

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

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

AQB 26-57 (P)

**NEW ENERGY ECONOMY’S RESPONSE TO YGI’S ALLEGED EMERGENCY TO
CHANGE THE HEARING DATE**

New Energy Economy respectfully provides the following response in opposition to Yucca Growth Infrastructure, LLC’s (“YGI”) *Request of [sic] Emergency Status Conference*, (hereinafter “Motion”).

Applicant YGI asks this Hearing Officer to declare an “emergency” because its preferred hearing schedule allegedly threatens Oracle’s business plans and investment timetable. The Motion should be denied. There is no emergency created by the permitting process. There is only Applicant’s dissatisfaction with the ordinary consequences of seeking approval for one of the largest industrial air pollution permits ever proposed in New Mexico’s history.

Ironically, YGI itself acknowledges that “Due process requires a meaningful opportunity to prepare and be heard.” Motion at 10. New Energy Economy agrees. That constitutional principle—not Oracle’s investment schedule—must govern these proceedings.

The Motion should be denied for the following reasons.

**I. YGI’S MOTION SHOULD BE DENIED BECAUSE IT FAILS TO COMPLY
WITH THE MANDATORY REQUIREMENTS OF THE NMED
PERMITTING RULES.**

YGI begins its request for extraordinary relief by ignoring the governing procedural rules. Section 20.1.4.200(D) NMAC expressly requires that a motion “shall seek and state the

positions of the other parties.” The rule is mandatory. YGI did not follow the rule governing this case. Rather than confer with the parties before filing an alleged emergency motion, YGI unilaterally sought extraordinary relief without advising the Hearing Officer whether the parties opposed or consented to the requested relief.

Compliance with procedural rules is particularly important where a party seeks emergency intervention. Having failed to satisfy the mandatory requirements of 20.1.4.200(D) NMAC, the Motion should be denied.

II. THE HEARING OFFICER HAS ALREADY FOUND GOOD CAUSE FOR THE CURRENT SCHEDULE.

YGI attempts to reargue an issue already decided.

Section 20.1.4.100(F)(2) NMAC provides:

“The Hearing Officer may grant an extension of time...for good cause shown, and after consideration of prejudice to other parties and undue delay to the proceeding.”

The regulation expressly requires balancing—not simply the Applicant’s preferred timeline. Here, the Hearing Officer has already determined that additional preparation time is warranted because this permit involves extraordinarily complex technical issues. That conclusion is amply supported by the record. Applicant’s own permit application spans approximately 648 pages and contains 22 separate technical sections addressing, among other things:

- emissions inventories;
- air dispersion modeling;
- water consumption;
- waste heat;
- compliance with state and federal regulations;
- operational plans for emissions mitigation;
- compliance testing history;
- New Source Review requirements;
- and numerous technical appendices.

Indeed, the Department itself extended the statutory decision deadline because the application required review of “unusually complex technical and regulatory issues” and because a public hearing was necessary.

This is not an ordinary permit.

It concerns one of the largest industrial projects ever proposed in New Mexico and introduces an entirely new power-generation configuration relying upon more than two thousand two hundred Bloom Energy solid oxide fuel cell powered “Energy Server Systems.”

Preparing expert testimony regarding atmospheric modeling, emissions inventories, thermal impacts, engineering assumptions, stack testing, groundwater demands, and Bloom’s technology requires months—not weeks.

The current Scheduling Order already reflects an expedited process. As the parties know, Opponents originally requested a hearing in April 2027 to provide adequate time for expert review of this unprecedented permit application. Despite the compressed schedule, Opponents are working diligently to retain qualified experts and prepare the written technical testimony and rebuttal necessary to assist the Hearing Officer in fully evaluating the complex engineering, emissions, atmospheric, water, and public health issues presented by this Application. This proceeding is not intended to be a race to judgment, but a careful and impartial examination of whether Applicant has satisfied the requirements of the Air Quality Act. Further compressing the schedule, as YGI requests, would unnecessarily undermine the public’s confidence that this permitting process is fair, thorough, and conducted on a level playing field for all participants.

III. APPLICANT'S PRIVATE BUSINESS CONCERNS DO NOT OVERRIDE THE PUBLIC'S CONSTITUTIONAL DUE PROCESS RIGHTS.

Applicant argues that Oracle's capital is "sitting idle" and that business contracts may expire. Motion at 12. Those allegations—even if accepted as true—are legally irrelevant.

This proceeding exists for one purpose: **To determine whether Applicant has satisfied the Air Quality Act.** It does not exist to protect Oracle's investment schedule. It does not exist to maximize shareholder returns. It does not exist to preserve speculative market opportunities in artificial intelligence. It exists to determine whether construction of this facility complies with New Mexico's air quality laws. YGI itself correctly acknowledges: "Due process requires a meaningful opportunity to prepare and be heard." Motion at 10. The New Mexico Supreme Court has repeatedly held that:

"the fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense."

