

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on June 11, 2020

COMMISSIONERS PRESENT:

John B. Rhodes, Chair
Diane X. Burman
James S. Alesi
Tracey A. Edwards
John B. Howard

CASE 19-E-0718 - Petition of Greenidge Generation LLC for a
Declaratory Ruling Regarding Jurisdiction and
Continued Application of Lightened Regulation.

CASE 20-E-0044 - Petition Of Greenidge Generation LLC For A
Declaratory Ruling Concerning The Furnishing
And/Or Sale Of Unmetered Electric Power To
Tenants Leasing Space At The Greenidge Site And
Alternate Petition For Amendment Of Its Section
68 Certificate To Permit Such Furnishing And/Or
Sales.

DECLARATORY RULING ON PROPOSED ON-SITE SERVICE

(Issued and Effective June 11, 2020)

BY THE COMMISSION:

INTRODUCTION

On September 16, 2016, the Public Service Commission
(Commission) granted a Certificate of Public Convenience and
Necessity (CPCN) for Greenidge Generation, LLC (Greenidge) to
resume operations of an approximately 106 MW generating facility

in the Town of Torrey, Yates County, New York (the Facility).¹ The September 2016 Order further authorized a lightened regulatory regime applicable to Greenidge in connection with the Facility participating on a merchant basis in wholesale markets administered by the New York Independent System Operator, Inc. (NYISO).

In November 2019 and January 2020, Greenidge filed separate petitions seeking declaratory rulings related to the applicability of the Public Service Law (PSL) and the extent of Commission jurisdiction over Greenidge's plans to construct electric distribution facilities and to serve commercial tenants on the same site as the Facility. Greenidge intends to use the Facility as the sole source of electricity for the on-site commercial tenants and to continue selling the remaining output into the NYISO-administered wholesale markets.

Responses to the November 2019 and January 2020 Petitions were due within the 21-day period prescribed under the Commission's Rules of Procedure, 16 NYCRR §8.2(c). No comments were received by the deadlines, which expired on December 10, 2019, and February 18, 2020, respectively. Several comments were filed after these deadlines and are addressed below. As discussed below, the Commission finds the very narrow legal issue raised with respect to proposed on-site activities would not be subject to Commission regulation. Further, the Commission finds that the lightened regulatory regime with respect to Greenidge's operation of the Facility would continue

¹ Case 15-E-0516, et al., Greenidge Generation LLC, Order Granting Certificates of Public Convenience and Necessity and Providing for Lightened and Incidental Regulation (issued September 16, 2016) (September 2016 Order), reh'g denied, Order Denying Rehearing (issued December 15, 2016).

to apply to its participation in wholesale markets on a merchant basis.

THE PETITIONS

Greenidge filed a petition on November 7, 2019, as amended on November 19, 2019, seeking a declaratory ruling regarding jurisdiction over on-site sales and the continued application of a lightened regulatory regime (November 2019 Petition).² The November 2019 Petition indicates that Greenidge intends to lease equipment used for data processing from, and to sell data processing services to, Greenidge Coin LLC (GLC). The data center operations and all electrical equipment necessary to provide these services would be located entirely on the Facility site, while the remainder of the Facility output would be sold on a merchant basis into wholesale markets administered by the NYISO. Greenidge intends to install breakers and relays, which are acceptable to New York State Electric and Gas Corporation (NYSEG) and the NYISO, that would disconnect all data processing operations whenever the output of the Facility falls below the demand from on-site data processing operations, as well as ensure that data processing operations would not take energy from NYSEG or NYISO when the Facility is out of service.

The November 2019 Petition requests a declaratory ruling that Greenidge's own use of electricity provided by the Facility for on-site data processing facilities leased from GLC would not be subject to the Commission's regulation or, alternatively, such on-site operations are covered under its existing CPCN and subject to lightened and incidental regulation. Lastly, the November 2019 Petition asks that the Commission confirm that the remainder of the Facility output

² See, Case 19-E-0718.

sold into NYISO markets would continue to be subject to lightened regulation.

Subsequently, Greenidge filed a second petition on January 28, 2020, seeking a declaratory ruling regarding the sale of unmetered electricity to tenants leasing space on the same property as the Facility (January 2020 Petition). In particular, the January 2020 Petition asks that the Commission disclaim jurisdiction over the construction and operation of certain overhead and underground electric distribution infrastructure at the Facility property that would be used to "furnish and/or sell unmetered electricity from the Facility to "third-parties [tenants] leasing space from Greenidge for the installation of their own data processing equipment at the Facility site."³ Greenidge asserts that "[n]one of the equipment used to provide such service would cross any public street or other public property, and all of the electricity in question would be furnished and/or sold to the [t]enants on an unmetered basis for on-site use and not for resale."⁴ In the event the Commission finds that such furnishing and/or sales of electricity are subject to its jurisdiction, Greenidge requests that the Commission find that no further approvals are required. Alternatively, Greenidge requests an amendment to its CPCN to allow these activities, while its furnishing and/or sales of electricity to tenants are subject to lightened regulation.

LEGAL AUTHORITY

The Commission is authorized to issue a declaratory ruling with respect to: (i) the applicability of any rule or statute enforceable by it to any person, property, or state of

³ January Petition, p. 2.

⁴ Id.

facts; and (ii) whether any action by it should be taken pursuant to a rule. The Commission also may decline to issue such a declaratory ruling. This authority is expressly established by State Administrative Procedure Act §204 and governed by the Commission's Rules of Procedure, contained in 16 NYCRR Part 8, implementing that statute.

DISCUSSION AND CONCLUSION

When interpreting the PSL, the Commission implements the statutory provisions in a manner that "best carries out the Legislature's intent and advances the public interest."⁵ In the AES and Carr Street Orders, for example, the Commission concluded that new forms of electric service providers participating in wholesale markets would be lightly regulated. Under this realistic appraisal approach, the Commission applies a lightened regulatory regime where appropriate, while continuing to impose the provisions of the PSL where necessary, such as matters with respect to enforcement, investigation, safety, reliability, and system improvements.⁶

In granting a lightened regulatory regime to Greenidge in 2016, the Commission found that certain statutory and regulatory requirements otherwise adhering to electric corporations are inapplicable, or otherwise unnecessary, due to Greenidge operating its Facility on a merchant basis and

⁵ Case 04-E-1549, et al., Calpine Bethpage 3, LLC, Declaratory Ruling Concerning Financing and Order Providing for Lightened Regulation, Granting Amendment of Certificate of Public Convenience and Necessity and Approving Transfer of Certificate as Amended (issued February 11, 2005).

⁶ Case 99-E-0148, AES Eastern Energy, L.P. and AES Creative Resources, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (AES Order); Case 98-E-1670, Carr Street Generating Station, L.P., Order Providing for Lightened Regulation (issued April 23, 1999) (Carr Street Order).

providing electricity in wholesale markets administered by the NYISO.⁷ The proposed activities presented in the November 2019 and January 2020 Petitions are also viewed in light of the Legislative intent and purposes of the PSL, while ensuring the public interest is adequately addressed.

Greenidge proposes to undertake several activities on the Facility property, including the construction and operation of certain overhead and underground electric distribution facilities to serve tenants "leasing space from Greenidge for the installation of their own data processing equipment at the Facility site."⁸ Greenidge would install breakers and relays that would disconnect all data processing operations whenever the output of the Facility falls below the demand from on-site data processing operations, as well as to ensure that data processing operations would not take energy from NYSEG or NYISO when the Facility is out of service. To the extent the Facility output exceeds on-site demand, it would be sold on a merchant basis into wholesale markets administered by the NYISO, as is currently done under a lightened regulatory regime applicable to Greenidge.⁹

As a result of these activities, Greenidge would continue to be deemed an "electric corporation" under the PSL by virtue of its continuing to generate electricity for "sale to others."¹⁰ However, it is notable that the term "electric corporation" explicitly excludes situations where "electricity is generated or distributed by the producer solely on or through private property for ... its own use or the use of its tenants

⁷ September 2016 Order, p. 23.

⁸ January Petition, p. 2.

⁹ September 2016 Order.

¹⁰ PSL §2(13).

and not for sale to others.”¹¹ Therefore, in the absence of its continued sales into NYISO-administered markets, the activities proposed by Greenidge, whereby it would serve on-site tenants, would not fall within the purview of the PSL.

Notwithstanding its status as an electric corporation, the proposed on-site sales by Greenidge do not present a need to apply consumer protections since it would serve a sophisticated commercial customer capable of negotiating the terms and conditions of service and could avail itself of competitive alternatives. The Commission ruled in several cases that similar arrangements do not require regulatory oversight.¹² These cases support a similar finding here that the PSL does not need to be applied to advance the public interest in the case of Greenidge’s proposed sales of unmetered electricity to commercial tenants.

¹¹ Id.

