



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

NEW ENERGY ECONOMY

S-1-SC-41579

Petitioner,

Case No. _____

v.

**THE SECRETARY OF THE ENVIRONMENT,
JAMES KENNEY, AND HIS DESIGNEE,
JOHN RHODERICK,
NEW MEXICO ENVIRONMENT DEPARTMENT,
HEARING OFFICER, MAX SHEPHERD,**

Respondents.

**REGARDING:
THE APPLICATION
OF YUCCA GROWTH INFRASTRUCTURE, LLC
FOR AN AIR QUALITY PERMIT NO. 10883
AQB 26-57**

**NEW ENERGY ECONOMY'S EMERGENCY REQUEST FOR A STAY OF
PROCEEDINGS PENDING A DETERMINATION ON VERIFIED
PETITION FOR WRIT OF MANDAMUS**

Oral Argument Requested

Mariel Nanasi
422 Old Santa Fe Trail
Santa Fe, NM 87501
MNanasi@NewEnergyEconomy.org
505.469.4060

Christopher Dodd
500 Marquette Avenue NW
Suite 1330
Albuquerque, N.M. 87102
chris@fayerbergdodd.com
505.475.2742

Attorneys for Petitioner, New Energy Economy

TABLE OF CONTENTS

I.	JURISDICTION AND STANDARDS	5
II.	PETITIONERS SEEK EMERGENCY REVIEW BECAUSE THE HEARING OFFICER’S ORDERS HAVE DENIED FUNDAMENTAL PROCEDURAL FAIRNESS AND THREATEN IRREPARABLE HARM.....	8
a.	The Hearing Officer’s Abrupt Acceleration of the Proceedings has Deprived Petitioners of a Meaningful Opportunity to Prepare Their Case.....	9
b.	The Hearing Officer’s Reversal on Discovery Deprived Petitioners of the Fundamental Fairness that Due Process Requires.....	11
c.	The Hearing Officer’s Reversal on the Dispositive Fuel-Supply Issue Deprived Petitioners of a Timely Determination of Whether Project Jupiter Can Lawfully Proceed.	15
d.	Due Process Does Not Permit Trial by Ambush.....	20
e.	Withholding the Administrative Record Until the Day Expert Testimony is Due Further Deprives Petitioner of a Meaningful Opportunity to be Heard and Present a Claim or Defense.	23
III.	THE NMED AND ITS HEARING OFFICER’S ACTIONS ARE CAUSING IMMEDIATE AND IRREPARABLE HARM.	25
IV.	CONCLUSION	28

TABLE OF AUTHORITIES

UNITED STATES SUPREME COURT

<i>Abbot Laboratories v. Gardner</i> , 387 U.S. 136 (1967).....	16
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965).....	25
<i>United States v. Procter & Gamble</i> , 356 U.S. 677, 78 S.Ct. 983, 2 L.Ed.2d 1077 (1958)	4

FEDERAL CASES

<i>Associated Securities Corp. v. SEC</i> , 283 F.2d 773 (10th Cir. 1960)	25
---	----

NEW MEXICO CONSTITUTION

New Mexico Constitution, Article VI, Section 3	5
--	---

NEW MEXICO CASES

<i>United Nuclear Corp. v. General Atomic Co.</i> , 96 N.M. 155, 629 P. 2d 231 (1980) 4	
---	--

NEW MEXICO SUPREME COURT CASES

<i>AFSCME v. Board of County Commissioners</i> , 2016-NMSC-017	17
<i>Albuquerque Bernalillo County Water Utility Authority v. N.M. Pub. Regul. Comm’n</i> , 2010-NMSC-013	21
<i>Jones v. N.M. State Racing Comm’n</i> , 1983-NMSC-089	21
<i>McDaniel v. New Mexico Bd. of Medical Examiners</i> , 1974-NMSC-062, 86 N.M. 447	18
<i>Mills v. N.M. State Bd. of Psychologist Examiners</i> , 1997-NMSC-028, 123 N.M. 421, 941 P.2d 502	8
<i>New Energy Economy, Inc. v. Shoobridge</i> , 2010-NMSC-049	4
<i>Public Serv. Co. of N.M. v. N.M. Pub. Regul. Comm’n</i> , 2019-NMSC-012, 444 P.3d 460	21, 25
<i>State ex rel. Battershell v. City of Albuquerque</i> , 1987-NMSC-097, 108 N.M. 658, 777 P.2d 386	8
<i>State ex rel. Egolf v. New Mexico Public Regulation Commission</i> , 2020-NMSC- 018, 476 P.3d 896	<i>passim</i>
<i>State ex rel. Sandel v. N.M. Pub. Util. Comm’n</i> 1999-NMSC-019	5, 6
<i>State ex rel. Transcontinental Bus Serv., Inc. v. Carmody</i> , 1948-NMSC-054, 53 N.M. 367, 208 P.2d 1073	25
<i>U.S. West Communications, Inc. v. New Mexico State Corporation Commission</i> , 1998-NMSC-032	17

<i>Wylie Corp. v. Mowrer</i> , 1986-NMSC-075, 104 N.M. 751, 726 P.2d 1381.....	25
--	----

NEW MEXICO COURT OF APPEALS

<i>Bass Enterprises Prod. Co. v. Mosaic Potash</i> , 2010-NMCA-065,148 N.M. 516..	18
<i>In re Estate of Duncan</i> , 2002-NMCA-069, 132 N.M. 426, 50 P.3d 175.....	17
<i>Southwest Organizing Project v. Albuquerque-Bernalillo County Air Quality Control Board</i> , 2021-NMCA-005.....	13

