

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF YATES

In the Matter of the Application of

SIERRA CLUB, COMMITTEE TO PRESERVE THE FINGER  
LAKES by and in the name of PETER GAMBA, its President; and  
COALITION TO PROTECT NEW YORK by and in the name of  
KATHRYN BARTHOLOMEW, its Treasurer,

ORAL ARGUMENT  
REQUESTED

Petitioners,

NOTICE OF MOTION  
FOR TEMPORARY  
INJUNCTIVE RELIEF

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

–against–

Index No. 2016-0165

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION, BASIL SEGGOS, COMMISSIONER,  
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,  
LLC, GREENIDGE PIPELINE PROPERTIES CORPORATION  
and LOCKWOOD HILLS, LLC,

Respondents.

PLEASE TAKE NOTICE that upon the accompanying affirmation of Rachel Treichler, Esq. dated December 23, 2016 and the exhibits thereto, and Petitioners' accompanying memorandum of law, dated December 23, 2016, Petitioners will, at 2:00 PM on the 24th day of January 2017 or as soon thereafter as counsel may be heard, before the Honorable William F. Kocher at the Yates County Courthouse at 415 Liberty Street, Penn Yan, New York move for an order enjoining and restraining Respondents Greenidge Generation LLC, Greenidge Pipeline LLC, Greenidge Pipeline Properties Corporation, their agents, employees, and all persons acting on their behalf, from taking steps to repower the Greenidge Generating Station or construct a gas pipeline to the station pending the resolution of this proceeding or further order of the Court, and,

if the Court agrees with Petitioners' reading of the plain text of the SEQRA law and regulations, to continue thereafter until DEC has completed the environmental review required by SEQRA.

As set forth in the attached affirmation of Rachel Treichler, Esq., Respondents Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation have indicated the desire and have the ability to begin construction of the pipeline. Such construction could raise a colorable claim of mootness of the pending proceeding which could render ineffectual any judgment ultimately obtained by Petitioners thereby causing them irreparable harm.

Petitioners will request that this Court impose no bond requirement or impose only a nominal undertaking in light of the strong public interest in this proceeding and the fact that Respondents will not be significantly harmed from issuance of the temporary injunctive relief sought.

DATED: Hammondsport, New York  
December 23, 2016

Respectfully submitted,



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**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS’  
MOTION FOR TEMPORARY INJUNCTIVE RELIEF**

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## **PRELIMINARY STATEMENT**

This case is about the failure of Respondent New York State Department of Environmental Conservation (“DEC”) to conduct an adequate environmental review under the State Environmental Quality Review Act (“SEQRA”) of the impacts of the project of Respondents Greenidge Generation LLC (“GGLLC”), Greenidge Pipeline LLC (“GPLLC”), Greenidge Pipeline Properties Corporation (“GPPC”) to repower the Greenidge Generating Station in Dresden, New York, including construction of a 4.6 mile gas pipeline to the station (the “Greenidge Repowering Project”) before issuing air permits to GGLLC for the plant on September 8, 2016. The amended verified petition seeks annulment of air permits issued to GGLLC and the negative declaration issued by DEC as lead agency on the ground that they violate the requirements of SEQRA.

Petitioners bring this motion for temporary injunctive relief to prevent GGLLC, GPLLC and GPPC from taking steps to construct any portion of the Greenidge Repowering Project until the Court decides Petitioners’ request for judgment on the petition. Because construction activities on the project at this time will irreparably harm Petitioners’ efforts to obtain an adequate environmental review of the proposed action under SEQRA, and because the public interest and a balancing of the equities favor an injunction to prevent that irreparable harm, the Court should enter a temporary restraining order or a preliminary injunction that will last until the Court decides Petitioners’ request for judgment on the amended verified petition, and, if the Court agrees with Petitioners’ reading of the plain text of the SEQRA law and regulations, to continue thereafter until DEC has completed the environmental review required by SEQRA.

## STATEMENT OF FACTS

The amended negative declaration at the heart of this case was issued by Respondent DEC as lead agency on June 28, 2016, with notice published in the *Penn Yan Chronicle Express* on July 6, 2016 (hereinafter the “Negative Declaration”). The Negative Declaration addresses the impacts of issuing Title IV and Title V Air Permits, a renewed and modified State Pollution Discharge Elimination System (“SPDES”) permit and a water withdrawal permit to GGLLC to permit the Greenidge Repowering Project. A copy of the Negative Declaration is attached as Exhibit A to the affirmation of Rachel Treichler of even date herewith (the “Tr. Aff.”).

The Negative Declaration describes the project under review as follows:

The sponsor, Greenidge Generation, LLC, proposes to reactivate the Greenidge Generating Station (“Greenidge Station”). Greenidge Station, a coal-fired plant, was in operation as early as the 1930’s, with Unit 4 installed in 1953. In 2006 significant improvements to emission control equipment were installed on Unit 4 and in 2011 the plant was placed in protective lay-up status and has not operated since March, 2011. The proposal would reactivate Unit 4 with a maximum generating capacity of 107 MW. The unit would not burn coal, but instead be converted to fire primarily natural gas, with the ability to co-fire up to 19% biomass, both of which were fuels previously authorized in the facility Title V permit. (A new natural gas pipeline would be constructed to service the site, which would be reviewed under the Article VII process governed by the New York State Department of Public Service separate from this SEQRA action.) The Department also proposes to renew and modify the facility’s existing SPDES permit to incorporate requirements to install cylindrical wedge wire intake screens on the plant’s cooling water intakes and install variable speed cooling water pumps on Unit 4 as “Best Technology Available” to address requirements under the federal Clean Water Act to reduce fish mortality (ie., impingement and entrainment).

*Id.*, pp. 1-2. DEC’s Environmental Assessment Form Part 3 for the project designates the action under review as a Type I action, and indicates, “This project will result in no significant adverse

impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.” *Id.*, EAF Pt. 3, p. 2.

DEC issued Title IV and Title V Air Permits to GGLLC on September 8, 2016. A revised and modified SPDES permit and a water withdrawal permit have not yet been issued to GGLLC.

Following issuance of the air permits, and notwithstanding the fact that the revised and modified SPDES permit and the water withdrawal permit have not yet been issued, the New York State Public Service Commission (PSC) issued two orders dated September 16, 2016 in the PSC cases brought by GGLLC, GPLLC and GPPC. PSC’s first order dated September 16, 2016 granted certificates of public convenience and necessity to GGLLC, GPLLC and GPPC in PSC cases 15-E-0516 and 15-G-0571 to repower the Greenidge Generating Station and exercise a road use agreement. The second order issued by PSC on September 16, 2016 granted a certificate of environmental compatibility and public need to GPLLC and GPPC to construct a gas pipeline to the generating station in PSC case 15-T-0586.

GPLLC and GPPC filed notice with the PSC on October 10, 2016, stating their intention to begin construction of the pipeline on October 11, 2016. Tr. Aff. Ex. C.

On October 19, 2016, the New York State Department of Public Service (“DPS”) filed with the PSC a notice to proceed issued October 17, 2016 to GPLLC and GPPC’s attorney authorizing GPLLC and GPPC to begin construction of the pipeline. Tr. Aff. Ex. D.

On October 17, 2016, Petitioners CPFL and CPNY filed a petition for rehearing with PSC of PSC’s September 16, 2016 order in PSC cases 15-E-0516 and 15-G-0571 seeking, inter alia, a cease and desist order to preclude further efforts by GGLLC, GPLLC and GPPC to restart the generating station or construct the pipeline until the rehearing was completed.

On December 15, 2016, PSC issued an order denying CPFL and CPNY's rehearing request.

## **ARGUMENT**

Petitioners meet each prong of the test for obtaining a preliminary injunction. For the reasons set forth below, Petitioners demonstrate: (1) a likelihood or probability of success on the merits of their claims that DEC's actions in issuing the revised air permits and amended negative declaration were arbitrary and capricious and violated SEQRA; (2) irreparable harm if the request for injunctive relief is denied; and (3) a balance of the equities tipping in favor of granting injunctive relief. *Felix v. Brand Service Group*, 101 A.D.3d 1724, (4th Dep't 2012), *Destiny USA Holdings v. Citigroup Global Markets Realty Corp.*, 69 A.D.3d 212 (4th Dep't 2009).

### **I. Petitioners Are Likely to Succeed on the Merits of Their SEQRA Claims**

Petitioners meet the first prong of the test for issuance of a preliminary injunction because they are likely to succeed on each of their specific claims under SEQRA. In order to meet this prong of the test, Petitioners need only show a likelihood of success on the merits of one of their claims, and they are able to show that for each one. As the court stated in *Tucker v. Toia*, 54 A.D.2d 322 (4th Dep't 1976), "the showing of a likelihood of success on the merits required before a preliminary injunction may be properly issued must not be equated with the showing of a certainty of success [citations omitted]. It is enough if the moving party makes a *prima facie* showing of his right to relief; the actual proving of his case should be left to the full hearing on the merits." *Id.* at 326. In addition, in those circumstances where, as in the present case, "the denial of a preliminary injunction would disturb the status quo and render the final

judgment ineffectual, the degree of proof required to establish the element of likelihood of success on the merits should be reduced.” *Peterson v. Corbin*, 275 A.D.2d 35, 41, J. Goldstein dissenting (2nd Dep’t 2000).

