



January 27, 2022

**VIA E-FILING**

Hon. Michelle L. Phillips, Secretary to the Commission  
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 Secretary Phillips:

We submit the following response to the recent letter filed by counsel for Digihost International Inc. on behalf of Fortistar North Tonawanda Inc. and Digihost International Inc. (collectively, “Digihost”) concerning their pending Petition for a Declaratory Ruling Regarding Application of Section 70 and 83 of the New York State Public Service Law (“PSL”) and the Alternative, Approval of the Proposed Transaction Pursuant to Sections 70 and 83.

Digihost’s letter conspicuously omits any references to the New York’s Climate Leadership and Community Protection Act (“CLCPA”) which 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.”<sup>1</sup>

Under the CLCPA, state agencies, authorities, offices, and divisions shall not, without justification, approve projects that will make it more difficult for the state to achieve its mandatory emissions reductions and equity goals. The Commission itself has stated “New York is committed to ensuring energy intensive industries in general, including cryptocurrency mining, comply with the emissions limits set forth under the CLCPA and advancing the State’s

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<sup>1</sup> CLCPA § 7(2).

climate goals.”<sup>2</sup> As our October 13, 2021 submission indicates, there is no justification for the planned increase in greenhouse gas emissions at this power plant, and as the Commission affirmed in their recent testimony, it is “committed to ensuring CLCPA compliance across all sectors of the economy, including relative newcomers like cryptocurrency mining operations.”<sup>3</sup> Here, Petitioners fail to apply the CLCPA to the Commission’s mandate and fail to provide adequate information as to how their increased use of the plant will not interfere with statewide attainment goals under the CLCPA.

The Commission should deny Petitioner’s Request for Declaratory Ruling. Further review is required because the Fortistar North Tonawanda (“FNT”) power plant has not demonstrated that their proposed material changes in operations is in the public interest – i.e., that it complies with the CLCPA, as is required under Sections 70(5) and 83(5), Petitioners’ requests that no further review is required under Sections 70 and 83 must be denied.<sup>4</sup> The new operations to mine Bitcoin<sup>5</sup> 24 hours of every day are unnecessary for reliable electricity service and would increase greenhouse gas (“GHG”) emissions and local air pollution in nearby communities in contravention of the CLCPA.

Lastly, Petitioners claim that the Commission can rely solely on a previous negative State Environmental Quality Review Act (“SEQRA”) determination authorized by the North Tonawanda Planning Commission (“NTPC”). First, for the reasons above, that is just one piece of a multi-pronged analysis the PSC might undertake in its review. Second, the SEQRA determinations made by the City of North Tonawanda have been challenged in the New York State Courts under Article 78, and are still pending.<sup>6</sup> Thirdly, Petitioners cite to several cases emphasizing the Commission’s authority to defer to SEQRA findings made by authorized entities that are distinguishable or inapposite.

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<sup>2</sup> Testimony of the Public Service Commission, Assembly Standing Committee on Environmental Conservation, Cryptocurrency Mining and the Climate Leadership and Community Protection Act (CLCPA), (Oct. 2021) (hereafter “PSC Testimony”).

<sup>3</sup> PSC Testimony pg. 4.

<sup>4</sup> Section 70(5) of the Public Service Law states: “No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest.” Section 83(5) of the Public Service Law also states: “No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest.”

<sup>5</sup> 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>.

<sup>6</sup> *Sierra Club et al vs. City of North Tonawanda et al*, Sup. Ct. Niagara Cnty., Docket No. E176242/2021.

For all of the above reasons and all the re reasons stated in our October 13, 2021, letter, we continue to respectfully request that the Commission deny Petitioner's request for a declaratory ruling or, in the alternative, hold the transfer in abeyance until the Commission undertakes further review and several other determinations are made.

Respectfully submitted,

/s/ Mandy DeRoche

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