

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

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

No. AQB 26-57 (P)

**MAXWELL'S CONSOLIDATED RESPONSE IN OPPOSITION TO APPLICANT'S
REQUEST OF EMERGENCY STATUS CONFERENCE AND SHEET METAL WORKERS
LOCAL UNION NO. 49'S REQUEST TO ADVANCE THE HEARING DATE FORWARD**

Mr. Maxwell submits this consolidated response to the Entry of Appearance and Request to Move Hearing Date Forward filed by Sheet Metal Workers Local Union No. 49 ("Local 49 Request") and the Request of Emergency Status Conference filed later the same day by Yucca Growth Infrastructure, LLC ("Applicant's Request").

Mr. Maxwell does not oppose a reasonably noticed status conference directed toward developing a complete schedule through final agency action. The conflict between the October 19, 2026 hearing date and the November 23, 2026 permit-decision deadline deserves prompt attention. Mr. Maxwell does oppose advancing the hearing to August 24, 2026, or to another materially earlier date, before the Department establishes when its analysis became available and before the parties have had a meaningful opportunity to review and respond to it.

Applicant correctly identifies November 23 as an important statutory and regulatory deadline. Local 49 also identifies legitimate concerns involving employment, wages, and economic opportunity. Neither filing, however, demonstrates that an August hearing is legally required, that the October 19 hearing date is invalid, or that materially advancing the hearing would preserve the procedural rights of all parties and members of the public.

Applicant's argument that an October hearing makes lawful completion impossible assumes that the ordinary post-hearing periods in 20.1.4.500 NMAC must be used in full, even though those periods may be shortened by order. Applicant also asserts that opponents have possessed the Department's analysis for months, but it does not identify the analysis, its release date, the notice of its availability, or the dates on which the required thirty-day review period began and ended. Local 49's filing, meanwhile, presents sincere but generalized employment concerns without declarations, payroll information, contracts, project schedules, or other evidence connecting the October hearing date to the loss of any existing employment or wages.

The Hearing Officer should deny the requests to advance the hearing on the present record. A status conference may nevertheless be appropriate to determine the status of the Department's analysis and establish a complete schedule that reconciles the November 23 deadline with meaningful participation under 20.2.72 and 20.1.4 NMAC.

I. BACKGROUND.

The Department determined the application administratively complete on May 27, 2026. On July 1, 2026, the Secretary granted a ninety-day extension because public hearings were needed and because the application required review of unusually complex technical and regulatory issues. The extension letter identified August 25, 2026 as the original issuance-or-denial deadline and November 23, 2026 as the extended deadline. Applicant's Request, Exhibit 3, Extension Letter at 1.

A scheduling conference was held on July 15, 2026. Applicant and the Department proposed holding the hearing during the week of August 17. Opposing participants advised the Hearing Officer that such a schedule would not permit fair preparation because the Department's

analysis had not yet been made available, the matter was technically complex, and some participants had learned of the formal hearing process only shortly before the conference.

The Hearing Officer thereafter entered a Scheduling Order setting the hearing to begin October 19, 2026.

On July 20, 2026, Local 49 entered its appearance and requested that the hearing be moved to the week of August 24 or to the earliest available opportunity in September. Local 49 states that its members work at the project, that they seek additional job opportunities, and that delay may result in lost wages and lost working time. It further asserts that New Mexico may lose the project and its associated employment opportunities if the November 23 deadline is not met. Local 49 Request at 1.

Applicant filed its emergency request later that day. Applicant asks for an immediate status conference so that hearing notice can issue for an August 24 hearing. Applicant argues that an October hearing will make it impossible to complete the post-hearing process by November 23 and that the Scheduling Order therefore creates an unavoidable conflict with state and federal law. Applicant's Request at 1–5.

Applicant further asserts that opposing parties have possessed the Department's analysis for months and that the thirty-day analysis-availability period required by 20.2.72.206(B)(2) NMAC has been satisfied "by a wide margin." Applicant's Request at 10, 13. Neither Applicant's Request nor Local 49's Request identifies the Department's analysis, states when it became available, provides the notice sent to interested persons, or calculates when the thirty-day period began and ended.

