

**CASE NO. 24-5200  
RANCHO VIEJO LIMITED PARTNERSHIP  
RANCHO VIEJO SOLAR, LLC  
AES CLEAN ENERGY DEVELOPMENT, LLC,  
Jointly the APPLICANT  
CONDITIONAL USE PERMIT**

**CLEAN ENERGY COALITION FOR SANTA FE COUNTY  
LETTER OF INTENT TO APPEAL ORDER DATED MARCH 24, 2025**

**COMES NOW**, Clean Energy Coalition for Santa Fe County (“CEC”), by and through their counsel of record, Robert A. Stranahan IV, The Stranahan Firm, LLC, and in accordance with Ordinance 2016-9, the Sustainable Land Development Code, Chapter 4, Section 4.5.4, to formally announce its intent to appeal the Order issued on March 24, 2025, granting the application for a Conditional Use Permit (“CUP”) tract with an extension of twelve months to allow a 96-MW utility scale solar energy electric power generation facility with a 48-MW battery storage system (“Project”) on approximately 684 acres (“Site”) in Sections 2-9, Township 15 North, Range 9 East that is zoned Rural Fringe (“RUR-F”) and is accessed from NM State Highway 14 in Commission District 5. In support of this Notice CEC state the following:

**INTRODUCTION**

**THIS MATTER** came before the Sustainable Land Development Code (“SLDC”) Hearing Officer, Marilyn S. Hebert, for hearing on December 4, 2024, on the application of Rancho Viejo Solar, LLC, and AES Clean Energy Development, LLC (jointly “Applicants”), for a conditional use permit to allow a 96-megawatt (MW) utility scale commercial solar energy electric power generation facility with a 48-MW battery storage system. Hearing Officer Hebert, having reviewed the application, heard testimony and examined exhibits from the Applicants, County Staff,

Intervenors [CEC and San Marcos Associations (“SMA”)], Ashley Schannauer, and other interested community members, issued her Recommended Order advising the application be denied.

The Recommended Order (“RO”) meticulously summarized the substantive testimony and evidence provided by the Applicants, County Staff, Intervenors, Ashley Schannauer, and other interested community members. The RO included an in-depth analysis of the submitted evidence concluding the following: (1) AES Project includes a three acre Battery Energy Storage System consisting of 570,000 lithium-ion batteries that AES admitted has not been deployed as a fully integrated system<sup>1</sup>, (2) unrebutted testimony was presented that “solar storage systems are evolving to ever safer forms, but the system proposed for this project are of an older less safe type”, (3) since 2019, there have been multiple fires caused by the lithium-ion battery technology designed or operated by AES with devastating results<sup>2</sup>, (4) the County does not employ a hazmat team and will have to use the City of Santa Fe unit located fifteen miles away, which makes the site even more vulnerable due to the consistent high winds, lack of moisture and combustible surrounding vegetation,<sup>3</sup> (5) There exists an inherent risk of groundwater contamination from the smoke carrying heavy metals, PFAS from burning batteries and fire water run off that will be released and may seep into the shallow groundwater and detrimentally affect domestic wells,

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<sup>1</sup> The components of the system have been deployed individually, but the exact system with all the aforementioned componentry has never been deployed in the proposed form.

<sup>2</sup> These were much smaller lithium-ion battery storage systems, but still caused injuries and required evacuations. In the case of this project, the system is exponentially larger, utilizes remote monitoring in Utah and will depend on telecommunications capabilities for alerts. The threat of a thermal runaway fire devastating the surrounding communities is ever-present.

<sup>3</sup> Projections based on the 8-mph daily wind speed and the dry nature of the environment, a fire would be expected to travel one mile in 26 minutes rendering adjacent or abutting communities of Eldorado (4,000 feet away) and Rancho San Marcos (550 feet away) directly in the line of fire implicating approximately 10,000 homes and 25,000 residents respectfully. However, high winds in this area are routine, which would cut these projected response times in half and render help from even a properly outfitted response team potentially ineffective and too late for likely containment.

(6) There is a legitimate risk that home valuations will drop and impacted residents may be unable to procure affordable insurance due to the previously stated risks, (7) county officials have conceded that the proposed AES project poses a greater hazardous threat than any previous, current or future project(s), (8) the evidence indicates the Project would be detrimental to the health, safety and general welfare of the area, (9) the Project would create a potential hazard for fire, panic, or other danger; and (10) the Project is inconsistent with the purposes of the property's zoning classification and inconsistent with the spirit and intent of the SLDC and the Sustained Growth Management Plan ("SGMP").

