

Nicholas Maxwell

Please find attached written statement.

**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 OPPOSING
THE HEARING OFFICER’S MISCLASSIFICATION OF WRITTEN STATEMENT**

Mr. Nicholas R. Maxwell submits this comment for the limited purpose of preserving an issue arising from the November 10 pre-hearing conference. At that conference, the Hearing Officer characterized Mr. Maxwell’s October 3 written public comment as “technical testimony,” without identifying the specific portion of the filing that constituted testimony and without reference to the structure of 20.1.1 NMAC.

Under 20.1.1.304(B), a “written statement” submitted by a member of the general public is expressly distinguished from “testifying” and “testimony,” which is governed by 20.1.1.304(A) and 20.1.1.401. Subsection B repeatedly refers to such filings as “written comment” or “comments”—never as testimony—and describes them only as being submitted “in lieu of providing oral testimony.” The distinction is explicit: written statements under 20.1.1.304(B) are not testimony.

By contrast, testimony—whether technical or non-technical—must be taken under oath or affirmation pursuant to 20.1.1.401(A). “Technical testimony,” defined in 20.1.1.7(S), remains a subset of testimony and presupposes sworn oral presentation or pre-filed narrative testimony by a technical witness under 20.1.1.302:

“S. “technical testimony” means scientific, engineering, economic or other specialized **testimony**, but does not include legal argument, general comments, or statements of policy or position concerning matters at issue in the hearing;” (Emphasis in bold)

While written comments may include technical information, such content does not convert a written statement into testimony absent a sworn appearance.

Mr. Maxwell has not been sworn or affirmed during this proceeding and has provided no oral testimony. His October 3 filing was submitted solely as a written statement under 20.1.1.304(B). The rules do not transform written public comment into testimony merely because it references technical subject matter. As explained in Mr. Maxwell's response to the Department's motion to compel, the filing "merely summarizes public-domain facts supporting a policy position and does not offer expert analyses, models, or conclusions drawn from specialized expertise." (See Maxwell Response at 3). As the Hearing Officer did not identify any specific portion of the comment she regarded as testimony, the basis for that conclusion remains unclear.

The Hearing Officer's interpretation, treating a written statement as "technical testimony" merely because it contains technical information, is inconsistent with the structure of the rule. If the presence of any technical subject matter were enough to convert a written statement into testimony, then a substantial number of written comments already filed in the record would likewise need to be reclassified as "technical testimony," even though the commenters were never sworn and never intended to testify. To be clear, Mr. Maxwell does not assert that those comments are technical testimony. Rather, it is the Hearing Officer's interpretive approach that produces an unworkable and subjective standard, erasing the rule's explicit distinction between written comments and sworn testimony.

This interpretation cannot be reconciled with an objective review of the full public record. When the same level of scrutiny applied to Mr. Maxwell's filing is applied uniformly to other

written statements, it becomes evident that his comment was singled out for treatment not applied to similarly situated commenters. The comment at issue expressed opposition to the rulemaking and cited statements from President Trump’s Administration—topics that have drawn sharp disagreement and palpable disdain from certain parties and their expert witnesses. The selective enforcement of the “technical testimony” label under these circumstances raises legitimate concerns about fairness, consistency, and the overall integrity of the rulemaking process.

Mr. Maxwell reserves all rights to challenge the classification of his October 3 filing and any consequences flowing from that classification.

Respectfully submitted,

By: *-s- Nicholas Maxwell*
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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 20, 2025 to all parties of record, with a hard copy mailed upon request.

-s- Nicholas Maxwell
Mr. Nicholas R. Maxwell