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. Jason L. Cook

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 SUPPORT OF THEIR MOTION TO INTERVENE

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PRELIMINARY STATEMENT

Committee to Preserve the Finger Lakes, Fossil Free Tompkins, Seneca Lake Guardian, and Sierra Club (collectively, "Proposed Intervenors") respectfully submit this memorandum of law in support of their motion to intervene pursuant to New York Civil Practice Law and Rules ("CPLR") 1012(a)(2), 1013, and 7802(d) as Respondents/Defendants in the above-captioned Article 78 proceeding. Proposed Intervenors consist of organizations who have engaged in longstanding advocacy to protect their members and the communities they serve from the harmful climate and localized pollution impacts of the Greenidge Generation Station, LLC gas-fired electric generation plant ("Greenidge" or Greenidge Facility").

Proposed Intervenors fully participated in the underlying administrative proceedings that led up to the permit denial at issue in this action, including the extensive "issues conference" that resulted in an "issues ruling" by a New York State Department of Environmental Conservation ("NYSDEC") administrative law judge. Proposed Intervenors also successfully appealed part of the "issues ruling," leading to the final decision of the NYSDEC Commissioner's designee challenged in this action. Proposed Intervenors, therefore, clearly have an interest in the outcome of this action and satisfy the test for intervention under the CPLR.

Proposed Intervenors should be granted leave to intervene as they represent interests distinct from the other parties, are impacted by the material outcome of a judgment in this proceeding, and are seeking intervention at the earliest stage of the proceeding so as to not cause any delays. Proposed Intervenors' members are individuals who live, work and recreate in the area and have been directly impacted by Greenidge's operation. As noted above, the appeal at issue before this Court stems from an underlying administrative order, which effectively adopted many of Proposed Intervenors' arguments. As representatives of the affected community,

Proposed Intervenors also have an interest in protecting their environment and the regions' culture.

As detailed further below, Proposed Intervenors satisfy any of the three standards for intervention under CPLR 1012(a)(2), 1013, and 7802(d) and should be granted intervention.

BACKGROUND

I. The Climate Leadership and Community Protection Act

Finding that "[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York," the state Legislature in 2019 enacted the Climate Leadership and Community Protection Act ("CLCPA" or "Climate Law") to strengthen New York's statewide mandates for emissions reductions and require the accelerated adoption of renewable energy.[1] In doing so, the Legislature sought to mitigate the existing harms of climate change and prevent even greater harm in the future.[2] Across all sectors of the economy, the CLCPA limits greenhouse gas emissions to 60% of 1990 levels by 2030 and 15% of 1990 levels by 2050, with net zero emissions achieved through offsets to projects outside the electric sector.[3] As required by the CLCPA, DEC has already promulgated the necessary regulations to convert the CLCPA's percentage mandates into numerical limits on statewide emissions.[4] The CLCPA further mandates transformative change in the fossil fuel-dominated electric sector in furtherance of the CLCPA's broader climate mandates.[5]

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[1] Climate Leadership and Community Protection Act [CLCPA], 2019 McKinney's Sess Laws of NY, ch 106 (S. 6599) § 1.
[2] *Id.* § 1[1] (finding that the adverse impacts of climate change include an increase in the severity and frequency of extreme weather events, rising sea levels, a decline in fish populations, increased average temperatures, an exacerbation of air pollution, and an increase of infectious diseases, asthma and heart attacks, and other negative health outcomes); *id.* § 1[2][a] ("The severity of current climate change and the threat of additional and more severe change will be affected by the actions undertaken by New York and other jurisdictions to reduce greenhouse gas emissions.").
[3] ECL 75-0107[1][a]-[b], 75-0109[4][a]-[b], [f].
[4] *See* 6 NYCRR 496.4 (limiting statewide greenhouse gas emissions in 2030 and 2050 to 245.87 and 61.47 million metric tons of carbon dioxide equivalent ("CO_2e"), respectively).
[5] Public Service Law § 66-p[2][a].

To achieve these requirements, the state Legislature further mandated that all state agencies—including DEC—evaluate each permit, license, or other administrative decision through the lens of the CLCPA. 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 greenhouse gas emissions limits." For each inconsistent or interfering permit decision, each agency must further provide "a detailed statement of justification as to why such limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located."[6] Agencies must also ensure that their decisions "shall not disproportionately burden disadvantaged communities. . . ."[7] Indeed, agencies must affirmatively "prioritize reductions of greenhouse gas emissions and co-pollutants" in such communities.[8]

II. Greenidge Generation Station

For more than seventy years, the Greenidge Facility operated as a coal plant for the sole purpose of providing electricity to New Yorkers. The coal plant retired in 2011 and, after a few changes of ownership, Greenidge Generation LLC ("Greenidge") purchased the Facility. Greenidge sought approval to reactivate the plant in 2014. Two years later, upon receipt of a new Title V permit, the plant reentered operation as a gas-fired electric generating plant—again, for the sole purpose of providing "peaking" electricity to New Yorkers. After a few years of operating as a gas plant, Greenidge sought to expand and fundamentally change its operation. Specifically, Greenidge sought to convert the power plant from one that only provides "peaking" generation during periods of high electricity demand to one that hosts proof-of-work

[6] CLCPA § 7[2].
[7] *Id.* § 7[3].
[8] *Id.*

cryptomining machines and uses its own generation to power its new operations. The result of this change in operation was that Greenidge would exponentially increase its burning of fossil gas to power proof-of-work cryptomining operations on its property.

