

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

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May 9, 2024

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**RE: GREENIDGE GENERATION LLC
DEC PERMIT ID NO. 8-57360-0004/00017
DECISION ISSUED – MAY 8, 2024**

Dear Parties:

Enclosed is a copy of the Decision signed by Regional Director Dereth B. Glance in the above referenced matter.

Very truly yours,

Michele M. Stefanucci

Michele M. Stefanucci
Chief Administrative Law Judge

Enclosure

cc: File

STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 Broadway
Albany, New York 12233-1010

In the Matter

-of-

The Denial of the Application to Renew
the New York State Title V Air Permit for
the Greenidge Generating Station,

-by-

GREENIDGE GENERATION LLC

Applicant.

DEC Permit ID No. 8-57360-0004/00017

DECISION OF THE REGIONAL DIRECTOR

May 8, 2024

DECISION¹

This proceeding concerns the application of Greenidge Generation LLC (Greenidge or Applicant) for the renewal of its Clean Air Act Title V air permit (DEC Permit ID No. 8-57360-0004/00017) for the Greenidge Generating Station (facility), located in the Town of Torrey, Yates County, New York. The facility is a primarily natural gas-fired electric generating plant, with a generating capacity of approximately 107 megawatts (MW). By letter dated June 30, 2022, staff of the New York State Department of Environmental Conservation (Department or DEC) denied the renewal application.

Applicant submitted a timely request for an adjudicatory hearing on its application, dated July 28, 2022. The matter was referred to the Department's Office of Hearings and Mediation Services and was assigned to Administrative Law Judge (ALJ) Elizabeth Phillips. The ALJ held two virtual legislative public comment hearings on October 24, 2022 and also received written comments, up until November 19, 2022, with respect to the proceeding. Petitioners Seneca Lake Guardian, The Committee to Preserve the Finger Lakes, Fossil Free Tompkins and Sierra Club-Atlantic Chapter (collectively, Petitioners) filed a joint petition for full party status, dated November 4, 2022 (Petition).

The ALJ held an issues conference on December 8, 2022 and January 4, 2023. Participating in the issues conference were Department staff, Applicant and Petitioners. After receiving additional briefing, the ALJ issued a Ruling on Issues and Party Status dated September 22, 2023 (Issues Ruling) which, among other things, granted Petitioners full party status in this proceeding and identified three issues for adjudication.

Presently pending before me are appeals taken by Greenidge and Petitioners from the Issues Ruling. Department staff did not appeal from the Issues Ruling but filed a response to Greenidge's appeal. Greenidge and Petitioners each filed a response to the other's appeal.

The Climate Leadership and Community Protection Act

Department staff denied Greenidge's renewal application based upon the Climate Leadership and Community Protection Act (CLCPA) (L 2019, ch 106). The CLCPA was enacted in 2019, and, with one exception not relevant here,² took effect on January 1, 2020. CLCPA § 1 (Legislative findings and declaration) states that “[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York” and provides a list of examples of the adverse impacts of climate change (CLCPA § 1 [1]). The statute provides:

“According to the U.S. Global Change Research Program (USGCRP) and the Intergovernmental Panel on Climate Change (IPCC), substantial reductions in greenhouse gas [GHG] emissions will be required by mid-century in order to limit global warming to

¹ By Memorandum dated September 19, 2022, the Commissioner of the New York State Department of Environmental Conservation delegated decision-making authority in this matter to Dereth B. Glance, then Deputy Commissioner for Environmental Remediation and Materials Management, now Region 7 Regional Director.

² ECL 75-0115, entitled “Community air monitoring program,” was effective October 1, 2022.

no more than 2°C and ideally 1.5°C, and thus minimize the risk of severe impacts from climate change. Specifically, industrialized countries must reduce their greenhouse gas emissions by at least 80% below 1990 levels by 2050 in order to stabilize carbon dioxide equivalent [CO₂e] concentrations at 450 parts per million -- the level required to stay within the 2°C target. . . . It shall therefore be a goal of the state of New York to reduce [GHG] emissions from all anthropogenic sources 100% over 1990 levels by the year 2050, with an incremental target of at least a 40 percent reduction in climate pollution by the year 2030, in line with USGCRP and IPCC projections of what is necessary to avoid the most severe impacts of climate change” (CLCPA § 1 [2][a], [4]).

The CLCPA added a new Article 75 to the Environmental Conservation Law (ECL), entitled “Climate Change.” ECL 75-0107 (1) directs the Department to, within one year of the effective date of the CLCPA, promulgate rules and regulations establishing “a statewide greenhouse gas emissions limit as a percentage of 1990 emissions, as estimated pursuant to [ECL] 75-0105 . . . , as follows: a. 2030: 60% of 1990 emissions. b. 2050: 15% of 1990 emissions.” The statute also requires the Department to, within four years of the effective date of the CLCPA, promulgate rules and regulations “to ensure compliance with the statewide emissions reduction limits” (ECL 75-0109 [1]). In addition, ECL 75-0103 established the New York State Climate Action Council (Council) which consists of 22 members, including the Commissioner of DEC who serves as a co-chairperson of the Council (*see* ECL 75-0103 [1] , [4]). The CLCPA directs the Council to “prepare and approve a scoping plan outlining the recommendations for attaining the statewide greenhouse gas emissions limits in accordance with the schedule established in [ECL] 75-0107 . . . which shall inform the state energy planning board’s adoption of a state energy plan in accordance with section 6-104 of the energy law” (ECL 75-0103 [11]). The final New York State Climate Action Council Scoping Plan (Scoping Plan) was issued on December 19, 2022.

The CLCPA also amended the Public Service Law by adding Public Service Law § 66-p, entitled “Establishment of a renewable energy program.” Among other things, Public Service Law § 66-p requires the Public Service Commission (PSC) to establish a program to require that “(a) a minimum of seventy percent [70%] of the statewide electric generation secured by jurisdictional load serving entities to meet the electrical energy requirements of all end-use customers in New York state in two thousand thirty [2030] shall be generated by renewable energy systems; and (b) that by the year two thousand forty [2040] (collectively, the “targets”) the statewide electrical demand system will be zero emissions” (Public Service Law § 66-p [2]).

CLCPA § 7 is an unconsolidated section of law entitled “Climate change actions by state agencies.” With respect thereto, CLCPA § 7 (2) states, in full:

“In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, each agency, office, authority, or division

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.”

CLCPA § 7 (3) states, in full:

“In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, pursuant to article 75 of the environmental conservation law, all state agencies, offices, authorities, and divisions shall not disproportionately burden disadvantaged communities as identified pursuant to subdivision 5 of section 75-0101 of the environmental conservation law. All state agencies, offices, authorities, and divisions shall also prioritize reductions of greenhouse gas emissions and co-pollutants in disadvantaged communities as identified pursuant to such subdivision 5 of section 75-0101 of the environmental conservation law.”

As required by ECL 75-0107(1), the Department promulgated regulations, 6 NYCRR part 496 (Statewide Greenhouse Gas Emission Limits), effective December 30, 2020. Section 496.4(a) of 6 NYCRR states that the “estimated level of statewide [GHG] emissions in 1990 is 409.78 million metric tons of [CO₂e].” Section 496.4(b) of 6 NYCRR, in turn, establishes statewide [GHG] emission limits of 245.87 million metric tons of CO₂e for 2030 and 61.47 million metric tons of CO₂e for 2050. The regulation defines “carbon dioxide equivalent” (CO₂e) as “the amount of carbon dioxide by mass that would produce the same global warming impact as the given mass of another greenhouse gas over a specific time frame, as determined by the IPCC, and as provided in Section 496.5 of this Part” (6 NYCRR 496.3 [b]) and provides a CO₂e value for each greenhouse gas (see 6 NYCRR 496.5).

The interpretation and application of CLCPA § 7(2) is the fundamental question at issue in this proceeding.

Factual and Procedural Background

The facility was historically a coal-burning electrical generating facility (see Greenidge letter in response to NOIA/RATI, dated August 2, 2021 [Greenidge’s August 2, 2021 letter], at 3; Department staff’s denial letter, dated June 30, 2022 [DEC Denial Letter], at 2). The facility ceased operations as a coal-fired power plant in March 2011, and the former owner relinquished its DEC-issued Title V air permit for the facility in 2012 (see Greenidge’s August 2, 2021 letter at 9; DEC Denial Letter at 2). Greenidge acquired the facility in 2012 (see Greenidge’s Appeal of Ruling on Issues and Party Status, dated November 13, 2023 [Greenidge Appeal], at 3). Greenidge applied for a new Title V air permit in 2014 and indicated that it would be converting the facility from coal-firing to primarily natural gas-firing (see DEC Denial Letter at 2; see also Greenidge’s August 2, 2021 letter at 11).

According to Department staff:

“The reopening of the Facility was, according to Greenidge, for the purpose of producing electricity on a limited basis to be sold into the New York Independent System Operator (NYISO) market. That is, the Facility was to be utilized in a ‘peaking’ capacity, providing a limited amount of electricity to the grid in certain circumstances. At that time, Greenidge did not indicate that it intended to utilize a significant amount of the energy generated by the Facility behind-the-meter for its own purposes. That is, Greenidge did not indicate in the initial application that it intended the Facility to primarily serve increasing energy load from on-site cryptocurrency mining operations,³ rather than provide energy primarily to the electricity grid. Based on the application materials provided by Greenidge, the Department’s understanding at the time was that the Facility would only be producing electricity to be sold to the grid” (DEC Denial Letter at 2).

Department staff issued a negative declaration for the new permit, pursuant to the State Environmental Quality Review Act (SEQRA) (see ECL article 8), finding, among other things: “[T]he operation of the plant itself will not create a new demand for energy. Rather, it will serve as another facility to help meet the current electricity demands of the region. As a result, the plant will have no significant adverse impacts in increasing the use of energy” (Greenidge Generation LLC’s Statement of Issues, dated November 4, 2022 [Greenidge’s Statement of Issues], at Exhibit [Exh] 1 at 3; see DEC Denial Letter at 3).

