

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

Case 15-E-0516 - Greenidge Generation, LLC

**Case 15-G-0571 - Greenidge Pipeline, LLC and
Greenidge Pipeline Properties Corporation**

**Case 15-T-0586 - Greenidge Pipeline, LLC, and
Greenidge Pipeline Properties Corporation**

COMMENTS OF THE COMMITTEE TO PRESERVE THE FINGER LAKES

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INTRODUCTION

Pursuant to the Commission’s notice dated October 14, 2015, regarding public comments in Cases 15-E-0516, 15-G-0571 and 15-T-0586, the Committee to Preserve the Finger Lakes (“CPFL”) respectfully submits the following comments in opposition to the petitions and application filed in the those cases. 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. Membership of CPFL is centered in Yates County, New York.

For the reasons set forth below, CPFL requests that the motions filed in Cases 15-E-0516, 15-G-0571 and 15-T-0586 requesting expedited proceedings be denied, that further hearings be scheduled, and that discovery be allowed.

OVERVIEW OF THE PETITIONS AND APPLICATION

On September 9, 2015, the new owner of the Greenidge Generating Station in Dresden, New York, Greenidge Generation LLC (“GGLLC”), filed a verified petition with this Commission for an expedited order granting an original certificate of public convenience and necessity and lightened regulation (the “GGLLC Petition”) giving approval to return Greenidge Unit #4 “to service as a merchant generating facility operating in the wholesale power markets administered by the New York Independent System Operator, Inc. (‘NYISO’).”¹ The New York State Department of Public Service (“DPS”) notified GGLLC’s attorney that the Generating Petition was deficient on September 14, 2015, and the Generating Petition was amended and restated on September 15, 2015. The amended and restated Generating Petition was subsequently

¹ Verified Petition of Greenidge Generation LLC for Expedited Order Granting Original Certificate of Public Convenience and Necessity and Lightened Regulation, Case 15-E-0516, September 9, 2015, p. 1.

corrected on September 21, 2015. The amended and corrected versions made very few changes to the original petition.

On September 23, 2015, two affiliates of GGLLC, Greenidge Pipeline LLC (“GPLLC”) and Greenidge Pipeline Properties Corporation (“GPPC”), filed a verified petition with this Commission for an expedited original certificate of public convenience and necessity and for incidental or lightened regulation (the “Pipeline Petition”) seeking authority to operate “a proposed natural gas pipeline in the Towns of Torrey and Milo in Yates County, New York (the ‘Pipeline’) under the provisions of a long-term gas transportation agreement” with GGLLC.² The Pipeline Petition states that, “Applicants are also preparing an application for a certificate of environmental compatibility and public need for the Pipeline pursuant to section 121-a(3) of the Public Service Law (“PSL”), Article VII, which application will be filed with the Commission in the near future.”³ The application filed by GPLLC and GPPC on October 2, 2015, to construct a fuel gas transmission line, containing approximately 24,318 feet of 8” steel pipeline, to be located in the Towns of Milo and Torrey, Yates County⁴ is apparently the application for a certificate of environmental compatibility and public need referred to in the Pipeline Petition.

² Verified Petition of Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation for Expedited Order Granting Original Certificate of Public Convenience and Necessity and Lightened Regulation, Case 15-G-0571, September 23, 2015, p. 1-2.

³ *Id.* at 2.

⁴⁴ Application of Greenidge Pipeline LLC and Greenidge Pipeline Properties Corporation construct a fuel gas transmission line, containing approximately 24,318 feet of 8” steel pipeline, to be located in the Towns of Milo and Torrey, Yates County, Case 15-T-0586, October 2, 2015

DISCUSSION AND COMMENT

A. The GLLC Petition Fails to Demonstrate a Public Need that Will Be Served by Reopening the Greenidge Generating Station

The regulations of the Public Service Commission require that an applicant for a proposed service demonstrate “the adequacy of the existing service to meet the reasonable needs of the public in the territory involved.”⁵ GLLC fails to demonstrate any such need in its petition. The only statement regarding need in the GLLC Petition is that “the Facility will provide needed energy, capacity, voltage support and other valuable generation-related services to NYSEG and NYISO on a purely merchant basis.”⁶ No capacity studies, reliability studies or power quality studies are referenced to back up this claim. Low-voltage conditions were briefly mentioned at the public meeting in Dresden on November 4, 2015, but again, no references were provided. The burden is on the applicant to demonstrate a public need for the reopening, and GLLC has failed to meet this burden.

