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 MOTION TO DISMISS YGI'S PERMT APPLICATION AS NOT RIPE FOR ADJUDICATION

Pursuant to the July 29, 2026 Amended Scheduling Order, at 3, ¶ 6, New Energy Economy ("NEE") respectfully moves to dismiss Air Quality Permit Application No. 10883 filed by Yucca Growth Infrastructure, LLC ("YGI") and Bloom Energy Corporation, whose technology and technical certifications form the basis of the proposed new source. Dismissal is warranted because a fundamental condition precedent to the proposed source—the Green Chili Lateral natural gas pipeline that would supply approximately 400 million cubic feet of natural gas per day—has twice been denied by the New Mexico Commissioner of Public Lands. Without a legally authorized fuel supply, the proposed source cannot be constructed or operated as described in the Application, rendering the Application unripe for adjudication and incapable of satisfying the requirements of 20.2.72.208(G) NMAC.

I. INTRODUCTION

This permit proceeding is no longer ripe for adjudication.

The application before the Hearing Officer seeks authority to construct and operate a methane-fueled generating facility that requires approximately 400 million cubic feet of natural gas every day. The application identifies only one means of supplying that fuel—the proposed Green Chili Lateral pipeline.

That pipeline has now been denied.

On March 20, 2026, the Commissioner of Public Lands denied Energy Transfer's applications for the rights-of-way and business lease necessary to construct the Green Chili Lateral pipeline and associated meter station. On July 14, 2026, following a request for reconsideration, the Commissioner again denied the applications, 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. The Commissioner further stated that the only remaining remedy is an administrative appeal. *See*, Exhibit A, attached and incorporated herein, letter of July 14, 2026, from the New Mexico Commissioner of Public Lands.

As matters presently stand, Applicants have no legal authority to construct the only identified fuel supply for Project Jupiter.

Accordingly, this proceeding has become an abstract exercise concerning a project that cannot presently be constructed regardless of how the Air Quality Bureau rules.

The Department should not expend substantial public resources conducting a lengthy evidentiary hearing concerning a project whose essential infrastructure has already been denied and found to be contrary to the public interest.

II. THE APPLICATION IS NO LONGER RIPE FOR ADJUDICATION

Ripeness exists to prevent agencies and courts from deciding hypothetical disputes whose resolution depends upon uncertain future events.

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).

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.

Those principles apply squarely here.

Whether Project Jupiter will ever exist now depends upon an entirely separate administrative proceeding challenging the Commissioner's denial of the Green Chili Lateral pipeline. That appeal has not even begun. It may take years. It may never succeed. Until that threshold issue is resolved, the Department cannot know whether the source described in the permit application will ever be capable of construction.

III. THIS HEARING RISKS BECOMING AN ADVISORY OPINION

The permit application assumes continuous delivery of approximately 400 million cubic feet of natural gas each day. Today, Applicants possess no legal authorization to construct the infrastructure necessary to provide that gas.

If the Commissioner is ultimately affirmed, Project Jupiter—as described in *this* permit application—cannot proceed.

Under 20.2.72.208(G) NMAC, the Department "shall deny" a permit if the proposed source cannot be produced in a timely fashion. If Applicants lack a legally viable means of supplying the approximately 400 million cubic feet of natural gas per day upon which the project depends, then the permit application no longer satisfies the regulatory prerequisites for continued processing and must be denied without prejudice. Administrative agencies do not issue advisory opinions concerning hypothetical projects.

IV. THE DOCTRINE OF IMPRACTICABILITY CONFIRMS THAT THIS PROCEEDING SHOULD NOT CONTINUE

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."

That principle applies with even greater force here. 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. 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.

The non-occurrence of the denial of the pipeline approvals was plainly a basic assumption underlying the permit application. That assumption has now failed. Continuing this proceeding despite that failure would require the Hearing Officer and Department to adjudicate a permit application for a hypothetical project rather than the project actually proposed.

