

**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. 10883**

AQB 26-57(P)

**APPLICANT YUCCA GROWTH INFRASTRUCTURE, LLC’S RESPONSE IN
OPPOSITION TO MOTIONS FOR HEARING OFFICER TO ORDER DISCOVERY FILED
BY NEW ENERGY ECONOMY [[Dkt. No. 106](#)], THE CENTER FOR BIOLOGICAL
DIVERSITY, JOSE SALDAÑA JR., AND VIVIANA FULLER [[Dkt. No. 108](#)]**

Applicant Yucca Growth Infrastructure, LLC (“YGI”) responds in opposition to the motions for the Hearing Officer to order discovery filed by New Energy Economy (“NEE”), served October 13, 2026 [Dkt. No. 106], and the Center for Biological Diversity (“CBD”), Jose Saldaña Jr., Viviana Fuller and New Mexico Environmental Law Center (“NMELC”), served October 14, 2026. [Dkt. No. 108]. YGI also responds to the 19 (27, including subparts) specific requests for production and 4 interrogatories served on YGI on October 20, 2026 from NEE/CBD/NMELC and 4 requests for production (16, including subparts) from Nicholas Maxwell. *See* Appendices A and B. Although Mr. Maxwell did not separately move to order discovery—or coordinate with NEE on his requests—YGI collectively refers to the motions and requests as the “Motions” and the parties seeking discovery as “Movants” unless otherwise noted.

INTRODUCTION

The Motions seek to reopen a legal issue already considered and resolved in this proceeding: whether the governing air permit hearing framework authorizes discovery. After reviewing the parties’ prior 160 discovery requests, responses, and authorities, the prior Hearing Officer concluded that discovery is not authorized in this proceeding. [Dkt. No. 72]. The Movants then challenged that ruling at the New Mexico Supreme Court and lost again. The

Movants now ask this Hearing Officer to ignore the law of the case, disregard the prior determination, and order discovery based on regulations that do not apply. But the prior Hearing Officer's prior order was well-reasoned. To the extent the current Hearing Officer reaches the same result on the law, discovery should be denied.

Hearing Officer Shepherd's prior determination that discovery is not authorized in this proceeding should remain controlling under the law-of-the-case doctrine. *See Mission Petroleum Carriers, Inc. v. N.M. State Corp. Comm'n*, 1992-NMSC-020 ¶ 5 ("Under the doctrine of the law of the case, a decision on an issue of law made at one stage of a case becomes a binding precedent to be followed in successive stages of the same litigation."). That doctrine promotes order and consistency by preserving legal determinations made at earlier stages of the same case and avoiding re-litigation of the same issues again and again.¹ YGI respectfully requests that the Hearing Officer decline to allow the Movants to litigate the same issue, now for a third time.

The prior Hearing Officer and New Mexico Supreme Court got the issue right. Discovery is simply not authorized for air permit hearings under the applicable regulations. Legislative authority under Section 74-9-29 of the Solid Waste Act expressly authorizes discovery procedures be adopted in Solid Waste Act permit proceedings, but there is no corresponding provision applicable to permit hearings under the Air Quality Act. And neither general hearing-management authority nor due process supplies an independent basis to expand that authority. Movants already have a meaningful opportunity to evaluate the existing application and

¹ Expending party and judicial resources relitigating issues already decided is not just a concern of YGI. The Department recently noted that "sanctions are warranted" against NEE "to prevent the recurring harms associated with harassing, intimidating, time-wasting, and repetitive requests." *See Department Response to NEE's Motion to Compel Witness for Motion to Dismiss Hearing* (Oct. 24, 2026) at 17 (no docket number as of the time of this filing).

supporting materials, present technical and rebuttal testimony, and cross-examine witnesses outside discovery procedures.

As the Department noted in its persuasive response to Movants' prior discovery requests, the Movants are attempting to transform this limited and narrowly focused air permit proceeding subject to strict statutory criteria and timelines into a full-blown civil trial with no limitation on scope and no corresponding deadline for completion. *New Mexico Environment Department Air Quality Bureau's Response to Requests for Discovery*, 1 (Aug. 7, 2026) [[Dkt. No. 62](#)]. Indeed, when the prior Hearing Officer briefly considered allowing discovery, the Movants abused the process and served 160 collective requests on YGI in a two-week period. While Movants have narrowed their total number of requests to approximately 50 (counting subparts), they ignore the Hearing Officer's specific directives attempting to rein in the process: Maxwell served his own numerous requests (when considering subparts) without coordinating with NEE; Movants seek information unrelated to air emissions; and while Movants may have avoided use of "any and all," their current requests are equally expansive and not the "rifle shots" focused on the air permit that the Hearing Officer contemplated.

The Hearing Officer should deny the Motions for four reasons:

- **First**, neither Part 72 nor Part 4 authorizes the Hearing Officer to order discovery in this air permit proceeding.
- **Second**, the previous Hearing Officer has already rejected discovery. Under the doctrine of the law of the case, a decision on the issue of law made at one stage of the case is binding precedent to be followed in successive stages of the same case.
- **Third**, due process does not establish the right to the requested discovery. Movants' due process concerns are answered by the hearing process provided for in regulation and already in place: every party will have an opportunity to present technical testimony and cross-examine YGI and the Bureau's witnesses at the hearing on the same topics requested in discovery (to the extent the issues are proper and relevant to the subject matter of the hearing).

- **Fourth**, the discovery requests are not relevant, are unreasonably burdensome, are an attempt to delay the proceeding, the benefit of the information does not outweigh the burden, and/or the information is otherwise reasonably obtainable.

For these reasons, and as further explained below, the Hearing Officer should deny the Motions for Discovery in full.

I. PROCEDURAL BACKGROUND

The prior Hearing Officer's July 16, 2026 Scheduling Order [[Dkt. No. 16](#)] initially contemplated discovery upon further motion and approval by the Hearing Officer. Movants subsequently requested discovery, including collectively (not including subparts) approximately 77 interrogatories, 47 requests for production, and 10 requests for admission on YGI and approximately 20 requests on the Department [Dkt. Nos. [29](#), [33](#), [35](#)]. YGI and the Department opposed those requests, arguing that discovery was unauthorized under the governing statutes and regulations and independently unwarranted given the requests' scope, burden, and duplication of otherwise readily available information.² [Dkt. Nos. [46](#), [62](#)].

On August 12, 2026, Hearing Officer Shepherd denied discovery after reviewing the requests, responses, and cited authorities. His Order concluded that "discovery is not allowed in air quality permit proceedings." Order, AQB 26-57(P), 1 (Aug. 12, 2026) [[Dkt. No. 72](#)].

Adopting YGI's statutory and regulatory analysis, the Order explained that Part 4 only authorizes discovery specifically for Solid Waste Act hearings, the Hearing Officer cannot exercise authority not granted by statute or regulation, and that due process supplied no independent basis for discovery in this proceeding. *Id.* at 1–2. The Order thus resolved both the asserted regulatory authority and the due process justification for discovery.

² The prior Hearing Officer originally suggested the guardrails applicable to discovery in Solid Waste Act proceedings under 20.1.4.200(E) NMAC would apply.

Dissatisfied with this Order, NEE thereafter sought emergency relief from the Supreme Court of New Mexico. *Emergency Request for a Stay of Proceedings Pending a Determination on Verified Petition for Writ of Mandamus before the Supreme Court of New Mexico*, No. S-1-SC-41579 (Aug. 19, 2026) (“Emergency Request”). The Center for Biological Diversity filed an amicus brief in support of the Emergency Request. *Brief of Amicus Curiae Center for Biological Diversity in Support of Petitioner’s Request for Emergency Relief*, No. S-1-SC-41579 (Aug. 18, 2026). Both parties made the denial of discovery and associated due process concerns a centerpiece of the petition for mandamus.

YGI and the Department filed responses opposing NEE’s Emergency Request. *Response of Yucca Growth Infrastructure, LLC in Opposition to Emergency Request for a Stay of Proceedings and Verified Petition for Writ of Mandamus*, No. S-1-SC-41579 (Aug. 31, 2026); *New Mexico Environment Department, Secretary, and Deputy Secretary’s Motion to Vacate Stay and Deny New Energy Economy’s Emergency Petition and Request for Stay Regarding AQB 26-57(P) for Lack of Jurisdiction; and Response in Opposition to Petition*, No. S-1-SC-41579 (Sept. 2, 2026) (“Department Response to Emergency Request”). On September 17, 2026, the Court denied NEE’s request for a writ of mandamus, afforded no relief from the prior discovery ruling, and lifted the stay of this proceeding. Order, No. S-1-SC-41579 (Sept. 17, 2026) [[Dkt. No. 97](#)].

Following Hearing Officer Shepherd’s recusal [[Dkt. No. 93](#)], Hearing Officer Browning was appointed on October 2, 2026. [[Dkt. No. 99](#)]. NEE renewed its request for discovery on October 13, and CBD/NMELC filed their motion the following day. [Dkt. Nos. [106](#), [108](#)]. Maxwell did not file a motion. The Motions again invoke regulatory authority and due process to seek discovery notwithstanding the August 12 Order from Hearing Officer Shepherd (the CBD/NMELC Motion expressly asks that the prior ruling be corrected).

On October 15, 2026, Hearing Officer Browning held a scheduling conference. At the scheduling conference, the Hearing Officer verbally ordered the Movants to coordinate and consolidate discovery through NEE, and cautioned that any discovery requests should be narrow “rifle shots” focused on the air permit, should avoid requests for “any and all documents,” and should focus on requests for documents versus interrogatories. The Hearing Officer then ordered that all discovery be served by October 20, 2026, and set the Motions for hearing on October 29, 2026. [Dkt. No. 112]. At the October 26, 2026 hearing, the Hearing Officer limited discovery to three core requests. YGI will confer with the Movants on their three priority requests in advance of the October 29, 2026 hearing.

