

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

**CASE NO. 24-5200**

**RANCHO VIEJO SOLAR, LLC CONDITIONAL USE PERMIT (CUP)  
RANCHO VIEJO LIMITED PARTNERSHIP, RANCHO VIEJO SOLAR, LLC,  
AES CLEAN ENERGY DEVELOPMENT, LLC, APPLICANTS**

**LETTER OF INTENT**

**May 2, 2025**

**Ashley C. Schannauer  
12 Mariano Road  
Santa Fe, NM 87508  
[Schannauer21@outlook.com](mailto:Schannauer21@outlook.com)  
(505) 920-0326**

## **Statement of Issues**

This Statement of Issues identifies my positions on the issues addressed in my appeal plus references to the record for evidentiary support.

### **I. County procedures mischaracterize the appeal of the Planning Commission's March 20 Order as a "Development Permit Application."**

The application form for filing an appeal under Section 4.5.4 of the SLDC characterizes the appeal of a Planning Commission Order as a "Development Permit Application." I and the other appellants aren't applying for permits. We are appealing a Planning Commission decision that approves a Conditional Use Permit submitted by the applicants in this case. From a legal standpoint, describing an appeal as an "application" for a Development Permit suggests that the appealing parties -- not the original applicant for the Conditional Use Permit -- have the burden of proof. It is important to recognize that the burden of proof at the BCC hearing remains with the original applicants for the Conditional Use Permit.

### **II. Issues with the Planning Commission's March 20, 2025 Order<sup>1</sup>**

**A. No findings of fact.** The Order identifies issues that were raised during the Planning Commission's February hearings, but it contains no Findings of Fact on those or other evidentiary issues, in violation of SLDC Section 4.3.2.

**B. No consideration of the findings of fact and conclusions of law in the December 23, 2024 Recommended Order of the Hearing Officer.** While making no findings of fact on its own, the Planning Commission also fails to address the detailed findings of fact made by the Hearing Officer<sup>2</sup>:

41. The Applicant's proposed Project contains a 3-acre BESS consisting of 570,000 lithium-ion batteries that as the Applicant itself stated "... the componentry in that system has not been deployed ... [although] every component within that exact system has been deployed." Unrebutted testimony was presented that solar battery storage systems are evolving to ever safer forms, but the system proposed for this Project are of an order less safe type. (Tr 21, 23-24, 44)

42. Since 2019, there have been three large fires caused by lithium-ion batteries, some with injuries and involving evacuations, at solar facilities operated or designed by the Applicant; two of these fires occurred at facilities with significantly fewer battery cells, one with 3,200 cells and one with approximately 10,000 cells. The remote monitoring for this Project, which would be the only

---

<sup>1</sup> Order, Case No. 24-5200, Rancho Viejo, LLC Conditional Use Permit (CUP), Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC, AES Clean Energy Development, LLC, Applicants, March 20, 2025.

<sup>2</sup> Recommended Order issued Dec. 23, 2024, Hearing Officer Meeting, Case No. 24-5200, Dec. 4, 2024. (Emphasis added.)

monitoring outside of the normal work week of onsite personnel, is located in Salt Lake City, Utah and is dependent on telecommunications capabilities. The potential for a catastrophic fire from failure of individual cells is vastly increased at a facility with over one-half million battery cells. (Tr 44)

43. The AES First Responder Mitigation Guidelines report, August 2024, states:

The fire suppression system(s) at the BESS containers are designed to suppress small fires within the ancillary equipment and there is no expectation that a thermal runaway type fire within the battery banks will be suppressed. Thermal runaway produces explosive gases prior to ignition, and it is anticipated that early warning will be provided by the gas detection system within each container.

Thermal runaway is one of the primary risks related to lithium-ion batteries. It is a phenomenon in which the lithium-ion cell enters an uncontrollable, self-heating state. Thermal runaway can result in: Ejection of gas, shrapnel, and/or particulates (violent cell venting) and extremely high temperatures.

(Guidelines 9-10)

44. The County does not have a hazardous material team/unit and utilizes the unit of the City of Santa Fe which is approximately 16 miles away from the Site. The closest County fire team is located off Hwy 14. Testimony about wildfire was provided using data from the National Wildfire Coordinating Group for grassy, juniper environment such as around the Project as follows: at a wind speed of eight miles an hour and low moisture conditions, a wildfire could be expected to cover one mile in 26 minutes; under the same conditions with a wind speed of 16 miles an hour,, the fire would travel that mile in 13 minutes. (Tr 45)

45. The consequences of a fire from the Project could be catastrophic because of its proximity to the surrounding communities of Eldorado, Rancho San Marcos, and Rancho Viejo - an area with an estimated 10,000 homes and approximately 25,000 residents.

