

**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 10833**

AQB 26-57 (P)

**NEW MEXICO ENVIRONMENT DEPARTMENT AIR QUALITY BUREAU'S
RESPONSE TO MAXWELL'S MOTION FOR EXPEDITED PREHEARING
DISCLOSURE, PRODUCTION OF IDENTIFIED ADMINISTRATIVE RECORD
MATERIALS, TARGETED ADMISSIONS, AND, IN THE ALTERNATIVE, LIMITED
DISCOVERY**

The New Mexico Environment Department's ("Department or NMED") Air Quality Bureau ("Bureau"), pursuant to 20.1.4.200(D)(4) NMAC, respectfully submits this Response to Maxwell's Motion for Expedited Prehearing Disclosure, Production of Identified Administrative Record. Mr. Maxwell is not seeking discovery; he is seeking the Bureau's hearing testimony before it is due, outside of the established administrative permit adjudication process to create his "affirmative filing." [Mot. at 18]. Mr. Maxwell is also attempting to use Interrogatories and Requests for Production to cross-examine the Bureau before its testimony is submitted. Mr. Maxwell's requests are unreasonably burdensome, and unreasonably duplicative. NMED has already posted the most critical documents on its Public Notices.¹ Under 20.1.4.300(B) NMAC, in

¹ The following documents are posted in on the Department's Public Notice website page: New Source Review Application in both English and Spanish; Completion Letter 5.27.2026; Revisions to Application 10883; Public Notice for Air Quality Construction Permit Application 10883 in both English and Spanish; Completion Letter 10883 in both English and Spanish; Public Involvement Plan and Limited English Proficiency 10883 in both English and Spanish; DRAFT as of 7.29.26 – NSR Permit PART A 10883 in both English and Spanish; DRAFT as of 7.29.26 – NSR Permit PART B_C 10883 in both English and Spanish; DRAFT as of 7.29.26 – Statement of Basis 10883 in both English and Spanish; 10883_Yucca Growth Infrastructure_YGI Microgrid_Modeling Review Report; and Amended Notice of Hearing-9.14.2026 in both English and Spanish. (<https://www.env.nm.gov/public-notices/>).

lieu of discovery, the parties are required to submit technical testimony and exhibits as disclosure to the other parties. Mr. Maxwell is improperly bypassing this regulatory step and the Amended Scheduling Order, and the Hearing Officer should not allow this.

I. MR. MAXWELL IS ASKING THE HEARING OFFICER TO ORDER THE DEPARTMENT TO SUBMIT TECHNICAL TESTIMONY BEFORE IT IS DUE

All four of Mr. Maxwell's interrogatories to the Bureau are seeking the Bureau's *technical testimony* on the Application and Draft Permit before it is submitted. Under the Amended Scheduling Order, technical testimony is not due until August 24, 2026. Should the Hearing Officer enter an Order requiring the Bureau to respond to Mr. Maxwell's requests, the Bureau would be forced to submit its technical testimony twice, with the first time being incomplete as it is still being prepared. This is unreasonably burdensome and unreasonably duplicative and should be denied. See *Dunn v. Brandt*, 2019-NMCA-061, ¶ 11 (restating the principle that "[t]he [tribunal] shall limit use of discovery methods when the discovery sought is duplicative or burdensome") (omitting internal citations and quotation marks).

Under the administrative permitting rules, all the parties submit their respective Statements of Intent ("SOI") by the deadline set in the rules or by order of the Hearing Officer. 20.1.4.300(B) NMAC. Then, under the Amended Scheduling Order of July 29, 2026, the Parties' will have the opportunity to submit rebuttal SOIs. At the hearing, opposing parties have the opportunity to cross-examine witnesses on both direct and rebuttal testimony. Mr. Maxwell is attempting to replace the process outlined under the administrative permitting rules and in the Amended Scheduling Order in order. The Hearing Officer should not allow this.

Mr. Maxwell's 22-page Motion clearly shows that he has all the information he needs to develop his technical testimony. It also shows that what he is seeking is the Bureau's direct testimony in advance of the August 24 deadline. For example, in the Motion Mr. Maxwell offers the following technical analysis:

Draft Condition A107.D, however, defines 780,900 scf as the maximum volume "from one startup event at one CDS unit" and 520,600 scf as the maximum volume at one CDS." It then multiplies those figures by the number of events at CDS units . . . Using the SSM Worksheet's own assumptions, the corresponding amounts are 8,220 cfs for startup of one CDS 5,480 scf for maintenance of one vessel at one CDS. The draft condition therefore appears to contain a factor-of-ninety-five mismatch between the SSM worksheet and the compliance equation.

