July 2, 2026 via email and comment portal

New Mexico Environment Department
Air Quality Bureau – Permitting Section
325 Camino de los Marquez, Ste. 1
Santa Fe, NM 87505

Re: **Yucca Growth Infrastructure, LLC Initial NSR Application**

Dear Permitting Program Staff:

Please accept this additional comment, demand for public hearing and demand for permit application denial, submitted by the New Mexico Environmental Law Center on behalf of Jose Saldaña Jr. and Vivian Fuller (hereinafter, "Community Members"), regarding Yucca Growth Infrastructure, LLC's ("YGI") Initial NSR Application for the YGI Microgrid ("Application"). Ultimately, YGI's Application simply contains too many unknowns and provides far more questions than answers that this Department must address prior to issuing any air pollution permit at the expense of Southern New Mexico residents. In addition to the concerns and issues raised in Community Members' comment submitted on May 20, 2026,[1] Community Members urge the New Mexico Environment Department to deny YGI's Application because YGI's Application is based on incomplete data and flawed assumptions; because issuing an air pollution permit will violate provisions of the New Mexico Air Quality Control Act ("AQCA"), NMSA 1978 § 74-2-1 *et seq.*, and the federal Clean Air Act, 42 U.S.C. 7401 *et seq.*; and because permitting the YGI facility will result in the Department's perpetuation of environmental racism against residents of Sunland Park and Santa Teresa, New Mexico.

[1] Included as Attachment 1.

## I. NMED must deny YGI's Application because any permit issued will violate the fundamental purpose of the New Mexico Air Quality Control Act and the Clean Air Act.

The New Mexico Environment Department ("NMED" or "the Department") must protect and restore the environment and foster a healthy and prosperous New Mexico for present and future generations.[2] Permitting the YGI facility, however, will achieve just the opposite. The Department must deny an air pollution permit if such permitting will violate any provision of the New Mexico Air Quality Control Act. 20.2.72.208(F) NMAC; *see also e.g*. NMSA 1978 § 74-2-10(A) ("Notwithstanding any other provision of the AQCA, if the secretary or the director determines that a source or combination of sources presents an imminent and substantial endangerment to the public health or welfare or to the environment, he may bring suit … to restrain immediately any person causing or contributing to the alleged air pollution to stop the emission of air contaminants causing or contributing to such air pollution").

The AQCA, at its core, requires the Department to exercise its regulatory authority in such a way as to protect human health and the public welfare. *See e..g.* NMSA 1978 § 74-2-5(A) ("the environmental improvement board or local board shall prevent or abate air pollution"); *see also* NMSA 1978 § 74-2-2(B) ("air pollution means the emission, except emission that occurs in nature, into the outdoor atmosphere of one or more air contaminants in quantities and of a duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility, or the reasonable use of property") (internal quotations omitted); *see* 42 U.S.C. § 7401(b)(1) ("The purposes of this subchapter are to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare of the productive capacity of its population").

[2] New Mexico Environment Department, "Mission." Accessible at: https://www.env.nm.gov/ (last viewed June 30, 2026).

Relatedly, the State of New Mexico has admitted that "climate change creates new risks and exacerbates existing vulnerabilities in communities across New Mexico and presents growing challenges for human health and safety, quality of life, and the rate of economic growth."[3] The State of New Mexico has further conceded that "carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride are recognized as the six greenhouse gases contributing to climate change." *Id.* Even the Department's own Secretary, Mr. James Kenney, purports to understand the need to "confront climate change head-on."[4] Yet, the state of New Mexico has failed to adopt any regulatory scheme that would meaningfully regulate greenhouse gas emissions in the air permitting context and achieve the mission of the Air Quality Control Act and the Clean Air Act,[5] leaving the Department primed to permit the YGI facility which promises to emit at least 10,144,115 tons per year of carbon dioxide – a decision that is certainly not aligned with the Department's mission and would violate the fundamental purpose and legal requirements of both the New Mexico Air Quality Control Act and the Clean Air Act. As such, the Department must deny YGI's Application.

In addition, YGI proposes to emit, according to its own flawed air dispersion modeling explained in Section IV, below, at least 124 tons per year of Volatile Organic Compounds, ("VOCs"), resulting in detrimental public health and welfare impacts, as well as exceeding the

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[3] *See* Executive Order 2019-003, Executive Order on Addressing and Preventing Climate Change and Energy Waste Prevention (January 29, 2019). Accessible at: https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf (Last viewed June 30, 2026).

[4] "New Mexico releases State Climate Action Plan Charting Path to Net-Zero Emissions," NMED News Release (December 19, 2025). Accessible at: https://www.env.nm.gov/wp-content/uploads/2025/12/2025-12-19-COMMS-New-Mexico-releases-state-Climate-Action-Plan-Final.pdf (Last viewed June 30, 2026).

[5] New Mexico Environment Department Memorandum, "Greenhouse Gas Permitting Issues and Answers," ("NMED GHG Memo") (May 20, 2016). Accessible at https://www.env.nm.gov/wp-content/uploads/sites/2/2019/10/GreenhouseGasPermittingIssuesandAnswers20May2016.pdf (Last viewed June 26, 2026).

Title V major source limits, such that the facility will require a Title V operating permit if the Department moves forward permitting this source. 20.2.70.7(R)(1) NMAC. Inhaling VOCs can cause difficulty breathing, nausea, cancer, and can damage the central nervous system.[6] VOCs also contribute to ozone pollution, which, as the Department knows, causes detrimental health impacts[7] and is already dangerously high in the area in which YGI's source is proposed.[8] Contributing to the formation of additional ozone in an area that is already in nonattainment in some portions of the airshed, and borderline in the rest, will almost certainly result in the violation of ambient air quality standards, the Air Quality Control Act, and the Clean Air Act.[9] For these reasons, the Department must deny YGI's Application.

## II. The Department must deny the Application because the Environmental Improvement Board must regulate greenhouse gas emissions prior to NMED issuing a permit.

As explained above, Section 74-2-5 of the AQCA sets forth the Environmental Improvement Board's ("Board") rulemaking authority, requiring the Board to "adopt, promulgate, publish, amend and repeal rules and standards consistent with the [AQCA] to attain and maintain national ambient air quality standards and prevent or abate air pollution," which the Department must implement. NMSA 1978 § 74-2-5(B)(1). Thus, on its face, Section 74-2-5(B)(1) requires the Board to exercise its rulemaking authority to prevent or abate "emission . . . into the outdoor atmosphere of one or more air contaminants in quantities and of a

[6] American Lung Association, "Volatile Organic Compounds" (January 13, 2026). Accessible at: https://www.lung.org/clean-air/indoor-air/indoor-air-pollutants/volatile-organic-compounds (last viewed June 30, 2026)
[7] American Lung Association, "Ozone," (June 9, 2025). Accessible at: https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone#how (last viewed June 30, 2026).
[8] Archived EPA EJScreen, "Santa Teresa" and "Sunland Park," Environmental Justice Index: Ozone." Accessible at https://pedp-ejscreen.azurewebsites.net/ (last viewed June 30, 2026).
[9] Community Members note that this emissions estimate is based exclusively on YGI's modeling which, explained in Section IV, is inadequate and likely underestimated.

duration that may with reasonable probability injure human health or animal or plant life or as may unreasonably interfere with the public welfare, visibility or the reasonable use of property[.]" NMSA 1978 § 74-2-2(B) (defining "air pollution"). "In other words, the Board must determine which quantities and durations of air contaminants may, with reasonable probability, cause injury. Only after defining such quantities and durations can the Board use its rulemaking power to accomplish the legislative mandate of preventing or abating air pollution." *See Southwest Org. Project v. Albuquerque-Bernalillo Cnty. Air Quality Control Bd*., 2021-NMCA-005 ¶ 12, 482 P.3d 1273 (emphasis added). The Department's obligation rings all the more true when considering that "[t]he protection of the state's beautiful and healthful environment is … declared to be of fundamental importance to the public interest, health, safety and the general welfare" and the state of New Mexico must "provide for control of pollution and control of despoilment of the air, water, and other natural resources of this state ..." N.M. Const. Art. XX, § 21. In the context of greenhouse gas ("GHG") emissions, however, "no ambient air quality standards for GHG"[10] exist. Thus, prior to issuing any air pollution permit to YGI, or any iteration of YGI, or any facility that stands to emit more greenhouse gases than New Mexico's largest metropolitan areas combined, NMED must, at the very least, petition the Environmental Improvement Board for a comprehensive regulatory framework that regulates greenhouse gas emissions in order to satisfy its obligations under the AQCA and the Clean Air Act, as well as the Constitution of the State of New Mexico, and ensure the protection of the public health and welfare of Community Members.

## III. NMED must deny the Application because permitting the YGI facility will contribute to the cumulative pollution burden in Santa Teresa, further harming the public health and welfare.

[10] See generally, NMED GHG Memo.

Additionally, in its regulation, control, prevention and abatement of air pollution, NMED must recognize the differences, needs, requirements and conditions in the different portions of the geographical area of the Department's responsibility. NMSA 1978 § 74-2-5.1(H); *see also* 20.2.72.203(A)(11) NMAC (requiring permit applications to include "such other specifically identified relevant information as the department may reasonably require").[11] Thus, the Department clearly has discretion to consider information relevant to its charge of protecting health and welfare and its mission to foster a healthy New Mexico. For too long, however, NMED's attitude toward the cumulative burden of its decision making has been one of intentional ignorance – arbitrarily distinguishing the decisions of the Air Bureau from those of the Water Quality Bureau, the Hazardous Waste Bureau, or any other permitting entity within, or outside of, the Department. Now is not the time for NMED to bury its head in the sand and continue to exploit the residents of Sunland Park and Santa Teresa. Certainly, NMED's track record of caring for these residents in particular is atrocious.[12] Rather than take the Department's usual approach of pretending the environmental consequences and health impacts of an air permitting decision happen in a vacuum, NMED must exercise its discretion and authority to ensure residents impacted by YGI's proposal do not continue to be exploited for the false promise of innovation and economic growth.

It is well understood that air pollution does not impact human health equally but instead is exacerbated by the cumulative impacts of a person's lived experience. Cumulative impacts are defined as the totality of exposures to combinations of chemical and nonchemical stressors and

[11] Community members incorporate the additional relevant information set forward in their Initial Comment, included as Attachment 1.

[12] *E.g.* Kent Patterson, "The Water Crisis in Sunland Park and Santa Teresa One Year Later, Part One: Residents Seek Stricter Federal Oversight of Water Utility" (January 3, 2025). Accessible at: https://elchuqueno.com/the-water-crisis-in-sunland-park-and-santa-teresa-one-year-later-part-one-residents-seek-stricter-federal-oversight-of-water-utility/ (Last viewed June 30, 2026).

their effects on health, well-being, and quality of life – which the Department must protect. Indeed, air pollutants do not exist in isolation, and the totality of environmental exposures, along with sociodemographic factors, pre-existing health issues, and climate change must be considered when regulating air pollutants.[13] Certainly the Department understands this, as NMED claims it is committed to environmental justice – which requires that no group of people bear a disproportionate share of the negative environmental consequences resulting from its decisions.[14] Yet, if the Department proceeds with YGI's air permitting, it will be again refusing to provide such protection for the residents of Sunland Park and Santa Teresa.

One such example of the cumulative effects of NMED's decision making that cannot be ignored is clearly demonstrated by the ongoing water crisis in Sunland Park and Santa Teresa. As the Department is well aware, residents of Sunland Park and Santa Teresa have lived without safe and clean drinking water for decades. Granting YGI's Application would certainly make this issue worse, contributing to the water scarcity in the region. Despite YGI's claim that the solid oxide fuel cell-powered microgrid should ease community concerns regarding water usage, stating this source will use "significantly less water" than the earlier-proposed East and West Microgrids, a closer reading of the Application shows that this claim only applies to water usage, "during steady state operation." YGI fails to disclose that, on start-up, the facility requires an initial input of water, and, while YGI does not provide any information on water usage, a

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[13] American Lung Association, "Cumulative Health Impacts Assessment and the National Ambient Air Quality Standards," (December 17, 2024). Accessible at: https://www.lung.org/getmedia/f0122ec4-095c-4eb3-9fa5-0a4cc47437ad/Lung-Association-Cumulative-Impacts-Assessment-Criteria-Air-Pollution-White-Paper.pdf (Last viewed June 30, 2026).

[14] Executive Order 2005-056, "Environmental Justice Executive Order," (November 18, 2005). Accessible at: https://www.env.nm.gov/wp-content/uploads/2022/06/EO_2005_056.pdf (Last viewed June 30, 2026). See also New Mexico Environment Department, "Equity," Accessible at: https://www.env.nm.gov/general/environmental-justice-in-new-mexico/ (Last viewed June 30, 2026).

previous Bloom solid oxide fuel cell model (ES-5000) used 1.2 gallons per kW at start-up. Assuming the water requirements for the current model are similar, YGI's 2.46 GW fleet would consume ~2.9 million gallons on start-up (or ~9 acre-feet). Assuming start-up happens once every two years for maintenance, the annual average water consumption would be ~1.45 million gal/yr (~4.5 acre-feet/yr).

The impacts of this proposed source, taken together with the fact that New Mexico does not have water to waste, residents in this area already live with unsafe air quality,[15] and continue to have unsafe drinking water, require the Department to deny YGI's Application.

## IV. The Department must deny YGI's Application because it is incomplete and based on flawed assumptions and inaccurate data.

The Department must deny YGI's Application because the Application is incomplete and relies on the use of flawed and inaccurate assumptions to justify the source's emissions. To start, YGI fails entirely to include any construction-phase or start-up emissions associated with the Application, instead listing zero Startup, Shutdown and Routine Maintenance ("SSM") emissions – a result that seems highly unlikely given the dust that will be generated when construction of the facility begins and the fact that Bloom Energy's fuel cells require diesel fuel generators for their initial cold start, known as a "black start," as well as for any startup required after maintenance. Bloom's fuel cells require a power source upon start-up and, typically, Bloom brings in portable nonroad engines, i.e. diesel generators, for this purpose.[16] Though YGI does not provide any information regarding how much diesel power they would need for this source, at a smaller source in West Jordan, Utah, startup required eight diesel-fuel engines for black start

[15] Supra, note 8.
[16] *See* letter from Bloom Energy to Bryce C. Bird, Re: Permit Exemption for Proposed Nonroad Engines Bloom Energy – Novva Data Center, West Jordan, Utah (August 22, 2025), included as Attachment 2.

of a less than 100MW energy generation facility. Notably, in that case, Bloom projected emissions from the generators alone to be NOx at 81.3 TPY and 100.6 TPY of CO.[17] Certainly one can expect these emissions to be even greater for startup of a facility the size of YGI's, yet, YGI has left this information in its Application blank. When any maintenance is needed for the fuel cell units, a similar process is required, generating additional emissions YGI did not account for. Importantly, even a small number of these Tier 2 generators being used for black start could quickly increase the total CO emissions beyond the PSD major permitting threshold of 250 TPY. 20.2.74.7(AG)(2) NMAC.

Additionally, YGI fails to provide any fire or hazard analysis, despite proposing a continuous high-volume gas supply, internally generated hydrogen and CO, and 700-900°C operation across ~2,275 solid oxide fuel cell modules. Allowing for a facility of this magnitude, which almost certainly creates a fire hazard, to not provide a plan for fire activity – while also locating in a desert, borderland, drought-stricken community with limited fire protection resources and a volunteer fire department – should not be accepted by the Department.

In keeping with its theme of not providing adequate information, YGI also baldly assert that this facility will not emit toxic air pollutants, ("TAPs") but provides no TAPs modeling or explanation for its assertions. YGI similarly provides no basis for its expected formaldehyde emissions, which it claims as zero tons per year.[18] Upon investigation, however, it becomes clear that the testing upon which YGI relied to make such an assertion is not a method that actually targets formaldehyde. In its limited analysis, YGI relies on a canister testing method which does not include formaldehyde as a target analyte.[19] YGI further relies upon a CARB certification to

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[17] *Id.*
[18] Application at 148.
[19] Formaldehyde is not a TO-15 target analyte and is not reliably captured by canister methods because of its volatility and reactivity.

support its formaldehyde emissions that similarly does not include formaldehyde – only NOx, CO and VOC. Notably, EPA's AP-42 § 1.4 (natural gas combustion) lists formaldehyde as a speciated Hazardous Air Pollutant ("HAP"). Because formaldehyde is usually the main cancer-risk driver for gas-fired generation YGI must provide proper aldehyde source testing, using a more appropriate testing method,[20] in order to adequately represent the risks associated with its facility. More important, when all of these pollutants are released into the atmosphere, and combine with the intense sunlight and heat in Santa Teresa, ozone development and concentrations of NOx will certainly increase in the area, along with the exposure-related health and welfare impacts. In the absence of adequate formaldehyde, TAPs and HAPs characterizations, the facility-wide and single pollutant totals understate the true values of emissions and impacts expected from YGI's facility and the Department should not blindly accept such an inaccurate analysis.

Finally, and most alarming, the Department must reject any expected emissions numbers provided by YGI based on their own emissions factors. It is highly likely that the emissions from the YGI power plant will be even greater than anticipated, given that YGI relies upon emissions factors generated by one test, of a single 65-67 kW ES 6.5 unit, scaled to 2,462 MW with no demonstration of representativeness at the installed scale, rather than the CARB emissions factors to estimate VOCs and CO emissions.[21] This test was performed by BlueSky Environmental over the course of only two days: December 5-6, 2023.[22] YGI does not provide

[20] The methods appropriate for source-level carbonyls/aldehydes are EPA Method 323, SW-846 Method 0011, or CARB Method 430 (source), and EPA Method TO-11A (DNPH). Notably none of these aldehyde-specific methods appear in the test record in the Application.
[21] Relatedly, Community Members note that YGI has not modeled its proclaimed VOC ambient impact and only addresses its ozone impact via generic SIL, with NOx and VOC precursors near the Sunland Park ozone nonattainment area and receptors truncated at the U.S. border.
[22] Application at 308.

any information demonstrating the level of degradation of the tested cells,[23] nor any CEMs data, such that it is impossible to know whether the data relied upon would be adequately representative of emissions over time.[24] CARB's BACT standard for CO emissions from fuel cells is 0.1 lb/MWh,[25] almost 10x higher than YGI's stated emission factor (0.013 lb/MWh), which would put the annual emissions at around 1200 TPY of CO for this site. Notably, even if YGI's true emission factor is just 60% higher than what it currently claims at ~0.02 lb/MWh, YGI would certainly exceed the 250 TPY major source threshold found in 20.2.74.7(AG)(2) NMAC. Because YGI has based its entire Application on four test-runs across two days on a single unit, its emissions estimates cannot possibly capture potential sources of variability and NMED must, at the very least, require YGI to resubmit its Application using more accurate emissions data.

## V. YGI's natural gas-fired powerplant must be subject to PSD major source permitting.

Despite YGI's attempts at greenwashing this project, use of inadequate modeling, and unsupported claimed status as a PSD-minor source, YGI's facility, and the Bloom Energy solid oxide fuel cells it purports to rely upon, equates to nothing more than a natural gas plant that

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[23] This is especially relevant given the fact that fuel cell output tends to decline 5% per year on average, with most retiring between 10 and 12 years. See Thunder Said Energy, "Bloom Energy: solid oxide fuel cell technology?" (August 2, 2023). Accessible at https://thundersaidenergy.com/downloads/bloom-energy-solid-oxide-fuel-cell-technology/ (Last viewed July 2, 2026).

[24] Importantly, fuel cells, like batteries, work perfectly until they do not and, because the systems are interconnected, if one element of the cell fails, it is likely the entire cell fails. For this reason, the Department must require YGI to include CEMs on all stacks to ensure the health and welfare of neighboring residents is adequately protected.

[25] SMAQMD BACT Clearinghouse, Fuel Cell BACT Determination Information (February 15, 2024). Accessible at: https://www.airquality.org/StationarySources/Documents/Fuel%20Cell%20%E2%80%93%20Waste%20Gas%20and%20or%20Natural%20Gas%20Fueled%20BACT%20358.pdf (Last viewed June 30, 2026).

should be subjected to the Department's PSD permitting requirements as a major emitting facility. In addition to the fact that, when using reliable emissions factors, the source would certainly qualify as a major PSD source emitting 250 TPY of multiple regulated new source review pollutants, YGI's microgrid should also constitute a listed major stationary source subject to PSD major sourcer permitting. If a source does not emit 250 TPY of a regulated pollutant, a "major stationary source" still includes "fossil fuel-fired steam electric plants of more than 250 MMBtu/hr heat input" that "emit, or have the potential to emit, one hundred tons per year or more of any air pollutant." 20.2.74.7(AG)(1) NMAC; 20.2.74.501(G) NMAC. Though YGI's facility is not a typical natural gas powerplant, YGI's proposed natural gas-fueled solid oxide fuel cell microgrid meets nearly all of the required criteria. The US Environmental Protection Agency has repeatedly determined that traditional gas turbine systems qualify as "electric utility steam generating units" for permitting purposes.[26] Similarly, according to YGI's Application, the Bloom Energy design is fossil-fuel fired, generates electricity, and has a heat input that is approximately 64 times the 250-MMBtu/hr required. Moreover, the source stands to emit, at best, 124.01 tons per year of VOCs, and 161.21 tons per year of CO, regulated new source review pollutants. Thus, the Department should require YGI to obtain a PSD permit as a listed source emitting over 100 TPY of any regulated NSR pollutant. 20.2.74.200(A) NMAC. If the Department chooses not to require YGI to obtain a major source PSD permit on the basis that it is a listed source due to limitations of the existing definition of a "fossil fuel-fired steam electric plants of more than 250 MMBtu/hr heat input," the Department should first determine how new

[26] *E.g.* EPA letter to Mr. Patrik M. Taher (August 6, 2001). Accessible at: . https://www.epa.gov/sites/default/files/2015-07/documents/cgtsd.pdf (Last viewed June 30, 2026); *see also* EPA Memorandum, "Determining Prevention of Significant Deterioration (PSD) Applicability Thresholds for Gas Turbine Facilities," (February 2, 1993). Accessible at https://www.epa.gov/sites/default/files/2015-07/documents/turbines.pdf (Last viewed June 30, 2026).

sources, like solid oxide fuel cell systems, fit within the existing regulatory scheme in order to ensure new source types are not escaping major source permitting requirements based exclusively on the fact that the source is an emerging technology.

