

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

IN THE MATTER OF:

THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE, LLC
FOR AN AIR QUALITY PERMIT,
NO. NSR 10883

AQB 26-57 (P)

REQUEST OF EMERGENCY STATUS CONFERENCE¹

Yucca Growth Infrastructure, LLC (“YGI” or “Applicant”) respectfully ask for an emergency status conference. Applicant is concerned that the hearing date and post hearing deadlines are in conflict with the New Mexico Environment Department (“NMED” or the “Department”) statutory requirement to issue a permit decision by November 23, 2026. Applicant respectfully asks the Hearing Officer **to set an emergency status conference on this request, as soon as possible.**

Unless the hearing is moved to the proposed earlier date, it is impossible for the Deputy Secretary of NMED to complete the required post-hearing steps and issue an order on the application before the November 23, 2026 statutory deadline (which deadline cannot be extended by law). The scheduling order does not merely risk missing that statutory deadline; it creates an unavoidable conflict with both the Air Quality Control Act and New Mexico’s federally approved State Implementation Plan.

There is no legitimate need to delay the hearing until October. The scheduling order followed a July 15, 2026, scheduling conference, at which counsel for Applicant, NMED, and the

¹YGI has hyperlinked the referenced comment letters and articles due to the size of these attachments. YGI can separately share these attachments, which would result in hundreds of pages of materials, if they need to be separately sent.

Hearing Officer indicated that they were ready to proceed to hearing the week of August 17, 2026. So, this is not a situation in which the Department lacks resources in order to complete a timely process. Several opposing parties, however, represented to the Hearing Officer that they lack sufficient time to prepare for a hearing set the week of August 17, 2026. That representation cannot be squared with the parties' own public record. As Section II details, these organizations have campaigned against this project's air permit process for more than seven months, demanded — repeatedly and in writing — the very public hearing they now claim arrived too soon, and already filed the substance of their technical case.

Applicant presses this request for a status conference with urgency because the stakes are not procedural: *an agency ordered to follow a schedule it cannot lawfully keep is an agency ordered into non-compliance with the law it administers*. In addition, if a permit is not issued by the November 23, 2026 statutory deadline, which date cannot be extended, Applicant will suffer the prejudice shown in the Declaration of Julia Robin, attached as **Exhibit 1**.

INTRODUCTION

This project's air permitting history began in the fall of 2025, when Acoma, LLC (a subsidiary of YGI) filed two NSR air permit applications — Permit Nos. 10732 and 10734, for the proposed East and West Microgrids. Those applications, for two natural gas-turbine projects to power a planned data center in Doña Ana County, drew organized opposition. In early 2026, YGI reconfigured its power plan to significantly reduce emissions; on April 27, 2026, Acoma, LLC withdrew its applications and YGI filed the current application, Permit No. 10883, cutting NOx emissions by 92% along with reductions in other pollutants. Opposition from the parties who have entered appearances in this case, however, carried over to the new application.

Starting the hearing on October 19, 2026 would not merely shift dates on a procedural calendar. As shown in Section I below, it will delay concrete, quantified benefits to New Mexicans and jeopardizes the Department's ability to meet its statutory deadline. An order setting a hearing date incompatible with this binding procedural timeline is invalid.

At the status conference, we ask that the Hearing Officer focus on a narrow question — one the Hearing Officer can answer without resolving any disputed issue of statutory interpretation. Setting the hearing in August, or as soon as possible in September, will provide a legally valid schedule consistent with the statutory framework. That timing will give every party the full process the regulations provide and leaves the Department with more time to decide what the opponents characterize as complex issues by its deadline. Setting the hearing in late October, by contrast, will provide the same process but make it impossible for the Department to reach a considered, valid decision by the statutory deadline.

I. THE SCHEDULING ORDER SHOULD PRESERVE THE DEPARTMENT'S ABILITY TO ISSUE A FINAL DECISION BY THE NOVEMBER 23, 2026 DEADLINE, WHICH CANNOT BE EXTENDED.

A. The Secretary Has Already Granted the Maximum Extension Allowed.

The Department determined the application administratively complete on or about May 27, 2026 (*see Exhibit 2*). That determination commenced the 90-day period under NMSA 1978, Section 74-2-7(B)(2)(a) and 20.2.72.207(B)(1) NMAC and set an original final-action deadline of August 25, 2026. On July 1, 2026, Secretary Kenney notified the Applicant in writing that an extension was required, specified the grounds, and granted the full 90-day extension permitted by Section 74-2-7(B)(2)(a) and 20.2.72.207(C) NMAC (*see* extension letter and Hearing Determination in **Exhibit 3**). The final-action deadline is now November 23, 2026, which cannot be extended.

On July 2, 2026, the Secretary issued the Notice of Docketing, Appointment of Hearing Officer, and Delegation of Final Decision Authority (*see Exhibit 4*). That notice delegated the procedural powers arising under Part 20.1.4 NMAC to the Hearing Officer and delegated the merits and dispositional issues to the Deputy Secretary. At the July 15, 2026 scheduling conference, YGI and the Department both advocated for a public hearing the week of August 17–21, 2026. Opponents argued that Section 74-2-7(B)(3) permits the schedule to run past the statutory deadline so long as the Department thereafter notifies the Applicant. As shown below, that interpretation is not correct — particularly where the Department has indicated that it is ready, willing, and able to hold the hearing in August and complete the post-hearing steps by November 23, 2026.

B. The Post-Hearing Steps Require an August or Early September Hearing.

Holding a hearing before November 23, 2026 is not enough time to comply with the statute; every post-hearing step must also be completed by that date. Under Part 20.1.4 NMAC, those steps include the filing of the transcript; the parties’ proposed findings and closing argument; the Hearing Officer’s report; a 15-day period for party comments on that report (unless the scheduling order or an order from the Secretary sets a shorter one); any oral argument allowed on the report; and the final order. 20.1.4.500(A)–(D) NMAC. All of this must occur within the 90-day extension the Secretary granted under Section 74-2-7(B)(2)(a) and 20.2.72.207(C) NMAC — that is, by no later than November 23, 2026.

A hearing set for the week of October 19, 2026 makes compliance with that deadline impractical. That prospect should concern every participant in this proceeding, the public, and the Department most of all. The statutory deadline is not the Applicant’s private entitlement; it is the Legislature’s binding command to the Department, and a schedule that forecloses compliance

leaves the Department no path to follow it. As proposed, the hearing would not commence until 55 days — 61% — of the extension period had passed. That schedule consumes nearly two-thirds of the time window before any evidence is heard. By contrast, a hearing by the week of August 24, 2026 would conclude with nearly three months remaining for the transcript, proposed findings, the Hearing Officer's report, party comments, and the Secretary's final order.

When one available schedule preserves every procedural protection the regulations afford and permits compliance with the Legislature's timetable, and the other forecloses compliance while adding nothing the rules require, sound administration favors the former.

Nothing in the record demonstrates that an October hearing is necessary to protect any party's rights. Every participant (the parties, the Department, the public, and any reviewing court or regulatory body) benefits from a record free of avoidable deadline questions. The question before the Hearing Officer, in short, is not whether a reviewing court would ultimately invalidate a permit issued after November 23, 2026; it is whether to adopt, knowingly, a schedule that creates a procedural impossibility when selecting a slightly earlier hearing date affords every party full protection **and** preserves the Department's ability to meet the Legislature's statutorily-mandated timetable.

C. The Statute Expressly Limits the Secretary's Extension Authority.

This is not a mere scheduling inconvenience. The Legislature created strict timelines for the processing of air permit applications. Statutory interpretation begins — and where the language is clear, ends — with the plain words the Legislature chose. *See High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 970 P.2d 599. Section 74-2-7(B)(2) directs that board regulations shall include:

specification of the deadlines for processing permit applications; provided that the deadline for a final decision by the department or the local agency on a construction

permit application **may not exceed**: (a) **ninety days** after the application is determined to be administratively complete, if the application is not subject to requirements for prevention of significant deterioration, ***unless the secretary or the director grants an extension not to exceed ninety days for good cause, including the need to have public hearings***

NMSA 1978, § 74-2-7(B)(2)(a) (emphasis added). Three features of this text control. First, the use of “may not exceed” in the lead-in creates a hard time limit for processing permit applications. Second, the Legislature expressly addressed extensions and capped them at 90 days (in this case, November 23, 2026). Where the Legislature has spoken to a subject and prescribed the manner and limit of its exercise, that prescription is exclusive.

The EIB’s implementing regulation tracks the statute precisely. Rule 20.2.72.207(B)(1) requires the Department to “either grant, grant subject to conditions or deny the permit . . . within ninety (90) days after the department deems the application administratively complete.” Rule 20.2.72.207(C) states:

If the department fails to take action on the application within the deadlines specified in Subsection B of 20.2.72.207 NMAC, the department shall notify the applicant by certified mail that an extension of time is necessary to process the application and shall specify, in detail, the grounds for the extension. ***The secretary may grant an extension, not to exceed ninety (90) days, to the deadlines specified in Subsection B of 20.2.72.207 NMAC, if the secretary determines that good cause exists for the extension. The secretary shall notify the applicant by certified mail of the decision on the extension. If the secretary grants the extension, the notification shall include the length of the extension and the reasons therefore. The authority under this paragraph may be delegated by the secretary only to the deputy secretary or a division director.***

(Emphasis added). The Secretary’s July 1, 2026 letter already granted the maximum 90-day extension to November 23, 2026. This date cannot be further extended ***by anyone***. The Legislature and the EIB created express time limits and a specific extension process, and both have now been exhausted. Those time limits are not merely aspirational: they are enforceable obligations of the

Department under both state and federal law.² A scheduling order should be the instrument by which the Department keeps those obligations — not the reason it cannot.³

D. Section 74-2-7(B)(3) Creates a Notice Duty, Not a Second Extension Mechanism.

At the scheduling hearing, one of the opponents relied on Paragraph (B)(3), which requires board regulations to provide “that if the department . . . fails to take final action on a construction permit application within the deadlines specified in Paragraph (2) . . . , the department . . . shall notify the applicant in writing that an extension of time is required . . . and specify in detail the grounds for the extension.” From this, the opponent reasoned that the permitting deadlines are essentially elastic: thus, the Hearing Officer may set whatever schedule appears proper, and the Department need only send a letter. That reading, however, renders the Legislature’s deadlines meaningless. It would allow any department employee to delay air permit applications indefinitely. The clear language of the statute rejects this argument.