Public Serv. Co. of N.M. v. N.M. Pub. Regul. Comm'n, 2019-NMSC-012, ¶ 102, 444 P.3d 460 (quoting *Albuquerque Bernalillo County Water Utility Authority v. NMPRC*, 2010-NMSC-013, ¶ 21, and *Jones v. N.M. State Racing Comm'n*, 1983-NMSC-089, ¶ 6).

Those constitutional protections belong equally to members of the public. The October hearing already represents a compressed schedule. Opponents requested an April 2027 hearing precisely because this matter involves unprecedented technical issues. Applicant now insists that Opponents somehow will not suffer prejudice from an August hearing despite the fact that expert reports have not yet been prepared, atmospheric experts have not yet completed their analyses, and written technical testimony has not yet been developed regarding the many issues presented by YGI's application. See, Section II above.

Meaningful participation requires meaningful preparation.

IV. THE REGULATIONS REQUIRE MEANINGFUL PUBLIC PARTICIPATION—NOT A RUSH TO ACCOMMODATE APPLICANT’S BUSINESS PREFERENCES.

Section 20.1.4.6 NMAC declares that permitting procedures must maximize: “the ability to participate of all persons and entities who desire to take part.” Likewise, 20.1.9.8 NMAC requires:

“The hearing officer shall conduct a fair and equitable proceeding, assure that the facts are fully elicited, and avoid delay. The hearing officer shall have authority to take all measures necessary for the maintenance of order and for the efficient, fair, and impartial consideration of issues.”

Those directives cannot be reconciled with Applicant’s request to compress preparation of expert testimony concerning one of the largest air permit applications ever filed in New Mexico.

A rushed proceeding is not a fair proceeding. Nor is one in which technical experts lack sufficient time to analyze hundreds of pages of engineering materials and respond accordingly.

V. NMED’S STATUTORY MANDATE IS TO PREVENT AND ABATE AIR POLLUTION—AND ONLY CONSIDER MATTERS WITHIN THE SCOPE OF ITS AUTHORITY.

Perhaps most fundamentally, Applicant asks this Hearing Officer to weigh considerations entirely outside NMED’s statutory authority.

YGI’s Motion gives as the reason for its allegedly emergency to expedite the hearing process:

- jeopardized contracts;
- idle capital;
- workforce impacts;
- expiring approvals;
- financing commitments;
- market timing;
- artificial intelligence demand; and
- Oracle's competitive opportunities.

Those issues may be important to Oracle. They are not relevant to NMED's statutory mission.

The New Mexico Court of Appeals has long held: "The Commission can only act as to those matters which are within the scope of the authority delegated to it." *Pub. Serv. Co. of N.M. v. N.M. Envtl. Improvement Bd.*, 1976-NMCA-039, ¶ 7. Agency action beyond delegated authority is ultra vires. *Mechem v. City of Santa Fe*, 1981-NMSC-104, ¶ 6. An agency exceeds its authority whenever its action is not authorized by statute or reasonably related to statutory objectives. *Bogan v. Sandoval County Planning & Zoning Comm'n*, 1994-NMCA-157, ¶ 18. Likewise, *American Civil Liberties Union of New Mexico v. New Mexico Corrections Department*, 2024-NMCA-071, ¶ 16, reiterates that an administrative agency possesses no power to create rules or standards inconsistent with its statutory authority.

The New Mexico Supreme Court has emphasized that agencies must remain strictly within their delegated authority. *State ex rel. Egolf v. N.M. Pub. Regul. Comm'n*, 2020-NMSC-018, ¶¶ 16-17, 32-33.

The Court of Appeals has likewise rejected attempts by environmental regulators to expand their authority beyond pollution control. In *Public Service Co. of New Mexico v. Environmental Improvement Board*, the Court held: "There is nothing in the board's mandate that gives it the authority to plan for the industrial development of the area." 1976-NMCA-039, ¶ 10. Nor may NMED "amend or enlarge its authority under the guise of making rules and regulations." *Id.*

Applicant's request asks this Hearing Officer to do exactly what these cases forbid: subordinate New Mexico's air permitting process to the private financial interests of an out-of-state corporation.

The Air Quality Act authorizes NMED to prevent and abate air pollution—not to preserve Oracle's business model, protect investment schedules, avoid contract deadlines, or maximize data center development opportunities.

VI. APPLICANT'S OWN TECHNOLOGY CHOICE UNDERMINES ITS CLAIM OF URGENCY.

Nor is the claimed emergency self-evident. Applicant voluntarily abandoned its original, legally deficient permit application, consuming months of administrative time before filing an entirely different proposal. Applicant also voluntarily selected a replacement power source dependent upon Bloom Energy's solid oxide fuel cell technology.

