

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

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

No. AQB 26-57 (P)

**MAXWELL’S MOTION FOR EXPEDITED PREHEARING DISCLOSURE,
PRODUCTION OF IDENTIFIED ADMINISTRATIVE RECORD MATERIALS,
TARGETED ADMISSIONS, AND, IN THE ALTERNATIVE, LIMITED DISCOVERY**

Mr. Maxwell moves for a narrow prehearing order requiring prompt access to specifically identified Administrative Record materials, written clarification of discrete technical matters, targeted admissions, and, only to the extent necessary, limited discovery. The relief is directed to proposed Permit Conditions A107 and A110 and to the associated emissions inventory and modeling. It does not seek the broad project-development, water, pipeline, manufacturing-capacity, raw-material, financing, or unrelated waste information criticized in Applicant Yucca Growth Infrastructure, LLC’s July 31, 2026 response to other parties’ discovery requests (“Applicant’s Discovery Response”). The motion is opposed.

The motion was prepared after release and review of the July 29, 2026 Draft Permit, Draft Statement of Basis, and Draft Modeling Review Report. It narrows the requested information to records and explanations necessary to understand facial inconsistencies in those materials and to prepare the complete written technical testimony and exhibits required by August 24, 2026. Applicant’s Discovery Response states that parties should have waited for the July 29 materials, conferred, and identified specific remaining gaps. *Applicant’s Discovery Response* at 3–4. Mr. Maxwell has followed that sequence.

The motion should be granted under the Hearing Officer’s July 29 Order, the Amended Scheduling Order, 20.1.4.100(A), (B), and (E)(2), 20.1.4.200(A)(2) and (D), 20.1.4.300(A)(3), and

the discovery-limiting principles identified in 20.1.4.200(E)(2). The requested information is nonprivileged, directly relevant, specifically identifiable, not reasonably obtainable from the public record in its present form, and proportionate to the approaching testimony deadline. The requested order is designed to avoid delay by permitting rolling access to the developing Administrative Record, incorporation of prior responses and productions, confidentiality protection, and written objections without requiring creation of new engineering work.

I. RELIEF REQUESTED.

Mr. Maxwell requests an order:

1. requiring NMED to make the Administrative Record as it presently exists immediately available for inspection and copying, to keep its constituent records identified, organized, and retrievable sufficiently to permit public review throughout the Part 4 proceeding, and to provide rolling access as additional public records are used by the Division in its continuing evaluation; for electronically maintained records, NMED should provide electronic copies or direct electronic access;
2. requiring NMED and Applicant to provide the limited written answers, existing records, and targeted admissions in Exhibit A;
3. allowing each responding party to incorporate a complete prior response or production by identifying the exact response or record, Administrative Record number, Bates range, native file name, folder or file identifier, or accessible electronic location sufficient to permit prompt access, without requiring disclosure of an internal network path;
4. requiring native production of existing spreadsheets, workbooks, calculation files, and modeling files with existing formulas, inputs, assumptions, and source rates intact;
5. protecting privileged material, allowing narrowly tailored redactions that preserve the intelligibility of responsive technical information, and providing an expedited procedure

for obtaining a protective order for legitimate confidential or security-sensitive information;

6. allowing Mr. Maxwell a limited supplementation of direct technical testimony and exhibits if materially responsive information is produced too late for reasonable use by August 24; and
7. setting expedited response and reply dates for this motion.

At minimum, if the Hearing Officer does not grant Exhibit A in full, Mr. Maxwell requests immediate access to NMED's current organization of the Administrative Record, including any existing working index, log, folder listing, or electronic directory or file listing sufficient to locate its constituent materials; immediate production of NMED's July 13, 2026 communication to Applicant and Applicant's July 16, 2026 response and attachments; the native calculation file underlying Applicant's one-page worksheet titled "Startup, Shutdown, and Maintenance Emissions (SSM) - Exempt Pursuant 20.2.72.202.B(5) NMAC" ("SSM Worksheet"); an existing site-specific Central Desulfurization System ("CDS") process-flow, piping and instrumentation, or gas-distribution diagram sufficient to show the two vessels, the sulfur-removal media contained inside each vessel ("CDS Vessel Media"), the gas-flow path, purge and blowdown lines, and vent points; and existing startup-purge and vessel-maintenance purge procedures, including any procedures applicable to CDS Vessel Media replacement. Mr. Maxwell also requests written clarification of the per-CDS versus facility-wide quantities and the basis for treating startup and maintenance as mutually exclusive within a rolling twelve-month period. This alternative does not require NMED to create an index, drawing, study, or calculation that does not already exist.

II. PROCEDURAL BACKGROUND.

On July 29, 2026, the Hearing Officer reset the hearing to September 14, 2026 and found "that discovery should be allowed in the case subject to the provisions of NMAC 20.1.4.200 (3)

[sic].” *July 29, 2026 Order* at 2. The Amended Scheduling Order separately provides that formal discovery will be allowed only upon order of the Hearing Officer. *Amended Scheduling Order* ¶ 7.

The Amended Scheduling Order requires any person intending to present technical evidence to file complete written technical testimony and supporting exhibits by August 24, 2026. Rebuttal is due September 3, 2026. Failure to file a timely and complete Notice of Intent precludes presentation of the technical evidence. *Id.* ¶¶ 2–3.

The Draft Permit, Draft Statement of Basis, and Draft Modeling Review Report were released on July 29, 2026. The Statement of Basis identifies NMED’s July 13 communication to Applicant and Applicant’s July 16 response as part of the permit review, but the public materials do not include those complete communications and attachments. *Draft Statement of Basis* at 1.

The docket reflects Mr. Maxwell’s efforts to obtain the Administrative Record before seeking this order. On July 14, 2026, he filed a Notice of Request for Administrative Record, giving notice that he had requested immediate inspection under IPRA of the Administrative Record and all public comments concerning Permit No. 10883. On July 30, 2026, he filed a Notice of Second Request for Administrative Record. The second notice identified seven narrowed categories, including the complete July 13–16 Applicant exchange, technical submittals supporting A107, the complete modeling archive, tracking and index records, and existing operational and monitoring plans.

The represented intervenors then placed NMED’s stated production position and the resulting schedule problem in the hearing docket. Their July 31, 2026 Motion to Reset October 19 Hearing Schedule and Preserve Due Process (“Motion to Reset”) states that NMED intended to deliver the Administrative Record on August 24, the same date direct technical cases are due. *Motion to Reset* at 2, 4–5. Attachment 1 to the Motion to Reset reproduces a July 30 email from

NMED counsel Christopher J. Vigil stating: “The Bureau is preparing the administrative record. It will likely be hundreds, if not thousands of pages, along with an extensive index. While the documents are available via the IPRA process, the AR itself is not fully compiled.” *Id.*, Attachment 1. Thus, the concept that the Administrative Record was awaiting “compilation” came from counsel’s description of the Bureau’s internal preparation and indexing work; “compile,” “compiled,” and “compilation” do not appear in the operative Part 4 definition or access provision.

Applicant filed its Discovery Response on July 31, 2026. The response addresses requests filed by the New Mexico Environmental Law Center, Center for Biological Diversity, and New Energy Economy. It argues first that formal discovery is not authorized and, alternatively, that any discovery should be limited by relevance, burden, privilege, duplication, reasonable availability, and proportionality. *Applicant’s Discovery Response* at 1–4. It criticizes numerous requests concerning water, waste, manufacturing supply, project completion, and pipeline proceedings and characterizes the combined requests as nearly sixty interrogatories and more than thirty requests for production. *Id.* at 5–8.

Applicant also asserts that information is or will be available through the Draft Permit, Statement of Basis, Administrative Record, public sources, technical testimony, and cross-examination. *Id.* at 9–11. Applicant specifically states that incompleteness in the published monitoring information should be addressed through technical testimony or cross-examination rather than interrogatories. *Id.* at 9.

NMED filed its Response in Opposition to the Motion to Reset on August 2, 2026 (“NMED Scheduling Response”). NMED states that it cannot identify an air-permit proceeding in the last seven years in which opposing parties received the Administrative Record before NMED filed it, that parties ordinarily receive the Administrative Record on or after NMED’s technical filing, and that Statements or Notices of Intent “take the place of discovery.” *NMED Scheduling Response* at

2–3. NMED also states that the Application, Draft Permit, Statement of Basis, and Modeling Review Report provide the documents necessary to begin building a case. *Id.* at 2.

This motion is materially different. It was prepared after the July 29 release; it identifies exact permit conditions, calculations, discrepancies, and records; it excludes the broad subjects Applicant criticized; and it permits exact incorporation rather than duplicate production. The motion is directed to the information necessary to understand and test NMED’s proposed conditions before the deadline for affirmative technical testimony.

III. GOVERNING AUTHORITY AND EXISTING ORDERS.

A. The July 29 orders authorize a tailored request.

Applicant’s threshold objection asks the Hearing Officer to reconsider whether discovery may be allowed at all. *Applicant’s Discovery Response* at 1–2, 12. The July 29 Order has already found that discovery should be allowed, and the Amended Scheduling Order establishes the mechanism: formal discovery requires a further order defining its scope. This motion supplies the narrow request and proposed conditions contemplated by those orders.

Mr. Maxwell does not contend that every provision under the heading “Special Procedures for Hearings Under the Solid Waste Act” applies wholesale to this air-permit hearing. Rather, he asks the Hearing Officer to implement the July 29 ruling through the general powers applicable to proceedings under Part 4 and, to the extent formal discovery is ordered, to apply the same limiting factors that the Hearing Officer’s order and Applicant’s Discovery Response identify. Applicant itself states that those limits should be “strictly applied” if discovery is considered. *Applicant’s Discovery Response* at 2–3.

Applicant’s cited principles—that an agency is bound by its regulations and possesses only delegated authority—are not disputed. *See* Law v. N.M. Human Servs. Dep’t, 2019-NMCA-066, ¶ 23; Alto Coal. for Env’t Pres. v. Roper Constr., Inc., 2025-NMCA-018, ¶ 12. The relief requested

here is grounded in Part 4, the Hearing Officer's existing orders, and the procedural obligations created by the current schedule. Nor does the Air Quality Control Act categorically prohibit discovery in an air-permit adjudication. In *Southwest Organizing Project v. Albuquerque-Bernalillo County Air Quality Control Board*, the Court of Appeals rejected a challenge to a discovery order in an Air Quality Control Act permit proceeding under the applicable local procedural rule. 2021-NMCA-005, ¶¶ 25–27. That case does not decide the precise reach of Part 4, but it is inconsistent with the broader premise that discovery is inherently foreign to an air-permit adjudication.

B. Counsel's "compiling" description concerns internal assembly; Part 4 instead requires a developing Administrative Record kept reviewable throughout the proceeding.

Section 20.1.4.7(A)(2) NMAC defines "Administrative Record" to mean "all public records used by the Division in evaluating the application," including the application and supporting data furnished by the applicant, materials cited in the application, public comments, correspondence, the draft permit and statement of basis, and "any other material used by the Division to evaluate the application." The operative event is the Division's use of a public record in evaluating the application. The definition does not make a record's status depend upon later assembly, indexing, Bates numbering, transmission to the Hearing Clerk, or completion of a final package.

The listed categories show that the Administrative Record necessarily develops over the course of the proceeding. Supporting data, correspondence, public comments, draft permit terms, the Statement of Basis, and other evaluative materials arise and are used at different times. Each public record comes within the definition when the Division uses it in evaluating the application. Part 4 does not describe an interim period in which a public record has been used in the evaluation

but is not yet part of the Administrative Record because a later “compilation” has not been completed.

The word “compiled” entered this docket through NMED counsel’s July 30 email, reproduced in Attachment 1 to the Motion to Reset. Counsel stated that the Bureau was “preparing the administrative record,” expected hundreds or thousands of pages and an extensive index, and considered the Administrative Record “not fully compiled.” That description reasonably may refer to the Bureau’s internal work of gathering copies, removing duplicates, reviewing confidentiality, arranging files, preparing an index, and assembling the version to be transmitted to the Hearing Clerk. It does not identify a status or condition created by Part 4, and it cannot postpone the regulatory consequence of the Division’s prior use of a public record in evaluating the application.

Section 20.1.4.200(A)(2) confirms the distinction. It directs the Division, upon filing of the Hearing Determination, to “forward” the Administrative Record to the Hearing Clerk no later than the hearing. That is an outside deadline for transmission and filing; it is not a definition of when the Administrative Record comes into existence or becomes reviewable. The same paragraph provides that material readily available at the Division’s office or generally available published material need not be physically included in the transmitted record if it is identified in the index filed with the Hearing Clerk. The rule therefore contemplates that constituent materials may remain in their existing locations and still be part of the Administrative Record. A single finalized packet is not the record’s defining feature.

The paragraph then imposes a separate and continuous command: “The Administrative Record is available for public review at all times.” “[A]vailable ... at all times” describes a condition the Division must maintain throughout the Part 4 proceeding, not a one-time act of production after counsel completes a later compilation. The duty necessarily requires the Department to keep the constituent public records used in the evaluation identified, organized, and

retrievable sufficiently that a member of the public can inspect the Administrative Record as it exists at a given point in the proceeding. It does not require a final Bates-stamped set or completed formal index at every moment. It does require an ongoing records arrangement adequate to locate and present the materials that have already entered the Administrative Record.

Reading the hearing-date transmission deadline as permission to defer all review until a final compilation is complete would collapse two distinct commands and largely deprive “available for public review at all times” of independent effect. The Division may continue adding materials and may later prepare the formal index and transmission set, but the developing record must remain reviewable in the meantime. If additional public records are later used in the evaluation, the obligation follows those additions; rolling access is therefore the practical implementation of the rule’s continuous requirement.

Applied here, the July 13 Department communication and Applicant’s July 16 response and attachments were used in developing the July 29 Draft Permit and Statement of Basis and are expressly identified in the Statement of Basis. To the extent they are public records, they fall within the regulatory definition whether or not NMED has placed them into a final indexed packet. The same is true of the native calculation file underlying the SSM Worksheet, supporting technical submittals, and modeling materials to the extent those public records were used in evaluating the application. NMED’s internal indexing or assembly work may continue, but it does not justify withholding the current record until August 24.

C. The docketed IPRA notices document prior access efforts but do not convert this motion into an IPRA enforcement action.

The July 14 and July 30 docketed notices show that Mr. Maxwell first sought inspection through the public-records mechanism made available to him and then narrowed the request to discrete records tied to the draft permit and testimony deadline. Attachment 1 to the July 31 Motion

to Reset documents both the source of the “not fully compiled” characterization and NMED’s position that the constituent documents should instead be obtained through IPRA pending delivery of the Administrative Record on August 24.

The use of IPRA as a separate access channel does not replace the Department’s Part 4 obligation to keep the Administrative Record available for review throughout the proceeding. Nor does the fact that individual documents might be obtainable through separate IPRA requests make the Administrative Record itself available “at all times.” Public review of the Administrative Record requires the ability to identify and inspect the body of public records NMED has used in evaluating the application, not merely the opportunity to guess at individual records and request them one by one without access to the Department’s current organization of the record.

Mr. Maxwell does not ask the Hearing Officer to determine whether NMED’s IPRA response was timely or complete, compel production as an IPRA remedy, award damages or fees, or decide any other matter reserved to a separate IPRA action. The notices and docketed correspondence are relied upon only to establish prior efforts, the source and meaning of counsel’s “compilation” position, the present unavailability of identified Administrative Record materials, and the need for proceeding-specific relief under Part 4 before August 24. Any separate IPRA rights and defenses remain unaffected.

