

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

SENECA LAKE GUARDIAN, THE COMMITTEE TO
PRESERVE THE FINGER LAKES, and SIERRA CLUB

Intervenors-Respondents

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

**REPLY AFFIDAVIT OF
DALE IRWIN**

Index No. 2024-5221

Dale Irwin, being duly sworn, deposes and states as follows under the penalties of perjury:

1. My name is Dale Irwin. I am over 21 years of age, and I am competent in all respects to make this Affidavit.

2. I am the President of Greenidge Generation Holdings, Inc., Greenidge Generation LLC, Greenidge Pipeline, LLC, Greenidge Pipeline Properties Corporation, and Lockwood Hills LLC.

3. I make this Reply Affidavit in further support of Greenidge's motion for a preliminary injunction and its Verified Petition.

4. My statements in this Affidavit are based upon my personal knowledge obtained through the various positions I have held for Greenidge and at Greenidge Station, my involvement in the Facility's environmental permitting as well as my review of relevant documentation, personal observations and participation in Greenidge's administrative appeal of the Denial.

5. I have reviewed the State Respondents' and Intervenors' Opposition to Greenidge's Motion for a Preliminary Injunction.

6. At the outset, both papers rest on a fundamental misunderstanding. *See* NYSCEF Doc. 97, p. 34 ("Greenidge could continue computing operations without running the Facility to power those operations."); NYSCEF Doc. 109, p. 13 ("Greenidge's cryptocurrency mining operations ... may continue without the Facility's gas plant operation."); NYSCEF Doc. 109, p. 16 ("Greenidge can simply purchase power to serve its Yates County crypto business").

7. While cryptocurrency operations do not require a Title V permit, because they themselves do not have air emissions, let alone any other Department permits or approvals, to operate, they still require electricity.

8. So, while theoretically the cryptocurrency operations could continue to operate without the Facility, they would need to secure their power elsewhere. As these operations would still have the same energy needs as they do now, the amount of electricity being generated would not change. Indeed, the cryptocurrency operations require the same amount of electricity whether it be behind the meter from the Facility or from the Grid.

9. Greenidge has not stated that it has all the necessary approvals to secure power from the grid. NYSCEF Doc. 76, p. 8 ("As of December 31, 2023, our owned and customer hosted miners at the New York Facility had the capacity to consume approximately 60 MW of electricity. We have approval from NYISO to utilize 64 MW of electricity *behind-the-meter.*") (emphasis

added).¹ Rather, it is in the process of doing so but such approvals are not anticipated for at least a year.

10. Moreover, the insinuation that the behind the meter operations solely benefits Greenidge is unfounded.² Not only does NYISO's Behind-the-Meter Net Generation program offer several key benefits (*e.g.*, increasing the competitiveness and efficiency of the energy and capacity markets and providing more clarity and certainty for future resource investments within New York State), it aligns with New York's broader energy goals and supports the state's energy transition.

11. Regardless, even if the cryptocurrency operations secured power directly from the grid, the greenhouse gas emissions would not necessarily decrease. Intervenors' assertion that if the power was secured from the grid, at least some of that power would come from renewable sources is nonsensical. NYSCEF Doc. 119, p. 28, fn. 32. Regardless of whether "renewables contribute nearly half of all generation" upstate, it does not mean that there is renewable power just waiting to be used by Greenidge or that the ultimate need for fossil fuel generated electricity would decrease. Rather, if we assume that the existing renewable mix in upstate New York was used to power the cryptocurrency operations, it would no longer be available for the other sources currently using that power. Those sources would then need to secure their power from non-renewable sources – *i.e.*, other fossil fuel fired generating facilities. Thus, the premise that if the

¹ See NYISO Presentation (<https://www.nyiso.com/documents/20142/1410122/agenda%208%20BTMNG%20BIC%20Presentation.pdf/0a2f4f94-e51f-9266-8ee3-5c46dca334b6>).

