TRANSCRIPT OF THE

SANTA FE COUNTY

SLDC HEARING OFFICER MEETING

Santa Fe, New Mexico

December 4, 2024

1. This meeting of the Santa Fe County Sustainable Land Development Code Hearing Officer meeting was called to order by Santa Fe County Hearing Officer Marilyn Hebert on the above-cited date at approximately 9:36 am at the Santa Fe Convention Center.

2. Approval of Agenda

HEARING OFFICER HEBERT: There's one case that's going to be heard today and that's the Rancho Viejo Solar, AES, Clean Energy Development, LLC request for approval of a CUP, conditional use permit to allow a 96-Megawatt solar facility on an 828-acre tract. The site is zoned Rural Fringe. It illustrates on the use matrix that that is a commercial solar energy production facility is a conditional use. The site is addressed at 211 Twilight Way which will be accessed via Highway 14 in Commission District 5.

3. Public Hearings

1. Rancho Viejo Solar, LLC Conditional Use Permit (CUP). Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC; AES Clean Energy Development, LLC (jointly, the Applicant), request approval of a CUP to allow a 96-Megawatt solar facility on 684+/- acres of an 828-acre tract. The site is zoned Rural Fringe (RUR-F). Appendix B, Use Matrix of the Sustainable Land Development Code (Ordinance 2016-9, hereafter SLDC) illustrates that a commercial solar energy production facility is a conditional use within RUR-F zoning. The site is addressed at 211 Twilight Way which will be accessed via Hwy. 14, SDA-2 (Commission District 5). Parcel ID # 99312727 [*Application and all exhibits are available on BoardDocs*]

HEARING OFFICER HEBERT: At this time I would just ask the representatives for the four different entities that are participating in this matter to identify who's going to be representing them and that would be AES itself, staff, the Clean Energy Coalition and the San Marcos Association. So at this time if the AES would identify the representative.

JOSHUA MAYER: Good morning Hearing Officer Hebert. My name is Joshua Mayer. I'm the Senior Development Manager for AES Clean Energy. I will be leading the primary presentation and I will be joined with colleagues for any Q and A session. Would you like them to introduce themselves now as well?

HEARING OFFICER HEBERT: No. That's fine, Mr. Mayer. Thank you. Staff, is Dominic Sisneros going to be the representative?

JORDAN YUTZY (Building & Development Services): Hearing Officer, yes. Dominic Sisneros, Case Manager, will be presenting for the County.

HEARING OFFICER HEBERT: Thank you. And the Clean Energy Coalition.

CATHERINE BABBITT: Good morning. My name is Catherine Babbitt. I'm on the Executive Steering Committee of the Clean Energy Coalition for Santa Fe County. I will be our representative at this hearing. We will have three witnesses.

HEARING OFFICER HEBERT: And the San Marcos Association.

DENNIS KURTZ: Good morning. I'm Dennis Kurtz, President of the San Marcos Association. And we don't plan to be calling any witnesses.

HEARING OFFICER HEBERT: Thank you, Mr. Kurtz. Since you're up here, I will ask you, I noticed that you posted the testimony of Ashley Schannauer on your San Marcos Association website. Are you planning to introduce that as an exhibit and have Mr. Schannauer testify?

MR. KURTZ: No. Our website is for public information purposes and that's why it's there. It's not connected to our presentation this morning.

HEARING OFFICER HEBERT: All right. Thank you.

MR. KURTZ: Thank you.

HEARING OFFICER HEBERT: On another preliminary matter I would ask that the Clean Energy Coalition has an outstanding motion to postpone this hearing based on an issue with the property description. Could you come back Ms. Babbitt and explain that problem?

MS. BABBITT: Yes, ma'am. We first learned when the Santa Fe County posted its official report as it pertains to this project. To our understanding that report was posted on November 28, albeit the date on the report shows December 4, which is obviously today. But when it was posted it contained a new site location map that we had not seen in any of the documents prior to November 28th. The new site map extended the boundary of the projects but it did not contain any details of the project, i.e., location of panels, BESS facility, substation, etc. It was just an outline that was different from anything we had seen before and we were unclear about the change, how that affects site specific location reports that were done using an old map that did not incorporate this new 100+ acres that the new County report map has.

HEARING OFFICER HEBERT: Ms. Babbitt, you're referring to the vicinity map, I believe, on page 1 of the staff report. Is that correct?

MS. BABBITT: Yes, ma'am.

HEARING OFFICER HEBERT: All right. Let me call Mr. Sisneros up to explain this confusion.

DOMINIC SISNEROS (Building & Development Services): Good morning, Hearing Officer Hebert. So the vicinity map that is shown on the report on page 1 is actually the parcel as a whole as it is as a legal lot. What was submitted by AES is

only showing the boundaries of the actual developed area. That will be part of the redlines that they will need to update. They will need to show the entire parcel. The addition that was brought up that is being shown there, that is not going to be utilized at all. That's going to remain open space. Again, that's just shown on our vicinity map as the parcel as a whole, the whole 828 acres.

HEARING OFFICER HEBERT: So Mr. Sisneros, you're saying that the approximately 100 acres will not be impacted at all? Nothing will be built on that 100-acre portion?

MR. SISNEROS: That is correct, and I believe my calculations were closer to like 96 acres, I believe is what it was, but that is correct. It is going to remain as natural open space.

HEARING OFFICER HEBERT: Ms. Babbitt, does that address your concern?

MS. BABBITT: The only other question I would have, Officer Hebert, is the new map shows the boundary moving from what was previously 1.3 miles from Eldorado community to 4,000 feet of our community. Does that have any impact on studies, site locations or you're saying that doesn't matter?

HEARING OFFICER HEBERT: Would you respond?

MR. SISNEROS: Yes, so that 4,000 feet is basically just that easterly corner of the property, the most easterly corner of the property was calculated. That is not the distance from the BESS, or from any of the solar arrays.

MS. BABBITT: It does not affect any of the site location reports and studies that were conducted?

MR. SISNEROS: No, it does not.

HEARING OFFICER HEBERT: Thank you, Mr. Sisneros.

MR. SISNEROS: Thank you.

HEARING OFFICER HEBERT: Does that address your concern, Ms. Babbitt?

MS. BABBITT: Yes, ma'am.

HEARING OFFICER HEBERT: Okay. Thank you. Today's order of presentation will be AES will present its application case and it's what will be addressing the different exhibits that were attached to its application. Following that the parties participating will have the opportunity after each witness to cross examine that witness at that time. Following AES' presentation the staff will present its witness on this CUP application. And again, Clean Energy and San Marcos will have the opportunity for cross examination of those witnesses in the same order.

After that, Clean Energy will present its witnesses and any exhibits it may have, and the same order of cross examination will be available to AES, and staff, if they have any questions. And then finally San Marcos will present its testimony and its exhibits. At that point that would conclude that portion of the evidentiary part of this hearing and at that point then public comment will be allowed, and public comment will be limited to three minutes. And I think at that point many hours will have passed and we'll all be hoping that we won't have a lot of redundancies because I think some of these issues are the concerns of many of the people in this room.

So with that, I would ask that the AES, Mr. Mayer would come forth and present the case.

MR. MAYER: Thank you, Hearing Officer Hebert. Good morning to members of the public. I'm very pleased to have the attendance that we have today. I think public participation is encouraged and I look forward to any discussion that we have after this presentation.

So as I begin this presentation I will say, it will be lengthy. I will try to be short and sweet and to the point but there is a lot of ground to cover, so I request everyone's patience and respect during this presentation. I know there may be many folks here that may have preconceived notions of what this project is or is not. I will aim to hopefully dispel many of those concerns throughout this presentation and I request open minds and open ears in doing so.

So, my name is Joshua Mayer. I'm the Senior Development Manager at AES Clean Energy. I've been working for AES for about ten years. I absolutely love my job and I love what I do day in and day out, which is trying to accelerate the clean energy transition for not only New Mexico but this country as a whole. And so it's with that great honor that I get the opportunity to present the solution of the Rancho Viejo Solar and Storage project to you all today, which as stated, is 115 megawatt DC, 96 megawatt AC solar project coupled with 192 megawatt-hour battery. This provides an exceptional opportunity to accelerate Santa Fe's clean energy transition with a locally sourced, dispatchable source of solar power.

So as I said, this will be a very detailed and lengthy presentation but I am aiming to have some structure to it. I'll begin by very importantly just stating the foundational reasons for why are we here today, what brings this project to fruition. I'll follow that by describing who AES is and AES Clean Energy has a local subsidiary. We'll then dive more into the project specifics, including the location and overview of the technology and design and layout. I'll summarize at a very high level the exceptional level of project diligence that we've conducted in evaluating the site suitability for hosting this project, and then I'll conclude with a review of how we believe that this project meets the approval criteria for conditional use permit, along with an estimated project timeline, and a final summary of the exception economic and environmental benefits that this project presents.

Okay, so why are we here today? Here today we have issued an exceptional level of modernity and quality of living. We are living in a time in which we have convenience and an ease of just general well-being and economic prosperity that is generally unrecognizable to generations prior to us. Now, that has come at a cost because powering the economy to get us to this point has largely been fueled by coal, natural gas, and oil, and through that generation there's been an increase in the carbon dioxide concentrations in our atmosphere. So prior to the industrial revolution, the naturally occurring concentration of CO_2 in the atmosphere was about 280 parts per million. If you look at this chart you can see that very quickly, since the dawn of the industrial resolution, and exceptionally in the last 100 years, we are now currently at a level of about 420 parts per million.

[Duly sworn, Joshua Mayer testified as follows:]

MR. MAYER: My name is Joshua Mayer. I represent AES Clean Energy at 282 Century Place, Suite 2000, Louisville, Colorado, zip code 80027.

As I was saying, the current concentrations of CO_2 have already climbed to 420 parts per million. This is very notable because climate scientists say that in order to

prevent the worst of the climate change impacts, we need to reverse this course and this trend to bring overall concentrations down to 350 parts per million. The current trajectory of course will not get us there. The status quo will not serve. Interesting to note of course is that for folks, perhaps in this room, born in 1950, the level of annual carbon dioxide emissions has increased nine-fold in just that lifespan.

So, when presented with this information, surely no one is going to stand up and say let's return to the Stone Age in order to reverse this trend. We all want to hold on to the modern convenience that we have. Fortunately, there are solutions to get us there and to reverse this trend but it required bold action and coordination, at not just global level but even local.

So, how are we getting here? How is this trickling down to New Mexico? Well, at the global level we have the US Paris Accord signed in 2015 by 196 nations committing to take action to reduce the emission of greenhouse gases. New Mexico is presenting itself as a leader in the United States by passing the Energy Transition Act of 2019, which is committing the state and the utilities that provide power to the ratepayers of this state to source that power 50 percent from renewables by 2030. That's roughly only five years away, and to be 100 percent carbon-free resources by 2045. This has trickled down to local levels as well including both for the City of Santa Fe, as outlined in their 25-year plan, and Santa Fe County itself through the passing of Resolution 2023-74.

As the utility providing energy and power to the residents of Santa Fe and other parts of New Mexico, PNM, who has the awesome responsibility of ensuring that our lights are on here today in this room right now, they need to plan for this transition which, you know, currently is buoyed by significant fossil fuel resources, such as coal plants in the Four Corners region, or natural gas plants spread throughout the state. They need to plan strategically to make this transition to meet those goals. And so there is a request for proposal anticipated for release at the end of this month that will seek resources with a guaranteed end service date of 2029 to 2032, and this project is positioning itself to participate in that request for competitive proposals.

Now, when we look at replacing coal-powered plants or natural gas-powered plants with solar farms and wind farms, there is a crucial component that needs to accompany these projects, because we all expect that the lights will turn on when the sun's not shining and the wind's not blowing. And that requires battery storage. And we're seeing it take place throughout the country. In Texas, for example, where battery storage is helping save hundreds of millions of dollars and maintain a resilient grid under extreme weather, especially when you have spiking power demand during heat waves or in significant cold snaps.

In California, we are also seeing batteries being a crucial linchpin to maintaining a stable and resilient power grid, cranking out more electricity than nuclear power and to avoid blackouts. Illinois, relying on battery storage as it closes its coal-powered plants. And this is not just in the United States. This is a global phenomenon that utilities and power providers are looking to implement to help this transition as we see it happening in Australia and in Europe.

So who is qualified to bring these kinds of solutions to New Mexico? AES is a company that is well positioned to be able to provide this kind of solution. As is evident through our global reach in approximately 13 countries we serve power to more than 22 million residences and businesses through a significant portfolio of renewables and still

some thermal generation that we are committed to transitioning out of. And throughout all of this, we are often recognized as exemplary in our commitment to sustainability and for accelerating the clean energy transition.

Specifically in the US I represent AES Clean Energy which is committed to the development of these renewable resources here in the United States. We are currently operating over 550 projects in more than half the country, representing over seven gigawatts of operating renewable assets. We are often recognized as being one of the industry leaders and especially with large corporates such as Amazon, Google and Microsoft for helping meet their renewable energy goals. And we actually have very strong links to Santa Fe as two of our executive leadership members grew up in Santa Fe and graduated high school here.

So let's begin to talk more specifically about the Rancho Viejo project. So this is located approximately three miles south of the city limits, two miles east of Highway 14, and 1.3 to 1.5 miles west of Eldorado, a third of a mile from San Marcos to the southwest. Important to note is that the battery energy storage facility, which is of interest to many folks here, that is located a full 1 ½ miles from the nearest residence in either of those two neighborhoods, and that is the northeast corner. I'll have a zoomed in picture a little later to show. The overall fenced acreage for the project is about 680 acres, and this is located on an overall tract in excess of 8,000 acres.

Our sponsoring landowner for this project is also looking at doing a transfer of development rights of nearly 5,000 acres in the vicinity of this project to ensure a long-term land buffer between this project and its neighbors.

I believe this was covered in the opening discussion, but just for clarify, the blue outline is the legal lot line, and the red area is where our project footprint will go. So nothing has changed in that. There will be overall, both within the array and in the extended parcel area over 340 acres of natural open space.

So speaking further, it's important to speak about the site's suitability. So this project is located in one of the lowest wildfire risk categories for Santa Fe County, as this map here presents. I will be able to show some images later which exemplify the very low amount of vegetation that is in this area that limits any fuel sources.

Now, there's been a lot of discussion about where does the power go? Is this project really benefiting Santa Fe, or is it just some means to take advantage of the area and send the power outside the state in the benefit of others? Well, it's a complex question but I'll break it down in two pieces. So the first part is that PNM itself, when they will evaluate our project, they will look for our ability to deliver power to their load centers, so that is centers where there's a high amount of electricity demand. So you can imagine Albuquerque and Santa Fe among other cities as those load centers. So we need to be able to prove that we can deliver to the Zia Substation, that there's enough thermal capacity on the lines for our power injection to be able to get to that substation, based on their traditional power flows. So we would be building the 2.3-mile gen-tie extension from the northeast corner of our project to hit the existing 115kV Zia-Valencia transmission line that currently bisects through the Eldorado neighborhood. We would tap into that line and under general power flow studies, that energy will flow predominantly into Santa Fe.

PNM itself in a recent *Searchlight New Mexico* article, when asked about some of the claims that are purported on this project have stated very straightforwardly that PNM

will be able to charge and discharge the battery at its sole discretion and operate the facility to the sole benefit of PNM customers. Furthermore, they add that under general power flow conditions, that energy will predominantly flow to Santa Fe, and in period of low load and max output, after satisfying the entirely of Santa Fe load, perhaps even flow to our neighbors in Albuquerque.

So now a little bit more nuance. So once we are able to prove that the size of the pipe where the faucet there is for our solar project is adequate in size to get to a load center or a transmission substation that can step down to the distribution level to feed power to our residences and our businesses, it effectively – the electrons are indistinguishable. So they mix in a support of the overall grid and its demands. Now, as a utility, they have an awesome responsibility to in real time to be managing the amount of power generation that's coming from various sources, whether it be fossil fuel plants or solar or wind, or even nuclear, they have to maintain the inflow of electricity with the outflow from us turning on lights and turning on machines, whether that be residences or businesses.

They have to make sure that that is maintained in balance to keep a certain frequency so that our appliances can work and the grid does not encounter a brownout or a blackout. So what we are aiming to do, of course, is increase the overall amount of solar energy that is supporting the grid wherever the energy is being used, and decrease the amount that is being fed from fossil fuel resources.

So back to the project specifically. I've already stated the project sizes and the energy output. I think it's important to try and translate into layman's terms of what that actually means if you're unfamiliar with megawatts and gigawatts and megawatt-hours. So effectively, as stated, we'll be serving the PNM transmission grid and providing power to PNM ratepayers. The estimated amount of energy production is nearly 270 gigawatt-hours. That is the equivalent of the entire annual residential load of Santa Fe, which is also approximately 37,000 households. Just think about that for a minute. Think about the amount of work and effort that would go into placing rooftop solar panels on 37,000 homes, and then also factor in whether those households can afford a solar system, or whether their roof is suitable or adequate, or if there's trees that are shading it. It would be a monumental task and take decades to try and deploy if it was feasible for all of these residents.

So with one single project we can make a significant leap forward in satisfying a substantial amount of Santa Fe's energy needs, all in support of the overall state goals of 100 percent carbon-free energy by 2045.

So we expect this project to operate close to 35 years, at the end of which we would decommission and restore the land. We anticipate an approximately year-long construction process and we'll be able to both remotely operate the project but also have onsite O&M staff to maintain the facility on a daily basis.

Overall, when compared to other forms of development solar energy is low impact with minimal noise, little water use, and limited lighting.

Now, through the course of the development of this project, which has been underway for many years, including since the time of our initial application in January of 2023, we've had several engagements with the community here to hear feedback and listen to concerns. So we've heard many of those and made adjustments where possible. So very early on in the project design phase, this project actually extended much further

to the west to take advantage of large swaths of flat land, closer to Highway 14 and directly north of the San Marcos community. We did hear concerns about obstruction to the visual viewshed to the north and so we took an earnest look at how we could potentially condense or shift the location of our solar panels to remove that impact on viewshed north of the San Marcos community and we were able to achieve that. So that's now reflected in our designs going forward, so that there's no more viewshed obstruction to the north.

We have reduced the panel heights from original 12 feet and max tilt down to eight. We've had significant consultations with the Santa Fe County Fire Department and have integrated their feedback. That includes a full perimeter access road going around the entire site to improve rapid response to all areas of the site, as well as to act a perimeter fire break. We've also integrated their suggestions for a 30,000 gallon water storage tank and of course are now specifying a 1400 square foot O&M building to house our four full-time O&M staff. We are further presenting the optionality for two different gen-tie transmission pole types, either monopole or H-frame, which I'll discuss later in the presentation.

If we zoom a little bit closer in to the northeast corner. That's kind of where a lot of the action is happening. That's not just your traditional solar panels, I'll have some further detail on additional slides, but if we take a close look we're demonstrating both the appropriate signage around the water tank to ensure that there'll always be access for the Fire Department if needed to that resource. Our battery storage project is the large rectangle just to the east of the water tank, and the project substation or the [inaudible]. Digital step-up from 345 kV to the 115 to enter into the transmission system is located there in the northeast corner. We'll have a large lay-down area for storage of our construction materials throughout the process, after which we will then establish the O&M building and the septic and leach field and 5,000 gallon water tank to support their needs, since this will otherwise be an off-grid office building.

We are also avoiding areas of slope that would be challenging to place solar panels on and we are setting back appropriately from any surveyed environmentally sensitive areas. This is also the point of origination of that 2.3-mile gen-tie to meet the Zia-Valencia transmission line.

Okay, so I'm sure many of you in this room are probably familiar with solar panels. They are now of course one of the cheapest forms of energy, so they are popping up really in all areas and geographies of this country. So the solar panels, as I said, will only be about eight feet tall at max height. We will be employing trackers, which is used to maximize the overall output of the facility by tracking the sun from the east in the morning to the west in the evening. So it's ever so almost imperceptible in real time but over the course of hours you'll notice that these solar panels are moving. Right? So at mid-day when the sun if overhead they'll actually be in a flat position and only about 5 ½ feet off the ground. There will be approximately 14 ½ feet of ground between each of these rows of solar panels, and will only be penetrating the ground every 22 feet with a steel post.

We are currently proud to specify a New Mexico manufactured racking and tracking product which I'll speak to more later about the economic benefit that that could bring.

Okay, batteries. This, perhaps, is a technology that's more novel to many of you in the room because it's really taken hold in the last several years as the overall penetration of renewables has increased on the grid and it's become more of a challenge for utilities to manage those faucets that I showed before to be able to respond to the real time load. And so with a high degree of renewables penetration, they want to be able to shape that output and shift it to when it's needed. So when solar is producing a maximum output in the middle of the day, the grid may not be all that stressed. And so they don't actually need the power at that time. They'd rather shift it into the evening when we're turning everything on as we get home and make dinner.

So batteries are now an essential feature of every solar energy project and PNM will actually not even entertain a solar project that is not coupled with storage. So just a few of the high level specs. I actually have a representative photo. This is an early generation of our energy storage solution but it still is helpful in illustrating what do these things look like. Effectively they look like your traditional ISO shipping container, but they are much more than that. They are heavily modified and designed with safety standards and fire resistance ratings to be appropriately air and temperature controlled to house lithium-ion batteries.

So one of these containers is about 40 feet long, eight feet wide and about 9 ½ feet tall, and within it it's filled with effectively what looks like your traditional data server racks, but it's various modules containing battery cells that are all linked together in series to be able to produce and – I should say store and then release excess solar energy – or not excess, but actually just solar energy generated from the facility to be released upon demand from the utility when they need it the most.

Also actually what's important to highlight here is that through the evolution of battery energy storage technology we've arrived at these non-occupyable and non-walk-in containerized solutions. That is to reduce any risk to operational personnel or first responders, and these of course, as I mentioned before are fire rated to be non-combustible.

This is just a quick little zoom in of the battery storage area, which was just an empty box in the other site layout. So here you can see more specifically the spacing of the battery storage equipment, so effectively we'll have 38 containers sited on 19 concrete pads. They're currently specified to be in pairs with about 21 feet in between each concrete pad. They are connected to power conversion stations which include inverters and medium voltage transformers. There will be an ingress and egress to the east and west, and we're set back 20 feet from the edge of the furthest storage pads to the fence, and this area will very likely be graveled to further reduce any combustible vegetation in the area and maintain a defensible space.

So there's a lot here and honestly, we have an exceptional level of diligence and technological evolution that has gone into really making this the top of the line technology. So there'd be a lot that I could talk to here and also my colleagues that are joining me, but I'll try and just highlight a lot of the key multi-layered safety approaches that we've integrated into our modern energy storage solution here on this slide.

So there's a lot to look at but what's important to point out is that as I said, we need to make sure these batteries continue to operate within an acceptable climate and environment, so we achieve that through the use of external chillers. We have multiple sensors throughout the entire facility that are constantly, on second intervals, monitoring

the temperature of the air, the temperature of coolants and battery cells, looking to detect smoke, any off-gassing from cells, as well as the voltage and current flowing to battery cells. If at any point the monitoring systems detect that any of these parameters are leaving an acceptable operational range there are auto-shut-down features that would cut the current flowing to that particular battery module or cell to stop the beginning of any kind of incident of a defective cell.

Should those all fail, or actually, I'm sorry. Actually not that they fail, if this detects and then the cutoff of current does not stop an event, we then have direct injection fire suppressant that can go directly – be released directly to the point of failure to be able to put out any indication of the start of a flame or a thermal runaway event. All of this has been designed to very strict codes and standards, most specifically the NFPA 885 code, as well as NFPA 68 and 69 compliance regarding the use of deflagration panels and gas accumulation exhaust.

In addition to that, there are included fire-rated partitions, both between different sets of the modules as well as the electrical compartments in the communications devices, so that an event initiated in any one would not – or be less likely to cascade to the rest of the container. All this has been factory listed or will be evaluated and factory listed prior to construction to UL 9540 standards as well as 1973, and most importantly, our test results demonstrate that this facility can successfully suppress thermal runaway with no indication of fire or smoke outside of the container.

So certainly have been incidents in the news of battery storage facilities and as any technology that's at the forefront of innovation and deployment, these things to happen but the industry learns from them and works to integrate those lessons learned into subsequent technologies, or to subsequent generations of the technology.

So with this graph, which has been produced by EPRI, demonstrates is that as the amount of deployment of energy storage solutions globally has increased exponentially from approximately one or two gigawatts in 2018 to well over 50 gigawatts at the end of last year, the overall rate of failure incidents has largely remained the same, and a significant number of those are actually occurring outside the US, but what is clear is that the overall failure rate is falling off precipitously. So to put some of this deployment into context, Rancho Viejo, the battery storage system itself is rated 48 megawatts at four hour duration, so at the end of 2023 there was already 50 gigawatts deployed globally in the US, that was 16 gigawatts in 2023, so roughly the equivalent of 330 of these projects already operating in this county. By the end of this year, as we're already in December, that amount of deployed energy storage is already doubled to 30 gigawatts. So now we're talking that operating today in the United States there's the equivalent of over 660 of these facilities serving the grid and keeping the lights on.

Now, AES, as I mentioned before, is specifically positioned to be a global leader and has been at the forefront of the deployment of this technology. So we have been operating these plants for over 15 years. We have 871 megawatts already deployed and in operation and we're nearly doubling that by the end of this year. As I stated before, energy storage is absolutely an essential complement to any modern solar project in order to provide the benefit of shifting when that power is made available to the grid's needs. So this is a commonplace in all of our projects going forward.

Okay. So let's move on to all of the diligence that we've performed over the last couple years to ensure that this site is in fact suitable for hosting a project of this nature.

We look at a lot of land and oftentimes there are many reasons why we would choose not to develop there. So if I go through just the large list of all the diligence we've performed to inform our design that includes real estate and topographical surveys, aquatic resource inventories, biological surveys that concluded that there's no federal or state threatened or endangered species. There is a prairie dog colony in the southwest portion of the project area that we are avoiding for prevention of any possible burrowing owl habitat there. We've conducted phase 1 environmental site assessments, hydrologic studies to ensure we're avoiding water courses that could pose any hazard to the project. We've performed extensive cultural resource pedestrian surveys, site threshold analysis for traffic impacts.

