

COPY

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF YATES

YATES COUNTY CLERK

2016 DEC 13 P 1:22

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  
AMENDED PETITION

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 amended verified petition of Sierra Club, Committee to Preserve the Finger Lakes and Coalition to Preserve New York, dated December 6, 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 request that this court issue a judgment pursuant to Article 78 of the Civil Practice Law and Rules for the relief demanded in the amended petition.

DATED: Hammondsport, New York  
December 13, 2016

Respectfully submitted,



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Pipeline Properties Corporation and Lockwood Hills, LLC*

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF YATES

YATES COUNTY CLERK

COPY

In the Matter of the Application of 2016 DEC -6 P 1:111

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,

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

AMENDED  
VERIFIED PETITION

—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.

Petitioners Sierra Club, Committee to Preserve the Finger Lakes and Coalition to Preserve New York (collectively “Petitioners”), for their verified petition for judgment pursuant to Article 78 of the New York Civil Practice Law and Rules, by their undersigned attorneys, allege as follows.

### **I. PRELIMINARY STATEMENT**

1. This proceeding challenges the Title IV and Title V air permits issued by Respondent New York State Department of Environmental Conservation (“DEC”) on September 8, 2016 to Respondent Greenidge Generation LLC (“GGLLC”) (the “Air Permits”) for its project to repower the Greenidge Generating Station in Dresden, New York on Seneca Lake and put additional waste into the coal ash landfill adjoining the generating station, and the accompanying project of GGLLC’s affiliates Greenidge Pipeline, LLC (“GPLLC”) and Greenidge

Pipeline Properties Corporation (“GPPC”) to build a pipeline to supply gas to the generating station.

2. DEC’s issuance of the Air Permits was legally deficient because DEC’s environmental assessment under the State Environmental Quality Review Act, Environmental Conservation Law, Article 8 (“SEQRA”), of the impacts of the Greenidge repowering and pipeline project was fundamentally flawed, and the resulting amended negative declaration dated June 28, 2016 (the “Negative Declaration”) was based on incorrect assumptions concerning current and future operations at the Greenidge plant, failed to compare the environmental impacts of the restarted operations to the current baseline of no operations, failed to identify all relevant areas of environmental concern, failed take a hard look at the impacts identified, failed to give a reasoned elaboration why the identified impacts would not adversely affect the environment, improperly segmented review of the impacts of the pipeline and the waste disposal from the review of the impacts of repowering the generating station, failed to consider cumulative impacts and constituted a conditioned negative declaration for a Type I action.

3. Petitioners seek a judgment and order and injunctive relief pursuant to Sections 7803(3), 7806, 3001 and 6301-6303 of the CPLR vacating and annulling the Air Permits and the Negative Declaration on the ground that they were issued in violation of lawful procedures, were affected by errors of law, were arbitrary and capricious, and their issuance constituted an abuse of discretion; enjoining Respondent DEC from approving Respondent GGLLC’s applications for air discharge, State Pollutant Discharge Elimination System (“SPDES”) and water withdrawal permits until Respondent DEC shall have complied with SEQRA in performing an environmental impact review that compares the impacts of the project to no operations and takes into account all reasonably foreseeable impacts of the project; and imposing a preliminary injunction prohibiting

Respondents GLLC, GPLLC and GPPC from taking steps to repower the Greenidge Generating Station or construct a gas pipeline to the generating station until Respondents have complied with all applicable federal and state laws.

## **II. PARTIES**

4. Petitioner Sierra Club is a national grassroots conservation organization. It is organized as a nonprofit corporation under the laws of the State of California. Sierra Club was founded in 1892. Its purposes include practicing and promoting the responsible use of earth's ecosystems and resources, and protecting and restoring the quality of the natural and human environment. The protection of air and water resources is a key aspect of Sierra Club's work. Sierra Club has approximately 600,000 members nationwide. More than 40,000 Club members live in New York, including members who live near the Greenidge Generating Station and Seneca Lake. The interests of the Club and its members will be injured by building the proposed pipeline, operating the generating station and increasing waste deposits at the adjoining coal ash landfill, and by the climate change impacts of producing and transporting increased amounts of natural gas and operating the generating station with natural gas. Sierra Club and its members further suffer informational injury as a result of the lack of a full environmental impact statement covering the permits at issue in this matter. The Club filed comment letters on GLLC's applications for the Air Permits and the proposed reactivation of the generating station on August 5, 2014, October 6, 2014, January 16, 2015 and March 2, 2015.

