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STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF:
THE APPLICATION OF YUCCA GROWTH INFRASTRUCTURE LLC FOR AN AIR QUALITY PERMIT, NO. NSR 10883

No. AQB 26-57 (P)

MAXWELL'S RESPONSE IN PARTIAL OPPOSITION TO JOINT MOTION TO VACATE DECEMBER 7, 2026 HEARING DATE AND MOTION FOR FURTHER EXTENSION OF PERMIT-DECISION DEADLINE FOR GOOD CAUSE

Intervenor Nicholas R. Maxwell ("Maxwell") responds to the November 3, 2026 Joint Motion to Vacate December 7, 2026 Hearing Date ("Joint Motion") filed by Yucca Growth Infrastructure, LLC ("Applicant") and the New Mexico Environment Department Air Quality Bureau ("Department"). Maxwell also expressly moves for a further extension of the permit-decision deadline for good cause under NMSA 1978, § 74-2-7(B)(2)(a) and (B)(3), and 20.2.72.207(C) NMAC.

Maxwell does not oppose vacating the December 7 hearing date without immediately establishing a replacement date. Maxwell opposes, however, reliance upon Applicant's indefinite waiver as a substitute for the statutory and regulatory procedures governing the Department's permit-decision deadline.

I. BACKGROUND

1. On May 27, 2026, the Department deemed Applicant's construction-permit application administratively complete. On July 1, Secretary James C. Kenney granted a ninety-day extension of the original August 25 decision deadline, establishing November 23, 2026 as the extended deadline.

2. The interpretation of the extension provisions has been disputed throughout this proceeding, particularly whether the initial ninety-day extension exhausts the Secretary's authority to grant additional time upon a separate determination of good cause.

3. During oral argument on the motions to dismiss in late October, Maxwell addressed the availability of a further good-cause extension in response to New Energy Economy's alternative request for procedural relief. Maxwell did not formally move for an extension at that time and now expressly seeks that relief.

4. Applicant submitted substantial revisions to its application in October, including changes to the generating configuration, exhaust parameters, emissions calculations, dispersion modeling, and a proposed 1,600 MW operating limitation. The Administrative Record has continued to develop through supplemental disclosures, including additional technical materials produced in connection with Maxwell's Motion for Limited Production (Dkt. No. 143).

5. In the Joint Motion, Applicant and the Department acknowledge that NMED requires additional time to complete its technical review and cannot preserve the December 7 hearing under the applicable notice requirements. Applicant therefore expressly waives the November 23 permit-decision deadline, while the parties request vacatur of the hearing and associated prehearing deadlines.

6. The Joint Motion establishes no replacement decision deadline, limitation on the duration of Applicant's waiver, or procedure for obtaining a formal good-cause extension.

II. THE HEARING SHOULD BE CONTINUED, BUT THE STATUTORY DEADLINE SHOULD BE ADDRESSED SEPARATELY

7. Under 20.1.4.200(C)(3) NMAC, the Hearing Officer may continue a hearing for good cause after considering prejudice to other parties and undue delay. The Department's incomplete

technical review and inability to satisfy the existing notice schedule provide substantial grounds for continuing the December 7 hearing.

8. Maxwell supports vacating the hearing and associated prehearing deadlines. Maxwell also supports paragraph 7 of the Joint Motion, which would prevent rescheduling until NMED places its revised recommendation into the Administrative Record, including an amended Draft Permit, Statement of Basis, and Modeling Report if issuance is recommended.

9. The statutory decision deadline presents a separate question. NMSA 1978, § 74-2-7(B)(2)(a) and (B)(3), and 20.2.72.207(B)–(C) NMAC impose decision-making obligations upon the Department and prescribe procedures for granting additional time.

10. Although Applicant's waiver may affect its ability to claim prejudice from an untimely decision, neither the statute nor regulation expressly provides that Applicant may extinguish the Department's independent statutory obligations or substitute an indefinite waiver for the prescribed extension process.

11. Maxwell does not contend that Applicant cannot waive its own rights, or that expiration of the November 23 deadline automatically requires denial or terminates the Department's jurisdiction. Rather, the legal effect of Applicant's waiver upon the Department's statutory obligations should be expressly determined instead of presumed from the parties' agreement.

III. GOOD CAUSE SUPPORTS A FURTHER EXTENSION OF UP TO NINETY DAYS

12. Maxwell expressly moves for a further extension of up to ninety days beyond November 23, 2026, or such shorter period as the record establishes is reasonably necessary.

13. The governing provisions should be construed together. Section 74-2-7(B)(3) separately addresses circumstances in which the Department cannot take final action within the deadlines specified in Paragraph (B)(2), while 20.2.72.207(C) NMAC provides for an extension upon a determination of good cause.

14. This interpretation has previously been advanced by the New Mexico Attorney General before the New Mexico Supreme Court, including the position that additional extensions beyond 180 days may be granted for good cause without Applicant's concurrence. The Supreme Court did not resolve that question on its merits.[1] Maxwell acknowledges that the scope of successive-extension authority remains disputed and requests an express determination by the authorized official.

15. Applicant and the Department have previously argued that the governing provisions authorize only one ninety-day extension. The cited provisions—§ 74-2-7(B)(2)(a), § 74-2-7(B)(3), and 20.2.72.207(C) NMAC—do not expressly limit the Department to a single extension. Both employ the singular phrase "an extension," without specifying that only one may be granted. Moreover, the Uniform Statute and Rule Construction Act expressly provides that "[u]se of the singular number includes the plural, and use of the plural number includes the singular." NMSA 1978, § 12-2A-5(A); see *In re Guardianship of Patrick D.*, 2012-NMSC-017, ¶¶ 13–14. Maxwell submits that the ninety-day restriction limits the duration of an extension, while the separate requirements for good cause, written notice, and a specified extension period provide safeguards against indefinite delay. The contrary interpretation therefore requires more than reliance upon the singular wording alone. Unless the statutory context requires otherwise, the singular reference to an extension does not itself establish a one-time limitation. The relevant statutory provisions were amended in 1999, following the effective date of the Uniform Statute and Rule Construction Act. See NMSA 1978, § 12-2A-1(B).

1 See Response of the Attorney General in Support of New Energy Economy's Emergency Request for a Stay of Proceedings, No. S-1-SC-41579, at 22–23 (Sept. 2, 2026): https://nmdoj.gov/wp-content/uploads/S-1-SC-41759-State-of-New-Mexico-Response.pdf

16. Section 20.2.72.207(C) identifies examples of good cause, including the need for public hearings, unusually complex technical and regulatory issues, and the inability to complete review because of the timing and scope of submitted information. *See* 20.2.72.207(C)(1), (5), and (6) NMAC.

17. The July 1 extension relied upon subsections (C)(1) and (5). Applicant's October revisions introduced materially changed technical information, and the Department now expressly acknowledges that additional review time is necessary. The Joint Motion therefore supplies the Department's own contemporaneous acknowledgment of circumstances supporting good cause under subsection (C)(6), separate from those considered in the July 1 extension determination.

18. A further extension, if authorized, would require an affirmative good-cause determination, a specified duration not exceeding ninety days, and compliance with the applicable written-notice requirements. It would not authorize indefinite delay.

19. Maxwell therefore requests that the Secretary or properly authorized designee determine whether a successive extension is legally available and warranted under the present circumstances. If the requested extension is unavailable, Maxwell requests a reasoned determination identifying the legal basis upon which the Department intends to proceed following Applicant's waiver.

IV. A STATUS CONFERENCE SHOULD BE SCHEDULED IN EARLY DECEMBER

20. Maxwell does not request an immediate replacement evidentiary-hearing date. The Department should complete its revised recommendation before the parties are required to prepare technical testimony under a new hearing schedule.

21. Maxwell requests a status conference during the first week of December 2026 to assess the Department's progress, the developing Administrative Record, and any remaining production or procedural matters.

22. The conference need not establish additional substantive deadlines or a new evidentiary-hearing date. It would provide continued procedural oversight while permitting the Department to complete its technical review.

23. Vacatur of the existing hearing schedule should not be construed as resolving pending discovery matters, terminating existing production commitments, or waiving any party's right to examine subsequently disclosed technical information.

V. CONCURRENCE

24. Pursuant to 20.1.4.200(D)(3) NMAC, Maxwell previously sought concurrence concerning a further good-cause extension. Applicant and the Department opposed; Bruce Wetherbee supported; the New Mexico Department of Justice took no position; and no response was received from the remaining parties. The extension motion is treated as opposed.

25. Those positions preceded the November 3 Joint Motion and are not represented as renewed responses to the present filing, which also seeks related procedural relief.

VI. REQUEST FOR RELIEF

WHEREFORE, Maxwell respectfully requests that:

1. The Hearing Officer grant the Joint Motion insofar as it seeks to vacate the December 7, 2026 hearing and associated prehearing deadlines, without immediately establishing a replacement hearing date;
2. The Hearing Officer preserve the requirement that NMED place its revised recommendation into the Administrative Record before the hearing is rescheduled;

3. The Hearing Officer decline to treat Applicant's indefinite waiver as conclusively extinguishing the Department's statutory decision-making obligations without a determination of the governing legal authority;
4. The Hearing Officer promptly transmit Maxwell's request for a further good-cause extension to the Secretary or properly authorized designee for determination before November 23, 2026;
5. The Secretary or properly authorized designee determine whether a further extension is legally available and, if warranted, grant an extension of up to ninety days beyond November 23, 2026, or such shorter period as reasonably necessary, with the required written findings and notice;
6. The Hearing Officer schedule a status conference during the first week of December 2026, without imposing a replacement evidentiary-hearing date; and
7. All other rights and positions of the parties, including outstanding discovery and production matters, remain preserved.

Respectfully submitted,

By *-s- Nicholas Maxwell*
Mr. Nicholas R. Maxwell
P.O. Box 1064
Hobbs, New Mexico 88241
Telephone: (575) 441-3560
Email: inspector@sunshineaudit.com

CERTIFICATE OF SERVICE

I certify that on November 4, 2026, a true and correct copy of the foregoing Response in Partial Opposition to Joint Motion to Vacate December 7, 2026 Hearing Date and Motion for Further Extension of Permit-Decision Deadline for Good Cause was served upon all parties of record by electronic mail, with a hard copy mailed upon request.

-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell