

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

INTERIM DECISION OF THE REGIONAL DIRECTOR

March 31, 2025

INTERIM DECISION¹

This proceeding concerns the application of Greenidge Generation LLC (Greenidge or Applicant) for the renewal of its Clean Air Act Title V (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. Greenidge's 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 Clean Air Act Title V air permit renewal application (Permit Denial).²

I. Procedural History

On July 28, 2022, Applicant submitted a timely request for an adjudicatory hearing to the Department on the Permit Denial. The hearing request was referred to the Department's Office of Hearings and Mediation Services (OHMS) and was assigned to Administrative Law Judge (ALJ) Elizabeth Phillips. 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).

Consistent with the Department's permit hearing procedures (6 NYCRR Part 624), ALJ Phillips held an issues conference with Department staff, Applicant, and Petitioners (collectively, parties) on December 8, 2022 and January 4, 2023. After receiving additional briefing from the parties, ALJ Phillips issued a Ruling on Issues and Party Status dated September 22, 2023 which, among other things, granted Petitioners full party status in this proceeding (Issues Ruling).³ Greenidge and Petitioners appealed the Issues Ruling on November 13, 2023. In its appeal of the Issues Ruling, Greenidge contended, along with other topics, that the ALJ erred in granting Petitioners full party status in this proceeding.

On May 8, 2024, I issued a Decision finding that there were no adjudicable issues requiring a hearing and declared the ALJ's determination of Petitioners' party status designation as moot (Regional Director's Decision).⁴ Consequently, I did not reach the merits of Greenidge's initial appeal with respect to proposed Petitioners' designation as full parties in this proceeding (*id.* at 27).

On August 15, 2024, Greenidge commenced an action pursuant to New York Civil Practice Law and Rules (CPLR) Article 78 in New York State Supreme Court, Yates County, challenging the Regional Director's Decision (Article 78 Action). On November 14, 2024, the Supreme Court, Hon. Vincent M. DiNolfo, J.S.C., issued a Decision, Judgment and Order (Supreme Court Order), which directed that the matter be returned to the Department for further proceedings consistent with the Supreme Court Order (*see Greenidge Generation LLC v. New York State Dep't of Env't*

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 DEC Region 7 Regional Director.

² For additional factual background concerning the facility and the Permit Denial, see *In the Matter of the Greenidge Generation LLC*, 2023 WL 11679228 (ALJ Ruling on Issues and Party Status dated September 22, 2023).

³ *In the Matter of the Greenidge Generation LLC*, 2023 WL 11679228 (ALJ Ruling issued Sept. 22, 2023).

⁴ *In the Matter of the Greenidge Generation LLC*, 2024 WL 2273410 (Decision of the Regional Director issued May 8, 2024).

Conservation, 223 N.Y.S.3d 846 [N.Y. Sup. Ct. 2024]). On December 16, 2024, Greenidge filed a Notice of Appeal from the Supreme Court Order with the Appellate Division, Fourth Judicial Department (Fourth Department), but has not yet perfected such appeal.

Upon the proceeding's return to the Department following the Supreme Court Order, ALJ Phillips held a status conference with the parties on December 16, 2024 to reinitiate this proceeding and obtain an update on the Article 78 Action, including the appeal from the Supreme Court Order. On January 27, 2025, Greenidge filed a motion with the Fourth Department seeking to stay the Supreme Court Order and the Department's adjudicatory proceeding until Greenidge's appeal to the Fourth Department was decided.

On January 28, 2025, ALJ Phillips held a scheduling conference with the parties to discuss potential hearing dates and a location for the hearing. Following the scheduling conference, ALJ Phillips issued two letters: one on January 28, 2025, and another on January 30, 2025, which reaffirmed her prior Issues Ruling, including the Petitioners' party status, and set a hearing location in Albany for the first stage of the hearing.

On February 7, 2025, Greenidge submitted a self-styled "Renewed Appeal of Ruling on Issues and Party Status" in this matter (Renewed Appeal).⁵ In its Renewed Appeal, Greenidge referred to its original Appeal Brief from November 13, 2023 and maintained that my Regional Director's Decision had failed to reach the following issues:

1. The nature and extent of the required statement of justification and the proper analytical framework, including whether Section 7(2) [of the Climate Act⁶] enables the Department to make a subjective determination as to whether a project or facility is needed (*see* Appeal, at Point III);
2. Whether Section 7(2) usurps the jurisdiction of other agencies, particularly with respect to an electric generating facility [*see* Point III(B)(C)];
3. The extent and type of mitigation measures required by Section 7(2) and the relevance of mitigation to the entire Section 7(2) analysis (*see* Appeal, at Point IV); and
4. The merits of Petitioners' Petition for Full Party Status (*see* Appeal, at Point VI)

(*see* Greenidge's Renewed Appeal at unnumbered pp. 3-4).