Department staff issued a Title V air permit to Greenidge for the facility with an effective date of September 7, 2016 and an expiration date of September 6, 2021 (see Title V air permit, effective September 7, 2016 [2016 Air Permit], at 1). The permit contemplated that Greenidge would conduct electric generating operations powered by a boiler (Boiler #6) which would burn natural gas, with the ability to co-fire up to 19% biomass (see id. at 2). The permit provided that “[f]acility-wide greenhouse gas emissions are limited to 53,788.1 tons of CO₂e per 30-day rolling average” and that “[f]acility-wide greenhouse gas emissions are limited to 641,878 tons/year of CO₂e on a 12-month rolling total basis, rolled monthly” (id. at 23 [Condition 29] and 24-25 [Condition 31]). Notably, the permit included a statement advising that the “Department reserves the right to exercise all available authority to modify, suspend, or revoke this permit in accordance with 6[]NYCRR Part 621” and stated that grounds for modification, suspension or revocation include “a material change in . . . applicable law or regulations since the issuance of the existing permit” (id. at 7).

--Greenidge’s Renewal Application

On March 5, 2021, Greenidge submitted an application to renew its Title V air permit for the facility.⁴ Greenidge requested some revisions to the permit, which it characterized as

³ Although the terms “mining” and “miner” are commonly used to describe cryptocurrency or bitcoin operations, such operations do not involve mining of any physical materials, as the term mining is generally used. Bitcoin mining and cryptocurrency mining as those terms are used herein refer to “operations that use proof-of-work authentication methods to validate blockchain transactions” (ECL 19-0331 [1]). Cryptocurrency mining operations are energy-intensive operations (see L 2022, ch 628 § 1[e]; Scoping Plan at 258).

⁴ Greenidge’s application was a combined application to renew its Title V air permit and its Title IV acid rain permit. The Title IV acid rain permit is not at issue in this proceeding.

“minor” and “non-material,” including removal of the diesel fire pump permit conditions (due to the fact that the diesel fire pump had been taken out of service) and revisions to the monitoring requirements for particulate emissions (March 5, 2021 Letter from David T. Murtha at 1-2). Greenidge’s renewal application did not request any change in greenhouse gas emissions limits.⁵

By letter dated May 3, 2021, Department staff issued a Notice of Incomplete Application (NOIA) with respect to Greenidge’s renewal application. Staff directed as follows:

“To address Section 7(2) of the CLCPA, identify each GHG and calculate the facility’s potential to emit GHG in tons per year and carbon dioxide equivalent (CO₂e) emissions for the facility using the 20-year global warming potentials found in 6 NYCRR Section 496.5. The CLCPA analysis should also include calculations showing the facility’s projected GHG and CO₂e emissions in the years 2030, 2040, and 2050. In addition, the CLCPA analysis should include actual GHG emissions from the facility, in tons per year and CO₂e, for each year since 2015. Finally, the CLCPA analysis should also include the anticipated actual GHG emissions from the facility, based on anticipated operation of the facility, for each year of the term of the permit” (NOIA dated May 3, 2021 at 1-2).

Department staff advised that it considered “upstream out-of-state GHG emissions associated with the generation of electricity imported into the State, or the extraction, transmission and use of fossil fuels imported into the State” to be statewide GHG emissions for purposes of the CLCPA (*id.* at 2). Staff further directed: “Please discuss how the emissions from this facility will be mitigated or reduced consistent with the [CLCPA’s GHG emissions] requirements, including the means the facility will use to meet the 2040 energy sector requirement. If there are no feasible ways to reduce GHGs, please explain that too” (*id.* at 2).

By letter dated June 30, 2021, Department issued a Request for Additional Technical Information (RATI) to the Applicant. Staff repeated the requests made in its May 3, 2021 letter and also requested information with respect to: (1) when the facility began operation of bitcoin mining at the facility; (2) whether any physical or operational changes were made at the facility to enable bitcoin mining; and (3) how much electricity the facility provided to the electricity grid and how much electricity was generated behind the meter for each year since bitcoin mining commenced at the facility (*see* RATI dated June 30, 2021 [RATI 1] at 2).

In response, by letter dated August 2, 2021, Greenidge, among other things, argued that renewal of its Title V permit was not inconsistent, and would not interfere with, the attainment of statewide GHG emissions targets. Of note, Greenidge represented that its total maximum potential GHG emissions, including upstream emissions, equal 952,968 CO₂e metric tonnes (MT) per year (1,050,423 CO₂e short tons per year) and asserted that those emissions: (1) comprise only 0.23% of the total statewide GHG 2030 emissions target; and (2) constitute “a

⁵ State Administrative Procedure Act (SAPA) § 401(2) provides: “[w]hen a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court” (*see also* 6 NYCRR 621.11[1]). Although its permit expired in September 2021, the facility continues to operate during the pendency of this proceeding pursuant to SAPA 401(2) and 6 NYCRR former 621.11 (l).

70.3% reduction in combined onsite and upstream emissions, based on the facility’s potential-to-emit (“PTE”) permitted emissions compared to the actual 1990 baseline and 75% reduction from 1990 actual baseline onsite emissions” (due to the conversion from coal to natural gas) (Greenidge’s August 2, 2021 letter at 7-8 [emphasis in original]). Greenidge represented that it has taken a number of steps to reduce GHG emissions, including the conversion to natural gas firing and removal of the diesel-fueled fire pump (see id. at 5-6).

As to future emissions, Greenidge represented that its total projected actual CO₂e emissions for each calendar year 2022 through 2026 would equal 952,958⁶ MT of CO₂e (with CO₂e emissions from onsite combustion totaling 520,386 MT of CO₂e) (see Greenidge’s August 2, 2021 letter at 10 [Table 5]). Greenidge further represented: “Based on its operational needs and trends, the Facility’s projected GHG and CO₂e emissions in the years 2030, 2040, and 2050 are expected to be consistent with its Potential GHG and CO₂e emissions as presented in Table 2” (id. at 8; see id. at 7 [Table 2][providing that the facility’s current PTE and upstream CO₂e emissions total 952,968 CO₂e MT/year]). Greenidge advised:

“However, Greenidge intends to use the next five years allowed by renewal of its Title V permit ending in 2026 (four years before the next CLCPA interim deadline) to assess its ability to further . . . improve efficiency and reduce GHG emissions associated with its operation. Specifically, Greenidge has identified several additional GHG reduction projects that it will evaluate over the next 5-year Title V/IV permit renewal period” (id. at 8).

Greenidge provided a table summarizing the GHG reduction projects that “will be evaluated” during the renewed permit period (id.).

Greenidge also provided information with respect to the facility’s past emissions; this information shows that the primary electricity generating unit at the facility (Unit #4) did not fire in 2015 and 2016 and that Unit #4 first fired under Greenidge’s existing Title V permit in February 2017 (see Greenidge’s August 2, 2021 letter at 9-10). Greenidge represented that the facility emitted the following actual GHG/CO₂e emissions: (1) 172,309 MT in 2017; (2) 195,731 MT in 2018; (3) 64,607 MT in 2019; (4) 374,814 MT in 2020; and (5) 195,493 MT from January to June 2021 (see id. at 10).

Greenidge advised: “No physical changes or changes in the method of operation at the emission source have taken place at the facility since the start of the Blockchain Technology (aka bitcoin mining) activities; including no changes to any of the air pollution sources or operational control devices associated with the emissions sources” (Greenidge’s August 2, 2021 letter at 11). Greenidge represented that, after piloting a Blockchain Technology data center at the facility in 2019, the Town of Torrey authorized the installation of the Blockchain Technology data center at

⁶ The 952,958 amounts set forth in Table 5 appear to be mathematically incorrect; the totals should be 952,968 (520,386 MT [onsite emissions] + 432,582 MT [upstream emissions] = 952,968 MT) (see Greenidge’s August 2, 2021 letter, at 10 [Table 5]; see id. at 7 [Table 2, entitled “Greenidge Current Potential-to-Emit (PTE) and Upstream CO₂e Emissions,” representing that the facility’s current onsite combustion emissions equal 520,386 MT and its upstream emissions equal 432,582 MT, for a total amount of 952,968 MT]).

the facility in 2020 (see id.). Greenidge provided the following table entitled “Greenidge Electricity Generation & Distribution:”

Calendar Year	Net Generation to NY ISO Grid	Station Service	Blockchain Technology Service
2017	170,297 megawatts (MW)	10,223 MW	0
2018	203,918 MW	12,496 MW	0
2019	61,232 MW	4,303 MW	7,812 MW
2020	215,588 MW	32,170 MW	132,215 MW
2021	76,486 MW	16,094 MW	112,474 MW (Jan 2021-June 2021)

(see Applicant’s August 2, 2021 letter at 12 [Table 6]). Greenidge stated that its “behind the meter” power generation has not and will not result in an increase in the facility’s future PTE GHGs and CO2e emissions from the current PTE and “renewal of the Title V/IV air permit will not impact this conclusion” (id. at 12).

By letter dated August 16, 2021, Department staff issued a second RATI. Staff requested, among other things, that Greenidge “update the analysis to discuss the GHG emissions associated with the current and planned operations of the facility and discuss alternatives and/or mitigation measures for those emissions. The analysis should also include projections of GHG emissions for the years 2030, 2040, and 2050” (RATI dated August 16, 2021 [RATI 2] at 1). Staff also requested more information pertaining to the generating capacity and utilization rate of the facility and information pertaining to how the facility’s output will be used (electricity generation to the grid vs. on-site consumption for blockchain operations) (see id. at 2). Staff requested “a discussion of the method(s) the facility will use to comply with the CLCPA’s zero emissions by 2040 requirement for the electricity generation sector” (id.).

Greenidge responded to RATI 2 by letter dated August 20, 2021. Greenidge argued that staff’s request for detailed projections regarding GHG emissions for the years 2030, 2040 and 2050 was premature -- where Greenidge only seeks to renew its permit for a five year term -- and that much of the supplemental data requested by staff would require “substantial speculation” (Greenidge letter in response to RATI 2, dated August 20, 2021 [Greenidge’s August 20, 2021 letter], at 1). Notwithstanding this position, Greenidge referenced Section 2 (Future Projected GHG & CO2e Emissions), including Table 3 (Greenidge GHG Reduction Project Opportunities), set forth in its August 2, 2021 response and “reiterate[d] its commitment to further improving energy efficiency and investigating, and if feasible installing, the technology to allow co-firing with green hydrogen fuels as a method to reduce and eventually eliminate GHG emissions from the facility” (id. at 2). Greenidge also represented that its total projected net actual CO2e emissions for 2030, 2040 and 2050 would comply with the CLCPA goals (see id. at 7 [Table 5]).