Prior to the scheduled Planning Commission Presentment Hearing, Dominic Sisneros, Santa Fe County Building and Development Services Supervisor, provided the Planning Commissioners with a memorandum in support of the AES Project to help refute Hearing Officer Hebert's Recommendation and provide a basis for reversal, while dismissing health and safety concerns and minimizing the inherent fire hazard risks.<sup>4</sup> Additionally, Roger Prucino, Assistant County Attorney II, provided a confidential legal memorandum to help address the obvious legal deficiencies inherent in the administrative process.<sup>5</sup> Specifically, Mr. Prucino provided a legal rationalization for treating the AES Project as a commercial solar energy facility for the purpose of applying the SLDC Use Matrix, rather than the more applicable utility scale, solar powered "gas and electric power generation facility"<sup>6</sup>. The RO and evidentiary record were presented to the Santa Fe County Planning Commission ("SFCPC") at a presentment hearing on February 3 & 4,

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<sup>4</sup> See Dominic J. Sisneros, Memorandum to SFCPC, dated January 29, 2025.

<sup>5</sup> See Roger L. Prucino Memorandum to SFCPC, dated January 31, 2025.

<sup>6</sup> AES lobbied the County to include battery storage as an allowable component to Commercial Solar Energy Production Facilities despite the increased risk factors involved but failed to establish siting preferences. The proposed 96-MW utility scale commercial solar energy electric power generation facility with a 48-MW battery storage system far exceeds the maximum allowable 5 MW size Community Solar Facility criteria used as an analogous basis for permitting and siting.



2025. Upon completion of the presentations, the SFCPC retired into executive session for review with members of the County Staff and County Attorney's Office who had actively advocated for the Planning Commission to reverse the RO. By a majority [6-1] roll call vote, the Planning Commission did exactly as they were expected and cajoled to do by issuing a Final Order granting AES a Conditional Use Permit despite the mountain of evidence demanding denial. The Final Order represents the ultimate *fait accompli*, wherein the Planning Commission, County technical and legal staff and AES collaborated to ignore the hazard risks, disregard the overwhelming community opposition and green light a project that should have been rejected from the outset.

#### **STATEMENT OF CONTESTED ISSUES**

##### **I. SANTA FE COUNTY VIOLATED DUE PROCESS AND FUNDAMENTAL FAIRNESS LEADING UP TO AND DURING THE DECEMBER HEARING AND FEBRUARY PRESENTATION**

##### **A. Santa Fe County Staff have acted as staunch advocates for the AES Project during the entire pendency of this matter.**

Under SLDC 4.4.1.5 the Santa Fe County staff are vested with the power to review and take final action on non-discretionary matters, or scrutinize and evaluate discretionary matters and make recommendations to the Hearing Officer, Planning Commission and/or the Board of County Commissioners. During the pendency of this matter the County Staff have acted as staunch advocates and facilitators for this Project. The County chose to ignore its duty to impartially evaluate the AES project. They have secretly and improperly amended their rules and regulations to specifically allow this project to go forward and acted in concert with the private corporate entities rather than in defense and support of the affected communities. This type of collusion with private corporate entities was never contemplated under the regulatory regime and should be impermissible as a matter of law.



**B. The Planning Commissioners did not disclose conflicts and acted inappropriately and with favoritism throughout the proceedings.**

During the Administrative proceedings, Planning Commissioner Chairman, Erik Aaboe, failed to disclose his affiliation as a member of the staff of the New Mexico Renewable Energy Transmission Authority (“RETA”). RETA’s mission is to “plan, license, finance, develop and acquire high-voltage transmission lines **and storage projects to help diversify the development of renewable energy resources.**” While this mission is profoundly important, it differs greatly from the mission of the Planning Commission, which is to dispassionately review, evaluate and scrutinize potential projects for the community. This includes screening and assessing community risks not ignoring them to the detriment of the communities they serve. Chairman Aaboe’s failure to disclose this obvious conflict went under the radar. While his bias in favor of AES and its affiliates throughout the administrative process was obvious. Opposing parties were granted less time and treated with clear antagonism throughout the administrative proceedings, while AES was granted additional time to make their case and treated with a heightened degree of deference. In particular, Chairman Aaboe’s disrespectful tone directed towards Mr. Schannauer was inappropriate, illustrating an inherent bias rendering the whole evaluative process suspect. Chairman Aaboe also reversed an earlier decision by the Hearing Officer at the prior hearing wherein each participant was granted the right to cross examine the opposition. Instead, Chairman Aaboe chose to assume cross examination duties himself. Unfortunately, Chairman Aaboe chose to disregard all cross-examination questions provided by CEC addressed to the County, and all but one cross-examination question to be posed to AES which was directed to Atar Fire instead of

