

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF SANTA FE COUNTY**

CASE NOS. 24-5201, 24-5202, 24-5203 and 24-5204

**APPEALS OF SANTA FE COUNTY PLANNING
COMMISSION ORDER APPROVING RANCHO
VIEJO SOLAR, LLC CONDITIONAL USE PERMIT (CUP)**

**ASHLEY C. SCHANNAUER (Case No. 24-5201),
SAN MARCOS ASSOCIATION (Case No. 24-5202),
NEW MEXICANS FOR RESPONSIBLE RENEWABLE
ENERGY (Case No. 24-5203), CLEAN ENERGY
COALITION FOR SANTA FE COUNTY, (Case No. 24-5204),
APPELLANTS,**

**RANCHO VIEJO LIMITED PARTNERSHIP,
RANCHOVIEJO SOLAR, LLC, AES CLEAN
ENERGY DEVELOPMENT, LLC,
APPLICANTS.**

TIMELINE OF EVENTS

1. On November 4, 2021, AES met with County Technical Advisory Committee for a pre-application meeting required by SLDC Section 4.4.3.
2. On March 29, 2022, County Technical Advisory Committee issued a letter specifying the studies and analyses AES must include in its CUP Application.
3. On April 18, 2022, batteries ignited and fires erupted at AES's 10 MW (BESS) facility in Chandler Arizona, forcing fire fighters to evacuate residents.
4. On July 12, 2022, the Board of County Commissioner (BCC) approves Ordinance 2022-05 changing definition of Commercial Solar Energy Production Facility to include "storage", paving the way for AES to include a Battery Energy Storage System (BESS) component to the AES Solar Project.

5. On or about July 14, 2022, Dennis Kurtz, President of the San Marcos Association (SMA) submitted a protest through the Santa Fe County portal stating that SMA, a Registered Organization pursuant to SLDC 2.2.3, had not been properly notified pursuant to SLDC 2.2.3.6.1 of a scheduled ‘Neighborhood Meeting’ concerning the Rancho Viejo Solar Project to take place on August 3, 2022.
6. On July 15, 2022, at 6:57 AM, a representative from RanchoViejoSolar@AES responded that Notice of the August 3, 2022, meeting had been sent to SMA via US Mail and email and provided SMA with the contact information given to them by Santa Fe County during a Technical Advisory Committee meeting. That information was incorrect.
7. On July 15, 2022, at 1:32 PM, Kurtz, having notified Santa Fe County of the erroneous information contained in their database, emailed RanchoViejoSolar@AES with the correct contact information for SMA.
8. On August 3, 2022, AES conducted its first Neighborhood Meeting at the Turquoise Trail Charter School. That meeting involved no formal presentation about the project other than AES staff being made available to answer questions connected to a poster display, SMA and members of the community complained. So, AES agreed to schedule another Neighborhood Meeting at a future date.
9. On October 4, 2022, AES conducts a *second* pre-application meeting with San Marcos residents required by SLDC Section 4.4.4.
10. On January 3, 2023, SMA sent a letter to all BCC Commissioners recommending that they consider designating all “utility-scale renewable energy projects” as Developments of County-wide Impact (DCIs). This letter made no mention of the Rancho Viejo Solar project because Santa Fe County staff explicitly instructed SMA not to refer to any

renewable energy technologies specifically. SMA requested that all such technologies, even those not yet extant, should be designated as Developments of County-wide impact.