With respect to staff’s inquiry concerning the generating capacity and utilization rate of the facility and the use of the facility’s output, Greenidge advised that “there is no planned increase in future generating capacity” and that “any attempt to project future utilization rates on

an ad hoc basis over a thirty-year planning horizon is not realistic and has no relevance for Title V renewals or CLCPA consistency determinations” (Greenidge’s August 20, 2021 letter at 9). Greenidge asserted that it does not control demand, including most on-site demand, and does not have complete control over utilization and stated: “To the extent that output exceeds station service combined with behind the meter sales authorized by the PSC, future generating capacity would be sold or offered for sale on a merchant basis into wholesale markets administered by the NYISO, as it has been since 2016” (*id.*).

Department staff determined that Greenidge’s application was complete for purposes of public review and comment and, on September 8, 2021, published a Notice of Complete Application, Availability of Draft Permits and Announcement of Virtual Legislative Public Comment Hearings in the Department’s Environmental Notice Bulletin (ENB) and two newspapers. Staff’s notice included comments with respect to the CLCPA. Among other things, the notice advised: “There are substantial greenhouse gas (GHG) emissions which are currently associated with the existing and proposed uses at the Facility. Based on the information currently available, at this time, Applicant has not demonstrated sufficient compliance with the requirements of the Climate Act” (ENB Notice, dated September 8, 2021 [ENB Notice], at 2). Staff stated that it may seek additional information from applicant in order to make its determination as to whether the project would be consistent with or would interfere with the attainment of the statewide GHG emission limits and also advised that, “[a]t this time, the Applicant has not provided a justification for the Facility nor proposed sufficient alternatives or GHG mitigation measures” (*id.* at 2-3). Staff sought public comments with respect to compliance with the CLCPA.⁷

Following the public comment hearings, held on October 13, 2021, and the close of the public comment period, Greenidge submitted a letter, dated March 25, 2022, in further support of its application. In the letter, Greenidge offered to agree to the following two binding conditions to be included in its permit:

- (1) “A binding condition that requires a 40% reduction in GHG emissions from our current permitted level by the end of 2025 – a full five (5) years before the CLCPA’s statewide target date of 2030;” and
- (2) “A requirement that Greenidge be a zero-carbon emitting power generation facility by 2035 – a full five (5) years before the statewide target for the electric generating sector found in Public Service Law § 66-p” (Greenidge letter in support of application, dated March 25, 2022 [Greenidge’s March 25, 2022 letter], at 2).

In its letter, Greenidge also provided a number of “relevant facts” which it argued establish that its permit renewal is CLCPA-compliant, including: (1) the facility’s emission levels are a “small

⁷ Of note, the Department received a number of comments from New York state legislators advocating for the denial of the permit (see e.g. Letter dated October 15, 2021 from Assemblymember Deborah J. Glick; Letter dated November 19, 2021 from then-Assemblymembers Steven Englebright and Dan Quart; Letter dated November 19, 2021 from Assemblymember Anna R. Kelles; Letter dated November 18, 2021 from Assemblymember Steven Otis; October 27, 2021 Testimony of New York State Senator James Sanders, Jr.).

fraction” of the statewide emissions target for 2030; (2) the statewide GHG emissions limits do not go into effect until after the permit would expire; (3) the renewal application did not request an increase in generation capacity and the facility is not generating any air emissions that are not already subject to the terms and conditions of the Title V air permit and “fully accounted for by New York State’s federally approved Clean Air Act State Implementation Plan;” and (4) Greenidge “send[s] power to the NYISO Grid each day that [it] operate[s]” (id. at 2-3).

--Department Staff’s Denial

By letter dated June 30, 2022, Department staff denied the renewal application. Staff interpreted CLCPA § 7(2) as having three elements, to be applied as follows:

“First, as is relevant here for purposes of the Department’s review of the Application, the Department must consider whether the renewal of a Title V permit for the Facility would be inconsistent with or interfere with the attainment of the Statewide GHG emission limits established in ECL Article 75. Second, if the renewal of a Title V permit would be inconsistent with or would interfere with the Statewide GHG emission limits, then the Department must also provide a detailed statement of justification for the continued operation of the Facility notwithstanding the inconsistency. Third, in the event a justification is available, the Department would also have to identify alternatives or GHG mitigation measures to be required for the Facility” (DEC Denial Letter at 6-7).

Applying these elements of CLCPA § 7(2), Department staff first determined that “the Facility’s continued operation in its current manner would be inconsistent with or would interfere with the attainment of the Statewide GHG emission limits established in Article 75 of the ECL and reflected in Part 496” (DEC Denial Letter at 8; see id. at 8-16). Staff indicated that this determination was primarily based upon the following factors:

- (1) “the actual GHG emissions from the Facility have drastically increased since the time of the Title V permit issuance in 2016 and since the effective date of the CLCPA in 2020;
- (2) this increase in GHG emissions is primarily due to the fact that Greenidge has substantially altered the primary purpose of the Facility’s operation, from providing electricity to the grid in a ‘peaking’ capacity to powering its own energy-intensive Proof-of-Work (PoW) cryptocurrency mining operations behind-the-meter; and
- (3) renewal of the Title V permit would allow Greenidge to continue to increase the Facility’s actual GHG emissions through the increased combustion of fossil fuels, for the benefit of its own behind-the-meter operations” (DEC Denial Letter at 8 [footnote omitted]).

Staff rejected Greenidge’s argument that CLCPA § 7(2) does not apply to its application due to the fact that the Department had not yet promulgated CLCPA-implementing regulations, finding that “Section 7(2) is of immediate effect” (DEC Denial Letter at 9). Staff also rejected Greenidge’s fact-based arguments with respect to consistency as irrelevant to the question being considered by the Department (see id. at 9). Specifically, Department staff determined that: (1) a facility’s GHG emissions considered as a percentage of the State’s overall energy generation and GHG emissions is irrelevant to the Department’s analysis under the CLCPA, which considers

consistency “in the context of an individual administrative decision;” (2) the fact that the facility is emitting less GHGs than it did in 1990 is also irrelevant to the analysis, which assesses whether a permitting decision “would be inconsistent or would interfere with the State’s overall achievement of the aggregate Statewide GHG emission limit;” and (3) the fact that the requested permit would expire before the 2030 date when the Statewide GHG emission limit becomes effective is not relevant to the question before the Department, noting that “achieving the Statewide GHG emission limits will require substantial action prior to 2030, including to transition the energy sector away from its reliance on fossil fuels” and that a facility may continue to operate and emit GHGs even beyond the permit term, as here (id.).

Department staff further determined that the data – both data submitted by Greenidge and data reported as part of the Regional Greenhouse Gas Initiative (RGGI) -- demonstrated that GHG emissions from the facility have “increased drastically” since the issuance of the Title V permit and the effective date of the CLCPA (DEC Denial Letter at 10). Staff pointed out that the total GHG emissions associated with the facility averaged 166,406 short tons (using RGGI data) or 158,970 short tons (using Applicant’s data) of CO₂e per year from 2017 through 2019 but, in 2020, the facility had total emissions of 415,861 short tons CO₂e of GHGs, “which equates to almost tripling its emissions” (id.). In addition, according to RGGI data: (1) the facility’s total emissions for 2021 equaled 514,012 short tons CO₂e of GHGs; and (2) during the first quarter of 2022, the facility had total emissions of 168,723 short tons of CO₂e (91,530 short tons of direct emissions and 77,193 short tons of upstream emissions) (see id. at 10-11). Staff observed: “If this quantity of emissions were to be replicated for the remaining three quarters of 2022, total Facility emissions in 2022 would be 674,172 short tons CO₂e of GHGs” (id. at 11). Staff also observed that, according to Greenidge’s submissions, Greenidge’s projected total facility emissions for calendar years 2022 through 2026 is 1,050,467 short tons of CO₂e per year, “which is more than six times the emissions the Facility was producing, on average, prior to shifting to cryptocurrency mining operations” and which, according to Greenidge, is “equivalent to the overall GHG PTE from the Facility” (id. at 11).

Staff also determined that the generation data provided by Greenidge demonstrated “a change in Greenidge’s primary purpose for the Facility’s operation since the Title V permit issuance and passage of the Climate Act” and noted that Greenidge represented that, in 2021, 54.9% of the Facility’s electricity generation served behind-the-meter PoW cryptocurrency mining operations (DEC Denial Letter at 13). Staff further stated that publicly available information, including data reported by Greenidge to the US Environmental Protection Agency (EPA) and NYISO data, confirms that “Greenidge has changed the primary purpose of its operation. That is, rather than providing the energy the Facility generates to the electric grid, Greenidge is utilizing a majority of the Facility’s energy behind-the-meter to support its own PoW cryptocurrency mining operations” (id. at 13-14).

Staff found that, if it were to grant the renewal, it would allow for the facility to continue in its current manner, thereby making it more difficult for the State to achieve the CLCPA’s GHG emissions limits. Among other things, staff found that, contrary to DEC’s understanding at the time of the initial permit issuance as indicated in its 2016 SEQRA negative declaration, Greenidge’s facility is creating a significant new demand for energy and further observed that Greenidge is “serving such increased energy demand exclusively through the combustion of

fossil fuels” (DEC Denial Letter at 15). Staff concluded that “[a] Department action to renew the Title V permit would improperly allow the Facility to continue increasing both GHG emissions and energy demand, and to do so through the increased combustion of fossil fuels” and would therefore be inconsistent with or would interfere with the Statewide GHG emission limits (id. at 16).

Staff next considered whether the project could be justified notwithstanding the inconsistency with the State’s climate goals. On this point, staff determined that Greenidge had not provided sufficient information regarding a potential justification for the facility, such as, for example, information demonstrating that the absence of the facility would result in social, economic or environmental harm to the public (see DEC Denial Letter at 16). Although not offered as a justification by Greenidge, Department staff considered whether the facility may be necessary for purposes of maintaining electric service reliability. Staff noted, among other things, that: (1) the facility did not operate between 2011 and 2017 and no known reliability issues were identified at that time; (2) in a 2012 notice to the PSC, the prior owner of the facility represented that neither NYISO nor the local utility had identified a reliability issue due to the unavailability of the facility; (3) in 2014, the NYISO conducted a System Reliability Impact Study (SRIS) which did not uncover any reliability issues associated with the facility; and (4) NYISO’s Reliability Needs Assessment (RNA) process does not indicate any deficiencies or loss of load expectation violations associated with the potential unavailability of the facility (see id. at 17). Based upon the above, Department staff determined that “the potential need for the Facility to maintain electricity reliability is not an available justification for the Facility notwithstanding its inconsistency under the Climate Act” (id. at 18).