As a consequence of this supposed failure, Greenidge's Renewed Appeal contends that the proceeding should be returned to Department staff, rather than to OHMS, for further evaluation of

⁵ DEC's permit hearing regulations, 6 NYCRR Part 624, do not provide for "renewed appeals" from final decisions issued by the Commissioner or a designated decision-maker. Consequently, given the specific facts and unique procedural circumstances of this proceeding at this juncture, Greenidge's Renewed Appeal is being treated as an appeal of an ALJ ruling pursuant to 6 NYCRR 624.8(d)(4) and 6 NYCRR 624.6(e). Additionally, as prescribed by 6 NYCRR 624.6(g), the Commissioner (or designated decision-maker) may modify the rules of practice in certain contexts.

⁶ References herein to the "Climate Act" or, alternatively, to the "CLCPA" refer to the Climate Leadership and Community Protection Act enacted in 2019 (Chapter 106 of the Laws of 2019).

Greenidge's previously denied permit renewal application. Greenidge's Renewed Appeal further contends that the ALJ's recent determination to proceed with an adjudicatory hearing in accordance with her September 22, 2023 Issues Ruling without addressing allegedly unresolved issues from Greenidge's original appeal from that Issues Ruling (as noted above) is premature, arbitrary and capricious, and in error (*see* Point II of Greenidge's Renewed Appeal).

On February 10, 2025, Greenidge submitted a motion for permission to file an interlocutory appeal of the ALJ's selection of hearing location (Motion for Permission to Appeal Hearing Location). The Motion for Permission to Appeal Hearing Location specifically seeks permission for leave to appeal from ALJ Phillips's January 30, 2025 letter ruling that the adjudicatory hearing will be held in DEC's Central Office in Albany, New York.

After conferring with me, on February 11, 2025, Acting Deputy Commissioner for Hearings and Mediation, Mark D. Sanza, issued a Memorandum to the parties advising them that I had considered Greenidge's Renewed Appeal as a motion for permission to file an interlocutory appeal of an ALJ Ruling, had granted that motion, and had designated Greenidge's Renewed Appeal submissions (including its 74-page Appeal Brief dated November 13, 2023 previously submitted on its original appeal of the Issues Ruling) as its brief on appeal.⁷ Department staff and proposed Petitioners were given until February 21, 2025 to submit responses to Greenidge's Renewed Appeal. Department staff and Petitioners each filed a response to Greenidge's Renewed Appeal on February 21, 2025.

On February 24, 2025, the Fourth Department denied Greenidge's motion for a stay of the Supreme Court Order and this proceeding. Thus, presently pending before me are: (i) Greenidge's Renewed Appeal; and (ii) Greenidge's Motion for Permission to Appeal Hearing Location.

II. Greenidge's Renewed Appeal

a. Supreme Court Order Return

As discussed, in its Renewed Appeal, Greenidge primarily argues that the matter should be remitted to Department staff, and not proceed with an adjudicatory hearing before OHMS, pursuant to the Supreme Court Order. Greenidge further alleges that the Regional Director's Decision failed to reach four issues outlined in its original appeal of the Issues Ruling. In its response to Greenidge's Renewed Appeal, Department staff contends that the issues attempted at being raised now have already been resolved and refuted by the Issues Ruling as well as by the Supreme Court Order and requests the adjudicatory hearing to move forward on the issues previously identified in the ALJ's Issues Ruling. Overall, Petitioners' position on Greenidge's Renewed Appeal is that it should be dismissed in its entirety for a variety of reasons and that they should be determined to be full parties in this proceeding.