² Notably, the Facility's approval to use behind-the-meter generation requires that it still be available to supply some or even all of its electricity to the grid as directed by NYISO on any given day, especially times of high energy demand during summer and winter.

Facility was forced to shut down that at least some of the power would come from renewable energy sources is, at best, misleading.

12. Finally, the argument is directly at odds with the basis for the Denial which was explicitly premised on Greenidge's cryptocurrency operations. See NYSDEC [Doc. 13](#), p. 8:

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

Greenidge Employment

13. In my prior affidavit, I testified under oath that Greenidge has 36 full time employees and that, in 2023, the annual salaries and wages of full-time employees at Greenidge averaged \$80,000. NYSCEF [Doc. 31](#), ¶ 62.

14. Intervenors attempt to discredit these numbers by arguing that Greenidge did not specify: "(a) how many of those employed actually reside in Yates County; (b) how many pertain to the cryptocurrency mining operation and how many pertain to the power plant; (c) how many employees are permanent or temporary; nor (d) how much the C-suite salaries distort their alleged average salary numbers." (NYSCEF [Doc. 109](#), p. 14).

15. They also note that "the most specific data" they have seen indicates that "the cryptocurrency mining operations at the Facility employed five workers on site as of October

2021.” (*id.*, p. 15). They then cite to various articles and other publications for the proposition that cryptocurrency operations require very few employees. (*id.*, p. 15).

16. The table below sets forth more specific data on Greenidge employment, excluding c-suite employees, both for fiscal year 2023 final W-2 wages and also as of October 1, 2024.

Greenidge Employment

Job Title	2023 W2 Data	As of 10/1/2024
Admin	6	5
Crypto/IT	13	9
Dresden Mangt	3	2
Engineering	2	2
Power Generation	15	13
Grand Total	39	31
State Residence		
NJ	1	0
NY	37	29
SC	1	0
TX	0	1
PA	0	1
Grand Total	39	31
Employment Status		
Full Time	36	29
Part Time	3	2
Grand Total	39	31
County Residence		
Yates County	21	16
Other NY Counties	16	13 ³
Out of State Counties	2	2
Grand Total	39	31

³ Of these 15 that live outside Yates County, all but 3 live in the Finger Lakes Region, within 45 miles of the Facility.

17. Further, based on final 2023 W-2 wages, Greenidge employees' salaries totaled over \$3.3 million, with an average salary of \$85,646.61.

18. For comparison purposes, the average wage for the 13 employees categorized as cypto/IT was \$64,162.36, while engineering and power generation positions averaged \$157,851.11 and \$88,352.96, respectively.

19. Intervenors also assume, without any basis, that if the Facility ceases operations, its employees can just be transferred elsewhere.⁴ Not only is this inaccurate, it also assumes that there is no harm in asking residents to uproot their lives and that of their families to move to another state. And to the extent that the cryptocurrency operations could remain by securing power from the grid (something that is at least a year from final approvals), this would not help the majority of Greenidge employees.

20. If the Facility were forced to relinquish its Title V permit and cease operations, all but 2 of the 31 Greenidge employees would lose their jobs.

21. Thus, contrary to Intervenors' argument, Greenidge's current employees and their respective families will be irreparably harmed if a preliminary injunction is not issued. *See also* NYSCEF [Doc. 43](#) (Affidavit of Brenda Dueck); NYSCEF [Doc. 44](#) (Affidavit of Kevin Fultz).

22. So too will Greenidge. It will have to cease operations and lay off its employees. These employees may be forced to relocate or find other employment such that when a final decision is rendered in this action, they may no longer be available. Greenidge also no longer be

⁴ While Greenidge could transfer its cryptocurrency operations out-of-state, this would irrefutably result in the leakage of GHG emissions. According to Department guidance, such leakage is sufficient justification. *See* DAR-21 ("potential examples of acceptable justifications may include ... [a] demonstration that the lack of the project within the State would result in emissions leakage in excess of emissions from the project"), accessible at https://www.dec.ny.gov/docs/air_pdf/dar21.pdf.

able to participate in many of its charitable undertakings, all of which will harm corporate goodwill throughout the community.