NEW MEXICO STATUTES, ADMINISTRATIVE CODE AND RULES

20.2.70.302 NMAC	17
20.2.72.208(G) NMAC	12, 16
Rule 12-504 NMRA	4

OTHER AUTHORITIES

<i>Smith v. Hollenbeck</i> , 48 Wash.2d 461, 294 P.2d 921 (1956)	18
--	----

This Petition arises from an administrative proceeding before the New Mexico Environment Department (“Department” or “NMED”) in which Applicant Yucca Growth Infrastructure, LLC (“YGI”) seeks an air quality permit authorizing a proposed methane-fueled power plant consisting of approximately 2,275 Bloom Energy solid oxide fuel cells designed to supply 2.46 GW of electricity to Project Jupiter, one of the largest artificial intelligence data center campuses ever proposed in the United States.

The hearing is a matter of extraordinary public importance because the permit would authorize approximately 8.8 million tons of greenhouse gas emissions (CO₂e) annually¹—more greenhouse gas pollution than Albuquerque, Santa Fe, and Las Cruces combined²—while consuming extraordinary quantities of natural gas, electricity, and water in a community already burdened poor air quality and water scarcity in Doña Ana County. It would also emit substantial quantities of carbon monoxide, volatile organic compounds, and other pollutants in an environmental justice community already burdened by poor air and water quality.

¹https://cloud.env.nm.gov/resources/_translator.php/OTRmYzlmMmMwMTljZDUyM2VkM2I5Y2ZkY18vMzYxNzM~.pdf, at p. 4 of 19. (last visited Aug. 17, 2026.)

² Albuquerque 5,523,266 metric tons per City of Albuquerque 2023 Greenhouse Gas Inventory Booklet (PDF), Santa Fe 1,000,000 metric ton per 2021 Inventory of Community-Wide Greenhouse Gas Emissions (PDF), and Las Cruces 770,000 to 800,000 metric tons per City Council Work Session Recap from Oct. 15, 2024.

The project raises issues of statewide significance concerning air quality, water security, climate change, public health, utility infrastructure, environmental justice, and the future of hyperscale artificial intelligence development in New Mexico. Equally important, this Petition presents a fundamental constitutional question: whether, in proceedings involving projects of such magnitude, administrative agencies may deny affected citizens the meaningful notice, discovery, and opportunity to be heard that due process requires. The issues presented therefore extend well beyond the parties to this proceeding and implicate the integrity of administrative adjudication throughout New Mexico.

This Petition has become necessary because the challenged actions, viewed together rather than in isolation, have transformed what should be a deliberate, technically rigorous administrative adjudication into a process that denies Petitioners a meaningful opportunity to prepare and present their case. Contrary to the Hearing Officer's own earlier rulings, the procedural framework he established, and the fundamental requirements of due process, the Hearing Officer abruptly accelerated the hearing date after previously determining that additional time was necessary; eliminated discovery after twice expressly authorizing it because of the "highly technical" nature of the proceeding; refused to entertain a potentially dispositive Motion to Dismiss concerning whether Project Jupiter can obtain the natural gas necessary to operate, after first ordering YGI and NMED to answer

specific questions bearing directly on that issue; relieved YGI and NMED even of the obligation to respond to that Motion; and permitted NMED to withhold an administrative record consisting of thousands of pages until August 24—the exact date Petitioners’ sworn technical testimony is due. The cumulative effect is extraordinary: Petitioners must investigate and prepare expert opinions concerning an unprecedented industrial project without discovery, without timely access to the administrative record, without answers to threshold questions concerning whether the project has a viable fuel supply, and under a schedule substantially shorter than the one the Hearing Officer himself originally found appropriate. Petitioners’ experts will be required to commit their opinions to writing before receiving information essential to those opinions and then attempt, for the first time at the hearing itself, to respond to whatever new technical evidence, engineering assumptions, fuel-supply claims, emissions data, or other information YGI and NMED present. Due process does not guarantee merely a seat in the hearing room and an opportunity to react in real time; it guarantees a meaningful opportunity to know the case, investigate the facts, prepare the evidence, present claims and defenses, and effectively test the opposing evidence. Taken together, the procedural reversals challenged here deprive Petitioners of precisely that opportunity and make judicial intervention necessary before the hearing occurs and the constitutional injury becomes irreversible. While discriminatory administrative

agency orders would normally not be a sufficient basis for seeking a writ, Petitioner respectfully urges the Court to take up this matter now, before all of the parties spend enormous time and incur enormous expenses to prepare for a hearing that the Hearing Examiner has made, in effect, a game of blind man's bluff.³

Petitioner therefore respectfully moves this Court, pursuant to Rule 12-504 NMRA, for an emergency temporary stay of the administrative proceedings concerning Air Quality Permit No. 10883 (AQB 26-57) pending resolution of its Verified Petition for Writ of Mandamus. In its Petition, NEE seeks to compel the NMED and its Hearing Officer to comply with their mandatory duties under the New Mexico Constitution, the Air Quality Control Act, the New Mexico Administrative Code, and NMED's own procedural rules by affording NEE and other intervenors a meaningful opportunity to present their claims and defenses.

