



October 12, 2021

VIA ELECTRONIC MAIL & U.S. MAIL

John B. Howard, Chair & Interim Chief Executive Officer
Hon. Michelle L. Phillips, Secretary to the Commission
James A. Denn, Public Information Coordinator
New York Department of Public Service Commission
Empire State Plaza, Agency Building 3
Albany, NY 12223-1350
secretary@dps.ny.gov

Re: Case No. 21-M-0238, *Petition of Fortistar North Tonawanda Inc. 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 Mr. Howard, Ms. Phillips, and Mr. Denn,

We write to submit the following comments regarding the Petition of Fortistar North Tonawanda LLC and Digihost International Inc. (collectively, “Petitioners”) for a Declaratory Ruling Regarding Application of Sections 70 and 83 of the New York State Public Service Law (“PSL”), and, in the Alternative, Approval Under Sections 70 and 83. On the current record, the Commission must deny Petitioners’ requested relief regarding the proposed transfer of ownership of the Fortistar North Tonawanda (“FNT”) gas-fired power plant to Digihost International because Petitioners have not established that the proposal is compliant with New York’s Climate Leadership and Community Protection Act (“CLCPA”) or in the public interest. At a minimum, the Commission must require Petitioners to supplement the record with an analysis of whether the proposal is consistent with the CLCPA and the public interest, and provide the public with an opportunity to review, comment on, and as appropriate request a hearing regarding such supplemented Petition.

I. Introduction and Summary of Comments

What is at issue in this proceeding is not simply a change in corporate ownership of the FNT plant. Rather, Petitioners seek to turn a power plant that currently operates only on a limited basis into one that operates (and pollutes) around the clock. In particular, over the past five years during which the FNT plant has been subject to the Commission’s jurisdiction, including at the time that the Commission approved lightened regulation for the plant, the FNT plant has operated between 2% and 13% of the time. Over that time period, the plant emitted

relatively small amounts of CO₂, NO_x, and other harmful air pollutants. In stark contrast to those historical operations, Petitioners' proposed transfer is part of a plan to use the power plant to power a Bitcoin mining operation, which would require operating the plant 24 hours every day.¹ As a result, the FNT plant would provide little to no service to the grid, yet the greenhouse gas ("GHG"), air pollution, and water pollution impacts from the plant would increase significantly.

The Commission should reject Petitioners' contention that no further review of the proposed transaction is required under Sections 70 and 83, or that they are entitled to approval under those Sections. Contrary to Petitioners' claims, even if the *Wallkill* presumption of lightened regulation applied here (which, as explained below, it does not), that presumption does not exempt Petitioners from the legal duty of demonstrating that their proposal is in the public interest and complies with other applicable statutory provisions. And, at a minimum, further review is emphatically required here as Petitioners have failed to make any meaningful showing that the proposed, material changes in ownership and operations of the FNT gas plant would be compliant with New York's Climate Leadership and Community Protection Act ("CLCPA") or in the public interest. As such, the Commission must on this record reject the Petition or, at a minimum, require Petitioners to supplement the Petition to address whether the proposed change in operations and ownership is compliant with the CLCPA and in the public interest, and provide an opportunity for public review of and comment on such supplement.

Perhaps realizing the proposal's inherent inconsistency with the CLCPA and the public interest, on August 26 Digihost submitted to the Commission a less-than-two-page letter claiming that it is "committed" to "align itself" with the CLCPA. In its August 26 Supplement, Digihost makes various claims that it will operate the FNT plant on so-called "renewable natural gas," then will use "fully renewable energy" to begin to replace the RNG, and then will use hydrogen to replace the RNG and make the plant be powered through "100% zero emissions sources by 2025."² Digihost, however, has failed to provide any details about how such claims could be achieved, which is perhaps not surprising given that (as described below) all the available evidence demonstrates that the claims are fanciful at best. Regardless, none of the claims in the August 26 Supplement are in any way enforceable, nor have Petitioners proposed to the New York State Department of Environmental Conservation ("DEC") that the emission limits in the Title V Clean Air Act permit for the FNT plant should be revised to reflect the new fuel sources that Digihost claims it would pursue.³ In short, the August 26 Supplement appears to set forth mere unsubstantiated puffery that fails to establish that Petitioners' proposal is

¹ See, e.g., GlobeNewswire, *Digihost Acquires 60 MW Power Plant Increasing Hashrate Capacity to 3 EH* (Mar. 24, 2021), <https://www.globenewswire.com/en/news-release/2021/03/24/2198342/0/en/Digihost-Acquires-60-MW-Power-Plant-Increasing-Hashrate-Capacity-to-3-EH.html>.

² In its August 26 Supplement, Digihost contends that its purported plans for the FNT plant are part of its "*DigiGreen Initiative*." Digihost, however, provided no details or documentation regarding this purported initiative, and the "DigiGreen" page on the company's website states only that "This section is coming soon!". See <https://digihost.ca/docs/digigreen/> (visited Oct. 11, 2021).

³ In fact, no information on the claimed alternative fuel sources were included in the Petitioners' application for an air permit. NAES, *Title V and Title IV Permits Renewal Application*, Fortistar North Tonawanda Cogeneration Facility (Apr. 21, 2021) at 5-6, 8, 30.

consistent with the CLCPA or the public interest.⁴ Instead, in the absence of further supplementation that the public would be provided the opportunity to review and comment on, the Commission has no choice but to reject Petitioners' application as contrary to the CLCPA and the public interest.

Finally, it is important to note that the DEC is currently reviewing the Petitioners' Title V air permit application. The significant and troubling increase in GHG emissions and the localized air pollution that would result from the proposed change in operations and ownership are inconsistent with achieving the GHG emissions reductions and the prevention of disproportionate cumulative impacts in disadvantaged communities required by the CLCPA. These inconsistencies with the CLCPA may be grounds for DEC denying or amending the facility's air permit. In addition, the Petitioner's Petitioners' Title V air permit application mentioned nothing about alternative fuel sources as the August 26 Supplement indicates it should. Because this project cannot move forward without a valid Title V air permit – and those prospects under the CLCPA are now in question⁵ – the Commission should postpone any decision on this Petition until DEC has made a final determination on the pending Title V air permit application.

