**STATE OF VERMONT**
**PUBLIC UTILITY COMMISSION**

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| **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 2.00 MW solar electric generation facility to be located off Willow Road in Bennington, Vermont** | ) | **Case No. 17-5024** |

## PETITIONER'S MOTION TO REOPEN

On June 4, 2021, the Vermont Supreme Court issued its mandate letter in the above-captioned matter returning jurisdiction to the Vermont Public Utility Commission (the "Commission"). Chelsea Solar LLC ("Chelsea" or "Petitioner") hereby moves the Commission to re-open these proceedings on the basis that the sole basis on which the Commission denied the certificate of public good ("CPG") in its order of June 12, 2019, no longer exists. Therefore, consistent with the remainder of the Commission's order dated June 12, 2019, the CPG should now be issued.

The Order of June 12, 2019, was based upon the fact that the Commission had issued a CPG to the Apple Hill Solar LLC ("AHS") project, and as such, the Commission concluded that the Chelsea project would be a single plant connecting to the same Green Mountain Power line extension. The AHS CPG has since been vacated. The Chelsea June 12, 2019, Order was based upon a "prior judgment [that] has been reversed or otherwise vacated." V.R.C.P. 60(b)(5). As a result, this docket should be re-opened, and the CPG issued in accordance with the conclusions in the remainder of the June 12, 2019 Order.

**A. Legal Standard.**

Under V.R.C.P. 60(b)(5), a court may reopen a proceeding and relieve a party from a judgment if "a prior judgment upon which it is based has been reversed or otherwise vacated." That is the case here.

Courts considering Rule 60(b)(5) motions are generally solicitous of a movant seeking relief when a prior judgment on which the challenged judgment relies has been vacated. *See, e.g., Flowers v. S. Reg'l Physician Servs., Inc*., 286 F.3d 798 (5th Cir. 2002); *Cal. Med. Ass'n v. Shalala*, 207 F.3d 575 (9th Cir. 2000); *Maul v. Constan*, 23 F.3d 143 (7th Cir. 1994) (holding that it was an abuse of discretion for the district court to deny a Rule 60(b)(5) motion for relief when the merits judgment was reduced to nominal damages on appeal); *Lowry Development, LLC v. Groves & Assocs. Ins., Inc*., 690 F.3d 382, 387 (5th Cir. 2012) ("when one judgment rests upon a contemporaneous judgment which has been reversed or otherwise vacated, . . . Rule 60(b)(5) should nevertheless apply if all the other conditions are met" on the ground that "the word 'prior' in Rule 60(b)(5) refers not only to prior in time but also to prior as a matter of legal significance.") (quoting *Werner v. Carbo*, 731 F.2d 204, 208 (4th Cir. 1984)).

The June 2019 Chelsea Order relied on the now vacated AHS CPG. As a result, this docket should be re-opened, and the CPG issued in accordance with the conclusions in the remainder of the June 12, 2019 Order.

Respectfully submitted,

*/s/Thomas Melone*
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