

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF:

THE APPLICATION

AQB 26-57

OF YUCCA GROWTH INFRASTRUCTURE, LLC

FOR AN AIR QUALITY PERMIT

NO. 10883

ORDER

This matter having come before me on the Motion of New Energy Economy (NEE) to reconsider my Sua Sponte Order filed August 10, 2026 denying NEE's motion to dismiss this air quality permit application. In support of its motion NEE argues in part that in reaching my decision to deny the motion to dismiss I had impermissibly shifted the burden of proof to the Movant.

NEE is of course correct that Applicants bear the burden of demonstrating that the permit application before the Department satisfies the applicable requirements of the Air Quality Control Act and the Department's regulations. *See*, 20.2.70.302 NMAC. (Permit Content includes all permit conditions.)

NEE is, however, not correct in asserting that I have shifted the burden of proof in my Order. What the Sua Sponte Order of August 10, 2026 does is simply to shift the time when this matter should be heard.

Under the administrative permitting rules, all the parties submit their respective Statements of Intent ("SOI") by the deadline set in the rules or by order of the Hearing Officer. 20.1.4.300(B). Applicant's technical testimony is, therefore,

not due until August 24, 2026, which is only 12 days away.

Applicant is aware of the pipeline issue and that issue by necessity will factor in Applicant's technical testimony filed on the 24th. A motion to dismiss could be filed after that date and Applicant would have the burden of proving that it had the ability to provide the fuel necessary to operate the facility.

A hearing on a motion to dismiss would allow the parties to present evidence under oath and would also allow for cross-examination which would not be available if the issue were to be presented through briefing.

This decision is also consistent with the accepted principle that discovery is not allowed in air quality permit proceedings. See my Order of August 11, 2026.

For the reasons stated above NEE's motion to reconsider is denied.

Max Shepherd

Hearing Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

Zachary Ogaz
General Counsel
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
zachary.ogaz@env.nm.gov
christopherj.vigil@env.nm.gov
brian.yardman-frank@env.nm.gov
Counsel for NMED

Kelsea E. Sona
Robles, Rael & Anaya, P.C.
500 Marquette Ave NW. Suite 700
Albuquerque, NM 87102
kelsea@roblesrael.com
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
Carlos Romo
Williams Weese Pepple & Ferguson, P.C.
1801 California Street, Suite 3400
Denver, CO 80202
jbieber@williamsweese.com
cromo@williamsweese.com
Counsel for Applicant Yucca Growth Infrastructure, LLC

Colin Cox
Gail Evans
Center for Biological Diversity
P.O. Box 31417
Santa Fe, NM 87594
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org
Counsel for the Center for Biological Diversity

Mariel Nanasi
Christopher Dodd
New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
mnanasi@newenergyeconomy.org
chris@fayerbergdodd.com
Counsel for New Energy Economy

Maslyn Locke
Senior Staff Attorney
Eric Jantz
Legal Director
New Mexico Environmental Law Center
mlocke@nmelc.org
ejantz@nmelc.org
Counsel for Viviana Fuller and Jose Saldaña Jr.

Esperanza Chairez
Zephyr Jaramillo
YUCCA Policy Campaign Manager
esperanza@yuccanm.org
info@yuccanm.org
Youth United for Climate Crisis Action

Yiwei Chen
Economic Development New Mexico
P.O. Box 20003
Santa Fe, NM 87504-5003
yiwei.chen@edd.nm.gov
*Counsel for the New Mexico Economic
Development Department*

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

Isaiah Zemke
2300 Buena Vista SE, Suite 110
Albuquerque, NM 87106
izemke@smwlu49.org
*Counsel for Sheet Metal Workers
Local Union No. 49*

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

Courtenay Eichhorst
411 Arizona St.
Albuquerque, NM 87108
courtenaye@ualocal412.org
*Counsel for New Mexico Building
and Construction Trades Council*

Christine Dobbin
1 Cielo Azul
Anthony, NM 88021
dobbin.cc@gmail.com
Pro Se Intervenor

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

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

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

Mark Trujillo
Stephanie Maez
Electrical Workers, Local Union 611
markgtrujillo@ibew611.org
smaeznm@gmail.com
*Authorized Representatives for
IBEW Local Union 611*

Darrell Deaguero
Laborers' International Union
of North America
1030 San Pedro Dr. NE
Albuquerque, NM 87110
darrell.deaguero@liuna16.org
cc: mlor@liuna.org
Representative of LIUNA Local 16

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

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