

STATE OF NEW YORK
SUPREME COURT: COUNTY OF YATES

GREENIDGE GENERATION LLC,
Petitioner/Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, and
ACTING COMMISSIONER SEAN MAHAR,
Respondents/Defendants,

Index No. 2024-5221

and

SENECA LAKE GUARDIAN, THE COMMITTEE
TO PRESERVE THE FINGER LAKES, SIERRA
CLUB,
Respondents/Defendants.

STATE'S OPPOSITION TO PROPOSED AMICI BRIEFING

LETITIA JAMES
Attorney General of the State of New
York
Attorney for Respondents/Defendants
Environmental Protection Bureau
New York State Department of Law
The Capitol
Albany, New York 12224-0341
(518) 776-2406

NICHOLAS C. BUTTINO
LISA M. BURIANEK
Assistant Attorneys General
Of Counsel

Dated: October 24, 2024

Reproduced on Recycled Paper

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT 1

LEGAL FRAMEWORK 1

ARGUMENT 2

THE COURT SHOULD DISREGARD THE PROPOSED AMICI BRIEFING 2

 A. The Power Producers..... 2

 B. The Business Council. 4

CONCLUSION 5

CERTIFICATE OF COMPLIANCE REGARDING WORD COUNT LIMIT..... 6

TABLE OF AUTHORITIES

Page(s)

Cases

Columbus Monument Corp. v City of Syracuse,
73 Misc 3d 967 (Sup Ct, Onondaga County 2021) 2-4

Matter of Kahn v Planning Bd. of City of Buffalo,
60 AD3d 1451 (4th Dept 2009)..... 2-3

New York Civ. Liberties Union v Suffolk County,
216 NYS3d 824 (Sup Ct, Suffolk County 2024) 1

State Statutes

Climate Act
§ 7 (2)..... 3

State Regulations

6 NYCRR
§ 624.9 (b) (1) 3

22 NYCRR
§ 500.23 (a) (4) 2

PRELIMINARY STATEMENT

The New York State Department of Environmental Conservation (the Department) and Sean Mahar, as interim Commissioner (collectively, the State) oppose the proposed amici briefing of the Independent Power Producers of New York, Inc. (Power Producers) and the Business Council of New York State, Inc. (Business Council). The proposed briefing adds little to arguments made by Greenidge Generation, LLC (Greenidge), references information outside of the record, and speculates about future impacts on permitting matters not before the Court. The proposed amici further fail to address the Department's administrative record demonstrating that it followed the Climate Leadership and Community Protection Act (Climate Act) § 7(2) and rationally denied Greenidge's renewal application for its Title V air permit. To the extent that the Court allows the proposed amici submissions, the Court should disregard them because they clarify neither the arguments nor the record.

LEGAL FRAMEWORK

"The CPLR does not set a standard for allowing amicus briefs" ([*New York Civ. Liberties Union v Suffolk County*](#), 216 NYS3d 824, 830 [Sup Ct, Suffolk County 2024]). Filing an amicus memo "is a privilege and not a right" ([*id.*](#)). Supreme Courts have laid out a six-factor test:

(1) whether the applications were timely; (2) whether each application states the movant's interest in the matter and includes the proposed brief; (3) whether the parties are capable of a full and adequate presentation of the relevant issues and, if not, whether the proposed amici could remedy this deficiency; (4) whether the proposed briefs identify law or arguments that might otherwise escape the court's

consideration or would otherwise be of assistance to the court; (5) whether consideration of the proposed amicus briefs would substantially prejudice the parties; and (6) whether the case involves questions of important public interest

(*Columbus Monument Corp. v City of Syracuse*, 73 Misc 3d 967, 971 [Sup Ct, Onondaga County 2021]; *see also* [22 NYCRR 500.23](#)[a][4] [appellate rules]).

ARGUMENT

THE COURT SHOULD DISREGARD THE PROPOSED AMICI BRIEFING

Many of the arguments of proposed amici focus on alleged issues with grid reliability. However, proposed amici, and Greenidge, could have raised those issues, with evidentiary support, in the Department's administrative proceeding. They failed to do so. Their arguments not only raise issues that are outside of the record, but also guess about how the Department and other agencies may act in the future. Based on the lack of evidentiary support and speculation, there is no reason to consider amici's arguments. The State addresses the details of the arguments made by the Power Producers and Business Council below.

A. The Power Producers.

The Power Producers seek to introduce information that is outside of the administrative record and, thus, irrelevant. "In a CPLR article 78 proceeding, the court's review is limited to the arguments and record adduced before the agency" (*Matter of Kahn v Planning Bd. of City of Buffalo*, 60 AD3d 1451, 1452 [4th Dept 2009]). In arguing about reliability, the Power Producers raise unsupported concerns. All they can offer is Greenidge's own self-serving allegations, which are themselves outside of the record (*see* [NY St Cts Elec Filing \[NYSCEF\] Doc No. 93](#), Affidavit of

Gavin Donohue ¶¶ 20). To the extent that they rely on comments submitted by other parties outside of this proceeding ([NYSCEF Doc No. 93](#), Donohue Aff. ¶ 21, n.5), those are also outside of the record, not appropriate for this Court to consider, and unrelated to Greenidge (see [Matter of Kahn](#), 60 AD3d at 1452). Had the Power Producers wanted to submit material for the Department's consideration, they should have participated in the administrative proceeding.