II. THE TWO REQUESTS SHOULD BE CONSIDERED TOGETHER.

Although Local 49's Request is styled primarily as an Entry of Appearance, it also requests affirmative relief from the Scheduling Order. Applicant seeks essentially the same relief several hours later, although it presents a more extensive legal argument. Because both filings ask the Hearing Officer to advance the hearing and rely on related claims of economic and procedural prejudice, they should be evaluated together.

Considering the filings together is particularly appropriate because Applicant relies in part on projected employment and economic benefits, while Local 49 attempts to present the interests of workers who may benefit from the project. The Hearing Officer should assess those interests fairly, but also should consider whether the claimed economic harms are supported by evidence and whether they depend on a future favorable permit decision.

Neither filing states that concurrence was sought from the existing parties before requesting a substantial amendment to the Scheduling Order. Applicant also sought a conference within approximately two days of filing, even though its requested relief would advance the hearing by nearly two months. Local 49's Request likewise does not identify the positions of the other parties or state that concurrence was sought.

The Hearing Officer may convene a status conference on his own initiative. Nevertheless, no substantive order advancing the hearing should issue before the affected parties have a reasonable opportunity to respond to the factual and legal assertions advanced in both filings.

Local 49's entry into the proceeding on July 20 also demonstrates that formal participation in the matter was continuing to develop after the July 15 scheduling conference.

That circumstance weighs against Applicant's broader suggestion that all interested parties had already been engaged for months and were necessarily prepared for an August evidentiary hearing.

III. NOVEMBER 23 IS A SERIOUS DEADLINE, BUT IT DOES NOT REQUIRE AN AUGUST HEARING.

Mr. Maxwell does not contend that the Department may obtain successive ninety-day extensions by sending additional letters. Section 74-2-7(B)(2)(a) NMSA 1978 and 20.2.72.207 NMAC establish a deadline for final agency action and authorize an extension not exceeding ninety days. The July 1 letter used that extension and identified November 23, 2026 as the new issuance-or-denial deadline.

The Department, Hearing Officer, Deputy Secretary, and parties should treat November 23 as a controlling scheduling consideration. That does not mean, however, that the statute independently dictates the date on which the evidentiary hearing must occur.

Applicant correctly observes that the ordinary Part 4 post-hearing timetable cannot be completed between October 19 and November 23. If every default period were used, the parties could receive thirty days after the transcript to submit proposed findings and closing arguments, the Hearing Officer could receive another thirty days to prepare a report, the parties could receive fifteen days to comment on that report, and the final decision-maker could receive another thirty days to enter a final order.

Those periods are not immutable. Section 20.1.4.500 NMAC expressly permits the Hearing Officer or Secretary to shorten them. Proposed findings are due within thirty days unless the Hearing Officer orders otherwise. The report deadline applies unless another law or

an order of the Secretary provides otherwise. The periods for comments and the final order may also be modified.

Applicant therefore demonstrates that the ordinary post-hearing schedule will not fit. It does not demonstrate that no fair and lawful expedited schedule could fit.

Applicant supplies no statement from the Hearing Officer, Deputy Secretary, transcript provider, or another person responsible for the post-hearing process establishing that a final decision by November 23 is impossible after an October hearing. Department counsel's support for an August hearing may show a scheduling preference, but it does not establish how long the hearing will last, when the transcript can be completed, how quickly the Hearing Officer can prepare a report, or how much time the Deputy Secretary will need to review the record and issue a reasoned decision.

The Scheduling Order also did not purport to extend the November 23 deadline. It selected a hearing date based on the information and competing positions presented at the July 15 conference.

Applicant cites no authority holding that a scheduling order becomes void merely because it creates substantial pressure on the remaining administrative timetable. It likewise identifies no authority establishing that the Department automatically loses jurisdiction after November 23, that the permit is automatically granted or denied, or that an August hearing is the exclusive remedy for avoiding noncompliance.