Textually, Paragraph (B)(3) directs the EIB to build a notice mechanism into its regulations. It confers no freestanding authority on anyone to act beyond the Paragraph (B)(2) deadlines. It incorporates those deadlines by reference (“the deadlines specified in Paragraph (2)”) and presupposes their continuing force: the written notice, with grounds “specif[ied] in detail,” is

² The Department’s duty to act within these deadlines is enforceable, and the consequences of non-compliance would not be confined to this proceeding. These deadlines are an enforceable component of the New Mexico State Implementation Plan, approved by EPA effective April 10, 2013, *see* 78 Fed. Reg. 15,296 (Mar. 11, 2013), and identified as part of the applicable implementation plan at 40 C.F.R. § 52.1620(c). Final action outside the deadlines the Secretary has now exhausted would therefore place the Department out of compliance not only with the Air Quality Control Act but with the applicable implementation plan under the federal Clean Air Act, 42 U.S.C. § 7410 — a posture carrying federal consequences of its own. Any history of non-compliance with these deadlines by NMED further compounds this issue and shows a history of non-compliance with the SIP. Non-compliance here may unnecessarily invite collateral administrative or judicial proceedings concerning the Department’s administration of its permitting program — proceedings that would divert attention from the merits and that are entirely avoidable through a modest scheduling adjustment. The relief requested here provides a path for the Hearing Officer to avoid creating that risk.

³ Furthermore, the Notice of Docketing does not delegate authority to the Hearing Officer to extend the deadlines in this case (directly or indirectly) past the 90-day extension period.

the accountability mechanism that accompanies the one capped, good-cause extension Paragraph (B)(2) permits. The EIB's implementation puts the point beyond argument. The Board adopted Paragraphs (B)(2) and (B)(3) together, in the single integrated provision quoted above — the certified-mail notice of the need for an extension, followed immediately, and only, by the Secretary's authority to grant one good-cause extension “not to exceed ninety (90) days.” 20.2.72.207(C) NMAC. The notice opponents rely on is not a separate path around the deadline; it is the first step in the one extension process the statute and rule create. Notice by itself suspends nothing and extends nothing.

Opponents' contrary reading violates the settled rule that a statute must be read as a harmonious whole, with no provision rendered surplusage. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 24, 309 P.3d 1047; *Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764, 918 P.2d 350. If a letter alone could carry the Department past the deadline, the two 90-day limits (one for processing a permit after a completeness determination and one additional 90-day period for an extension) would do no work at all. It would also produce an absurd result the Legislature cannot have intended: perpetual delay of any permit decision by periodic correspondence. *See Baker v. Hedstrom*, 2013-NMSC-043, ¶ 11, 309 P.3d 1047.

The New Mexico Supreme Court has enforced the same principle under this very Act — courts may not enlarge a standard that the Legislature has fixed. In *Duke City Lumber Co. v. N.M. Environmental Improvement Board*, 1984-NMSC-042, ¶ 17, 101 N.M. 291, 681 P.2d 717, the Supreme Court reversed an EIB decision where the Board “expand[ed] the statutory definition” beyond the standard the Legislature chose. The Supreme Court held that “[t]he Legislature has provided the standard . . . and this Court must adhere to it.” Opponents' interpretation of Paragraph B(3) suffers from this same flaw: it uses an enlarged statutory interpretation of Department staff's

ability to extend permit timelines by adding an exception the Legislature never expressly intended. The Legislature provided an express limit on permit processing extensions. Neither the Department, the Hearing Officer, nor the opponents' gloss on Paragraph (B)(3) may expand it.

B. Opponents Will Not Be Prejudiced by Holding the Hearing Before October 19.

The opposing parties who now claim they lack time to prepare for an August hearing have actually spent months preparing for this hearing. They have filed extensive technical comments; publicly identified at least one academic expert; and published their own modeling and technical data — all of which they have made publicly available. And the same attorneys and principals now pleading lack of time have been quoted in the press analyzing the merits of Project Jupiter's air permit applications since December 2025 — including CBD counsel's statement to the Albuquerque Journal, seven months before the scheduling conference, that he “anticipated a challenge to the air quality permits.” Their own submissions, and contemporaneous news coverage of their campaign, establish the timeline, which is set forth on **Exhibit 5**.

The claim of unpreparedness fails on its own record for two reasons. First, these organizations have demanded a hearing for months — across two generations of permit applications. They cannot claim prejudice from receiving the very result they spent months advocating for. Second, and more fundamentally, the technical case opponents say they need time to build is not prospective; it has largely been filed already in their comment letters. Contrary to statements made at the scheduling conference, the [NEE Comment Letter](#) shows that Ms. Nanasi is already working with at least one expert: it attaches an analysis prepared by Robert Davies, Ph.D., of Utah State University, and “incorporate[s]” Dr. Davies's curriculum vitae as Exhibit B — work product on which CBD's Comment Letter also relies. See [CBD Comment Letter](#) at 10 & n.30.

The stack-test theory NEE advanced at the scheduling conference has likewise already been briefed — twice. NMELC pre-briefed it on July 2, 2026, attacking the application’s reliance on a single-unit test “scaled to 2,462 MW with no demonstration of representativeness at the installed scale.” [NMELC Additional Comment \(July 2, 2026\)](#) at 10–11. CBD’s Comment Letter goes further still, adding a quantitative, run-by-run critique of YGI’s stack test — computed variance percentages, comparative emission factors — alongside ozone design-value and heat-flux analyses. [CBD Comment Letter](#) at 2–3.

These documented facts show organizations that assembled their arguments, analyses, and experts long ago. The procedural rules, by default, require notices of intent 14 days before a hearing; nothing in this record explains why that period would not be adequate here.

Nor can the claim of insufficient time be evaluated in the abstract, because NMED’s regulations have already answered how much notice and preparation time these proceedings require. A hearing beginning the week of August 24, 2026 honors every fixed deadline the regulations prescribe. The post-completeness public notice and 30-day interest period, 20.2.72.206 NMAC, has run in full, with robust public comment and participation. A Notice of Hearing issued now would still precede an August 24 hearing by more than 30 days, as 20.1.4.200 NMAC requires. The deadline to file statements of intent to present technical testimony would fall on or about August 10, 2026 — the full 14-day regulatory period under 20.1.4.300 NMAC, and a full 35 days after opponents filed their technical comments. And the 30-day analysis-availability period of 20.2.72.206(B)(2) NMAC is satisfied by a wide margin. Due process requires a meaningful opportunity to prepare and be heard; it does not require the maximum preparation time a party might prefer. The Environmental Improvement Board (EIB) determined that these timelines are sufficient and wrote them into its rules. Applying the agency’s long-established rules equally to

all parties is not a due process violation. *See Nat’l Council on Comp. Ins. v. New Mexico State Corp. Comm’n*, 1988-NMSC-036, ¶¶ 21–22, 107 N.M. 278, 284, 756 P.2d 558, 564 (notice reasonably informing the party of the matters to be addressed, with twenty-five days for preparation, “comported with procedural due process”; a party’s “actual knowledge of the details to be inquired into at the hearing” further supports the conclusion that no due process violation occurred). Applicant seeks no departure from those rules. Every party retains the opportunity to present witnesses, cross-examine opposing witnesses, introduce exhibits, file proposed findings, and submit legal argument.

The Legislature’s own benchmark for similar air permit hearings confirms the point. The Air Quality Control Act requires the EIB to conduct a complete merits hearing on a permit appeal — with public notice and participation — within sixty days of the petition. NMSA 1978, § 74-2-7(I). Measured against that yardstick, opponents’ position is strained: by August 24, 2026, they will have had 96 days since NMELC’s first written hearing demand on this application, roughly 89 days since the completeness determination, and approximately 49 days since filing technical comments that already brief the merits.

Finally, resetting the hearing for August does not require narrowing public participation, and YGI does not ask for that. YGI does not oppose reasonable measures to maximize participation within the lawful schedule — an in-person hearing in the affected community, Spanish-language interpretation, and if needed evening public-comment sessions. The choice the Air Quality Control Act’s deadlines present is not between speed and participation; it is between a schedule that preserves the Department’s ability to comply with the Legislature’s timetable and one that unnecessarily makes that compliance impossible.

C. The October 19, 2026 Hearing Date Will Prejudice Applicant.

The prejudice from delay is not speculative. As shown in the Declaration attached as Exhibit 1, Applicant's tenant at the microgrid, Oracle America, has made plans and concrete investments in reliance on the November 23, 2026 deadline that cannot be undone without significant financial harm. As the Declaration of Julia Robin establishes, Oracle and the Applicant committed to equipment procurement, engineering, and financing in reliance on the statutory deadline that began running when the Department deemed the Application complete on May 27, 2026 — capital that now sits idle and cannot be deployed or recovered while the permit remains unresolved. Robin Decl. ¶¶ 4–5, 8(a). Approximately 1,000 construction and 1,500 operations positions cannot begin until the permit issues, and continued delay will force postponement of hiring and the loss of skilled personnel who may be unavailable if/when the permit is ultimately granted. *Id.* ¶ 8(c). The Facility was developed to serve a specific, time-limited market window for computing capacity; once that opportunity passes, it cannot be recovered even by a favorable decision on the merits. *Id.* ¶ 8(e). Critically, none of this harm is compensable: much of it is not susceptible to any reliable measure of money damages, and no damages action lies against the Department for the delay, leaving the Applicant without any adequate remedy. *Id.* ¶ 9. By contrast, no party has identified any prejudice from holding the hearing within the timeframe the Applicant and the Department originally proposed — the opponents have been engaged with this project for over seven months and have been actively preparing for this hearing. The balance of harms therefore weighs decisively in favor of amending the Scheduling Order. *Id.* ¶¶ 7, 10.

The public shares in this prejudice. Postponing the hearing delays the creation of hundreds of jobs in the near term for New Mexicans. The project will create more than 4,000 construction jobs and 1,500 ongoing project-supported jobs once construction is complete, generating \$384 million in annual economic impact during construction and \$113 million annually once

operational. See Oracle, [*Oracle Launches New Campaign Highlighting Commitments to Doña Ana County*](#) (May 26, 2026). Applicant estimates that the microgrid will be the direct source of approximately 1000 construction jobs and over 700 operations roles, and the hiring for those roles cannot commence while the application decision date remains in limbo. Every month of delay also impacts the community benefits tied to the project's progress: construction of the microgrid is projected to produce millions of dollars in Gross Receipts Taxes that will provide concrete benefits at the county and state level. Deferring construction means the full scope of those benefits will be indefinitely delayed. Opponents, by contrast, face no comparable harm: they have had the application, the Department's analysis, and their own experts' work for months. The balance of prejudice points in one direction, and the public interest in a timely hearing and decision is concrete and substantial.

CONCLUSION

The Scheduling Order is not compatible with the binding November 23, 2026 deadline and will require the Department to choose between complying with a scheduling order and complying with the law. Applicant respectfully asks the Hearing Officer to set a status conference before July 22, 2026, so that a Notice of Hearing may issue at least thirty days before an August 24 hearing. See 20.1.4.200 NMAC.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 20, 2026, a true and correct copy of the foregoing Entry of Appearance was served by email to:

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**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT**

**IN THE MATTER OF:
THE APPLICATION OF YUCCA
(P)
GROWTH INFRASTRUCTURE,
LLC FOR AN AIR QUALITY PERMIT,
NO. NSR 10883**

AQB 26-57

**DECLARATION OF JULIA ROBIN IN SUPPORT OF YUCCA GROWTH
INFRASTRUCTURE'S EMERGENCY MOTION TO AMEND SCHEDULING
ORDER**

I, Julia Robin, state as follows:

1. I am over 18 years of age, of sound mind, and otherwise competent to make this Declaration. The factual statements set out below are based on my own personal knowledge and on business records maintained by Oracle America Cloud Services, LLC ("Oracle") that I have reviewed and that are kept in the ordinary course of Oracle's business.

2. I am the Vice President, Infrastructure Capacity and Sourcing at Oracle America, Inc., the parent company of Oracle. In that capacity, I oversee infrastructure sourcing and contracting for all new data center colocation as well as build-to-suit development projects for Oracle's customers. I am submitting this Declaration at the request of Yucca Growth Infrastructure, LLC (the "Applicant"). My duties give me direct, firsthand knowledge of the Applicant's air permit application, its construction and operating schedule, its contractual commitments, and the financial and operational consequences described below.

3. On April 27, 2026, the Applicant filed with the New Mexico Environment Department ("Department") an application for an air quality construction permit for the YGI Microgrid (the "Facility") located in Doña Ana, New Mexico (the "Application"). The Department deemed the Application complete on May 27, 2026.

4. At this time, Oracle was aware of the binding statutory deadline for the Department to issue a decision on the Application by no later than November 23, 2026.

5. Given the complexity of construction of a large infrastructure project like the YGI microgrid, Oracle began coordinating with project partners including the Applicant on construction planning, contracts with equipment vendors, and other key logistical matters even as the Application was being drafted for filing in April, and fully committed to a number of commercial obligations in reliance on the November 23, 2026 permit decision deadline once the Application was deemed complete on May 27, 2026.

6. On July 1, 2026, the Department determined that there was “significant public interest” in the Application and recommended that a public hearing would be held on the Application.

7. To my knowledge, the Applicant has at all times acted diligently in prosecuting the Application. It has timely submitted all information requested by the Department, responded to each request for additional information, and stands ready to present its case at a hearing that will allow the Department to meet its statutory deadline, i.e. the August 17, 2026 hearing timeframe proposed in its Proposed Scheduling Order. None of the delay in this matter is attributable to any act or omission of the Applicant.

8. The delay of the hearing is causing Oracle concrete, ongoing, and non-recoverable harm. Specifically:

(a) **Stalled capital project and idle investment.** Oracle has committed to entering into contracts with equipment vendors, engineering, and financing that cannot be deployed or recovered while the permit remains unresolved. To extent the hearing is at risk of delay beyond the current schedule, contractors and vendors will move on to other projects and the entire project’s timetable could be pushed.

(b) **Lost and jeopardized contracts.** Oracle and Applicant have entered into gas supply, power purchase, option, and construction agreements that are contingent on certain activities commencing by December 2026. As a direct result of the delay, Oracle and the Applicant face the loss of contracts and business relationships that cannot be replaced.

(c) **Workforce impact.** Oracle and the Applicant project that there are approximately 1000 construction and 700 operations roles associated with the Facility whose work cannot begin until the permit issues. Continued delay will require Oracle and

the Applicant to postpone hiring efforts for this workforce, with a corresponding loss of skilled personnel who may not be available if and when the permit is later granted.