D. Part 4 authorizes prehearing clarification, admissions, and procedural orders.

The Rules of Civil Procedure do not apply of their own force, but the Hearing Officer may use them for guidance. 20.1.4.100(A) NMAC. Part 4 must be liberally construed to facilitate public participation, including participation by persons without counsel. 20.1.4.100(B) NMAC. The Hearing Officer must conduct a fair proceeding, assure that the facts are fully elicited, avoid delay, rule on motions and procedural requests, issue necessary orders, and require conferences for simplification or expedition. 20.1.4.100(E)(2) NMAC.

Section 20.1.4.300(A)(3) independently permits prehearing orders to expedite disposition, discourage duplicative activity, formulate and simplify issues, obtain stipulations or admissions of fact or law, avoid unnecessary or cumulative evidence, and manage difficult or complex proceedings. Targeted admissions and written clarification therefore need not depend entirely upon formal civil discovery.

E. The testimony rules make timely prehearing access consequential.

Applicant bears the burden of proving that the permit should issue, NMED bears the burden for a challenged proposed condition, and a person contending that a condition is inadequate or improper bears the burden of going forward with an affirmative case. 20.1.4.400(A)(1) NMAC. Technical information generally may not be introduced during examination unless it was placed in the Hearing Record by the technical-testimony deadline, except for impeachment or rebuttal. 20.1.4.400(B)(2) NMAC. Thus, the ability to ask questions at the hearing does not cure the inability to obtain and file the technical materials needed for an affirmative case by August 24.

F. The requested relief satisfies the discovery-limiting factors.

The motion uses the factors stated in 20.1.4.200(E)(2) and relied upon by Applicant: the relief will not unreasonably delay the proceeding or impose unreasonable burden or expense; the information is nonprivileged and directly relevant; the information is not unreasonably cumulative or duplicative and is not otherwise reasonably obtainable; and the likely benefit substantially outweighs the burden. *See Applicant's Discovery Response* at 2–3. Exhibit A contains defined, project-specific requests for existing information, allows incorporation by reference, excludes new studies, and permits confidentiality protection.

IV. THE PUBLIC MATERIALS IDENTIFY DISCRETE TECHNICAL GAPS.¹

¹ Common technical acronyms used in Section IV of this motion are the same as those used in Draft Permit Part C.

A. Draft Condition A107 appears to treat facility-wide purge volumes as per-CDS event volumes.

The SSM Worksheet calculates startup volume as 95 CDS units $\times$ 2 vessels $\times$ 3 purge cycles $\times$ 1,370 scf, producing 780,900 scf. It calculates maintenance volume as 95 CDS units $\times$ 1 vessel $\times$ 4 purge cycles $\times$ 1,370 scf, producing 520,600 scf. *Revisions to Application 10883* at 1. Those calculations facially produce full-facility scenario totals.

Draft Condition A107.D, however, defines 780,900 scf as the maximum volume “from one startup event at one CDS unit” and 520,600 scf as the maximum volume “from one maintenance event at one CDS.” It then multiplies those figures by the number of events at all CDS units. Draft Permit A107.D. Using the SSM Worksheet’s own assumptions, the corresponding amounts are 8,220 scf for startup of one CDS and 5,480 scf for maintenance of one vessel at one CDS. The draft condition therefore appears to contain a factor-of-ninety-five mismatch between the SSM Worksheet and the compliance equation.

The SSM Worksheet also labels the resulting pollutant masses “lb/hr,” but the displayed calculation contains no time variable and appears to produce mass for the calculated full-facility scenario rather than a time-based rate, unless an unstated one-hour duration is assumed. The public record does not disclose event duration, maximum flow rate, concurrency, or the resulting hourly emission rate. Those matters affect not only annual VOC compliance but the characterization of a vent release.

B. The one-half-ton exemption and 0.34-tpy limit depend upon unverified operational assumptions.

The SSM Worksheet reports 671.57 pounds of VOC for startup and 447.72 pounds for maintenance. Together, those quantities equal 1,119.29 pounds, or 0.559645 tons. The SSM Worksheet treats the two scenarios as mutually exclusive and therefore does not add them, stating that startup and maintenance cannot occur within the same rolling twelve-month period. The Draft

Permit does not clearly impose that prohibition. Draft Condition A107.E instead authorizes up to 570 startup vessel purges and up to 380 shutdown and maintenance vessel purges per year—the full counts for both SSM Worksheet scenarios—without calculating mass or prohibiting overlap.

Section 20.2.72.202(B)(5) NMAC requires multiple emissions units, operations, and activities performing identical or similar functions to be combined in determining applicability of the one-half-ton exemption. Both disclosed scenarios involve predictable natural-gas venting from CDS equipment. Further, potential emission rate is based upon maximum capacity under the source's physical and operational design, and an operational limitation reduces that capacity only if the limitation or its effect on emissions is enforceable by the Department. 20.2.72.7(Y) NMAC. Applicant's intended scheduling therefore does not, by itself, establish that the combined scenario is unavailable for purposes of potential emissions.

The Statement of Basis confirms that NMED could not verify the premise. It states that AQB could not confirm that the SSM potential emission rate is less than one-half ton per year, that nothing inherently limits the number of maintenance activities or purges, and that AQB could not verify the technical maintenance or operational requirements. *Draft Statement of Basis* § 14.B. The requested records and explanations go directly to the factual basis of the proposed 0.34-tpy condition and the claimed exemption.

C. Vessel volume, standard conditions, gas composition, architecture, and sulfur monitoring remain unresolved.

The revised narrative describes each vessel as having a volume of “1,370 standard cubic feet,” while the SSM Worksheet labels the input “1,370 ft³.” Physical vessel volume and standard gas quantity are not interchangeable, particularly where the record does not distinguish gross vessel volume, free-gas volume, the volume occupied by CDS Vessel Media, void volume within that media, connected piping or manifold volume, operating pressure and temperature, and the

standard temperature and pressure basis. Draft A107 uses 379.4 scf/lb-mol in its VOC equation, while A601.F uses 359 ft³/lb-mol in its SO₂ calculation. The permit does not identify the temperature and pressure conventions that explain the difference.

The SSM Worksheet assumes a natural-gas density of 0.043 lb/scf, two percent VOC by weight, and ninety-eight percent methane by weight. The tariff attached to the revised application does not state a total regulatory VOC percentage or the assumed two-percent weight fraction. Yet A107.D requires a “gas tariff sheet documenting the %VOC.” The public record does not identify the chromatogram, extended analysis, constituent calculation, or other data supporting the SSM Worksheet’s assumptions or explain how the permittee will calculate regulatory VOC from constituent concentrations.

The Statement of Basis describes approximately ninety-five CDS skids or blocks, each with two lead-and-lag vessels, and recognizes that the “desulfurization canister replacement process system” undergoing replacement must be isolated and purged to prevent uncontrolled venting of hydrocarbons and sulfur gases. Draft Statement of Basis at 2, § 16.K. The public materials do not disclose the exact or maximum CDS count; the complete onsite gas-treatment path; the lead-and-lag service sequence; the type, quantity, loading, arrangement, or sulfur-removal capacity of the CDS Vessel Media; the purge procedure; operating and purge pressures; the breakthrough or media-replacement criterion; or maintenance-vent monitoring. Existing equipment schedules, vessel-internal diagrams, and media schedules could identify the contents and gas-flow relationship of each vessel without requiring Applicant to create a new drawing or study. A110 requires annual outlet sampling of at least five percent of installed CDS units, but the public materials do not show that those normal-operation outlet samples measure the sulfur content or mass of gas discharged during maintenance venting, including CDS Vessel Media replacement if it occurs.

The requests concerning upstream or downstream Fuel-Treatment Components, as defined in Exhibit A, are not requests for offsite waste-disposal information. They ask a binary, source-identification question: whether any onsite gas-treatment component remains before or after the disclosed centralized system and, if so, whether servicing it creates another routine or predictable gas-release activity. That question bears directly on whether all emission units and SSM activities are represented.