Proposed Intervenors have advocated against the Greenidge Facility as far back as 2011, when Proposed Intervenor Sierra Club first sought to ensure a responsible retirement of the coal plant and minimize the harmful effects on the community. Affidavit of Kathryn Bartholomew ("Bartholomew Aff.") ¶¶ 5, 18. Since Greenidge recommenced operations, Proposed Intervenors have engaged with various permit applications, seeking to protect their community from the Facility's pollution. Affidavit of Joseph Campbell ("Campbell Aff.") ¶¶ 13-17; Affidavit of Abi Buddington ("Buddington Aff.") ¶¶ 14-21; Bartholomew Aff. ¶¶ 19-26; Affidavit of Irene Weiser ("Weiser Aff.") ¶¶ 20-22. When Proposed Intervenors learned of Greenidge's planned change of operations to begin proof-of-work cryptocurrency mining, they immediately responded, submitting comments, educating their members, and raising concerns with their representatives regarding the increased noise, water, and air pollution that would result from the plant's new daily operation. Proposed Intervenors were also concerned about the climate impact of the facility's increased emissions, especially in light of New York's new statutory commitments to stringent climate goals. As Proposed Intervenors feared, Greenidge's cryptomining operation has significantly increased emissions in the community in line with the facility's transition from operating several weeks out of the year to twenty-four hours a day, every day. *See generally* Campbell Aff. ¶¶ 5, 9, 11, 14-15; Buddington Aff. ¶¶ 18-19; Bartholomew Aff. ¶¶ 9, 14-15, 22-23, 46; Weiser Aff. ¶¶ 3-4, 14-17.

III. Title V Permit Renewal Process

Greenidge's prior Title V permit expired on September 2021. Six months before the date of expiration, on March 5, 2021,[9] Greenidge submitted an application to the New York State Department of Environmental Conservation ("DEC") to renew its air pollution control permit under Title V of the federal Clean Air Act and Article 19 of the N.Y. Environmental Conservation Law ("ECL") ("Title V Permit").

Upon review of Greenidge's application, DEC directed the Company to submit information relevant to each of the three aspects of the CLCPA 7(2) analysis—consistency, justification, and mitigation. Greenidge's responses primarily focused on consistency. When DEC released a Notice of Complete Application and a draft Title V Permit for public comment on September 8, 2021, the agency specifically flagged Greenidge's failure to demonstrate sufficient compliance with any part of CLCPA 7(2).[10]

During the public comment process, Proposed Intervenors jointly submitted fifty-six pages of technical comments, highlighting the plant's ever-increasing emissions and urging DEC to deny the permit as inconsistent with the state Climate Law. Affirmation of Lisa K. Perfetto dated August 20, 2024 ("Perfetto Aff."), Ex. 5. In October 2021, DEC hosted public legislative hearings pursuant to 6 NYCRR part 621 and received over 4,000 written public comments during the public comment period. Proposed Intervenors' members both participated at the

[9]Greenidge Generating Station, Project Documents, Department of Environmental Conservation, https://dec ny.gov/regulatory/permits-licenses/notable-projects-documentation/greenridge-generation-station [last accessed Aug.20, 2024].

[10] Department of Environmental Conservation, Notice of Complete Application at 1 [Sept. 1, 2021], https://dec ny.gov/news/environmental-notice-bulletin/2021-09-08/public-notice/applicant-greenidge-generation-llc-590-plant-rd-po-box-187-dresden-ny-14441-0187 [last accessed Aug. 9, 2024] ("Based on the information currently available, at this time, Applicant has not demonstrated sufficient compliance with the requirements of the Climate Act.")

public hearing and submitted individual comments to DEC. Campbell Aff. ¶ 17; Buddington Aff. ¶ 21; Bartholomew Aff. ¶ 27; Weiser Aff. ¶ 21-22.