Bloom Energy itself warns investors in its 2025 Form 10-K that its ambitious expansion from approximately 1 GW to 2 GW of manufacturing capacity by the end of 2026 faces substantial execution risk, including supply chain disruptions, labor shortages, equipment failures, quality-control problems, geopolitical instability, regulatory uncertainty, and dependence upon third-party suppliers. Bloom Energy further warns that failure either to expand production or achieve anticipated customer demand could materially impair its business and financial condition.¹

¹ <https://d18rn0p25nwr6d.cloudfront.net/CIK-0001664703/39be2950-0c15-4820-a34b-6639c0d9beec.pdf>, at 37, 50.

Applicant therefore asks this Hearing Officer to curtail the public's constitutional rights in order to accelerate deployment of a technology whose own manufacturer warns investors is subject to substantial uncertainty. That is not an emergency. It is ordinary business risk.

CONCLUSION

This proceeding concerns whether one of the largest industrial air pollution permits ever proposed in New Mexico satisfies the requirements of the Air Quality Act. It is not a proceeding to rescue Oracle's investment schedule, preserve private contracts, or accelerate artificial intelligence infrastructure.

Applicant's claimed emergency is entirely self-created. The public did not choose Applicant's original defective permit application. The public did not choose Applicant's replacement technology. The public did not choose Applicant's construction timetable or contractual commitments. Those private business decisions cannot override the constitutional due process rights of the citizens who will live with the emissions, water consumption, heat generation, and long-term environmental consequences of this facility.

The Air Quality Act entrusts NMED with one mission: **to prevent and abate air pollution**. It does not authorize the Department to prioritize the financial interests of a billion-dollar corporation over the public's right to a full, fair, and technically informed hearing. To do otherwise would exceed the Department's statutory authority, compromise the fairness of these proceedings, and transform an air permitting process into an economic development exercise that New Mexico law simply does not permit.

For these reasons, Applicant's Request for An Emergency Expedited Hearing should be denied, and the existing Scheduling Order should remain in effect so that this unprecedented

permit application receives the careful, expert, and constitutionally adequate review that both New Mexico law and the public interest require.

Respectfully submitted this 23rd day of July, 2026,

NEW ENERGY ECONOMY

By: /s/ Mariel Nanasi

Mariel Nanasi

Christopher Dodd

Attorneys for New Energy Economy

422 Old Santa Fe Trail

Santa Fe, NM 87501

MNanasi@NewEnergyEconomy.org

chris@fayerbergdodd.com

505.469.4060.

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

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
christopherj.vigil@env.nm.gov
brian.yardman-frank@env.nm.gov
Counsel for NMED

Jennifer L. Bradfute
David Kirmse
P.O. Box 90233
Albuquerque, NM 87199
Telephone: (505) 264-8740
jennifer@bradfutelaw.com
david@bradfutelaw.com
Counsel for Applicant Yucca Growth Infrastructure, LLC

Jennifer L. Bieber
Williams Weese Pepple & Ferguson, P.C.
1801 California Street, Suite 3400
Denver, CO 80202
jbieber@williamsweese.com
Counsel for Applicant Yucca Growth Infrastructure, LLC

Nicholas R. Maxwell
P.O. Box 1064
Hobbs, NM 88241
inspector@sunshineaudit.com
Pro Se Intervenor

Colin Cox
Gail Evans
The Center for Biological Diversity
1025 ½ Lomas NW
Albuquerque, New Mexico 87102
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org
Counsel for Center for Biological Diversity

Maslyn Locke
Senior Staff Attorney
Eric Jantz
Legal Director
New Mexico Environmental
Law Center
Tel.: (505) 989-9022
mlocke@nmelc.org
ejantz@nmelc.org
Counsel for Vivian Fuller and Jose Saldaña Jr.

Bruce Wetherbee
60 Thoreau Street #103
Concord, MA 01742
editor@thecandlepublishing.com
Pro Se Intervenor

Joe Cardillo
344 4th Street SW
Albuquerque, NM 87102
joe@progressnownm.org
Pro Se Intervenor

Andre Makarski
United Association Local 412
510 San Pedro
Albuquerque, NM 87108
andre@ualocal412.org

Esperanza Chairez
Zephyr Jaramillo
esperanza@yuccanm.org
Youth United for Climate Crisis Action

Yiwei Chen
Economic Development New Mexico
P.O. Box 20003 Santa Fe, NM 87504-
5003 (505) 394-5481
yiwei.chen@edd.nm.gov

Isaiah Zemke
izenke@smwlu49.org Sheet Metal
Workers Local Union No. 49

Nathaniel Chakeres General Counsel
New Mexico Office of the State Engineer
P.O. Box 25102 Santa Fe, NM 87504-
5012 (505) 231-4459
nathaniel.chakeres@ose.nm.gov

By: /s/ Mariel Nanasi
NEW ENERGY ECONOMY

Mariel Nanasi
Christopher Dodd
Attorney for New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
MNanasi@NewEnergyEconomy.org
chris@fayerbergdodd.com
505.469.4060.