RECEIVED Luis Lopez
By The Office Of The Secretary at 4:38 pm, Nov 04, 2026

STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT

IN THE MATTER OF:
THE APPLICATION **AQB 26-57**
OF YUCCA GROWTH INFRASTRUCTURE, LLC
FOR AN AIR QUALITY PERMIT

NO. 10883

NEW ENERGY ECONOMY'S RENEWED MOTION TO DISMISS APPLICATION WITHOUT PREJUDICE AS A MATTER OF LAW, RESPONSE IN OPPOSITION TO THE JOINT MOTION TO VACATE THE DECEMBER 7 HEARING WITHOUT DISMISSAL, AND REQUEST FOR EXPEDITED RULING

New Energy Economy ("NEE") respectfully renews its October 14, 2026 Motion to Dismiss Application Without Prejudice as Incomplete and Not Ready for Hearing ("October 14 Motion"), and requests dismissal without prejudice of Yucca Growth Infrastructure, LLC's ("YGI") application for Air Quality Permit No. 10883. NEE further opposes the November 3, 2026 Joint Motion of YGI and the New Mexico Environment Department ("NMED" or "Department") insofar as it seeks merely to vacate the December 7 hearing and preserve an application that the Department itself acknowledges it cannot finish evaluating.

The facts supporting dismissal are no longer genuinely disputed. NMED has admitted that it cannot complete its technical review, prepare a revised draft permit, and provide the legally required public notice and draft permit before the scheduled December 7 hearing. YGI has repeatedly changed the physical configuration, emissions assumptions, and modeling underlying its application. Its latest submission introduces a three-tier fuel-cell configuration for which YGI has not identified comparable operating installations or the testing and engineering validation requested in response to opponents' discovery. Meanwhile, the Department continues

to identify unresolved questions necessary to determine whether the proposed facility complies with applicable air-quality requirements.

This is no longer a question of whether NMED needs a little more time. It is a question of whether an applicant may fundamentally change the facility it seeks permission to construct, fail to supply information necessary to evaluate that facility, and then demand that the agency and intervenors perpetually reorganize the adjudicatory process around its shifting proposal. New Mexico law does not require that result.

For nearly a year, Project Jupiter has occupied the resources of NMED, affected communities, public-interest organizations, technical experts, and the adjudicatory process. NEE and other intervenors have spent many thousands of dollars and extraordinary amounts of time analyzing successive iterations of an application that YGI itself has repeatedly rendered obsolete. There have been extensive proceedings, including two hearings and a discovery hearing lasting more than five hours. Yet the central questions remain unresolved: What precise facility is YGI proposing to construct? What reliable evidence supports its emissions projections? And what complete application is the Department actually evaluating?

On November 3, YGI and NMED jointly acknowledged that the existing hearing schedule cannot be met. Rather than confront the consequences of YGI's failure to present a stable, technically supportable application, they propose to vacate the hearing, waive the statutory decision deadline, and preserve the application indefinitely while NMED continues its review.

The appropriate remedy is dismissal without prejudice. That remedy would not prevent YGI from pursuing its project. It would require YGI to do what the law contemplates: submit a complete and technically supportable application, allow NMED to evaluate the actual proposed

facility, and provide the public and intervenors a fair opportunity to review and challenge the same application upon which a permitting decision will be made.

I. PROCEDURAL HISTORY: NEE IDENTIFIED THE APPLICATION'S FUNDAMENTAL DEFICIENCIES THREE WEEKS AGO.

1. YGI seeks authorization to construct and operate a massive methane-powered electricity-generation facility associated with Project Jupiter in Doña Ana County. The proposed generating capacity is approximately 2.46 gigawatts, making the reliability of the project's emissions estimates, source configuration, exhaust characteristics, and air-dispersion modeling matters of extraordinary public consequence.

2. YGI submitted its original application in November 2025, then submitted a new application in April 2026. The Department thereafter prepared a draft permit and modeling analysis based on information supplied by YGI and Bloom Energy concerning the proposed source configuration and emissions characteristics.