## VI. The Department must regulate emissions from the "neighboring data center facility" separately from the emissions from YGI's natural gas-fired power plant.

Most egregious, perhaps, is YGI's attempt to fold any potential regulation of emissions coming from the Project Jupiter data and surveillance center itself into this Application, stating "The SOFC Unit includes a dedicated subsystem to supply backup power to the adjacent data center. Therefore, the data center, once constructed, will not require a permit and will have no regulated emissions sources."[27] The Department must reject this attempt to ensure pollutants coming from the YGI microgrid's neighboring data and surveillance center are unregulated, especially in light of EPA's refusal to set nationwide ambient air quality standards for the unknown emissions coming from these facilities.[28] Notably, communities, particularly communities of color, living within close proximity (i.e. one mile) to data centers, have higher air pollution burdens compared to the national median.[29] YGI, as the developer of the microgrid, as well as the developer of the Project Jupiter data and surveillance center, cannot avoid its responsibility of obtaining a permit for the construction of the data and surveillance center itself

[27] Application at 622.
[28] Alex Gullen, "EPA won't set nationwide standards for data centers," POLITICO (June 10, 2026). Accessible at: https://www.politico.com/news/2026/06/10/zeldin-data-centers-states-00956574 (Last viewed June 30, 2026).
[29] Leila Marie Hampton and Eric Nost, "Communities Close to EPA-Regulated Data Centers Face Heightened Air Pollution," Environmental Data & Governance Initiative (October 28, 2025). Accessible at: https://envirodatagov.org/communities-close-to-epa-regulated-data-centers-face-heightened-air-pollution/ (Last viewed June 30, 2026).

simply by submitting this Application, and the Department must not allow such a blatant violation of the Clean Air Act and the AQCA to occur.

## VII. The Department's Public Involvement Plan and Limited English Proficiency Services Evaluation is flawed and incomplete.

Finally, Community Members note significant flaws in the Department's Public Involvement Plan, ("PIP"), and Limited English Proficiency ("LEP") Services Evaluation that mischaracterizes the nature of public interest in the YGI facility and disregards the significant community effort expended during the initial East and West microgrid permitting process related to the Project Jupiter data and surveillance center.

As NMED is aware, this attempt by YGI to obtain an air pollution permit for its latest iteration of a microgrid facility comes after YGI, formerly Acoma, LLC,[30] applied for two highly problematic air pollution permits for a microgrid facility to power Project Jupiter. Yet NMED now disingenuously claims that, "[h]istory of public involvement in air permitting: none, the YGI Microgrid is a new facility." PIP at 3. The Department similarly asserts, in its Limited English Proficiency Services Evaluation, "[t]he Bureau does not have records indicating any participation by LEP individuals or any member of the public regarding the YGI Microgrid facility" and "[t]here is no record[31] of frequent or any contact with LEP individuals regarding the YGI Microgrid Facility." LEP Services Evaluation at 1. The Department's erasure of the over 7,000 public comments submitted, in both English and Spanish, opposing the original microgrid plan, submitted by YGI, in what appears to be an attempt to justify not granting a public hearing

[30] Gillian Barkhurst & Algernon D'Ammassa, "Project Jupiter developers to change company name after criticism from Acoma Pueblo," Albuquerque Journal (April 22, 2026). Accessible at: https://www.abqjournal.com/news/project-jupiter-developers-to-change-company-name-after-criticism-from-acoma-pueblo/3027728 (Last viewed June 30, 2026).

[31] Community Members note that NMED appears to have deleted all public comments, or hidden them from public view, originally submitted related to YGI's East and West Microgrid Applications.

on the Application, to be held in both English and Spanish, is unacceptable – especially considering NMED's own admission that the proposed source is a "high interest facility." PIP at 4.

In addition, Community Members note that many community groups, aside from the New Mexico Environmental Law Center, are stakeholders and should be included as such in this matter. PIP at 3. This includes but is not limited to:

- The Center for Biological Diversity, ccox@biologicaldiversity.org
- Fight Chiuahuan Desert Extraction, info@fcdx.live
- Youth United for Climate Crisis Action, esperanza@yuccanm.org
- CARD New Mexico, contactus@cardnm.org
- Earth Care New Mexico, bianca@earthcarenm.org

In order for the Department to fulfil its obligation, it must recognize all interested community stakeholders.

## VIII. Conclusion

YGI's Application is significantly flawed and incomplete. At best, the Application has brought to the Department's attention the very real need to address unanswered questions regarding its permitting rules and regulatory structure before it issues any air pollution permit to a data center facility or its power source. At worst, permitting the YGI facility will result in significant harm to the residents of Santa Teresa and Sunland Park. Should the Department proceed with the permitting process, NMED must hold a public hearing on YGI's Application, in English and Spanish, in hybrid format with an in-person hearing in Santa Teresa, because, as the Department admits, the proposed source is a "high interest facility." More importantly, NMED must deny YGI's Application because issuing any permit will violate the AQCA, the Clean Air Act, and result in the Department's perpetuation of environmental racism.

Respectfully submitted,

Maslyn Locke
Senior Staff Attorney
New Mexico Environmental Law Center
mlocke@nmelc.org

Kacey Hovden
Staff Attorney
New Mexico Environmental Law Center
khovden@nmelc.org

Eric Jantz
Legal Director
New Mexico Environmental Law Center
ejantz@nmelc.org

# ATTACHMENT 1

May 20, 2026 Via email

New Mexico Environment Department
Air Quality Bureau - Permitting Section
525 Camino de los Marquez, Ste. 1
Santa Fe, NM 87505

Re: Yucca Growth Infrastructure, LLC Notice of Air Quality Permit Application – YGI Microgrid

Dear Ms. Romero, Ms. Kuhn, and Permitting Program Staff:

Please accept this initial comment and demand for public hearing, submitted by the New Mexico Environmental Law Center on behalf of José Saldaña Jr. and Vivian Fuller, (collectively, "community members"), regarding Yucca Growth Infrastructure, LLC,[1] (hereinafter "YGI"), formerly known as Acoma, LLC, and its latest attempt to apply for an air pollution permit to power Project Jupiter, the hyperscale data center campus proposed for Santa Teresa, New Mexico. Community members reserve the right to make additional comments on the YGI application as this process proceeds. As the Department is aware, YGI previously submitted two air pollution permit applications for two microgrid facilities – the East[2] and West[3] microgrids –

[1] *See* Danielle Prokop, *NM Project Jupiter data center developers rename company after Pueblo of Acoma criticism*, SourceNM (April 21, 2026), https://sourcenm.com/briefs/project-jupiter-developers-rename-company-after-pueblo-of-acoma-criticism/.

[2] *See* Acoma LLC's East Microgrid Withdrawn Application ( Permit No. 10732 and TEMPO Agency Interest No. 41309) [accessible here: https://cloud.env.nm.gov/resources/_translator.php/YmQ3NWRjYmQ0YmY0OWI5NzgwYjk2N2VhZF8yMTU5Njg~.pdf].

[3] *See* Acoma LLC's West Microgrid Withdrawn Application (Permit No. 10734 and TEMPO Agency Interest No. 41311) [accessible here: https://cloud.env.nm.gov/resources/_translator.php/YTJlYjg5ZWQ2ZWYxOWFiODY0MDYyMzNkZl8yMTU5NTY~.pdf].

both of which were withdrawn on April 27, 2026, after the Department determined it would hold a public hearing on the applications due to significant public interest in and opposition to the project. Community members note that YGI's latest application appears to be nothing more than a thinly veiled attempt to address opposition to the heavily polluting microgrid and, more broadly, Project Jupiter, by disingenuously painting the new microgrid proposal as a green energy solution despite emitting 10 million tons per year of greenhouse gas emissions, 124.01 tons per year of VOCs, 161.21 tons per year of CO2[4] and generating unknown quantities of hazardous waste, while also attempting to exhaust community members and allies by requiring this additional effort to comment and demand a public hearing on a new permit application.

I. NMED must deny YGI's application because it is incomplete.

Pursuant to 20.2.72.203(A)(11) NMAC, YGI must include with its air pollution permit application all "such other specifically identified relevant information as the department may reasonably require." While applicable regulations do not specify what exactly may constitute such relevant information, the word "relevant," as defined by Webster's dictionary, means "relating in an appropriate way to something under consideration: having significant and demonstrable bearing on or relation to the matter at hand;" and "providing evidence tending to prove or disprove the matter at issue or under discussion."[5] Bloom Energy and its solid oxide fuel cell ("SOFC") system upon which YGI seeks to rely, has been the source of significant environmental concerns and challenges for years – concerns that YGI fails to mention in its application, despite relying on emissions testing from the Santa Clara Bloom Energy site – the

[4] Community members note this amount of emissions requires YGI to also obtain a Title V Operating Permit as the power plant qualifies as a major source. See 20.2.70.7(R) NMAC.
[5] "Relevant", Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/relevant (last accessed May 12, 2026).

same site that is a chronic thorn in the side of the State of California.[6] This information is certainly relevant and must be meaningfully considered by the Department.

Bloom Energy and its solid oxide fuel cells do not provide clean energy – in fact, the city of Santa Clara, California, attempted to ban the use of these cells due to conflicts with the state of California's aggressive greenhouse gas reduction goals[7] – and the Department must recognize that and take this into consideration when reviewing YGI's Application. In addition to exorbitant greenhouse gas emissions, fuel cells generate NOX, CO, VOCS,[8] and hazardous solid waste.[9] When operating, waste generated sulfur compounds from natural gas combustion must be filtered out, and other toxins such as benzene, toluene, xylene, lead, chromium, and arsenic also become trapped.[10] The filtering material together with the trapped toxins becomes hazardous solid waste.[11] In July 2018, Bloom disclosed that the EPA was seeking to collect $1 million in

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[6] *See Bloom Energy Corporation v. City of Santa Clara, et al. (CEQA)*,19CV348838 (Sup. Ct. of Calif.) (2019) [hereinafter, "Bloom Energy 1"]; *see also Bloom Energy Corporation v. City of Santa Clara (CEQA)*, 21CV383800 (Sup. Ct. of Calif.) (2021) [hereinafter, "Bloom Energy 2"]. For publicly available court documents in the captioned cases, *see* https://portal.scscourt.org/search/business?businessName=Bloom%20Energy%20Corporation.

[7] *See Bloom Energy 1*, Respondent's Opposition Brief at 6 ("Fuel cells, once installed, generally operate for 15-20 years. Therefore, natural gas fuel cells that are installed in the City in the future will potentially emit GHGs and criteria air pollutants for decades to come. As these emissions are inconsistent with both the City's and State's GHG and green energy goals, the City adopted the Regulations, in part, to encourage development of biogas fuel cells instead of natural gas fuel cells in the City").

[8] As explained in community members' comments on the East and West Microgrid, included here as Attachments 1-A and 1-B, the area impacted by this proposed microgrid facility lands between the 80th and 100th percentile according to the U.S. Environmental Protection Agency's Ozone Environmental Justice Index – meaning residents in these areas are already at a greater risk of impacts from Ozone due to being minority, low-income residents. Archived EPA EJScreen, "Santa Teresa" and "Sunland Park," Environmental Justice Index: Ozone." Accessible at https://pedp-ejscreen.azurewebsites.net/ (last viewed February 23, 2026). As the Department is aware, VOCs are ozone precursors. In an area where residents are already at risk of increased negative health impacts from Ozone pollution, the last thing the Department should do is permit a major VOC source.

[9] *See id.* at 11.

[10] *Id.*

[11] *Id.*

fines related to its disposal of benzene, the hazardous waste found in Bloom's desulfurization containers.[12] Benzene, as the Department is undoubtedly aware, is known to cause cancer, adverse gastrointestinal and nervous system effects, blood health impacts, fertility issues and pregnancy complications.[13] The servers upon which YGI now purports to rely upon for energy, over time, collect large quantities of this hazardous waste which, historically, Bloom has simply dumped into the nearest local landfill.[14] While community members understand that the regulation of such hazardous waste falls outside of the purview of the Air Quality Bureau, given the significant negative health and environmental impacts that will come from the use of the SOFCs, community members urge the Air Quality Bureau to coordinate with NMED's Hazardous Waste Bureau and ultimately demand that, prior to issuing any air pollution permit, YGI has obtained all requisite hazardous waste permits required to operate, should this project proceed.

Moreover, Bloom has aggressively lobbied for years for government subsidies to further its business interests, notwithstanding the environmental impacts associated with fuel cells operating using natural gas. Initially, Bloom's lobbying efforts were "tremendously successful, resulting in hundreds of millions of dollars in subsidies."[15] Specifically, Bloom has obtained over $400 million in rate-payer subsidies from the State of California's Self Generation Incentive Program (SGIP). In 2015, after the California State Legislature renewed the SGIP until 2021,

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[12] *See* Prospectus Filed Pursuant to Rule 424(B)(4) at 36. Accessible at https://www.sec.gov/Archives/edgar/data/1664703/000119312518227590/d96446d424b4.htm (Last viewed May 20, 2026); *See also* Environmental Appeals Board, United States Environmental Protection Agency, I*n re: Bloom Energy Corporation*, Final Order, Docket No. RCRA-HQ-2020-501 (May 12, 2020), included as Attachment 2.

[13] *See Benzene Chemical Fact Sheet*, Centers for Disease and Control Prevention (May 5, 2026), https://www.cdc.gov/chemical-emergencies/chemical-fact-sheets/benzene.html.

[14] *See* Report: Bloom Energy: A "Clean" Energy Darling Wilting to its Demise, Hindenberg Research (Sept. 17, 2019) https://hindenburgresearch.com/bloom-energy-a-clean-energy-darling-wilting-to-its-demise/.

[15] *See Bloom Energy 1,* Respondent's Opposition Brief at 11.

State Assembly members sent a letter to the Public Utilities Commission criticizing the existing SGIP eligibility criteria, which "maintain[ed] eligibility for existing technologies operating on 100 percent conventional natural gas." The letter urged that such technologies are not "consistent with the state's long term climate and energy goals."[16] The letter also noted that these existing natural gas technologies would emit significantly less greenhouse gas emissions if they used renewable biogas.[17]

Importantly, while these fuel cells can operate on biogas, which would greatly reduce the environmental impacts of this proposed power plant, YGI clearly intends for this facility to rely on natural gas.[18] Notably, Bloom often overstates the efficiency of its natural gas fuel cells, especially due to the fact that these fuel cells become less efficient over time.[19] This information, all of which is relevant to YGI's application, is loud in its absence, and must be included for consideration by the Department.

II. NMED should deny YGI's application because the project is contrary to New Mexico's Climate Goals and will result in NMED's perpetuation of environmental racism.

As explained above, the fuel cells YGI purports to rely upon for its proposed power plant will certainly not provide clean energy to Project Jupiter and will cause incredible environmental and public health harm to the community members of Santa Teresa and neighboring Sunland Park. Furthermore, as the Department is aware, New Mexico has the goal of reducing statewide

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[16] *See id.* at 12.
[17] *See id.*
[18] *See* YGI Microgrid Air Pollution Permit Application (hereinafter, "YGI Microgrid") at Table 2-J, Page 1; Table 2-M, Page 1; YGI Microgrid Process Flow Diagram, Page 141; Page 150 [accessible here: https://cloud.env.nm.gov/resources/_translator.php/ZWM3Njk5ZGQ3MjNjNzZiMjRmZmU1ZjgyMF8yMjYwMDk~.pdf]; *see also* Hindenberg Research, *supra* note 8 ("While being capable of running on biogas (a form of genuine green energy), 91% of the company's fuel cell products run on natural gas (a non-renewable fossil fuel)").
[19] *Bloom Energy 1*, Respondent 's Opposition Brief at 11.

greenhouse gas emissions by at least 45% by 2030 compared to 2005 levels.[20] It is impossible to fathom how permitting one source proposing to emit 10,144,115 tons of greenhouse gas ("GHG") emissions per year will achieve such a goal.[21] In the absence of state regulations controlling greenhouse gas emissions, and in light of EPA's recision of the endangerment finding,[22] now is the time for the Department to lead on climate change efforts – not to permit an enormous polluting facility for the sole purpose of servicing a data center complex that community members oppose.

Community members understand that the state currently lacks a regulatory scheme under which to regulate greenhouse gas emissions coming from the proposed microgrid. However, in light of Executive Order 2019-003, "Executive Order on Addressing Climate Change and Energy Waste Prevention;"[23] because the greenhouse gas emissions coming from the YGI Microgrid are substantial, because the Department is unequivocally required to "prevent and abate air pollution,"[24] and because greenhouse gases can hardly be considered anything other than a pollutant subject to regulation, the Department should deny YGI's permit application. In the event the Department decides to forego its responsibilities and its commitment to protecting the health and welfare of all New Mexicans and issue an air pollution permit to YGI, the Department must restrict the greenhouse gas emissions coming from the microgrid by requiring the source to

[20] New Mexico Interagency Climate Change Task Force, 2022-2024 New Mexico Climate Strategy, "Climate Progress Report," (October 2025). Accessible at: https://cloud.env.nm.gov/resources/_translator.php/MjI3NjdjZGQ2ZWQ4M2Q0YjlhZTY4ZDE5Ml8yMDg5MjU~.pdf (last viewed February 24, 2026).
[21] *See* YGI Microgrid Permit Application at 150.
[22] 91 FR 7686; (Vol. 91, No. 32, (Feb. 18, 2026). Accessible at: https://www.govinfo.gov/content/pkg/FR-2026-02-18/pdf/2026-03157.pdf (last viewed February 24, 2026).
[23] E.O. 2019-003, "Executive Order on Addressing Climate Change and Energy Waste Prevention," (January 29, 2019). Accessible at: https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf (last viewed February 24, 2026).
[24] New Mexico Air Quality Control Act, NMSA 1978 § 74-2-5.1.

rely exclusively on biofuel or other clean energy sources such as solar, wind or geothermal, not natural gas. Community members further demand, in the event regulating such greenhouse gas emissions requires a rulemaking before the Environmental Improvement Board ("EIB"), the Department petition the EIB for a health protective greenhouse gas regulation prior to permitting any facility that will contribute so significantly to greenhouse gas emissions in New Mexico.

The YGI microgrid stands to emit over 10 million tons of GHG per year – including carbon dioxide (CO2), which is one of the most significant greenhouse gases. Traditionally, the solid oxide fuel cell system converts about 85% of the fuel (natural gas) into electricity, with unconverted fuel undergoing combustion, yielding water and CO2. CO2 exposure affects human health at many levels: short term exposure makes it difficult to breathe, leading to incapacitation, headaches, and, in some cases, vertigo and double vision. At higher concentrations and levels of exposure, the lungs cannot replace the CO2 quickly enough, increasing rate of respiration, metabolic stress, headaches, hypertension, blood and kidney issues, skin problems, muscle tremors, and hearing loss.[25] Importantly, community members in Sunland Park and Santa Teresa will feel these impacts to a significantly greater extent due to the fact that this is an environmental justice community that bears an already disproportionate burden of environmental and public health impacts.[26]

As explained in Community Members' comments on the East and West Microgrid, included here as Attachment 1-A and 1-B, when evaluating any permit application, the

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[25] Sarah Naiyer and Syed Safdar Abbas, Effect of Greenhouse Gases on Human Health, Springer at 102 (2022) https://www.researchgate.net/profile/Sarah-Naiyer/publication/358031936_Effect_of_Greenhouse_Gases_on_Human_Health/links/63d594e362d2a24f92d7b673/Effect-of-Greenhouse-Gases-on-Human-Health.pdf#page=96.

[26] *See Equity: Environmental Justice*, New Mexico Environment Department, https://www.env.nm.gov/general/environmental-justice-in-new-mexico/ (last accessed May 12, 2026).

Department must remember and exercise its obligation to consider and address environmental justice and civil rights, which cannot be uncoupled from its obligation to prevent and abate air pollution. The Department must consider information and evidence, in addition to what is required by its technical regulations, in order to ensure that "no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."[27] In addition, Title VI of the Civil Rights Act of 1964 continues to prohibit recipients of federal funds, like the Department, from operating its programs in such a way that results in discrimination in the form of disproportionate impacts of air pollution against any individual or community on the basis of race, color or national origin. 42 U.S.C. §§ 2000d. Finally, the New Mexico Air Quality Control Act, NMSA 1978 §§ 74-2-1 *et seq*., and the Department's implementing regulations require the Department to protect the public health and welfare of all members of the public, in recognition of the needs of the community impacted by the Department's decision. NMSA 1978 § 74-2-5.1(H) (requiring the Department to develop a plan for "the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the department's responsibility …") (emphasis added). Indeed, the Department should be well aware of this obligation to conduct its permitting program in such a way that the specific communities impacted by its decisions are adequately informed and protected.[28] Because any decision to issue an air pollution permit to YGI will impact the communities of Sunland Park and

[27] New Mexico Environment Department, "Environmental Justice – Justicia Ambiental." Accessible at: https://www.env.nm.gov/general/environmental-justice-in-new-mexico/ (last viewed February 23, 2026).

[28] *See* Informal Resolution Agreement between the Department and the U.S. Environmental Protection Agency (Jan. 19, 2017) Accessible at https://19january2021snapshot.epa.gov/sites/static/files/2017-01/documents/final-resolution-letter-and-agreement-triassic-park-recipinet-1-19-2017.pdf (detailing the Department's responsibilities, under Title VI Title VI and EPA regulation 40 C.F.R. Part 7, to ensure its permitting processes do not engage in discrimination on the basis of race or national origin).

Santa Teresa differently than it otherwise would if YGI was seeking the Department's permission to pollute a white, affluent community, the Department must consider the context and cumulative impacts a decision to issue any air pollution permit will have on this already overburdened community.

Furthermore, the National Ambient Air Quality Standards ("NAAQS"), and most ambient air quality standards, do not adequately protect the public health and welfare of residents in low-income communities and communities of color. All air pollution impacts, which the YGI Microgrid will significantly contribute to, fall disproportionately on these communities.[29] This is all the more important when considering the fact that the facility will be located in Santa Teresa, a community that is 84% Hispanic, with 23.9% of residents living below the federal poverty line,[30] and already dealing with the effects of being a nonattainment area for Ozone more broadly. In addition, this Borderland community has, for decades, dealt with the impacts of a contaminated drinking water supply,[31] lack of access to quality food and medical care,[32] and

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[29] Letter to Ms. Brenda Mallory, Chair, The Council of Environmental Quality from the White House Environmental Justice Advisory Council, June 27, 2023. Accessible at https://www.epa.gov/system/files/documents/2023-07/Final%20WHEJAC%20Recommendations%20Letter%20on%20NAAQS%2020230627.pdf (last viewed February 23, 2026).