¹² See, Case 04-E-1549, et al., Calpine Bethpage 3, LLC, Declaratory Ruling Concerning Financing and Order Providing for Lightened Regulation, Granting Amendment of Certificate of Public Convenience and Necessity and Approving Transfer of Certificate as Amended (issued February 11, 2005) (several PSL provisions inapplicable to retail electric sales to “a large and sophisticated entity capable of protecting its own interests, and of securing electricity supply from various competitive alternatives”), pp. 10-11; see also, Case 00-M-2231, Indeck-Olean Limited Partnership, Order Providing for Lightened Regulation and Granting a Certificate of Public Convenience and Necessity to Procure and Deliver Steam (issued May 2, 2001) (conditions to protect consumer interests not necessary where two sophisticated business entities negotiated a contract at arm’s length for steam service), p. 11; see also, Case 11-G-0361, Gateway Delmar LLC and American Midstream Onshore Pipelines LLC, Order Providing for Lightened Ratemaking Regulation (issued November 22, 2011) (gas contract does not need to be filed where “sophisticated business entities are capable of protecting their own interests...”), p. 4.

Further, the proposed on-site construction and operation of overhead and underground electric distribution facilities would not present safety or reliability concerns from a public interest perspective.¹³ Importantly, none of the equipment used to provide such service would cross any public street or other public property. Greenidge also advises that NYISO and NYSEG have reviewed the changes to Greenidge's interconnection facilities required to serve the proposed behind-the-meter load and have concluded that those changes do not constitute a "material modification" to that existing interconnection. This determination reflects the NYISO's conclusion that these changes to the existing interconnection facilities would not have a material adverse impact on the reliable operation of the New York State Transmission System or on NYSEG's distribution facilities. In the event that the New York State Power System enters a condition other than the Normal State, as defined in NYISO's Emergency Operations Manual, and in the event that NYISO requests voluntary curtailment of large loads as a corrective measure as authorized in that manual, Greenidge has agreed to curtail its behind-the-meter load to the extent requested by NYISO.

The activities proposed by Greenidge would not affect its lightened regulatory status, which would continue to apply with respect to the remainder of the Facility output that is sold into NYISO-administered wholesale markets, as described in the September 2016 Order. Greenidge is reminded that, under lightened regulation, it remains subject to the PSL with respect to matters such as enforcement, investigation, safety, reliability, and system improvement, and the other requirements

¹³ In a supplement filed on May 20, 2020, Greenidge provided additional information requested by Department of Public Service with respect to reliability matters.

of PSL Articles 1 and 4, to the extent discussed in prior orders regarding lightened regulation.

This ruling is specific to the single question raised on the Petitions - whether Greenidge's proposed service of electricity to on-site tenants is subject to the Commission's regulation. To be clear, this ruling does not address either the propriety of any permits granted to Greenidge by federal, State, or local regulatory entities or whether Greenidge is obligated to obtain permits from such entities. Several residents living in the vicinity of the Facility submitted late-filed comments raising concerns with the environmental impacts of the Facility, especially those related to the water intake and discharge. These comments raise matters that are beyond the scope of this declaratory ruling, which is limited to the applicability of the PSL to the facts presented in the November 2019 and January 2020 Petitions.¹⁴

Additionally, declaratory rulings involving interpretations of existing statutes, rules, or regulation are not "actions" within meaning of the State Environmental Quality Review Act (SEQRA) and its implementing regulations and, therefore, they may be issued without further SEQRA review.¹⁵ The declaratory relief requested in the November 2019 and

¹⁴ As the Seneca Lake Pure Waters Association notes in its comments, the "Greenidge Generation facility's thermal discharge is governed by a [New York State Department of Environmental Conservation] issued [State Pollutant Discharge Elimination System] permit," which was amended in October 2019 to allow the Facility to utilize natural gas as a fuel. Case 20-E-0044, Seneca Lake Pure Waters Association Comments (filed June 10, 2020).

¹⁵ 6 NYCRR §617.5(c)(37) (defining "interpretation[s] of an existing code, rule or regulation," as Type II actions not subject to review under SEQRA).

January 2020 Petitions falls within the ambit of the statute and regulations authorizing issuance of a declaratory ruling.

In considering the facts and circumstances presented in the November 2019 and January 2020 Petitions, the Commission finds that the proposed construction and operation of certain overhead and underground electric distribution facilities on the Facility site, accompanied by the provision of electricity from the Facility for on-site data processing by commercial tenants, would not be subject to regulation by the Commission. These findings only extend to the limited activities presented in the November 2019 and January 2020 Petitions. Further Commission review would be required before Greenidge may serve other entities.

The Commission finds and declares:

1. The provisions of the Public Service Law shall not apply to the proposed activities, as presented in the petitions filed by Greenidge Generation, LLC on November 7, 2019, as amended on November 19, 2019, and on January 28, 2020, to the extent discussed in the body of this Declaratory Ruling.

2. These proceedings are closed.

By the Commission,

(SIGNED)

MICHELLE L. PHILLIPS
Secretary