3. Those assumptions did not withstand scrutiny. As NMED explained in its October 2, 2026 communication to YGI's counsel, subsequently supplied information concerning the actual source configuration and exhaust characteristics produced materially different modeling results. NMED stated that although estimated emissions increased by approximately two percent, modeled pollutant concentrations sometimes doubled, tripled and even quadrupled.[1]

[1] Compare Administrative Record NSR 10833_000643-44 (April 2026) with Administrative Record NSR 10833_011727-28 (September 2026) and Administrative Record NSR 10833_012157-58 (October 2026).

4. NMED further acknowledged that the new modeling called into question whether the original modeling assumptions were defensible and conservative. These were the Department's own technical concerns, not allegations manufactured by intervenors.[2]

5. On October 9, 2026, NMED requested additional information concerning emissions calculations, fuel-cell clusters, exhaust flows, stack characteristics, operating parameters, and the proposed equipment configuration. That information went to the foundation of the permitting analysis.[3]

6. On October 14, NEE filed its Motion to Dismiss Application Without Prejudice as Incomplete and Not Ready for Hearing. The Motion explained that 20.2.72.203(E) NMAC imposes a continuing obligation on applicants to supplement and correct material information and provides a procedure for the Department to obtain additional information necessary to evaluate or take final action on an application.

7. NEE argued that an earlier administrative-completeness determination could not insulate the application from subsequently discovered deficiencies, particularly when the Department's own analysis showed that the underlying modeling assumptions had materially changed.

8. The October 14 Motion also identified the fundamental prejudice caused by adjudicating a moving target. Intervenors cannot responsibly retain experts, analyze modeling, prepare technical testimony, or conduct cross-examination when the applicant and permitting agency are still determining the configuration and emissions characteristics of the facility under review.

---

[2] Administrative Record NSR 10833_011966-67 (NMED letter of October 2).

[3] Administrative Record NSR 10833_011976-77 (NMED letter of October 2).

9. NEE requested dismissal without prejudice, or alternatively a stay of the merits proceeding until YGI supplied the necessary information, NMED completed its technical review, and intervenors had a meaningful opportunity to evaluate a complete administrative record.

10. Rather than resolving the deficiencies identified in that Motion and responding fully to NMED's technical questions concerning the earlier configuration, YGI submitted a substantially revised application on or about October 16, 2026, proposing a different physical arrangement of Bloom Energy fuel cells and revised air-dispersion modeling.

11. Although YGI has characterized these changes as "refinements", their substantive significance cannot be minimized. The source configuration, exhaust geometry, modeled pollutant concentrations, and operational assumptions are central to whether the proposed facility will comply with applicable air-quality standards.

12. YGI's October submission effectively superseded material aspects of the April proposal. Yet the proceeding continued under the same permit number and an accelerated hearing schedule, without a completed technical review of the revised design.

13. The October 16 Second Amended Scheduling Order set the evidentiary hearing for December 7, 2026, required technical testimony by November 17, and directed publication of the necessary public hearing notice in English and Spanish at least thirty days before the hearing.

14. The schedule therefore required intervenors to prepare expert testimony while YGI's technical submissions remained unsettled and NMED had not completed the analysis necessary to determine what permit conditions, if any, could lawfully authorize the proposed facility.

15. The resulting procedural posture is not an ordinary permitting dispute involving a minor supplemental document. The applicant has changed the technical foundation of its

application after substantial litigation, while the agency responsible for evaluating that foundation has acknowledged that its work remains unfinished.

II. NMED HAS NOW CONCEDED THAT THE DECEMBER 7 HEARING CANNOT LAWFULLY PROCEED.

16. At the October 29, 2026 hearing, NMED counsel Kelsea Sona advised the Hearing Officer that the Department could not complete its revised draft permit in time to provide the necessary public notice for December 7.

17. Ms. Sona explained that the Bureau was still analyzing newly supplied information that it had requested earlier in October. She stated:

> "The Air Quality Bureau will not be able to finish its revised draft permit for posting 30 days before the December 7th hearing date, as required by law."

October 29, 2026 Hearing.

18. The Hearing Officer initially urged NMED to proceed with publication and emphasized that the Department remained responsible for performing its statutory duties.

19. Ms. Sona then explained that the obstacle was not merely the mechanics of publishing notice. The Department could not identify an available draft permit because it had not completed its technical review of the revised application:

> "There's no way for us to at this point publicly notice what we are going to hearing on because we don't have a draft permit."

Id.

20. She continued:

> "The law doesn't allow us to proceed to hearing without 30 days notice."

Id.

21. NMED further acknowledged that the public was entitled to examine the draft permit and that the Department could not presently supply one. Ms. Sona explained that the Bureau's unanswered technical questions, including questions for which YGI asserted that information did not exist, prevented completion of the technical review.

22. Particularly significant was NMED's acknowledgment that the absence of information was itself relevant to its evaluation:

"the lack of information is still highly relevant to the technical review."

Id.

23. The Hearing Officer responded that if the Department could not perform its permitting function, denial was an available consequence:

"So, the department can't do its job, then it needs to deny the permit."

Id.

24. On November 3, 2026, YGI and NMED jointly filed a motion confirming that the December 7 hearing could not proceed on the existing schedule. They acknowledged that the Department needed additional time to complete its technical review and could not submit the required notice to newspaper publishers by November 3.

25. The Joint Motion further provides that the hearing should not be rescheduled until the Bureau files its revised recommendation and, if recommending issuance, an amended draft permit, statement of basis, and modeling report.

26. **These admissions establish that the application is not ready for adjudication.** The Department cannot publish adequate notice because it does not yet have the technical basis

for a revised permit. It cannot complete that technical basis because YGI has not supplied, or cannot identify, information necessary to evaluate the proposed source.

27. NMED's representations eliminate any reasonable basis for compelling intervenors to prepare technical testimony or proceed to an evidentiary hearing on the present application and record.

III. THE AIR QUALITY CONTROL ACT AND APPLICABLE REGULATIONS REQUIRE MEANINGFUL PUBLIC NOTICE AND REVIEW OF THE PROPOSED FACILITY.

28. The New Mexico Air Quality Control Act, NMSA 1978, § 74-2-7, establishes the statutory framework for air permitting and authorizes the Department to issue permits only through the procedures and substantive requirements established by law.

29. Section 74-2-7(B) requires the permitting authority to act on applications in accordance with the applicable permitting framework. The applicant's waiver of a decision deadline does not waive the Department's obligation to determine whether the proposed source satisfies applicable legal requirements, nor does it waive the public's procedural rights.

30. Section 20.2.72.206(A)(2) NMAC requires the Department to make the permit application and its preliminary determination available for public inspection.

31. Section 20.2.72.206(A)(3) requires public notice identifying the proposed source, estimated emissions and ambient impacts, the Department's preliminary intent, and the location of the application and Department's analysis for public review.

32. Section 20.2.72.206(B) provides a further opportunity for interested persons to review and comment on the Department's analysis and prohibits issuance of the permit until at least thirty days after that analysis becomes available for review.

33. Section 20.2.72.206(C) independently requires notice of a public hearing and a reasonable opportunity for interested persons to submit data, views, and arguments and examine witnesses.

34. The procedural rule governing this hearing, 20.1.4.200(C)(2) NMAC, requires a hearing notice identifying the nature and location of the proposed action and the person from whom the public may obtain relevant information, *including the draft permit* and application.

35. The Hearing Officer's October 16 Second Amended Scheduling Order further directed the Department and Hearing Clerk to prepare and publish notice in English and Spanish no later than thirty days before the hearing.

36. NMED has now admitted that it cannot satisfy that schedule because the revised draft permit does not exist. The inability to provide the draft permit is not a harmless technical defect. The public cannot meaningfully evaluate the proposed permit conditions, the underlying modeling, or the health implications of the proposed source when the Department has not finished determining what those conditions and analyses will be.

37. New Mexico courts recognize that adequate notice and a meaningful opportunity to be heard are fundamental to fair administrative proceedings. See *Rayellen Resources, Inc. v. Lyons*, 2014-NMSC-006; *Neal v. N.M. Pub. Regul. Comm'n*, 2016-NMSC-021. The adequacy of public notice must be evaluated in light of the circumstances and the agency's efforts to inform affected persons. *N.M. Mun. League, Inc. v. N.M. Envtl. Improvement Bd.*, 1975-NMCA-083.

38. These principles are especially important where the proposed facility is extraordinarily large, the underlying technical information has materially changed, and the agency itself cannot complete the evaluation necessary to describe accurately what it proposes to authorize.

