



STATE OF NEW YORK
ADIRONDACK PARK AGENCY

In the Matter of the Application of

APA Project No. 2021-0276

UNCONVENTIONAL CONCEPTS, INC.
AND MICHAEL HOPMEIER

**APA HEARING STAFF RESPONSE
TO INTERVENORS' JOINT MOTION
TO DISMISS**

On November 13, 2025, after nearly four years of review and requests for additional information, Agency staff recommended P2021-0276 proceed to a public hearing under §580 of the Agency's regulations. Following this recommendation, the Agency Board ordered the project to a hearing for the purpose of further developing the record. The hearing is an opportunity for the Applicant to present evidence and demonstrate that the project is approvable under §809(10) of the Adirondack Park Agency Act ("APA Act").

9 months later and the record is littered with unsubstantiated procedural challenges and is entirely void of additional information that would aid the Agency Board in their review.

Agency hearing staff respectfully request Judge Greenwood take whatever action he deems appropriate to move towards a final resolution of these proceedings including (1) dismissal and reversion to the Agency Board; (2) preclusion of the testimony, but continuation of the proceedings; (3) conditional admission of the testimony, with failure to file or comply with procedure resulting in automatic default; or (4) any other sanctions.

History of the Proceedings

On November 14, 2025, a notice of intent to proceed to hearing was sent to the Applicant.

On November 20, 2025, Judge Greenwood was appointed as the hearing officer. Attorney for the Applicant has repeatedly challenged this designation based on unsubstantiated allegations of bias.

On December 3, 2025, the Agency issued a Notice of Public Hearing with a scheduled appearance date of December 22, 2025 at 6:00 P.M.

On December 12, 2025 Agency hearing staff and attorney for the Applicant submitted a joint request for adjournment. Judge Greenwood ordered the proceedings adjourned until February 4, 2026.

On January 20, 2026, attorney for the Applicant requested a stay of the proceedings via e-mail until the “sponsor’s challenge of Judge Greenwood’s qualification” was resolved. This request was denied.

On January 21, 2026, Agency hearing staff, attorney for the Applicant, and intervening parties submitted a joint request for adjournment to February 25, 2026. Judge Greenwood granted this request.

On January 30, 2026, attorney for the Applicant brought an Article 78 action seeking to vacate the Board’s hearing order and to disqualify Judge Greenwood. The Applicant also requested a stay of the hearing proceedings. The State has moved to dismiss the Article 78 proceedings. The parties are still awaiting a decision from the Court.

On February 11, 2026, at the request of the applicant, consent of the Agency staff, and over objection of the intervening parties, Judge Greenwood ordered the hearing to be adjourned until April 22, 2026.

On March 4, 2026, attorney for the Applicant moved for an indefinite stay of the hearing pending the resolution of the Article 78 proceedings described above. Agency regulations require the hearing be adjourned to a time and date certain, so Applicant requested an adjournment to June 24, 2026, with opportunity for extension. Agency staff and intervening parties objected to the indefinite stay. Judge Greenwood issued an order denying the stay but granting the adjournment to June 24, 2026.

On April 29, 2026, the hearing was adjourned a 5th time to October 28, 2026. This adjournment was requested by Agency hearing staff and consented to by the other parties. The purpose of this 6 month adjournment was to provide all parties the opportunity to engage in discovery, develop expert reports, and prepare for the evidentiary portion of the hearing.

On June 15, 2026, a conference was held with all parties to discuss a revised scheduling order. APA hearing staff proposed the Applicant submit their pre-filed testimony by Wednesday, July 29, 2026, but Applicant’s representative indicated he needed additional time to prepare. He stated that he would take as much time as possible, but requested at least two weeks, shifting the deadline to August 12, 2026. He did not provide a basis for the request. Agency staff did not object. Judge Greenwood noted that this adjustment would compress some of the other timelines in the proposed scheduling order, but felt that it was a reasonable accommodation, so long as it didn’t shift the overall hearing timeline. Intervening parties, in particular the representative for Adirondack Council, expressed concerns about the timeline and their ability to review the materials submitted by the Applicant but ultimately conceded this point. The Third Revised Scheduling Order was issued on June 24, 2026.

Pursuant to the Third Revised Scheduling Order, the Applicant's pre-filed testimony was due on August 12, 2026. On August 11, 2026 attorney for the Applicant submitted a letter request to Judge Greenwood for a 21 day extension without explanation – attorney for the Applicant stated, "I simply need more time to complete the submission." The Third Revised Scheduling Order, as with all prior scheduling orders, provided that "any requests to modify or amend this Scheduling Order must be filed in writing at least 10 calendar days before the established due date. Prior to filing the request, the parties must confer and attempt to resolve the conflict before filing the request with the hearing officer." Judge Greenwood denied the request for failure to comply with this provision and scheduled a conference to discuss a new scheduling order.

Following the denial, the intervening parties moved to dismiss the proceedings and to send the Application back to the Agency Board for final action. The intervenors argue that a revised scheduling order would "(i) effectively nullify Your Honor's prior ruling denying the Applicants' request for an extension; (ii) grant the Applicants the very relief that Your Honor has determined is unwarranted; (iii) in essence reward the Applicants' flagrant disregard of the Order; (iv) significantly prejudice the Intervenor; and (v) result in a failure to maintain "order and the efficient conduct of the hearing" as required by APA regulations. 9 NYCRR §580.14(a)(4)(xi)."

The parties convened for a brief call on Wednesday, August 19, 2026 to discuss a briefing schedule for this motion. On that call, attorney for the Applicant stated that the Applicant is the only party harmed by the delay. Respectfully, Agency staff disagree.

Argument

I. Legal Authority

The Administrative Law Judge ("ALJ") has broad authority to manage these proceedings under both Agency Regulations and the New York State Administrative Procedures Act ("SAPA"). Specifically, Agency regulation §580.14(a)(4)(xi) provides that the hearing officer shall have the authority to "do all acts and take all measures necessary for the maintenance of order and the efficient conduct of the hearing." This includes the authority to admit or exclude evidence under Agency regulation §580.14(a)(4)(ix) and SAPA §306 and to dispose of an adjudicatory proceeding by default under SAPA §301 and Agency regulations §580.10.

APA Act §809(3)(d) provides that "No project may be disapproved without a public hearing first being held thereon." The purpose of this provision is to provide an Applicant facing the possibility of denial with the opportunity to demonstrate that the proposed project meets the required statutory findings under §809(10) of the APA Act.

However, the opportunity to be heard is not without condition as is recognized under the default provisions of SAPA §301 and Agency Regulations §580.10. While default under these provisions typically occurs when a party fails to appear, these sections speak to the underlying principle that the interested party has an obligation to participate in the proceedings in good faith.

Whether dismissal is an appropriate sanction in this instance is a matter to be determined by the ALJ. In making this determination, the ALJ might consider whether the Applicant's failure to comply with the scheduling order was "willful, contumacious, or in bad faith." *Wingdale v. Tarnacki*, 184 A.D.3d 1178, (4th Dept. 2020) *citing to* *Green v. Kingdom Garage Corp.* 34 A.D.3d 1373, 1374 (4th Dept. 2006), *Peterson v. New York Cent. Mut. Fire Ins. Co.*, 174 A.D.3d 1386, 1387-1388 (4th Dept. 2019) and *Wiljeff LLC v. United Realty Mgt. Corp.*, 82 A.D.3d 1616, 1619 (4th Dept. 2011). This line of cases deals primarily with dismissal grounded in failure to comply with a disclosure order under CPLR §3126, but the established legal principles are relevant beyond that context. These cases highlight the judiciary's obligation to balance the non-complying party's due process rights against the prejudice the moving party has suffered because of that non-compliance, while also considering the broader judicial economy and allocation of resources.

In balancing these interests and relying on this analogy, the ALJ should be careful not to collapse the distinctions between that body of case law and these proceedings. The standards prescribed by CPLR are instructive but not controlling. Failure to comply with a disclosure order is distinct from failure to submit pre-filed testimony, in that failure to disclose can usually be remedied through some means other than dismissal and should only occur where the non-complying party acted in bad faith. Failure to submit pre-filed testimony is more akin to failure to appear in that the non-complying party either gets another opportunity to submit their pre-filed or not. The ALJ does not necessarily need to find that failure to comply with the scheduling order was independently "willful, contumacious, or in bad faith" if he determines that the only appropriate remedy for this failure is to preclude the testimony considering the totality of the circumstances.

II. Prior Challenges to the Hearing Proceedings

Throughout the proceedings, Applicant by and through his attorney has attempted to undermine the legitimacy of the hearing. He has disregarded procedure without explanation or excuse. He challenged the validity of the hearing order, despite the Boards unanimous vote. He questioned the ALJ's objectivity but failed to support any allegations of bias. He limited the intervenors' ability to meaningfully participate by denying them a site visit. He continues to question their ability to participate despite their full party status. He has publicly and incorrectly indicated that a federal contract would obviate the Agency's review authority. Attorney for the Applicant has done just about everything but

introduce evidence that demonstrates the proposed project is approvable. To be clear, Agency staff are not suggesting that any of the above actions would be inappropriate if grounded by evidence. Attorneys should advocate for clients and submit challenges if they believe and can support their position.

III. Failure to Comply with Scheduling Order and Submission of Pre-filed Testimony

With respect to the present issue, Agency hearing staff share the frustrations expressed by the intervenors. The last revised scheduling order has been in place for over two months. It was carefully constructed and intentionally staggered to provide all parties with the opportunity to submit pre-filed testimony and to review the pre-filed testimony submitted by others. A three week extension does not “give everyone more time” as suggested by the Applicant’s representative, it compresses the timeline that all parties, including the Applicant, must work within to review these filings ahead of the October 28 appearance date. It requires the parties and their witnesses to rearrange their schedules to accommodate an unreasonable and inconsiderate request. The delay – in and of itself – is a harm that cannot be fully be redressed by shifting the hearing schedule. If the attorney for the Applicant had complied with the scheduling order and had at least made an attempt to confer with Agency staff and intervening parties before submitting the request to the ALJ, we could have perhaps reached a consensus and affirmatively resolved the scheduling issues to avoid yet another delay to the evidentiary portion of the hearing.

Independently, failure to comply with the scheduling order would be unlikely to be read as “willful, contumacious, or in bad faith”, however, in the broader context of this application and these proceedings, it is hard to separate this failure from what appears to be a larger strategy of avoidance. To what end, is unclear. The Agency cannot approve this application without further evidence demonstrating that the project meets the required statutory findings under §809(10).

IV. Conclusion

Agency hearing staff do not advocate for a specific sanction, though some form of admonishment is proper. The ALJ might consider the following (1) dismissal and reversion to the Agency Board; (2) preclusion of the testimony, but continuation of the proceedings; (3) conditional admission of the testimony, with failure to file or comply with procedure resulting in automatic default; or (4) any other sanction the ALJ deems appropriate.

If the ALJ allows the proceedings to move forward, Applicant’s representative must affirmatively demonstrate their intent to participate in the proceedings and comply with the hearing process.

The Agency can only provide the opportunity for due process; it cannot compel participation. If the Applicant does not wish to move forward with the hearing process, they are not required to do so and may withdraw at any time.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Grace Sullivan", with a long horizontal flourish extending to the right.

Grace Sullivan
APA Hearing Staff – Attorney



**Public Hearing Service List
P2021-0276**

Recipient	Address
Project Sponsor – Michael Hopmeier, Unconventional Concepts LLC Authorized Representatives: Matthew D. Norfolk	Matthew D. Norfolk, Esq. Norfolk Beier, PLLC 1936 Saranac Ave, Suite 106 Lake Placid, NY 12946 mnorfolk@norfolkbeier.com Sean Davis Norfolk Beier, PLLC 1936 Saranac Ave, Suite 106 Lake Placid, NY 12946 sdavis@norfolkbeier.com
Administrative Law Judge: David Greenwood	New York State Department of Environmental Conservation Office of Hearing and Mediation Services 625 Broadway, First Floor Albany, NY 12233-1550 david.greenwood@dec.ny.gov
Agency Hearing Staff: Grace Sullivan Jennifer Hubbard	Grace Sullivan grace.sullivan@apa.ny.gov Jennifer Hubbard jennifer.hubbard@apa.ny.gov Adirondack Park Agency P.O. Box 99 1133 NYS Route 86 Ray Brook, NY 12977
Protect the Adirondacks!	Christopher A. Amato, Esq. conservationdirector@protectadks.org P.O. Box 48 North Creek, NY 12853 Claudia Braymer, Esq. executivedirector@protectadks.org P.O. Box 48 North Creek, NY 12853
Adirondack Wild: Friends of the Forrest Preserve	David Gibson dgibson@adirondackwild.org P.O. Box 9247 Niskayuna, NY 12309



Recipient	Address
Sierra Club Atlantic Chapter	Todd Ommen tommen@law.pace.edu 78 North Broadway, White Plains, NY 10603
Adirondack Council	Philip H. Gitlen, Esq. pgitlen@woh.com Whiteman Osterman & Hanna LLP 1 Commerce Plaza, Albany, New York, 12260 Paul Van Cott PVanCott@woh.com Whiteman Osterman & Hanna LLP 1 Commerce Plaza, Albany, New York, 12260 Anna V. Seitelman, Esq. ASEitelman@woh.com Whiteman Osterman & Hanna LLP 1 Commerce Plaza, Albany, New York, 12260

This service list includes all parties to the abovementioned proceeding as of May 7, 2026. This list will be updated as parties join the proceeding. Please continue to check the Agency's website for the most updated list of parties.