5. Petitioner Committee to Preserve the Finger Lakes ("CPFL") is a voluntary association formed in 2010 to preserve the natural beauty and the purity of the water in the Finger Lakes region of New York State. Peter Gamba is the President of CPFL. Membership of CPFL is centered in Yates County, New York and includes members living in the Village of Dresden, the

Town of Torrey and the Town of Milo. Most of CPFL's members live in the Seneca Lake watershed. The interests of CPFL and its members will be injured by building the proposed pipeline, operating the generating station and increasing waste deposits at the adjoining coal ash landfill, and by the climate change impacts of producing and transporting increased amounts of natural gas and operating the generating station with natural gas. CPFL and its members further suffer informational injury as a result of the lack of a full environmental impact statement covering the permits at issue in this matter. CPFL and its members participated actively in the review given to the Greenidge repowering project by Respondent DEC, the New York State Public Service Commission ("PSC"), and the Yates County Legislature. CPFL filed comment letters with DEC on its proposed air permits, SPDES permit and water withdrawal permit and initial and amended negative declaration on September 11, 2015 and August 5, 2016.

6. Petitioner Coalition to Protect New York ("CPNY") is a coalition of local environmental organizations in the Finger Lakes – Southern Tier area, and as such, is an unincorporated association. Kathryn Bartholomew is the Treasurer of CPFL. CPFL is a member organization of CPNY. The member organizations of CPNY work together to promote the health and vibrancy of our land and resources, and to oppose the harms that are caused by gas drilling, gas drilling wastes and fossil fuel infrastructure. The interests of CPFL and its members will be injured by building the proposed pipeline, operating the generating station and increasing waste deposits at the adjoining coal ash landfill, and by the climate change impacts of producing and transporting increased amounts of natural gas and operating the generating station with natural gas. CPNY and its member organizations further suffer informational injury as a result of the lack of a full environmental impact statement covering the permits at issue in this matter. CPNY's member organization, CPFL filed comment letters with DEC on its proposed air permits,

SPDES permit and water withdrawal permit and initial and amended negative declaration on September 11, 2015 and August 5, 2016.

7. Respondent New York State Department of Environmental Conservation is the administrative agency of the State of New York covering the actions at issue in this case. DEC is the governmental body responsible for environmental protection in the state of New York and for the protection of New York's natural resources. DEC administers New York's air discharge permitting program. Basil Seggos is the Commissioner of DEC.

8. Upon information and belief, Greenidge Generation LLC (GGLLC) is a limited liability company formed under the laws of Delaware with offices and facilities at 590 Plant Road, Dresden, New York 14441 and is a wholly-owned subsidiary of Greenidge Generation Holdings LLC.

9. Upon information and belief, Greenidge Pipeline LLC ("GPLLC") is a limited liability company formed under the laws of the State of Delaware with offices and facilities at 590 Plant Road, Dresden, New York 14441 and, like GGLLC, is a wholly-owned subsidiary of Greenidge Generation Holdings LLC.

10. Upon information and belief, Greenidge Pipeline Properties Corporation ("GPPC") is a corporation formed under New York's Transportation Corporations Law with offices and facilities at 590 Plant Road, Dresden, New York 14441 and is a wholly-owned subsidiary of GPLLC.

11. Upon information and belief, Lockwood Hills LLC (LHLLC) is a limited liability corporation authorized to do business in New York with offices and facilities at a New York limited liability company, whose address is 590 Plant Road, Dresden, New York 14441, and is an affiliate of GGLLC, GPLLC and GPCC.

