

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Petition of Chelsea Solar LLC, pursuant to )  
30 V.S.A. § 248, for a certificate of public )  
good authorizing the installation and )  
operation of the “Chelsea Solar Project,” a )  
2.0 MW solar electric generation facility )  
located off Willow Road in Bennington, )  
Vermont )

Case No. 17-5024-PET

**REPLY BRIEF OF APPLE HILL HOMEOWNERS ASSOCIATION and MOUNT  
ANTHONY COUNTRY CLUB RE CHELSEA SOLAR 2**

NOW COME Intervenor Apple Hill Homeowners Association (AHHA) represented by Lora Block, *pro se*, and Mount Anthony Country Club (MACC) represented by Maru Leon, *pro se*, and submit the following Brief in support of their position that the petition of Chelsea Solar LLC 2 (CS2 or “the Project”) for a Certificate of Public Good (CPG) authorizing the installation and operation of a 2.0 megawatt (MW) solar photovoltaic electricity generation facility located at 1133 Willow Road Apple in Bennington, Vermont should be denied

**LEGAL ARGUMENT**

- I. **The Law of the Case Settles the Issue of whether there is a clear written community standards contained in the Town Plan; thus, Petitioner is precluded from arguing that the Town Plan does not contain a clear written community standard.**

The Petitioner’s Proposed Findings include a discussion of whether the limitations on development in the Rural Conservation District set forth in the Bennington Town Plan constitutes a "clear written community standard." While Petitioner concludes in its Proposed Findings that it does not, that exact question has been addressed and decided in a final, binding

determination by the PUC in a prior phase of this very case. The prior application submitted by Chelsea Solar in this case, was denied by the PUC on the basis that there was a clear written community standard contained in the Town Plan that was violated by the proposed project. The Petitioner appealed that case to the Supreme Court; however, instead of litigating that appeal to a conclusion, the Petitioner chose to withdraw its appeal to the Supreme Court; thus foreclosing its right to quarrel with the PUC's decision on a particular rule of law. The Petitioner chose a strategy to withdraw its appeal and thus allowed the decision to become final and binding. Moreover that decision now governs all subsequent stages of the same case. "The law of the case doctrine is a rule of practice that provides that once a court decides a particular rule of law, that decision governs the same issue in subsequent stages of the same case." *Felis v. Felis*, 196 Vt. 643, 93 A.3d 1057 (2014)(citing *Gardner v. Jefferys*, 2005 VT 56, ¶ 14, 178 Vt. 594, 878 A.2d 259 (mem.)). There is, however, no law of the case absent a judicial decision establishing the particular rule of law. *In re Chittenden Solid Waste Dist.*, 2007 VT 28, ¶ 29, 182 Vt. 38, 928 A.2d 1183.

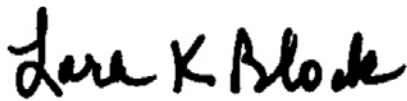
While the Petitioner can argue that the project has been reconfigured and that the application of the law to the new project may have a different result, the interpretation of the law itself has been established by a judicial decision establishing the particular rule of law which cannot be changed if the law itself has not changed. Thus, the PUC's determination that the Town Plan contains a clear written community standard is a final legal decision and should stand. The only thing left for the PUC to decide is whether this version of the project does or does not violate the already established interpretation of the law. The undersigned submit that the newly revised

project is still prohibited in the RCON district no matter the configuration. Thus, the PUC should DENY the Petition

For all of the above reasons, a CPG for CS2 must be denied.

Dated at Bennington, Vermont this 2<sup>nd</sup> day of November, 2018.

Respectfully submitted,



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