II. The Proposed Change in Operations at the FNT Plant Means That It Would Operate 365 Days A Year, 24 Hours A Day, Multiplying Its GHG Emissions Nearly 3000%

The FNT power plant is an approximately 55 MW fossil gas power plant located in the City of North Tonawanda in Niagara County, New York. If allowed to change its operations and its ownership to mine Bitcoin full-time, the power plant will drastically increase its GHG emissions and will threaten the State's achievement of the emission reductions that are required under the CLCPA and necessary to help mitigate the harmful effects of climate change. As the most recent assessment report of the Intergovernmental Panel on Climate Change ("IPCC") recently concluded, we must act now to reduce GHG emissions to avert the worst effects of the climate crisis – not increase these planet-warming emissions.⁶

⁴ Similarly unsubstantiated puffery appears to also be found in the August 26 Supplement's claim that "Billion-dollar international companies have already committed to long-term arrangements to join us, where they will hire from the local community and uptrain job seekers to fill roles needed on site." No such companies have been identified, no description of such "long-term arrangements" has been set forth, and no documentation of the claimed hiring and job training practices of such hypothetical companies has been provided.

⁵ See, e.g., with regard to a different power plant mining Bitcoin, Twitter, DEC Commissioner Basil Seggos, <https://twitter.com/basilseggos/status/1435724739352449025> ("NYS is taking action on #ClimateChange. ("Today @NYSDEC released for public comment draft air permits for former coal plant turned Bitcoin mine, Greenidge LLC. DEC has not made a final determination on the permits and Greenidge **has not shown compliance with NY's climate law...**").

⁶ Intergovernmental Panel on Climate Change, *Sixth Assessment Report, Climate Change 2021: The Physical Science Basis* (Aug. 2021), <https://www.ipcc.ch/report/sixth-assessment-report-working-group-i/>.

According to EPA emissions data, the FNT facility operated infrequently over the last several years, *e.g.*, serving the grid between approximately 10 and 25 days each year since 2017.⁷ The power plant’s annual emissions were as follows.⁸

Year	Approximate Days of Operation Per Year	Approximate Average Capacity Factor ⁹	Tons of CO2 Emitted Per Year
2016 ¹⁰	75	13%	43,406
2017	10	1.7%	5,755
2018	25	4%	12,448
2019	18	3%	9,245
2020	21	2.2%	10,981

In dismaying contrast, if the change in ownership and operation are approved, the FNT facility would presumably operate 24 hours per day, 7 days a week, 365 days per year, which means that the plant would meet or nearly meet its “potential emissions from the facility” of 339,068 tons of CO2 per year – while also significantly increasing emissions of nitrous oxide, particulate matter, carbon monoxide, and volatile organic compounds.¹¹

Comparing the plant’s likely emissions powering a Bitcoin mining operation to the plant’s 2020 actual emissions, when it operated approximately 21 days, that is a nearly **3,000%** increase in its CO2 emissions. In addition, these numbers reflect only CO2 emitted directly from the plant and does not include upstream GHG emissions from the extraction and transport of the gas used to fuel the plant, which are required by the CLCPA to be evaluated.¹² Yet Petitioners’

⁷ EPA, *Power Sector Emissions Data*, <https://www.epa.gov/airmarkets/power-sector-emissions-data>; <https://ampd.epa.gov/ampd/>.

⁸ *Id.*

⁹ Per the New York Independent System Operator’s regulations, the annual capacity factor is a percentage measurement of actual generation in relation to potential maximum generation on an annual basis. The calculation used in this chart gathers CAMD data and applies the following NYISO equation for calculating the megawatt capacity of the facility operating at full capacity for a year (8,760 hours) and dividing that by the amount of megawatt-hours gross load the facility actually realized for each year. “For example, a generator with a 1 megawatt capacity operating at full capacity for a year (8,760 hours) would produce 8,760 megawatt-hours (MWh) of electricity. The generator’s annual capacity factor would be 100%”. NYISO, *Power Trends*, Glossary, p. 49 <https://www.nyiso.com/documents/20142/2223020/2021-Power-Trends-Report.pdf/471a65f8-4f3a-59f9-4f8c-3d9f2754d7de>.

¹⁰ The plant became subject to the Commission’s jurisdiction on Jan. 1, 2016 when it stopped operating as a Qualifying Facility under the Public Utility Regulatory Policies Act.

¹¹ Digihost Technology, Inc., *Title V and Title IV Permits Renewal Application, Fortistar North Tonawanda Cogeneration Facility* (Apr. 21, 2021), at 5-6, 30.

¹² The CLCPA requires accounting of GHG emissions associated with the extraction and transmission of fossil fuels imported into the state using a 20-year time horizon. This requirement necessitates using upstream fossil fuel cycle factor data that cover extraction, processing, and transmission/distribution of gas, coal, and petroleum into the state. N.Y. Env’t Conserv. Law § 75-0101(13) (defining “Statewide greenhouse gas emissions” means the total annual emissions of greenhouse gases produced within the state from anthropogenic sources and greenhouse gases produced outside of the state that are associated with the generation of electricity imported into the state and the extraction and transmission of fossil fuels imported into the state.”).

filings fail to even acknowledge the emissions increases that would result from their proposal, much less make any showing that their increased GHG emissions would be compliant with the CLCPA and/or in the public interest.

Furthermore, Bitcoin mining full time will use and heat significant amounts of water. The FNT facility plans to use 500,000 gallons of water per day, which will account for approximately 12% of the City's current total water usage.¹³ Petitioners have failed to make a determination as to whether their water usage may disproportionately affect the public interest. The additional potential harm to the public interest as it relates to water consumption and wastewater should be assessed and the Commission should seek more information from Petitioners.

In short, Digihost's operations at the FNT power plant would be substantially different from that as described in FNT's 2015 Petition for a Certificate of Public Convenience and Necessity ("CPCN") Pursuant to Public Service Law Section 81 and Petition for an Order Providing Lightened and Incidental Regulation. The Commission should consider whether the proposed significant changes in operations are permissible under the existing CPCN before the Commission can make a decision on this Petition.¹⁴ In their 2015 petition for the CPCN, FNT sought to be subjected to a lightened regulatory process for their limited electric and steam operations.¹⁵ However, nothing in the 2015 petition for the CPCN mentions the use of the FNT power plant for full-time 365/24/7 proof-of-work cryptocurrency mining, nor does it make any mention of converting the fuel sources at the facility from fossil gas to "renewable natural gas" or to hydrogen fuel. The Commission should insist that Digihost make a fulsome showing that its new operations and new ownership can serve the public interest and that the terms of the 2015 CPCN can still be met today.¹⁶

III. Bitcoin Mining's Environmental Impacts

Bitcoin mining, the mining proposed at the FNT facility, is a type of proof-of-work cryptocurrency mining method that consumes tremendous amounts of energy, which in turn generates substantial amounts of GHG emissions when such operations are powered either

¹³ Digihost, *Full Environmental Assessment Form* (Aug. 12, 2021) at 5, https://www.northtonawanda.org/documents/legal%20notice/fortistar%20amended%20seqr_2.pdf.