46. Among other concerns expressed regarding the Project were fears of groundwater contamination from the fire suppressants. In the event of a fire escaping from enclosed cells, there would be potential for PFAS-laden fire suppressant together with massive amounts of water used to extinguish the fire could contaminate the groundwater in areas with a shallow aquifer and residents reliant on domestic wells. (Tr 41)

47. Residents of the surrounding communities, all zoned residential, expressed fear that the Project would negatively affect their home values and ability to obtain reasonable home insurance, if such insurance would be available at any

cost. The Applicant provided market studies to support its position that the siting of the Project would not negatively affect home values. The comparable properties were located in the vicinity of much smaller solar generation and battery storage facilities, 10 to 20 megawatts. Of the three properties near such facilities of approximately 100 megawatts, one was sited in an industrial area and the other was neighboring an asphalt facility. (Tr 15)

48. At the hearing when asked if there was any commercial or industrial facility in the County that posed a comparable degree of hazard as the proposed Project, Staff responded that it was not aware of any past, present, or future projects that posed such hazard as the proposed Project.

49. The scale of the Project, over 200,000 panels and 570,000 lithium-ion batteries, together with the proximity to residential communities with homes as close as 500 feet from the Site boundary creates an unreasonable risk to the safety and welfare of the communities. This risk is compounded by the distance of these areas from County fire fighting stations, none of which has a hazardous material team.

50. The 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.

51. The evidence supports denial of the Application.<sup>3</sup>

**C. No mention of SLDC Chapter 6 requirements for Environmental Impact Reports.**

The Planning Commission's Order states only that the "applicable provisions of the SLDC" are Section 4.9.6 Conditional Use Permits and Chapter 7 Sustainable Design Standards. The Order omits additional requirements in Chapters 4, such as Section 4.4.3, for a pre-application Technical Advisory Committee (TAC) review of AES's August 2024 application. It also omits Chapter 6 of the SLDC, which applies to the Environmental Impact Report (EIR) that AES was required to submit with its CUP application. As examples, AES's application violated SLDC Section 6.3.1 (no mention of AES's prior fires and explosion), Section 6.3.10.2 (mitigation measures to be approved during the Conditional Use Permit process, not after the Permit is issued), and Section 6.3.11 (no discussion of safer battery alternatives).<sup>4</sup>

**D. No consideration of "parties of standing" input.** The Planning Commission's Order does not identify the parties with standing that participated in the February hearings, nor does it mention the evidence they provided.

---

<sup>3</sup> Recommended Order, Findings Nos. 40-51, at pp. 15-17 (emphasis added).

<sup>4</sup> See Schannauer Testimony, November 27, 2024, at pp. 33-51.

**E. Preferential enforcement of SLDC.** The Order lets stand the preferential treatment provided to the applicants in this case regarding the enforcement of Ordinance 2023-09 and the SLDC:

-- The County has required Linea Energy to comply with Annex G to NFPA 855 in Linea's soon-to-be filed CUP application for its battery energy storage project, but has not required the same for the Rancho Viejo Solar Project.<sup>5</sup>

-- The County has required Linea Energy to perform a Fiscal Impact Assessment (FIA) for its proposed battery energy storage project but has not required a FIA for the Rancho Viejo Solar Project.<sup>6</sup>

### **III. AES has failed to satisfy its burden of proof**

#### **A. The Rancho Viejo Solar Project fails SLDC CUP approval criteria standards 1, 2, 3, 5 and 7.**

Before issuing a Conditional Use Permit, the SLDC requires applicants to prove and the County to determine that the proposed use will satisfy seven criteria:

4.9.6.5 Approval Criteria. CUPs [Conditional Use Permits] may only be approved if it is determined that the use for which the permit is requested will not:

1. Be detrimental to the health, safety and general welfare of the area;
2. Tend to create congestion in roads;
3. Create a potential hazard for fire, panic, or other danger;
4. Tend to overcrowd land and cause undue concentration of population;
5. Interfere with adequate provisions for schools, parks, water, sewerage, transportation or other public requirements, conveniences or improvements;
6. Interfere with adequate light and air; and
7. Be inconsistent with the purposes of the property's zoning classification or in any other way inconsistent with the spirit and intent of the SLDC or SGMP.<sup>7</sup>

AES's application violates five of the criteria most relevant here. The criteria require that the applicant prove that the proposed use (i) will not "be detrimental to the health, safety and general welfare of the area," (ii) will not "create a potential hazard for fire, panic, or other danger," (iii) will not create road congestion, (iv) will not interfere with adequate provisions for public requirements, such as water supplies, and (v) will not be inconsistent with the spirit and intent of the SLDC or the County's Sustainable Growth Management Plan (SGMP).