Petitioner is well aware of this Court's decision in *New Energy Economy, Inc. v. Shoobridge*, 2010-NMSC-049, as Petitioner was the prevailing party in that matter. Unlike *Shoobridge*, however, NEE does not seek to halt a lawful administrative proceeding or obtain premature judicial review of the merits. It seeks only to ensure that the proceeding complies with fundamental principles of due process before it continues. This case is more akin to *State ex rel. Egolf v. New*

³ *United Nuclear Corp. v. General Atomic Co.*, 96 N.M. 155, 629 P. 2d 231, 246 (1980) citing, *United States v. Procter & Gamble*, 356 U.S. 677, 682, 78 S.Ct. 983, 986-87, 2 L.Ed.2d 1077 (1958) (citation omitted).

Mexico Public Regulation Commission, (“*Egolf*”), 2020-NMSC-018, 476 P.3d 896, ¶¶ 7, 14-15, 19, in which the Supreme Court recognized mandamus as the appropriate vehicle to compel an administrative agency to perform mandatory legal duties. Here, the Hearing Officer’s repeated departures from governing law and procedure have denied intervenors the meaningful opportunity to be heard that due process requires. Unless these proceedings are stayed, the administrative hearing will proceed under procedures that cannot be meaningfully corrected on appeal, rendering any subsequent relief largely illusory.

As grounds for this Petition, Petitioners state as follows:

I. JURISDICTION AND STANDARDS

1. Jurisdiction over this Petition arises under Article VI, Section 3 of the New Mexico Constitution, which confers original jurisdiction over mandamus against all state commissions and authority to issue writs as necessary to carry out this Court’s jurisdiction. See, *State ex rel. Sandel v. N.M. Pub. Util. Comm’n* (“*Sandel*”), 1999-NMSC-019, ¶10, 127 N.M. 272; *Egolf*, ¶¶ 7, 14-19.

2. The circumstances occasioning this Petition satisfy the standards identified in *Sandel* and *Egolf* for exercising this Court’s original jurisdiction and writ authority:

Such an exercise may be appropriate when the petitioner presents a purely legal issue concerning the non-discretionary duty of a government official

that (1) implicates fundamental constitutional questions of great public importance, (2) can be answered on the basis of virtually undisputed facts, and (3) calls for an expeditious resolution that cannot be obtained through other channels such as a direct appeal.

Sandel, 111. As will be explained in further detail:

- a) The “purely legal issue” here are basic due protections: The NMED has a non-discretionary duty to apply Constitutional protections, the Air Quality Control Act, the New Mexico Administrative Code, and NMED’s own procedural rules and under these circumstances.
- b) This Petition presents issues of exceptional public importance⁴ extending well beyond the interests of the parties. It concerns the

⁴ See, for example, Group Exhibit A: Algernon D’Ammassa, “*Hundreds Pack Senator’s Project Jupiter Town Hall*,” Albuquerque Journal (August 12, 2026); <https://www.abqjournal.com/news/hundreds-pack-senators-project-jupiter-town-hall/3101111>; Julia Gentin, “*‘All About Money’: Las Cruces Senators Push Back on Project Jupiter at Crowded Forum*,” Searchlight New Mexico (Aug. 13, 2026), <https://searchlightnm.org/all-about-money-las-cruces-senators-push-back-on-project-jupiter-at-crowded-forum/>; Source Staff, “*New Mexico Environment Department Updates Public Comment Portal Following Fraud Reports*,” Source New Mexico (August 7, 2026), <https://sourcenm.com/briefs/new-mexico-environment-department-updates-public-comment-portal-following-fraud-reports/>; Julia Gentin, “*Demonstrators arrested, jobs promised at rowdy Project Jupiter meeting*,” Santa Fe New Mexican, (Jul. 28, 2026), https://www.santafenewmexican.com/news/local_news/demonstrators-arrested-jobs-promised-at-rowdy-project-jupiter-meeting/article_1103bffd-1b21-4f98-b868-c7cb4ab5e795.html; Joshua Bowling, “*Town hall on Project Jupiter data*

procedural integrity of administrative adjudications involving one of the largest and most polluting industrial projects ever proposed in New Mexico and the ability of citizens to meaningfully participate in agency proceedings that will have profound and lasting environmental, public health, economic, and energy consequences. The New Mexico Supreme Court has long recognized that extraordinary writ jurisdiction is appropriate where a petition implicates fundamental constitutional questions, the proper exercise of governmental authority, or issues of substantial public importance. *See, e.g., Egolf*, ¶ 11. (exercising original jurisdiction to compel a regulatory agency to comply with mandatory statutory duties).

- c) The undisputed facts underlying this Petition are contained in the procedural history and orders of the administrative proceeding before the NMED;
- d) The four verified declarations (in lieu of affidavits) attached to this Petition address the irreversible harm to New Mexicans, that result from NMED's equivocation and refusal to establish the

center changed to 'community open house and career fair,'" Source New Mexico, (June 11, 2026).

applicability of due process protections, and demonstrate the need for expeditious resolution, unachievable through an ordinary appeal. The declarations are from Victor Mata, resident of Santa Teresa; State Senator Elizabeth (“Liz”) Stefanics, Chair of the Senate Conservation Committee; State Senator Carrie Hamblen, Chair of the Senate Tax, Business and Transportation Committee; and State Representative Micaela Lara Cadena for House District 33 in Doña Ana County.

II. PETITIONERS SEEK EMERGENCY REVIEW BECAUSE THE HEARING OFFICER’S ORDERS HAVE DENIED FUNDAMENTAL PROCEDURAL FAIRNESS AND THREATEN IRREPARABLE HARM.

3. Extraordinary relief is warranted because the challenged orders collectively deprive Petitioners of the meaningful opportunity to be heard that due process requires. See *State ex rel. Battershell v. City of Albuquerque*, 1987-NMSC-097, ¶ 8, 108 N.M. 658, 777 P.2d 386 (due process requires notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner); *Mills v. N.M. State Bd. of Psychologist Examiners*, 1997-NMSC-028, ¶ 16, 123 N.M. 421, 941 P.2d 502 (administrative proceedings must satisfy constitutional due process).

a. The Hearing Officer's Abrupt Acceleration of the Proceedings has Deprived Petitioners of a Meaningful Opportunity to Prepare Their Case.

This proceeding concerns one of the most technically complex air permitting applications ever presented to the New Mexico Environment Department. YGI's Air Quality Permit Application spans approximately **648 pages** and contains **22 separate technical sections** addressing, among other subjects:

- emissions inventories;
- air dispersion modeling;
- greenhouse gas emissions;
- water consumption;
- waste heat;
- compliance with state and federal environmental regulations;
- operational plans for emissions mitigation;
- emissions testing protocols;
- New Source Review requirements; and
- numerous technical appendices supporting the Application.

The scope and complexity of the Application necessarily require substantial expert analysis, technical discovery, and careful preparation.

At the initial scheduling conference held on **July 15, 2026**, the parties sharply disagreed regarding an appropriate hearing schedule. Intervenors requested that the hearing be scheduled several months later because of the technical complexity of the Application and the need to retain experts, conduct discovery, review thousands of pages of technical materials, and prepare comprehensive

written testimony. YGI and NMED, by contrast, urged an expedited hearing schedule to commence in August.

Recognizing the complexity of the proceeding and the due process concerns expressed by the intervenors, the Hearing Officer entered a Scheduling Order establishing an **October 19, 2026** hearing date.⁵

Thereafter, on July 20, 2026, YGI filed what it styled a “Request of Emergency Status Conference,” (sic) asserting that delaying the hearing would have “significant financial and operational consequences” for the project and, with the concurrence of NMED, requested the Hearing Officer to reschedule the hearing for August. The Hearing Officer convened an additional scheduling conference on the morning of **July 27, 2026**. During that conference, the Hearing Officer rejected YGI’s and NMED’s request to accelerate the hearing, explaining that the project should not have proceeded with construction before obtaining an air quality permit and that the Applicant’s asserted financial losses did not outweigh the need to afford opposing parties a fair opportunity to prepare their cases. The Hearing Officer further recognized that the additional time was necessary to permit discovery, expert preparation, and the orderly presentation of technical evidence.

⁵ See, Exhibit B, *Scheduling Order*, July 16, 2026.

On the afternoon of **July 27, 2026**, following the Hearing Officer's denial of Applicant's request to accelerate the hearing schedule, representatives of Oracle, the anchor tenant for Project Jupiter, met with Governor Michelle Lujan Grisham.⁶

Two days later, the Hearing Officer reversed course. In an Amended Scheduling Order entered on **July 29, 2026**, he accelerated the hearing by more than one month, moving it from **October 19 to September 14, 2026**, and correspondingly accelerated every major prehearing deadline, including the deadline for submitting full written technical testimony.⁷

The practical consequences of that decision are profound. The compressed schedule dramatically restricted Petitioner's ability to complete technical analyses before expert testimony became due, now on August 24, 2026, less than a month from the July 29th Order.

b. The Hearing Officer's Reversal on Discovery Deprived Petitioners of the Fundamental Fairness that Due Process Requires.

Having twice determined that discovery was appropriate in this "highly technical" proceeding, the Hearing Officer invited the parties to conduct discovery. Acting in direct reliance upon the July 16 and July 29 Scheduling Orders, Exhibits

⁶ See, Exhibit C, Official Schedule of New Mexico Governor Michelle Lujan Grisham, Week of July 27, 2026.

⁷ See, Exhibit D, *Amended Scheduling Order*, July 29, 2026.

B and C, respectively, Petitioners promptly served narrowly tailored interrogatories and requests for production directed to the core factual issues in this case.

The discovery requests were neither burdensome nor peripheral. They sought information uniquely within Applicants' possession concerning the scientific, engineering, and factual assumptions underlying the permit application.

Among other things, Petitioners requested information regarding:

- whether Project Jupiter has any legally viable alternative to the Green Chili Lateral natural gas pipeline following the Commissioner of Public Lands' (twice) denial of the required rights-of-way and business lease;
- engineering analyses supporting Bloom Energy's unprecedented deployment of approximately 2,275 solid oxide fuel cell stacks;
- emissions testing and statistical support underlying the Application;
- manufacturing capability, delivery schedules, and supply-chain constraints;
- contingency planning, risk assessments, and construction schedules; and
- the engineering and financial analyses demonstrating that Project Jupiter can be constructed within the time required by 20.2.72.208(G) NMAC.

Then, after Petitioners had relied upon his orders and served discovery, the Hearing Officer reversed himself. On August 12, 2026, he concluded that his earlier interpretation had been "incorrect," adopted Applicant's legal arguments

almost verbatim, and held that discovery is categorically unavailable in air quality permit proceedings.⁸

That ruling is contrary to New Mexico precedent. In *Southwest Organizing Project v. Albuquerque-Bernalillo County Air Quality Control Board*, 2021-NMCA-005, the Court of Appeals rejected a challenge to a hearing officer's decision authorizing discovery in an Air Quality Control Act permitting proceeding. Rather than questioning the hearing officer's authority to permit discovery, the Court analyzed whether the requested discovery was relevant and whether any prejudice resulted from requiring its production. The Court held there was no error because the challenger failed to demonstrate that irrelevant information had been sought or that the discovery affected the outcome of the proceeding. *Id.* ¶¶ 27-28. The decision recognizes that discovery is an appropriate procedural mechanism in air permitting proceedings where, as here, the requested information is relevant to the issues before the agency.

The prejudice resulting from the denial of discovery is immediate and irreparable. Petitioners' expert testimony must be filed before they have access to the engineering studies, manufacturing analyses, emissions support, contingency plans, fuel supply analyses, and other technical information that only Applicants

⁸ Exhibit E, *Order*, Aug. 12, 2026.

possess. Petitioners' experts are thus required to formulate opinions based only upon the representations contained in Applicants' own permit application, without any meaningful opportunity to test those representations against the underlying facts.

Even more fundamentally, the Hearing Officer's discovery ruling cannot be reconciled with his own reasoning in denying Petitioners' Motion to Dismiss.⁹ There, the Hearing Officer concluded that the dispositive issues should not be resolved through briefing because the relevant facts "*should be developed through testimony presented under oath rather than through argument of counsel in briefs.*"¹⁰ Yet, having determined that additional factual development is necessary, he simultaneously denied Petitioners the only meaningful procedural mechanism for obtaining those facts before the hearing. In practical terms, Petitioners' experts must enter this proceeding blindfolded—limited to investigating only the information Applicants chose to disclose in their permit application. Due process does not require experts to speculate; it requires a fair opportunity to discover and test the facts before being required to render sworn opinions. Under these circumstances, immediate intervention is necessary to preserve the meaningful hearing guaranteed by the New Mexico Constitution.

⁹ Exhibit F, *Sua Sponte Order*, Aug. 5, 2026.

¹⁰ *Id.*, at 2.

c. The Hearing Officer’s Reversal on the Dispositive Fuel-Supply Issue Deprived Petitioners of a Timely Determination of Whether Project Jupiter Can Lawfully Proceed.

Project Jupiter, as proposed by YGI, depends upon a single identified fuel source: approximately 400 million cubic feet of natural gas per day delivered through the Green Chili Lateral pipeline. Yet the independent constitutional officer charged with managing New Mexico’s State Land Trust—the Commissioner of Public Lands, Stephanie Garcia Richard—twice denied the rights-of-way and business lease necessary to construct that pipeline, concluding that the project was not in the best interests of the State Land Trust because it would impose substantial environmental costs while providing minimal public benefit.¹¹ The Commissioner further advised that Applicants’ sole remaining remedy was an administrative appeal; the deadline for pursuing that remedy has now expired, and no contest petition was filed with the State Land Office.

Recognizing that this independent determination created a potentially dispositive threshold issue, the Hearing Officer initially agreed. On August 5,

¹¹ See, Exhibit G, letter of July 14, 2026, from the New Mexico Commissioner of Public Lands, denying Energy Transfer’s applications for the rights-of-way and business lease necessary to construct the Green Chili Lateral pipeline and associated meter station.

2026, he entered an Order expressly finding that expedited briefing was appropriate and directed both YGI and NMED to answer five focused questions concerning the continued viability of Project Jupiter.¹² Those questions required Applicants to explain, among other things, whether any legally obtainable alternative source of natural gas existed, whether they intended to appeal the Commissioner’s decision, whether any alternative pipeline or fuel delivery system had been identified or engineered, whether Project Jupiter remained capable of being constructed as proposed, and whether the project could still be completed within a reasonable time under 20.2.72.208(G) NMAC.¹³

Ripeness exists to prevent agencies and courts from deciding hypothetical disputes whose resolution depends upon uncertain future events. That is the purpose of NMED’s own rule; Under 20.2.72.208(G) NMAC, the Department “shall deny” a permit if the proposed source cannot be produced in a timely fashion.

As the United States Supreme Court explained in *Abbott Laboratories v. Gardner*, ripeness prevents adjudicators from “entangling themselves in abstract disagreements” and protects agencies until a controversy has matured into a concrete dispute. 387 U.S. 136, 148-49 (1967).

¹² See, Exhibit H, *Order*, August 5, 2026.

¹³ *Id.*

Likewise, the New Mexico Supreme Court has recognized that ripeness prevents courts from issuing advisory opinions concerning future contingencies. *U.S. West Communications, Inc. v. New Mexico State Corporation Commission*, 1998-NMSC-032, ¶ 8.

More recently, the Court reaffirmed that a claim lacks ripeness where it depends upon “uncertain and contingent events that may not occur as anticipated or may not occur at all.” *AFSCME v. Board of County Commissioners*, 2016-NMSC-017, ¶¶ 10-12.

New Mexico recognizes the doctrine of impracticability or impossibility when an event occurs whose non-occurrence constituted a basic assumption underlying the transaction. As the Court explained in *In re Estate of Duncan*, the doctrine applies where performance “is made impracticable without his fault by the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made.” 2002-NMCA-069, ¶ 27, 132 N.M. 426, 50 P.3d 175 (quoting Restatement (Second) of Contracts § 261 (1979)), rev’d on other grounds, 2003-NMSC-013. Likewise, “the object must be so completely the basis of the contract that, as both parties understand, without it the transaction would make little sense.” *See*, 20.2.70.302 NMAC. (Permit Content includes all permit conditions.)

The ability to deliver approximately 400 million cubic feet of natural gas every day is not merely one feature of Project Jupiter. It is the project. Without fuel, there is no electric generation.¹⁴ Without electric generation, there is no data center. Without the Green Chili Lateral—or another legally obtainable equivalent fuel supply—the proposed source described in the permit application cannot exist.

Failure to consider whether the Applicant has a fuel source to power its facility—which is highly relevant to the issue of whether construction of the source will be completed in a reasonable amount of time – and instead hear and grant YGI’s Application will ultimately result in an arbitrary decision by the Department. *See, McDaniel v. New Mexico Bd. of Medical Examiners*, 1974-NMSC-062, ¶ 11, 86 N.M. 447 *quoting Smith v. Hollenbeck*, 48 Wash.2d 461, 294 P.2d 921 (1956) (“An agency action is arbitrary and capricious when it is a “willful and unreasonable action, without consideration and in disregard of facts or circumstances.”); see also *Bass Enterprises Prod. Co. v. Mosaic Potash*, 2010-NMCA-065, ¶ 45, 148 N.M. 516 (An agency action is arbitrary and capricious when it is unreasonable or without rational basis when viewed in light of the whole

¹⁴ Applicants’ permit application repeatedly represents that Project Jupiter’s operational reliability depends upon “*its use of a robust natural gas pipeline system.*” YGI Application, https://cloud.env.nm.gov/resources/_translator.php/ZWM3Njk5ZGQ3MjNjNzZiMjRmZmU1ZjgyMF8yMjYwMDk~.pdf at 471, 517, and 520 of 648. (last visited Aug. 17, 2026.)

record, is not the result of the winnowing and sifting process, or if there is no rational connection between the choices made and the facts found or if necessary aspects of consideration or relevant factors are omitted) (citations omitted).

The day before the YGI and NMED responses were due, however, the Hearing Officer reversed course again. Without requiring Applicants or the Department to answer the very questions he had determined were essential, he entered a *Sua Sponte Order*, attached as Exhibit E, declining to decide the threshold issue before expert testimony is due. The Hearing Officer instead concluded that the matter should await the merits hearing. Petitioners sought reconsideration, arguing that Applicants—not Petitioners—bear the burden of demonstrating that the project remains legally viable after the Commissioner of Public Lands’ independent denial of the essential pipeline approvals.

In denying reconsideration, the Hearing Officer acknowledged that Applicants bear the burden of proving that the permit application satisfies the Air Quality Control Act and applicable regulations. Nevertheless, he concluded that the issue should simply be postponed until after Applicants filed technical testimony, reasoning that the pipeline issue would “factor in” to that testimony and that a later hearing would permit testimony under oath and cross-examination.¹⁵ At

¹⁵ See, Exhibit I, *Order*, August 12, 2026.

the same time, however, he relied upon his separate ruling that discovery is unavailable in air permit proceedings.¹⁶

These rulings create an untenable procedural contradiction. The Hearing Officer first recognized that the Commissioner's denial of the Green Chili Lateral presented a threshold issue requiring immediate responses from YGI and NMED before the parties incurred the enormous expense of preparing technical testimony. He then withdrew that order, postponed the issue until after expert reports were due, and simultaneously denied discovery into the very facts necessary to evaluate whether Applicants possess any legally obtainable alternative fuel source. As a result, Petitioners are required to prepare expert testimony and litigate the merits without first determining whether the project described in the permit application can lawfully obtain the fuel necessary to operate. Due process does not require parties to litigate a hypothetical project while postponing resolution of the independent constitutional officer's determination that the project's only identified fuel infrastructure cannot be constructed.

d. Due Process Does Not Permit Trial by Ambush.

The denial of discovery is not a mere procedural dispute. It strikes at the heart of Petitioners' constitutional right to a meaningful hearing. *Public Serv. Co.*

¹⁶ See, Exhibit E, *supra*.

of N.M. v. N.M. Pub. Regul. Comm'n, 2019-NMSC-012, ¶ 102, 444 P.3d 460 (quoting *Albuquerque Bernalillo County Water Utility Authority v. N.M. Pub. Regul. Comm'n*, 2010-NMSC-013, ¶ 21, and *Jones v. N.M. State Racing Comm'n*, 1983-NMSC-089, ¶ 6) (“The fundamental requirements of due process in an administrative context are reasonable notice and opportunity to be heard and present any claim or defense.”).

This case illustrates precisely why those constitutional protections exist. Project Jupiter is not an ordinary air permit. It proposes an industrial source unlike anything previously constructed in New Mexico and relies upon engineering, manufacturing, and emissions assumptions that are unique in both scale and complexity. The permit application depends upon Bloom Energy technology that, according to the Application itself and the supporting materials, has never been commercially deployed at anything approaching the proposed scale. Likewise, the Application relies upon extensive engineering assumptions, manufacturing commitments, emissions projections, and operational representations that remain uniquely within Applicants’ possession.

The resulting prejudice is substantial. Petitioners have been denied any meaningful opportunity to examine the factual basis for those representations before submitting sworn expert testimony. Without discovery, Petitioners cannot reasonably investigate the engineering analyses supporting the proposed design,

the feasibility of manufacturing commitments, the assumptions underlying the proposed fuel supply, the contingency planning for equipment failures, or the scientific basis for emissions projections derived from testing that represents only a minute fraction of the proposed facility. Nor can Petitioners meaningfully evaluate whether the Application's technical representations remain accurate under real-world operating conditions over the life of the project.

Instead, the Hearing Officer's rulings require Petitioners to accept Applicants' technical representations at face value while simultaneously requiring Petitioners' experts to formulate opinions without access to the underlying data, analyses, and documents upon which those representations are based. If Applicants later introduce additional engineering analyses, revised operational assumptions, alternative fuel supply proposals, or other technical evidence during their direct testimony or at the evidentiary hearing, Petitioners will have no realistic opportunity to investigate those assertions, consult their experts, or prepare meaningful cross-examination.

That is not the fair adversarial process contemplated by the New Mexico Constitution or the Air Quality Control Act. Administrative hearings are intended to be a search for the truth through the testing of evidence—not an exercise in accepting technical assertions because opposing parties were denied the tools necessary to evaluate them. Particularly where, as here, the proposed source is

unprecedented in scale, dependent upon novel engineering assumptions, and supported by technical information available only to the Applicant, due process requires that intervenors have a meaningful opportunity to discover and test the factual basis of those claims before they are required to submit expert testimony or proceed to hearing. Emergency relief is therefore necessary to preserve Petitioners' constitutional right to a meaningful opportunity to be heard before that right is irretrievably lost.

e. Withholding the Administrative Record Until the Day Expert Testimony is Due Further Deprives Petitioner of a Meaningful Opportunity to be Heard and Present a Claim or Defense.

The procedural unfairness is compounded by the Department's decision to withhold the administrative record until August 24, 2026—the very same day Petitioners' direct technical testimony is due. According to NMED, the administrative record consists of thousands of pages of documents accumulated during the Department's review of the permit application. Yet Petitioners and their experts will not receive that record until the deadline for filing their own affirmative direct technical case.

That schedule effectively nullifies the purpose of producing the administrative record. Expert witnesses cannot meaningfully review thousands of pages of technical materials, evaluate their significance, revise their analyses, and

incorporate those materials into sworn testimony on the very day their testimony must be filed. Instead, Petitioners' experts will be forced to submit their opinions without knowing whether the administrative record contains additional engineering analyses, agency correspondence, technical memoranda, emissions evaluations, internal reviews, alternatives to the denied methane fuel pipeline or other materials directly relevant to the issues before the Hearing Officer.

This is not merely inconvenient—it is fundamentally unfair. The administrative record should inform expert testimony, not follow it. By withholding the record until Petitioners' testimony is due, the Department has effectively ensured that only Applicants and the Department will have had the benefit of reviewing the complete record while developing their technical case. Petitioners, by contrast, must proceed without access to the very record upon which the Department's permitting decision will ultimately rest.

The cumulative effect of these rulings and decisions are unprecedented and unmistakable. Petitioners have been denied discovery, deprived of the factual information uniquely within Applicants' possession, required to prepare expert testimony under an extraordinarily compressed schedule, and must also do so without timely access to the administrative record itself. The practical consequence is that Opponents are repeatedly being kept in the dark while Applicants alone possess the information necessary to support their case. Such a process does not

afford the “reasonable notice and opportunity to be heard and present any claim or defense” that due process requires. *Public Serv. Co. of N.M. v. N.M. Pub. Regul. Comm’n, supra*, ¶¶ 63, 102. Under these circumstances, emergency intervention is necessary to preserve the fairness and integrity of this proceeding before the prejudice becomes irreversible.

III. THE NMED AND ITS HEARING OFFICER’S ACTIONS ARE CAUSING IMMEDIATE AND IRREPARABLE HARM.

4. The due process guaranteed by both the United States and New Mexico Constitutions requires more than the mere opportunity to appear at a hearing. It requires that the hearing occur “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Wylie Corp. v. Mowrer*, 1986-NMSC-075, ¶ 7, 104 N.M. 751, 726 P.2d 1381. Equally important, New Mexico courts have recognized that the judiciary “must maintain the power of check over the exercise of judicial functions by quasi-judicial tribunals in order that those adjudications will not violate our constitution.” *State ex rel. Transcontinental Bus Serv., Inc. v. Carmody*, 1948-NMSC-054, ¶ 17, 53 N.M. 367, 208 P.2d 1073.

5. Petitioners satisfy each of the factors warranting extraordinary relief. See *Associated Securities Corp. v. SEC*, 283 F.2d 773 (10th Cir. 1960). Most

significantly, the prejudice inflicted by the challenged orders is immediate and irreparable.

6. This proceeding concerns the largest industrial air permit ever proposed in New Mexico. If approved, Project Jupiter would authorize approximately 8.8 million tons of greenhouse gas pollution annually—and would facilitate construction of a multi-billion-dollar artificial intelligence data center campus spanning approximately 1,400 acres in Doña Ana County. The consequences of issuing the permit are therefore extraordinary and long-lasting.

7. Yet Petitioners have been denied the procedural protections necessary for a fundamentally fair hearing: the Hearing Officer accelerated the schedule, reversed two prior rulings authorizing discovery in this “highly technical” case, and withdrew his order requiring responses to a potentially dispositive motion concerning the denial of Project Jupiter’s only identified natural gas pipeline. Compounding that prejudice, NMED will not provide its thousands-of-pages administrative record until the very day Petitioners’ direct expert testimony is due, depriving Petitioners of the information necessary to meaningfully prepare and present their case.

8. Viewed individually, each ruling substantially impairs Petitioners’ ability to present their case. Viewed collectively, they deny Petitioners the meaningful opportunity to prepare, investigate, present evidence, and test

Applicants' evidence that due process requires. Petitioners' experts are required to submit sworn opinions without discovery, without timely access to the administrative record, and without the factual information uniquely within Applicants' possession. That prejudice cannot be remedied after the hearing has concluded.

9. Nor is post-hearing judicial review an adequate remedy.

Administrative appeals routinely take years, before a final appellate decision is rendered. During that time, if the permit is allowed to issue, Applicants will continue to proceed with construction of one of the largest polluting facilities in New Mexico history. Even if Petitioners were ultimately to prevail on appeal, much of the practical harm would already have occurred. A favorable appellate decision after construction has commenced would provide only a hollow victory because the constitutional injury—the denial of a fair opportunity to be heard before the permit issued—cannot be undone.

10. By contrast, granting a temporary stay pending this Court's determination of the Petition will not decide the merits of the permit application or permanently delay the project. It will simply preserve the status quo long enough for this Court to determine whether the procedures employed by NMED and its Hearing Officer satisfy the constitutional minimum required by due process. If the Court ultimately denies the Petition, the administrative proceedings may continue.

If the Court grants relief, however, the hearing will proceed under procedures that afford all parties the fair opportunity to be heard that the Constitution demands.

11. This Court's intervention therefore serves not only Petitioners' interests, but the broader public interest in ensuring that administrative agencies faithfully discharge their constitutional obligations. Petitioners ask for nothing more than what due process guarantees: a fair opportunity to prove their case on the merits before a permit of extraordinary environmental and public significance is issued.

IV. CONCLUSION

Petitioners do not ask this Court to determine whether Project Jupiter should ultimately receive an air quality permit. Nor do Petitioners ask this Court to substitute its judgment for that of the Environment Department on the merits of the Application. Petitioners ask only that the administrative proceeding comply with the constitutional, statutory, and regulatory protections that every litigant is entitled to receive before the State authorizes a project of this magnitude.

The New Mexico Supreme Court has made clear that mandamus exists precisely for circumstances such as these. In *Egolf* the Court held that where an administrative agency equivocates in performing a nondiscretionary legal duty, thereby threatening constitutional principles and causing irreparable harm, this Court not only possesses the authority to intervene—it has the constitutional

responsibility to do so. The Court explained that agencies have a “nondiscretionary duty to administer applicable law” and that when an agency departs from those mandatory obligations, this Court’s mandamus jurisdiction is properly invoked “to preserve New Mexico’s constitutionally required separation of powers.”

That principle governs here.

The Hearing Officer has repeatedly recognized that this is a highly technical proceeding, only to withdraw the procedural protections necessary to ensure its fairness. Discovery was twice authorized and then denied. A dispositive issue concerning the project’s only identified fuel source was first ordered briefed and then postponed without requiring a response. The administrative record will not be produced until the very day Petitioners’ expert testimony is due. The cumulative effect deprives Petitioners of the meaningful opportunity to prepare, present evidence, and test Applicants’ assertions that due process requires.

As *Egolf* further teaches, agencies possess only those powers granted by law and are constitutionally obligated to exercise those powers “in such manner as the Legislature shall provide.” They may not disregard mandatory legal duties in the interest of political expediency or administrative convenience.

Absent immediate intervention, the prejudice will be irreversible.

Administrative appeals cannot restore the opportunity to conduct discovery before expert reports are due. They cannot recreate cross-examination that never occurred

because essential information was withheld. They cannot reconstruct a hearing conducted on an incomplete factual record. Nor can they meaningfully undo the practical consequences if construction proceeds under a permit issued through procedures that denied the public a fair opportunity to participate.

This Court recognized in *Egolf* that extraordinary relief is appropriate when constitutional questions of great public importance, virtually undisputed facts, and the need for immediate resolution converge. Those same circumstances exist here.

Petitioners therefore respectfully request that this Court issue an immediate temporary stay of the administrative proceedings as soon as possible and before the technical testimony of Petitioners' experts is due on August 24, 2026 and thereafter issue a Writ of Mandamus directing Respondents to comply with their mandatory constitutional, statutory, and regulatory duties before this proceeding continues. The integrity of the administrative process, the public's confidence in the rule of law, and the constitutional guarantee of a meaningful opportunity to be heard require nothing less.

Respectfully submitted this 18th day of August, 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.

STATEMENT OF COMPLIANCE

Mariel Nanasi is the Executive Director of, and Senior Attorney for, New Energy Economy, the named Petitioner herein. She wrote the foregoing *New Energy Economy's Emergency Request for a Stay of Proceedings Pending A Determination on Verified Petition for Writ of Mandamus* and attests that the contents are true and correct to the best of her knowledge and belief. Further, the body of the petition does not exceed six thousand (6,000) words and the typeface used was Times New Roman.

/s/ Mariel Nanasi

Mariel Nanasi

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of August 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

Max Shepherd
max.shepherd@comcast.net
Hearing Officer

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

Christopher Vigil
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. Bieber
Carlos Romo
Williams Weese Pepple &
Ferguson, P.C.
1801 California Street, Suite 3400
Denver, CO 80202
jbieber@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

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

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

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

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

/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.