STATE OF NEW MEXICO
ENVIRONMENTAL IMPROVEMENT BOARD

IN THE MATTER OF PROPOSED
ADOPTION OF 20.2.92 NMAC -
Clean Transportation Fuels Program **No. EIB 25-23 (R)**

MAXWELL'S GENERAL PUBLIC COMMENT ON THE DEPARTMENT'S SELECTIVE APPLICATION OF ITS "TECHNICAL TESTIMONY" STANDARD

Mr. Nicholas R. Maxwell submits this public comment to address the implications of the Department's selective application of its "technical testimony" standard, the Hearing Officer's preliminary classification of his October 3 written statement, and the broader impact of this selective approach on the fairness of the rulemaking process.

I. BACKGROUND.

On October 3, 2025, Mr. Maxwell filed a written comment pursuant to 20.1.1.304(B), which permits members of the general public to submit written statements for the record in lieu of oral testimony at the hearing. The Department moved the next day to compel cross-examination, asserting that the filing constituted "technical testimony" submitted without the Notice of Intent required under 20.1.1.302 NMAC. Mr. Maxwell responded that written comment under 20.1.1.304(B) is expressly distinct from sworn testimony; that the Department's theory was incompatible with the structure of Part 20.1.1; and that the presence of technical subject matter in a written statement does not transform it into testimony absent a sworn presentation under 20.1.1.401. At the pre-hearing conference on November 10, the Hearing Officer declined to order cross-examination but indicated that she believed the filing "looked like technical testimony" and that she might advise the Board not to afford it full weight.

II. QUESTION PRESENTED.

That preliminary view raises an important question: if Mr. Maxwell's written comment—unsworn, offered under the stated authority of 20.1.1.304(B), and containing no expert analysis—may be deemed "technical testimony," what is the status of the numerous sworn commenters who made far more explicitly technical assertions without filing any Notice of Intent or supplying qualifications?

III. THE DEPARTMENT'S ASSERTED STANDARD FOR WHAT CONSTITUTES TECHNICAL TESTIMONY.

The Department's October 30 reply advanced an expansive view of what constitutes "technical testimony." According to the Department, any analysis of economic feasibility, any inference connecting external events to program outcomes, any statement that draws causal conclusions, any use of factual premises to support a policy argument, any discussion of infrastructure or energy systems, any evaluation of emissions pathways, and any prediction of market behavior or regulatory consequence qualifies as "technical testimony." The Department also argued that testimony need not involve credentials, that written submissions may be treated as testimony based solely on content, and that any speaker who makes statements requiring more than high-school-level expertise must be classified as a technical witness.

IV. APPLICATION OF THE DEPARTMENT'S STANDARD TO SWORN PUBLIC COMMENTERS.

a. Context of Public Comment Review.

Under this framework, nearly every sworn public commenter in this proceeding provided what the Department would characterize as "technical testimony." None filed Notices of Intent.

None disclosed qualifications. None supplied narrative prefiled testimony. Yet all were permitted to testify under oath without objection or limitation.

Mr. Maxwell's summary review herein covers the first 12 days of hearing testimony, as well as the additional two evenings during which the Hearing Officer specifically solicited public comment. These sessions featured input from individuals representing academics, scientists, environmental advocates, industry stakeholders, and concerned citizens. Nearly all of these individuals provided testimony that, according to the Department's standard, could easily be classified as technical due to the specialized knowledge or factual claims they made regarding transportation fuels, greenhouse gas emissions, and the technical aspects of the Clean Transportation Fuel Program; some of these contributions were explicitly technical in nature.

Despite this, the Department did not raise any concerns at the hearing about whether their comments qualified as technical testimony under the applicable rules.

b. Examples of Sworn Public Commenters Providing Technical Testimony.

For example, one commenter, a Stanford RegLab researcher, presented one of the most overtly technical submissions in the entire proceeding. He described a multi-year academic study employing statistical matching techniques, nearly 9,000 satellite images, infrastructure classification, and methane-emissions accounting to isolate causal effects of digester incentives on herd expansion. He quantified expansion ("860 more cows") and provided emissions offsets ("one third of claimed reductions negated"). Under the Department's asserted standard—that material requiring technical expertise is "technical testimony"—this comment would unquestionably qualify. Yet this was accepted during a time for non-technical public comment.