Applicant's deadline concern justifies comprehensive scheduling. It does not establish that the hearing must be advanced before the Department's analysis and the resulting preparation requirements have been addressed.

IV. APPLICANT HAS NOT SHOWN THAT THE DEPARTMENT'S ANALYSIS-REVIEW PERIOD HAS OCCURRED.

Section 20.2.72.206 NMAC establishes a two-stage public-participation process. After an application is determined administratively complete, the Department publishes an initial notice and allows interested persons thirty days to express their interest in writing.

If any person expresses written interest, the Department must notify each such person when and where the Department's analysis is or will be available. The Department may not issue the permit until at least thirty days after the analysis becomes available. During that period, any person may submit comments or request a hearing.

Applicant states that this thirty-day period has been satisfied "by a wide margin." It also states that opponents have possessed the Department's analysis "for months." Those assertions are unsupported by the filing.

Applicant does not identify the title or date of the Department's analysis. It does not attach the analysis or the notice of its availability. It does not state where the analysis was made available, when interested persons were notified, or when the thirty-day review period began and ended.

Applicant's own Exhibit 2 does not establish that the analysis was available on May 27. The completeness letter states that the Department's analysis, including the Statement of Basis, is prepared during the technical review. It also states that interested persons will be notified when and where that analysis may be reviewed. Applicant's Request, Exhibit 2, Completeness Determination at 1.

The completeness letter therefore anticipates later preparation and notice. It does not establish that the public received the Department's completed analysis when the application was deemed administratively complete.

At the July 15 conference, opposing participants represented that the analysis had not yet been made available. Applicant's Request does not identify a subsequently released document or notice that disproves that representation.

A thirty-day regulatory period cannot be shown to have expired without identifying the event that started it. Applicant's bare assertion that the period has been completed cannot substitute for the missing dates and documents.

The omission is consequential. Under Applicant's requested August 24 schedule, technical testimony could be due around August 10. If the Department's analysis became available on or after July 15, parties could be required to finalize witnesses, expert opinions, testimony, and exhibits before the thirty-day review period ended.

That result would be especially problematic because the Secretary has already determined that the application presents unusually complex technical and regulatory issues. The protected review period should permit meaningful evaluation of the Department's analysis. It should not operate merely as a calendar formality while the parties are simultaneously required to complete their technical hearing cases.

V. PRIOR ADVOCACY DOES NOT ESTABLISH READINESS FOR AN AUGUST HEARING.

Applicant argues that certain opposing organizations have criticized Project Jupiter for months, requested public hearings, consulted experts, and submitted technical comments. Those

facts may demonstrate familiarity with the project and preparation concerning particular issues. They do not establish readiness to present a complete Part 4 evidentiary case in August.

A person may consistently believe that a public hearing is necessary and also maintain that the hearing must occur after the Department releases its analysis and provides enough time for meaningful preparation. Requesting a hearing does not waive the right to adequate notice, agency disclosure, witness preparation, examination, or rebuttal.

Applicant also emphasizes that the current application materially differs from the withdrawn East and West Microgrid applications and allegedly reduces nitrogen-oxide emissions by ninety-two percent. Applicant's Request at 2. If the present application is materially different enough to support that claimed reduction, preparation concerning the earlier turbine applications cannot automatically establish readiness to address the replacement proposal.

Nor is a public comment necessarily equivalent to complete Part 4 testimony. A comment may identify concerns, criticize assumptions, present preliminary calculations, preserve issues, or request additional analysis. A formal technical filing may require identified witnesses, their qualifications, complete written testimony, expert opinions and their bases, technical exhibits, responses to the Department's analysis and proposed permit, and readiness for examination under oath.

Applicant does not compare the earlier comment letters with these requirements. It simply declares that opponents' technical cases have largely been filed already.

