

**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

**NEW ENERGY ECONOMY’S EXPEDITED MOTION TO COMPEL THE
APPEARANCE AND TESTIMONY OF NMED MAJOR SOURCES MANAGER JULIA
KUHN, OR AN EQUALLY KNOWLEDGEABLE TECHNICAL WITNESS, AT THE
OCTOBER 26, 2026 HEARING AND REQUEST FOR EXPEDITED RESPONSES BY
OCTOBER 22, 2026**

New Energy Economy (“NEE”) respectfully moves the Hearing Officer for an expedited order requiring the New Mexico Environment Department (“NMED” or “Department”) to produce Julia Kuhn, Major Sources Manager for NMED’s Air Quality Bureau (“AQB”), or another NMED technical employee with equivalent firsthand knowledge, for no more than forty-five minutes of direct examination at the October 26, 2026 hearing on NEE’s Motion to Dismiss Application Without Prejudice as Incomplete and Not Ready for Hearing (“Motion to Dismiss”). NEE further requests that NMED and any other party opposing this Motion file responses no later than October 22, 2026, permitting the Hearing Officer to rule before October 26.

The requested testimony concerns matters uniquely within NMED’s knowledge: whether Yucca Growth Infrastructure, LLC’s (“YGI”) substantially revised October 14, 2026 application requires a new technical evaluation; the status and anticipated duration of that evaluation; whether the revised air-dispersion modeling is reliable; and whether the application can responsibly proceed to adjudication before NMED completes its review. These questions go directly to the threshold issue presented by NEE’s pending Motion to Dismiss.

NEE first sought NMED's voluntary cooperation. On October 15, 2026, NEE requested that NMED make available the AQB technical or scientific employee responsible for performing or reviewing the modeling analysis underlying NMED's October 2 and October 9 communications, attached to NEE's Motion to Dismiss respectively as Exhibits A & B. NEE offered to limit the examination, identify the subjects in advance, and confer with the witness beforehand to avoid surprise. On October 19, 2026, counsel Ms. Kelsea Sona responded on NMED's behalf: "NMED is not amendable [*sic*] to this request."

NMED's refusal makes this Motion necessary. The Department cannot identify fundamental deficiencies in an applicant's technical demonstration, acknowledge that materially changed modeling calls earlier assumptions into question, and then prevent the Hearing Officer and parties from examining the agency personnel best positioned to explain those findings.

**I. NMED'S OWN FINDINGS MAKE ITS TECHNICAL WITNESS
INDISPENSABLE TO RESOLVING THE MOTION TO DISMISS.**

On October 14, 2026, NEE moved to dismiss YGI's application without prejudice because NMED's own October 2 and October 9 communications established that material technical assumptions underlying the application and draft permit had changed and required further evaluation. Those communications, attached as Exhibits A and B to NEE's Motion to Dismiss, are incorporated herein by reference.

NMED's October 2 communication reported that revised modeling resulted in approximately a two-percent increase in emissions but a doubling of modeled pollutant concentrations. NMED expressly stated that the results called into question whether the original modeling assumptions were defensible and conservative. NMED further acknowledged that

AQB must assess the significance of YGI's updates. Exhibit A, Administrative Record 10833, Bates Nos. 011966–011967.

On October 9, NMED required additional information concerning the relationship between source configuration and modeled emissions, including per-stack emissions, cluster composition, exhaust flows, velocities, temperatures, supporting calculations, and differences from the previously proposed configuration. NMED explained that these materials were necessary for AQB to adequately review and confirm YGI's modeling. Exhibit B, Administrative Record 10833, Bates Nos. 011976–011977.

The importance of that review has increased dramatically. On October 14, YGI's Trinity Consultants submitted to Ms. Kuhn a seven-page technical response accompanied by an entirely revised 197-page application and multiple highly technical dispersion-modeling files. The revised proposal:

1. Reduces the number of exhaust points from 2,275 to 1,263 clusters;
2. Increases release height from 30 to 45 feet, a fifty-percent increase;
3. Changes exhaust temperatures, velocities, and flow parameters;
4. Alters the facility's physical layout and replaces its two-tier configuration with a three-tier arrangement;
5. Retains approximately 2,462 MW of installed nameplate capacity while proposing a new 1,600 MW operating cap;
6. Reduces requested allowable emissions by approximately thirty-five percent based on that proposed cap;
7. Reduces requested annual greenhouse-gas emissions from approximately 8.82 million to 5.73 million tons CO₂e; and
8. Introduces multiple revised dispersion-modeling scenarios, including a 1,600 MW operating scenario and a separate scenario modeling all 1,263 clusters at full capacity, approximately 2,462 MW.

These changes concern the physical design, operating conditions, emissions limitations, and dispersion characteristics of the proposed facility. They are not clerical corrections. NMED

must determine whether the revised application accurately represents the proposed source, whether the modeling is scientifically supportable, and whether the new operating restrictions are technically justified and enforceable.

Ms. Kuhn is the AQB Major Sources Manager and the identified recipient of Trinity's October 14 technical submission. She is therefore an appropriate witness to explain NMED's review responsibilities, the status of the revised application, the work remaining, and the time reasonably necessary to complete that work. If another AQB scientist or technical employee possesses more direct knowledge of the modeling, NEE requests that NMED produce that employee instead of, or together with, Ms. Kuhn, within the same forty-five-minute examination period.

II. THE HEARING OFFICER HAS AUTHORITY TO REQUIRE RELEVANT TESTIMONY NECESSARY FOR A FAIR AND INFORMED DETERMINATION.

The Hearing Officer's responsibility is not merely to receive the parties' legal arguments. It is to ensure that the factual record is adequate to resolve the matters presented.

Section 20.1.4.100 NMAC authorizes the Hearing Officer to conduct fair and impartial proceedings, ensure that facts are fully elicited, rule upon motions and procedural requests, examine witnesses, and take measures necessary for fair and efficient adjudication. Section 20.1.4.200(E)(4) NMAC recognizes the Secretary's authority to issue subpoenas for witness testimony and permits delegation of that authority to the Hearing Officer. Section 20.1.4.400 NMAC governs the presentation and examination of evidence in permit proceedings.

The New Mexico Administrative Procedures Act likewise recognizes the importance of compulsory testimony. NMSA 1978, Section 12-8-15(A)–(B), authorizes covered agencies to require witness attendance and issue subpoenas; subsection (D) provides qualifying parties a right to request subpoenas, subject to the Act's applicability and governing procedures. *See also*

NMSA 1978, § 12-8-23. NEE invokes these provisions to the extent applicable and, independently, requests an order under the Hearing Officer's authority to regulate this permit proceeding and obtain evidence necessary to decide the pending motion.

The Department's permit-specific regulation also recognizes the importance of examining witnesses. Under 20.2.72.206 NMAC, interested persons at a permit hearing must be afforded a reasonable opportunity to present information and examine witnesses who testify.

NEE seeks no broad discovery, deposition, or burdensome production of documents. It requests forty-five minutes of testimony from the agency personnel responsible for reviewing the technical basis of a permit application that has undergone extraordinary revisions. The testimony is directly relevant, narrowly confined, nonduplicative, and necessary to decide whether the application is ready for hearing.

NMED's technical conclusions cannot be meaningfully tested through correspondence alone. The Hearing Officer should hear directly from the officials who understand the Department's concerns, the work necessary to resolve them, and whether that work has been completed.

III. THE REQUESTED TESTIMONY ADDRESSES FIVE QUESTIONS THAT ONLY NMED CAN AUTHORITATIVELY ANSWER.

NEE proposes to limit examination to five subjects:

First, does NMED consider YGI's October 14 submission a materially revised application requiring a new technical evaluation? If not, what technical basis supports treating these changes as minor?

Second, how many working days does NMED reasonably require to independently evaluate the revised 197-page application, emissions calculations, operating restrictions, and

dispersion modeling? What work remains, and can that work be completed before the December 7, 2026 currently scheduled hearing deadline in this matter?

Third, given NMED's October 2 finding that revised modeling doubled predicted pollutant concentrations, what independent verification has NMED performed to establish that YGI's latest modeling is accurate, representative, and conservative?

Fourth, how will NMED determine whether the proposed 1,600 MW operating cap actually supports a thirty-five-percent reduction in allowable emissions when the facility retains approximately 2,462 MW of installed generating capacity and individual clusters may operate at varying loads? What monitoring and enforceable permit conditions would be required?

Fifth, has NMED completed sufficient technical review to support proceeding with the present application, and have the public and opposing parties had a meaningful opportunity to evaluate and challenge the substantially revised project? Will NMED need to re-notice the newly revised application for public comment as it has done with the first two YGI applications?

These are factual and technical questions, not requests for privileged legal advice or speculation concerning the Secretary's ultimate decision. NEE seeks testimony concerning NMED's own analysis, findings, review process, and remaining work.

No YGI consultant can testify authoritatively about the status of NMED's independent review, its staffing, its anticipated completion date, or the technical conclusions NMED has reached. Nor can NEE's experts substitute for the agency's own account of its evaluation. **Only NMED can explain what NMED has reviewed, what NMED has verified, and what NMED still needs to determine.**

IV. DENYING THIS LIMITED EXAMINATION WOULD PREJUDICE NEE AND UNDERMINE THE RELIABILITY OF THE HEARING OFFICER'S DETERMINATION.

NEE's Motion to Dismiss presents two related but distinct issues. First, whether NMED can make a reliable permitting determination without completing its independent review of YGI's substantially revised application. Second, whether the magnitude and timing of YGI's revisions warrant dismissal without prejudice rather than another continuance or reopening of the evidentiary process.

The requested testimony bears directly on both issues. If NMED has not completed its review, the Hearing Officer needs to know what remains unresolved. If completion requires substantial additional time, that fact is material to whether the current schedule can be maintained without prejudicing the parties. And, if NMED has completed its review, its responsible technical witness should be able to explain what was reviewed, when, and with what conclusions.

Section 20.2.72.203(E)(1)–(2) NMAC requires applicants to supplement and correct their applications and establishes procedures for obtaining additional information necessary to evaluate or take final action on an application, regardless of an earlier administrative-completeness determination. Section 20.2.72.207(D) NMAC places the burden of demonstrating that a permit should be approved upon the applicant.

YGI cannot satisfy that burden by continually replacing the technical foundation of its application while opposing parties are required to prepare testimony against superseded information. NMED likewise cannot substitute the applicant's assurances for the Department's own independent assessment.

The prejudice is concrete. A fundamentally reconfigured facility, with new source parameters, modeling scenarios, and operating limits, is now being presented under a hearing schedule established for a materially different application. Without NMED's testimony, the

Hearing Officer would be asked to decide whether the application is ready for adjudication without hearing from the agency responsible for determining whether its technical foundation is reliable.

NEE does not ask the Hearing Officer to prejudge the merits. It asks that the decision on dismissal be informed by the most probative evidence available: the permitting agency's own account of the adequacy and status of its technical review.

V. GOOD CAUSE EXISTS FOR EXPEDITED RELIEF.

NEE acted promptly. On October 15, the day YGI filed its revised submission, NEE requested voluntary production of an AQB technical witness for the October 26 hearing. NMED refused on October 19.

The October 26 hearing is only six days away. Ordinary motion-response periods would effectively defeat the requested relief. NEE therefore requests responses by **Thursday, October 22, 2026**, and a ruling before October 26 to permit the witness to appear.

The requested accommodation imposes minimal burden. NEE seeks one knowledgeable agency witness, a strictly limited examination, and no additional document production.

Should NMED continue to refuse, NEE requests issuance of a subpoena through the Secretary or duly delegated Hearing Officer, as authorized by applicable law. NEE further requests that the Hearing Officer preserve the opportunity for appropriate judicial relief if compulsory process is denied or not honored. NEE does not seek unnecessary judicial intervention; it seeks to avoid it through a prompt and fair administrative ruling.

VI. POSITION OF THE PARTIES

NEE sought the position of the parties and can state: Center for Biological Diversity, Youth United for Climate Crisis Action and Wetherbee support the Motion. Mr. Maxwell

supports obtaining a clear account of NMED's technical-review status, but does not concur with the Motion as presented. YGI and NMED oppose the Motion. No other party provided their position before the filing of this Motion.

CONCLUSION AND REQUEST FOR RELIEF

The October 26 hearing concerns whether YGI's application is sufficiently complete, reliable, and settled to proceed. NMED's own correspondence identifies material technical concerns, and YGI's October 15 filing fundamentally changes the proposed facility. The Hearing Officer should not be required to decide the Motion to Dismiss without hearing from the agency responsible for reviewing those changes.

WHEREFORE, New Energy Economy respectfully requests that the Hearing Officer:

1. **Grant this Expedited Motion** and require NMED to produce Julia Kuhn, Major Sources Manager, or an equally knowledgeable AQB technical employee, for up to forty-five minutes of direct examination at the October 26, 2026 hearing on NEE's Motion to Dismiss;
2. Direct NMED to identify the witness promptly and make reasonable arrangements for a brief advance conference concerning the limited subjects of examination;
3. Require NMED and any other party opposing this Motion to file responses no later than **October 22, 2026**;
4. Issue a ruling before October 26 to permit the witness's attendance and preparation;
5. If NMED declines voluntary compliance, direct issuance of appropriate compulsory process through the Secretary or Hearing Officer, to the extent authorized by applicable law;
6. Alternatively, if the witness cannot be made available on October 26, preserve NEE's right to present the testimony before a ruling on the Motion to Dismiss, including through a brief supplemental evidentiary proceeding; and
7. Grant such further relief as necessary to ensure a fair, informed determination and preserve NEE's ability to seek appropriate judicial relief.

Respectfully submitted this 20th day of October, 2026,

NEW ENERGY ECONOMY

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CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

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