39. The Department and YGI are correct that the December 7 hearing cannot lawfully proceed under the circumstances they have described. But vacating that hearing alone does not resolve the antecedent problem: the application has not reached a stable and sufficiently supported form for the Department to complete its technical review and provide meaningful public participation.

IV. YGI'S NOVEMBER 2 DISCOVERY RESPONSE EXPOSES THE UNVALIDATED FOUNDATION OF ITS LATEST PROPOSED CONFIGURATION.

40. The most recent discovery reinforces the October 14 Motion's central contention that YGI's revised application is not ready for adjudication.

41. In its October submission, YGI proposed a three-tier, vertically stacked arrangement of Bloom Energy solid oxide fuel cells, involving approximately 1,263 clusters.

42. Intervenors sought discovery concerning the operational and engineering foundation for that configuration. Request for Production No. 19 asked YGI to identify existing or previously operated installations using a comparable three-tier configuration during the preceding five years, including their locations, commissioning dates, capacities, cluster arrangements, stack heights, exhaust configurations, and operating histories.

43. The request also sought engineering drawings, performance-testing results, emissions-testing data, and air-dispersion modeling used to validate the three-tier design.

44. Critically, the request expressly addressed the possibility that no comparable installation existed. In that event, YGI was asked to produce documents establishing whether the proposed design had undergone full-scale operational testing, emissions testing, thermal and exhaust-flow validation, or independent engineering review, together with the methodologies, results, and known uncertainties.

45. According to YGI's November 2, 2026 discovery response, YGI identified no responsive information establishing comparable operating installations or the requested full-scale testing and independent validation. NEE requests that the actual response be considered as part of the record supporting this motion.

46. This disclosure is extraordinary. YGI proposes to construct an approximately 2.46-gigawatt electricity-generation facility using a newly revised physical configuration that it has not supported with *any* identified comparable operating experience or the engineering and emissions-testing documentation requested by intervenors.

47. The central question is not whether the configuration might theoretically work. It is whether YGI has supplied sufficient reliable information to demonstrate that the actual facility it proposes to construct will comply with applicable requirements.

48. This concern is particularly acute because YGI's successive modeling submissions have produced dramatic differences in predicted pollutant concentrations. Earlier refinements caused modeled concentrations for several pollutants to change dramatically. The subsequent October configuration then produced lower modeled concentrations under revised assumptions.

49. **A reduction in modeled pollution is not proof of an actual reduction in pollution when the physical configuration and assumptions underlying the model have not been adequately validated.**

50. The approximately 2.46-gigawatt generating capacity also raises a distinct question concerning the October application's modeling of a 1,600-megawatt operating scenario. Any proposed operational restriction must be evaluated for technical feasibility, enforceability,

monitoring, and compliance assurance. The public must be able to determine whether the permit actually constrains the facility's emissions under foreseeable operating conditions.

51. The Department cannot substitute hypothetical assumptions for the reliable technical information necessary to determine compliance. Nor can YGI shift to intervenors the burden of disproving emissions predictions that YGI has not adequately substantiated.

52. The November 2 response therefore adds a new and material basis for dismissal: the latest proposed source configuration remains unsupported by identified information necessary to establish the reliability of its emissions and dispersion analysis. 20.2.72.207(D) NMAC; 20.2.72.208(A) NMAC.

V. YGI'S REPEATED REVISIONS HAVE MADE THE APPLICATION A MOVING TARGET, IMPOSING SUBSTANTIAL PREJUDICE AND EXPENSE.

53. The prejudice to intervenors is concrete, cumulative, and substantial.

54. NEE and other parties have retained technical experts, reviewed extensive modeling submissions, examined NMED's communications, prepared discovery, litigated procedural disputes, and participated in multiple hearings. The discovery proceedings alone included a hearing lasting more than five hours.

55. Those efforts have required many thousands of dollars and significant professional and volunteer time. They have also imposed burdens on the Department, the Hearing Officer, affected residents, and other participants.

56. Yet each time intervenors identify fundamental defects, YGI supplies a new configuration or revised modeling assumptions that change the subject of the technical inquiry.