11. On January 4, 2023, AES conducted a third Neighborhood Meeting as they had failed to properly notify everyone entitled to attend the prior meeting. This meeting was virtual and limited to those who had not been notified of the October 4, 2022, meeting. SMA was not notified of this meeting.
12. On January 26, 2023, AES files Application for Conditional Use Permit.
13. On March 14, 2023, the BCC heard a presentation from staff about Developments of Countywide Impact. When questioned by one of the Commissioners, Growth Management Director Ellis-Green noted that designating such projects as DCIs would (paraphrasing) take too much time and be too much effort. *(*NOTE – unlike other jurisdictions that have experienced the catastrophic fires related to these Utility-Scale facilities and this technology and promulgated rules and regulations for community safety, Santa Fe County does not have a regulatory structure in place for Utility-Scale commercial solar energy production facilities and yet the County continues to consider permits for these dangerous facilities under an ill-advised, shockingly inadequate regulatory structure designed for little more than small scale home projects).*
14. On March 20, 2023, SMA sent a letter to the then unnamed SLDC Hearing Officer explaining why it felt the AES CUP application should be denied. In that letter, among other reasons, SMA noted that the proposed project would be a “Gas or Electric Power Generating Facility” that was Prohibited in the Rural-Fringe under the SLDC.
15. On July 24, 2023, after repeated requests for follow-up from SMA, County Manager Shaffer responded to SMA’s January 3, 2023, suggestion stating as one reason for County

staff not supporting this recommendation, that “there is no basis in existing County planning documents to treat commercial solar energy production facilities as a DCI. Neither the SLDC nor the Sustainable Growth Management Plan (SGMP) identifies this use as a potential DCI.” [**NOTE- this is Untrue as the SGMP, on pages 54-55, in Section 2.2.6.5, notes that “other potential DCI’s may include ... large scale solar and wind farms*

16. On August 17, 2023. SMA responded to County Manager Shaffer’s July 24 letter asking for clarification as that County response did not appear to have been a response to SMA’s original letter but was instead responding to other parties as well.
17. On September 12, 2023, County Manager Shaffer emailed SMA at 11:22 AM a letter responding to SMA’s August 17 letter. This response again stated reasons for the County not supporting a DCI designation for projects such as Rancho Viejo, noting that designating them as DCIs would create “additional hurdles to the necessary transition to renewable energy,” clearly prioritizing advancement over community safety.
18. On August 14, 2023, Schannauer files Open Meetings Act complaint alleging BCC adopted revised definition of Commercial Solar Energy Production Facility to permit such facilities as Conditional Uses without adequate public notice.
19. On August 29, 2023, BCC denies Schannauer Open Meetings Act complaint.
20. On November 1, 2023, Schannauer sends a letter to BCC, County Manager Shaffer, County Attorney Prucino, Fire Chief Black, Fire Marshal Blay and Growth Management Director Ellis-Green requesting adoption of 2023 edition of NFPA 855.
21. On November 20, 2023 Schannauer sends a letter to Growth Management Director Ellis-Green and Case Manager Sisneros identifying nine issues for the review of AES’s CUP application, including, but not limited to, inter alia: 1) compliance with the 2023 edition of

NFPA 855, including a Hazard Mitigation Analysis to be prepared prior to the issuance of a CUP and the public's participation as a stakeholder in the analysis, 2) the evaluation of battery alternatives in a new Environmental Impact Report, 3) the submission of reports from AES evaluating the causes, consequences and lessons learned from AES's April 2019 and April 2022 explosion and fires, and 4) public access to portions of the AES Application improperly redacted as trade secrets.

22. On December 13, 2023, BCC approves Ordinance 2023-09 adopting the 2023 edition of NFPA 855.
23. On January 21, 2024, Schannauer sends a letter to Growth Management Director Ellis-Green , Fire Marshall Blay and Assistant County Attorney Prucino with follow-up questions from the January 17, 2024 meeting on CUP process for Commercial Renewable Energy Projects. Questions addressed: 1) the improper advocacy of County staff in the Cup process, 2) the relevance of AES's accident record and damage claims to the current process and proceedings, 3) compliance with the Hazard Mitigation Analysis and other requirements as set forth in the 2023 edition of NFPA 855 prior to CUP issuance.
24. On February 12, 2024, Schannauer sends a letter to BCC with copies to County Manager Shaffer, County Assistant Attorney Young, Santa Fe County Fire Chief Black, Fire Marshall Blay and Director Ellis-Green regarding the "stakeholder" and Hazard Mitigation Analysis requirements in Annex G of the 2023 edition of NFPA 855 adopted in Ordinance 2023-09
25. On February 18, 2024, Schannauer sends a letter to BCC with copies to County Manager Shaffer, County Attorney Young, Fire Chief Black, Fire Marshall Blay, Assistant Fire Chief, Emergency Management and LEPC Coordinator Martin Vigil and Director Ellis-