(d) **Expiring approvals and compliance deadlines.** The Facility depends on related permits, financing commitments, tax incentives, and contracts that cannot practically be extended. Any delay threatens the loss of corresponding permits and commitments, which cannot be restored by a later favorable ruling on the Application.

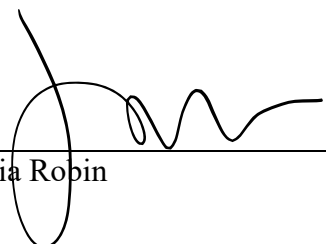
(e) **Foreclosed market opportunity.** The Facility was planned to serve a data center and specific market window, customer, and demand for computing power from the quickly moving artificial intelligence marketplace. That opportunity is time-limited and, once lost, cannot be recovered even if the permit ultimately issues.

9. The harm described above cannot be undone by a later decision in the Applicant's favor. A permit granted after contracts have been lost, the workforce has dispersed, the collateral approvals have expired, and the market opportunity has passed will not restore the Applicant to the position it would have occupied had the hearing gone forward on schedule. Much of this harm is not susceptible to any certain or reliable measure of money damages, and no action for damages lies against the Department to compensate the Applicant for the delay. The Applicant therefore has no adequate remedy for the injury the delay is inflicting.

10. Time is of the essence to the Application. When the Department deemed the Application complete on May 27, 2026, a defined statutory and regulatory period began to run within which action on the Application and any hearing were required to occur. Oracle relied on those deadlines. The delay of the hearing will extend the proceeding beyond the mandatory statutory periods Oracle understood would govern.

11. I make this Affidavit in support of the Applicant's request that the Hearing Officer reconsider his Scheduling Order and set and hold the hearing on the Application at the earliest date permitted by law and decline any further delay or extension.

I, Julia Robin, declare under penalty of perjury that the foregoing is true and correct. Executed this 17th day of July, 2026.



Julia Robin



EXHIBIT 2

MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

May 27, 2026

Sent By Certified Mail

Amanda Marrufo
Operator
Yucca Growth Infrastructure, LLC
4353 North First Ave
San Jose, CA 95134

Re: Air Quality Permit Application No. 10883 (Agency Interest No. 41351 - PRN20260001)

Dear Amanda Marrufo:

This letter is in response to your air quality permit application dated and received by the New Mexico Environment Department ("NMED" or "the Department") on April 27, 2026, to construct the "YGI Microgrid" near Santa Teresa, New Mexico in Doña Ana County. This letter addresses the Completeness Determination, Public Notice and Comment, and Invoice for Permit Fee and is intended for use by the applicant, interested individuals and groups, and the appropriate NMED Field Office.

Completeness Determination

A preliminary review has been completed and the information provided is sufficient to complete an evaluation of your permit application. Therefore, your application was ruled administratively complete on May 27, 2026. Under the requirements of 20.2.72 NMAC, the Department anticipates issuing or denying this permit on or before August 25, 2026.

Public Notice and Comment

The Department will publish a legal notice that will be sent to the NMED district or field office nearest the source (see enclosed). It describes the proposed facility, a summary of estimated emissions and ambient impact, the Department's preliminary intent to issue the permit, and the provisions for public comment.

The Department's analysis includes the Statement of Basis and is prepared as part of the technical review of the permit application. All interested persons have thirty (30) days from the date the public notice is published to notify the Department in writing of their interest in the permit application. The Department will notify all such persons of when and where the Department's analysis may be reviewed. Interested persons may review the Department's analysis for thirty (30) days after it becomes available at the NMED district or field office nearest the source. Written comments on the analysis or permit application and requests for a public hearing may be submitted to the Department during this second thirty (30) day period or any time before the permit is issued or denied.

The Department will hold a public hearing if the Secretary determines there is significant public interest in the permit application. The Department will also determine the time, date, and place of the hearing and shall notify the applicant and the public. At the hearing, all interested persons shall be given a reasonable chance to submit data, views or arguments orally or in writing, and to examine witnesses testifying at the hearing.

After the permit is issued or denied, the Department will mail written notice of the action taken on a permit application to all persons who submitted written comments or evidence on the application.

Invoice for Permit Fee

In accordance with 20.2.75 NMAC, this letter includes an invoice for the required permit fee in the amount of \$16,170.00. The outstanding balance of \$15,670.00 is due within thirty (30) days of the date ruled administratively complete. 20.2.75 NMAC states that the Department shall deny any permit application or request for permit revision if the required permit fee has not been paid. This fee is not refundable. An enforcement/compliance fee will also be assessed annually. All fees shall be remitted in the form of a corporate check, certified check, or money order made payable to the New Mexico Environment Department and shall be accompanied by the enclosed remittance slip. Fees shall be submitted to New Mexico Environment Department, Air Quality Bureau at the address shown on the invoice.

20.2.72.200.E NMAC states: "for all sources subject to this part, applications for permits shall be filed prior to the commencement of construction, modification, or installation. Regardless of the anticipated commencement date, no construction, modification, or installation shall begin prior to issuance of the permit."

