SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

In the Matter of the Application of
GREENIDGE GENERATION LLC,

Petitioner-Plaintiff,

Index No. 2024-5221
Hon. Vincent M. Dinolfo

For a Judgment Pursuant to Article 78 of the
Civil Practice Law and Rules

- against -

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, and ACTING
COMMISSIONER SEAN MAHAR, In his Official
Capacity as Acting Commissioner,

Respondents-Defendants.

PROPOSED INTERVENORS' MEMORANDUM OF LAW IN OPPOSITION TO PETITIONER-PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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PRELIMINARY STATEMENT

Seneca Lake Guardian, Committee to Preserve the Finger Lakes, Fossil Free Tompkins, and Sierra Club (collectively, "Proposed Intervenors") respectfully submit this memorandum of law in opposition to Petitioner Greenidge Generation, LLC's (hereafter, "Petitioner" or "Greenidge") order to show cause seeking a temporary restraining order ("TRO") and a preliminary injunction. Petitioner asks this Court to stay Respondents-Defendants New York State Department of Environmental Conservation ("NYSDEC"), and Acting Commissioner Sean Mahar, in his Official Capacity as Acting Commissioner (collectively, "Respondents"), from denying Greenidge's application to renew its Clean Air Act Title V air permit for the Greenidge Generation Station[1] and enjoining Respondents from requiring that Petitioner relinquish its Title V air permit and cease operations of the Greenidge Generation Station by September 9, 2024.

Although Greenidge attempts to cast the permit denial as some form of "political" vendetta, NYSDEC denied Petitioner's air permit renewal because its continued operations, which have evolved significantly in recent years to serve its own energy-intensive proof-of-work cryptocurrency mining business, represent a very substantial increase in GHG emissions which are inconsistent with and would interfere with the attainment of the statewide greenhouse gas ("GHG") emission limits established in Article 75 of the Environmental Conservation Law ("ECL"). Thus, while significant emitters of greenhouse gases around the State are striving (and required) to reduce their emissions to be consistent with the GHG emission reductions mandated by the Climate Leadership and Community Protection Act ("CLCPA"), Greenidge is doing the opposite—

[1] To the extent that Greenidge seeks to stay NYSDEC from denying Greenidge's Title V air permit, that denial already occurred on May 8, 2024. Therefore, Greenidge's application for interim relief should be interpreted as only seeking to enjoin NYSDEC from taking enforcement action based on that denial.

substantially increasing its GHG emissions for the sole purpose of supplying "behind the meter" electricity to its "proof of work" bitcoin mining operation.

Petitioner, then, is asking this Court to set aside NYSDEC's reasoned decision, which the agency reached following extensive administrative proceedings, and allow it to continue to increase its actual GHG emissions beyond the already enormous increase that has occurred since it began its cryptocurrency operations, through the increased combustion of fossil fuels solely for its own benefit. There is no justification for Petitioner's significantly increased emissions, which only serve to benefit its own behind-the-meter crypto mining operations and now take up ~90% of its operations,[2] and Greenidge utterly failed, in any event, to even attempt to offer a justification during the lengthy NYSDEC administrative proceedings.

Petitioner has not and cannot demonstrate that it will suffer any harm at all, much less irreparable harm, if this Court were to deny the TRO and preliminary injunction. Petitioner's motion is based upon speculative economic injuries to the company—injuries which are easily refuted by its own public filings—as well as fabricated injuries related to New York's power grid. But Petitioner has offered nothing beyond its own speculation and vague references to the New York Independent System Operator's ("NYISO") deactivation process to substantiate its claimed harm.

Although Petitioner's motion should be denied based on its failure to establish irreparable harm alone, Petitioner also fails to establish a likelihood of success on the merits and that the balance of the equities weighs in its favor—all three of which are required to sustain a motion for

[2] Affirmation of Philip H. Gitlen ("Gitlen Aff."), August 28, 2024, Ex. 1. Greenidge Form 10-Q at 4 ("2024 Revenue: "Datacenter hosting [of others' cryptocurrency miners] $6,645 [50.89%]; Cryptocurrency mining 4,775 [36.57%]; Power and capacity 1,487 [11.39%]; ...") https://www.sec.gov/ix?doc=/Archives/edgar/data/1844971/000162828024037288/gree-20240630.htm; Gitlen Aff. Ex. 2. 2023 Form 10-K/A at 6, ("Revenues … 2023 Cryptocurrency mining 24,238 [34.43 %] Datacenter hosting 39,478 [56.09 %] Power and capacity 6,672 [9.48 %] …"), https://www.sec.gov/Archives/edgar/data/1844971/000119380524000600/e663587_10ka-ggh.htm.

a TRO and a preliminary injunction. The merits of Petitioner's claims have already proven unsuccessful at the administrative level, and NYSDEC's rational basis for denying Petitioner's permit is entitled to deference. Regarding the balancing of the equities, Petitioner has failed to establish that its vague and speculative assertions of harm in the absence of immediate relief outweigh the clear and compelling harm the State and the public would bear if the State's efforts to mitigate climate change are thwarted. Injunctive relief would allow Petitioner to continue to increase its actual GHG emissions through the increased combustion of fossil fuels, in contravention of the CLCPA, and hinder the State's ability to meet its statewide emission reduction mandates. According to Greenidge's own documentation, its operations and direct emissions in 2023 have more than quadrupled from its first year of operations in 2017. This is also in stark contrast to 2011-2016, when the facility was completely dormant with zero direct or upstream GHG emissions and zero local air pollution.