**A. Petitioners Are Likely to Succeed on Their Claim of an Impermissible Conditioned Negative Declaration**

Petitioners are likely to succeed on their claim that DEC’s Negative Declaration is invalid because it is a conditioned negative declaration of a Type I action. The EAF Part 3 attached to the Negative Declaration designates the Greenidge Repowering Project as a Type I action. Tr.Aff., Ex. A, EAF Pt. 3, p. 1. Type I actions presumptively require an EIS under the SEQRA regulations. 6 N.Y.C.R.R. § 617.4(a). Despite that presumption, DEC issued a negative declaration for the Greenidge Repowering Project. Under the SEQRA regulations, conditioned negative declarations are not allowed for Type I actions.

A conditioned negative declaration is defined in 6 N.Y.C.R.R. § 617.2(h), “Conditioned negative declaration (CND) means a negative declaration issued by a lead agency for an Unlisted action, involving an applicant, in which the action as initially proposed may result in one or more significant adverse environmental impacts; however, mitigation measures identified and required by the lead agency, pursuant to the procedures in section 617.7(d) of this Part, will modify the proposed action so that no significant adverse environmental impacts will result.” Conditioned negative declarations are authorized by 6 N.Y.C.R.R. § 617.7(d), but only for unlisted actions. “The SEQRA regulations do not authorize the issuance of a conditioned negative declaration for Type I actions.” *Ferrari v. Penfield Planning*, 181 A.D.2d 149, 151 (4th Dep’t 1992). *Myerson v. McNally*, 90 N.Y.2d 742 (1997) sets forth certain tests for when modifications to a negative declaration may be permissible for Type I actions, but states that “a lead agency clearly may not

issue a negative declaration [for a Type I action] on the basis of conditions contained in the declaration itself.” *Id.* at 753. That, however, is exactly what DEC has done in this case.

The Negative Declaration describes major modifications that will be required in the SPDES permit to be issued to GGLLC (as noted in the petition, the SPDES permit has not yet been issued) to reduce fish entrainment and impingement: “The project will ultimately involve a modification of the cooling water intake structure (CWIS) at the facility. The modification will include the installation of ‘Best Technology Available’ (BTA) measures in accordance with Commissioner’s Policy CP-52 to reduce fish entrainment and impingement. This will involve construction/attachment of intake screens at the end of the intake below the mean high water line of Seneca Lake.” *Tr. Aff., Ex. A, Neg. Dec., p. 1.* The Negative Declaration also states, “A review was completed and the Department is proposing modifications to the SPDES permit based on that evaluation. The primary changes are the inclusion of a dilution study to determine appropriate dilution factors in Seneca Lake, and revised conditions requiring implementation of the Department’s Best Technology Available (BTA) determination the Department has determined that BTA for this facility will include the installation of wedge-wire intake screens on the CWIS [cooling water intake structure ] and the installation of variable speed cooling water circulation pumps. The facility will be required to implement the BTA technologies and achieve an 85% reduction in the entrainment of all fish life stages and a 95% reduction in impingement mortality of all fish life stages. The proposed modified permit for Greenidge Station contains effluent limits and conditions which ensure that the existing beneficial uses of Seneca Lake will be maintained. As a result there are no significant adverse impacts associated with the Department’s renewal and modification of the facility SPDES permit.” *Id.*, p. 1-2.

Inherent in these conditions is the recognition by DEC that significant environmental impacts are posed by the Greenidge Repowering Project without the imposition of the conditions. The conditions to GGLLC's SPDES permit described in the Negative Declaration are being required for the stated purpose of achieving an 85% reduction in the entrainment of all fish life stages and a 95% reduction in impingement mortality of all fish life stages, and as such are conditional prerequisites for the issuance of the Negative Declaration. This type of conditioned negative declaration is not permissible for a Type I action and must be annulled.

#### **B. Petitioners Are Likely to Succeed on Their Claim of Impermissible Segmentation**

Petitioners are likely to succeed on their claim that DEC's Negative Declaration is invalid because it segments review of the construction of the pipeline and the disposition of waste into the adjoining Lockwood Coal Ash landfill from the review of the operations of the Greenidge generating station. The attempt by DEC to avoid conducting a full SEQRA review and expedite the Greenidge Repowering Project by considering various elements of the overall project separately constitutes a clear case of segmentation.

The SEQRA regulations state that, “[c]onsidering only a part of segment of an action is contrary to the intent of SEQR. If a lead agency believes that circumstances warrant a segmented review, it must clearly state in its determination of significance and any subsequent EIS the supporting reasons and must demonstrate that such review is clearly no less protective of the environment. Related actions should be identified and discussed to the fullest extent possible.” 6 N.Y.C.R.R. § 617.3(g)(1). “[S]egmentation, i.e., the division of environmental review for different sections or stages of a project project (see 6 NYCRR 617.2 [ag]), is generally disfavored.” *Sierra Club v. Village of Painted Post*, 134 A.D.3d 1475, 1478 (4th Dep’t 2015).

In the present case, the impacts of two significant aspects of the project were segmented from DEC's review in the Negative Declaration: the impacts of constructing a 4.6 mile pipeline and the impacts of adding new waste to an existing coal ash landfill near the generating station, the Lockwood Ash Landfill, which is currently operating under a consent order with DEC. The description of the action in the Negative Declaration refers to construction of the pipeline, stating that, "A new natural gas pipeline would be constructed to service the site, which would be reviewed under the Article VII process governed by the New York State Department of Public Service separate from this SEQRA action," (Tr. Aff., Ex. A, Neg. Dec., p. 1), but does not consider any of the impacts of the pipeline construction. The environmental review of the pipeline construction by PSC needed to be coordinated with and included the SEQRA review conducted by DEC as lead agency, and it was not. The PSC review was not even completed until September 16, 2016, two and one-half months after the Negative Declaration was issued.

Furthermore, the impacts of the construction of the pipeline were improperly ignored in DEC's responses to Part 2 of the revised environmental assessment form ("EAF2") attached to the Negative Declaration. Petition ¶¶ 61-78. For example, DEC answered "No" to EAF2 question 1, "Proposed action may involve construction on, or physical alteration of the land surface of the proposed site;" DEC answered "No" to EAF2 question 7h, "The proposed action requires the conversion of more than 10 acres of forest, grass land or any other regionally or locally important habitat;" DEC answered "No" to EAF2 question 8c, "The proposed action may result in the excavation or compaction of the soil profile of active agricultural land;" and DEC answered "No" to EAF2 question 11j, "The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste." *Id.*, ¶¶ 61, 65, 67, 78. Each of these responses ignores the impacts of constructing a 4.6 mile pipeline

which will pass within 50 feet of the Lockwood Ash Disposal Landfill on its path to the generating station. DEC Comment Letter, Tr. Aff. Ex. B, p. 2. These responses fail to acknowledge obvious impacts of the pipeline construction.

The Negative Declaration also fails to consider the impacts of depositing new waste in the Lockwood Hills landfill located on property adjoining the Greenidge generating station. The Lockwood landfill is currently operating under a DEC consent order due to long-standing contamination issues. Petition ¶ 79. The Negative Declaration states, “No impacts related to solid waste management are expected to result from the re-activation of Greenidge Station. By eliminating the use of coal as a fuel source, the generation of solid waste from the facility will be significantly reduced compared to prior operations. If Unit 4 were reactivated with coal, approximately 78,000 tons of fly ash and 158 tons of other waste would be generated per year. However, this will be greatly reduced since coal will no longer be used as a fuel source. As a result, there are no significant adverse impacts related to solid waste management associated with this project.” Petition ¶ 42. This statement completely ignores the impacts of depositing significant amounts of additional waste into the existing Lockwood ash landfill, fails to mention the ongoing landfill clean-up operations and incorrectly implies that there are no problems with current operations at the landfill.

The wording of the Negative Declaration and DEC’s responses to Part 2 of the EAF demonstrate that that DEC’s review of the impacts of the Greenidge Repowering Project improperly segmented review of the pipeline construction and the operation of the Lockwood coal ash landfill from review of the other aspects of the project.

**C. Petitioners Are Likely to Succeed on Their Claim that DEC Failed to Identify All Relevant Issues, Failed to Take a Hard Look at the Issues Identified and Failed to Make a Reasoned Elaboration of the Basis for its Determination**

Petitioners are likely to succeed on their claim that DEC's Negative Declaration is invalid because DEC failed to identify all relevant issues, failed to take a hard look at the issues identified and failed to make a reasoned elaboration of the basis for its determination of nonsignificance. As the Court of Appeals stated in *Kahn v Pashnik*, 90 N.Y.2d 569, 574 (1997), "A court's authority to examine a SEQRA review conducted by an entity that was required to do so is limited to reviewing whether the determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion. The relevant question before the court is 'whether the agency identified the relevant areas of environmental concern, took a "hard look" at them, and made a "reasoned elaboration" of the basis for its determination,'" quoting *Gernatt Asphalt Products v Town of Sardinia*, 87 N.Y.2d 668, 688 (1996) and *Jackson v New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 417 (1986).

DEC's SEQRA review fails to comply with any of these three requirements. These failures result primarily from the fact that DEC used the wrong baseline to evaluate the impacts of the Greenidge Repowering Project, evaluating the impact as if the generating station was an ongoing operation when in fact the station was shuttered in March 2011 and has not operated since. The correct baseline for evaluating impacts of the project is no operations.

The use of the incorrect baseline is reflected throughout the Negative Declaration. For example, with regard to impacts on air quality, the Negative Declaration states, "During its prior operation on coal with many of these existing controls in place, the operation of Greenidge Station did not result in any significant adverse impacts to air quality. These controls will remain in place and, in addition, as detailed above, the boiler and emission controls will be optimized,

which will result in even lower air emissions. . . . As a result of the above, the Department has determined that resuming operation of this existing facility, and its conversion to natural gas as its primary fuel will not result in any significant adverse impacts to air quality.” Petition ¶ 37. With regard to impacts on plants or animals, the Negative Declaration states, “The project will have no significant adverse impacts on plants or animals. See discussion concerning fish impingement and entrainment under ‘surface waters’ above. In addition, the facility is existing and will not involve the removal or destruction of vegetation.” Petition ¶ 39. With regard to impacts on historic and archaeological resources, the Negative Declaration states, “[t]he project site is located just east of the Crooked Lake Outlet Historic District (95 NR 00889), which is listed on the National Registers of Historic Places. The project site is also located within an area designated as archaeologically sensitive by the New York State Office of Parks, Recreation, and Historic Preservation. However, the facilities that will be re-activated already exist and no new construction is proposed., To the extent that gas will be provided to the site at some future date by a new gas pipeline, the construction of the gas pipeline will be regulated under Article VII of the Public Service Law by the New York State Public Service Commission and potential impacts to cultural resources, if any, will be addressed at that time. As a result there will be no significant adverse impacts to historic or archaeological resources associated with the plant re-activation.” Petition ¶ 40. With regard to impacts on energy, the Negative Declaration states, “[t]he re-activation of Unit 4 at Greenidge Station will use biomass and natural gas to generate electricity. However, the operation of the plant itself will not create a new demand for energy. Rather, it will serve as another facility to help meet the current electricity demands of the region. As a result, the plant will have no significant adverse impacts in increasing the use of energy.” Petition ¶ 41.

A similar statement in the Negative Declaration concluding that there will be no significant adverse impacts on solid waste is quoted above.

Each of these brief and conclusory evaluations of impacts made by DEC in the Negative Declaration is based on the incorrect assumption that there will be no significant environmental impacts from the Greenidge Repowering Project. This assumption is arbitrary and capricious and does not meet the requirements established by a long line of cases that an agency undertaking a SEQRA review identify the relevant areas of environmental concern, took a “hard look” at them, and made a “reasoned elaboration” of the basis for its determination. As in the cases of *Kahn v Pasnik*, 90 N.Y.2d 569 (1997) and *Dawley v. Whitetail 414*, 130 A.D.3d 1570 (4th Dep’t 2015), DEC’s Negative Declaration should be annulled.

The only circumstance in which the Negative Declaration acknowledges any impact from the restarted operations is with regard to surface water impacts, as quoted above. The conditions contained in the Negative Declaration to mitigate these impacts constitute an impermissible conditioned negative declaration for a Type I action as outlined above.

Because DEC used an incorrect baseline of pre-2011 operations, it arbitrarily and capriciously failed to identify all relevant issues, failed to take a hard look at the issues identified and failed to make a reasoned elaboration of the basis for its determination of nonsignificance.

For the reasons set forth herein, Petitioners have made a *prima facie* case for each of their claims that Respondent DEC failed to comply with the requirements of SEQRA in issuing the Negative Declaration, and have met the first prong of the test for granting a preliminary injunction.

## **II. Petitioners Will Be Irreparably Harmed if Injunctive Relief is Not Granted**

Petitioners also meet the second prong of the test for granting a preliminary injunction—irreparable harm. *Destiny USA Holdings*, supra, 69 A.D.3d at 216. Petitioners will be irreparably harmed if their request for injunctive relief is denied. The filing made by Respondents GPLLC and GPPC with PSC stating their intent to begin and the DPS's notice that pipeline construction may begin on October 17, 2016 discussed above show that GPLLC and GPPC have the desire and the ability to begin construction of the proposed pipeline. Such construction could raise a colorable claim of mootness of the pending proceeding which could render ineffectual any judgment ultimately obtained by Petitioners thereby causing them irreparable harm. See e.g. *Dreikausen v Zoning Bd. of Appeals of City of Long Beach*, 98 N.Y.2d 165 (2002); *Graf v. Livonia*, 120 A.D.3d 944 (4th Dep't 2014). Therefore, in order to effectuate the relief requested in the attached Petition, it is necessary that this Court grant Petitioners' request for temporary injunctive relief.

The public interest in obtaining an adequate environmental review of the proposed project would also be irreparably harmed if Respondents could raise a colorable claim of mootness.

## **III. The Balance of Equities Tips Strongly in Petitioners' Favor**

The third and final prong of the test for evaluating the propriety of issuing a preliminary injunction is a balancing of the equities. *Destiny USA Holdings*, supra, 69 A.D.3d at 216-217. The balance of the equities in this matter favors issuance of a preliminary injunction. Here the irreparable injury to be sustained by Petitioners is more burdensome than the harm that might be caused to Respondents GLLC, GPLLC and GPPC through imposition of the injunction. In

fact, it is likely that there will be no significant financial harm to GGLLC, GPLLC and GPPC from granting the injunction as the pipeline cannot be used until the generating station begins operation and the station cannot begin operations until this case is resolved and until the SPDES and water withdrawal permits needed for its operation are issued.

The present proceeding presents a situation similar to the situation in *Felix v. Brand Service Group*, 101 A.D.3d 1724 (4th Dep't 2012), in which the court determined that, "the irreparable injury to plaintiffs is more burdensome than the harm caused to defendants through the imposition of the injunction." *Id.* at 1726, citing *Destiny USA Holdings*, 69 A.D.3d at 223. Here, while GPLLC and GPPC may be delayed in beginning construction on the pipeline, Petitioners and their members may never be able to proceed with their SEQRA claims if the construction raises a colorable claim of mootness.

In addition, the public has a strong interest in this case in seeing that an adequate environmental review of the Greenidge Repowering Project is conducted. This strong public interest needs to be weighed in evaluating Petitioners request for injunctive relief. "In ruling on a motion for a preliminary injunction, the courts must weigh the interests of the general public as well as the interests of the parties to the litigation." *Destiny USA Holdings*, at 223. After reviewing "the enormous public interests involved" the Fourth Department in the *Destiny* case concluded that *Destiny* had established that a balancing of the equities favors granting the preliminary injunction, and this court should do likewise.

#### **IV. Petitioners Should Have to Post At Most a Nominal Bond**

The Court has wide discretion under CPLR 6311 in setting a bond amount for a preliminary injunction, and may decide not to impose a bond requirement at all if the court issues a temporary restraining order under CPLR 6313. In cases involving the public interest, it is

appropriate to require only a nominal bond or no bond at all. Because of the strong public interest in the issues raised by this case, Petitioners request that this Court waive the bond requirement or impose a nominal undertaking.

Moreover, Petitioners ask for very limited relief: that GGLLC, GPLLC and GPPC be enjoined from while the Court considers the petition, and if the Court resolves the Petition in Petitioners' favor, thereafter until DEC has completed the environmental review required by SEQRA. For at least the period until the Court rules on the petition, it is unlikely that GPLLC and GPPC can articulate significant damages; after all, GPLLC and GPPC must be aware that GGLLC has not yet received its SPDES permit renewal and water withdrawal permit it needs to operate the generating station and use the gas that will be supplied by the pipeline. For that period, then, Petitioners respectfully submit that the injunction should issue without bond, or with a nominal bond. Petitioners will of course be prepared to discuss a larger bond should the Court issue a longer injunction and GPLLC and GPPC demonstrate harm that would befall them from such an injunction.

## CONCLUSION

For these reasons, Petitioners' respectfully request that the Court grant a temporary restraining order or preliminary injunction restraining Respondents GGLLC, GPLLC and GPPC, their agents, employees, and all persons acting on their behalf, from engaging in acts to repower the Greenidge Generating Station in Dresden, New York, including acts to construct a gas pipeline to the station until the Court decides the claims raised in the petition, and, if the Court resolves these claims in Petitioners' favor, until DEC has completed the environmental review required by SEQRA.

DATED: Hammondsport, New York  
December 23, 2016

Respectfully submitted,



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SIERRA CLUB, COMMITTEE TO PRESERVE THE  
FINGER LAKES by and in the name of PETER GAMBA, its  
President, and COALITION TO PROTECT NEW YORK by  
and in the name of KATHRYN BARTHOLOMEW, its  
Treasurer,

Petitioners,

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

–against–

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION, BASIL SEGGOS, COMMISSIONER,  
GREENIDGE GENERATION, LLC, GREENIDGE PIPELINE,  
LLC, GREENIDGE PIPELINE PROPERTIES  
CORPORATION and LOCKWOOD HILLS, LLC.

Respondents.

AFFIRMATION OF  
RACHEL TREICHLER  
IN SUPPORT OF  
PETITIONERS'  
MOTION FOR  
TEMPORARY  
INJUNCTIVE RELIEF

Index No. 2016-0165

I, Rachel Treichler, an attorney admitted to the practice of law before the courts of the  
State of New York, affirm the following to be true under the penalties of perjury pursuant to  
CPLR 2106:

1. I am one of the attorneys representing the Petitioners in this proceeding. As such,  
I am fully familiar with the facts and circumstances of this matter.

1. I respectfully submit this affirmation in support of Petitioners' Motion for  
Temporary Injunctive Relief seeking an order enjoining and restraining Respondents Greenidge  
Generation LLC ("GGLLC"), Greenidge Pipeline LLC ("GPLLC"), Greenidge Pipeline  
Properties Corporation ("GPPC") from taking steps to repower the Greenidge Generating Station

in Dresden, New York, including construction of a gas pipeline to the station pending the resolution of Petitioners' claims in the amended verified petition.

