

**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

**JOSE SALDAÑA JR. AND VIVIAN FULLER AND CENTER FOR BIOLOGICAL
DIVERSITY'S NOTICE OF JOINDER IN NEW ENERGY ECONOMY'S MOTION TO
DISMISS APPLICATION WITHOUT PREJUDICE AS INCOMPLETE AND NOT
READY FOR HEARING**

Jose Saldaña Jr. and Vivian Fuller, (collectively, "Community Members"), and the Center for Biological Diversity respectfully join New Energy Economy's Motion to Dismiss Application Without Prejudice as Incomplete and Not Ready for Hearing (Dkt. No. 107). The Center and Community Members join New Energy Economy in seeking either dismissal or abeyance of this proceeding to remedy the incompleteness of the underlying application and the lack of a fully developed administrative record on which to base technical testimony.

Specifically, Community Members and the Center file this joinder to provide additional support for New Energy Economy's alternative request to hold this proceeding in abeyance until a completed application is shared with the public and reviewed by the New Mexico Environment Department ("NMED" or "the Department"). If the Hearing Officer finds that a recommendation of dismissal is not warranted, in the alternative, abeyance of this proceeding is both reasonable and warranted as it will provide the Department sufficient time to fully consider new and ever-changing information related to Yucca Growth Infrastructures, LLC's ("YGI") application, and allow parties sufficient time to develop testimony on the application and the Department's pending technical review and draft permit.

The Hearing Officer has the authority to “take all measures necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues” which includes the authority to issue “all necessary orders.[.]” Thus, either dismissal or abeyance should be ordered. 20.1.4.100(E)(2) NMAC. *See also* 20.1.4.300(A)(3) NMAC (Hearing Officer may adopt “special procedures for managing proceedings involving difficult or complex issues[.]”).

Community Members and the Center respectfully request that the application be dismissed without prejudice or that the hearing be held in abeyance until 1) YGI has provided a complete application, 2) the Department has completed its technical review of that application and issued a draft permit that accurately reflects the contents of the application, and 3) the public has been afforded an opportunity to comment on the new application. These are conditions precedent for meaningful participation in this hearing.

ARGUMENT

I. Dismissal or abeyance is appropriate because the Department itself needs additional time and holding the proceeding in abeyance will conserve Department resources.

On October 9, 2026, the Department requested that YGI provide supplemental information regarding its application, including:

1. Incorporation of TCEQ emissions data.
2. Specific emissions per stack and how the emissions relate to the number of clusters, servers, and power modules for each respective stack.
3. The flow rate, temperature, and other stack parameters with respect to flow composition (i.e. how much flow is from the hotbox, ventilation, and DC inverter modules), as well as any additional blowers or fans YGI intends to use.
4. All supporting calculations used to justify the parameters and associated emissions.
5. A detailed description as to the specific changes that YGI is making compared to its 10/18/20 configuration.

A.R. NSR 10833_011976 (Dkt. No. 105).

Subsequently, at the October 15, 2026 status conference, counsel for the Department explained that: 1) the Department requested additional information from YGI because the Department determined it did not currently have the information needed to complete its technical review of YGI's application; and 2) based on the Department's current capacity, it will take at least twenty to thirty days to re-run its air dispersion modeling based on new information it receives from YGI, after which additional time will be required to complete the Department's technical review.

On Friday afternoon, October 16, 2026,¹ YGI responded to the Department's request for more information and provided the Department and the parties with significant amendments to its application. Among other changes, YGI updated pollution amounts and exhaust profiles for all 1,263 listed pollution stacks, and provided entirely new air dispersion modeling and pollution impacts analysis for the entire project.

While it remains unclear whether the Department will conclude the information YGI provided is sufficiently responsive to its requests or if additional information or clarification will be required before NMED can begin its analysis, if the Department itself needs twenty to thirty days to even confirm the air dispersion modeling results provided by YGI—at the earliest, November 3, 2026, and at the latest, November 13—and additional time to prepare its technical review of those results, it is unfathomable how the Department can meet the November 17 Notice of Intent (“NOI”) submission deadline. Indeed, based on the Department's own words, the Department would have, at best, less than two weeks to both complete its technical review, make the review public, and complete its own NOI. All other parties, presumably, would have even less time to analyze the technical review with their experts and meaningfully comment in

¹ This information was not shared with other parties until October 16, 2026. *See* Dkt. No. 113. It has not yet been shared with the public.

their own NOIs. The Department also needs to complete the draft permit for the project, and parties need sufficient time to assess the adequacy and protectiveness of that draft permit.

Ultimately, in the absence of a finalized application and finalized Department analysis and draft permit, parties to this proceeding will be unable to meaningfully comment on YGI's application by the November 17 deadline. As it stands under the current schedule, all parties, along with their technical experts, must complete their review of the existing administrative record, which remains incomplete and in flux, YGI's application, which continues to change, and the Department's analysis and draft permit, which are both incomplete due to the changing nature of YGI's application, by November 17, 2026—less than thirty days from the date of this filing. Thus, the parties are currently preparing technical testimony on an application that was significantly amended less than one week ago and on a technical review and draft permit that no longer accurately reflect that application. This, it seems, is what New Energy Economy is referring to when describing this process as “chasing a moving target.”

Moreover, abeyance will conserve the resources of both the Hearing Officer and the Department. While Community Members and the Center understand the need to have a date scheduled by which a hearing may be held, each time a hearing is scheduled and noticed, if the date changes, the Department must reissue notice. Not only does that waste Department resources, it contributes to the chaos and confusion surrounding this highly publicized and technical proceeding and frustrates the public's ability to participate. Abeyance will conserve those resources and prevent the Department, the parties, and the Hearing Officer from continuously attending scheduling conferences, only for all deadlines to ultimately change.

II. The proposed schedule is impractical.

In addition to the unworkability explained above, under the existing schedule, prehearing motions, including motions to exclude evidence, are due the day before written technical testimony is due, requiring parties to ultimately predict what may be dispositive or should be excluded, prior to actually reviewing the evidence of any other party. Furthermore, the proposed schedule does not allow parties sufficient time to engage in the limited discovery currently proposed. It is highly likely that, once the application is finalized and the Department's revised technical analysis is made available, parties will have additional discovery requests. The process of determining which requests, if any, may be appropriate, will certainly take additional time, and will likely extend beyond the date by which Notices of Intent are to be filed.

III. The proposed schedule conflicts with other parties' obligations.

The proposed hearing date of December 7, 2026 also conflicts with obligations of multiple parties. The Supreme Court has set oral argument in *Atencio v. State*, S-1-SC-40980, for December 7, 2026. Both the Center for Biological Diversity and Youth United for Climate Crisis Action are petitioners in *Atencio*, a constitutional case about the failure of the state to control pollution from oil and gas that has been in active litigation for over three years. Gail Evans and Colin Cox, counsel for the Center for Biological Diversity here, are counsel for all petitioners in *Atencio* and must attend the oral argument.

IV. The public must be afforded an additional comment period once the Department's technical review is completed.

The continually evolving nature of YGI's application severely disadvantages members of the public who have sought to exercise their right to provide meaningful comments on the Application. See 20.2.72.303(C)(2) and 20.2.70.401(C)(6) NMAC. In this proceeding, public comment on the initial application commenced in June, 2026, and thousands of public comments

addressing information that is now outdated and inaccurate have already been submitted. The information provided by YGI on October 16 significantly amends the application, such that the public is entitled an additional notice and comment period. The public is also entitled to an additional 30 days to review and comment on the Department's analysis of the application and the Department's draft permit, which is highly unlikely to be satisfied given the Department's estimation as to when it can complete its analysis and the December 7, 2026 hearing date set under the Second Amended Scheduling Order. *See* 20.2.72.206(B)(2) NMAC. Holding this proceeding in abeyance and providing a new public comment period once all details regarding the application are finalized and the Department completes its analysis of the application and draft permit remedies these critical issues.

In sum, the Hearing Officer should enter an order either dismissing without prejudice the incomplete application or holding this proceeding in abeyance until: 1) all details underlying the permit application are finalized and submitted to the Department; 2) the Department completes its analysis of the finalized application and issues a draft permit based on the finalized application; and 3) the public is provided a new opportunity to comment on both the finalized application and NMED's analysis. This would allow the Department sufficient time to fully consider new and complete information regarding YGI's permit application, would allow for a fair proceeding that provides the public with a meaningful opportunity to be heard on current information, and would allow interested parties to adequately represent their interests.

CONCLUSION

For the foregoing reasons, Jose Saldaña Jr., Vivian Fuller, and the Center for Biological Diversity respectfully join New Energy Economy's Motion and respectfully request that the

Hearing Officer enter an order either dismissing without prejudice the application or holding this proceeding in abeyance.

Respectfully submitted,

/s/ Maslyn Locke

Maslyn Locke
Senior Staff Attorney
Eric Jantz
Legal Director
Kayla Jankowski
Staff Attorney
New Mexico Environmental Law Center
Tel.: (505) 989-9022
mlocke@nmelc.org
ejantz@nmelc.org
kjankowski@nmelc.org
cc: kpalmmer@nmelc.org
Counsel for Jose Saldaña Jr. and Vivian Fuller

/s/ Colin Cox

Colin Cox
Gail Evans
Climate Law Institute
PO Box 31417
Santa Fe, NM 87594
(832) 316-0580
gevans@biologicaldiversity.org
ccox@biologicaldiversity.org

Counsel for Center for Biological Diversity

CERTIFICATE OF SERVICE

I certify on October 22, 2026, a true and correct copy of the foregoing Notice of Joinder was served by email to:

Hon. James O. Browning
Hearing Officer
james.oren.browning@gmail.com

Pamela Jones
Luis Lopez
Office of Public Facilitation
New Mexico Environment Department
Pamela.Jones@env.nm.gov
luis.lopez@env.nm.gov

Zachary Ogaz
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
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
amanda@roblesrael.com
kimberly@roblesrael.com
Counsel for NMED

Jennifer L. Biever
Carlos Romo
Corey Lim
Williams Weese Pepple & Ferguson, P.C.
1801 California Street, Suite 3400
Denver, CO 80202
jbiever@williamsweese.com
cromo@williamsweese.com
clim@williamsweese.com
*Counsel for Applicant Yucca Growth
Infrastructure, LLC*

Jennifer Bradfute
David Kirmse
Bradfute Sayer Law PC
P.O. Box 90233
Albuquerque, NM 87199
Telephone: (505) 264-8740
jennifer@bradfutelaw.com
david@bradfutelaw.com
*Counsel for Applicant Yucca Growth
Infrastructure, LLC*

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

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

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

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

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

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

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

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*

Rocky Bacchus
Consultant
6501 Tarascas Drive
El Paso, TX 79912
rockybacchus@gmail.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*

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

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

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

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

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

Robert Aubert
IUPAT District Council 36, Local 823
P.O. Box 9163
Albuquerque, NM 87119
robert.aubert@dc36.org
cc: uriel.apodaca@dc36.org
*Counsel for IUPAT District Council 36,
Local 823*

Allison Johnson
Kalista Wilson
Assistant Attorneys General
New Mexico Department of Justice
201 3rd St. Suite 300
Albuquerque, New Mexico 87102
(505) 651-5998
(505) 795-1121
AJohnson@nm DOJ.gov
KWilson@nm DOJ.gov
*Counsel for New Mexico Department of
Justice*

/s/ Maslyn Locke