The Department may make additional requests for information pursuant to 20.2.72.203(E) NMAC. Under Policy AQB 02-013, if the application changes substantially from the original application that was submitted during review, an extension may be requested and subsequently granted.

If you have any questions, please contact me in Santa Fe at 505-629-2893 or julia.kuhn@env.nm.gov.

Sincerely,

Julia Kuhn Digitally signed by Julia Kuhn
Date: 2026.05.27 17:21:25
-06'00'

Julia Kuhn
Permits Section
Air Quality Bureau

cc via email: Jesse Lovegren, jesse.lovegren@trinityconsultants.com

cc via regular mail: Las Cruces NMED District/Field Office

Enclosures Sent with Letter:

Legal Notice – Attachment A

Permit fee invoice

NMED District or Field Office Request – Attachment B



EXHIBIT 3

MICHELLE LUJAN GRISHAM
GOVERNOR

JAMES C. KENNEY
CABINET SECRETARY

July 1, 2026

Sent via Certified Mail and Email

Amanda Marrufo
Operator
Yucca Growth Infrastructure, LLC
4353 North First Ave
San Jose, CA 95134
amanda.marruffo@bloomenergy.com

Re: Air Quality Permit Application No. NSR 10883 (Agency Interest No. 41351 - PRN20260001).

Dear Amanda Marrufo,

This letter is in response to your air quality permit application dated April 22, 2026, to construct the YGI Microgrid near Santa Teresa, NM in Doña Ana County. The New Mexico Environment Department (NMED) received the application on April 27, 2026.

Through this letter, NMED is providing notice that an extension of time is needed to process the above referenced application on the grounds that good cause is found for the following reasons:

- "The need to have public hearings" (20.2.72.207(C)(1)).
- "The permit application requires review of unusually complex technical and regulatory issues" (20.2.72.207(C)(5)).

Thus, in accordance with 20.2.72.207(C) NMAC, this letter extends the deadline set forth in 20.2.72.207(B) for a length of time not to exceed ninety days beyond the original August 25, 2026 decision deadline for Air Quality Permit Application No. NSR 10883 (Agency Interest No. 41351 - PRN20260001).

Original issuance/denial deadline:	August 25, 2026
Period of extension:	90 days
New issuance/denial deadline:	November 23, 2026

Sincerely,

DocuSigned by:
A blue ink signature of James C. Kenney.
James C. Kenney
Cabinet Secretary

EXHIBIT 4

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF ENVIRONMENT

RECEIVED
JUL 02 2026
Luis Lopez (OPF)

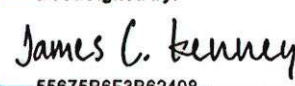

IN THE MATTER OF:
THE APPLICATION OF YUCCA
GROWTH INFRASTRUCTURE'S,
LLC FOR AN AIR QUALITY PERMIT,
NO. NSR 10883

AQB 26- 57(P)

**NOTICE OF DOCKETING, APPOINTMENT OF HEARING
OFFICER, AND DELEGATION OF FINAL DECISION AUTHORITY**

In response to the Request for Public Hearing Determination filed in the Office of Public Facilitation on July 2, 2026, and pursuant to 20.1.4.200(B) NMAC, I, Cabinet Secretary James C. Kenney, hereby order a hearing and appoint Max Shepherd to serve as Hearing Officer in this matter. The Hearing Officer shall exercise all powers and duties granted under the New Mexico Environment Department Permitting Procedures found in 20.1.4 NMAC.

Additionally, pursuant to NMSA 1978 Section 9-7A-6(B)(2), I, Cabinet Secretary James C. Kenney, hereby delegate authority to make all final and dispositive decisions in this matter to Deputy Cabinet Secretary John Rhoderick.

DocuSigned by:

55675B6F3B62408...
James C. Kenney, Cabinet Secretary
New Mexico Environment Department

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of July 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

Christopher Vigil
Assistant General Counsel
Brian Yardman-Frank
Assistant General Counsel
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
chris.vigil@env.nm.gov
brian.yardman-frank@env.nm.gov
Counsel for NMED

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

By: /s/ Luis Lopez
Luis Lopez, Hearing Clerk
Office of Public Facilitation
New Mexico Environment Department
Direct: 505-490-0186
luis.lopez@env.nm.gov