Applicant likewise misconstrues the fourteen-day provision in 20.1.4.300 NMAC. That provision limits how close to the hearing a Statement of Intent may be filed. It does not establish

that fourteen days is always sufficient to prepare a technical case after receiving the Department's analysis.

The interval between filing testimony and the hearing is not the same as the interval between receiving the relevant agency materials and preparing the testimony. A filing due fourteen days before a hearing may be fair when the Department's analysis has been available for months. The same filing deadline may be unfair when the analysis becomes available shortly before testimony is due.

The October date was selected in part to prevent this informational imbalance from becoming a preclusive procedural disadvantage.

VI. LOCAL 49'S EMPLOYMENT INTERESTS ARE LEGITIMATE BUT DO NOT ESTABLISH A RIGHT TO AN EARLIER HEARING.

Local 49 states that its members work at the project and have an interest in additional employment opportunities. It further states that members may suffer lost wages and lost time on the job if the application is delayed, and that New Mexico may lose the project and its associated employment opportunities if the November 23 deadline is not met. Local 49 Request at 1.

Those concerns are legitimate and deserve consideration. Workers may reasonably care about when a project proceeds and whether anticipated employment becomes available. The existence of that interest, however, does not establish a legal right to an August hearing.

The Local 49 Request is not accompanied by a declaration or supporting records. It does not identify how many Local 49 members currently work at the site, what work they perform, whether that work depends upon Permit No. NSR 10883, or when any existing assignment will end.

The request also does not identify the amount of wages at risk, a contract that will terminate because of the October hearing date, a project milestone tied specifically to the hearing, or the factual basis for the assertion that New Mexico may lose the entire project.

Local 49 describes its members as having a “vested interest.” The filing appears to use that expression in a practical or economic sense. It does not establish a vested legal right to permit issuance or to a particular hearing date.

The statute requires the Department to grant, conditionally grant, or deny the application. It does not guarantee that the permit will issue. A timely denial would not create the employment opportunities Local 49 anticipates. Those employment benefits therefore depend on a favorable permit decision and subsequent project development.

Local 49’s concerns are directed more directly toward prompt final resolution than toward the precise date of the evidentiary hearing. They may support prompt release of the Department’s analysis, efficient prehearing administration, avoidance of unnecessary repetition, expedited transcript preparation, shortened but fair post-hearing briefing, and diligent final decision-making.

They do not establish that the appropriate remedy is to reduce the period in which other parties must prepare technical testimony.

Local 49’s Request also demonstrates why notice and preparation remain important. Local 49 formally entered the proceeding only after the July 15 scheduling conference. Other supporting, opposing, or neutral participants may also have learned of the formal proceeding only recently.

A fair process should accommodate both labor interests and environmental or community interests. Protecting the preparation rights of opposing parties does not prevent Local 49 from presenting evidence concerning employment and economic effects. Conversely, anticipated economic benefits cannot eliminate the rights of other parties to review the Department's analysis, prepare technical testimony, and examine witnesses.

VII. APPLICANT'S ECONOMIC DECLARATION DOES NOT ESTABLISH ENTITLEMENT TO AN AUGUST HEARING.

Applicant submits the Declaration of Julia Robin to support its claim of economic prejudice. The declaration identifies business concerns involving equipment vendors, engineering, financing, gas-supply and power-purchase agreements, related approvals, workforce planning, and a time-sensitive computing market. Applicant's Request, Exhibit 1, Robin Declaration ¶¶ 8–10.

Those concerns may justify diligent scheduling. They do not establish that Applicant is legally entitled to an August hearing.

The statutory deadline is a deadline for a permit decision. It is not a guarantee that the permit will issue. Applicant and the declaration repeatedly measure harm according to when the permit issues, when construction can begin, and when anticipated project benefits can be realized.

Those consequences depend upon a favorable decision. A timely denial on November 23 would not permit construction, equipment deployment, hiring, or operation. Applicant's commercial expectations therefore cannot be treated as rights created by the permit-processing deadline.

The declaration also acknowledges that planning began while the application was still being drafted and that commercial commitments were undertaken while the permit remained unresolved. Robin Declaration ¶¶ 5–7. Applicant and Oracle necessarily knew that construction could not begin without the permit, that the permit could be denied or conditioned, that significant public interest could require a hearing, and that the Secretary could invoke the ninety-day extension.

Commercial agreements entered during a pending regulatory proceeding do not displace the Department’s mandatory public-participation obligations.

The declaration also does not attach the contracts upon which it relies, identify particular termination provisions, provide exact expiration dates or financial amounts, or explain why amendments or extensions are unavailable. It establishes that delay may matter economically, but it does not demonstrate that an October hearing will necessarily cause the asserted losses.

The employment figures in Applicant’s Request also require clarification. Applicant attributes approximately 1,500 operations positions to paragraph 8(c) of the Robin Declaration, while paragraph 8(c) identifies approximately 700 operations roles associated with the facility. Applicant’s Request at 12; Robin Declaration ¶ 8(c).

Applicant may be distinguishing broader project-wide employment from jobs associated specifically with the microgrid, but the cited paragraph does not support the figure attributed to it. Local 49’s filing repeats the general concern about current and future jobs without resolving that discrepancy or supplying additional evidence.

VIII. THE OCTOBER DATE WAS A REASONABLE EXERCISE OF PROCEDURAL DISCRETION.

Part 4 is intended to provide due process, enable interested persons and entities to participate, and establish an orderly process for environmental permit proceedings. Its provisions must be construed to carry out the governing statutes and facilitate public participation, including participation by persons without counsel. See 20.1.4.6 and 20.1.4.100(B) NMAC.

The Hearing Officer may conduct prehearing conferences and establish special procedures in proceedings involving difficult or complex issues or numerous parties. See 20.1.4.300 NMAC.

The Hearing Officer exercised that authority after hearing the parties' positions on July 15. The circumstances before him included the absence of an identified and available Department analysis, the Secretary's formal determination that the matter involved unusual technical and regulatory complexity, the recent docketing of the Part 4 proceeding, the recent awareness of some prospective participants, and the imminent technical-testimony deadlines that would accompany an August hearing.

Those circumstances provided a rational basis for selecting October 19.

Ross v. State Racing Commission, 64 N.M. 478, 484–85, 330 P.2d 701, 705 (1958), recognizes that administrative discretion must be exercised within legal limits and in a manner connected to the purposes of the governing law. The October date was not an arbitrary departure from those purposes. It was selected to permit meaningful preparation and participation in a proceeding the Department itself characterized as unusually complex.

The New Mexico Supreme Court has also recognized that an essential purpose of environmental permit hearings conducted under Part 4 is to allow affected persons to ask

questions, present technical evidence, examine witnesses, and make nontechnical statements. *Colonias Development Council v. Rhino Environmental Services, Inc.*, 2005-NMSC-024, ¶¶ 2, 21, 138 N.M. 133, 117 P.3d 939.

The Court in *Colonias* further opined that procedural deficiencies can make an ostensible right to participate illusory. *Id.* ¶¶ 42–43. Although that case arose under the Solid Waste Act, it applied the same Part 4 procedures and is persuasive concerning what meaningful participation requires.

A hearing does not become meaningful merely because all parties are permitted to appear. They must have a reasonable opportunity to understand the Department’s position, prepare evidence, question witnesses, and respond to the technical cases offered by Applicant and NMED.

Local 49’s economic concerns can be fully presented in such a process. They do not require the Hearing Officer to diminish the procedural opportunities afforded to other participants.

IX. A STATUS CONFERENCE SHOULD ADDRESS THE ENTIRE REMAINING PROCESS.

Mr. Maxwell does not oppose a status conference directed toward resolving the tension between the October hearing date and the November final-decision deadline. His position should not be understood as joining Applicant’s request to advance the hearing or as conceding that the existing Scheduling Order is unlawful. Rather, if the Hearing Officer determines that a status conference is appropriate, the conference should address the entire remaining process and the

factual matters necessary to evaluate whether any amendment to the Scheduling Order is warranted.