CPFL requests an opportunity to obtain discovery of capacity, reliability and power quality information in the possession of GLLC.

B. Without a Public Need for the Generating Station, There Is No Public Need for a New Gas Pipeline to the Station

The public need for the pipeline is entirely dependent upon the public need for the generating station. Because GLLC has failed to demonstrate a public need for reopening the generating station, there is no basis for determining that there is a public need for a new gas pipeline to the generating station.

⁵ 16 NYCRR § 21.3(g)(1).

⁶ GLLC Petition, p. 12.

C. The GLLC Petition Fails to Explain the Company's Business Plan

The GLLC Petition states that the Greenidge facility seeks to serve “as a merchant generating facility operating in the wholesale power markets,” but the petition contains no information regarding the company’s business plan for producing the electricity it plans to sell. GLLC’s failure to address how it plans to operate in our state’s rapidly changing electricity markets raises concerns that the company has not done adequate planning and that its operations may not be successful. The company fails to address how increasing fuel costs might affect its ability to operate. Solar, wind and hydro generating facilities utilize sources of fuel that are free once the facilities are installed. In contrast, the fuel sources the Greenidge Station is equipped to use are likely to become increasingly costly over time.

A recent article in *Bloomberg Business* explains that the cost disadvantages of gas over solar will increase over time.⁷ As more renewables are installed, the article explains, coal and natural gas plants will be used less. As coal and gas are used less, the cost of using them to generate electricity will go up. According to the article, this presents “a serious new risk for power companies planning to invest in coal or natural-gas plants.”⁸ The article concludes, “It has never made less sense to build fossil fuel power plants.”⁹

CPFL requests an opportunity to conduct discovery of GLLC’s business plans.

⁷ “Solar and Wind Just Passed Another Big Turning Point: It has never made less sense to build fossil fuel power plants,” Tom Randall, *Bloomberg Business*, October 6, 2015, <http://www.bloomberg.com/news/articles/2015-10-06/solar-wind-reach-a-big-renewables-turning-point-bnef>

⁸ *Id.*

⁹ *Id.*

D. Reopening the Greenidge Station is Contrary to the State Energy Plan

Authorizing Greenidge to reopen using fossil fuels would conflict with the 2015 State Energy Plan.¹⁰ Pursuant to this plan, New York has set targets to reduce greenhouse gas emissions to 40% below 1990 levels by 2030 and 80% below 1990 levels by 2050. These goals were reaffirmed by Governor Cuomo on October 8, 2015, when he signed the “Under 2 MOU” (Memorandum of Understanding) affirming New York’s commitment to a 40% reduction in greenhouse gas emissions by 2030 and an 80% reduction by 2050.¹¹ These targets cannot be achieved if New York continues to bring fossil-fueled generating infrastructure online.

E. Granting the Petitions and Application Will Have a Significant Effect on the Environment and will Damage Natural Resources and Public Health

The Commission’s enabling statutes mandate that the Commission preserve the environment and conserve natural resources. PSL Section 5(1) states that the Commission “shall encourage all persons and corporations subject to its jurisdiction to formulate and carry out long-range programs . . . for the performance of their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.” In accordance with this mandate, the Commission has defined “adequate service” as “service that is reliable, environmentally compatible and sustainable,”¹² and has determined that “matters such as . . . environmental externalities, energy efficiency,

¹⁰ <http://energyplan.ny.gov/Plans/2015>.

¹¹ Governor Cuomo, Joined By Vice President Gore, Announces New Actions to Reduce Greenhouse Gas Emissions and Lead Nation on Climate Change, Governor’s Press Release, October 8, 2015, <https://www.governor.ny.gov/news/governor-cuomo-joined-vice-president-gore-announces-new-actions-reduce-greenhouse-gas-emissions>

¹² Proceeding on Motion of the Commission to Establish a Long-Range Electric Resource Plan and Infrastructure Planning Process, Order Initiating Electricity Reliability and Infrastructure Planning, PSC Case No. 07-E-1507, at 5 n. 11 (Dec. 24, 2007). See generally the comments filed by the Institute for Policy Integrity at New York University School of Law in Proceeding on Motion of the Commission in Regard to Reforming the Energy Vision, Case 14-M-0101, October 26, 2015.