¹⁴ The Commission maintains the authority to revoke or modify an authorized CPCN for issues, including but not limited to "consider the economic feasibility of the corporation ... and whether issuance of a certificate is in the public interest." NY PSL § 68(1).

¹⁵ N.Y. State Pub. Service Comm'n, Case No. 15-M-0642, Supplement to Petition of Fortistar North Tonawanda Inc. for Certificate of Public Convenience and Necessity Pursuant to Public Service Law § 81 and Petition for an Order Providing Lightened and Incidental Regulation (Nov. 25, 2015), <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={3243F23D-2474-4FFF-BA6F-C87411CD9C0B}>.

¹⁶ *Cf. Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 612 (1944) (the spirit of a CPCN is "... plainly designed to protect the consumer interests against exploitation...").

directly or indirectly by fossil fuels.¹⁷ Bitcoin mining today uses 133.68 terawatt hours per year of electricity globally, more than three times as much as it did at the beginning of 2019.¹⁸ Bitcoin mining's energy use this year alone will nearly match that of all data centers globally.¹⁹ If Bitcoin were a country, it would rank in the top 30 countries of energy users worldwide—between Norway and Argentina.²⁰ Indeed, a recent study published in Nature Climate Change found that Bitcoin mining has the potential to push the planet past the targets set by the Paris agreement.²¹

The FNT facility is one of many retiring, retired, or peaking power plants converting to 24/7/365 Bitcoin mining.²² Some estimates show that between 30 and 45 power plants across New York state could use their excess capacity to mine Bitcoin.²³ The company running a similar power plant-turned-Bitcoin mining operation by Seneca Lake informed its investors recently that it is assisting other Bitcoin mining companies to “[r]eplicate [its] model of owning [a] captive low-cost power source” and plans to expand to more than 500 MW usage for Bitcoin mining in the next couple years.²⁴

¹⁷ See, e.g., NBC News, *Cryptocurrency goes green: Could ‘proof of stake’ offer a solution to energy concerns?* (May 25, 2021), <https://www.nbcnews.com/tech/tech-news/cryptocurrency-goes-green-proof-stake-offer-solution-energy-concerns-rcna1030>; Digiconomist, *Bitcoin Energy Consumption Index* (2021), <https://digiconomist.net/bitcoin-energy-consumption/>; <https://blog.ethereum.org/2021/05/18/country-power-no-more/>; N.Y. Times, *Why Bill Gates Is Worried About Bitcoin* (Mar. 9, 2021), <https://www.nytimes.com/2021/03/09/business/dealbook/bill-gates-bitcoin.html> (“‘Bitcoin uses more electricity per transaction than any other method known to mankind.’”).

¹⁸ Financial Times, *Bitcoin’s growing energy problem: ‘It’s A Dirty Currency’* (May 20, 2021), <https://www.ft.com/content/1aebc2db-8f61-427c-a413-3b929291c8ac> (citing Cambridge Bitcoin Electricity Consumption Index, <https://cbeci.org/>); Wall Street Journal, *Bitcoin Miners Are Giving New Life to Old Fossil-Fuel Power Plants* (May 21, 2021), <https://www.wsj.com/articles/Bitcoin-miners-are-giving-new-life-to-old-fossil-fuel-power-plants-11621594803>.

¹⁹ Alex de Vries, *Bitcoin Boom: What Rising Prices Mean For The Network’s Energy Consumption*, (Mar. 10, 2021) [https://www.cell.com/joule/fulltext/S2542-4351\(21\)00083-0](https://www.cell.com/joule/fulltext/S2542-4351(21)00083-0).

²⁰ See, e.g., N.Y. Times, *Bitcoin Uses More Electricity Than Many Countries. How Is That Possible?* (Sept. 3, 2021) <https://www.nytimes.com/interactive/2021/09/03/climate/bitcoin-carbon-footprint-electricity.html>; Cambridge Centre for Alternative Finance, *Cambridge Bitcoin Electricity Consumption Index*, <https://cbeci.org/cbeci/comparisons>.

²¹ Nature Climate Change, *Bitcoin Emissions Alone Could Push Global Warming Above 2°C*, <https://www.nature.com/articles/s41558-018-0321-8>.

²² By way of short example, Atlas Holdings LLC has begun mining full-time at power plants in New York and South Carolina. Support.com, *NASDAQ Merger Announcement* (Mar. 22, 2021) at 5, 14, <https://corporate.support.com/wp-content/uploads/2021/03/Greenidge-SPRT-Merger-Announcement-032221-FINAL.pdf>. Stronghold Digital Mining has begun mining full-time at 3 coal-waste-fired power plants in Pennsylvania. Stronghold Digital Mining, Inc., SEC Form S-1. Registration Statement, <https://www.sec.gov/Archives/edgar/data/0001856028/000156459021038087/sdmi-s1.htm>. Marathon Digital Holdings Inc. has begun mining Bitcoin fulltime a coal-fired power plant in Montana. <https://marathondh.com/our-facilities/>. And many more proposals abound.

²³ See, e.g., U.S. Energy Information Administration, *Form 860* (2019) (reviewing power plants that are retired, will be retiring, or are peaker plants with excess generation capacity), <https://www.eia.gov/electricity/data/eia860/>.

²⁴ Support.com, *NASDAQ Merger Announcement* (Mar. 22, 2021) at 5, 14, <https://corporate.support.com/wp-content/uploads/2021/03/Greenidge-SPRT-Merger-Announcement-032221-FINAL.pdf>.

As described further below, if the Commission were to grant Petitioners' request that the proposed transaction either be subjected to no further review or be approved on the sparse record presented to date, it would effectively greenlight similar changes in operations and ownership at dozens more gas plants throughout New York without any meaningful evaluation of whether reviving and/or significantly boosting the operations of aging gas plants for Bitcoin mining is compliant with the CLCPA or consistent with the public interest. Such a result would be contrary to law and unreasonable.

IV. Digihost's Unsubstantiated Claim That It May Convert the Plant To Combust So-Called "Renewable Natural Gas" Does Not Demonstrate That The Proposed Transaction Complies With The CLCPA Or Is In The Public Interest

Digihost's August 26, 2021 Supplement to the Petition claims, for the first time, that:

"Beginning this year and continuing to expand through the end of 2022, Digihost **will immediately convert the plant to run on sustainably sourced renewable natural gas ("RNG")**, a bridge biomass alternative to natural gas that will allow us to operate with a **zero carbon** footprint in our early development. The switch to RNG is simple and requires no new infrastructure."

(Digihost's Aug. 26, 2021 Supplement, at 1) (emphasis added). Digihost has failed to provide any details about whether it could source such RNG, whether it would be economic to fuel the FNT plant with RNG, or how such RNG would purportedly provide a "zero carbon footprint." Instead, Digihost's claim regarding possible future RNG use is unsupported and unenforceable, and does nothing to demonstrate that CLCPA compliance would actually be achieved or that the public interest would be served by Petitioners' proposal.

Digihost's unsubstantiated statements about RNG are especially deficient because the available evidence suggests that sourcing, transporting, and combusting RNG would rarely, if ever, be "zero carbon." RNG is the chemical equivalent of methane, emits just as much carbon dioxide when burned, and leaks just as much methane when transported as gas produced from non-biological sources like hydraulic fracturing (fracking).²⁵ Given methane's large, adverse climate impacts during transport and combustion – methane's global warming potential is approximately 87 times that of carbon dioxide over a 20-year time horizon – the full life-cycle

²⁵ Earthjustice & Sierra Club, *Rhetoric v Reality: The Myth of "Renewable Natural Gas" for Building Decarbonization* 9 (July 2020), https://earthjustice.org/sites/default/files/feature/2020/report-decarb/Report_Building-Decarbonization-2020.pdf; Vox, *The False Promise Of "Renewable Natural Gas"* (Feb. 20, 2020), <https://www.vox.com/energy-and-environment/2020/2/14/21131109/california-natural-gas-renewable-socialgas>.

emissions implications of RNG must be carefully scrutinized before drawing any conclusions about its consistency with the CLCPA.²⁶

Depending on its source (which Digihost does not explain), RNG can emit even more GHG emissions than fossil gas. RNG can be produced from biological sources such as landfills, confined animal feeding operations, or gasification of biomass. Some sources can have a positive climate impacts, such as wastewater treatment, which involves capturing and collecting methane that is produced from the anaerobic breakdown of biosolids and using that methane as a fuel, rather than venting it.²⁷ Other sources of RNG risk *increasing* climate pollution, such as forestry residues, which gasify biomass that would otherwise decompose aerobically without conversion to potent methane gas.²⁸ Many sources of RNG have other adverse environmental and land use impacts that offset potential climate benefits. For example, energy crops grown for biomass often compete with food production or biodiverse landscapes, and confined animal feeding operations create a host of air and water pollution problems.²⁹ In addition, climate impacts worsen if any gas is leaked during transport. The August 26 Supplement is also silent as to leakage issues during transport and storage. Finally, all evidence indicates that existing quantities of RNG are far too small to supply a power plant with enough fuel to operate full-time as Digihost plans to do.³⁰ Because Petitioners have not explained the source, transportation, or storage of the proposals for RNG or how it might be CLCPA-compliant, there is no indication that Petitioners will be able to operate within the requirements of the CLCPA. As a result, Petitioners have not demonstrated whether their proposed changes are in the public interest.

In summary, Petitioners have not provided any basis to conclude that developing, transporting, and burning RNG to mine cryptocurrency is CLCPA-compliant or in the public interest.

²⁶ See, e.g., *id.*, Power Generation Advisory Panel Recommendations to Climate Action Council (May 3, 2021) at 46, <https://climate.ny.gov/-/media/CLCPA/Files/2021-04-17-Power-Generation-Advisory-Panel-Presentation.pdf>; Given the wide-ranging climate and environmental impacts associated with different sources of RNG, the Power Generation Advisory Panel identified the need to “[d]etermine the lifecycle GHG accounting framework of RNG.”

²⁷ NRDC, Issue Brief: *A Pipe Dream or Climate Solution? The Opportunities and Limits of Biogas and Synthetic Gas to Replace Fossil Fuels* (June 2020) at 3, <https://www.nrdc.org/sites/default/files/pipe-dream-climate-solution-bio-synthetic-gas-ib.pdf>.

²⁸ *Id.* at 2.

²⁹ See *id.* at 3.

³⁰ See Natural Gas Intel, *U.S. RNG Production, Sites Accelerate in 2020* (Jan. 7, 2021) (“Collective RNG volumes were estimated at 59 billion Btu, or more than 530.2 million gasoline gallon equivalents (GGE) at the end of last year.”), <https://www.naturalgasintel.com/u-s-rng-production-sites-accelerate-in-2020/>; U.S. Energy Info. Admin., *Natural gas explained* (Feb. 12, 2021) (“EIA estimates in the *Annual Energy Outlook 2021* that as of January 1, 2019, the United States had about 2,867 trillion cubic feet (Tcf) of TRR of dry natural gas.”), <https://www.eia.gov/energyexplained/natural-gas/how-much-gas-is-left.php>. Notably, Digihost’s March 24, 2021 press release announcing its plan to acquire the FNT plant was careful to note that it purportedly intends to use RNG only “to the extent possible.” See <https://www.globenewswire.com/en/news-release/2021/03/24/2198342/0/en/Digihost-Acquires-60-MW-Power-Plant-Increasing-Hashrate-Capacity-to-3-EH.html> (visited October 12, 2021).

V. **Digihost’s Unsubstantiated Claim That It May Combust Hydrogen At The Plant Does Not Demonstrate that the Proposed Transaction Is CLCPA-Compliant Or In The Public Interest**

Digihost’s August 26, 2021 Supplement to the Petition claims that:

“The plant itself will undergo upgrades at the end of 2023 to install and use hydrogen power to replace the use of RNG. ...
In short, this plant will be powered through 100% **zero emissions** sources by 2025, well in advance of the goals promulgated pursuant to the Climate Leadership and Community Protection Act.