[Motion at 12].

This is just one of many examples that cover fully five pages of his Motion. Rather than wait for the Bureau's SOI, which would very likely reconcile the alleged mismatch, he appears to assume that his theory is correct and further assumes that he is entitled to have the Bureau explain the Application and Permit to him before NMED's SOI is due. This is precisely what will occur as part of the administrative hearing proceedings. Mr. Maxwell appears to misunderstand the hearing process and is seeking cross examination and rebuttal before the hearing starts. This is contrary to the administrative regulations and the Amended Scheduling Order, which orders rebuttal testimony be filed on September 3, 2026. Mr. Maxwell's complaints about his inability to submit a so-called "affirmative filing" have no merit. Mr. Maxwell, just like the Bureau and all other parties, will have their first opportunity to see witness lists, technical testimony, and other exhibits at the same time to ensure fairness and process.

At the hearing, Mr. Maxwell is free to offer direct testimony or cross-examine on this or any other relevant issue. It is unreasonably burdensome and duplicative and risks transforming "discovery" into a hearing on the merits. See *United States ex rel. Schweizer v. Océ N. Am., Inc.*,

956 F. Supp. 2d 1, 11 (D.D.C. 2013) (holding that when discovery is not authorized by black-letter law, “allowing full-blown discovery as of right would risk transforming [pre-hearing practice] into a trial on the merits . . . It would put the cart before the horse”)

The Bureau respectfully ask that the Hearing Officer not grant Mr. Maxwell’s Motion, as it runs contrary to the Amended Scheduling Order and to the purpose of 20.1.4 NMAC, which contemplates that pre-hearing orders discourage “unnecessary, duplicative or wasteful pre-hearing activities.” 20.1.4.300(A)(3) NMAC.

II. ALL PUBLIC DOCUMENTS RELATED TO THIS MATTER NOT SUBJECT TO EXCEPTIONS ARE AVAILABLE VIA IPRA

Mr. Maxwell is asking that the Administrative Record (“AR”) be produced “immediately,” and argues for an “ongoing records arrangement” for parties and members of the public to obtain documents that may become part of the AR [Mot. at 2 and 9] outside of the administrative regulations. Mr. Maxwell may and has utilized the Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1941 as amended through 2025) to obtain records from NMED. But, under 20.1.4 NMAC, the AR is a distinct document that is legally defined as:

all public records used by the Division in evaluating the application or petition, including the application or petition and all supporting data furnished by the applicant or petitioner, all materials cited in the application or petition, public comments, correspondence, and as applicable, the draft permit and statement of basis or fact sheet, and any other material used by the Division to evaluate the application or petition

20.1.4.7(A)(2) NMAC.

As such, the AR must be compiled by Department staff in a process that typically takes a few weeks,² as the Department must collect all technical documents that were *actually* used to evaluate the application and petition and work with its attorneys to compile. At this point in the process, NMED is organizing and collating all the information it has into what will be the AR. The AR is constantly under construction, and it will likely take every day until the deadline to complete it. Therefore, the AR is not something that can be produced on demand, and NMED should not be required to produce it to until the scheduled deadline within the context of the administrative proceeding.

Again, the AR is a continually growing document that is often not completed until the day of the hearing. This reality is recognized by 20.1.4.200(A)(2), which gives the Department until the day of the hearing to deliver the AR to the hearing clerk. While no court has interpreted this section, in light of the fact that the AR has to be compiled and indexed, it appears that language stating that “[t]he Administrative Record is available for public review at all times,” contemplates access under the Inspection of Public Records Act (“IPRA”) rather than a discovery process. In support of this is the explicit exclusion in this proceeding of the Rules of Civil Procedure and Rules of Evidence under 20.1.4.100(A) NMAC.

Mr. Maxwell has submitted an IPRA request to the Department that mirrors what he is seeking in his Motion. He should not be permitted to do both. Some of the documents have already been delivered to him and others are being evaluated for any exceptions or privileges. [NMED Attachment A]. Mr. Miller’s use of both IPRA and motion practice to obtain documents makes his

² For example, on Application No. 10883 the Department has so far received over 22,000 public comments, with many more to come until the comment period ends. These must be reviewed, sorted, responded to (if appropriate, and compiled into the AR.

Motion unreasonably burdensome and duplicative and subject to denial under 20.1.4.300(A)(3) NMAC. The Hearing Officer should not aid Mr. Maxwell in his efforts.

For the reasons set forth above, the Bureau respectfully requests that the Hearing Officer deny the Motion.

Respectfully submitted,

/s/ Zach Ogaz

Zach Ogaz

General Counsel

Chris Vigil

Brian Yardman-Frank

Assistants General Counsel

New Mexico Environment Department

PO Box 5469

Santa Fe, NM 87502-5469

Phone: (505) 469-4696, (505) 709-8671

zachary.ogaz@env.nm.gov

christopherj.vigil@env.nm.gov

brian.yardman-frank@env.nm.gov

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Response was sent via electronic mail to the persons listed below this 7th day of August 2026.

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

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

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

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

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

Mariel Nanasi
Christopher Dodd
422 Old Santa Fe Trail
Santa Fe, NM 87501
MNanasi@NewEnergyEconomy.org
chris@fayerbergdodd.com
(505) 469-4060
Counsel for New Energy Economy
Christine Dobbin

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

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

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

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

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

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

Courtney Eichhorst
411 Arizona Street
Albuquerque, NM 87109
courtney@ualocal412.org
*New Mexico Building and Construction Trades
Council*

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

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

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

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

/s/ Chris Vigil



Outlook

IPRA Docs

From Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>

Date Fri 7/31/2026 10:13 AM

To Nick Maxwell <inspector@sunshineaudit.com>

Cc Ogaz, Zachary, ENV <zachary.ogaz@env.nm.gov>; Yardman-Frank, Brian, ENV <brian.yardman-frank@env.nm.gov>

Hi Nick,

I'm looking into getting the narrowed docs you are seeking. I do understand that you would like these to prepare your NOI, and I am seeing if I can get it to you faster.

I hope you will consider that no documents are being withheld. NMED staff is just very busy and they field many IPRA requests, all of which are important, including yours. We are doing what we can to fulfill all requests.

Chris Vigil

Assistant General Counsel

Air Quality Bureau

New Mexico Environment Department

121 Tijeras Ave. NE, Ste. 1000

Albuquerque, NM 87102

Phone: (505) 469-4696

Fax: (505) 383-2064

Email: christopherj.vigil@env.nm.gov

<https://www.env.nm.gov/>

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material that is protected by the attorney-client privilege. If you have received this e-mail in error please immediately notify the sender by reply e-mail or by telephone at the number above and destroy the e-mail that you have received.



Fw: calculations attached

From Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>

Date Thu 8/6/2026 6:56 PM

To Nick Maxwell <inspector@sunshineaudit.com>

Cc Ogaz, Zachary, ENV <zachary.ogaz@env.nm.gov>

 2 attachments (6 MB)

A-XXXX-YGI Microgrid-UA2 and Calcs.xlsx; Copy of YGI Microgrid_SSM_2026-0522.xlsx;

Hi Nick,

Attached are the responsive documents to RFP No. 2 in your Motion.

Thank you

Chris Vigil

Assistant General Counsel

Air Quality Bureau

New Mexico Environment Department

121 Tijeras Ave. NE, Ste. 1000

Albuquerque, NM 87102

Phone: (505) 469-4696

Fax: (505) 383-2064

Email: christopherj.vigil@env.nm.gov

<https://www.env.nm.gov/>

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to whom they are addressed. This communication may contain material that is protected by the attorney-client privilege. If you have received this e-mail in error please immediately notify the sender by reply e-mail or by telephone at the number above and destroy the e-mail that you have received.

From: Kuhn, Julia, ENV <Julia.Kuhn@env.nm.gov>

Sent: Thursday, August 6, 2026 4:13 PM

To: Vigil, Christopher J, ENV <ChristopherJ.Vigil@env.nm.gov>

Cc: Ogaz, Zachary, ENV <zachary.ogaz@env.nm.gov>

Subject: calculations attached

Please find attached facility calculations and SSMs.

Julia Kuhn M.S.

Major Source Manager

New Mexico Environmental Department

Air Quality Bureau

NMED Attachment A

525 Camino de los Marquez, Suite 1
Santa Fe, NM 87505
505-629-2893
Julia.Kuhn@env.nm.gov
www.env.nm.gov