---

<sup>5</sup> See Schannauer Testimony, November 27, 2024, at pp. 31-32.

<sup>6</sup> See Schannauer Testimony, November 27, 2024, at p. 33.

<sup>7</sup> Santa Fe County Sustainable Land Development Code, section 4.9.6.5.

**B. Criteria 1 and 3. The AES project “will be detrimental to the health, safety and general welfare of the area” and “create a potential hazard for fire, panic, or other danger.”**

**1. History of fires and explosion at AES facilities<sup>8</sup>**

- April 19, 2019 in Surprise AZ
- April 18-May 1, 2022 fire in Chandler AZ
- September 5-6, 2024 fire in Escondido (San Diego County) CA
- January 16-17, 2025 fire in Moss Landing, CA (re-ignited on February 18)

**2. AES’s First Responder Guidelines: AES warns first responders of thermal runaway, and fires, explosions and toxic gases**

Utility-scale lithium-ion batteries as proposed by the Applicants pose a demonstrated fire, explosion and toxic gas hazard. The project’s hazards are documented in AES’s own First Responder Guidelines submitted with AES’s CUP Application:

**5.1 Fire Hazards**

**Normal Conditions**

Fire hazards are present from potential electrical equipment failure and thermal runaway

**Abnormal Conditions**

Thermal runaway potential exists during abnormal conditions as well as increased risk for short circuiting.

Thermal runaway is one of the primary risks related to lithium-ion batteries. It is a **phenomenon in which the lithium-ion cell enters an uncontrollable, self-heating state**. Thermal runaway can result in: Ejection of gas, shrapnel, and/or particulates (violent cell venting) and extremely high temperatures.

Under abnormal conditions batteries may be subjective to the production of off gases to include, but not limited to Hydrogen, Hydrogen Fluoride, Hydrogen Chloride, Carbon Monoxide, Methane, Ethane & Ethylene gases which may result in smoke, fire, and/or explosion. **Due to various gases present (listed above) appropriate PPE, including SCBA, protective clothing should be worn.<sup>9</sup>**

**3. AES annual reports to investors: AES warns of “inherent risks” of AES lithium-ion battery energy storage systems**

Following the second of AES’s BESS fires in April 2022, AES Corporation included for the first time a description of the fire and other risks associated with the company’s lithium-ion batteries in its 2022 Annual Report filed with the U.S. Securities and Exchange Commission

---

<sup>8</sup> See Schannauer Testimony, November 27, 2024, at pp. 9-11, Schannauer PowerPoint Slides 5-11 (2/3/2025).

<sup>9</sup> First Responder Mitigation Guidelines, Rancho Viejo Solar and Battery Energy Storage System, October 10, 2024, p. 10 of 20 (emphasis in original).

(SEC). After discussing the risks of AES Corporation's electric generation facilities, AES described the "inherent" risks of its battery storage operations:

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.

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 cleanup costs, personal injury and fines and/or penalties.<sup>10</sup>

The same language has been used in AES's Annual Reports for the succeeding years 2023 and 2024.

#### **4. Hazards to residents and businesses**

According to the Western Fire Chiefs Association and others, wildfires, especially in grasslands, can travel at up to 14 miles per hour.<sup>11</sup> At 14 miles per hour, a grass fire starting at the battery site could reach homes 1.5 miles away in less than seven minutes. At 7 miles per hour, a fire could reach those homes in less than 15 minutes. The proposed project site is also notorious for its wind speeds, which can accelerate the progress of such a fire.

The response times for local emergency responders are not fast enough to address the risks, and County responders are often dealing with more than one fire at a time. Santa Fe County also does not have a Hazardous Materials response team. It relies on a team from the City of Santa Fe, which, when available, has an estimated travel time of 24 minutes (16 miles) to the proposed site. If the City's team is not available, the County will seek help from Hazardous Materials response teams in Los Alamos, 49.3 miles from the site (estimated 55 minutes), and/or Albuquerque, 56.5 miles from the site (estimated 53 minutes).

---

<sup>10</sup> Report 10-K (2022 Annual Report) AES Corporation filed with the U.S. Securities and Exchange Commission, March 1, 2023 pp. 58-59. The same language is also included in the company's 2023 Report 10-K filed on February 26, 2024 and the 2024 10-K Report filed on March 11, 2025. (Emphasis added.) See also Schannauer Testimony, November 27, 2024, at p. 14 and Exhibit AS-4 (2/3/2025).

<sup>11</sup> How Fast Do Wildfires Spread? Western Fire Chiefs Association, November 1, 2022. See also Schannauer Testimony, November 27, 2024, at p. 2.

5. **2021 Electric Power Research Institute (EPRI) report.** According to the EPRI report, “Lessons Learned: Lithium-Ion Battery Storage Fire Prevention and Mitigation – 2021,” no “silver bullet” exists to eliminate the risks of battery failures and fires.<sup>12</sup>

6. **EPRI’s 2024 “root cause” report.** EPRI’s 2024 report, “Insights from EPRI’s Battery Energy Storage Systems (BESS) Failure Incident Database: Analysis of Failure Root Cause,” discounts the notion that recent improvements in battery technology and safety codes are sufficient to address the hazards of battery energy storage systems. The report examined the root causes of 26 of the 81 BESS incidents in the EPRI database for which sufficient information was available to assign a root cause. It found that only six incidents were the result of faulty design and the others resulted from errors occurring during integration, assembly and construction; operational issues; and manufacturing defects:

**EPRI Root Cause Report<sup>13</sup>**

Root Causes	Number	%
Integration, Assembly and Construction	10	36%
Operational issues	8	29%
Design	6	21%
Manufacturing defects	4	14%

7. **EPRI’s 2021 report on human health consequences.** EPRI’s 2021 report, “Approaches for Evaluating Potential Human Health Consequences of Utility-Scale Lithium-ion Battery Failures,” stated that emissions from explosions and fires due to lithium-ion batteries can include toxic gases and can result in deposition of toxic heavy metals in the surrounding environment.<sup>14</sup> This was confirmed by scientific analysis of soil samples in the vicinity of the recent Moss Landing, CA, BESS fire.<sup>15</sup>

8. **National Fire Protection Association Standard 855.** NFPA issued its 2023 update of NFPA 855 to address BESS fires with Annex G, “Guide for Suppression and Safety of Lithium-Ion Battery Energy Storage Systems,” in response to the increasing incidence of lithium-ion battery energy storage system fires since the 2020 edition of NFPA 855. Annex G states its purpose “is to help stakeholders, designers, and authorities having jurisdiction (AHJs) understand and implement minimum safety requirements through a permitting and inspection process to ensure efficiency, transparency, and safety in their local communities.”<sup>16</sup>

---

<sup>12</sup>Lessons Learned: Lithium Ion Battery Storage Fire Prevention and Mitigation - 2021.” Electric Power Research Institute report, 2021. See also Schannauer Testimony, November 27, 2024, at pp.14-16.

<sup>13</sup> Insights from EPRI’s Battery Energy Storage Systems (BESS) Failure Incident Database, Analysis of Failure Root Cause, EPRI, May 2024. See also Schannauer Testimony, November 27, 2024, at p. 16.

<sup>14</sup> “Approaches for preventing potential human health consequences of utility-scale lithium-ion battery failures.” Electric Power Research Institute report, 2021. See also Schannauer Testimony, November 27, 2024, at pp. 16-17.

<sup>15</sup> “Moss Landing Battery Fire: Unusually High Concentrations of Toxic Metals Found in Wetlands Near Plant,” siliconvalley.com, Jan. 28, 2025. <https://www.siliconvalley.com/2025/01/27/moss-landing-battery-fire-unusually-high-concentrations-of-toxic-metals-found-in-wetlands-near-plant/> See Exhibit AS-7 (2/3/2025).

<sup>16</sup> NFPA 855-23, Annex G, Section G.1.2.1. See Schannauer Testimony, November 27, 2024, at pp. 17-21.

**9. “I strongly believe we need to adopt more stringent requirements” (Santa Fe County Fire Marshal Jaome Blay).** This was the Fire Marshal’s July 30, 2024 response to the San Diego County (California) Supervisors’ announcement to develop siting regulations for battery storage projects, following battery storage fires in September 2023 and May 2024 that required evacuations and shelter-in-place orders. San Diego County said “building and gaining the public’s trust and acceptance” is necessary. They said the development of standards “will enable the County to gather more meaningful community input, provide better transparency for the public during the review process, and address specific safety and other environmental concerns such as fire risk, air quality, noise, and visual impacts.”<sup>17</sup>

In spite of Blay’s recommendation, neither the Planning Commission nor the Santa Fe County Staff recommended or discussed San Diego’s efforts.

**10. “As other jurisdictions are proactively preparing themselves to permit BESS installations by adapting and adopting new codes and standards, it behooves us to follow their lead for obvious reasons.” (Santa Fe County Fire Marshal Jaome Blay).**<sup>18</sup>

On December 10, 2024, the County’s third-party battery consultant sent a set of Interim Fire Protection Guidelines for BESS Facilities that were adopted by the San Diego County Fire Protection District on that same date. Contrary to the narrow codes-based review conducted by AES and Atar Fire (on behalf of County Staff), the San Diego County guidelines establish additional requirements, recognizing that the NFPA standards and Underwriters Laboratory guidelines do not fully account for the hazards of BESS installations.