2. The amended verified petition seeks annulment of the air permits issued by Respondent New York State Department of Environmental Conservation ("DEC") to GLLC on September 8, 2016 and the amended negative declaration covering the air permits issued by DEC as lead agency.

2. A true and correct copy of the amended negative declaration issued by DEC dated June 28, 2016, and provided to me by Scott Sheeley, DEC Region 8, Regional Permit Administrator is attached as Exhibit A.

3. Attached as Exhibit B is a true and correct copy of the letter filed by DEC in New York State Public Service Commission (PSC) Case 15-T-0586 dated May 5, 2015, which states on page 2 that "the proximity of the proposed pipeline to the Lockwood Ash Disposal Landfill [is] (approximately 50 feet horizontal distance to landfill edge)."

4. Respondents Greenidge Generation LLC (GLLC), Greenidge Pipeline LLC (GPLLC), Greenidge Pipeline Properties Corporation (GPPC) have indicated the desire and have the ability to begin construction of the pipeline.

5. Such construction could raise a colorable claim of mootness of the pending proceeding which could render ineffectual any judgment ultimately obtained by Petitioners thereby causing them irreparable harm.

6. PSC issued two orders dated September 16, 2016, in the PSC cases brought by GLLC, GPLLC and GPPC. PSC's first order dated September 16, 2016 granted certificates of public convenience and necessity to GLLC, GPLLC and GPPC in PSC cases 15-E-0516 and

15-G-0571 to repower the Greenidge Generating Station in the Village of Dresden in Yates County, New York and to exercise a road use agreement.

7. The second order issued by PSC on September 16, 2016, was issued in PSC case 15-T-0586 and granted a certificate of environmental compatibility and public need to GPLLC and GPPC to construct a gas pipeline to the generating station.

8. Respondents GPLLC and GPPC filed a notice with the PSC on October 10, 2016, stating their intention to begin construction of the pipeline on October 11, 2016. A true and correct of the notice filed in PSC Case 15-T-0586 by GPLLC and GPPC on October 10, 2016 is attached as Exhibit C.

9. On October 19, 2016, the New York State Department of Public Service (“DPS”) filed with the PSC a notice to proceed issued October 17, 2016 to GPLLC and GPPC’s attorney authorizing GPLLC and GPPC to begin construction of the pipeline. Tr. Aff. Ex. D. A true and correct copy of the DPS filing dated October 19, 2016 in PSC Case 15-T-0586 is attached as Exhibit D.

10. On October 17, 2016, Petitioners CPFL and CPNY filed a petition for rehearing of the September 16, 2016 PSC order in PSC cases 15-E-0516 and 15-G-0571, seeking a cease and desist order to preclude further efforts by GLLC, GPLLC and GPPC to restart the generating station or construct the pipeline until the rehearing was completed.

11. On December 15, 2016, PSC issued an order denying CPFL and CPNY’s rehearing request.

12. Therefore, in order to effectuate the relief requested in the attached Petition, it is necessary that this Court promptly hear argument concerning the issuance of temporary injunctive relief in this proceeding.

Dated:           Hammondsport, New York  
                  December 23, 2016



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*Attorney for the Petitioners*

# **Exhibit A**

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8  
6274 East Avon-Lima Road, Avon, NY 14414-9516  
P: (585) 226-5400 | F: (585) 226-2830  
www.dec.ny.gov

## STATE ENVIRONMENTAL QUALITY REVIEW ACT TRANSMITTAL OF AMENDED SEQR NEGATIVE DECLARATION

June 28, 2016

Re: Greenidge Station, Town of Torrey, Yates County  
DEC Application Nos. 8-5736-00004/00001, /00016, and /00017

Dear Involved or Interested Agency:

The Region 8 Office of the New York State Department of Environmental Conservation (DEC) has received permit applications related to the operation of the Greenidge Station power plant located in the Town of Torrey, Yates County. The applicant has applied for the required Title IV and Title V Air Pollution Control permits, and the Department proposes a renewal and modification of the existing State Pollutant Discharge Elimination System (SPDES) Permit. Previously, copies of the permit application and Full Environmental Assessment Forms (EAF) were provided to your agency, along with a summary "SEQR Data Sheet".

All agencies responded to our lead agency coordination package by consenting to the DEC serving as the lead agency for review of the project.

This is to inform you that the DEC, as the SEQR lead agency, has issued an amended negative declaration for the project and will not require the preparation of an environmental impact statement. Enclosed for your information are Parts 2 and 3 of the Full EAF documenting the Department's determination.

Please feel free to contact me at (585) 226-5382 if you have any questions, or need additional information.

Sincerely,



Scott E. Sheeley  
Regional Permit Administrator

Distribution List Attached

Enclosure – Amended Negative Declaration

**SEQR Lead Agency Coordination Distribution List (all with enclosures):**

**Involved Agencies:**

New York State Department of Public Service  
Attn: James Austin, Chief  
Environmental Certification & Compliance  
3 Empire State Plaza, 3rd Floor  
Albany, New York 12223

Yates County Industrial Development Agency  
Finger Lakes Economic Development Center  
Attn: Jim Long, Chairman, Board of Directors  
One Keuka Business Park  
Penn Yan, New York 14527

Town of Torrey Town Board  
Attention: Supervisor and Town Board  
56 Geneva Street  
Dresden, New York 14441

Town of Torrey Building and Code *Enforcement*  
Attention: Dwight James, Building & Zoning  
Officer  
56 Geneva Street  
Dresden, New York 14441

**Interested Agencies:**

Village of Dresden  
Attn: William Hall, Mayor  
Box 156  
3 Firehouse Avenue  
Dresden, New York 14441

**Applicant/Sponsor:**

Greenidge Generation, LLC  
Attn: Dale Irwin  
590 Plant Road  
Dresden, New York 14441

**Enclosures:**

SEQR Full EAF Parts 2 and 3, Comprising the Negative Declaration

**Full Environmental Assessment Form**  
**Part 2 - Identification of Potential Project Impacts**

Agency Use Only [If applicable]  
 Project : Greenidge Station  
 Date : June 28, 2016

**Part 2 is to be completed by the lead agency.** Part 2 is designed to help the lead agency inventory all potential resources that could be affected by a proposed project or action. We recognize that the lead agency's reviewer(s) will not necessarily be environmental professionals. So, the questions are designed to walk a reviewer through the assessment process by providing a series of questions that can be answered using the information found in Part 1. To further assist the lead agency in completing Part 2, the form identifies the most relevant questions in Part 1 that will provide the information needed to answer the Part 2 question. When Part 2 is completed, the lead agency will have identified the relevant environmental areas that may be impacted by the proposed activity.

If the lead agency is a state agency and the action is in any Coastal Area, complete the Coastal Assessment Form before proceeding with this assessment.

**Tips for completing Part 2:**

- Review all of the information provided in Part 1.
- Review any application, maps, supporting materials and the Full EAF Workbook.
- Answer each of the 18 questions in Part 2.
- If you answer "Yes" to a numbered question, please complete all the questions that follow in that section.
- If you answer "No" to a numbered question, move on to the next numbered question.
- Check appropriate column to indicate the anticipated size of the impact.
- Proposed projects that would exceed a numeric threshold contained in a question should result in the reviewing agency checking the box "Moderate to large impact may occur."
- The reviewer is not expected to be an expert in environmental analysis.
- If you are not sure or undecided about the size of an impact, it may help to review the sub-questions for the general question and consult the workbook.
- When answering a question consider all components of the proposed activity, that is, the "whole action".
- Consider the possibility for long-term and cumulative impacts as well as direct impacts.
- Answer the question in a reasonable manner considering the scale and context of the project.

<b>1. Impact on Land</b> Proposed action may involve construction on, or physical alteration of, the land surface of the proposed site. (See Part 1. D.1) <i>If "Yes", answer questions a - j. If "No", move on to Section 2.</i>			
		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may involve construction on land where depth to water table is less than 3 feet.	E2d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may involve construction on slopes of 15% or greater.	E2f	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve construction on land where bedrock is exposed, or generally within 5 feet of existing ground surface.	E2a	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve the excavation and removal of more than 1,000 tons of natural material.	D2a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may involve construction that continues for more than one year or in multiple phases.	D1e	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in increased erosion, whether from physical disturbance or vegetation removal (including from treatment by herbicides).	D2e, D2q	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action is, or may be, located within a Coastal Erosion hazard area.	B1i	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**2. Impact on Geological Features**

The proposed action may result in the modification or destruction of, or inhibit access to, any unique or unusual land forms on the site (e.g., cliffs, dunes, minerals, fossils, caves). (See Part 1. E.2.g)

NO

YES

If "Yes", answer questions a - c. If "No", move on to Section 3.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Identify the specific land form(s) attached: _____	E2g	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may affect or is adjacent to a geological feature listed as a registered National Natural Landmark. Specific feature: _____	E3c	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**3. Impacts on Surface Water**

The proposed action may affect one or more wetlands or other surface water bodies (e.g., streams, rivers, ponds or lakes). (See Part 1. D.2, E.2.h)