(Digihost’s Aug. 26, 2021 Supplement, at 1) (emphasis added). Digihost has failed to provide any details about whether it could source such hydrogen, whether it would be economic to fuel the FNT plant with hydrogen, or how such hydrogen would purportedly be 100% zero emissions by 2025. Instead, Digihost’s claim regarding possible future hydrogen use is unsupported and unenforceable, and does nothing to demonstrate that CLCPA compliance would actually be achieved or that the public interest would be served by Petitioners’ proposal.

The lack of any detail or analysis supporting Digihost’s claims about future hydrogen use is compounded by the numerous challenges facing any effort to convert the FNT plant to hydrogen. For one thing, the existing turbine at the FNT plant only has the capacity to burn a small amount of hydrogen, blended with fossil gas.³¹ Petitioners have not made a showing of the large-scale infrastructure changes it would need to implement in order to be able to burn more than a small percentage of so-called “green” hydrogen. Even if the facility could burn a gas blend with as much as 50% green hydrogen, which its current turbine cannot do, a 50% hydrogen blend would likely only reduce the CO2 emissions from the Bitcoin operations by 20%.³² As such, even if Digihost tried to follow through on its unsubstantiated and unenforceable claim that it may try to fuel the FNT plant with hydrogen, the Bitcoin operations enabled by the proposed transfer would still significantly increase CO2 emissions above current levels, which runs counter to the CLCPA and the public interest.

A second hurdle facing Digihost’s claimed plan to fuel the FNT plant with hydrogen is that the generation of green hydrogen through electrolysis requires large amounts of surplus

³¹ *Supra* note 3, pg. 4 indicating FNT has a (U-00001-General Electric Model PG6541(B) 55 MW combined cycle combustion turbine (CCCT).

³² General Electric, *Hydrogen as a Fuel for Gas Turbines* (2021) at 5, https://www.ge.com/content/dam/gepower-new/global/en_US/downloads/gas-new-site/future-of-energy/hydrogen-fuel-for-gas-turbines-gea34979.pdf.

renewable energy.³³ Using today's technology, it would take over 900 MW of nearby wind or solar power to generate approximately 65 MW of energy through hydrogen electrolyzers.³⁴ The diversion of New York's limited supply of wind and solar energy towards the energy-intensive production of this much green hydrogen to in turn mine extremely energy-intensive Bitcoin at this power plant seems absurd and not in the public interest.

Digihost has not provided any information beyond the cursory claim of future hydrogen use and thus the feasibility and costs of such an approach are in doubt. There are no pipelines designed for transporting hydrogen currently located in, or proposed for, New York State. The constraints on transporting hydrogen via pipeline are due to the gas's molecular properties. Hydrogen is a smaller molecule than methane and has been shown to leak at nearly three times the rate of the gas.³⁵ Hydrogen also tends to corrode and embrittle pipeline infrastructure.³⁶ For example, in 2020, there were 18,330 gas leaks reported in New York, or about 370 gas leaks per 1,000 miles of pipeline, leaving a volume of gas equal to almost 20% of total gas demand lost or unaccounted for.³⁷ Moreover, that leakage will have climate impacts – Hydrogen is an indirect GHG, which will itself contribute to climate change.³⁸ Unburned, leaked hydrogen is a potent

³³ Sasan Saadat & Sara Gersen, Earthjustice, *Reclaiming Hydrogen for a Renewable Future: Distinguishing Oil & Gas Industry Spin from Zero-Emission Solutions* 24–26 (2021), https://earthjustice.org/sites/default/files/files/hydrogen_earthjustice.pdf. (“Reclaiming Hydrogen Report”). See also, e.g., Aurora Energy Research, *Hydrogen in the Northwest European Energy System* (Aug. 31, 2020), <https://auroraer.com/insight/hydrogen-in-the-northwest-european-energy-system>; Sonal Patel, *Why Power-to-Gas May Flourish in a Renewables-Heavy World*, *Power Magazine* (Dec. 2019), <https://www.powermag.com/why-power-to-gas-may-flourish-in-a-renewables-heavy-world/>; Power Magazine, *High-Volume Hydrogen Gas Turbines Take Shape* (May 2019), <https://www.powermag.com/high-volume-hydrogen-gas-turbines-take-shape> (“running electrolysis to produce 50 MW for one hour at a CCGT running at 50% efficiency could require 175 MW of renewable power and 3,400 kilograms (more than 14,000 gallons) of hydrogen”); Julie McNamara, *What's the Role of Hydrogen in the Clean Energy Transition?*, *Union of Concerned Scientists* (Dec. 9, 2020), <https://blog.ucsusa.org/julie-mcnamara/whats-the-role-of-hydrogen-in-the-clean-energy-transition> (citing M.W. Melaina et al., Nat'l Renewable Energy Lab'y, *Blending Hydrogen into Natural Gas Pipeline Networks: A Review of Key Issues* (Mar. 2013), <https://www.nrel.gov/docs/fy13osti/51995.pdf>); see also E3, *Pathways to Deep Decarbonization in New York State* 6 (June 2020), <https://climate.ny.gov/-/media/CLCPA/Files/2020-06-24-NYS-Decarbonization-Pathways-Report.pdf>.

³⁴ *Hydrogen Fueled Gas Turbines*, General Electric, <https://www.ge.com/power/gas/fuel-capability/hydrogen-fueled-gas-turbines>. These figures were derived from use of the cited calculator.

³⁵ *Id.*; Justin Mikulka, *Decoding the Hype Behind the Natural Gas Industry's Hydrogen Push*, *Desmog Blog* (Jan. 14, 2021), <https://www.desmogblog.com/2021/01/14/decoding-hype-behind-natural-gas-industry-hydrogen-push> (citing Zahreddine Hafsia et al., *Hydrogen embrittlement of steel pipelines during transients*, *Procedia Structural Integrity*, Vol. 13 (2018)).

³⁶ *Id.*

³⁷ See U.S. Dept. of Transp., Pipeline and Hazardous Materials Safety Admin., *Gas Distribution, Gas Gathering, Gas Transmission, Hazardous Liquids, Liquefied Natural Gas (LNG), & Underground Natural Gas Storage (UNGS) Annual Report Data, Gas Distribution Annual Data – 2010 to present* (2020), https://www.phmsa.dot.gov/sites/phmsa.dot.gov/files/data_statistics/pipeline/annual_gas_distribution_2010_present.zip.

³⁸ Mikulka, *supra* note 34.

GHG with a 100-year global warming potential that is more than 5.8 times greater than that of CO₂.³⁹

Additionally, there are safety and flammability issues with hydrogen blend transport, storage, and combustion at power plants that need to be considered and accounted for. Hydrogen is much more flammable than methane gas.⁴⁰ It requires less air to burn than methane and when hydrogen ignites the flames have the potential to spread much faster.⁴¹ Comprehensive studies of the safety and flammability must be undertaken to fully understand the risks posed by transporting, storage, and combusting hydrogen fuel at power plants.

Finally, hydrogen combustion creates significant amounts of nitrogen oxide (NO_x) emissions, which are a precursor of both ground-level ozone and fine particulate matter, and could degrade local air quality and disproportionately impact disadvantaged communities in the area. For example, a study conducted by General Electric on its combustion turbines found that a 50/50 mixture of hydrogen and fossil gas (by volume) increased concentrations of NO_x in gas exhaust by 35%.⁴² A recent report by a gas turbine industry association warned that these higher flame temperatures will produce more health-harming nitrogen oxide (NO_x) emissions “if no additional measures are undertaken.”⁴³

Further, any increase in NO_x emissions and resulting ozone could exacerbate already significant public health and environmental equity concerns. NO_x emissions leading to ozone formation is a major health concern for New Yorkers. For example, the state’s Department of Health has identified the reduction of air pollution including ozone as a key indicator to drive improvements in asthma rates and public health outcomes throughout the state. The New York State Prevention Agenda 2019-2024 notes the “extensive evidence” linking ozone with respiratory and cardiovascular illness and death, and establishes a goal to “reduce exposure to outdoor air pollutants,” with an emphasis on vulnerable groups.⁴⁴ Despite these significant concerns about the impacts of NO_x emissions and resulting ozone on public health and equity, Petitioners fail to even acknowledge the increase in NO_x emissions that would result from their Bitcoin plans, much less evaluate whether such increase is in the public interest.

In short, Petitioners have not even attempted to demonstrate that transporting, storing, and combusting hydrogen at the FNT plant in order to mine cryptocurrency is CLCPA-compliant or in the public interest, and the available evidence suggests strongly that it is not. The technical challenges and costs associated with converting a facility to operate using hydrogen in the future

³⁹ Richard Derwent et al., *Global Environmental Impacts of the Hydrogen Economy*, *Int’l Journal of Nuclear Hydrogen Production and Applications* (2006) at 1, https://www.geos.ed.ac.uk/~dstevens/Presentations/Papers/derwent_ijhr06.pdf.

⁴⁰ McNamara, *supra* note 33 at 11.

⁴¹ *Id.*

⁴² *Supra* note 32 at 5.

⁴³ European Turbine Network, *Hydrogen Gas Turbines* (Jan. 2020) at 9, <https://etn.global/wp-content/uploads/2020/01/ETN-Hydrogen-Gas-Turbines-report.pdf>.

⁴⁴ N.Y. State Dept. of Health, *New York’s State Health Improvement Plan: Prevention Agenda 2019-2024* (Apr. 27, 2021) at 72-3, https://www.health.ny.gov/prevention/prevention_agenda/2019-2024/docs/ship/nys_pa.pdf.

could be substantial, and in the absence of any concrete, feasible, and enforceable plans to operate the FNT plant on hydrogen that has been demonstrated to truly be zero emissions, the Commission cannot rely on Digihost's unsubstantiated claims about future hydrogen use in evaluating whether the Petitioners' proposal is CLCPA compliant and in the public interest.

VI. Petitioners Have Provided No Assessment of the Impacts The Proposed Changes in Operations and Ownership May Have On Nearby Environmental Justice Communities

This project is located close to several state-designated Potential Environmental Justice Areas. According to the DEC's mapping tool of potential environmental justice areas,⁴⁵ the FNT power plant appears to be approximately one mile from one potential environmental justice area⁴⁶ and less than two miles from a second potential environmental justice area.⁴⁷ According to the EPA's EJ Screen, a third potential environmental justice area may be even closer.⁴⁸

Section 7(3) of the CLCPA precludes state agencies and bodies from disproportionately burdening "disadvantaged communities" when issuing administrative approvals or decisions.⁴⁹ Yet Petitioners have not provided any analysis of what the potential effects their proposal to change the operations at the FNT plant to power Digihost's Bitcoin operations may have on nearby environmental justice communities. The cumulative impacts of the project should be an important consideration in this highly overburdened area.⁵⁰ Further review is required and Petitioners must conduct an environmental justice analysis, which must then be made available for public review and comment before any determination of compliance with CLCPA Section 7(3) can be made.

When determining whether proposed change of operations and change of ownership at the FNT power plant is in the public interest, the Commission should ask Petitioners to evaluate the environmental impacts described above and whether such impacts would disproportionately burden already overburdened environmental justice communities in the area. Such analysis is needed with regards to both Digihost's plan to change the operations at the FNT plant to mine Bitcoin, as well as any changes to the fuel source at the plant. The Commission cannot determine whether the proposed project is in the public interest without a full analysis of the cumulative environmental impacts of the project in the neighboring communities without

⁴⁵ N.Y. State Dep't of Env't Conservation, *Maps & Geospatial Information System (GIS) Tools for Environmental Justice*, <https://www.dec.ny.gov/public/911.html>; N.Y. State Dep't of Env't Conservation, *Potential Environmental Justice Area (PEJA) Communities*, ArcGIS, [https://www.arcgis.com/home/webmap/viewer.html?url=https://services6.arcgis.com/DZHaqZm9cxOD4CWM/ArcGIS/rest/services/Potential Environmental Justice Area PEJA Communities/FeatureServer&source=sd](https://www.arcgis.com/home/webmap/viewer.html?url=https://services6.arcgis.com/DZHaqZm9cxOD4CWM/ArcGIS/rest/services/Potential%20Environmental%20Justice%20Area%20PEJA%20Communities/FeatureServer&source=sd).

⁴⁶ *Id.* (citing PEJA Community: 15000US360290091074; Census Block Group 15000US360290091074).

⁴⁷ *Id.* (citing PEJA Community: 15000US360630232003; Census Block Group 15000US360630232003).

