

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
New York on December 15, 2016

COMMISSIONERS PRESENT:

Audrey Zibelman, Chair
Patricia L. Acampora
Gregg C. Sayre
Diane X. Burman

CASE 15-E-0516 - Petition of Greenidge Generation LLC for an Original Certificate of Public Convenience and Necessity and Lightened Regulation.

CASE 15-G-0571 - Petition of Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation for an Expedited Original Certificate of Public Convenience and Necessity and for Incidental or Lightened Regulation.

ORDER DENYING REHEARING

(Issued and Effective December 15, 2016)

BY THE COMMISSION:

INTRODUCTION

By order issued September 16, 2016 in these proceedings (Order), the Commission granted a Certificate of Public Convenience and Necessity (CPCN), pursuant to Public Service Law (PSL) §68(1), allowing Greenidge Generation LLC (Greenidge) to resume operation of the Greenidge Generating Station, located in the Town of Torrey, Yates County, and also provided for lightened regulation of the facility. That Order also granted a CPCN approving the request of Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation (together, Greenidge Pipeline) for the exercise of consent to use municipal property (i.e., road crossings) in conjunction with a pipeline

for supply of natural gas to the facility, and further granted incidental and lightened regulation as gas corporations.¹

For the purpose of compliance with the State Environmental Quality Review Act (SEQRA), coordinated review with other agencies was conducted. The New York State Department of Environmental Conservation (DEC) assumed the role of lead agency. It classified the Greenidge facility's proposed resumption of operation as a Type I action, and issued an amended negative declaration of significance regarding that action. The Commission, as an involved agency under SEQRA, relied upon the DEC's declaration in finding that SEQRA review had been completed.

The Committee to Preserve the Finger Lakes and the Coalition to Protect New York (together, CPFL), by petition filed October 17, 2016, timely sought rehearing of the Order.² CPFL claims that the Order is affected by errors of fact and law because it relied upon the DEC's negative declaration, which it argues was non-compliant with the requirements of SEQRA. It also requests that we order Greenidge to cease and desist construction and operation during the pendency of its petition for rehearing.

Greenidge and Greenidge Pipeline filed its opposition to CPFL's petition for rehearing on October 31, 2016. They argue that PSL § 130 deprives the Commission of authority to take any action that would interfere with construction of their

¹ The Commission also granted a PSL Article VII Certificate of Environmental Compatibility and Public Need (CEC&PN), pursuant to PSL § 121-a(7), authorizing construction of the pipeline, by order issued September 16, 2016 in Case 15-T-0586.

² CPFL's petition is timely because the 30-day period for rehearing under PSL § 22 ended on a Sunday, and the petition was filed on the next business day. General Construction Law § 25-a(1).

pipeline, and that CPFL's SEQRA claims do not identify any errors of law or fact warranting rehearing.

For the following reasons, the Commission finds that CPFL's petition fails to state an error of law or fact. Rehearing is therefore denied.

DISCUSSION

Rehearing may be sought only on the grounds that the Commission committed an error of law or fact or that new circumstances warrant a different determination.³ A petition for rehearing must separately identify and specifically explain and support each alleged error or new circumstance said to warrant rehearing.

The CPFL asserts that the Commission's reliance on DEC's SEQRA negative declaration of significance was an error of fact and law. It alleges that the declaration was based on factual errors and did not comply with the statutory and regulatory requirements of SEQRA. In essence, then, CPFL argues that the Commission, as an involved agency under SEQRA, cannot rely upon the lead agency's declaration of significance.

To the contrary, however, the SEQRA regulations plainly state that an involved agency is bound by the lead agency's declaration. Those regulations provide that:

If a lead agency exercises due diligence in identifying all other involved agencies and provides written notice of its determination of significance to the identified involved agencies, then no involved agency may later require the preparation of an [environmental assessment form], a negative declaration or an [environmental impact statement] in connection

³ 16 NYCRR §3.7(b).

with the action. The determination of significance issued by the lead agency following coordinated review is binding on all other involved agencies.⁴

The DEC complied with these requirements as they pertain to the Commission. By letter dated June 16, 2015, the DEC asserted its intent to assume the role of lead agency and requested the Commission's consent. The DEC published notice of its SEQRA determination in the July 29, 2016 edition of the Environmental Notice Bulletin, and provided a copy to the Office of Environmental Certification and Compliance within the Department of Public Service. Consequently, the Commission is not only entitled to rely upon the DEC's declaration; it has no choice other than to do so.⁵

To the extent CPFL asks for a determination that the DEC's declaration was unlawful, that is a decision which is not ours to make. Only a Supreme Court, in a proceeding pursuant to Article 78 of the Civil Practice Law and Rules, can make such a determination. Indeed, CPFL is currently seeking such relief against the DEC in Supreme Court, Yates County.⁶ In that proceeding, CPFL requests that the court assess whether DEC's declaration was affected by an error of law.⁷ CPFL's request for the same relief here, then, is neither feasible nor warranted. The Commission therefore finds that CPFL has failed to state an error of law or fact or new circumstances warranting a different determination.

⁴ 6 NYCRR § 617.6(b)(3)(iii).

⁵ Matter of Gordon v. Rush, 299 A.D.2d 20, 29 (3d Dep't 2002); aff'd 100 N.Y.2d 236 (2003).

⁶ Committee to Preserve the Finger Lakes v. New York State Dept. of Env'tl. Conservation, Index No. 2016-0165 (Sup. Ct., Yates County, filed Oct. 28, 2016).

⁷ Id., Verified Petition, ¶3.

Greenidge Pipeline previously filed for a PSL § 68 petition for the exercise of consent to use municipal property (i.e., road crossings) in conjunction with its pipeline. Its argument that PSL §130 (and Article VII generally) governs consent to those road crossings is an unexplained shift in position. Because rehearing is denied on SEQRA grounds, the Commission need not reach Greenidge's PSL § 130 claim, inasmuch as CPFL's request for a stay of construction and operation can be denied.

The Commission orders:

1. The Committee to Preserve the Finger Lakes and the Coalition to Protect New York's petition for rehearing is denied.
2. This proceeding is closed.

By the Commission,

(SIGNED)

KATHLEEN H. BURGESS
Secretary