Neither the Planning Commission nor the Santa Fe County Staff recommended or discussed Blay’s recommendation or San Diego County’s guidelines.

**11. AES’s Application fails the requirements of the SLDC, Ordinance 2023-09 and NFPA 855 to ensure the safety of projects seeking Conditional Use Permits**

-- **SLDC Section 4.4.3:** AES violated by not seeking the pre-application Technical Advisory Committee (TAC) review of its August 2024 application.<sup>19</sup>

-- **Ordinance 2023-09:** AES violated by not incorporating the updated safety standards as required in Ordinance 2023-09.<sup>20</sup>

---

<sup>17</sup> Agenda Item, Establishing Development Standards for Siting Battery Energy System Storage Projects in the Unincorporated County, San Diego County Board of Supervisors, July 17, 2024, p. 4. See also Schannauer Testimony, November 27, 2024, at pp. 21-22.

<sup>18</sup> December 10, 2024 email string between Fire Marshal Blay and Atar Fire. See Schannauer Legal Authority and Testimony, May 2, 2025, at pp. 19-20.

<sup>19</sup> See Schannauer Testimony, November 27, 2024, at pp. 28-29.

<sup>20</sup> See Schannauer Testimony, November 27, 2024, at pp. 29-31, 34-36, 38-43. See also letters on this issue between Schannauer and County Staff on this issue in the exhibits submitted to the Hearing Officer on December 6, 2024.

-- **SLDC Section 6.3.1:** Neither the Environmental Impact Report nor AES's draft preliminary Hazard Mitigation Analysis mentions AES's prior fires and explosion.<sup>21</sup>

-- **SLDC Section 6.3.10.2:** The Hazard Mitigation Analysis must be completed and mitigation measures must be approved during the Conditional Use Permit process, not after the Permit is issued. AES's HMA is only a preliminary draft that leaves the determination of critical mitigation measures to the final Hazard Mitigation Analysis, in violation of Section 6.3.10.2 of the SLDC.<sup>22</sup>

-- AES's draft preliminary Hazard Mitigation Analysis addresses only the project's risks to facility occupants and facility equipment, and does not address the criteria in Section 4.9.6.5 of the SLDC, which requires consideration of the "general welfare of the area," nor does it fully address the considerations in Annex G of NFPA 855.<sup>23</sup>

-- AES's draft preliminary Hazard Mitigation Analysis does not include the project-specific issues prescribed in Annex G of NFPA 855.<sup>24</sup>

-- **SLDC Section 6.3.11:** AES's Environmental Impact Report does not identify or discuss any safer alternatives for the battery component of the project as required in this section.<sup>25</sup>

## **12. Failure to adopt "Best Practices."**

Even if Annex G of the 2023 edition of NFPA 855 is considered "informational" rather than "mandatory" requirements, the Planning Commission has failed to adopt what the County Fire Marshal recognizes to be Annex G's "best practices" for BESS fire safety: Annex G "provides best practices for Fire Departments nationwide;" "these best practices provided by the NFPA are not mandatory, [but] these are useful guidelines to follow." (Fire Marshal Blay).<sup>26</sup>

County Staff failed to inform the Planning Commission of the Interim Fire Protection Guidelines for BESS Facilities adopted by the San Diego County Fire Protection District in December 2024 in response to BESS fires in San Diego County. The omission was significant in light of Fire Marshal Blay's internal email thanking Atar Fire "for sharing this critical document with us (Land Use and Fire). As other jurisdictions are proactively preparing themselves to

---

<sup>21</sup> Schannauer Testimony, November 27, 2024, at pp. 36-37.

<sup>22</sup> Schannauer Testimony, November 27, 2024, at pp. 44-49.

<sup>23</sup> Schannauer Testimony, November 27, 2024, at pp. 37-38.

<sup>24</sup> Schannauer Testimony, November 27, 2024, at pp. 40-43.

<sup>25</sup> Schannauer Testimony, November 27, 2024, at pp. 49-51, Schannauer PowerPoint Slides 23-24 (2/3/2025).