57. The April application led to a draft permit and modeling report. More accurate information concerning the source configuration subsequently caused modeled pollutant

concentrations to increase dramatically. NMED sought explanations and additional information. YGI then submitted an October "revised" application with a materially different physical configuration and revised modeling.

58. Now the applicant and Department concede that the revised proposal cannot be fully evaluated in time for the scheduled hearing.

59. **Which application is actually being adjudicated?** Is the operative proposal the April configuration, the later modeling revisions, or the October three-tier arrangement? If the October submission supersedes the earlier design, what remains of the Department's previous draft permit and technical analysis? If the earlier application remains operative, how can the Department rely upon assumptions it has itself called into question?

60. These are not rhetorical questions. They go to the identity of the proposed source, the completeness of the administrative record, and the ability of parties to present relevant evidence.

61. Administrative adjudication cannot become an indefinite process in which the applicant is permitted to replace the material foundations of its case while intervenors must repeatedly reconstruct theirs.

62. Fairness is not satisfied merely by promising intervenors another hearing date. The process must provide a definite application, a completed technical evaluation, and sufficient time to prepare testimony addressing the actual proposed facility.

VI. THE NOVEMBER 3 JOINT MOTION DOES NOT CURE THE DEFICIENCIES AND DOES NOT JUSTIFY INDEFINITE PRESERVATION OF THE APPLICATION.

67. The November 3 Joint Motion is remarkable for what it concedes and what it asks the Hearing Officer to overlook.

68. YGI and NMED agree that the December 7 hearing must be vacated because the Department cannot complete the necessary technical review and notice requirements.

69. They further agree that no new hearing should be scheduled until the Department places its revised recommendation into the administrative record, together with an amended draft permit, statement of basis, and modeling report if it recommends issuance.

70. Those conditions confirm that the proceeding lacks the *essential* technical and procedural foundation for a merits hearing.

71. Yet the Joint Motion seeks to preserve the existing application without requiring YGI to resolve the completeness issues raised three weeks earlier by NEE.

72. YGI now offers to waive the statutory decision deadline under § 74-2-7(B)(2)(a) and 20.2.72.207(B)–(C) NMAC. That waiver represents a material reversal of the position described in earlier filings and statements at hearings.

73. NEE does not dispute that an applicant may waive an applicable decision deadline where authorized by law. But **waiving a deadline is not the same as curing an incomplete application**. A waiver does not establish that YGI has supplied the information necessary to evaluate the proposed source, that NMED's previous analysis remains reliable, or that the public has received the process to which it is entitled.

74. Nor does the Department's agreement not to seek denial or dismissal absent a finding under § 74-2-7(C) and 20.2.72.208 NMAC resolve NEE's pending motion. That agreement is a litigation position taken by two parties. It does not adjudicate NEE's independent arguments concerning completeness, procedural fairness, and the proper disposition of the application.

75. YGI and NMED cannot, by stipulation between themselves, extinguish the rights of the public and intervenors or dictate the outcome of a pending dispositive motion.

76. Their requested relief would leave the application pending while NMED conducts an open-ended review of an altered source configuration, without first requiring a complete technical submission and an orderly process for meaningful public participation.

77. That is precisely the result NEE's October 14 Motion sought to prevent.

78. Dismissal without prejudice is the proportionate remedy. It restores procedural regularity without foreclosing a future application. If YGI possesses a technically supportable proposal, it may submit one. If it lacks the necessary information, it must obtain that information before demanding that the public and Department devote further resources to adjudicating its proposal.

VII. YGI AND NMED'S FAILURE TO SEEK OTHER PARTIES' POSITIONS CONTRAVENES THE PURPOSE OF THE PROCEDURAL RULES.

79. The November 3 Joint Motion states that counsel did not contact the other parties concerning their positions because of purported time constraints.

80. Under 20.1.4.200(D)(3) NMAC, an opposed motion must state whether concurrence was sought and denied or explain why concurrence was not sought.

81. The rule thus contemplates that counsel will ordinarily attempt to ascertain the positions of other parties before seeking contested relief. Its purpose is practical and important: narrowing disputes, identifying potential agreement, avoiding unnecessary motion practice, and reducing administrative burdens.

82. The Joint Motion provides a reason for not seeking concurrence, and NEE recognizes that the rule permits such an explanation. But the asserted urgency must be evaluated in context.