[30] The YGI Microgrid will also significantly impact residents living in Sunland Park, where 94% of the residents identify as Hispanic, and 22.4% live below the federal poverty level. See https://censusreporter.org/profiles/16000US3575640-sunland-park-nm/ (last viewed February 23, 2026).

[31] *E.g.*, Kent Patterson, "Is Sunland Park the border's Flint, Michigan?", NMPolitics.net (June 6, 2016) Accessible at: https://nmpolitics.net/index/2016/06/is-sunland-park-the-borders-flint-michigan/; See also Ariana Parra, "Sunland Park water utility fails state's surprise arsenic test at Santa Teresa site," (March 28, 2024). Accessible at https://kfoxtv.com/news/local/sunland-park-water-utility-fails-states-surprise-arsenic-test-at-santa-teresa-site-new-mexico-crrua-camino-real-regional-utility-authority (last viewed March 2, 2026).

[32] Food access and access to medical care are social determinants of health – non-medical factors that affect health outcomes. These factors combine with health effects of air pollution to exacerbate medical problems and health inequity. Centers for Disease Control, "Social Determinants of Health," (May 15, 2024). Accessible at:

ultimately, a refusal by the State of New Mexico to provide any meaningful assistance and support. Community Members understand that the Department's Air Quality Bureau is charged with making determinations on air quality permit applications, but urge the Department to recognize that any decision it makes on the YGI Permit Application will not occur in a vacuum. YGI's latest attempt to build a microgrid for Project Jupiter stands to emit, on its own, several hundred tons per year of harmful air pollutants with significant public health effects. These health effects will be in addition to the existing health effects already plaguing the Sunland Park and Santa Teresa Community.

Finally, Community Members reiterate that the state of New Mexico has recently reaffirmed its commitment to environmental justice, with Attorney General Raul Torres signing on to a declaration along with thirteen other states, affirming the continued legality and importance of environmental justice efforts by state agencies like the Department.[33] This affirmation is certainly based, at least in part, on the understanding that permitting decisions do not impact all people in the same way, and the Department's obligation to protect the public health and welfare does not mean the public health and welfare of only a few.

III. If the Department determines YGI's Application to be administratively complete, the Department must hold a public hearing in English and Spanish, in Santa Teresa, on the application.

The Air Quality Bureau received approximately 7,155 public comments during the comment period for the East and West Microgrid, most of which requested a public hearing on the permit applications, rising to the level of "significant public interest" required for the

https://www.cdc.gov/public-health-gateway/php/about/social-determinants-of-health.html (last viewed March 2, 2026).

[33] Multi-State Guidance Affirming the Importance and Legality of Environmental Justice Initiatives. Accessible at: https://nmelc.org/wp-content/uploads/2026/01/2025.01.16-EJ-Guidance-for-Publication.pdf (last viewed February 23, 2026).

Department to hold a public hearing on the air permit applications.[34] While the emissions from the proposed YGI microgrid are inconsequentially different, the impacts and opposition to the powerplant remain. As such, all comments submitted relating to the original East and West Microgrids should be considered and reflected in the record of any decision the Department makes on YGI's latest attempt at obtaining an air pollution permit. Community members note, however, that the consideration of earlier public comments does not impact the Department's responsibility to comply with all requirements in 20.2.72.206 NMAC, including ensuring that all public notices after administrative completeness is determined are posted in English and Spanish, all thirty (30) day deadlines are calculated from the date by which both an English and Spanish notice is posted and all application materials are provided to the public in English and Spanish, and the initial public comment period lasts at least thirty (30) days. Consistent with Community members' earlier requests, Community members urge the Department to allow for a public comment period of at least sixty (60) days to ensure members of the public are able to meaningfully participate in this process.

Additionally, community members again demand the Department hold a public hearing, in English and Spanish, in Santa Teresa with a hybrid online option available, as well as provide all permit information, including the application, in Spanish to the public, just as the Department did with the East and West Microgrid Applications, in order to ensure the Department does not fall victim to Bloom Energy's propaganda and allows New Mexico to become another in the list of states duped by the company's false promises.

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[34] *See* New Mexico Environment Department Memorandum (March 23, 2026) https://cloud.env.nm.gov/resources/_translator.php/NDZmZjVhMzg1MWQxMWQ0N2I2MmU3MmNmY18yMjIwMzQ~.pdf; *see also* https://cloud.env.nm.gov/resources/_translator.php/MGNmM2I3MTM4NWRmMmUyY2Y5ZGU4YmJmOF8yMjIwMzc~.pdf.

Respectfully submitted,

*/s/ Maslyn Locke*
New Mexico Environmental
Law Center
mlocke@nmelc.org

*/s/ Kacey Hovden*
New Mexico Environmental
Law Center
khovden@nmelc.org

**ATTACHMENT 1-A**

March 2, 2026

New Mexico Environment Department
Air Quality Bureau - Permitting Section
525 Camino de los Marquez, Ste. 1
Santa Fe, NM 87505

Via email to aqb-acoma-microgrids@env.nm.gov and NMED Public Comment Portal

**Re: Community Members Initial Comments on Application for Initial NSR Permit Acoma, LLC – East Microgrid, Permit No. 10732 and TEMPO Agency Interest No. 41309**

Dear Ms. Romero, Ms. Kuhn, and Permitting Program Staff:

Please accept this initial comment on Acoma, LLC's Application for Initial NSR Permit – East Microgrid Power Plant, Permit No. 10732 and TEMPO Agency Interest No. 41309 ("East Permit Application"), submitted on behalf of community members in Doña Ana County, José Saldaña, Jr., Vivian Fuller and Daisy Maldonado, collectively, "Community Members." Community Members reserve the right to make additional comments as this permitting process moves forward.

## I. Public Access.

While Community Members appreciate the Department's efforts to comply with its own language access policies and provide the East Permit Application in Spanish and English, as well as posting notice of the East Permit Application in public spaces residents in Sunland Park and Santa Teresa, New Mexico, frequent, Community Members urge NMED to ensure residents have the most access to all information related to Acoma, LLC's East Microgrid natural gas power plant application. For this reason, Community Members demand NMED hold at least one public information session on the East Permit Application, prior to the public hearing, in a location of

the Community Members' choosing, in English and Spanish, because the impacts of this proposed major pollution source cannot be understated and must be understood by all residents in the area. This information session must include significant discussion of the Department's East Permit Application analysis, once it is released to the public. In addition, Community Members demand NMED hold a public hearing on the East Permit Application, no less than 90 (ninety) days after NMED's analysis is released, in Santa Teresa, New Mexico, and virtually, in both English and Spanish, in order to provide members of the public adequate opportunity to participate in the permitting process.[1]

## II. Acoma, LLC's East Permit Application Must be Considered in Context.

When evaluating any permit application, NMED must remember that the Department's obligation to consider and address environmental justice and civil rights cannot be uncoupled from its obligation to prevent and abate air pollution. NMED must consider information and evidence, in addition to what is required by its technical regulations, in order to ensure that "no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."[2] Title VI of the Civil Rights Act of 1964, continues to prohibit recipients of federal funds, like the Department, from operating its programs in such a way that results in discrimination in the form of disproportionate impacts of air pollution against any individual or community on the basis of

[1] Community Members are concerned with the Department's current Public Involvement Plan, ("PIP"), which simultaneously admits that the public has demonstrated significant interest in the East Permit Application, while also failing to commit to holding either a public information session on the East Permit Application or a public hearing on the West Permit Application. Based on the significant interest in the East Permit Application, the Department must hold a hearing. 20.2.72.206(C) NMAC.

[2] New Mexico Environment Department, "Environmental Justice – Justicia Ambiental." Accessible at: https://www.env.nm.gov/general/environmental-justice-in-new-mexico/ (last viewed February 23, 2026).

race, color or national origin. 42 U.S.C. §§ 2000d. In addition, the New Mexico Air Quality Act, NMSA 1978 §§ 74-2-1 *et seq*., and the Department's implementing regulations require NMED to protect the public health and welfare of all members of the public, *in recognition of the needs of the community impacted by the Department's decision*. NMSA 1978 § 74-2-5.1(H) (requiring the Department to develop a plan for "the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the department's responsibility …") (emphasis added). Indeed, NMED should be well aware of this obligation to conduct its permitting program in such a way that the specific communities impacted by its decisions are adequately informed and protected.[3] Because any decision to issue an air pollution permit to Acoma, LLC will impact the communities of Sunland Park and Santa Teresa differently than it otherwise would if Acoma, LLC was seeking the Department's permission to pollute a white, affluent community, NMED must consider the context and cumulative impact a decision to grant the East Permit Application will have on an already overburdened community.

The National Ambient Air Quality Standards ("NAAQS"), and most ambient air quality standards, do not adequately protect public health and welfare – especially in low-income communities and communities of color. PM2.5 and Ozone impacts, which the East Microgrid will significantly contribute to, fall disproportionately on these communities.[4] This is all the

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[3] *See* Informal Resolution Agreement between the Department and the U.S. Environmental Protection Agency (Jan. 19, 2017) Accessible at https://19january2021snapshot.epa.gov/sites/static/files/2017-01/documents/final-resolution-letter-and-agreement-triassic-park-recipinet-1-19-2017.pdf (detailing the Department's responsibilities, under Title VI Title VI and EPA regulation 40 C.F.R. Part 7, to ensure its permitting processes do not engage in discrimination on the basis of race or national origin).

[4] Letter to Ms. Brenda Mallory, Chair, The Council of Environmental Quality from the White House Environmental Justice Advisory Council, June 27, 2023. Accessible at https://www.epa.gov/system/files/documents/2023-07/Final%20WHEJAC%20Recommendations%20Letter%20on%20NAAQS%2020230627.pdf (last viewed February 23, 2026).

more important when considering the fact that the East Microgrid facility will be located in Santa Teresa, New Mexico, a community that is 84% Hispanic, with 23.9% of residents living below the federal poverty line,[5] and already dealing with the effects of being a nonattainment area for Ozone more broadly. In addition, this Borderland community has, for decades, dealt with the impacts of a contaminated drinking water supply,[6] lack of access to quality food and medical care,[7] and ultimately a refusal by the State of New Mexico to provide any meaningful assistance. Community Members understand that the Department's Air Bureau is charged with making determinations on air quality permit applications, but urge the Department to recognize that any decision it makes on the East Permit Application will not occur in a vacuum. The East Microgrid stands to emit, on its own, several hundred tons of harmful air pollutants with significant public health effects. These health effects will be in addition to the existing health effects already plaguing the Sunland Park and Santa Teresa Community.

The East Microgrid, under configuration one, has the potential to emit 3,699.16 tons of nitrogen oxides per year. Nitrogen oxides ("NOx") are known to cause a range of harmful health

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[5]The East Microgrid will also significantly impact residents living in Sunland Park, where 94% of the residents identify as Hispanic, and 22.4% live below the federal poverty level. See https://censusreporter.org/profiles/16000US3575640-sunland-park-nm/ (last viewed February 23, 2026).

[6] *E.g.*, Kent Patterson, "Is Sunland Park the border's Flint, Michigan?", NMPolitics.net (June 6, 2016) Accessible at: https://nmpolitics.net/index/2016/06/is-sunland-park-the-borders-flint-michigan/; See also Ariana Parra, "Sunland Park water utility fails state's surprise arsenic test at Santa Teresa site," (March 28, 2024). Accessible at https://kfoxtv.com/news/local/sunland-park-water-utility-fails-states-surprise-arsenic-test-at-santa-teresa-site-new-mexico-crrua-camino-real-regional-utility-authority (last viewed March 2, 2026).

[7] Food access and access to medical care are social determinants of health – non-medical factors that affect health outcomes. These factors combine with health effects of air pollution to exacerbate medical problems and health inequity. Centers for Disease Control, "Social Determinants of Health," (May 15, 2024). Accessible at: https://www.cdc.gov/public-health-gateway/php/about/social-determinants-of-health.html (last viewed March 2, 2026).

effects, including reduced lung function, increased asthma attacks, heart and lung harm, and increased risk of kidney and neurological harm.[8] NOx also contribute to the formation of Ozone, which is formed through reactions between precursor pollutants from emissions sources, including fossil fuel combustion sources like the East Microgrid. Ozone causes breathing difficulties, triggers asthma attacks, and leads to asthma development in children.[9] This is all the more important when considering that the entire area impacted by the East Microgrid lands between the 80th and 100th percentile on the U.S. Environmental Protection Agency's Ozone Environmental Justice Index – meaning residents in these areas are already at a greater risk of impacts from Ozone due to being minority, low-income residents.[10] Furthermore, though the area where the East Microgrid seeks to locate is not, from a technical standpoint, within the arbitrary boundaries of the neighboring Ozone "marginal" nonattainment area,[11] the impacts of any additional Ozone on residents in the area will almost certainly not be "marginal."

In addition, under configuration one, the East Microgrid has the potential to emit 600.53 tons of Carbon Monoxide ("CO") per year – a pollutant known to negatively affect the cardiovascular and respiratory systems, cause neurological impacts, and death.[12] Carbon Monoxide, like NOx, is an Ozone precursor, reacting in the presence of sunlight to produce

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[8] American Lung Association, "Nitrogen Dioxide," https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/nitrogen-dioxide (last viewed February 23, 2026).
[9] American Lung Association, "Ozone," https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone#how (last viewed February 23, 2026).
[10] Archived EPA EJScreen, "Santa Teresa" and "Sunland Park," Environmental Justice Index: Ozone." Accessible at https://pedp-ejscreen.azurewebsites.net/ (last viewed February 23, 2026).
[11] United States Environmental Protection Agency Greenbook, "Current Nonattainment Counties for All Criteria Pollutants." Accessible at: https://www3.epa.gov/airquality/greenbook/ancl.html (last viewed February 23, 2026).
[12] Agency for Toxic Substances and Disease Registry, Toxic Substances Portal, "Carbon Monoxide." Accessible at: https://wwwn.cdc.gov/TSP/substances/ToxSubstance.aspx?toxid=253 (last viewed February 23, 2026).

ground-level Ozone. Configuration two of the East Microgrid is similarly problematic, emitting up to 570.69 tons of CO per year. Notably, the neighboring area of Doña Ana County is currently out of attainment for both PM-10 and 8-Hour Ozone[13] – which the East Microgrid stands to contribute to significantly. For this reason alone, Acoma, LLC's East Permit Application should be denied by the Department, unless NMED wishes to contribute to the existing, and worsening, nonattainment problem.

Finally, the East Microgrid has the potential to emit several hundred tons of all sizes of particulate matter which, similarly, is detrimental to the health and welfare of the public, especially those individuals located in environmental justice and overburdened communities, like Sunland Park and Santa Teresa.

As the Department is undoubtedly aware, the state of New Mexico has recently reaffirmed its commitment to environmental justice, with Attorney General Raul Torres signing on to a publication along with thirteen states, affirming the continued legality and importance of environmental justice efforts.[14] This affirmation is certainly based, at least in part, on the understanding that permitting decisions do not impact all people in the same way, and NMED's obligation to protect the public health and welfare does not mean the public health and welfare of only a few. This, combined with NMED's own stated commitment to ensuring that "no group of people should bear a disproportionate share of the negative environmental consequences

[13] United States Environmental Protection Agency Greenbook, "Current Nonattainment Counties for All Criteria Pollutants." Accessible at: https://www3.epa.gov/airquality/greenbook/ancl.html (last viewed February 23, 2026).
[14] Multi-State Guidance Affirming the Importance and Legality of Environmental Justice Initiatives. Accessible at: https://nmelc.org/wp-content/uploads/2026/01/2025.01.16-EJ-Guidance-for-Publication.pdf (last viewed February 23, 2026).

resulting from industrial, governmental and commercial operations or policies,"[15] requires the Department to deny Acoma, LLC's East Permit Application.

## III. The related Acoma, LLC West Microgrid must be considered as part of this source.

As the Department is aware, Acoma, LLC has submitted a second air pollution permit application for its West Microgrid Power Plant, similarly intended to exclusively power the data center complex, Project Jupiter, and located approximately two miles from the East Microgrid. Acoma LLC's inappropriate attempt to circumvent more stringent air pollution regulation by splitting its source in half seemingly to avoid Prevention of Significant Deterioration ("PSD") and Title V permitting cannot be ignored by the Department. When considered together, as the microgrid facilities must be, the facility is certainly a Major Source, emitting far more than 100 tons per year of Criteria Pollutants and more than ten tons per year of a single Hazardous Air Pollutant, ("HAP"), or 25 tons per year of a combination of HAPS. 20.2.70.7(R)(1)(a) NMAC. Acoma, LLC's audacious attempt to arbitrarily distinguish two halves of the same source is insulting to both the Department and Community Members, as it is so clearly an attempt to avoid air pollution control requirements: the West Microgrid seeks to emit 20.82 tons per year of HAPS under configuration one and 19.16 tons per year of HAPS under configuration two; the East Microgrid has the potential to emit 24.2 tons per year of HAPS under configuration one and 24.20 tons per year of HAPS under configuration two – thus both sources individually fall just under the 25 tons per year limit.

The East and West Microgrid must be considered to be a single, major source because both sources are adjacent to each other and under the common control of the same persons in

[15] New Mexico Environment Department, "Environmental Justice – Justicia Ambiental." Accessible at: https://www.env.nm.gov/general/environmental-justice-in-new-mexico/ (last viewed February 23, 2026).

which all of the pollutant emitting activities at such source belong to the same major group. 20.2.70.7(R) NMAC. The Department's single source determination on the basis that the East and West Microgrid are separated by a parcel of land not owned by the operator, Acoma, LLC, is preposterous. First, this determination ignores the fact that, the reason the two sources are separated by a parcel of land is because, sitting between the two sources, is the facility the microgrids intend to power. The fact that the sources are a mere two miles apart is insufficient to qualify the East and West Microgrid as separate sources, especially when that distance is because of, and a part of, the full data center campus the microgrid facility belongs to. This would be all the more obvious if Acoma, LLC had included with its East Permit Application a one line diagram of the facility, showing all the anticipated load calculations for the source. Community Members recommend the Department reject the East Permit Application in the absence of such a drawing, as it is needed to ensure NMED considers the project as what it is: a single major polluting source.

The United States Environmental Protection Agency is clear that, in order to be considered "adjacent," the facilities are not required to be on parcels of land that share a border.[16] The determination of whether a source is a single source due to the operations being adjacent to each other requires a case-specific inquiry that further depends on the nature of the industry involved and NMED has authority to make such a determination based on the facts before it.[17] Because the East and West Microgrid will essentially function as one natural gas power plant used for the sole purpose of supplying energy to Project Jupiter, the sources must be considered

[16] United States Environmental Protection Agency, Memorandum, "Interpreting 'Adjacent' for New Source Review and Title V Determinations in All Other Industries Other Than Oil and Gas," (11/28/2019). Accessible at: https://www.epa.gov/sites/default/files/2019-12/documents/adjacent_guidance.pdf (last viewed February 23, 2026).
[17] *Id.*

as one plant. As such, the microgrid facility must be subject to Title V operating permit requirements, in addition to PSD permitting requirements.

## IV. The East Microgrid, if permitted as a stand-alone facility, must be permitted as a Major Source subject to PSD permitting and Title V permitting.

Even if the Department arbitrarily determines it must review the East Permit Application as permitting a stand-alone source, the East Microgrid is, on its own, a Major Source subject to Title V and PSD permitting requirements, not minor source or synthetic minor source permitting requirements, as Acoma, LLC claims on the East Permit Application. For this reason, NMED must deny Acoma, LLC's East Permit Application.

### A. The East Microgrid is likely a stand-alone PSD major source in the absence of consideration of the West Microgrid.

The East Microgrid is a source with the potential to emit more than 250 tons per year of any regulated new source review pollutant, such that it is a major source subject to PSD permitting, not NSR minor or synthetic minor source permitting. 20.2.74.7(AG) NMAC.

A major stationary source, if not listed in 20.2.74.501 NMAC, is one which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant. 20.2.74.7(AG)(2) NMAC. As it stands, Acoma, LLC's requested emissions limit would allow the East Microgrid to emit 245 tons per year of both NOx and CO – a mere five tons per year below the PSD limit. The ability of Acoma, LLC to meet these limitations successfully, however, is highly doubtful for two reasons. First, even if Acoma, LLC were to comply with its self-imposed limitation of operating only five of its seven turbines at 100% at one time, the total tons per year of NOx and CO would still exceed the limit of 250 TPY. For example, at Acoma, LLC's self-imposed limit under Configuration 1, operating only five of the seven turbines still puts the East Microgrid well-above the PSD limit, emitting 327.4 TPY of

NOx and 340.1 TPY of CO. This is all the more important when considering the high probability that Acoma, LLC is likely to operate over its self-imposed limitation, due to the enormous capacity the East Microgrid has to generate electricity.

The United States Environmental Protection Agency ("EPA") has raised concerns about the issue of "sham permitting," which occurs when a source improperly seeks a synthetic minor permit by constructing its facility subject to less stringent minor source permitting requirements that it intends to "free itself of shortly after completion of construction and commencement of operation."[18] EPA looks at objective indicia to identify whether a permit applicant is unlawfully circumventing major source permitting requirements, including "the economic realities surrounding a transaction; and projected levels of operation as portrayed to lending institutions and other records of projected demand output."[19] Most important, "where it appears obvious that a proposed source or modification, by its physical and operational design characteristics, could not economically run at minor source levels for an appreciable length of time, EPA will consider minor source limits taken by the source unrealistic and sham."[20] Acoma, LLC's East Permit Application is almost certainly a sham. In addition to unlawfully splitting the source into an East and West Microgrid, discussed above, the East Microgrid has an output potential less than what is required to operate Project Jupiter, such that it is inconceivable that the source plans to operate at minor levels, as proposed. Project Jupiter, which the East Microgrid will serve, will require at least 2700-2800 Megawatts of power.[21] Based on the East Permit Application, it is simply

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[18] United States Environmental Protection Agency, Memorandum, "Applicability of New Source Review Guidance to 3M - Maplewood, Minnesota," at 2. (6/7/1993). Accessible at: https://www.epa.gov/sites/default/files/2015-07/documents/maplwood.pdf (last viewed February 23, 2026).
[19] *Id.*
[20] *Id.* at 3.
[21] Peter Goodman, KRWG, "Big money moved Project Jupiter forward with lightning speed - at what cost?" (1/5/26). Accessible at:

inconceivable that Acoma, LLC intends to operate at any level less than full capacity in order to serve the data center.