To begin, the Department, and my Decision on Greenidge's Renewed Appeal, is constrained by the directives of the Supreme Court Order. While Greenidge previously requested an adjudicatory hearing regarding the Permit Denial, Greenidge now argues that the matter should instead be remitted to Department staff for further review and should not proceed to a hearing

⁷ The Acting Deputy Commissioner's February 11, 2025 Memorandum to the parties did not address Greenidge's February 10, 2025 Motion for Permission to Appeal Hearing Location. Consequently, this Interim Decision also addresses Greenidge's Motion for Permission to Appeal Hearing Location.

before OHMS (Renewed Appeal at 2).⁸ Yet, the Supreme Court Order explicitly notes that it is the failure of the Regional Director’s Decision to advance the Climate Act’s element of “justification” to adjudication – and not Department staff’s Permit Denial – as the basis for the Court’s decision (*Greenidge* 223 N.Y.S.3d at 862). Indeed, throughout the Supreme Court Order, the Court referred to the Regional Director’s Decision (referenced as “Final Denial” in the Supreme Court Order), and not to Department staff’s Permit Denial, as the act in error of law and arbitrary and capricious (*id.* at 862-864, 866-867). This is further evidenced by the Court’s differentiation between the Final Denial and Department staff’s Permit Denial (referenced as “Staff Denial” in the Supreme Court Order) throughout the Supreme Court Order (*see, e.g., id.* at 863-864).

The Supreme Court also held that “[i]t thus is a fair characterization of the Staff Denial that justification is one of its bases for denying the Renewal Application. . . .” (*id.* at 864-865). Consequently, as recognized by the Court, an adjudicatory hearing on justification under Section 7 of the Climate Act is the proper next step in the proceeding’s directed return to DEC (*id.*). *Greenidge* further argues that the omission of a reference to an adjudicatory hearing in the Court’s denial of a stay of this proceeding as justification that the matter should be reverted to Department staff as opposed to OHMS to conduct an adjudicatory hearing (Renewed Appeal at 7). The Supreme Court Order represents the controlling direction to the Department to provide *Greenidge* with the administrative hearing it originally requested on July 28, 2022. Consistent with the provisions and directives of the Supreme Court Order, I thereby direct an adjudicatory hearing before OHMS to proceed.

In reaching this decision, I considered the unique procedural posture of this case presented by *Greenidge*’s current appeal from the Supreme Court Order to the Fourth Department, as well as the Fourth Department’s recent denial of *Greenidge*’s motion to stay the Supreme Court Order and this proceeding during the pendency of the appeal. *Greenidge*’s appeal to the Fourth Department springs directly from the Regional Director’s Decision which, in turn, stems from the ALJ’s Issues Ruling. Thus, the Article 78 Action and appeal therefrom, as well as this administrative proceeding, are advancing in parallel and may ultimately address the same, or at least similar, issues and elements. Accordingly, in the interest of judicial and administrative economy, the Issues Ruling will not be disturbed and the issues determined for adjudication by the ALJ as provided in Section VI of the September 2023 Issues Ruling will advance to adjudication.

Excluding the issue of determination on petitions for party status, which I address further below, two of the three remaining issues that *Greenidge* alleges in its Renewed Appeal were not addressed in the Regional Director’s Decision – the nature and extent of the required statement of justification, as well as the extent and type of mitigation measures required by CLCPA Section 7(2) - concern mixed questions of law and fact.⁹ In light of the issues already outlined in Section VI of the Issues Ruling advancing to adjudication, these two issues posed by *Greenidge*’s Renewed Appeal will be subject to further examination and development in the adjudicatory hearing process. *Greenidge*, and the other parties, will be able to pursue their claims on these CLCPA Section 7(2) issues with witness testimony, cross examination and evidence at the hearing, as well as have an opportunity to make legal arguments in subsequent briefing at the close of the proceeding.

⁸ *See, e.g.,* *Greenidge*’s July 28, 2022 request for a hearing and *Greenidge*’s November 4, 2022 statement of issues.

⁹ *See* items numbered “1” and “3” from *Greenidge*’s Renewed Appeal on p. 2 herein.

The remaining issue in Greenidge’s Renewed Appeal (excluding party status determination) of whether CLCPA Section 7(2) usurps the jurisdiction of other agencies, particularly with respect to an electric generating facility, is solely an issue of law that has been previously addressed by two different state Supreme Court decisions and by another ALJ ruling.¹⁰ While the Supreme Court Order may not have explicitly considered this precise issue in its decision, the Court nevertheless cited and relied upon the decision in *Danskammer Energy, LLC v. DEC (Danskammer)*¹¹ for its determination (*see Greenidge Generation LLC v. New York State Dep’t of Env’t Conservation*, 223 N.Y.S.3d 846, 861-62 [N.Y. Sup. Ct. 2024]).