A useful status conference should begin by requiring the Department to identify its complete analysis, state when and where it became available, and produce the notice sent to interested persons under 20.2.72.206(B)(1) NMAC. The Department should state when the thirty-day review period began and ended and whether its Statement of Basis, proposed permit, modeling files, emissions calculations, and other relied-upon technical materials are presently available.

The Department should also disclose whether it anticipates material revisions to its analysis or proposed permit conditions. The parties and the Hearing Officer need to know the likely number of hearing days and witnesses, the expected time for transcript preparation, and the time the Hearing Officer and Deputy Secretary reasonably require to complete their respective post-hearing responsibilities.

Applicant should identify the particular post-hearing periods it proposes to shorten and explain why those proposed periods would remain fair in view of the anticipated record and hearing length. Local 49 should be permitted to provide evidence concerning its members' existing employment, the wages allegedly at risk, relevant project deadlines, and the specific connection between the hearing date and the harms it asserts. Opposing participants should likewise be permitted to explain the technical, disclosure, notice, and preparation prejudice that an accelerated hearing would cause.

The Hearing Officer can then determine whether the October date should remain, whether an intermediate September date is feasible, or whether an expedited post-hearing schedule provides the more appropriate means of addressing the November deadline.

Until those facts are established, advancing the hearing to August 24 would depend upon unsupported assumptions that the Department's analysis-review process is complete, that all participants possess the relevant agency materials, that earlier public comments constitute complete technical testimony, that fourteen days necessarily provides adequate preparation, and that the asserted economic harms outweigh any impairment of public-participation rights. Those assumptions do not provide a sufficient basis for setting aside the considered Scheduling Order.

To the extent this Response is construed as independently requesting that the Hearing Officer convene a status conference, no concurrence was sought. Applicant characterized the scheduling issue as an emergency and requested immediate consideration, and this Response is being submitted directly in opposition to that filing and to Local 49's Request. Under those circumstances, seeking concurrence before stating the alternative conditions under which a status conference could be useful was not reasonably practicable. Mr. Maxwell's alternative position is therefore that, if the Hearing Officer elects to convene a conference, it should be reasonably noticed, should permit all parties to participate, and should address the complete remaining schedule rather than presuppose that the hearing must be advanced.

CONCLUSION AND REQUEST FOR RELIEF.

For the foregoing reasons, Mr. Maxwell respectfully requests that the Hearing Officer deny Applicant's request to advance the hearing to August 24, 2026, and deny Local 49's request to advance the hearing on the present record.

Mr. Maxwell further requests that no substantive amendment of the Scheduling Order occur until all parties have received a reasonable opportunity to respond. Should the Hearing Officer convene a status conference, Mr. Maxwell requests that the conference address the status and availability of the Department's analysis, the completion of the thirty-day review period, the remaining prehearing requirements, the anticipated hearing duration, transcript preparation, and the complete post-hearing schedule through final agency action.

Mr. Maxwell asks that the October 19 hearing date remain in effect unless the record demonstrates that an earlier date will not impair the rights of the parties or the public. Local 49's employment concerns should be considered as part of the overall prejudice analysis, but claims involving lost wages, lost jobs, expiring commitments, or loss of the project should be supported by specific evidence.

Finally, Mr. Maxwell requests that any post-hearing periods be expedited only to the extent consistent with meaningful review, a reasoned administrative record, and fair participation by all parties.

Respectfully submitted,

By -s- Nicholas Maxwell

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of my Consolidated Response in Opposition to Applicant's Request of Emergency Status Conference and Sheet Metal Workers Local Union No. 49's Request to Advance the Hearing Date Forward was served by email on July 21, 2026 to the Hearing Clerk and to all parties of record in this matter, with a hard copy mailed upon request.

-s- Nicholas Maxwell

Mr. Nicholas R. Maxwell