

**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**

AQB 26-57

NO. 10883

OBJECTION AND MOTION TO STRIKE YGI'S REPLY

1. In the July 16, 2026 Scheduling Order and reiterated in the July 29, 2026 Amended Scheduling Order, at 3, ¶7, the Hearing Officer determined that discovery was warranted in this case.
2. New Mexico Environmental Law Center ("NMELC") and the Center for Biological Diversity's ("CBD") requested that the Hearing Officer require discovery be answered by Applicant Yucca Growth Infrastructure, LLC ("YGI" or "Applicant") on July 24, 2026.
3. New Energy Economy ("NEE") requested that the Hearing Officer require discovery be answered by Applicant in its First Request on July 27, 2026 and in its Second Request on July 28, 2026.
4. Applicant objected to those requests in its July 31st Response.
5. NEE's responded to Applicant's objections on August 3, 2026.
6. On August 7, 2026 Applicant replied *again* to NEE's discovery and to NMELC and CBD's discovery as well as.
7. NEE and NMELC (together "Movants") object and move to strike Applicant's second "reply" of August 7, 2026.
8. The Department's permitting procedures explicitly allow only for a party to respond to a motion, 20.1.4.200.D(4) NMAC, and the movant to reply to any response.

20.1.4.200.D(5) NMAC. Because this is the process the Department's regulations account for, it is assumed that, in the absence of a provision allowing for the Applicant's additional reply, the agency did not intend to allow for such a process. *See Cmtys. for Clean Water v. N.M. Water Quality Control Comm'n*, 2018-NMCA-024, ¶ 14, 413 P.3d 877 (Agency regulations are interpreted using the same canons of constructions used to interpret statutes).

9. Indeed, neither the Administrative Code or the general principles of administrative adjudication permit multiple substantive responses to the same motion absent leave of the Hearing Officer or an order expressly authorizing supplemental briefing. Movants are unaware of any court or administrative tribunal that permits a respondent to file a second response on the merits as a matter of right. To do so would confer an unwarranted procedural advantage on one party while depriving the opposing party of the orderly and predictable process required in contested adjudications.
10. If allowed to continue Applicant will take advantage of this process.
11. The position of the parties are as follows: Applicant opposes this motion. NMED takes no position regarding the objection and motion to strike. Wetherbee does not object to the motion. No other party responded before this motion was filed.

WHEREFORE, Movants respectfully request that the Hearing Officer strike Applicant's August 7, 2026 Reply as it regards the pending discovery requests of NEE and NMELC because it was filed without authorization and is inconsistent with the orderly administration of these proceedings. Allowing serial briefing without leave would grant Applicant an improper

procedural advantage and invite endless rounds of briefing whenever a party is dissatisfied with its original response.

Respectfully submitted this 10th day of August, 2026,

NEW ENERGY ECONOMY

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CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of August 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

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