Like this matter, the *Danskammer* case also involved a Title V permit application for an electric generating facility that was denied by the Department. The petitioner in that case, Danskammer Energy, LLC, argued that DEC’s denial of its Title V permit “was unlawful because it ignore[d] the fact that Danskammer’s Title V permit application was sought in conjunction with [an electric generation facility] siting proceeding commenced pursuant to Article 10 of the [Public Service Law (PSL)]” (*Danskammer*, 173 N.Y.S. at 150–151).¹² Danskammer Energy, LLC also argued that DEC lacked the authority to make determinations about the need and justification for electricity generation, alleging that that function was instead given to the Siting Board under PSL Article 10, and to the Public Service Commission (PSC), the New York State Reliability Council, and the New York Independent System Operator (*id.* at 152).

The *Danskammer* Decision and Order dismissed the CPLR Article 78 case against the Department in its entirety and held, among other things, that CLCPA Section 7(2) grants the Department authority to deny a permit application, including Danskammer Energy LLC’s Title V permit application (*id.* at 173-176). The Supreme Court Order in this matter also held that CLCPA Section 7(2) grants the Department authority to deny a permit application, including Greenidge’s Title V air permit renewal application (*Greenidge* at 861-862). And as held by an ALJ previously, the Court in *Danskammer* and the CLCPA itself establish that DEC is required to consider and apply CLCPA Section 7(2) to permit decisions, including Title V permit decisions (*In the Matter of the Danskammer Energy Center*, 2023 WL 2898982, at *19-21 [ALJ Ruling issued April 4, 2023]). To interpret it any other way would necessarily compel DEC to ignore its own mandate pursuant to CLCPA Section 7, which was summarily upheld in *Danskammer* and by the Supreme Court Order.

Moroeover, the plain language of CLCPA Section 7 and DEC's sole and independent, federally delegated authority to issue Title V permits in New York State (*see Danskammer* at 9; 6 NYCRR Parts 201 and 201-6) demonstrate that the Department has authority – and mandate – to apply CLCPA Section 7 to Title V permits. CLCPA Section 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

¹⁰ See item numbered “2” from Greenidge’s Renewed Appeal on p. 2 herein. *See also In the Matter of the Danskammer Energy Center*, 2023 WL 2898982 (ALJ Ruling issued April 4, 2023).

¹¹ *Danskammer Energy, LLC v. New York State Dep’t of Env’t Conservation*, 173 N.Y.S.3d 134 (N.Y. Sup. Ct. 2022).

¹² Barclay Damon LLP represented Danskammer Energy LLC and currently represents the Applicant in this proceeding and the Article 78 Action (and appeal therefrom).

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.

The statutory language cited makes clear that CLCPA Section 7(2) applies to all state agencies, including the Department, and explicitly directs all state agencies to ensure compliance with the requirements of CLCPA Section 7(2) when considering permit applications and decisions. A Title V permit decision by the Department is necessarily independent from other state proceedings and processes. The Department regulates the construction, operation and emissions of stationary sources, including electric generating facilities, and DEC's jurisdiction over an electric generation facility continues irrespective of PSC regulation of the entity or facility (*see e.g.*, ECL 19-0312; 6 NYCRR Part 251). DEC's exclusive authority for Title V permits includes attendant requirements under State law, such as CLCPA Section 7(2). Consistent with the mandate of CLCPA Section 7(2), DEC is the only appropriate state agency authorized to consider and apply the CLCPA Section 7(2) requirements to a facility's Title V permit application. On the question of which State agency considers and applies CLCPA Section 7(2) for Title V permits, it is very clearly DEC. It is entirely immaterial whether the same facility applying for a Title V permit is also subject to PSL or any other regulatory regime, because DEC's exclusive authority under existing law for Title V air permits unquestionably makes DEC the sole state agency charged with considering and applying CLCPA Section 7(2) to Title V permit applications.