D. The emissions inventory and modeling materials cannot presently be reconciled.

The public materials do not disclose how CDS SSM emissions are reconciled with the facility-wide VOC total. The revised application calculates approximately 124.01 tpy of VOC from normal SOFC operation. Draft Table 106.A authorizes 124.0 tpy for SOFC-1 through SOFC-2275, while A107 separately authorizes 0.34 tpy for routine or predictable SSM. Table 102.A nevertheless reports 124.0 tpy as the entire-facility potential emission rate and states that the figure includes fugitives and SSM. The record does not explain whether the 0.34 tpy is included in, added to, or excluded from the 124.0-tpy figure.

Table 102.B contains an additional facial inconsistency. It lists benzene at 0.2 tpy, methanol at 1.2 tpy, xylenes at 0.7 tpy, and total HAPs at 1.4 tpy. The listed values total 2.1 tpy. The application and Modeling Review Report instead identify xylenes at approximately 0.066 or 0.07 tpy and total HAPs at approximately 1.42 tpy, suggesting that the 0.7-tpy entry may be a decimal-place error. The table's footnote says only individual HAPs greater than one tpy are listed, although the table lists benzene and xylenes below that amount. This motion does not seek broad HAP discovery; it seeks NMED's correction or reconciliation of its own draft table and the inventory relied upon.

The Modeling Review Report identifies the modeled emission sources as the 2,275 fuel-cell stacks and does not visibly identify CDS startup or maintenance vents as modeled sources.

Modeling Review Report at 2–4. It says that potential impacts from ozone and the listed HAPs were evaluated, but the visible discussion of HAPs compares emission totals to federal major-source thresholds rather than presenting ambient concentrations. The record does not show whether CDS release parameters were included in the modeling or why they were excluded.

The Modeling Review Report states that the project-specific eight-hour ozone concentration is 1.546 $\mu\text{g}/\text{m}^3$ against a 1.96- $\mu\text{g}/\text{m}^3$ significance level. *Modeling Review Report* at 6. The Statement of Basis states that the resulting concentration is 0.18 $\mu\text{g}/\text{m}^3$. Draft Statement of Basis at 8–9. Both values are below the stated level, but they differ materially and are not reconciled. The displayed per-stack source rates in Table 2 of the Modeling Review Report are also rounded so coarsely that multiplying them by 2,275 does not reproduce the stated facility totals. Native modeling files and full-precision source rates are therefore necessary to determine which values were actually used.

E. The July 13 and July 16 materials and native files are specifically identifiable.

The Statement of Basis identifies a July 13, 2026 Department communication to Applicant and a July 16 Applicant response. Those records are not speculative categories; they are discrete communications already in NMED’s possession and directly associated with development of the July 29 draft. The native calculation file underlying the SSM Worksheet, existing technical attachments, and native model files are likewise identifiable. Producing those records is substantially less burdensome than requiring the parties to reconstruct calculations from rounded PDF tables.

V. APPLICANT’S DISCOVERY RESPONSE AND THE NMED SCHEDULING RESPONSE DO NOT DEFEAT THIS MOTION.

A. Applicant’s examples of overbreadth are not present here.

Applicant criticizes requests concerning water use and discharge, pipeline appeals, fuel-cell raw materials, scandium supply, manufacturing capacity, corporate backlog, financing, and project-wide completion risks. Applicant's Discovery Response at 5–8, 10–11. Exhibit A seeks none of those subjects. It is confined to the SSM Worksheet and underlying calculation, proposed Conditions A107 and A110, the onsite gas-treatment path and CDS Vessel Media information necessary to identify emission units and quantify venting, supporting gas-composition data, and the corresponding inventory and modeling treatment.

The requests are also framed as “records sufficient to establish” specified facts, not unrestricted demands for every document “related to” a broad subject. They contain a project-specific temporal and subject-matter scope, permit exact incorporation, and do not require creation of new records. Applicant's burden examples therefore do not describe this motion.

B. Mr. Maxwell followed the sequence Applicant says the other requests omitted.

Applicant argues that the earlier requestors should have waited until the July 29 release, conferred, and explained why the resulting record remained incomplete. *Id.* at 3–4. Mr. Maxwell did wait and sought concurrence before filing. The motion identifies why each category is relevant and why it cannot be answered from the published record.

C. NMED's stated filing practice confirms that the identified materials will not otherwise be available before the affirmative-case deadline.

Section III.B explains why NMED counsel's “not fully compiled” description and NMED's historical filing practice do not alter the operative definition of Administrative Record or the independent requirement that it remain available for public review at all times. The NMED Scheduling Response is significant here for a narrower, nonduplicative reason: it confirms that, absent an order, NMED does not expect opposing parties to receive the Administrative Record before NMED's August 24 technical filing. Because Mr. Maxwell's complete affirmative technical

testimony and supporting materials are due that same day, the identified records are not otherwise reasonably obtainable in time for that filing. That timing supports the limited prehearing access requested here and, if materially responsive information is nevertheless produced after the deadline, the narrowly tailored supplementation remedy.

D. Public-domain information does not answer site-specific questions.

Applicant states that general information about fuel-cell operation is available on Bloom's website and elsewhere. *Id.* at 10–11. Exhibit A does not ask how a generic fuel cell works. It asks for the site-specific CDS count, flow configuration, information concerning the vessels and CDS Vessel Media, piping inventory, purge procedure, gas analyses, monitoring points, and calculation files underlying this permit. A generic website cannot establish those project-specific facts.

E. Simultaneous technical-testimony disclosures cannot supply materials needed for the affirmative case due the same day.

NMED states that Statements or Notices of Intent “take the place of discovery” and that parties ordinarily develop rebuttal after reviewing one another's filings. *NMED Scheduling Response* at 3. Section 20.1.4.300(B)(1) prescribes what each party must disclose in its own technical filing. It does not state that simultaneous filings supersede the Administrative Record definition, the requirement of availability at all times, the Hearing Officer's authority to obtain admissions and simplify issues, or the July 29 determination that discovery should be allowed upon an appropriate order.

More fundamentally, all parties' complete direct technical testimony and supporting materials are due August 24. Material first disclosed in NMED's or Applicant's August 24 filing cannot be reviewed, supplied to a witness, analyzed, incorporated into calculations, or attached to Mr. Maxwell's affirmative filing due that same day. NMED's suggested procedure may identify subjects for rebuttal, but it does not provide the information necessary to prepare the affirmative

case that Section 20.1.4.400(A)(1) requires a challenger to present concerning an allegedly inadequate condition.

Applicant likewise suggests that gaps can be addressed through testimony and cross-examination. *Applicant's Discovery Response* at 9. But Section 20.1.4.400(B)(2) generally bars introduction of technical information during examination unless it was placed in the Hearing Record by the technical-testimony deadline, except for impeachment or rebuttal. Cross-examination can test a disclosed basis; it cannot substitute for timely access needed to identify the issue, calculate its significance, prepare exhibits, and satisfy the burden of going forward.

F. The benefit of the requested information outweighs the burden.

The requested information will determine whether the factor-of-ninety-five issue is a drafting error or a substantive compliance-method error; whether the 0.34-tpy limit rests on an enforceable no-overlap restriction; whether the one-half-ton exemption was evaluated by combining similar activities; whether the assumptions concerning vessel volume, CDS Vessel Media, gas composition, and standard conditions are supported; whether sulfur-bearing venting during maintenance—including depressurization, purging, CDS Vessel Media replacement if it occurs, and recommissioning—is monitored or calculated; and whether the inventory and modeling include the sources and rates actually authorized. Resolving those matters before testimony will narrow the hearing, reduce surprise, and permit stipulations or corrections. The likely benefit is substantial, while the burden is limited to existing, specifically identified records and concise answers.