AES.<sup>7</sup> Additionally, after establishing rules limiting the timing for presentations by all participants in order to ensure that the hearing could be accomplished within the time allotted, Chairman Aaboe chose to allow AES to speak unconstrained by any time limits while strictly enforcing the time limitations on all opposing participants.<sup>8</sup> The decision to silence oppositional viewpoints and prohibit inquiry represents such a significant departure from the basic doctrine of due process and illustrates a level of party bias that it is difficult to explain or condone in any manner whatsoever.

## **II. AES PROJECT IS INCONSISTENT WITH THE SPIRIT AND INTENT OF THE SUSTAINABLE LAND DEVELOPMENT CODE AND SUSTAINABLE GROWTH MANAGEMENT PLAN**

### **A. Violation of the New Mexico Open Meetings Act.**

The amendment to the definition of "Commercial Solar Energy Production Facility" within the Community Solar Ordinance, which made battery storage facilities eligible for Conditional Use Permits, was adopted without proper public notice and was "buried" in an unrelated ordinance developed specifically for small scale projects. This Ordinance was never meant to apply to 96-MW utility-scale solar energy electric power generation facility with a 48-MW battery storage system. This lack of transparency and violation of the Open Meetings Act renders the revised definition and the eligibility of battery storage as a Conditional Use invalid, thus making the project inconsistent with the current valid SLDC.

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<sup>7</sup> In deference to the tribunal, CEC only submitted six cross-examination questions. Two questions were submitted to the County regarding water supply, air quality and toxic emissions, and four to AES regarding NFPA 69, possible incident remediation and affiliated entities. Each inquiry represents a legitimate area of inquiry; however, Chairman Aaboe chose to disregard all but one question regarding the NFPA 69.

<sup>8</sup> AES' initial presentation to the Planning Commission had been limited to one hour yet AES was allowed to speak for more than 2 hours. Throughout the hearing there were examples of opposition participants being cutoff and proponents being given additional opportunities to address the Commission. The resultant disparity shows a proponent speaking advantage of 6.5 hrs. to 2.75 hrs.

## **B. Lack of Specific Siting Regulations for Utility-Scale Solar Energy Production Facility with Battery Storage.**

The SLDC lacks specific provisions addressing the siting of utility-scale solar energy production facilities, particularly those that include battery storage units. The existing SLDC excludes such facilities from residential zoning districts but provides for their siting in other districts as a Conditional Use on a case-by-case basis, relying on general standards that may not adequately address the unique risks of battery storage and enormity of the AES 96-MW utility scale solar energy electric power generation facility with a 48-MW battery storage system. The County has more detailed standards for much smaller Community Solar facilities, which underscores the fact that the rules, regulations and processes have been manipulated to specifically allow this project to go forward despite overwhelming community opposition and the blatant lack of specific siting regulations for a project of this magnitude.

## **C. Failure to Conduct Adequate Pre-Application Review:**

AES did not seek a new Technical Advisory Committee (TAC) review for its revised August 2024 Conditional Use Permit application after the adoption of Ordinance 2023-09, which updated the Santa Fe County Fire Code and adopted the 2023 edition of NFPA 855. The previous TAC review from March 2022 mentioned the possibility of including battery storage as a facility component, but did not document, review or evaluate the fire risks associated with a 48-MW battery storage facility and did not reference NFPA 855. The failure to adhere to the updated permitting considerations and decision to allow the use of an outdated TAC review as part of the new application renders the application inconsistent with current SLDC requirements.<sup>9</sup> At a

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<sup>9</sup> AES resubmitted the 2022 TAC review, which acknowledged that battery storage could be included as a component of the AES project. However, that review did not include a technical evaluation of the fire hazards and risks associated with the 48 MW lithium-ion battery storage componentry proposed by the 96 MW generation project. The inclusion of a 48 MW lithium-ion battery storage system as a component of the AES project is a **major substantive change** to the TAC review, which was not part of the 2022 submission and never evaluated from a technical standpoint. This major substantive change renders the 2022 TAC review submission inadequate for resubmission with the current project and should render the entire application *void ab initio*.



minimum, the resubmitted application incorporating the huge 48-MW battery complex should have gone through an exhaustive HMA review to analyze the inherent fire hazards and risks associated with the proposed battery technology implementation, operations, and threat mitigation.