NO

YES

If "Yes", answer questions a - l. If "No", move on to Section 4.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may create a new water body. <i>NO</i>	D2b, D1h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in an increase or decrease of over 10% or more than a 10 acre increase or decrease in the surface area of any body of water. <i>NO</i>	D2b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may involve dredging more than 100 cubic yards of material from a wetland or water body. <i>NO</i>	D2a	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve construction within or adjoining a freshwater or tidal wetland, or in the bed or banks of any other water body. <i>SMALL IMPACT SEE PART 3</i>	E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may create turbidity in a waterbody, either from upland erosion, runoff or by disturbing bottom sediments. <i>NO</i>	D2a, D2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water. <i>NO</i>	D2c	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s). <i>NO</i>	D2d	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may cause soil erosion, or otherwise create a source of stormwater discharge that may lead to siltation or other degradation of receiving water bodies. <i>NO</i>	D2e	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action. <i>NO</i>	E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may involve the application of pesticides or herbicides in or around any water body. <i>NO</i>	D2q, E2h	<input checked="" type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may require the construction of new, or expansion of existing, wastewater treatment facilities. <i>NO</i>	D1a, D2d	<input checked="" type="checkbox"/>	<input type="checkbox"/>

l. Other impacts: <u>Plant resuming operation requiring resumption of cooling water withdrawals and installation of intake structure screens to reduce fish mortality</u> <i>SEE PART 3</i>		<input type="checkbox"/>	<input checked="" type="checkbox"/>
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**4. Impact on groundwater**  
 The proposed action may result in new or additional use of ground water, or may have the potential to introduce contaminants to ground water or an aquifer. (See Part I. D.2.a, D.2.c, D.2.d, D.2.p, D.2.q, D.2.t)  
*If "Yes", answer questions a - h. If "No", move on to Section 5.*

NO       YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may require new water supply wells, or create additional demand on supplies from existing water supply wells.	D2c	<input type="checkbox"/>	<input type="checkbox"/>
b. Water supply demand from the proposed action may exceed safe and sustainable withdrawal capacity rate of the local supply or aquifer. Cite Source: _____	D2c	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may allow or result in residential uses in areas without water and sewer services.	D1a, D2c	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may include or require wastewater discharged to groundwater.	D2d, E2l	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in the construction of water supply wells in locations where groundwater is, or is suspected to be, contaminated.	D2c, E1f, E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may require the bulk storage of petroleum or chemical products over ground water or an aquifer.	D2p, E2l	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may involve the commercial application of pesticides within 100 feet of potable drinking water or irrigation sources.	E2h, D2q, E2l, D2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**5. Impact on Flooding**  
 The proposed action may result in development on lands subject to flooding. (See Part I. E.2)  
*If "Yes", answer questions a - g. If "No", move on to Section 6.*

NO       YES

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may result in development in a designated floodway.	E2i	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in development within a 100 year floodplain.	E2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in development within a 500 year floodplain.	E2k	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in, or require, modification of existing drainage patterns.	D2b, D2e	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may change flood water flows that contribute to flooding.	D2b, E2i, E2j, E2k	<input type="checkbox"/>	<input type="checkbox"/>
f. If there is a dam located on the site of the proposed action, is the dam in need of repair, or upgrade?	E1e	<input type="checkbox"/>	<input type="checkbox"/>

g. Other impacts: _____ _____	<input type="checkbox"/>	<input type="checkbox"/>
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<b>6. Impacts on Air</b> The proposed action may include a state regulated air emission source. <span style="float: right;"><input type="checkbox"/> NO <input checked="" type="checkbox"/> YES</span> (See Part 1. D.2.f., D.2.h, D.2.g) <i>If "Yes", answer questions a - f. If "No", move on to Section 7.</i>			
<i>SEE PART 3</i>	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. If the proposed action requires federal or state air emission permits, the action may also emit one or more greenhouse gases at or above the following levels: i. More than 1000 tons/year of carbon dioxide (CO <sub>2</sub> ) ii. More than 3.5 tons/year of nitrous oxide (N <sub>2</sub> O) iii. More than 1000 tons/year of carbon equivalent of perfluorocarbons (PFCs) iv. More than .045 tons/year of sulfur hexafluoride (SF <sub>6</sub> ) v. More than 1000 tons/year of carbon dioxide equivalent of hydrochlorofluorocarbons (HFCs) emissions vi. 43 tons/year or more of methane	D2g D2g D2g D2g D2g D2h	<input type="checkbox"/> <input type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> <input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
b. The proposed action may generate 10 tons/year or more of any one designated hazardous air pollutant, or 25 tons/year or more of any combination of such hazardous air pollutants.	D2g	<input type="checkbox"/>	<input checked="" type="checkbox"/>
c. The proposed action may require a state air registration, or may produce an emissions rate of total contaminants that may exceed 5 lbs. per hour, or may include a heat source capable of producing more than 10 million BTU's per hour.	D2f, D2g	<input type="checkbox"/>	<input checked="" type="checkbox"/>
d. The proposed action may reach 50% of any of the thresholds in "a" through "c", above.	D2g	<input type="checkbox"/>	<input checked="" type="checkbox"/>
e. The proposed action may result in the combustion or thermal treatment of more than 1 ton of refuse per hour.	D2s	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>7. Impact on Plants and Animals</b> The proposed action may result in a loss of flora or fauna. (See Part 1. E.2. m.-q.) <span style="float: right;"><input type="checkbox"/> NO <input checked="" type="checkbox"/> YES</span> <i>If "Yes", answer questions a - j. If "No", move on to Section 8.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may cause reduction in population or loss of individuals of any threatened or endangered species, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site. <span style="float: right;"><i>NO</i></span>	E2o	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction or degradation of any habitat used by any rare, threatened or endangered species, as listed by New York State or the federal government. <span style="float: right;"><i>NO</i></span>	E2o	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may cause reduction in population, or loss of individuals, of any species of special concern or conservation need, as listed by New York State or the Federal government, that use the site, or are found on, over, or near the site. <span style="float: right;"><i>NO</i></span>	E2p	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in a reduction or degradation of any habitat used by any species of special concern and conservation need, as listed by New York State or the Federal government. <span style="float: right;"><i>NO</i></span>	E2p	<input checked="" type="checkbox"/>	<input type="checkbox"/>

e. The proposed action may diminish the capacity of a registered National Natural Landmark to support the biological community it was established to protect. <i>NO</i>	E3c	<input checked="" type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result in the removal of, or ground disturbance in, any portion of a designated significant natural community. Source: _____ <i>NO</i>	E2n	<input checked="" type="checkbox"/>	<input type="checkbox"/>
g. The proposed action may substantially interfere with nesting/breeding, foraging, or over-wintering habitat for the predominant species that occupy or use the project site.	E2m	<input checked="" type="checkbox"/>	<input type="checkbox"/>
h. The proposed action requires the conversion of more than 10 acres of forest, grassland or any other regionally or locally important habitat. Habitat type & information source: _____ <i>NO</i>	E1b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
i. Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides. <i>NO</i>	D2q	<input checked="" type="checkbox"/>	<input type="checkbox"/>
j. Other impacts: Fish entrainment & impingement mortality will result from operation of cooling water intakes - see PART 3		<input type="checkbox"/>	<input checked="" type="checkbox"/>

<b>8. Impact on Agricultural Resources</b>			
The proposed action may impact agricultural resources. (See Part I. E.3.a. and b.)		<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
<i>If "Yes", answer questions a - h. If "No", move on to Section 9.</i>			
	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may impact soil classified within soil group 1 through 4 of the NYS Land Classification System.	E2c, E3b	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may sever, cross or otherwise limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc).	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.	E3b	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may irreversibly convert agricultural land to non-agricultural uses, either more than 2.5 acres if located in an Agricultural District, or more than 10 acres if not within an Agricultural District.	E1b, E3a	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may disrupt or prevent installation of an agricultural land management system.	E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action may result, directly or indirectly, in increased development potential or pressure on farmland.	C2c, C3, D2c, D2d	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed project is not consistent with the adopted municipal Farmland Protection Plan.	C2c	<input type="checkbox"/>	<input type="checkbox"/>
h. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>



d. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>
e. If any of the above (a-d) are answered "Moderate to large impact may occur", continue with the following questions to help support conclusions in Part 3:			
i. The proposed action may result in the destruction or alteration of all or part of the site or property. <b>NO</b>	E3e, E3g, E3f	<input checked="" type="checkbox"/>	<input type="checkbox"/>
ii. The proposed action may result in the alteration of the property's setting or integrity. <b>NO</b>	E3e, E3f, E3g, E1a, E1b	<input checked="" type="checkbox"/>	<input type="checkbox"/>
iii. The proposed action may result in the introduction of visual elements which are out of character with the site or property, or may alter its setting. <b>NO</b>	E3e, E3f, E3g, E3h, C2, C3	<input checked="" type="checkbox"/>	<input type="checkbox"/>

<b>11. Impact on Open Space and Recreation</b> The proposed action may result in a loss of recreational opportunities or a reduction of an open space resource as designated in any adopted municipal open space plan. <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES (See Part I. C.2.c, E.1.c., E.2.q.) <i>If "Yes", answer questions a - e. If "No", go to Section 12.</i>			
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may result in an impairment of natural functions, or "ecosystem services", provided by an undeveloped area, including but not limited to stormwater storage, nutrient cycling, wildlife habitat.	D2e, E1b, E2h, E2m, E2o, E2n, E2p	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the loss of a current or future recreational resource.	C2a, E1c, C2c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may eliminate open space or recreational resource in an area with few such resources.	C2a, C2c, E1c, E2q	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may result in loss of an area now used informally by the community as an open space resource.	C2c, E1c	<input type="checkbox"/>	<input type="checkbox"/>
e. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>12. Impact on Critical Environmental Areas</b> The proposed action may be located within or adjacent to a critical environmental area (CEA). (See Part I. E.3.d) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <i>If "Yes", answer questions a - c. If "No", go to Section 13.</i>			
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action may result in a reduction in the quantity of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in a reduction in the quality of the resource or characteristic which was the basis for designation of the CEA.	E3d	<input type="checkbox"/>	<input type="checkbox"/>
c. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