Department staff determined that it need not reach the third prong of the CLCPA § 7(2) analysis (mitigation) because no justification is available. Notwithstanding this finding, staff also determined that the “limited” mitigation measures proposed by Greenidge in a submission provided after the close of the public comment period were insufficient because they “would only provide minimal GHG mitigation and not fully account for the substantial increase in GHG emissions due to the Facility’s change in its primary purpose of operation” (DEC Denial Letter at 18). Staff found that Greenidge had failed to present a “serious plan to transition away from its current and exclusive reliance on natural gas for its cryptocurrency mining operations” and, rather, had provided only “vague assurances that it would decrease GHG emissions over time and eventually become a zero-carbon emitting power generation facility by 2035” (id.). Staff noted that there are less energy intensive cryptocurrency mining alternatives which were not mentioned in Greenidge’s application.

Finally, Department staff noted that, according to the draft Disadvantaged Communities map published by the Climate Justice Working Group (CJWG), the facility is located in and impacts a draft Disadvantaged Community (see DEC Denial Letter at 19). Staff determined that Greenidge had not provided any submissions specifically addressing CLCPA § 7(3) and that, based upon the application before it, staff “cannot ensure that renewal of the Title V permit for the Facility would comply with the statutory requirements of Climate Act Section 7(3)” (id. at 19-20).

Issues Ruling

Following a two-day issues conference and two rounds of briefing, the ALJ issued the Issues Ruling on September 22, 2023. Therein, the ALJ analyzed and ruled on each of the twenty-one issues raised by the Applicant and the four issues raised by Petitioners. The ALJ's specific rulings which are the subject of the appeals will be discussed in greater detail below, but the key determinations set forth in the Issues Ruling are summarized as follows.

As an initial matter, relying on two recent decisions pertaining to the application of Danskammer Energy Center, LLC (Danskammer) for a Title V air permit as persuasive authority, the ALJ rejected Greenidge's arguments that the CLCPA does not authorize the Department to deny a permit under CLCPA § 7(2) and that the Department cannot make any findings pursuant to CLCPA § 7(2) until the Department promulgates the regulations required by ECL 75-0109 (see Issues Ruling at 10-15). The ALJ also determined that Department staff correctly concluded, based upon the information provided by Greenidge with respect to its actual and projected GHG emissions, that, pursuant to CLCPA § 7(2), the renewal of Greenidge's Title V air permit would be inconsistent with the CLCPA's GHG emissions goals and that Greenidge had not raised any adjudicable issues of fact with respect to the issue of inconsistency (see id. at 21-22, 44-45).

As to the issue of justification, the ALJ found that Greenidge had failed to meet its burden to "provide Department staff with the minimum information it needed to find the project justified notwithstanding its inconsistency with the GHG emission limits," that the purpose of the facility is relevant to the question of justification and that Department staff did not err in relying on publicly available NYISO reports to determine if renewal of the permit could be justified (Issues Ruling at 26). As to the issue of mitigation, the ALJ similarly concluded that Greenidge had failed to meet its burden to provide the information necessary for Department staff to identify alternatives or mitigation (see id. at 29). Nevertheless, the ALJ concluded that, although Greenidge had not met its burden with respect to providing information to Department staff with respect to justification and mitigation, the issues of justification and mitigation would be adjudicated.

The ALJ also granted Petitioners full party status and determined that one issue raised by Petitioners – the question of whether granting the renewal will disproportionately burden disadvantaged communities as prohibited by CLCPA § 7(3) – would advance to adjudication (see id. at 54-57).⁸

Appeals and Responses

In its appeal, Greenidge first argues that the ALJ erred by finding that the Department has the authority to deny the permit pursuant to CLCPA § 7(2) and by relying on decisions issued in the Danskammer litigation in making that determination (see Greenidge Appeal at 12-27). Greenidge also challenges the ALJ's finding that the issue of whether the permit renewal would be inconsistent with or would interfere with the attainment of the statewide GHG emissions limits would not be adjudicated (see id. at 28-39). Greenidge further argues that the ALJ erred in

⁸ The ALJ also denied Petitioners' motion for summary judgment, which had been filed with their issues conference brief (see Issues Ruling at 9, 57-59). Petitioners have not appealed the ALJ's denial of that motion.

a number of respects in the analysis of the issues of justification and mitigation (see id. at 40-49). In addition, Greenidge argues that the policies expressed in a recent statute imposing a moratorium with respect to cryptocurrency operations (L 2022, ch 628) and the Scoping Plan undermine Department staff's denial of its renewal application (see id. at 50-56). Greenidge further contends that the ALJ erred in granting Petitioners full party status (see id. at 56-72).

In their appeal, Petitioners argue that the ALJ erred by finding that Greenidge failed to meet its initial burden with respect to the issues of justification and mitigation but ruling, nonetheless, that those issues would advance to adjudication (Petitioners' Appeal from the Issues Ruling and Request to Deny Permit, dated November 13, 2023 [Petitioners' Appeal], at 4-9). Petitioners request reversal of the ALJ's Issues Ruling, denial of the permit and termination of this proceeding (see id. at 9).

Department staff, in its response, advises: "While not in agreement that [the three issues that the ALJ found to be adjudicable] warrant formal adjudication, Department Staff is prepared to move forward with the adjudication" of those issues and indicates that, in opposition to Greenidge's appeal, it will primarily rely on its prior filings (Department Staff's Reply to Appeals of Ruling on Issues and Party Status [DEC Staff Reply] at 3-4; see id. at 20). Staff characterizes Greenidge's appeal as primarily restating the arguments that it made before the ALJ (see id. at 6-8). Department staff asserts that it is telling that Greenidge has failed to provide, in its appeal or otherwise, "a concrete and immediately effective mitigation plan" and any proof that the facility has been found to be needed for grid reliability (id. at 16; see id. at 15-19).

Greenidge and Petitioners each filed a response to the other's appeal (see Petitioners' Response to Greenidge Generation LLC's Appeal of Ruling on Issues and Party Status, dated December 6, 2023 [Petitioners' Response]; Greenidge Generation LLC's Response in Opposition to Proposed Petitioners' Appeal of Ruling on Issues and Party Status, dated December 6, 2023 [Greenidge's Response]).

Standard for Adjudication

Part 624 of 6 NYCRR establishes the standards for adjudicable issues. An issue is adjudicable if:

- “(i) it relates to a dispute between the department staff and the applicant over a substantial term or condition of the draft permit;
- (ii) it relates to a matter cited by the department staff as a basis to deny the permit and is contested by the applicant; or
- (iii) it is proposed by a potential party and is both substantive and significant” (6 NYCRR 624.4[c][1][i]-[iii]).

Any legal issue, the resolution of which is not dependent on facts that are in substantial dispute, is generally addressed in the issues ruling (see 6 NYCRR 624.4[b][2][iv]). As this matter involves a permit denial, the relevant standard for the Applicant is set forth in 6 NYCRR 624.4(c)(1)(ii).

For the Petitioners, the relevant standard is set forth in 6 NYCRR 624.4(c)(1)(iii). An issue is substantive “if there is sufficient doubt about the applicant’s ability to meet statutory or regulatory criteria applicable to the project, such that a reasonable person would require further inquiry” (6 NYCRR 624.4[c][2]). In determining whether a proposed party has raised a substantive issue, the ALJ “must consider the proposed issue in light of the application and related documents, the draft permit, the content of any petitions filed for party status, the record of the issues conference and any subsequent written arguments authorized by the ALJ” (*id.*). An issue is significant “if it has the potential to result in the denial of a permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the draft permit” (6 NYCRR 624.4[c][3]).

“Conclusory statements or statements unsupported by the record, whether made by an applicant or by a petitioner, are insufficient to raise an adjudicable issue” (Matter of Village of Kiryas Joel, Decision of the Deputy Commissioner, March 22, 2023, at 6; see Matter of Frontier Stone, LLC, Decision of the Commissioner, May 8, 2017, at 2 “[s]peculation, expressions of concern, or conclusory statements alone are insufficient to raise an adjudicable issue”). “Conducting an adjudicatory hearing where offers of proof, at best raise potential uncertainties, or where such a hearing would dissolve into an academic debate is not the intent of the Department’s hearing process” (*id.* [internal quotation marks, citations and brackets omitted]).

Where an issues ruling is appealed, the task of the Commissioner or his designee is to review whether the ALJ adhered to the applicable standard for adjudicable issues as set forth in 6 NYCRR 624.4(c) (see Matter of Seneca Meadows, Inc., Interim Decision of the Commissioner, October 26, 2012, at 2; see also Matter of Crossroads Ventures, LLC, Interim Decision of the Deputy Commissioner, December 29, 2006 at 10), while affording the ALJ “substantial deference . . . on factual issues in connection with interim appeals” (Matter of the Saratoga County Landfill, Second Interim Decision of the Deputy Commissioner, October 3, 1995 at 2). With respect to legal and policy issues, the Commissioner’s (or his designee’s) review is de novo, and the appeal provides the opportunity to offer guidance “to optimize the permitting process and focus the hearing” (Matter of Crossroads Ventures, LLC, Interim Decision of the Deputy Commissioner, December 29, 2006 at 10-11, quoting Matter of Saratoga County Landfill, Second Interim Decision of the Commissioner, October 3, 1995 at 3).

I now turn to the specific issues raised by Greenidge and the Petitioners in their appeals.

Statutory Interpretation of CLCPA § 7(2)

Greenidge argues that the ALJ’s conclusion that CLCPA § 7(2) authorizes the Department to deny Greenidge’s application to renew its Title V air permit is contrary to the plain language of the statute, positing that the statute only requires the agency to “consider” inconsistency or interference with GHG emission goals, and nothing in the statute provides the express authority to deny a permit (see Greenidge Appeal at 17-19). Greenidge asserts that the CLCPA’s aim is to “carefully transition to a clean energy economy” and that the legislature could have, but did not, “require that every permitted facility that is due for renewal after the CLCPA’s effective date stop emitting GHGs immediately” but, rather, provided for a period of

transition and included future deadlines in the statute (*id.* at 25-26). Greenidge argues that the ALJ’s ruling “ignores this incremental approach” (*id.* at 26).