### **III. FACTUAL BACKGROUND**

12. On August 12, 2015, DEC gave notice in its Environmental Notice Bulletin (“ENB”) that GGLLC had applied for “a Title V Facility Permit and Title IV (Acid Rain) Facility Permit for resumption of electric generating operations its Greenidge Generating Station in the Town of Torrey.” (Greenidge Generating Station is hereinafter referred to as “Greenidge Station”)

13. The notice stated that “in 2011 the plant was placed in protective lay-up status by its prior owner and has not operated since March, 2011. The proposal would reactivate Unit 4 with a generating capacity of 107 MW. The unit would not burn coal, but instead be fired with biomass, natural gas, and minimal amounts of waste oil, . . . . The sponsor will also fully convert the facility to use natural-gas as the primary fuel.”

14. The notice stated that Greenidge Station “was a Major Stationary Source, and was required to obtain a Title V Permit as specified in 6 NYCRR Part 201-6, due to potential emissions of particulate matter smaller than 10 microns (PM-10), total particulates (PM), sulfur dioxide (SO<sub>2</sub>), 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.”

15. The notice stated that DEC “has determined that the reactivation of Greenidge Unit 4 falls within USEPA’s reactivation policy and Unit 4 will not be required to meet New Source Performance Standards or Prevention of Significant Deterioration requirements applicable to a new major source of air emissions.”

16. The notice stated that the SEQRA determination was that the “Project is a Type I action and will not have a significant effect on the environment. A coordinated review with other agencies was performed and a Negative Declaration is on file. SEQR Lead Agency: NYS Department of Environmental Conservation.”

17. DEC's August 12, 2015 ENB also contained a notice of GGLLC's application for a SPDES permit.

18. Although the ENB notice of GGLLC's SPDES permit application stated that "the station withdraws a maximum of approximately 159.9 million gallons per day of water for "once through" condenser cooling," the ENB notice did not specify the size of the discharge permit sought.

19. CPFL obtained a copy of the draft SPDES permit DEC proposed to issue to GGLLC from DEC Region 8 and learned that discharges of up to 190,000,000 million gallons per day would be authorized by the permit.

20. The ENB notice of GGLLC's SPDES permit application did not describe the types of discharges proposed to be authorized or specify the waterbodies into which discharges would be authorized.

21. The draft permit authorized discharges into Keuka Outlet "of condenser cooling water with a maximum temperature of 108°F in summer and 86 F in winter, outfall 02a discharge, and unit 4 boiler blowdown."

22. The draft permit authorized discharges into Seneca Lake and groundwater of "bottom ash pond overflow (includes stormwater, treated coal pile runoff, treated maintenance cleaning wastewater, oil separator, boiler chemical cleaning final rinse, outfalls 02e – 02i, all with a combined with a daily maximum of 50 ng/1 of mercury); oil separator (process oil, fuel oil storage area); boiler water final rinse, coal pile runoff, fly ash hopper decant, demineralizer regenerate wastewater, maintenance cleaning wastewater – treated and batch discharge to ash pond (the foregoing with a combined daily maximum of 50 ng/1 of mercury); treated maintenance cleaning wastewater – batch discharged to ash pond, process equipment cooling

water, in-plant drain collection sump, plant feedwater make-up treatment; bottom ash sluice system with a daily maximum of 50 ng/l of mercury; north yard drain sump and east yard drain sump, roof drains, and stormwater.”

23. The ENB notice of GGLLC’s SPDES permit application stated, “[p]roject is a Type I action and will not have a significant effect on the environment. A coordinated review with other agencies was performed and a Negative Declaration is on file. SEQR Lead Agency: NYS Department of Environmental Conservation.”

24. In addition to notices for GGLLC’s air permit and SPDES permit applications, the August 12, 2105 ENB contained a notice of GGLLC’s application for a water withdrawal permit pursuant to Environmental Conservation Law (“ECL”) Article 15, Title 15 to withdraw up to 159,897,000 gallons per day (GPD) of water from Seneca Lake “for operation of the Plant’s once-through cooling system and other purposes.”

25. The notice for the water withdrawal permit stated, “[p]roject is not subject to SEQR because it is a Type II action.”

26. On September 11, 2015, CPFL and a group of local environmental organizations filed comments with DEC opposing issuance of the proposed air permits, SPDES permit and water withdrawal permit (the “CPFL 2015 Comments”).