I'll present a few slides on the visual impacts that we've performed, and we've also looking into appraisals to establish that this project would not have any impacts to residential home values in the area.

I did request respect during this presentation and I appreciate that. So additional project diligence that we've performed include environmental impact reports identified no significant resource issues. I have another slide that I'll go into more detail on the noise technical report that we performed. That concludes that this project will continue to keep noise levels within ordinance and code. We've looked at the soil composition of the area to inform our design for concrete pads and for pile installation. We've already drafted a plan on how we'd go about decommissioning this project at the end of its lifecycle, and we've been forward prepared with the presentation of a hazard mitigation analysis, looking at the battery storage system and its safety design features, as well as provided draft versions of first responder mitigation guidelines and a pre-incident plan to help first responders understand the nature of the facility and how to respond in case of any incident.

Okay, so we'll take a quick look at some of the visual simulations. And I referenced before, the project is located about two miles east of County Highway 14. From that public right-of-way you can barely make out a thin blue line on the horizon but as you can see there's ample open space and setback from that corridor to the facility in the east. This is also exemplary of the vegetation that's onsite. As you can see, there's clearly very little vegetative fuel in the area, hence the low wildfire risk rating.

This is from the nearest point of public access in the Eldorado neighborhood. This is about a mile and a half away. The project is not visible as far as the solar panels from this perspective, but the gen-tie route is perceivable and it's about a third of a mile. Actually from this perspective here it's probably closer to about a half a mile away, but I'm presenting the two different frame structures that we are allowing the County to consider here. The one is an H-frame. That's actually the type of pole that's already running through Eldorado on the 115 kV line, so those structures, they're only 50 feet tall but they have a shorter span of about 250 to 350 feet, so that's why we're also presenting the optionality of a monopole structure, which is a bit taller at about 70 feet but allows us to span up to 450 feet so thereby having fewer of these poles.

We know that noise has been expressed as a concern by some folks from this project so we took that to heart and completed a technical noise study using a sound plan, and we concluded that the overall decibel ratings that could be observable arrive at about 40 decibels during daytime hours and 38 during nighttime, so that is well within the ordinance and sustainable design standards, which has the stated decibel of 55 in daytime

or 45 in nighttime, or five decibels above the ambient temperature. So we've updated the study to include the ambient noise levels taken by the County and we are arriving at less than that five decibel increment.

We know that there's also been concerns stated about the use of our fire suppression agent, which as I stated before is demonstrated to be entirely effective at preventing thermal runaway, so it is a critical component, a safety feature to this project and it's important to note that these containers are designed with an ingress protection rating of IP 55, which affects any leakage of fluids. These are largely solid state materials but there is electrolyte in the battery, so the containers are designed to prevent any exit of fluids from the container at a low pressure, and should there be the unlikely scenario of a release of this fire suppressant agent at a cell experiencing thermal runaway, that effectively would be vaporized upon its contact with the cell in question and essentially would go into the atmosphere. So this chart on the right demonstrates that the atmospheric lifetime of this FK-5-1-12 is less than seven days, has a global warming potential less than carbon dioxide, and has zero ozone depletion potential.

Water use has also been a common concern, so while during the construction phase of about a year, there would be a substantial amount of water use, estimated at about 100 to 150 acre-feet over that construction period. We have looked into sources and can confirm that we should b able to provide over 50 percent of that water with the reclaimed water source. It's important to put this amount of water use into reference or comparison, so 100 to 140 acre-feet is roughly the equivalent of a low-end golf course and its annual needs for irrigation, and overall it's estimated to be less than a half a percent of the county's annual water use.

Once we've built the project, during the operational phase, the amount of water used declines significantly, and that's because during the construction phase we're predominantly using water to solve another concern, which is preventing fugitive dust. So when we're disturbing the site and building it we do not want dust to get into the air, so we need to utilize water to maintain moisture in the ground. So once we're in operation that work has been complete, we actually reduce our water to a conservative number of two to three acre-feet per year. That's roughly the equivalent of about four to eight household's annual water use, and that is being used predominantly just for washing the panels, if there's not been significant rainfall or snowfall for some time, and there's soil building on the panels.

There will of course also be a 3,000 gallon per month usage at our O&M building for the personnel onsite there.

Weed management. Again, a picture of the site which shows a significant amount of bare ground and also very little vegetative fuel. Nonetheless we do not expect much weed pressure here but we will take measures to avoid the introduction of weed seeds at the site, and minimize soil disturbance where we can. We will also, once re-establishing vegetation within the project area, we'll have a preference for manual and mechanical treatment, but should herbicides be required, they would be applied via state certified herbicide applicator as a last resort.

Okay, so I may just breeze through these following slides a bit, because I believe the County will discuss this as well from their perspective, but at a high level, based on the information I've been presenting so far we believe that this project not only presents a significant opportunity to the residents of Santa Fe County to meet renewable energy

goals and to be a part of the clean energy transition but we feel that we meet the approval criteria for a conditional use permit. So that's prominently by not being a detriment to the health, safety and general welfare of the area. That's through meeting all the stringent safety standards and codes for this type of project. As noted, there will be an uptick in traffic during the construction timeframe but thereafter, no more than the vehicles of just four staff members, so we will not anticipate any significant congestion on roads.

We will not be presenting any significant potential for fire, panic, or other danger. Again, as demonstrated through our hazard mitigation analysis and the significant design features that we've integrated into this project through the feedback of the County Fire Department and our own professional. And of course this project would have no impact on undue concentrations of population and we'll continue to designate significant natural open space.

So this project will not require significant public utilities such as piped water or sewer, so we'll have no impact to other County improvements and public utilities. Neither will we interfere with adequate light or air, and being a Rural Fringe zoning district that allows for commercial solar energy production, we believe this is an exemplary project to support renewable energy generation within the county.

So I'm approaching the conclusion of my presentation so I think it's appropriate to outline our general project timeline. So we are now here at the end of 2024. It's been a quick year and we're here at the Hearing Office meeting, having the wonderful opportunity to present this project to you all. As we approach 2025 we'll be looking to submit this project into a competitive bid and solicitation with PNM for those resources in later years, and looking to present this project to the Planning Commission as well in hopes for receiving CUP approval.

If selected through the RFP we will target signing a contract with PNM as soon as the end of 2025 which would then kick off our design process to get to an issue for construction design set and contracting with a construction firm, so that way we could initiate construction as soon as late Q4 2026, more likely in 2027 with a goal to overall conclude our construction and to complete the commissioning and interconnection with PNM by the end of 2028. Once build and operational, as I stated before, we expect about 35 years of operation before either repowering or decommissioning the project and restoring the land.

So it's my pleasure of course to be able to conclude this presentation with a summary of the significant economic benefits that this project presents, not only Santa Fe County but the state as a whole. So we estimate nearly 200 construction jobs directly through the course of building the project. There will of course be cascading effects through contribution to local services with that activity during that year. This represents a capital investment in excess of $200 million, of which we estimate nearly $20 million of that will be directly in labor and wages, and $5 million of which could be wages and material procurement directly here within Santa Fe County. I mentioned before that we're specifying our racking and tracking technology for this project with a New Mexico based manufacturer. That could represent nearly $18 million in economic activity and manufacturing output, and while it's still premature to discuss property taxes, since we need an approval of this conditional use before seeking an industrial revenue bond with the Santa Fe County, which is a standard mechanism employed by large capital projects and infrastructure projects in the State of New Mexico there is precedent and guidance

that we can rely on through legal counsel to estimate what the property taxes generated could be, and we think that those are reasonably in excess of $!0 million over the course of the project, and at the front end, the gross receipts tax collection, we estimate to be close to $4 million with about $3 million going to the County.

All of this again is in addition to the fact that we are bidding this project in a market competitive solicitation that will be providing a fixed, low cost of energy to PNM ratepayers, which is likely most of the folks in this room, which in times of inflation being able to fix the rate of your energy and your electricity for several decades is a significant hedge at incurring inflation in the future or your energy rates.

And of course there's the environmental benefits of this project, so I already stated that this project can produce the equivalent of the entire residential load of Santa Fe. On the broader state level this represents about one percent of getting that 100 percent goal by 2045, and to put this into context of avoiding CO_2 emissions, that's the equivalent of nearly removing 42,000 cars off the road. And again, this is all exemplified through a low impact development that diversifies and strengthens the grid resiliency here in Santa Fe County.

So with that, it's my pleasure to conclude. I appreciate everyone's patience and listening to the information that I presented today. It's exciting to know that what this project presents to the Santa Fe County is an opportunity to be a leader in the state, to participate in the clean energy transition, and to know that this project will be able to keep the lights on, even at nighttime when we've successfully achieved those goals of transitioning away from coal and natural gas generation, and I think that is all something we can look forward to when we consider that these milestones are really only about 20 years out. So that's the timeframe of a newborn child today graduating college. This is the moon shot of our generation. It's an exceptional challenge being presented to humanity as a whole, and this is the opportunity for Santa Fe to step up and make the right decision to participate and contribute to worst effects of climate change.

So with that I thank you and we'll be open to taking questions, myself and my colleagues at your discretion.

HEARING OFFICER HEBERT: Thank you, Mr. Mayer. I have a couple of questions, just more of an overview of questions, not getting into the details.

MR. MAYER: Please.

HEARING OFFICER HEBERT: Will you be having somebody who will be a witness as to the solar impact study that was prepared by Kirkland, and then reviewed by our local company -- will someone today be addressing that market study?

MR. MAYER: I can speak to that to some extent. The reports themselves were authored by those consultants and so their conclusions are contained therein with, but if there's any questions I can certainly attempt to address them.

HEARING OFFICER HEBERT: Well, then, so there won't be a specific witness.

MR. MAYER: Not the authors of those reports. No, ma'am.

HEARING OFFICER HEBERT: Okay. In the Kirkland impact study, there were nine – this relates to the property values of surrounding properties. And there nine sites, all of them were 35 megawatt facilities or much less. Some of them nine, some even smaller than that, and only one was comparable. It was a 104 megawatt facility.

Does AES have any properties of the 100 megawatt facility with any information on market data, other than what was presented in this Kirkland impact study.

MR. MAYER: So we were relying on these independent consultants to perform these studies. Over the course of many years, right, the size of these projects has grown in relation to the overall demand, so there are fewer of some of the larger facilities in years past than are becoming more commonplace today. But overall, through the use of matched pair analysis in those reports we believe the findings are reasonable and that's why there was a local assessor who then further reviewed the original report to provide his own insights and assessments of the conclusions of that report.

HEARING OFFICER HEBERT: Well, in the analysis more specifically on the sites that had the BESS systems, it listed 14 sites and only three of those were of 100 megawatts or more and most were in the 11 to 20 megawatt area, and of those three of comparable size to this one, one was neighboring an asphalt facility, and one was in an industrial, which only left one in a residential. The site that AES is proposing here has large residential areas, both to the east and to the south. So I don't know if you have anything comparable that you can offer for your property analysis because it doesn't seem that any that were in those studies really meet the mark here.

MR. MAYER: We could certainly take another look at them. Again, they have to assess what is available to them in the marketplace for comparison. I think the overall setbacks of this facility, the battery storage specifically being a mile and a half from the nearest residence. The facility being a 1.3 miles from Eldorado as a whole and two miles from the bulk of that neighborhood, as well as a minimum of a third of a mile from San Marcos is a substantial setback and as we know, the visual impact from public rights-of-way is quite low so we believe that these studies are accurate enough representations of impacts to residential studies.

I personally have traveled throughout the country. I've been in California, Colorado, where I've seen transmission lines and solar power plants literally right next door to multi-million dollar properties. So through my just general personal experience and exposure I think that it's a fair finding through the research that's been provided.

HEARING OFFICER HEBERT: Well, there may be someone that will also be one of your witnesses, more specifically on the battery systems, but is this battery system one that AES has had in use for over a year, or has it been put in use within a year's time. I know it's evolving.

MR. MAYER: Sure. Sure. I'll speak at a high level here. So AES has been operating battery storage plants for 15 years at this point and we've gone through several generations, so it's almost like comparing your modern Apple iPhone 12 to a circa 2006 Nokia phone that I had back in college. They still allow you to make a call but the capability and the features in your iPhone 12 have substantially advanced. And so that is effectively what we're also seeing with this latest generation of battery storage that has heightened levels of safety features that were not exhibited in some earlier generations.

HEARING OFFICER HEBERT: Well, for instance, the temperature, you pointed out that these have internal regulating temperature systems that provide air conditioning. But it also gets extremely cold here during several winter months. Is there something that keeps that from fluctuating on the low end below 32 degrees? Is there –

MR. MAYER: Yes. There's also air conditioning to ensure that the facility is maintained within an operational parameter. So both from heat and cold.

HEARING OFFICER HEBERT: Okay. Are these the same generation of BESS that were involved with the Escondido fire in California?

MR. MAYER: So the Escondido fire was actually not an AES facility. AES developed that but it was owned and operated by a San Diego Power Gas and Electric, so essentially we can't really comment on that facility because it was not one of ours.

HEARING OFFICER HEBERT: So you don't know what kind of battery storage they were using?

MR. MAYER: My colleague could speak to that, but again, we think it's kind of most appropriate that as not being the owners and operators of that facility, it's not our place to comment on that facility. I can say that it was a prior generation overall though, in comparison to what we are presenting here for this project.

HEARING OFFICER HEBERT: Well, on a more mundane area, I'll ask you a little bit about the financial guarantee that was referenced in page 36 of the CUP application itself. It stated that it would be provided and do you have an idea about how much that financial guarantee is going to be and at what point that would be provided?

MR. MAYER: So I believe you're referencing the decommissioning bond, which is a typical practice for us.

HEARING OFFICER HEBERT: Well, I thought these were two separate items. This was in regard to Section 7.2.2 of the code. And it says that it would be provided prior to final plat recording and permit approval. So maybe is that the guarantee? I'll also ask the staff. Is that the guarantee for the decommissioning? And it was estimated to be $8 million.

MR. YUTZY: Hearing Officer Hebert, that is correct. That is the decommissioning bond and it's roughly, like $7.6 million that will be required.

HEARING OFFICER HEBERT: Okay. Thank you. That leads me to my final question for you. There's been some confusion about AES and its corporate structure. In this application it's listed as a limited liability corporation. Is it owned by a domestically registered corporation? Or is this an international corporation? Could you just describe the ownership of this?

MR. MAYER: Sure. So it is a bit of a complex structuring but there's a reason and a rationale for that. So the AES Corporation owns AES Clean Energy, who then owns project companies that are set up for every specific project. And the reason we do that is largely in the nature of the project financing that supports the construction and operation of these projects. So because the confidence level I renewable energy and solar energy and battery facilities has risen to a degree where it's very predictable output and revenue flows, that means that we are able to invite in banking partners to provide debt to the project, as well as other renewable energy tax credit investors. And so all of this is facilitated by having an LLC project company that is represented on the project so that you can raise this financing directly based on the merit of the project and not on the balance sheet of the overall parent company.

HEARING OFFICER HEBERT: And the parent company is – it's a corporation registered in Delaware?

MR. MAYER: Correct. Yes, ma'am.

HEARING OFFICER HEBERT: And could you – I had a list of people who were going to be testifying on behalf – and I seem to have misplaced it, but could you just give me an idea of the next people who will present on behalf of your case?

MR. MAYER: Sure. So I've already provided our primary presentation before further Q and A depending on the subject matter. I'm accompanied by Mike Simpson, who is our Director of Innovation Engineering, as well as Matt Gordon who is our Permitting Manager, as well as Adrian from SWCA, who is our consultant behind many of our diligence reports. So they may participate depending on a question posed to us about the project.

HEARING OFFICER HEBERT: Okay. Thank you, Mr. Mayer.

MR. MAYER: Thank you, Hearing Officer Hebert.

HEARING OFFICER HEBERT: That concludes AES' presentation.

MR. MAYER: That does, and we invite any further comments or questions.

HEARING OFFICER HEBERT: Okay. And at this time I would just ask if Clean Energy Coalition has any question.

[Duly sworn, Catherine Babbitt testified as follows:]

MS. BABBITT: My name is Catherine Babbitt. I live at 77 Encantado Loop, Santa Fe, New Mexico. My testimony this morning is under oath. So I just have a few questions, Mr. Mayer, about your presentation.

MR. MAYER: Yes, please.

MS. BABBITT: And then I'll have a few more questions sort of outside of that, if I may. You began by sort of talking about AES as a global leader in the solar industry. I think you're words were we have been exemplary in our efforts. I did notice though on your webpage there have been in excess of $40 million in fines that AES has paid out and what I would like to know, Mr. Mayer, is those fines that my understanding were for environmental violations, employee safety violations, safety violations, and how do you determine – or how do you make the decision to remedy a problem or just pay a fine?

MR. MAYER: So I develop solar power projects for AES Clean Energy. I cannot speak to anything that does not pertain to our direct involvement in solar energy projects, so at the end of the day AES strives to adhere to all prevailing legal codes and standards in the jurisdictions applicable to the projects.

MS. BABBITT: And I understand the efforts being made, but I'm trying to figure out when is it that we – that AES is notified of a violation at a particular facility, and rather than correct the violation they determine it's a little bit easier to just pay some money and we'll go on down the road. Can you speak to that at all?

MR. MAYER: I can tell you that safety is AES's number one value and that we hold ourselves to the absolutely highest standards for ethical conduct. So there would never be any intentional breach of any code or law or regulation, and that's the response I can provide to you.

MS. BABBITT: Not to belabor the point but clearly there have been violations that AES decided to remedy with money, and I'm trying to figure out what those are, or why you would do that rather than remedy the problem. Can you speak to that or is that a question for someone else?

MR. MAYER: I don't believe that that is pertinent to the operation of the facility that we are proposing here today.

MS. BABBITT: I don't believe you get to make that determination. As standing in this hearing I'm allowed to ask you questions, and that's my question.

HEARING OFFICER HEBERT: If you can't answer the question, just say so.

MR. MAYER: I cannot speak direct to your question.

MS. BABBITT: In your presentation you discussed where does the power go, and with respect to PNM and powering their load centers. I believe the statement was that the energy would go to Albuquerque and Santa Fe. And then there was a statement in there that generated energy mostly would be sent to Santa Fe and Albuquerque. Can you be a little bit more specific in that regard?

MR. MAYER: Sure. It's a very nuanced topic and that's why I tried to complement it with a simplistic but also exceptionally complicated illustration of the piping and the kind of tanks of water as that relates to the demand for energy. So as I said, what we need to be able to prove to PNM in our proposal is there's a thermal capacity on transmission lines or through the aid of upgrades to be able to send power, inject new power into the grid to arrive at the points where they most need it, where they have the most stress on their system, and so that is the Zia Substation located on Richards Avenue here in the heard of Santa Fe.

We need to be able to prove that there's that deliverability aspect on a thermal capacity basis, but effectively, once these electrons hit the transmission network, you're really supporting a whole system and so those electrons are largely indistinguishable but they are all playing a part in meeting the demand to the closest point that it's needed. And so what you can further consider here is that Santa Fe is served through three primary transmission corridors. If there were to be significant contingency events such as wildfires or high winds that damaged two of the transmission corridors into Santa Fe it could be largely cut off from coal generation in the Four Corners or nuclear generation in Arizona or natural gas generation in Albuquerque or southern New Mexico.

So by having a generation source sited as close to a load center like Santa Fe as it is, it can effectively operate in contingency circumstances almost as a micro-grid in itself because you can still send power into where the energy is needed. So think about the implications it has for hospitals and critical life-serving apparatus of people that have medical devices that require energy and imagine the impact of a blackout and power loss for multiple days. Having an energy source that's close to that load in these contingency scenarios ensures that we can still provide power to where it's needed, even if other points of access on the transmission network have gone down.

MS. BABBITT: I fear my question was not clear. I wasn't really trying to get into the technical aspect of how energy is generated and then loaded. I'm more concerned about statements that AES has made concerning we can generate enough electricity to power all of Santa Fe. The ability to do that is one thing. Actually doing it is another.

MR. MAYER: So I can say that when we speak about being able to power the equivalent of the residential load of Santa Fe we are trying to speak in terms that make sense to folks so that it can be understood. What does this quantity of energy represent. Because as I said –

MS. BABBITT: But I'm asking, will it?

HEARING OFFICER HEBERT: Ms. Babbitt, I think he's answered your question.

MS. BABBITT: All right.

HEARING OFFICER HEBERT: I think what you're saying is they're not sending specific watts in any one particular direction. It just goes into the big basin.

MR. MAYER: Exactly. There are traditional power flows and once it enters into the network it is supporting those power flows throughout the entire network.

MS. BABBITT: You then talked about how rooftop solar would be a bit more cumbersome than this AES project. But isn't there something in between rooftop and solar and an enormous facility such as AES? And by that I mean a federated micro-grid system that is much smaller in scope containing much less risk than a massive facility would. Is that also a possibility? These smaller, federated micro-grid solar systems.

MR. MAYER: Well, so you could build five megawatt community solar projects, but in order to serve the residential load of Santa Fe, you wouldn't need just one five megawatt community solar project, you would need 20 of them, which would represent the same exact size of Rancho Viejo to meet that requirement. So a solar panel is rated to produce a certain amount of energy and by having – to be able to meet the required energy demand you still need the same number of solar panels.

So those could be distributed on rooftops, which we fully support. Those could be community solar projects, which we fully support, but ultimately, at the end of the day what I'm sure most everyone in this room would like is the lowest electricity bill possible. And so the cheapest form of solar energy is building it on a larger scale that can incur economies of scale to lower the price. A rooftop system costs about three times the amount of utility scale project on a kilowatt-hour basis. A community solar project costs about two times more.

So at the end of the day, if you are a resident who maybe doesn't own your own home. Maybe your roof is inadequate and needs repairs or you just simply have trees shading your rooftop, or you're economically disadvantaged to be able to pay for a solar system, you're most concerned about having the cheapest energy bill as possible, and you would feel good if that was being provided by renewable energy and that's what a commercial solar project of this nature is able to provide.

MS. BABBITT: And really, this is a utility scale project as your company has referred to it in District Court hearings and in documents contained in your CUP application. Correct? Would you call this a utility scale facility?

MR. MAYER: We will be selling to PNM, who is a utility.

MS. BABBITT: But your facility in scope and size would be considered utility scale, would it not?

MR. MAYER: You can call it whatever you'd like. It's a solar power project at the end of the day that's generating electricity for consumers.

MS. BABBITT: Let me do it this way. Let me try this approach. The Department of Energy defines utility scale as what, sir?

MR. MAYER: I believe what's relevant to this –

MS. BABBITT: I'm not asking –

HEARING OFFICER HEBERT: Let's stop for a moment. Ms. Babbitt –

MS. BABBITT: Yes, ma'am.

HEARING OFFICER HEBERT: Let's bring this down a little bit. He's trying to answer your question.

MS. BABBITT: Okay. Yes, ma'am.

HEARING OFFICER HEBERT: Well, I think to the extent he's going to answer it and raising your voice is not going to help.

MR. MAYER: I believe what pertains to this conversation is how does Santa Fe County define a commercial solar facility, and that is one that generate electricity from a solar energy source for the sale at a profit to a customer, and that's what this project does.

HEARING OFFICER HEBERT: I think that's your answer.

MS. BABBITT: All right. I'll move along. You talked about the pairs of these containers being within 20 feet of one another?

MR. MAYER: Correct.

MS. BABBITT: In the Atar Fire report on issue #63, there seems to be some discrepancy between whether they are going to be 22 feet apart or whether in some of your project documents, it states that the containers are 3.5 feet apart.

MR. MAYER: So as depicted in our site plan, as you said, there's pairs, right? So there's 19 concrete pads, which house two containers each. In between those containers there's a minimum of 3.5 feet. There's then 20 feet in between each pair of battery containers.

MS. BABBITT: The deflagration panels on top that were in your diagram, in the Atar Fire report. You've seen that report – the review by Atar Fire?

MR. MAYER: Yes, ma'am.

MS. BABBITT: And there are 93 open issues or issues that still need resolution or clarification. Do you agree with that?

MR. MAYER: Yes, and prior to seeking a development permit to initiate construction of this project we will satisfy all those open conditions.

MS. BABBITT: Sure. And you would agree that some of those open issues are directly related to the safety of this project.

MR. MAYER: In adhering to NFPA 855, yes. All components of the evaluation are related to the safety and the performance of the facility.

MS. BABBITT: And it's not important that those issues are resolved prior to approval?

MR. MAYER: I think what's important to distinguish here is that we are at a conditional use permit hearing, so we're generally presenting a concept and evaluating it as an appropriate land use. We are at a 30 percent design stage, and we are still looking to contract the project. So there's still a lot of work to be done, and we've actually been forward-leaning in providing this hazard mitigation analysis and going through the review of our technical evaluations at a much earlier phase than is traditional in many jurisdictions. But still, we are committing that once we have a concept approval and we actually go to put shovels in the ground, which assuming we would receive an approval on the concept, that does not give us approval to go ahead and start construction.

We then need to seek a development approval in which at that time we need to present the full list of completed studies addressing all conditions imposed on the use

permit to the satisfaction of the authority having jurisdiction in order to receive that permit and to initiate construction.

MS. BABBITT: And the deflagration vent design that is in your proposal, does that design – will that design change in the completion of the project? In other words, do you intend on using the deflagration panels on top of the containers, or will that change?

MR. MAYER: As currently specified, that is our design parameters to have those deflagration vents on the top of the container.

MS. BABBITT: Is it – my understanding is that the deflagration venting on top in 2026, that will change by standards and regulations.

MR. MAYER: I can't speak to that specifically but I can invite my colleague, Mike Simpson, to address that question.

[Duly sworn, Mike Simpson testified as follows:]

MIKE SIMPSON: Mike Simpson with AES Clean Energy, 282 Century Place, Suite 2000, Louisville, Colorado, 80027. The question was deflagration vents and will they be excluded in 2026. Is that –

MS. BABBITT: My understanding is the industry is changing in that regard. That today that's the standard, but in 2026 it will change. Am I wrong about that?

MR. SIMPSON: Well, NFPA 855 is the model code, right? My understand is that Santa Fe County is adopting that as their code. But it can be adopted in every jurisdiction separately, right? But assuming that 855 is the code adopted here, 855, the current version does specify that essentially the explosion hazard, the deflagration hazard is addressed in one of two ways, and it references NFPA 68 which is handling a deflagration by essentially a pressure relief valve, directing it so that it doesn't cause more damage.

And then NFPA 69 is exhaust of the gases before there is a high enough concentration to the point at which it can combust, so below a flammability limit. And so 855 says you can do either/or approach here and it doesn't say you can't do both. And in fact our market surveys indicate that a lot of manufacturers are doing both. So yes there is a new draft version of 855 but that has not been approved yet, that states that NFPA 69 will be required which is basically the removal or the reduction of the concentration of gasses. NFPA 68 is not excluded, and so the currently proposed solution at 30 percent design includes systems compliant of both right now. So there are deflagration vents on the top as you specified, that pressure relief valve, as well as essentially an air intake and exhaust mechanism to be able to both detect the gases and then actuate a fan to remove the gases and bring in fresh air under an extreme event to prevent any kind of deflagration.

MS. BABBITT: Thank you for your answer, Mr. Simpson.

MR. SIMPSON: Thank you. Any further questions on the –

MS. BABBITT: I'm sorry. Thank you. Thank you. Just a few for Mr. Mayer.

HEARING OFFICER HEBERT: Mr. Mayer.

MS. BABBITT: The environmental impact report, my understanding is Terracon did a review of that report. The environmental impact report was adjusted or revised based upon Terracon's review. It has also been submitted to Glorieta Geoscience for their review. My understanding was the Geoscience report was going to be made

available December 2nd. We have not seen that report. Have you seen that review? Has it been completed?

MR. MAYER: We have not seen it. No, ma'am.

MS. BABBITT: So when we say that the EIR, or the environmental impact report has no significant resource issue, do we really know that without the review?

MR. MAYER: Well, we are making that statement in relation to the environmental impact report review that we've been provided to date, which was performed by Terracon. And we will be prepared to address any further comments on that that come out from any subsequent review.

MS. BABBITT: Do we have any idea when that Geoscience review report will be made available, or the contents of it, or something?

MR. MAYER: I would have to defer to the County on that question.

MS. BABBITT: Thank you, sir. The benefit – you talked about the economic benefit to Santa Fe. What is the economic benefit to AES for a project like this?

MR. MAYER: So I can't speak to clearly our target returns because that's confidential information but what I can tell you is any company that's investing hundreds of millions of dollars is looking to get a return on that investment that's commensurate to the professional expertise that's required and the overall cost of capital to build that project, and we operate in a very competitive market. So effectively we are going to hold our same standard return on this project as any other while we compete to offer the lowest possible price to PNM and subsequently the PNM ratepayers. So to the extent that we can get that price as low as possible while still meeting our hurdle return for the cost of our capital and our expertise on that is what we'll be doing.

MS. BABBITT: So we don't really know the economic benefit to AES. Do we know the economic benefit to the ratepayers? In other words, I haven't seen any documents that say electric bills will be decreased by a dollar amount, be decreased by a percentage. Can you enlighten us in that regard?

HEARING OFFICER HEBERT: Ms. Babbitt, I think we're getting beyond the scope of the CUP and the requirements of that.

MS. BABBITT: Okay.

MR. MAYER: What I can say to that question is at the end of the day PNM is going to pick the lowest cost proposal and the most strategic locations possible that they believe they'll receive New Mexico Public Regulatory Commission approval on, so that is in their interest to select the project with the best cost proposal for their ratepayers.

MS. BABBITT: In the CUP application, I did not see in any of the documents any reference to the three previous fires with respect to AES. Is there a reason that AES did not mention these fires in the CUP application?

MR. MAYER: I think it can largely relate to the analogy that I was presenting before regarding a circa 2006 Nokia phone to a modern iPhone 12. We were talking about generations between early technology and what we're proposing with this. So they're effectively completely different products and are in our view irrelevant to our project proposal here today.

MS. BABBITT: When Officer Hebert asked you if the BESS in this particular proposed facility has been in use before, I didn't understand if it has been or it has not been.

MR. MAYER: So there are several components that build an energy storage facility, right? And they're continually releasing new generations of battery cells. So there are features and components that carry over from one generation to the next, but as we look for projects that are years ahead in the future there's a continuous inclusion of addition safety and performance features.

MS. BABBITT: Have we used these BESSes before?

MR. MAYER: The current specified battery cells and overall solution that we're providing has not been deployed yet but it is going through the standard and the reviews that we've been discussing already to determine that it successfully suppresses and mitigates propagation of thermal runaway. Okay, so my colleagues informed me that every component of the system has been deployed but not as this entire integrated system. Is there anything you'd like to elaborate further, Mike? Okay.

HEARING OFFICER HEBERT: Let me just clear this up. So I think her question was specifically to the BESS component. Is that correct?

MS. BABBITT: Yes. The batteries utilized in the BESS component. Yes, ma'am.

HEARING OFFICER HEBERT: And so is your testimony that that has been utilized in prior applications by AES?

MR. MAYER: I'll allow my colleague to clarify.

MR. SIMPSON: Thank you. So every component in this system has been deployed before. AES has deployed most of them. In other cases similar companies have deployed them elsewhere, so we're not picking anything out of the lab and – this is not a science experiment and we'll be deploying commercially available products. Any follow-ups there?

MS. BABBITT: I guess my confusion is in the first CUP application you proposed using one particular kind of lithium ion battery and in your second application, you've changed.

MR. MAYER: That's right.

MS. BABBITT: To a little bit, by some accounts, a little bit more dangerous battery. And I'm wondering the reason for the change.

MR. MAYER: The reason for the change was because the original operational date of the project allowed for previous generation, but once that operational date shifted we had an opportunity to use a newer generation that again, has been deployed by other companies.

MS. BABBITT: And the newer generation has been deployed by AES?

MR. MAYER: The generation presented here in all of the componentry in that system has not been deployed. It is developed for other projects, but every component within that exact system has been deployed.

MS. BABBITT: And in trying to assess the risk of batteries, as it relates to safety of the community, risk of fire, and things along those lines, there has been some information that's been redacted concerning the battery, right?

MR. MAYER: Correct.

MS. BABBITT: And in the first application the same type of information was redacted and we ended up at a District Court, CEC intervened, and you guys finally sort of released the information. If the claim of trade secret – is that not right?

LUKE PIERPONT: Hearing Officer Hebert, Luke Pierpont, counsel for AES, that's incorrect. The information that was previously redacted was not specific to the prior application. That was information that had been provided as an example of previously deployed battery technologies as an example to the Santa Fe County Fire Department to show what type of documentation would be provided in a hazard mitigation analysis. It was not specific to the proposed battery technology in the initial application.

MS. BABBITT: But it is information that you ultimately released.

MR. PIERPONT: That's correct.

MS. BABBITT: And we find ourselves in that same boat again, where there's redacted information pertaining to the batteries, and that information has not been released.

HEARING OFFICER HEBERT: I'm just going to interrupt for just a minute, just because – are you referring, Ms. Babbitt, to the information that's in the draft preliminary hazard mitigation analysis? Is that the information on page 9? That's what we're all talking about?

MR. PIERPONT: I believe so.

HEARING OFFICER HEBERT: Okay. Yes.

MS. BABBITT: I apologize for the confusion.

HEARING OFFICER HEBERT: No, the latest that I had also contains redactions.

MS. BABBITT: And I'm just wondering why if one time when you complained battery information was trade secret, and then later released it, that claim has not been waived with regard to this go-round/.

MR. PIERPONT: It's different information.

MS. BABBITT: Do you think it's information that important for the Hearing Officer and for experts to be able to analyze?

MR. PIERPONT: Experts have analyzed that information.

MS. BABBITT: Our experts have not.

MR. PIERPONT: The County's experts have.

MS. BABBITT: Could we have that information for our experts?

HEARING OFFICER HEBERT: This may be a question that the staff could respond to, Mr. Pierpont. We could move on from here.

MR. PIERPONT: Hearing Officer Hebert, I would just like to clarify that AES has asserted that the information that we're discussing is trade secrets. There is a hearing scheduled on AES' request for a preliminary injunction for December 11th at which point that question will be answered by the court.

HEARING OFFICER HEBERT: Thank you, Mr. Pierpont.

MR. PIERPONT: Thank you.

HEARING OFFICER HEBERT: Ms. Babbitt, do you have any other questions for AES?

MS. BABBITT: If I could just have two seconds, ma'am. Just lastly concerning the personnel that you indicated would be onsite, my understanding is it's not 24/7 personnel onsite. Is that right?

MR. MAYER: That's correct. The onsite personnel would not be there 24/7. However, these projects are 24/7 monitored via our remote operations control centers located throughout the country, and so all of our sensors in every single container and every inverter level is relayed in real time to these control centers. So if there's any deviation of any particular parameter outside of an acceptable operational range our technicians at those 24/7 control centers are immediately notified and are able to look at the situation to determine if we need to take further action and dispatch additional personnel to the facility as needed.

MS. BABBITT: Sure. But the intention right now is to have someone there just Monday through Friday during the day?

MR. MAYER: Correct. Because there is a substantial amount of just general maintenance work for them to be able to do.

MS. BABBITT: I appreciate your time, Mr. Mayer.

MR. MAYER: Thank you very much. Appreciate the questions.

HEARING OFFICER HEBERT: Thank you, Ms. Babbitt. Does the San Marcos Association have questions for this witness?

MR. KURTZ: No, ma'am

HEARING OFFICER HEBERT: Okay. Thank you very much. At this time if AES has no other witness to present, other than in response, perhaps, something else. Is that what I understand?

MR. MAYER: We will continue to be available to take any further questions throughout the course of this hearing.

HEARING OFFICER HEBERT: Thank you. Mr. Sisneros, I believe you'll be presenting the staff report on this request. Mr. Sisneros, if there are other people who will be testifying, could you all be sworn in at one time at this time, please.

MR. SISNEROS: Hearing Officer Hebert, we do not have any witnesses but we do have subject matter experts available for questions. Would you like them to come up to be sworn in at this time?

HEARING OFFICER HEBERT: That'd probably be better so I won't forget. Yes, please.

[Dominic Sisneros and Todd LaBerge were administered the oath,]

TODD LABERGE: Todd LaBerge. I live at 1162 Salerno Drive, Campbell, California, 95008, representing Atar Fire for the County Fire Department.

MR. SISNEROS: Dominic J. Sisneros, Building and Development Supervisor, 7236 Vuelta de la Luz, Santa Fe, New Mexico, 87507.

HEARING OFFICER HEBERT: Thank you, Mr. Sisneros. Go ahead.

MR. SISNEROS: Thank you Madam Hearing Officer Hebert. Dominic J. Sisneros, Building and Development Supervisor with Growth Management Division.

Rancho Viejo Solar, LLC, Conditional Use Permit. Rancho Viejo Limited Partnership, Rancho Viejo Solar, LLC and AES Clean Energy Development, LLC request approval of a CUP to allow a 96-megawatt solar facility on plus or minus 684 acres of an 828-acre tract. The site is zoned Rural Fringe. Appendix B, Use Matrix of the Sustainable Land Development Code illustrates that a commercial solar energy

production facility is a conditional use within Rural Fringe zoning. The site is addressed at 211 Twilight Way, which will be accessed via Highway 14, located in SDA-2 and within Section 17, Township 15 North, Range 9 East, Commission District 5.

The 828-acre parcel is currently vacant. The subject property is surrounded by vacant land with the southwestern corner of the parcel being over 550 feet away from the Rancho San Marcos Subdivision and the most easterly corner of the subject parcel being more than 4,000 feet away from the community of Eldorado.

The applicant is requesting approval of a conditional use permit to allow a 96-megawatt solar facility on an 828-acre tract. The proposed project will consist of a 680-acre solar facility, a one-acre collector substation, a three-acre battery energy storage system containing no more than 38 CEN 40-foot containers, a 30,000-gallon above-ground water tank for fire protection, a maximum 5,000-gallon above-ground water tank for potable water, and a 1,400-square foot operations building approximately 18 feet in height with an onsite septic system. Offsite and onsite improvement will consist of a 2.3-mile generation tie-in line with either 70-foot-tall steel monopoles or 50-foot-tall steel H-frame poles within existing easements, and a 2.1-mile access road also within an existing easement. If the request for a CUP is granted, the applicant expects to request a 12-month extension to the 24-month expiration deadline that is set forth at SLDC Section 4.9.6.10.

The subject property is zoned Rural Fringe. Appendix B, Use Matrix of Ordinance 2016-9, the Sustainable Land Development Code illustrates that a commercial solar production facility is a conditional use within Rural Fringe zoning. Section 7.12.1.3 of the SLDC, states, "above-ground electric utility lines that transmit electricity at a voltage greater than or equal to 46 kilovolts shall be designed and constructed at the minimum height necessary for the proposed structure to function properly and for public health, safety and welfare, as demonstrated by the applicant."

If a CUP approval is granted, Section 4.9.6.10 of the SLDC allows the Planning Commission to extend the expiration of the permit an additional twelve months, with no further extension allowed under any circumstances.

On November 4, 2021, as required by Table 4-1 and Section 4.4.3 the applicant presented the proposed CUP to the Technical Advisory Committee at the regularly scheduled bi-monthly meeting. On August 22, 2024, as required by Table 4-1 and Section 4.4.4 of the SLDC, the applicant conducted a pre-application neighborhood meeting on the CUP. The applicant notified surrounding property owners as well as Certified Organizations and Registered Organizations with 140 individuals attended the meeting. The applicant presented the history of the development and presented, in detail, the proposal for the CUP. In the meeting the attendees had questions and comments about safety risks, fire danger, groundwater contamination, power purchase agreement, infrastructure/technology, conditional use permit application process, environmental impacts, insurance, property values and funding.

AES addressed most questions and comments the best they could and tried to provide input to the public.

Notice requirements were met as per SLDC Section 4.6.3.

General Notice of Application Requiring a Public Hearing: In advance of the hearing on the application, the applicant provided an affidavit of posting of notice of the hearing, confirming that public notice posting regarding the application was made for fifteen days on the property beginning on November 13, 2024. Additionally, notice of

hearing was published in the *Santa Fe New Mexican* on November 19, 2024, as evidenced by a copy of that notice contained in the record. The notice of the hearing was sent to owners of land within 1,120 feet of the previous bigger parcel of which the 828-acre parcel was derived from as well as any pertinent CO's and RO's. A list of persons sent a mailing is contained in the record.

The application was made on August 30, 2024.

The applicant has addressed the variance criteria and staff has responded to the applicant's comments.

Building and Development Services staff has reviewed this project for compliance with pertinent SLDC requirements and have found that the facts presented support the request for a conditional use permit to allow a 96-megawatt solar facility on an 828-acre tract within the Rural Fringe zoning district. The use is compatible with the current development within the affected zoning districts; the use will not impact adjacent land uses; and the application satisfies the submittal requirements set forth in the SLDC inclusive of the conditional use criteria set forth in Chapter 4, Section 4.9.6.5.

The review comments from Santa Fe County Fire, 3rd party reviewer Atar Fire, State Historical Preservation Office, and reviews from County staff have established findings that this application to allow a 96-megawatt solar facility on an 828-acre tract within the Rural Fringe zoning district is in compliance with pertinent design standards set forth in the SLDC.

The third party reviewed of the EIR was submitted yesterday, which has been given to you today and as well has been updated to Exhibit Q to reflect.

Staff reviewed the CUP application and have determined that all criteria for the CUP have been met to allow a 96-megawatt solar facility on an 828-acre tract within the Rural Fringe zoning, subject to conditions. After the third party review of the EIR, questions were brought up regarding the water usage during the construction, which will be addressed with an added condition. Condition #15 states that the applicant provide a detailed and accurate water budget for construction, operation and maintenance, and decommissioning. The water budget is to include water source and water trucking, and the water budget will be reviewed by Glorieta Geoscience and approved by Santa Fe County Utilities.

If the Hearing Officer finds that the applicant has met the conditional use permit criteria and recommends approval, staff suggests the following conditions be imposed. Madam Hearing Officer Hebert, may I enter these conditions into the record?

HEARING OFFICER HEBERT: Yes, please do. And did you just say there would be an additional #15 on these conditions?

MR. SISNEROS: That is correct. Condition #15, The applicant provide a detailed and accurate water budget for construction, operation and maintenance, and decommissioning. The water budget is to include water source and water trucking, and the water budget will be reviewed by Glorieta Geoscience and approved by Santa Fe County Utilities.

HEARING OFFICER HEBERT: All right. Thank you.

The conditions are as follows:

1. Compliance with all Reviewing Agencies' comments.
2. The drilling or use of individual and/or shared wells for this use on this property is prohibited.

3. The Applicant shall provide proper buffering and screening by installing a paneled fence to a portion of the proposed 8' tall fence that will be located on the southwest portion of the property.
4. Construction fencing will be required around all designated archeological sites to preserve the integrity of these areas.
5. Prior to the recordation of the CUP site development plan, the access road and internal roads shall be permitted through Santa Fe County, built out and inspected, or bonded for 125% of the construction cost.
6. The CUP site development plan showing the site layout and any other conditions that may be imposed through the approval process shall be recorded at the expense of the Applicant in the office of the County Clerk in accordance with Chapter 4, Section 4.9.6.8.
7. Utilization of the 70-foot-tall steel monopoles will be required, as they have less of a visual impact. The poles will be required to blend into the natural landscape and shall be non-reflective.
8. A decommissioning bond (may contain salvage value) will be required prior to recordation of the CUP site development plan, and must be in place for the life of the project.
9. Applicant will be required to apply for all applicable Development Permits after the CUP recordation.
10. Prior to the submittal of any applicable Development Permit the Applicant will be required to renew its access permit from NMDOT.
11. Applicant shall obtain an approved liquid waste permit from NMED prior to the submittal for a Development Permit.
12. The Applicant is required to work in consultation with the appropriate flood zone authorities to address the requirements specified in Chapter 7, Section 7.18.9.1 of the SLDC for any steel monopole located within a Zone A flood hazard area and submit the findings to staff for the record.
13. Construction activity to be limited to a Monday-through Friday 7am to 7pm work schedule. Any deviation from these construction hours will require 48 hours' notice to Santa Fe County and neighboring property owners.
14. Prior to operating the Applicant shall obtain a Santa Fe County Business License.
15. The applicant provide a detailed and accurate water budget for construction, operation and maintenance, and decommissioning. The water budget is to include water source and water trucking, and the water budget will be reviewed by Glorieta Geoscience and approved by Santa Fe County Utilities. [Condition added at staff report.]

HEARING OFFICER HEBERT: All right. Thank you.

MR. SISNEROS: This report and the exhibits listed below are hereby submitted as part of the hearing record. Staff requests that the Hearing Officer memorialize findings of fact and conclusions of law in a written recommended order. The Santa Fe County Planning Commission may be holding a public hearing on this matter on February 3, 2025. Thank you, Madam Hearing Officer. At this time I stand for any questions.

HEARING OFFICER HEBERT: Thank you, Mr. Sisneros. I have a few questions. The first responder's guide, it was part of the application on page 19, stated that the Santa Fe County Fire does not have a hazmat team, a hazardous material team. Is that your understanding?

MR. SISNEROS: That is my understanding. We do have our Santa Fe County Fire Marshal here in attendance. He may want to add to that if need be.

HEARING OFFICER HEBERT: There was a reference that the Santa Fe City does have a hazmat team. I guess you don't know how far that team would be stationed from this site. Do you have any idea?

MR. SISNEROS: I do not have an answer for that.

HEARING OFFICER HEBERT: And do you know whether Santa Fe County Fire has had any experience with lithium battery fires?

MR. SISNEROS: Again, I do not have any information on that.

HEARING OFFICER HEBERT: Do you have an idea approximately the number of the people who work at the Santa Fe County Fire Department that are actually volunteers, compared to the ones who are actually employed?

MR. SISNEROS: Hearing Officer Hebert, I do not have a number.

HEARING OFFICER HEBERT: And this one is a difficult one. Do you know of any commercial, industrial facility in Santa Fe County that poses the same degree of hazard from a lithium battery fire that this particular facility would if it failed? Is there anything comparable to that in this county?

MR. SISNEROS: I am not aware of any past, present of future projects that are similar to this project.

HEARING OFFICER HEBERT: We don't have any oil and gas production in Santa Fe County, do we?

MR. SISNEROS: No. We do not. Madame Hearing Officer Hebert, we do have Jaome Blay, the Fire Marshal for Santa Fe County here available.

HEARING OFFICER HEBERT: Oh, yes. Would you please step forward and they'll swear you in. You could answer some of these questions. Thank you.

[Jeff Carroll and Jaome Blay were placed under oath.]

JEFF CARROLL (Deputy Fire Chief): My name is Jeff Carroll. I'm the Deputy Fire Chief of Santa Fe County. I acknowledge I am under oath. I live at 53 Back Road, Madrid, New Mexico, 87010.

JAOME BLAY (Assistant Fire Chief): Jaome Blay, I acknowledge that I'm under oath. I live at 1003 Calle Feliz, Santa Fe, New Mexico, 87507.

HEARING OFFICER HEBERT: Thank you. I asked Mr. Sisneros questions you probably heard. Do you have any hazmat facilities at all in Santa Fe County Fire?

MR. CARROLL: We have no hazmat team. We rely on the City of Santa Fe. I believe their hazmat team is stationed at Station 7, so it's a short distance from the proposed site.

HEARING OFFICER HEBERT: Where is that site? Where is Station 7?

MR. CARROLL: On Rodeo Road.

HEARING OFFICER HEBERT: Rodeo Road. Thank you.

MR. CARROLL: We currently have staffing of about 26 paid staff on full time every day. In the region we have the ability to have about eight people full time in

the immediate area Agua Fria and La Cienega, and then we have volunteer staff in the west of currently about 30 active members.

HEARING OFFICER HEBERT: And I think I saw the response times, in the event that there was any occurrence at this facility. Could you just tell me what those response times would be.

MR. CARROLL: I haven't reviewed the exact numbers. Our closest manned station is off of – is near Bisbee Court, Highway 14 and Rancho Viejo. So it would be about a seven to eight minute drive.

HEARING OFFICER HEBERT: And ordinarily, how many employees do you have at that station?

MR. CARROLL: At that station we have four.

HEARING OFFICER HEBERT: Four. Thank you.

MR. CARROLL: Plus we also have a battalion chief and then we do have our admin staff at the Public Safety Arena by the prison, so that would be a 9:00 to 5:00, Monday through Friday. We have roughly five to six people that are current active firefighters.

HEARING OFFICER HEBERT: So that would be a total of nine or ten in that Highway 14 area. Is that right?

MR. CARROLL: Correct.

HEARING OFFICER HEBERT: Okay. Thank you. Did Clean Energy have any questions for the Fire while they're up here?

MS. BABBITT: Officer Hebert, I apologize. We do not have any questions for Fire.

HEARING OFFICER HEBERT: Thank you. Okay. And does San Marcos have any questions? No questions for Fire? Thank you. All right. Thank you for your testimony.

MR. CARROLL: Thank you.

HEARING OFFICER HEBERT: Mr. Sisneros, you did conclude your presentation. Is that correct?

MR. SISNEROS: That is correct, Madam Hearing Officer Hebert.

HEARING OFFICER HEBERT: And are there any questions for Mr. Sisneros? Ms. Babbitt has questions.

MS. BABBITT: Again, Catherine Babbitt for CEC. Mr. Sisneros, I don't believe we've had an opportunity to meet. I appreciate you being available for questions. If we could, I would like to address my first few questions in the air quality and noise section of your report that was filed. In the air quality section, you talk about project emissions during the construction of the project, and I think a line about decommissions being similar. What about emissions during the operation of the facility?

MR. SISNEROS: Let me just pull up that report. Just a second.

MS. BABBITT: Yes, sir.

MR. SISNEROS: Can you repeat the question?

MS. BABBITT: Yes, sir. I'm wondering in the air quality section of your report you address emissions during the construction of the facility. There's a statement about emissions during the decommission portion. But there is no mention of emissions during the operation of the facility, or any mention of emissions in the event of a fire, toxic, emissions, etc. And I'm just wondering why that's not in that section.

MR. SISNEROS: So the section of the report for air quality, those statements were taken from the report from AES. No air quality tests or report was actually required by Santa Fe County Land Use, therefore there's no information on the actual operation and maintenance of the environmental on air quality. That may be a question for the consultant that reviewed the environmental, which is here today for any questions.

MS. BABBITT: Okay. I don't know how you want to –

HEARING OFFICER HEBERT: Did you want to have that person come be sworn in so she could ask that question?

MR. SISNEROS: Yes.

[Duly sworn, Abby Guidry testified as follows:]

ABBY GUIDRY: My name's Abby Guidry. I work for Glorieta Geoscience, a division of GZA. The address is 1723 Second Street, Santa Fe, New Mexico, 87505. I acknowledge that I am under oath. Hi. Could you please repeat the question?

MS. BABBITT: Sure. What I'm trying to find out is emissions during the operation of the facility, emissions in the event of a fire, emissions in the event of an explosion.

MS. GUIDRY: So I did the third party review of the environmental impact report provided by SWCA on behalf of AES, and that was not addressed in the environmental impact report either. So I cannot speak to that.

MS. BABBITT: Thank you. Then if I may move on to the noise section in your report, Mr. Sisneros. As I understand it –

MR. SISNEROS: Hearing Officer Hebert, we have another subject matter expert here that could answer the question about the emissions on fire.

HEARING OFFICER HEBERT: All right. Thank you.