**C. Deficiencies in the Environmental Impact Report (EIR) and Hazard Mitigation Analysis (HMA):**

The EIR fails to adequately identify and discuss significant environmental effects by omitting any mention of AES's history of battery storage fires and explosions. The HMA narrowly focuses on risks to facility occupants and equipment and does not adequately address the potential hazards to the surrounding area and the criteria for a Conditional Use Permit in SLDC Section 4.9.6.5, specifically whether the project will be detrimental to health, safety, and welfare or create a fire hazard or other risks. The HMA does not apply the updated safety standards and Annex G of the 2023 edition of NFPA 855, which provides detailed guidance on hazard analysis for battery energy storage systems. AES has deferred the formulation of critical mitigation measures to a final HMA until after the permit decision, violating SLDC Section 6.3.10. The EIR does not identify or discuss reasonable alternatives to the proposed lithium-ion battery storage component, such as safer or longer-duration battery technologies, as required by SLDC Section 6.3.11. The EIR and HMA fail to adequately address the "Environmentally Sensitive Area" located within the project site.

**E. Failure to properly disclose or review the request for a 12-month CUP extension:**

Upon announcement of the CUP approval, AES spoke up to “remind” the Planning Commission that AES requested, and would require, a 12-month extension as part of the approval. Despite not having reviewed, analyzed and evaluated the impact of the proposed extension, the Planning Commission acquiesced and granted the extension.<sup>10</sup> A request for that extension did not

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<sup>10</sup> It is important to note that the 12-month extension ostensibly gives AES, at a minimum, a 3-year window to begin project construction. During that three-year period the technologies that are specifically being proposed and implemented, reviewed and analyzed will become obsolete. As a result, this hearing will only serve to scrutinize technologies that shouldn't even be under consideration. Had the CUP approval process required a 100% design instead of the allowed 30% design, the extension would never have been required.

exist in public documents as part of the application, any AES presentation, or the County's Report to the Planning Commission. The impact of granting an extension for the CUP was never considered as part of the Planning Commission Hearing. Had the extension been explicitly identified as part of the application, those impacts could have been addressed by the other parties with standing in the proceedings.

The progression and advancement of battery storage technology is moving away from the shorter-duration more dangerous battery systems (like the one proposed for the AES Project) and towards safer longer-duration technologies, which will become the standard industry practice over the timeframe of this application. This is an inevitable and logical industry response to the proliferation of fires occurring at these facilities that utilize these dangerous battery technologies causing untold environmental damage, displacing affected communities, releasing toxic plumes and causing severe injury. In the current application, EIR, and HMA, AES has been very specific in defining the technology that will be applied to the Rancho Viejo Project. Within this approved 3-year timeframe, AES may or may not stay committed to the technology stated in the application and build a facility that is obsolete, unnecessarily dangerous and patently behind technological trends and safety standards. However, extending the CUP for 12 months will allow AES time to significantly change its design and operating parameters without review or scrutiny prior to beginning construction. Consequently, there is zero chance that the application EIR and HMA will relate in any meaningful way to the project as it inevitably morphs into whatever iteration is most profitable for AES. Moreover, it will be impossible for the County or any regulatory authority to restrict, control or legitimately oversee the final project design, technologies employed or safety measures that will, or should be, implemented in the final build-out on the proposed location. The County does not have enough experience in the technology or established guidelines to determine

whether the final changes being permitted are above or below the 5% threshold that could invalidate the CUP altogether. Without those guidelines, the already flawed approach to reviewing the HMA only gets worse because the County and the surrounding communities will have no opportunity to provide appropriate oversight and/or comment on the final design or the technologies employed.

**F. Inconsistency with Zoning Classifications:**

The proposed project is situated in a Rural Fringe zoning district, adjacent to rural residential communities and residential estate districts where Commercial Solar Energy Production Facilities (even without battery storage) are prohibited. Allowing a potentially hazardous facility by Conditional Use Permit in the Rural Fringe, so close to prohibited zones and posing risks to those areas, is inconsistent with the spirit and intent of the SLDC regarding land use compatibility and the protection of residential areas.

**G. Comparison to Prohibited "Gas and Electric Power Generation Facilities":**

Due to the inherent fire risk associated with the proposed 48-MW lithium-ion battery storage complex, utility-scale solar facilities with battery storage should be treated similarly to "Gas and Electric Power Generation Facilities" under the SLDC because the risks associated with lithium-ion battery storage facilities are similar to, or greater than, the risks associated with conventional gas and electric power generation facilities. Notably, a "Gas and Electric Power Generation Facility" is a prohibited use in the Rural Fringe zoning districts because of the inherent risks involved in normal energy production. AES intends to locate the Rancho Viejo facility in this Rural-Fringe even though the area is ill-suited to *any* commercial energy production because wildfire grassland fuel is abundant, response teams are ill equipped, response times are inadequate, and fire containment is difficult if not unachievable in high wind conditions. This suggests that



the level of risk associated with such energy generation facilities, including the fire risk presented by a utility-scale battery storage, should be deemed incompatible with the Rural Fringe zone, as it is in the adjacent communities.

#### **H. Public Safety Concerns and Insufficient Emergency Response:**

The SGMP's Chapter 9 on Public Safety states that the current emergency response system is insufficient. The County lacks a comprehensive all-hazard emergency response plan and a dedicated hazardous material response team. The proposed project, with its inherent risks of fire, explosion, toxic gas releases and smoke containing heavy metals from the utility-scale battery storage, would place significant demands on this already inadequate system, thus being inconsistent with the SGMP's goals for public safety. The Hearing Officer's Recommended Order also highlights that the scale and proximity to residential areas create an unreasonable risk, that is compounded by the distance from fire stations lacking hazardous material teams. Efforts in 2024 and 2025 by the County to update its emergency response and hazardous material plans do not substantially change or improve this condition.

#### **I. Flawed Permitting Process and Lack of Transparency:**

The amendment to the SLDC's definition of "Commercial Solar Energy Production Facility" to include battery storage, which made the AES project eligible for a Conditional Use Permit, was "buried" within the unrelated Community Solar Ordinance and adopted without adequate public notice, constituting a violation of the New Mexico Open Meetings Act. This lack of transparency and failure to follow fundamental tenets of due process or even consider adopting a more balanced approach undermines the spirit and intent of the SLDC, which aims for orderly and publicly accountable land use regulations. The deceptive nature of these proceedings has led AES to both deny and downplay the inherent risks of fire and toxic smoke associated with their utility-scale

battery storage system by openly assuring the SFCPC that increased fire hazard risks are “comparable or less than acceptable daily risks”.

“[W]e and others have shown the BESS fire risks have fallen dramatically in recent years. The tech has vastly improved and in our assessment comparable or less than the many acceptable daily risks we experience, like driving a car”.

*{Santa Fe County Planning Commission, Feb. 3, 2025, p.62, ¶ 4.}*

While privately acknowledging to shareholders that the inherent risks are real, potentially catastrophic and costly:

**“In addition, our battery storage operations also involve risks associated with lithium-ion batteries. On rare occasions, lithium-ion batteries can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion batteries. While more recent design developments for our storage projects seek to minimize the impact of such events, these events are inherent risks of our battery storage operations.**

*{AES Corporation Annual Report, 2022 & 2023} {emphasis added}*

**“The hazards described above, along with other safety hazards associated with our operations, can cause significant personal injury or loss of life, severe damage to and destruction of property, plant and equipment, contamination of, or damage to, the environment and suspension of operations. The occurrence of any one of these events may result in our being named as a defendant in lawsuits asserting claims for substantial damages, environmental clean up costs, personal injury and fines and/or penalties.**

*{AES Corporation Annual Report, 2022&2023} {emphasis added}*

The AES statements provided above are excerpts from the AES annual reports for 2022 & 2023 and contain factual admissions that are required by the Securities and Exchange Commission. In the context of this application, they represent “statements against interest” and their veracity is to be assumed. Thus, when required to be truthful to a federal agency, AES states explicitly that these facilities are inherently dangerous and may lead to severe injury and death. But when discussing these matters with the County and the public in furtherance of their application AES claims the facilities are innocuous and harmless. Either of the Annual Report statements provided above constitute a clear and obvious basis for denying the application in totality.

**IN SUMMARY**, the Hearing Officer's finding of inconsistency is supported by arguments related to the project's proximity to prohibited residential zones; (1) the comparable fire risk to explicitly prohibited energy generation facilities, (2) the conflict with the County's preferred siting for solar projects, (3) the flawed and non-transparent permitting process, and (4) the inadequacy of the County's emergency response capabilities as outlined in its own Sustainable Growth Management Plan. In fact, Hearing Officer Hebert explicitly concluded that "[t]he evidence indicates, the Project would be detrimental to the health, safety and general welfare of the area; the Project would create a potential hazard for fire, panic, or other danger; and the Project is inconsistent with the purposes of the property's zoning classification and inconsistent with the spirit and intent of the SLDC and SGMP". This is a direct finding based on the evidence presented at the hearing.

### **III. AES PROJECT WILL BE DETRIMENTAL TO THE HEALTH, SAFETY AND GENERAL WELFARE OF THE AREA AND WILL CREATE A POTENTIAL HAZARD FOR FIRE, PANIC OR OTHER DANGER**

#### **A. The AES Project Poses a Significant Risk of Fire, Explosion, and Toxic Gas Release:**

The proposed project includes a 48-MW lithium-ion battery storage complex, which presents a demonstrated risk of fire, explosion, and the release of toxic gases. As previously stated, AES itself warns investors of the "inherent risks" associated with lithium-ion batteries, noting that they can "rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion batteries". The Electric Power Research Institute (EPRI) found that over the four years preceding 2021, at least 30 large-scale battery energy storage sites globally experienced failures resulting in destructive fires. EPRI also states that "no currently available mitigation technology can prevent an internal cell defect from causing



a thermal runaway event once that cell leaves the factory". Thermal runaway in lithium-ion batteries can lead to the ejection of a "chaotic mixture of hot and glowing particles," the release of hazardous off-gases, and the potential for explosion and fire. These fires are known to generate intense heat and considerable amounts of toxic gases, including carbon monoxide and hydrogen fluoride.

#### **B. AES's History of Accidents:**

AES has a documented history of battery storage fires and explosions. This includes an explosion and fire at a 2-MW facility in Surprise, Arizona on April 19, 2019, which injured eight firefighters and continued burning for two weeks. A 10-MW facility in Chandler, Arizona experienced a thermal runaway on April 18, 2022, leading to a fire that burned for almost two weeks, closing a freeway and prompting evacuations. More recently, a 30-MW facility designed and built by AES in Escondido, California, caught fire on September 5, 2024, causing evacuations, school closures, and shelter-in-place recommendations. These facilities were smaller than the 48-MW battery facility proposed for Santa Fe County, but still operationally dangerous enough to cause, shutdowns, evacuations, school closures and shelter in place recommendations. Why are these inherent risks not being properly evaluated and assessed by the County?

#### **C. Proximity to Residential Communities:**

The project is proposed to be sited in close proximity to several residential communities, including Eldorado, Rancho San Marcos, and Rancho Viejo, with homes as close as 500 feet from the site boundary and an above-ground gas regulating station, which provides gas to the adjacent and abutting communities. Unfortunately, the above-ground gas regulating station can only be shut down manually, which means the risk of involvement in a runaway thermal fire increases exponentially as do the potential catastrophic outcomes. This represents a secondary hazard that

could accelerate any potential fire exponential increasing the potential damage. This proximity to an area with an estimated 10,000 homes and approximately 25,000 residents, significantly increases the potential for catastrophic consequences in the event of a fire at the battery storage facility. The Hearing Officer noted that the scale of the project and its proximity to these communities creates an “**unreasonable risk to the safety and welfare of these communities**”.

**D. Insufficient Emergency Response Capabilities:**

The Santa Fe County Sustainable Growth Management Plan (SGMP) states that the current emergency response system is not sufficient to service the existing population, especially in the case of a large-scale emergency. None of the County fire fighting stations have a hazardous material team. The distance of the proposed project from fire-fighting stations further compounds this risk. The County simply doesn't have the capability to handle a thermal event and evidently has no current plans to affirmatively address this glaring deficiency. Current updates to County plans do not result in any changes or improvements to the County capabilities.

**E. Potential for Rapid Wildfire Spread:**

The project site is located in grasslands, which are prone to wildfires that can spread rapidly, especially given the area's dry and windy conditions. Wildfires in grasslands can travel at up to 16 miles per hour. A grass fire starting at the battery site could reach homes 2 miles away in less than 10 minutes. Even conservative estimates using fire travel speeds of eight miles per hour strongly suggests that response resources will be deficient and response times will be inadequate even under optimal conditions with maximum efforts. Consequently, it is impossible for the County, partisan experts or any person to suggest that the AES Project does not pose a significant threat to the health, safety and general welfare of the surrounding communities and will create a potential hazard for fire, panic or other danger.

#### **F. Release of Toxic Gases/Smoke, Health Impacts and More Dangerous Battery:**

Lithium-ion battery fires release significant amounts of toxic gases, including carbon monoxide and hydrogen fluoride, which can have severe adverse health impacts. Residents near the AES Chandler fire reported metallic tastes, burning eyes and throats, and yellow residue. EPRI's 2021 report also highlights the fact that hydrogen fluoride has the potential for the most significant adverse impacts following a lithium-ion battery failure. Moreover, a lawsuit has been filed by Singleton Schreiber on February 4, 2025, representing the victims of Moss Landing citing health effects from elevated levels of heavy metals found in independent soil testing up to 7.5 miles from the facility after the lithium-ion battery fire in Moss Landing on January 16, 2025.

The lawsuit also names the battery manufacturer, LG Energy Solution, for their dangerous lithium-ion NMC batteries. Media coverage following the fire highlighted the fact that the majority of utility-scale facilities are now adopting the use of "safer" lithium-ion LFP batteries that are slower to go into thermal runaway.

While AES continues to claim safety is their number one priority, they have chosen to use a denser, higher energy battery, (NCA, containing Nickel, Cobalt and Aluminum), that is more prone to thermal runaway at lower temperatures. This clearly demonstrates they are not following the industry standard evolution to safer batteries by pointedly choosing a less safe option for this facility in order to generate more power and make more money.

None of this information has been properly evaluated or viewed in context regarding this proposed Project.



#### **G. Inconsistency with the Sustainable Growth Management Plan and Land Development Code:**

The Hearing Officer concluded that the evidence indicates the Project **would be detrimental to the health, safety, and general welfare of the area** and inconsistent with the spirit and intent of the SLDC and SGMP. The project also conflicts with the County's official preference that solar projects be sited on brownfield, built environment, or degraded land, rather than healthy ecosystems. Furthermore, given their fire risk, utility-scale solar facilities with battery storage should be sited like "Gas and Electric Power Generation Facilities," which are prohibited in Rural Fringe areas under the SLDC.

#### **H. Flawed Application and Review Process:**

The County's amendment of the definition of Commercial Solar Energy Production Facility to include battery storage was done without proper public notice (violating the New Mexico Open Meetings Act), undermines transparency and endangers public welfare. AES's Environmental Impact Report (EIR) and Hazard Mitigation Analysis (HMA) have been criticized for omitting AES's prior fire history, and for not adequately addressing the risks to adjacent land uses or the criteria for a Conditional Use Permit under the SLDC. The HMA is only a preliminary draft that defers the determination of critical mitigation measures to a later date. Efforts to protect redactions in the HMA, particularly of UL 9540A fire test results, further hindered public scrutiny of safety claims. The EIR also fails to discuss alternative, potentially safer, battery technologies.

**IN SUMMARY**, the Hearing Officer explicitly recommended denial of the Conditional Use Permit, stating that the project poses a comparable degree of hazard unlike any other commercial or industrial facility in Santa Fe County and creates an unreasonable risk to the safety and welfare of adjacent communities. The potential for fire, explosion, and toxic gas release from the battery storage facility, combined with AES's history of such incidents, compounded by the project's

dangerous proximity to residential areas, the inadequacy of the County's emergency response, the risk of rapid wildfire spread, and inconsistencies with local land use plans and a flawed permitting process, provide compelling arguments that the AES solar project would be detrimental to the health, safety, and general welfare of the area and create a significant potential hazard for fire, panic, or other danger.

THE STRANAHAN FIRM, LLC

**Robert A. Stranahan IV**

Robert A. Stranahan IV, *Attorney for Appellant*