SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF YATES

In the Matter of the Application of

GREENIDGE GENERATION LLC,

Petitioner-Plaintiff,

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.

VERIFIED PETITION AND COMPLAINT

Index No. 2024-____

Petitioner-Plaintiff Greenidge Generation LLC ("Greenidge"), by and through its undersigned attorneys, as and for its Verified Petition and Complaint, state as follows:

INTRODUCTION

1. In 2019, New York enacted the Climate Leadership and Community Protection Act ("CLCPA"). "A fundamental objective of New York's nation-leading climate and energy agenda is to advance New York's contributions to global climate change *mitigation*."[1]

2. At the crux of the current proceeding, Section 7(2) of the CLCPA directs all state agencies to "consider" whether their actions, including decisions to issue permits, are "inconsistent with or will otherwise interfere with the attainment of statewide greenhouse gas emissions limits[.]" Should there be an inconsistency, the state agency must provide a detailed statement of justification (*i.e.*, an explanation) as to why the "limits/criteria may not be met, and identify alternatives or greenhouse gas mitigation measures to be required where such project is located."

[1] New York Climate Action Council Scoping Plan (Dec. 2022), p. 2 (also noting that New York's climate action strategy is fundamentally driven by the need to deliver on climate mitigation, justice, economic opportunity, and long-term job opportunities for New Yorkers) (emphasis added).

3. The Department of Environmental Conservation ("Department" or "NYSDEC") has misinterpreted Section 7(2) as authorizing unlimited agency discretion to deny any permit, including a renewal permit application for a long-standing, existing electric generating facility, based on the Department's *ad hoc* subjective value judgement regarding whether a given project or facility is "needed," desirable, or worthy.

4. The Department has misconstrued CLCPA Section 7(2) despite the fact that the plain language of the law, as wholly supported by the legislative intent, instead merely calls for the Department and other state agencies to take a hard look at their decision-making in the context of climate change.

5. Nothing in the law or the legislative record indicates that the Legislature ever intended Section 7(2) to impart unlimited denial authority on each and every state agency with respect to each and every decision to decide what economic activity should be allow or disallowed in the state on climate grounds based on alleged "need" or other public policy determinations.

6. This is particularly true given that CLCPA Section 7(2) is not codified into any state agency's authorizing statute and, specifically, not codified in the New York Environmental Conservation Law ("ECL").

7. Rather, when adopting the CLCPA, the Legislature instructed the Department (and other state agencies) only to "consider" greenhouse gas ("GHG") emissions and ultimately ensure that they are minimizing and mitigating statewide GHG emissions in accordance with the 2030 and 2050 step-down requirements codified in ECL Article 75 and at 6 NYCRR Part 496.

8. Despite the language of Section 7(2) and legislative intent, on June 30, 2022, the Department issued a Notice of Denial of Greenidge's application to renew its Title V air permit

based solely on Section 7(2) (the "Denial"), as affirmed by the Regional Director Dereth Glance on May 8, 2024 (the "Final Decision"), without affording Greenidge an adjudicatory hearing.

9. Greenidge operates an existing natural gas fired power plant in Yates County (the "Facility"), which supplies power to the grid on a daily basis and provides numerous high-paying jobs, as well as substantial economic contributions to the state and local economy, including funding a significant portion of the County's budget via its tax payments.

10. Following significant investment and upgrades to the Facility to convert from coal to natural gas, which substantially reduced the Facility's GHG emissions, the Department issued a Title IV/V air permit to Greenidge in 2016.

11. In 2021, Greenidge sought a renewed Title IV/V air permit that "is essentially unchanged from the existing permit."[2]

12. Greenidge did not request any increase in generation capacity or any relief from any of the conditions of the existing Title V Air Permit, and the renewed Title V Air Permit would expire before the first CLCPA statewide emissions target in 2030.

13. Greenidge also proposed two binding permit conditions be included in its Title V permit; namely: (1) a condition that requires a 40% reduction in GHG emissions from the currently permitted level by the end of 2025; and (2) a requirement that Greenidge be a zero-carbon emitting power generating facility by 2035, five years before the CLCPA target in 2040 for the electric sector.

14. This was in addition to the permit condition included in the draft permit the Department publicly noticed that included Condition 5 associated with ECL 75-0107 compliance,

[2] *See* Department's September 9, 2021 Permit Review Report ("PRR") Renewal 1, p. 2.

which required Greenidge to submit a site specific GHG mitigation plan to NYSDEC for approval within 120 days of permit issuance.

15. The Department denied Greenidge's renewal application on June 30, 2022 – which upon information and belief is the only ***renewal*** application for an existing facility denied by the Department since the CLCPA's enactment in 2019.

16. Upon information and belief, the Denial here is also ***only one of four*** permit applications denied since the CLCPA's enactment in 2019, and all four denials were for politically controversial projects.

17. The Denial rests upon the Department's determination that its issuance of the renewed permit would be inconsistent with the Statewide GHG limits in 2030 and 2050 – despite Greenidge agreeing to permit conditions requiring mitigation consistent with those limits and the fact that the permit would expire prior to 2030 – as well as the Department's *ad hoc* value judgment that Greenidge's operations and economic activity are not needed, desirable, or worthy of "justification" from a policy perspective.

18. The Department made an impermissible policy determination that the Facility was not needed, desirable, or worthy of "justification" and should be shut down because, in addition to providing electricity to the grid, the Facility also supplied a significant amount of electricity behind-the-meter to a cryptocurrency mining operation.

19. This determination by the Department grossly exceeded its own jurisdiction, usurped the role of the legislature and the delegated authority of the New York State Public Service Commission ("NYSPSC") over electric generating facilities, and disregarded the New York Independent System Operator ("NYISO") process.

20. Greenidge, therefore, brings this proceeding to annul the Department's Denial.

21. For the reasons discussed herein, the Department's Denial exceeds its jurisdiction and employs an improper and incomplete analysis that is inconsistent with the language of Section 7(2) and misapplies ECL Article 75 and Part 496 to the facts presented by Greenidge's application.

22. In the absence of any further legislative or regulatory action, the Department's incorrect interpretation of CLCPA Section 7(2) confers on it such broad and unfettered discretion that it invites, as a matter of course, the kind of arbitrary and capricious decision-making as has occurred here.

23. Compounding this error, the Department deprived Greenidge of the right to include in its application the information the Department now says is required by applying the CLCPA using standards and criteria not identified to Greenidge until (or even after) the Denial, and then by denying Greenidge an adjudicatory hearing in accordance with Part 624.

24. Unless the Department's Denial is annulled, Greenidge will be required to shut down and cease operating the Facility by September 9, 2024.

PARTIES

25. Greenidge is a domestic limited liability company with headquarters located at 590 Plant Road, Dresden, New York, doing business in the Town of Torrey, Yates County, New York.

26. The Department is a civil department and executive agency of New York State responsible for, among other things, issuing Title V permits in accordance with the Clean Air Act.

27. Sean Mahar is the Acting Commissioner of the Department.

JURISDICTION AND VENUE

28. Yates County is an appropriate venue for this hybrid CPLR Article 78 proceeding and declaratory judgment action because the material events at issue in the present petition/complaint occurred in Yates County and the Greenidge Generation Station is located in Yates County.

29. Petitioner designates the venue and place of trial for this action in Yates County pursuant to CPLR §§ 506 and 509.

30. For the reasons stated herein, this Court has the authority to issue a declaratory ruling here as to the rights and other legal relations of the parties to a justiciable controversy pursuant to CPLR § 3001.

THE CLIMATE LEADERSHIP AND COMMUNITY PROTECTION ACT

31. Enacted in 2019, the purpose of the CLCPA is "to adopt measures to put the state on a path to reduce statewide greenhouse gas emissions by eighty-five percent by two thousand fifty and net zero emissions in all sectors of the economy." *See* Bill S6599, Purpose of Bill.

32. The CLCPA aims "to reduce greenhouse gas emissions from all anthropogenic sources[3] 100% over 1990 levels by the year 2050, with an incremental target of at least a 40 percent reduction in climate pollution by the year 2030." *Id.* at § 1(4).

33. The CLCPA takes a global approach to reducing GHG emissions across the state and across all sectors and, in doing so, takes a step-down approach with specific milestones to evaluate the state's overall efforts at reducing emissions.

34. With goals of reducing all statewide GHG emissions 40% by 2030 and 85% by 2050,[4] the CLCPA puts New York on a path toward carbon neutrality, while aiming to ensure equity and system reliability in the transition to a clean energy economy.

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[3] Anthropogenic emission sources include landfills, oil and natural gas systems, agricultural activities, coal mining, stationary and mobile combustion, wastewater treatment, and certain industrial processes. See EPA Importance of Methane, accessible at https://www.epa.gov/gmi/importance-methane#:~:text=Anthropogenic%20emission%20sources%20include%20landfills,treatment%2C%20and%20certain%20industrial%20processes.

[4] *See* Scoping Plan Full Report December 2022, available at https://climate.ny.gov/resources/scoping-plan/.

35. The CLCPA does not specify the mechanisms by which emissions will be reduced, but rather sets up a process for open discussion and consideration of the method and manner in which to do so.

36. That process centers around the Climate Action Council (the "CAC") and its Scoping Plan, which was to identify and recommend "regulatory measures and other state actions that will ensure the attainment" of the statewide emissions limits. ECL § 75-0103.