II. ARGUMENT

A. THE GOVERNING STATUTES AND RULES DO NOT AUTHORIZE DISCOVERY IN THIS AIR PERMIT PROCEEDING.

i. 20.1.4.200(E) NMAC applies to Solid Waste Act hearings, not this air-permit proceeding.

Part 4 governs the general procedures for permitting hearings before the Department “except to the extent any provision of this Part is inconsistent with any rule promulgated by the Environmental Improvement Board.” 20.1.4.2 NMAC. Part 72 establishes the Environmental Improvement Board’s specific regulations governing construction permits under the Act. Part 72, not Part 4, more narrowly defines what the Secretary may do with a construction permit application.

The current scheduling order states that formal discovery will be allowed only upon the Hearing Officer’s order, “[a]s provided in 20.1.4.200(E) NMAC.” Second Amended Scheduling Order, 3 (Oct. 16, 2026), [Dkt. No. 109]. But Section 20.1.4.200(E) authorizes discovery only in “special procedures for hearings under the Solid Waste Act.” (Emphasis added). This Section

does not apply here. Neither Section 20.1.4.200(E), Part 72, nor any other applicable statute or rule authorizes discovery in air permit proceedings. *Compare* 1.2.2.25 NMAC (utility hearing procedures expressly allowing discovery). The Department made the clear decision to distinguish hearings under the Solid Waste Act from all other permitting proceedings. This is consistent with the legislative direction under Section 74-9-29 of the Solid Waste Act expressly authorizing discovery procedures to be adopted in Solid Waste Act permit proceedings. No similar legislative authority is found in the New Mexico Air Quality Control Act (the “Air Act”). With respect to air, the legislature has only authorized discovery in **enforcement** proceedings. *Compare* Solid Waste Act § 74-9-29 (“As a minimum, the procedural regulations shall provide: ... (5) procedures for discovery” in adjudicatory proceedings which are defined to include permit proceedings) *with* Air Act § 74-2-12 (“In connection with a proceeding under this section [concerning enforcement of the Air Act], the secretary or the director ... may adopt rules for discovery procedures.”).

The Movants seek to reverse the Legislature’s reasoning, arguing that the absence of an express prohibition permits discovery, and that Section 20.1.4.200(E) merely adds restrictions in solid-waste cases. CBD/NMELC Mot. at 3–4. But agency authority is not established by the absence of a prohibition. *Matter of Chavez*, 2017-NMSC-012, ¶ 16, 390 P.3d 965, 968 (“[A]s a matter of fundamental policy, we emphasize that the absence of a prohibition does not equal permission.”); *see also* New Mexico Environment Department Air Quality Bureau’s Response to Requests for Discovery, 2 (Aug. 7, 2026), [[Dkt. No. 62](#)].

The Hearing Officer is bound by the regulations and cannot invoke authority in a procedural order that has not been granted by statute or regulation. 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. Because the New Mexico Environment Department is a creature of statute, it “has no common law or inherent powers and can act only as to those matters which are within the scope of the authority delegated to them.” *Alto Coal. for Env’t Pres. v. Roper Constr., Inc.*, 2025-NMCA-018, ¶ 12, 572 P.3d 268. Indeed, Applicant reviewed dockets applicable to air permit hearings before the Secretary and was unable to locate any prior instance of a Hearing Officer ordering discovery in an air permit proceeding like this one.

As the Department noted in its August 7, 2026 Response to Discovery:

Had the Legislature wanted to provide a discovery process as it did in the Solid Waste Act (See NMSA 1978, § 74-9-29), it could have done so. The absence of similar language in the Air Quality Act is telling, and that absence should be read as the Legislature’s intent to not provide for discovery in air permit hearings.

New Mexico Environment Department Air Quality Bureau’s Response to Requests for Discovery, 3 (Aug. 7, 2026), [[Dkt. No. 62](#)].

ii. General case-management provisions do not displace the specific hearing procedures.

NEE relies on 20.1.4.300(A)(3) NMAC, which permits special procedures for complex proceedings, and 20.1.4.100(E)(2) NMAC, which directs the Hearing Officer to ensure that relevant facts are fully elicited. NEE Mot. at 1–2. Those responsibilities are important, but they do not establish an independent right to discovery. NEE itself recognizes that prehearing orders must not be inconsistent with the governing rules. *Id.* at 1. The provisions should be read together with the specific disclosure and hearing procedures, not used to import a discovery mechanism that the governing procedures do not provide.

A hearing under Part 4 contemplates the application, the draft permit and technical analysis by the Department, public notice and comment, prefiled technical testimony, exhibits, cross-examination of witnesses, and post-hearing briefing as the mechanism to elicit facts in air

permit proceedings. The Department previously explained that the New Mexico Rules of Civil Procedure and Rules of Evidence do not govern this proceeding. New Mexico Environment Department Air Quality Bureau’s Response to Requests for Discovery, 2 (Aug. 7, 2026), [[Dkt. No. 62](#)] (“[T]he Requestors appear to misunderstand the nature of administrative proceedings and are effectively asking the Hearing Officer to transform this permit proceeding into a civil case by seeking extensive discovery rather than proceeding under the specific disclosure procedures provided in 20.1.4.300(B)(1) NMAC. . . . In fact, the rules governing this proceeding explicitly state that “[t]he New Mexico Rules of Civil Procedure . . . and the New Mexico Rules of Evidence . . . shall not apply to proceedings under this [20.1.4 NMAC]”). Movants can fully elicit relevant facts through review of the administrative record, testimony, rebuttal, and cross-examination without converting the proceeding into civil litigation.

iii. Movants’ cited case law does not apply to this air permit proceeding.

The CBD/NMELC Motion relies on *Southwest Org. Project v. Albuquerque-Bernalillo Cnty. Air Quality Control Board*, 2021-NMCA-005, ¶¶ 25–28 (“SWOP”). But CBD/NMELC acknowledge that the local Bernalillo County board proceeding in *SWOP* was governed by 20.11.81.14.J NMAC, which specifically allows for discovery “guided by the provisions of the New Mexico Rules of Civil Procedure.” CBD/NMELC Mot. at 3–4. No comparable discovery rules have been promulgated for a hearing under the state Air Quality Bureau permit proceedings. In fact, the rules applicable to this hearing specifically provide that the New Mexico Rules of Civil Procedure “**shall not apply to proceedings under this Part.**” 20.1.4.100(A) NMAC (emphasis added). While CBD/NMELC point to the Air Quality Act as the governing statute in both *SWOP* and this proceeding, the difference is that the local Bernalillo County board has specifically promulgated rules authorizing discovery, while the Department has only

specifically authorized discovery through “Special Procedures for Hearings Under the Solid Waste Act.”

As the Department’s Supreme Court response explained, *SWOP* also involved a post-decision local-board permit appeal under a regulation expressly recognizing discovery. *SWOP* involved a different air permit administrative procedure before a different decisionmaker (i.e., the local air board) for a quasi-adjudicatory permit appeal proceeding (i.e., post-decision) under a different local air board’s regulation under 20.11.81 NMAC, which expressly recognizes discovery. Department Response to Emergency Request, 57–58 (Sept. 2, 2026). *SWOP* does not establish a general right to discovery in a public hearing before the Secretary. Nor should the Hearing Officer read silence on discovery in the Air Act as authorizing discovery here. *See Gila Res. Info. Project v. N.M. Water Quality Control Comm’n*, 2018-NMSC-025, ¶ 66 (declining “to read the Legislature’s silence as embracing (implicitly or otherwise) any particular approach[.]”).

B. THE PRIOR RULING DENYING DISCOVERY SHOULD GOVERN UNDER THE LAW-OF-THE-CASE DOCTRINE.

YGI respectfully requests that the Hearing Officer adhere to the law-of-the-case doctrine and affirm the prior Hearing Officer’s August 12 order denying discovery. That ruling was not an unexplained refusal to consider discovery or clear error. It followed review of the parties’ submissions and expressly corrected the prior Hearing Officer’s initial misinterpretation of Part 4 (which was made before YGI and the Department had an opportunity to brief the Hearing Officer). Order at 1–2; *see also* Department Response to Emergency Request, 58–59 (Sept. 2, 2026) (“In fact, in the NMED air permit proceeding, discovery should never have been authorized in the first place; Hearing Officer Shepherd’s corrected ruling to deny discovery represents the state of the law. ... This Court should reject an interpretation requiring a hearing

officer to act contrary to law. If opposing parties want a process that includes discovery, that is a matter to take up with the Legislature.”).

Hearing Officer Shepherd adopted YGI’s statutory argument that Section 20.1.4.200(E) NMAC authorizes discovery only in “special procedures for hearings under the Solid Waste Act,” and that “[n]either Section 20.1.4.200(E) nor any other subsection of that provision authorizes discovery in any other permitting proceedings.” And he rejected the suggestion that due process supplied a different answer: “Nor is there any authority or basis for the argument that ‘due process’ requires discovery in this proceeding.” *Id.* The Movants’ reliance on earlier conference statements and scheduling provisions does not establish that the later ruling lacked a rational basis. *See* CBD/NMELC Mot. at 5–6 & n.5. Those preliminary statements were superseded by the considered legal determination the Motion now seeks to reverse.

“Under the doctrine of the law of the case, a decision on an issue of law made at one stage of a case becomes a binding precedent to be followed in successive stages of the same litigation.” *Mission Petroleum Carriers, Inc.*, 1992-NMSC-020, ¶ 5; *see also First Nat’l Bank of El Paso v. Cavin*, 28 N.M. 468, 214 P. 325 (1923). The doctrine promotes finality and judicial economy by preserving settled issues, subject to limited exceptions for clear error or obvious injustice. *Laughlin v. Convenient Management Services, Inc.*, 2013-NMCA-088, ¶ 20; *Trujillo v. City of Albuquerque*, 1998-NMSC-031, ¶ 41.

