

PACE ENVIRONMENTAL LITIGATION CLINIC

JOHN JAY LEGAL SERVICES, INC.
ELISABETH HAUB SCHOOL OF LAW
78 NORTH BROADWAY
WHITE PLAINS, NEW YORK 10603
PHONE: 914.422.4343
FAX: 914.422.4437

OF COUNSEL
KARL S. COPLAN

SUPERVISING ATTORNEY
TODD D. OMMEN

ADMINISTRATOR
JENNIFER RUHLE

March 10, 2026

Via email

Hon. David N. Greenwood
Administrative Law Judge
New York State Department of Environmental Conservation
Office of Hearings and Mediation Services
625 Broadway, First Floor,
Albany, NY 12233-1550

Re: In the Matter of the Application of Unconventional Concepts, Inc. and Michael Hopmeier APA Project No. 2021-0276

Dear Judge Greenwood,

On behalf of Sierra Club, Atlantic Chapter, we write to join in the letter filed today by Protect the Adirondacks! (“Protect”) opposing a further stay of these proceedings.

In addition to the cogent arguments presented in that letter, we add two points. First, even beyond whether this tribunal should reconsider its prior Order regarding the requested stay, there is a separate legal obstacle to the Applicant’s current request. As noted in Protect’s letter, Applicant sought the same relief in the Supreme Court, and the relief was denied. *See* Protect Letter at 2. Having been denied any stay in the Supreme Court, Applicant is barred by collateral estoppel from seeking to relitigate that same issue in this forum. Under New York law, collateral estoppel precludes a party from relitigating an issue where the identical issue was previously raised and decided, and the party had a full and fair opportunity to litigate it. *See Ryan v. New York Tel. Co.*, 62 N.Y.2d 494, 500–01 (1984). Here, the Applicant sought and briefed a stay of this adjudicatory proceeding and the Supreme Court declined to grant that relief. Having already sought and failed to obtain a stay from that court, Applicant is not permitted to relitigate the identical request before this tribunal hoping for a different result.

Second, the Protect Letter correctly notes that the duration of the Article 78 proceeding is entirely unknown. Protect Letter at 3. We would add to that concern that, regardless when the issue is decided by the Supreme Court, the losing side will doubtless appeal, and if this proceeding is stayed pending resolution of the Article 78 case, Applicant will doubtless seek to extend the stay for the duration of any subsequent appeal, potentially further delaying matters here. Sierra Club reserves the right to contest any further stay should those events come to pass,

but the question of when the Article 78 proceeding is truly “over” is one that could lead to further disputes if a stay is granted now, which could even further extend delay this proceeding.

For these reasons as well as the reasons set forth in the Protect Letter, the requested stay should be denied. Thank you for your consideration of these issues.

Sincerely,



Todd D. Ommen, Esq.