CLCPA Section 7(2)

37. CLCPA Section 7(2) directs ***all*** state agencies to "consider" whether their actions, including permitting decisions, are "inconsistent with or will otherwise interfere with the attainment of statewide [GHG] emissions limits[.]" (Emphasis added). Section 7(2) reads in its entirety:

> In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, each agency, office, authority, or division shall 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.

38. The Department is otherwise on equal footing with other state agencies, meaning it must likewise apply CLCPA Section 7(2) as written and intended by the Legislature (*i.e.*, there is no special or separate role for the Department).

39. The CLCPA does not define consistency. It also does not impose *any* facility or source-specific GHG emission limits, nor does it establish any facility or source-specific criteria for determining consistency.

40. The CLCPA does not identify a threshold amount of GHG emissions, or a threshold increase in GHG emissions, that would render a specific facility, particularly one that is already operating, inconsistent.

41. The CLCPA also does not frame the Section 7(2) analysis as a snapshot in time, but rather specifically focuses on the statewide GHG emissions limits set forth in Article 75 for the years 2030 and 2050, and whether a state agency approval would be inconsistent or interfere with the attainment of the 2030 and 2050 emission limits.

42. In all cases where an agency determines that a decision, such as issuance of a permit, is inconsistent with or would interfere with the attainment of the ECL Article 75 statewide GHG emission limits, the CLCPA requires the agency to provide a detailed statement of justification (*i.e.*, an explanation) as to why such limits/criteria may not be met and identify mitigation measures.

43. Moreover, the CLCPA does not state that consistency or justification must be analyzed in complete isolation, separate from the potential reduction or mitigation of GHG emissions in advance of the 2030 and 2050 statewide targets.

44. Section 7(2) of the CLCPA requires only that all state agencies, including the Department, "consider" climate change impacts part of their decision-making process.

45. This translates into determining first whether an action will result in GHG emissions and, if so, evaluating whether those emissions can be avoided and, if not, if there are viable alternatives, or mitigation measures, that would reduce GHG emissions.

CLCPA Section 7(3)

46. CLCPA § 7(3) states that "all state agencies, offices, authorities, and divisions shall not disproportionately burden disadvantaged communities" through their actions, including

permitting decisions. Section 7(3) also directs the State's Climate Justice Working Group ("CJWG") to establish criteria defining disadvantaged communities, which the CJWG finalized on March 27, 2023.

47. Disadvantaged communities are defined as "communities that bear burdens of negative public health effects, environmental pollution, impacts of climate change, and possess certain socioeconomic criteria, or comprise high-concentrations of low- and moderate-income households, as identified pursuant to [ECL] 75-0111[.]"

Legislative History

48. The Bill Jacket for the CLCPA contains very little discussion of Section 7(2).

49. At most, in the legislative history, CLCPA Section 7(2) is described as providing "additional authority" for all state agencies to promulgate GHG regulations and "require the [NYSDEC] to consider climate change in permitting decisions."[5]

50. There is no discussion or even insinuation in the Bill Jacket that CLCPA Section 7(2) was intended to empower state agencies with the ability to deny a permit based solely on that provision alone.

51. Rather, the law and legislative history as a whole confirm that the law requires only that all state agencies "consider" climate in their actions so that GHG emissions are mitigated while the CAC works with relevant experts and key stakeholders, all with public involvement, to establish a roadmap for the State to hit the CLCPA's ambitious goals, targets and limits, which are then implemented through legislation or appropriate agency rulemaking.

[5] Hennessey Aff., Exhibit A, p. 12.

52. Not even the Department's comments on the legislation discuss Section 7(2) or the apparent interpretation of the agency in these proceedings that Section 7(2) empowers the Department to deny a permit under CLCPA Section 7(2).[6]

53. Rather, after detailing the emission limits established by the legislation, the Department states that:

> "[t]he CLCPA sets forth a *policy* roadmap for making these goals a reality through the Climate Action Council. Heads of state agencies, legislative appointees, and experts will craft the steps forward to achieving the law's mandates. The Council and DEC will establish working groups to make sure relevant experts and stakeholders inform all policies, including transportation, agriculture, energy-intensive and trade exposed industries, land use, environmental justice, climate justice, and a just transition labor-based group."[7]

The Climate Action Council and Scoping Plan

54. At the heart of the CLCPA, the Scoping Plan serves to govern the State's actions to decarbonize its economy over the next several decades.

55. The CLCPA charged the CAC to develop the Scoping Plan, and, in doing so, the CLCPA identified the measures and actions that the CAC was required to consider as well as the manner in which the CAC should develop the Scoping Plan.[8]

56. To assist in preparing the Scoping Plan, the CLCPA required the CAC to establish advisory panels chaired by persons with special expertise in order to provide recommendations to the CAC on specific topics in its preparation of the Scoping Plan.

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6 Hennessey Aff., Exhibit A, p. 15.

7 *Id.* (Emphasis added).

8 By way of example, the CLCPA requires that in developing the Scoping Plan that the CAC "[t]ake into account the relative contribution of each source or source category to statewide greenhouse gas emissions." ECL § 75-0103(14).

57. At a minimum, the CLCPA required and the CAC formed, advisory panels on transportation, energy intensive and trade-exposed industries, land use and local government, energy efficiency and housing, power generation, and agriculture and forestry. ECL § 75-0103(7).

58. Per the CLCPA, the Scoping Plan was required to identify and make recommendations on regulatory measures, including those to be promulgated by the Department, and other state actions, including, where necessary, additional legislative actions that will ensure the attainment of the statewide GHG emission limits. ECL § 75-0103(13).

59. The measures and actions that were to be considered in the Scoping Plan include: performance-based standards for sources of GHG emissions from various sectors; measures to reduce emissions from the electricity sector; and verifiable, enforceable, and voluntary emissions reduction measures, amongst others. *Id.*

60. The CAC and in turn, the Scoping Plan, is a creature of the CLCPA designed to guide agency implementation of its mandates, including Section 7(2).

61. The CAC has repeatedly emphasized the need for an organized, collaborative, and gradual approach to decarbonization.

62. On December 19, 2022, almost six (6) months after the Denial, the final Scoping Plan was approved, adopted, and made publicly available by the CAC.

63. The CAC held a total of 32 public meetings to develop and finalize the Scoping Plan.

64. The Scoping Plan as finalized necessarily includes findings and recommendations which apply to or indirectly affect electric generation facilities supporting behind-the-meter cryptocurrency operations.

65. First, the Scoping Plan acknowledges today's grid utilizes a combination of generation assets, and that while a phase out of fossil fueled generation over time is required, "during the same [transition] period, New York will also need to maintain a completely safe and reliable power grid." Scoping Plan Full Report, December 2022, p. 225 (hereinafter "Scoping Plan").

66. Importantly, while the Scoping Plan obviously envisions retirement and/or repurposing of fossil fuel-fired facilities to cut emissions, it also recognizes the need for a thorough, comprehensive process for retiring fossil fueled facilities:

> "Pursuant to existing policies and procedures, any retirement and/or repurposing of existing fossil fuel generation must be done in coordination with the [NYS]PSC, the NYISO planning process, the required reviews under Section 7(2) and 7(3) of the Climate Act, and consistent with New York State Reliability Council criteria." *Id.* at 226.

67. In other words, the CAC, the body charged with evaluating and coming up with recommendations for implementation of the CLCPA, and charged with informing future rulemaking by the Department, has concluded that the application of Section 7(2) to electric generating facilities cannot occur in a vacuum as was done here.

68. There is nothing in the CLCPA or any other legislative enactment altering the jurisdiction of the NYSPSC over electric generating facilities or theNYISO process.

69. Second, the CAC's Scoping Plan, specifically referring to cryptocurrency mining, echoes the legislature's recent findings that more information is necessary to make decisions on consistency, notwithstanding the fact such operations currently require fossil fueled generation:

> "Given the 30-year time horizon of this Scoping Plan, *it is possible* that new potential industrial GHG emission sources *may emerge or grow* to become significant sources of GHG emissions. For example, energy-intensive operations such as data centers and cryptocurrency mining operations *have the potential* to consume significant amounts of electricity and, in some cases, have sought to generate their own electricity from fossil fuel combustion. While many grid-based electricity-intensive activities will be automatically decarbonized by 2040 in concert with the

> elimination of GHG emissions from the electricity sector… the State *should monitor and evaluate emerging industries and develop policy responses needed to ensure that those industries do not interfere* with meeting the statewide emission limits or other Climate Act requirements." *Id.* at 258 (emphasis added).

70. The CAC did not do as the Department did here – the CAC did not make any policy findings or recommendations providing that behind-the-meter cryptocurrency will interfere with meeting the statewide GHG emission limits or any other CLCPA requirement.

The Department's Limited Authority Under The CLCPA

71. The Department's role under the CLCPA consists of:

- issuing an annual statewide GHG emissions report;
- promulgating regulations by January 1, 2021 establishing statewide GHG emission limits for 2030 and 2050 that are 60% and 15% of 1990 emissions, respectively (ECL § 75-0107(1));
- establishing by January 1, 2021, in consultation with the New York State Energy Research and Development Authority, a social cost of carbon for use by state agencies (ECL § 75-0113(1)); and,
- in consultation with the CAC, publishing a report every four years that includes recommendations regarding implementation of GHG reduction measures. ECL § 75-0119.

72. In addition, by operation of law under the State Administrative Procedure Act ("SAPA"), the Department was required by the CLCPA and ECL 75-0109 to promulgate enforceable regulations by January 1, 2024 to ensure that aggregate emissions from GHG emission sources comply with the statewide emission limits established in ECL 75-0107. *Id.* at § 75-0109(2).

73. The required regulations are to reflect the findings of the final Scoping Plan and must be designed and implemented in a manner that minimizes costs and maximizes benefits to New York State. ECL § 75-0109(3).

74. These regulations are required to be promulgated pursuant to the SAPA and include legally enforceable emission limits, performance standards, or other requirements to control emissions. ECL § 75-0109(2)(b).

75. To date, the Department has not yet done so; while the Department established the statewide GHG emissions limits for 2030 and 2050 under Part 496 in December 2020, there are still no individual CLCPA compliance obligations.

76. An action that complies with the yet-to-be promulgated regulations would be considered consistent with the ECL Article 75 statewide emission limits, and therefore consistent for purposes of CLCPA Section 7(2).

77. The clear and transparent process the CLCPA required is not possible since NYSDEC, in contravention of the CLCPA, has not yet promulgated these regulations.

78. The only regulation that the Department has duly adopted based upon authority granted to it by the CLCPA "*does not impose a compliance requirement on any entity*, and therefore does not directly impose any costs on any regulated entities," and instead, the Part 496 limits are designed to inform the to-be promulgated compliance obligations.[9]

79. The Department's discretion is carefully circumscribed and any regulations must reflect the findings of the final Scoping Plan and must be designed and implemented in a manner that minimizes costs and maximizes benefits to New York. *Id.*

80. Critically, this limited discretion does not, and as a matter of law could not, extend to *ad hoc* policy-making by the Department on a case-by-case basis as occurred here.

[9] *See* Revised Regulatory Impact Statement Part 496, p.32 available at https://www.dec.ny.gov/docs/administration_pdf/revisedris496.pdf (emphasis added).

The Department's Implementation of the CLCPA

81. In accordance with the CLCPA's mandate, in December 2020, the Department promulgated Part 496, which established the statewide 1990 GHG emission baseline, and sets the limits for statewide GHG emissions for 2030 and 2050 as required by ECL §75-0107.

82. Also as required by the CLCPA, in December 2021, the Department established a social cost of carbon for use by state agencies.[10]

83. No other CLCPA regulations have yet been proposed by the Department.

84. There are no regulations defining consistency or providing applicants, the public, or Department with standards to assess Section 7(2) on a project specific basis.

85. The Department also sought to develop agency-specific informal guidance for its Staff and to notify the regulated community how it intended to apply the CLCPA in permitting.

86. Prior to enactment of the CLCPA, the Department had a longstanding guidance document on climate change, "Commissioner Policy 49 – Climate Change and DEC Action" ("CP-49"), originally issued on October 22, 2010.

87. The Department amended this existing guidance to account for CLCPA implementation and issued a revised CP-49 on December 14, 2022, almost 6 months after the Denial.

88. Pertinent here, CP-49 states that:

> Although it is a fact-specific inquiry, in evaluating whether an administrative decision may be inconsistent or interfere with the Statewide Emission Limits, the Department should consider if the decision enables a new source of GHG emissions; increases a source's permitted or potential GHG emissions; or allows a reasonably expected increase in actual GHG emissions above levels that existed prior to a permit application or decision at issue. In those circumstances, the Department may determine that GHG emissions from the action are below a level that – based on the relevant

[10] *Id*. at §75-0113. *See also* Establishing a Value of Carbon Guidelines for Use by State Agencies available at https://www.dec.ny.gov/docs/administration_pdf/vocguid22.pdf.

Program, specific facts, and the type of activity – will not interfere with the attainment of the Emission Limits. Routine permit renewals that would not lead to an increase in actual or potential GHG emissions would ordinarily be considered consistent with the CLCPA pending finalization of the Scoping Plan, the subsequent adoption of a state energy plan, and future regulations unless project specific facts support a finding of inconsistency.

In addition, the Department may determine that an action is inconsistent with the Emission Limits if it finds that the action:

- does not conform with the Scoping Plan, State Energy Plan or Department regulations designed to achieve compliance with the Emission Limits;
- would be directly responsible for an increase in demand for the use of a known source of GHG emissions, such as at an existing facility or project;
- directly reduces the market demand or market access for GHG emissions-reducing technologies or strategies; and/or
- prevents or makes it more difficult or more expensive for the State to reduce GHG emissions.[11]

89. Relative to justification, CP-49 states:

If a Department administrative decision is determined to be inconsistent or would interfere with achievement of the Emission Limits, a statement of justification must be created to proceed with a decision. If a justification is not available, then the Department need not reach the next stage of the CLCPA Section 7(2) analysis regarding alternatives or GHG mitigation.[12]

90. CP-49 then identifies as "[e]xamples of acceptable justifications";

- Demonstration that the lack of the project within the State would result in emissions leakage in excess of the emissions from the project (e.g., the facility would transfer operations to a neighboring state).
- Absence of the project will result in economic, social, or environmental harm to the public, harm to the public health or safety, or impact the safety and reliability of the State's energy systems, and no feasible alternatives exist.[13]

[11] CP-49, pp. 6-7.
[12] *Id.* at 7.
[13] *Id.* at 7-8.

91. In furtherance of CP-49, the Division of Air Resources (DAR) developed the "DAR-21 - The Climate Leadership and Community Protection Act and Air Permit Applications" ("DAR-21") guidance document, particularly focused on the implementation of CLCPA Section 7(2) with respect to air permitting.

92. DAR-21 was also issued on December 14, 2022, almost 6 months after the Denial, and provides a generic outline of the analysis applicants should submit when seeking an air permit from the Department.

93. DAR-21 applies to all new Title V and Air State Facility permits, Air Facility Registrations, and all pending permit applications and registrations to the extent feasible, including modifications and renewals of existing permits.

94. Similar to CP-49, DAR-21 states that "[f]ollowing the submittal of a CLCPA analysis meeting the requirements of this policy, [Division of Air Resources] staff must evaluate the information presented to determine whether the project is inconsistent with or will interfere with the State's ability to meet the statewide emission limits promulgated in Part 496."[14]

95. DAR-21 then recognizes that "each determination will be based on the facts surrounding the project itself" while then listing "some potential causes of interference and inconsistency."[15]

96. DAR-21 then states that "[i]f [NYS]DEC finds that the project is inconsistent with or will interfere with the State's ability to meet the statewide emission limits, [NYS]DEC must consider whether sufficient justification for the project exists."[16]

97. DAR-21 then goes on to explain:

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[14] DAR-21, p. 5.
[15] *Id.*
[16] *Id.* (Emphasis added).

> While each determination will be based on the facts surrounding the project itself, potential examples of acceptable justifications may include, in no particular order:
>
> - A demonstration that the lack of the project within the State would result in emissions leakage in excess of emissions from the project (e.g. the applicant would transfer operations to a neighboring state);
> - The applicant will undertake efforts to mitigate the GHG emissions associated with the project;
> - The absence of the project will result in economic, social, or environmental harm to the public;
> - The project is needed to improve or maintain the safety and reliability of existing systems; and
> - The project is identified as necessary to resolve an electric system reliability need.[17]

98. As is plain on the face of CP-49 and DAR-21, the Department has envisioned for itself a broad climate policymaking role in each and every permitting application and intends to impose is value judgments on an ad hoc basis, including as to matters of social and economic policy and electric generating and distribution that are wholly outside of its scope of authority.

The NYSPSC's Authority Under The CLCPA

99. In adopting the CLCPA, the Legislature recognized the importance of ensuring reliable electric service.

100. The CLCPA requires that the NYSPSC (not the Department) adopt regulations establishing a program to meet a target of seventy percent of statewide electrical generation from renewable sources by 2030, and a target of zero GHG emissions for statewide electrical demand by 2040.

[17] *Id.* at 6.

101. Section 4 of the CLCPA established Public Service Law ("PSL") §66-p, which gives the NYSPSC the sole authority to establish a program to meet the CLCPA's 2040 target of a zero carbon statewide electrical demand system.

102. Section 4 additionally gives the NYSPSC the authority to modify the 2040 target if it deems it necessary to ensure safe and adequate electric service.

103. The above authority was given to the NYSPSC based upon its expertise in determining the reliability needs of the electric system, how to best reach the CLCPA's 2040 zero carbon electric system target, and whether a revision to the 2040 target is necessary to ensure continued safe and reliable electric service.[18]

ADDITIONAL STATUTORY AND REGULATORY BACKGROUND

NYSPSC Authority under the PSL

104. The NYSPSC has the longstanding authority to determine system reliability need through its approval process under PSL § 68.

105. Before an electric plant may be constructed, the NYSPSC must issue a Certificate of Public Convenience and Necessity ("CPCN") after determining that the facility is "convenient and necessary for the public service."[19]

106. In making its determination, the NYSPSC "shall consider the economic feasibility of the corporation, the corporation's ability to finance improvements of a gas plant or electric plant, render safe, adequate and reliable service, and provide just and reasonable rates, and whether issuance of a certificate is in the public interest." *Id.*

[18] *See* CLCPA §§4(2), 4(4).