VI. THE REQUESTED PROCEDURE AVOIDS DELAY AND PROTECTS LEGITIMATE INTERESTS.

Exhibit A and the proposed order require access to the Administrative Record in the organization by which NMED presently keeps and uses it, permit identification by exact prior

response or record, Administrative Record number, Bates range, native file name, folder or file identifier, or accessible electronic location, and require rolling access as additional public records are used in the evaluation. They do not require disclosure of internal network paths. They also permit rolling production of ordered discovery; native-file production only where such files exist; separate, particularized objections; protection of privilege; limited confidentiality or security redactions that preserve the intelligibility of responsive technical information; and an expedited protective-order procedure. They do not require depositions, onsite inspections, new testing, new modeling, new diagrams, or creation of new engineering studies.

The requested supplementation provision is equally narrow. It applies only to materially responsive information produced too late for reasonable use by August 24, and any supplement must remain within the subject matter of the delayed production. Applicant and NMED may address it in rebuttal or seek a targeted adjustment upon a particularized showing. That procedure is less disruptive than forcing incomplete testimony followed by avoidable disputes at the hearing.

VII. EXPEDITED BRIEFING IS NECESSARY.

The ordinary fifteen-day response and ten-day reply periods under 20.1.4.200(D)(4)–(5) would extend beyond, or unreasonably close to, the August 24 technical-testimony deadline. Mr. Maxwell requests that responses be filed by 5:00 p.m. on Wednesday, August 5, 2026, and that any reply be filed by 5:00 p.m. on Friday, August 7, 2026. The issues have already been substantially briefed in Applicant’s July 31 Discovery Response, and the present motion narrows rather than expands the subjects.

VIII. CONCURRENCE.

On July 31, 2026, Mr. Maxwell sought concurrence by email from the parties and counsel. NMED and Applicant oppose the motion. No other party responded before the motion was served and filed.

IX. CONCLUSION AND PRAYER FOR RELIEF.

The relief requested is a targeted effort to obtain the technical basis of proposed permit conditions that NMED itself states it could not fully verify and to reconcile facial conflicts among the revised application, Draft Permit, Statement of Basis, and Modeling Review Report. Applicant's July 31 objections to broad, unrelated discovery do not apply to this narrowed request. Timely disclosure and clarification will assist the Hearing Officer in fully eliciting the facts, simplify the hearing, and permit meaningful compliance with the August 24 testimony deadline.

WHEREFORE, Mr. Maxwell respectfully requests that the Hearing Officer enter the accompanying proposed order granting the relief stated in Part I and Exhibit A, or, at minimum, the limited alternative relief stated above; establish the expedited briefing schedule; and grant such further procedural relief as is necessary for a fair and efficient hearing.

Respectfully submitted,

By -s- Nicholas Maxwell

Mr. Nicholas R. Maxwell

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Hobbs, New Mexico 88241

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of my Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record Materials, Targeted Admissions, and, in the alternative, Limited Discovery was served by email on the persons listed below on August 3, 2026, with a hard copy mailed upon request:

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-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell

EXHIBIT A
LIMITED PREHEARING REQUESTS AND, IN THE ALTERNATIVE, DISCOVERY

I. DEFINITIONS AND GENERAL INSTRUCTIONS.

1. **“Application”** means Air Quality Permit Application No. NSR 10883, including revisions and supporting materials submitted for the YGI Microgrid.
2. **“Administrative Record Material”** means a public record used by the Division in evaluating the Application within the meaning of 20.1.4.7(A)(2) NMAC, whether or not it has been indexed, Bates-numbered, or included in the set forwarded to the Hearing Clerk.
3. **“CDS”** means each Central Desulfurization System proposed for the YGI Microgrid, together with the two vessels described in the revised Application and the associated sulfur-removal media, piping, valves, bypasses, pressure regulators, purge and blowdown connections, vents, relief devices, sampling points, and breakthrough-detection equipment.
4. **“CDS Activity”** means initial commissioning, startup, shutdown, isolation, lead-and-lag role change, depressurization, blowdown, purging, CDS Vessel Media replacement, breakthrough response, recommissioning, or return to service.
5. **“CDS Vessel Media”** means the sulfur-removal adsorbent or other sulfur-removal material contained inside either vessel of a CDS.
6. **“Energy Server”** means one Bloom Energy fuel-cell power-generation unit proposed for the YGI Microgrid, and **“Energy Servers”** means two or more such units.
7. **“Fuel-Treatment Component”** means any item of equipment located at the proposed facility, between the facility natural-gas inlet and the point of final fuel use within an Energy Server, that filters the gas; separates liquids; heats it; regulates its pressure; removes sulfur or other constituents; provides guard, polishing, or other supplemental treatment after another onsite treatment stage; or otherwise conditions the gas for delivery to an Energy Server. The term includes such onsite equipment whether located upstream or downstream of a disclosed CDS. It excludes (a) pipeline or gas-treatment equipment located outside the proposed facility and (b) equipment used to manufacture or assemble Energy Servers, CDS units, or other project components, whether that manufacturing or assembly equipment is located onsite or offsite.
8. **“Responsive Record”** means existing recorded information, including electronically stored information, within the responding party’s possession, custody, or control.
9. **“SSM Worksheet”** means the one-page worksheet included as page 1 of Applicant’s May 2026 revisions to the Application and titled “Startup, Shutdown, and Maintenance Emissions (SSM) - Exempt Pursuant 20.2.72.202.B(5) NMAC,” which displays the CDS startup and maintenance calculations using ninety-five CDS units and a 1,370-ft³ vessel input. The term refers to that publicly filed worksheet; it does not include any native, predecessor, revised, corrected, or supporting file unless a request expressly seeks such material.
10. Unless a request states otherwise, these requests are limited to Responsive Records concerning the current Application, the proposed facility design, or NMED’s review of Permit No. NSR 10883. They include responsive materials created, submitted, received, relied upon, or used through completion of the response and any ordered rolling production, regardless of date, if they bear on the Application, Draft Permit, Statement of Basis, modeling, emissions inventory, or any calculation at issue.
11. A request for a calculation includes the native spreadsheet, workbook, model, or electronic file with formulas intact, together with existing inputs, assumptions, notes, supporting data, and versions sufficient to understand the calculation and any change in its result.

12. A responding party may incorporate a complete prior response or production by identifying the exact response, Responsive Record, Bates range, Administrative Record number, native file name, folder or file identifier, or electronic location sufficient to permit prompt access. This instruction does not require disclosure of an internal network path.
13. A responding party need not reproduce a Responsive Record already available to all parties if it is specifically identified and remains accessible.
14. If no Responsive Record exists after a reasonable search, the response shall state that fact. These requests do not require creation of a new record, drawing, engineering study, test, or calculation.
15. These requests do not seek privileged attorney-client communications, attorney work product, internal legal advice, or internal communications that contain no responsive technical facts.
16. These requests do not seek information concerning water rights or use, pipeline rights-of-way or appeals, raw-material supply, manufacturing capacity, project financing, corporate backlog, or offsite waste disposal.
17. Production may occur on a rolling basis. Immediately available responsive material should not be withheld until every response is complete. For NMED, rolling access includes prompt access to additional public records after they are used by the Division in evaluating the Application, without awaiting completion of a final index or transmission set.
18. A responding party may redact unrelated confidential-business, physical-security, or cybersecurity information, provided the responsive process configuration, equipment relationships, valves, vents, bypasses, purge paths, treatment stages, gas-distribution paths, and monitoring points remain understandable. Each redaction or withholding shall identify its general nature and basis. A party asserting confidentiality may promptly seek protective relief.
19. For each interrogatory, request for production, and request for admission, the responding party shall state its answer, response, or objection separately. An objection shall state whether responsive information is being withheld and the particular basis for withholding it.
20. An editable courtesy copy may be used for responses. In the event of any discrepancy, the filed PDF version of Exhibit A controls.