On June 30, 2022, DEC's Division of Environmental Permits denied Greenidge's Title V renewal request, finding that the facility's continued operation would be inconsistent with or would interfere with the attainment of the Statewide greenhouse gas ("GHG") emission limits set by the CLCPA. Further, the DEC found that there could be no justification for the continued operation of the facility, as there was no "need for the Facility to maintain electricity reliability,"[11] and that Greenidge's proposed mitigation amounted to nothing more than "vague assurances" that "failed to offer a serious plan."[12]

Greenidge then filed an administrative appeal of the denial on July 28, 2022 and the matter was assigned to an Administrative Law Judge ("ALJ") in DEC's Office of Hearings and Mediation Services, pursuant to 6 NYCRR part 624. On November 4, 2022, Proposed Intervenors submitted their Petition for Full Party Status as permitted by 6 NYCRR 624.5(b) and became active participants in the underlying administrative appeal. Perfetto Aff., Ex. 5.

During the administrative appeal, Proposed Intervenors participated in the issues conference and several rounds of briefing. Proposed Intervenors raised issues related to the proposed plant's consistency with the Climate Law, the plant's adverse impact on disadvantaged communities, and Greenidge's failure to provide enough information in its application materials to permit DEC to grant the permit. Proposed Intervenors also offered to provide extensive factual proof related to these issues and proffered their own experts. Perfetto Aff., Ex. 5; Ex. 6; Ex. 7.

In September 2023, the ALJ published her Ruling on Issues and Party Status ("Issues Ruling"), which granted Proposed Intervenors Party Status and affirmed DEC's finding that the

[11] NY St Dept of Envtl Conservation, *Notice of Denial of Title V Air Permit* at 18 [June 30, 2022].
[12] *Id.*

Facility was inconsistent with the Climate Law. Despite concluding that Greenidge failed to meet their burden to adequately substantiate their application as related to justification and mitigation, the ALJ permitted those issues to move forward to adjudication.

On November 13, 2023, Proposed Intervenors appealed the Issues Ruling, arguing that the Commissioner's Designee should cancel the adjudicatory hearing, deny Greenidge's permit, and terminate the proceeding in light of Greenidge's failure to meet their burden of proof through every stage of the application and subsequent appeal process. Perfetto Aff. Ex. 8. Greenidge also appealed the Issues Ruling, challenging Proposed Intervenors grant of Party Status and the elimination of several of their issues for adjudication. DEC Staff did not appeal the Issues Ruling.

On May 8, 2024, Regional Director Glance, appointed as the Commissioner's designee, issued the final decision on the administrative appeal. The Regional Director found that Greenidge had failed to meet its burden of proof and that it would be inappropriate to let the Company offer additional, new evidence now when it had failed to do so at either the application stage or before the ALJ during the Issues Conference, effectively adopting Proposed Intervenor's arguments on appeal. Having found that there were no issues for adjudication, the Regional Director canceled the hearing, concluding the administrative review. NY St Dept of Envtl Conservation, *Decision of the Regional Director* at 29 [May 8, 2024].

Regional Director Glance's Decision also upheld the ALJ's ruling that Greenidge's operations were inconsistent with the CLCPA's requirements, finding it "beyond dispute" that granting the permit would interfere with attainment of the CLCPA's statewide greenhouse gas emission limits because it would authorize the continued, increasing emission of GHGs to further proof-of-work cryptomining operations that also increased energy demand. *Id.* at 21-24.

Petitioner Greenidge Generation commenced this proceeding on August 15, 2024, challenging DEC's authority to deny the Facility's Title V Permit.

IV. Background on Proposed Intervenors

Proposed Intervenors are organizations that work to protect their communities and members from environmental and health threats like Greenidge, a fossil fuel resource that causes localized air pollution and contributes to far-reaching climate impacts. Proposed Intervenors have tirelessly sought to protect their community from increasing emissions and harm from Greenidge's proof-of-work cryptomining operation.

Seneca Lake Guardian ("SLG") is an organization of concerned citizens, local business owners, and regional environmental groups seeking to protect Seneca Lake, its iconic landscape, and home-grown businesses from the threat of invasive industrialization. SLG's members live, raise their families, and own property in the area surrounding Seneca Lake and the wider Finger Lakes region. In addition, the Seneca Lake Guardian Business Coalition (the agriculture and tourism-related business membership component of SLG) represents more than 400 businesses within the community that have an interest in protecting Seneca Lake from harmful pollution. SLG has members all over the Seneca Lake area, with fifty-seven members within Yates County.

The Committee to Preserve the Finger Lakes ("CTPFL") is committed to preserving the natural ecosystem of the Finger Lakes region for future generations and recognizes tourism and agriculture as the well-established foundation of the region's economy. The Committee promotes the region's preservation by identifying environmental and economic threats and informing and educating the general public, municipal officials, and government regulators.

Sierra Club works to promote a cleaner, healthier, and more sustainable natural environment in its members' communities by replacing fossil fuel-burning electric generation with zero-emission energy. Sierra Club and its members have long advocated to mitigate the

causes and impacts of climate change, and to support robust implementation of state policies—like the CLCPA—that enable a just and equitable transition to 100% clean energy in New York State. Since 2011, Sierra Club has raised concerns with state regulators about the harms of the Greenidge Facility. Sierra Club has participated in advocacy before the Public Service Commission and on several DEC permits for the Greenidge Facility. Sierra Club has 127 members in Yates and Seneca Counties.