Additionally, as acknowledged by the Climate Action Council in the Scoping Plan, CLCPA implementation "necessitates an all-hands-on-deck approach across State government" (Scoping Plan at p. 21 [issued December 2022]), in which all State agencies take implementation steps. When enacting the CLCPA, the Legislature found that "[c]limate change is adversely affecting economic well-being, public health, natural resources, and the environment of New York," and acknowledged various State efforts across multiple agencies that had already demonstrated leadership in the climate change context (*see* CLCPA § 1). CLCPA Section 7(2) has been held to apply to permits and licenses issued by PSC, as well as to other PSC administrative approvals and decisions (*see, e.g., Clean Air Coal. of W. New York, Inc. v. New York State Pub. Serv. Comm'n*, 223 N.Y.S.3d 837, 842-44 [N.Y. Sup. Ct. 2024]). Holding that CLCPA Section 7 usurps other state agency jurisdiction would contradict the Legislative and Climate Action Council's intent and direction to State agencies with respect to climate action and regulation (*see* New York Bill Jacket, 2019 S.B. 6599, Ch. 106 ["Sections 7 through 12 would provide for additional authority for state agencies to promulgate greenhouse gas regulations and require the Department of Environmental Conservation to consider climate change in permitting decisions."]). Further, Greenidge fails to adequately explain how the PSL or any other regulatory scheme, including a Certificate of Public Convenience and Necessity issued by the PSC pursuant to PSL Section 68, relates to need such that it would hinder the Department's separate ability and legal requirement to assess justification under CLCPA Section 7(2).

In view of the foregoing, and consistent with the *Danskammer* decision and Supreme Court Order, I conclude as a matter of law that DEC has the authority to make determinations pursuant to CLCPA Section 7(2) in permit decisions, including in the context of the Title V program. I further conclude as a matter of law that the Department has the authority to apply CLCPA Section 7(2) to a Title V permit application and determination, whether or not the facility is an electric generation facility that may also require permits or approvals from other entities. For the reasons stated herein, the legal question of whether CLCPA Section 7(2) usurps the jurisdiction of other state agencies is answered in the negative.

b. Joint Petition for Full Party Status

Greenidge's Renewed Appeal contends that the ALJ's January 30, 2025 letter ruling noting that Petitioners' party status determination from the Issues Ruling "has not been disturbed" by the Supreme Court Order is in error and relies upon its initial appeal brief from November 2023 to argue that Petitioners' joint petition for full party status be denied.¹³ In response, Petitioners maintain that they have met all of the applicable requirements to obtain full party status as a matter of law and fact, as outlined in their response to Greenidge's initial appeal filed on December 6, 2023, and as determined by the ALJ's Issues Ruling. Department staff noted, in its response to Greenidge's initial appeal of the Issues Ruling and again in response to the Renewed Appeal, that it does not object to Petitioners' participation as full parties in this proceeding.

I concur with the portion of ALJ Phillips's Issues Ruling pertaining to the determination of Petitioners' party status, which I adopt here in my Interim Decision in this matter, subject to my comments herein. ALJ Phillips comprehensively addressed the Petitioner's request for full party status, as well as the responses to that request, and rigorously applied and analyzed the Department's regulatory requirements for becoming a full party (Issues Ruling at 50-52). As set forth in the Issues Ruling, Petitioners satisfy all elements of 6 NYCRR 624.5 (Issues Ruling at 50-52).

Contrary to Greenidge's argument, 6 NYCRR Part 624 does not require potential parties to raise a "unique" substantive and significant issue in order to be granted full party status. In other words, 6 NYCRR 624.5 does not require a potential party to propose an issue that is not already part of the proceeding. Rather, 6 NYCRR 624.5(d)(1)(ii) simply requires "a finding that the petitioner has raised a substantive and significant issue *or that the petitioner can make a meaningful contribution to the record regarding a substantive and significant issue raised by another party.*" The plain language of the applicable regulation allows for parties to address overlapping issues in the proceeding, so long as a potential party can make a meaningful contribution to the record on such overlapping issues (*see In the Matter of the Application of Southern Dutchess Sand & Gravel, Inc.*, 2005 WL 958141, at *7 (Ruling on Issues and Party Status issued April 20, 2005) ["The requirement of [6 NYCRR 624.5] is only that a petitioner identify an issue for adjudication that meets the criteria of [6 NYCRR 624.5], not that it be a party raising that issue. The issue identified for purposes of the requirements of [6 NYCRR 624.5] can be an issue raised by another party."]).