EXHIBIT 5

Timeline

Date	Action	Content
Feb. 2025 – present	NMELC announces its Project Jupiter campaign.	NMELC’s campaign page states that it has been “relentlessly working” against the project “[s]ince Governor Michelle Lujan Grisham’s first announcement of Project Jupiter . . . in February 2025.” NMELC, Data Centers — Project Jupiter & the Fight for Clean and Safe Drinking Water (last visited July 15, 2026). The page’s “TAKE ACTION” button drives an organized form-comment campaign urging NMED “to DENY the new air pollution application,” <i>id.</i>, via a form letter demanding that NMED hold a public hearing in Santa Teresa.
Dec. 2025	Groups state they intend to challenge the Project’s air permit applications.	By late 2025, counsel of record for both CBD and NMELC were publicly critiquing the applications in the press. See Joshua Bowling, Data center Project Jupiter’s greenhouse gas emissions could rival NM’s largest cities, Source New Mexico (Dec. 5, 2025). Mr. Cox was quoted stating he “anticipated a challenge to the air quality permits.” Project Jupiter permit applications forecast massive carbon fuel use, Albuquerque Journal (Dec. 9, 2025). By December 15, 2025, NMELC — through Ms. Locke and Ms. Hovden — had lodged its hearing demand with the Department. NMELC Follow-Up Letter to NMED re Acoma, LLC Applications (Dec. 15, 2025) at 2, ¶ (2). That demand was publicized in the press. NM Environmental Law Center calls for greater access to Project Jupiter air permit review, Buffalo’s Fire (Dec. 17, 2025).
Mar. 2, 2026	NMELC comment letter, submitted by Maslyn Locke and Kacey Hovden on behalf of Community Members Saldaña, Fuller, and Maldonado;	NMELC demanded a public hearing on each application. The same day, NEE filed its comment demanding that NMED “reject permit applications 10732 and 10734 outright.” NEE, We filed our comment opposing Project Jupiter’s air pollution permit applications (Mar. 2, 2026).

Date	Action	Content
	NEE comment opposing the applications.	
Apr. 27, 2026	Original applications withdrawn; YGI files the current application (Permit No. 10883).	Same-day press coverage of the new YGI application quoted NMELC counsel Ms. Hovden already critiquing its merits (“I don’t know that this is the clean energy solution that they’re saying it’s going to be”). Joshua Bowling, NM Project Jupiter data center developers announce new plans for generating power , Source New Mexico (Apr. 27, 2026).
Apr. 29 – May 28, 2026	Opponents’ counsel and NEE’s executive director publicly critique the fuel-cell application on the merits.	Mr. Cox described the fuel-cell proposal as “essentially greenwashing” and critiqued its climate emissions. Project Jupiter developers overhaul data center’s power plan , Santa Fe New Mexican (Apr. 29, 2026). Mr. Cox was later quoted with quantified emissions comparisons; Ms. Nanasi argued the merits of alternatives and burden allocation; and the same article quotes Ms. Hovden critiquing the fuel-cell design. Massive New Mexico data center tries to ‘greenwash’ environmental impact with fuel cell proposal , Oil & Gas Watch News (May 28, 2026).
May 20, 2026	NMELC comments on YGI’s Permit No. 10883, submitted by Maslyn Locke and Kacey Hovden on behalf of Community Members Saldaña and Fuller.	The comment letter attacks the technical merits of the application and demands a public hearing. It advances the incompleteness theory matching NEE’s statements at the scheduling conference. NMELC Comment Letter 1 .
June 28, 2026	NEE provides a detailed analysis of the YGI application.	NEE obtains a technical assessment of the YGI application, stating it is intended to support the work of qualified professionals (legal counsel, environmental engineers, atmospheric scientists, hydrologists, public health specialists, and others) engaged on this case. See NEE Comment Letter , at Ex. A. NEE also began hosting technical materials on its website purporting to explain to the public how

Date	Action	Content
		fuel cells function. NEE, Project Jupiter — the Time to Speak Out is Now (June 2026).
July 2, 2026	NMELC files “additional comment, demand for public hearing and demand for permit application denial,” submitted by Maslyn Locke, Kacey Hovden, and Eric Jantz.	The comment provides an emissions-specific merits analysis with quantified tonnage figures and footnoted authorities — including the single-unit stack-test representativeness critique (“one test, of a single 65-67 kW ES 6.5 unit, scaled to 2,462 MW with no demonstration of representativeness at the installed scale,” performed over “only two days”). See NMELC Additional Comment (July 2, 2026) .
July 6, 2026	NEE technical comments; CBD/Sierra Club submit a joint technical comment.	The NEE Comment Letter demands that the Secretary “must order a public hearing before any permit decision is issued,” attaches a quantitative analysis (Ex. A) and the analyst’s curriculum vitae (Ex. B), and articulates the completeness theory of its anticipated motion. CBD/Sierra Club advance the same “incomplete and therefore legally deficient” theory advanced by NMELC and NEE, along with other technical arguments. ⁴ CBD Comment Letter .
July 15, 2026	Scheduling conference.	The organizations advise the Hearing Officer that they lack sufficient time to prepare for the hearing they demanded.

⁴YGI, of course, disagrees with these arguments. The rules require “a description of the equipment or methods proposed by the applicant to be used for emission measurement,” 20.2.72.203(A)(9) NMAC. This language uses the future tense for a reason: in a preconstruction program, measurement is something the source will do after it is constructed. The source cannot be constructed until the permit is in place. The rules accordingly require applicants to estimate the quantities of contaminants the source “will emit” after construction is completed, 20.2.72.203(A)(3) NMAC, and permit the use of EPA-approved dispersion modeling, 20.2.72.203(A)(4) NMAC. YGI has used testing information from representative units, worked with experts to obtain estimates, and conducted modeling in accord with state and federal rules and methods.