II. ADMINISTRATIVE RECORD ACCESS REQUEST TO NMED.

Administrative Record Access Request No. 1 — Current organization and rolling access.

Make available for public review the Administrative Record as it presently exists, including all Administrative Record Materials already used by the Division in evaluating the Application. Provide the materials in, or identify them by reference to, the current organization NMED uses to identify and retrieve them, including any existing working index, log, folder listing, electronic directory listing, or equivalent organizational aid to the extent it identifies Administrative Record Materials. Identify the physical or electronic location and access method for any portion not directly produced. As additional public records are used in the evaluation, provide prompt rolling access without awaiting completion of a final index or transmission set. This request does not seek access to NMED's internal network or systems, require creation of a new index, or require duplication of a Responsive Record already specifically identified and accessible.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

III. INTERROGATORIES TO NMED.

NMED Interrogatory No. 1 — SSM Worksheet and proposed Condition A107.

State whether NMED agrees that the SSM Worksheet derives:

- a. 780,900 scf by multiplying ninety-five CDS units by two vessels, three purge cycles, and 1,370 scf; and
- b. 520,600 scf by multiplying ninety-five CDS units by one vessel, four purge cycles, and 1,370 scf.

State whether NMED considers those figures facility-wide totals, per-CDS quantities, per-vessel quantities, or another defined quantity. State the technical or drafting basis for A107.D's description of each figure as the volume from one event at one CDS, and state whether NMED intends to revise that language.

State whether the SSM Worksheet calculations produce pounds per event or pounds per hour. If NMED considers them hourly rates, identify the event duration, maximum vent flow, concurrency assumption, and calculation supporting that interpretation.

State how A107.D and A107.E are intended to operate together, including whether they are alternative compliance methods, cumulative requirements, or otherwise; identify any election mechanism; and state whether NMED intends to retain or revise either provision.

ANSWER OR OBJECTION:

NMED Interrogatory No. 2 — Verified assumptions, potential emissions, gas composition, and overlapping activities.

For purposes of this request, "verified" means confirmed by NMED through review of an identified technical record or calculation, rather than merely repeated from Applicant. Identify which of the following assumptions NMED has verified, which it has not verified, and the records supporting any verification:

- a. the meaning and basis of the 1,370 figure per vessel, including whether it is expressed as scf or ft³ and whether it represents gross internal vessel volume, free-gas volume, volume occupied by CDS Vessel Media, void volume within the CDS Vessel Media, connected-piping or manifold volume, a standard gas quantity, or another measure;
- b. the temperature and pressure basis for standard cubic feet and the reason A107 uses 379.4 scf/lb-mol while A601.F uses 359 ft³/lb-mol;
- c. three startup purge cycles per vessel;
- d. four maintenance purge cycles per vessel;
- e. maintenance of only one vessel per CDS every two years;
- f. no startup and maintenance within the same rolling twelve-month period;
- g. two percent VOC by weight;
- h. ninety-eight percent methane by weight;
- i. 0.043 lb/scf natural-gas density;
- j. no additional venting from connected piping, role change, depressurization, or recommissioning;
- k. that shutdown produces no separate release, or that any shutdown release is fully represented by another disclosed scenario; and

- l. that the Transwestern tariff documents the percentage of VOC in the natural gas or supports the assumed two-percent VOC weight fraction.

Explain whether NMED considers the tariff sufficient to satisfy A107.D's recordkeeping requirement for a "gas tariff sheet documenting the %VOC." If not, identify the record NMED intends the permittee to maintain and explain how regulatory VOC will be calculated from that record.

Explain how NMED determined the potential emission rate and applicability of 20.2.72.202(B)(5) NMAC, including how identical or similar CDS activities were combined and how the permit will assure compliance with the 0.34-tpy VOC limit if startup and maintenance are physically capable of occurring within the same rolling twelve-month period.

ANSWER OR OBJECTION:

NMED Interrogatory No. 3 — Fuel-treatment architecture, CDS quantity, lead-and-lag operation, and maintenance-vent monitoring.

Describe NMED's present understanding of the onsite natural-gas path from the facility inlet through delivery to the Energy Servers, including:

- a. each disclosed onsite treatment stage;
- b. whether any facility-wide or regional Fuel-Treatment Component is located upstream of the approximately ninety-five CDS skids or blocks;
- c. whether any Fuel-Treatment Component remains downstream of those CDS units;
- d. whether the CDS units receive gas from a common untreated or pretreated header;
- e. NMED's current understanding of the design count and the maximum number of CDS units that could be installed or operated under the Draft Permit as written;
- f. whether all CDS units are expected to be identical with respect to parameters material to emissions, including manufacturer, model, capacity, vessel size, operating pressure, CDS Vessel Media type and quantity, and configuration; and
- g. the Energy Servers, clusters, and project areas served by each CDS or CDS class, and the generating capacity and maximum gas flow associated with each CDS or CDS class.

State why the revised narrative describes the CDS quantity as "approximately ninety-five" while the SSM Worksheet uses exactly 95. State whether NMED understands the two vessels within each CDS to operate in series, in parallel, or in another arrangement, whether the vessels exchange lead and lag roles after maintenance, and the technical basis for the assumption that only one vessel per CDS is maintained every two years.

Explain whether proposed Conditions A107, A110, or A601 require measurement or calculation of: (a) actual maintenance-vent gas volume, flow rate, and duration; (b) the concentration or mass of total sulfur, hydrogen sulfide, or mercaptan sulfur; or (c) the volume, mass, or pollutant content of releases occurring during depressurization, vessel opening, CDS Vessel Media replacement, and recommissioning. Identify the monitoring point and method NMED contends will demonstrate compliance for maintenance-vent emissions. Also explain how CDS units will be selected or rotated for the annual sampling of at least five percent of installed units under A110, and identify the sulfur concentration or other result that would require corrective action, CDS Vessel Media replacement, additional sampling, or other response.

ANSWER OR OBJECTION:

NMED Interrogatory No. 4 — Emissions inventory, Table 102, and modeling reconciliation.

State whether CDS startup, shutdown, maintenance, blowdown, purging, or related venting was included in:

- a. the facility-wide emissions inventory;
- b. the 124.0-tpy or 124.01-tpy VOC total;
- c. Table 102.A and Table 106.A;
- d. the air-dispersion modeling; and
- e. the ozone analysis.

For each included activity, identify the source identifier, pollutant, numerical emission rate at the precision used in the inventory or model, release parameters, operating scenario, and native inventory or modeling file. If excluded, state the basis for exclusion.

Reconcile:

- a. Table 102.A's statement that 124.0 tpy VOC includes fugitives and SSM with Table 106.A's 124.0-tpy SOFC limit and A107's separate 0.34-tpy SSM limit;
- b. Table 102.B's statement that only individual HAPs greater than 1.0 tpy are listed with its inclusion of benzene at 0.2 tpy and xylenes at 0.7 tpy;
- c. Table 102.B's 0.7-tpy entry for xylenes and 1.4-tpy total HAP entry with the Application and Modeling Review Report values of approximately 0.066 or 0.07 tpy xylenes and 1.42 tpy total HAPs;
- d. the Statement of Basis ozone value of 0.18 $\mu\text{g}/\text{m}^3$ with the Modeling Review Report value of 1.546 $\mu\text{g}/\text{m}^3$; and
- e. the rounded per-stack rates displayed in Table 2 of the Modeling Review Report with the stated facility totals.

ANSWER OR OBJECTION:

IV. REQUESTS FOR PRODUCTION TO NMED.

NMED Request for Production No. 1 — July 13 and July 16 materials.

Produce or provide direct electronic access to NMED's complete July 13, 2026 communication to Applicant and Applicant's complete July 16, 2026 response, including attachments, spreadsheets, calculations, diagrams, embedded files, corrections, and supplements.

RESPONSE OR OBJECTION:

NMED Request for Production No. 2 — Native SSM and inventory calculations.

Produce any native workbook or calculation file in NMED's possession underlying the SSM Worksheet, together with revised, corrected, or annotated versions; ordinary file metadata available without forensic recovery, including file name, author, creation and modification dates,

and existing version information; existing comments and transmittal records ordinarily maintained with the file; and any native inventory workbook used to reconcile normal-operation, SSM, fugitive, HAP, and facility-total emissions.

RESPONSE OR OBJECTION:

NMED Request for Production No. 3 — Operational, architectural, and gas-composition support.

Produce nonprivileged technical records received from Applicant or its consultants, or otherwise used by NMED in evaluating the Application, sufficient to establish the complete onsite natural-gas path; upstream and downstream Fuel-Treatment Components; the current design count and the maximum number of CDS units that could be installed or operated under the Draft Permit as written; CDS equipment classes and allocation; vessel and connected-piping volumes; operating and purge pressures; purge gas, cycles, flow rate, duration, and sequence; lead-and-lag operation; whether CDS Vessel Media replacement occurs and, if so, its frequency; the basis for excluding overlapping startup and maintenance; any basis for assigning zero or no separate emissions to shutdown; and the natural-gas density, VOC fraction, methane fraction, constituent composition, and standard conditions used in or supporting the calculation displayed in the SSM Worksheet.

RESPONSE OR OBJECTION:

NMED Request for Production No. 4 — Technical basis for A107 and A110.

Produce nonprivileged technical calculations, records received from Applicant or its consultants, and communications with Applicant sufficient to show the factual and engineering basis for the 780,900- and 520,600-scf figures; the 570- and 380-purge limits; the 0.34-tpy VOC limit; the relationship between A107.D and A107.E, including any asserted alternative compliance methods; A107's annual extended inlet-gas analysis and "gas tariff sheet documenting the %VOC" requirements; and the sulfur-monitoring requirements in A110.

RESPONSE OR OBJECTION:

NMED Request for Production No. 5 — CDS Vessel Media, sulfur monitoring, and native modeling.

Produce technical records concerning sulfur-breakthrough criteria and CDS Vessel Media replacement criteria, outlet-sulfur specifications, interstage or outlet monitoring, alarms, and monitoring or calculation of maintenance-vent emissions. Produce the native AERMOD, BPIP, AERMAP, MERP, or related modeling input and output files sufficient to determine the full-precision source rates, the ozone value used, and whether and how CDS emissions were represented.

RESPONSE OR OBJECTION:

V. INTERROGATORIES TO APPLICANT.

Applicant Interrogatory No. 1 — Complete fuel-treatment architecture, CDS quantity, and allocation.

Describe Applicant's current proposed design for onsite natural-gas treatment from the facility inlet through delivery to the Energy Servers. State:

- a. each treatment, conditioning, filtration, liquid-separation, heating, pressure-regulation, sulfur-removal, guard, or polishing stage;
- b. whether any facility-wide, regional, or other Fuel-Treatment Component is upstream of the disclosed CDS units and whether those units receive untreated pipeline gas or gas already treated onsite;
- c. whether any Fuel-Treatment Component remains downstream of a CDS unit, including equipment located adjacent to or within an Energy Server;
- d. whether the CDS units are connected to a common untreated or pretreated header, arranged only in parallel, arranged in multiple treatment tiers, or arranged otherwise;
- e. the current design count and the maximum number of CDS units that could be installed or operated under the Draft Permit as written;
- f. why the narrative states "approximately ninety-five" while the SSM Worksheet uses exactly 95;
- g. whether all CDS units are identical with respect to parameters material to emissions and, if not, each materially different CDS class;
- h. the Energy Servers, clusters, and project areas served by each CDS or CDS class, and the generating capacity and maximum gas flow associated with each CDS or CDS class; and
- i. whether any CDS unit is spare, standby, redundant, partially loaded, or available for alternate routing, and whether the count or configuration may change by construction phase or final equipment mix.

For each Fuel-Treatment Component identified upstream or downstream of the CDS units, state its type, location, number, service interval, and associated isolation, purging, blowdown, venting, servicing, or replacement activity.

ANSWER OR OBJECTION:

Applicant Interrogatory No. 2 — Lead-and-lag sequence.

State whether the two vessels in each CDS operate in series, parallel, or another arrangement and whether their lead and lag roles are interchangeable. If roles are interchangeable, describe the normal flow path, how the lag vessel becomes lead, how the serviced vessel becomes the new lag, whether one vessel remains online, whether flow through a physical vessel reverses, each bypass or crossover path, and venting or purging associated with changeover. If roles are fixed, explain which vessel is maintained every two years, what that maintenance entails, when the other vessel is maintained, and where emissions from servicing each vessel are included. State whether maintenance of either vessel includes CDS Vessel Media replacement.

ANSWER OR OBJECTION:

Applicant Interrogatory No. 3 — Maintenance and purge sequence.

Describe each step beginning with isolation of a vessel for maintenance and ending with return to service. State whether the maintenance includes CDS Vessel Media replacement. For

each blowdown or purge step, identify the gas used; expected and maximum pressure; expected and maximum gas volume at standard conditions; flow rate; duration; flow direction; destination; and whether the stream is recovered, controlled, combusted, or vented to the atmosphere. If the maintenance includes CDS Vessel Media replacement, also identify whether each blowdown or purge step occurs before or after that replacement. State specifically whether the four maintenance purge cycles consist of one pre-maintenance blowdown and three post-maintenance purges or another sequence.

ANSWER OR OBJECTION:

Applicant Interrogatory No. 4 — SSM Worksheet quantities, hourly rate, and preparation.

Confirm or correct that 780,900 scf is the SSM Worksheet total for startup of all ninety-five CDS units; 8,220 scf is the corresponding quantity for startup of one CDS; 520,600 scf is the SSM Worksheet total for maintenance across all ninety-five CDS units; and 5,480 scf is the corresponding quantity for maintenance of one vessel at one CDS. Explain any different interpretation and reconcile the SSM Worksheet with A107.D's description of 780,900 and 520,600 scf as quantities from one event at one CDS.

State whether the SSM Worksheet values labeled "lb/hr" are pounds per event or pounds per hour. If they are hourly rates, identify the event duration, flow, concurrency, and calculation. State how the calculation would change if the final or maximum CDS quantity differs from ninety-five or if CDS units are not materially identical.

Identify the person or persons principally responsible for preparing and approving the SSM Worksheet. For each, state the employer, title, role, technical inputs or assumptions supplied or reviewed, and whether the person relied upon site-specific CDS design information, equipment specifications, process diagrams, or operating and purge procedures.

ANSWER OR OBJECTION:

Applicant Interrogatory No. 5 — Startup, shutdown, maintenance overlap, and potential emissions.

Identify any physical restriction, manufacturer requirement, operational limitation, construction-sequencing restriction, or enforceable permit condition supporting the statement in the SSM Worksheet that startup and maintenance cannot occur within the same rolling twelve-month period. State whether startup of later-installed CDS units can occur during maintenance of previously operating CDS units. Identify each routine or predictable CDS Activity included in the 0.34-tpy VOC limit and explain how similar activities were combined in evaluating the one-half-ton exemption. State whether shutdown creates a separate gas release and, if no separate shutdown emissions were calculated, identify the basis for assigning zero emissions or treating the release as included in another scenario.

ANSWER OR OBJECTION:

Applicant Interrogatory No. 6 — Vessel-volume, standard-condition, and gas-composition basis.