Second, it is highly likely that the emissions from the East Microgrid will be even greater than anticipated, given that Acoma, LLC's emissions estimates are based on AP-42 emissions factors. Emissions factors are representative values, most commonly averages of all available data for emissions sources. Because these emissions factors represent an average of a range of emission rates, approximately half of the subject sources Acoma, LLC has estimated emissions of will have emissions rates greater than the emission factor. As such, a permit limit using an AP-42 emission factor would result in half of the sources being in noncompliance. This is all the more important because Acoma, LLC relies on emissions factors with ratings of "C," "D," and "E." These factors are developed from poorly rated data, with "D" and "E" rated emissions presenting a high likelihood that the facilities tested do not represent a random sample of the industry and are not reflective of emissions coming out of the source.

In November, 2020, EPA issued an Enforcement Alert, reminding all permitting agencies and regulated entities of these issues, and explicitly cautioning against the use of even highly rated factors of "A" and "B" and stating "Remember, AP-42 emissions factors should only be used as a last resort."[22] Rather than comply with this guidance, Acoma, LLC relies on these factors to estimate their enormous emissions. While Community Members understand that the Department often allows polluting industries to rely on these emissions factors for the purpose of administrative convenience, the significant risks of doing so in this case cannot be understated.

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https://www.krwg.org/local-viewpoints/2026-01-05/big-money-moved-project-jupiter-forward-with-lightning-speed-at-what-cost (last viewed February 24, 2026).

[22] United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, "Enforcement Alert," Pub. No. EPA 325-N-20-001 (Nov. 2020). Accessible at: https://www.epa.gov/sites/default/files/2021-01/documents/ap42-enforcementalert.pdf (last viewed February 24, 2026).

Given how close the East Microgrid already is to being subject to PSD requirements, and when considering the nearby nonattainment area and environmental justice concerns in the community where the East Microgrid will locate, NMED must require Acoma, LLC to obtain and use the most representative emissions data, including source specific emissions data, in any permit application, in order to ensure the public is protected from the harmful impacts of emissions from this facility, and should deny the East Permit Application outright as Acoma, LLC has failed to seek a PSD Major Source permit.

B. Acoma, LLC must obtain Title V Operating Permit for the East Microgrid.

Finally, should NEMD issue an air pollution permit to Acoma, LLC, which it should not do on the basis of its existing East Permit Application, the Department must require Acoma, LLC to obtain a Title V operating permit. A Title V permit is required for sources that have a potential to emit more than 100 tons per year for criteria pollutants. The East Microgrid has the potential to emit far more than 100 tons per year of NOx, CO, and PM, all criteria pollutants, discussed above, as well as 35.84 tons per year of Hazardous Air Pollutants ("HAPs") – subjecting the source to Title V permitting requirements.

## V. Permitting the East Microgrid is contrary to New Mexico's climate goals.

New Mexico has the goal of reducing statewide greenhouse gas emissions by at least 45% by 2030 compared to 2005 levels.[23] It is impossible to fathom how permitting one source proposing to emit 7,959,053.56 TPY of greenhouse gas emissions, let alone a combined nearly 14 million tons per year when including the West Microgrid's 5,116,498.57 TPY of greenhouse gas emissions, will achieve such a goal. In the absence of state regulations controlling

[23] New Mexico Interagency Climate Change Task Force, 2022-2024 New Mexico Climate Strategy, "Climate Progress Report," (October 2025). Accessible at: https://cloud.env.nm.gov/resources/_translator.php/MjI3NjdjZGQ2ZWQ4M2Q0YjlhZTY4ZDE5Ml8yMDg5MjU~.pdf (last viewed February 24, 2026).

greenhouse gas emissions, and in light of EPA's recision of the endangerment finding,[24] now is the time for the Department to lead on climate change mitigation – not to permit an enormous polluting facility for the sole purpose of servicing a data center.

Community Members understand that the state currently lacks a regulatory scheme under which to regulate greenhouse gas emissions coming from the East Microgrid. However, in light of Executive Order 2019-003, "Executive Order on Addressing Climate Change and Energy Waste Prevention,"[25] and because these emissions are substantial, because the Department is required to prevent and abate air pollution, and because greenhouse gases can hardly be considered anything other than a pollutant subject to regulation, NMED must restrict the greenhouse gas emissions coming from the East Microgrid by requiring strict emissions limitations in any final permit. In the event regulating such emissions requires a rulemaking before the Environmental Improvement Board ("EIB"), Community Members demand NMED petition the EIB for a health protective greenhouse gas regulation prior to permitting any facility that will contribute so significantly to greenhouse gas emissions in New Mexico.

## VI. Permitting the East Microgrid will harm the public's health and welfare, along with the local and state economy.

Additionally, in light of Secretary Kenney's commitment to "environment and economy,"[26] the Department must deny Acoma, LLC's East Permit Application because issuing a

[24] 91 FR 7686; (Vol. 91, No. 32, (Feb. 18, 2026). Accessible at: https://www.govinfo.gov/content/pkg/FR-2026-02-18/pdf/2026-03157.pdf (last viewed February 24, 2026).
[25] E.O. 2019-003, "Executive Order on Addressing Climate Change and Energy Waste Prevention," (January 29, 2019). Accessible at: https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf (last viewed February 24, 2026).
[26] See New Mexico Environment Department Secretary Kenney Statement on Repeal of EP Endangerment Finding (February 12, 2026). Accessible at: https://www.env.nm.gov/wp-content/uploads/2026/02/2026-02-12-COMMS-Sec.-Kenney-statement-on-repeal-of-EPA-endangerment-finding-Final.pdf (last viewed February 24, 2026).

permit will not only harm the environment and the public health and welfare, which the Department must protect, but will also harm the economy.[27] The high economic costs of air pollution have been well understood for decades. In 2014, premature mortality from PM2.5 alone cost the U.S. economy over $780 billion, and constituted over 4 percent of gross domestic product.[28] State-level studies have yielded similar conclusions. Research published in 2020 estimated the economic cost of air pollution in Utah to be $1.9 billion annually. The authors attributed 55 percent of these costs to PM2.5 and less than 10 percent to O3 and NOx.[29]

Moreover, a growing body of research demonstrates that air pollution reduces workforce participation and productivity. The Organisation for Economic Co-operation and Development, an international standard-setter for public welfare and policy, projects a marked decrease in global labor force productivity due to rising air pollution. Each year, an estimated 1.2 billion workdays are lost worldwide due to the health effects of air pollution. By 2060, this number is expected to more than triple, growing to 3.7 billion.[30] Air pollution decreases labor productivity by increasing absenteeism and 'presenteeism' the practice of working while sick.[31] Exposure to moderate levels of PM2.5, for example, has been shown to reduce the hours worked by adults,

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[27] Community Members note that while the Department may consider the economic impacts of a proposed air pollution project, NMED's primary mission to prevent and abate air pollution and protect public health and welfare remains. For that reason, Community Members urge the Department to consider the economic costs of an unhealthy public due to polluted air in addition to any speculative economic benefit a polluting entity may provide – and weigh such factors accordingly.

[28] Fine particulate matter damages and value added in the US economy. Retrieved from: https://www.pnas.org/doi/10.1073/pnas.1905030116.

[29] Errigo, I., et al., *Human Health and Economic Costs of Air Pollution in Utah: An Expert Assessment*. Atmosphere 2020, *11*, 1238. At 12 of 28. Retrieved from https://www.mdpi.com/2073-4433/11/11/1238.

[30] OECD (2016), The Economic Consequences of Outdoor Air Pollution, OECD Publishing, Paris.

[31] Lu, Jackson. Air Pollution: A systemic review of its psychological, economic and social effects, Current Opinion in Psychology (Vol. 32, pp. 52-65) (April 2022).

likely due to the need for caregiving for susceptible dependents such as young children and elderly adults.[32] Indeed, parents of children with asthma have been shown to miss significantly more work days than parents of children without asthma.[33] Other studies have shown that mothers of children with asthma are less likely than other mothers to be employed with full-or part-time jobs.[34]

This stands in stark contrast to the claims being made by developers of Project Jupiter, who seek to construct the East Microgrid to service Project Jupiter – and who claim this project will bring jobs and economic gain to Doña Ana County and New Mexico. The Department has a responsibility to protect the health and welfare of New Mexico residents and should not contribute to airshed and economic problems already plaguing Doña Ana County by allowing a facility to locate in an already overburdened area.

## VII. Conclusion

For the foregoing reasons, Community Members urge NMED to deny Acoma, LLC's East Permit Application. In addition, Community Members demand a public hearing on the East Permit Application, to be held in person and virtually, in English and Spanish, in Santa Teresa, no less than ninety days after the Department makes its analysis of the East Permit Application publicly available in English and Spanish. Community Members further request the Department hold at least one public information session about its East Permit Application analysis, both in

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[32] *Id.*

[33] Sullivan PW, Ghushchyan V, Navaratnam P, Friedman HS, Kavati A, Ortiz B, et al. *The national burden of poorly controlled asthma, school absence and parental work loss among school-aged children in the United States. J Asthma*. 2018;55(6):659–67. doi: 10.1080/02770903.2017.1350972. See also
Wang, L. Y., Zhong, Y., & Wheeler, L. (2005). Direct and indirect costs of asthma in school-age children. Preventing chronic disease, 2(1), A11.

[34] Baydar, Nazli & Joesch, Jutta & Kieckhefer, Gail & Kim, Hyoshin & Greek, April. (2007). Employment Behaviors of Mothers Who Have A Child with Asthma. Journal of Family and Economic Issues. 28. 337-355. 10.1007/s10834-007-9068-5.

person and online, in English and Spanish, because the East Microgrid stands to significantly impact the health and welfare of all residents in Sunland Park, Santa Teresa, and Doña Ana County.

Respectfully submitted,

*/s/ Maslyn Locke*
New Mexico Environmental
Law Center
mlocke@nmelc.org

*/s/ Kacey Hovden*
New Mexico Environmental
Law Center
khovden@nmelc.org

**ATTACHMENT 1-B**

March 2, 2026

New Mexico Environment Department
Air Quality Bureau - Permitting Section
525 Camino de los Marquez, Ste. 1
Santa Fe, NM 87505

Via email to aqb-acoma-microgrids@env.nm.gov and NMED Public Comment Portal

**Re: Community Members Initial Comments on Application for Initial NSR Permit Acoma, LLC – West Microgrid, Permit No. 10734 and TEMPO Agency Interest No. 41311**

Dear Ms. Romero, Ms. Kuhn, and Permitting Program Staff:

Please accept this initial comment on Acoma, LLC's Application for Initial NSR Permit – West Microgrid Power Plant, Permit No. 10734 and TEMPO Agency Interest No. 41311("West Permit Application"), submitted on behalf of community members in Doña Ana County, José Saldaña, Jr., Vivian Fuller and Daisy Maldonado, collectively, "Community Members." Community Members reserve the right to make additional comments as this permitting process moves forward.

## I. Public Access.

While Community Members appreciate the Department's efforts to comply with its own language access policies and provide the West Permit Application in Spanish and English, as well as posting notice of the West Permit Application in public spaces residents in Sunland Park and Santa Teresa, New Mexico, frequent, Community Members urge NMED to ensure residents have the most access to all information related to Acoma, LLC's West Microgrid natural gas power plant. For this reason, Community Members demand NMED hold at least one public

information session on the West Permit Application, prior to the public hearing, in a location of the Community Members' choosing, in English and Spanish, because the impacts of this proposed major pollution source cannot be understated and must be understood by all residents in the area. This information session must include significant discussion of the Department's West Permit Application analysis, once it is released to the public. In addition, Community Members demand NMED hold a public hearing on the West Permit Application, no less than 90 (ninety) days after NMED's analysis is released, as required by 20.2.72.206(B) NMAC, in Santa Teresa, New Mexico, and virtually, in both English and Spanish, in order to provide members of the public adequate opportunity to participate in the permitting process.[1]

## II. Acoma, LLC's West Permit Application Must be Considered in Context.

When evaluating any permit application, NMED must remember that the Department's obligation to consider and address environmental justice and civil rights cannot be uncoupled from its obligation to prevent and abate air pollution. NMED must consider information and evidence, in addition to what is required by its technical regulations, in order to ensure that "no group of people should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental and commercial operations or policies."[2] Title VI of the Civil Rights Act of 1964, continues to prohibit recipients of federal funds, like the Department, from operating its programs in such a way that results in discrimination in the form

[1] Community Members are concerned with the Department's current Public Involvement Plan, ("PIP"), which simultaneously admits that the public has demonstrated significant interest in the West Permit Application, while also failing to commit to holding either a public information session on the West Permit Application or a public hearing on the East Permit Application. Based on the significant interest in the West Permit Application, the Department must hold a hearing. 20.2.72.206(C) NMAC.

[2] New Mexico Environment Department, "Environmental Justice – Justicia Ambiental." Accessible at: https://www.env.nm.gov/general/environmental-justice-in-new-mexico/ (last viewed February 23, 2026).

of disproportionate impacts of air pollution against any individual or community on the basis of race, color or national origin. 42 U.S.C. §§ 2000d. In addition, the New Mexico Air Quality Act, NMSA 1978 §§ 74-2-1 *et seq*., and the Department's implementing regulations require NMED to protect the public health and welfare of all members of the public, *in recognition of the needs of the community impacted by the Department's decision*. NMSA 1978 § 74-2-5.1(H) (requiring the Department to develop a plan for "the regulation, control, prevention or abatement of air pollution, recognizing the differences, needs, requirements and conditions in the different portions of the geographical area of the department's responsibility …") (emphasis added). Indeed, NMED should be well aware of this obligation to conduct its permitting program in such a way that the specific communities impacted by its decisions are adequately informed and protected.[3] Because any decision to issue an air pollution permit to Acoma, LLC will impact the communities of Sunland Park and Santa Teresa differently than it otherwise would if Acoma, LLC was seeking the Department's permission to pollute a white, affluent community, NMED must consider the context and cumulative impact a decision to grant the West Permit Application will have on an already overburdened community.

The National Ambient Air Quality Standards ("NAAQS"), and most ambient air quality standards, do not adequately protect the public health and welfare of residents in low-income communities and communities of color. PM2.5 and Ozone impacts, which the West Microgrid will significantly contribute to, fall disproportionately on these communities.[4] This is all the

[3] *See* Informal Resolution Agreement between the Department and the U.S. Environmental Protection Agency (Jan. 19, 2017) Accessible at https://19january2021snapshot.epa.gov/sites/static/files/2017-01/documents/final-resolution-letter-and-agreement-triassic-park-recipinet-1-19-2017.pdf (detailing the Department's responsibilities, under Title VI Title VI and EPA regulation 40 C.F.R. Part 7, to ensure its permitting processes do not engage in discrimination on the basis of race or national origin).

[4] Letter to Ms. Brenda Mallory, Chair, The Council of Environmental Quality from the White House Environmental Justice Advisory Council, June 27, 2023. Accessible at

more important when considering the fact that the West Microgrid facility will be located in Santa Teresa, a community that is 84% Hispanic, with 23.9% of residents living below the federal poverty line,[5] and already dealing with the effects of being a nonattainment area for Ozone more broadly. In addition, this Borderland community has, for decades, dealt with the impacts of a contaminated drinking water supply,[6] lack of access to quality food and medical care,[7] and ultimately a refusal by the State of New Mexico to provide any meaningful assistance. Community Members understand that the Department's Air Bureau is charged with making determinations on air quality permit applications, but urge the Department to recognize that any decision it makes on the West Permit Application will not occur in a vacuum. The West Microgrid stands to emit, on its own, several hundred tons of harmful air pollutants with significant public health effects. These health effects will be in addition to the existing health effects already plaguing the Sunland Park and Santa Teresa Community.

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https://www.epa.gov/system/files/documents/2023-07/Final%20WHEJAC%20Recommendations%20Letter%20on%20NAAQS%2020230627.pdf (last viewed February 23, 2026).

[5] The West Microgrid will also significantly impact residents living in Sunland Park, where 94% of the residents identify as Hispanic, and 22.4% live below the federal poverty level. See https://censusreporter.org/profiles/16000US3575640-sunland-park-nm/ (last viewed February 23, 2026).

[6] *E.g.*, Kent Patterson, "Is Sunland Park the border's Flint, Michigan?", NMPolitics.net (June 6, 2016) Accessible at: https://nmpolitics.net/index/2016/06/is-sunland-park-the-borders-flint-michigan/; See also Ariana Parra, "Sunland Park water utility fails state's surprise arsenic test at Santa Teresa site," (March 28, 2024). Accessible at https://kfoxtv.com/news/local/sunland-park-water-utility-fails-states-surprise-arsenic-test-at-santa-teresa-site-new-mexico-crrua-camino-real-regional-utility-authority (last viewed March 2, 2026).

[7] Food access and access to medical care are social determinants of health – non-medical factors that affect health outcomes. These factors combine with health effects of air pollution to exacerbate medical problems and health inequity. Centers for Disease Control, "Social Determinants of Health," (May 15, 2024). Accessible at: https://www.cdc.gov/public-health-gateway/php/about/social-determinants-of-health.html (last viewed March 2, 2026).

The West Microgrid, under configuration one,[8] has the potential to emit 3,775.25 tons of nitrogen oxides per year. Nitrogen oxides ("NOx") are known to cause a range of harmful health effects, including reduced lung function, increased asthma attacks, heart and lung harm, and increased risk of kidney and neurological harm.[9] NOx also contributes to the formation of Ozone, which is formed through reactions between precursor pollutants from emissions sources, including fossil fuel combustion sources like the West Microgrid. Ozone causes breathing difficulties, triggers asthma attacks, and leads to asthma development in children.[10] Again, this is all the more important when considering that the entire area impacted by the West Microgrid lands between the 80th and 100th percentile on the U.S. Environmental Protection Agency's Ozone Environmental Justice Index – meaning residents in these areas are already at a greater risk of impacts from Ozone due to being minority, low-income residents.[11] Furthermore, though the area where the West Microgrid seeks to locate is not, from a technical standpoint, within the arbitrary boundaries of the neighboring Ozone "marginal" nonattainment area,[12] the impacts of any additional Ozone on residents in the area will almost certainly not be "marginal."

In addition, under configuration one,[13] the West Microgrid has the potential to emit 2,298.3 tons of Carbon Monoxide ("CO") per year – a pollutant known to negatively affect the

[8] Similarly, under configuration two, the West Microgrid's maximum NOx emissions are 3,878.12 tons per year.
[9] American Lung Association, "Nitrogen Dioxide," https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/nitrogen-dioxide (last viewed February 23, 2026).
[10] American Lung Association, "Ozone," https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/ozone#how (last viewed February 23, 2026).
[11] Archived EPA EJScreen, "Santa Teresa" and "Sunland Park," Environmental Justice Index: Ozone." Accessible at https://pedp-ejscreen.azurewebsites.net/ (last viewed February 23, 2026).
[12] United States Environmental Protection Agency Greenbook, "Current Nonattainment Counties for All Criteria Pollutants." Accessible at: https://www3.epa.gov/airquality/greenbook/ancl.html (last viewed February 23, 2026).
[13] Under configuration two, the West Microgrid's potential CO emissions are 5,190.06 tons per year.

cardiovascular and respiratory systems, cause neurological impacts, and death.[14] Carbon Monoxide, like NOx, is an Ozone precursor, reacting in the presence of sunlight to produce ground-level Ozone. Notably, as mentioned above, a neighboring area of Doña Ana County is currently out of attainment for both PM-10 and 8-Hour Ozone[15] – which the West Microgrid stands to contribute to significantly. For this reason alone, Acoma, LLC's West Permit Application should be denied by the Department, unless NMED wishes to contribute to the existing, and worsening, nonattainment problem in the County.

Finally, the West Microgrid has the potential to emit several hundred tons of particulate matter of all sizes which, similar to the pollutants above, is detrimental to the health and welfare of the public, especially those individuals located in environmental justice and overburdened communities, like Sunland Park and Santa Teresa.

As the Department is undoubtedly aware, the state of New Mexico has recently reaffirmed its commitment to environmental justice, with Attorney General Raul Torres signing on to a publication along with 13 other states, affirming the continued legality and importance of environmental justice efforts by state agencies like NMED.[16] This affirmation is certainly based, at least in part, on the understanding that permitting decisions do not impact all people in the same way, and NMED's obligation to protect the public health and welfare does not mean the public health and welfare of only a few. This, combined with NMED's own stated commitment

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[14] Agency for Toxic Substances and Disease Registry, Toxic Substances Portal, "Carbon Monoxide." Accessible at: https://wwwn.cdc.gov/TSP/substances/ToxSubstance.aspx?toxid=253 (last viewed February 23, 2026).
[15] United States Environmental Protection Agency Greenbook, "Current Nonattainment Counties for All Criteria Pollutants." Accessible at: https://www3.epa.gov/airquality/greenbook/ancl.html (last viewed February 23, 2026).
[16] Multi-State Guidance Affirming the Importance and Legality of Environmental Justice Initiatives. Accessible at: https://nmelc.org/wp-content/uploads/2026/01/2025.01.16-EJ-Guidance-for-Publication.pdf (last viewed February 23, 2026).

to environmental justice and legal requirement to protect the public health and welfare for all members of the public, requires the Department to deny Acoma, LLC's West Permit Application.