**13. Impact on Transportation**

The proposed action may result in a change to existing transportation systems.  
(See Part 1. D.2.j)

NO

YES

If "Yes", answer questions a - f. If "No", go to Section 14.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. Projected traffic increase may exceed capacity of existing road network.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in the construction of paved parking area for 500 or more vehicles.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action will degrade existing transit access.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
d. The proposed action will degrade existing pedestrian or bicycle accommodations.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may alter the present pattern of movement of people or goods.	D2j	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____		<input type="checkbox"/>	<input type="checkbox"/>

**14. Impact on Energy**

The proposed action may cause an increase in the use of any form of energy.  
(See Part 1. D.2.k)

NO

YES

If "Yes", answer questions a - e. If "No", go to Section 15.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action will require a new, or an upgrade to an existing, substation.	D2k	<input checked="" type="checkbox"/>	<input type="checkbox"/>
b. The proposed action will require the creation or extension of an energy transmission or supply system to serve more than 50 single or two-family residences or to serve a commercial or industrial use. <i>NO - GAS LINE TO BE EXTENDED TO SITE UNDER PSC ARTICLE VII JURISDICTION</i>	D1f, D1q, D2k	<input checked="" type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may utilize more than 2,500 MWhrs per year of electricity.	D2k	<input checked="" type="checkbox"/>	<input type="checkbox"/>
d. The proposed action may involve heating and/or cooling of more than 100,000 square feet of building area when completed.	D1g	<input checked="" type="checkbox"/>	<input type="checkbox"/>
e. Other Impacts: <u>Resuming operation of Greenidge Station Power Plant Unit 4, with 107 MW capacity. The plant will be operated on natural gas, with up to 19% biomass</u>		<input type="checkbox"/>	<input checked="" type="checkbox"/>

**15. Impact on Noise, Odor, and Light**

The proposed action may result in an increase in noise, odors, or outdoor lighting.  
(See Part 1. D.2.m., n., and o.)

NO

YES

If "Yes", answer questions a - f. If "No", go to Section 16.

	Relevant Part I Question(s)	No, or small impact may occur	Moderate to large impact may occur
a. The proposed action may produce sound above noise levels established by local regulation.	D2m	<input type="checkbox"/>	<input type="checkbox"/>
b. The proposed action may result in blasting within 1,500 feet of any residence, hospital, school, licensed day care center, or nursing home.	D2m, E1d	<input type="checkbox"/>	<input type="checkbox"/>
c. The proposed action may result in routine odors for more than one hour per day.	D2o	<input type="checkbox"/>	<input type="checkbox"/>

d. The proposed action may result in light shining onto adjoining properties.	D2n	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may result in lighting creating sky-glow brighter than existing area conditions.	D2n, E1a	<input type="checkbox"/>	<input type="checkbox"/>
f. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>

<b>16. Impact on Human Health</b> The proposed action may have an impact on human health from exposure to new or existing sources of contaminants. (See Part 1.D.2.q., E.1. d. f. g. and h.) <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES <i>If "Yes", answer questions a - m. If "No", go to Section 17.</i>			
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>
a. The proposed action is located within 1500 feet of a school, hospital, licensed day care center, group home, nursing home or retirement community.	E1d	<input type="checkbox"/>	<input type="checkbox"/>
b. The site of the proposed action is currently undergoing remediation.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
c. There is a completed emergency spill remediation, or a completed environmental site remediation on, or adjacent to, the site of the proposed action.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
d. The site of the action is subject to an institutional control limiting the use of the property (e.g., easement or deed restriction).	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
e. The proposed action may affect institutional control measures that were put in place to ensure that the site remains protective of the environment and human health.	E1g, E1h	<input type="checkbox"/>	<input type="checkbox"/>
f. The proposed action has adequate control measures in place to ensure that future generation, treatment and/or disposal of hazardous wastes will be protective of the environment and human health.	D2t	<input type="checkbox"/>	<input type="checkbox"/>
g. The proposed action involves construction or modification of a solid waste management facility.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
h. The proposed action may result in the unearthing of solid or hazardous waste.	D2q, E1f	<input type="checkbox"/>	<input type="checkbox"/>
i. The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.	D2r, D2s	<input type="checkbox"/>	<input type="checkbox"/>
j. The proposed action may result in excavation or other disturbance within 2000 feet of a site used for the disposal of solid or hazardous waste.	E1f, E1g E1h	<input type="checkbox"/>	<input type="checkbox"/>
k. The proposed action may result in the migration of explosive gases from a landfill site to adjacent off site structures.	E1f, E1g	<input type="checkbox"/>	<input type="checkbox"/>
l. The proposed action may result in the release of contaminated leachate from the project site.	D2s, E1f, D2r	<input type="checkbox"/>	<input type="checkbox"/>
m. Other impacts: _____ _____			

<b>17. Consistency with Community Plans</b> The proposed action is not consistent with adopted land use plans. (See Part 1. C.1, C.2. and C.3.) <i>If "Yes", answer questions a - h. If "No", go to Section 18.</i>				<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>		
a. The proposed action's land use components may be different from, or in sharp contrast to, current surrounding land use pattern(s).	C2, C3, D1a E1a, E1b	<input type="checkbox"/>	<input type="checkbox"/>		
b. The proposed action will cause the permanent population of the city, town or village in which the project is located to grow by more than 5%.	C2	<input type="checkbox"/>	<input type="checkbox"/>		
c. The proposed action is inconsistent with local land use plans or zoning regulations.	C2, C2, C3	<input type="checkbox"/>	<input type="checkbox"/>		
d. The proposed action is inconsistent with any County plans, or other regional land use plans.	C2, C2	<input type="checkbox"/>	<input type="checkbox"/>		
e. The proposed action may cause a change in the density of development that is not supported by existing infrastructure or is distant from existing infrastructure.	C3, D1c, D1d, D1f, D1d, E1b	<input type="checkbox"/>	<input type="checkbox"/>		
f. The proposed action is located in an area characterized by low density development that will require new or expanded public infrastructure.	C4, D2c, D2d D2j	<input type="checkbox"/>	<input type="checkbox"/>		
g. The proposed action may induce secondary development impacts (e.g., residential or commercial development not included in the proposed action)	C2a	<input type="checkbox"/>	<input type="checkbox"/>		
h. Other: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>		

<b>18. Consistency with Community Character</b> The proposed project is inconsistent with the existing community character. (See Part 1. C.2, C.3, D.2, E.3) <i>If "Yes", answer questions a - g. If "No", proceed to Part 3.</i>				<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
	<b>Relevant Part I Question(s)</b>	<b>No, or small impact may occur</b>	<b>Moderate to large impact may occur</b>		
a. The proposed action may replace or eliminate existing facilities, structures, or areas of historic importance to the community.	E3e, E3f, E3g	<input type="checkbox"/>	<input type="checkbox"/>		
b. The proposed action may create a demand for additional community services (e.g. schools, police and fire)	C4	<input type="checkbox"/>	<input type="checkbox"/>		
c. The proposed action may displace affordable or low-income housing in an area where there is a shortage of such housing.	C2, C3, D1f D1g, E1a	<input type="checkbox"/>	<input type="checkbox"/>		
d. The proposed action may interfere with the use or enjoyment of officially recognized or designated public resources.	C2, E3	<input type="checkbox"/>	<input type="checkbox"/>		
e. The proposed action is inconsistent with the predominant architectural scale and character.	C2, C3	<input type="checkbox"/>	<input type="checkbox"/>		
f. Proposed action is inconsistent with the character of the existing natural landscape.	C2, C3 E1a, E1b E2g, E2h	<input type="checkbox"/>	<input type="checkbox"/>		
g. Other impacts: _____ _____		<input type="checkbox"/>	<input type="checkbox"/>		

**PRINT FULL FORM**

Project : Greenidge Station

Date : June 28, 2016

**Full Environmental Assessment Form**  
**Part 3 - Evaluation of the Magnitude and Importance of Project Impacts**  
**and**  
**Determination of Significance**

Part 3 provides the reasons in support of the determination of significance. The lead agency must complete Part 3 for every question in Part 2 where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.

Based on the analysis in Part 3, the lead agency must decide whether to require an environmental impact statement to further assess the proposed action or whether available information is sufficient for the lead agency to conclude that the proposed action will not have a significant adverse environmental impact. By completing the certification on the next page, the lead agency can complete its determination of significance.

**Reasons Supporting This Determination:**

To complete this section:

- Identify the impact based on the Part 2 responses and describe its magnitude. Magnitude considers factors such as severity, size or extent of an impact.
- Assess the importance of the impact. Importance relates to the geographic scope, duration, probability of the impact occurring, number of people affected by the impact and any additional environmental consequences if the impact were to occur.
- The assessment should take into consideration any design element or project changes.
- Repeat this process for each Part 2 question where the impact has been identified as potentially moderate to large or where there is a need to explain why a particular element of the proposed action will not, or may, result in a significant adverse environmental impact.
- Provide the reason(s) why the impact may, or will not, result in a significant adverse environmental impact
- For Conditional Negative Declarations identify the specific condition(s) imposed that will modify the proposed action so that no significant adverse environmental impacts will result.
- Attach additional sheets, as needed.