Green regarding the County's lack of compliance with emergency planning requirements under the NM All Hazards Emergency Act and the federal Emergency Planning and Community Right-to-Know Act

26. On February 27, 2024, Schannauer sent a letter to County Commissioners with copies to County Manager Shaffer, County Attorney Young, Fire Chief Black, Fire Marshall Blay and Director Ellis-Green regarding the Fire Marshal's interpretation of the Ordinance 2023-09 and its adoption of Annex G of the 2023 edition of NFPA 855
27. On February 29, 2024, County Case Manager Larranaga sends a letter to AES finding AES's January 2023 Application to be incomplete.
28. On April 28, 2024, Schannauer sends a letter to Fire Marshall Blay and Director Ellis-Green with copies to BCC, County Manager Shaffer, County Attorney Young, Fire Chief Black, Case Manager Dominic Sisneros, and Building and Development Manager Jordan Yutzy analyzing Annex G of NFPA 855 and the Fire Marshal's failure to apply it before the County issues a CUP in violation of SLDC Section 6.3.10.2
29. On April 29, 2024, Fire Marshal letter to Schannauer: "Annex G shall be considered in its entirety for all BESS installations within Santa Fe County" . . . "before a CUP is granted".
30. On June 2, 2024, Schannauer sends a letter to Fire Marshall Blay, Director Ellis-Green, AES Senior Manager Joshua Mayer, and Nick Bartlett from Atar Fire requesting the identification of "stakeholders" to participate in the Hazard Mitigation Analysis under Annex G of 2023 edition of NFPA 855.
31. On June 7, 2024, AES Permitting Project Manager Matt Gordon sends letter to Schannauer with copies to County Manager Shaffer, County Attorney Young, Fire Chief Black, Case

Manager Sisneros and Development Manager Yutzy responding to Schannauer letter of June 2, 2024, agreeing to stakeholder process under Annex G of 2023 edition of NFPA 855.

32. On June 11, 2024, Fire Marshall Blay sends an email to Development Manager Yutzy and Deputy County Manager Cordova with proposed press release seeking community for stakeholders to help develop a Hazard Mitigation Analysis for BESS projects
33. On July 5, 2024, Schannauer sends a letter to Fire Marshall Blay, Interim Growth Management Director Leandro Cordova, Deputy Growth Management Director Lisaida Archuleta, AES Representatives Mr. Mayer and Mr. Bartlett with copies to County Manager Shaffer, County Attorney Young, Fire Chief Black, Case Manager Sisneros, Development Manager Yutzy, Former Speaker of the House Brian Egolf and Matt Gordon requesting start of the stakeholder process for the Hazard Mitigation Analysis under Annex G of NFPA 855 for the Rancho Viejo Solar Project.
34. On July 30, 2024, Santa Fe County's battery consultant informed the Fire Marshal that San Diego County supervisors announced they will develop siting regulations for BESS projects. This follows BESS fires in September 2023 and May 2024 that required evacuations and shelter-in-place orders.
35. On July 31, 2024, Fire Marshall Blay sends an email to Commissioner Hank Hughes, with copies to County Manager Shaffer, County Attorney Jeff Young, Fire Chief Black, Deputy Growth Management Director Lisaida Archuleta and eight members of their staffs, citing the action in San Diego County and stating, **"I strongly believe we need to adopt more stringent requirements"** for BESS projects. Schannauer sends letter to County Manager Shaffer with copies to Deputy County Manager Young, Fire Chief Black, Fire Marshall Blay, Deputy County Manager Cordova, Deputy Growth Management Director Archuleta,

Growth Management Director Ladd, Development Manager Yutzy, Case Manager Sisneros and Commissioner Hughes requesting a virtual meeting to discuss: 1) answers to the January 21, 2024, follow-up questions from the January 17, 2024 meeting, 2) stakeholder process for Hazard Mitigation analysis, 3) scope of work for recently hired County battery expert.