27. The CPFL 2015 Comments stated, “We oppose issuance of the proposed draft permits because they fail to comply with the statutory requirements applicable in each instance to the issuance of new permits to new operations. In the case of each permit application, DEC has treated the permit application as if the Greenidge generating station were a currently operating facility when in fact the station was shuttered four years ago and sold for scrap. Consequently,

DEC has failed to make determinations and impose permit conditions that would be required if the applications were properly treated as applications for new permits.”

28. With regard to the proposed Greenidge air permits, the CPFL 2015 Comments stated that an analysis of EPA Reactivation Policy and federal reactivation precedent, “demonstrates that: (1) the Greenidge facility has been out of operation for four years, (2) the facility was shutdown for reasons which included economic factors as well as the cost of complying with environmental laws; (3) the facility’s previous owner indicated an unambiguous intent to retire the facility and sell it for scrap, (4) the facility requires millions of dollars in repairs and retrofits; and (4) the facility is not currently operable, the Title V and Title IV permits were surrendered, and a new water withdrawal permit is required and reissuance of the facility’s SPDES permit is required. Consequently, the facility is subject to EPA’s Reactivation Policy as a new source for purposes of prevention of significant deterioration (PSD). Because the facility has not operated as an electric generating facility for over four years, according to the NSR regulations, actual emissions should be based as zero for the past two years.”

29. On December 7, 2015, the U.S. Environmental Protection Agency Region 2 Office (“EPA”) sent a letter to DEC disapproving DEC’s draft air permits for the Greenidge Station.

30. The EPA letter stated: “By this letter, the U.S. Environmental Protection Agency Region 2 Office (EPA) objects to the issuance of the above-referenced proposed Title V operating permit for the Greenidge Station (“Greenidge”) (permit ID: 8-5736-00004/00017), located in Dresden, Yates County, New York, and owned by Greenidge Generation LLC. . . . The primary basis for EPA’s objection is that, if reactivated, Greenidge will be subject to the Clean Air Act’s Prevention of Significant Deterioration (“PSD”) permit program as a new source. . . . The facility has not operated for nearly five years and was permanently shut down, as demonstrated, among

other things, by the prior owners' representations to two federal courts and government agencies and their relinquishment of Clean Air Act Title V and Title IV permits. By concluding that the facility will not be a new source upon reactivation, NYSDEC failed to incorporate into the proposed Title V permit applicable requirements under the Clean Air Act's PSD program and implementing regulations as approved into New York's State Implementation Plan ("SIP"). Thus, the proposed Title V permit fails to assure compliance with applicable PSD requirements."

31. On June 29, 2016, DEC gave notice in the ENB that revised air permits had been prepared and that DEC had issued an amended negative declaration covering the air permits and the SPDES permit.

32. A DEC notice of the revised air permits and the amended negative declaration was published in the Penn Yan *Chronicle Express* on July 6, 2016.

33. A copy of the amended negative declaration dated June 28, 2016 (the "Negative Declaration") was provided to CPFL by DEC Region 8.

34. The description of the action in the Negative Declaration stated: "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 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 (Le., impingement and entrainment).”

35. The three and one quarter page Negative Declaration addressed six categories impacts on air, impacts on surface water, impacts on plants and animals, impacts on historic and archeological resources, impacts on energy, and impacts on solid waste management.

36. For each category of impact, the Negative Declaration concluded that because prior operations of the plant did not cause impacts in these areas, the proposed action would not cause impacts.

37. The Negative Declaration stated, “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.”

38. With regard to impacts on surface water, the Negative Declaration stated, “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. . . . 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 [cooling water intake structure ] CWIS 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.”

39. With regard to impacts on plants or animals, the Negative Declaration stated, “[t]he 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.”

40. With regard to impacts on historic and archaeological resources, the Negative Declaration stated, “[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.”

41. With regard to impacts on energy, the Negative Declaration stated, “[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.”

42. With regard to impacts on solid waste management, the Negative Declaration stated, “[n]o 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.”

43. CPFL and other local environmental groups filed a comment letter with DEC on August 5, 2016 (the “CPFL 2016 Comments”). The CPFL 2016 Comments opposed the issuance

of any permits to GLLC until such time as DEC shall have conducted an adequate environmental review pursuant to SEQRA.

44. The CPFL 2016 Comments stated that “[t]he amended negative declaration issued by DEC on June 28, 2016 (the “Neg Dec”) fails to comply with SEQRA in many respects. Although the Neg Dec purports to address adverse environmental impacts of the revised draft air permit announced in the June 29, 2016 issue of the Environmental Notice Bulletin (“ENB”) and the draft SPDES and water withdrawal permits announced in the August 12, 2015 issue of the ENB, DEC’s determination that restarting the Greenidge Generating Station will have no significant adverse impacts on the environment is without foundation because DEC fails to identify and consider a number of areas of relevant environmental concern.”

45. The CPFL 2016 Comments identified a number of flawed and incomplete of responses by GLLC in its revised Part 1 of the revised environmental assessment form (“EAF”). GLLC’s revised EAF Part 1 constitutes Section 6 of GLLC’s revised air permit application dated March 16, 2016.

46. DEC relied upon the responses given by GLLC in Part 1 of the EAF in completing Parts 2 and 3 of the EAF and in issuing the Negative Declaration.

47. As an example of GLLC’s flawed and incomplete responses in EAF Part 1, GLLC answered “No” to question D2c, “Will the proposed action use, or create a new demand for water?” This response does not take into account the fact that GLLC has applied for a water withdrawal permit to take up to 159,897,000 gallons of water per day from Seneca Lake, and no usage would take place if Greenidge Station is not permitted to repower.

48. Because GLLC answered “No” to question D2c, GLLC did not provide a response to question D2ci, “Total anticipated water usage/demand per day: gallons/day.” This

response does not take into account the fact that GGLLC has applied for a water withdrawal permit to take up to 159,897,000 gallons of water per day from Seneca Lake.

49. GGLLC answered “Yes” to question D2d, “Will the proposed action generate liquid wastes?” but the response Greenidge provided to question D2di, “Total anticipated liquid waste generation per day: gallons/day” of “20,000 (120,000 max)” specifies a maximum that is 0.0006% of the maximum discharge of 190,000,000 gallons per day requested in GGLLC’s application for a SPDES permit for the Greenidge Station.

50. GGLLC answered “No” to question D2h, “Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)?” This response fails to take into account the methane that will leak at Greenidge Station from the natural gas that will be used to power the plant, the methane that will leak from the pipelines and their accompanying compressor stations transmitting gas to the plant or the methane that will leak from the gas fields during production of the gas that will be used at the plant.

51. GGLLC answered “153 acres” to question D1ba, “Total acreage of the site of the proposed action?” This response does not take into account the acreage of the 4.6 mile gas pipeline that is part of the proposed project.

52. GGLLC answered “0 acres” to question D1bb, “Total acreage to be physically disturbed?” This response does not take into account the acreage that will be disturbed in building the 4.6 mile gas pipeline that is part of the proposed project.

53. GGLLC answered “No” to question D2a. “Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both?” and failed to respond to the 9 sub-questions regarding details of the proposed excavation activities. These answers do

not take into account the excavation activities that will take place in building the 4.6 mile gas pipeline that is part of the proposed project.

54. GGLLC answered “No” to question D2q, “Will the proposed action (commercial, industrial and recreational projects only) use pesticides (Le., herbicides, insecticides) during construction or operation?” This response does not take into account the herbicides that will be used to maintain the pipeline once it is put into operation.

55. GGLLC answered “No” to question D2j, “Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services?” This response does not take into account that the application and the EAF state that the biomass burned at the plant will be trucked to the plant.

56. Because it answered “No” to question D2j, GGLLC did not provide responses to questions D2ji, “When is the peak traffic expected (Check all that apply): Morning, Evening, Weekend,” and D2jii “For commercial activities only, projected number of semi-trailer truck trips/day.” These responses do not take into account that the application and the EAF state that the biomass burned at Greenidge Station will be trucked to the plant. This will necessarily result in a certain number of truck trips per day.

57. GGLLC answered “No” to question D2k, “Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy?” This response does not take into account that repowering Greenidge Station will necessarily require huge quantities of natural gas, substantial amounts of biomass, and substantial amounts of electricity. In fact, building a new gas pipeline to supply natural gas to the generating station is a key component of the project.

58. GGLLC answered “No” to question D2o “Does the proposed action have the potential to produce odors for more than one hour per day?” This response does not take into account that many of the emissions from Greenidge Station will produce odors, even with emission control protections in place.

59. GGLLC answered “No” to question E1f, “Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility?” This response does not take into account that the fact that the generating station adjoins the Lockwood Hills coal ash landfill.

60. The CPFL 2016 Comments identified a number of flawed and incomplete of responses by DEC to the questions contained in Parts 2 and 3 of the EAF. These flawed and incomplete responses demonstrate that DEC failed to identify a number of relevant areas of environmental concern.

61. As an example of DEC’s flawed and incomplete responses in EAF Parts 2 and 3, DEC answered “No” to question 1, “Proposed action may involve construction on, or physical alteration of the land surface of the proposed site.” This response does not take into account the land surface that will be disturbed in building the 4.6 mile gas pipeline that is part of the proposed project. The Negative Declaration explicitly excludes consideration of the impacts of the pipeline construction.

62. DEC answered “No” to question 3f, “The proposed action may include construction of one or more intake(s) for withdrawal of water from surface water.” This response does not take into account that GGLLC applied for a water withdrawal permit to take up to

159,897,000 gallons of water per day from Seneca Lake and that such withdrawals will necessarily involve one or more intakes.

63. DEC answered “No” to question 3g, “The proposed action may include construction of one or more outfall(s) for discharge of wastewater to surface water(s).” This response does not take into account that restarting the Greenidge facility will result in discharges of up to 190,000,000 gallons of heated and contaminated water each day into Keuka Outlet and Seneca Lake.

64. DEC answered “No” to question 3i. “The proposed action may affect the water quality of any water bodies within or downstream of the site of the proposed action.” This response does not take into account that the proposed discharges of up to 190,000,000 gallons of heated and contaminated water from facility’s operation each day are likely to have a significant effect on water quality in Keuka Outlet and Seneca Lake.

65. DEC answered “No” to 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.” This response does not take into account that more than 10 acres of habitat that be converted by construction of the 4.6 mile of gas pipeline that is part of the project.

66. DEC answered “No” to question 7i, “Proposed action (commercial, industrial or recreational projects, only) involves use of herbicides or pesticides.” This response does not take into account the herbicides that will be used to maintain the pipeline once it is put into operation.

67. DEC answered “No” to question 8c, “The proposed action may result in the excavation or compaction of the soil profile of active agricultural land.” This response does not take into account that construction of the proposed pipeline will result in the excavation or compaction of the soil profile of active agricultural land.

68. DEC answered “No” to question 8d, “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.” This response does not take into account that construction of the proposed pipeline will irreversibly convert agricultural land to non-agricultural uses in more than 2.5 acres along the route of the proposed pipeline.

69. DEC answered “No” to question 9, “The land use of the proposed action are obviously different from, or are in sharp contrast to, current land use patterns between the proposed project and a scenic or aesthetic resource.” This response does not take into account that the groomed route of the proposed pipeline is likely to be visible to sections of the Keuka Outlet Trail and that the groomed pipeline route will be in sharp contrast to the natural vegetation along the trail.

70. DEC answered “No” to question 11a, “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.” This response does not take into account that water withdrawals of up to 159,897,000 gallons per day from Seneca Lake will have significant impacts on the aquatic habitats in the lake. The response also fails to take into account that discharges of up to 190,000,000 gallons of heated and contaminated water from facility’s operation each day into Keuka Outlet and Seneca Lake will have significant impacts on aquatic habitats in the Keuka Outlet and Seneca Lake. Because the section of Seneca Lake at the mouth of the Keuka Outlet is one of the largest shallower areas in the lake, it is a particularly important habitat and spawning ground.

71. DEC answered “No” to question 11b, “The proposed action may result in the loss of a current or future recreational resource.” This response does not take into account that the fish

impingement and entrainment from the huge water withdrawals needed to operate the facility and the thermal degradation and contamination resulting from the huge discharges from the facility may result in the loss of recreational opportunities for fishing and swimming in Seneca Lake and Keuka Outlet. A number of cottages are located on the lake shore in this area and the proposed project may negatively impact the recreational use of the lake by the residents of these cottages.

72. DEC answered “No” to question 2, “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).” This response does not take into account that the location of the Greenidge Station site and certain sections of the proposed pipeline route adjoin the Keuka Outlet. Keuka Outlet is a unique natural feature. Keuka Lake empties into Seneca Lake through the outlet. Keuka Outlet is the largest tributary to Seneca Lake, its watershed area representing 35% of total watershed of the lake. It is the sole outlet of Keuka Lake, and flows east from Penn Yan to Dresden. Keuka Outlet is a DEC Class C fishing stream. The elevation along the seven mile length of Keuka drops 270 feet from Keuka Lake to Seneca Lake and contains a number of waterfalls. In the past, a number of water-powered mills were located along the outlet. A hiking trail, the Outlet Trail, follows the route of an old rail line along the northern side of Keuka Outlet. The trail is an important landmark in Yates County history and a tourism asset that provides scenic views along a stream that turns into a cascading waterfall. It has been reported that over 7,000 people visit the Outlet Trail each year. The Greenidge Station is located on the south side of Keuka Outlet near the confluence of the outlet and Seneca Lake and GLLC has requested that it be allowed to discharge up to 190,000,000 gallons per day from the repowered generating station into Keuka Outlet. Substantial discharges into the outlet are likely to result in the modification of Keuka Outlet. Activity at the repowered generating station may block access

to adjoining portions of Keuka Outlet from the south and the construction of the sections of the proposed pipeline closest to the generating station may also block access to adjoining portions of Keuka Outlet. These potential impacts were not addressed in the Negative Declaration.

73. DEC answered “No” to question 14, “The proposed action may cause an increase in the use of any form of energy.” This response does not take into account that operation of the plant will necessarily require huge quantities of natural gas, substantial amounts of biomass, and substantial amounts of electricity. In fact, building a new gas pipeline to supply natural gas to the generating station is a key component of the project.

74. DEC answered “No” to question 14c, “The proposed action may utilize more than 2,500 MWhrs per year of electricity.” GGLLC’s application materials do not specify how much electricity will be used by the generating station, but operating the station is likely utilize more than 2,500 MWhrs per year of electricity

75. DEC answered “No” to question 15c, “The proposed action may result in routine odors for more than one hour per day.” This response does not take into account that many of the emissions from Greenidge Station are likely to produce odors, even with emission control protections in place.

76. DEC answered “No” to question 16, “The proposed action may have an impact on human health from exposure to new or existing sources of contaminants.” This response does not take into account that the emissions from Greenidge Station are likely to result in health consequences, even with emission control protections in place, or that the water quality impacts of the large volumes of contaminated discharges into Keuka Outlet, Seneca Lake and area groundwater may have health impacts or that adding new wastes to the Lockwood Hills coal ash landfill may result in increased releases of contaminants from that landfill.

77. DEC answered “No” to question 16i, “The proposed action may result in an increase in the rate of disposal, or processing, of solid waste.” This response does not take into account that the operation of the generating station will result in solid waste being created by the plant’s operations. According to Greenidge’s response to question D2ri in Part 1 of the EAF, operation of the facility will produce 6,500 tons of fly ash each year.

78. DEC answered “No” to 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.” This response does not take into account that the pipeline route maps filed with the PSC show that the proposed pipeline will be constructed within 2,000 feet of the Lockwood Hills coal ash landfill.

79. The Lockwood Hills landfill is operating under a consent order entered into between Lockwood Hills LLC and DEC on February 18, 2015. The consent order indicates that the landfill is a source of groundwater contamination. The order states that DEC “has determined that groundwater at the site contains substances in excess of the duly promulgated water quality standards for, *inter alia*, total dissolved solids, boron, manganese, magnesium, iron, sodium and sulfate,” and that DEC “believes that the Leachate Pond is a source of the substances and has contributed and continues to contribute to a contravention of duly promulgated water quality standards in violation of ECL § 17-0501 and 6 NYCRR § 360-1.14(b)(2).”

80. On September 8, 2016, DEC issued the Air Permits to GLLC.

81. On September 16, 2016, the PSC issued an order granting certificates of convenience and necessity to GLLC, GPLLC and GPPC for the generating station and the pipeline.

82. On October 17, 2016, CPFL and CPNY filed a petition for rehearing of the September 16, 2016 PSC order.

83. Also on October 17, 2016, the New York State Department of Public Service issued a Notice to Proceed with Construction authorizing GPLLC and GPPC to begin activities required for the construction of the 4.6 miles of eight inch natural gas pipeline.

84. GLLC held a groundbreaking ceremony for the repowering of the Greenidge Station at the facility on October 18, 2016.

85. As of the filing of this Verified Petition, the SPDES permit and water withdrawal permit sought by GLLC for operation of the Greenidge Station have not been made public by DEC.

86. Petitioners intend to evaluate the GLLC SPDES permit and water withdrawal permit once they are issued, and will seek to amend this Verified Petition to challenge the permits after they issued by DEC if any of their terms or conditions violate state or federal law, or if the environmental review process pursuant to which they was issued violates SEQRA.

#### **IV. CAUSE OF ACTION**

87. Petitioners repeat and reallege the allegations in paragraphs 1 through 86 as though fully set forth herein.

88. DEC's determination that there would be no significant environmental impacts from the Greenidge restart project violated SEQRA and the SEQRA regulations, 6 NYCRR Part 617.

89. DEC's Negative Declaration was based on incorrect assumptions concerning current and future operations at the Greenidge Station.

90. DEC's Negative Declaration failed to compare post-repowering impacts to the correct environmental baseline, which is no operation.

91. DEC's Negative Declaration was based on a flawed and incomplete environmental assessment provided by GGLLC.

92. DEC failed to identify all relevant areas of environmental concern.

93. DEC failed to take a hard look at the impacts identified in Part 2 of the EAF and the Negative Declaration.

94. DEC failed to correctly analyze the areas of environmental concern identified in the Negative Declaration.

95. DEC failed to provide a reasoned elaboration of the basis for its conclusion that the project to repower the Greenidge Station will have no significant environmental impacts.

96. DEC improperly segmented its review of the impacts of restarting the Greenidge Station from PSC's review of building the gas pipeline to Greenidge Station.

97. DEC improperly segmented its review of the impacts of restarting the Greenidge Station from its review of the impacts of waste disposal at the Lockwood landfill pursuant to DEC's consent order with Lockwood Hills LLC.

98. DEC failed to identify and consider reasonably related long-term, short-term, direct, indirect and cumulative impacts of the project including the climate change and greenhouse gas impacts of operating the Greenidge Station and the gas pipeline.

99. DEC failed to evaluate the environmental benefits of choosing transmission upgrades, rather than repowering, to satisfy reliability needs.

100. The modifications to GGLLC's SPDES permit set forth in the Negative Declaration constitute a conditioned negative declaration, which is impermissible for a Type I action.

101. For the above reasons, DEC's determination that there would be no significant environmental impacts from the Greenidge restart project was affected by errors of law, arbitrary and capricious, and an abuse of discretion.

#### **V. RELIEF REQUESTED**

**WHEREFORE**, Petitioners respectfully request that this Court enter judgment against Respondents pursuant to CPLR §§ 7803(1), 7803(3), 7806, 3001 and 6301-6303 as follows:

A. Annulling the Title IV and Title V air permits issued on September 8, 2016 to Respondent GGLLC by Respondent DEC on the basis that issuance of the permits was made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, and an abuse of discretion;

B. Annulling Respondent DEC's SEQRA findings and June 28, 2016 Negative Declaration on the basis that the findings and Negative Declaration were made in violation of lawful procedure, affected by an error of law, arbitrary and capricious, and an abuse of discretion;

C. Enjoining Respondent DEC from approving Respondent GGLLC's air, SPDES and water withdrawal permit applications until Respondent DEC shall have complied with SEQRA in performing an environmental impact review that compares the impacts of the project to no operations and takes into account all reasonably foreseeable impacts of the project;

D. Imposing a preliminary injunction prohibiting Respondents GGLLC, GPLLC and GPPC from taking steps to repower the Greenidge Station or construct a gas pipeline to the

generating station until such time as Respondents shall have complied with all applicable federal and state laws;

- E. Granting Petitioners the costs and disbursements of this action; and
- V. Granting such other and further relief as the Court deems just and proper.

DATED: Hammondsport, New York  
December 6, 2016

Respectfully submitted,



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