IV. CONSERVATION OF ADMINISTRATIVE RESOURCES FAVORS DISMISSAL OR STAY

This proceeding will require an extraordinary expenditure of both public and private resources. It will involve multiple days of evidentiary hearings, the retention and preparation of highly specialized expert witnesses and technical consultants, extensive participation by Department staff and the Hearing Officer, significant discovery, substantial public participation, preparation of proposed findings of fact and conclusions of law, post-hearing briefing, and the likelihood of subsequent administrative or judicial appeals. These commitments represent hundreds, if not thousands, of hours of professional time and substantial public and private expense. It would be an inefficient and imprudent use of those limited resources to proceed with a hearing on an application for a project that, as presently proposed, cannot move forward because the essential infrastructure necessary to supply its fuel has twice been denied by the Commissioner of Public Lands. Prudence, administrative economy, and sound regulatory practice all favor resolving that threshold issue before requiring the parties, the Department, and the public to undertake the enormous burden of litigating the merits of an application that may never be capable of implementation.

Judicial economy and administrative efficiency strongly favor dismissal now rather than conducting an extensive hearing only to discover later that the project cannot legally proceed.

Should Applicants later obtain all necessary pipeline approvals—or submit an entirely different fuel supply proposal—they remain free to submit a permit application reflecting those changed circumstances.

But the Department should not conduct a hearing based upon infrastructure that has already been denied. Administrative agencies routinely stay or dismiss proceedings where a threshold dispositive regulatory issue pending before another tribunal has rendered the remaining litigation unnecessary.

V. THE DEPARTMENT'S OWN REGULATIONS REQUIRE RECONSIDERATION OF THE APPLICATION

These changed circumstances also call into question whether the Department's preliminary determination that the application was administratively complete remains legally sustainable.

Under 20.2.72.208(G) NMAC, the Department "shall deny" a permit if the proposed source cannot be produced in a timely fashion. Because Applicants' identified fuel source has now been denied the Department therefore cannot simply proceed as though nothing has changed.

VI. REQUEST FOR EXPEDITED RESPONSE

At a minimum, if the Hearing Officer is not prepared to grant this Motion immediately, New Energy Economy respectfully requests that the Hearing Officer issue an Order directing both the Department and Applicants to show cause why this permit application should not be dismissed as administratively unripe. Specifically, the Hearing Officer should require the Department and Applicants to file written responses addressing the following threshold issues:

- Whether any legally obtainable alternative source of natural gas exists capable of supplying the approximately 400 million cubic feet of natural gas per day required by Project Jupiter;
- Whether Applicants intend to administratively appeal the Commissioner of Public Lands' denial of the Green Chili Lateral rights-of-way and business lease;
- Whether any alternative pipeline route or alternative fuel delivery system has been identified, engineered, or permitted;
- Whether the project described in Air Quality Permit Application No. 10883 remains capable of being constructed as proposed in light of the Commissioner's decisions; and
- Whether the proposed source can still be "produced in a timely fashion," as required by 20.2.72.208(G) NMAC, notwithstanding the denial of the essential fuel infrastructure.

Because technical testimony is presently due on August 24, 2026, and because the issues presented by this Motion directly affect whether this proceeding should continue at all, New Energy Economy further requests that the Hearing Officer require both Applicants and the Department to respond within three (3) business days of the entry of such an Order. Following receipt of those responses, the Hearing Officer can determine this dispositive Motion before the parties and the Department expend additional substantial resources preparing technical testimony on an application that may no longer be ripe for adjudication.

VII. POSITION OF THE PARTIES

New Energy Economy sought the position of the parties on this Motion and can state:

YUCCA supports the Motion.

The following parties oppose: Applicant, NMED and Nick Maxwell.

The following parties do not oppose: Center for Biological Diversity, Christine Dobbin, Mr. Saldana and Ms. Fuller, Mr. Wetherbee.

VIII. CONCLUSION

Ripeness is a doctrine of judicial and administrative restraint. It exists to ensure that agencies devote their limited resources to concrete controversies rather than hypothetical ones. Today, Project Jupiter cannot proceed as proposed because its indispensable fuel infrastructure has twice been denied by the Commissioner of Public Lands. Whether those denials will ultimately be reversed through an administrative appeal is unknown, and until that threshold issue is resolved, the project's ability to proceed remains contingent and uncertain.

That uncertainty is precisely the type of contingent future event the ripeness doctrine is designed to address. The Hearing Officer should therefore decline to expend the considerable time and resources of the Department, the parties, expert witnesses, and the public conducting what may ultimately prove to be an unnecessary evidentiary hearing on a project that, as presently proposed, cannot move forward.

Accordingly, New Energy Economy respectfully requests that the Hearing Officer dismiss Air Quality Permit Application No. 10883. In the alternative, New Energy Economy requests that the Hearing Officer issue an Order requiring both Applicants and the Department to respond, within three (3) business days**,** to the threshold issues identified above and, upon consideration of those responses, rule on this dispositive Motion before the parties are required to submit technical testimony or incur the significant expense associated with further litigation of this proceeding.