[19] PSL § 68(1).

107. NYSDEC has no statutory involvement with the CPCN proceedings under PSL § 68 or otherwise.

108. Nonetheless, the Department's interpretation of Section 7(2) ignores the NYSPSC's finding of need for the Facility, stating that it is immaterial given the NYSDEC's legal authority to issue or deny a Title V air permit.

109. Determining the need for a facility, by way of PSL § 68 proceedings, "are within the expertise of the [NYS]PSC to determine, and *great deference* should be given to the [NYS]PSC's interpretation of its own enabling statute.[20]

110. The NYSPSC also oversees the deactivation of electric generating facilities.

111. Generators that are equal to or greater than 80 MW in capacity must provide written notice to the NYSPSC at least 180 days prior to a proposed retirement of the facility.[21]

NYISO Oversight of the Electric Grid

112. The NYISO is the organization responsible for managing New York's electric grid and its competitive wholesale electric marketplace.

113. In the late 1990s, the Federal Energy Regulatory Commission ("FERC") formed an independent system operator – the NYISO – which officially took control of New York's electric power system on December 1, 1999, with a charge to design, deploy, administer, and monitor New York's wholesale electricity marketplace.

114. As created, the NYISO was structured as an independent entity serving under a transparent, shared governance platform approved and overseen by FERC.

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[20] *CNG Transmission Corp. v. New York State Public Service Comm.*, 185 A.D.2d 671, 672 (Fourth Dept., July 14, 1992) (emphasis added).

[21] *See* Case 05-E-0889, *Proceeding on Motion of the Commission to Establish Policies and Procedures Regarding Generation Unit Retirements*, Order Adopting Notice Requirements for Generation Unit Retirements, p. 16 (issued Dec. 20, 2005).

115. The NYISO is charged with reliably operating New York's power grid, meeting the most stringent standards in the nation under strict regulatory oversight. Its mission is to ensure power system reliability and competitive markets for New York in a clean energy future.

116. The NYISO is regulated by FERC and the NYSPSC, with oversight by various entities responsible for establishing and implementing statewide, regional, and national reliability standards.

117. The NYISO has two tariffs which are regulated by FERC.

118. FERC must approve all changes to the NYISO's tariffs, and the NYISO's procedures and operations must comply with FERC orders and applicable federal laws.

119. One of the NYISO's two tariffs approved and regulated by FERC is the Open Access Transmission Tariff ("OATT").

120. Before a facility with a nameplate rating exceeding one megawatt in capacity may be retired or enter into a mothball outage, the facility is obligated to comply with certain obligations under the OATT. Specifically, Section 38, Attachment FF of the OATT sets forth the NYISO's short-term reliability process for generator deactivations.

121. Under the OATT, prior to any retirement, an electric generating facility must generally: (1) submit a Generator Deactivation Notice to the NYISO; (2) the NYISO must review the notice, request additional information as necessary, and determine whether Greenidge's notice is complete; and (3) upon a completeness determination by the NYISO, initiate a 365-day notice period, which begins to run on the date of the next quarterly Short-Term Assessment of Reliability ("STAR").

122. The NYISO then performs an assessment to determine whether the deactivation will create reliability concerns and, in some cases, may require a reliability must-run agreement whereby the generator must continue to operate to ensure safe and reliable service.[22]

6 NYCRR Part 624 – Permit Hearing Procedures

123. The Department's permit hearing procedures are described in Part 624 of Title 6 of the New York Code of Rules and Regulations.

124. Part 624 is applicable to hearings conducted by the Department arising out of "a request made by an applicant in conformance with the provisions of section 621.10(a)(1) and (2) of this Title (based on department staff's denial of permit or attachment of significant conditions)[.]"[23]

125. The applicant and assigned Department Staff are automatically full parties to a Part 624 proceeding.[24]

126. Any other party that seeks to participate in a Part 624 proceeding is required to file a petition that, among other things, identifies an issue for adjudication which is both substantive and significant, and presents "an offer of proof specifying the witness(es), the nature of the evidence the person expects to present and the grounds upon which the assertion is made with respect to that issue."[25]

127. The requirement to submit an offer of proof is not limited to the permitting record already before the Department.

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22 *See* NYISO Technical Bulletin 185, accessible at www.nyiso.com.

23 6 NYCRR § 624.1(a).

24 6 NYCRR § 624.5(a).

25 6 NYCRR §§ 624.5(b); 624.4(c).

128. An issue is per se adjudicable if "it relates to a matter cited by the [D]epartment staff as a basis to deny the permit and is contested by the applicant[.]"[26]

129. Part 624 does not require an applicant to submit an offer of proof where it has requested a hearing.

FACTUAL BACKGROUND

The Greenidge Generating Station

130. The Facility is an electric generating facility located in the Town of Torrey, New York. It currently consists of one 107 MW generating unit, known as Unit 4, which historically operated as a coal-fired power plant.

131. The Facility was initially constructed in the 1930s. Unit 4 (the only remaining generating unit at the Facility) was installed in 1953.

132. In March 2011, the Facility was put into temporary protective layup.

133. Thereafter, on October 11, 2012, Greenidge (then known as "GMMM Greenidge, LLC") acquired the Facility.

134. Following its acquisition of the Facility, Greenidge sought to resume operations. As part of this, Greenidge proposed the Greenidge Project, which consisted of: (1) in-plant construction that would allow the Unit 4 boiler to be operated on 100 percent natural gas (with up to 19 percent biomass co-firing); (2) construction of a 4.6-mile pipeline to bring natural gas from the Empire Connector main natural gas supply line to the Generating Facility; and (3) construction of necessary auxiliary services, including a meter station, a regulation station and interconnection work.

135. The purpose of the Greenidge Project was to allow the Facility to produce electricity using 100 percent natural gas (with up to 19 percent biomass co-firing), and no longer burn coal as

[26] 6 NYCRR § 624.4(c)(1)(ii).

a fuel source, which would substantially reduce emissions including greenhouse gases ("GHG") from the Facility.

136. As part of the Greenidge Project, Greenidge applied to the Department for, among other approvals, the necessary Title IV and Title V air permits required by the Clean Air Act, ECL Article 19 and 6 NYCRR 201-6 and 6 NYCRR 231 to construct and operate the Facility.

137. The NYSDEC applied 6 NYCRR 231 New Source Review and Prevention of Significant Deterioration, and required emissions from the Greenidge Project, including GHG emissions, to meet Best Available Control Technology and Lowest Achievable Emission Rate standards and requirements.

138. Following its review of Greenidge's pending permit applications, on July 30, 2015, the Department issued a Notice of Complete Application ("NOCA") and a Negative Declaration, which provided the basis for the Department's State Environmental Quality Review Act ("SEQRA") determination that the resumption of operations at the Generating Facility would not have a significant adverse impact on the environment.

139. The Department's review was based on the Facility operating 24 hours a day, 7 days a week – *i.e.*, the maximum possible emissions from the Facility or what is referred to as Potential to Emit ("PTE").[27] It was not based on some lesser amount of anticipated actual emissions from the Facility.

140. Thereafter, certain revisions were made to the draft Title V air permit.

141. On June 28, 2016, the Department issued an Amended Negative Declaration based on the revisions made to the draft Title V air permit, which concluded once again that the

[27] "Potential to emit" is defined to mean "the maximum capacity of a stationary source to emit any regulated air contaminant under its physical and operational design…" ECL § 19-0107(21). See also, 6 NYCRR § 200.1(bl). PTE is the maximum annual amount of emissions that based on its design a source is able to emit if it operated to the maximum extent (*i.e.*, 24 hours a day, 7 days a week, 365 days a year).

resumption of operations at the Facility would not have a significant adverse impact on the environment.

142. Again, the Department's review was based on the Facility operating 24 hours a day, 7 days a week, with the maximum possible electric generation from the Facility and PTE.

143. On September 8, 2016, the Department issued the final Title IV and Tile V air permits which authorized the in-plant construction work necessary to convert the Facility to natural gas and the subsequent operation of the Greenidge Station.

144. The final Title V permit issued to Greenidge allowed it to emit greenhouse gases totaling its PTE (641,878 short tons of CO_2e/year), consistent with the SEQRA determination.

145. Parallel with the Department's processing of permits to allow the Facility to resume operations, on September 16, 2016, the NYSPSC issued an *Order Granting Certificate of Environmental Compatibility and Public Need* (Case 15-T-0586) (the "Certificate Order"), which approved the construction of a 4.6-mile pipeline (the "Greenidge Pipeline"), a metering station, and a regulation station.

146. The NYSPSC also issued a Notice to Proceed with Construction on October 17, 2016, which authorized the Greenidge Respondents to commence construction of the Greenidge Pipeline.

147. The total cost of the Greenidge Project was over $12,000,000.

148. Ultimately, the construction was completed and the Facility resumed operations in or around March 2017.

149. Since 2017, the Facility has provided electricity to the grid as called upon by the NYISO.

150. Indeed, in December 2022 during the major winter storm that impacted Western New York, the Facility was called upon to run ***at full capacity*** exclusively to furnish electricity to the grid.

151. In 2023, Greenidge sought to shut down the Facility for a two-week period in June of that year to conduct routine maintenance. The NYISO denied the Facility's request due to low or no capacity margin, with not enough capacity online during that time frame to accommodate the planned outage without risk to system reliability.