The Hearing Officer’s prior order was not clear error. Hearing Officer Shepherd correctly concluded, after reviewing the governing law, that discovery is not authorized in air-permit proceedings. Movants sought to overturn that ruling via an unsuccessful petition for writ of mandamus to the New Mexico Supreme Court. Adherence to the prior ruling creates no injustice because Movants retain ample means to obtain relevant information through the robust hearing

process for air permits. Maintaining the prior legal ruling would promote consistency while preserving the Hearing Officer's ability to consider the evidence, hear objections, and determine the appropriate weight of the parties' technical presentations. The Motions do not demonstrate why the Hearing Officer's prior order is clear error or why the available procedures are inadequate and discovery is necessary. Repeating the contention that discovery would improve preparation is not a sufficient basis to overturn the prior ruling.

C. THE ADMINISTRATIVE RECORD AND OPPORTUNITY TO PRESENT EVIDENCE AND CROSS-EXAMINE WITNESSES PROTECTS DUE PROCESS WITHOUT THE REQUESTED DISCOVERY.

The parties agree: there is no automatic constitutional right to prehearing discovery in administrative proceedings. NEE Mot. at 4, 13; *Archuleta v. Santa Fe Police Dep't ex rel. City of Santa Fe*, 2005-NMSC-006, ¶ 31. *Archuleta* observed that this general rule "is not dispositive," because "in some cases, due process might require that depositions be allowed in order to afford a party a meaningful opportunity to prepare." *Id.* (quoting *Dente v. State Taxation and Revenue Dep't*, 1997-NMCA-099, ¶ 8, 124 N.M. 93, 946 P.2d 1104). This is not such a case.

i. Movants identify no protected liberty or property interest supporting their due process claim.

"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). Unless a party asserts a protected "liberty" or "property" interest, the Due Process Clause has no application. *Bd. of Regents v. Roth*, 408 U.S. 564, 569 (1972). "Liberty," as that term is used in the procedural due process context, includes fundamental rights such as the right of the individual to "contract," "acquire useful knowledge,"

“marry,” “establish a home and bring up children,” and “worship God according to the dictates of his own conscience.” *Bd. of Regents v. Roth*, 408 U.S. at 572 (citation omitted). A protectible “property” interest includes continued public employment, *Greene v. Barrett*, 174 F.3d 1136, 1140 (10th Cir. 1999), a professional license, *Bell v. Burson*, 402 U.S. 535, 539 (1971), and government benefits, *Goldberg v. Kelly*, 397 U.S. 254, 261 (1970).

Here, Movants have no property or liberty interest that results in a constitutional right to discovery. YGI agrees with the Department’s prior statements that Movants have not met their burden in demonstrating that they have been deprived of a legitimate liberty or property interest:

Petitioner cannot establish a constitutional due process claim merely by showing that it desired even more process; it must first show the Constitution protects a liberty or property interest that triggers the constitutional due-process protection. The Petition fails to do this because Petitioner has no liberty or property interest at issue.

Department Response to Emergency Request at 17.

ii. A meaningful opportunity to participate does not require civil discovery.

Movants have not shown that the robust air permit hearing procedures available here fail to provide a meaningful opportunity for Movants to prepare and be heard. Movants have access to the Department’s continuously updated Administrative Record (which includes the application and supplemental materials, technical reviews by the Department, and extensive public comment) and will receive all parties’ technical testimony and exhibits on November 17, 2026. Movants may then submit rebuttal testimony on November 30 and cross-examine every testifying witness at the hearing itself beginning December 8 (after one full day of public comment). Because Movants identify no specific prejudice these procedures cannot cure, denying discovery does not violate due process. *See Archuleta*, 2005-NMSC-006, ¶ 35; *Dente*, 1997-NMCA-099, ¶ 8; *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 and denying discovery). If cross-examination in lieu of discovery is sufficient in criminal proceedings (with the highest due process rights), surely the opportunity to present rebuttal testimony and cross-examine witnesses is sufficient in this air permit proceeding.

If ordered by the Hearing Officer, discovery would turn this case into a civil trial and upend the procedures that the Department has established in the Part 4 regulations by effectively requiring YGI to put on its case prior to the statement-of-intent deadline of November 17, 2026. The Part 4 regulations and the Second Amended Scheduling Order establish deadlines for presentation of technical and non-technical testimony and rebuttal testimony. Requiring YGI to respond to onerous highly technical requests before those deadlines violates the Department’s and the Hearing Officer’s determinations that this proceeding must follow an established process. *See also Department Response to NEE’s Motion to Compel NMED Witness for Motion to Dismiss Hearing* (Oct. 24, 2026)³ at 8 (“The AQCA and governing regulations deliberately allocate evidentiary burdens without providing for subpoenas as a prerequisite to carrying those burdens and instead rely on public-notice materials, prefiled technical testimony, and procedural protections like oaths, cross-examination, objections, and rebuttal.”).⁴

iii. The *Mathews* factors do not establish the need for discovery.

The Motions invoke *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976), and *Archuleta*, ¶¶ 31–32, balancing the interests affected, the risk of error and value of additional safeguards, and

³ No docket number at the time of this filing.

⁴ The subpoena power that NEE attempts to invoke in its Motion to Compel a NMED Witness to the Motion to Dismiss hearing is in the same Section 20.1.4.200(E) applicable to Solid Waste Act proceedings that it invokes for discovery.

the governmental interest and administrative burden. NEE Mot. at 5–12; CBD/NMELC Mot. at 4–8. Even assuming the asserted interests warrant an analysis under *Mathews*—which YGI contends is unnecessary in light of the factors discussed *supra*—the balance does not require discovery.

First, the private interest is attenuated at best: participation in an adjudication of another party’s permit application. Movants do not identify which discovery responses are constitutionally necessary. The question is whether the prescribed procedures permit meaningful examination of compliance with the applicable permitting requirements, not whether the application is consequential.

Second, the Motions identify technical disagreements but do not establish that the hearing process cannot resolve them. NEE already articulates detailed criticisms of the testing sample, extrapolation, variability, monitoring, and safety margin, citing specific administrative-record materials and describing anticipated expert testimony. NEE Mot. at 6–10. CBD’s expert submitted technical comments to the agency. Those arguments are subjects for expert technical testimony—including rebuttal testimony—and cross-examination. They do not justify an order compelling full responses to numerous additional requests that stray afar from the air permit proceeding at hand.

Movants have the same opportunity provided to all parties in air permit proceedings. Not only are relevant requests already addressed in the Administrative Record, but the Movants will have the opportunity via technical direct testimony and rebuttal and opportunities for cross-examination at the hearing itself to comment on and question experts on the exact topics they want YGI to duplicate via discovery. In light of the permitting record information already available, declarations recently provided in response to Motions to Dismiss, and upcoming

testimony to be filed on November 17, 2026, many of the requests are premature, unreasonably cumulative and duplicative, and seek information that is otherwise reasonably obtainable from other sources.

Meanwhile, the Department and YGI's interest is substantial and concrete: the Department must take final action on this Application expeditiously, *see* NMSA 1978, § 74-2-7(B)(2)(a); the hearing is set for December 7, 2026; and the discovery proposed would consume the Department's and the parties' time on collateral subjects. As important, allowing discovery here—which would be the first of its kind in any similar air permit proceeding—could create substantial adverse precedent against future permit applicants and the Department and encumber future air permit proceedings. *See Department Response to Discovery*, at 4 [Dkt. No. 62] (noting that “the government's interest in conserving scarce fiscal and administrative resources is a factor that must be weighed in determining whether due process requires procedural safeguards prior to an administrative decision”).

None of the Movants have demonstrated why the incredibly burdensome discovery would not duplicate the entire purpose of the hearing and unreasonably burden the Department and Applicant. As such, an analysis under *Mathews* weighs in favor of following the Department's typical pre-hearing procedures which do not include discovery.

D. THE REQUESTS DO NOT MEET THE HEARING OFFICER'S CRITERIA FOR NARROW DISCOVERY.

The Air Act identifies the statutory grounds the Department must use to evaluate approval or denial of an air permit. According to the Air Act, the Department may deny an air permit application if the permit: (a) will not meet applicable requirements of the Air Quality Control Act or federal Clean Air Act; (b) will cause or contribute to exceedances of applicable air quality standards; or (c) will violate any other provision of the Air Act or federal Clean Air

Act. NMSA § 74-2-7(C)(1). New Mexico appellate courts evaluating air permit decisions confirm that the focus is on these statutory criteria related to air quality, not on open-ended collateral inquiries into every issue that could conceivably affect a project. *See, e.g., Alto Coal. for Env't Pres. v. Roper Const., Inc.* 2025-NMCA-018, ¶ 14, 572 P.3d 268 (focusing on statutory criteria and “whether construction will cause or contribute to air contaminant levels in excess of a national or state standard”).

Consistent with the statutory criteria, the Hearing Officer indicated at the scheduling conference on October 15, 2026 that any discovery requested should be narrow “rifle shots” focused on the “air permit.” The Hearing Officer’s Second Amended Scheduling Order also cites to 20.1.4.200(E) NMAC which (although inapplicable as explained above) specifies that discovery in Solid Waste Act proceedings is only allowed if:

- (a) The discovery will not unreasonably delay the proceeding and is not unreasonably burdensome or expensive;
- (b) The information sought is not privileged and is relevant to the subject matter of the proceeding;
- (c) The information to be obtained is not unreasonably cumulative or duplicative, or not otherwise reasonably obtainable; and
- (d) The benefit of the information to be obtained outweighs the burden or expense of the proposed discovery.

See 20.1.4.200(E)(2), NMAC; *see also* 1-026, 1-033, and 1-034 NMRA.⁵

The discovery sought by Movants on October 20, 2026 fails all these criteria.⁶

⁵ While YGI does not agree that 20.1.4.200(E) or the New Mexico Rules of Civil Procedure apply to this air permit proceeding, the concepts limiting the ability to seek discovery are relevant to the extent any discovery is considered.

⁶ YGI reserves the right to object to the narrower set of three requests that Movants were instructed to refine by the Hearing Officer at the October 26, 2026 hearing. YGI will confer in good faith on the requests before October 29, 2026.

i. Discovery requests focused on manufacturing capacity, critical minerals, and construction timeline are not relevant.