Finally, if this Court were to grant Petitioner the injunction it seeks, Petitioner should be required to post a bond substantial enough to cover the widespread harm to the State and its residents who bear the burden of adverse impacts of climate change.

STATEMENT OF FACTS

A. The Greenidge Facility

Petitioner owns a natural gas fired electric generating plant located in Town of Torrey, Yates County, New York (the "Facility"). Matter of Greenidge Generation, LLC, Decision of the Regional Director, May 8, 2024, at 1. The site was historically a coal burning electrical generating facility. *Id.* at 6. In 2012, the Facility was acquired by Greenidge, which received a Title V air permit in 2016 after indicating it would convert operations to natural gas. *Id.* at 3-4. The purpose of the Facility under the 2016 permit was to produce and provide electricity on a limited basis to the NYISO market in a "peaking capacity", i.e., supplying energy to the State power grid during

"peak" periods of electric energy demand. *Id.* at 4. In 2020, the Town of Torrey authorized the installation of a Blockchain Technology Data Center at the Facility. *Id.* at 6-7. That same year, the Facility's GHG emissions almost tripled. *Id.* at 10. In 2021, Greenidge provided 112,474 megawatt hours of electricity to the Blockchain center, 67% more than the 76,486-megawatt hours it provided to the NYISO grid. *Id.* at 7. Before it began mining cryptocurrency, its grid service was even less.

With the immense ramp up of Greenidge's power plant to operate its crypto mining operation, Facility GHG emissions have skyrocketed. In 2023 alone, the Facility emitted nearly 390,000 tons of carbon dioxide—the equivalent of more than 80,000 cars on the road. As the chart below demonstrates, Greenidge's emissions have increased every year since they began crypto mining.

Table 1. Greenidge Facility Operations and Direct Emissions Since 2009[3]

Year	Facility's Days of Operation	Facility's Approx. Annual Capacity Factor	Facility's Direct CO_2 Emissions (short tons per year)	# of Miners	Fuel source
2009	267	~51.3%	454,207	0	Coal
2010	358	~65.2%	599,105	0	Coal
2011	77	~11.6%	114,946	0	Coal
2012	0	0.0%	0	0	none
2013	0	0.0%	0	0	none
2014	0	0.0%	0	0	none
2015	0	0.0%	0	0	none
2016	0	0.0%	0	0	none
2017	135	~19.3%	124,009	0	Gas
2018	147	~22.0%	119,305	0	Gas
2019	48	~6.5%	39,406	few	Gas
2020	343	~42.2%	228,303	6,900	Gas
2021	361	~52%	278,846	17,300	Gas
2022	356	~63%	343,046	22,000	Gas
2023	356	~71%	388,036	~42,300	Gas
First ½ of 2024	174	~73%	188,276	Unclear	Gas

[3] *Greenidge Generation LLC v N.Y. State Dept. of Envtl. Conservation et al*, Index No. 2024-5221, Doc. No. 54, at 9, Sup Ct, Yates County.

The chart above includes only the Facility's direct emissions—the numbers are even more staggering with the addition of upstream emissions.[4] Greenidge itself projects that its current upstream emissions total 476,840 short-tons of carbon dioxide equivalents (CO^2e)[5] per year.[6] As such, Greenidge's combined direct and upstream emissions for 2023 totaled more than 860,000 short-tons of CO^2e.

B. Greenidge's Permit Renewal

Greenidge's 2016 air permit expired on September 6, 2021. *Id.* at 4. On June 30, 2022, NYSDEC staff denied Greenidge's renewal application because the Facility's continued operation as a behind the meter cryptocurrency mining operation would be inconsistent with or would interfere with the attainment of the statewide GHG emission limits established in ECL Art. 75 and reflected in 6 NYCRR Part 496. *Id.* at 9-10. NYSDEC staff also determined that the Facility was not needed for grid reliability and that their proposed mitigation measures were insufficient. Following NYDEC's denial of Greenidge's permit, Petitioner filed a request for an adjudicatory hearing with the agency's Office of Hearings and Mediation Services on July 28, 2022. In September 2023, following an Issues Conference and substantial briefing, an Administrative Law Judge ruled, inter alia, that (1) NYSDEC had the authority to deny the permit, (2) NYSDEC staff had correctly concluded that Greenidge's permit renewal was inconsistent with the CLCPA Section 7(2), (3) Greenidge had not raised any adjudicable issues of fact with respect to the issue

[4] The CLCPA defines statewide GHG emissions as "the total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state." Thus, upstream emissions are also part of the analysis. ECL 75-0101[13]; *see also* NYSDEC's Notice of Denial at 5.

[5] Carbon Dioxide equivalents are used to measure a given source's combined GHG emissions as weighted by their global warming potential ("GWP"). 6 NYCRR 496.3[b]. For example, one ton of methane would be multiplied by the GWP value of 84 and have a CO^2e of 84 tons. 6 NYCRR 496.5.

[6] Greenidge's Response to NYSDEC's Second RFAI at 7 [Aug. 20, 2021]. Greenidge submitted their projected upstream emissions in metric tons, which are converted to short tons by multiplying their 432,582 value by 1.1023.

of inconsistency, and (4) while Greenidge failed to meet its burden as to justification and mitigation, the issues of justification and mitigation could nevertheless advance to adjudication. *Id.* at 12.

Greenidge appealed the limitation of adjudicable issues and Proposed Intervenors appealed contending that Greenidge had several opportunities to address the justification and mitigation issues, refused to do so, and should not have yet another opportunity to address them after its refusals led to a permit denial.