<sup>26</sup> Virtual public meeting, Public Q&A re. Hazard Mitigation Assessment and Emergency Response Plan, November 6, 2024, Slide 3.

permit BESS installations by adapting and adopting new codes and standards, it behooves us to follow their lead for obvious reasons.”<sup>27</sup>

**C. Criteria 2 and 5. Road congestion during the 12-month construction period and amended CUP application, without public notice, for new water supply plans**

**1. Road congestion during the 12-month construction period and amended CUP application:** Glorieta Geoscience, the County’s third-party reviewer of AES’s Environmental Impact Report, noted likely traffic congestion from trucks delivering water to the site. To address the issue, AES proposed a January 2025 amendment to the CUP application, without public notice, to pipe water from a County fire hydrant on NM 14 during the 12-month construction period. Glorieta Geoscience then recommended significant permit conditions to address the amendment.<sup>28</sup>

**2. Solution is unresolved:** County Staff did not recommend Glorieta Geoscience’s proposals to the Planning Commission, leaving unresolved the potentially conflicting issues of traffic congestion and a new water supply.

**D. Criteria 7. AES’s project is inconsistent with the spirit and intent of the Sustainable Growth Management Plan.**

**1. Santa Fe County's Sustainable Growth Management Plan (SGMP):** "The current emergency response system is not sufficient to service our population today. In the case of a large-scale emergency, where large numbers of County residents would have to be evacuated or hospitalized, the County and provider infrastructure and resources would be insufficient."<sup>29</sup>

**2. New Mexico All-Hazard Emergency Management Act:** The County does not have an “all-hazard emergency response plan” as required by state law.<sup>30</sup>

**3. Federal Emergency Planning and Community Right-to-Know Act (EPCRA):** The County does not have an approved emergency response plan for hazardous chemical releases under the federal Emergency Planning and Community-Right-to-Know Act and the New Mexico Hazardous Chemicals Information Act.<sup>31</sup>

---

<sup>27</sup> See Schannauer Legal Authority and Testimony, May 2, 2025, at pp. 19-20, discussing Exhibit 5, December 10, 2024 email string between Fire Marshal Blay and Atar Fire.

<sup>28</sup> Schannauer Legal Authority and Testimony, May 2, 2025, at pp. 21-23, discussing Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, Glorieta Geoscience, December 4, 2024.

<sup>29</sup> Schannauer Testimony, November 27, 2024, at pp. 22-23, discussing Santa Fe County Sustainable Growth Management Plan, section 9.1.1.

<sup>30</sup> Schannauer Testimony, November 27, 2024, at pp. 23-24.

<sup>31</sup> Schannauer Testimony, November 27, 2024, at pp. 24-26.

**4. Proximity to residential zoning districts:** The AES project would be shoehorned in between two residential zoning districts in which its siting would be prohibited.<sup>32</sup>

**5. Hazards similar to uses prohibited in Rural Fringe areas:** Given their fire risk, utility-scale solar facilities that include battery storage should be sited like “Gas and Electric Power Generation Facilities” that the SLDC prohibits in Rural Fringe areas.<sup>33</sup>

**6. Conflicts with County’s established preferences for Community Solar projects which are a fraction of the size of the AES project:** The AES project, which at 96-megawatts is far larger than a 5-megawatt community solar facility, conflicts with the County’s official preference that community solar projects not be sited on lands with healthy, intact ecosystems, but instead on brownfield, built environment, or degraded land.<sup>34</sup>

#### **IV. Due Process Violations**

**A. County Staff cannot be an advocate and a decision-maker in the same case.** The commingling of those functions in Staff’s public and private roles violated parties’ due process rights.<sup>35</sup>

**B. County’s restrictions on discovery and cross-examination prevented opposing parties from obtaining relevant evidence.** The inability to conduct discovery and to directly cross-examine opposing witnesses violated the right to produce relevant evidence and, thus, the right to a fair hearing.<sup>36</sup>

---

<sup>32</sup> Schannauer Testimony, November 27, 2024, at p. 26.

<sup>33</sup> Schannauer Testimony, November 27, 2024, at p. 27.

<sup>34</sup> Schannauer Testimony, November 27, 2024, at pp. 27-28, discussing Santa Fe County Resolution 2022-054.

<sup>35</sup> For more detail, see Schannauer Legal Authority and Testimony, May 2, 2025, at pp. 1-41.

<sup>36</sup> Schannauer Legal Authority and Testimony, May 2, 2025, pp. 41-44.

**Designation of portions of the record  
before the Planning Commission and Hearing Officer**

**1. Hearings and Decisions (to be provided to the BCC by County staff pursuant to SLDC Section 4.5.4):**

**-- Planning Commission proceedings**

- Transcript of January 16, 2025 Planning Commission Prehearing Conference
- Transcript of February 3-4, 2025 Planning Commission Hearing
- March 20, 2025 Order

**-- Hearing Officer proceedings**

- November 14, 2024 Hearing Officer Prehearing Conference
- December 4, 2024 Hearing Officer Hearing
- December 23, 2024 Recommended Order