## III. The related Acoma, LLC East Microgrid must be considered as part of this source.

As the Department is aware, Acoma, LLC has submitted a second air pollution permit application for its East Microgrid Power Plant, similarly intended to exclusively power a data center complex, Project Jupiter, and located approximately two miles from the West Microgrid. Acoma, LLC's inappropriate attempt to circumvent more stringent air pollution regulation by splitting its source in half seemingly to avoid Prevention of Significant Deterioration ("PSD") and Title V permitting cannot be ignored by the Department. When considered together, as the microgrid facilities must be, the facility is certainly a Major Source, emitting far more than 100 tons per year of Criteria Pollutants and more than ten tons per year of a single Hazardous Air Pollutant, ("HAP"), or 25 tons per year of a combination of HAPS. 20.2.70.7(R)(1)(a) NMAC. Acoma, LLC's audacious attempt to arbitrarily distinguish two halves of the same source is insulting to both the Department and Community Members, as it is so clearly an attempt to avoid air pollution control requirements: the West Microgrid seeks to emit 20.82 tons per year of HAPS under configuration one and 19.16 tons per year of HAPS under configuration two; the East Microgrid has the potential to emit 24.2 tons per year of HAPS under configuration one and 24.20 tons per year of HAPS under configuration two – not coincidentally, both facilities fall just under the 25 tons per year HAPS limit.

The East and West Microgrid must be considered to be a single, major source because both sources are adjacent to each other and under the common control of the same persons in which all of the pollutant emitting activities at such source belong to the same major group. 20.2.70.7(R) NMAC. The Department's single source determination on the basis that the East

and West Microgrid are separated by a parcel of land not owned by the operator, Acoma, LLC, is nothing short of preposterous. First, this determination ignores the fact that the reason the two sources are separated by a parcel of land is because, sitting between the two sources, is the facility the microgrids intend to power. The fact that the sources are a mere two miles apart is insufficient to qualify the East and West Microgrid as separate sources, especially when that distance is because of, and a part of, the full data center campus the microgrid facility belongs to. This would be all the more obvious if Acoma, LLC had included with its West Permit Application a one line diagram of the facility, showing all the anticipated load calculations for the source. Community Members recommend the Department reject the West Permit Application in the absence of such a drawing, as it is needed to ensure NMED considers the project as what it is: a single major polluting source.

The United States Environmental Protection Agency ("EPA") is clear that "adjacent," does not require the facilities to be on parcels of land that share a border.[17] The determination of whether a source is a single source when two operations are adjacent to each other requires a case-specific inquiry that depends on the nature of the industry involved, and NMED has authority to make such a determination based on the facts before it.[18] Because the East and West Microgrid will essentially function as one natural gas power plant used for the sole purpose of supplying energy to Project Jupiter, the sources must be considered as one plant. As such, the microgrid facility must be subject to Title V operating permitting requirements, in addition to PSD permitting.

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[17] United States Environmental Protection Agency, Memorandum, "Interpreting 'Adjacent' for New Source Review and Title V Determinations in All Other Industries Other Than Oil and Gas," (11/28/2019). Accessible at: https://www.epa.gov/sites/default/files/2019-12/documents/adjacent_guidance.pdf (last viewed February 23, 2026).

[18] *Id.*

## IV. The West Microgrid, if permitted as a stand-alone facility, must be permitted as a Major Source subject to PSD permitting and Title V permitting.

Even if the Department arbitrarily determines it must review the West Permit Application as permitting a stand-alone source, the West Microgrid is, on its own, a Major Source subject to Title V and PSD permitting requirements, not minor source or synthetic minor source permitting requirements, as Acoma, LLC claims on the West Permit Application. For this reason, NMED must deny Acoma, LLC's West Permit Application.

### A. The West Microgrid is likely a stand-alone PSD major source in the absence of consideration of the East Microgrid.

The West Microgrid is a source with the potential to emit more than 250 tons per year of any regulated new source review pollutant, such that it is a major source subject to PSD permitting, not NSR minor or synthetic minor source permitting. 20.2.74.7(AG) NMAC.

A major stationary source, if not listed in 20.2.74.501 NMAC, is one which emits or has the potential to emit two hundred fifty (250) tons per year or more of any regulated new source review pollutant. 20.2.74.7(AG)(2) NMAC. As it stands, Acoma, LLC's requested emissions limit would allow the West Microgrid to emit 245 tons per year of NOx, PM, PM10, PM2.5 and CO – a mere five tons per year below the PSD limit for nearly every criteria pollutant. The ability of Acoma, LLC to meet these limitations successfully, however, is highly doubtful for two reasons. First, even if Acoma, LLC were to comply with its self-imposed annual emissions cap, Acoma, LLC is likely to operate over its self-imposed limitation, due to the enormous capacity the West Microgrid has to generate electricity and its potential to emit either 3,775.25 or 3,878.12 TPY of NOx, 2,298.30 or 5,190.06 TPY of CO, 259.49 TPY of VOCs, and 270.30 or 277.67 TPY of condensible PM, PM10 and PM2.5.

The United States Environmental Protection Agency ("EPA") has raised concerns about the issue of "sham permitting," which occurs when a source improperly seeks a synthetic minor permit by constructing its facility subject to less stringent minor source permitting requirements that it intends to "free itself of shortly after completion of construction and commencement of operation."[19] EPA looks at objective indicia to identify whether a permit applicant is unlawfully circumventing major source permitting requirements, including "the economic realities surrounding a transaction; and projected levels of operation as portrayed to lending institutions and other records of projected demand output."[20] Most important, "where it appears obvious that a proposed source or modification, by its physical and operational design characteristics, could not economically run at minor source levels for an appreciable length of time, EPA will consider minor source limits taken by the source unrealistic and sham."[21] Acoma, LLC's West Permit Application is almost certainly a sham. In addition to unlawfully splitting the source into an East and West Microgrid, discussed above, the West Microgrid has an output potential much lower than what is required to operate Project Jupiter, such that it is inconceivable that the source plans to operate at minor levels, as proposed. Project Jupiter, which the West Microgrid will serve, will require at least 2700-2800 Megawatts of power.[22] Based on the West Permit Application, it is simply inconceivable that Acoma, LLC intends to operate at any level less than full capacity in order to successfully serve the data center.

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[19] United States Environmental Protection Agency, Memorandum, "Applicability of New Source Review Guidance to 3M - Maplewood, Minnesota," at 2. (6/7/1993). Accessible at: https://www.epa.gov/sites/default/files/2015-07/documents/maplwood.pdf (last viewed February 23, 2026).

[20] *Id.*

[21] *Id.* at 3.

[22] Peter Goodman, KRWG, "Big money moved Project Jupiter forward with lightning speed - at what cost?" (1/5/26). Accessible at: https://www.krwg.org/local-viewpoints/2026-01-05/big-money-moved-project-jupiter-forward-with-lightning-speed-at-what-cost (last viewed February 24, 2026).

Second, it is highly likely that the emissions from the West Microgrid will be even greater than anticipated, given that Acoma, LLC's emissions estimates are based on AP-42 emissions factors. Emissions factors are representative values, most commonly averages of all available data for emissions sources. Because these emissions factors represent an average of a range of emission rates, approximately half of the subject sources Acoma, LLC has estimated emissions of will have emissions rates greater than what is noted on the West Permit Application. As such, any permit limit based on the use of an AP-42 emission factor would result in half of the sources permitted being in noncompliance. This is all the more important because Acoma, LLC relies on emissions factors with ratings of "C," "D," and "E". These factors are developed from poorly rated data, with "D" and "E" rated emissions presenting a high likelihood that the facilities tested do not represent a random sample of the industry and are not reflective of emissions coming out of the source.

In November, 2020, the United States Environmental Protection Agency issued an Enforcement Alert, reminding all permitting agencies and regulated entities of these issues, and explicitly cautioning against the use of even highly rated factors of "A" and "B" and stating "Remember, AP-42 emissions factors should only be used as a last resort." (emphasis added)[23] Rather than comply with this guidance, Acoma, LLC relies on these factors to estimate their already enormous emissions. While Community Members understand that the Department often allows polluting industries to rely on these emissions factors for the purpose of administrative convenience, the significant risks of doing so in this case cannot be understated. Given how close the West Microgrid is to being subject to PSD requirements, and when considering the nearby

[23] United States Environmental Protection Agency, Office of Enforcement and Compliance Assurance, "Enforcement Alert," Pub. No. EPA 325-N-20-001 (Nov. 2020). Accessible at: https://www.epa.gov/sites/default/files/2021-01/documents/ap42-enforcementalert.pdf (last viewed February 24, 2026).

nonattainment area and environmental justice concerns in the community where the West Microgrid will locate, NMED must require Acoma, LLC to obtain and use the most representative emissions data, including source specific emissions data, in any permit application, in order to ensure the public is protected from the harmful impacts of emissions from this facility, and should deny the current West Permit Application outright as Acoma, LLC has failed to seek a PSD Major Source permit.

B. Acoma, LLC must obtain Title V Operating Permit for the West Microgrid.

Finally, should NEMD issue a construction permit to Acoma, LLC, which it should not do on the basis of its existing West Permit Application, the Department must require Acoma, LLC to obtain a Title V operating permit. A Title V permit is required for sources that have a potential to emit more than 100 tons per year for Criteria Pollutants. The West Microgrid has the potential to emit substantially more than 100 tons per year of NOx, CO, and PM, all of which are Criteria Pollutants, subjecting the source to Title V permitting requirements.

## V. Permitting the West Microgrid is contrary to New Mexico's climate goals.

New Mexico has the goal of reducing statewide greenhouse gas emissions by at least 45% by 2030 compared to 2005 levels.[24] It is impossible to fathom how permitting one source proposing to emit 5,116,498.57 TPY of greenhouse gas emissions, let alone a combined nearly 14 million tons per year when including the East Microgrid's 7,959,053.56 TPY of greenhouse gas emissions, will achieve such a goal. In the absence of state regulations controlling

[24] New Mexico Interagency Climate Change Task Force, 2022-2024 New Mexico Climate Strategy, "Climate Progress Report," (October 2025). Accessible at: https://cloud.env.nm.gov/resources/_translator.php/MjI3NjdjZGQ2ZWQ4M2Q0YjlhZTY4ZDE5Ml8yMDg5MjU~.pdf (last viewed February 24, 2026).

greenhouse gas emissions, and in light of EPA's recision of the endangerment finding,[25] now is the time for the Department to lead on climate change efforts – not to permit an enormous polluting facility for the sole purpose of servicing a data center complex.

Community Members understand that the state currently lacks a regulatory scheme under which to regulate greenhouse gas emissions coming from the West Microgrid. However, in light of Executive Order 2019-003, "Executive Order on Addressing Climate Change and Energy Waste Prevention,"[26] and because the greenhouse gas emissions coming from the West Microgrid are substantial, because the Department is unequivocally required to "prevent and abate air pollution" and because greenhouse gases can hardly be considered anything other than a pollutant subject to regulation, in the event the Department decides to issue an air pollution permit to Acoma, LLC, NMED must restrict the greenhouse gas emissions coming from the West Microgrid by requiring strict emissions limitations in any final permit. In the event regulating such emissions requires a rulemaking before the Environmental Improvement Board ("EIB"), Community Members demand NMED petition the EIB for a health protective greenhouse gas regulation prior to permitting any facility that will contribute so significantly to greenhouse gas emissions in New Mexico.

## VI. Permitting the West Microgrid will harm the public's health and welfare, along with the local and state economy.

[25] 91 FR 7686; (Vol. 91, No. 32, (Feb. 18, 2026). Accessible at: https://www.govinfo.gov/content/pkg/FR-2026-02-18/pdf/2026-03157.pdf (last viewed February 24, 2026).

[26] E.O. 2019-003, "Executive Order on Addressing Climate Change and Energy Waste Prevention," (January 29, 2019). Accessible at: https://www.governor.state.nm.us/wp-content/uploads/2019/01/EO_2019-003.pdf (last viewed February 24, 2026).

Additionally, in light of Secretary Kenney's commitment to "environment and economy,"[27] the Department must deny Acoma, LLC's West Permit Application because issuing a permit will not only harm the environment and the public health and welfare, discussed above, which the Department must protect, but will also harm the economy.[28] The high economic costs of air pollution have been well understood for decades. In 2014, premature mortality from PM2.5 alone cost the U.S. economy over $780 billion, and constituted over 4 percent of gross domestic product.[29] State-level studies have yielded similar conclusions. Research published in 2020 estimated the economic cost of air pollution in Utah to be $1.9 billion annually. The authors attributed 55 percent of these costs to PM2.5 and less than 10 percent to O3 and NOx.[30]

Moreover, a growing body of research demonstrates that air pollution reduces workforce participation and productivity. The Organisation for Economic Co-operation and Development, an international standard-setter for public welfare and policy, projects a marked decrease in global labor force productivity due to rising air pollution. Each year, an estimated 1.2 billion workdays are lost worldwide due to the health effects of air pollution. By 2060, this number is expected to more than triple, growing to 3.7 billion.[31] Air pollution decreases labor productivity

[27] See New Mexico Environment Department Secretary Kenney Statement on Repeal of EP Endangerment Finding (February 12, 2026). Accessible at: https://www.env.nm.gov/wp-content/uploads/2026/02/2026-02-12-COMMS-Sec.-Kenney-statement-on-repeal-of-EPA-endangerment-finding-Final.pdf (last viewed February 24, 2026).

[28] Community Members note that while the Department may consider the economic impacts of a proposed air pollution project, NMED's primary mission to prevent and abate air pollution and protect public health and welfare remains. For that reason, Community Members urge the Department to consider the economic costs of an unhealthy public due to polluted air in addition to any speculative economic benefit a polluting entity may provide – and weigh such factors accordingly.

[29] Fine particulate matter damages and value added in the US economy. Retrieved from: https://www.pnas.org/doi/10.1073/pnas.1905030116.

[30] Errigo, I., et al., *Human Health and Economic Costs of Air Pollution in Utah: An Expert Assessment*. Atmosphere 2020, *11*, 1238. At 12 of 28. Retrieved from https://www.mdpi.com/2073-4433/11/11/1238.

[31] OECD (2016), The Economic Consequences of Outdoor Air Pollution, OECD Publishing, Paris.

by increasing absenteeism and 'presenteeism' – the practice of working while sick.[32] Exposure to moderate levels of PM2.5, for example, has been shown to reduce the hours worked by adults, likely due to the need for caregiving for susceptible dependents such as young children and elderly adults.[33] Indeed, parents of children with asthma have been shown to miss significantly more work days than parents of children without asthma.[34] Other studies have shown that mothers of children with asthma are less likely than other mothers to be employed with full-or part-time jobs.[35]

This stands in stark contrast to the claims being made by developers of Project Jupiter, who seek to construct the West Microgrid to service Project Jupiter – and who claim the project will bring jobs and economic gain to Doña Ana County and New Mexico. Because the Department has a responsibility to protect the health and welfare of New Mexico residents, it should not contribute to airshed and economic problems already plaguing Doña Ana County by allowing any microgrid facility to locate in this already overburdened area.

## VII. Conclusion

For the foregoing reasons, Community Members urge NMED to deny Acoma, LLC's West Permit Application. In addition, Community Members demand a public hearing on the West Permit Application, to be held in person and virtually, in English and Spanish, in Santa

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[32] Lu, Jackson. Air Pollution: A systemic review of its psychological, economic and social effects, Current Opinion in Psychology (Vol. 32, pp. 52-65) (April 2022).
[33] *Id.*
[34] Sullivan PW, Ghushchyan V, Navaratnam P, Friedman HS, Kavati A, Ortiz B, et al. *The national burden of poorly controlled asthma, school absence and parental work loss among school-aged children in the United States. J Asthma*. 2018;55(6):659–67. doi: 10.1080/02770903.2017.1350972. See also
Wang, L. Y., Zhong, Y., & Wheeler, L. (2005). Direct and indirect costs of asthma in school-age children. Preventing chronic disease, 2(1), A11.
[35] Baydar, Nazli & Joesch, Jutta & Kieckhefer, Gail & Kim, Hyoshin & Greek, April. (2007). Employment Behaviors of Mothers Who Have A Child with Asthma. Journal of Family and Economic Issues. 28. 337-355. 10.1007/s10834-007-9068-5.

Teresa, no less than ninety (90) days after the Department makes its analysis of the West Permit Application publicly available in English and Spanish. Community Members further request the Department hold at least one public information session about its West Permit Application analysis, both in person and online, in English and Spanish, because the West Microgrid stands to significantly impact the health and welfare of all residents in Sunland Park, Santa Teresa, and Doña Ana County.

Respectfully submitted,

*/s/ Maslyn Locke*
New Mexico Environmental
Law Center
mlocke@nmelc.org

*/s/ Kacey Hovden*
New Mexico Environmental
Law Center
khovden@nmelc.org

ATTACHMENT 2

FILED
May 12 2020
Clerk, Environmental Appeals Board
INITIALS

**ENVIRONMENTAL APPEALS BOARD**
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**
**WASHINGTON, D.C.**

| | | |
|---|---|---|
| In re:<br><br>Bloom Energy Corporation. | ) | Docket No. RCRA-HQ-2020-501 |

**FINAL ORDER**

Pursuant to 40 C.F.R. § 22.18(b)-(c) of EPA's Consolidated Rules of Practice, the attached Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified.

The Respondent is ORDERED to comply with all terms of the Consent Agreement, effective immediately.

So ordered.[1]

**ENVIRONMENTAL APPEALS BOARD**

Dated: ***May 12 2020***

Mary Kay Lynch
Environmental Appeals Judge

[1] The panel ratifying this matter is composed of Environmental Appeals Judges Mary Kay Lynch and Kathie A. Stein.

**BEFORE THE**
**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

| | | |
|---|---|---|
| **In the Matter of:** | : | |
| | : | |
| **Bloom Energy Corporation** | : | **U.S. EPA Docket No. RCRA-HQ-2020-501** |
| **4353 North First Street** | : | |
| **San Jose, CA 95134** | : | **Proceeding under Section 3008(a) and (g) of the** |
| | : | **Resource Conservation and Recovery Act, as** |
| **Respondent.** | : | **amended, 42 U.S.C. § 6928(a) and (g)** |
| | : | |
| **The "Pennsylvania Customer Facility"** | : | |
| **The "Maryland Customer Facilities"** | : | |
| | : | |
| **Facilities.** | : | |
| | : | |
| | : | |

## CONSENT AGREEMENT AND FINAL ORDER

## CONSENT AGREEMENT

## PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Waste and Chemical Enforcement Divison, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance ("Complainant") and Bloom Energy Corporation ("Respondent") (collectively the "Parties"), pursuant to Section 3008(a) and (g) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), as amended, 42 U.S.C. § 6928(a) and (g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

2. Section 3008(a) of RCRA authorizes the Administrator of the U.S. Environmental Protection Agency ("EPA" or the "Agency") to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Complainant.

3. Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), authorizes the assessment of a civil monetary penalty against any person who violates any requirement of RCRA Subtitle C, EPA's regulations thereunder, or any regulation of a state hazardous waste program which has been authorized by EPA.

4. This Consent Agreement and the attached Final Order resolve Complainant's civil penalty claims against Respondent under RCRA for the violations alleged herein.

5. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

## JURISDICTION

6. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.

7. Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(4).

8. The Commonwealth of Pennsylvania has received federal authorization to administer a Hazardous Waste Management Program (the "Pennsylvania Hazardous Waste Management Program") in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939g. Effective January 30, 1986, the Commonwealth of Pennsylvania Hazardous Waste Regulations were authorized by EPA pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A. The Commonwealth of Pennsylvania has revised, and EPA has re-authorized, the Commonwealth of Pennsylvania Hazardous Waste Regulations several times subsequent to this original authorization. The most recent authorized (revised) regulations became effective on June 29, 2009 (74 Fed. Reg. 19453). The provisions of the current authorized (revised) Commonwealth of Pennsylvania Hazardous Waste Regulations, codified at 25 Pa. Code Chapters 260a-266a, 266b, and 268a-270a ("PAHWR"), have thereby become requirements of RCRA Subtitle C and are enforceable by EPA pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a).

9. On February 11, 1985, pursuant to Section 3006(b) of RCRA, 42 U.S.C. § 6926(b), and 40 C.F.R. Part 271, Subpart A, the State of Maryland was granted final authorization to administer its Hazardous Waste Management Regulations ("MDHWMR") set forth at the Code of Maryland Regulations ("COMAR"), Title 10, Subtitle 51 et seq., in lieu of the federal hazardous waste management program established under RCRA Subtitle C, 42 U.S.C. §§ 6921-6939e. Through this final authorization, the provisions of the MDHWMR became requirements of RCRA Subtitle C and are, accordingly, enforceable by EPA on and after that date pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). A revised Maryland hazardous waste management program set forth at COMAR, Title 26, Subtitle 13 was authorized and effective on July 31, 2001, September 24, 2004, and most recently on October 31, 2016. Accordingly, the provisions of the revised MDHWMR are enforceable by EPA on and after those dates pursuant to § 3008(a) of RCRA, 42 U.S.C. § 6928(a).

10. This Consent Agreement addresses alleged violations by Respondent of Subtitle C of RCRA, 42 U.S.C. §§ 6921–6939g, certain federally-authorized PAHWMR and MDHWMR, as well as certain of the federal hazardous waste regulations, set forth at 40 C.F.R. Parts 260–268, for which the State of Maryland has not been granted authorization to administer in lieu of the federal hazardous waste management program under HSWA, in connection with Respondent's facilities, described below.

11. On January 8, 2018, EPA sent letters to the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection ("PADEP"), and the State of Maryland, through the Maryland Department of the Environment ("MDE"), giving prior notice of this enforcement action in accordance with Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2).

## GENERAL PROVISIONS

12. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this Consent Agreement and Final Order.

13. Except as provided in Paragraph 12, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this Consent Agreement.

14. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this Consent Agreement and Final Order.

15. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this Consent Agreement and waives its right to appeal the accompanying Final Order.

16. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.

17. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

18. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.

## BLOOM OPERATIONS

19. Respondent Bloom is, and at all times relevant to the allegations set forth against it in this Consent Agreement was, a Delaware corporation.

20. Respondent is, and at all times relevant to the allegations set forth against it in this Consent Agreement, was a "person," as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15), 25 Pa. Code § 260a.10 and COMAR 26.13.01.03(B)(61).

21. Respondent developed, sells and/or leases to its customers, and operates solid oxide fuel cell technology that converts natural gas into electricity without combustion. This technology is contained inside of equipment, known as "Bloom Energy Servers" or "Energy Servers".