Greenidge further contends that the ALJ erred by relying on the Danskammer litigation in making the determination as to whether the CLCPA authorizes the Department to deny a permit, because neither the Supreme Court decision nor the administrative decision is controlling with respect to this proceeding, and this matter – which Greenidge characterizes as a “simple renewal application” (Greenidge Appeal at 13) which “only requests the continued operation of an *existing* facility [with] no operational or emission limit changes or modifications” (*id.* at 23 [emphasis in original]) – is fundamentally different from the Danskammer proceeding, which involved a new major source of GHG emissions and its application was subject to more stringent requirements than an existing facility would be (*see* Greenidge Appeal at 12-16, 23-24). Greenidge asserts that it was improper for Supreme Court to have conducted a textual analysis of CLCPA § 7(2), where the Department had not yet filed an answer and the issue had not been fully briefed; for this reason, Greenidge asserts that the ALJ should have taken a “hard look” at the question of the Department’s authority to deny a permit under the CLCPA rather than relying on the Supreme Court’s decision in the Danskammer proceeding (*id.* at 17; *see id.* at 14-17).

Greenidge also contends that the ALJ improperly analyzed the issue of justification (*see* Greenidge Appeal at 40-47). Greenidge’s position is that the plain language of the CLCPA requires that the agency provide a detailed statement of justification as to why such limits/criteria – the statewide GHG limits – may not be met, but does not require the Department to decide if any particular facility is needed (*see id.* at 40-43). Greenidge asserts that the statute cannot be read to “confer[] the unfettered authority to arbitrarily decide a project’s worthiness (*id.* at 42). Greenidge posits that the decision as to whether an electric generating facility is needed is a matter for the PSC and not the Department or any other State agency (*see id.* at 42-43). Greenidge notes that it already holds a Certificate of Public Convenience and Necessity (CPCN) issued by the PSC, which, according to Greenidge, constitutes a prior determination that the facility is needed; Greenidge further notes that there is an established process that exists for the retirement of an electric generating facility, and nothing in CLCPA § 7(2) alters this process (*see id.* at 43-45).

--Analysis

When presented with a question of statutory interpretation, as here, the “primary consideration is to ascertain and give effect to the intention of the Legislature” (Matter of National Fuel Gas Supply Corp. v Schueckler, 35 NY3d 297, 307-308 [2020] [internal citations and quotation marks omitted]; *see Lynch v City of New York*, 40 NY3d 7, 13 [2023]). “The clearest indicator of legislative intent is the statutory text, and the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof” (*id.* [internal citations, quotation marks and brackets omitted]). “[A]ll parts of a statute are intended to be given effect and . . . a statutory construction which renders one part meaningless should be avoided” (Matter of Springer v Board of Educ. of the City Sch. Dist. of the City of N.Y., 27 NY3d 102, 107 [2016] [internal quotation marks and citation omitted]). In addition, “when a statute is part of a broader legislative scheme, its language must be construed in context and in a manner that harmonizes the related provisions and renders them compatible” (James B. Nutter &

Co. v County of Saratoga, 39 NY3d 350, 355 [2023][internal citations, quotation marks and brackets omitted]).

CLCPA § 7(2) states:

“In considering and issuing permits, licenses, and other administrative approvals and decisions, including but not limited to the execution of grants, loans, and contracts, all state agencies, offices, authorities, and divisions shall consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law. Where such decisions are deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, each agency, office, authority, or division 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.”

By its unambiguous terms, CLCPA § 7(2) applies to “administrative approvals and decisions” made by state agencies including decisions, as here, as to whether to issue a permit (CLCPA § 7[2][*emphasis added*]). Afforded their common meaning, the terms “approvals” and “decisions” refer to an agency’s acts in assessing an application and either granting or denying it. As to such administrative decision-making, the statute, in its first sentence, directs state agencies to “consider whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits” set forth in ECL article 75 (*id.* [*emphasis added*]). This first sentence of CLCPA § 7(2) uses the directive “shall” and contains no qualifying language or conditions. By this language, the CLCPA effectively adds a criterion to be considered in all agency decision-making; to wit, agencies must consider whether their decisions (including grants or denials of applications) are inconsistent with or will interfere with the attainment of the statewide GHG emissions limits. An agency necessarily must be authorized to make a determination on the application based upon this additional statutory criterion.

If the statute were to be read as Greenidge argues (that the statute directs agencies to consider inconsistency/interference but stops short of permitting the agency to make a determination on the application based on inconsistency/interference), an agency would not have authority to make any decision based upon its consideration of the CLCPA criterion, rendering the first sentence of CLCPA § 7(2) wholly without effect (*see* McKinney’s Cons. Laws of N.Y., Book 1, Statutes § 144 [“[s]tatutes will not be construed as to render them ineffective”]; Frank v Meadowlakes Dev. Corp., 6 NY3d 687, 691 [2006]; *see also* Matter of Atlantic Cement Co. v Williams, 129 AD2d 84, 89 [3d Dept 1987] [“A provision of a statute should not be construed so as to render it ineffective, nor should the statute be interpreted in a fashion which undermines or erodes the purpose for which it was enacted”]).

Based upon the foregoing, I conclude the CLCPA authorizes an agency to deny a permit application based upon a finding that granting the permit would be inconsistent with or will interfere with the attainment of the statewide GHG emissions limits established in ECL article 75.

The second sentence of CLCPA § 7(2) does not change the analysis.⁹ Whereas the first sentence provides a criterion for agencies to consider in making administrative decisions, the second sentence provides a requirement for an agency to comply with “where” it is making a “decision” – i.e. a grant or denial of a permit -- that is “deemed to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits” (CLCPA § 7[2][emphasis added]). The word “where” is used as a conjunction and, in this context, means “[i]n any place or situation in which” (The American Heritage Dictionary of the English Language [3rd ed 1996]). Therefore, the second sentence of CLCPA § 7(2) applies only in the situation where the agency is making a decision that is inconsistent with or will interfere with the CLCPA’s climate goals. In such a circumstance, the agency must “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” (id.).

Considering these sentences together and giving effect to the plain meaning of the two sentences, I conclude that CLCPA § 7(2) both: (1) authorizes state agencies to deny a permit application based upon a finding that granting the application would be inconsistent with or will interfere with the attainment of the statewide GHG emissions limits established in ECL article 75;¹⁰ and (2) authorizes state agencies to make a decision (i.e. grant a permit application) that the agency deems to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, but in such circumstances, the agency is required to provide a detailed statement of justification as to why such limits/criteria may not be met (i.e. why the decision is inconsistent with or will interfere with the CLCPA goals), and identify alternatives or greenhouse gas mitigation measures to be required where such project is located.

I therefore concur with the ALJ’s determination that the CLCPA authorizes the Department to deny a permit under CLCPA § 7(2) prior to promulgation of the regulations

⁹ The second sentence of CLCPA § 7(2) (and its interaction with the first sentence of CLCPA § 7[2]) has been subject to varying interpretations (see DEC Denial Letter at 16 [“Where, as here, a permit decision would be inconsistent with or would interfere with the attainment of the Statewide GHG emission limits established in ECL Article 75, the agency must also: (1) provide a detailed statement of justification for the project notwithstanding the inconsistency; and (2) if such a justification of available, identify alternatives of GHG mitigation measures to be required”]; CP-49 / Climate Change and DEC Action (revised December 14, 2022) [CP-49], at 7 [“If a Department administrative decision is determined to be inconsistent or would interfere with achievement of the Emission Limits, a statement of justification must be created to proceed with a decision”]; DAR-21 / The Climate Leadership and Community Protection Act and Air Permit Applications [issued December 14, 2022] [DAR-21] [“If DEC finds that the project is inconsistent with or will interfere with the State’s ability to meet the statewide emission limits, DEC must consider whether sufficient justification for the project exists. If so, a statement of justification must be created before issuing a final decision on the application”]; Danskammer Energy, LLC v New York State Dept. of Env’tl. Conservation, 76 Misc 3d 196, 250 [Sup Ct, Orange County 2022] [“the Court finds that the plain language of the statute must be interpreted to grant the DEC the requisite authority to deny a permit when the grant of the permit would be inconsistent with or interfere with the attainment of the goals of the CLCPA, and the grant cannot otherwise be justified or the adverse effects mitigated”]).

¹⁰ Of course, the converse would also apply: CLCPA § 7(2) also authorizes state agencies, in making administrative approvals and decisions, to grant a permit application based upon a finding that denying the application would be inconsistent with or will interfere with the attainment of the statewide GHG emissions limits set forth in ECL article 75.

required by ECL 75-0109 (see Issues Ruling at 12-15). I conclude that CLCPA § 7(2) went into effect on the effective date of the statute, as there is no language in the statute that suggests otherwise.

My interpretation of CLCPA § 7(2) in this regard is consistent with the broad legislative scheme of the CLCPA, which aims to combat the adverse impacts of climate change by imposing aggressive reductions in statewide GHG emissions (see CLCPA §1 [1]). Giving state agencies the authority to deny permit applications because the decision to grant the permit would be inconsistent or interfere with the GHG emissions goals of the CLCPA both strengthens and effectuates the objective of the legislation. My conclusion that the CLCPA authorizes an agency to deny a permit application based upon CLCPA § 7(2) is also consistent with the holdings of Supreme Court and the ALJ in the Danskammer litigation (see Matter of Danskammer Energy, LLC v New York State Dept. of Env'tl Conservation, 76 Misc 3d 196, 247-250 [Sup Ct, Orange County 2022]; Matter of Danskammer Energy Center, ALJ's Ruling on Issues and Party Status, April 4, 2023, at 23),¹¹ as well as the position taken by several legislators in comments provided with respect to this proceeding.

I further conclude that the authorization to deny a permit application pursuant to CLCPA § 7(2) extends to the authority to deny permit renewal applications, as here. The statute applies to “administrative approvals and decisions” (CLCPA § 7[2]) and contains no language indicating that its application is limited solely to new applications, or that renewal applications are excluded. Moreover, there is no language in the statute that supports Greenidge’s position that the legislature intended for agencies to treat renewal applications filed by existing facilities differently than applications seeking to authorize a new source of emissions (see Greenidge Appeal at 23-27). Contrary to Greenidge’s argument, the CLCPA does not require the “immediate shutdown of an existing facility” that is emitting GHGs (see id. at 26).

Based upon the foregoing, I affirm the ALJ’s Issues Ruling with respect to the Department’s authority to deny Greenidge’s application to renew its permit pursuant to CLCPA § 7(2).