Greenidge Has Not Manufactured Its Own Emergency

23. Intervenors assert that Greenidge has manufactured its own “emergency” by failing to seek NYISO Deactivation Review when NYSDEC first issued the Notice of Denial in 2022, or the many affirmances since then” (NYSCEF Doc. 109, pp. 16-17).

24. Once again, Intervenors miss the point.

25. Greenidge has challenged the Denial as an error of law and arbitrary and capricious and been very open about its intent to do so, including its intent to file this action. To do what Intervenors assert would be counter to that position.

26. Further, the Facility has been able to continue operating under the State Administrative Procedures Act as well as the temporary restraining order issued in this case (NYSCEF Doc. 45) and stipulation with Respondents (NYSCEF Doc. 69).

27. As such, Greenidge continues to have a Title V permit and lawfully operates.

28. Greenidge also continues to be regularly called upon by the NYISO to send electricity to the grid every day that it operates, a fact that has not been contested.

29. In addition to the data for July and examples detailed in my prior affidavit (NYSCEF Doc. 31, ¶¶ 24-31), the Facility was called upon by the New York System Independent Operator (“NYISO”) and provided 11,591.58 megawatt hours (“MWh”) to the grid in August 2024.

30. In September 2024, the Facility provided 10,729.22 MWh to the grid.

31. I also reported in my prior affidavit that in March 2023 Greenidge sought to shut down the Facility for a two-week period in June 2023 to conduct routine maintenance and 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.

A true and accurate copy of the NYISO's Denial is attached as **Exhibit A**.

THE BALANCING OF THE EQUITIES FAVORS A PRELIMINARY INJUNCTION

32. State Respondents and Intervenors conclusorily maintain that there would be significant adverse impacts on the State and its residents if the Facility is allowed to continue operating during the pendency of this action.

33. It is unclear what specific harm they contend would occur.

34. Greenidge seeks to maintain the status quo while its challenge to the Department's Denial, which was based solely on the Department's determination that the renewal permit would be inconsistent with the attainment of the Statewide greenhouse gas (GHG) emission limits established for 2030 and 2050 – more than 5 years from now.

35. Moreover, the Facility continues to operate in accordance with its Title V permit, the very same permit that this Court previously held was issued in accordance with all laws. *See Matter of Sierra Club et al v. New York State Dep't of Env. Conserv. et al*, 2017 NY Slip Op 33406(U) (Sup. Ct. Apr. 21, 2017), dismissing appeal, CA 18-00648, Memorandum and Order, dated Feb. 8, 2019.

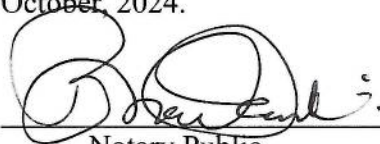
CONCLUSION

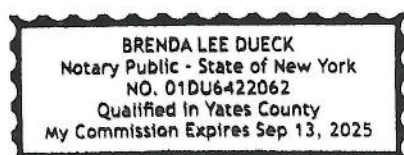
36. If NYSDEC's Denial is permitted to remain in place and a preliminary injunction is not issued, Greenidge will be required to shut down the Facility and move its cryptocurrency operations out-of-state, resulting in employees losing good paying local jobs, local businesses losing an important customer, and the local community losing a major source of tax revenue which will need to be made up elsewhere to maintain the current level of services.



Dale Irwin

Subscribed and sworn to
before me this 21st day of
October, 2024.



Notary Public

CERTIFICATION OF WORD COUNT

As required by Uniform Rules for Trial Courts § 202.8-b(a), I hereby certify that the accompanying Reply Affidavit of Dale Irwin, which was prepared in Times New Roman 12-point typeface, contains 2,074 words, excluding the parts of the document that are exempted by § 202.8-b. This certificate was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepare the document.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: October 24, 2024

/s/ Yvonne E. Hennessey