environmental justice, . . . economic development, . . . global warming emissions, . . . and other issues critical to the public interest may be considered.”¹³ In its February 2014 Order in the Con Ed ratemaking proceeding, the Commission indicated that Con Edison should assess “societal cost factors,” such as “[t]he risks and probabilities of future climate events, . . . the impact of outages of varying duration on affected customers, and the potential risk to critical facilities,” and monetize them in benefit-cost analysis “to the extent that reasonable values can be established and will be of practical relevance.”¹⁴

For these reasons, the Commission needs to take into account the negative environmental impacts of the reopening the Greenidge Generating Station in evaluating the request of GGLLC for a certificate of convenience and public necessity. In its petition, GGLLC states that “DEC has already concluded that operation of the existing Facility in accordance with the terms of its proposed draft Air Permits, draft water withdrawal permit and draft SPDES permit will not have a significant adverse effect on the environment.”¹⁵ Actually, in the case of the pending water withdrawal permit, DEC did not determine that issuance of the permit would have no significant impact on the environment. Rather, it determined that the permit application was exempt from environmental review, for reasons CPFL strongly disputes.¹⁶ CPFL also strongly disputes DEC’s determinations of no significant environmental impact for the air and SPDES permits.¹⁷ Because

¹³ *Id.* at 5-6.

¹⁴ Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Approving Electric, Gas, and Steam Rate Plans in Accord with Joint Proposal, Case 13-E-0030, at 68 (February 21, 2014).

¹⁵ GGLLC Petition at 14.

¹⁶ See CPFL Comments on Greenidge DEC permit applications attached hereto as Exhibit A.

¹⁷ *Id.*, See also “Of Zombie Permits and Greenwash Renewal Strategies: Ten Years of New York’s So-Called ‘Environmental Benefit Permitting Strategy’,” Coplan, Karl S., *Pace Environmental Law Review*, Vol. 22 No. 1, Spring 2005.

DEC has not conducted adequate environmental reviews of the Greenidge permit applications, has segmented its review of the applications and has not given the public adequate opportunities to comment on the pending applications, DEC's conclusions regarding environmental impacts cannot be relied upon in assessing the public need for proposals currently before the Commission.

1. Air Quality Impacts

The harmful health impacts and climate change impacts of fossil fuel emissions are well understood.¹⁸ Such emissions could be avoided if renewable energy sources were used to fuel a different type of generating facility and such alternatives need to be evaluated in assessing the public need for the Greenidge plant. DEC proposes to issue Title IV and Title V air permits that would allow Greenidge to release into the atmosphere in excess of 100 tons per year of each of the following: particulate matter smaller than 10 microns (PM-10), total particulates (PM), sulfur dioxide (SO₂), oxides of nitrogen (NO_X), and carbon monoxide (CO) from burning gas at the facility.¹⁹ Additional releases would also result from the production of the gas used at the facility, which may be coming from the fracked gas fields of Pennsylvania and Ohio.

CPFL requests an opportunity to present additional evidence on air quality impacts in these proceedings.

¹⁸ See *e.g.*, *The Hidden Costs of Fossil Fuels*, Union of Concerned Scientists, http://www.ucsusa.org/clean_energy/our-energy-choices/coal-and-other-fossil-fuels/the-hidden-cost-of-fossil.html, and the studies cited on this webpage.

¹⁹ See the DEC's August 12, 2015 Environmental Notice Bulletin, http://www.dec.ny.gov/enb/20150812_reg8.html.

2. *Water Withdrawal Impacts*

The harmful impacts of once-through cooling systems at thermo-electric generating facilities are well documented.²⁰ A 2010 report on the impact of once-through cooling systems in New York power plants concludes, “Closed-cycle cooling is a proven technology that reduces power plant water intake by up to 98 percent, thereby reducing the damage to aquatic life by up to 98 percent.”²¹ The harmful environmental effects of once-through cooling could be avoided if renewable energy sources were used to fuel a non-thermo-electric generating facility. Such alternatives need to be evaluated in assessing the public need for the Greenidge plant.

Notwithstanding DEC’s own 2011 guidance on Best Available Technology (“BTA”) for Cooling Water Intake Structures,²² which requires closed cycle cooling, DEC proposes to allow once-through cooling at the Greenidge facility. DEC proposes to issue a very wasteful water withdrawal permit to allow GGLLC to withdraw up to 159,897,000 gallons per day (GPD) of water from Seneca Lake for operation of its once-through cooling system.²³

CPFL has been hampered in its ability to adequately evaluate the environmental impacts of the Greenidge once-through cooling system on Seneca Lake because the DEC has not yet responded to a FOIL request filed in August 2015 seeking copies of the fish impingement and entrainment studies previously conducted by the plant.