[Duly sworn, Todd LaBerge testified as follows:]

TODD LABERGE: I acknowledge I am under oath. Todd LaBerge. I reside at 1162 Salerno Drive, Campbell, California, 95008, here representing Atar Fire and supporting the Santa Fe County Fire Department. I can address the question regarding air emissions during normal operation of a lithium ion battery installation facility. Some battery technologies do give off gases, lead acid for example gives of hydrogen, especially when they're over-charged. That is one of the benefits of the lithium ion chemistry. During normal operation they do not give off emissions.

In the event of fires, to date, where air sampling has been performed in recent fire events, the EPA has recently provided some reports on these air samplings in addition with other consultants that fires, going back to about 2021 – I can get the exact dates for you if you would like. And to date, at property line boundaries and where the air sampling locations were noted, there were no detectable toxic gases or other gas particulates above detectable limits.

MS. BABBITT: Are you speaking about at the three previous fires involving AES?

MR. LABERGE: Great question. Let me clarify. So recently you all may have heard about the fire in Missouri at the critical minerals recovery facility, that was a lithium ion battery recycler, completely different scenario, that building materials that were burning and other things. This was November – I want to say 27th. I could be wrong

on the precise date. EPA just released the monitoring report on that. Showed no detectable levels of hazardous chemicals in the air.

There are some water issues because firefighting water was provided on that fire because it was a structure. The reports I'm talking about were for the Escondido fire, which I believe AES was the developer. I would defer back to AES on that. And then also the Tesla fire that was in Moss Landing in – I want to say September of 2021. It might be 2022. I apologize on the exact date. Those air monitoring reports demonstrate that no toxic gases or emissions were experienced outside of the property line, and they draw a conclusion comparing that a fire in a similar scenario produces fewer emissions that a typical structure fire like a home.

MS. BABBITT: So if I understand, let's just take the Escondido fire.

MR. LABERGE: Yes, ma'am.

MS. BABBITT: You're saying that air quality was measured and as a result of that fire that burned for I think 13 hours, there were no toxic emissions in the air?

MR. LABERGE: I can only speak to the report stating that there no toxic emissions above detectable amounts. That's it. I apologize. I'm not an EPA air scientist.

MS. BABBITT: Nor am I.

MR. LABERGE: So whatever the detectable thresholds are, and there's more – I can dig up the report; I have it with me. I can provide a better comparison to that, if that would be useful. But whatever the detectable levels were that the EPA was monitoring for, whatever was coming from the site were below those levels.

MS. BABBITT: All right. Thank you for your explanation.

MR. LABERGE: Thank you, ma'am.

MS. BABBITT: I'm going to move back to noise if I may.

HEARING OFFICER HEBERT: Well, I'm sorry. Would you come back? I just have a question. I don't know whether you're familiar or not with the Otay Mesa that burned for 11 days in California.

MR. LABERGE: Yes, ma'am. I am.

HEARING OFFICER HEBERT: Do you have any review of the quality of the air from that situation?

MR. LABERGE: I have – I've been informed of the sampling. I have not seen an official report, so any testimony I give has to be counseled against that, so it could be considered hearsay. I will trust the attorneys to speak to that. So the discussions that I have – that have been relayed to me from personnel who were performing air monitoring, they literally had to walk up to the door of the facility while it was on fire to get detectable amounts of anything. At the property line there were no detectable amounts. And I believe there is a preliminary report that has been published by the EPA. I cannot speak to that with certainly. I have not been privy to it.

HEARING OFFICER HEBERT: Okay. Thank you very much.

MR. LABERGE: Yes, ma'am.

HEARING OFFICER HEBERT: Any other questions? Go back to Mr. Sisneros.

MS. BABBITT: Yes, ma'am. I can move to noise.

HEARING OFFICER HEBERT: All right.

MS. BABBITT: So in the noise section of your report, just to backtrack just a little bit. There was a July of 2024 noise study that was done by AES, or AES and its experts. Right? And in that July 2024 noise study, rather than do actual sound metering, AES used estimates. Is that right? Do I have that correct?

MR. SISNEROS: That is correct.

MS. BABBITT: And then they, based on estimates that were used, made their calculations regarding noise limits and where they fell. Then, the County went out to the property to also conduct, I guess, some noise metering or noise evaluation.

MR. SISNEROS: To test the ambient levels.

MS. BABBITT: And why did you do that? Why did the County go do that?

MR. SISNEROS: It was my understanding that there was some question about the existing report and the ambient levels were used in that existing report, and so Santa Fe County felt it – deemed it necessary that we go out and we verify those ambient levels or find new information or current information that would be better useful for the sound report.

MS. BABBITT: Fair to say because AES used estimates of ambient levels you felt it necessary to go out and do actual leveling, or actually testing for actual levels.

MR. SISNEROS: I am not exactly sure where their ambient levels came from or where the question in regards to those ambient levels came from, but we took it as a serious request and decided that we needed to go out there and do our own level testing.

MS. BABBITT: And who went out there from the County?

MR. SISNEROS: It was myself and our Land Use Administrator, Jordan Yutzy.

MS. BABBITT: And did you or Mr. Yutzy set up sound metering equipment around the boundary of this property?

[Duly sworn, Jordan Yutzy testified as follows:]

MR. YUTZY: Jordan Yutzy, 100 Catron Street, Santa Fe, New Mexico. I understand I'm under oath. The numbers used by AES in the original report is the industry standard. It's the same as a traffic impact analysis. There are tables that have been generated over decades of information that are used by sound engineers to determine what ambient levels are. We went out there to measure because of the concern of the community that the ambient levels that they used were wrong. The ambient levels were actually a lot lower than what they used but the numbers they originally used were based on the national standard.

We went out there and we took measurements at two different locations and we did an average of two minutes per location to come up with the ambient level.

MS. BABBITT: And I understand that they used industry standards, and then when you went out, your daytime ambient level metering was less than what AES' estimate was.

MR. YUTZY: That is correct, and they updated their report.

MS. BABBITT: Meaning it's quieter, right?

MR. YUTZY: Yes.

MS. BABBITT: And you said that you went to two locations?

MR. YUTZY: That is correct. We went to the northeast corner of the property and the southwest corner of the proposed site.

MS. BABBITT: You did two –

MR. YUTZY: Two minute readings to take an average of the noise.

MS. BABBITT: So basically a four minute reading. Is that fair to say?

MR. YUTZY: That's fair to say.

MS. BABBITT: Why not the 30 minute reading as referenced in the SLDC?

MR. YUTZY: That was done in the original report. That was a number to check the ambient level.

MS. BABBITT: I thought the initial report used estimates. They didn't use actual sound metering.

MR. YUTZY: They did. We could have stuck with the estimated industry standard numbers but we didn't. We went and got the reading of the ambient number. The ambient number did not fluctuate enough that would need a 30 minute reading. We do not have airplane traffic. We do not have roadway traffic out there that far, so the noises aren't being heard.

MS. BABBITT: Did you use sound metering equipment?

MR. YUTZY: We used a sound meter, yes.

MS. BABBITT: Like one of the hand-held devices?

MR. YUTZY: One of the hand-held devices that we use for our code enforcement.

MS. BABBITT: So you took daytime – it was about 10:00 in the morning, I think.

MR. YUTZY: It was roughly about 10:00 in the morning, yes.

MS. BABBITT: Give or take. And then what time in the evening did you go out to test the actual ambient sound?

MR. YUTZY: We did not do any ambient reading.

MS. BABBITT: Why not?

MR. YUTZY: We do not operate during the evening. The office staff does not operate in the evening.

MS. BABBITT: So the nighttime, you and AES used an estimate ambient level.

MR. YUTZY: I cannot speak for AES but I believe that they gave the information back to their sound people and they estimated what the ambient nighttime would be based on the ambient daytime.

MS. BABBITT: But I mean you are aware that AES did not go out and set up any sound metering equipment. They used estimates. Standard estimates, I understand, but nonetheless, estimates, right?

MR. YUTZY: That is correct. That is the industry standard.

MS. BABBITT: What I'm having a little bit of trouble with is when you go out and do an actual reading and you realize that it is quieter or less than the estimate that AES did for daytime, why not also do one in the evening to see if their estimate is also wrong and it's quieter. Why wouldn't we do that?

MR. YUTZY: Because the evening number was adjusted based on a daytime ambient.

MS. BABBITT: But it's still an estimate, right?

MR. YUTZY: It's still an estimate but it's a valid assumption that's made in the report.

MS. BABBITT: Did anyone discuss maybe a third party sound expert that would go out and do an actual 24-hour sound study to reveal actual ambient levels? Was that discussed?

MR. YUTZY: That was not discussed.

MS. BABBITT: The nighttime level of decibels that AES is saying or relying upon is what? Six-tenths of a point from the limit? In other words, if they were .7 of a point higher it would be prohibited. Is that right? Do I understand that?

MR. SISNEROS: We'd have to look into that to verify that, but I believe that is correct, but we would need to verify it.

MS. BABBITT: I guess if you're that close to being completely prohibited by virtue of noise, why we wouldn't want an expert to really delve into this.

MR. YUTZY: That was not a requirement from the SLDC. A CUP process assessment does not require a noise study. That was a request of the County based on the community.

MS. BABBITT: I'm sorry. I'll move back to the report and off of noise.

HEARING OFFICER HEBERT: All right. Thank you, Mr. Yutzy. You may come back.

MS. BABBITT: Mr. Sisneros, in the report, the section where you talk about the conditional use permit code sections, under the first one, that this facility would not be a detriment to the health, safety and general welfare of the area, you write it is a static, non-obtrusive use of land that will be compatible with surrounding land uses. Can you expand on that and explain how this facility is compatible with the surrounding land use?

HEARING OFFICER HEBERT: No. No. There's no applauding. There's no more applauding. We're having a proceeding without applauding or booing or hissing or anything else. And if you can't contain yourself I'd ask you to leave. So thank you. Mr. Sisneros.

MR. SISNEROS: So it's deemed compatible based on the SLDC Appendix B, the Use Matrix for the zoning district for Rural Fringe, as it's a conditional use for that area.

MS. BABBITT: Okay, so I guess what really you're saying is maybe it legally fits in the different categories, versus actual land use in this area.

MR. SISNEROS: That would be correct.

MS. BABBITT: You write that the project will not endanger to public health or safety in the location proposed. On what basis did you make that conclusion?

MR. SISNEROS: On the basis of the review from our Santa Fe County Fire Marshal as well as Atar Fire. We rely on the third party reviewer as well as Santa Fe County Fire to ensure that it's going to meet all standards of the fire code, and therefore ensure the safety for the community.

MS. BABBITT: The risk of fire with this facility would not enter into that analysis, or it would?

MR. SISNEROS: Again, the risk of fire as deemed by Santa Fe County Fire and a third party reviewer would be deemed minimal. It would be contained within the container, as I understand it.

MS. BABBITT: Hopefully, right? But I mean there's also the possibility of an explosion, right?

MR. SISNEROS: That is correct.

MS. BABBITT: That would be dangerous.

MR. SISNEROS: Yes.

MS. BABBITT: In the third criterion, that this project will not create potential hazard for fire, panic, or other danger, I mean I guess your conclusion is that that criterion has also been met in the County's opinion?

MR. SISNEROS: It has. In our response to their comment was they are meeting all minimum requirements, even going over minimum requirements. They're adding 20-foot driving surfaces all within the facility. They're providing a 30,000-gallon onsite water tank and the BESS containers will be equipped with the internal fire suppression system as well. The only standard water application, as we're identifying that the BESS containers will be required is that only in the case where the internal fire suppression systems may fail.

MS. BABBITT: Was the County aware of these other fires, in Surprise, Arizona, Chandler, Arizona and Escondido?

MR. SISNEROS: Yes, staff has been receiving the information in these reports.

MS. BABBITT: Did you do any independent investigation into those fires and causes for toxins released?

MR. SISNEROS: Staff had reviewed them but we did not go into any further review or inspection of those. I believe Santa Fe County Fire Marshal reviewed those as well and I think all that information was also sent over to Atar Fire and I think they were made aware of all those as well.

MS. BABBITT: So I guess the previous fires, in the opinion of the County don't impact a potential for fire this time?

MR. SISNEROS: I believe, as the applicant states as well is we're dealing with different types of systems. An older generation versus a new generation, therefore I am not an expert and couldn't really compare the two different systems and compare the fires versus a proposed threat or any type of future threat. Again, that's something that we rely on Santa Fe County Fire Marshal as well as the third party reviewer.

MS. BABBITT: I want to talk to you just a little bit about your seventh criterion. That this project is not contrary to the intent or spirit of the SLDC and the SGMP. You and AES – not you necessarily, Mr. Sisneros, but the County and AES have been in discussions regarding this proposed project for how long do you think?

MR. SISNEROS: My understanding is that this came to the Technical Advisory Committee in 2021.

MS. BABBITT: And in 2021, your discussions with AES, the County was made aware that their proposed project would contain battery storage. Is that right?

MR. SISNEROS: So although I was on staff in 2021 I was not part of this particular division and involved with the Technical Advisory Committee meeting, but I

do believe according to the Technical Advisory Committee follow-up letter, staff was aware of the BESS, the battery energy storage system.

MS. BABBITT: That that was proposed to be a part of this.

MR. SISNEROS: Yes. That is my understanding.

MS. BABBITT: And did the County relay to AES that at that time, in 2021, project containing battery storage were prohibited in Rural Fringe zones?

MR. SISNEROS: That I cannot attest to, if prior staff informed AES of that.

MS. BABBITT: You're not aware of any discussions between the County and AES regarding prohibition of battery storage as it relates to Rural Fringe.

MR. SISNEROS: No, I am not.

MS. BABBITT: In 2022, I believe, in about July, give or take, the County changed the definition of commercial solar to include battery storage. Is that right?

MR. SISNEROS: Again, I was not – that would be a question for prior staff. I'm not aware of that. All I know is the current definition of commercial solar.

MS. BABBITT: I mean I have documents that talk about the County resolution, how it was changed to include "and may store" in the language. Would you agree with me that that happened.

MR. SISNEROS: Yes.

MS. BABBITT: Do you need to see those? Okay. So when the County changed the definition to include "and may store" it effectively made the AES project eligible for the location they want to put it in. Right?

MR. SISNEROS: Yes. You could say that.

MS. BABBITT: And I'm just wondering, whose idea was it to try to change the definition? Was that the County's idea? Was that AES' suggestion?

MR. SISNEROS: No. I don't believe AES had any involvement in that. That would have been from previous staff, previous administration and the County Manager's Office.

MS. BABBITT: Well, there are emails going back and forth between the County and AES regarding the change in the commercial solar ordinance. Are you aware of those?

MR. SISNEROS: I am not aware of those emails. No.

MS. BABBITT: What I'm wondering, Mr. Sisneros, is that the SLDC in terms of the community solar ordinance contains some regulations regarding land use preferences. Right? When the County writes a letter of support to the PRC, you're looking at where locations are sited. Brownfields, degraded lands, etc. Do you know what the land use preferences I'm referencing?

MR. SISNEROS: I do, and I believe in an earlier letter from the County Manager he does refer to a map that relates to fire danger. Or maybe not necessarily fire danger but the exposure for the best areas suited for a solar facility, and he did reference that map in one of his early on letters to a community member.

MS. BABBITT: And these community solar ordinance standards apply to facilities at five megawatts or less, correct?

MR. SISNEROS: That is my understanding, yes.

MS. BABBITT: And the land use preferences are that those five-megawatt facilities or less be sited in brownfields, built environments, degraded lands or rooftop locations. Right?

MR. SISNEROS: I would have to take a look at the code on that and see exactly what that states to better answer that question.

MS. BABBITT: It also says that projects, community solar five megawatts or less projects, should not be located on land with healthy, intact ecosystems. You can verify in the code but I took that from the code.

MR. SISNEROS: I would have to verify that.

MS. BABBITT: Yes, sir. Assuming that is true, it would appear that this 96-megawatt facility conflicts with all of those land use preferences for a much smaller facility.

MR. SISNEROS: Again, I would have to verify that information.

MS. BABBITT: Do you know why the County has taken steps to regulate smaller facilities with specific land use preferences, but not with regard to much, much larger facilities?

HEARING OFFICER HEBERT: Ms. Babbitt, I think we're in areas that Mr. Sisneros is not going to be able to answer.

MS. BABBITT: Yes, ma'am. I believe that's all the questions I have right now.

HEARING OFFICER HEBERT: All right. Thank you. Does the San Marcos Association have any questions?

MR. KURTZ: No, ma'am.

HEARING OFFICER HEBERT: Mr. Sisneros, I just had a few cleanup questions I wanted to ask. Going back to this controversial redacted page of the hazmat report, do I understand that staff has actually at this time scene the redacted information, or has not seen it?

MR. SISNEROS: So staff has not, but it was sent directly to the third party reviewer, Atar Fire, which they did sign and NDA, so they have reviewed it.

MR. YUTZY: Hearing Officer, if you have questions over that our Atar Fire, Todd LaBerge, can answer those questions for you.

HEARING OFFICER HEBERT: All right. Thank you, Mr. Yutzy. The other was a reference, the environmental impact report that I received this morning is still "draft". Is that a concern that there may be another report coming out?

MR. YUTZY: No, ma'am. It's draft because there's a couple questions on the water, as we stated and put the condition in there. That's the reason it's draft. We need more information before it can be finalized.

HEARING OFFICER HEBERT: On the issue of the water use.

MR. YUTZY: The water usage, the amount of potable water compared to reclaimed water, and the total number during construction, decommissioning and O&M.

HEARING OFFICER HEBERT: And finally, I had an issue with the TAC report from 2021. Is the fact that that was done again for this application in 2024, that none of those conditions would have changed? Is that the case?

MR. YUTZY: At the time – they're not required to go back to TAC. At the time that this was done. We just implemented a rule in the past – I think it was in July, that TAC now is only good for eight months, but at the time that this project went to

TAC there was no deadline for TAC. They could have an unlimited amount of time to submit the project without having to go back.

HEARING OFFICER HEBERT: I see. Thank you. I have no other questions at this time. Thank you very much.

MR. SISNEROS: Thank you.

HEARING OFFICER HEBERT: This would probably be a good time to break for lunch until 1:00 and we can resume and at that time the Clean Energy and the San Marcos Association could present their witness if they have any testimony. And we'll have public comment following that. Thank you.

[The hearing adjourned from 12:01 to 1:00.]

HEARING OFFICER HEBERT: At this point it will be the Coalition of Clean Energy. Ms. Babbitt, if you would give me an idea of your witnesses, the number of witnesses.

MS. BABBITT: I just have a brief introduction, a few brief introductory comments and then we only have three witnesses. Would you like their names?

HEARING OFFICER HEBERT: Yes, please.

MS. BABBITT: Kaye Cooper-Mead is our first witness, followed by Randy Coleman, and lastly Lee Zltotoff.

HEARING OFFICER HEBERT: Thank you.

MS. BABBITT: Yes, ma'am.

HEARING OFFICER HEBERT: All right. You can proceed.

MS. BABBITT: Thank you. As I introduce myself, my name is Catherine Babbitt and I'm on the executive steering committee for the Clean Energy Coalition for Santa Fe County. Our non-profit has almost 1,300 members. We have grown since the last time we were before this Hearing Officer. We are committed to safe, renewable energy facilities that include battery storage. The Rancho Viejo solar project is enormous and the proposed location is amidst three residential communities with over 10,000 homes, 25,000 citizens. It would be near several schools with hundreds of school children, and there is a maximum security prison with 790 inmates nearby.

From our extensive research the last two years into this proposed project, and given our collective backgrounds in fields of engineering, environmental, legal, medical and library science, we are opposed to this project on several legal grounds. Specifically, it will be a detriment to the health, safety and welfare of the area. It will create a potential hazard for fire, panic and other dangers, particularly environmental dangers, and it is inconsistent with the spirit and intent of the SLDC and the SGMP, the governing code and plan.

Unfortunately, Santa Fe County does not have any specific standards and regulations in place for utility-scale solar facilities that contain battery storage. Over the last two years there have been several requests by different organizations asking the County to place a moratorium on projects of this size to allow time for County staff to study safety measures, potential restrictions, and to adopt specific regulations. The County was asked to make utility-scale projects with battery storage a development of community-wide impact, which would make them subject to much more regulations and standards and safety restrictions. The County has declined on all accounts.

A quick Google search and you will find that there are more than 300 counties across the country that are enacting moratoriums, pauses and delays so that they may

study these complex issues associated with siting large-scale facilities, particularly large-scale facilities that contain battery storage, and lithium ion battery storage.

We all recognize that solar energy and storage must be the way of the future if we have any hope of saving this planet. According to the New Mexico State Land Office there are nine million acres of land available for lease to renewable energy companies. Our opposition is to this project's location.

HEARING OFFICER HEBERT: Thank you. And if you'd be sworn in, please.

[Duly sworn, Kaye Cooper-Mead testified as follows:]

KAYE COOPER-MEAD: My name is Kaye Cooper-Mead. My address is 2 Mariposa Road, Santa Fe, New Mexico, 87508, and I understand I'm under oath.

Honorable Officer Hebert and all others here today. Hello. My name is Kaye Cooper-Mead and I am speaking today on behalf of the Clean Energy Coalition for Santa Fe County. We want to talk about the Rancho Viejo solar project in relation to the Sustainable Growth Management Plan, which I will refer to as the SGMP or the plan. We think of the plan as the spirit and will of the people. It was updated by many community members over more than a year. They were interested and concerned citizens, much like all of you here today. Landowners, businesses, environmental groups, homeowners associations, even youth groups and school programs participated.

They spent a long time thinking about how they wanted to see their communities grow and develop in the future. Well, it's ten years later and that future is now. The SGMP is described as the policy framework, while the SLDC, the Sustainable Land Development Code, is a tool to implement the SGMP. The SLDC requires that the SLDC shall be consistent with the SGMP.

As Officer Hebert knows it is state law that requires a county to have a comprehensive plan and requires the county's zoning to be and I quote, "in accordance with its comprehensive plan." Adopted by County resolution the plan focuses on creating sustainable communities. In Chapter 1, it states, and, I quote, "As our communities continue to change and grow, community
planning plays an important role in ensuring that future growth is in harmony with existing settings."

So what is the existing setting? As defined in the AES environmental impact report, the project area and surrounding land are mostly vacant rangeland and housing developments. They say the nearest community is Santa Fe approximately three miles north. They don't even mention the much closer communities of Rancho San Marcos, Eldorado or Rancho Viejo at 550 feet to 4,000 feet away or perhaps they don't consider us communities but merely housing developments. Well, there are more than 10,000 homes and 25,000 to 30,000 people who live in these communities, which are much more than just housing developments, and include the Turquoise Trail Charter School.

The setting is a drought-prone area, with ever-increasing high winds that predominantly blow west to east toward Eldorado, with highly flammable tall grasses and pinyon-juniper vegetation. It is extremely quiet with natural sounds such as birds and winds dominating. And
extremely important to note that many homes rely solely on well water from a shallow aquifer.

Let's think about this setting in terms of the Rancho Viejo Solar Project. Is this

utility-scale facility with the risks of fires from the battery energy storage system, of which AES has had 3 fires in the last five years, the latest just two months ago, in harmony with the existing setting? Is this utility-scale facility with the potential for groundwater contamination from the PFAS-laden fire suppressant, Novec 1230, that AES will use, in harmony with the existing setting? Is this utility-scale facility with the destruction of wildlife habitats over 828 acres, in harmony with the existing setting?

In Chapter 1 of the SGMP, it states and I quote, "Community planning must carefully balance the needs and desires of residents against challenges presented by growth and change, not just in the physical realm, but also economically and socially." Are these wildfire risks in an extremely windy and bone-dry environment much more than just a challenge presented by growth? Is the irreversible damage to our wells that many of us rely on by forever chemicals which will end up in groundwater during the firefighting process – much more than just a challenge presented by growth? Is the release of toxic gases during a thermal runaway that is now left to burn itself out for hours or days much more than just a challenge presented by growth?

As required by the plan, the County must carefully balancing our need and desire for safety, security and quality of life with AES' economic need and desire to site this facility in this exact location. These two needs and desires are obviously very different, polar opposites in fact, and we don't think they can be balanced at all. I think for most of us it is hard to comprehend how big 828 acres is. Well, it is 627 football fields and it is more land use in Santa Fe than the
state prison at 650 acres, and more acres than the total of the following four combined: the County landfill, 160 acres; the Santa Fe Opera, 122 acres; the Community College, 160 acres; and the Institute of American Indian Arts, 135 acres.

Chapter 2 of the SGMP covers land use element, the very thing the County says is the only thing they can decide on. I quote, "The land use element provides direction for future growth and sustainable development to include: protection of groundwater resources, reduction of land consumption while maintaining quality of life, economic opportunities and environmental protection." How is the facility protecting groundwater resources when it uses a forever chemical to suppress fires? How is the facility reducing land consumption while covering 828 acres of land just three miles from Santa Fe? How is the facility maintaining our quality of life while emitting noise from all of the equipment 24/7? How is the facility maintaining our quality of life if there is a fire in the facility? How will it affect our homeowner's insurance rates? Will it make it more expensive? Will we be unable to obtain insurance? How is the facility providing economic opportunities for all of us when the only jobs created are during the year of construction and only four nine to five jobs for the remainder of the facility's life of 35 years?

Or is the facility only providing economic opportunities for AES, an out-of-state company with $45 billion dollars in assets who has confirmed in the August 2024 meeting that if approved for the CUP, they will apply to the County for an industrial revenue bond to use our tax dollars to help finance a project most of this community clearly do not want?

The SGMP states in Chapter 2, that a key issue in land use development is and I quote, "Unsustainable development patterns negatively impact the environment. These impacts are exacerbated by: Overly consumptive land development that consumes

forests, water resources, wildlife, open spaces and agricultural and ranching lands." Isn't this facility clearly an overly consumptive land development that consumes water resources by AES' own estimation 32 to 49 million gallons of water during construction alone and up to one million gallons each year after, that consumes wildlife, that consumes open spaces, that consumes agricultural and ranching lands.

The facility seems to meet all of the unsustainable development patterns which the SGMP identify negatively impact the environment. Keys to Sustainability in Chapter 6 of the SGMP, emphasizes the need to, and I quote, "Preserve open space in all areas of the county with an emphasis on areas experiencing significant growth pressure including the southern portion of the County." Exactly where this utility-scale facility proposes to be sited. Chapter 2 of the SGMP states one of the main challenges of zoning is, and I quote, "Ensuring that potential land use compatibility and environmental conflicts are taken into consideration in the location of utility uses such as solar or wind power generation."

The plan clearly considers and stresses the need for renewable energy, including an entire Chapter 7 of the plan. Ten years ago the updaters had the forethought to define utility-scale as greater than 300 kW or about a third of a megawatt. The Department of Energy defines utility-scale as ranging from five to 100 megawatts, feeding generated electricity into the grid. That's the distinguishing feature of utility-scale solar, just as this facility will do. And the DOE defines commercial solar in the range of just 100 kilowatts to two megawatts.

We found the original email that Rebecca Halford of AES sent to Adeline Murthy of the County on May 2, 2022, more than six months before the CUP was even filed which stated that the project was not for the community solar program but is a utility-scale project.

The SLDC has no mention whatsoever of utility-scale solar. It defines a commercial solar energy production facility simply as a renewable energy production facility that uses sunlight to generate and may store energy for sale or profit." This proposed facility at 96 megawatts places it clearly by the SGMP, as well as current industry standards, in the utility-scale category, a definition which conflicts with the County's commercial solar definition. Remember the plan and the SLDC are to be consistent. Under Chapter 7, the SGMP states, and I quote, "Establish wind and solar energy standards to encourage renewable energy production compatible with greater ecological and environmental issues such as prevention of nuisance from noise and vibration, hazards to air navigation, birds and other wildlife, degradation to scenic viewsheds and other potential nuisances and hazards."

Let's talk about the zoning categories from the SGMP found under Chapter 2. When looking at the detailed zoning definitions in the SGMP, it is clear that a utility-scale facility, or a commercial facility, do not qualify for inclusion in the Rural Fringe zone. The proposed location, is classified as Rural Fringe and falls under the overall category of rural/agricultural/conservation. In defining what is permissible in this zone, "Rural Fringe" is defined as including and I quote, "residential development at low intensities while protecting agricultural and environmental areas that are inappropriate for more intense development due to their sensitivity. Review factors are to be based on balance between conservation, environmental protection and reasonable opportunity for development."

Commercial does not even exist in the Rural Fringe zone but it does appear in the mixed use zone defined and I quote, "as a combination of residential and commercial areas and higher density development." And commercial exists in the non-residential zone defined, and I quote, "as primarily commercial/public/institutional and industrial areas." It's important to point out that even the Industrial Light zone under this non-residential category only allows uses for non-hazardous materials. We know AES will use 38 forty-foot containers filled with 570,000 lithium-ion battery cells. And we know the US Department of Transportation and the EPA classify lithium-ion batteries as hazardous materials so the facility wouldn't even qualify for the SGMP's Industrial Light zone.

In the foreword to the SGMP there is a note of special thanks and appreciation to all the community members who participated in the development of the SGMP and I quote, "The SGMP would not be possible without the community perspective, wisdom, expertise, dedication and support."

We now ask the County to listen to that very same community perspective while making this very serious land use decision, a decision that will last at least 35 years and will impact all of us for generations. Per Criteria 7 of the Sustainable Land Development Code, and I quote, "The conditional use permit application may only be approved if it is determined that the uses for which the permit is requested will not: 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 the SGMP.

On behalf of the Clean Energy Coalition for Santa Fe County and our more than 1,250 members of this community, we respectfully submit that the Rancho Viejo Solar Facility is clearly inconsistent with both the property's zoning as Rural Fringe as well as inconsistent with the spirit and intent of the County's own Sustainable Growth Management Plan that the County is legally bound to follow. Thank you.

HEARING OFFICER HEBERT: Thank you, Ms. Cooper-Mead. Are there any questions from staff or AES for Ms. Cooper-Mead?

MR. MAYER: Nothing from AES.

HEARING OFFICER HEBERT: Thank you. Anything from staff? Thank you.

MS. COOPER-MEAD: Thank you.

HEARING OFFICER HEBERT: Mr. Coleman, would you be sworn in please?

[Duly sworn, Randy Coleman testified as follows:]

RANDY COLEMAN: My name is Randy Coleman. I live at 22 Fonda Road in Santa Fe, New Mexico, 87508, and I recognize that my testimony is under oath.

Good morning, Honorable Officer Hebert. The AES team, Santa Fe County staff, representatives of the community and the public who made it their duty to be here today. My name's Randy Coleman. I live in Eldorado. I'm vice president of the Clean Energy Coalition for Santa Fe County. The AES defined Rancho Viejo utility-scale solar and battery project site location is detrimental to the health and safety and general welfare of the area. Since 2019 AES has had three fires in battery storage facilities in the western part of the country. The first of those fires was in Surprise, Arizona on April 19, 2019. This fire is considered the most dangerous fire in the history of battery energy storage systems. Fires with the most serious injuries to first responders.

This facility had only 10,584 NMC type battery cells, organized in modules in racks in one walk-in enclosure, so image a facility here with 38 containers holding 570,000 batteries.

The second fire occurred in Chandler, Arizona on April 18, 2022. This fire created a hazmat situation, forcing a quarter mile area evacuation and shelter in place order. Later reports said this fire continued for two weeks. This was a ten megawatt facility with only 3,200 lithium ion batteries. More than 2 ½ years later AES has released no information to the public about this fire and its causes.

The third fire in a BESS designed by AES was recently in Escondido, California on September 5, 2024. This battery storage facility fire prompted evacuations in the area, just like other BESS fires. The Escondido City Council voted unanimously on November 20th to extend its moratorium on new BESS within the city limits for up to ten months and 15 days as staff worked to establish updated zoning regulations and safety standards for the facilities.

Facilities like these are not built without the consent and approvals of local municipal officials and surrounding fire and emergency services. AES would have been asked to make assurances of manufacturing and design safety and that the installations would have been in accordance with national and local fire and building codes. AES has made statements just like these here today. These statements don't protect the public health and safety when these facilities are placed too close to surrounding communities.

The consequences, not just the hazards and risks, of this facility being in a location is that checking off the boxes of codes and ordinances doesn't take into consideration that the location may still have dangerous interactions with the surrounding communities for a proposed site. The Rancho Viejo solar project site location will create a potential hazard for fire, panic and other dangers. Fire is the risk that the site will produce flame and heat. AES has described how they would mitigate that risk.

But fire differs from wildfire. Wildfire is a consequence of fire at the project site. Wildfire is a clear and present danger in Santa Fe County in spite of what might be said. The source of this threat is 570,000 lithium ion batteries. In AES' first CUP application they proposed using lithium ion type NMC battery. In the present application AES selected the more dangerous lithium ion type NCA battery. Of the six types of lithium ion battery, NCA batteries are the least safe, most likely to result in thermal runaway, and burn the hottest and fastest.

AES is proposing to place 38 40-foot battery enclosures in pairs with 3 ½ feet between them. This arrangement prevents the Santa Fe County Fire Department responders from access around the burning enclosure, forcing responders to shoot water over enclosures. I took the NFPA 855 training session from Mr. Bartlett of Atar Fire, the County's third party assessor. In that training Mr. Bartlett identified that the industry is moving towards 20-foot battery containers for logistical reasons and to reduce the exposure of the volumes of batteries to any one single fire event.

The AES design of 40-foot containers is twice that of that proposed industry standard. Pairing the containers means that each pair in proximity with each other represents an exposure of 80 feet of batteries of four times the industry standard. The AES hazard mitigation assessment in Section 3.2.9.1 states that if a fire evolves to the point it spreads beyond an enclosure, it is highly likely the pair will become involved.

In AES' first application a fire risk assessment report referred to at the Heller Report was included. The report contained redacted information pertaining to the batteries and AES petitioned the District Court for a restraining order to prevent the County from releasing the redacted information to the public. CEC intervened in the case and AES subsequently released the information. The information in the Heller Report identified the expected heat flux and temperatures resulting from a fire in an enclosure, both the fire internal to the enclosure and one that escaped the container. It was conceptual but it was the only thing that they had at the time.

It also identified the resulting toxic gases. AES has again withheld the same battery information in the current application and again has filed a restraining order. CEC has filed another motion to intervene but in the meantime, CEC will have to utilize the data from the Heller Report as the general characterization of the container fire risk assessment. It is reasonable to assume that the current values would not be so significantly different as to invalidate our review.

AES has established a 20- to 30-foot perimeter around the BESS site that will be used as a zero vegetation zone. Exhibit 8 from CEC contains calculations using the Heller Report data that show that from 6 ½ feet away from a container on fire the temperature can reach as high as 2030 degrees Fahrenheit, at 6 ½ feet. At 30 feet from the engulfed container the temperature could reach as much as 720 degrees Fahrenheit or more. Beyond the 30-foot perimeter is the natural vegetation and dry grasses in the area. Dry grass will ignite in a few seconds at 932 degrees Fahrenheit. In three minutes at 752 degrees Fahrenheit and about ten minutes at 572 degrees Fahrenheit. Without intervention, a dry grass fire that could potentially result in a wildfire could start in as few as five to eight minutes due to the radiant heat of a container fire.

Utilizing the National Wildfire Coordinating Group, NWCG.gov methodology, calculations indicate that for the grassy and juniper environment around the facility, an effective wind speed of eight miles per hour, and a relative moisture of nine percent, a wildfire could be expected to cover one mile in 26 minutes. Double the wind speed to 16 miles per hour and the same mile would be covered in 13 minutes. Think of that in terms of the response times you've heard. Sixteen mile per hour wind is nothing across that area.

The Heller Report identifies that the smoke from the fire would most likely contain burning particulate matter directly from inside the batteries. The same material that is so difficult to extinguish and must be allowed to burn out. The report also identified that this material tends to reignite on its own, even after having been extinguished and cooled. This could result in a fire due to spotting where material carried by smoke and winds lands on dry material and starts spot fires. At times of the year flammable material like tumbleweed can be driven at great speed and over large distances by the wind, further adding fuel to fires.

According to wildfirerisk.org, Eldorado at Santa Fe, New Mexico has a high risk of wildfire, currently higher than 80 percent of the communities in the US. A year ago the percentage was as high as 93 percent. Current trends of persistently rising temperatures and increasing drought conditions make the likelihood of a wildfire as a consequence only increase with each passing year. We know overheating and fire events will happen at this site. These events bring a string of safety and health and environmental issues with them. Thermal runaway is the failure mechanism most likely to occur in the lithium ion

batteries. The result is for the battery to overheat or catch fire. As cell temperatures rise the cells begin to off-gas. These gases can contain deadly toxic compounds such as cyanide and hydrogen fluoride.

The systems are programmed to begin ventilated these gases when cells reach a temperature called the lowest flammable limit. Deflagration panels on the roof of the enclosure will release this toxicity when the gases reach a pressure that could result in a container explosion. As AES acknowledged here today they will have a mix of those panels and ventilation that will continuously be releasing toxicity to the environment. 570,000 batteries, you can bet that some of them are out-gassing.

This is the start of the cells having consequences on the local environment. To make toxic conditions even worse, once smoke is detected, thermal runaway suppression systems set off to attempt to control the spread of the thermal runaway chain. The thermal runaway suppression systems themselves are toxic, adding to the toxicity building up in a container or more probably released to the atmosphere. Smoke fumes can be large and toxic. Fume footprints can be even larger.

Imagine a shelter in place order imposed in Santa Fe. It takes an EPA representative to take multiple samples over a long period of time to establish all clear. In the open spaces in lower Santa Fe it's reasonable to assume that the shelter in place footprints would easily cover Rancho Viejo, San Marcos, Eldorado, and maybe even into Santa Fe City. The community can expect that the Rancho Viejo project will be a regular source of air pollution in Santa Fe

While a lithium ion battery fire is allowed to burn out the attending firefighters will be using water to cool the surrounding containers to prevent further thermal runaway or fire spread. This water will also be used in attempts to knock down the toxic fumes and smoke and will mix with the burning toxic thermal runaway suppressant. The contained water will them puddle and seep into the surrounding ground placing permanent PFAS or forever toxins into the environment. PFAS contamination in our groundwater is already a persistent tragedy in the Santa Fe region.

Exhibit 9 documents the extent of damage PFAS groundwater contamination can inflict on a community, its families and its citizens. Why has CEC taken on these analyses? Someone in the community had to try to understand the consequences of this facility. NFPA 855, Appendix G recommends that the community stakeholders be part of an application review. We know that the County staff attempted to bring in community stakeholders and that that effort was stopped.

No matter how diligent the County is in checking boxes and enforcing codes, the consequences of the utility-scale solar and battery facility whose purpose is to generate electrical energy will always be threats of wildfire and toxicity. Allowing these threats within this specific location clearly violates the spirit and intent of the SGMP goals and policies and the SLDC land use for Rural Fringe zoning. Our renewable energy goals require the development of solar and battery storage facilities. The SGMP and SLDC intend that large utility-scale battery facilities belong in locations where threats of wildfire and toxicity don't intersect with our livelihood, our families, our homes, and our communities. Thank you.

HEARING OFFICER HEBERT: Thank you, Mr. Coleman. Please, let's stop with the applause. Thank you. Does the applicant have any questions for Mr. Coleman or any statement to make in response?

MR. MAYER: Madame Hearing Officer, we have a brief response from Mike Simpson.

HEARING OFFICER HEBERT: Thank you. Thank you, Mr. Coleman. He may have questions for you. We'll see.

MR. SIMPSON: I'll just make a brief statement. We'd be happy to respond to a lot of those points in writing afterwards. There's a few things that I think – first of all I understand the concerns. I appreciate the concerns and I share the concerns, and that's why we feel like we've addressed all the concerns in our system. And I think if there's an error here it might be from miscommunication of some of those ways in which we've addressed these concerns.

A few quick points: PFAS is a general term applied to a number of different chemicals. It is colloquially the group of chemicals has been referred to as "forever chemicals". In this case as we've shown, the exact version of PFAS that's being applied in this project is contained. It is not persistent in the environment. In fact it decomposes within seven days. It's form is not liquid. It does not dissolve into water and would not penetrate the groundwater. There were a few other points in there that again I think are not necessarily incorrect but may have been incorrectly applied to the specific system and if anything, we look forward to continuing to ensure that we mitigate all the concerns that they've presented today. So thank you for the opportunity to speak on that.

MR. COLEMAN: May I respond?

HEARING OFFICER HEBERT: Yes, briefly.

MR. COLEMAN: Okay. I appreciate that. I'd like to offer to AES, be careful when you talk about PFAS around Santa Fe, particularly when you would try to make it seem less dangerous. I just offer that. I understand what you're saying about the suppressants. When you were describing it and everything that you described you were speaking about a leak in the suppressants, but I'm talking about when the suppressant is combined in a fire situation. Those things do in fact combine and the PFAS that is in the suppressant become part of the combustion products.

I would love to have been able to apply the calculations, particularly what the toxic chemicals were. My temperature calculations, the heat flux do things against the actual design since you said I didn't apply it to the actual design, but you're redacted them. I have what I have. Okay? And the community only knows what it knows, and without that knowledge we can't do better.

MR. SIMPSON: I can understand that. I think we've made the offer, if there's an opportunity that you'd like to hire a fire protection engineer that can protect the – it's really our suppliers' confidential data; it's not our confidential data. They've asked that we not release that to the general public, but if there's an interest then we can share it with them in the same way.

MR. COLEMAN: I look forward to addressing trade secrets in a different venue.

MR. SIMPSON: Okay. Thank you very much.

HEARING OFFICER HEBERT: It would have to be. Thank you, Mr. Coleman.

MR. COLEMAN: You're welcome.

MR. SIMPSON: Thank you for the response as well.

MR. COLEMAN: Anybody? Okay, thank you.

HEARING OFFICER HEBERT: At this time Mr. Zlotoff please

[Duly sworn, Lee Zlotoff testified as follows:]

LEE ZLOTOFF: Lee Zlotoff, 53 Camerada Road, Santa Fe, 87508, and I acknowledge that I am under oath.

Honorable Officer Hebert and residents of Santa Fe County, as I just swore, my name is Lee Zlotoff and I am the president of the Clean Energy Coalition for Santa Fe County. And unlike the others who have testified for CEC I do not hold any advanced degrees in either law, library science or electrical engineering. My background is in the entertainment industry, which is to say I am a mere storyteller. But rarely have I found myself caught up in a story as disingenuous, calculated, and alarming as this so-called solar project proposed by AES. While we wholeheartedly support the County's efforts to transition to renewable energy, to the point that CEC has proposed and alternative, an alternate plan to the AES project.

We contend that what AES proposes is in fact a wolf in sheep's clothing. In the words of one of our members, the only thing green about their project is the money they hope to extract from the citizens of New Mexico. As you must do now, Officer Hebert, we have for years tried studiously to understand and evaluate the story presented to us by AES, a task made extremely difficult if not impossible as the information they offer continues to shift and change and remain incomplete, if not hidden from the residents entirely.

For example, in May of 2023 I informed the County of a major natural gas line that runs along the western border of Eldorado. I know this because the regulator station where the gas line emerges from the ground is immediately adjacent to my house. In August of 2023 we directly informed AES of this gas line, noted in our Exhibit 10, pages 110 through 112 for your reference. And yet it has never and does not appear in their application for a conditional use permit. Why?

Due to our concerns about the proximity of this exposed gas line, which is now, give or take a mile from the most recent map of the AES battery facility, we invited the County's Director of Emergency Response Department, a gentleman named Martin Vigil, to come discuss evacuation plans for Eldorado and to inspect those exposed gas lines. Mr. Vigil explained that wildfire was the single biggest threat we faced in Eldorado, but there was no way to know exactly where a wildfire would start or progress. And so he could offer no specific evacuation plans for our community in advance lest those plans direct the 4,000+ residents of Eldorado towards rather than away from such a wildfire.

But upon seeing the gas lines themselves, Mr. Vigil, with over 50 years of experience in emergency planning acknowledged that the gas lines represented a dangerous situation in light of the proposed AES installation, and he said he would relay his assessment to his superiors at the County. He also stated that for County first responders to get on site to evaluate the situation in the event of such a wildfire would require a minimum of 20 to 40 minutes in Eldorado. For reasons we can only speculate, Mr. Vigil was subsequently relieved of his position and no longer works for Santa Fe County.

It is worth noting that over 2,000 homes in Eldorado receive natural gas from that line, which in the event that gas line ruptured or exploded, all of those homes could be subject to explosion and fire, as natural gas explosions are among the most instantaneous of destructive of all utility failures. The fact remains there are only two roads that provide

evacuation from the western half of our community and no Eldorado emergency alert system currently exists in the event of either a wildfire caused by the AES facility or even a toxic plume caused by a battery container fire.

The SLDC specifically prohibits any project that could cause public panic. Should there be either a wildfire or toxic plume carried by the prevailing easterly winds, which are nearly constant and can often reach almost 50 miles per hour, the residents of Eldorado would be left to their own devices to attempt such an evacuation. If that is not a recipe for public panic I struggle to imagine what one would be.

You will also note, Officer Hebert, on those same exhibit pages those two blue swaths that run to the east from the AES facilities that look like waterways. They are in fact the Gallina Arroyo, one branch of which runs directly into Eldorado and the other up directly into Santa Fe. According to the wildfire consultant we paid to evaluate the situation, a Mr. Craig Dougherty, just as arroyos channel water in the event of heavy rainfalls, due to the vegetation that result from that run off, arroyos can also channel wind-driven wildfires which can travel even faster than the surface fires providing yet another possibility of triggering a public panic.

But let's for the moment not assume the worst case scenario. AES repeatedly states that as of yet at least, no BESS fire has escaped the confines of its facility. But with over 500,000 lithium ion batteries over a 35-year period it is virtually a mathematically certainty that there will be at least one if not multiple BESS fires as the history of their facilities has shown to be the case.

Imagine then if you will such a fire occurring in the summer at the height of the Santa Fe tourist season, Indian Market, Folk Art Market, Spanish Market and so on, and the toxic plume from that fire which could last for days or even weeks, is carried by the wind up into town. At which point, not only all the local residents but all the tourists upon which our economy depends are told to return to their homes, hotel rooms or Airbnbs. An then close the windows, turn off the air conditioners and the fans and shelter in place until such time as the EPA determines it's safe to go back outside. I daresay the impact of such an event could devastate the financial based of Santa Fe not only in the short term but potentially for years to come.

Do we know that such an event will occur? We do not. Can AES or anyone assure us that if they build this facility such an event will never happen? They cannot. What we do know is that when there is a BESS fire the hundreds of thousands if not millions of gallons of water that are necessary to keep the containers cool so the BESS fire doesn't spread to the other containers will carry the toxic PFAS chemicals down into our aquifers, from which at least 2/3 of Eldorado residents draw their water. And exactly how serious an impact might that have?

In November of 2023 some 500 homes in the communities of La Cienega and La Cieneguilla were informed in writing that their wells were contaminated with toxic PFAS up to 38 times the lethal amount specified by the EPA. They were told to neither drink nor bathe in their own well water and that at their own expense they would need to test or filter their wells, if not find another source of household water. To my knowledge, there is no way to remove these chemicals from an aquifer, and the residents there have already noted numerous cancer clusters and deaths.

Given that this is already an issue for county residents, how could anyone in good conscience recommend a facility that will most likely produce another such situation?

And for what exactly? A project that our local energy provider, PNM, has now rejected in its power production plans for a sixth straight time.

HEARING OFFICER HEBERT: Please, let's stop. No more clapping.

MR. ZLOTOFF: As is now evident, if not in this room today but by the emails sent to the County, the public opposition to the AES project is at least ten to one and growing. Are we all simpletons? Luddites? Or fools? Or are we instead informed citizens who can see clearly through the desire for corporate profit at the expense of our safety and well-being? With all due respect, Officer Hebert, no matter how you tell it, this story simply makes no sense for the residents, the economy, or the health, safety and welfare of Santa Fe County. Thank you for your due consideration to our testimony and exhibits.

HEARING OFFICER HEBERT: Mr. Zlotoff, I have a question. You said that PNM has now rejected the AES facility as a provider six times? What do you base that on?

MR. ZLOTOFF: Well, most recently, PNM published the projects they wished to pursue in their latest round of RFPs. The AES was not among it and has not been among it for the last five RFPs that PNM has done, to my understanding. I don't work for PNM. I just know what I read in the newspapers.

HEARING OFFICER HEBERT: All right. Thank you very much. Is there any response from the applicant or staff to Mr. Zlotoff's comments?

MR. MAYER: I'll just briefly address the last comment regarding past PNM RFPs. Past selection or non-selection is irrelevant to a future procurement, especially in light of a project maturing its overall development. So we did not have a signed interconnection agreement prior to the last RFP, and of course we are now further along through a permitting process, which also demonstrates a growing maturity of the project. At the end of the day there's also a price component to PNM selecting resources, and so that's something we're always looking at approving. At the end of the day it will be PNM's choice. They may or they may not select this project in the next RFP but we will put forward the best proposal that we can and trust them to make that evaluation.

HEARING OFFICER HEBERT: Thank you, Mr. Mayer.

MR. ZLOTOFF: May I respond?

HEARING OFFICER HEBERT: Yes.

MR. ZLOTOFF: The State of New Mexico, not the County, the State of New Mexico generally reviews these projects and has more experience with big utility projects. They will not even consider a renewable utility project that does not have a power providing agreement with PNM. You are asking the County to give you a permit with no guarantee of a PPA with PNM. Is that correct?

MR. MAYER: So we're talking about a couple different things. So in order to successfully develop and build a project, you need several pieces of the puzzle to come together. If you don't have all of them you don't have a complete picture. So there's several avenues of which this project development is proceeding to which we need all of them to come together in the end.

So one of them is seeking permission from the County for a land use permit to develop this project. Without that you obviously cannot develop the project. Separately, we also need a commercial contract in order to reasonably finance and build this project. So we are looking to participate in the forthcoming PNM RFP. We will pursue being

selected in that and ultimately signing a power purchase contract. That has to happen prior to the New Mexico Public Regulatory Commission later approving that. So these are all different avenues of which they all need to proceed in order for us to later seek a development permit to initiate ground disturbance and construction of the project.

HEARING OFFICER HEBERT: Thank you, Mr. Mayer. Thank you, Mr. Zlotoff.

MR. ZLOTOFF: I just have one more comment if I may.

HEARING OFFICER HEBERT: Briefly.

MR. ZLOTOFF: If I understood what AES said in their presentation, the battery container facilities they are now intending to use on this project have not been used anywhere before in any of their facilities. Is that a correct statement? I understood you to say the components have been used but that this collection of components has not yet been used in any of your facilities. Yes or no?

MR. SIMPSON: I think the answer's yes.

MR. ZLOTOFF: Okay, then with all due respect, why should we be your guinea pigs? Thank you.

HEARING OFFICER HEBERT: At this time, I guess you all are just going to keep applauding until somebody tells you you have to leave. Well, it slows everything down. At this time, Ranch San Marcos, San Marcos Association.

MR. SIMPSON: Madam Hearing Officer, should I answer that last question or should I leave that one.

HEARING OFFICER HEBERT: I think that whether or not it has a PNM contract is somewhat irrelevant to whether it meets the CUP criteria, so thank you anyway.

MR. SIMPSON: Okay. Thank you.

[Duly sworn, Dennis Kurtz testified as follows:]

DENNIS KURTZ: My name is Dennis Kurtz. I live at 42 San Marcos Road West in Santa Fe, 87508 and I understand that I am under oath. Good afternoon, Madam Hearing Officer and residents of Santa Fe County. My name is Dennis Kurtz. I'm president of the San Marcos Association. The words San Marcos have been used a lot of ways today so I just wanted to clarify who and what I represent. The San Marcos Association is a registered organization pursuant to Chapter of the Sustainable Land Development Code, the SLDC. It is not the HOA, for example, of Rancho San Marcos, which is a community within the area for which we advocate.

We advocate for a very large area, stretching from the Colibri Subdivision on the north to far below Madrid, from I-25 on the west to the borders of but not including Eldorado, borders of but not including Galisteo, including Cerrillos, including the Cerrillos Hills, including the western Galisteo Basin, including Madrid – all that area is an area for which our registered organization advocates. We also call it SMA and I'll be using that phrase a lot in my presentation. So thank you for granting us standing in this matter.

Our mission concerning this whole issue is important. We intend to serve our community as a trusted resource by listening to community concerns, by sharing information and by influencing policy. We're not a single item organization. This solar project is one of many things – traffic safety, preserving cultural resources, ensuring that the gold mine up on Gold Mine Road is restored to its natural state, the Nuisance

Abatement Ordinance that was recently passed by the County – these are all things that we try to influence. Most of the time we're not tellers; we're listeners, but sometimes we have to tell and this is one of those, because what we're here today is to attack this process from a different angle a different elevation.

San Marcos Association feels that the conditional use application process does not apply here. This should never have come this far in the first place. Now, these have all been discussed and I didn't know what order I would be speaking in so I'm not going to spend a lot of time on these, all of these different kinds of solar, but these are the four kinds of solar that are regulated in Santa Fe County: residential, commercial solar energy production facility, which is what the CUP is under. I'll point out that that's according to what we've learned is of neighborhood scale, community solar, which this is not – totally separate set of laws, and a gas or power generating facility. A gas or electric power generating facility is one of the uses in the SLDC.

Now when I use the words scale and size, just like everybody else here today I'm talking about things like square footage and acreage but also megawatts or kilowatts or whatever. I'm going to go through and explain this. Okay, the Rancho Viejo solar project is a gas or electric power generating facility. This is not just a phrase that I made up or that we made up; this is a use in Appendix B of the SLDC. Nobody here has said anything different that this this morning, today. It's an electric power generating facility, and it's huge. It is greater than the previously mentioned utility scale that's in the SGMP, greater than the 300 kilowatts. It transmits power directly to the grid. It does not transmit to my house like my residential solar would or to a neighborhood like a community solar would. It transmits it to the grid which then it goes out as was explained, depending on what the load needs are.

In Appendix B, the Use Matrix, these gas or electric power generating facilities, which I'm going to just call power plants for short, have a code. That code is in the law. It's what's called the LBCS Structure Codes. LBCD stands for the land-based classification standards. It's part of the American Planning Association, and many, many uses if you look at the Use Matrix, which is pages long, have these codes and it defines what that use is. This use is defined by those codes. That code 6460 specifically says that it includes under gas or electric power generating facility, includes solar panel farms.

Now farms is a big word. Farms is not a rooftop solar. It includes solar panel farms. This project is a power plant. This project is a gas or electric power generating facility. All kinds of objections have been raised and they're good and solid and all of that but our position, the San Marcos Association is is a gas or electric power generating facility, those are prohibited in the Rural Fringe, therefore conditional use permits are not an option. They're not the way to go.

This is what a tiny slice of what this Use Matrix looks like. Okay, if you want to go online you can see it is pages and page. This is page 11 and there's more after this, but what I've done here, what you have is on the left, different kinds of usage. You see it says at the very top – I'm not sure anyone can read it, but I'll just read: septic tank services, repair and installation business. What does that mean? Well, it has a code and you can look that up according to the American Planning Association. So our assumption, Madame Hearing Officer is that these codes, because they're in the Use Matrix are part of the law, and so we treat them as being part of the rules.

Down at the bottom, towards the bottom where it's highlighted gas or electric power generation facility, code 6400, I circled. This is the Rural Fringe column. All these other columns are different – Rural Residential, Industrial Light. The Rural Fringe column, X. Gas or electric power generating facilities are prohibited. That's what the X means. They're not conditional – there's a C for conditional. They're not permitted – a P. X.

There's no real way to deny that this facility is somehow not one of these. It's huge. It's a power plant. It's prohibited. To me, from our standpoint – I realize it's a very selfish point of view but the San Marcos Association, had we been the person to talk this morning that would end the entire here. There it is. It's prohibited. But of course there are different opinions. And the opinion that seems to be in play is that it is not this – it's not a power plant. Forget that power plant piece. It is a commercial solar energy production facility. Well, I didn't – I mistakenly just poorly planned. I didn't show the Use Matrix page but three lines below the power plant line that I showed, this one, three lines below is this line: commercial solar energy production facility, which is defined as renewable energy production facility that uses sunlight to generate and may store energy for sale or profit. In other words, it's anything that uses the sunlight to make money, to produce electricity to make money.

But this is the part that's so puzzling, that kind of definition. I'm not an attorney. I'm not an attorney. I am a – my background's in education, but I was assistant superintendant, I was around a lot of attorneys and I can say I've never run into a legal statement that was so vague. That could be written by a sixth grader. I mean commercial means for sale or profit. Solar energy means from the sun. So why is this here and it's three items below.

In 2016 the Board of County Commissioners adopted the SLDC. They voted for it. And they voted for both of these things at the same time, right? They voted for the entire law and this is here. As we've already heard, dozens and dozens of people contributed to the SGMP, which is the foundation for this law, and the SLDC. And now we're told to believe that there are uses just this far apart on the page that are somehow the same, even though they have different names. This one, commercial solar energy production facility, has no number. The land based classification is not relevant. The only definition is has are those words right there which are in Appendix A. That definition was adopted by the Board of County Commissioners in 2016 but a part written 2015 or 2024 – whenever. It takes a while to write these documents and in those days utility scale was greater than 300,000 watts. This is 96 million watts is what we're talking about. Greater than 300,000 watts. This definition did not contemplate anything like this particular solar project.

It's conditional in the Rural Fringe – how can it be conditional when supposedly the same thing – it is the same thing, the power plant is prohibited. It's something that I've struggled with personally just in terms of how to present it's so complicated. We have held, the San Marcos Association has held this position since March of 2023. We wrote a letter to the County and said, lookit. It's a power plant; that's prohibited. This shouldn't even have a CUP. It should be dismissed now, but here we are.

A couple of different things to back up this notion that this is not what the commercial solar energy production facility – this is not what that use is intended to be. It's conditional in the Rural Fringe. Rural Fringe is defined as suitable for a combination

of estate type residential development, minimum size is 20 acres – agricultural uses, and other compatible uses. Now, today, I've heard this notion of a compatible use. This solar field is a compatible use. That's the quote from the SLDC that 863. But compatible use doesn't mean compatible with anything you feel like you want to make it compatible with; it means compatible with things in that same sentence. Agricultural uses and estate type residential development.

We submit that this is not in the spirit or the intent of the SLDC or the SGMP for that matter. In the SGMP there is a whole section called the infrastructure section. The SGMP, the Sustainable Growth Management Plan deals with many, many, many things. Solar is just one little tiny piece. And that infrastructure section has to do with the physical infrastructure like roads and things, the legal infrastructure, the financial infrastructure, the administrative infrastructure – all those kinds of things. And there is a section on renewable energy infrastructure. It's on page 67, Section 3.2.5.2 of the SGMP. And ma'am, I have a note card I can give you if you want afterwards that has all these quotes and things so you don't have to take notes here. But I've got a document.

But the quote from the SGMP is this: that that infrastructure needs to be developed for renewable energy sources to allow "allow residential and commercial property owners to be able to make renewable energy improvements in an accessible and affordable manner." The SGMP clearly intended commercial to be something that already exists. Target wants to put solar panels on his roof to reduce his electric bill, increase his profits – sure. That's commercial use. That's what the SGMP meant by commercial renewable enterprise in this case. And that's what we think that this means.

This is not using the sunlight to make electricity to sell and make money. It's using the sunlight for my business, as opposed to my residence to help me be more profitable. Maybe if I own a mall I could sell it to other little businesses in the mall or something, but it's for an existing commercial enterprise; it's not the commercial enterprise in and of itself. It's not a power plant. If I'm Target, I don't get to build a power plant, I just get to put some panels on my roof to help me lower my energy bills. That's our understanding of what it is, but that's not the only place we get this from.

But I would just point out, if you change this definition a little bit, renewable energy production facility that uses sunlight to generate and may store energy for residential use. Our understanding is that this part of the law was written to directly contrast with residential solar. You have residential solar and you have commercial solar of about the same size but for every different uses.

Okay. I want to be very clear about this. This looks like the Use Matrix that I showed a minute ago, but this was a document that was handed to the San Marcos Planning District, the San Marcos Planning District, yet another entity that has the words San Marcos in it is not the same as the San Marcos Association. San Marcos Planning District is part of the SLDC, created by the County and it's in Chapter 9 of the SLDC and the people in the planning district, there's like 13 of them or something, they get to rewrite the Use Matrix in ways that suit their community. And so every five or eight years or whatever, the planning district gets to meet and review their Use Matrix.

So this is a worksheet that was given to us. I was on that committee. Not the San Marcos Association,wasn't connected to that. I was just on that committee. This is a document that we received and what you see on the top line, commercial solar energy production, it's conditional in the Rural Fringe, in the SMD here, this SMD means San

Marcos District. So what this is is a document that says here's what the San Marcos District is now and here's what the County is. Here's what the County thinks the San Marcos District should be in the future. And it's a worksheet. You go through this line by line. Well, the San Marcos District would say it was prohibited in Rural Fringe. The County says it's conditional in Rural Fringe. We already know that; that's been said all day long. And they were proposing that it be permitted in Rural Fringe. Okay.

But over here, in order to help us interpret what to do and how to make our decisions, the County gave us notes and it says, neighborhood-scale renewable energy production facilities. Someone could jump up and say, well, look, the County says it ought to be permitted; forget all this conditional stuff. The County is saying it should be permitted because it's of neighborhood scale. Neighborhood scale does not have a definition but if you go back to the slide mentally that had the four different types of solar, the average residential solar size – this is from Google so it's on the internet; it's got to be true – is 7.2 kilowatts. 7,200 watts. That's a residential size on average. So a commercial facility in a Rural Residential, Rural Fringe neighborhood is going to be something similar to that. It's not going to be 7,200 kilowatts. No, it's not going to be 96 million watts. Neighborhood scale.

So our feeling is that this represents a small – there's nothing about a scale in the definition. It doesn't say size or anything. It just says for money. That's what it's all about commercial. Our feeling is that the use of the commercial solar energy production facility, that use, is not appropriate for this project. This project is a power plant, a gas or electric power generating facility. And that's prohibited in the Rural Fringe. This is not applicable.

If the County wants to allow that in the Rural Fringe, change the law. Change the Use Matrix. Go to that effort and then – and the San Marcos Association has said, make this a DCI. Have a community conversation. If you want to change it, change it. We are not against solar energy, obviously. We've got to do something about this, but what we are against is people who don't follow the rules. And we feel like the rules aren't being followed here. This is prohibited, and that's it.

So what we are asking, Madam Hearing Officer, is that this conditional use permit application not be approved because the SLDC prohibits electrical power generation in the Rural Fringe for the reasons that I just said. And that the definition of this commercial solar production facility is not specific enough to somehow overturn that prohibition which is as clear as a bell. This is a power plant. It's prohibited. The end. That's our position there.

My last slide is pretty personal to SMA. We are listeners. AES did not notice us about a meeting that they had. One of their public meetings. This is from a report that they sent out and so therefore they denied the San Marcos Association the chance to listen. Public meetings are for three reasons, just like this one is. People get to say what they need to say. Other people get to respond to that. And other people get to listen to that. San Marcos Association was denied our opportunity to listen. Probably a technicality in terms of the whole big picture but it's something that we felt like we should point out. That we should point out. So with that, I made my point, I think. I've tried. I'll take questions to try and clarify if I messed it up.

HEARING OFFICER HEBERT: Thank you, Mr. Kurtz. Does the applicant or staff have any response or questions for Mr. Kurtz. It was largely a legal argument.

MR. MAYER: No questions from the applicant.

MR. SISNEROS: The neighborhood meeting that Mr. Kurtz is referring to is part of the old application. Prior to the new application being submitted AES was required to hold a new neighborhood meeting which is in the record and part of the exhibits.

HEARING OFFICER HEBERT: Thank you, Mr. Sisneros.

MR. KURTZ: The San Marcos Association understands that. Nevertheless felt like it was important to put in the record that we were not notified according to the procedures, and other people have spoken about other procedures they feel like were not adhered to. I'll leave it at that. We did not feel that this project adheres with the spirit of the SGMP or the SLDC.

HEARING OFFICER HEBERT: Thank you for your testimony.

MR. KURTZ: Thank you.

HEARING OFFICER HEBERT: Now, with that I think we will take a short break and come back for the public comment part of this process. So we'll take a break of ten minutes.

[The hearing recessed from 2:30 to 2:40.]

HEARING OFFICER HEBERT: I believe we will continue now with the public comment part of this hearing, if everyone would either sit or leave we could begin with the public comment. We have been notified by the City that they're having another event this evening so we have to be out of this room by 5:30 and in consequence of that we're going to limit the public comment to two minutes a person and I ask that it not be repetitive and redundant. I think we all understand the basic issues and the fears and the concerns about fire that have been expressed thus far. But we do want the people who have attended here to have the opportunity to express their feelings.

So with that we will begin now with the public comment and each person will have to be sworn in.

[Duly sworn, Lucy Foma testified as follows:]

LUCY FOMA: My name is Lucy Foma. I confirm I'm under oath, and I live at 714 Rosita Street, Santa Fe, New Mexico. I'd like to note the Planning staff have done a great job and Land Use staff have done a great job, but I have submitted a letter twice in support of this project and it hasn't been posted on the website but I hope that you have it in your files.

I am born and raised here and I have two small children who I hope have a future here as well. I'd like to note that they are the ones who really should have standing in this meeting, not the CEC alone or the San Marcos Association. There's a story about ants collecting food stores for winter when torrential rains begin, and as the water rises the ants start to fight about whose job it is to carry crumbs instead of protecting themselves against the flood.

The flood is happening as the climate crisis is already playing out in our state and around the world. And I'd like to remind the folks here, as you're asking questions about

the potential about a possible fire from a battery and what the impact on the neighbors is, our electricity in our homes has been coming from coal, from coal-fired power plants in the Four Corners area that's been poisoning people daily for 50 years.

Luckily, Santa Fe County has a Sustainable Land Development Code which Section 1.4.2.14 and many other places say that we shall – which means we must do solar. You're sustainable, and renewable energy. The parcel in question is zoned Rural Fringe with one dwelling unit per 20 acres, so this acreage could either become about 40 houses or it could power close to 40,000 houses. And this is private property so the developer could choose to develop 400 houses on this parcel instead, making it just a big sprawling area.

Solar panels require battery storage because the sun doesn't shine 24/7 and yet our homes and businesses require 24/7 power availability. Battery storage safety measures have increased dramatically and as the data shows – there was a graph – fire instances have basically plateaued in recent years as battery storage has skyrocketed across the nation and around the world.

Staff have recommended approval of this project. It meets all of the rigid and very stringent standards that we've put on them. I've been waiting for this solar development for over three years and meanwhile our global temperatures keep hitting new highs every year. Let's stop wasting time and address the flood that is coming our way. We've already made the decision to build the houses that are sprawling across our landscape that demand energy. Now we must power them with solar energy.

As the United States is about to abandon the urgent need of the climate crisis our county has the responsibility to do what we have already said we supported – build solar. Nobody likes change but change is already happening and we can make the most of it and address it, or we can quarrel about who is carrying crumbs while we all drown. Please think about your children.

HEARING OFFICER HEBERT: Thank you, Ms. Foma.

MR. SISNEROS: Hearing Officer Hebert, before we get to the next speaker we do have to address the crowd as far as how we want to go forward with the presentation.

HEARING OFFICER HEBERT: I'm sorry, Mr. Sisneros, I don't understand what you're saying about –

MR. SISNEROS: So with the public comments, we kind of have a format that we just wanted to have something a little bit more formal, so Daniel Fresquez is going to just briefly kind of go over to the crowd of how we want to go forward with the public comments. Just so we can try and keep things moving for you.

HEARING OFFICER HEBERT: All right. I thought I'd addressed that. But Mr. Fresquez can make some comments if he'd like.

DANIEL FRESQUEZ (Media Specialist): Thank you, Madam Hearing Officer. With the current number of speakers signed up, including those with donated time, public comment is set to last just over three hours. Each speaker is allowed one opportunity to speak for a maximum of two minutes, which has been adjusted due to the high demand for public comment. Those with donated time will be limited to a maximum of 15 minutes, which has also been adjusted for that same reason. This time limit will be strictly enforced, and the timer, as we all saw, will be displayed on the screen.

We'll first hear from those who have received donated time, which I will call on by name. Following that, attendees who have signed up speak on their own behalf will be invited to line up at each podium. If you have donated your time to someone else please do not stand in line. For our virtual attendees, please use the raised hand feature to indicate that you would like to speak. Virtual speakers will be called on in order of their request received. All speakers, whether in person or virtual, must be sworn in by the stenographer. To make the most of this time we ask that speakers avoid repeating questions or comments that have already been addressed. Thank you for your understanding and cooperation. Our next speaker will be – we're going to go for the first three donated time speakers so the first one is Camilla Brom.

HEARING OFFICER HEBERT: And just to be clear, the speakers that are attending remotely will be at the conclusion of the people who are in this room. Is that correct?

MR. FRESQUEZ: Yes, Madam Hearing Officer.

HEARING OFFICER HEBERT: All right. Thank you.

[Duly sworn, testified as follows:]

CAMILLA BROM: Camilla Brom, 181 San Marcos Loop, Santa Fe, New Mexico, 87508, and I confirm I am under oath. Hi, Madam Hearing Officer. My name is Camilla Brown. I live in Rancho San Marcos which is a small neighborhood just directly southwest of this AES facility, and I'm going to speak – well, I wanted to say thank you to those who ceded their time to me, and I'm going to touch on a few concerns that I don't think have been addressed in detail, and then I want to comment on a few things that were presented by AES earlier in Santa Fe County earlier.

I wanted to point out what the fire risks. We all are aware now of the battery storage facility and the risk it carries with this proposed facility, and again, with these batteries, they're comprised for this case over half a million battery cells. And at any point during – be it the construction of the cell or the transmitting or transferring it to a facility and traveling and all of that, or constructing it at the facility, anything could go wrong and it just takes one single lithium ion battery cell to overhead and then turn into a thermal runaway fire. So it's really concerning to have so many ways in which this fire could develop with a lithium battery runaway fire. So I want to make sure that's – I wanted to point that out.

Also the solar array that's being proposed, I wanted to point out that although we don't hear about as many fires in a solar array, they are underreported according to research a number of us have done, and also if a solar array catches on fire, be it from some component in the array itself, or be it, say a wildfire or grass fire that ends up getting under the solar array, I want to point out that fire personnel can't just come out and start extinguishing it like you would think. The circuitry is still live, so there's a delay in any kind of a firefighting starting because they have to confirm there's no other live circuitry that's still possibly live that could end up electrocuting a firefighter. So that's another delay in any kind of a fire.

And out where we live and several people have mentioned it before, winds are commonplace out there. And also it's prairie grass so it's just almost like the perfect setting already for a fire. We all already worry to a certain extent about it but including this type of facility that is a blatantly obvious fire risk and threat to all of us, it just doesn't make sense.'

I wanted to bring up water in a little more detail because as someone mentioned, this facility is sitting on top, directly on top of an aquifer that thousands of us rely on for the groundwater flows in the general area and south southwest. And the property itself – I want to point this out – the landowner, he owns the surface rights to the land. So he can try to build something on the actual surface but he does not own the water underneath or anything underneath the ground. And being that there are thousands of us who rely on that to sustain our homes and our lives, that should, I hope, be taken into consideration because this is a whole different story when these decisions can impact thousands of us.

If there is a fire that happens – there's been a lot of discussion about, well, will the fire go past the general area, or will it be contained, but the issue here with the water is in order to try to keep these other surrounding containers from overheating, they have to spray a tremendous amount of water continually to keep them from not overheating because if they start to overheat that will impact the surrounding containers. The toxic gases that come out of these fires, when there's water being sprayed on them, they automatically – it collects these chemicals and such and it goes to the ground and in turn then it's going to be drained, or the runoff's going to go into the ground.

I've asked at a recent meeting by the County if they had required AES to have any kind of containment system for all this toxic water, and they said they did not. They said if a fire happens, and we end up with all this water runoff they would contact the State EPA or the Emergency Planning to figure out what to do from there. But to me that's just too little – it's too late. There are such things where these types of facilities require containment systems and drains and all that, and this hasn't been required – the County has not required this of AES.

But if our groundwater gets contaminated that's going to be a financial and environmental disaster, because there's no way to fix that once it happens. And to me that alone should say let's just put an end to this, among other thing people have mentioned today.

I read in a recent study just from I think October of 2023, or not a study but a report from a proposed 50 megawatt BESS facility in the UK. They were trying to figure out if they were going to approve this facility and the fire personnel, they gave a report about how they were against this, and they were called the Yorkshire fire rescue team and they raised objections. And this – and I'm bringing this up because that facility that they were concerned about is the same size as this – or I say facility – the battery energy storage is the same size. But they said that in just 24 hours they would have to approximately use 1.5 million gallons of water to fight a 50 megawatt BESS of this size.

So that's an unbelievable amount of water and none of that, I don't believe has been addressed in the water usage in the application from AES and SWCA. And I don't know if anything's been addressed of where all of this – to me, they need to plan for the worst case scenario. So if they're going to be hauling in water from somewhere, and on average it takes 1.5 million gallons of water, and the County says they have trucks that haul around 10,000 gallons of water, well just in 24 hours that adds up to 150 trucks coming in with water to try to extinguish this possible fire.

AES also said that they're going to have a 30,000-gallong storage tank onsite, but on average, that's only enough water to put out a typical EV fire, electric vehicle fire, and that you can find throughout if you do some research online. To me that's – I don't know how long that would last. It doesn't come anywhere near what's required.

Also, I wanted to make sure there was nothing else on water I wanted to bring up because to me, we just cannot afford to risk ruining our groundwater. I don't know what plans the County would have if that happens, or if they could supply water in another way for thousands of us who use this water.

Also, I wanted to mention a little bit about some of AES' information where they say that – they've said different things but they said earlier today that they were saying something to try make it more easy to understand, but there's a fine line to making it easier to understand versus making it sound misleading. And some of us have been involved in this for almost three years when we first heard about this facility. And one thing I want to point out because it definitely needs to be pointed out is the visual simulations they've used that are the same ones that have been up for almost a couple of years on their website or however long, and the visual simulation they showed you in their presentation today, which was a KOP-5 view and it was taken from the Turquoise Trail Charter School directly out to this facility area. That was the only visual simulation and all the others – I think they have a total of seven or nine, that when you start looking at the details, that view shows the solar panels completely flat. All the other views show them at a 60 degree angle. But that's how it can look like a little think gray line. And I brought this up to AES a number of times and it's still the same visual simulation on there. And I think because this would be seen right off a national historic Turquoise Trail Scenic Byway – well, not national historic, but the nation scenic byway, I think it's really important to make sure all the visual simulations are accurate and they're all the same as far as how tilted the solar panels are.

I also want to bring up the wildlife. In the first application AES used a consulting firm called SWCA out of I think Albuquerque, and in their field studies for the wildlife part and for other photos they've been showing today, that timeframe was done between April 4, 2022 and April 11, 2022. That was during that extreme drought when we had the Hermit's Peak-Calf Canyon Fire and that is not an accurate representation of what the area typically is. So when you go in for only a week on an extreme drought saying we didn't see any wildlife or there's hardly any vegetation, and even in the report they don't mention how long they were even out there looking. That's concerning. It's just insufficient in my opinion.

We have birds and other animals that migrate through that area so to do a really thorough, fair, accurate report for not just the wildlife but everything else, if there's no problems then why not do a little bit more evaluating? Why keep everything so short? I've had a problem with that because it just does not accurately depict what that area is.

I want to bring up one more thing I was going to talk about other stuff but the noise. I live probably a half a mile from this facility and I've been taking decibel readings on my own for the past month or more – not every night or day, but I even went out last night close to midnight but I took about five or six decibel readings. My average was 28.5 decibels to 30.1, I believe. Now AES never came out and did any kind of noise study. The County said they came out because of concerns from all of us, but I think the County's role, if I would be in the County would be I want to make sure the residents are protected. We want to make sure that this is all accurate. There's some responsibility here and it doesn't just – it's not just about making sure it coincides with the SLDC. To me it has to do with using common sense and taking some responsibility. So I really question those two minute readings that were taken last month. What were the conditions? Was it

windy? Was there some noise in the background? It's not good enough. And we, a number of us had asked the County before to consider an expert to hire, and they had the option to do that and at the applicant's expense, but they didn't.

And the environmental impact report and none of us have seen, which is still not finalized but it's a draft, to me that's one of the key reports that we should have been looking at a week or more ago. But when the only one that was brought up to the Commissioners that the County wasn't going to hire a third party consultant for the environmental impact report at this time, me at least reached out to the Commissioners and then the County started looking for a third party consultant, but only at the end of October. And an environmental impact report of this magnitude, for this kind of facility and it being over 600 pages long typically takes two to three months to do an accurate and thorough evaluation. So this appears to be a rush job and I believe we should have all had access to see it weeks before but we didn't.

So lastly, location. There's no reason. People have said we need to do this. We've got to put it in now. Well, now three years have gone by and AES is fixated on this one location rather than saying, you know what? Let's see if there's other locations that aren't as impactful to the residents and the environment, and they haven't. They're sticking with this. And this location is out in the middle of a pasture between three communities of over 10,000 people like the CEC said, and there's zero infrastructure. There's no substation, there's no transmission line. No BESS. Nothings out there. And the transmission line they're going to use is 2 ½ miles away and I've seen where New Mexico the state has over 1600 miles of this same kilovolt transmission line. There's no real reason this is here.

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

HEARING OFFICER HEBERT: Thank you for your comments, Ms. Brom.

MR. FRESQUEZ: Madam Hearing Officer, if I may, the next speaker would be Selma Schieveld.

HEARING OFFICER HEBERT: Thank you.

[Duly sworn, Selma Schieveld testified as follows:]

SELMA SCHIEVELD: Selma Schieveld, 227 San Marcos Loop, Santa Fe, New Mexico, 87508. I want to start by adding something to what Dennis Kurtz from the San Marcos Association already mentioned. The Sustainable Growth Management Plan in 2015 stated, and I quote, "The scale for the integration of solar technology varies from residential to commercial. The potential for large-scale electric generation facilities exists within Santa Fe County." So here, the Growth Management Plan already distinguishes the three different ones, the residential, the commercial and the large-scale electric generation facilities.

And to ensure that these large-scale solar electric generation facilities would not interfere with preservation of the integrity of the landscape, both the plan and the code are quite clear. The gas or electric power generation is not permitted within the Rural Fringe, differentiating between residential, commercial and large-scale electric facilities. And therefore, and I totally agree with Dennis, therefore there was no reason to even consider the proposal.

The bypassing of stricter regulation is also noticeable in the strained efforts to create all commercial solar facilities equal. Just because a cow is an animal doesn't make

animals cows. And all industrial solar facilities are commercial, but not every commercial solar facility is an industrial facility. PNM makes a difference between them and so does the PRC, the scientific literature and the industry. The only ones in denial are the County officials and AES.

Public participation is an essential part of these proceedings, yet the pre-application neighborhood meetings organized by AES and the County were disastrous. Some ended in screaming matches, questions were insufficiently answered or not addressed at all. In final memo provided by staff just days ago it's mentioned. AES addressed most questions and comments the best they could. Is that measure acceptable to the County? People were allowed to ask one question in a timeframe of a few minutes. The written answers provided by AES were mostly insufficient at best. The same applied to the so-called public meetings organized by the County. The decision to hold these meetings virtually meant that the County controlled the narrative by allowing one question with a two-minute time limit, and even though there was time left, there was time life, not allowed a second question by the same person.

The answers provided on written questions were riddled with misinformation like pointing to the County – I have adjusted my presentation to preventing duplicates so I have to go back to another area.

In the virtual meeting on October 22 the County officials wanted to show that the project was not inconsistent with the purpose of the property's zoning classification. The County Manager wrote a letter dated July 24, 2023 to the San Marcos Association. During the virtual meeting that letter was put forward as proof that the project was allowed. It stated in the presentation that a letter stated that the Board of County Commissioners wished to have large-scale with BESS as a conditional use permit. However, in the actual letter, large-scale solar with BESS is not even mentioned. This is an indication of how County officials try to push through this project by bypassing the strict regulations.

And it goes even further. Resolution 2023-093 introduced by Commissioners Hughes and Hamilton and signed by Commissioner Hansen on September 26, 2023 – so just two months after the letter to the San Marcos Association, that resolution directed staff to engage with experts regarding commercial solar and set up a website. The resolution does not mention large-scale solar either. So we as residents are incorrectly informed and made to believe the County Commissioners are okay with this.

So to continue with my previous point, the answers provided by the written questions by the County due to the virtual meetings, they were riddled with misinformation, like pointing to the County Manager who pointed to the County Commissioners as being the ones who approved this us, while the evidence does not support those statements. This is not the level of public participation as demanded by the Sustainable Growth Management Plan. However, the biggest affront – okay, no.

Another painful issue is the environmental report that has only become available just today, I believe, or yesterday. How can staff conclude that all the criteria to the CUP have been met because although dated September 4 the staff final memo became available around November 28. So this shows the bias, the done-deal state of mind of the County and the disrespect to the residents. Our opinion does not matter.

However, the biggest affront is the so-called hazard mitigation analysis. It was supposed to be tested against the latest standards but the update to those standard, Annex

G, developed because of the incidents with battery storage systems is left out of the testing. This creates a full sense of safety and it misleads the County and the residents. The rest results are shrouded in secrecy. Essential numbers are redacted. Essential reports withheld, and it was mentioned today that the components of the system were deployed before and also other companies deployed them as well, so that raises me the question, why the trade secrets?

What staff is reporting in their final memo is in straight contradiction to the test results. Staff reported the UL 9540-A test of this system indicates adequate prevention of thermal runaway. End of quote. Now, this test is a four-level test. When looking at the redacted UL 9540-A test reports, testing at cell level resulted in thermal runaway with flammable gas released. So you can deduce that from looking at even though it's redacted.

The performance criteria are that you neither, so you shouldn't have cell, you shouldn't have thermal runaway and you shouldn't have flammable gas released, but they had that in the cell level testing.

When we look at the module level testing, that's the second step in the testing, it revealed that thermal runaway in one cell spread to the other, resulting in explosion and flying debris. Yet the performance criteria are that the thermal runaway stays limited to one cell and there will be no explosion. Unit level testing is supposed not to cause flaming and explosion outside the unit which it did. The installation testing in which a direct injection of cooling agent was used showed that the thermal runaway was kept limited to one cell.

During the testing the wall temperature must not exceed 90 degrees Celsius, which is 175 degrees Fahrenheit, because around that temperature cell failure, independent for what has caused the failure can easily progress to thermal runaway. As was to be expected, in the results, which are redacted, the wall temperatures were redacted. I fail to see how a temperature can be designated a trade secret.

It's extremely worrisome that staff reported the UL9540-A test of this system indicate adequate prevention of thermal runaway, which when it's clear that's just not the case. If you look at the test report, they had a thermal runaway. And it's not even possible to prevent a thermal runaway. The best we can do with current technology with lithium ion batteries is to prevent it from spreading. The fact that the Fire Department, the Fire Marshal and the County staff are not alarmed by the results is consistent with the incomprehensible interpretation of the regulations surrounding this project. All is aimed at granting permission.

The emergency response plan developed by AES is abysmal. Basic information is not provided, setting first responders up for accidents and injuries. For instance, per the International Fire Code, on the outside of the containers there are supposed to be warrants and special lights with different colors for gas detection and fire alarms. These are not provided for in the emergency response plan. Also, in the checklist, seven steps in the checklist, before entering a site there is no sentence like: do not open container door. Explosion hazards may occur. These recommendations are from the Atar Fire review on which is the Fire Department and staff based their validation for a permit.

In addition to those two issues, Atar has 91 other issues that must be satisfactorily addressed. They very from minor to major major. For instance, the draft UL9540 report, that's a system level standard like UL 9540 are proof of concept that many components

that form a battery storage system will work together safely. Atar asks AES to provide the documents to review. The FMEA for UL9540 and the UL67301-F evaluation. And that stands for failure mode and effective analysis which is a method used to identify potential failures in the product of process assessed to impact and prioritize action to mitigate risks.

The other standard is certification for automatic electric controls in industrial applications. Those standards focus on ensuring the safety and the reliability of operations of automatic controls. So obviously, Atar Fire did not have possession of those two important documents. It means that we cannot assume that the system is safe until these reports are reviewed. And complying with industrial test standards should not be postponed till after the construction. Atar Fire failed to point out that NXT was not included in the testing, and failed to state that the short [inaudible] of testing should be resolved before granting the permit. They accepted the draft copy of the UL9540 report, stated that certification is not complete, and that completion of this project is contingent upon successful UL9540 certification.

They should have had the courage to point out that successful UL9540 certification needs to be part of the permit. AES cannot be trusted to solve the 93 issues brought up by the HMA, the mitigation analysis and the fire review. They have proven in the past not to bide by, for instance, the Emergency Planning And Community Right to Know Act, a federal law. Efforts to communicate with the County through letters and motions were fruitless. The County does not want to be held accountable and just ignores comments and does not serve their purpose. One of the reasons the Sustainable Growth Management Plan was brought to life was because problems with variance and loopholes in the existing code has undercut comprehensive growth management and promoted uncertainty and mistrust among residents and developers.

Now, ten years down the road we are still in that same position. Thank you.

HEARING OFFICER HEBERT: Thank you. Our next speaker?

MR. FRESQUEZ: Madam Hearing Officer, our next speaker is Ashley Schannauer.

[Duly sworn, Ashley Schannauer testified as follows:]

ASHLEY SCHANNAUER: [*Exhibit AA: Additional testimony, exhibits and power point*] My name is Ashley Schannauer. The address is 12 Mariano Road, Santa Fe, 87508, and I acknowledge that I am under oath. Good afternoon. I'd like to start with all due respect by renewing my continuing objection to the exclusion of my participation as a party with standing in this proceeding. The reasons for that objection are contained in the motion that I filed on this issue on November 20th and except for a response that I received by email from Mr. Sisneros when I filed my written testimony on November 27th I've not received a determination from your honor on that motion.

So without waiving that objection I would like to highlight several of the points in the written testimony I filed on November 27th. The written testimony addresses these points in more detail. First, the discussion of AES' application takes place within a context of legal requirements. I'm a lawyer; that's why I look at the legal requirements. The SLDC establishes criteria for the issuance of a conditional use permit. A project may not be detrimental to the health, safety and general welfare of an area. It may not create a potential hazard for fire, panic, or other danger. But the SLDC also requires applicants to

submit types of analyses and comply with specific pre-application reviews before the file an application.

In my limited time I want to highlight the legal requirements that AES has violated. Again, I address these and more in my written testimony. First, the SLDC requires that the hazards of a project be identified and addressed in the application. The SLDC also requires applicants to propose measures to effectively mitigate those hazards in the application. These must all be included in the application materials before a conditional use permit is issued, not after the permit has been issued.

AES' application violates this requirement in the SLDC. AES has submitted a document which is entitled "Draft preliminary hazard mitigation analysis". And AES even excludes from the draft preliminary hazard mitigation analysis the results of fire testing it conducted on its batteries. AES claims that that's a trade secret.

Second, the County Commissioners enacted an ordinance in December of 2023 that adopted updated safety standards from the National Fire Protection Association for lithium ion battery energy storage systems. The NFPA issued its 2023 standards to address the lithium ion system accidents that occurred since the 2020 date of NFPA's prior standards. In this case, AES is avoiding the application of the new standards that were adopted in the County's ordinance. It's doing that by having failed to seek the pre-application review of the County's Technical Advisory Committee for its new application in August 2024 that is required by the SLDC.

Instead, AES has submitted a Technical Advisory Committee review from November 4, 2021 that was prepared or its January 2023 application. It's still continuing to use that old Technical Advisory Committee review despite the fact that the County adopted new standards, updated standards in December of 2023. That means that AES violates Section 4.4.2 of the SLDC. AES conducted the pre-application community meeting that's required by the SLDC for a new application but it did not conduct or seek a new Technical Advisory Committee review for its new application. And the County is allowing that to happen.

You heard the reasoning today. I'm not sure I understood it, but you heard the reasoning for why the County is not requiring that pre-application – had not required that pre-application Technical Advisory Committee review. But it clearly has the authority to do that.

And I guess it's important to note, I believe at this point in time that the County has adopted those new, updated safety requirements for a different application filed by a different developer in August of this year, who is a potential AES competitor. But the County did not see fit to require AES to conduct that pre-application with the Technical Advisory Committee or to comply with the update requirements from the December 2023 ordinance.

The third point I'd like to make is in response to the claim that AES made earlier today that its project is needed to serve Santa Fe and address the problem of carbon emissions that lead to climate change. I've worked at the New Mexico Public Regulation Commission for 17 years, the last 12 as a hearing examiner and I have a lot of experience with PNM resource acquisitions. And one thing that is very clear is that PNM does not select resources it does not need. Another thing that's clear is the PRC does not approve resources that utilities do not need. And that has to be – I think it's important to put this whole debate into some context.

This project is not needed, as proven by the fact that PNM has rejected this application for a number of times. What does PNM need? PNM is required under state law to eliminate its fossil fuel generation by 2045. But it wants to do that even earlier. It wants to do that by 2040. And the Energy Transition Act, which is designed to hasten the elimination of fossil fuel generation establishes a preference for new resources to go into San Juan County, where a lot of the fossil fuel generation currently exists and is being retired. Those are all factors that PNM and the PRC look at when they approve resources.

As examples, the San Juan coal plant has been finally retired over a number of years and it's been replaced with resources in northwest New Mexico where transmission capacity has been freed up by that retirement. And with resources adjacent to Albuquerque where there's growing demand, primarily from the Facebook data center in Los Lunas. That's what they've done in the past. What they're doing in the future is that PNM is planning to retire a gas plant in Albuquerque, located smack dab in the middle of Albuquerque in the timeframe of 2028 to 2029 and it plans to close it's – abdicate its interest in the Four Corners power plant in San Juan County in 2031. So that's what PNM is going to be looking at in the next few years. It wants to replace that retired fossil fuel generation with renewable resources but it also wants to do it where it makes sense. It wants to do it where capacity, transmission capacity has been freed up. It also wants to do it where there's increasing demand. And it wants to do it in a cost-effective manner.

So that's what we're looking at. You don't build solar facilities, renewable facilities out in the middle of nowhere. You build it where there's transmission lines. You build it where there's demand for the resource and the experience that we've seen is that that does not apply to this project and it will not likely apply to this project in the foreseeable future. And it also means that denying this permit is not going to impact anyone's plans to decarbonizes emissions from power plants in New Mexico.

One other point. There is a requirement in the SLDC for the environmental impact reports to analyze alternatives to projects that are being developed. And in this case, the environmental impact report has no analysis of any alternatives to the use of lithium ion batteries in this project. But my testimony, in the written testimony I expand upon that with a discussion of other battery types that utilities are pursuing and I guess I'd like to just put an emphasis on that, which is in this most recent procurement case that PNM filed with the PRC, I think two weeks ago, PNM has in the past been entering into purchase power agreements with developers for solar energy and battery projects. But in this case PNM's also proposing to build a plant on its own and PNM's choice – most of these PPA, the purchase power agreements have involved lithium ion batteries. PNM's choice in this case though is something called lithium iron phosphate battery. That is a lower density battery, which is much safer than the lithium ion batteries that are being proposed by AES. So there's a basic flaw in the environmental impact report on that issue.

Lastly, I would like to finish by requesting that the written testimony that I submitted on November 27 be admitted into the record, and that includes the testimony itself plus the exhibits and they power point slides that I submitted with the testimony at that time on the potential that I might be able to participate in the hearing today as a party with standing.

HEARING OFFICER HEBERT: Mr. Schannauer, let me ask if the representatives for the applicant have any objection to – I believe you've had the

opportunity to review Mr. Schannauer's written testimony. Is there an objection that being entered into the record?

MR. MAYER: No objection.

HEARING OFFICER HEBERT: Thank you. Then we will enter that as a hearing exhibit marked AA.

MR. SCHANNAUER: And I have a hard copy of that filing. Should I give it to the clerk?

HEARING OFFICER HEBERT: Yes, That would be wonderful. Yes. Thank you.

MR. SCHANNAUER: Thank you.

HEARING OFFICER HEBERT: Thank you.

MR. FRESQUEZ: Madam Hearing Officer, our next speaker is Patricia Sill.

[Duly sworn, Patricia Sill testified as follows:]

PATRICIA SILL: My name is Patricia Sill. I live at 4 Antigua Place, Santa Fe, New Mexico, 87508. I am under oath. I acknowledge that.

Madame Officer Hebert. Thank you for your time today and your consideration. I'm an Eldorado resident and I have a valid concern for the health and safety of the 10,000 people in three communities positioned in close proximity to the proposed AES site. Never has one of these facilities been allowed so close to a residential area, and Eldorado is located 4,000 feet from the proposed of this facility. The closest home in Rancho Viejo is 200 yards, not 1.5 to 1.5 miles, as Mr. Mayer falsely indicated.

I'm considered why this isn't a deterrent for AES and further, why are they requesting the County to consider rezoning the proposed Rural Fringe land to accommodate this AES development? Catherine Babbitt, the representative for CEC revealed that in 2021 the SLDC prohibited solar facilities with battery storage in Rural Fringe zone. This is a Rural Fringe zone. This is a state law, but the County intervened and changed the definition in 2022 to allow for battery storage, thereby allowing for this AES project.

How is it that Dominic Sisneros, the County's team leader for conditional use permits, variances and appeals is not aware of this fact? I was under the impression that taking an oath was legally binding and now it just seems I was mistaken. Why do they want to place it on this piece of land besides the potential ease due to the one developer willing to lease it to AES, which keeps them from having to find perhaps multiple landowners willing to have this project on their conscience?

Clearly the County and AES understand the dangers, risks and liabilities are significant, so significant, in fact that when the Escondido, California fire broke out at an AES facility two months ago, 500 businesses and four schools had to evacuate or shelter in place. In the Fox news report, AES had no comment, and instead pushed their proposal forward to build another facility ten times the size in Eden Valley, a residentially zoned area, at which point their county official initiated a plan to place a moratorium against the new AES proposal.

I'm including a letter from J.P. Therberg who is the vice chair of the Elfen Forest Harmony Grove town council in San Diego County. We are reviewing a very large project by AES, 1280 megawatts, and found that they have been using misleading statistics, downplaying risks, and in some cases, lying about the project and capabilities. I

understand that in your town AES is claiming to have never had a battery storage fire. To be clear, there are at least three facilities built by AES that have caught fire. The McMicken facility in Arizona which injured firefighters. In 2019, the Chandler fire in Arizona, and the SDG&E substation in Escondido last month. All three facilities were built by AES, despite Mr. Mayer trying to distance himself from this.

Why isn't our County officials protecting us? Imagine, we go to bed at night, an explosion occurs at the AES facility, we hear an alarm. Oh, no. I'm sorry, there are no alarms. So we have to hope that god wakes us up so that we can have the time to gather our family, our children, our elders, our animals and evacuate on one of the three roads available to the 6,500 residents in Eldorado.

Madam Officer Hebert, to allow this to happen is putting ourselves in peril. Let's look at the hazards. Oh, the hazards have been redacted. Allegedly, AES shared some of the hazards with the County in their initial proposal but AES required that the County withhold that information from us. The County is aware of the hazards as confirmed by the AES legal counsel today. In the second proposal AES has excluded both the County and the residents from accessing the hazard mitigation analysis from what I've heard.

The County is willing to accept AES' proposal on only 30 percent of the plan available for review. Why? To prevent us from understanding the potential dangers that they are aware of. How has AES been allowed to redact the hazards by relabeling them as trade secrets? We heard today from Mr. Mayer when he was showing us the slide on hazards and his response was, oh, we're just going to breeze through this part. It's our lives we're talking about.

Anyway, he stated that the AES facilities have no undue impact on us so maybe we just don't need to worry about this. Today the legal counsel for the County claimed that there are no toxic emissions above detectable threshold experienced outside the perimeter of a fire, but in the Escondido fire facility, one business owner claimed on this Fox news thing that I saw that air smelled so bad that they had to close business for days. Apparently toxic fumes were detected outside the facility's perimeters. These are our lives. This is our lives.

What concerns AES so significantly that they would have to hide 70 percent of the hazards from us. Clearly we need full disclosure. Bernalillo is demanding 100 percent transparency and so should we. Our lives and our property values depend on it. I don't want to evacuate my home or shelter in place. Do you? I request full transparency on behalf of myself and all 10,000 residents by AES and the County of the inherent dangers of this proposed development. Based on the Inspection of Public Records Act I am demanding that we be granted immediate access to every document including emails between all participating entities.

Fellow community members, let's band together against this potential environmental disaster in what is clearly the fight for our lives. Thank you very much.

HEARING OFFICER HEBERT: Thank you, Ms. Sill.

MR. FRESQUEZ: Madam Hearing Officer, our next speaker is Stace Williams.

MS. BABBITT: Stace is not here.

HEARING OFFICER HEBERT: She's not here?

MS. BABBITT: She had to leave

MR. FRESQUEZ: Okay. Our next speaker is Randy Coleman.

HEARING OFFICER HEBERT: I believe we heard from Mr. Coleman earlier. Thank you. Can we go to the next one?

MR. FRESQUEZ: Okay. Next speaker is Vicky Sallem Clark.

[Duly sworn, Vicky Clark testified as follows:]

VICTORIA CLARK: I understand I'm under oath. Victoria Clark, 3 Gualdo Road, Santa Fe, New Mexico, 87508. Thank you, Madam Hebert for this opportunity to speak today. My name is Vicky Clark. I've been a resident of Eldorado for 33 years, and I'm a retired obstetric nurse, having worked at St. Vincent Hospital for 40 years. I'm also – I'm on the steering committee for the Clean Energy Coalition for Santa Fe County.

For the record, I just want to put this on the record that I am for renewable energy, but I'm for a wiser, safer solar. Rancho Viejo Solar is not the only option for Santa Fe County to be able to achieve its renewable energy goals. I stand here to voice my profound concern regarding the parent company AES. This company has had over 50 different offenses, 21 air pollution violations, 14 environmental violations, 13 workplace safety or health violations, two energy market violations, and on labor relation violation. These offenses have resulted in over $40 million in penalties, which leads me to think about the harm done to the locations and the people that are affected. If Santa Fe County were considering a contractor for a multi-million project, it is difficult to believe that they would even consider a company with this history.

And in a manner of speaking, Santa Fe County is asking their constituents to basically hire this company to conduct business in close proximity to our families, homes and our schools. I'd like to just close with this thought. What business people say they will do is less important than what they have done. Thank you for the time.

HEARING OFFICER HEBERT: Thank you, Ms. Clark.

MR. FRESQUEZ: Madam Hearing Officer, our next speaker is Lee Zlotoff.

HEARING OFFICER HEBERT: He's no longer here.

MR. FRESQUEZ: Okay. Our next speaker is Joseph Pringle.

[Duly sworn, Joseph Pringle testified as follows:]

JOSEPH PRINGLE: My name is Joseph Pringle, 41 Camerada Road, 87508, and I understand that I am oath. Thank you for giving us the opportunity to speak. I'm a resident of Eldorado. I live on the very western edge of Camerada Road so my house is one of the closest ones to this proposed development. And like many others in this room I fully support the transition to green renewable energy, but my concerns about the process that we're seeing here and the placement of this facility.

I think Ms. Babbitt really hit the nail on the head when she talked about the fact that we have a very sophisticated corporation here. They've done this fight dozens, maybe hundreds of times. I don't envy you your job going into community after community and fighting this same battle over and over again because there's a lot of concern and opposition about these placements, and we have a very wealthy and well connected real estate developer who has a vested interest in placing this facility in this one spot.

And so what they have done is a sophisticated corporation coming into a relatively unsophisticated county, as evidenced by the fact that we don't have any regulations on the books about this utility-scale type of development. We never even saw

it coming. We have regulations about smaller, community-scale developments, so they picked us out and said we can get in there and plant the flag before anybody knows what's happening. We can get in there and get this thing built for people that this is the first time anybody in this county has ever event tried to learn about these type of solar projects and every time they go through this process I guarantee you they compare notes and take notes and figure out how can we do this better the next time to override these concerns to get our way in these communities.

And once this genie is out of the bottle there's no putting it back. And I just want to cite one small example, is that there was an article in the *Santa Fe New Mexican* recently about homeowners losing their insurance coverage due to just increased fire risk in the West. And so my concern is what's going to happen if a thousand homeowners in Santa Fe County all of a sudden don't get their homeowners' insurance renewed in a couple years because the insurance companies have decided maybe there's only a one or two percent increase in fire risk but it's too much for us to take, so we're no longer going to underwrite homeowners' policies. Who's going to make us whole if that happens? Who's going to make us whole if – I'm on a well about a mile from that facility. What's going to happen if my well runs dry or gets contaminated? Who's going to make us whole?

So what I'm asking for is a moratorium on this process until we really determine, is this utility-scale project, does it need to be elevated to a higher level than – no offense, a couple of County workers who are going through a process who don't have the sophistication to really evaluate this type of project, and then step back so that we're pro-actively deciding where and when and how these things should be built and not reacting to – this company is the size of one third of the GDP of the whole state of New Mexico. They have almost infinite resources and they're better at this than us.

I think we really need to step back and say let's slow this down and figure out what's going on. Thank you very much.

MR. FRESQUEZ: Madam Hearing Officer, our next speaker is Catherine Babbitt.

MS. BABBITT: I'm not sure why our names are on there.

HEARING OFFICER HEBERT: They may have just been taken as you came in, I think. You're not speaking again.

MR. FRESQUEZ: Okay, our next speaker is Nina Rebstock.

HEARING OFFICER HEBERT: Okay. She's not here.

MR. FRESQUEZ: All right. That concludes the attendees that had time donated. We can move on to the people that signed up to speak during regular public comment with a limit of two minutes. We invite you to line up at the podiums. We're going to alternate between the left and right, starting with the left, so please go ahead and line up.

[Those wishing to speak were sworn in as a group.]

CAROL BEIDLEMAN: My name is Carol Beidleman. My address is 35 Tetilla Road in Santa Fe, 87508, and I understand that I'm under oath. The neighborhoods surrounding this proposed AES industrial facility have been requesting for two years, as has been said, that Santa Fe County create a development of countywide impact category for this and other utility-scale solar projects. The conditional use permit process was not developed for, nor can it be justified to be used for, such large, complex

industrial facilities which have greater safety risks and environmental impacts. Unfortunately, those requests from residents have gone unheeded.

However, there is no stronger argument, no more compelling case for the County to not allow the CUP process to be used for this proposed AES facility than a County official's own words during the November 14th meeting to discuss standing regarding this case. In answer to the public comments and questions throughout that meeting that official said and I quote, "That the AES application doesn't really fit with the CUP rules. It's a big application. It's a big facility. The CUP process is much simpler. The rules that govern the Cup process are very bare-bones. It's unusual to use the CUP process for such an involved case, and this has never come up before through the CUP process. That County official was Hearing Officer Hebert.

These truthful comments demonstrate that indeed the CUP process should not be allowed to be used for this Rancho Viejo Solar project, this AES Cup application should be declined outright. Thank you.

HEARING OFFICER HEBERT: Thank you.

