



EARTHJUSTICE
BECAUSE THE EARTH NEEDS A GOOD LAWYER

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June 17, 2026

Via Email

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223
secretary@dps.ny.gov

Re: Case No. 21-M-0238: Petition of Fortistar North Tonawanda LLC and Digihost International Inc. for a Declaratory Ruling Regarding Application of Section 70 and 83 of the New York State Public Service Law and the Alternative, Approval of the Proposed Transaction Pursuant to Sections 70 and 83.

Dear Secretary,

Please find attached for filing in the above-referenced proceeding a Notice of Entry filed by Earthjustice, on behalf of Clean Air Coalition of Western New York, and Sierra Club, along with the Memorandum and Order issued on June 3, 2026, by the Clerk of the Appellate Division of the Supreme Court, Third Department. The attached decision affirms in its entirety the November 14, 2024 decision of the Supreme Court, Albany County, which was filed on this docket at #29 on December 19, 2024.

Both decisions confirm that Section 7 of the CLCPA applies to the Commission's consideration of the Declaratory Ruling sought in this proceeding, and reject any argument "that such review by the PSC was not required because the facility itself is regulated by the Department of Environmental Conservation." Appellate Division decision at 6. As the court explained, that argument contradicts "the plain language and the purpose of the CLCPA provisions at issue here, which were intended to provide agencies added authority to regulate greenhouse gas emissions (*see* Senate Introducer's Mem in Support, Bill Jacket, L 2019, ch 106 at 8-9)." *Id.*

Respectfully,

Dror Ladin
Senior Attorney
Earthjustice

cc: Party List