Respectfully submitted this 4th 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.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th 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

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
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 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

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

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

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

Exhibit A

State of New Mexico
Commissioner of Public Lands
Stephanie Garcia Richard

310 OLD SANTA FE TRAIL
P.O. BOX 1148
SANTA FE, NEW MEXICO 87504-1148

July 14, 2026

Via First Class Mail and Email (mark.vedral@energytransfer.com)

Mark Vedral
Senior Director – Land/Projects
Energy Transfer
1300 Main Street
Houston, TX 77002

Dear Mr. Vedral:

The New Mexico State Land Office ("NMSLO") is in receipt of two letters from you dated April 2, 2026 on behalf of ET Gathering and Processing LLC and Transwestern Pipeline Company LLC, which we understand are both subsidiaries or affiliates of Energy Transfer ("Subsidiaries"). The letters ("Reconsideration Letters") ask for reconsideration of NMSLO's prior rejection of Energy Transfer Subsidiaries' applications for two rights-of-way and a business lease on or across New Mexico state trust lands in connection with a massive planned data center project in Doña Ana County called "Project Jupiter." The Reconsideration Letters are functionally identical. For the reasons described in this letter, Energy Transfer's request for reconsideration of the agency's prior determination is denied.

The office of Land Commissioner is established under the New Mexico Constitution and by statute. *See* N.M. Const., art. V, § 1; *id*., art. XIII, § 2; NMSA 1978, § 19-1-1 (1912); *id*. § 19-1-2 (1953). The Commissioner is the chief executive officer of the NMSLO, and exercises authority over lands and mineral resources granted to the State of New Mexico by the federal government in trust to generate support for public schools and other state institutions, such as hospitals and universities, and is designated under New Mexico law to carry out the State's trust duties under the New Mexico Enabling Act (Act of Congress of June 20, 1910, 36 Stat. 557, Ch. 310, § 10).

Through what appear to be separate project entities, Energy Transfer applied for two separate rights-of-way for the same project – a buried 24" natural gas pipeline called the "Green

Chili Lateral." ET Gathering and Processing LLC was named as the applicant for around 2,000 feet of a southern segment of the pipeline (Township 29 South, Range 2 East, Section 2), while Transwestern Pipeline Company LLC was named as the applicant for about 3,200 feet of a northern segment of the pipeline (Township 25 South, Range 2 East, Section 32). The requested rights-of-way on state trust land represent a small part of the overall approximately 17-mile proposed project. NMSLO received the applications on February 6 and February 9, 2026, and assigned them for review purposes right-of-way number R4-3458 and R4-3459, respectively. Transwestern Pipeline Company LLC also applied for a state business lease for the "Green Chili Meter Station" to connect the proposed new Green Chili Lateral with an existing El Paso Natural Gas line; this application was assigned number BL-3339 for review purposes. By letters dated March 20, 2026, NMSLO notified the Subsidiaries that the right-of-way and business lease applications were canceled and would not be processed further. The Reconsideration Letters followed.

As a threshold matter, Energy Transfer and the Subsidiaries misunderstand the scope of the Commissioner's authority with respect to the use and management of state trust lands. The Reconsideration Letters both state that the Subsidiaries "filed [the] Applications in full compliance with the NMSLO's applicable regulations … and paid all required filing fees …. To [the Subsidiaries'] knowledge, the Applications were complete and in proper form at the time of submission…."; and that "[t]he cancellation of the properly filed, fee-paid applications – without notice, without identification of any deficiency, and without any stated rationale – raises serious concerns…" Reconsideration Letters at 1.

Energy Transfer presupposes that it is entitled to issuance of the rights-of-way and business lease merely by virtue of filing applications and paying nominal application fees ($100 for short-term business lease applications and $250 for rights-of-way). The Commissioner, however, is under no obligation to issue any lease, right-of-way, or permit to <u>any</u> party, and properly does so only upon determining that a given lease, right-of-way, or other authorization is in the best interests of the state land trust which the Commissioner serves as a fiduciary. *See State ex rel. Otto v. Field*, 1925-NMSC-019, ¶ 85, 31 N.M. 120 ("[I]t may not be doubted that the Legislature … in creating the state land office, intended that the commissioner should exercise the power … to use his discretion in making deeds, contracts, and grants"); see also *Heimann v. Adee*, 1996-NMSC-053, ¶ 30, 122 N.M. 340, 924 P.2d 1352 (New Mexico law vests the Commissioner with "plenary authority over state lands.").