Many of Movants' Discovery Requests go far beyond the Hearing Officer's directive to keep requests focused on the air permit and the relevant statutory criteria focused on air quality. For instance, NEE/CBD/NMELC RFP Nos. 11-14 and Interrogatory No. 2 relate to the project's "manufacturing schedule," "supply agreements" and "supply-chain analyses" related to "scandium supply" "engineering studies" related to "fuel supply" for the project and the "quantity of scandium required to manufacture" the fuel cells. Specifically, Movants request:

RFP No. 11 — Project Jupiter Manufacturing Schedule

Produce the current manufacturing, delivery, installation, testing, and commissioning schedule for Project Jupiter, including scheduled milestones and quantities/MW associated with each milestone.

RFP No. 12 — Critical-Material Supply

Produce supply agreements, purchase commitments, supply-chain analyses, and risk assessments concerning the scandium required for Project Jupiter, including documents identifying country of mining and processing, quantity available, delivery schedule, and contingency supply.

RFP No. 13 — Green Chili Lateral

Produce documents evaluating the effect of the State Land Office's denial of the Green Chili Lateral rights-of-way and business lease on Project Jupiter's feasibility, construction schedule, fuel supply, financing, or commercial-operation date.

RFP No. 14— Alternative Natural-Gas Supply

Produce the following documents concerning any means of supplying natural gas to Project Jupiter **other than the Green Chile Lateral route rejected by the New Mexico State Land Office**:

- a. Engineering studies, route analyses, feasibility studies, proposals, agreements, schedules, maps, and permitting analyses concerning any alternative pipeline route or other means of supplying natural gas to Project Jupiter;
- b. Documents submitted to, received from, or exchanged with FERC concerning any proposed alternative pipeline route or means of supplying natural gas to Project Jupiter; and

c. Documents concerning the potential delivery of natural gas to Project Jupiter by truck, including proposed routes, the form and volume of gas to be transported, anticipated number and frequency of vehicles or deliveries, transportation capacity, loading and unloading facilities, schedules, costs, required permits or approvals, safety analyses, insurance requirements or coverage, accident or incident analyses, emergency-response planning, and studies addressing the feasibility of supplying the approximately **400 million cubic feet of natural gas required by the Project through truck delivery.**

Interrogatory No. 2 — Critical Materials

Identify the quantity of scandium required to manufacture 2462MW of Project Jupiter's fuel cells, the anticipated supplier(s), country of mining and processing, and whether Applicant or Bloom has identified a substitute or contingency source if the anticipated supply is delayed or unavailable.

Movants' requests are based on a regulatory provision focused on construction timelines related to *major* sources.⁷ A closer look at 20.2.72.208(G) shows it is not intended to broaden the

⁷ 20.2.72.208 NMAC provides in full: "The Department shall deny any application for a permit or permit revision if considering emissions after controls:

A. It appears that the construction, modification or permit revision will not meet applicable regulations adopted pursuant to the Air Quality Control Act;

B. The source will emit a hazardous air pollutant or an air contaminant in excess of any applicable New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants or a regulation of the board; C. For toxic air pollutants, see 20.2.72.400 NMAC - 20.2.72.499 NMAC;

D. The construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico Ambient Air Quality Standard unless the ambient air impact is offset by meeting the requirements of either 20.2.79 NMAC or 20.2.72.216 NMAC, whichever is applicable;

E. The construction, modification, or permit revision would cause or contribute to ambient concentrations in excess of a Prevention of Significant Deterioration (PSD) increment;

F. Any provision of the Air Quality Control Act will be violated;

G. It appears that the construction of the new source will not be completed within a reasonable time; or

H. The Department chooses to deny the application due to a conflict of interest in accelerated review as provided for under Subsection C of 20.2.72.221 NMAC."

scope of a hearing on a **minor** air permit, such as the one at issue here, into issues unrelated to air quality.

The criteria in 20.2.72.208 NMAC apply to both major and minor air sources, but the Application here concerns a minor source of air emissions. This is important because the specific provision at 20.2.72.208(G) NMAC is most relevant to permits for major sources, as evidenced by the fact that 20.2.72.208(G) NMAC mirrors requirements in state and federal Prevention of Significant Deterioration (“PSD”) regulations applicable to commencement of, and completion of construction of “major stationary sources.” *See* 20.2.74.7(N) NMAC; 40 C.F.R. § 52.21(b)(9). The definition of “commencement” in the more general construction permit requirements related to minor source permits does not have similar language regarding completing construction of a project within a reasonable time. *See* 20.2.72.7(G) NMAC. In fact, the minor source permit construction requirements include provisions which allow a source to take up to two years to commence construction of a project, and suspend a project for another year before a permit can be eligible to be cancelled (and only after a hearing to determine if cancellation is appropriate). *See* 20.2.72.211 NMAC. This means Applicant would have at least two years to secure all other related approvals related to the project before construction even begins, and at minimum another year to phase construction as needed. There is nothing in the statute or rules that suggests a project proponent must have every authorization needed for a project in hand to secure an air permit.

Relatedly, when referring to completion of construction of a major source project within a reasonable time, the major source PSD regulations refer to the need to have “necessary preconstruction approvals or permits” which are defined to mean Federal and state permits or approvals “required under” “air quality control laws.” 20.2.74.7(AK) NMAC; 40 C.F.R. §

52.21(b)(10). Thus, even under the more stringent major source requirements, the relevant inquiry related to timely completion of a major source is focused on permits and approvals related to air quality.

This regulatory framework demonstrates that many of Movants' Requests are not relevant.⁸ It would be inappropriate to use 20.2.72.208(G) NMAC to greatly expand the scope of a minor air permit hearing to issues unrelated to air quality. If Movants were right, 20.2.72.208(G) NMAC would allow discovery and examination into every tangential business decision and approval related to development of even the most insignificant new sources. That is not what the Air Act contemplates. As the Department noted in its Response to NEE's Motion to Dismiss the Application as Not Ripe at 5 (Oct. 25, 2026):

NEE's proposed interpretation of 20.2.72.208(G) NMAC would transform the Bureau's air-quality permitting process into a comprehensive determination that every aspect of a proposed project outside the authority of the Air Quality Control Act. That exceeds the role assigned to the Bureau.

ii. The Hearing Officer should deny the requests because they are unreasonably burdensome and/or the burden of the proposed discovery outweighs the likely benefit.

Movants abuse the Hearing Officer's receptiveness to discovery by proposing over 30 requests (not including numerous subparts) that seek information far beyond the narrow scope of this air permit proceeding, seek confidential and privileged information, and contain broad unrestricted requests (in terms of both scope and timing). While Movants may have removed requests stating that they are seeking "any and all documents" related to certain subjects, many of the requests effectively ask for the same broad scope of information. For instance, one NEE/CBD/NMELC request appears to seek "operating data" on every fuel cell installation

⁸ Requests that are not relevant include the following: NEE/CBD/NMELC Request Nos. 5, 10, 11-14, 18; NEE/CBD/NMELC Interrogatory Nos. 1-3.

Bloom has ever constructed in the entire world over the last five years. See NEE/CBD/NMELC Request for Production No. 5. This request could require production of vast amounts of information with no clear link to this air permit proceeding or a demonstration that the benefit of this discovery outweighs its burden.

The following are just a few examples demonstrating that Movants have not taken the Hearing Officer's instructions to narrow requests to a "rifle shot" seriously:

[NEE/CBD/NMELC] RFP No. 5 — Degradation and Useful Life

Produce studies or operating data concerning degradation, efficiency, emissions, useful life, maintenance frequency, and replacement frequency for the Bloom Energy Server model proposed for Project Jupiter within the last 5 years.

[NEE/CBD/NMELC] RFP No. 16 — Bloom Energy Fuel-Cell Efficiency, Degradation, and Project Jupiter Assumptions

Produce documents concerning the actual and projected efficiency, electrical output, degradation, availability, useful life, and replacement frequency of the Bloom Energy fuel cells proposed for Project Jupiter, including:

- a. Engineering analyses, test results, operating data, warranties, performance guarantees, degradation curves, and other documents supporting the efficiency, output, availability, and useful-life assumptions used for Project Jupiter;
- b. Documents comparing the Project Jupiter assumptions with **actual operating performance of Bloom Energy fuel-cell installations**, including installations in New York, California, Delaware, South Korea, and data-center installations;
- c. Documents analyzing the effect of **fuel-cell degradation or efficiency below the levels assumed for Project Jupiter** on natural-gas consumption, required fuel-cell capacity or overbuild, electrical output, emissions, air-dispersion modeling, waste heat, water use, stack replacement frequency, and Project Jupiter's ability to supply its proposed electrical load;
- d. Documents calculating Project Jupiter's **natural-gas consumption and emissions at different fuel-cell efficiencies**, including the quantity of additional natural gas required and resulting emissions if the fuel cells operate below the efficiency or output assumed in the Application; and
- e. Documents concerning whether degradation, maintenance, repair, replacement, or underperformance of Bloom Energy fuel-cell stacks would require **additional Energy**

Servers, replacement stacks, backup generation, additional natural gas, or other equipment or infrastructure to provide Project Jupiter’s represented electrical capacity.

[MAXWELL] YGI Request No. 5 — Subsequent native emissions calculations and supporting modeling files.

Produce any existing revised native emissions-calculation workbook or other native electronic calculation file prepared or materially changed after the original calculation materials produced by NMED on August 6, 2026, and relied upon in preparing the October 14–16, 2026 Application revisions.

This request is limited to existing calculations supporting the revised operating limitation, equipment configuration, source-specific emissions rates, or revised SSM assumptions. If the responsive materials have already been made accessible, identification of their exact filenames and accessible locations will suffice.

To the extent not already included in the modeling-file submittal received October 15, 2026, produced in response to Joint Movants’ RFP No. 19, or otherwise made accessible, produce the following existing files and records used to prepare, run, or interpret the AERMOD/AERMAP modeling associated with the revised Application:

- a. The meteorological surface and profile data files referenced in the AERMOD input decks: “SunlandParkDesertView_2020-2024.SFC” and “SunlandParkDesertView_2020-2024.PFL.”
- b. The terrain raster referenced in the AERMAP input (“terrain.tif”), or the corresponding existing terrain data used to generate the supplied elevations. If that file was not retained, identify the terrain dataset and version used, to the extent known from existing records.
- c. The existing AERMOD plot-output files specified by the submitted input decks’ PLOTFILE directives, including the applicable FIRST, SECOND, SIXTH, EIGHTH, and ANNUAL plot files, and any associated POSTFILE or intermediate output files actually generated and retained for those runs.
- d. Existing project-specific drawings, equipment schedules, or source-parameter records relied upon to establish the current modeled cluster and stack configuration, stack locations and heights, exhaust configuration, and fan or exhaust parameters, but only to the extent those matters are not apparent from the supplied input decks and have not been produced in response to Joint Movants’ RFP Nos. 17 or 19.
- e. For the cumulative-impact-analysis (CIA) runs, existing source-inventory or supporting records identifying the sources located in Texas represented in the model, including source identifiers, locations, pollutants, emission rates, and the existing source data relied upon for those values, to the extent that information is not apparent from the supplied input decks and has not otherwise been produced.
- f. Any existing run configuration or documentation necessary to associate the responsive files with the corresponding 1600 MW and Full Load scenarios and CIA or significant-impact-level (SIL) runs, but only where that association is not apparent from the files already provided.

This request seeks existing files and records only. It does not require YGI to rerun a model, create new outputs, prepare new calculations, or reproduce files already included in the modeling-file submittal or produced in response to the Joint Movants' requests. If a specifically identified file was not retained or is not within YGI's possession, custody, or control, YGI may state that fact and, if known, identify whether it was maintained by its modeling consultant.

These requests are clearly not "rifle shots" and the burden of responding undoubtedly outweighs any likely benefit. Moreover, it is not clear why this information must be adduced via discovery.

To the extent NEE/CBD/NMELC have concerns with fuel cell degradation or efficiency, they can raise their concerns in direct and rebuttal technical testimony and/or on cross-examination of YGI and Department witnesses.

Although Maxwell failed to coordinate with NEE and CBD/NMELC as instructed by the Hearing Officer, he attempts to "narrow" his focus on the air permit application with four requests for production focused on fuel desulfurization. (Maxwell's numerous subpart requests result in many more than just four requests and are thus more of a shotgun approach than a rifle shot).⁹ But Maxwell's requests still fail a proportionality test because the estimated emissions from the central desulfurization system ("CDS") (if even necessary if non-emitting canisters are used) are approximately 0.34 tons per year (tpy) of Volatile Organic Compound ("VOC")

⁹ Maxwell's requests include numerous subparts. For instance, his Request for Production No. 1 requests: **"YGI Request No. 1 — Existing CDS vessel and media specifications.**

Produce the existing manufacturer datasheet, engineering specification, or design calculation supporting the CDS vessel-volume information used in the SSM Worksheet, including existing specifications addressing vessel dimensions, gross internal volume, gas-accessible volume, operating pressure, temperature, CDS Vessel Media occupancy, and connected piping, to the extent reflected in the responsive records.

Also produce the existing manufacturer specification, datasheet, or other technical record identifying the CDS Vessel Media, including its type or product designation, quantity or mass loaded per vessel, volume occupied within the vessel, and existing specifications or design information concerning sulfur-removal capacity and breakthrough or replacement criteria.

Include the existing engineering basis used to determine the gas volume associated with the purge events represented in the SSM Worksheet. Include any existing record identifying whether the 1,370-ft³ figure used in the SSM Worksheet represents actual vessel volume or standard cubic feet (scf), the standard temperature and pressure conditions used, and the method and assumptions used to determine the standard gas volume associated with each purge event. This request is limited to existing records and does not require a new engineering calculation."

emissions out of the estimated 124 tpy from the entire project. Thus, while some of Maxwell's requests appear relevant, the burden to respond still vastly outweighs the benefit of any information gathered through discovery.¹⁰

Maxwell's Requests are also unreasonably burdensome because Applicant shouldn't be required to support every complex equation or related technical assumption via discovery. The air permit application is technical. Technical testimony from the Department and YGI at the hearing will support various calculations in the Application. Discovery is not the appropriate means to question or probe the accuracy of application calculations. There is simply no reason why Maxwell can't put on his own technical testimony or use cross-examination time at the hearing if the Hearing Officer deems the questioning relevant and material.

iii. The Hearing Officer should deny the requests because requested information is otherwise reasonably obtainable.

Numerous requests by Movants and some from Maxwell are already in the permitting record and/or are otherwise reasonably obtainable from other public sources. For example, NEE/CBD/NMELC Request No. 5 requests the following:

RFP No. 6 — Startup, Shutdown and Replacement

Produce emissions testing or calculations for startup, shutdown, cold/black start, malfunction, fuel-cell replacement, and recommissioning, including the basis for annual emissions attributed to those events.

Calculations related to startup, shutdown, and maintenance ("SSM") emissions and the assumptions and "basis for annual emissions attributed to those events" are in the Administrative

¹⁰ Requests that are unreasonably burdensome or the burden does not outweigh the benefit include the following requests: NEE/CBD/NMELC Request Nos. 1, 5, 11-14, 16; Interrogatory Nos. 1-4; Maxwell Requests 1-5.

Record. See Administrative Record NSR 10833_001343 (detailing assumptions and emission calculations for SSM that remain unchanged).

Similarly, NEE/CBD/NMELC request materials that are readily available in the Federal Energy Regulatory Commission (“FERC”) public docket in which CBD (and not YGI) is a party.¹¹ Specifically, NEE/CBD/NMELC request the following:

RFP No. 14— Alternative Natural-Gas Supply

Produce the following documents concerning any means of supplying natural gas to Project Jupiter **other than the Green Chile Lateral route rejected by the New Mexico State Land Office:**

- a. Engineering studies, route analyses, feasibility studies, proposals, agreements, schedules, maps, and permitting analyses concerning any alternative pipeline route or other means of supplying natural gas to Project Jupiter;
- b. Documents submitted to, received from, or exchanged with FERC concerning any proposed alternative pipeline route or means of supplying natural gas to Project Jupiter; and
- c. Documents concerning the potential delivery of natural gas to Project Jupiter by truck, including proposed routes, the form and volume of gas to be transported, anticipated number and frequency of vehicles or deliveries, transportation capacity, loading and unloading facilities, schedules, costs, required permits or approvals, safety analyses, insurance requirements or coverage, accident or incident analyses, emergency-response planning, and studies addressing the feasibility of supplying the approximately **400 million cubic feet of natural gas required by the Project through truck delivery.**

“Documents submitted to . . . FERC” are in the public FERC docket for the relevant proceeding.

YGI is not only not a party to the FERC proceeding (Energy Transfer’s affiliate Transwestern is the applicant for the natural gas pipeline at issue), YGI would have no reason to have every document “submitted to, received from, or exchanged with FERC.”

¹¹ Materials in the relevant FERC docketed proceeding CP 26-80 are publicly accessible. See <https://elibrary.ferc.gov/eLibrary/search>

NEE/CBD/NMELC Interrogatory No. 3 similarly requests information readily obtainable in the FERC docket. Specifically, NEE/CBD/NMELC asks:

Interrogatory No. 3 — Natural-Gas Supply

State whether Applicant presently has a legally authorized means of supplying the natural gas required to operate Project Jupiter following the State Land Office’s denial of the rights-of-way and business lease associated with the Green Chili Lateral. If yes, identify the proposed source, transportation infrastructure, required governmental approvals, status of those approvals, and anticipated date on which gas could be delivered.

While YGI does not believe materials related to gas supply are relevant to this proceeding (for the reasons articulated in Section D.i. above), to the extent even relevant, YGI provided information related to gas supply in the Declaration from YGI permitting contact Jacques Greyling included as Exhibit 1 to YGI’s Response to NEE’s Motion to Dismiss YGI’s Permit Application as Not Ripe for Adjudication on October 19, 2026. *See* Dkt. No. 114. That Declaration referenced and included as attachments FERC docket materials directly addressing the information in this Interrogatory. Yet Movants ignore that information and impermissibly request duplicative information via Request for Production No. 14 and Interrogatory No. 3.¹²

iv. The Hearing Officer should deny the requests because there are no responsive materials.

Movants appear to believe that there exist vast amounts of engineering evaluations and analyses related to the use of fuel cells as part of this air permit proceeding. But the reality is that there simply are no responsive materials to numerous requests. For instance, NEE/CBD/NMELC Request for Production No. 3 asks for “statistical analyses or validation studies supporting

¹² Other examples of requests that duplicate information readily obtainable from other sources (including the application, draft permit, supporting materials in the administrative record, modeling files, Declarations in response to the Motions to Dismiss, and publicly available materials like Securities and Exchange Commission filings or sustainability reports by Bloom) include the following numbers: NEE/CBD/NMELC Request for Production Nos. 1, 2, 3, 6, 7, 8, 9, 15, 17, and 19; NEE/CBD/NMELC Interrogatory Nos. 1-3; Maxwell Request Nos. 1, 2, 3, & 5.

extrapolation of emissions measured from tested Bloom equipment to the number of Energy Servers proposed for Project Jupiter.” It is unclear what Movants mean by “extrapolation.” But as is apparent from the air permit application and supporting materials available in the Administrative Record, the application calculated emissions as follows:

Emissions from the Bloom Energy Server System are provided by the manufacturer based on output-based emission factors (lb/MW-hr) determined through CARB certification or other stack testing for the particular unit. Each such emission factor is multiplied by the installed capacity of the Bloom Energy Server System to obtain an hourly emission rate. Annual emission rates are obtained by multiplying by the operating schedule (hr/yr) and converting to units of tons/yr. While Bloom Energy does not customarily recommend the use of safety factors for similar projects in other jurisdictions, a 15% safety factor was added to all hourly and annual emissions, except for GHGs, to account for potential variability in operating conditions and to ensure a conservative assessment of source impacts, consistent with local practice. For example, VOC emissions for the nameplate capacity of 2,462.005 MW can be calculated as follows:

$$ER = MW \times EF \times (1 + 15\%)$$

$$0.01 \text{ lb VOC/MW-hr} \times 2,462.005 \text{ MW} \times (1 + 15\%) = 28.31 \text{ lb/hr}^{13}$$

See Application Section 6, Administrative Record NSR 10833_000145; see also _012139 (same formula). This is relatively simple math based on the number of fuel cell units producing electricity and emissions estimated from the fuel cell modules derived from manufacturer-provided emission factors, and supported by stack tests (which were included with the application). No additional “statistical analyses or validation studies” are needed and none exist.

Similarly, NEE/CBD/NMELC ask:

RFP No. 13 — Green Chili Lateral

Produce documents evaluating the effect of the State Land Office’s denial of the Green Chili Lateral rights-of-way and business lease on Project Jupiter’s feasibility, construction schedule, fuel supply, financing, or commercial-operation date.

¹³ Annual emissions in tons per year is based on this lb/hr emission rate for the maximum 2,462 nameplate capacity and 1,600 requested permit capacity is 124.01 tpy and 80.59 tpy VOC respectively. See Administrative Record NSR 10833_012130.

As noted above, while YGI contests the relevancy of fuel supply to this proceeding, YGI produced a Declaration from a YGI representative directly addressing the scope of this Request on October 19, 2026. *See* Dkt. No. 114. More specifically, because the pipeline applicant immediately identified an alternative pipeline route that avoids New Mexico State Lands, the denial by the State Land Office has no effect on the fuel supply for the project. *See* Dkt. No. 114 Exh. 1. Again, NEE/CBD/NMELC ignore this information in their request served the following day on October 20, 2026. YGI should not have to respond to duplicative requests for information that is already readily obtainable from other sources.¹⁴

III. CONCLUSION

YGI respectfully requests that the Hearing Officer deny the Motions and adhere to the prior August 12 legally correct Hearing Officer ruling that discovery is not authorized in this air permit hearing. The governing air permitting regulations do not authorize discovery, and the Motions have not demonstrated that technical testimony, rebuttal, cross-examination, and the permitting record are inadequate. Alternatively, the discovery requests served October 20, 2026 should be denied because they are duplicative, burdensome, the benefit does not outweigh the burden, and/or the information either does not exist or is otherwise reasonably available. In accordance with the Hearing Officer's direction at the October 26, 2026 hearing, YGI will confer with the Movants on a narrower set of requests and be prepared to discuss the Movants' three priority requests at the October 29, 2026 hearing.

Respectfully submitted this 26th day of October, 2026.

¹⁴ Other examples of information requested but that does not exist (i.e. YGI has no responsive documents) include the following requests: NEE/CBD/NMELC Request Nos. 1, 3, 4, 7, 8, 10, 17, 18, and 19; Maxwell Request Nos. 2-3.

YUCCA GROWTH INFRASTRUCTURE, LLC

/s/ Carlos R. Romo

Jennifer L. Bradfute

David Kirmse

P.O. Box 90233

Albuquerque, NM 87199

Telephone: (505) 264-8740

Email: jennifer@bradfutelaw.com

Jennifer L. Bieber

Carlos Romo

Williams Weese Pepple & Ferguson, P.C.

1801 California Street, Suite 3400

Denver, CO 80202

jbieber@williamsweese.com

Counsel for Applicant Yucca Growth

Infrastructure, LLC

CERTIFICATE OF SERVICE

I certify that on October 26, 2026, I served the foregoing on all parties and counsel of record on the service list for AQB 26-57(P) by electronic mail.

Hon. James O. Browning
Hearing Officer

Brian Yardman-Frank
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
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 Thoreau Street, 103
Concord, Massachusetts 01742
editor@thecandlepublishing.com
Pro Se Intervenor

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

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

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

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

Kayla Jankowski, Staff Attorney
Maslyn Locke, Senior Staff Attorney
Eric Jantz, Legal Director
New Mexico Environmental Law Center
kjankowski@nmelc.org
mlocke@nmelc.org
ejantz@nmelc.org
cc: kpalmer@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

Isaiah Zemke
2300 Buena Vista SE, Suite 110
Albuquerque, NM 87106
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

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

Allison Johnson
Kalista Wilson
Assistant Attorneys General
New Mexico Department of Justice
201 3rd St. Suite 300
Albuquerque, New Mexico 87102
AJohnson@nm DOJ.gov
KWilson@nm DOJ.gov
Counsel for New Mexico Department of Justice

Rocky Bacchus
Consultant
6501 Tarascas Drive
El Paso, TX 79912
rockybacchus@gmail.com
Pro Se Intervenor

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

Alfonso "Fonze" Martinez, Jr.,
Business Manager/Financial Secretary
Mark Trujillo
Stephanie Maez
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

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

/s/ Carlos R. Romo

Appendix A

**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

JOINT MOVANTS' CONSOLIDATED DISCOVERY REQUESTS

New Energy Economy (“NEE”), Center for Biological Diversity, Jose Saldaña, Jr. and Viviana Fuller, request that Hearing Officer, Judge Browning, order Applicant Yucca Growth Infrastructure, LLC (“YGI”) and Bloom Energy, the company whose technology, emissions data, engineering assumptions, manufacturing capabilities, and technical representations form the basis of the proposed source, and the New Mexico Environment Department (“NMED”), to respond to discovery. Movants expressly reserve the right to propound additional discovery following NMED’s review, independent testing, and technical analysis of YGI’s October 15, 2026 revised application, including its substantially modified source configuration, emissions calculations, operating limitations, and air-dispersion modeling. Any additional discovery shall be directed toward evaluating NMED’s findings, testing the reliability and sufficiency of YGI’s revised technical submissions, and ensuring that Movants have a meaningful opportunity to examine and challenge the evidence upon which any permitting determination may rest. Movants cannot reasonably be required to exhaust their discovery rights before NMED has completed its evaluation of a YGI’s October 15 revised application that has been materially altered during these proceedings.

Definitions and Time Period

“Applicant” means Yucca Growth Infrastructure, LLC (“YGI”) and, with respect to documents concerning the design, manufacture, testing, emissions, operation, delivery, or performance of the Bloom Energy Server System proposed for Project Jupiter, documents within YGI's possession, custody, or control obtained from or maintained by Bloom Energy.

“Project Jupiter” means the facility proposed in Air Quality Permit Application No. 10883, including the revised application and technical materials submitted on October 16, 2026.

“Document” means writings and electronically stored information, including reports, analyses, studies, test results, data, spreadsheets, models, contracts, schedules, presentations, memoranda, and communications.

Unless otherwise stated, these requests cover **October 20, 2021 through October 20, 2026**. The five-year limitation does not exclude technical testing or studies expressly relied upon in Permit Application No. 10883 merely because the underlying test or study predates October 20, 2021.

REQUESTS FOR PRODUCTION

RFP No. 1 — Basis for 2,462 MW

Produce engineering studies, calculations, reliability analyses, presentations, or memoranda supporting construction of 2,462 MW of generating capacity for a facility that will be limited to 1600 MW, including documents quantifying required redundancy, forced-outage rates, degradation, maintenance, and replacement assumptions.

RFP No. 2 — Emissions Testing

Produce the test reports, raw test data, laboratory reports, operating data, calculations, and statistical analyses supporting the emission factors used in Application No. 10883.

RFP No. 3 — Fleet Extrapolation

Produce statistical analyses or validation studies supporting extrapolation of emissions measured from tested Bloom equipment to the number of Energy Servers proposed for Project Jupiter.

RFP No. 4 — 15% Safety Factor

Produce technical analyses supporting Applicant's use of the 15-percent safety factor, including analyses addressing whether that factor accounts for unit-to-unit variability, measurement uncertainty, degradation, operating load, ambient conditions, startup, shutdown, maintenance, and malfunction.

RFP No. 5 — Degradation and Useful Life

Produce studies or operating data concerning degradation, efficiency, emissions, useful life, maintenance frequency, and replacement frequency for the Bloom Energy Server model proposed for Project Jupiter within the last 5 years.

RFP No. 6 — Startup, Shutdown and Replacement

Produce emissions testing or calculations for startup, shutdown, cold/black start, malfunction, fuel-cell replacement, and recommissioning, including the basis for annual emissions attributed to those events.

RFP No. 7 — Hazardous and Unaccounted Emissions

Produce test results or analyses concerning emissions or formation of formaldehyde, nickel compounds including nickel tetracarbonyl, hexavalent chromium, methane slip, and hydrogen slip from the proposed Energy Servers.

RFP No. 8 — Desulfurization

Produce engineering specifications, emissions testing, operating procedures, and calculations for the proposed natural-gas desulfurization system, including media replacement, venting, startup, shutdown, and disposal.

RFP No. 9 — Compliance Monitoring

Produce specifications, protocols, calculations, and proposed procedures for measuring and demonstrating compliance with hourly and annual limits and corresponding emission limits.

RFP No. 10 — Largest Comparable Installations

Produce studies or analyses relied upon by Applicant comparing Project Jupiter's design, reliability, emissions, degradation, maintenance, or operation with existing Bloom Energy installations of **50 MW or greater**.

RFP No. 11 — Project Jupiter Manufacturing Schedule

Produce the current manufacturing, delivery, installation, testing, and commissioning schedule for Project Jupiter, including scheduled milestones and quantities/MW associated with each milestone.

RFP No. 12 — Critical-Material Supply

Produce supply agreements, purchase commitments, supply-chain analyses, and risk assessments concerning the scandium required for Project Jupiter, including documents identifying country of mining and processing, quantity available, delivery schedule, and contingency supply.

RFP No. 13 — Green Chili Lateral

Produce documents evaluating the effect of the State Land Office's denial of the Green Chili Lateral rights-of-way and business lease on Project Jupiter's feasibility, construction schedule, fuel supply, financing, or commercial-operation date.