22. Respondent has installed its Energy Servers at multiple customer facilities at locations in the United States.

23. Respondent installed Energy Servers at three customer facilities located in Pennsylvania and Maryland (respectively referred to as the "Pennsylvania Customer Facility," the "Maryland Customer 1 Facility" and the "Maryland Customer 2 Facility"). Collectively, these facilities will be referred to herein as the "Customer Facilities."

24. Respondent installed Energy Servers at the Pennsylvania Customer Facility, the Maryland Customer 1 Facility and the Maryland Customer 2 Facility, in 2012, 2014 and 2015, respectively.

25. Each Energy Server at the customer facilities utilizes natural gas. Each Energy Server contains (1) a group of fuel cell modules ("Fuel Cells"); (2) a fuel processing module; and (3) detachable canisters (referred to herein as "Desulf Canisters").

26. Inside each Fuel Cell, natural gas is converted into electricity through an electrochemical reaction.

27. The Desulf Canisters operate within an Energy Server and are located upstream of the Fuel Cells. The materials inside the Desulf Canisters remove sulfur compounds that were added as an odorant to the natural gas by the gas company, before the natural gas reaches the Fuel Cells.

28. Each Desulf Canister contains granular desulfurization material and carbon (collectively referred to as "media") which can adsorb a finite amount of sulfur compounds from the incoming natural gas.

29. At all times relevant to the allegations set forth against Respondent in this Consent Agreement, each Desulf Canister also incidentally adsorbed other compounds in the natural gas including, but not limited to, benzene. These contaminants were captured by the media within the Desulf Canisters.

30. The media in a Desulf Canister were only able to adsorb a finite amount of sulfur compounds, after which the media became exhausted and/or "spent."

31. When the adsorption capacity of the Desulf Canister degraded to a significant degree, the spent media in a Desulf Canister had to be replaced. Respondent made the determination as to when media became spent. Respondent replaced the spent Desulf Canister and its contents with a Desulf Canister containing fresh media. Respondent would then arrange for the disposal of the spent media.

32. Respondent detached the Desulf Canisters from the Energy Servers located at its customer facilities. Respondent then arranged to ship these Desulf Canisters offsite to receiving facilities so that the spent media could be removed and disposed. Respondent then replaced these Desulf Canisters containing spent media with other Desulf Canisters containing fresh media.

## SHIPPING OF SPENT DESULF CANISTERS

33. From approximately June 2013 to the present, Respondent sent Desulf Canisters which were used at the Customer Facilities and contained spent media, from the Customer Facilities to receiving facilities.

34. Respondent sent Desulf Canisters containing spent media from the Customer Facilities to these receiving facilities, during the following timeframes:

    a. VLS Recovery Services LLC ("VLS"), located in Pasadena, Texas – March 2015 – February 2017;

    b. Advanced Chemical Treatment, Inc. ("ACT"), located in Albuquerque, New Mexico – October 2016 – June 2019.

    c. Ross Incineration Services, Inc. ("Ross"), located in Grafton, Ohio – October 2019 – the present.

    (Collectively referred to as the "Receiving Facilities.")

35. At the time that VLS received Respondent's spent media, this facility was a treatment, storage or disposal facility which was not permitted under RCRA Subtitle C, 40 C.F.R. Part 270, or Pa. Code § 270a.1 (which incorporates by reference 40 C.F.R. Part 270), or COMAR 26.13.07, or 30 TAC Chapter 335, to treat, store or dispose hazardous waste.

## LEGAL CONCLUSIONS

36. At some point prior to the time that Respondent disconnected each Desulf Canister from a Fuel Cell and removed it from an Energy Server at a customer facility, and at all times thereafter relevant to the violations alleged herein, the spent media in the Desulf Canisters was a "solid waste" as this term is defined in 25 Pa. Code § 260a.1 (which

incorporates by reference 40 C.F.R. § 260.10, which further incorporates by reference 40 C.F.R. § 261.2), and COMAR 26.13.01.03(B)(73).

37. Pursuant to 25 Pa. Code § 260a.1 (which incorporates by reference 40 C.F.R. § 260.10), and COMAR 26.13.01.03(B)(31), and 25 Pa. Code § 261a.1 (which incorporates by reference 40 C.F.R. § 261.3), and COMAR 26.13.02, a solid waste is a hazardous waste if it is not excluded from regulation as a hazardous waste under 25 Pa. Code § 261a.1 (which incorporates by reference 40 C.F.R. § 261.4(b)), and COMAR 26.13.02.04 and, inter alia, it exhibits any of the characteristics of a hazardous waste set forth in 25 Pa. Code § 261a.1 (which incorporates by reference 40 C.F.R. Part 261, Subpart C), and COMAR 26.13.02.10 - .14.

38. Based upon the information above, EPA has determined that spent media generated at and shipped from the Maryland Customer 1 Facility and the Pennsylvania Customer Facility, at all times relevant to the allegations herein, was a "solid waste" as defined by 25 Pa. Code § 260a. (which incorporates by reference 40 C.F.R. § 260.10) and COMAR 26.13.01.03(B)(73).

39. Based upon the information above, EPA has determined that spent media generated at and shipped from the Maryland Customer 1 Facility and the Pennsylvania Customer Facility, at all times relevant to the allegations herein, was a "hazardous waste" as defined by 25 Pa. Code § 260a.1 (which incorporates by reference 40 C.F.R. § 260.10) and COMAR 26.13.01.03(B)(31), because it exhibits the characteristic of toxicity for benzene (EPA Waste Code D018), as described in 40 C.F.R. § 261.24.

40. EPA has determined that the spent media contained in the Desulf Canisters generated at the customer facilities was not "excluded from regulation as a hazardous waste" under 25 Pa. Code § 261a.1 (which incorporates by reference 40 C.F.R. § 261.4(b)), or COMAR 26.13.02.04.

41. 25 Pa. Code § 260a.1 (which incorporates by reference 40 C.F.R. § 260.10), defines "generator" as any person, by site, whose act or process produces hazardous waste identified or listed in 40 C.F.R. Part 261 or whose act first causes a hazardous waste to become subject to regulation.

42. COMAR 26.13.01.03(B)(29) defines "generator" as "any person, by site, whose act or process produces hazardous waste identified or listed in COMAR 26.13.02 or whose act first causes a hazardous waste to become subject to regulation."

43. Each of the customer facilities is a separate site.

44. At all times relevant to the allegations set forth in this Complaint, Respondent was a "generator" of hazardous waste generated in and "stored" within the Energy Servers at Respondent's Customer Facilities, as these terms are defined in 25 Pa. Code § 260a.1

(which incorporates by reference 40 C.F.R. § 260.10), and COMAR 26.13.01.03(B)(29) and (76).

**COUNT I**
***(Failure to Prepare a Manifest for Offsite Shipment of Hazardous Waste)***

45. The allegations of each of the preceding paragraphs are incorporated herein by reference as though fully set forth at length.

46. 25 Pa. Code § 262a.10 (which incorporates by reference 40 C.F.R. § 262.20(a)(1)), provides that "[a] generator who transports, or offers for transport a hazardous waste for offsite treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, must prepare a Manifest (OMB Control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to this part."

47. COMAR 26.13.03.04.A(1) similarly provides that "[a] generator who transports, or offers for transport a hazardous waste for off-site treatment, storage, or disposal, or a treatment, storage, and disposal facility who offers for transport a rejected hazardous waste load, shall prepare a manifest (OMB control number 2050-0039) on EPA Form 8700-22, and, if necessary, EPA Form 8700-22A, according to the instructions included in the appendix to 40 CFR Part 262 before the waste is transported off-site."

48. Respondent shipped Desulf Canisters storing spent media which contained benzene (EPA Hazardous Waste No. D018) from two Customer Facilities in Pennsylvania and Maryland, without first preparing a Hazardous Waste Manifest for each of these shipments, on at least the following dates:

    a. From the Pennsylvania Customer Facility: 2/11/16 (1 Desulf Canister, about 95 lbs of spent media), 11/23/16 (9 Desulf Canisters, about 855 lbs of spent media)

    b. From the Maryland Customer 1 Facility: 9/23/15 (32 Desulf Canisters, about 3,040 lbs of spent media), 10/7/16 (31 Desulf Canisters, about 2,945 lbs of spent media)

49. On at least four occasions, Respondent violated 25 Pa. Code § 262a.10 (which incorporates by reference 40 C.F.R. § 262.20(a)(1)) and COMAR 26.13.03.04.A(1), by offering for transport a hazardous waste (the spent media in the Desulf Canisters) for offsite treatment, storage, or disposal without first preparing a Manifest.

**COUNT II**
***(Failure to Adequately Respond to Information Requests*)**

50. The allegations of each of the preceding paragraphs are incorporated herein by reference as though fully set forth at length.

51. Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), provides, in part: "Access Entry. For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles or has handled hazardous wastes shall, upon request of any officer, employee or representative of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer, employee or representative of a State having an authorized hazardous waste program, furnish information relating to such wastes and permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. . . ."

52. On or about December 31, 2015, Respondent installed a Bloom Energy Server which became operational at a Customer Facility in Maryland, known as the "Maryland Customer 2 Facility."

53. In an information request letter ("IRL") that EPA sent to Respondent, dated January 20, 2017 ("IRL #1), Question 1, EPA asked Respondent to: "Identify all facilities where a Bloom Energy Server has been installed within the States of Pennsylvania, Maryland, Virginia, West Virginia, and the District of Columbia."

54. In an information request letter that EPA sent to Respondent, dated September 1, 2017 ("IRL #2"), Question 9, EPA asked Respondent to update its response to the original IRL with any new information generated since January 1, 2017, up to the date of Respondent's receipt of the letter, and not already included in the previous submittal.

55. Respondent failed to provide any information related to the Maryland Customer 2 Facility in either its IRL Response #1, dated March 24, 2017, or its IRL Response #2, dated October 4, 2017.

56. On March 24, 2017 and October 4, 2017, Respondent violated the requirements of Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), by failing to provide information about the Maryland Customer 2 Facility in response to an EPA information request that asked Respondent to identify all facilities where a Bloom Energy Server has been installed within the State of Maryland.

## CIVIL PENALTY

57. In settlement of EPA's claims for civil penalties for the violations alleged in this Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of **TWO HUNDRED TEN THOUSAND DOLLARS ($210,000.00)**, which Respondent shall be liable to pay in accordance with the terms set forth below.

58. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3)**,** including, the following: the seriousness of the violation and any good faith

efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's October, 1990 RCRA Civil Penalty Policy, as revised in June, 2003 ("RCRA Penalty Policy"), which reflect the statutory penalty criteria and factors set forth at Section 3008(a)(3) and (g) of RCRA, 42 U.S.C. §§ 6928(a)(3) and (g), the appropriate Adjustment of Civil Monetary Penalties for Inflation, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation.

59. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:

a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, RCRA-HQ-2020-501;

b. All checks shall be made payable to the "United States Treasury";

c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

https://www.epa.gov/financial/makepayment

e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

Natalie Katz
Senior Assistant Regional Counsel
U.S. EPA, Region III (3RC40)
1650 Arch Street
Philadelphia, PA 19103-2029
katz.natalie@epa.gov

60. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as

specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.

61. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed Consent Agreement and Final Order. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed Consent Agreement and Final Order, with a date stamp indicating the date on which the Consent Agreement and Final Order was filed with the Clerk of the Environmental Appeals Board, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).

62. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this Consent Agreement and Final Order will begin to accrue on the date that a copy of the fully executed and filed Consent Agreement and Final Order is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).

63. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) days the penalty remains unpaid.

64. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

65. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this Consent Agreement and Final Order.

## SETTLEMENT CONDITION - COMPLIANCE AUDIT

66. As a condition of this settlement, Respondent agrees to conduct a Compliance Audit. Respondent shall retain an independent third party (the "Auditor") to perform the Compliance Audit, which shall consist of an audit of each of the records of Respondent's shipments of Desulf Canisters containing spent media from all of its customer facilities in the United States outside of Region III (DC, DE, MD, PA, VA, WV), for the time period beginning September 8, 2015 through December 31, 2019. (This Compliance Audit will not include records of shipments of Desulf Canisters containing spent media that

Respondent sent to the Shoremet LLC facility in Valparaiso, Indiana.) Respondent agrees to undertake the following activities, described below, with regard to the performance of the Compliance Audit.

67. Within forty-five (45) days of the effective date of this Consent Agreement and Final Order, Respondent shall provide to EPA the following: the name and address of the Auditor that Respondent has selected to perform the Compliance Audit, and documentation that such Auditor satisfies the requirements described below in Paragraph 68 of this Consent Agreement and Final Order.

68. At a minimum, the Auditor selected by Respondent for performance of the Compliance Audit shall:

    a. have no less than 3 years of experience in performing RCRA compliance audits;

    b. have a trained and experienced staff for the performance of such audits;

    c. have no past or present relationship or affiliation with the Respondent nor anticipate any prospective relationship or affiliation with the Respondent as a result of performing the Compliance Audit.

69. Upon completion of a review by EPA of the materials described in Paragraph 68, relating to the name and qualifications of the proposed Auditor, EPA will, in its sole discretion (but subject to the Dispute Resolution provisions of Paragraphs 94 through 98), either: (1) notify Respondent in writing of EPA's approval of the selection of the proposed Auditor, or (2) notify Respondent in writing of EPA's rejection of the proposed Auditor. If EPA rejects Respondent's proposed Auditor, EPA will state the reasons for the rejection in writing and will allow Respondent thirty (30) days to make a new submittal.

70. Within thirty (30) days of receipt of notice of EPA's approval of the proposed Auditor, Respondent shall provide to EPA a proposed plan (the "Compliance Audit Plan") describing the procedures which satisfy the requirements set forth in Paragraphs 72 through 77, and Appendix A of this Consent Agreement and Final Order. The Audit Plan shall reflect the scope of the records audit provided herein and in Appendix A.

71. Upon completion of a review by EPA of the proposed Compliance Audit Plan, EPA will, in its sole discretion (but subject to the Dispute Resolution provisions of Paragraphs 94 through 98), either: (1) notify Respondent in writing of EPA's approval of the proposed Compliance Audit Plan, or (2) notify Respondent in writing of EPA's rejection of the proposed Compliance Audit Plan. EPA's decision regarding approval of the Compliance Audit Plan shall be consistent with the agreed scope of the Compliance Audit as reflected in Paragraph 66 and Appendix A. If EPA rejects any or all of Respondent's proposed Compliance Audit Plan, EPA will state the reasons for the rejection and will provide to Respondent in writing a reasonable timeframe to make a new submittal. The performance of the Compliance Audit shall commence only upon Respondent's receipt of

approval by EPA of the Compliance Audit Plan. If Respondent fails to submit the name of the proposed Auditor or the Compliance Audit Plan within the deadline for submission or fails to revise and re-submit any of the items by EPA's deadline, EPA shall have the right to terminate this Consent Agreement and Final Order by providing written notice to Respondent, and EPA shall have the right to seek and collect the maximum penalty allowed by law for any and all violations of Subtitle C of RCRA at any of Respondent's customer facilities.

72. Respondent shall fully cooperate with requests made by the EPA-approved Auditor concerning performance of the Audit in accordance with the Compliance Audit Plan and preparation of the Final Audit Report.

73. Within ninety (90) days of receipt of EPA's approval of the proposed Auditor and Compliance Audit Plan, Respondent shall have the Compliance Audit completed, and submit to EPA a Final Audit Report.

74. The Final Audit Report shall contain the information set forth in Appendix A.

75. Respondent shall maintain for inspection by EPA the original records pertaining to the actual implementation and/or performance of the Compliance Audit for a period of three years from the date of approval of the Final Audit Report.

76. The Final Audit Report shall be certified by Respondent in the following manner:

> I certify that the information contained in or accompanying the Final Audit Report is true, accurate, and complete. As to [the/those] identified portions of the Final Audit Report for which I cannot personally verify [its/their] accuracy, I certify under penalty of law that the Final Audit Report and all attachments, including any and all supporting information, were prepared in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who participated in development of the Final Audit Report, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.
>
> Signature:
>
> Name:
>
> Title:

77. Upon completion of a review by EPA of the Final Audit Report, EPA shall, in its sole discretion (but subject to the Dispute Resolution provisions of Paragraphs 94 through 98),

either: (1) notify Respondent in writing of its approval of the Final Audit Report, or (2) notify Respondent in writing of its rejection of all or any part of the Final Audit Report because of a failure to include information required in accordance with Appendix A. If EPA rejects all or any part of the proposed Final Audit Report, EPA will state the reasons for rejection and will provide to Respondent in writing a reasonable time to make a new submittal. In the event that Respondent fails to revise and re-submit any or all of the items addressed in EPA's notice of rejection for the Final Audit Report within the deadline provided by EPA in the notice, EPA shall have the right to investigate any and all of Respondent's shipments from customer facilities that are within the scope of the Compliance Audit as set forth in Paragraph 66, but that were not properly addressed in the Final Audit Report. In that case, pursuant to Section 3008(g) of RCRA, 42 U.S.C. § 6928(g), EPA also has the right to seek and collect the maximum civil penalty allowed by law for any and all violations of RCRA, at any such facility related to any such shipments.

78. Upon completion of a review by EPA of the Final Audit Report, EPA shall, in its sole discretion (but subject to the Dispute Resolution provisions of Paragraphs 94 through 98), determine whether facts reported by the Compliance Audit resulted in any violations of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., federal regulations promulgated thereunder, or state hazardous waste management requirements authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926. For purposes of determining whether the Audit findings resulted in any violations, the Parties stipulate that spent media generated at and/or shipped from the customer facilities listed in the Final Audit Report constituted a "hazardous waste" as defined by 40 C.F.R. § 260.10, and the applicable state hazardous waste management regulations.

79. Respondent shall immediately undertake any and all actions necessary to correct any ongoing violation of Subtitle C of RCRA, 42 U.S.C. § 6921 et seq., federal regulations promulgated thereunder, or state hazardous waste management requirements authorized by EPA pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, and remediate any harm caused or threatened by such violation discovered during the course of the performance of the Compliance Audit, and institute effective measures to ensure that any such violation does not reoccur in the future. Nothing in this Paragraph shall relieve Respondent of any obligation imposed by any applicable federal, state and/or local laws and requirements concerning compliance.

80. In the event EPA determines that there was a violation as described in Paragraph 85, below, Respondent agrees to pay penalties in accordance with the penalty schedule in Paragraphs 85 through 87 of this Consent Agreement and Final Order, for each violation. Each violation shall be resolved and settled by paying the assessed penalty in accordance with Paragraphs 59 through 65 of this Consent Agreement and Final Order. EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to resolve any violations identified through the Compliance Audit that are not listed in Paragraph 85.

81. In the event EPA determines that there was a violation as described in Paragraph 85, below, Respondent will certify to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations identified in the Compliance Audit. Respondent will submit this certification to EPA within 30 Days of receiving the EPA's written demand letter pursuant to Paragraph 82.

## CIVIL PENALTIES FOR VIOLATIONS DISCOVERED THROUGH THE COMPLIANCE AUDIT

82. Following EPA's review of the approved Final Audit Report, EPA will furnish to Respondent a demand letter, which establishes the pre-agreed penalties to be paid for violations described in Paragraph 85, below, and identified through the Compliance Audit and Final Audit Report. Once paid, the penalty payment would resolve the claims for civil penalties EPA may have against Respondent for those violations identified through the Compliance Audit and Final Audit Report. A copy of the demand letter will also be sent to the EPA Cincinnati Finance Office.

83. No criminal violation or civil violation that results in serious actual harm or that may present an imminent and substantial endangerment to public health or the environment, shall qualify for the imposition of penalties under this Section and satisfaction under this Consent Agreement and Final Order, and EPA reserves the right to seek and obtain injunctive relief and the imposition of the maximum civil penalty or criminal sanction allowed by law for any such violation.

84. Subject to the provisions and terms of this Consent Agreement and Final Order, the period commencing May 31, 2018 and ending December 31, 2020 (the "Tolling Period"), inclusive, will not be included in computing the running of any statute of limitations applicable to any action brought by EPA or on behalf of EPA, pursuant to 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), for civil penalties and/or other remedies provided by law in relation to any violation of the regulations identified through the Compliance Audit. Respondent shall not assert, plead or raise against EPA, or the U.S. Department of Justice on behalf of EPA, in any fashion, whether by answer, motion or otherwise, any defense or avoidance based on the running of any statute of limitations during any portion of the Tolling Period, and any statute of limitations shall be tolled during and for that period.

85. Respondent shall be liable and agrees to pay civil penalties, upon demand by EPA, for any violation discovered through the Compliance Audit and disclosed in the Final Audit Report, as set forth below:

a. Violations of 40 C.F.R. § 262.20(a)(1), for offering for transport spent media in a Desulf Canister from a customer facility to a permitted TSD, without first preparing a manifest:

$2,000 per shipment for violations occurring between September 8, 2015 and October 3, 2016.

$4,000 per shipment for violations occurring on or after October 4, 2016

b. Violations of 40 C.F.R. § 262.20(a)(1), for offering for transport spent media in a Desulf Canister from a customer facility to a non-permitted receiving facility, without first preparing a manifest:

$3,000 per shipment for violations occurring between September 8, 2015 and October 3, 2016.

$7,500 per shipment for violations occurring on or after October 4, 2016.

c. Violations of Section 3001(d)(5) of RCRA, 42 U.S.C. § 6921(d)(5), for ultimate disposal of spent media from a Desulf Canister at a facility not permitted for treatment, storage or disposal of hazardous waste

$10,000 per shipment for violations occuring on or after September 8, 2015.

86. Penalties shall be individually assessed for each separate shipment identified through the Compliance Audit.

87. Respondent shall pay any penalty within 30 Days of receiving the EPA's written demand for payment.

88. EPA may, in the unreviewable exercise of its discretion, reduce or waive penalties otherwise due it under this Consent Agreement and Final Order.

89. Respondent shall pay penalties owing to EPA in the manner set forth and with the confirmation notices required by Paragraph 59, except that Respondent's transmittal letter shall state that the payment is for penalties for violations discovered through the Compliance Audit, and it shall state for which violation(s) the penalties are being paid.

90. If Respondent fails to pay penalties for violations discovered through the Compliance Audit, according to the terms of this Consent Agreement and Final Order, Respondent shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961, accruing as of the date payment became due. Nothing in this Paragraph shall be construed to limit EPA from seeking any remedy otherwise provided by law for Respondent's failure to pay any penalties.

