

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

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

AQB 26-57

NO. 10883

**YOUTH UNITED FOR CLIMATE CRISIS ACTION'S RESPONSE IN
SUPPORT OF NEW ENERGY ECONOMY'S MOTION TO DISMISS**

Youth United for Climate Crisis Action ("YUCCA"), by and through its authorized representative, Esperanza Chairez, respectfully submits this Response in support of New Energy Economy's Motion to Dismiss and states as follows:

I. YUCCA Supports Dismissal.

YUCCA fully supports New Energy Economy's Motion because the record now establishes that the Project Jupiter proposal, as described in Air Quality Permit Application No. 10883, cannot presently be constructed.

The application before this tribunal is not for a hypothetical future project. It is an application for a specific methane-fueled generating facility requiring approximately 400 million cubic feet of natural gas each day, supplied through the proposed Green Chili Lateral Pipeline. The Applicants selected that pipeline. They designed the facility around that pipeline. Their emissions calculations, engineering analyses, operating assumptions, and permit application all depend upon continuous delivery of that natural gas.

That pipeline no longer has legal authorization to be constructed. The Commissioner of Public Lands denied the required rights-of-way and business lease, reaffirmed that denial after

reconsideration, and determined that the project is not in the best interests of the State Land Trust.

Accordingly, Applicants presently possess no lawful means of delivering the fuel their own application identifies as indispensable.

II. The Natural Gas Pipeline Is a Condition Precedent to Project Jupiter.

The Green Chili Lateral is not a supplementary project. It is a condition precedent to the entire Project Jupiter proposal. Without approximately 400 million cubic feet of natural gas every day:

- Bloom Energy’s solid oxide fuel cells cannot generate electricity;
- the proposed onsite generating station cannot operate;
- the proposed data center cannot function; and
- the project described in the permit application cannot be constructed.

The permit application therefore depends upon the prior occurrence of an event that has not occurred—and presently cannot occur—the lawful construction of the Green Chili Lateral pipeline. Until that condition precedent is satisfied, every remaining issue in this proceeding becomes hypothetical.

The Hearing Officer correctly recognized this issue when directing Applicants to explain:

- whether any legally obtainable alternative fuel source exists;
- whether any alternative pipeline has been engineered or permitted;
- whether the project remains capable of being constructed as proposed; and
- whether the proposed source can still be completed within a reasonable time as required by 20.2.7.208(G) NMAC.

Those questions are crucial because if the answer is “no,” there is no project left to permit.

III. The New Mexico Environment Department Must Follow Its Own Regulations.

This case also presents a straightforward principle of administrative law:

An administrative agency is bound by its own regulations.

The New Mexico Environment Department (“Department”) promulgated 20.2.7.208(G) NMAC. That regulation provides that the Department “shall deny” a permit if construction of the

proposed source will not be completed within a reasonable time. The word “shall” is mandatory. The Department therefore cannot ignore changed circumstances that directly affect whether the project can ever be completed.

An agency acts arbitrarily and capriciously when it fails to follow the legal standards it has adopted for itself. New Mexico courts have long recognized that administrative action is unlawful where an agency departs from its own governing standards or established procedures without legal justification. In *Hobbs Gas Co. v. New Mexico Public Service Commission*, 1993-NMSC-032, the New Mexico Supreme Court affirmed the district court’s determination that the Commission acted arbitrarily, capriciously, and unlawfully when it departed from its own prior regulatory approach without substantial evidentiary support. The Court emphasized that agencies must exercise their discretion consistently with governing law and may not arbitrarily disregard their own regulatory principles.

The same principle governs here. The Department cannot acknowledge that the only identified fuel source has been denied while simultaneously pretending the application remains unchanged. If the project no longer satisfies the requirements of 20.2.7.208(G) NMAC, the Department must apply its own rule. Anything less would constitute arbitrary and capricious agency action.

IV. Continuing This Proceeding Would Waste Public Resources.

YUCCA is a nonprofit organization with limited resources that must carefully devote its time and funding to protecting New Mexico's communities and environment. Compelling YUCCA, and the public to expend enormous time and energy in an air permit hearing for a project that all parties now know cannot lawfully proceed absent an essential natural gas pipeline is senseless. Administrative proceedings exist to resolve real controversies—not to conduct hearings on projects that cannot be constructed as proposed.

V. Conclusion

Project Jupiter, as proposed, cannot move forward unless and until Applicants obtain lawful authorization to construct the Green Chili Lateral or submit an entirely different project supported by a legally obtainable fuel supply.

The pipeline is not merely related infrastructure—it is indispensable to Project Jupiter and which the entire permit application rests.

Until that condition is satisfied, this proceeding concerns a project that cannot presently be built. Under these circumstances, 20.2.7.208(G) NMAC requires dismissal, or at minimum a stay pending resolution of the pipeline proceedings.

Accordingly, YUCCA respectfully requests that the Hearing Officer grant New Energy Economy's Motion to Dismiss.

Respectfully submitted this 5th day of August, 2026,

YOUTH UNITED FOR CLIMATE CRISIS ACTION

By: /s/ **Esperanza Chairez**

Esperanza Chairez

Campaign Manager and Authorized Representative

Youth United for Climate Crisis Action (YUCCA)

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of August 2026, a copy of the foregoing was sent to the following parties or counsel of record via electronic mail:

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