²⁰ *Reeling in New York’s Aging Power Plants: The Case for Fish-Friendlier Power*, Kyle Rabin, Network for New Energy Choices, June 2010, http://www.gracelinks.org/media/pdf/fishkill_report_online.pdf [accessed June 27, 2015].

²¹ *Id.*

²² “BTA for Cooling Water Intake Structures,” July 10, 2011, http://www.dec.ny.gov/docs/fish_marine_pdf/btapolicyfinal.pdf [accessed July 5, 2015].

²³ *Id.*

CPFL requests that the Commission allow discovery of fish impingement and entrainment information in the possession of GLLC.

CPFL requests an opportunity to present additional evidence on water withdrawal impacts in these proceedings.

3. *Water Quality Impacts*

The harmful impacts on water quality of mercury and other pollutants leaching from coal ash waste sites are widely recognized,²⁴ Such discharges from the coal ash landfill adjacent to the Greenidge Generating Station and the proposed pipeline should be cleaned up. Instead, DEC proposes to facilitate discharge of the leaching wastes by allowing discharges from the landfill to be disposed of in Seneca Lake through a Greenidge Pollution Discharge Elimination System (SPDES) permit that will allow Greenidge to discharge up to 190,000,000 GPD of water contaminated with mercury and other pollutants into Seneca Lake. The volume of the discharges DEC proposes to allow on a daily basis is 30 million GPD greater than the maximum volume of withdrawals it proposes to allow — approximately 160,000,000 GPD. Judging from the discharge sources described in the proposed SPDES permit, the 30 million GPD in excess discharges appear to be coming in substantial part from the coal ash landfill next to the generating station. Discharges from the coal ash landfill are explicitly referenced in the DEC’s proposed SPDES permit. The permit states that the sources of permitted discharges include: “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

²⁴ Jeff, Stant, *Out of Control: Mounting Damages From Coal Ash Waste Sites: Thirty-one New Damage Cases of Contamination from Improperly Disposed Coal Combustion Waste*, Environmental Integrity Project and Earthjustice, February 24, 2010, <http://earthjustice.org/sites/default/files/library/reports/ej-eipreportout-of-control-final.pdf>.

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/l 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; and bottom ash sluice system discharges with a daily maximum of 50 ng/l of mercury.’’²⁵

Some of the harmful water quality effects of these discharges could be avoided if renewable energy sources were used to fuel a non-thermo-electric generating facility that was not allowed to discharge wastes leaching from the coal ash landfill into Seneca Lake. Such alternatives need to be evaluated in assessing the public need for the Greenidge plant.

CPFL requests that the Commission allow discovery of information in the possession of GGLLC and its affiliates regarding the discharges from the coal ash landfill.

CPFL requests an opportunity to present additional evidence on water quality impacts in these proceedings.

F. Notices of Petitions for Expedited Proceedings Failed to Comply with Notice Requirements

Under Section 21.10 (b) of the PSC regulations, 16 NYCRR 21.10 (b), the PSC may grant a motion for expedited proceedings if no one files “a written objection stating substantive reasons for opposition to the granting of such a motion” “within 10 days of the date of publication of the newspaper notice required by paragraph (a)(3) of this section.” CPFL notes that in the Greenidge cases, the applicants failed to comply with the notice requirements in paragraph (a)(3) of Section 21.10 (b). The notices published in these cases do not contain the statement “that any person opposed to the granting or renewal of the franchise should, within 10 days of the date of the

²⁵ *Id.*

publication of the notice, notify in writing the secretary of the Public Service Commission at Agency Building 3, Empire State Plaza, Albany, NY 12223, of the reasons for the opposition,” as required by paragraph (a)(3)(iii). For this reason, the applicants’ motions for expedited proceedings should not be granted.

CONCLUSION

For the foregoing reasons, CPFL has demonstrated a substantive basis for its opposition to the granting of the certificates requested in Cases 15-E-0516, 15-G-0571 and 15-T-0586.

CPFL respectfully requests that the motions requesting expedited proceedings be denied, that further hearings be scheduled, and that discovery be allowed.

DATED: Hammondsport, New York
 November 9, 2015

Respectfully submitted,



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