Additionally, the Power Producers are unqualified to assess grid reliability, and thus their submission remedies no deficiency in materials already filed (see [Columbus Monument Corp.](#), 73 Misc 3d at 971). Greenidge argues that it is the responsibility of the New York State Public Service Commission and the New York State Independent System Operator to evaluate reliability (see [NYSCEF Doc No. 1](#), Petition ¶ 19). The Power Producers speak for neither of these non-parties, nor does the submission point to evidence indicating that closing the Facility will impact grid reliability.

Finally, nothing in these arguments changes Greenidge's burden to show entitlement to a permit by offering evidence to substantiate its arguments. An applicant must show that its proposals will comply with all applicable laws, including the Climate Act § 7(2) ([6 NYCRR 624.9](#)[b][1]; see ECL Ch. 43-B, Art. 75, [2019 Sess. Law News of N.Y. Ch. 106](#) [Climate Act] § 7[2]). For permits that are inconsistent with § 7(2), such as Greenidge's Title V air permit, the applicant must show justification for a renewal permit. Here, Greenidge failed to show justification, particularly regarding its vague claims about grid reliability. Nothing in the Power

Producers' submissions alleviates this lack of evidence. At most, the Power Producers express concern about potential future Department regulations; however, future actions are hypothetical and not before this Court.

B. The Business Council.

The Business Council's arguments duplicate those made by Greenidge and the Power Producers and are both irrelevant and unsupported by the record. The Business Council largely focuses on the scope of the Department's authority under Climate Act § 7(2) (see [NYSCEF Doc No. 124](#), Affidavit of Kenneth Pokalsky, ¶¶ 9-20). These arguments add nothing to the Court's consideration of this matter because they parallel Greenidge's position (see [NYSCEF Doc No. 3](#), Greenidge's Memo at 27). Because the arguments do not fill an issue that is unaddressed, they are not appropriate for an amicus brief (see [Columbus Monument Corp.](#), 73 Misc 3d at 971).

The Business Council also incorrectly implies that Greenidge did not receive due process (see [NYSCEF Doc No. 124](#), Pokalsky Aff. ¶ 35). The Business Council's claims are belied by the record, which demonstrates the extensive due process Greenidge received, including an almost two-year administrative proceeding during which the Facility continued to operate.

The Business Council also misstates the basis for the Department's decision, alleging that the agency banned cryptocurrency mining through the denial of a single permit application. In fact, the record shows the Department denied the permit because of inconsistency with the Climate Act's emissions limits, based on the six-fold increase in the Facility's emissions. Moreover, as the State explained in its opposition memorandum, the Department's denial was based on Greenidge's

emissions data and projections, and does not prevent Greenidge or other permitted facilities from cryptocurrency mining ([NYSCEF Doc No. 97](#), State's Memo at 42).

Finally, the Business Council speculates about future air emissions regulations under the Climate Act (see [NYSCEF Doc No. 124](#), Pokalsky Aff. ¶¶ 30-33). Any regulation that the Department may issue in the future is not the subject of this proceeding and the Business Council will have an opportunity to participate in any future Department rulemaking on greenhouse gas emissions. However, this proceeding is not about future regulations, but about the Department's rational application of Climate Act § 7(2) to deny Greenidge's Title V permit renewal application based on the factual record.

CONCLUSION

The State requests that this Court deny, or in the alternative disregard, the proposed amici briefing of the Power Producers and the Business Council.

Dated: October 24, 2024
Albany, New York

LETITIA JAMES
Attorney General of the State of New York
Attorney for Respondents/Defendants

By: /s/ Nicholas C. Buttino
Nicholas C. Buttino
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224-0341
(518) 776-2406
Nicholas.Buttino@ag.ny.gov

**CERTIFICATE OF COMPLIANCE REGARDING
WORD COUNT LIMIT**

The undersigned attorney hereby certifies:

This document complies with the word count limitations pursuant to Rule 202.8-b (c), of the Uniform Civil Rules for the Supreme Court and the County Court as amended by the Administrative Order 270-20, effective February 1, 2021. According to the word processing system used in this office, this document, exclusive of the sections excluded by Rule 202.8-b (b), (f), contains 1,183 words.

Dated: Oct. 24, 2024

/s/ Nicholas C. Buttino
Nicholas C. Buttino
Assistant Attorney General
Environmental Protection Bureau
The Capitol
Albany, New York 12224
(518) 776-2406
Nicholas.Buttino@ag.ny.gov