Fossil Free Tompkins ("FFT") works to organize and amplify Tompkins County's collective voice against fossil-fuel dependence. FFT advocates at the local and state levels to stop the buildout of fracking and fossil-fuel infrastructure, to promote New York State's climate goals, and to support the development of a just, local, sustainable energy economy.

Each Intervenor has an interest in protecting the Finger Lakes region from Greenidge's harmful pollution and has raised concerns with state and local regulators about the harms of the Greenidge Facility. Campbell Aff. ¶¶ 3, 6-24; Buddington Aff. ¶¶ 5, 9-28; Bartholomew Aff. ¶¶ 5, 7-33; Weiser Aff. ¶¶ 5, 6-29. Proposed Intervenors have advocated to halt Greenidge's harmful operations before administrative agencies, including the Public Service Commission and DEC.

ARGUMENT

"Intervention is liberally allowed by courts, permitting persons to intervene in actions where they have a bona fide interest in an issue involved in that action." *Yuppie Puppy Pet Prods., Inc. v Street Smart Realty, LLC*, 77 AD3d 197, 201 [1st Dept 2010] (citation omitted); *see also Matter of Jermain*, 122 AD3d 1175, 1177 [3d Dept 2014].

The CPLR provides three independent bases for intervention, any one of which is sufficient to grant Proposed Intervenors participation in this proceeding. First, upon timely

motion, CPLR 1012(a)(2) grants a non-party the right to intervene "when the representation of the person's interest by the parties is or may be inadequate and the person is or may be bound by the judgment." Second, CPLR 7802(d) allows any "interested persons" to intervene in an Art. 78 proceeding. Lastly, CPLR 1013 permits the Court to allow "any person . . . to intervene in any action . . . when the person's claim or defense and the main action have a common question of law or fact."

"[W]hether intervention is sought as a matter of right . . . or as a matter of discretion . . . is of little practical significance [since] intervention should be permitted where the intervenor has a real and substantial interest in the outcome of the proceedings." *Berkoski v Board of Trustees of Inc. Vil. of Southampton*, 67 AD3d 840, 843 [2d Dept 2009] (citation omitted) (quotation omitted). Distinctions between the two are "no longer sharply applied"; courts now routinely grant or deny intervention without specifying the applicable standard. *Matter of Norstar Apts. v Town of Clay*, 112 AD2d 750, 751 [4th Dept 1985] (adopting a broad grant for intervention when a party "has a real and substantial interest . . . . [a]bsent a showing of prejudice resulting from delay.")

Proposed Intervenors have a real and substantive interest in both Greenidge's Title V application and the interpretation of the Climate Law as it applies to power plant permitting in New York State. "[T]he law recognizes that a legitimate legal interest, particularly in matters concerning the environment and cultural or aesthetic resources, cannot always be set forth in terms of potential monetary gain or loss, or by making a claim to ownership of property." *Matter of Toll Land V L.P. v Planning Bd. of the Vil. of Tarrytown*, 49 Misc 3d 662, 672 [Sup. Ct, Westchester County 2015] (citing *Lujan v Defenders of Wildlife*, 504 U.S. 555, 562-563 [1992]).

Proposed Intervenors more than satisfy the requirements for any of the three standards needed for intervention.

I. The Court Should Grant Intervention as of Right Under CPLR 1012(a)(2)

This Court should grant intervention as of right under CPLR 1012(a)(2) because the existing parties do not adequately represent Proposed Intervenors' interests, Proposed Intervenors will be bound by any judgment rendered herein, and Proposed Intervenors' motion is timely.

A. The Existing Parties Do Not Represent Proposed Intervenors' Interests

Petitioners, whose interests are plainly adverse to Proposed Intervenors, clearly cannot represent Proposed Intervenors' interests herein. Neither can Respondents, who broadly represent the interests of the general public.[13] Proposed Intervenors have specific, local, business, community, and environmental related interests that are uniquely vulnerable to the outcome of this proceeding. Proposed Intervenors' members and volunteers that live, work, and recreate near the plant and in the surrounding community are directly harmed by the increased air, noise, and water pollution that arises from Greenidge's constant, around the clock operation. *See generally* Campbell Aff. ¶¶ 5-12; Buddington Aff. ¶¶ 4-5; 8-13; Bartholomew Aff. ¶¶ 7-15; Weiser Aff. ¶¶ 6-11 .