⁴⁸ EPA, *EJSCREEN: EPA's Environmental Justice Screening and Mapping Tool*, <https://ejscreen.epa.gov/mapper/> (citing census state-county-tract-block group identifier 360630233001).

⁴⁹ CLCPA § 7(3).

⁵⁰ *See, e.g.*, N.Y. State Dep't of Health, *Tonawanda Study Area: Health Outcomes Review*, <https://www.health.ny.gov/environmental/investigations/tonawanda/>.

knowing whether the project complies with the CLCPA’s goals of reducing pollution in disadvantaged communities.

VII. CLCPA Requirements

Recognizing that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York,” the state legislature enacted the CLCPA to strengthen New York’s statewide mandates for both emissions reductions and the adoption of renewable energy, setting some of the country’s most ambitious targets to date.⁵¹ The CLCPA mandates that New York obtain 70 percent of its power from renewable energy resources by 2030 and mandates 100 percent zero emissions electricity by 2040.⁵² The law also establishes specific benchmarks for the adoption of renewables, including nine gigawatts (GW) of offshore wind by 2035, six GW of solar by 2025, and three GW of energy storage by 2030.⁵³ Across all sectors, the CLCPA also limits greenhouse gas emissions to 60 percent of 1990 levels by 2030 and 15 percent of 1990 emissions by 2050 (with net zero emissions achieved through offsets to projects outside the electric sector).⁵⁴

Section 7(2) of the CLCPA requires all state agencies, authorities, offices, and divisions to “consider whether [their] decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in [the CLCPA]” prior to issuing any “permits, licenses, or other administrative approvals or decisions.”⁵⁵ (emphasis added). For each inconsistent or interfering decision, the agency “shall 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.”⁵⁶ Increased fossil fuel power generation is, by definition, inconsistent with the CLCPA. Any additional GHG emissions from the burning of fossil fuels will frustrate efforts to reduce state GHG emissions as well as the transition to a zero-emissions electricity sector by 2030 – in 9 short years. As stated above, the CLCPA requires 70 percent renewable energy by 2030 and zero emissions electricity by 2040. Neither mandate can be met by adding additional gas generation.

FNT has not yet made a showing that could justify Bitcoin mining under the CLCPA as it will significantly increase GHG emissions at the facility. The State must ensure a substantial decrease—not increase—in fossil fuel power generation. Existing fossil resources must retire and/or significantly curb generation to meet the CLCPA’s 2030 requirements – not allowing increasing emissions, especially on this scale.

As described above, the CLCPA also established important substantive and procedural requirements to help ensure benefits for and the reduction of harms to disadvantaged

⁵¹ CLCPA § 1.

⁵² *Id.* § 4 (codified at N.Y. P.S.L. § 66-p(2)).

⁵³ *Id.* (codified at N.Y. P.S.L. § 66-p(5)).

⁵⁴ *Id.* §§ 1(4) & 2 (codified at NY. E.C.L. §§ 75-0107(1), 75-0109(4)(a)–(b), (f)).

⁵⁵ CLCPA § 7(2).

⁵⁶ *Id.*

communities. Section 7(3) of the CLCPA provides that in issuing “permits, licenses, and other administrative approvals and decisions” all state agencies “shall not disproportionately burden disadvantaged communities” and “shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities.” CLCPA § 7(3). As detailed in Section VI above, Petitioners have failed to even acknowledge, much less evaluate, the potential impacts to disadvantaged communities of the proposed change in ownership and operations of the FNT plant.

VIII. Public Service Law and The Public Interest Requirement

A fundamental aspect of the Commission’s duty is to ensure that projects approved by the Commission are in the public interest. N.Y. P.S.L. §§ 5, 70, 83.⁵⁷ For example, Public Service Law Section 5(2) states that the Commission shall perform “their public service responsibilities with economy, efficiency, and care for the public safety, the preservation of environmental values and the conservation of natural resources.” N.Y. P.S.L. § 5(2). The Commission has also determined that “matters such as ... environmental externalities, energy efficiency, environmental justice, ... economic development, ... global warming emissions, ... and other issues critical to the public interest may be considered.”⁵⁸

The Commission is empowered to accommodate the public interest on a case-by-case basis, and there is ample Commission precedent for such case-by-case public interest evaluations.⁵⁹ In a February 2014 Order, the Commission held that Petitioner there 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.”⁶⁰

⁵⁷ See also, e.g., *Luyster Creek, LLC v. N.Y. State Pub. Service Comm’n*, 82 A.D.3d 1401, 1403 (3d Dep’t 2011); *Lockport Light, Heat & Power Co. v. Maltbie*, 257 A.D. 11, 12 N.Y.S.2d 595 (3d Dep’t 1939).

⁵⁸ New York State Pub. Service Comm’n, Case No. 07-E-1507, *Long Range Electric Resource Plan and Infrastructure Planning Process, Utility Commodity Supply Service to Residential and Small Commercial and Industrial Customers – Phase II*, Order Initiating Electricity Reliability and Infrastructure Planning at 5-6 <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={1CFDCE13-1F3E-424A-A4F0-45BD26DC2D08}>. The Commission has also defined “adequate” service as “service that is reliable, environmentally compatible and sustainable.” *Id.* at 5, n 11.

⁵⁹ *Monk v. Finkelstein*, 194 Misc. 241, 245, 85 N.Y.S.2d 586, 590 (Sup. Ct. 1948). See also, e.g., *Intercountry Assocs. v. Ball*, 25 A.D.2d 671, 671, 268 N.Y.S.2d 412, 413 (1966), *aff’d*, 21 N.Y.2d 859, 236 N.E.2d 165 (1968); *In Re Long Island Lighting Co.*, 26 N.Y. P.S.C. 25 (Jan. 24, 1986) (“state agencies “are free, within the ambit of their statutory authority, to make the pragmatic adjustments which may be called for by particular circumstances.”); See also *Int’l Ry Co. v. N.Y. State Pub. Service Comm’n*, 264 A.D. 506, 36 N.Y.S.2d 125 (3d Dept. 1942), *aff’d*, 289 N.Y. 830, 47 N.E.2d 435 (1943) (the Commission has the authority to direct the cancellation of any contract determined to be contrary to the “public interest.”)

⁶⁰ N.Y. State Pub. Service Comm’n, Case No. 13-E-0030, Order Approving Electric, Gas, and Steam Rate Plans in Accord with Joint Proposal (Feb. 21, 2014) at 68, https://www2.dps.ny.gov/ETS/search/searchSubmissionID.cfm?sub_id=2775715.

The “societal cost factors,” involving impacts on climate are spelled out statutorily in the CLCPA. Reading Sections 5, 70 and 83 of the Public Service Law and the CLCPA together makes clear that approving this transfer and enabling Digihost’s proposed cryptocurrency mining operations is not in the public interest. Approving the proposed transfer of ownership will not facilitate reliable electricity service and will increase the use of fossil fuels at the generating station in contravention of the CLCPA, while also increasing the local air pollution in the communities surrounding the facility.

The caselaw on interpreting the public interest standard under Public Service Law Sections 70 and 83 also make clear that the Commission has authority to exercise not only those “powers expressly granted to it by the Legislature, but also those ‘incidental to its expressed powers, together with those required by necessary implication to enable the [Commission] to fulfill its statutory mandate.’”⁶¹ The Legislature has expressly granted the Commission authority to address environmental concerns in Public Service Law Sections 5, 70 and 83.

The “Wallkill Presumption” Does Not Apply Here

In requesting approval of the transfer, Petitioners rely on the so-called “*Wallkill* Presumption,” but the Commission Orders establishing the *Wallkill* Presumption do not apply to the proposed transfer to Digihost for electricity used solely for a cryptocurrency mining facility. Unlike Digihost, the generating station being transferred in the *Wallkill* case operated in a competitive environment to produce electricity for the public use in the electric grid.⁶² The FNT power plant currently operates infrequently to service the grid, and its new operations and new owners will not produce additional electricity for the public use.

Under the *Wallkill* presumption, the Commission held that upstream owners of wholesale generators may seek and receive declaratory rulings under a lightened regulatory regime “unless there is a potential for harm to the interests of captive utility ratepayers sufficient to override the presumption.”⁶³ In *Carr*, the Commission refined the “harm to captive ratepayers standard” to an analysis of whether or not the upstream purchasing entity had the ability to exert horizontal or

⁶¹ See, e.g., *Luyster Creek, LLC v. N.Y. State Pub. Service Comm’n*, 82 A.D.3d 1401, 1403 (3d Dep’t 2011), *rev’d on other grounds*, 18 N.Y.3d 977 (2012). In *Luyster*, the Third Department determined that “neither the Public Service Law nor the implementing regulations delineate the specific factors the PSC should consider in determining whether a utility’s transfer of property is in the public interest.” *Id.*

⁶² N.Y. State Pub. Service Comm’n, Case No. 91-E-0350, Declaratory Ruling on Regulatory Policies Affecting Wallkill Generating Company and Notice Soliciting Comments (Aug. 21, 1991) at 8, <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A8279FB3-FFCA-442E-98AC-849FE890F497}>.

⁶³ N.Y. State Pub. Service Comm’n, Case No. 1-E-0350, *Wallkill Generating Co.*, Order Establishing Regulatory Regime (Apr. 11, 1994) at 10, <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B6FBB442-2CB6-46DD-8429-24FBFBFE00CC6}>.

vertical market power.⁶⁴ However, the industry has changed and while the ruling in *Carr* continues to be a primary method of protecting ratepayers from harm, the Commission should expand and consider secondary methods of harm. More study is needed to determine whether there is potential for these secondary types of harm to affect the interests of captive utility ratepayers in this situation.

Petitioners' assertion that a change in operations and ownership will not result in any adverse impacts in New York is not compelling when the environmental and social costs of the proposed cryptocurrency mining operations are considered and under the new CLCPA statutory requirements. Additionally, as stated above, even if the *Wallkill* presumption were to apply, any action by a state agency mandates review under the CLCPA. *Wallkill* does not foreclose the applicability of other statutory requirements such as the CLCPA, nor does it obviate the need to ensure that the proposal is in the public interest.

* * * *

The vast majority of the energy that would be generated by the FNT plant under the Petitioners' proposal would not go to the grid. Rather, such electricity would be used by Digihost International, a private technology company, where the financial rewards remain with the company and its investors, while the environmental impacts of its intensive energy use are externalized, impacting the local community, our state, and our ever-warming world. Petitioners have failed to show that the proposed activities are in the public interest and meet the requirements of the CLCPA.

For these reasons, in its evaluation of the Petition, the Commission needs to take into account the proposed harmful environmental impacts, environmental injustices, and other harmful societal cost factors that will result from operation of the facility to produce electricity to run a proof-of-work cryptocurrency mining facility owned and operated for the sole benefit of Digihost and its shareholders. Due to the astounding lack of information provided by Petitioner, the Commission needs to undertake further review of the Petition and seek additional, specific, information from Petitioners before moving forward.

We respectfully request that, if the Commission is not ready to deny the Petition at this stage, the Commission require Petitioners to supplement their Petition with a thorough analysis of whether the proposed change in operations and ownership in the FNT plant would be compliant with the CLCPA and in the public interest, and that the public be provided an opportunity to review, comment on, and as appropriate, request a hearing regarding such supplemented Petition. We also respectfully request that the Commission await the DEC's actions on its upcoming Title V air permit and any further SEQR processes in order to avoid conflicts and confusion between two agencies currently reviewing the proposed significant changes in operations at the FNT power plant.

⁶⁴ N.Y. State Pub. Service Comm'n, Case No. 98-E-1670, *Carr Street Generating Station, L.P.*, Order Providing for Lightened Regulation (Apr. 23, 1999) at 8, <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={A756485C-3CE1-4C70-BEEB-8AE0D4EE8B4D}>.

Thank you for considering our comments describing the impact this power plant will have on the community of North Tonawanda, and the state's CLCPA's emissions reduction requirements. Compliance with the CLCPA is the only way to prevent our community, our state, our country, and our planet from suffering the worst of climate change's impacts.

Respectfully submitted,

/s/ Mandy DeRoche

Mandy DeRoche
Jessamine De Ocampo
Earthjustice
48 Wall Street
New York, NY 10005
Tel. 212-284-8044
mderoche@earthjustice.org

/s/ Kate Bartholomew

Kate Bartholomew, Chair
Sierra Club Atlantic Chapter
744 Broadway
Albany, NY 12207
Tel. 518-426-9144
atlantic.chapter@sierraclub.org