91. Non-Exclusivity of Remedy. Penalties are not the EPA's exclusive remedy for violations discovered through the Compliance Audit. EPA expressly reserves the right to seek any other relief it deems appropriate for Respondent's violation of this Consent Agreement and Final Order or applicable law, including but not limited to an action against

Respondent for statutory penalties, additional injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any statutory penalty assessed for a violation shall be reduced by an amount equal to the amount of any penalty assessed and paid pursuant to this Consent Agreement and Final Order. EPA will not seek further penalties for violations addressed pursuant to Paragraph 85.

## GENERAL SETTLEMENT CONDITIONS

92. By signing this Consent Agreement, Respondent acknowledges that this Consent Agreement and Final Order will be available to the public and represents that, to the best of Respondent's knowledge and belief, this Consent Agreement and Final Order does not contain any confidential business information or personally identifiable information from Respondent.

93. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this Consent Agreement and Final Order, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

## DISPUTE RESOLUTION

94. The dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Agreement and Final Order.

95. If Respondent disagrees, in whole or in part, with any decision by EPA under this Consent Agreement and Final Order, Respondent shall notify EPA through the Branch Chief of the Air, RCRA and Toxics Branch, EPA, Region III, and the parties shall use their best efforts to informally and in good faith resolve all disputes or differences of opinion relating to this Consent Agreement and Final Order.

96. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding paragraphs, Respondent may pursue the matter by submitting its objection to the Branch Chief of the Air, RCRA and Toxics Branch, EPA, Region III, in writing. Respondent's written objections must set forth the specific points of the dispute, the basis for Respondent's position and any matters which it considers necessary for EPA's determination.

97. EPA and Respondent shall have thirty (30) days from receipt of Respondent's written objections to attempt to resolve the dispute through formal discussions.

98. If EPA and Respondent cannot resolve the dispute through formal discussions, EPA, through the Branch Chief of the Air, RCRA and Toxics Branch, EPA, Region III, will provide to Respondent in writing EPA's decision on the pending dispute, and that decision will be binding upon the Respondent.

## NOTICE

99. Except as otherwise specified herein, whenever this Consent Agreement and Final Order requires notice or submission of reports, information, or documents, such notice or submission shall be provided to the following persons via certified mail, return receipt requested, first class mail, overnight mail (Express or priority), hand-delivery or any reliable commercial delivery service. Either party may substitute another person to receive notice on its behalf or change the address to which notices are to be sent by sending written notification of the substitution or change to the other party.

a. For EPA:

Leslie Oif
Attorney/Advisor (2249A)
Officer of Civil Enforcement
Office of Enforcement and Compliance Assurance
1200 Pennsylvania Avenue, NW
Washington DC 20004
oif.leslie@epa.gov

Martin Matlin
Enforcement and Compliance Officer (3ED22)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
matlin.martin@epa.gov

Natalie Katz
Senior Assistant Regional Counsel (3RC40)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103-2029
katz.natalie@epa.gov

b. For Respondent:

Shawn Soderberg
Bloom Energy Corporation
4353 North First Street
San Jose, CA 95134
shawn.soderberg@bloomenergy.com

Patrick McCormick
Vice President, Regulatory
Bloom Energy Corporation
200 Christina Parkway
Newark, DE 19713
patrick.mccormick@bloomenergy.com

Michael Roesch
Bloom Energy Corporation
4353 North First Street
San Jose, CA 95134
michael.roesch@bloomenergy.com

## CERTIFICATION OF COMPLIANCE

100. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

## OTHER APPLICABLE LAWS

101. Nothing in this Consent Agreement and Final Order shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This Consent Agreement and Final Order does not constitute a waiver, suspension or modification of the requirements of RCRA, or any regulations promulgated thereunder.

## RESERVATION OF RIGHTS

102. This Consent Agreement and Final Order resolves only EPA's claims for civil penalties for the specific violation[s] alleged against Respondent in this Consent Agreement and Final Order and for violations identified through the Compliance Audit. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is

subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under RCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this Consent Agreement and Final Order after its effective date.

## EXECUTION /PARTIES BOUND

103. This Consent Agreement and Final Order shall apply to and be binding upon EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this Consent Agreement and Final Order.

## EFFECTIVE DATE

104. The effective date of this Consent Agreement and Final Order is the date on which the Final Order, signed by the Environmental Appeals Board is filed along with the Consent Agreement with the Hearing Clerk for the Environmental Appeals Board pursuant to the Consolidated Rules of Practice.

## ENTIRE AGREEMENT

105. This Consent Agreement and Final Order constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and Final Order.

For Respondent: BLOOM ENERGY CORPORATION

Date: 4/2/20

By: Shawn Soderberg, Esq.
Executive Vice President, General Counsel and Secretary

For the Complainant: U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 5/5/2020

By: NATALIE KATZ Digitally signed by NATALIE KATZ Date: 2020.05.05 12:23:48 -04'00'

Natalie L. Katz
Sr. Assistant Regional Counsel
Office of Regional Counsel, EPA, Region III

Date: 5/5/2020

By: LESLIE OIF Digitally signed by LESLIE OIF Date: 2020.05.05 13:54:26 -04'00'

Leslie A. Oif
Attorney
Waste and Chemical Enforcement Division

After reviewing the Consent Agreement and other pertinent matters, the Environmental Compliance and Enforcement Division of the U.S. Environmental Protection Agency, recommends that the Administrator, or his/her designee issue the attached Final Order.

Date: 05/05/2020

By: DIANA SAENZ Digitally signed by DIANA SAENZ Date: 2020.05.05 14:57:12 -04'00'

Diana Saenz, Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

## APPENDIX A

The purpose of the Compliance Audit shall be to audit each of the records of Respondent's shipments of Desulf Units containing spent catalysts from all of its customer facilities in the United States outside of Region III (DC, DE, MD, PA, VA, WV) for the time period beginning September 8, 2015 through December 31, 2019. The Final Audit Report, required by Paragraph 73 and 74 of this Consent Agreement and Final Order, shall include the following information:

1. Identification of all facilities where a Bloom Energy Server has been installed outside of Region III states (DC, DE, MD, PA, VA, WV). For each such facility, please provide the following:

    a. Name of customer, name of facility, address of facility, and EPA ID number of facility (if applicable)
    b. Date(s) of each Energy Server installation.
    c. Number and volume of all Desulf Canisters present at the facility.

2. For each of the facilities listed in response to question 1a. above, provide the date(s) and number of instances when any Desulf Canisters were removed from any installed Energy Server during the period of September 8, 2015 through December 1, 2019. For each such instance, provide the following:

    a. Date of removal
    b. Number of Desulf Canisters removed
    c. Date of off-site transport
    d. Name, address, and EPA ID number (if applicable) of transporter(s) utilized
    e. Copies of the following types of documents showing each shipment of the Desulf Canisters, including: bills of lading, manifests, hazardous waste manifests, shipping invoices, electronic records, LDR notices and certifications.

3. For each facility or location that received a Desulf Canister shipment ("Receiving Facility"), provide the following:

    a. Name, address, and EPA ID number (if applicable) of Receiving Facility
    b. Date of receipt for each Desulf Canister shipment
    c. For any and all material removed from a Desulf Canister ("Removed Material") at this location, provide the following:
        (1) Date of removal and volume removed
        (2) Whether Removed Material was shipped from the Receiving Facility to another location and the date and method of such shipment(s). If it has not been shipped from that location, state its current location and explain why it has not been shipped from the Receiving Facility.
        (3) If the Removed Material was shipped from the Receiving Facility, provide copies of the following types of documents reflecting each shipment, including: bills of lading, manifests, hazardous waste manifests, shipping

invoices, electronic records, LDR notices and certifications that accompanied and/or refer to each off-site shipment of this material.

4. For each facility or location that received material removed from a Desulf Canister ("Final Destination"), please provide the following:

   a. Name, address, and EPA ID number (if applicable) of Final Destination
   b. Date of receipt for each shipment of Removed Material from a Desulf Canister
   c. Whether the Removed Material was ultimately disposed of. If so, provide:
      (1) date of disposal
      (2) volume disposed
      (3) disposal facility name, address and EPA ID number (if applicable)
      (4) method of disposal
      (5) copies of all documents related to the disposal.
   d. State whether the Removed Material was ultimately reclaimed or recycled. If so, provide:
      (1) whether the Removed Material was reclaimed or whether it was recycled
      (2) date of reclamation or recycling
      (3) name, address and EPA ID number (if applicable) of reclamation or recycling location
      (4) method of reclamation or recycling
      (5) copies of all documents related to the reclamation or recycling.

5. If Bloom is not in possession of documents (in any format) reflecting the information listed above, Bloom shall: i) specify which information and categories of documents it does not have; ii) formally request in writing and diligently pursue for the benefit of the auditor documents including such information from applicable transporters, receiving facilities, destination facilities, and any other entities likely to have such documents; and iii) inform EPA regarding the response of each entity to the request for documents.

6. A statement indicating any problems or difficulties, in performing the Compliance Audit, and the measures taken to address such problems or difficulties.

## CERTIFICATE OF SERVICE

I certify that copies of the foregoing "Consent Agreement" and "Final Order," in the matter of *Bloom Energy Corporation*, Docket No. RCRA-HQ-2020-501were sent to the following persons in the manner indicated:

**By E-mail:**

Shawn Soderberg
Bloom Energy Corporation
4353 North First Street
San Jose, CA 95134
shawn.soderberg@bloomenergy.com

Patrick J. McCormick III, Esq.
Bloom Energy Corporation
200 Christina Parkway
Newark, DE 19713
patrick.mccormick@bloomenergy.com

Natalie Katz
Sr. Asst. Regional Counsel
ORC – 3RC40
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103
katz.natalie@epa.gov

Diana Saenz
Acting Director
Waste and Chemical Enforcement Division
Office of Civil Enforcement
OECA (2249A)
1200 Pennsylvania Ave., NW
Washington DC 20004
saenz.diana@epa.gov

Martin Matlin
Enforcement Officer
ECAD – 3ED22
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103
matlin.martin@epa.gov

Leslie Oif
Attorney
Officer of Civil Enforcement
OECA (2249A)
1200 Pennsylvania Ave., NW
Washington DC 20004
oif.leslie@epa.gov

Dated: ***May 12 2020***

Eurika Durr
Clerk of the Board

ATTACHMENT 2

August 22, 2025

Bryce C. Bird, Director
Utah Department of Environmental Quality
Division of Air Quality
195 North 1950 West
Salt Lake City, UT 84114

**RE: Permit Exemption for Proposed Nonroad Engines**
**Bloom Energy – Novva Data Center, West Jordan, Utah**

Dear Mr. Bird:

I am writing to you to request confirmation of an exemption from the requirement to submit a Notice of Intent (NOI) and obtain an Approval Order (AO) prior to the construction and operation of nonroad engines at the Novva Data Center, located in West Jordan, Utah. Details about the proposed engines is included below, along with the basis for the proposed exemption.

**Project Description**
The Novva Data Center is an existing data center located in West Jordan, Utah. The project received AO DAQE-AN160660003-24 approving the addition of new prime power generators as part of a planned expansion, on December 19, 2024. These generators are being installed due to the lack of availability of grid power for the site.

While those prime power generators are being fabricated, the site has contracted with Bloom Energy to provide power from the operation of solid oxide fuel cell Energy Servers. Bloom Energy recently obtained a small source permit exemption from UDAQ on July 11th for this installation. Bloom Energy plans to install its Energy Servers in tranches, accordingly, it will require additional power to accommodate black starts. Bloom plans to bring in portable nonroad engines for this purpose. The purpose of this letter is to request an air permitting exemption for the nonroad engines, as described below.

The proposed project consists of four Caterpillar CAT® 3516B ENGINE V-16, 4-stroke-cycle engines, and three Volvo TWD1672GE 6-cylinder engines, all fired on diesel fuel. Each CAT engine has a standby power rating of up to 2000kW and each Volvo engine has a standby power rating of 500kW, for a total power generation capacity of 9,500 kW. Specification sheets for each of the proposed engines are included as Attachment 1 to this letter. Projected emissions associated with these engines are included in Attachment 2 to this letter. **Please note that emission calculations were prepared using commissioning best practices and are attributable to the absence of grid power.** Two-500kW engines are required to operate a maximum of 3 days per "stamp" installed. One "stamp" is equal to 2.275MW. Two-500kW engine operation during commissioning is only required for the first 12-stamps, or for the first 27.3MW. The remaining stamps can complete commissioning via power from the previously commissioned stamps. As a result, run time of each 500kW engine will

be limited to 864 hours. The third-500kW engine will remain off and stay as a standby engine to support in case any one of the other two engines fail. Once commissioning for the site is complete, which is expected within 90 days, the engines will return to the rental company. In addition, if at all necessary, the 2000kW engines will run 1-day per stamp to support customer critical load in the event of an equipment failure that results in the need for a subsequent commissioning-like restart. At most, 4-2000kW engines would be utilized at once. It is unclear whether the 2000kW engines will run at all. If they do, the calculations in Attachment 2 represent the worst-case scenario, which is limited to 1000 hours. Actual emissions will likely be smaller.

**Discussion of Requirements**

As outlined in R-307-401 of the Utah State administrative Rules, stationary sources in Utah are required to obtain an AO prior to construction. A stationary source includes all equipment permanently located at a site. Nonroad engines, and other portable equipment, may be excluded from regulation as part of a stationary source and are therefore exempt from the requirement to obtain an AO. DAQ has described this exemption in its February 23, 2017 Guideline, "Nonroad Engines," included as Attachment 3. This Guideline states that:

> "*Portable welders, compressors, and portable generators that are driven by internal combustion engines meet the definition of nonroad engine. However, if this equipment stays at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source, it is considered a stationary source*."

The Nonroad Engine Guideline goes on to state that, "*(i)f the engine is designed to be and capable of being moved, but is stationary at the site it will be considered a stationary source for NSR and Title V permitting*."

The Nonroad Engine Guideline is consistent with the definition of nonroad engine from the United States Environmental Protection Agency (USEPA), found in 40 C.F.R. 1068.30. Under this definition, a "nonroad engine" is any internal combustion engine that meets one of three criteria, including an engine that "(*b)y itself or in or on a piece of equipment, it is portable or transportable, meaning designed to be and capable of being carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform*." The EPA definition also cites the 12-month limitation for classification as a nonroad engine.

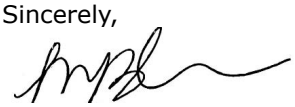
The proposed engines will power portable generators and will remain at the Novva Data Center for no more than 12 months. The proposed engines will remain mounted on trailers and moved around the site, as necessary, to support various stamps during commissioning and their initial period of operation, ensuring that they would not be considered stationary sources. As a result, these engines meet the criteria for treatment as nonroad engines, under both the UDAQ and EPA definitions of this term.

Please note that Bloom's Energy Servers (i.e. fuel cells) may remain at the site for longer than 12 months in accordance with the recent small source exemption, but the proposed portable engines described here will be removed in under 12 months.

**Conclusion**

We appreciate your consideration of this matter, and we would appreciate written confirmation that the proposed nonroad engines are exempt from the requirement to obtain an air permit. If you need any additional information, please feel free to contact me at (805) 231-0912 or by e-mail at Marisa.Blackshire@bloomenergy.com.

Sincerely,



Marisa Blackshire
Vice President, Environment and Regulatory Law

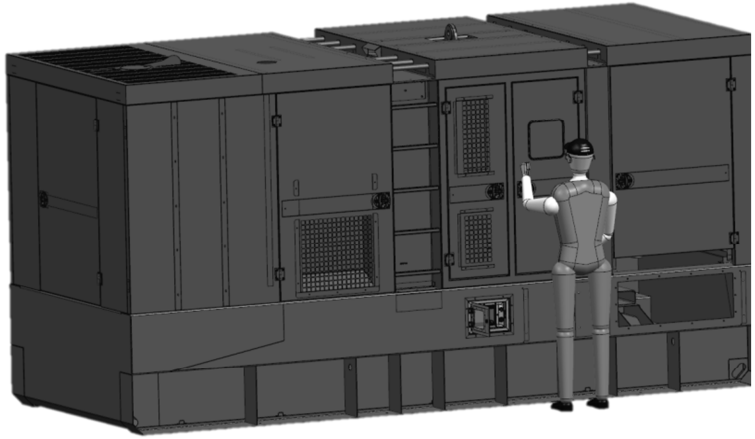
Attachments

1. Engine Manufacturer Specification Sheets
2. Emission Calculations
3. "Nonroad Engines," DAQ Guideline, February 23, 2017

# ATTACHMENT 1

# ENGINE MANUFACTURER SPECIFICATION SHEET

# G625RS | Rental Set | Evaluation Units



| DIESEL GENERATOR | T4F |
|---|---|

## WEIGHT AND DIMENSIONS - STATIC

| | | |
|---|---|---|
| Length | in | 195 |
| Width | in | 81 |
| Height | in | 100 |
| Weight* | lbs | 21772 |

**Standard build with all fluids including fuel*

## WEIGHT AND DIMENSIONS – TRAILER MOUNTED

| | | |
|---|---|---|
| Length | in | 261 |
| Width | in | 105 |
| Height | in | 123 |
| Weight* | lbs | 24472 |

**Standard build with all fluids including fuel*

## ELECTRICAL

| Prime Rating | | | | | | | |
|---|---|---|---|---|---|---|---|
| Frequency (Hz) | Phases | Voltage (V) | kVA | kW | Amps | Rated Speed (RPM) | Emissions |
| 60 | 3 | 480/277V | 625 | 500 | 753 | 1800 | T4F |
| 60 | 3 | 208/120V | 625 | 500 | 1290 | 1800 | T4F |
| 60 | 1 | 240V | 300 | 300 | 1250 | 1800 | T4F |

## POWER FACTOR

| | |
|---|---|
| 3 Phase | 0.8 |
| 1 Phase | 1 |

## ALL RATINGS ARE TO STANDARD ISO REFERENCE CONDITIONS

**Prime:** This rating is for the supply of continuous electrical power, at variable load (70% average), in lieu of commercially purchase power. There is no limitation on the annual hours of operation and 10% over load power can be supplied for 1 hour in 12.
**Standby:** Standby Power (ESP) is the maximum output available, for up to 200 hours per year, where the average load (variable) does not exceed 70% of the standby power rating. No overload is available.

# G625RS | Rental Set

## AIR SYSTEM

| | | | |
|---|---|---|---|
| Engine Intake Air Flow | cfm | 60Hz | 1627 |
| Alternator Fan Flow | cfm | | 2288 |
| Radiator Cooling Airflow | cfm | | TBA |

## EXHAUST SYSTEM

| | | | |
|---|---|---|---|
| Maximum Temperature 100% | $^{O}F$ | 60Hz | 793 |
| Exhaust Gas Flow 100% | cfm | | 4025 |
| Maximum Allowed Back Pressure | In $H_2O$ | | 76.4 |

## FUEL SYSTEM

| | | |
|---|---|---|
| Diesel Specification | | ASTM D975 (2D) |
| Standard Fuel Tank Capacity | (US) g | 593 |
| Fuel Tank Material | | Steel |
| Fuel Tank Construction | | Double Skinned |

## FUEL CONSUMPTION

| | | | |
|---|---|---|---|
| 100% Load Prime | (US) gph | 60Hz | 34.1 |
| 75% Load Prime | (US) gph | | 25.8 |
| 50% Load Prime | (US) gph | | 20.4 |
| 100% Load Standby | (US) gph | | 37.5 |

## DEF SYSTEM

| | | |
|---|---|---|
| DEF Specification | | ISO 22241-1 |
| Standard Capacity Tank | (US) g | 42.3 |

## DEF CONSUMPTION

| | | | |
|---|---|---|---|
| 100% Load Prime | % of Fuel Used | 60Hz | 7.1 |
| 75% Load Prime | % of Fuel Used | | 7.1 |
| 50% Load Prime | % of Fuel Used | | 7.1 |
| 100% Load Standby | % of Fuel Used | | 7.1 |

## ENGINE

| | 1800 RPM | |
|---|---|---|
| Net Output Rating (PRP) | kW | 532 |
| Net Output Rating (Standby) | kW | 585 |
| | | |
| Manufacturer and Model | | Volvo TWD1672GE |
| Fuel | | Diesel |
| Injection | | Direct |
| Aspiration | | Turbo Charged |
| Cylinders | | 6 |
| Bore and Stroke | in | 5.67 x 6.5 |
| Displacement | $in^3$ | 983.9 |
| Cooling | | Water |
| Engine Oil Specification | | API CH4-SAE 10W40 |
| Compression Ratio | | 16.8 : 1 |
| Engine Oil Capacity | g | 12.70 |
| Coolant Capacity | g | 43.9 |
| Governor | | Electronic |
| Engine Oil Consumption | gph | 0.026 |
| Exhaust Aftertreatment | SCR | • |
| | DOC | x |
| | DPF | x |

## AMBIENT CLEARANCE

| | | |
|---|---|---|
| Upper Temperature Limit | $^{O}F$ | 122 |
| Lower Temperature Limit | $^{O}F$ | 23 |

## SOUND PRESSURE

| | | | |
|---|---|---|---|
| LpA (23ft) - *Provisional* | dB(A) | 60Hz | 72 |

# G625RS | Rental Set

## ELECTRICAL

| | |
|---|---|
| AVR DSR | x |
| AVR DER1 with 3 phase sensing | ● |
| Total + Winding Protection for Harsh & Saline Environments | ● |
| MAUX – High Motor Start Auxiliary Winding | ● |
| PMG | Δ |
| Anti-Condensation Heater | Δ |
| 3 Pole Moulded Case Circuit Breaker | ● |
| Earth Leakage Protection (Switchable) | Δ |
| Preparation for Earth Spike | ● |
| Emergency Stop Button (Control Panel) | ● |
| 120V Charger & Heater Supply Sockets | ● |
| GFCI 120V Small Power Sockets | ● |
| 50A Shore Power Sockets ( 3 x 240/120V) | ● |
| Camlock Connections | Δ |
| Terminal Safety Microswitches | ● |