RFP No. 14— Alternative Natural-Gas Supply

Produce the following documents concerning any means of supplying natural gas to Project Jupiter **other than the Green Chile Lateral route rejected by the New Mexico State Land Office**:

- a. Engineering studies, route analyses, feasibility studies, proposals, agreements, schedules, maps, and permitting analyses concerning any alternative pipeline route or other means of supplying natural gas to Project Jupiter;
- b. Documents submitted to, received from, or exchanged with FERC concerning any proposed alternative pipeline route or means of supplying natural gas to Project Jupiter; and
- c. Documents concerning the potential delivery of natural gas to Project Jupiter by truck, including proposed routes, the form and volume of gas to be transported, anticipated number and frequency of vehicles or deliveries, transportation capacity, loading and unloading facilities, schedules, costs, required permits or approvals, safety analyses, insurance requirements or coverage, accident or incident analyses, emergency-response planning, and studies addressing the feasibility of supplying the approximately **400 million cubic feet of natural gas required by the Project through truck delivery**.

RFP No. 15 — Gas Composition and Consumption

Produce analyses establishing the assumed natural-gas composition, including concentrations of contaminants that may be removed during the desulfurization process, heating value, maximum and annual gas consumption, and the calculations reconciling fuel consumption with the CO₂ and CO₂e emissions stated in the revised Application.

RFP No. 16 — Bloom Energy Fuel-Cell Efficiency, Degradation, and Project Jupiter Assumptions

Produce documents concerning the actual and projected efficiency, electrical output, degradation, availability, useful life, and replacement frequency of the Bloom Energy fuel cells proposed for Project Jupiter, including:

- a. Engineering analyses, test results, operating data, warranties, performance guarantees, degradation curves, and other documents supporting the efficiency, output, availability, and useful-life assumptions used for Project Jupiter;

- b. Documents comparing the Project Jupiter assumptions with **actual operating performance of Bloom Energy fuel-cell installations**, including installations in New York, California, Delaware, South Korea, and data-center installations;
- c. Documents analyzing the effect of **fuel-cell degradation or efficiency below the levels assumed for Project Jupiter** on natural-gas consumption, required fuel-cell capacity or overbuild, electrical output, emissions, air-dispersion modeling, waste heat, water use, stack replacement frequency, and Project Jupiter's ability to supply its proposed electrical load;
- d. Documents calculating Project Jupiter's **natural-gas consumption and emissions at different fuel-cell efficiencies**, including the quantity of additional natural gas required and resulting emissions if the fuel cells operate below the efficiency or output assumed in the Application; and
- e. Documents concerning whether degradation, maintenance, repair, replacement, or underperformance of Bloom Energy fuel-cell stacks would require **additional Energy Servers, replacement stacks, backup generation, additional natural gas, or other equipment or infrastructure** to provide Project Jupiter's represented electrical capacity.

RFP No. 17 — Fuel Cell input/output

Produce data sheets showing the mass balance of all streams going into and coming out of the proposed fuel cell, including but not limited to flow rate, concentration of all constituents, temperature, and pressure.

RFP No. 18 – Pollution from decoking

Produce engineering specifications, emissions testing, operating procedures, and calculations for anticipated carbon accumulation in the fuel cells (“coking”) and air emissions from decoking operations.

RFP No. 19 – Three-Tier Stack Structure

Produce documents sufficient to identify every existing or previously operated installation of Bloom Energy solid oxide fuel cells utilizing a three-tier, vertically stacked configuration comparable to the 1,263-cluster configuration proposed in YGI's October 15, 2026 revised application, during the preceding five years. For each installation, produce documents identifying its location, commissioning date, generating capacity, number and arrangement of clusters, stack heights, exhaust configuration, and operating history, together with engineering drawings, performance-testing results, emissions-testing data, and air-dispersion modeling used to validate the three-tier design.

If Bloom Energy has never constructed or operated a comparable three-tier configuration, produce documents sufficient to establish whether the proposed design has undergone full-scale operational testing, emissions testing, thermal and exhaust-flow validation, or independent

engineering review, including documents identifying the testing methodology, results, and any limitations or uncertainties concerning the proposed configuration.

INTERROGATORIES

Interrogatory No. 1 — Bloom Energy's Manufacturing and Delivery

State Bloom Energy's present annual manufacturing capacity for the Energy Server equipment proposed for Project Jupiter and identify:

- (a) the number/MW required for Project Jupiter;
- (b) the amount presently manufactured or allocated to Project Jupiter;
- (c) the scheduled dates for manufacture, delivery, installation, and commissioning; and
- (d) the manufacturing capacity already committed to other customers during the Project Jupiter production period.

Interrogatory No. 2 — Critical Materials

Identify the quantity of scandium required to manufacture 2462MW of Project Jupiter's fuel cells, the anticipated supplier(s), country of mining and processing, and whether Applicant or Bloom has identified a substitute or contingency source if the anticipated supply is delayed or unavailable.

Interrogatory No. 3 — Natural-Gas Supply

State whether Applicant presently has a legally authorized means of supplying the natural gas required to operate Project Jupiter following the State Land Office's denial of the rights-of-way and business lease associated with the Green Chili Lateral. If yes, identify the proposed source, transportation infrastructure, required governmental approvals, status of those approvals, and anticipated date on which gas could be delivered.

Interrogatory No. 4 — Cold State Emissions

How does Applicant actually plan to power up each cell without diesel generators and a lot more emissions?

Respectfully submitted this 20th day of October, 2026,

NEW ENERGY ECONOMY

By: /s/ Mariel Nanasi

Mariel Nanasi

Christopher Dodd

Attorneys for New Energy Economy

422 Old Santa Fe Trail

Santa Fe, NM 87501

MNanasi@NewEnergyEconomy.org

chris@fayerbergdodd.com

505.469.4060.

CENTER FOR BIOLOGICAL DIVERSITY

By: /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

/s/ Maslyn Locke

Maslyn Locke

Eric Jantz

New Mexico Environmental Law Center

mlocke@nmelc.org

ejantz@nmelc.org

Attorneys for Jose Saldaña, Jr. and Vivian Fuller

Appendix B

EXHIBIT A
LIMITED PREHEARING REQUESTS AND, IN THE ALTERNATIVE, DISCOVERY

I. DEFINITIONS AND GENERAL INSTRUCTIONS.

1. **“Applicant”** means Yucca Growth Infrastructure, LLC, the applicant for NSR Permit No. 10883.
2. **“NMED”** means the New Mexico Environment Department, including its Air Quality Bureau, as applicable to these requests.
3. **“Application”** means Air Quality Permit Application No. NSR 10883, including revisions and supporting materials submitted for the YGI Microgrid.
4. **“Administrative Record”** means the records and materials considered by NMED in evaluating the Application within the meaning of 20.1.4.7(A)(2) NMAC, whether or not indexed, Bates-numbered, or included in the materials forwarded to the Hearing Clerk.
5. **“CDS”** means the Central Desulfurization System described in the Application materials preceding the October 16, 2026 revision, including, where applicable, its two-vessel lead/lag configuration and associated sulfur-removal media, piping, valves, bypasses, pressure regulators, purge and blowdown connections, vents, relief devices, sampling points, and breakthrough-detection equipment. The term applies to that configuration whether or not it is retained in the revised Application.
6. **“CDS Activity”** means initial commissioning, startup, shutdown, isolation, lead-and-lag role change, depressurization, blowdown, purging, CDS Vessel Media replacement, breakthrough response, recommissioning, or return to service.
7. **“CDS Vessel Media”** means the sulfur-removal adsorbent or other sulfur-removal material contained inside either vessel of a CDS.
8. **“Energy Server”** means one Bloom Energy fuel-cell power-generation unit proposed for the YGI Microgrid, and **“Energy Servers”** means two or more such units.
9. **“Fuel-Treatment Component”** means any item of equipment located at the proposed facility, between the facility natural-gas inlet and the point of final fuel use within an Energy Server, that filters the gas; separates liquids; heats it; regulates its pressure; removes sulfur or other constituents; provides guard, polishing, or other supplemental treatment after another onsite treatment stage; or otherwise conditions the gas for delivery to an Energy Server. The term includes such onsite equipment whether located upstream or downstream of a disclosed CDS. It excludes (a) pipeline or gas-treatment equipment located outside the proposed facility and (b) equipment used to manufacture or assemble Energy Servers, CDS units, or other project components, whether that manufacturing or assembly equipment is located onsite or offsite.
10. **“Responsive Record”** means existing recorded information, including electronically stored information, within the responding party's possession, custody, or control.
11. **“SSM Worksheet”** means the one-page worksheet included as page 1 of Applicant's May 2026 revisions to the Application and titled “Startup, Shutdown, and Maintenance Emissions (SSM) - Exempt Pursuant 20.2.72.202.B(5) NMAC,” which displays the CDS startup and maintenance calculations using ninety-five CDS units and a 1,370-ft³ vessel input. The term refers to that publicly filed worksheet; it does not include any native, predecessor, revised, corrected, or supporting file unless a request expressly seeks such material.
12. Unless a request states otherwise, these requests are limited to Responsive Records concerning the current Application, the proposed facility design, or NMED's review of Permit No. NSR 10883. They include responsive materials created, submitted, received, relied upon, or used through

completion of the response and any ordered rolling production, regardless of date, if they bear on the Application, Draft Permit, Statement of Basis, modeling, emissions inventory, or any calculation at issue.