Petitioners here have shown that they can make a meaningful contribution to the record regarding the issues moving forward to adjudication. Even if the adjudicable issues Petitioners and Department staff develop in this proceeding overlap, Petitioners may have a different perspective

¹³ See Greenidge's Renewed Appeal at unnumbered p. 5.

than Department staff and will meaningfully contribute to the record in this matter by providing additional arguments, insights, or technical expertise relevant to the issues (*see In the Matter of the Application of Southern Dutchess Sand & Gravel, Inc.*, 2005 WL 958141, at *6-8). Unlike other proceedings that have come before the Department, the issues moving forward to adjudication in this matter are not so narrow that all information relevant to the issue can be developed by Department staff and Applicant (*compare In the Matter of the Application Whitesville Field, Allegany and Steuben Counties, New York. East Resources, Inc.*, 2009 WL 6372309, at *12 [Ruling on Issues and Party Status issued December 11, 2009]).

Petitioners have also proposed to offer expert testimony and an analysis of the applicable legal standards for the CLCPA that are novel and have yet to be adjudicated before the Department (*see e.g.*, Petitioners Response to Greenidge’s Initial Appeal at 26-30 [December 6, 2023]). In fact, in past proceedings, some of the representatives encompassing the Petitioners have demonstrated that they could make a meaningful contribution to the administrative record.¹⁴ Petitioners have also participated in every step of this proceeding thus far, as well as in other matters concerning the Greenidge facility, including the contemporaneous Article 78 Action, which further demonstrates their involvement, commitment, and ability to meaningfully contribute to the record in this proceeding.

Lastly, Petitioners have raised a substantive and significant issue that was not initially identified by Department staff, namely, the failure to address whether there will be a disproportionate burden on disadvantaged communities as required by CLCPA Section 7(3). As discussed herein, the issues identified in Section VI of the Issues Ruling are moving forward to adjudication. Further, I concur with ALJ Phillips’s Issues Ruling that Petitioners’ proposed issue on CLCPA Section 7(3) is substantive and significant because it raises a substantial doubt about applicant's ability to meet the statutory criteria, requiring further inquiry, and could result in permit denial, a major modification, or the imposition of significant permit conditions (Issues Ruling at 19-20). Petitioners could meaningfully contribute to the record regarding this issue because it was not a basis for the Permit Denial and staff have asserted that it is not a basis for adjudication (*see* Permit Denial at 19-20; Department staff’s November 22, 2022 Response to Greenidge’s Statement of Issues and Petitions for Party Status at 13; Issues Ruling at 20). Greenidge also identified CLCPA Section 7(3) in its November 4, 2022 statement of issues. Thus, given their respective filings and the record in this proceeding so far, as well as in the Article 78 Action, it is likely that Petitioners will have a different position than Greenidge on the topic of CLCPA Section 7(3) and may provide a unique perspective to the proceeding regarding this substantive and significant issue, which will result in a meaningful contribution to the record.

In light of the foregoing, ALJ Phillips’s ruling on party status in the September 22, 2023 Issues Ruling will not be disturbed. Petitioners are hereby granted full party status in this proceeding.

¹⁴ Sierra Club was granted full party status in the Department’s Danskammer proceeding and was also represented by Earthjustice in that matter (*In the Matter of the Danskammer Energy Center*, 2023 WL 2898982, at *3, 5, 13-15, 39-41 [(ALJ Ruling issued April 4, 2023)]. As discussed in Section II(a) of this Interim Decision, the Danskammer administrative proceeding has many similarities to this proceeding.

III. Greenidge’s Motion for Permission to Appeal Hearing Location

For the reasons provided in ALJ Phillips’s January 30, 2025 letter ruling that the adjudicatory hearing be held in DEC’s Central Office in Albany, the Motion for Permission to Appeal Hearing Location is denied (*see* 6 NYCRR 624.8[b][1][ii], [xvi], [xxi]).

IV. Conclusion

To the extent that Greenidge has raised, or attempted to raise, any additional issues in its two appeals encompassed by Sections II and III of this Interim Decision, these have been considered and found to be lacking in merit. Based on all of the foregoing, and in accordance with Justice DiNolfo’s Supreme Court Order dated November 14, 2024, as well as the Fourth Department’s recent denial of Greenidge’s motion for stay, this matter is remanded to OHMS and ALJ Phillips for the purpose of holding an adjudicatory hearing on the issues identified in Section VI of the Issues Ruling dated September 22, 2023, subject to my comments herein and consistent with this Interim Decision.

For the New York State Department
of Environmental Conservation

By: _____ /S/
Dereh B. Glance
Regional Director, DEC Region 7

Dated: March 31, 2025
Albany, New York