Standard: ● Not Available: x Optional: Δ

## ALTERNATOR ECO40-1.5L/4B

| | |
|---|---|
| Poles | 4 |
| Insulation | Class H |
| Enclosure | IP23 |
| Exciter System | MAUX Excitation |
| Voltage Regulator | AVR - DER1 (DVC310 AVR fitted with Sync Controller) |
| Steady State Voltage Regulation | +/- 0.5% |
| Bearing | Single bearing sealed |
| Coupling | Flexible disc |
| Cooling | Direct drive centrifugal blower fan |
| Coating | Total Protection + |
| Multi Position Voltage Selection Switch | Δ |

Standard: ● Not Available: x Optional: Δ

## BATTERY FEATURES

| | |
|---|---|
| Battery Isolator | ● |
| Battery Type | Sealed Lead Acid |
| Battery Charger – 10A | Δ |

## STARTING SYSTEM

| | | |
|---|---|---|
| Battery Capacity | Ah | 235 |
| Number of Batteries | | 2 |
| Auxiliary Voltage | V | 24 |

# G625RS | Rental Set

## MECHANICAL

| | |
|---|---|
| Tropical Cooling Pack | ● |
| Heavy Duty Air Filter | ● |
| Radiator Fan Guards | ● |
| Hot Component Guards | ● |
| Manual Oil Drain Pump | ● |
| Water Jacket Heater | Δ |
| Fuel Pre-Filter with Separator | ● |
| Racor water/fuel separator | Δ |
| Fuel Level Sender | ● |
| 3 Way Fuel Valve | Δ |
| Residential Silencer | ● |
| Fuel Tank Access Plate | ● |
| External Fuel and DEF Fill Point | ● |
| Remote DEF Tank Connection | Δ |

Standard: ● Not Available: x Optional: Δ

## TRAILER - Optional

| | |
|---|---|
| DOT Approval | ● |
| LED Lights | ● |
| Electric Brakes | ● |
| Access Platform Fenders | ● |
| 3" Pintle Eye Hitch | ● |
| 7 Pin Towing Electrics | ● |
| Tie Down Points | ● |
| Heavy Duty Jack | ● |
| Fire Extinguisher | Δ |
| Black Paint Finish (Trailer & Rims) | ● |

Standard: ● Not Available: x Optional: Δ

## Standards

| | |
|---|---|
| UL Approval – Certificate pending | ● |
| CSA – Certificate pending | Δ |
| CUL – Certificate pending | Δ |

## CANOPY

| | |
|---|---|
| Lockable Maintenance Access Doors | ● |
| Control Panel Viewing Window | ● |
| Single Lift Point | Δ |
| Fork Lift Pockets | Δ |
| Fluid Containment with Drain Point | ● |
| 4 Point Tie Down | ● |
| High Density Fire Retardant Foam | ● |
| Yellow Paint | ● |
| Other Paint Finishes | Δ |
| Heavy Duty Rental Base | ● |
| Galvanised Steel Canopy | ● |
| Integrated High Level Access Ladder | ● |
| Self Latching Cable Access Points | ● |
| Door Retention Catches | ● |
| External Emergency Stop Button | ● |

Standard: ● Not Available: x Optional: Δ

## COMMUNICATION AND CONTROL

| | |
|---|---|
| Deif AGC150 (Non Sync) Controller | ● |
| Deif AGC4 (Sync) Controller with TDU7 Touchscreen Display | Δ |
| Analogue Load Share (with Sync controller) | Δ |
| External USB Programmable Port | ● |
| JCB LiveLink for Power | Δ |
| High Engine Temperature Shutdown | ● |
| Low Oil Pressure Shutdown | ● |
| Low Coolant Level Alarm | ● |
| Leak Detection Alarm | Δ |
| Analogue Hour Counter | ● |
| Bus Live Warning lamp | ● |
| Audible Alarm Sounder | ● |
| Panel Mounted Voltage Trimpot | ● |

Standard: ● Not Available: x Optional: Δ

# XQ2000 SOUND ATTENUATED POWER MODULE

**60 Hz**

## FEATURES

### EMISSIONS

EPA and CARB Emissions Certified for non-road mobile applications.

### CAT® DIESEL GENERATOR SETS

Factory designed, certified prototype tested with torsional analysis. Production tested and delivered to you in a package that is ready to be connected to your fuel and power lines. Electric Power Design Pro computer sizing available. Supported 100% by your Caterpillar dealer with warranty on parts and labor. Extended warranty available in some areas. The generator set was designed and manufactured in an ISO 9001 compliant facility. Generator set and components meet or exceed the following specifications: AS1359, AS2789, ABGSM TM3, BS4999, DIN6271, DIN6280, EGSA101P, JEM1359, IEC 34/1, ISO3046/1, ISO8528, NEMA MG1-22.

### CATERPILLAR® SR4B GENERATOR

Single bearing, wye connected, static regulated, brushless permanent magnet excited generator designed to match the performance and output characteristics of the Caterpillar diesel engine that drives it.

### RELIABLE, FUEL EFFICIENT DIESEL

The compact, four-stroke-cycle diesel engine combines durability with minimum weight while providing dependability and economy. The fuel system operates on a variety of fuels.

### CATERPILLAR® COOLING SYSTEM

Sized compatible to rating with energy efficient fan and core.

### CATERPILLAR® SWITCHGEAR

Single unit or optional paralleling components. Circuit breakers, bus bars, and connection panel ready to connect.

### EXCLUSIVE CATERPILLAR® VOLTAGE REGULATOR

Three-phase sensing and adjustable Volts-per-Hertz regulation give precise control, excellent block loading, and constant voltage in the normal operating range.

### SOUND ATTENUATED ISO CONTAINER

For ease of transportation and protection. Meets 70 dBA at 50 ft or below per SAE J1074 measurement procedure.

## FACTORY INSTALLED STANDARD & OPTIONAL EQUIPMENT

| System | Standard | Optional |
|---|---|---|
| **Engine** | Air cleaner, with service indicator<br>Batteries<br>Filters; fuel, LH with service indicators; lubricating oil<br>Insulated muffler<br>Jacket water heater<br>Pump, fuel priming — LH<br>Radiator<br>Service meter<br>Standard eight-gauge instrument panel<br>Sump pump<br>Governor<br>Electronic ADEM II | |
| **Generator** | SR4B brushless, 480 volt, PM excited three-phase with digital voltage regulator, space heater | |
| **Containerized Module** | Air intake louvers<br>Bus bar access door<br>Fuel tank — 4730 L (1250 Gal) UL listed<br>Fuel/water separator<br>110 VAC/24 VDC lighting<br>Sound attenuated (75 dBA @ 50 ft)<br>ISO hi cube container<br>Lockable doors<br>Stainless steel hardware and hinges<br>Horizontal radiator and exhaust discharge plenum | |
| **Cooling** | Standard cooling provides 110° ambient at prime rating | |
| **Switchgear** | Floorstanding switchgear with EMCP II components<br>Automatic start/stop with cooldown timer<br>Battery charger, heavy duty 20A<br>Protection: 32, 59<br>Circuit breaker, electrically operated<br>Connection terminals, 3-phase and neutral<br>Automatic paralleling<br>Auxiliary power connections for jacket water heater, battery charger, space heaters | Meters: power factor, KW, PF, W/WHM, synchroscope, KVAR<br>Protection: 27, 40, 810, 81U<br>CIM, CCM, remote annunciation<br>Plug and peak shave utility conversion panel |

## SPECIFICATIONS

### CAT SR4B GENERATOR

Type . . . . . Static regulated brushless PM excited
Construction . . . . . Single bearing, close coupled
Three-phase . . . . . Wye connected — 6 lead
Insulation . . . . . Class H — 2 extra dips and bakes on random wound units
Enclosure . . . . . Drip proof
Alignment . . . . . Pilot shaft
Overspeed capability . . . . . 130%
Voltage regulator . . . . . 3-phase sensing with Volts-per-Hertz
Voltage regulation . . . . . Less than ± 0.5%
Voltage gain . . . . . Adjustable to compensate for engine speed droop and line loss
Wave form . . . . . Less than 5% deviation
TIF. . . . . Less than 50
THD. . . . . Less than 3%

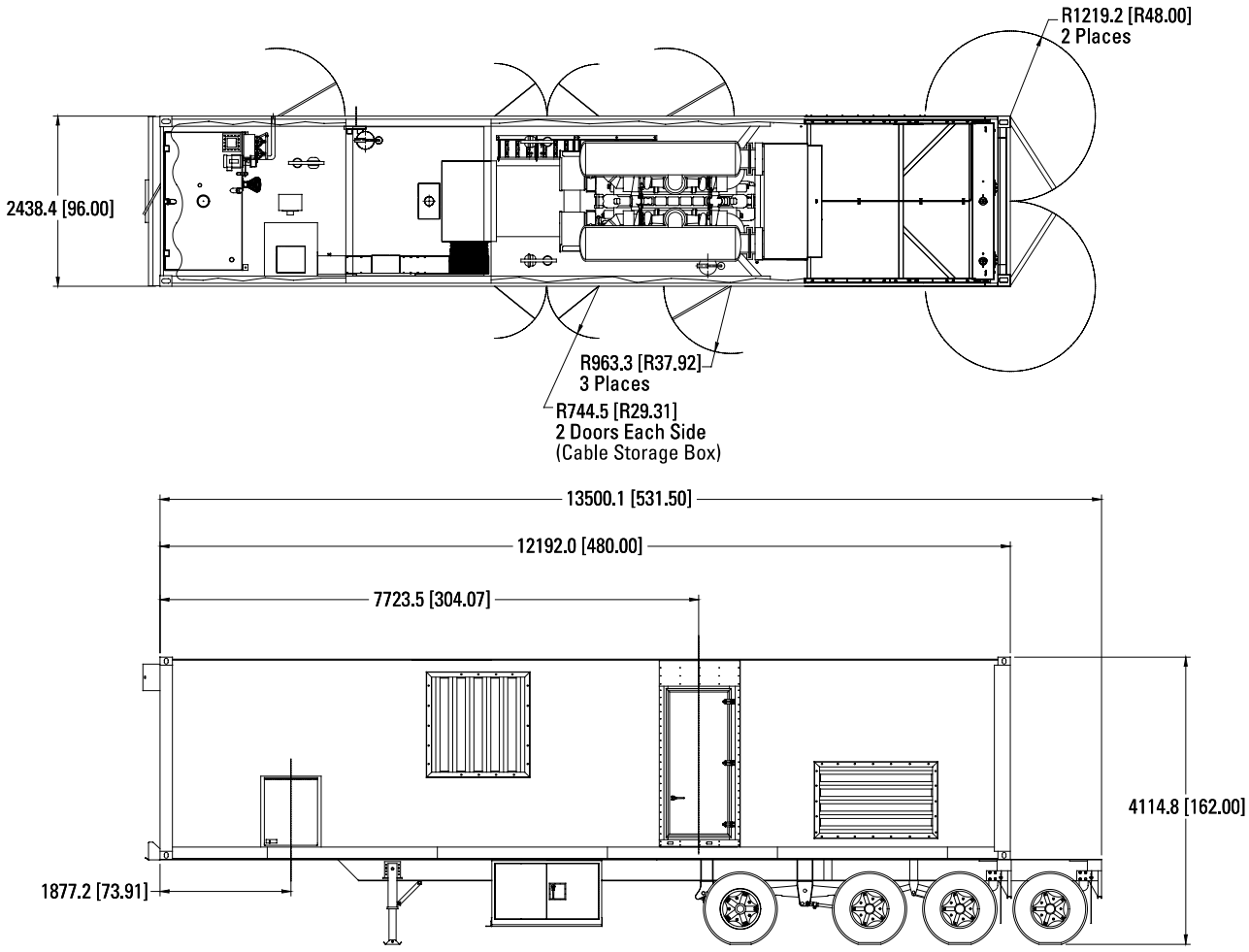
### CAT® 3516B ENGINE

V-16, 4-stroke-cycle diesel
Bore — mm (in) . . . . . 170 (6.7)
Stroke — mm (in) . . . . . 190 (7.5)
Displacement — L (cu in) . . . . . 69.0 (4210)
Aspiration . . . . . Turbocharged-Aftercooled

## TECHNICAL DATA

| | | | |
|---|---|---|---|
| **Power Rating** | | **Standby** | **Prime** |
| 60 Hz | ekW | 2000 | 1825 |
| **Engine and Container Information** | | | |
| Engine Model | | 3516B | |
| Container size | m (ft) | 12 (40) | |
| Container dimensions | | see below | |
| **Fuel Capacity Hours of Operation at 60% Load Factor** | | | |
| 4732 L (1250 Gal) Standard 12 m (40 ft) | hours | 8 | 9 |
| **Approximate Weight (Dry) — Container with Generator Set and Switchgear** | | | |
| Including Container | kg (lb) | 32 660 (72,000) | |
| With Undercarriage | kg (lb) | 40 370 (89,000) | |

### Container Dimensions




The power module must have support under the center when set on the ground.

| Dimensions | | |
|---|---|---|
| **Length** | 13500.1 mm | 531.50 in |
| **Width** | 2438.4 mm | 96.00 in |
| **Height** | 4114.8 mm | 162.00 in |

## STANDARD CONTROLS

## 12 m (40 ft) CONTAINERS 480V/60 Hz

Floorstanding switchgear includes the following functions and features:

**ELECTRONIC MODULAR CONTROL PANEL (EMCP II) COMPONENTS**

**GENERATOR SET CONTROL (GSC)**

Monitoring

Sequentially rotating, backlit LCD display of engine hours, engine rpm, DC battery voltage, oil pressure, and water temperature. Includes pushbutton to hold display on any single parameter.

Protection

Shutdowns:

Overspeed, overcrank, high water temperature, low oil pressure, and emergency stop. With LED indicator for each condition.

Alarms:

Low coolant level

AC Metering

Three-phase volts (L-L), amperes and frequency with phase select pushbutton, on backlit LCD. Metering accuracy is 0.5%.

Control

Automatic starting with field adjustable cycle crank, failure to start (overcrank), and cooldown timer.

Programming and Diagnostics

Includes field programmable set-points for engine control and monitoring variables and self diagnosis of EMCP II system component and wiring failures.

**ALARM MODULE**

Flashing LED warnings for: low coolant temperature, high coolant temperature (pre-alarm), low oil pressure (pre-alarm), engine control switch not in automatic, and low DC voltage. Includes alarm horn and acknowledge pushbutton.

**ENGINE CONTROL SWITCH**

Snap action rotary switch, four-position — off/reset, automatic, manual, stop/cooldown. Off/reset for engine shutdown and resetting faults, automatic for remote starting by customer contact closure, manual for local starting and manual paralleling, stop/cooldown for manual operation cooldown.

**ALARM ACKNOWLEDGE/LAMP TEST SWITCH**

Three-position, spring return to center switch for alarm acknowledge and lamp test of all discrete indicating lamps. Lamp test shall also sound the alarm horn.

**ANNUNCIATION CIRCUITS**

Upon receipt of an alarm or shutdown condition, the horn shall sound and an LED shall flash. Upon acknowledgement from alarm acknowledge/lamp test switch, the horn shall be silenced and the lamp steadied. LED shall be extinguished when ECS is placed in the off/reset position if the alarm condition has been corrected. Circuits are recurring such that the LED shall flash and the horn sound, should another fault occur even prior to correction of the initial fault.

**EMERGENCY STOP PUSHBUTTON**

Mushroom head, twist to reset, causes engine shutdown and tripping of the generator circuit breaker. Prevents engine starting when depressed.

**MANUAL PARALLELING**

Controls consisting of reverse power relay, synchronizing lights, and switch. Reverse power condition causes tripping of the generator circuit breaker, immediate engine shutdown, flashing of indicating lamp, and sounding of alarm horn.

**CIRCUIT BREAKER**

Fixed mounted, three-pole, manually operated, molded case circuit breaker with solid state trip unit for overload (time overcurrent) and fault (instantaneous) protection. Includes DC shunt trip coil activated on any generator set monitored fault. Circuit breaker is sized for full load capacity of the generator set at 0.8 power factor.

**LOAD SHARE GOVERNOR**

Electronic load sharing governor with speed adjust potentiometer, idle/rated switch, and isochronous/droop switch.

**VOLTAGE REGULATOR**

Standard Caterpillar generator-mounted digital voltage regulator with voltage adjust rheostat mounted in the floorstanding switchgear.

## STANDARD CONTROLS (Continued)

**CURRENT TRANSFORMERS (3)**

Five-ampere secondary with shorting terminal strips

**POTENTIAL TRANSFORMERS (3)**

120 VAC secondary with primary and secondary fuse protection, two connected to the generator side of the circuit breaker, one connected to the load side of the circuit breaker.

**BUS BARS**

Three-phase plus fully rated neutral bus bars with NEMA standard hole pattern for connection of customer load cables and generator cables. Bus bars are sized for full load capacity of the generator set at 0.8 power factor. Also includes ground bus, connected to the generator frame ground and container frame with holes for connection of field ground cable. Bus bars are accessible from outside of the power module via hinged, lockable cable access door.

**ACCESSORY POWER**

3500 Power Modules

Three 230 VAC (50 Hz units) or 120 VAC (60 Hz units) shore power connections for jacket water heaters, generator space heater, and battery charger.

**BATTERY CHARGER**

24 VDC/20A battery charger with float/ equalize modes and charging ammeter.

www.CAT-ElectricPower.com

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LEHX0534 (10-00)

Materials and specifications are subject to change without notice.
The International System of Units (SI) is used in this publication.

# ATTACHMENT 2

# EMISSION CALCULATIONS

**Bloom Energy**
**Supplemental Power - Nonroad Engines**
**Jordan, Utah**

**Input Data**

| | | |
|---|---|---|
| Engine rating | 2,000 | kW |
| Number of engines | 4 | |
| Size of project | 8,000 | kW |
| Daily operating hours | 24 | hr/day |
| Annual operating hours | 1,000 | hrs/yr |

| Criteria Pollutants | Emission Factor | Hourly Emissions | Daily Emissions | Annual Emissions |
|---|---|---|---|---|
| | (g/kWh) | (lb/hr) | (lb/day) | (ton/yr) |
| NOx | 9.2 | 162.26 | 3,894 | 81.1 |
| CO | 11.4 | 201.06 | 4,826 | 100.5 |
| VOC | 1.3 | 22.93 | 550 | 11.5 |
| SO2 | 0.0055 | 0.097 | 2.3 | 0.0 |
| PM | 0.54 | 9.52 | 228.6 | 4.8 |

References:
1. NOx, CO and PM emission s calculated based on EPA Tier 1 diesel engine limit.
2. VOC emissions calculated based on EPA Tier 1 diesel engine limit.
3. SO2 emissions calculated using EPA AP-42, Chapter 3.4, Table 3.4-1.

SO2 Emission Factor

| | | | |
|---|---|---|---|
| AP-42 SO2 factor | | 8.09 E-03 S | lb/hp-hr |
| Diesel sulfur content | | 15 | ppm |
| | = | 0.0015% | |
| Calculated SO2 factor | | 0.0055 | g/kWh |

Unit conversions

| | | |
|---|---|---|
| Mass | 453.59 | g/lb |
| Mass | 2,000 | lb/ton |
| Power | 1.341 | hp/kW |

**Input Data**

| | | |
|---|---|---|
| Engine rating | 500 | kW |
| Number of engines | 2 | |
| Size of project | 1,000 | kW |
| Daily operating hours | 24 | hr/day |
| Annual operating hours | 864 | hrs/yr |

| Criteria Pollutants | Emission Factor | Hourly Emissions | Daily Emissions | Annual Emissions | Total Annual Emissions |
|---|---|---|---|---|---|
| | (g/kWh) | (lb/hr) | (lb/day) | (ton/yr) | |
| NOx | 0.17 | 0.37 | 9 | 0.2 | 81.3 |
| CO | 0.04 | 0.09 | 2 | 0.05 | 100.6 |
| VOC | 0.19 | 0.42 | 10 | 0.2 | 11.7 |
| SO2 | 0.0055 | 0.01 | 0.3 | 0.01 | 0.1 |
| PM | 0.012 | 0.03 | 1 | 0.01 | 4.8 |

References:
1. NOx, CO and PM emissions calculated based on EPA Tier 4 diesel engine limit.
2. VOC emissions calculated based on EPA Tier 4 diesel engine limit.
3. SO2 emissions calculated using EPA AP-42, Chapter 3.4, Table 3.4-1.

SO2 Emission Factor

| | | | |
|---|---|---|---|
| AP-42 SO2 factor | | 8.09 E-03 S | lb/hp-hr |
| Diesel sulfur content | | 15 | ppm |
| | = | 0.0015% | |
| Calculated SO2 factor | | 0.0055 | g/kWh |

Unit conversions

| | | |
|---|---|---|
| | 1,341 | hp/MW |
| | 453.59 | g/lb |

# ATTACHMENT 3

# "NONROAD ENGINES,"
# DAQ GUIDELINE, FEBRUARY 23, 2017

State of Utah

GARY R. HERBERT
*Governor*

GREG BELL
*Lieutenant Governor*

Department of
Environmental Quality

Amanda Smith
*Executive Director*

DIVISION OF AIR QUALITY
Bryce Bird
*Director*

# GUIDELINES

**TO: Permitting Staff**

**FROM: Regg Olsen, Permitting Branch Manager** RDO 2/23/17

**DATE: February 23, 2017**

**SUBJECT: Nonroad Engines**

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Portable engines that are moved within a source in conjunction with use at different specific sites in the source are considered nonroad engines.

Portable welders, compressors, and portable generators that are driven by internal combustion engines meet the definition of nonroad engine. However, if this equipment stays at a location for more than 12 consecutive months or a shorter period of time for an engine located at a seasonal source, it is considered a stationary source. A location is any site at a building, structure, facility, or installation. Therefore, an engine (designed to be and capable of being moved) that moves from a single site (i.e. coordinate) within an owner/operator's property to another single site (i.e. coordinate) within the same owner/operator's property, meets the definition of nonroad engine.

If the engine is designed to be and capable of being moved, but is stationary at the site it will be considered a stationary source for NSR and Title V permitting.

This Guideline shall be audited every five years by the Major NSR Section Manager to determine the current status and relevance of the information.

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144820 • Salt Lake City, UT 84114-4820
Telephone (801) 536-4000 • Fax (801) 536-4099 • T.D.D. (801) 536-4414
*www.deq.utah.gov*
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