THIS IS AN AMENDED NEGATIVE DECLARATION THAT REPLACES THE ORIGINAL DETERMINATION OF SIGNIFICANCE  
DATED JULY 30, 2015

SEE ATTACHED

**Determination of Significance - Type 1 and Unlisted Actions**

SEQR Status:  Type 1  Unlisted

Identify portions of EAF completed for this Project:  Part 1  Part 2  Part 3

Upon review of the information recorded on this EAF, as noted, plus this additional support information

and considering both the magnitude and importance of each identified potential impact, it is the conclusion of the  
THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION as lead agency that:

- A. This project will result in no significant adverse impacts on the environment, and, therefore, an environmental impact statement need not be prepared. Accordingly, this negative declaration is issued.
- B. Although this project could have a significant adverse impact on the environment, that impact will be avoided or substantially mitigated because of the following conditions which will be required by the lead agency:

There will, therefore, be no significant adverse impacts from the project as conditioned, and, therefore, this conditioned negative declaration is issued. A conditioned negative declaration may be used only for UNLISTED actions (see 6 NYCRR 617.d).

- C. This Project may result in one or more significant adverse impacts on the environment, and an environmental impact statement must be prepared to further assess the impact(s) and possible mitigation and to explore alternatives to avoid or reduce those impacts. Accordingly, this positive declaration is issued.

Name of Action: Greenidge Station Conversion and SPDES Permit Renewal/Modification

Name of Lead Agency: New York State Department of Environmental Conservation

Name of Responsible Officer in Lead Agency: Scott E. Sheeley

Title of Responsible Officer: Regional Permit Administrator

Signature of Responsible Officer in Lead Agency:



Date: June 28, 2016

Signature of Preparer (if different from Responsible Officer)

Date:

**For Further Information:**

Contact Person: Scott E. Sheeley, Regional Permit Administrator

Address: NYSDEC Region 8, 6274 East Avon-Lima Road

Telephone Number: 585-226-5382

E-mail: SCOTT.SHEELEY@DEC.NY.GOV

**For Type 1 Actions and Conditioned Negative Declarations, a copy of this Notice is sent to:**

Chief Executive Officer of the political subdivision in which the action will be principally located (e.g., Town / City / Village of)  
Other involved agencies (if any)

Applicant (if any)

Environmental Notice Bulletin: <http://www.dec.ny.gov/enb/enb.html>

PRINT FULL FORM

## State Environmental Quality Review

### SEQR Full Environmental Assessment Form

#### Part 3 - Evaluation of the Magnitude and Importance of Project Impacts (Continuation) For Amended Negative Declaration

**Project Numbers:** 8-5736-00004/00001, /00016, and /00017

**Date:** June 28, 2016

**Name of Action:** Greenidge Station Reactivation and SPDES Renewal/Modification

**SEQR Status:** Type 1

**Preparer's Name:** Scott E. Sheeley, Regional Permit Administrator  
NYSDEC Division of Environmental Permits  
6274 East Avon-Lima Road, Avon NY 14414  
(585) 226-5382

#### **Description of Action:**

The sponsor, Greenidge Generation, LLC, proposes to resume operations at the Greenidge Generating Station ("Greenidge Station"). Greenidge Station, a previously coal-fired plant, was in operation as early as the 1930's, with Unit 4 installed in 1953. In 2006 significant improvements to emission control equipment were installed on Unit 4 and in 2011 the plant was placed in protective lay-up status and has not operated since March, 2011. The proposal would operate Unit 4 with a maximum generating capacity of 107 MW. The unit would not burn coal, but instead be converted to fire primarily natural gas, with the ability to co-fire up to 19% biomass, both of which were fuels previously authorized in the facility Title V permit. (A new natural gas pipeline would be constructed to service the site, which would be reviewed under the Article VII process governed by the New York State Department of Public Service separate from this SEQR action.) The Department also proposes to renew and modify the facility's existing SPDES permit to incorporate requirements to install cylindrical wedge wire intake screens on the plant's cooling water intakes and install variable speed cooling water pumps on Unit 4 as "Best Technology Available" to address requirements under the federal Clean Water Act to reduce fish mortality (i.e., impingement and entrainment).

#### **Reasons Supporting the Amended SEQR Determination:**

1. Impacts on Surface Water: The project will ultimately involve a modification of the cooling water intake structure (CWIS) at the facility. The modification will include the installation of "Best Technology Available" (BTA) measures in accordance with Commissioner's Policy CP-52 to reduce fish entrainment and impingement. This will involve construction/attachment of intake screens at the end of the intake below the mean high water line of Seneca Lake. As such, no significant amount of modification or alteration of the bed of Seneca Lake is expected even though there may be short-term, temporary impacts to water quality directly around the work site during construction. As a result, no impacts to surface waters are anticipated as a result of intake modification.

The Department is proposing to renew and modify the SPDES permit to ensure the facility complies with all applicable water quality standards and addresses the "Best Technology Available" (BTA) requirements of the Clean Water Act and DEC Commissioner's Policy on BTA for Cooling Water Intake Structures (CP-52). A review was completed and the Department is proposing modifications to the SPDES permit based on that evaluation. The primary changes are the inclusion of a dilution study to determine appropriate dilution factors in Seneca Lake, and revised conditions requiring implementation of the Department's Best Technology Available

(BTA) determination. The dilution factors obtained by the dilution study will be used to refine the current water quality based effluent limits in the permit. With regard to the modifications related to BTA, the Department has determined that BTA for this facility will include the installation of wedge-wire intake screens on the CWIS with a slot size of  $0.5 \leq 1.0$  mm, and the installation of variable speed cooling water circulation pumps. The Department has determined that this BTA determination is consistent with applicable regulations and CP-52. The facility will be required to implement the BTA technologies and achieve an 85% reduction in the entrainment of all fish life stages and a 95% reduction in impingement mortality of all fish life stages. The proposed modified permit for Greenidge Station contains effluent limits and conditions which ensure that the existing beneficial uses of Seneca Lake will be maintained. As a result there are no significant adverse impacts associated with the Department's renewal and modification of the facility SPDES permit.

The Department is also considering an application for an initial permit for the withdrawal of water pursuant to 6 NYCRR Part 601 (Water Withdrawal Permitting). Part 601 requires the Department to issue Initial Permits to authorize the continued operation and withdrawal of already-existing water withdrawal facilities for the maximum capacity reported to NYSDEC as of February 15, 2012. The Department intends on issuing an initial permit to Greenidge Generation LLC for Greenidge Station, an already-existing water withdrawal facility, for the withdrawal of approximately 160 million gallons per day (MGD), the amount reported to the Department. The initial water withdrawal permit will also include a suite of conservation measures as required by Part 601 to minimize impacts from the water withdrawal. However, given that reactivation will be limited to Unit 4, the anticipated amount of actual withdrawal will be less than the permitted amount.

Although the Department has classified the issuance of an initial permit under 6 NYCRR Part 601 as a Type II action under SEQR (6 NYCRR 617.5[c][19]) and, therefore not subject to SEQR, substantively, in this instance – because the initial water withdrawal permit is proposed to be issued along with permits that are subject to SEQR - the impact or impact of any change in withdrawal has been considered alongside the impacts of the air and SPDES permits.

2. Impacts on Air: The Department is proposing to issue Title V and Title IV permits for the Greenidge Station Facility. Greenidge Station was previously owned by AES Greenidge LLC, and operated under Title IV and Title V Facility Permits from 2001 until operations ceased in 2011. AES Greenidge LLC then relinquished the Title IV and Title V Facility Permits in November 2012.

Greenidge Station is a Major Stationary Source, and is required to obtain a Title V Permit as specified in 6 NYCRR Part 201-6, due to potential emissions of oxides of nitrogen (NO<sub>x</sub>) and carbon monoxide (CO) in excess of 100 tons per year (each); and hazardous air pollutants (HAP) in excess of 25 tons per year. With operations of Unit 4 being resumed without coal as a fuel source, the Greenidge Generating Station will emit contaminants from boiler powered electric generation and ash handling operations. The Department has subjected the proposed operation of Greenidge Unit 4 to 6 NYCRR Part 231 Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NNSR) requirements applicable to major source of air emissions.

The Department has determined that NO<sub>x</sub> emissions from the Greenidge Station will be above the major source threshold and, therefore, applied the nonattainment New Source Review (NNSR) lowest achievable emission rate (LAER) requirement. PSD best available control technology (BACT) requirements were applied to emissions of CO, particulate matter (PM, PM<sub>10</sub>, PM<sub>2.5</sub>), and carbon dioxide (CO<sub>2</sub>). To meet LAER, the boiler's NO<sub>x</sub> emissions will be controlled by optimizing the

following: low NOx burners/flue gas recirculation/tangential low NOx firing; separated overfire air; closed couple overfire air; selective non-catalytic reduction; and selective catalytic reduction. BACT for particulate emissions will be a fabric filter baghouse with leak detection and the use of low emitting fuel (natural gas). BACT for CO emissions is the use of separated overfire air and closed couple overfire air. BACT for CO2 is the use of low carbon fuels (natural gas and biomass); fuel efficient generation and use of energy to operate the facility; natural gas line leak detection and repair; and the completion of an energy efficiency assessment of the facility. To ensure compliance with BACT, LAER and other emission requirements, continuous emission monitoring systems will be used to measure NOx, CO, sulfur oxides (SOx), ammonia (NH3), and GHGs requirements. In addition, a Continuous Opacity Monitoring System (COMS) will be used to monitor compliance with opacity requirements, and annual stack testing will be required for demonstrating compliance with the emission limits for PM, PM10, and PM2.5. Greenidge Generation LLC has also surrendered 177 tons of NOx emission reduction credits (ERC) to offset the 153.8 tons of potential NOx emissions associated with this action.