Other commenters made extensive scientific or engineering claims. For instance, two commenters representing Food & Water Watch, a party similarly situated to Mr. Maxwell in this proceeding with only an entry of appearance filed, cited public health impacts, respiratory illness patterns, groundwater pollution, lifecycle emissions consequences, and the issue of 'herd size tripling' under California's LCFS. A commenter representing Animal Protection New Mexico discussed statewide manure production volumes, groundwater contamination, public-health impacts, and animal-agriculture infrastructure—none of which were treated as technical testimony. A commenter for Waga Energy cited EPA's 2023 methane-capture percentages ("only 39% captured"), described landfill gas-to-energy engineering practices, and proposed specific methane-capture crediting methodologies based on site-specific monitoring. A commenter for American Soybean Association offered analysis of lifecycle greenhouse gas models, indirect land-use change scoring, agricultural emissions science, and international verification protocols. All such assertions, by their nature, require scientific background to develop—yet they were accepted without objection during a period set aside for non-technical public comment.

Many commenters also provided detailed engineering or efficiency analysis. A commenter for Sierra Club Rio Grande Chapter testified about comparative drivetrain efficiency between EVs and combustion vehicles. A commenter representing PNM discussed PNM's "72% carbon-free" generation portfolio, projected revenue offsets of "10 to 20%," and the technical operation of transportation electrification programs. A commenter representing Tesla analyzed the operation of DC fast-charging networks, credit-calculation mechanics under proposed Sections 303 and 304, competitive effects among charging operators, and regulatory consequences of dealer-licensing statutes. These subjects clearly involve engineering, grid-

operations, and regulatory expertise. Still, none of these commenters were treated as technical witnesses on the record.

Equally telling are the commenters who provided scientific health-risk assessments. One commenter cited a 2024 JAMA cohort study of 5,279 children and described epidemiological correlations between early-childhood pollution exposure and asthma incidence. Another commenter linked local air-pollution dynamics to observed respiratory effects such as nosebleeds, headaches, and asthma exacerbation. These claims involve interpretation of medical literature and public-health data, yet again were accepted as ordinary public comment, not technical testimony.

Regulatory and market-structure analysis also appeared throughout the record. A commenter for Americans for Affordable Clean Energy offered detailed critiques of definitions of "regulated party," discussed refinery control of fuel characteristics, cost-pass-through mechanisms, and structural distortions created by SAF opt-in crediting. Commenters for Loves analyzed Section 20.2.92.401, supply-chain ownership transfer, below-the-rack obligations, and alignment with California LCFS definitions. These are precisely the kinds of regulatory interpretations the Department labeled "improper" when applied to Mr. Maxwell's written comment—yet were fully accepted from other members of the public.

Other public commenters offered physics-based and chemistry-based arguments. One commenter, a retired physics and chemistry teacher, explained ozone formation processes from partial combustion, asserted that EVs convert "90% of electricity into useful work," described magnetic-force motion in electric drivetrains, and urged adoption of NREL's EER value of 4.4.

These statements clearly rely on specialized scientific knowledge. Yet the Department did not attempt to reclassify them.

c. Inconsistency in Application of the Department's Standard.

These limited examples show that large portions of the public comment record consist of material that—under the Department's ad hoc standard—would have been considered technical testimony requiring a Notice of Intent, pre-filed narrative, witness qualification, and sworn presentation. Nevertheless, none of these commenters were subjected to reclassification, procedural exclusion, diminished weighting, or adverse remarks at the hearing. The Department's standard was therefore neither text-based nor uniformly applied. Instead, it functioned only as a basis for singling out Mr. Maxwell's written comment—despite the fact that his written comment was submitted expressly under 20.1.1.304(B), contained no sworn testimony, and included less technical content than many of the sworn commenters above. The record shows that the Department's position is inconsistent with the rule's distinction between written comments and oral testimony, and is contradicted by numerous examples of sworn public comments containing technical testimony, all of which were accepted without objection.

d. The Humanity of Public Comment.

Public comment is more than just a technical formality; it is an act of courage and civic engagement. Each individual who steps up to testify—whether an expert or a concerned citizen—shares not just information, but their personal stake in the outcome. As Vice Chair Trujillo acknowledged when speaking to participants:

> "..thank you for having the courage to come up and share what you're most passionate about."

This reflects the true value of public comment: the opportunity for individuals to voice their concerns and hopes for the future, despite the vulnerability it may bring.

The Hearing Officer was right to permit these comments unobstructed into the record. Public participation is vital in rulemaking, and the board's decision to ensure a full and honest reflection of public input was essential for transparency and fairness. However, some of the comments clearly constituted technical testimony, which should be reviewed and noted by the Hearing Officer in her report to the Board. By selectively applying standards and failing to object to the technical nature of certain contributions during a time designated for non-technical testimony, the Department undermined the integrity of its position against Mr. Maxwell's own statement.

V. CONCLUSION.

Public comment is a fundamental part of this rulemaking, and the courage to speak up must be respected, not diminished. The Department's failure to acknowledge this is the true flaw in their arguments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of my public comment was served by email on November 24, 2025 to all parties of record, with a hard copy mailed upon request.

-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell