

Yvonne E. Hennessey
Partner

July 28, 2022

**VIA HAND DELIVERY
AND ELECTRONIC MAIL (deppermitting@dec.ny.gov)**

Daniel Whitehead
Director, Division of Environmental Permits
New York State Department of Environmental Conservation
625 Broadway, 4th Floor
Albany, NY 12233-1750

**VIA OVERNIGHT MAIL
AND ELECTRONIC MAIL (dep.r8@dec.ny.gov)**

Thomas Haley
Regional Permit Administrator
NYSDEC, Region 8
6274 East Avon-Lima Road
Avon, NY 14414-9519

Re: DEC ID: 8-5736-00004/00017
Greenidge Generation LLC – Greenidge Generating Station
Title V Air Permit Application
Request for Hearing

Dear Mr. Whitehead and Mr. Haley:

Pursuant to Section 621.10(a)(2) of Title 6 of the New York Code of Rules and Regulations,¹ Greenidge Generation LLC (“Greenidge”) respectfully requests a hearing on the New York State Department of Environmental Conservation’s (“Department”) June 30, 2022 Notice of Denial of Title V Air Permit of Greenidge’s application to renew its Title V air permit. An adjudicatory hearing will establish that the Department’s denial of the Title V application for the Facility is both legally and factually flawed.

The Notice of Denial exceeds the Department’s jurisdiction under the Climate Leadership and Community Protection Act (“CLCPA”)² and employs an improper and incomplete analysis

¹ In accordance with Part 621.10, a copy of this Hearing Request is also being provided to the Chief Administrative Law Judge.

² Ch. 106, Laws of 2019.

that is inconsistent with the statutory language and misapplies ECL Article 75 and Part 496 to the facts presented by Greenidge’s application. It also errs in treating Greenidge’s renewal application, which “is essentially unchanged from the existing permit”³ and did not request any increase in generation capacity or any relief from any of the conditions in the existing Title V Air Permit, as a new application due to the Department’s unsupported finding of “unique circumstances.”⁴

The Department also failed to undertake a proper and thorough evaluation of Greenidge’s renewal application and supporting materials, which fully establish that the renewal of the Facility’s Title V permit is in no way inconsistent with, nor does it interfere with, the future emissions reductions targets in the CLCPA. To the contrary, even if running at full permitted capacity, the Facility accounts for a mere 0.3 percent of the approximately 38,000 MW of power generation capacity in the State of New York and the Facility’s emission levels equate to a mere 0.2% of the statewide emissions reduction target for 2030. The important goals of the CLCPA are simply not impacted by the proposed renewal. A hearing will establish that the Department’s opposite conclusion is unsupported and contrary to the application and supporting materials before it.

Furthermore, in evaluating the Facility’s consistency with the statewide greenhouse gas (“GHG”) emissions limits, the Department ignores Part 496’s express purpose to limit GHG emissions “for the years 2030 and 2050, as a percentage of 1990 emission levels of 60 percent and 15 percent[.]” 6 NYCRR 496.1. If the Department had applied Part 496 as plainly written, it would have been compelled to renew the permit because the undisputed facts show that its current onsite and upstream potential carbon dioxide equivalent emissions are already approximately 70 percent lower than the Facility’s actual emissions in 1990, the statewide barometer enacted in the CLCPA to measure statewide emissions reductions.

Greenidge’s renewal application also provided ample facts that compelled the Department to provide “a detailed statement of justification as to why such limits/criteria may not be met and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.”⁵ Even using the Department’s flawed interpretation of the required showing of justification,⁶ the record before the Department showed unequivocally that the “absence of the [Facility] will result in economic, social, or environmental harm to the public.”⁷ The Department compounded these errors by both concluding that the Facility is a “peaker” plant and relying upon its assessment of grid reliability, which is squarely outside the Department’s expertise.

³ See Department’s September 9, 2021 Permit Review Report (“PRR”) Renewal 1, p. 2.

⁴ Notice of Denial, p. 8.

⁵ CLCPA, Section 7(2).

⁶ Greenidge reserves its rights to challenge the Department’s interpretation of Section 7(2)’s required analysis. Section 7(2) does not impose a demonstration of project need.

⁷ Notice of Denial, p. 16.

Daniel Whitehead
Thomas Haley
July 28, 2022
Page 3

Greenidge also proposed significant mitigation in the form of a binding permit condition which would reduce the Facility's permitted GHG emissions by an additional 40% by 2025, five years before the first CLCPA emissions reduction target date in 2030, as well as a commitment to transition to a zero-carbon emitting facility by 2035 – a full five years before the statewide target for the electric generating sector. Rather than working with Greenidge to meaningfully evaluate its proposed mitigation as part of the application process, the Department instead chose to wholly ignore Greenidge's proposal. The Department's conclusory disregard of this meaningful mitigation proposal by the applicant, which would surely help to facilitate New York's ability to meet the GHG reduction standards established by the CLCPA, ECL Article 75 and Part 496, is not only nonsensical but also wholly unsupported by the record. Adjudication of this issue will establish that that Department erred in disregarding Greenidge's offer of substantial, binding mitigation that would further reduce the Facility's GHG emissions to zero by 2035 and, in turn, reduce statewide GHG emissions.

Greenidge respectfully requests an adjudicatory hearing pursuant to 6 NYCRR § 621.10(a)(2) to resolve the myriad of legal and factual issues raised by Department's June 30, 2022 Notice of Denial. In the meantime, Greenidge reserves all rights and defenses.

Very truly yours,



Yvonne E. Hennessey

cc: Michele Stefanucci, Esq., NYSDEC OHMS (via hand delivery)
T. Berkman, Esq., NYSDEC OGC (via electronic mail only)
J. Binder, Esq., NYSDEC OGC (via electronic mail only)
Greenidge Generation LLC (via electronic mail only)