36. On August 1, 2024, Linea Energy conducts pre-application Technical Advisory Committee meeting for upcoming CUP application for BESS project.
37. On August 5/6, 2024, Development Manager Yutzy emails on behalf of the Growth Management Department, Assistant County Attorney Roger Prucino and Sara Smith, operations manager in the County Manager's Office, proposing agenda item for August 13 BCC. Proposed resolution would have established a community working group "to be transparent and allow community input" on BESS issues. The Group proposed a formal stakeholder committee to assess specific projects as they are filed: "Due to the increased interest in installing and operating large-scale energy storage facilities in the county, staff is seeking input from the community regarding the fire safety of these facilities" clearly acknowledging the inadequacy of the current regulatory structure. *(Such a community working group was never formed by the County.)*
38. On August 13, 2024, BCC Meeting Agenda omits items requested by County Staff on August 5-6.
39. On August 8, 2024, AES Representative Joshua Mayer emailed SMA President Kurtz (not SMA) informing him of the upcoming August 22, 2024, Neighborhood Meeting. Mr. Mayer notes that formal notification to SMA should arrive soon and provided SMA's contact information as the County Technical Advisory Committee had provided it and as

AES had it in their records. That information was incorrect and was the same incorrect information SMA and AES had corresponded about in 2022.

40. On August 9, 2024, SMA President Kurtz emailed AES Representative Mayer at 4:38 PM informing Mr. Mayer that AES still had incorrect contact information for SMA.
41. On August 19, 2024, County Technical Advisory Committee issues letter specifying studies and assessments required for Linea Energy BESS project, including compliance with Annex G of 2023 edition of NFPA 855 *[contrasts with County Staff's non-enforcement of pre-application TAC requirements for AES's upcoming August 30 application]*.
42. On August 19, 2024, Kurtz emailed Mayer at 3:21 PM providing him with the correct SMA contact information and advising him that AES may have incorrect information regarding other parties. *[This contact information confusion is a direct result of the County not requiring a Technical Advisory Committee meeting for the second AES application. In 2022, TAC provided AES with incorrect contact information, from a then incorrect County database. Had there been a TAC for the second CUP application, County staff would have been able to give AES correct contact information. Santa Fe County's suggestion that nothing of note had changed in two years from 2022 to 2024, and so a TAC was unnecessary, is unconscionable based on the rash of lithium-ion fires in the interim.]*
43. On August 22, 2024, AES conducts pre-application neighborhood meeting for upcoming CUP application.
44. On August 25., 2024, Schannauer sends a letter to Growth Management Director Ladd and Fire Marshall Blay with copies to County Manager Shaffer, Deputy County Manager Young, Deputy County Manager Cordova, Deputy Growth management Director

Archuleta, Development Manager Yutzy and Case Manager Sisneros “Re: Public input for the Conditional Use Permit process for the Rancho Viejo Solar Project”

45. On August 30, 2024, AES files new Application for Conditional Use Permit.
46. On September 5, 2024, the Escondido Fire Department was alerted to a fire inside a San Diego Gas & Electric Storage Facility designed and built for SDG&E by AES. The SDG&E facility experienced a BESS lithium-ion battery failure that devolved into a thermal chemical runaway fire prompting the evacuation of more than 500 businesses and nearby schools. Fire Chief Batson consulted the SDG&E Fire Coordinator and the company’s fire agency, as well as the San Diego city and county hazardous materials officials to develop a response strategy. The Fire Department and consultants determined that the best course of action was to contain the thermal runaway fire and allow it to burn itself out. But copious amounts of water were used in cooling adjacent containers in the facility. *[This is because suppression materials are ineffective and water can create more problems than it fixes, thus rendering operators and first responders impotent to effectively respond].*
47. On September 21, 2024, Schannauer files Motion to Intervene. Hearing Officer Hebert determines the CEC and SMA may participate by presenting arguments and witnesses and cross-examine witnesses. All other parties were denied standing.
48. On September 25, 2024, AES withdraws January 2023 CUP application.
49. On October 12, 2024, Schannauer files Motion Requesting Prehearing Conference.
50. On October 16, 2024, Hearing Officer Hebert issues Order on Schannauer Motion to Intervene granting Schannauer standing and sends a copy of the Order to Case Manager