On May 8, 2024, the Commissioner's Designee dismissed Greenidge's appeal, granted the relief sought by Proposed Intervenor's appeal, and canceled the adjudicatory hearing, holding that NYSDEC was not required to make a statement of justification or identify alternatives or mitigation measures where it could not justify issuance of a permit (the "Final Decision"). *Id.* at 25-29. In so holding, the Commissioner's Designee found that "Greenidge was provided ample opportunities to propose a concrete plan for reducing its GHG emissions, including during this Part 624 proceeding, yet failed to do so" instead offering "only a vague assurance that it will present mitigation proposals at the adjudicatory hearing." *Id.* at 26. Accordingly, "it would be inappropriate to allow Greenidge to offer additional, new evidence in support of its application at the adjudicatory stage of [the] Part 624 proceeding." *Id.* at 26-27.

Notwithstanding Respondents' Final Decision denying Greenidge's Title V permit, the Facility has continued to operate pursuant to the State Administrative Procedure Act ("SAPA") Section 401(2).

C. Generator Deactivation Review

The NYISO is a nonprofit organization responsible for overseeing the electric power grid in New York State. NYISO ensures the power grid operates reliably and efficiently, balancing supply and demand. A generator that sells electricity to NYISO has an Open Access Transmission

Tariff ("OATT" or "Tariff") that outlines all the applicable requirements and obligations that must be met.

A Facility that may need to retire must submit notice to NYISO,[7] at which point NYISO will undertake a fact-based analysis, for informational purposes only, to understand the impact of possible changes in load and resources on the grid. NYISO assesses proposed Generator Deactivations on a quarterly basis.[8] Upon information and belief, Greenidge has not yet requested that NYISO conduct this review for its Facility.

The New York Public Service Commission ("NYPSC") regulates the state specific aspects of energy in New York State. A generator that may need to retire must provide notice to the NYPSC, typically via a letter filed in the Generator Unit Retirements Docket.[9] However, unlike NYISO's fact-intensive quarterly assessment, the NYPSC does not engage in its own study, and merely relies on NYISO's findings.

ARGUMENT

POINT I

PETITIONER IS NOT ENTITLED TO A TEMPORARY RESTRAINING ORDER OR PRELIMINARY INJUNCTION

A court may grant a TRO "pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had." CPLR 6301; *see also* CPLR 6313. The standards for a TRO and preliminary injunction are effectively the same, and when deciding whether to grant such relief

[7] Gitlen Aff., Ex. 3. NYISO Open Access Transmission Tariff (OATT), Attachment FF, Section 38.3.1.4 at 372 https://nyisoviewer.etariff.biz/ViewerDocLibrary/MasterTariffs/9FullTariffNYISOOATT.pdf.

[8] Gitlen Aff., Ex. 4. NYISO, Technical Bulletin 185–Updates, at 3 ("A Generator. . . is required to comply with the Generator Deactivation requirements of the quarterly Short-Term Reliability Process before becoming Retired.") https://www.nyiso.com/documents/20142/36339783/TB%20-185%20Presentation_2023-02-13.pdf/fda2805d-bf61-f24e-2861-c850ee0c8d02.

[9] Case 05-E-0889, *Order Adopting Notice Requirements for Generation Unit Retirements* [Dec. 20, 2005].

courts will weigh three factors: (1) likelihood of success on the merits; (2) irreparable injury if preliminary injunctive relief is denied, and (3) whether a balance of the equities favors the movant. *See* CPLR 6313[a]; *see also Nobu Next Door, LLC v Fine Arts Hous., Inc.*, 4 NY3d 839, 840 [2005]; *Aetna Ins. Co. v Capasso*, 75 NY2d 860, 862 [1990]; *Doe v Axelrod*, 73 NY2d 748, 750 [1988]; *Cooperstown Capital, LLC v Patton*, 60 AD3d 1251, 1252 [3d Dept 2009]. Whether or not to grant a TRO and preliminary injunction is within the sound discretion of the trial court. *See 84-85 Gardens Owners Corp. v 84-12 35th Ave. Apt. Corp.*, 91 AD3d 702 [2d Dept 2012]; *159 Smith, LLC v Boerum Hill Prop. Holdings, LLC*, 191 AD3d 741 [2d Dept 2021].

"Preliminary injunctive relief is a drastic remedy which is not routinely granted." *Marietta Corp. v Fairhurst*, 301 AD2d 734, 736 [3d Dept 2003]; *see also Armanida Realty Corp. v Town of Oyster Bay,* 126 AD3d 894, 894 [2d Dept 2015] ["the remedy is considered a drastic one, which should be used sparingly"]. Indeed, "[i]t is well established that the drastic remedy of a preliminary injunction is not to be granted unless a clear right to the relief demanded is established under the undisputed facts upon the moving papers, and that the burden of showing such an undisputed right is on the person seeking such relief." *Brand v Bartlett*, 52 AD2d 272, 275 [3d Dept 1976]; *Board of Mgrs. of Wharfside Condo. v Nehrich*, 73 AD3d 822, 824 [2d Dept 2010].

Petitioner has failed to meet this heavy burden.

A. Petitioner has Failed to Demonstrate a Likelihood of Success on the Merits

Petitioner claims, incorrectly, that Respondents' denial must be annulled because: (1) NYSDEC lacks authority to deny the permit under CLCPA 7(2); (2) NYSDEC failed to assess justification and alternatives/mitigation as required by §7(2); (3) NYSDEC based its decision on improper policy making; and (4) NYSDEC's consistency determination was arbitrary and

capricious.[10] Petitioner has failed, however, to demonstrate a likelihood of success on any of these claims.

