

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

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.

RULING CONCERNING PARTY STATUS REQUESTS AND PROCESS

(Issued December 28, 2015)

MICHELLE L. PHILLIPS,
Administrative Law Judge:

BACKGROUND

On September 10, 2015, Greenidge Generation, LLC (Generation) filed a petition, initiating Case 15-E-0516, seeking a Certificate of Public Convenience and Necessity under Public Service Law (PSL) §68 to resume the operation of an existing generating plant that has been out of service since March 19, 2011. Generation also seeks an order confirming that it would be subject to lightened regulation as a generator participating in the wholesale energy market.¹ Case 15-G-0571 was initiated by a similar petition pursuant to PSL §68 filed on September 24, 2015, by affiliated companies, Greenidge Pipeline, LLC, and Greenidge Pipeline Properties Corporation (collectively, the Pipeline Companies), seeking a Certificate of Public Convenience and Necessity to operate a proposed gas pipeline in the Towns of Milo and Torrey and to exercise the

¹ The request for an order concerning lightened regulation was published in the State Register on October 7, 2015, in conformance with State Administrative Procedure Act (SAPA) §202(1), which provides for notice and comments regarding Commission action defined as rulemaking. The period for submitting comments in response to the notice expired on November 23, 2015.

rights granted to them under a road crossing agreement with the Town of Torrey. Their petition also requests that their operation as a gas corporation be governed by incidental or lightened regulation by the Commission.² Following some supplementation of one of the petitions, as requested by Department counsel, both petitions are deemed compliant with applicable filing requirements as of September 28, 2015.

In a third, related proceeding initiated October 2, 2015, Case 15-T-0586, the Pipeline Companies have applied for a Certificate of Environmental Compatibility and Public Need pursuant to PSL §121-a(3) to construct a gas transmission pipeline, roughly 4.6 miles in length, located in the Towns of Milo and Torrey in Yates County. The pipeline would connect the power plant owned by Generation with the existing Empire Gas Pipeline at a point on Himrod Road in the Town of Milo, enabling Generation to convert the plant to run on natural gas.

Pursuant to public notice, I presided at a public statement hearing on November 4, 2015, in Dresden, New York, to receive public comments regarding all three petitions.³ Fifty-three people spoke at the public statement hearing, most of them urging the denial of one or more of the petitions. Recognizing that the November 4, 2015 public statement hearing was lengthy and some people might have left before getting an opportunity to speak, and to ensure that all persons have had a chance to

² The request for an order concerning lightened regulation was published in the State Register on October 21, 2015, in conformance with SAPA §202(1), which provides for notice and comments regarding Commission actions defined as rulemaking. The period for submitting comments in response to the notice expired on December 7, 2015.

³ To the extent that the Petitioners were requesting expedited approval pursuant to 16 NYCRR 21.10, the holding of the public statement hearing has effectively denied that request.

comment, on November 25, 2015, the Commission issued a Notice Inviting Further Public Comment in these proceedings.

I conducted a procedural conference in Albany on November 10, 2015, to identify potential parties and provide all interested persons an opportunity to present and explain their proposals regarding the procedures to be followed in this case. The notice of the conference specifically advised that we would discuss at the conference whether any issues of fact presented by the petitions, application, or the public comments (both those made at the public statement hearing and those submitted in writing to the agency) warrant an evidentiary hearing.

Active participants at the procedural conference, in addition to Generation, the Pipeline Companies, and Department of Public Service Staff (Department Staff), were the Committee to Preserve the Finger Lakes (CPFL) and Dr. John Dennis. CPFL representatives and Dr. Dennis had also made statements at the public statement hearing, and CPFL has also submitted several sets of written comments. Both CPFL and Dr. Dennis have requested party status.

CPFL describes its interest as concern that renewed operation of the Greenidge Generating Station and construction of the proposed gas pipeline will have negative environmental impacts. CPFL asserts that most of its members live in Yates County and many of them have done substantial research on these issues and are prepared to provide evidence regarding these issues to the Commission.