83. NEE filed its Motion to Dismiss on October 14—approximately three weeks before the Joint Motion. The underlying problems were identified even earlier in NMED's October 2 and October 9 communications. The approaching public-notice deadline was established by the hearing schedule, not by an unforeseeable event.

84. There was ample opportunity for YGI and NMED to consult intervenors concerning the implications of the revised application, the incomplete technical review, and the approaching hearing deadline.

85. Instead, YGI and NMED jointly requested substantial procedural relief while declining to seek the positions of parties whose substantial expenditures and participation rights would be directly affected.

86. NEE is concerned that this is part of a broader pattern of motions filed without meaningful advance consultation. The Hearing Officer should require adherence to the applicable motion procedures going forward and should not treat a bilateral agreement between YGI and NMED as a substitute for consideration of the other parties' interests.

87. The rules are designed to promote fairness and administrative efficiency. They cannot fulfill that purpose if the applicant repeatedly creates emergencies through late technical submissions and then invokes urgency as a reason to dispense with ordinary consultation.

VIII. DISMISSAL WITHOUT PREJUDICE IS NECESSARY TO RESTORE A FAIR AND LAWFUL PERMITTING PROCESS.

88. The Department has described aspects of these proceedings as unprecedented. The present procedural posture warrants that characterization.

89. A massive industrial facility has undergone repeated material revisions. Its modeling has produced sharply different predicted pollutant concentrations. The Department has acknowledged that earlier assumptions were questionable, that additional information is necessary, and that it cannot complete a revised draft permit or publish adequate notice for the scheduled hearing.

90. The applicant's most recent proposed configuration has not been supported by identified comparable operating installations or the full-scale testing and independent engineering validation requested in discovery. Lacking the necessary scientific or engineering substantiation YGI's Project Jupiter applications are "not ready for primetime."

91. Intervenors have incurred substantial expense responding to successive proposals. The Department and Hearing Officer have devoted significant public resources to proceedings that still lack a settled technical foundation.

92. And now, after the October 14 Motion placed these deficiencies squarely before the Hearing Officer, YGI and NMED ask simply to postpone the hearing and preserve the application.

93. **That approach would reward the very conduct that made the hearing impossible.** It would shift the consequences of YGI's repeated changes and inadequate submissions onto the public, intervenors, and the Department.

94. The Air Quality Control Act and its implementing regulations do not make the applicant's preferred development schedule the measure of regulatory compliance. Their purpose

is to ensure that proposed sources are evaluated on reliable information and that permitting decisions protect air quality and the public interest.

95. NEE does not ask the Hearing Officer to decide, on this motion, that every conceivable version of Project Jupiter must be prohibited. NEE asks that YGI be required to present one complete, accurate, and technically supportable application before the Department and the public are compelled to adjudicate it.

96. A dismissal without prejudice would permit YGI to submit an application reflecting its actual proposed configuration, supported by adequate engineering and emissions data. NMED could then conduct a coherent technical review, make the required preliminary determinations, provide public notice, and allow interested persons to participate meaningfully.

97. That is not an extraordinary sanction. It is the orderly administrative process contemplated by New Mexico law. Indeed, the applicable regulations do not allow substantive revisions to applications. *See* 20.2.72.203(E) (establishing that the only changes to applications contemplated by the regulations are for corrections or supplementations, not revisions or material changes to the application).

98. At minimum, the present record establishes that the December 7 hearing and all associated testimony deadlines must be vacated. But because the underlying application remains materially unsettled and the Department has not completed its technical evaluation, a continuance alone is inadequate.

CONCLUSION AND REQUEST FOR RELIEF

For nearly a year, Project Jupiter's proponents have sought authorization for one of the largest proposed methane-powered electricity-generation facilities in New Mexico. The public

and intervenors have been required to follow an application whose physical design, emissions modeling, and technical justifications have repeatedly changed.

Three weeks ago, NEE moved to dismiss because the application was incomplete and incapable of fair adjudication. Since then, the applicant has introduced a materially different configuration, discovery has revealed the absence of identified operational and engineering validation for that configuration, and NMED has expressly acknowledged that it cannot complete the draft permit and legally required notice in time for the December 7 hearing.

The application is not ready. The Department's technical review is not complete. The public cannot evaluate a draft permit that does not exist. And intervenors cannot fairly be required to litigate a project whose operative design and emissions foundation remain unsettled.

The law does not require endless procedural accommodation for an applicant that repeatedly changes the facility it seeks permission to construct. Nor does it require affected communities to expend unlimited resources chasing successive versions of an inadequately supported proposal.

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

1. **Grant NEE's October 14, 2026 Motion to Dismiss, as renewed and supplemented herein and because as a matter of law there is no notice for the hearing dismiss YGI's application for Air Quality Permit No. 10883 without prejudice**, or recommend the same to the NMED Acting Secretary Rhoderick, because the application is not presently supported by a complete, stable, and sufficiently evaluated technical record capable of fair adjudication;
2. Find that the December 7, 2026 hearing cannot proceed in compliance with the applicable public-notice, technical-review, and public-participation requirements, and vacate that hearing and all associated prehearing deadlines;

3. Deny the November 3 Joint Motion to the extent it seeks to preserve the present application without resolving the deficiencies identified in NEE's October 14 Motion and this renewed motion;
4. Determine that YGI's waiver of the statutory decision deadline does not cure the deficiencies in the application or diminish NMED's obligations under § 74-2-7 and 20.2.72 NMAC;
5. Require that any renewed application identify the precise source configuration, proposed operating capacity and enforceable operating limitations, exhaust and emissions characteristics, and supporting technical and modeling information necessary for meaningful review;
6. Alternatively, if dismissal is denied, stay all merits proceedings and set a status conference in 90 days;
7. Preserve intervenors' rights to supplemental discovery, expert testimony, cross-examination, and objections addressing any revised application, draft permit, modeling report, or statement of basis; and
8. Grant such further relief as is necessary to ensure a lawful, orderly, and fair permitting process.

NEE sought the positions of the parties and can state: The Center for Biological Diversity, Mr. Saldaña and Ms. Fuller, and Wetherbee, support the Motion. Nick Maxwell takes no position on the Motion. No other party provided their position before the filing of this Motion.

Respectfully submitted this 4th day of November, 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

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of November 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

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

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

Brian Yardman-Frank
New Mexico Environment Department
Office of General Counsel
121 Tijeras Avenue NE, Suite 1000
Albuquerque, NM 87102
christopherJ.vigil@env.nm.gov
brian.yardman-frank@env.nm.gov
Counsel for NMED

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

ROBLES, RAEL & ANAYA, P.C.
Kelsea E. Sona
For New Mexico Environment Department
500 Marquette Ave NW, Suite 700
Albuquerque, New Mexico 87102
(505) 242-2228
kelsea@roblesrael.com

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

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

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

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

Colin Cox
Sarah Baer
Gail Evans
The Center for Biological Diversity
1025 ½ Lomas NW
Albuquerque, New Mexico 87102
ccox@biologicaldiversity.org
gevans@biologicaldiversity.org
sbaer@biologicaldiversity.org
Counsel for Center for Biological Diversity

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

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

Esperanza Chairez
Zephyr Jaramillo
esperanza@yuccanm.org
Youth United for Climate Crisis Action

Yiwei Chen
Economic Development New Mexico
P.O. Box 20003
Santa Fe, NM 87504-5003
(505) 394-5481
Yiwei.chen@edd.nm.gov

Nathaniel Chakeres
General Counsel New Mexico
Office of the State Engineer
P.O. Box 25102
Santa Fe, NM 87504-5012
(505) 231-4459
nathaniel.chakeres@ose.nm.gov

Christine Dobbin
1 Cielo Azul Anthony, NM 88021
(915) 412-9148
dobbin.cc@gmail.com

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

Darrell Deaguero,
Darrell.deaguero@liuna16.org
May Va Lor, mlor@liuna.org
LIUNA Local 16

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

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

Courtenay Eichhorst
411 Arizona St.
Albuquerque, NM 87109
courtenaye@ualocal412.org
New Mexico Building and Construction
Trades Council

By: */s/ Mariel Nanasi*
NEW ENERGY ECONOMY

Mariel Nanasi
Attorney for New Energy Economy
422 Old Santa Fe Trail
Santa Fe, NM 87501
MNanasi@NewEnergyEconomy.org
505.469.4060.