

EXHIBIT 5

**Order, denying Petitioners' opposed motion to vacate orders
issued under disqualification
(January 19, 2023)**

RECEIVED

Pamela Jones

By Water Quality Control Commission at 2:28 pm, Jan 19, 2023

**STATE OF NEW MEXICO
WATER QUALITY CONTROL COMMISSION**

**IN THE MATTER OF THE PETITION FOR
REVIEW OF THE DECISION OF THE NEW
MEXICO ENVIRONMENT DEPARTMENT
ISSUING GROUND WATER DISCHARGE
PERMIT NO. DP-1132.**

**CONCERNED CITIZENS FOR NUCLEAR
SAFETY AND HONOR OUR PUEBLO
EXISTENCE,**

WQCC NO. 22-21 (A)

PETITIONERS,

VS.

**NEW MEXICO ENVIRONMENT
DEPARTMENT,**

RESPONDENT.

**ORDER DENYING PETITIONERS' OPPOSED
MOTION TO VACATE ORDERS ISSUED UNDER DISQUALIFICATION**

THIS MATTER came before a duly constituted quorum of the Water Quality Control Commission ("Commission") during its regularly scheduled meeting on January 10, 2023, on the opposed Motion by Petitioners Concerned Citizens for Nuclear Safety and Honor Our Pueblo Existence ("Petitioners") to Vacate Orders Issued Under Disqualification ("Motion to Vacate Orders") filed on November 4, 2022, moving the Commission to vacate Orders entered in these adjudicatory proceedings while former Commission Chair Stephanie Stringer allegedly "was disqualified by an undisclosed conflicting interest";¹ the Commission duly considered the pleadings and legal memoranda filed by the parties in regard to the Motion to Vacate Orders, as well as the related legal arguments and authorities of law offered by Lindsay Lovejoy, Jr.,

¹ Motion to Vacate Orders, par. 1, pg. 1.

counsel for Petitioners, Lisa Chai, counsel for the New Mexico Environment Department (“Department”), and Jeffrey Wechsler, counsel for Triad National Security, LLC; and having been otherwise sufficiently advised in the premises, the Commission **FINDS**:

1. At times relating to deliberations and decisions of the Commission, acting as a duly constituted public body, on then pending petitions or motions filed by Petitioners, Stephanie Stringer, as both Commission Chair and the statutory designee of the Department’s Cabinet Secretary on the Commission,³ participated in those deliberations and decisions while seeking employment and subsequently obtaining a salaried position with the National Nuclear Security Administration (“NNSA”), an agency of the United States Department of Energy (“DOE”).³

2. On August 30, 2022, a duly constituted quorum of the Commission issued its Order on Motion to Stay Proceedings Pending Resolution of Related Adjudication (“Order on Motion to Stay Proceedings”), ordering that the adjudicatory proceedings before the Commission on the Verified Petition for Review on Behalf of Concerned Citizens for Nuclear Safety and Honor Our Pueblo Existence (“Petition for Review”) filed on June 6, 2022, be stayed pending resolution of the related adjudicatory proceeding, *In re: U.S. Department of Energy and Triad National Security, LLC*, Docket No. NM0028355, NPDES Appeal No. 22-01 (05/02/2022), before the U.S. Environmental Protection Agency’s Environmental Appeals Board.

2. On November 14, 2022, after Ms. Stringer was no longer Commission Chair or a

² See, NMSA 1978, § 74-6-3(A)(1) (2007).

³ The dates stipulated to by the parties relative to Ms. Stringer’s employment with the NNSA are:

1. Date Ms. Stringer’s application was submitted via the USAJOBS portal: August 7, 2022.
2. Date the NNSA hiring official received access to the certification list, which would have contained Ms. Stringer’s name among the list of candidates: August 12, 2022.
3. Date of Ms. Stringer’s job interview: August 23, 2022.
4. Date of the NNSA’s initial offer to Ms. Stringer: August 31, 2022.
5. Date of Ms. Stringer’s onboarding: November 6, 2022.

sitting member of the Commission, a duly constituted quorum of the Commission issued its Order Denying Opposed Motion to Vacate Stay of Proceedings, in effect reaffirming and ratifying the stay of proceedings issued under its previous Order on Motion to Stay Proceedings.

3. There has been no decision-making by the Commission, with or without Ms. Stringer's participation, concerning the issues raised in the Petition for Review or the administrative relief properly requested in that Petition,⁴ so as to deny Petitioners due process under the law such as would require vacating the previous Orders issued by the Commission staying these adjudicatory proceedings pending resolution of the related adjudicatory proceeding.

4. Those previous Orders issued by the Commission on August 30, 2022, September 16, 2022, and November 14, 2022, respectively, should be reaffirmed and ratified.

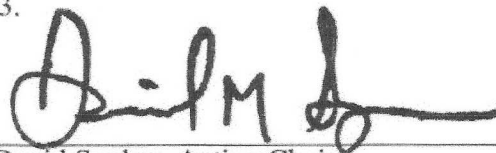
Based on the foregoing Findings, **IT IS ORDERED:**

A. The Motion to Vacate Orders is denied.

B. All previous Orders issued by the Commission staying these adjudicatory proceedings are reaffirmed and ratified.

C. Petitioners' request in open Commission meeting for sanctions against the DOE and the NNSA is denied.

Dated this 19 day of January, 2023.



David Sypher, Acting Chair
Water Quality Control Commission

⁴ Order Granting Request for Permit Review and Appointing Hearing Officer, par. 1, pg. 1, docketed on August 30, 2022. See, <https://www.env.nm.gov/opf/docketed-matters/>.

Certificate of Service

I hereby certify that on January 19, 2023 a copy of the foregoing **Order** was emailed to the persons listed below. A copy will be mailed first class upon request.

Lindsay Lovejoy, Jr.
3600 Cerrillos Road Unit 1001A
Santa Fe, NM 87507
lindsay@lindsaylovejoy.com

Silas DeRoma
US Department of Energy
Silas.deroma@nnsa.doe.gov
Counsel for US DOE and Triad National Security, LLC

Maxine M. McReynolds
Christopher C. Stoneback
Los Alamos National Laboratory
mcreynolds@lanl.gov
stoneback@lanl.gov

Jeffrey J. Weschler
Kari E. Olson
Diana Luna
Teresa Pacheco
Montgomery & Andrews
jwechsler@montand.com
kolson@montand.com
dluna@montand.com
tpacheco@montand.com
Counsel for Triad National Security, LLC

Christopher Atencio
Lisa Chai
New Mexico Environment Department
Christopher.Atencio@state.nm.us
Lisa.Chai1@state.nm.us
Counsel for the New Mexico Environment Department

Robert F. Sanchez
New Mexico Office of the Attorney General
rfsanchez@nmag.gov
Counsel for the Water Quality Control Commission

/s/ Pamela Jones
Pamela Jones, Commission Administrator
Water Quality Control Commission
Phone: (505) 660-4305
Email: Pamela.Jones@env.nm.gov