State what the 1,370 figure used in the SSM Worksheet represents, including whether it is expressed as scf or ft³ and whether it is gross internal vessel volume, free-gas volume, volume occupied by CDS Vessel Media, void volume within the CDS Vessel Media, a standard gas quantity, or another measure. Identify the standard temperature and pressure basis used in the SSM Worksheet; the operating and purge pressures and temperatures relevant to that calculation; any connected piping or manifold volume included in or excluded from the 1,370 figure; the source of the 0.043-lb/scf density used in the SSM Worksheet; each tariff sheet, chromatogram, extended analysis, constituent analysis, or other record supporting the SSM Worksheet's two-percent-VOC assumption; the calculation converting constituent analysis into regulatory VOC weight percent; whether the Transwestern tariff itself states a total VOC percentage; the source of the SSM Worksheet's ninety-eight-percent-methane assumption; and the basis for using 379.4 scf/lb-mol in A107 versus 359 ft³/lb-mol in A601.F.

ANSWER OR OBJECTION:

Applicant Interrogatory No. 7 — Sulfur breakthrough and maintenance emissions.

State any criterion that would require CDS Vessel Media replacement; how breakthrough or exhaustion is detected; whether an interstage or outlet sulfur monitor is installed; the expected sulfur loading, breakthrough status, or other condition of the CDS Vessel Media in the lead vessel if replacement occurs; whether the maintenance vent is sampled or monitored; whether total sulfur, hydrogen sulfide, or mercaptan emissions from maintenance are calculated; where emissions from depressurization, purging, opening, and recommissioning are included in the Application and proposed permit; and, if CDS Vessel Media replacement occurs, where emissions from that activity are included.

ANSWER OR OBJECTION:

VI. REQUESTS FOR PRODUCTION TO APPLICANT.

Applicant Request for Production No. 1 — Process and gas-distribution diagrams.

Produce existing site-specific process-flow diagrams, piping and instrumentation diagrams, valve diagrams, gas-distribution diagrams, diagrams showing the interior of each CDS vessel, cutaway diagrams, and equipment schedules. Also produce any existing equipment schedule, media schedule, specification, data sheet, loading record, or other Responsive Record that identifies or specifies the CDS Vessel Media contained inside each CDS vessel. The records produced must be sufficient to show the facility inlet; custody-transfer, metering, filtering, separation, heating, and pressure-regulation equipment; upstream and downstream Fuel-Treatment Components; common headers; each CDS or CDS class; the two vessels of each CDS; the location, quantity, type, arrangement, and relationship of the CDS Vessel Media to the direction and path of gas flow through each vessel; normal and role-change flow; crossover and bypass piping; isolation valves; purge and blowdown lines; vent and relief points; sulfur-sampling and breakthrough-monitoring points; and the distribution of gas to Energy Servers, including the clusters or project areas served by each distribution path, and the generating capacity and maximum gas flow associated with each distribution path.

RESPONSE OR OBJECTION:

Applicant Request for Production No. 2 — CDS quantity, classes, and specifications.

Produce specifications, data sheets, design-basis records, equipment schedules, and allocation records sufficient to establish the current design count and the maximum number of CDS units that could be installed or operated under the Draft Permit as written; manufacturer and model of each CDS or CDS class; materially different configurations; vessel dimensions; gross internal vessel volume; free-gas volume; volume occupied by CDS Vessel Media; void volume within the CDS Vessel Media; operating and purge pressures and temperatures; CDS Vessel Media manufacturer or product designation, type, quantity or mass loaded per vessel, arrangement or bed depth, and sulfur-removal capacity; rated gas flow; spare or standby status; and the Energy Servers, clusters, and project areas served by each CDS or CDS class, and the generating capacity and maximum gas flow associated with each CDS or CDS class.

RESPONSE OR OBJECTION:

Applicant Request for Production No. 3 — Native calculations, authorship history, and supporting inlet-gas data.

Produce in native format the calculation displayed in the SSM Worksheet and existing supporting workbooks, tariff sheets, inlet-natural-gas chromatograms, extended analyses, constituent analyses, emission factors, VOC-speciation calculations, inventory workbooks, assumptions, revisions, and corrected versions relied upon to support that calculation and reconcile it with Tables 102.A, 102.B, 106.A, and A107. Include ordinary file metadata available without forensic recovery, existing comments and version information, and transmittal records sufficient to identify the principal preparers and approvers.

RESPONSE OR OBJECTION:

Applicant Request for Production No. 4 — Operating procedures.

Produce any existing site-specific, manufacturer-supplied, draft, or proposed procedures relied upon for initial CDS commissioning; startup; shutdown; vessel isolation and blowdown; startup purging; maintenance purging; vessel maintenance; CDS Vessel Media replacement, if applicable; lead-and-lag role changes; recommissioning; and return to service.

RESPONSE OR OBJECTION:

Applicant Request for Production No. 5 — Sulfur breakthrough and monitoring.

Produce existing records sufficient to establish sulfur-breakthrough criteria and CDS Vessel Media replacement criteria; interstage and outlet monitoring; alarms and response; outlet-sulfur specifications; selection or rotation of CDS units for annual sampling; sulfur concentrations or other results requiring corrective action, CDS Vessel Media replacement, additional sampling, or other response; and monitoring or calculation of maintenance-vent emissions.

RESPONSE OR OBJECTION:

Applicant Request for Production No. 6 — Activity overlap and phased installation.

Produce existing CDS-specific installation, commissioning, and maintenance schedules or planning records sufficient to determine the anticipated period of CDS installation and commissioning; CDS quantity and configuration by construction phase; whether startup of later units may overlap with operation or maintenance of earlier units; and the earliest anticipated vessel-maintenance date or period, including any anticipated CDS Vessel Media replacement date or period. This request does not seek the overall project construction schedule except to the extent it contains those CDS-specific facts.

RESPONSE OR OBJECTION:

Applicant Request for Production No. 7 — Upstream and downstream fuel-treatment components.

To the extent Applicant identifies a Fuel-Treatment Component upstream or downstream of the disclosed CDS units, produce existing specifications and operating or maintenance records sufficient to establish its type, manufacturer, model, capacity, location, relationship to the CDS units, gas flow rate, equipment served, service interval, and requirements for isolation, blowdown, purging, venting, servicing, and replacement.

RESPONSE OR OBJECTION:

VII. REQUESTS FOR ADMISSION TO APPLICANT.

Request for Admission No. 1.

Admit that the SSM Worksheet calculates 780,900 scf by multiplying ninety-five CDS units, two vessels per CDS, three purge cycles, and 1,370 scf per vessel.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 2.

Admit that, using the SSM Worksheet assumptions, startup of one CDS corresponds to 8,220 scf.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 3.

Admit that the SSM Worksheet calculates 520,600 scf by multiplying ninety-five CDS units, one vessel per CDS, four purge cycles, and 1,370 scf per vessel.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 4.

Admit that, using the SSM Worksheet assumptions, maintenance of one vessel at one CDS corresponds to 5,480 scf.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 5.

Admit that the SSM Worksheet assumes startup and maintenance will not occur within the same rolling twelve-month period.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 6.

Admit that, using the SSM Worksheet's stated startup and maintenance values, the VOC masses total 1,119.29 pounds, or 0.559645 tons.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 7.

Admit that proposed Condition A107 contains no provision stating that CDS startup and CDS maintenance may not occur within the same rolling twelve-month period.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 8.

Admit that the annual grab samples required by proposed Condition A110 are taken at the outlet of selected CDS units and are not samples of gas discharged from a maintenance vent during a purge event.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 9.

Admit that the Transwestern tariff included in the revised Application does not state a numerical total VOC concentration, total VOC mole fraction, or total VOC weight fraction for natural gas delivered to the proposed facility and does not state that the gas contains two percent VOC by weight.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

Request for Admission No. 10.

Admit that the revised Application narrative describes the number of CDS skids or blocks as "approximately ninety-five," while the SSM Worksheet uses exactly ninety-five CDS units in calculating both startup and maintenance emissions.

RESPONSE — ADMIT, DENY, QUALIFY, OR OBJECT:

For each Request for Admission denied or qualified, Applicant shall state the factual basis for the denial or qualification and identify any supporting Responsive Record produced previously or with the response.