During its prior operation on coal with many of these existing controls in place, the operation of Greenidge Station did not result in any significant adverse impacts to air quality. These controls will remain in place and, in addition, as detailed above, the boiler and emission controls will be optimized, which will result in even lower air emissions. Greenidge station will also not use coal as a fuel source. The boiler will be converted to operate primarily on natural gas, with the ability to co-fire up to 19% biomass. No other fuels will be authorized. This will reduce air emissions even further, and the operations will meet all applicable air emission standards.

As a result of the above, the Department has determined that resuming operation of this existing facility, and its conversion to natural gas as its primary fuel will not result in any significant adverse impacts to air quality.

3. Impacts on Plants and Animals: The project will have no significant adverse impacts on plants or animals. See discussion concerning fish impingement and entrainment under "surface waters" above. In addition, the facility is existing and will not involve the removal or destruction of vegetation.
4. Impacts on Historic and Archaeological Resources: The project site is located just east of the Crooked Lake Outlet Historic District (95 NR 00889), which is listed on the National Registers of Historic Places. The project site is also located within an area designated as archaeologically sensitive by the New York State Office of Parks, Recreation, and Historic Preservation. However, the facilities that will be re-activated already exist and no new construction is proposed. To the extent that gas will be provided to the site at some future date by a new gas pipeline, the construction of the gas pipeline will be regulated under Article VII of the Public Service Law by the New York State Public Service Commission and potential impacts to cultural resources, if any, will be addressed at that time. As a result there will be no significant adverse impacts to historic or archaeological resources associated with the plant re-activation.
5. Impact on Energy: The re-activation of Unit 4 at Greenidge Station will use biomass and natural gas to generate electricity. However, the operation of the plant itself will not create a new demand for energy. Rather, it will serve as another facility to help meet the current electricity demands of the region. As a result, the plant will have no significant adverse impacts in increasing the use of energy.

6. **Solid Waste Management:** No impacts related to solid waste management are expected to result from the re-activation of Greenidge Station. By eliminating the use of coal as a fuel source, the generation of solid waste from the facility will be significantly reduced compared to prior operations. If Unit 4 were reactivated with coal, approximately 78,000 tons of fly ash and 158 tons of other waste would be generated per year. However, this will be greatly reduced since coal will no longer be used as a fuel source. As a result, there are no significant adverse impacts related to solid waste management associated with this project.

## **Exhibit B**

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1500

P: (518) 402-9185 | F: (518) 402-9018

www.dec.ny.gov

May 5, 2016

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
Empire State Plaza  
Agency Building Three  
Albany, New York 12223-1350

Re: Application of Greenidge Pipeline, Inc., PSL Article VII, Case15-T-0586

Dear Secretary Burgess:

On Behalf of Staff of the New York State Department of Environmental Conservation (“NYSDEC”) the undersigned submits the following comments to supplement the record to date in the captioned proceeding, convened before the Commission pursuant to Article VII of the Public Service Law. NYSDEC Staff’s comments are provided below as representatives of a statutory party and under its authority for administering respective portions of the Environmental Conservation Law, and to supplement earlier comments provided on November 9, 2015.

- The proposed pipeline route traverses several Class “C” non-navigable streams which are tributaries to the Keuka Outlet. NYSDEC Staff recently sampled the streams that will be traversed by the project and determined that the streams support warm water fisheries. No trout were found during the sampling events. As a result of these findings, NYSDEC Staff will not impose timing restrictions for in-stream work. No streams subject to protection under the Protection of Waters Program (Article 15 of the Environmental Conservation Law) will be impacted by the project. Nevertheless, NYSDEC Staff respectfully request that the Commission provide that other applicable stream protection and water quality regulations be complied with in designing and proposing stream crossings.
- Steeply sided streams/drainage channels that will be traversed in the eastern portion of the project may require permanent stabilization measures, such as in-stream grade control structures and erosion control blankets, to protect the pipeline and prevent erosion and sedimentation. NYSDEC Staff respectfully request that the Commission require that construction plans include sufficient details on effective permanent stabilization measures proposed within these stream channels.
- The proposed pipeline route does not traverse any State regulated Freshwater Wetlands or regulated adjacent areas subject to protection under the Freshwater Wetlands Act (Article 24 of the Environmental Conservation Law). However, construction activities will impact federally regulated wetlands and waterbodies. NYSDEC Staff respectfully request that

the Commission require the applicant to employ wetland construction techniques such as topsoil segregation, equipment mats to minimize compaction, re-establishment of pre-existing contours and revegetation of disturbed wetland areas to minimize wetland disturbance and prevent contravention of water quality standards. State water quality standards are fully applicable to this project.

- Please note that the proposed project will disturb more than one acre of land, and therefore, the applicant must comply with the State Pollutant Discharge Elimination System (SPDES) Phase II regulations for Stormwater Discharges from Construction Activities. Information regarding the SPDES General Permit for Stormwater Discharges (GP-0-15-002) can be found on NYSDEC's website at: <http://www.dec.ny.gov/chemical/8468.html>.
- Given the proximity of the proposed pipeline to the Lockwood Ash Disposal Landfill (approximately 50 feet horizontal distance to landfill edge), NYSDEC Staff respectfully request that the Commission require that all monitoring wells within the construction right-of-way be surveyed prior to construction and an assessment of their current condition be made and provided to the NYSDEC Region 8 Division of Materials Management. In addition, NYSDEC Staff request that the Commission provide that monitoring wells shall be flagged so that they are easily identifiable during construction activities and, if monitoring wells are damaged during construction, that they be repaired or replaced and notification be made to the NYSDEC Region 8 Division of Materials Management within 48 hours of the damage occurring.

NYSDEC Staff appreciate the opportunity to comment and are available for further discussions on the matter.

Sincerely yours,



William Little  
Associate Counsel  
Office of General Counsel  
New York State Department of  
Environmental Conservation  
625 Broadway  
Albany, New York 12233-1500

cc.: S. Blow, Esq.  
G. Jesmer, Esq.  
G. Pond, Esq.  
K. Gaidasz

## **Exhibit C**



September 28, 2016

Hon. Kathleen H. Burgess  
Secretary  
New York State Public Service Commission  
3 Empire Plaza  
Albany, NY 12233

**Re:** Application by Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation to Construct a Fuel Gas Transmission Line, Containing Approximately 24,318 Feet of 8" Steel Pipeline, Located in the Towns of Milo and Torrey, Yates County.  
Case 15-T-0586

Dear Secretary Burgess,

Pursuant to section 1(e) of the Order Granting Certificate of Environmental Compatibility and Public Need, Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (collectively, the "Applicants") propose to commence construction on Tuesday, October 11, 2016.

Respectfully submitted,

/s/

Joel D. Moore  
Professional Engineer for  
Greenidge Pipeline LLC and  
Greenidge Pipeline Properties Corporation

## **Exhibit D**



**Department of  
Public Service**

**Public Service Commission**

Audrey Zibelman  
Chair

Patricia L. Acampora  
Gregg C. Sayre  
Diane X. Burman  
Commissioners

Paul Agresta  
General Counsel  
Kathleen H. Burgess  
Secretary

Three Empire State Plaza Albany NY 12223-1350  
[www.dps.ny.gov](http://www.dps.ny.gov)

October 19, 2016

Ms. Kathleen H. Burgess, Secretary  
New York State  
Department of Public Service  
Three Empire State Plaza  
Albany, New York 12223-1350

RE: CASE 15-T-0586 – Application by Greenidge Pipeline LLC; Greenidge Pipeline Properties Corporation to Construct a Fuel Gas Transmission Line, Containing Approximately 24,318 Feet of 8" Steel Pipeline, Located in the Towns of Milo and Torrey, Yates County.

Dear Secretary Burgess:

Enclosed is a filing of a Notice to Proceed with Construction for Greenidge Pipeline Properties Corporation notification of construction commencement.

If you have any questions, please contact Corey Strub by phone at 518-486-7847 or by email at [corey.strub@dps.ny.gov](mailto:corey.strub@dps.ny.gov)

Sincerely,

James D. Austin, Chief  
Environmental Certification & Compliance  
Office of Electric, Gas and Water



**Department of  
Public Service**

**Public Service Commission**

Audrey Zibelman

Chair

Patricia L. Acampora

Gregg C. Sayre

Diane X. Burman

Commissioners

Kimberly A. Harriman

General Counsel

Kathleen H. Burgess

Secretary

Three Empire State Plaza Albany, NY 12223-1350  
www.dps.ny.gov

October 17, 2016

George M. Pond, Esq.  
Barclay Damon LLP  
80 State Street  
Albany, New York 12207

RE: CASE 15-T-0586 - Application by Greenidge Pipeline LLC; Greenidge Pipeline Properties Corporation to Construct a Fuel Gas Transmission Line, Containing Approximately 24,318 Feet of 8" Steel Pipeline, Located in the Towns of Milo and Torrey, Yates County.

Dear Mr. Pond:

**Notice to Proceed with Construction**

Staff of the Department of Public Service has reviewed the information provided in satisfaction with the EM&CP order issued in the above referenced case.

You are hereby authorized to begin activities required for the construction of the 4.6 miles of eight inch natural gas as described in the Commission's September 16, 2016, Order.

If you have any questions, please contact Corey Strub of our Environmental Compliance Staff, at (518) 486-7847 or by email at [Corey.Strub@dps.ny.gov](mailto:Corey.Strub@dps.ny.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Austin".

James D. Austin

Chief, Environmental Certification & Compliance  
Office of Electric, Gas and Water

cc: Case File, DPS