**2. Schannauer testimony and exhibits (included in this filing):**

**-- May 2, 2025 Schannauer Legal Authority and Testimony on Denial of Due Process, including the following exhibits:**

- 1        Staff Memorandum to Planning Commission, January 29, 2025
- 2        Email string September 17-18, 2023 between Selma Eikelenboom and Fire Marshal Jaome Blay
- 3        County Staff email string June 11-August 7, 2024 on Annex G stakeholder process
  - June 11 email from Blay with proposed press release on HMA stakeholder process
  - August 5 email from Blay to resident on proposed stakeholder process
  - August 6 email from Shaffer scheduling Staff meeting (with proposed resolution) for August 13 BCC meeting
  - August 7 email from Blay to Growth Management to discuss “next course of action” after stakeholder process was rejected at August 7 meeting
- 4        Case Timelines and Expiration, Yutzy Memorandum to Building and Development Staff, July 2, 2024
- 5        December 10, 2024 email string between Fire Marshal Blay and Atar Fire
- 6        Interim Fire Protection Guidelines for BESS Facilities, San Diego County Fire Protection District, December 10, 2024.
- 7        December 3, 2024 email, Yutzy to Gordon (AES), Mayer (AES), Gonzales (Staff) and Sisneros (Staff) re Rancho Viejo – Status Update

8 AES Response to the Third-Party Review of the Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, SWCA Environmental Consultants, January 2025

9 Review of Environmental Impact Report for the Rancho Viejo Solar Project in Santa Fe County, New Mexico, Glorieta Geoscience, January 29, 2025 Report

10 April 24, 2025 email from Roger Prucino to Selma Eikelenboom-Schieveld

11 Email communications between Staff and AES regarding Staff's third-party reviewers:

-- December 10-16, 2024 email string: Staff and AES re Rancho Viejo -- EIR Third Party Review Comments

-- January 3-10, 2025 email string: Staff and AES re Rancho Viejo Follow-up Items

-- January 17-February 22, 2024 email string: Staff and AES re Questions and Comments related to January 17 meeting with Glorieta Geoscience

-- January 31, 2025 email string: Staff and AES re Rancho Viejo Solar – Atar Fire Review

12 October 16, 2024 Hearing Officer Order on Motion to Intervene

13 Motion Requesting Order Addressing *Ex Parte* Communications and County Staff's Blocking of the Hearing Officer's October 16, 2024 Order on Motion to Intervene, November 20, 2024

14 Prucino Memorandum, Re: Planning Commission Meeting February 3, 2025, Rancho Viejo Limited Partnership, et al, January 31, 2025

15 February 4, 2025 email string between Nathaniel Crail and Alexandra Ladd regarding Staff participation in Executive Session

16 November 1, 2024 Notice of Special Meeting for November 14, 2024 Prehearing Conference with Hearing Officer

17 January 8, 2025 Notice of Special Meeting January 16, 2025 Prehearing Conference with Planning Commission

18 January 24, 2025 Order on Staff request for consideration of procedural matters in advance of February 3, 2025 hearing

19 January 27, 2025 Order on Staff request for consideration of procedural matters in advance of February 3, 2025 hearing

20 November 8, 2024 Motion to Compel Discovery Responses and Supporting Brief

21 February 2, 2025 Cross-Examination questions submitted by Schannauer

**-- February 3, 2025 Schannauer PowerPoint presentation, including the following exhibits submitted for the February 3-4 Planning Commission hearing:**

Exhibit AS-1: Schannauer PowerPoint Presentation, February 3, 2025 (pdf version)

Exhibit AS-2: Schannauer Testimony for Hearing Officer Hebert, November 27, 2024 (Admitted into evidence at December 4, 2024 hearing)

Exhibit AS-3: AES Corporation Subsidiaries, SEC Form 21.1, February 26, 2024

Exhibit AS-4: AES Corporation warning to investors

Exhibit AS-5: "Huge battery fire at Moss Landing battery plant spurs evacuations, road closures, sends out plumes of toxic smoke," San Jose Mercury News, January 17, 2025

Exhibit AS-6: Qualifications

Exhibit AS-7: Moss Landing Battery Fire: Unusually High Concentrations of Toxic Metals Found in Wetlands Near Plant

Exhibit AS-8: Monterey County Information Sheet: Hydrogen Fluoride (HF) and Particulate Matter (PM) from a Battery Fire

**-- November 27, 2024 testimony, PowerPoint presentation, and the following exhibits admitted into evidence as Exhibit AA at the Hearing Officer's December 4, 2024 hearing:**