Sisneros with the County. Mr. Sisneros sends email to Hearing Officer Hebert requesting that the Order not go out to the parties.

51. On October 18, 2024, Schannauer serves Discovery requests on AES. Case manager Sisneros sends an email to Hearing Officer Hebert proposing a meeting with himself, Growth Management Director Ladd, Development Manager Yutzy and County Attorney Prucino (excluding all other parties with standing).
52. On October 28, 2024, Hearing Officer Hebert sends email to Case Manager Sisneros requesting an explanation as to why the Order granting Schannauer standing should be withheld from other parties with standing.
53. On October 29, 2024, Schannauer serves an IPRA request on AES for an unredacted copy of the AES Draft Preliminary Hazard Mitigation Analysis with attached fire test reports.
54. On November 1, 2024, Case Manager Sisneros emails the parties with standing simultaneously requesting and scheduling a prehearing conference.
55. On November 8, 2024, Schannauer files Motion to Compel Discovery Responses with a Supporting Brief.
56. On November 12, 2024, AES files complaint in District Court to prevent release of fire test reports asserting such documents constitute or contain trade secrets.
57. On November 14, 2024, Prehearing Conference convened by Hearing Officer Hebert.
58. On November 18, 2024, Hearing Officer issues Order regarding parties with standing for the Dec. 4th hearing. Ashley Schannauer is denied standing despite Hearing Officer's order to the County.
59. On November 21-22, 2024, Schannauer, CEC and NMRRE file motions to intervene in District Court on AES trade secrets claim.

60. On December 3, 2024, Development Manager Yutzy sends notice to AES of “red flags” contained in the third-party EIR review performed by Glorieta Geoscience.
61. On December 4, 2024, Hearing Officer Hebert convenes hearing. Santa Fe County staff’s issues initial report to Hearing Officer Hebert with proposed permit conditions. Glorieta Geoscience issues initial report to Santa Fe County staff on the AES EIR. ***(Ashley Schannauer was not granted standing for this hearing despite Officer Herbert’s Order sent to the County).***
62. On December 10, 2024, Atar Fire, a third-party fire reviewer, notifies Santa Fe County staff of the newly issued San Diego County guidelines for BESS facilities.
63. On December 11, 2024, District Court hearing on AES trade secret claim; judge denied AES request for preliminary injunction to prevent disclosure; order to be drafted and issued later.
64. On December 23, 2024, Hearing Officer Hebert issues her Recommended Order concluding the project would be detrimental to health, safety and general welfare of the area; would create a potential hazard for fire, panic or other danger; and was inconsistent with the SLDC and SGMP in both spirit and intent and should be DENIED.
65. On December 24, 2024, Staff starts process to vet appointments and reappointments for expiring Planning Commission terms.
66. On December 30, 2024, District Court Order issued denying AES request for preliminary injunction; previously issued temporary restraining order to continue pending interlocutory appeal to Court of Appeals.
67. On December 31, 2024, Terms expire for Planning Commissioners from Districts 1, 3, 4 and 5.