Dr. Dennis states that his interest is in "assisting the implementation of the Governor's Reforming the Energy Vision." He says that he will represent "a positive, forward-thinking approach that will be more likely to ensure robust long-lasting employment opportunities within the Town of Torrey than would the current pipeline-cum-power plant plan as

presently presented." At the procedural conference, he also expressed an interest in the pipeline's potential impacts on a nearby landfill and on climate change generally.⁴

Having considered the positions expressed at the public statement hearing, the procedural conference and in written submissions, I am now ruling on the process to be followed hereafter in these cases and addressing the pending requests for party status. Because the statute governing these cases differs from the one applicable to Case 15-T-0586 and because the parties have taken somewhat different positions in that case, I am issuing a separate ruling under that case number. This ruling therefore applies only to Cases 15-G-0571 and 15-E-0516.

EVIDENTIARY HEARING

The only request for an evidentiary hearing has been made by CPFL.⁵ As an initial matter, CPFL claims that since Generation seeks authority to convert a permanently retired coal-fired generating station to a natural gas fired generating station and to commence new operations under entirely new ownership, such circumstances require that the petition be considered pursuant to PSL Article 10, and not PSL §68. CPFL asserts that there is a factual dispute regarding whether or not the generating station was permanently retired in 2012, and that this factual issue must be resolved in an evidentiary hearing in

⁴ See, e.g., November 10, 2015 Procedural Conference Transcript (Tr.), p. 30.

⁵ See CPFL Comments dated November 9, 2015 at 1 and Supplemental Comments dated November 23, 2015 at 2, 19. See Tr. 66.

order to determine whether or not an Article 10 proceeding is required.⁶

Even if review of the petition continues under PSL §68, CPFL argues that Generation has failed (1) to show that commencing new operations at the Greenidge Generating Station will serve either public need or the public interest and (2) to disclose its business plans. CPFL says that the petition fails to demonstrate "the adequacy of the existing service to meet the reasonable needs of the public in the territory involved" or to address how Generation plans to operate in rapidly changing electricity markets, thereby raising concerns that it has not done adequate planning and that its operations may not be successful. CPFL requests an opportunity to obtain discovery of information regarding capacity, reliability and power quality as well as Generation's business plans and financial viability.⁷

CPFL asserts that authorizing the plant to reopen using fossil fuels would conflict with the 2015 State Energy Plan and with PSL §5's mandate that jurisdictional entities perform public service responsibilities with "care for the public safety" and "preservation of environmental values." CPFL contends that since the Commission has defined "adequate service" as "service that is reliable, environmentally compatible and sustainable," the Commission needs to take into account the negative environmental impacts of the reopening the Greenidge Generating Station in evaluating Generation's Certificate request.

⁶ As CPFL notes, an Article 10 proceeding would require extensive environmental and public health impact analyses, among other studies.

⁷ CPFL also requests discovery of, and an opportunity to review and comment on, the System Reliability Impact Study (SRIS) for the Greenidge facility prepared by New York Independent System Operator (NYISO). Supplemental Comments at 8.

CPFL takes issue with determinations made and permits issued by the NYS Department of Environmental Conservation (DEC) with respect to the generating station. CPFL asserts that DEC has not conducted adequate environmental review of the Greenidge permit applications, and, as a result, DEC's conclusions regarding environmental impacts cannot be relied upon in assessing the public need for this petition. CPFL also argues that, if the petition is reviewed under PSL §68, the Commission is an involved agency and, for purposes of review of the proposed project under the State Environmental Quality Review Act (SEQRA), the Commission must evaluate the environmental impacts of the project. CPFL requests an opportunity to obtain discovery of information concerning coal ash landfill discharge in the possession of Petitioner and the opportunity to present additional evidence on water withdrawal impacts in these proceedings.

* * * * *

The well-attended public statement hearing and the numerous written comments submitted in these cases have provided the Commission and Department Staff with valuable insights, information and arguments. The interest and engagement of members of the public is welcomed and beneficial to creating a robust record for Commission consideration of the matters presented to it in these petitions. As noted above, the Commission will continue to receive and consider comments submitted in these cases. Under PSL §68, the "due hearing" requirement is met through these procedures, so that the decision to conduct a further evidentiary hearing is discretionary. I conclude that the process conducted to date, including continued submission of written comments and further analysis by Department Staff, as necessary, will be sufficient

to develop a record for Commission decision, and that an evidentiary hearing is not warranted at this time.

It appears that the concerns raised by CPFL and Dr. Dennis are clearly stated and can be addressed without the need for cross-examination of witnesses. For example, while CPFL argues that there is a factual dispute regarding whether or not the facility was permanently retired, it cites to Generation's verified petition for its recitation that the plant's prior owner submitted a retirement notice, and CPFL attached a copy of that retirement notice as an exhibit to its supplemental comments. Thus, all that remains of this particular argument is CPFL's contention that, as a matter of law, the petition is properly reviewed pursuant to PSL Article 10, instead of PSL §68. Without reaching the merits of this argument, it is clearly legal, not factual, in nature.

CPFL's challenges to the requested findings that the generating station is needed and that its renewed operation is in the public interest are, like Dr. Dennis's positions, policy arguments based on their assertions that the Commission should consider environmental impacts and alternative means of meeting reliability goals, such as those under consideration in the REV proceeding, in evaluating these petitions. These positions can be, and indeed have already been, forcefully articulated without the need for evidentiary hearings. Moreover, because the challenges to the granting of a certificate for the Pipeline Companies to operate are primarily based on the challenges to granting a certificate for Generation, they do not raise any independent need for witness testimony or cross-examination in an evidentiary hearing.

CPFL's challenges to DEC's determinations and issuance of permits with respect to the generating station are based on a mix of legal and factual arguments. To the extent that CPFL

believes further inquiry is warranted into the factual basis for DEC's environmental review of the permit applications for the generating plant, such factual allegations must be pursued and resolved in proceedings before DEC in the first instance.⁸ The remainder of CPFL's argument regarding DEC's permitting process is that a failure by DEC to conduct adequate environmental review precludes this agency from relying on DEC's conclusions. This is a legal argument that can be and has been vigorously advocated in this case through the existing notice and comment process. Also, for an involved agency, which CPFL argues the Commission is for purposes of reviewing Generation's petition, SEQRA compliance can be achieved through reference to the SEQRA proceedings conducted by other lead agencies and the making of additional findings, to the extent necessary, in a notice and comment process as opposed to a process involving an evidentiary hearing.⁹

Both CPFL and Dr. Dennis have already submitted their legal and factual arguments, summarized above, to the Commission for consideration in this case. To the extent such comments contain relevant factual information, they may be further evaluated by Department Staff and ultimately may inform this agency's decision on whether to make its own additional

⁸ It appears that DEC's determinations may not yet be final. See Letter to Administrative Law Judge M. Phillips from George M. Pond, Esq., providing notice that the United States Environmental Protection Agency's Region 2 objected to certain aspects of the Draft Title V Operating Permit for the Greenidge Station previously issued by DEC.

⁹ See, e.g., Case 10-E-0501 - Petition of CPV Valley, LLC, Order Granting Certificate of Public Convenience and Necessity, Authorizing Lightened Ratemaking Regulation, and Approving Financing (issued May 9, 2014), at 12-14, and Case 07-E-0257, Noble Chateaugay Windpark LLC, Order Granting a Certificate of Public Convenience and Necessity and Providing for Lightened Regulation (issued November 19, 2007) and Findings Statement (issued November 19, 2007).

environmental findings and to impose conditions on the generating plant that would avoid and minimize adverse environmental impacts to the maximum extent practicable.¹⁰

In the absence of hearings, Staff should continue its review and processing of these cases and, in its advisory capacity, make internal recommendations to the Commission as to whether and under what conditions to grant the relief requested in the petitions.

PARTY STATUS

Petitioners do not object to the party status requests of either CPFL or Dr. Dennis. However, my decision that this case can proceed without an additional evidentiary-type hearing renders these requests essentially moot, at this time. Party status is necessary to engage in discovery, to submit testimony, and to cross-examine witnesses, but these activities will not occur in this case. Meanwhile, the comments submitted by CPFL and Dr. Dennis will be seriously considered and evaluated regardless of their status as parties. Consequently, I decline to grant party status at this time, without any prejudice to CPFL or Dr. Dennis to renew their requests at a later time should such status become important.

(SIGNED)

MICHELLE L. PHILLIPS

¹⁰ In its Supplemental Comments (at 13), CPFL noted that it anticipated obtaining access from DEC to fish impingement and entrainment studies related to the generating plant, and it requested the opportunity to provide the Commission with comments on those studies. The notice providing the opportunity for submission of further comments will enable CPFL to do so.