- 1 Schannauer Qualifications
- 2 October 16, 2024 Order on Motion to Intervene
- 3 September 17-18, 2023 email string between Eikelenboom and Fire Marshal Blay
- 4 AES Corporation Annual Reports for 2022 and 2023
- 5 July 31, 2024 email from Fire Marshal Blay to Commissioner Hank Hughes, County Manager Shaffer and other County officials
- 6 February 18, 2024 letter from Schannauer to Board of County Commissioners
- 7 November 1, 2023 letter from Schannauer to Board of County Commissioners
- 8 March 29, 2022 TAC letter for the Rancho Viejo Solar Project
- 9 August 19, 2024 TAC letter for the Linea Energy solar project

10 April 28, 2024 letter from Schannauer to Fire Marshal Blay and Growth Management Department Director Ellis-Green on Annex G

11 April 29, 2024 letter from Fire Marshal Blay to Schannauer on Annex G

12 How Fast Do Wildfires Spread? Western Fire Chiefs Association, November 1, 2022

**-- Exhibits submitted to the Hearing Officer on December 6, 2024:**

**- Schannauer letters to County officials:**

1 November 1, 2023 letter – Schannauer to Commissioners, County Manager Shaffer, County Attorney Jeffrey Young, Fire Chief Jacob Black, Fire Marshal Jaome Blay and Growth Management Director Penny Ellis-Green “Re: The County’s adoption of the International Fire Code and National Fire Protection Association Standard 855”

2 November 20, 2023 letter – Schannauer to Penny Ellis-Green and Case Manager Jose Larranaga “Re: NFPA 855, Hazard Mitigation Analysis, Trade Secrets and the Rancho Viejo Solar Project”

3 January 21, 2024 letter – Schannauer to Penny Ellis-Green, Jaome Blay and Assistant County Attorney Roger Prucino “Re: Follow-Up Questions from the January 17 Meeting on the Conditional Use Permitting Process for Commercial Renewable Energy Projects”

4 February 12, 2024 letter – Schannauer to County Commissioners with copies to Shaffer, Young, Black, Blay and Ellis-Green “Re: National Fire Protection Association Standard 855”

5 February 18, 2024 letter – Schannauer to County Commissioners with copies to Shaffer, Young, Black, Blay, Assistant Fire Chief, Emergency Management and LEPC Coordinator Martin Vigil and Ellis-Green

6 February 27, 2024 letter – Schannauer letter to County Commissioners with copies to Shaffer, Young, Black, Blay and Ellis-Green “Re: Annex G of the 2023 edition of National Fire Protection Association Standard 855”

7 April 28, 2024 letter -- Schannauer to Blay and Ellis-Green with copies to County Commissioners, Shaffer, Young, Black, Case Manager Dominic Sisneros, and Building and Development Manager Jordan Yutzy “Re: Ordinance 2023-09 and Annex G of NFPA 855”

8 June 2, 2024 letter – Schannauer to Blay, Ellis-Green, AES Senior Manager Joshua Mayer, and Nick Bartlett, Atar Fire “Re: Request to identify ‘stakeholders’ to participate in Hazard Mitigation Analysis under NFPA 855 for the Rancho Viejo Solar Project”

9 July 5, 2024 letter – Schannauer to Blay, Interim Growth Management Director Leandro Cordova, Deputy Growth Management Director Lisaida Archuleta, Mayer and Bartlett with copies to Shaffer, Young, Black, Sisneros, Yutzy, Brian Egolf and Matt Gordon “Re: Request to start the stakeholder process for the Hazard Mitigation Analysis under NFPA 855 for the Rancho Viejo Solar Project”

10 July 31, 2024 letter – Schannauer to Shaffer with copies to Young, Black, Blay, Cordova, Archuleta, Growth Management Director Alexandra Ladd, Yutzy, Sisneros and Commissioner Hank Hughes “Re: Request for virtual public meeting on the Rancho Viejo Solar Project application”

11 August 25, 2024 letter – Schannauer to Ladd and Blay with copies to Shaffer, Young, Cordova, Archuleta, Yutzy and Sisneros “Re: Public input for the Conditional Use Permit process for the Rancho Viejo Solar Project”

**- Letters from County Staff and AES responding to the above letters:**

12 April 29, 2024 letter – Blay to Schannauer “Re: Ordinance 2023-09 and Annex G of NFPA 855”

13 June 7, 2024 letter – AES Permitting Project Manager Matt Gordon to Schannauer with copies to Shaffer, Young, Black, Sisneros and Yutzy responding to Schannauer letter of June 2, 2024 letter regarding stakeholder input under Annex G of NFPA 855

**- Other relevant items:**

14 Ordinance 2023-09

15 Annex G to NFPA 855

16 February 29, 2024 letter -- Larranaga letter to Matt Gordon, AES Clean Energy/The AES Corporation “Re: Case #23-5010 AES-Rancho Viejo Solar Conditional Use Permit (CUP) 4152 NM 14 Santa Fe, NM 87508”