

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

AQB 26-57(P)

**APPLICANT YUCCA GROWTH INFRASTRUCTURE, LLC'S RESPONSE TO
ORDER REQUESTING EXPEDITED BRIEFING ON A COROLLARY ISSUE**

I. Introduction

Applicant Yucca Growth Infrastructure, LLC (“Applicant” or “YGI”) files this response to the Hearing Officer’s August 19, 2026 order (“Order”) requesting expedited briefing on the issues raised in Section VI.(4) of Mr. Maxwell’s August 11, 2026 “Expedited Motion for Reconsideration and Clarification of August 11, 2026 Order and, in the Alternative, for Limited Modification of Technical Filing Procedure” (“Maxwell Expedited Motion”).

Mr. Maxwell asks the Hearing Officer to grant him the right to file responsive supplemental direct technical testimony—a filing no statute, regulation, or precedent recognizes. The Hearing Officer should deny this request because it is contrary to both the Amended Scheduling Order and the Part 4 permit procedures, which discourage “unnecessary, duplicative or wasteful pre-hearing activities.” 20.1.4.300(A)(3) NMAC. The Hearing Officer has already rejected a prior attempt by Mr. Maxwell to deviate from the procedures prescribed by Part 4 that govern conduct of permit proceedings. Order (Aug. 11, 2026). The Maxwell Expedited Motion is simply another such attempt, and the Hearing Officer should reject it.

Mr. Maxwell’s request lacks legal authority and demonstrates no prejudice. Mr. Maxwell cites no authority permitting responsive supplemental direct technical testimony in an air permit proceeding of this kind, nor any precedent allowing such supplemental testimony on the grounds

he asserts. Nor does he explain why existing procedures in Part 4, including the ability to submit rebuttal testimony and conduct cross-examination at the hearing itself, are insufficient to address new information that could not have been anticipated. Rather than curing prejudice, Mr. Maxwell's request creates it by granting one party the ability to submit an additional responsive filing outside the procedural bounds set forth in regulation.

Ultimately, Mr. Maxwell's request to deviate from the procedures and order of testimony prescribed by Part 4 is grounded in nothing more than a general disagreement with the structure of air permit hearings imposed by the regulations, not on any concern with this specific hearing or application. As in all hearings conducted under Part 4, all parties—including Mr. Maxwell—will have the opportunity to submit rebuttal testimony and cross-examine witnesses. The “prejudice” alleged by Mr. Maxwell is illusory.

II. Mr. Maxwell does not provide any statutory or regulatory authority to support his request.

Mr. Maxwell asks the Hearing Officer to modify the technical filing procedure in the Amended Scheduling Order so that he alone may supplement his direct technical testimony in response to information NMED or Applicant discloses “too late” for him to use in his August 24 filing. Specifically, Mr. Maxwell requests the ability to file supplemental testimony based on information available on or before August 24 by August 28, and any supplemental testimony based on later-disclosed information within five days of disclosure. Maxwell Expedited Motion at 9. Mr. Maxwell proposes that NMED and Applicant may respond in rebuttal or seek a corresponding adjustment, and that the September 14 hearing date remain unchanged absent a later finding that adjustment is necessary to prevent prejudice. *Id.*

Mr. Maxwell grounds his request for a “limited modification” of the technical filing procedure in 20.1.4.100(F)(2) NMAC and the Hearing Officer’s general case-management authority. *Id.* Neither authorizes a party to supplement direct technical testimony.

A. 20.1.4.100(F)(2) NMAC does not authorize supplemental direct technical testimony.

First, 20.1.4.100(F)(2) NMAC authorizes extensions of time, not supplemental filings. The Hearing Officer may “grant an extension of time to file a document . . . for good cause shown, and after consideration of prejudice to other parties and undue delay to the proceeding.” 20.1.4.100(F)(2) NMAC. Mr. Maxwell does not seek additional time to file his testimony; he seeks additional filing opportunities that the regulation does not provide. The cited regulation does not support the scope of Mr. Maxwell’s request.

Second, Mr. Maxwell fails to show good cause. In support of his request to supplement, he asserts a premature concern that the subjects of the August 3 Motion may be disclosed “too late for reasonable use” in his direct testimony. Maxwell Expedited Motion at 9. This concern is unfounded. Mr. Maxwell may fully respond to any information disclosed by the August 24 deadline in his rebuttal testimony, and he never explains how or why the specific information at issue will arrive too late, particularly when the rules authorize filing of the administrative record at the start of the hearing. *See* 20.1.4.200(A)(2) NMAC. Vague and speculative concerns are not “good cause.”

Third, the request prejudices other parties and threatens undue delay. The request would grant Mr. Maxwell two additional opportunities to supplement his direct testimony while confining every other party to the single direct technical testimony filing that the regulation allows. *See* 20.1.4.300(B)(1) NMAC. That unevenness is itself prejudice. Mr. Maxwell’s suggestion that NMED and Applicant “may address any such supplementation in rebuttal or

request a correspondingly limited adjustment upon a particularized showing,” Maxwell Expedited Motion at 9, only compounds the problem by inviting even more supplemental filings, likely necessitating responsive motions and further orders from the Hearing Officer.

The Hearing Officer denied Mr. Maxwell’s August 3, 2026 “Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record Materials, Targeted Admissions, and, in the Alternative, Limited Discovery” because Mr. Maxwell’s request was “contrary to the Amended Scheduling Order and to the purpose of 20.1.4 NMAC, which contemplates that pre-hearing orders discourage ‘unnecessary, duplicative or wasteful pre-hearing activities.’ 20.1.4.300(A)(3) NMAC.” Order, 1 (Aug. 11, 2026). The Hearing Officer should deny Mr. Maxwell’s Expedited Motion for the same reasons here; supplemental direct technical testimony filings are unnecessary, duplicative of rebuttal testimony, and are a wasteful prehearing activity.

B. The Hearing Officer’s authority does not extend to granting supplemental direct technical testimony.

Mr. Maxwell invokes “the Hearing Officer’s case-management authority” to support his request but cites no specific statute or regulation. Section 20.1.4.100(E)(2) NMAC enumerates the Hearing Officer’s duties: to conduct a fair and impartial proceeding, to assure that the facts are fully elicited, to avoid delay, and to issue necessary orders. Granting Mr. Maxwell’s request would subvert these duties, not serve them. The existing technical testimony, rebuttal, and cross-examination procedures prescribed for a Part 4 permit hearing fully elicit the facts without the need for supplemental filings.

III. Mr. Maxwell’s request would upend the NMED’s permit procedures established in Part 4.

Granting Mr. Maxwell’s request would upend the Part 4 regulations by creating a

responsive technical testimony filing not recognized or allowed by Part 4. Those regulations and the Amended Scheduling Order prescribe a specific sequencing of testimony and evidence for air permit hearings, including for technical testimony, non-technical testimony, and rebuttal testimony. *See* 20.1.4.300(B)(1) NMAC; Amended Scheduling Order (July 29, 2026). Affording Mr. Maxwell two additional opportunities to submit technical testimony outside those deadlines would override NMED's and the Hearing Officer's determination that this proceeding follow an established process. The Hearing Officer is bound by the regulations and cannot assume authority that no regulation confers. It is black-letter law that "administrative agencies are bound by their own regulations." *Law v. N.M. Human Servs. Dep't*, 2019-NMCA-066, ¶ 23, 451 P.3d 91. Therefore, the Hearing Officer cannot deviate from the singular filing of direct technical testimony established by regulation.

Supplementing direct technical testimony is contrary to how air permitting hearings proceed under Part 4. As the NMED explained:

[Direct technical testimony] is when the parties disclose evidence and identify witnesses. Typically, the respective parties will then develop rebuttal testimony based on the testimony and documents presented in the [direct technical testimony]. To further illustrate the point, the Department has no insight on whether the Movant will produce evidence, nor what witnesses will offer testimony until the day [direct technical testimonies] are filed. This is the standard practice, and the Hearing Officer should not transform this proceeding into a civil matter.

NMED, Response in Opposition to Motion to Reset October 19 Hearing Schedule and Preserve Due Process, 3 (Aug. 3, 2026). Mr. Maxwell improperly attempts to alter the process outlined in NMED's permitting regulations and in the Hearing Officer's Amended Scheduling Order.

IV. Denying Mr. Maxwell's Expedited Motion does not create "affirmative-case prejudice."

Even if the Hearing Officer has the authority to deviate from the order of testimony prescribed by Part 4 (respectfully, he does not), Mr. Maxwell fails to establish that such a

deviation is appropriate or necessary. Mr. Maxwell contends that NMED’s regulations and the Amended Scheduling Order impose an “affirmative-case prejudice” on his burden to present an affirmative case on a challenged permit condition under 20.1.4.400(A)(1) NMAC. Maxwell Expedited Motion at 7. But he cannot show that the technical filing procedure prejudices his ability to present an affirmative case on any challenged permit condition.

Mr. Maxwell has had the Application since May 2026 and the Draft Permit, Statement of Basis, and Modeling Review Report since July 29, 2026. On August 24, he will receive the same administrative record and complete technical testimony as every other party—the same information parties customarily have at this stage in all permitting cases before the Secretary. He offers no reason why he is uniquely situated among the parties to this hearing or to prior air permitting hearings.

As NMED confirmed, “[t]his hearing will be based on the information contained in the Draft Permit and the Application,” which are both currently available to Mr. Maxwell. NMED, Response in Opposition to Motion to Reset October 19 Hearing Schedule and Preserve Due Process, 2 (Aug. 3, 2026); *see* Order (Aug. 3, 2026) (adopting NMED’s statement of how administrative hearings proceed under 20.1.4 NMAC). Mr. Maxwell already has access to the documents needed to inform his experts and has ample time to build his affirmative case.

Rebuttal testimony and cross-examination provide Mr. Maxwell sufficient opportunity to address any information disclosed on August 24. As NMED explained, and Applicant agrees:

Mr. Maxwell’s complaints about his inability to submit a so-called ‘affirmative filing’ have no merit. Mr. Maxwell, just like the Bureau and all other parties, will have their first opportunity to see witness lists, technical testimony, and other exhibits at the same time to ensure fairness and process. At the hearing, Mr. Maxwell is free to offer direct testimony or cross-examine on this or any other relevant issue.

NMED AQB, Response to Maxwell’s Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record Materials, Targeted Admissions, and, in the Alternative, Limited Discovery, 3 (Aug. 7, 2026). Mr. Maxwell therefore cannot show that the NMED permit regulations or the Amended Scheduling Order prejudice his affirmative case.¹

V. Conclusion

For the foregoing reasons, Applicant respectfully requests that the Hearing Officer deny the relief sought in Section VI.(4) of Mr. Maxwell’s Expedited Motion.

Mr. Maxwell’s request to supplement his direct technical testimony finds no support in statute, regulation, or precedent, rests on speculative and premature concerns rather than good cause, and would prejudice the other parties while inviting delay. Mr. Maxwell has the necessary information to present and defend his affirmative case on the same terms as every other party. Granting his request would create a responsive filing the regulations do not recognize and override both the Part 4 regulations and the Hearing Officer’s established process.

Respectfully submitted,

/s/ Corey Lim

Corey Lim, Associate

Jennifer Biever, Director

Carlos Romo, Director

Williams Weese Pepple & Ferguson

¹ In past filings, Mr. Maxwell has relied on “due process” concerns to support his requests that the Hearing Officer deviate from the rules established by Part 4. Mr. Maxwell does not rely on such concerns in his Expedited Motion. But even if he did, Mr. Maxwell (and other objectors) do not have a “liberty” or “property” interest in the Application or in this hearing that would trigger application of the Due Process Clause of the U.S. Constitution. “Before a procedural due process claim may be asserted, the plaintiff must establish that he was deprived of a legitimate liberty or property interest and that he was not afforded adequate procedural protections in connection with the deprivation.” *Bd. of Educ. of Carlsbad Mun. Schs. v. Harrell*, 118 N.M. 470, 477 (1994); *see also Ramirez v. Marsh*, 2025-NMSC-050, 580 P.3d 768, 779 (holding that the ability to conduct “thorough cross-examination” satisfied party’s constitutional Sixth Amendment right to confrontation). If cross-examination is sufficient in criminal proceedings (with the highest due process rights), surely cross-examination is sufficient for this air permit proceeding.

1801 California Street, Suite 3400
Denver, CO 80202
(303) 861-2828
clim@williamsweese.com
jbiever@williamsweese.com
cromo@williamsweese.com

Jennifer L. Bradfute
David Kirmse
P.O. Box 90233
Albuquerque, NM 87199
(505) 264-8740
jennifer@bradfutelaw.com

*Counsel for Applicant
Yucca Growth Infrastructure, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2026 a copy of the foregoing RESPONSE TO ORDER REQUESTING EXPEDITED BRIEFING ON A COROLLARY ISSUE was emailed to the persons listed below.

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

Luis Lopez
Luis.lopez@env.nm.gov
Hearing Clerk

Christopher Vigil
Brian Yardman-Frank
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

Zachary E. Ogaz, General Counsel
New Mexico Environment Department
PO Box 5469, Santa Fe, NM 87502-5469
Zachary.ogaz@env.nm.gov
Counsel for NMED

Kelsea E. Sona
Robles, Rael & Anaya, P.C.
500 Marquette Ave NW, Ste. 700,
Albuquerque, NM 87102
kelsea@roblesrael.com
Counsel for NMED

Bruce Wetherbee
60 Concord, Massachusetts 01742
editor@thecandlepublishing.com
Pro Se Intervenor

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

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

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

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

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

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

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

Courtenay Eichhorst
411 Arizona ST. Albuquerque, NM 87109
courtenaye@ualocal412.org

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

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

Colin Cox
Sarah Baer
Gail Evans
PO Box 31417, Santa Fe, NM 87594
ccox@biologicaldiversity.org
sbaer@biologicaldiversity.org
gevans@biologicaldiversity.org
Counsel for Center for Biological Diversity

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

*New Mexico Building and Construction Trades
Council*

Alfonso “Fonze” Martinez, Jr.,
Business Manager/Financial Secretary
alfonso@ibew611.org
markgtrujillo@ibew611.org
smaeznm@gmail.com
IBEW Local Union 611

Darrell Deaguero, Business Manager
1030 San Pedro Drive NE, Albuquerque, NM
87110
darrell.deaguero@liuna16.org
mlor@liuna.org
LIUNA Local 16

/s/ Corey Lim