13. A request for a calculation includes the native spreadsheet, workbook, model, or electronic file with formulas intact, together with existing inputs, assumptions, notes, supporting data, and versions sufficient to understand the calculation and any change in its result.
14. A responding party may incorporate a complete prior response or production by identifying the exact response, Responsive Record, Bates range, Administrative Record Bates reference or document identifier, native filename, folder or file identifier, or electronic location sufficient to permit prompt access. This instruction does not require disclosure of an internal network path.
15. A responding party need not reproduce a Responsive Record already available to all parties if it is specifically identified and remains accessible. A responsive record produced pursuant to the discovery requests by other parties may satisfy an overlapping request if the record is specifically identified and accessible.
16. If no Responsive Record exists after a reasonable search, the response shall state that fact. These requests do not require creation of a new record, drawing, engineering study, test, or calculation.
17. These requests do not seek privileged attorney-client communications, attorney work product, internal legal advice, or internal communications that contain no responsive technical facts.
18. These requests do not seek information concerning water rights or use, pipeline rights-of-way or appeals, raw-material supply, manufacturing capacity, project financing, corporate backlog, or offsite waste disposal.
19. Production may occur on a rolling basis. Immediately available responsive material should not be withheld until every response is complete. For NMED, rolling access includes prompt access to additional records considered in evaluating the Application as they become available, without awaiting completion of a final index or transmission set.
20. A responding party may redact unrelated confidential business, physical security, or cybersecurity information, provided the responsive process configuration, equipment relationships, valves, vents, bypasses, purge paths, treatment stages, gas distribution paths, and monitoring points remain understandable. Each redaction or withholding shall identify its general nature and basis. A party asserting confidentiality may promptly seek protective relief.
21. For each request for production, the responding party shall state its response or objection separately. An objection shall state whether responsive information is being withheld and the particular basis for withholding it.
22. An editable courtesy copy may be used for responses. In the event of any discrepancy, the filed PDF version of Exhibit A controls.

II. REQUESTS FOR PRODUCTION TO YGI

YGI Request No. 1 — Existing CDS vessel and media specifications.

Produce the existing manufacturer datasheet, engineering specification, or design calculation supporting the CDS vessel-volume information used in the SSM Worksheet, including existing specifications addressing vessel dimensions, gross internal volume, gas-accessible volume, operating pressure, temperature, CDS Vessel Media occupancy, and connected piping, to the extent reflected in the responsive records.

Also produce the existing manufacturer specification, datasheet, or other technical record identifying the CDS Vessel Media, including its type or product designation, quantity or mass

loaded per vessel, volume occupied within the vessel, and existing specifications or design information concerning sulfur-removal capacity and breakthrough or replacement criteria.

Include the existing engineering basis used to determine the gas volume associated with the purge events represented in the SSM Worksheet. Include any existing record identifying whether the 1,370-ft³ figure used in the SSM Worksheet represents actual vessel volume or standard cubic feet (scf), the standard temperature and pressure conditions used, and the method and assumptions used to determine the standard gas volume associated with each purge event. This request is limited to existing records and does not require a new engineering calculation.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

YGI Request No. 2 — Existing CDS operating and maintenance procedures.

Produce the existing site-specific or manufacturer procedures relied upon for each CDS Activity.

Include existing records identifying the disposition of gas released during each CDS Activity and any stated event duration or flow conditions. Include the existing procedure or technical record identifying the circumstances requiring CDS Vessel Media replacement, to the extent not already produced in response to Request No. 1.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

YGI Request No. 3 — Existing technical records supporting proposed Condition A107.

Produce existing technical analyses, calculations, revised permit-condition language, or other supporting records specifically addressing the calculation basis and operating assumptions used for proposed Condition A107, including:

1. The relationship between the facility-wide SSM quantities and the per-CDS quantities stated in A107.D;
2. The basis for any hourly emission rate calculated from an SSM event;
3. The basis for the proposed VOC limitation and annual purge allowances; and
4. Any existing operating restriction or commissioning schedule relied upon in calculating annual SSM emissions.

The original materials provided by NMED on August 6, 2026, in response to NMED Production Request No. 2 in Exhibit A to Maxwell's August 3, 2026 motion need not be produced again. This request is limited to additional existing technical records, revisions, or supporting materials not included in that production.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

YGI Request No. 4 — Current proposed fuel-treatment configuration.

Produce the latest existing site-specific process-flow diagram, equipment schedule, or engineering drawing identifying the Fuel-Treatment Components proposed in the October 16, 2026 revised Application, from the facility natural-gas inlet through the point of final fuel use within an Energy Server. The existing records should identify the sequence of treatment stages and

whether the proposed configuration uses CDS units, sealed canisters, or a combination, together with any other onsite fuel-conditioning equipment reflected in those records. Include any existing diagrams or technical records identifying relevant bypasses, purge or blowdown connections, vents, relief devices, and sampling points. This request seeks existing records only and does not require creation of a new diagram or schedule.

For the sealed-canister alternative, produce the existing technical record or manufacturer procedure relied upon for the Application's statement concerning associated startup, shutdown, and maintenance emissions.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

YGI Request No. 5 — Subsequent native emissions calculations and supporting modeling files.

Produce any existing revised native emissions-calculation workbook or other native electronic calculation file prepared or materially changed after the original calculation materials produced by NMED on August 6, 2026, and relied upon in preparing the October 14–16, 2026 Application revisions.

This request is limited to existing calculations supporting the revised operating limitation, equipment configuration, source-specific emissions rates, or revised SSM assumptions. If the responsive materials have already been made accessible, identification of their exact filenames and accessible locations will suffice.

To the extent not already included in the modeling-file submittal received October 15, 2026, produced in response to Joint Movants' RFP No. 19, or otherwise made accessible, produce the following existing files and records used to prepare, run, or interpret the AERMOD/AERMAP modeling associated with the revised Application:

a. The meteorological surface and profile data files referenced in the AERMOD input decks: "SunlandParkDesertView_2020-2024.SFC" and "SunlandParkDesertView_2020-2024.PFL."

b. The terrain raster referenced in the AERMAP input ("terrain.tif"), or the corresponding existing terrain data used to generate the supplied elevations. If that file was not retained, identify the terrain dataset and version used, to the extent known from existing records.

c. The existing AERMOD plot-output files specified by the submitted input decks' PLOTFILE directives, including the applicable FIRST, SECOND, SIXTH, EIGHTH, and ANNUAL plot files, and any associated POSTFILE or intermediate output files actually generated and retained for those runs.

d. Existing project-specific drawings, equipment schedules, or source-parameter records relied upon to establish the current modeled cluster and stack configuration, stack locations and heights, exhaust configuration, and fan or exhaust parameters, but only to the extent those matters are not apparent from the supplied input decks and have not been produced in response to Joint Movants' RFP Nos. 17 or 19.

e. For the cumulative-impact-analysis (CIA) runs, existing source-inventory or supporting records identifying the sources located in Texas represented in the model, including source identifiers, locations, pollutants, emission rates, and the existing source data relied upon for those

values, to the extent that information is not apparent from the supplied input decks and has not otherwise been produced.

f. Any existing run configuration or documentation necessary to associate the responsive files with the corresponding 1600 MW and Full Load scenarios and CIA or significant-impact-level (SIL) runs, but only where that association is not apparent from the files already provided.

This request seeks existing files and records only. It does not require YGI to rerun a model, create new outputs, prepare new calculations, or reproduce files already included in the modeling-file submittal or produced in response to the Joint Movants' requests. If a specifically identified file was not retained or is not within YGI's possession, custody, or control, YGI may state that fact and, if known, identify whether it was maintained by its modeling consultant.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

III. LIMITED PREHEARING ACCESS REQUESTS TO NMED

NMED Access Request No. 1 — Outstanding July 13–16 permit-review attachments.

Produce or identify the accessible electronic location of the existing attachments to NMED's July 13–14, 2026 communications to Applicant and Applicant's July 16, 2026 response, to the extent those attachments have not already been made accessible to Maxwell, including:

- a. The draft permit Parts A, B, and C transmitted July 13, 2026, to the extent those versions differ from the July 29 Draft Permit included in the Administrative Record;
- b. The draft Statement of Basis transmitted July 14, 2026, to the extent that version differs from the July 29 Draft Statement of Basis included in the Administrative Record;
- c. The Applicant's July 15 permit redline identified in the July 16 correspondence;
- d. The Applicant's annotated Statement of Basis comments identified in that correspondence;
- e. Any July 15, 2026 baseline version identified in the filename of the Applicant's redline, if distinct from the July 13 draft and not already accessible.

The July 13–16 correspondence is already included at AR Bates 002082–002088, and the July 29 Draft Permit and Draft Statement of Basis are included at Bates 001609–001654. Those existing records are not requested again. This request concerns only the identified earlier versions and attachments not already accessible.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

NMED Access Request No. 2 — Outstanding technical records concerning Conditions A107 and A110.

Produce or identify existing, nonprivileged technical calculations, reviewer analyses, proposed permit redlines, or written technical comment-resolution records used or considered by NMED in evaluating proposed Conditions A107 and A110, to the extent those records are not already accessible in the Administrative Record or through prior production.

This request includes existing records specifically addressing any modification or continued application of Conditions A107 and A110 in light of the Applicant's revised desulfurization alternatives and associated emissions representations.

The request does not seek duplicate production of the original calculations provided in response to NMED Production Request No. 2 in Exhibit A to Maxwell's August 3, 2026 motion, the existing Statement of Basis, Draft Permit, ERG technical memorandum, or other records already accessible. Nor does it seek privileged legal advice, unrestricted agency communications, or the creation of new technical analyses.

If no additional responsive records exist or are held by NMED, the Department may state that fact.

RESPONSE, ACCESS LOCATION, OR OBJECTION:

NMED Access Request No. 3 — Subsequent technical submissions and Administrative Record access.

Identify the Bates ranges, native filenames, or accessible electronic locations of the Applicant's technical submissions received by NMED after October 9, 2026, including the revised application forms, emissions calculations, technical responses, and dispersion-modeling materials submitted October 14–17, 2026.

Identify any such responsive material received by NMED that is not yet accessible through the Administrative Record or another existing electronic production, and provide or identify access to that material.

This request also includes any subsequent existing draft revisions to Conditions A107 or A110 prepared or received by NMED through October 20, 2026, to the extent those revisions are not already accessible.

No duplicate production of previously accessible materials is requested. NMED need not create a new index, technical analysis, or other record.

RESPONSE, ACCESS LOCATION, OR OBJECTION: