

STATE OF NEW YORK
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ATTORNEY GENERALDIVISION OF SOCIAL JUSTICE
ENVIRONMENTAL PROTECTION BUREAU

August 23, 2024

Hon. Carol B. Winslow
Clerk of the Court
Yates County Supreme Court
415 Liberty Street
Penn Yan, NY 14527

Re: *Greenidge v. DEC* (2024-5221)

Dear Hon. Carol Winslow:

I represent the Department of Environmental Conservation (the Department) and Sean Mahar, as interim Commissioner of the Department (collectively, the State) in the above-referenced matter. I write for two purposes: 1) to assert the State's objection to the *ex parte* temporary restraining order issued against the State by Justice Cook on August 20, 2024, who has since recused himself from the case; and 2) to notify the Court that the State has submitted a briefing schedule stipulation, as between petitioners-complainants Greenidge Generation (Greenidge) and the State.

On August 20, 2024, in response to Greenidge's order to show cause, Judge Cook issued an order stating: "pending a hearing and determination of this application the Respondents are enjoined and restrained from taking any action requiring that Petitioner-Plaintiff relinquish its Title V permit or cease operations of the Facility" ([NYSCEF Doc No. 45](#), emergency order to show cause for injunction and temporary restraining order at 3). Notably, the Court did so on the *same day* that Greenidge made the request and without giving the State an opportunity to be heard, as required by established law. The State now understands that Justice Cook recused himself from this proceeding on August 21, 2024.

[CPLR 6313](#)(a) prevents the Court from restraining the State from performing its statutory duties. In this case, the Department's May 8, 2024 decision at issue in this proceeding (*see* [NYSCEF Doc No. 21](#), Department decision) was issued pursuant to its statutory authority under, among other things, New York's Climate

Leadership & Community Protection Act § 7(2), [Environmental Conservation law Ch.43-B, Art. 75](#), and the Department's hearing regulations in 6 NYCRR Pt. 624. The Court may not issue a temporary injunction against the State for fulfillment of its statutory duties without giving the State an opportunity to be heard ([DiFate v Scher](#), 45 AD2d 1002, 1003 [2d Dept 1974] ["CPLR 6313 (subd. [a]), which authorizes the granting of ex parte temporary restraining orders, specifically prohibits the granting of such relief against 'a public officer, board or municipal corporation of the state'. The temporary restraining order contained in the order to show cause which implemented this proceeding was void on its face because the issuing court was without authority to grant it and, therefore, need not have been obeyed by the respondents"])). What is more, the Court's order appears to not only grant temporary injunctive relief until this matter can be heard, but is fundamentally overbroad in that it enjoins the State through the pendency of this litigation.

Nevertheless, and without waiving any of its defenses, the State seeks to expeditiously address the merits of the case, which requires time to address the multiple motions and lengthy affidavits and memoranda before the Court. Accordingly, the State has submitted a scheduling stipulation, which will obviate the need for any TRO. Proposed Intervenor do not consent to the functional extension of the *ex parte* TRO without being heard on the merits and have informed us that they plan to submit proposed opposition papers August 28 as currently directed in the Order at No. 45 on the docket.

As a final note, the State does not object to the Court granting the motion to intervene (motion 3) (see [NYSCEF Doc No. 46](#), notice of motion).

Respectfully submitted

/s/ Nicholas C. Buttino

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