It is a well-established general principle that an administrative agency tasked with implementing a statute should be given deference in its interpretation and implementation of that statute, so long as the agency's interpretation is not irrational or unreasonable (*Matter of Natural Resources Defense Council, Inc. v NYSDEC*, 25 N.Y.3d 373 [2015]). Courts should not "second-guess[] the experience and expertise of state agencies charged with administering statutes and regulations" (*Id*. at 397; *see also Lamar Cent. Outdoor, LLC v N.Y.*, 64 AD3d 944, 947-948 [3d Dept. 2009]). Accordingly, when "the judgment of the agency involves factual evaluations in the area of the agency's expertise and is supported by the record, such judgment must be accorded great weight and judicial deference." *Beer v N.Y. State Dept. of Envtl. Conservation*, 189 AD3d 1916, 1918 [3d Dept 2020] [internal quotation marks and citations omitted].

NYSDEC also correctly determined that CLCPA §7(2) confers upon state agencies the authority to deny a permit that is inconsistent with or would interfere with the statewide emissions limits established in ECL Art. 75, and such determination is consistent with both the plain language of §7(2) and the recent ruling in *Danskammer Energy, LLC v NYSDEC*, 76 Misc. 3d 196, 2022 N.Y. Slip Op. 22182 [Sup Ct, Orange County 2022].

To achieve CLCPA requirements, the state legislature mandated that all state agencies—including NYSDEC—evaluate each permit, license, or other administrative decision to ensure compliance with the CLCPA mandates. Specifically, CLCPA 7(2) directs that "[i]n considering and issuing permits, . . . all state agencies . . . shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide [GHG] emissions limits." For each

[10] Petitioner claims, but does not address in its briefing, that NYSDEC's interpretation of §7(2) is in error of law because it would render the law in violation of the supremacy clause.

inconsistent or interfering permit decision, "a detailed statement of justification as to why such limits/criteria may not be met, and identif[ication of] alternatives or [GHG] mitigation measures to be required where such project is located" shall be provided. CLCPA 7(2).

In *Danskammer*, a case in which a natural gas-fired power plant operator challenged the denial of its Title V air permit application for a new, more efficient electricity generating plant, the Supreme Court confirmed DEC's authority to deny permits under CLCPA 7(2) and found Danskammer's arguments "ignore[d] the entire thrust, purpose and legislative history of the statute," which identified climate change as "a currently existing, urgent problem that was worsening, not a developing or potential problem that might arise if appropriate action was not taken in the future." *Danskammer*, 76 Misc. 3d at 249. The court explained that Danskammer's—and now Greenidge's—interpretation "would render the legislature's expressed mandate to reduce GHG emissions, despite its immediacy and urgency, completely toothless for years to come. . . ." *Id.* at 250.

NYSDEC staff correctly denied Petitioner's permit renewal application on the basis that the Facility's continued operation in its current manner would be inconsistent with or would interfere with the attainment of the statewide GHG emission limits. Specifically, NYSDEC based its decision on the following factors:

> *(1) the actual GHG emissions from the Facility have drastically increased since the time of the Title V permit issuance in 2016 and since the effective date of the CLCPA in 2020;*
>
> *(2) this increase in GHG emissions is primarily due to the fact that Greenidge has substantially altered the primary purpose of the Facility's operation, from providing electricity to the grid in a 'peaking' capacity to powering its own energy-intensive Proof-of-Work (PoW) cryptocurrency mining operations behind-the-meter; and*
>
> *(3) renewal of the Title V permit would allow Greenidge to continue to increase the Facility's actual GHG emissions through the increased combustion of fossil fuels,*

> *for the benefit of its own behind-the-meter operations" (DEC Denial Letter at 8 [footnote omitted]).*

Final Decision at 9.

Perhaps most critically, NYSDEC concluded that if it were to grant the renewal, it would allow for the Facility to continue increasing emissions, thereby making it more difficult for the State to achieve the CLCPA's GHG emissions limits. *Id.* at 10. NYSDEC also correctly concluded that Greenidge had not provided sufficient information on any potential justification for the Facility—such as, for example, information demonstrating that the absence of the Facility would result in social, economic or environmental harm to the public—and that NYSDEC need not identify alternatives or mitigation measures, since no justification is available. *Id.* at 11.

Thus, NYSDEC properly applied §7(2) to reach its determination that renewing Greenidge's permit would be fundamentally inconsistent with the CLCPA's GHG emission reduction requirements, and in so doing, NYSDEC engaged in a thorough and reasoned analysis of the issues.

Greenidge's current (now expired) permit, states explicitly that it does not convey any property rights, citing 6 NYCRR 201-6.4(a)(6), which concept has substantial statutory and case law support. Further, such property rights do not normally arise in benefits that are discretionary, as with the Department's action on the Greenidge permit.

To the extent Greenidge maintains that NYSDEC's denial was arbitrary and capricious because it was in response to a renewal application, such arguments have no merit and are not likely to succeed on the merits. [11] The CLCPA does not differentiate between new permits and renewals and neither does the Final Agency Decision.

[11] Moreover, Greenidge does not have any inherent right to a permit. NYSDEC can grant, modify, or deny permits for many reasons, including compliance and non-compliance with state and federal law. *See generally* 40 CFR

Nor is there any merit to Petitioner's suggestion that the determination of the Commissioner's Designee in the Final Decision to cancel the adjudicatory hearing was in contravention of NYSDEC's Uniform Permitting Procedures (Part 624).[12] "Under the [ECL], it is the Commissioner alone that is vested with the authority to evaluate the environmental impacts associated with a requested permit (*see* ECL 3–0301[1][b]) and to hold administrative hearings (*see* ECL 3–0301[2][h])." *Catskill Heritage All., Inc. v New York State Dept. of Envtl. Conservation*, 161 AD3d 11, 18 [3d Dept 2018] (citations omitted). The Commissioner's Designee's determination that no issues warranted adjudication was supported by a rational basis, and accordingly is entitled to deference.

For these reasons, Petitioner has failed to demonstrate any likelihood of success in its challenge to NYSDEC's interpretation and application of CLCPA 7(2). This Court should, therefore, deny Petitioner's motion in its entirety.

B. Petitioner has Failed to Demonstrate that it will Suffer Irreparable Harm Without the Injunction

"To be entitled to a preliminary injunction, the movant must demonstrate by clear and convincing evidence…irreparable injury absent the granting of the preliminary injunction" (*EdCia Corp. v McCormack*, 44 AD3d 991, 993 [2d Dept 2007] [quotation marks and citations omitted]; *see McGrath v Town Bd. of North Greenbush*, 254 AD2d 614, 616 [3d Dept 1998], *lv denied* 93 NY2d 803 [1999]; *Rockland Dev. Assoc. v Village of Hillburn*, 172 AD2d 978, 979 [3d Dept 1991]). Unsubstantiated claims and conclusory allegations that an agency's failure to issue permits

70.6[a][6][iv]; 6 NYCRR 201-6.4[a][6]; 6 NYCRR 621.10[f]; § 621.13[a][4]-[5]; *Danskammer*, 76 Misc. 3d at 230; *Huntington Yacht Club v Vill. of Huntington Bay*, 767 NY2d 132 [2d Dept 2003].

[12] We note that, at any rate, this issue is not relevant to nor does it need to be resolved at the TRO/PI stage of the proceeding, and can be briefed at a later time.

will result in bankruptcy "are insufficient to demonstrate irreparable injury" (*Rockland Dev. Assoc.*, 172 AD2d at 979).

Here, Greenidge has not established by any evidence, never mind clear and convincing evidence as required by law, that it will be irreparably injured in the absence of injunctive relief. (TRO Br. at 23) ("It is therefore entirely possible . . . ."). Greenidge's claims are not substantiated by any evidence and fail as a matter of law as a result.

In fact, much evidence demonstrates the opposite, as described below.

1. As it has told the SEC and its investors, Greenidge is able to continue its cryptocurrency mining operation with or without their Title V Air Permit

First and most importantly, Greenidge is able to continue its cryptocurrency mining operation with or without its Title V Air permit: (1) it can power its mining operations from the grid; and (2) it can mine cryptocurrency at many other locations owned by the company. While it is convenient (and perhaps economically beneficial to the company) for the Facility to be able to generate its own electricity to power its operations, restricting this option does not constitute irreparable harm. Greenidge's change in operations has resulted in two cash flows: revenues from cryptocurrency mining and revenues from power generation. In its most recent Annual Report to investors and the SEC, Greenidge reported that only 9% of its revenues came from grid power sales and capacity.[13]

Greenidge's cryptocurrency mining operations—its primary revenue source—may continue without the Facility's gas plant operation. Greenidge has stated to its investors that it has obtained all the requisite approvals needed to power its cryptocurrency mining operation by

[13] Gitlen Aff., Ex. 2, 2023 10-K/A ("[2023] Revenue: ...power and capacity 6,672 [or about 9 %]).

purchasing power from the grid.[14] While the ability to do so might slightly increase costs for the Company, that by no means constitutes irreparable harm.

Greenidge can also continue its cryptocurrency mining operations at the Company's other facilities, undermining any allegation that it will be irreparably harmed by the denial of a preliminary injunction. From Greenidge's own admissions, it may "mov[e] its [cryptocurrency] miners hosting facilities and redeploy[] the miners to a combination of more profitable sites owned and leased by Greenidge."[15] Greenidge claimed as much to this Court, stating that closure of their Facility would simply result in transferring operations out-of-state.[16] Moving operations would not be a concern for Greenidge as it has gone from site acquisition to miner deployment within just three months.[17] Greenidge therefore has a ready option in hand to mitigate any losses from its failure to secure a permit renewal from the Department.

2. *Greenidge has not put forth evidence about employment from their non-cryptocurrency mining operations to warrant continued operations*

Greenidge has never provided transparent or specific information on employment at the Facility. While it now provides employment numbers, it does not identify: (a) how many of those employed actually reside in Yates County; (b) how many pertain to the cryptocurrency mining operation and how many pertain to the power plant; (c) how many employees are permanent or temporary; nor (d) how much the C-suite salaries distort their alleged average salary numbers.

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[14] Gitlen Aff., Ex. 5, 2023 10-K at 8 ("As of December 31, 2023, our owned and customer hosted miners at the New York Facility had the capacity to consume approximately 60 MW of electricity. We have approval from NYISO to utilize 64 MW of electricity behind-the-meter.") https://www.sec.gov/Archives/edgar/data/1844971/000162828024015540/gree-20231231.htm; *see also* Greenidge 2022 10-K at 8, https://www.sec.gov/Archives/edgar/data/1844971/000162828023010227/gree-20221231.htm.

[15] Gitlen Aff., Ex. 6, Form 8-K, Ex. 99.1 [Aug. 1, 2024], https://www.sec.gov/Archives/edgar/data/1844971/000162828024034163/greenidgeprovidesq22024bit.htm.

[16] *Index No. 2024-5221*, Doc. No.3 at 17, n.13.

[17] Gitlen Aff., Ex. 7, Form 8-K, Ex. 99.1 [July 24, 2024] ("Greenidge has already deployed the Pod X at its sites in New York, South Carolina, North Dakota and Mississippi, *where it recently took its newest bitcoin mining site from acquisition to miner deployment within just three months* by building out the site using the Pod X.")(emphasis added) https://www.sec.gov/Archives/edgar/data/1844971/000162828024032833/newprdraftbmcomments7-23x2.htm.

Setting aside Greenidge's persistent obfuscations,[18] the most specific data we have seen so far indicates that the cryptocurrency mining operations at the Facility employed five workers on site as of October 2021.[19]

Across the country, it's clear that the number of jobs needed to mine cryptocurrency are few.[20] The application-specific machines that mine cryptocurrency need very little human input. Most of the employment that is created at cryptocurrency mining sites is short-term, with temporary workers hired to set up the mining machines; less than a dozen people may be required to maintain an operation or provide security. As a Berkeley business school professor has observed: "These are warehouses full of computers and they only require one or two IT people to run the whole operation, so it's unlikely that it brings jobs or stimulates the economy."[21] Fitch Ratings similarly has found that "[c]ryptocurrency mining operations typically bring in very little additional economic benefits in the form of jobs or ancillary business to a local economy."[22]

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[18] *Index No. 2024-5221*, Doc. No. 30 at 9 (noting 36 employees, but not clarifying which are for cryptomining or which are for power generation). Recall, approx. 90% of the company's revenues are from cryptomining, now power/energy. This is an essential distinction.

[19] Susan Arbetter, *Greenidge Generation permit renewal draws supporters, critics over cryptocurrency mining*, NY State of Politics [Oct. 13, 2021], https://nystateofpolitics.com/state-of-politics/new-york/politics/2021/10/13/greenidge-generation-permit-renewal-draws-supporters--critics-over-cryptocurrency-mining.

[20] *See, e.g.*, U.S. House Committee on Energy & Commerce Staff, *Memorandum re Hearing on Cleaning Up Cryptocurrency: The Energy Impacts of Blockchains*, at 9 [Jan. 17, 2021], https://democrats-energycommerce.house.gov/sites/evo-subsites/democrats-energycommerce.house.gov/files/documents/Briefing%20Memo_OI%20Hearing_2022.01.20.pdf (Rockdale, TX cryptocurrency mining only generated 14 of 350 promised jobs). Avi Asher-Schapiro, Coal to crypto: The gold rush bringing bitcoin miners to Kentucky, Thomson Reuters Found [Mar. 14, 2022], https://www.context.news/digital-divides/long-read/coal-to-crypto-the-gold-rush-bringing-bitcoin-miners-to-kentucky?utm_source=news-trust&utm_medium=redirect&utm_campaign=context&utm_content=article; Ky. PSC, Case No. 2021-00282, *Tariff Filing of Big Rivers Elec. Corp.*, Order at 12 [Oct. 14, 2021], https://psc.ky.gov/pscscf/2021%20Cases/2021-00282//20211014_PSC_ORDER.pdf.

[21] *See, e.g.*, Laura Counts, *Power-hungry cryptocurrency miners push up electricity costs for locals*, Berkeley Haas [Aug. 3, 2021], https://newsroom.haas.berkeley.edu/research/power-hungry-cryptominers-push-up-electricity-costs-for-locals/; Matteo Benetton et al., *When Cryptocurrency Comes to Town: High Electricity-Use Spillovers to the Local Economy*, SSRN, at 3 [Aug. 2022], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3779720.

[22] Fitch Ratings, *Crypto Mining Poses Challenges to Public Power Utilities* [Jan. 24, 2022], https://www.fitchratings.com/research/us-public-finance/crypto-mining-poses-challenges-to-public-power-utilities-24-01-2022#:~:text=Fitch%20Ratings%2DNew%20York%2FSan,sufficiently%20mitigated%2C%20Fitch%20Ratings%20says .; *see also* Lois Parshley, *How Bitcoin mining devastated this N.Y. town*, MIT Tech. Review [Apr. 18, 2022] https://www.technologyreview.com/2022/04/18/1049331/bitcoin-cryptocurrency-cryptomining-new-york/; Pia Singh, *Bitcoin miners flocked to an upstate N.Y. town for cheap energy — then it got complicated*, CNBC [June

Furthermore, many if not all of the financial or high-tech jobs that come with Greenidge's crypto mining operations are not in Torrey, New York—the owners and many c-suite employees of Greenidge are headquartered in or work in Connecticut,[23] and as detailed above, are similarly managing sites in North Dakota, Mississippi, and South Carolina.[24]

To the extent the employees Greenidge references actually are employed in Yates County and affected by the plant closure, they may be offered similar positions throughout the rest of the Company, including in any of Greenidge's operations in other states or by their parent company Atlas Holdings. The cessation of operations at the Facility does not have to result in job losses, unless Greenidge so chooses. Moreover, because Greenidge can simply purchase power to serve its Yates County crypto business, any loss of cryptocurrency mining jobs there would occur of its own choosing—not because of the permit denial.

3. *Greenidge has manufactured its own "emergency" by failing to seek NYISO Deactivation Review when NYSDEC first issued the Notice of Denial in 2022, or the many affirmances since then*

Petitioner claims that without injunctive relief, "the Facility will be unable to comply with the established process in New York for an electric generating facility to cease operations." TRO Br. at 20. This is entirely an issue of Greenidge's own making. Despite having been notified by NYSDEC that their Title V Air Permit was denied in June 2022, Greenidge should have—but failed to—notify NYISO of its permit denial. Judging by Greenidge's TRO filing, the Company has still not provided notice to either NYISO or the NYSPSC. Greenidge should not be rewarded

24, 2021], https://www.cnbc.com/2021/06/24/bitcoin-miners-flocked-to-upstate-new-york-for-cheap-energy-then-it-got-complicated.html; Steve Wright, *Testimony Before the Subcommittee On Oversight And Investigations, House Energy and Commerce Committee*, [Jan. 20, 2022], https://www.congress.gov/117/meeting/house/114332/witnesses/HHRG-117-IF02-Wstate-WrightS-20220120.pdf.

[23] Gitlen Aff., Ex. 5, 2023 10-K at 1 ("135 Rennell Drive, 3rd Floor Fairfield, CT 06890 (Address of principal executive offices)"); *id.* at 51 ("We lease office space in Fairfield, Connecticut."); Yahoo Finance, https://finance.yahoo.com/quote/GREE/profile/ ("Greenidge Generation Holdings Inc. 135 Rennell Drive 3rd Floor Fairfield, CT 06890").

[24] *Supra* note 17.

for that failure with an additional 365 days of operation in order to comply, at the very last second, with its obligation to provide notice of closure.

Despite Greenidge's attempts to use the deactivation review process as a scapegoat, NYISO recognizes the requirement that all generators must abide by New York law.[25] As such, NYISO's own generator deactivation review requirements show that if a facility is not able to operate due to a lack of compliance with environmental law or a lack of a permit, NYISO—not Greenidge—will conduct its review and immediately model the facility as "out-of-service" on the date the permit denial takes effect.[26] Greenidge's duty to provide notice is not a get-out-of-jail free card allowing the Company—rather than the State or NYISO—the final say on continuing operations. Any "harm" posed under Greenidge's theory here is of the Company's own making and not a result of DEC's permit denial.

4. Greenidge's operations are not needed to ensure "grid reliability"

Greenidge also points to vague reliability concerns for New Yorkers. To the extent that Greenidge is arguing that their continued operations are needed to ensure grid safety, Greenidge has once again failed to proffer any meaningful evidence. Greenidge claims that it may be "possible that reliability and resiliency will be impacted" by the shuttering of their operations. TRO Br. at 23. Yet, even at this supposedly imperative juncture, Greenidge has not provided any documentation to establish that there is a need for the Facility to continue operating to serve the

[25] *See* NYISO OATT, Section 9.1 General, ("Each Party shall comply with Applicable Laws and Regulations and Applicable Reliability Standards."); Article 14.1, Regulatory Requirements ("obligations under this Agreement shall be subject to. . .any required approval or certificate from one or more Governmental Authorities."); Section 14.2 Governing Law ("The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of New York.") https://nyisoviewer.etariff.biz/viewerdoclibrary/MasterTariffs/58TariffSections/20161115%20Greenidge%20LGIA%202305%20clean_18436.htm.

[26] *See* Gitlen Aff., Ex. 8, NYISO, Reliability Planning Manual at 21 (should a generator lack "authority to operate. . .due to a new or amended environmental law or regulation" the generator "may be modeled out-of-service" on the date required, [Sept. 9], https://www.nyiso.com/documents/20142/2924447/rpp_mnl.pdf/67e1c2ea-46bc-f094-0bc7-7a29f82771de.

grid. If NYISO, the entity with advanced technical expertise and sophistication in ensuring the safe and efficient operation of the power grid, determined that there is a reliability need that required the continued operation of a generator, NYISO would communicate that directly and take steps to ensure that need is met.[27] Greenidge cannot proffer such documentation here for the simple reason that it does not exist.

Further, it is clear that Greenidge's main priority is not providing electricity to New Yorkers, but rather to maximize its own profits. In its SEC filings, Greenidge disclosed limited revenue from "power and capacity".[28] Greenidge tells its investors and the SEC that they "opportunistically increase or decrease the total amount of electricity sold by the power plant based on prevailing prices in the wholesale electricity market."[29] This opportunistic sale of power is not the mark of a generator that is concerned about providing electricity to New Yorkers, but rather one seeking to maximize profits.

* * * * *

In summary, Petitioner's submissions fail to demonstrate that it will suffer irreparable harm in the absence of a TRO or a preliminary injunction. Greenidge operates in many states and has admitted its ability to transport its cryptocurrency mining equipment between its facilities; therefore, it has a remedy in hand for mitigating its losses while this proceeding is pending. Furthermore, Petitioner's vague references to lost jobs as a result of the Facility's closure are not "clear and convincing evidence" for purposes of establishing entitlement to injunctive relief, and

[27] For example, a Reliability Must Run or "RMR" Order from NYISO identifies when a Facility is needed. Greenidge has made no showing of an executed RMR and cannot rely vague claims of reliability needs for a TRO or preliminary injunction.
[28] Gitlen Aff., Ex. 2, 2023 Form 10-K/A (Power and capacity revenues at 6,672 [9.48 %] of total revenues); Gitlen Aff., Ex. 1.
[29] Gitlen Aff., Ex. 5, 2023 10-K at 56.

its inability to comply with the NYISO's generator deactivation procedures does not constitute irreparable harm.

C. The Balance of the Equities does not Weigh in Petitioner's Favor

Finally, in order to demonstrate that it is entitled to a preliminary injunction, Petitioner must also show that the balance of the equities supports such a remedy. In balancing the equities, a court must inquire whether "the irreparable injury to be sustained . . . is more burdensome [to the plaintiff] than the harm caused to defendant through imposition of the injunction." *Felix v Brand Serv. Group LLC*, 957 NYS2d 545, 547 [4th Dept. 2012]. "Courts must weigh the interests of the general public as well as the interests of the parties to the litigation." *Destiny USA Holdings, LLC*, 69 AD3d 212, 223 [4th Dept 2009].

While Petitioner has not shown that it will be irreparably harmed in the absence of an injunction, it is clear that an injunction would have significant adverse impacts on the State of New York and its residents. Indeed, it is the general public whom the Legislature determined will continue to bear the weight of climate change caused by increasing GHG emissions.

The damages from the Facility's continued pollution in the Finger Lakes Region and New York is a paramount concern and approximately 90% of those air emissions are tied to its cryptomining operations. The Finger Lakes region's economy is driven by agriculture and tourism, which contribute $3 billion into our economy annually and supports approximately 60,000 jobs—all of which rely heavily on clean air.[30] The CLCPA uses a "Value of Carbon" to "serve as a monetary estimate of the value of not emitting a ton of greenhouse gas emissions." ECL 75-0113[2]. Under that statutory rubric, CO_2 emissions from Greenidge damage the state over $117

[30] Sen. Gillibrand, *Legislation To Designate Finger Lakes Region As A National Heritage Area Passes Key Committee* [Mar. 12, 2018], https://www.gillibrand.senate.gov/news/press/release/senator-gillibrands-legislation-to-designate-finger-lakes-region-as-a-national-heritage-area-passes-key-committee/.

million per year.[31] For a five-year term (the length of an air permit), $585 million in economic harm.

Thus, the injury to Proposed Intervenors and to the State is "irreparable" on a greater order of magnitude than that of which Greenidge complains, and the State's interest in reducing GHG emissions to protect its natural resources and the health and welfare of its residents far outweighs the concerns of one cryptocurrency mining operation, which employs relatively few people and negatively impacts the local, tourism-based economy.

For these reasons, the balance of the equities does not weigh in Petitioner's favor.

* * *

Petitioner has failed to demonstrate by clear and convincing evidence any of the three showings required for a TRO or preliminary injunction: a likelihood of success on the merits, irreparable harm absent injunctive relief, and that the balance of the equities weighs in its favor. *EdCia Corp.*, 44 AD3d at 993. Accordingly, Petitioner's motion must be denied.

POINT II

SHOULD THE COURT GRANT PETITIONER'S MOTION, PETITIONER MUST BE REQUIRED TO POST A SIGNIFICANT UNDERTAKING

Pursuant to CPLR Article 63, should this Court determine that a preliminary injunction is warranted, Petitioner must be required to post an undertaking (*see* CPLR 6312[b] ["[P]rior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of

[31] Greenidge's projected annual emissions of 952,958 metric tons multiplied by DEC cost of carbon of $123 per metric ton. NYSDEC, Establishing a Value of Carbon, Guidelines for Use by State Agencies, at 28 https://extapps.dec.ny.gov/docs/administration_pdf/vocguide23final.pdf; Greenidge's Response to NYSDEC's Second RFAI at 7 [Aug. 20, 2021].

the injunction."] *Margolies v Encounter, Inc.*, 42 NY2d 475, 477 [1977] ["[T]he purpose and function of an undertaking given by a plaintiff pursuant to the provisions of CPLR 6312 [subd. [b]], prior to the granting of a preliminary injunction, is to reimburse the defendant for damages sustained if it is later finally determined that the preliminary injunction was erroneously granted."]).

In setting the amount of the undertaking, the Court would typically ensure that the amount is "rationally related to the potential damages that defendants could recover if an injunction is ultimately deemed unwarranted." *Cooperstown Capital*, 60 AD3d at 1253 [internal quotation marks omitted]; *see also Bonded Concrete, Inc. v Town of Saugerties*, 42 AD3d 852, 855 [3d Dept 2007]. While the Value of Carbon, mentioned above, is one measurement of potential damages, it is nearly impossible to quantify the potential damages to New York State and its residents that would ensue if Petitioner were permitted by this Court to continue releasing harmful GHG and co-pollutant emissions.

In enacting the CLCPA, the Legislature found that "[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York." Bill S6599, Legislative findings and declaration. As the Danskammer court put it, "the [L]egislature identified a currently existing, urgent problem that was worsening, not a developing or potential problem that might arise if appropriate action was not taken in the future." *Danskammer*, 76 Misc. 3d at 249. And, the "problem" includes the litany of "adverse impacts of climate change," including "the [increasing] severity and frequency of extreme weather events," "rising sea levels," and "an increase in the incidences of infectious diseases, asthma attacks, heart attacks, and other negative health outcomes," among others. *See* CLCPA 1(1). To address this problem, the Legislature found that "substantial emissions reductions are necessary to avoid the most severe

impacts of climate change . . . [some of which] . . . are already observable in New York state and the northeastern United States." *See* CLCPA 1(5).

Facilities like Petitioner's are fundamentally part of the "problem" and therefore Petitioner's continued operations would only serve to worsen the adverse impacts of climate change and exacerbate the substantial economic harm already occurring in New York. Accordingly, this Court must fashion an undertaking which is cognizant of the Legislature's findings, including that climate change is already causing the public to incur economic harms.

CONCLUSION

For the reasons set forth above, Proposed Intervenors respectfully request that this Court deny Petitioner's order to show cause with a TRO and motion for a preliminary injunction, and award such other and further relief as it deems just and proper.

Dated: August 28, 2024

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CERTIFICATION OF COMPLIANCE WITH UNIFORM CIVIL RULE 202.8-b

I hereby certify the foregoing Memorandum of Law, exclusive of caption and signature block, comprises 6,957 words, which is in compliance with the limitation provided under Uniform Civil Rule 202.8-b.

Dated: August 28, 2024

/s/ *Philip H. Gitlen*
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4880-0012-5149,