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The NMED needs to deny the permit application for Yucca Growth Infrastructure's proposed fuel cell installation to support the Jupiter data center in Dona Ana County. To support this view I offer the following comments.

There are fatal errors in the permit application

The permit application contains two significant factual errors misrepresented the project and that may have served to suppress public comment.

First, The application misidentifies the owner of the Facility as Yucca Growth Infrastructure, LLC. The owner should be listed as Dona Ana County. This is significant in that the public may not understand the County's role in this development, specifically that whatever is permitted will be, for the duration of the IRB, the property of the County. Consequently, there is the potential for the County to acquire liability for the project should it be abandoned and provisions have not been made or funds are not available for the safe shutdown and disposal of waste associated with the project. There is significant peril involved with this as the fuel cells will likely be considered hazardous waste. Thus, misidentifying the owner of the facility as anyone other than the County masks the liability taxpayer's of Dona Ana County may acquire if for any reason the project is abandoned. This potential liability needs to be made explicit in the application by identifying the true owner, Dona Ana County. Otherwise taxpayers will not recognize the importance of commenting on the application. For this reason, the application must be corrected and re-noticed.

The second factual error is in regard to the section about Title V applicability. The application says there are no pueblos within 50 miles of the project. Yseleta Del Sur is in fact a federally recognized pueblo within 50 miles of Project Jupiter. This failure to identify a pueblo within 50 miles of the project has the effect of disenfranchising members of Yseleta Del Sur, as it gives the impression they are not in an area affected by the permit. Tribal allies in New Mexico may also be deceived about the impact this permit will have on their brothers and sisters who are members of the Pueblo and so not recognize the importance of submitting comments. The application needs to be corrected and re-noticed.

There are significant deficiencies with regard to enforceability

The application lists 2275 individual fuel cells, each with its own separate stack to vent emissions. The application indicates there are no controls and no emissions monitors on any of these stacks. This raises the question of how compliance with emission limits can be enforced. Requiring monitors on 2275 individual stacks is perhaps impractical. But if the stacks were aggregated into a single stack, or some reasonable number of stacks, then monitoring would be entirely practical. And, it seems necessary, as the facility will eventually be required to obtain a Title V permit that requires enforceability of emissions limitations. The application as written is allowing for emission limitations that are not enforceable as a practical matter and should not be issued in its current form. Furthermore the required changes are significant enough to require a new application and comment period.

I also question at what point exactly the facility will be required to obtain a Title V permit. It seems probable that the fuel cell, since they are modular, may not all be installed at once. If some subset of the fuel cells begin operating before the entire project is complete, does that trigger any clock for the application for a Title V permit? It seems that if any portion of the facility begins operating, then they are operating a facility that is permitted to operate at Title V levels and that should start the clock. This needs to be clarified in any permit that is issued.

The public deserves a hearing

Because of the significant public interest in this project, NMED needs to hold a hearing on this permit application. It is basically a reformulation of an earlier project submitted by Acoma, LLC, in the form of applications for two microgrids powered by gas fired turbines. These applications prompted more than 7000 comments from concerned residents, and NMED at that time determined a hearing was necessary. This indicates the tremendous public interest in this project, no matter what form the power source takes. And NMED tacitly recognized this connection when it sent notices to those who commented on the Acoma applications, telling them the turbine applications were withdrawn, but this new application for fuel cells had been submitted. NMED should treat those earlier comments on the turbines as proof that the level of public interest warrants a hearing.

Furthermore, the current application for fuel cells has generated thousands, of additional comments. Regardless of whether those comments are for or against the project, they demonstrate a sufficient interest. And a hearing is necessary particularly because there is reason to believe many comments were generated by paid canvassers who were motivated more by a desire to please their employer than to truthfully inform the public. This disingenuous "informing" of the public by canvasser is no substitute for a hearing with experts and sworn testimony. NMED must use the opportunity of a hearing to allow the public to get accurate information.

Lastly, as the fuel cell technology is relatively new, and never before implemented on this scale, a hearing is necessary for the public to gain a fuller understanding of what is proposed. Even the internet provides scant resources that can inform concerned residents. Thus, a hearing is necessary to provide information to the public regarding potential impacts, information that they can not otherwise acquire.

Conclusion

For the reasons given above, NMED must reject the application. Failing that, NMED need to provide for a public hearing.