The Commissioner has determined that issuing the rights-of-way and business lease that Energy Transfer has requested through its Subsidiaries would not be in the best interests of the trust for several reasons. First, the rights-of-way and business lease would only generate minimal revenue for NMSLO. NMSLO rights-of-way are generally priced on a published fee schedule, and at those rates the rights-of-way would generate only one-time payments of $11,282.20 and $20,624.65 over a 35-year period. The business lease, meanwhile, based on acreage and intended use, would bring in only modest annual payments of $43,406.00 over its five-year term.

There are also few, if any, collateral benefits that Project Jupiter and the ancillary infrastructure facilitating it, such as the Green Chili Lateral, would provide to NMSLO or the trust. The overall project is apparently intended to serve large technology companies like Oracle; the

Green Chile Project (of which the "Green Chili Lateral" for which Energy Transfer's Subsidiaries sought NMSLO rights-of-way is apparently a component) is expected to transport 400 million cubic feet of gas per day to power the operation. *See Danielle Prokop*, "BLM Fast-Tracks 'Green Chile' Pipeline Construction Review for NM Data Center Project Jupiter," *Source New Mexico*, May 7, 2026.[1] This undertaking undoubtedly will enrich Project Jupiter's financial backers, developers, and tenants, and the developers of related infrastructure such as Energy Transfer, but neither Energy Transfer nor any other party has demonstrated how Project Jupiter will provide any significant benefit to NMSLO or its beneficiaries. The burden that the project will impose on New Mexico's water and other natural resources, and on the surrounding community, is extreme. This includes the negative impact that greenhouse gas emissions play in driving climate change, which effects the health and productivity of state trust lands throughout New Mexico. Even with a proposed change from gas-fired power plants to a fuel-cell based power source, Project Jupiter is expected to emit more than 10 million tons of greenhouse gases per year, according to its own permit applications. *See* Heath Haussamen, "Project Jupiter Unveils Less-Polluting Power Plan," *Haussamen.com*, April 26, 2026.[2] This is almost double the annual emissions of the entire city of Albuquerque, New Mexico's largest metropolitan area. *See* City of Albuquerque, 2025 Greenhouse Gas Inventory.[3] At a time when New Mexico needs to stop the out-of-control acceleration of climate change, literally doubling down on dangerous emissions is irresponsible and incompatible with NMSLO's mission. Project Jupiter is also expected to consume nearly a million gallons of water a day in one of the most arid corners of our arid state. *See* Alaina Mencinger, Project Jupiter Will Need Nearly 1 Million Gallons of Water a Day – Where Will it Come From?, *Santa Fe New Mexican*, Apr. 6, 2026.[4]

NMSLO is proud to partner in clean, sustainable economic development. However, building pipelines and other gas infrastructure intended to serve Project Jupiter is a poor use of New Mexico state trust lands and staff resources, and based on available information appears that it will impose environmental costs on New Mexico greater than any resulting benefit to the trust, our people and our resources. Advancing the massive use of gas for a project of this scale is simply not in the best interest of the trust. For these reasons, I am upholding the agency's determination not to issue the rights-of-way and business lease to Energy Transfer that are component parts of Project Jupiter. If you are aggrieved by this decision, you may file a petition for administrative

---

[1] Available at https://sourcenm.com/2026/05/07/blm-fast-tracks-green-chile-pipeline-construction-review-for-new-mexico-data-center-project-jupiter/

[2] Available at https://haussamen.com/2026/04/27/project-jupiter-unveils-less-polluting-power-plan/

[3] Available at https://www.cabq.gov/sustainability/documents/ghg-inventory-2025-booklet.pdf/@@download/file/ghg-inventory-2025-booklet.pdf

[4] Available at https://www.santafenewmexican.com/news/local_news/project-jupiter-will-need-nearly-1-million-gallons-of-water-a-day-where-will-it/article_9cf82fa5-9bf5-49c9-864d-a51f5ff5ab1d.html

contest pursuant to State Land Office rules (*see* 19.2.15 NMAC) within 30 days of the date of this letter.

Sincerely,

Stephanie Garcia Richard
Commissioner of Public Lands