152. Additionally, the NYISO also called upon Greenidge to deliver full load to the grid on February 3, 2024, again for the purpose of ensuring system reliability.

153. This summer alone, the Facility curtailed providing power to the behind-the-meter cryptocurrency operations upon direction of the NYISO on several occasions, in order to provide power to the grid to help meet increased summer load demand.

154. During the month of July 2024, the Facility provided approximately 21,000 megawatt hours ("MWh") to the Grid. To put this in perspective, one MWh is equivalent to 1,000 kilowatt-hours ("KWh").

155. According to the U.S. Energy Information Administration("EIA"), it takes approximately 0.9 MWh to power one home for a month.[28]

Cryptocurrency Operations

156. In 2019, Greenidge decided to add data processing facilities (also known as cryptocurrency mining) at its site in the Town of Torrey.

[28] *See* U.S. EIA website, accessible at https://www.eia.gov/tools/faqs/faq.php?id=97&t=3.

157. Greenidge could have secured electricity to operate the necessary computer processing and networking equipment for data processing functions either directly from the electric grid or onsite behind the meter generation.

158. Instead of buying electricity from somebody else (*i.e.*, off the grid), Greenidge chose onsite behind-the-meter.

159. The use of onsite behind-the-meter electricity for data processing did not require any Department approvals because, among other things, the Department's regulation of the Facility extends to its generation of electricity consistent with its air, water, and waste-related permits, as opposed to how that electricity is ultimately used – which is wholly outside of the Department's purview.

Renewal Application

160. The initial term of Greenidge's Title IV and Title V air permits expired on September 6, 2021.

161. Greenidge therefore submitted a timely renewal application to Department Staff on March 5, 2021.

162. Greenidge's application requested renewal of its existing Title V permit, with only minor non-material revisions.

163. The requested permit renewal was for a five (5) year term, the maximum period allowed under the law, meaning that, if approved, the renewed permit would expire five years from the date of issuance.

164. Greenidge did not seek a change in the operation of the Facility or an increase to its permitted PTE of any type of emission, including GHG emissions.

165. Greenidge simply asked the Department to issue a renewal permit that would allow Greenidge to continue to operate the Facility in the same manner to generate electricity as previously approved, with the same limits on emissions.

166. On June 30, 2021, Department Staff issued Greenidge a Request for Additional Technical Information and Suspension of the Uniform Procedures Act Time Frame Request, which requested a CLCPA analysis and certain specific GHG emission information as follows:

- Identification of each GHG and the Facility's potential to emit in CO2e using the global warming potentials in Part 496;
- Projected GHG and CO2e emissions in the years 2030, 2040, and 2050;
- Actual GHG emissions from the Facility for each year since 2015; and
- Anticipated actual GHG emissions from the Facility for each year of the renewal permit term.

167. On August 2, 2021, Greenidge provided full and complete responses to all of Department Staff's comments and requests for information.

168. In its August 2, 2021 response, Greenidge explained why the renewal of its Title V/IV permit was consistent with, and would not interfere with the attainment of the statewide greenhouse gas emissions targets established by the CLCPA.

169. Thereafter, on August 16, 2021, Department Staff issued a Second Request for Additional Technical Information, requesting additional information related to GHG emissions from the Facility, but not requesting additional information on Facility GHG reduction/mitigation measures or justification.

170. Greenidge submitted the supplemental response on August 20, 2021.

171. In addition, and although not requested by Department Staff, Greenidge included in its August 2, 2021 and August 20, 2021 responses a suite of six site-specific greenhouse gases

reduction opportunities that it would evaluate and, if feasible, implement during the term of the renewal permit.

172. The Department did not request any additional information regarding these GHG reduction/mitigation opportunities identified by Greenidge or suggest in any way that they were inadequate or should be supplemented to meet regulatory requirements on a permit renewal application, including under the brand new CLCPA.

173. On September 8, 2021, Department Staff issued a Notice of Complete Application ("NOCA").

174. The September 8, 2021 NOCA included a draft Title V permit available for public comment and announced virtual Legislative Public Comment Hearings.

175. The draft Title V permit included a condition requiring Greenidge to submit a "[s]ite-specific greenhouse gas mitigation plan" within 120 days of the issuance of the permit.

176. Upon information and belief, many but not all of Title V permit renewals issued by the Department for electric generating facilities since the effective date of the CLCPA included a condition similar to the following:

> Pursuant to The New York State Climate Leadership and Community Protection Act (CLCPA) and Article 75 of the Environmental Conservation Law, emission sources shall comply with regulations to be promulgated by the Department to ensure that by 2030 statewide greenhouse gas emissions are reduced by 40% of 1990 levels, and by 2050 statewide greenhouse gas emissions are reduced by 85% of 1990 levels.

177. Greenidge did not comment or otherwise challenge the Department's inclusion in the draft Title V permit renewal a requirement that it submit a site-specific GHG mitigation plan.

178. On September 8, 2021, the Department also released a Permit Review Report ("PRR") which concluded that Greenidge's "renewal application is essentially unchanged from

the existing permit. The renewal application and draft permit do not request or allow any additional emissions."

179. In the PRR, Department Staff also considered each of the major elements of the Title V program, including Prevention of Significant Deterioration; National Emissions Standards for Hazardous Air Pollutants; Maximum Achievable Best Available Control Technology; as well as Acid Rain Control and Ozone Protection, and concluded that the "Facility is in compliance with all requirements."

180. The public comment period on the draft Title V permit closed on November 19, 2021.

181. Following the close of the comment period, Department Staff requested several extensions to the Uniform Procedures Act ("UPA") timeframes from Greenidge, which Greenidge granted.

182. The last request from Department Staff to extend the timeframe was made on March 30, 2022, which extended the Department's decision date to June 30, 2022.

183. During this time, Department Staff did not request any additional information from Greenidge related to primary purpose, justification, specific mitigation measures or alternatives.

184. Notwithstanding, Greenidge submitted a letter to the Department on March 25, 2022 proposing, in addition to the mitigation measures included in its August 2, 2021 response, two CLCPA binding permit conditions be included in its Title V permit to directly address GHGs; namely:

- a condition that requires a 40% reduction in GHG emissions from the currently permitted level by the end of 2025 (*i.e.*, five years before the first CLCPA statewide GHG emissions limit); and

- a requirement that Greenidge be a zero-carbon emitting power generating facility by 2035 (*i.e.*, five years before the CLCPA zero-emissions target for electricity generating facilities in 2040).

185. Department Staff failed to discuss these or any other proposed mitigation measures with Greenidge, nor did staff request any additional information related to these proposed GHG mitigation measures.

186. Rather, on June 30, 2022, Department Staff simply issued the Denial and notified Greenidge of its decision to deny the Title V renewal application based on the staff's conclusion that the Department's issuance of the permit would be inconsistent with or would interfere with the attainment of the statewide GHG emission limits in 2030.

187. This was only the fourth permit denial issued by the Department that cited the CLCPA as a basis for denial since the CLCPA's enactment in 2019.

188. Upon information and belief, it was also ***the only denial*** of a renewal application for an existing facility under the CLCPA.

Notice of Denial

189. On June 30, 2022, the Department issued Greenidge a Notice of Denial.

190. In the Denial, Department Staff determined that the Project does not demonstrate compliance with the requirements of the CLCPA because it: (1) would be inconsistent with or would interfere with the statewide GHG emissions limits found in ECL § 75-0107(1); and (2) Greenidge failed to demonstrate electric system reliability or another ongoing need as justification for the Facility notwithstanding this inconsistency.

191. The basis for Department Staff's factual analysis and legal determinations hinged on the interpretation of CLCPA Section 7(2), and the conclusion that despite the absence of key CLCPA implementation plans, including development of the Scoping Plan and implementing regulations, the Department had sufficient authority to deny a permit application for an existing

facility and that it could not renew Greenidge's Title V permit unless it can ensure compliance with Section 7(2).

192. Department Staff interpreted CLCPA Section 7(2) as requiring it to consider three separate and distinct elements:

- whether the renewal of a Title V permit for the Facility would be inconsistent with or interfere with the attainment of the statewide GHG emission limits established in ECL Article 75;
- if the renewal of a Title V permit for the Facility would be inconsistent with or would interfere with the statewide GHG emission limits, then the Department must also provide a detailed statement of justification for the continued operation of the Facility notwithstanding the inconsistency; and
- if a justification is available, the Department must then identify alternatives or GHG mitigation measures to be required for the Facility.[29]

193. Based upon this previously unannounced three part analysis, Department Staff first found that even though Greenidge had submitted a timely and complete application seeking a routine permit renewal to continue to operate the Facility to produce electricity in the same manner it had been since it received its Title V permit in 2016, "due to Greenidge's material change in the primary purpose of the Facility's operation [*i.e.*, behind-the-meter cryptocurrency mining][,]" it would treat the renewal "in the same manner as a new application for purposes of CLCPA Section 7(2)."[30]

194. Department Staff then determined 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 established in Article 75 of the ECL and reflected in Part 496." Denial Letter, Point III.

[29] Denial, pp. 6-7).

[30] Denial, p. 7.

195. This site-specific determination was based on the following factual findings by Department Staff:

- Although the PTE was unchanged, the "actual" GHG emissions from the Facility have increased since the time of the Title V permit issuance in 2016 and since the effective date of the CLCPA in 2020 and that increase was determined to be significant;[31]

- The increase in GHG emissions is due to the fact that Greenidge is powering its own energy-intensive Proof-of-Work (PoW) cryptocurrency mining operations behind-the-meter and this constituted a change in the "primary purpose" of the Facility;[32] and

- Renewal of the Title V permit would allow Greenidge 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.[33]

196. As used by the Department, the evaluation of the purported "primary purpose" of the Facility is just code for a policy determination regarding whether cryptocurrency mining or any other use of behind-the-meter electricity is needed, desirable, or worthy according to the Department Staff's own peculiar whims and preferences.

197. Based on its determination of inconsistency, which was clearly rooted in the Department Staff's disapproval of the use of electricity for cryptocurrency mining, the Department Staff then turned to the required statement of justification under Section 7(2).

198. In doing so, Department Staff considered only whether the Facility was necessary for purposes of electric system reliability. Denial, Point IV ("the potential need for the Facility to maintain electricity reliability is not an available justification for the Facility notwithstanding its inconsistency under the Climate Act.").

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[31] Denial, Point III(B).

[32] Denial, Point III(C).

[33] Denial, Point III(D)

199. Finding that the Facility was not needed for reliability and that there were no other potential justifications of any kind, Department Staff determined that it was "unable to provide a detailed statement of justification for the continued operation of the Facility notwithstanding its inconsistency."[34]

200. Because of its factual findings on the first two "steps" of its analysis, Department Staff announced that it need not reach the "third prong" under CLCPA Section 7(2) regarding mitigation and alternatives.[35]

201. Notwithstanding, the Denial went on to summarily conclude that the mitigation measures proposed by Greenidge "would only provide minimal GHG mitigation and not fully account for the substantial increase in GHG emissions due to the Facility's change in its primary purpose of operation", and did so without explaining how significance is measured or mitigation is evaluated.[36]

202. In accordance with Department regulations, Greenidge timely requested an adjudicatory hearing to challenge Department Staff's basis for the Denial and to present factual and legal arguments establishing that the Department's denial of the Title V renewal application for the Facility was both legally and factually flawed.

Administrative Hearing Process

203. Following Greenidge's request for an administrative hearing, the Department's Office of Hearings and Mediation assigned an Administrative Law Judge ("ALJ") to conduct the necessary proceedings.

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[34] Denial, p. 18.

[35] Denial, p. 18.

[36] Denial, p. 18.

204. Thereafter, among other things, the ALJ requested that Greenidge prepare a Statement of Issues even though one is not required by Department regulations.[37]

205. On November 4, 2022, Greenidge submitted its Statement of Issues which, among other things, raised a number of issues of fact concerning the Facility's purpose, evidence supporting a statement of justification, and the nature and extent of mitigation required by the CLCPA.

206. That same day, other interested parties submitted a joint petition seeking party status as required by Department regulations.[38]

207. Department Staff submitted a response to Greenidge's Statement of Issues on November 22, 2022.

208. While Department Staff asserted that certain issues "should not be an issue for adjudication," Department Staff did not oppose adjudication of consistency or justification.

209. Following written submissions, the ALJ convened an Issues Conference on December 8, 2022 and January 4, 2023.

210. Thereafter parties filed post-issues conference briefing.

211. The ALJ issued her Ruling On Issues and Party Status ("Issues Ruling") on September 22, 2023, advancing three issues for adjudication:[39]

a. Whether there is justification for renewal of the Title V air permit notwithstanding the inconsistency with the CLCPA GHG emissions limits. The purpose of the facility is relevant to this issue.

b. Whether there are proposed alternatives or greenhouse gas mitigation measures which, are real, additional, quantifiable, permanent, verifiable, and enforceable; are located where the project is located, and will result in the immediate lessening or

[37] *See, generally,* 6 NYCRR Part 624.

[38] *See* 6 NYCRR § 624.5.

[39] Issues Ruling, p. 57.

the elimination of the inconsistency or interference with the GHG emissions goals of the CLCPA at the time of permit issuance.

c. Whether renewal of the Title V air permit will disproportionately burden disadvantaged communities, as prohibited by § 7(3) of [the] CLCPA.

212. The Issues Ruling improperly predicated the majority of its determinations on its denial of a Title V air permit application for a new electric generating facility, the Danskammer Energy Center, notwithstanding the fundamental distinctions between construction of a new facility and continued operation of an existing facility.

213. Notwithstanding the above, the Issues Ruling acknowledged the need for adjudication, finding that:

a. "The CLCPA was a new law and public guidance was released in draft form *after* Greenidge submitted its application."[40]

b. "Greenidge may not have been able to anticipate what DEC required to establish justification without a specific request for the information, which was authorized under 6 NYCRR 621.14(b)."[41]

c. Greenidge was entitled to the opportunity to propose its mitigation measures and alternatives at the hearing, again based on that fact that "Greenidge was addressing a new law with only draft guidance available" and the record was not yet fully developed on those points;[42] and

d. Whether renewal would disproportionately burden disadvantaged communities was left unaddressed by the proceedings to date and thus was ripe for adjudication.[43]

214. On November 13, 2023, Greenidge filed its timely Appeal, challenging the Issues Ruling because it failed to recognize the fact-intensive inquiries surrounding CLCPA consistency, among the several other issues not advanced to adjudication, presents issues of first impression

[40] Ruling, p. 51 (emphasis added)

[41] Ruling, p. 51.

[42] Ruling, pp. 53-54.

[43] Ruling, pp 20-21.

that cannot be resolved as a matter of law, and glossed over numerous pertinent matters by compartmentalizing review in lieu of a holistic approach.

215. Greenidge's Appeal sought *de novo* review by the Commissioner's designee to clarify the applicable standards and application of CLCPA Section 7(2), given the Denial represents the first instance NYSDEC denied a renewal application, with no Commissioner-level decisions.

216. Procedurally, the Appeal also explained that the Issues Ruling was in error by "ignoring Part 624 and well-settled practice that disputes between Department Staff and an applicant are *per se* adjudicable." Appeal at 2.

217. On May 8, 2024 Regional Director Glance issued the Department's Final Decision, denying Greenidge its requested relief and further determining that no adjudication was required despite the ALJ's finding of three adjudicable issues.

218. The Final Decision adopts a fundamentally flawed interpretation of CLCPA Section 7(2), finding that the Department need not make a statement of justification, and in turn, perform any related analysis, if its decision is to deny a permit based on its determination that issuance would not be consistent with the CLCPA (notwithstanding that the permit would, presumptively, be approved but for CLCPA considerations).

219. Additionally, the Final Decision weaponized the permittee's burden of proof to demonstrate compliance with all applicable laws and regulations under 6 NYCRR § 624.9(b)(3) to determine that Greenidge allegedly had the opportunity to present its mitigation measures and plans, notwithstanding the acknowledgement by the Issues Ruling that Greenidge did not have the benefit of regulations or guidance on what mitigation is appropriate under the CLCPA, nor the reality that NYSDEC itself made submittal of a mitigation plan a condition of the draft permit.

220. The Decision also cancelled the adjudicatory hearing altogether, despite the factual deficiencies in the record as identified by the ALJ. *See* 6 NYCRR § 624.4(c)(1)(ii) (an issue that "relates to a matter cited by the [D]epartment staff as a basis to deny the permit and is contested by the applicant" is adjudicable).

NYSDEC Request that Greenidge Cease Operations

221. Following the Final Decision, by letter dated June 4, 2024, the Department notified Greenidge that the May 8, 2024 Decision issued by Regional Director Dereth Glance was the Department's final decision on the matter.

222. In NYSDEC's June 4, 2024 letter, the Department also notified Greenidge that its Title V air permit would expire on September 9, 2024 and that Greenidge could not lawfully operate without a valid permit.

223. The Department also notified Greenidge that it "expects that Greenidge will responsibly cease operations by September 9, 2024" and also "close its facility[.]"

CLAIMS

COUNT I

A DETERMINATION UNDER ARTICLE 78 THAT NYSDEC'S DENIAL MUST BE ANNULLED BECAUSE THE DEPARTMENT LACKS AUTHORITY TO DENY GREENIDGE'S PERMIT RENEWAL APPLICATION UNDER CLCPA SECTION 7(2)

224. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

225. An administrative agency, as a creature of the Legislature, is clothed with only those powers expressly conferred by its authorizing statute, as well as those required by necessary implication.

226. The Department's authorizing statute is the New York Environmental Conservation Law.

227. NYSDEC denied Greenidge's application to renew its Title V air permit for the Facility citing CLCPA Section 7(2) because the Department determined that approving the application would purportedly be inconsistent with or interfere with the attainment of the statewide GHG emission limits established in ECL Article 75.

228. NYSDEC's consistency determination under CLCPA Section 7(2) was the sole basis for NYSDEC's denial of Greenidge's Title V air permit renewal application.

229. CLCPA Section 7(2) is not codified in the New York Environmental Conservation Law.

230. There was and is no reasonable dispute that Greenidge's requested renewal permit would expire in five years, before the first statewide emissions limit applicable in 2030.

231. There also was and is no reasonable dispute that:

a. Greenidge has satisfied all statutory and regulatory requirements for renewal of the Title V permit for the Facility;

b. the Facility's operations have not changed;

c. the Facility's allowable emissions in the renewed permit would remain the same as in current permit; and

d. Greenidge has agreed to include a binding condition in the renewal permit that requires a 40% reduction in GHG emissions from the currently permitted level (which are already 70% below 1990 primarily due to the conversion from coal) prior to 2030.

232. In denying Greenidge's permit renewal application for the Facility, NYSDEC erroneously interpreted CLCPA Section 7(2) as authorizing the Department to deny the renewal of an air permit for an existing, currently operating facility based on that provision alone, even if, as here, all other statutory and regulatory requirements have been satisfied and the requested permit renewal would expire before the first ECL Article 75 Statewide GHG emission limit in 2030.

233. Contrary to NYSDEC's erroneous interpretation of CLCPA Section 7(2), the law does not authorize the Department to deny a permit renewal application.

234. Instead, CLCPA Section 7(2) only requires the Department and every other state agency to formally incorporate climate considerations into its decision-making process, including evaluating whether GHG emissions can be reduced and potential alternatives and options for mitigating any associated GHG emissions.

235. Even if CLCPA Section 7(2) allowed NYSDEC to deny a permit renewal application based solely on its purported inconsistency/interference determination, the law does not authorize the Department to deny such a permit requested by an existing, currently operating facility when the permit would expire before the first statewide target in 2030.

236. Accordingly, NYSDEC's denial of Greenidge's permit renewal application under CLCPA Section 7(2) has no basis in law and must be annulled.

COUNT II

NYSDEC'S DENIAL MUST BE ANNULLED BECAUSE THE DEPARTMENT FAILED TO ASSESS JUSTIFICATION AND ALTERNATIVES/MITIGATION AS REQUIRED BY CLCPA SECTION 7(2)

237. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

238. CLCPA does not contain any criteria, standard, guidance, or methodology by which NYSDEC or any other state agency is to determine whether a given amount of GHG emissions would be inconsistent with or interfere with New York State's attainment of the 2030 and 2050 Statewide GHG emission reduction limits.

239. Nor has NYSDEC itself provided any criteria, standard, guidance, regulations or methodology to determine whether a given amount of GHG emissions would be inconsistent with,

or interfere with, New York State's Statewide GHG reduction limits in a Department rule, guidance document, or the Denial.

240. In the absence of any criteria, standard, guidance, rules or methodology in Section 7(2) or elsewhere, the practical reality is that the issuance of a permit for a project or facility that emits any amount of GHGs (no matter how small) would potentially be inconsistent with, and interfere with, the CLCPA emission limit that seeks to reduce Statewide GHG emissions by 2030.

241. In denying Greenidge's Title V permit renewal application, NYSDEC erroneously interpreted CLCPA Section 7(2) as authorizing the Department to deny any permit application if it determines that such action would be inconsistent with or interfere with statewide GHG emissions limits, without determining whether a justification exists and identifying alternatives and mitigation measures, as expressly required by that law.

242. In other words, NYSDEC asserts that CLCPA Section 7(2) authorizes the Department, in its complete and sole discretion, to deny Greenidge's and any other party's permit application if the facility at issue will have ***any*** GHG emissions – which is true as to almost every single facility for which an air permit is requested – regardless of any justification or alternatives/mitigation considerations, and in spite of all other regulatory and statutory requirements having been met.

243. In effect, NYSDEC asserts that the Department has the authority under CLCPA Section 7(2) to function as New York State's *de facto* climate czar, determining on an *ad hoc* subjective basis what facilities should be permitted to operate or be shut down based on climate change considerations alone.

244. Contrary to NYSDEC's attempt to anoint itself as New York State's arbiter of economy-wide climate issues, however, the CLCPA instead created the CAC, a 22-member

appointed body, with the mission to prepare a Scoping Plan with extensive public involvement to serve as the roadmap to achieve the State's clean energy and climate goals.

245. Having determined that Greenidge's Facility emits GHGs, NYSDEC relied in its Final Decision on an erroneous interpretation of CLCPA Section 7(2) to deny Greenidge's permit renewal application without any explanation or analysis regarding justification or alternatives/mitigation.

246. It did so despite the ALJ's prior finding of three adjudicable issues under CLCPA Section 7(2), including justification and alternatives/mitigation.

247. CLCPA Section 7(2) requires the Department and every other state agency to: (1) consider whether an administrative approval/decision is inconsistent or would interfere with the state attaining the 2030 and 2050 statewide GHG emission limits in ECL Article 75. If an agency determines that an approval would be inconsistent or cause interference, the agency ***must*** (2) provide a detailed statement explaining why/how the GHG limits in 2030 or 2050 may not be met; and (3) identify alternatives and measures for mitigating GHG emissions.

248. There is no language in the CLCPA that allows an agency that deems a decision to be inconsistent with or to interfere with the state meeting the ECL Article 75 limits to just deny a permit and skip the Section 7(2) requirement to evaluate justification and identify alternatives and mitigation measures.

249. Accordingly, as an alternative to Count I, even if CLCPA Section 7(2) authorizes the Department to deny a permit renewal application under certain circumstances, NYSDEC's denial of Greenidge's permit renewal application must be annulled, because it was based on the Department's erroneous interpretation of the law and how it is to be applied to a renewal

application for an existing facility, and the Department's resulting failure to properly consider the justification and alternatives/mitigation elements required by Section 7(2).

COUNT III

NYSDEC'S DENIAL SHOULD BE ANNULLED BECAUSE THE DEPARTMENT'S DECISION WAS BASED ON IMPROPER POLICYMAKING UNDER THE GUISE OF A CLCPA SECTION 7(2) JUSTIFICATION ANALYSIS

250. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

251. According to NYSDEC's erroneous statutory interpretation in its Final Decision, the Department is only required to consider justification or alternatives/mitigation under CLCPA Section 7(2) if it first decides, in its complete and sole discretion, to issue a permit despite a facility's GHG emissions.

252. NYSDEC claimed in its Final Decision that, whenever the Department decides to deny a permit due to a facility's GHG emissions, in its complete and sole discretion, the Department has no further obligation to address the justification or alternatives/mitigation elements of CLCPA Section 7(2).

253. However, NYSDEC's denial – whether initially by Department Staff, by the ALJ, or on final appeal to the Department's Commissioner – was based on NYSDEC's *ad hoc* subjective policy determination that the Greenidge Facility's GHG emissions could never be justified because the Department disapproved of the end use of the electricity generated by the Facility, namely, behind-the-meter cryptocurrency mining.

254. While NYSDEC attempted in its Final Decision to avoid any discussion of CLCPA Section 7(2)'s justification/written explanation element by reading it out of the law when the Department decides, as here, to deny a permit, the Department's Denial was clearly and obviously based on its erroneous interpretation of that element as authorizing it to make a policy

determination that electricity generation and use for cryptocurrency mining is not "needed," not desirable, and not worthy of justification.

255. This NYSDEC policymaking – regardless of whether it occurs in public or behind closed doors at the Department – is not contemplated or authorized by CLCPA Section 7(2).

256. As properly interpreted, CLCPA Section 7(2) does not require or allow any policymaking: If NYSDEC finds that a proposed permit would be inconsistent with, or interfere with, statewide GHG emissions goals, the Department "shall 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."

257. Contrary to NYSDEC's erroneous interpretation, CLCPA Section 7(2)'s justification/written explanation element does not invite the Department or any other state agency to make its own subjective *ad hoc* value judgements regarding the purported "purpose" of a project or facility or what economic activity in New York State is needed, desirable, or worthy. Nor is an agency authorized to disregard the requirement that it provide a statement of justification (*i.e.*, an explanation) as to why the limits may not be met.

258. Accordingly, NYSDEC's Denial should be annulled because it has no basis in law to the extent that the Department's decision to deny Greenidge's permit renewal application was based on its improper interpretation of the plain language and intent of the legislature, and improper policymaking as regards the social and economic value of cryptocurrency mining.

COUNT IV

NYSDEC'S DENIAL MUST BE ANNULLED BECAUSE NYSDEC'S CONSISTENCY DETERMINATION WAS ARBITRARY AND CAPRICIOUS

259. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

260. This action relates to NYSDEC's Denial of Greenidge's application to renew the Title V air permit for its existing, currently operating Facility. NYSDEC's Denial would require the Greenidge Facility to shut down.

261. If issued, Greenidge's requested permit would expire in five years.

262. Under the CLCPA, the first statewide GHG emissions target is 2030.

263. Before the first statewide emissions target in 2030, Greenidge will be required to submit another permit renewal application to NYSDEC, at which time the Department will have the opportunity to evaluate that proposed permit under CLCPA Section 7(2).

264. In accordance with the CLCPA and ECL Article 75, the 2030 Statewide GHG emission limit is a 40% reduction from the 1990 level of GHG emissions statewide.

265. The Greenidge Facility has already reduced its own GHG emissions from 1990 to the present by approximately 70% by, among other things, converting the Facility from operating on coal to operating on natural gas (with up to 19% biomass co-firing) at a cost of over $12 million.

266. In keeping with the Department's draft permit, Greenidge proposed a suite of six site-specific greenhouse gases reduction opportunities that it would evaluate and, if feasible, implement during the term of the renewal permit

267. Greenidge also agreed to include a binding condition in the renewal permit that requires a further 40% reduction in GHG emissions from the currently permitted level (which are already 70% below 1990 actual emissions) prior to the first GHG emission reduction target date of 2030.

268. Because Greenidge's requested permit would expire prior to the first statewide emissions limit in 2030[44], NYSDEC's denial and shutdown of the Facility, on the grounds that issuance of the permit would be inconsistent with, or interfere with that emissions reduction goal in the future was arbitrary and capricious.

269. NYSDEC's denial and shut down of the Facility was also arbitrary and capricious because the Facility has already reduced its GHG emissions from 1990 to the present by approximately 70% and Greenidge has agreed to further reduce emissions from the current permitted level by 40% prior to 2030, making the issuance of the permit to this existing, operating Facility consistent with the 2030 40% targeted emissions reduction compared to 1990.

270. Accordingly, NYSDEC's Denial must be annulled.

COUNT V

NYSDEC'S INTERPRETATION OF CLCPA SECTION 7(2) IS IN ERROR OF LAW AS IT WOULD RENDER THE LAW IN VIOLATION OF THE SUPREMACY CLAUSE

271. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

272. Greenidge is an electric generating facility.

273. Greenidge operates under a CPCN used by the NYSDPS on September 16, 2016.

274. Greenidge currently provides electricity to the grid every day that it operates.

275. Combined, the Final Decision and the Department's June 4, 2024 letter asserts that Greenidge must cease operating by September 9, 2024.

276. The Department's decision under Section 7(2) was based solely on its finding that the requested renewal permit would be inconsistent with, or would interfere with, the statewide GHG emissions limits.

[44] Because Title V permits are issued for five-year terms, had the NYSDEC issued the permit in 2021 or 2022, the permit would be set to expire in 2026 or 2027 and thus the NYSDEC would have the opportunity to revisit its CLCPA analyses several years prior to the emissions limit in 2030.

277. The Department's Final Decision did not consider whether any "justification [existed] as to why such limits/criteria may not be met", nor did it consider any alternatives or GHG mitigation measures.

278. In doing so, the Department concluded that "it is not appropriate and is contrary to the intent of the CLCPA to read into the law a requirement that, where an agency finds that granting a permit would be inconsistent with or will interfere with the attainment of statewide GHG emission limits, the agency must then identify whether there is a justification for the continued operation of a facility."

279. The Department's determination did not comply with the NYISO's federal approved tariff, the OATT.

280. The Department provided no notice to the NYISO of its intent to require Greenidge to cease operating.

281. As such, the NYISO's federally approved deactivation process for existing generating facilities, which ensures that the necessary and appropriate reliability and resiliency studies are conducted before deactivation, was not followed.

282. The OATT is a federally filed and approved regulatory tariff that carries the force of federal law.

283. The Department's interpretation of Section CLCPA 7(2) would violate the Supremacy Clause of the U.S. Constitution.

284. Accordingly, NYSDEC's denial of Greenidge's permit renewal application under CLCPA Section 7(2) constitutes an error of law and must be annulled.

COUNT VI

DECLARATORY JUDGMENT

285. Petitioner repeats and realleges the foregoing paragraphs as if fully set forth herein.

286. NYSDEC's Denial of Greenidge's application to renew the Title V air permit for the Facility was based on numerous errors of law and fact.

287. A valid, ripe, justiciable controversy exists between Greenidge and NYSDEC concerning the proper interpretation and application of CLCPA Section 7(2) with respect to the Department's consideration of Greenidge's permit renewal application.

288. Specifically, Greenidge and NYSDEC disagree regarding the following:

a. Whether the Department lacks authority under CLCPA Section 7(2) to deny an application to renew a Title V air permit for an existing, operating facility;

b. Whether NYSDEC erroneously interpreted CLCPA Section 7(2) as authorizing the Department to deny any permit application if it determines that such action would be inconsistent with or interfere with statewide GHG emission limits, without providing a statement of justification (*i.e.*, explanation) as to why the limits may not be met and identifying alternatives and mitigation measures, as expressly required by that law;

c. Whether NYSDEC erroneously interpreted CLCPA Section 7(2)'s justification element as authorizing the Department to make a policy determination that a particular project or facility is not "needed," not desirable, and not worthy of justification;

d. Whether the Department lacks authority to deny a renewal permit for an existing facility when the applicant seeks no change in permitted emissions prior to 2030;

e. Whether the Department lacks authority to deny a renewal permit for an existing facility when the renewed permit will expire prior to 2030, the deadline for the first statewide emissions target;

f. Whether the Department lacks authority to deny a renewal permit for an existing facility when the applicant has agreed to include a binding condition in the renewal permit that requires a 40% reduction in GHG emissions from the currently permitted level (which are already 70% below 1990 actual emissions) prior to 2030 when the first statewide GHG limit becomes applicable;

g. Whether the Department lacks authority to deny a renewal permit for an existing electric generating facility based on an alleged change in the primary purpose of the Facility (*i.e.*, how the electricity is used) where no changes to the Facility's operations have occurred and the emissions limits and, in turn, the facility's allowable emissions in the renewed permit would remain the same;

h. Whether the analysis required by CLCPA Section 7(2) is a fact-based inquiry that cannot be compartmentalized; rather, a myriad of factors, including potential and feasible GHG reduction and mitigation measures, must be evaluated as a whole to determine if a specific permit application or facility is consistent with the 2030/2050 statewide GHG emission limits;

i. Whether the Department is obligated to consider justification and mitigation as part of any analysis under CLCPA Section 7(2) where it determines that a proposed action will be inconsistent or interfere with the attainment of the statewide GHG emission limits under the CLCPA; and

j. Whether the CLCPA does not vest the Department (and all other agencies, no matter their areas of expertise or lack thereof) with authority to usurp the statutorily-defined role of the Public Service Commission ("PSC") or the New York Independent Systems Operator ("NYISO") in determining whether an electric generating facility is needed.

289. Pursuant to CPLR § 3001, Greenidge seeks a declaratory judgment regarding the foregoing matters.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

A. Annul the Department's June 30, 2022 Denial of Greenidge's Application to renew its Title V permit and the May 8, 2024 Final Decision;

B. Issue a declaratory judgment that CLCPA Section 7(2) is void and unenforceable, as interpreted and applied by the Department, because it is contrary to the plain language and intent of CLCPA Section 7(2)

C. Issue a declaratory judgment that CLCPA Section 7(2) is void and unenforceable, as interpreted and applied by the Department, because it impermissibly delegates matters of social and public policy reserved for the legislature to the Department (and all other agencies, no matter their areas of expertise or lack thereof) regarding whether certain projects or types of economic activity are "needed" and worthy of justification.

D. Issue a declaratory judgment that the Department lacks authority to deny a renewal permit for an existing facility when the applicant seeks no change in permitted emissions prior to 2030;

E. Issue a declaratory judgment that the Department lacks authority to deny a renewal permit for an existing facility when the renewed permit will expire prior to 2030, the deadline for the first statewide emissions target;

F. Issue a declaratory judgment that the Department lacks authority to deny a renewal permit for an existing electric generating facility based on an alleged change in the primary purpose of the Facility (*i.e.*, how the electricity is used) where no changes to the Facility's operations have occurred and the emissions limits remain the same and thus, in turn, the facility's allowable emissions in the renewed permit would remain the same;

G. Issue a declaratory judgment that the analysis required by CLCPA Section 7(2) is a fact-based inquiry that cannot be compartmentalized; rather, a myriad of factors, including potential and feasible current and future GHG reduction and mitigation measures, must be evaluated as a whole to determine if a specific permit application or facility is consistent with the statewide GHG emission limits;

H. Issue a declaratory judgment that the Department is obligated to consider justification and mitigation as part of any analysis under CLCPA Section 7(2) where it determines that a proposed action will be inconsistent with the statewide greenhouse gas emission limits under the CLCPA;

I. Issue a declaratory judgment that the CLCPA does not vest the Department (and all other agencies, no matter their areas of expertise or lack thereof) with authority to usurp the

statutorily-defined role of the Public Service Commission ("PSC") or the New York Independent Systems Operator ("NYISO") in determining whether an electric generating facility is needed;

J. Enjoin the Department from taking any action to deny Greenidge's Title V permit renewal or requiring that the Facility cease operations under the auspices of the CLCPA;

K. Remand this matter to the Department for further action consistent with the Court's order;

L. Award Petitioner reasonable attorney's fees; and

M. Grant any such further relief as this Court deems just, equitable and proper.

Dated: August 15, 2024

Respectfully submitted,

BARCLAY DAMON LLP

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Attorneys for Petitioner-Plaintiff
Greenidge Generation LLC

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF YATES)

Dale Irwin, being duly sworn, deposes and says:

1. He is the President of Petitioner Greenidge Generation LLC a domestic limited liability company formed and existing under the laws of the State of New York.
2. That he has read to foregoing Verified Petition and Complaint and is fully aware of the contents thereof.
3. That the contents of the foregoing Verified Petition and Complaint are true to his own knowledge, except as to matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

DALE IRWIN

Sworn to before me this
14th day of August 2024

Notary Public

BRENDA LEE DUECK
Notary Public - State of New York
NO. 01DU6422062
Qualified in Yates County
My Commission Expires Sep 13, 2025