Regarding the ALJ’s and Department staff’s application of CLCPA § 7(2), I conclude, as a matter of statutory interpretation, that CLCPA § 7(2) must necessarily be read to authorize an agency to deny a permit based upon a finding that the decision is inconsistent with or will interfere with the attainment of the statewide GHG emissions limits established in ECL article 75. The statute also authorizes an agency to make a decision (i.e. grant a permit application) that the agency deems to be inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits, but in such circumstances, the agency is required to 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.

¹¹ The decisions in the Danskammer litigation are not binding authority in this proceeding. As discussed herein, my interpretation of the statute differs in some respects from the interpretations made in that matter.

In my view, reading more into the statute overly complicates the CLCPA § 7(2) analysis and unduly limits agencies' decision-making discretion. The first element of the Department's analysis (see DEC Denial Letter at 6) requires consideration of "whether such decisions are inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law" (CLCPA § 7[2]). Department staff's second and third elements of its three-element analysis may overly complicate statutory interpretation and lacks direct support in the text of CLCPA § 7(2).

The second element of staff's analysis is: "if the renewal of a Title V permit for the Facility would be inconsistent with or would interfere with the Statewide GHG emission limits, then the Department must provide a detailed statement of justification for the continued operation of the Facility notwithstanding the inconsistency" (DEC Denial Letter at 6). However, the statement of justification that is required is a statement justifying "why such limits/criteria may not be met" (CLCPA § 7(2) [emphasis added]), without reference to whether there is justification for the continued operation of the facility, or whether the project is justified. Rather than requiring that an agency find that a project is justified, the statute requires a statement of justification explaining why an agency authorizes an action despite having found it inconsistent with CLCPA goals. The statement of justification is only required when an agency is making a decision that is inconsistent with or will interfere with attainment of the statewide GHG emission limits.

This reading of the statute gives full effect to the words "as to why such limits/criteria may not be met." Nothing in the statute requires an agency to provide a statement as to justification before it can deny a permit based upon inconsistency. In my view, it is not appropriate and is contrary to the intent of the CLCPA to read into the statute a requirement that, where an agency finds that granting a permit would be inconsistent with or will interfere with the attainment of statewide GHG emission limits, the agency must then identify whether there is a justification for the continued operation of a facility.

The third element identified by staff is: "in the event a justification is available, the Department would also have to identify alternatives of GHG mitigation measures to be required for the Facility" (*id.* at 6-7). The statute, however, uses the word "and" when it refers to mitigation measures and does not make an agency's identification of such dependent on whether a justification is available.

Relying on the statutory text, I conclude that a state agency applying CLCPA § 7(2) initially must consider whether a decision would be "inconsistent with or will interfere with the attainment of the statewide greenhouse gas emissions limits established in article 75 of the environmental conservation law" (CLCPA § 7[2]). In the event that the agency makes a decision which it has deemed inconsistent with the CLCPA, the agency is required to provide a statement of justification and identify alternatives and mitigation measures.

This does not mean, however, that Department staff should ignore whether the project is justified, or not, when reviewing the permit application. However, a statement as to justification is only necessary where a decision is inconsistent with or will interfere with attainment of statewide GHG emission limits. CLCPA § 7(2) does not compel the Department to issue a

decision that is “inconsistent with or will interfere with attainment of the statewide greenhouse gas emissions limits established in Article 75 of the conservation law” if it is shown to be justified, rather CLCPA § 7(2) provides that the Department *may* issue an inconsistent decision if the Department finds it is justified and has identified alternatives or GHG mitigation measures applicable to the facility.

Based upon the foregoing, I find that the ALJ erred inasmuch as she adopted Department staff’s interpretation of CLCPA § 7(2).

Inconsistency/Interference With the Attainment of the Statewide Greenhouse Gas Limits

In its appeal, Greenidge contends that the issue of whether the Department’s issuance of the renewal permit would be inconsistent with or would interfere with the attainment of the statewide GHG emissions limits should be adjudicated. On this point, Greenidge asserts that, pursuant to 6 NYCRR 624.4(c)(1)(ii), the issue is “[p]er [s]e” adjudicable because it was a basis for the Department’s denial of the permit and is contested by Greenidge (Greenidge Appeal at 28 [emphasis omitted]). Greenidge further argues that the issue of consistency is a fact-intensive inquiry that cannot be decided without adjudication, especially given the lack of regulations providing standards for the consideration of the issue (*see id.* at 29-30).

Greenidge argues that the following considerations and factual issues are relevant to the inquiry with respect to consistency:

- (1) Greenidge is an existing facility and not a new source of GHG emissions, and there is nothing in the CLCPA that indicates that the legislature intended that existing facilities would be forced to cease operations based upon the analysis required by CLCPA § 7(2);
- (2) Greenidge’s renewal application did not seek a change in the facility’s PTE;
- (3) the facility has significantly reduced its GHG emissions as compared to its 1990 GHG emissions;
- (4) because Greenidge’s application sought a five-year renewal and the term of the permit would expire before the 2030 statewide GHG emissions limit goes into effect, “it is impossible for the renewal application to be inconsistent with the statewide GHG emissions limits or to interfere with the statewide GHG emission limits” and, even so, Greenidge “proposed to use this permit term to explore additional ways to feasibly further reduce GHG emissions” (*id.* at 34);
- (5) Greenidge proffered several mitigation proposals in its application, including “a suite of site-specific GHG reduction opportunities that it would evaluate and, if feasible, implement well before the 2030 target in Part 496” (*id.* at 36) and two binding permit conditions that would require a 40% reduction in GHG emissions by the end of 2025 and would require that Greenidge operate as a zero-carbon emitting power generating facility by 2035;

- (6) Greenidge has already employed a number of GHG reductions at the facility, including the conversion of the facility from coal-firing to natural gas-firing; and
- (7) the facility's emission levels are "de minimus" and a small percentage (.2%) of the statewide GHG emissions reduction target for 2030, such that the goals of the CLCPA are not, and could not, be impacted by the facility's emissions (id. at 38).

Greenidge posits that, at the adjudicatory hearing, it will present testimony addressing the foregoing (see id. at 39).

As to this issue, the ALJ found that Department staff correctly determined that the renewal of Greenidge's Title V air permit for the facility would be inconsistent with the attainment of the statewide greenhouse gas limits (see Issues Ruling at 22). The ALJ noted that Greenidge's August 20, 2021 response "clearly showed that Greenidge intended to emit to its full permitted PTE, 952,958 metric tons of CO₂e per year, including upstream emissions during the renewed permit term, which was a drastic increase from its actual emissions under the current permit" and concluded: "[t]he increasing actual GHG emissions from the facility, and Greenidge's projections that the actual GHG emissions would continue to increase to match the maximum permitted PTE, were sufficient to establish that renewal of the facility was inconsistent with the GHG emissions goals of the CLCPA" (id.).

The ALJ considered and rejected Greenidge's argument that issues of fact existed for adjudication, finding that: (1) the facility's 1990 GHG emission levels are not relevant to the analysis under CLCPA § 7(2); (2) consideration of the undisputed fact that Greenidge's emissions are a small percentage of the statewide emissions target for 2030 would "defeat the purpose of the CLCPA" and need not be adjudicated (id. at 42); (3) Greenidge's mitigation proposals do not "propose[] to reduce emissions during the permit term" and are, therefore, not adjudicable (id. at 43-44); and (4) the inclusion of the facility's 1990 emissions in the 1990 GHG baseline emissions set forth in 6 NYCRR part 496 is not relevant to the CLCPA § 7(2) determination (see id. at 41-45).

--Analysis

Upon review, I affirm the ALJ's determination that the issue of whether the grant of Greenidge's renewal permit would be inconsistent with or would interfere with the attainment of the statewide GHG emissions limits will not advance to adjudication.

As a preliminary matter, Greenidge's argument that this issue is "per se" adjudicable is without merit. "Neither an applicant nor a petitioner has any guarantee of or automatic right to an adjudicatory hearing. Part 624 establishes the legal process that ALJs, and the Commissioner or his/her designee, are obligated to follow in order to determine whether adjudication is necessary. No basis exists, in regulation or statute, that allows the ALJ to bypass 6 NYCRR part 624 and order an adjudicatory hearing It would be an abrogation of the responsibilities of an ALJ and a Commissioner or his/her designee, and would be contrary to the applicable regulations, to grant a blanket authorization to proceed to an adjudicatory hearing without an

assessment of whether a factual issue has been properly proposed and supported” (Matter of Village of Kiryas Joel, Decision of the Deputy Commissioner, March 22, 2023, at 7).

In addition, I conclude that the ALJ correctly ruled that the issue of inconsistency/interference may be determined on these papers as a matter of law and will not advance to adjudication. I agree with Greenidge that the issue of inconsistency/interference is a fact-driven inquiry. Here, the considerations and factual issues that Greenidge has proffered on appeal were presented both to Department staff during the underlying application process and to the ALJ during the issues conference and in related post-issues conference briefing by Greenidge, and were thoroughly considered by the ALJ and rejected (see Issues Ruling at 30-35, 37-38, 41-45). Although Greenidge characterizes its arguments in this regard as factual issues that require adjudication, in fact, the considerations proffered by Greenidge are either legal arguments themselves (i.e. the legislature did not intend for existing facilities to be forced to cease operations under the CLCPA, and it is impossible for the renewal to be inconsistent with the statewide emissions limits because the term of the permit would expire before the limits go into effect), or are undisputed facts which Greenidge argues are relevant to the legal analysis of the issue of consistency (i.e. Greenidge does not seek a change in the facility’s PTE and has reduced its emissions significantly compared with its 1990 emissions) (see Greenidge Appeal at 30-39). As stated above, any legal issue, the resolution of which is not dependent on facts that are in substantial dispute, is generally addressed in the issues ruling (see 6 NYCRR 624.4[b][2][iv]). In its appeal, Greenidge has not identified any fact that is in substantial dispute which must be adjudicated before the issue of inconsistency/interference may be determined in this proceeding. Greenidge’s argument that this issue is adjudicable is rejected.

Inasmuch as Greenidge’s appeal can be read as challenging the ALJ’s determination with respect to this legal issue based upon the undisputed facts presented, I concur with the ALJ that Department staff properly evaluated the issue and determined that renewal of Greenidge’s Title V air permit for the facility would be inconsistent or would interfere with the attainment of the statewide greenhouse gas limits.

CLCPA § 7(2) requires agencies to consider whether their decisions “are inconsistent with or will interfere with the attainment of the statewide greenhouse gas limits established in [ECL] article 75.” The statute does not define the terms “inconsistent” and “interfere” and, as noted by Greenidge, the Department has not yet promulgated regulations setting forth a standard for reviewing applications for inconsistency/interference. “In the absence of any controlling statutory definition, [a tribunal should] construe words of ordinary import with their usual and commonly understood meaning” (Rosner v Metropolitan Prop. & Liab. Ins. Co., 96 NY2d 475, 479-480 [2001][internal citations and quotation marks omitted]).

Department staff determined that granting the renewal and allowing Greenidge to continue operating in its current manner “would be inconsistent with or would interfere with the attainment of the Statewide GHG emission limits established in Article 75 of the ECL and reflected in Part 496” (DEC Denial Letter at 8; see id. at 8-16). Staff based this determination on, among other things, the following undisputed facts: (1) actual GHG emissions from the facility have increased drastically since the time of the permit issuance; (2) the increase in GHG emissions is primarily due to the fact that Greenidge transitioned from providing electricity to the

grid in a “peaking” capacity to providing electricity to power its own cryptocurrency mining operations behind-the-meter; and (3) according to Greenidge, its projected actual GHG emissions are “equivalent to the overall GHG PTE from the Facility,” which represents “a substantial amount of ongoing GHG emission from a single GHG emission source” (id. at 11; see id. at 8-16). Staff determined that granting the renewal and allowing the facility to continue in its current manner would make it more difficult for the State to achieve the CLCPA’s GHG emissions limits; would allow for substantial and ongoing increases in the facility’s GHG emissions; would improperly provide the Department’s endorsement of the project in the face of a change in the primary purpose of the facility contemplated by the Department when it issued the permit; and would allow Greenidge to continue to increase demand for energy and meet that demand through the combustion of fossil fuels (see id. at 14-16).

I find that Department staff’s determination in this regard is supported by a plain reading of CLCPA § 7(2) and the administrative record. As the ALJ observed (see Issues Ruling at 22), Greenidge has significantly increased its GHG emissions since the Title V permit was granted in 2016 and after the enactment of the CLCPA (see Greenidge’s August 2, 2021 letter at 10), and Greenidge indicated in its application materials that it intends to emit GHGs for the duration of the permit term (2022 through 2026) at a rate that equals its full, maximum permitted PTE (see id. at 7-8, 10 [Tables 2 and 5]; see also DEC Denial Letter at 11). Although, in its March 25, 2022 letter, Greenidge proposed that the permit include a binding condition that requires a 40% reduction in GHG emissions from the facility’s current permitted level by the end of 2025 (see Greenidge’s March 25, 2022 letter at 2), at no point either in its application materials or during this proceeding did Greenidge offer any concrete plan for reducing its GHG emissions, or indicate any willingness to reduce its GHG emissions at the outset of the permit term. Rather, Greenidge adopted the position that the renewal of its Title V permit would be consistent with the CLCPA because Greenidge does not request any increase in generating capacity, and its current emission cap has already been approved by the Department (see e.g. Greenidge’s August 2, 2021 letter at 12; Greenidge’s August 20, 2021 letter at 9; Greenidge’s March 25, 2022 letter at 2-3). Greenidge’s position in this regard directly conflicts with the legislative intent of the CLCPA, which aims to “to reduce [GHG] emissions from all anthropogenic sources” (CLCPA § 1 [4]).

It is also undisputed that Greenidge’s cryptocurrency operations are increasing the demand for energy, contrary to the finding in the negative declaration issued by the Department when it first granted a Title V permit to Greenidge (see Greenidge’s Statement of Issues, at Exh 1 at 3), and that demand is being met by the combustion of fossil fuels, also in direct conflict with the goals of the CLCPA (see DEC Denial Letter at 15-16; see also L 2022, ch 628 § 1[e] [“The continued and expanded operation of cryptocurrency mining operations running proof-of-work authentication methods to validate blockchain transactions will greatly increase the amount of energy usage in the state of New York, and impact compliance with the Climate Leadership and Community Protection Act”]).

As Department staff and the ALJ concluded, it is beyond dispute that granting the renewal permit under these circumstances is inconsistent with or will interfere with the attainment of the statewide greenhouse gas limits established in ECL article 75. Notably, an agency only need find that the decision “will interfere with” the attainment of the State’s goals.

Here, if the permit were to be granted, it would authorize the continued, increasing (up to the limit of the permit) emission of GHGs from a facility that is combusting fossil fuels in furtherance of operations that also increase energy demand. As a matter of fact, granting the permit will make attainment of the statewide GHG emissions limits more difficult (i.e. it will interfere with the attainment of the goals). I have considered Greenidge's arguments to the contrary and reject them for the reasons provided by Department staff and the ALJ. I do not find that adjudication of this issue is warranted.

Justification and Mitigation

The ALJ determined that, although Greenidge had not met its burden to "provide the information necessary [for Department staff] to make the detailed statement of justification and to identify alternatives or mitigation" pursuant to CLCPA § 7(2) (Issues Ruling at 29; see id. at 24-29), the issues of justification and mitigation would advance to adjudication (see id. at 51-54).

With respect to the issue of justification, the ALJ concluded: "I find that the record needs to be developed regarding justification for renewing the Title V air permit for the facility. The Department staff did not ask for and Greenidge did not provide any basis for finding a grid reliability need or any other justification for the facility during the [permit] review process. This will be an issue for adjudication" (Issues Ruling at 52). With respect to the mitigation prong, the ALJ found:

"I found above that the Department did not err in finding the permit renewal inconsistent with the CLCPA GHG emissions limits notwithstanding Greenidge's proposal to use cessation of operations to comply with the CLCPA's zero emissions by 2040 requirement for the electricity generation sector. There is no need to adjudicate proposals to occur in the future without a specific plan for alternatives or greenhouse gas mitigation measures to be required at the time of permit issuance.

Greenidge may propose alternatives or mitigation which meet the standards set forth above: they must be located where the project is located, they must be real, additional, quantifiable, permanent, verifiable, and enforceable, and they must result in the immediate lessening or the elimination of the inconsistency or interference with the GHG emissions goals of the CLCPA at the time of permit issuance. These alternatives or mitigation measures will be subject to adjudication" (id. at 54).

In their appeal, Petitioners argue that the ALJ's ruling allowing the issues of justification and mitigation to proceed to an adjudicatory hearing runs counter to the CLCPA's mandate calling for a swift reduction in GHG emissions (see Petitioners' Appeal at 4-5). Petitioners assert that adjudication of the issues of justification and mitigation is unwarranted and improper here, where the ALJ found that Greenidge failed, in the first instance, to submit sufficient evidence with respect to justification and mitigation; petitioners urge that "[t]here is no case law or other legal requirement that permits or mandates allowing an applicant to submit necessary application materials for the first time during the adjudicatory hearing process" (id. at 5; see id. at 4-5). Petitioners argue that, contrary to the ALJ's finding, Greenidge's failure to submit evidence as part of its application cannot be excused based upon a lack of notice, as it was

provided “full notice” that Department staff would be considering both justification and mitigation in making its CLCPA § 7(2) determination, as set forth in the CLCPA itself, DEC’s NOIA and RFAIs, DEC’s Notice of Complete Application, DEC’s notices of permit denials pertaining to other projects (Danskammer and a matter involving Astoria Gas Turbine Power, LLC) and comments submitted to DEC with respect to Greenidge’s application (see id. at 5-7). Petitioners assert that Greenidge knew that a CLCPA-inconsistent permit could only be issued based upon a demonstration of justification and that only concrete mitigation would suffice under the CLCPA but made the deliberate decision not to present such (see id. at 8). Finally, petitioners contend that, if Greenidge’s permit is denied and this proceeding is terminated on the basis that granting the permit would be inconsistent with the CLCPA and not otherwise justified, there is no need to hold an adjudicatory hearing on the CLCPA § 7(3) issue (see id. at 9).

As to the issue of justification, as noted above, Greenidge contends that the ALJ improperly analyzed the issue (see Greenidge Appeal at 40-47). Greenidge also argues that the ALJ erred by finding that Department staff properly relied on publicly available NYISO reports and that the adjudication of this issue should include testimony as to why Department staff’s permit evaluation was erroneous (see id. at 45). Finally, Greenidge contends that the ALJ improperly shifted the burden to Greenidge to provide information with respect to justification, especially where there was no guidance available as to what information would be necessary to establish justification (see id. at 46-47).

As to the issue of mitigation, Greenidge argues that the ALJ improperly limited the type of mitigation measures that are relevant to a CLCPA § 7(2) determination to those which will take place immediately (see Greenidge Appeal at 47-49). Greenidge argues that it is not appropriate for an immediacy requirement to be imposed upon an existing facility and that the immediacy requirement is “at odds with the incremental, step-wise approach to reducing statewide GHG emissions that the CLCPA requires” (id. at 48). Greenidge asserts that Department guidance – specifically DAR-21 – takes a contrary position (see id. at 49).

--Analysis

Department staff determined, based upon the application materials, supplemental information and the record before it, that granting the permit would be inconsistent with or will interfere with the attainment of the statewide GHG emissions limits. As discussed above, Department staff’s finding with respect to inconsistency/interference was supported and appropriate and will not be disturbed or adjudicated. Under these circumstances, Department staff’s decision to deny Greenidge’s permit application is consistent with the attainment of the statewide greenhouse gas emissions limits (see Issues Ruling at 27; Department of Environmental Conservation Staff’s Post-Issues Conference Brief, dated March 1, 2023 at 15). Department staff did not determine, based upon the materials before it, that it would grant the application notwithstanding the inconsistency with the CLCPA, and staff was not required to make a statement of justification and identify alternatives or mitigation measures. For that reason, I find it unnecessary to adjudicate those issues in this proceeding.

A demonstration by an applicant that there is a grid-reliability need for the facility, that the absence of the facility would result in social, economic or environmental harm to the public,

or that there are adequate available alternatives or mitigation measures that would lessen the environmental impact of the facility are relevant to the agency’s determination as to whether to grant the permit application. Such demonstrations may, upon consideration by Department staff, provide a basis for the Department to determine that granting the permit would be consistent with the CLCPA goals or, in the alternative, provide the basis for the Department to provide the detailed statement of justification and identification of alternatives or GHG mitigation measures to be required in the event that it decides to grant a permit that is found to be inconsistent with or will interfere with the statewide GHG emissions goals.