68. On January 6, 2025, Schannauer Motion to Intervene as a Party with Standing for Planning Commission hearing.
69. On January 8, 2025, Assistant County Attorney Prucino sends the planning Commission a ***confidential attorney/client memorandum*** requesting that Commissioner Mendoza recuse himself from the proceedings; Planning Commission Board Members unanimously reject this request and Mendoza refuses. Case Manager Sisneros emails parties simultaneously requesting and scheduling prehearing conference before Planning Commission & notifying the parties and the public of the January 13 deadline and other procedures to request status of “party with standing”; Case Manager Sisneros directs that all requests be filed directly with him.
70. On January 14, 2025, Board of County Commissioners first meeting of 2025 (Staff presents no proposals or actions to nominate new Planning Commission members or to re-nominate Commissioners with expired terms).
71. On January 15, 2025, AES decides not to appeal District Court on trade secret claim; Schannauer asks County Staff to respond to IPRA request.
72. On January 16, 2025, Prehearing Conference convened by Planning Commission; decisions reached on “parties with standing” and procedures for February 3, 2025, hearing.
73. On January 16, 2025, a fire occurred at the 300 MW battery energy storage facility at Vistra’s Moss Landing site in Monterey County, California. The engineering contractor for this Phase 1 was AES’ joint-venture company, Fluence. Vistra personnel responded immediately, and the North County Fire Protection Unit was dispatched to the scene. The battery storage facility held more than 99,000 battery modules in a tightly packed, double stacked racking system in an indoor facility with less than six feet of space between

rows. Due to the intensity of the fire, and smoke, and superheated gases, containment was not achievable. A fire suppression system was overridden, which led to a chemical thermal runaway fire that eventually overtook the entire building. *[as indicated later in this timeline the fire reignited in February, as lithium-ion fires tend to do]*

74. On January 17, 2025, County releases unredacted copy of AES Draft Preliminary Hazard Mitigation Analysis sought in IPRA request and District Court.
75. On January 24, 2025, Santa Fe County staff issues order announcing parties with standing and schedule for filings for Planning Commission hearing.
76. On January 27, 2025, Staff issues order determining procedure for cross-examination, deciding to only allow the Commissioners to cross-examine witnesses, which directly contradicts Hearing Officer Hebert's directive that all parties shall have the opportunity to cross-examine witnesses.
77. On January 28, 2025, Santa Fe County staff proposes, and Board of County Commissioners appoints, a new Planning Commission member for District 5, reappoints members from Districts 1 and 4 & takes no action on District 3 membership, allowing the member with an expired term to continue serving until further action.
78. On January 29, 2025, Glorieta Geoscience issues its final report to Santa Fe County staff on EIR. Staff report to Planning Commission with additional proposed permit conditions based on said report.
79. On January 31, 2025, Assistant County Attorney Prucino sends memorandum to Planning Commission specifically addressing the San Marcos Association arguments by providing counter arguments for each issue identified.
80. On February 3-4, 2025, Planning Commission Hearing on AES CUP Application begins.

81. On February 4, 2025, Assistant County Attorney Prucino and Santa Fe County staff members participate as advocates during the testimonial portion of the hearing and convene with the Planning Commissioners during their deliberations in Executive Session *[highly improper – county attorneys and staff are specifically employed to protect the public, not advocate for multi-billion-dollar corporations]*
82. Between February 4th and 20th, 2025, County Attorney Prucino drafts Order approving AES CUP application.
83. On February 18, 2025, the fire at the Moss Landing facility reignites. This is not an isolated incident, thermal chemical runaway fires represent the cost associated with introducing inadequately regulated and highly dangerous and volatile technologies when attempting to bridge the gap between commercial Solar energy production facilities that do not include battery storage components and are only effective during clear daylight hours and utility-scale energy production facilities that incorporate dangerous battery energy storage systems, that can operate round-the-clock but pose catastrophic risks that are undeniable.
84. On March 20, 2025, Santa Fe County Planning Commission issues the Order prepared by County Attorney Prucino to approve the AES application.
85. May 2, 2025, multiple parties with standing file appeals of the Santa Fe County Planning Commission's Order granting the CUP in direct contravention of Hearing Officer Hebert's recommendation of denial without addressing the obvious violations of the SLDC code, the Growth Management Plan or the myriad of due process violations highlighted during the proceedings and reflected in the proposed Order issued by Hearing Officer Herbert.