Proposed Intervenors engage with and represent their community, which is being exposed to increased local air pollution from the Facility in the form of carcinogens, carbon monoxide, nitrogen oxides and particulate matter. Campbell Aff. ¶¶ 7-11; Buddington Aff. ¶¶ 8, 10-12; Bartholomew Aff. ¶¶ 5, 7-11, 16; Weiser Aff. ¶¶ 7-8, 11-12; Perfetto Aff., Ex. 5 at 29-35. These pollutants have a direct impact on the surrounding area, including at residences and local

[13] Respondents-Defendants do not oppose Proposed Intervenors Motion to Intervene.

businesses. As stated above, Proposed Intervenors' members include local agritourism businesses that are negatively impacted by Greenidge's operations. Emissions from the plant are adversely affecting not just the air quality in the area, but also leading to depositions of pollutants, which can adversely affect businesses like neighboring vineyards. Perfetto Aff., Ex. 5 at 32-34; *see also* Campbell Aff. ¶¶ 10-12; Buddington Aff. ¶ 11; Bartholomew Aff. ¶ 9.

These increased exposures give rise to risks distinct from those of the general public. *Cf. Matter of Parisella v Town of Fishkill*, 209 AD2d 850, 851-852 [3d Dept. 1994] (finding risk of increased air emissions, noise, and odor due to proximity to plant "are different in kind and degree from injury to the public at large"). Proposed Intervenors seek to mitigate, reduce, and/or eliminate localized harms in their community. As such, Proposed Intervenors' unique interests are not adequately represented by any other party.

New York courts may look to "[f]ederal case law [to] provide useful guidance" where a state statute is similar to a federal provision. *Albunio v City of New York*, 23 NY3d 65, 73 [2014]; *see, e.g.*, *Adams v City of New York*, 2021 NY Slip Op 30251[U], *9-11, 2021 NY Misc LEXIS 322, *10-15 (noting CPLR 1012; 1013 were modeled after federal rules on intervention, collecting cases, and granting intervention of community groups). Federal courts have frequently found inadequate representation by government agencies where the interests of prospective intervenors were more specific than the interests of the public at large.

For example, in *New Mexico Off-Hwy. Veh. Alliance v United States Forest Serv.*, 540 Fed Appx 877, 880 [10th Cir 2013], the court considered whether environmental groups merited intervention as of right. The court first considered whether the groups had an interest in the litigation that could be impaired by its outcome, and determined they had—noting that they "participated in the administrative process by submitting comments," and "at all times

express[ed] concerns about the harms" of the proposal to specific environmental interests. *Id.* The court next considered whether the agency at issue adequately represented their interests and determined it did not, "recogniz[ing] that it is impossible for a government agency to protect both the public's interests and the would-be intervenor's private interests." *Id.*; *see also, e.g.*, *In re Sierra Club*, 945 F2d 776, 779-780 [4th Cir 1991] (finding Sierra Club's interests not adequately represented by state environmental agency that "may share some objectives" because the agency was obliged to "represent all of the citizens of the state," not just "a subset of citizens"); *United States v Palermino*, 238 FRD 118, 123 [D. Conn. 2006] (citing Sierra Club, 945 F2d at 780) (granting intervention as-of-right where agency "is a neutral state-established adjudicative body seeking to clarify the outer boundaries of its authority and to exercise such authority" and community groups "seek to protect individuals"); *Herdman v Town of Angelica*, 163 FRD 180, 187 [WD NY 1995] (citing *Sierra Club*, 945 F2d 776) (granting intervention as-of-right where a community group, which was party to the administrative proceeding and advocated for adoption of a relevant law, represented "the personal interests of its individual members in the integrity of local air and water resources . . . and in the maintenance of their property values, [which] are threatened by the propos[al] . . . [the relevant law] was enacted to prevent"). Here, too, Proposed Intervenors represent a subset of the broader population with unique interests and long-term engagement in the underlying administrative process.

Proposed Intervenors have raised concerns about Greenidge's operations for more than a decade. Proposed Intervenor Sierra Club participated in the assessment of the Facility's retirement before the PSC in 2011. And Proposed Intervenors submitted comments in 2015 when Greenidge sought a new Title V permit to restart operations. After Greenidge submitted its Title V renewal application in 2021, Proposed Intervenors repeatedly urged DEC to deny the permit as

inconsistent with the CLCPA. Once DEC denied the permit and Greenidge filed its administrative appeal, Proposed Intervenors attained party status to vigorously defend DEC's decision. Proposed Intervenors litigated the matter through an issues conference and extensive briefing. And it was Proposed Intervenors rather than DEC Staff that appealed the ALJ's issue ruling to the Commissioner's Designee, who effectively adopted Proposed Intervenors' arguments in affirming the permit denial, canceling the hearing, and dismissing Greenidge's appeal. Proposed Intervenors' unique interests and participation as full-fledged parties to the underlying administrative appeal merit intervention in this proceeding.

B. Proposed Intervenors May Be Bound by the Judgment

Proposed Intervenors "[are] or may be bound by the judgment," CPLR 1012[a][2] as it will have a direct impact on their members and the communities they represent. *See, e.g.*, *Matter of Village of Spring Val. v Village of Spring Val. Hous. Auth.*, 33 AD2d 1037, 1038 [2d Dept 1970] (finding local NAACP chapter would or may be bound by judgment, and therefore entitled to intervene as-of-right, in lawsuit challenging local housing authority's ability to create and improve low-income housing). The judgment sought by Greenidge—overturning DEC's final decision—would bind Proposed Intervenors in three ways. It would directly undo Proposed Intervenors' hard-fought victory in the underlying administrative appeal, perpetuate harms to Proposed Intervenors' members who live and recreate near the plant and are exposed to Greenidge's ever-increasing pollution, and threaten Proposed Intervenors' broader body of work seeking a strong implementation of the CLCPA.

First, Proposed Intervenors have a strong interest in preserving the outcome of the underlying DEC administrative proceeding. Proposed Intervenors have long advocated to curb Greenidge's harmful emissions. Campbell Aff. ¶ 3; Buddington Aff. ¶ 5; Bartholomew Aff. ¶ 16; Weiser Aff. ¶ 11. Proposed Intervenors submitted detailed comments on the draft Title V Permit

and participated as full parties to the underlying DEC administrative appeal. Campbell Aff. ¶¶ 17-18, 21-22; Buddington Aff. ¶¶ 21, 24; Bartholomew Aff. ¶¶ 27, 29-30; Weiser Aff. ¶¶ 22, 25. "Where, as here, the proposed interveners [sic] seek to protect their rights, even though they are supposedly represented by a governmental agency already a party, intervention as of right should be granted." *City of New York v Maul*, 2006 NY Slip Op 30701[U], *14-15, 2006 NY Misc LEXIS 9433, *19 [Sup. Ct, New York County 2006] (citing *Village of Spring Val.*, 33 AD2d 1037 [2d Dept 1970]) (citations omitted).

As detailed above, DEC's final determination on Greenidge's permit adopted Proposed Intervenors' arguments. In dismissing Greenidge's appeal, Regional Director Glance agreed with Proposed Intervenors that Greenidge—having repeatedly failed to meet their burden to set forth any justification for its plant's continued operations—should not be awarded yet another opportunity to substantiate their application via an adjudicatory hearing. NY St Dept of Envtl Conservation, Decision of the Regional Director at 24-27, 29 [May 8, 2024]; *see also* Perfetto Aff., Ex. 8. Proposed Intervenors would be disadvantaged if they were denied the opportunity to defend DEC's final determination—and in particular the rationale for dismissal first set forth in Proposed Intervenors' own briefing—on appeal.

Proposed Intervenors will also be bound by the judgment as their members live and work in the area near the plant and will be directly affected by the outcome of this proceeding. *Clinton v Summers*, 144 AD2d 145, 147, 534 NYS2d 473 [1988] (lower court's denial of intervention was improper when organization's members either owned property or regularly utilized the lake for recreational purposes). Proposed Intervenors' members live near and on Seneca Lake, where Greenidge is located. Campbell Aff. ¶¶ 8-9; Buddington Aff. ¶¶ 8, 10; Bartholomew Aff. ¶¶ 7-9. Proposed Intervenors' members often recreate near the facility and their enjoyment is lessened

due to Greenidge's operations. Campbell Aff. ¶ 9; Buddington Aff. ¶ 10; Bartholomew Aff. ¶¶ 8, 10. Proposed Intervenors' members also include vineyard and other business owners, whose livelihood depends on clean water and air. Campbell Aff. ¶¶ 11-12. Greenidge's operations are harmful to the bustling tourism and agritourism economy of upstate New York that Proposed Intervenors' members depend on and ensuring a thriving, scenic, and sustainable community around Seneca Lake and the Finger Lakes Region is core to Proposed Intervenors' missions. Campbell Aff. ¶¶ 6, 10-12; Buddington Aff. ¶ 11; Bartholomew Aff. ¶ 9.

Finally, Proposed Intervenors will be further bound by the judgment because this Court's opinion will determine the scope of the Climate Law. Proposed Intervenors have participated in the creation and implementation of the Climate Law and thus have a unique and robust interest in its application in this case. *See generally* Campbell Aff. ¶¶ 25-26; Bartholomew Aff. ¶¶ 34-44, 47; Weiser Aff. ¶¶ 30-34. Proposed Intervenors joined others to submit detailed comments on the Climate Action Council's Draft Scoping Plan. Campbell Aff. ¶ 26; Bartholomew Aff. ¶¶ 37, 39; Weiser Aff. ¶ 31. They also submitted comments to two Climate Action Council Advisory Panels detailing concerns with Greenidge specifically and proof-of-work cryptocurrency mining more generally. Bartholomew Aff. ¶ 38; Weiser Aff. ¶ 30, 33. Since the passage of the Climate Law, Proposed Intervenors have consistently participated in ensuring a robust implementation, through various agency public comment processes. Campbell Aff. ¶ 25; Buddington Aff. ¶ 13; Bartholomew Aff. ¶¶ 37-44; Weiser Aff. ¶ 34.

C. Intervention Is Timely.

Lastly, Intervention is timely as it would neither prejudice any party nor unduly delay this proceeding. *See Wells Fargo Bank, N.A. v Mazzara*, 124 AD3d 875 [2d Dept 2015].

Proposed Intervenors filed this motion at the earliest stage of this proceeding—a mere five days after Greenidge filed its petition and well before Respondents are due to file their

responsive pleadings. Accordingly, the grant of intervention will neither delay this proceeding nor prejudice the original parties. *See Halstead v Dolphy*, 70 AD3d 639, 640 [3d Dept 2010] (granting intervention four years after commencement of the suit, because "intervention may occur at any time, provided that it does not unduly delay the action or prejudice existing parties"); *see also Rent Stabilization Assn. of N.Y. City v New York State Div. of Hous. & Community Renewal*, 681 NYS2d 679, 683 [1998] (finding that the Supreme Court should have granted motion to intervene as opposing party did not demonstrate that intervention would cause prejudice or delay).

* * *

For all of the above reasons, Proposed Intervenors should be granted intervention as of right under CPLR 1012[a][2].

II. Permissive Intervention Is Warranted Under CPLR 7802(d)

Proposed Intervenors easily satisfy the requirements for permissive intervention under CPLR 7802, which "grants the court broader authority to allow intervention in an article 78 proceeding." *Matter of Greater N.Y. Health Care Facilities Assn. v DeBuono*, 91 NY2d 716, 720 [1998]. Section 7802(d) requires only that prospective Proposed Intervenors be "interested persons," meaning they have a "real and substantial interest in the outcome of the proceeding." *Matter of Snyder v New York State Bd. of Regents*, 31 Misc 3d 556, 559 [Sup Ct, Albany County 2010] [citation omitted]. *See also Matter of White v Incorporated Vil. of Plandome Manor*, 190 AD2d 854, 854 [2d Dept 1993] (a court should grant leave to intervene to anyone "who will be directly affected by the outcome of th[e] proceeding"). Under this standard, intervention "should be permitted" where, as here, the Proposed Intervenors will be adversely affected by the annulment of the challenged governmental action. *See, e.g.*, *Borst v International Paper Co*., 121 AD3d 1343, 1346-1347 [3d Dept 2014] (overturning denial of lakefront landowners' motion to

intervene in defense of local regulation of lake water levels). Proposed Intervenors share a real and substantial interest in the outcome of this proceeding because they are organizations dedicated to protecting the natural landscape of Seneca Lake, ensuring a robust implementation of the Climate Law, and their members are directly affected by Greenidge's operations.

Proposed Intervenors prioritize the conservation, enjoyment, and protection of the pristine beauty of Seneca Lake. Proposed Intervenors have worked to protect their communities and members from environmental and health threats and to transition New York State away from fossil fuel resources that cause climate change and localized air pollution impacts—like Greenidge—toward non-emitting renewable and equitable climate solutions. Campbell Aff. ¶¶ 3, 6, 25; Buddington Aff. ¶¶ 5, 9, 13, 28; Bartholomew Aff. ¶¶ 4-5, 8, 11-13, 34-38, 40-44; Weiser Aff. ¶¶ 1, 3, 5-8, 11-12, 31, 34; *Matter of Helms v Diamond*, 76 Misc 2d 253, 255 [Sup Ct, Schenectady County 1973] (applying § 7802 standard to grant intervention to three environmental/conservation groups based on their interest in conserving and protecting natural and scenic resources); *Matter of Clinton v Summers*, 144 AD2d 145, 147 [3d Dept 1988] (applying § 7802 intervention standard and reversing trial court's denial of intervention as an abuse of discretion because Proposed Intervenors owned property on and regularly utilized the nearby lake). *Matter of Toll Land V L.P. v Planning Bd. of the Vil. of Tarrytown*, 49 Misc 3d 662, 672 [Sup Ct, Westchester County 2015] (granting a non-profit leave to intervene as a respondent in an Article 78 proceeding based on its interest in historic preservation).

To effectuate their organizational missions, Proposed Intervenors have advocated for the robust implementation of New York's nation-leading climate law, the CLCPA. Proposed Intervenors worked to support the passage of the law and throughout various stages of implementation, have consistently provided comments. In 2021 and 2022, Proposed Intervenors

submitted multiple rounds of comments to the Climate Action Council on proof-of-work cryptocurrency mining's potential to derail the statutory mandates of the CLCPA. In August 2023, Proposed Intervenors submitted comments to the Public Service Commission emphasizing the need to adhere to the "zero-emissions" mandate of the Climate Law. Proposed Intervenors have and will continue to invest time and resources to ensuring the State meets the mandates of the Climate Law to ensure a sustainable and environmentally protected community. Campbell Aff. ¶¶ 17, 21, 25-26; Buddington Aff. ¶¶ 13, 24; Bartholomew Aff. ¶¶ 4, 13, 23, 27, 29, 34-44, 47; Weiser Aff. ¶¶ 4-5, 14, 21-22, 25, 30-34.

Finally, Proposed Intervenors' members include those that live in close proximity to the Greenidge Facility and are subject to localized impacts, including the harmful emission of air contaminants. Campbell Aff. ¶¶ 5, 8-12; Buddington Aff. ¶¶ 4, 10-12; Bartholomew Aff. ¶¶ 7-11, 45-46; *see also* Perfetto Aff., Ex. 5 at 29-35. These air emission contaminants include increased particulate matter, volatile organic compounds, and nitrogen oxides ("NO_X"). Perfetto Aff., Ex. 5 at 31; Bartholomew Aff. ¶ 9. A reversal of DEC's permit denial would extend the amount of harm Proposed Intervenors' members must suffer. *Cf. Matter of Develop Don't Destroy Brooklyn v Empire State Dev. Corp*., 2006 WL 6166461 [Sup Ct, NY County, Feb. 14, 2006] (granting motion to intervene based on local residents' concerns of "lasting environmental and health effects" from stadium construction).

As evidenced by the undeniable adverse impact the annulment of DEC's permit denial would have on Proposed Intervenors' members and organizational missions, Proposed Intervenors hold a "real and substantial interest" in the outcome of this proceeding that warrants intervention.

III. Proposed Intervenors Also Satisfy the Standard for Permissive Intervention Under CPLR 1013

Finally, Proposed Intervenors also satisfy the requirements for permissive intervention under CPLR 1013, which allows intervention "when the person's claim or defense and the main action have a common question of law or fact."

Proposed Intervenors seek intervention to fully participate in the adjudication of Greenidge's petition, similar to their involvement in the underlying DEC administrative appeal. Proposed Intervenors' answer and planned response on the merits of Greenidge's Petition addresses the same questions of law and fact raised in the Petition, including whether DEC staff's decision to deny Greenidge's Title V Permit and cancel the adjudicatory hearing was proper. *See, e.g.*, *Berkoski v Board of Trustees of Inc. Vil. of Southampton*, 67 AD3d 840, 844 [2d Dept 2009] (granting intervention where "there is at least one common question of law . . . and there has been no showing that intervention would cause undue delay") (citation omitted); *Kaplen v Town of Haverstraw*, 105 AD2d 690, 690-691 [2d Dept 1984] ("Where the gravamen of an action for a declaratory judgment is the alleged invalidity of a governmental enactment, it is appropriate . . . to permit intervention of persons for whose benefit the enactment was made."); *Osarczuk v Associated Univs., Inc.*, 130 AD3d 592, 12 NYS3d 286 [2015] (reversing a denial of intervention as Proposed Intervenors' raised "common theories" satisfying the requirement of CPLR 1013.)

Further, Proposed Intervenors' engagement in the underlying administrative appeal also shared similar defenses to those raised by DEC staff in the administrative appeal and confirmed by DEC in its final decision. Proposed Intervenors submitted extensive briefing arguing that Greenidge's permit denial was proper under the CLCPA, there was no justification or mitigation for the Facility, and agreeing with DEC that the scope of issues should be narrowed. Perfetto

Aff., Ex. 6; Ex. 7; Ex. 8. Proposed Intervenors seek to defend their interests in DEC's permit denial as well as in the Regional Director's decision, which adopted Proposed Intervenors' argument that Greenidge's failure to meet their burden of proof should result in the cancellation of the adjudicatory hearing. *See* Perfetto Aff., Ex. 8.

Proposed Intervenors meet the standard for permissive intervention under CPLR 1013 in light of their personal interests in averting the plant's direct harmful impact on themselves and the broader Seneca Lake community and because Proposed Intervenors defenses address the same questions of law and fact as Respondents.

Conclusion

Proposed Intervenors have a critical interest in the outcome of this proceeding. Their interests are not adequately represented by the existing parties, but will nonetheless be affected by any decision this Court issues. Accordingly, Proposed Intervenors respectfully request that this Court grant intervention.

Dated: August 20, 2024
New York, NY

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RULE 202.8-b CERTIFICATION

Pursuant to the Uniform Civil Rules for the Supreme Court & County Court, Rule 202.8-b, I hereby certify that the foregoing brief contains 6,155 words as calculated by the word-processing system used to prepare the document, excluding the caption, tables, and signature block, and therefore complies with the word limit.

Dated: August 20, 2024
New York, NY

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