Importantly, however, “[w]here an application is made for permit renewal, the permittee has the burden of proof to demonstrate that the permitted activity is in compliance with all applicable laws and regulations administered by the department” (6 NYCRR 624.9 [b][3]).¹² In this case, the burden was on Greenidge to demonstrate, at the application stage (as well as the issues conference stage), that granting the renewal permit would be consistent and would not interfere with the attainment of the statewide GHG emissions limits, or that the permit should be granted even if found to be inconsistent. Here, Greenidge provided multiple submissions to Department staff, and Department staff based its CLCPA § 7(2) determination on all of the information and arguments provided by Greenidge. Department staff considered Greenidge’s submissions as they pertained to mitigation and found them to be insufficient (see DEC Denial Letter at 18).¹³ Department staff also noted that Greenidge had not provided a justification for the project but nonetheless considered the issue of “whether the Facility may be necessary for purposes of maintaining an electric system reliability” (DEC Denial Letter at 16; see id. at 16-18).¹⁴ I find that it would be inappropriate to allow Greenidge to offer additional, new evidence

¹² 6 NYCRR 624.9 (b)(3) also provides that “[a] demonstration by the permittee that there is no change in permitted activity, environmental conditions or applicable law and regulations constitutes a prima facie case for the permittee.” Here, Greenidge has not demonstrated that it is entitled to the benefit of this provision. Indeed, pursuant to 6 NYCRR 201-6.6 (a)(1), applications to renew a Title V permit are “subject to the same procedural and review requirements . . . that apply to initial permit issuance” (see also 6 NYCRR 621.11[i]).

¹³ Greenidge argues in its appeal that “given the lack of any notice that only mitigation that reduces or eliminates emissions ‘at the start of the permit term’ may be relevant, due process requires that Greenidge have the opportunity to evaluate and, if feasible, present such mitigation proposals during the adjudicatory hearing” (Greenidge Appeal at 37). I find that Greenidge’s argument in this regard is misplaced. ECL 75-0109, which was in effect when Greenidge filed its renewal application, directs that Department staff, in promulgating the regulations required by the CLCPA, shall “[e]nsure that greenhouse gas emissions reductions achieved are real, permanent, quantifiable, verifiable, and enforceable by the department” (ECL 75-0109 [3][b]). Moreover, Greenidge was informed during the application process that Department staff was seeking information with respect to how the facility’s current and planned GHG emissions would be reduced (see NOIA at 2; RFAI2 at 1), and Department staff advised in the ENB Notice that Greenidge had not proposed sufficient alternatives or GHG mitigation measures (ENB Notice at 2-3). In Department staff’s denial letter, Department staff faulted Greenidge, in part, for failing to consider immediately using alternative renewable energy sources to power its mining operations or transitioning to less energy-intensive methods for cryptocurrency mining (see DEC Denial Letter at 18-19). I find that Greenidge was provided ample opportunities to propose a concrete plan for reducing its GHG emissions, including during this Part 624 proceeding, yet failed to do so. Indeed, Greenidge, in its appeal, offers only a vague assurance that it will present mitigation proposals at the adjudicatory hearing (see Greenidge Appeal at 37). I discern no violation of Greenidge’s due process rights arising from the fact that it is not being allowed another bite at the apple in this adjudicatory forum.

¹⁴ I discern no error in Department staff’s consideration of an issue, at the application stage, that was not presented by the applicant in this case; if a reliability need for the facility was found, the resolution of that issue would benefit the applicant.

in support of its application at the adjudicatory stage of this Part 624 proceeding. Greenidge has not demonstrated that Department staff failed to consider all of its application materials or that Department staff made any errors in its factual assessment of the materials, and has not contested the ALJ's findings that it failed to meet its initial burden on its application.

Based upon the foregoing, I find it unnecessary to adjudicate the issues of justification and mitigation and reverse the ALJ's determination that those issues will proceed to adjudication. I conclude that any error in Department staff's and/or the ALJ's analysis of the issues of justification and mitigation was inconsequential.

New York's Policy on Cryptocurrency Operations

Greenidge also argues in its appeal that Department staff's denial of the renewal permit is undermined by the text and legislative history of L 2022, ch 628 (identified by Greenidge as the Cryptocurrency Moratorium Law), as well as by the Scoping Plan. Specifically, Greenidge argues that the Cryptocurrency Moratorium Law "makes the affirmative, legislative statement that there is not sufficient information [with respect to the impacts of cryptocurrency mining operations] to support Department Staff's findings in the Denial" (Greenidge Appeal at 50; see id. at 50-54). Greenidge asserts that the moratorium also "underscores that policy decisions under the CLCPA are not meant to be made on a project by project or facility by facility basis" and must be considered as a whole, contrary to Department staff's conclusion in its denial letter (id. at 52). Greenidge contends that the Scoping Plan similarly undercuts Department staff's denial of the renewal permit, as it calls for "an organized, collaborative, and gradual approach to decarbonization, not a hack and slash approach under the veil of a need for immediacy as Department Staff and now the Issues Ruling contends" (id. at 54; see id. at 54-56). Greenidge takes the position that the Council determined, as set forth in the Scoping Plan, that, at the time of the denial, insufficient information was available to make an assessment as to whether behind-the-meter cryptocurrency mining is inconsistent with or will interfere with the attainment of the statewide GHG emission limits (see id. at 55-56).

Upon review, I find that neither L 2022, ch 628, nor the Scoping Plan provide a basis to reverse Department staff's denial of Greenidge's renewal application. L 2022, ch 628, effective November 22, 2022, added ECL 19-0331, entitled "Moratorium on air permit issuance and renewal," which states, in relevant part:

"For the period commencing on the effective date of this section and ending two years after such date, the department, after consultation with the department of public service, shall not approve a new application for or issue a new permit pursuant to this article, or article seventy of this chapter, for an electric generating facility that utilizes a carbon-based fuel and that provides, in whole or in part, behind-the-meter electric energy consumed or utilized by cryptocurrency mining operations that use proof-of-work authentication methods to validate blockchain transactions" (ECL 19-0331 [1]).

The statute states that it "shall take effect immediately and shall apply to all permits or renewal applications filed after such date" (L 2022, ch 628 § 7). Because Greenidge filed its renewal application prior to December 22, 2022, the statute does not apply to its application. I

am not persuaded that the fact that L 2022, ch 628 requires the preparation of a generic environmental impact statement [GEIS] with respect to cryptocurrency mining operations (see L 2022, ch 628 § 3) establishes that Department staff's denial of Greenidge's application was contrary to legislative intent or New York State policy. Contrary to Greenidge's position, the moratorium law supports Department staff's analysis here, as it evinces the legislature's concern about the "potential impacts of electric energy consumption by cryptocurrency mining operations that use proof-of-work authentication methods to validate blockchain transactions on the state's ability to meet the greenhouse gas emission reduction goals set forth in [ECL article 75]" (L 2022, ch 628 § 3[vi]).

Similarly, as the ALJ found (see Issues Ruling at 17), the Scoping Plan may only be considered in this proceeding as guidance and, in any event, was not yet final at the time of Department staff's denial. Nothing in the Scoping Plan calls into question Department staff's decision in this matter. Contrary to Greenidge's assertions, the Scoping Plan, in fact, supports Department staff's denial of the renewal application, as it postulates that the "additional electricity load [demanded by cryptocurrency operations] could make it more difficult to meet the Climate Act's 100x40 requirement" and recommends that the State "monitor and evaluate emerging industries and develop policy responses needed to ensure that those industries do not interfere with meeting the statewide emission limits or other Climate Act requirements" (Scoping Plan at 258).

Disadvantaged Communities

As noted above, CLCPA § 7(3), among other things, requires that agencies, in considering and issuing permits, "shall not disproportionately burden disadvantaged communities as identified pursuant to [ECL 75-0101 (5)]." In its denial letter, Department staff found that Greenidge had not provided any submissions specifically addressing CLCPA § 7(3) and that, based upon the application before it, staff "cannot ensure that renewal of the Title V permit for the Facility would comply with the statutory requirements of Climate Act Section 7(3)" (DEC Denial Letter at 19-20). Among the issues proposed for adjudication by Petitioners was "[Whether] Air Pollution from the Facility Will Impact a Potential Disadvantaged Community and Potential Environmental Justice Areas and Endanger the Community Character of the Finger Lakes" (Petition at 29; see id. at 29-35). The ALJ concluded that the issue was substantive and significant and that the issue would advance to adjudication (see Issues Ruling at 56-57). The ALJ identified the issue to be adjudicated as: "Whether renewal of the Title V air permit will disproportionately burden disadvantaged communities, as prohibited by § 7(3) of the CLCPA" (id. at 57).

Greenidge does not challenge this ruling on appeal. As Petitioners note (see Petitioners' Appeal at 9), however, the outcome of any adjudication of this issue would, at most, provide an additional basis for denial of Greenidge's application. Because I find that there are no issues for adjudication with respect to Department staff's denial of Greenidge's renewal application based upon its application of CLCPA § 7(2) and affirm that denial, I conclude that it is unnecessary to adjudicate this additional issue under CLCPA § 7(3).

Petition for Full Party Status

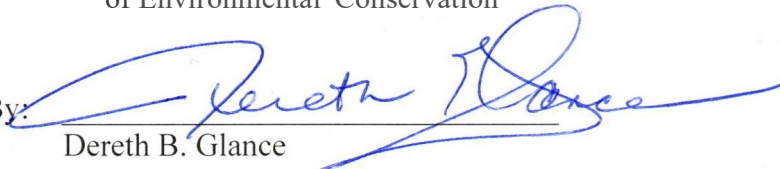
Greenidge also argues that the ALJ erred by granting Petitioners full party status (see Greenidge Appeal at 56-72). Because I have found that there are no issues that are adjudicable, the issue of the party status designation of Petitioners is moot and I need not reach the merits with respect to their designation as a party in this proceeding (see Matter of Village of Kiryas Joel, Decision of the Deputy Commissioner, March 22, 2023, at 24 n 29).

Conclusion

To the extent that Applicant and Petitioners have raised any additional issues in their appeals, these have been considered and found to be lacking in merit.

Based upon the foregoing, I find that there are no issues for adjudication in this proceeding and that the adjudicatory hearing shall be canceled. This matter is remanded to Department staff for any required processing and closing of this matter.

For the New York State Department
of Environmental Conservation

By: 
Dereth B. Glance
Regional Director, Region 7

Dated: May 8, 2024
Albany, New York

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