BRIAN ROMERO: Hi. My name is Brian Romero. I live in Rancho San Marcos and attended AES, one of their first meetings, and I have to say after so many years of battling this, walking away a lot more confused with less answers and more questions. And I want to talk from the perspective that I have as a resident, a former firefighter, a career firefighter for 20 years who has – I'm thankful to be here. I bring that up because one of the fires that I fought was going up to the Cerros Colorados fire, which was the Los Alamos fire where we were doing mutual aid to prevent residents and the laboratory itself from going up in flames.

And let me tell you that a little coolant protective system is not going to stop anything that a lithium ion battery will produce fire-wise. It's going to be basically, and forgive me and with all respect to the County Fire Department, but I think they'd agree with me that your strategy to fight these fire is to back off and let it burn. And they'll take a defensive system, which basically means you lob water as far as you can for as long as you can. Otherwise you're going to be putting yourself in jeopardy, and I would not blame them a bit. I ran at the point of a battalion chief and I would never command a crew to go in there and so that.

The other perspective is as a landscaper. I've been doing that for 20 years and one of the things that I do is reclamation, and that is trying to restore the earth, the ground itself, so that it holds soil, so it doesn't blow with the wind, so that it doesn't generate and foster a lot of ragweed that will accumulate and add to your fuel source. So you will have fuel source above and beyond what your pictures show. And I just sort of think that you could have done a lot better job in showing this community that it's going to be safe, because it's not.

HEARING OFFICER HEBERT: Thank you, Mr. Romero.

JIM DESJARDINS: Good afternoon, Madam Hearing Officer. My name is Jim Desjardins, and I'm the executive director of the Renewable Energy Industries Association of New Mexico. We have over 60 diverse members. We've been around since 2004. It is predicted that 2024 will be the hottest year on record. The federal government is doing their part to a large degree with the passage of the Inflation Reduction Act. It's in the process of pumping $365 billion into the renewable energy

industry. The state has also done their part with the passage of the Energy Transition Act which is going to provide us with 100 percent carbon free energy by 2045.

The County and the City have also done their part. There's a Solarize Santa Fe program that's great, but it's time for all of us to do our part. It will take small, medium and large solar and wind projects to make the needed transition to clean energy. And as we put more solar and wind on the grid it's also going to become essential that we pair this generation with energy storage. Currently batteries are the best way to do this and they are becoming very safe. We have a lot of permitting, insurance, finance and other standards that make sure that they are done safely.

I'd also like to remind folks in this room that we currently have energy storage in our communities all over the place and they contain highly toxic flammable substance. These places are known as gas stations. We also supply them with fuel going down our interstate highways, one of them right next to Eldorado. I am not here to endorse this specific project and I'm aware, obviously, that many people are opposed. But if we wait for perfection we'll never get anything done. Meanwhile, the climate change clock keeps on ticking. Thank you very much for the opportunity to speak.

HEARING OFFICER HEBERT: Thank you.

CINDY WHEELER: Cindy Wheeler, 20 Descanso Road, 87508. I'm co-chair with Roger Taylor of the community organization 285 Alliance. Madam Hearing Officer, losing our homes to fire is one of our biggest fears from the battery storage farm. Our homes are not only our main investments but where we lay our heads at night. Home insurance companies are one at a time refusing to cover home loss due to fires in Eldorado.

We now have no way to protect ourselves from this loss even as AES adds to the risk. So I propose a compromise. AES is confident that fires from its batteries will not harm our homes, so I ask that AES mitigate our concerns by providing home fire insurance for any fire event to our homes due to its business. Thank you.

HEARING OFFICER HEBERT: Thank you.

TORI STRATTON: My name is Tori Stratton. In 35 years, when this project is ended, what cleanup is my generation going to be faced with? Will it have bad water? Will the land be able to still be built on? Will my kinds have to dispose of the containers of the solar panels? My you take these questions into granted?

HEARING OFFICER HEBERT: Thank you.

PATRICIA BROWN: My name is Patricia Brown. I've been a resident of Santa Fe County for more than 50 years since a PhD at the University of Texas at Austin. I've been involved in public health all this time. I don't want to repeat what's already been said. A couple of things. I'm part of the New Mexico Energy Policy Research Advisory and we have been looking at long-term energy storage and other renewable solutions and we are very supportive of renewable solutions for energy. And I do want to say that we had a recent long conversation with the lead California long-term energy storage team that major state department. And they are not looking at lithium batteries for long-term energy storage. They're looking at a number of other solutions and the concerns about lithium batteries is significant. Many safety concerns. And I just want to also say that the remote monitoring system that you all have proposed seems very weak and not very do-able. The electricity can shut down. The internet shuts down and you

have four staff on site only during the daytime, so that is entirely insufficient for safety features.

So there are other better alternatives to long-term energy storage. Thank you.

HEARING OFFICER HEBERT: Thank you.

MICHAEL NIETO: Hi. My name is Michael Nieto and I acknowledge that I am under oath. Madam Hearing Officer, when I first started to do my research on this project I was disappointed to learn that the Santa Fe County Planning Commission gets to unilaterally choose whether this project gets conditional use approval without any direct vote from the residents that live in the nearby affected communities. I was further disappointed to learn that the members of this committee are not elected by the people but chosen by the Santa Fe County Growth Management Department. Mores o, that the members of this department are also not elected by the people but chosen by their director who is also not elected but chosen by the Santa Fe County Commissioners, which is the only body in this hierarchy that we have any voice in choosing through a general election, which won't happen again until November 8, 2026, after which a decision on this project will have already been made.

With that in mind, it's extremely scary to think that such an important decision might be made without the direct votes by the people that this project affects most. For the record, I'm against this project and the intrusions that it will have upon our beautiful and undisturbed land, wildlife and community. I bought my home in Eldorado based on the protections that I believed the Santa Fe County Planning Commission would provide, and I'm scared and disappointed to see that they might not honor the promise that they were sworn to protect. If this went to a direct vote by the citizens that are nearby it would not pass.

I hope that the will of the people in this room and the residents of the communities that surround this project will prevail and that this project will unilaterally be rejected and denied. Thank you for your time.

HEARING OFFICER HEBERT: Thank you, Mr. Nieto.

JOHN BUCHSER: Hello. My name is John Buchser, I'm chair of the Rio Grande Chapter, Santa Fe group. I live on the 600 block of Alto Street. We support this project. We believe the technology has progressed to the point where battery energy storage systems are at the point where fire risk can be properly managed and the need is urgent. I watched a Siemens video, it's about an hour long, made this year, obviously promoting their system, and it shows what happens when a single cell battery fails. You can tell when a cell is going to fail because it starts to emit gas before it explodes. If you detect that gas and provide at least a 90 percent non-oxygen environment, which you can do simply by releasing nitrogen gas, then it doesn't explode.

Well, that's not quite true. It does explode but it only affects its two cell neighbors. This then does not promote that fire to go to all adjacent areas. I think what we have here is a case of where permitting processes haven't kept up with technology. The McMicken, Surprise, Arizona fire injured several firefighters. What Arizona Public Service recommended as in part "Standards have avoided prescribing solutions that restrict or slow cell-to-cell and module-to-module thermal runaway propagation." If you do that, the likelihood of large fires is very low. Thank you.

HEARING OFFICER HEBERT: Thank you.

CAROL CULVER: My name's Carol Culver. I live at 12 Mariana Road and I acknowledge that I'm under oath. Much has been said here about the risks inherent in a project like this, not because it's solar but because of the battery installation. Who else besides the concerned residents here takes seriously the risks of lithium ion battery energy storage systems? Well, there's the electric power research institute or EPRI, who reported that as of 2021 at least 30 BESS systems globally "experienced failures that resulted in destructive fires." These incidents amounted to about one to two percent of capacity, true, but "the hazards can be sever." These incidents demonstrate the possibility of fire, release of flammable gases and explosion.

Then there's the National Fire Protection Association or NFPA. They also take seriously the risk of lithium ion battery storage systems. They created a 54-page appendix to their fire code to address the hazards and risks posed by battery energy storage systems.

And finally, the AES Corporation itself acknowledges the risks inherent in the lithium ion battery systems used in their own facilities. In their 2022 and 2023 reports filed with the SEC, AES stated the following: "Our battery storage operations involve risks associated with lithium ion batteries…On rare occasions the batteries can rapidly release energy by venting smoke and flames in a manner that can ignite nearby materials as well as other batteries…These events are inherent risks of our battery storage operations…The hazards can cause significant personal injury or loss of life, severe damage to and destruction of property, and contamination of or damage to the environment."

These are the words of AES themselves in their annual report. This is not a green technology. It doesn't belong adjacent to residential areas and schools. Thank you.

HEARING OFFICER HEBERT: Thank you, Ms. Culver.

DANIEL BAKER: [*Exhibit BB: Additional testimony*] My name is Daniel Baker, and I acknowledge I'm under oath. My address is 32 Camino Mariquita in Santa Fe County, 87508. I am here today to speak in favor of the development project. As a long-time resident of Santa Fe County I do work in the solar battery and electric car industry locally, and I have done so since 2007. And rather than rehash many of the fears that have been mentioned I would like to maybe clarify a little information that may be used to reduce fear and concern, and that is that over the last number of years as battery technology advanced, so did the testing and standards used to measure safety.

The gold standard of electrical equipment is Underwriters Laboratory and they basically come up with all the tests and then if there are problems in a specific type of equipment, they upgrade their testing process and procedures and the end result is we continually have the safest known equipment. The current UL certificate that is required for battery energy storage systems is 9540-A and one thing that is very important to note is that when a system has obtained certification from Underwriters Laboratory, that means it's deemed as safe as we know how to make it.

That means that the system has been tested with all kinds of possible failure modes to fail in the least damaging way. And the best example of that was actually in September this year in Escondido when the fire was out in 48 hours, no toxic smoke, no toxic gas. The facility was back up and running in 48 hours. Thank you.

HEARING OFFICER HEBERT: Thank you.

MICHAEL MEADE: My name's Michael Meade. I live at 2323 Calle Pava. I acknowledge I'm under oath. I represent Positive Energy Solar and I just wanted to shed some light on the circumstances of our grid feeder capacity and the ramifications of a project like this. I don't think that it's been brought up yet but currently the Rancho Viejo area and Eldorado area are both in what's called a yellow designation in the PNM feeder capacity.

Basically, when you get into yellow it means that the transmission lines and transmission infrastructure is reaching its max capacity and once it gets to red which La Cienega is currently in the red zone, then you can't interconnect more residential solar projects. And so La Cienega got bumped out of that ability when the County accepted a ten megawatt solar array and there's a lot of folks in La Cienega that are concerned and frustrated that they can't produce their own energy on their home and be connected to the grid like that. That's something that I'm sure many folks in Rancho Viejo and Eldorado area would like to have the ability to connect their own home solar arrays into the grid in the future and given the ability, the laziness, I guess I could say, of PNM to upgrade the grid in certain areas like La Cienega I don't see how they could potentially do that in the Eldorado Rancho Viejo areas once this solar and battery storage facility comes in and basically consumes the feeder capacity there. It would be inevitably put to a red zone.

HEARING OFFICER HEBERT: Thank you for that information.

CLAUDIA STANDISH: My name is Claudia Standish and I live at 65 Camerada Loop, Santa Fe, New Mexico. That's in Eldorado, 87508. I'm going to have a little different perspective. So I held positions in the US Forest Service and BLM, in fire. I worked with them for 34 years. I also did smoke management at the Air Quality Bureau for eight years working under the BLM and actually funded by the Federal Land Management Agencies.

I'm really not for this project. I'm trying to be, but I'm not. And let me tell you why. When I came here from California and before the Cerro Grande fire, I was charged with writing the wildland-urban interface plan for Los Alamos. So people said, oh, we have so much equipment here; this is not an issue. We have probably the best equipped fire department in the whole world. And I said, really? So all your above-ground power lines, your water – what's going to happen if the fire comes into town?

Anyway, that's a neither here nor there question. I bring that up because when we look at this situation and we talk about fire, I don't worry as much about the wildland part of it because I live out in that area so I've seen the fuel loadings. As you come closer to where I live, however, and we are right there on Camerada Loop, the fuel loadings do increase. I worry about the potential for a toxic explosion where things might be lofted through the air because we get very strong southwestern winds all the time.

I suspect AES could find other places in New Mexico where people would not be affected. I kind of find it unconscionable that this is going to happen or wants to happen so close to this community. I've lived there over 32 years. I suspect someone's going to make a whole lot of money at the expense and risk of other people's lives. To me, that's unacceptable. What I learned working with homeowners and the National Firewise Communities program, and as the smoke management specialist at the New Mexico Air Quality Bureau, where I spoke to many people about smoke and wildfire regularly is that values of people matter. In many respects that's all that matters. This should be the steering mechanism to navigate –

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

HEARING OFFICER HEBERT: Thank you for your comments.

PAUL ORR: Hello. My name is Paul Orr. I live at 55 Encantado Loop, Santa Fe, 87508, and I understand I'm under oath. I live right on the western edge of Eldorado as well and so I would be one of the first homes that would be affected by a wildland fire. One of the things that I object to is the pictures that were shown in the presentation by AES show very little vegetation. The person that just spoke said, as you get closer to Eldorado the vegetation gets very dense. In fact the grasses were up to my shoulders this summer after some intense rains, and they grow like overnight.

So they're saying that, well, the fire's not going to go very far because there's not enough vegetation. I disagree with that. I also disagree with the fact they want to use lithium ion batteries. One of the other speakers mentioned lithium iron batteries, but there's a lot of research that's been done on iron air batteries which cannot burn. And so you don't need PFAS. You don't have the fire hazard.

So step back. Let's get the best technology we can. Make this a showcase industrial-scale solar utility if indeed it proceeds, but don't cut corners at homeowners' expense because not only will my insurance go up if it doesn't get canceled but also they're going to put 2.3 miles of 70-foot power lines right across my horizon and that affects my property values. So if you're going to do it right, bury the power lines. I understand it costs more. It costs around five times as much. But if you're talking about a million dollars to put power lines in and instead you're going to put in $5 million, but it's going to be safe for the 35 years of this project I think it's well worth it, given the billions of dollars that companies like PG&E have had to pay in retribution for power lines going down and causing fires.

So mainly that's it because I don't want to see this project externalize cost to homeowners that live in the area. Thank you.

HEARING OFFICER HEBERT: Thank you. Okay.

MILES STANDISH: Hello. My name is Miles Standish. I live at 65 Camerada Loop, 87508, and I acknowledge that I am under oath. I've lived in my little house for 32 years. It's on Camerada Loop. That's the street you saw in the presentation of the closest spot in Eldorado to the proposed facility. It's a mile away. I will be one of the first. If anything happens I'll be one of the closest to it.

One of the great things about my little property is how quiet it is. It is the quietest place I've ever lived in my life. Now, I'm told, oh, don't worry. You won't even hear us. We'll be quiet as a church mouse. And, oh, you're not going to see anything out there on the horizon. I frankly just don't buy it. There's too many dollars at stake. There's too much momentum behind this project. I'm sure it's being pushed from the very top, whether you consider that Santa Fe or DC, but there's a lot of big heavy players pushing this on us. It's pretty clear the local communities do not want this. I am all for solar energy; I'm all for battery storage. My advice to you gentleman is find another location.

It's incomprehensible to me that AES has banged their head on this wall for at least a couple years. This is the second presentation I've been to and I've heard a lot of talk and I've learned some things. I have never heard an explanation for why it has to be this location, in between three communities. And even learning that it's not even zoned for that. I just don't understand what is the moneyed interest? What's behind this? Why

does it have to be in that location? There are millions of acres available with power line transmission lines going through them. Find another location. Thank you.

SUSAN MAYES: Hi. My name is Susan Mayes. I understand I am under oath. My address is 16 Mesa Pino, Santa Fe, New Mexico, 87508. My husband and I have lived in Rancho Viejo on the southern perimeter for over 20 years with the understanding that the open land we view every night did not have water rights. We love our night sky and our quiet community, and I came here today to listen with an open mind to listen to both sides, and I've come to the conclusion I am in opposition of this location that is in the middle of three-plus major communities. We are a growing area. There are thousands of homes under construction right now, all along 14 and in and around Rancho Viejo.

The amount of potable and non-potable water that AES will be using is mindboggling. We don't even have enough water for our own community. The concern for the safety of all of our communities from wildfire risk and the line of sight proposed for the Zia transmission line that will be up in the air that will interrupt our amazing sunset views. I am definitely opposed for this project at this point, as presented.

HEARING OFFICER HEBERT: Thank you, Ms. Mayes.

GAIL KARR: My name is Gail Karr. I live at 11 Camino Dimitrio, Santa Fe, 87508, and I've recently moved there because I lived over by San Marcos since the eighties, mid-1980s but I've been around for a long time and I even had a solar company in 1980 but anyway, I have a few things to say and they're not duplications. I took notes while we were talking.

HEARING OFFICER HEBERT: Thank you.

MS. KARR: I want you to recognize the fact that there's another subdivision that nobody has mentioned and that's the one I moved to. It's called Dos Griegos and when we had the annual meeting the board said we could speak for ourselves but they hadn't come to any conclusion. Afterwards, several people came to me and said they were opposed to this. This land is adjacent to Eldorado. The grass in continuous, the earth is continuous. It's all one, and if a fire comes, I've been in a grass fire. We never want it. You cannot outrun that stuff. It's just too dangerous.

It's so dangerous when it gets dry here they tell you not to park your car on the grass. If we can't park our car on the grass I don't know anything else. They even talk about it gets so dry that you can get lightning when it sticks at each other, some of these grasses. It's really dangerous for fire there. And that's of real concern because as soon as I moved there, all of a sudden my house insurance got canceled. I've never had that happen before. They've come and inspected – never a problem. All of a sudden, my policy was canceled just because of New Mexico fires.

So that's happening in other states. And I'm just tired of this state and us being treated like we're a third world state and we're stupid. This is going to go right by the WIPP route. The potential, with these things colliding, and we have always not had enough hazard –

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

HEARING OFFICER HEBERT: Thank you, Ms. Karr.

MARY LOU JACKSON: Hi. My name is Mary Lou Jackson. I'm a retired nurse. I've spent my career in life caring for the welfare and health of people in our community. I am concerned. I am under oath. 36 Alcalde Road, Santa Fe, New Mexico,

87505. I understand. I am concerned for the health and wellbeing of my family, neighbors, and the communities bordering the proposed Rancho Viejo Solar project. I'm thinking of future generations. I am, and I understand the need for green energy. I support it. I am asking Santa Fe County employees reviewing the AES application to do the right thing – reject the proposal for the current location out of respect for the Santa Fe County men, women, and children.

I don't know if any of them live in any of the communities that will be so impacted. I doubt that any AES employees live there. AES with it's billions in revenues and assets should be able to find a new location and afford to build the transmission lines from a different location even though it could be more, then it wouldn't have such a potentially negative impact as expressed by so many concerned residents here today, and all those who could not be here. I imagine AES could afford to pay huge fines and damages to the County for anything that they do inappropriately when they don't follow the rules, and all the residents who could be negatively impacted.

Potential noise, lowered property values, increased homeowner insurance, illness, suffering – we're heard it all today. It would result from an explosion of a fire, although they tell us it's just a tiny, small risk. It won't jump the containment. You don't have to worry about smoke and gases. But they do say that there is smoke and it is toxic. If we have to evacuate we have a lot of vulnerable people. We don't live in smoke-proof houses if we have to shelter in place. I'm concerned we'll be sacrificed in the interest of meeting a green energy quota for the state and county and for AES' financial gain. AES doesn't live here; we do. Please be brave and do the right thing to protect Santa Fe County residents, reject the proposed location of the Rancho Viejo Solar project.

HEARING OFFICER HEBERT: Thank you.

TOM WYATT: I understand I'm under oath. My name is Tom Wyatt, 509 Calle de Francisco, Santa Fe. Not in the greater Eldorado area. I'm a relatively new resident of Santa Fe and a long-time supporter or renewable energy. In the two years I've been here I've read many times about this project. But what struck me is that no one, until today, was talking about alternatives to lithium ion battery storage, even with its safety issues.

There are viable and successful technologies being built or already in operation. These include iron air battery systems. Form Energy, a Massachusetts-based company is building an 85 megawatt iron air facility in Lincoln, Maine. They received a $157 million grant from the Department of Energy for this safer, more affordable, battery system that can also provide energy at much longer time periods that lithium ion.

Sodium iron battery systems – two facilities have opened in China, large facilities this year. This technology is fast developing and it costs just below lithium ion but it uses raw materials that are abundant and easy to extract. Flow batteries, 100 megawatt flow battery facility opened in China and a 500 megawatt facility is planned in Switzerland.

If AES is unable to pursue these safer technologies, maybe they could partner with an energy battery storage company that could handle that part of the project.

The main thing about lithium ion is that while it's popular, it's not the technology of the future. Tesla is moving away from lithium ion to sodium ion. A similar project, 105 megawatt in Wendell, Massachusetts was just withdrawn. You talk about thermal runaway and the fires and explosions –

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

MR. WYATT: Just ask the 22 families whose family members died in South Korea in June of this year.

HEARING OFFICER HEBERT: Thank you for your comments.

DARLA FRANZ: Hi. My name is Darla Franz. I live at 4696 Ojos Verdes in the City of Santa Fe at 87507. We've been talking about hypotheticals today but I'd like to share a real experience in a scenario that relates to this facility and its impacts to Santa Fe residents. Two years ago I returned to New Mexico as a traumatized survivor of the December 2021 Marshall Fire in Boulder County, Colorado, which started five miles away and 30 minutes later burned 1100 homes, burning over knee-high grassland by the way. In the course of three hours in an otherwise non-descript Thursday afternoon.

The fire burned through two cities while people were away at work. I was one of the "lucky ones" whose home did not burn but remaining in my community was what it must be like to live on Mars. It was a disaster zone. By the time I moved here, residents with homes were still driving to the community center each day to pick up bottled water to brush their teeth, make coffee and fill the dog bowl because the city water was contaminated.

The important point I want to make is that the Marshall Fire was a wildland grass fire. It was not caused by a battery facility exploding or igniting spontaneously. However, in the process of fighting that fire, the many fire departments who were responding had to make a devastating choice. They had to commit valuable resources away from protecting homes in order to protect a Tesla facility that had a substantial battery supply on site. Some of the firefighters themselves protected that facility while their own homes burned, killing beloved pets who were trapped at home. But the fire professionals knew that the greater risk of allowing that facility to ignite was devastating.

For many Santa Fe residents, me included, our homeowners' policies have been non-renewed, mine after only one year, due to fire risk, and I live in a neighborhood that's never seen a fire. So as a new Santa Fe resident who has the actually experience of surviving a wildland fire that swept an urban city, I plead, your honor, to consider carefully the duty to protect the residents of Santa Fe from the extreme and for us terrifying and costly risk of wildland fire that already exists and exacerbated by this project.

HEARING OFFICER HEBERT: Thank you.

JOAN MITCHELL: I acknowledge I'm under oath. The name is Joan Mitchell. I live at 32 Camerada Road in Eldorado on the west side. I wanted to make a view contributions about the noise issue, and then I have a question. I've heard that the noise that was in a recent Santa Fe New Mexican editorial that the noise would be only that of a refrigerator. And I said, I don't think so. And I looked on line and I found a company called Noise Monitoring Services that specializes in monitoring BESS storage units and other aspects of BESS systems. And what they said was that most of the noise comes from the cooling equipment in the storage units and this consists of giant fans and condensers, up to 92 decibels one meter away from the storage unit. We're talking about 78 units. I think that sounds like an awful lot of noise. 93 decibels is a pneumatic hammer.

There's also noise associated with power conversion systems which convert the electricity from direct to renewable and these measure out at 83 decibels. So we're not talking about refrigerators. We're talking about much louder. The Eldorado community

piece and quiet, according to a recent survey was a very important aspect of why people bought their homes in Eldorado, and you're going to tell me my property values are not going to be affected.

My question is, and this follows up on two other speakers, is there's been an intense worldwide effort to develop and scale alternative battery sources for renewable energy away from the lithium ion, and a number of them have been mentioned. I've recently read articles on the water-based technology that has been tried in a couple of states and also in Australia, and also the sodium ion which was just mentioned. Why is there so much interest in alternatives to lithium ion storage? And the answer is the difficulties and dangers of lithium ion. The fire danger and explosion danger has been brought up a great deal.

Another issue that I'd like to bring up –

MR. FRESQUEZ: Madam Chair, the timer has expired.

HEARING OFFICER HEBERT: Thank you for your comments.

CLAUDIA DAIGLE: Good evening. My name is Claudia Daigle. I live in Eldorado at 4 Conchas Place, and I acknowledge I am under oath. My notes are rather quick but I believe what's happening in Santa Fe County is a state action. It's a concerted effort between the County, Sierra Club and the state. And they're squeezing. They going to squeeze us into having to be subscribers to their solar facilities instead of being able to purchase our own solar installations and be able to choose what we want to use for energy, although I'm very much for solar.

The efforts that I've seen are – there's no consideration that seems for people. It's just all about solar. It's like zealous. There's only one owner of this parcel, the 882-acre parcel and he's applying for this CUP to lease his property for this purpose. And this purpose is going to affect thousands and thousands of homeowners and families and children. And I believe the County – I feel like the County's already made up their mind but I hope they have not and I hope that this day has affected them to give it a new thought.

This is new technology. It should be placed on the brownfields for study first. You don't put such a huge facility in the middle of three homeowners associations when you don't understand the technology, and you don't even have the preparation for emergency fire, experienced people with the proper equipment.

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

MS. DAIGLE: Under federal regulations.

HARLAND SOPER: Hello. My name is Harland Soper. I am an Eldorado resident. I take the oath and acknowledge I'm under oath. I live at 21 Sabroso Road out on the western side of Eldorado and it's a beautiful place. Over the last six years I've owned two homes and had the opportunity to put solar on each one, and I'll put a plug into Positive Energy Solar. They did a fabulous job. But I'm not here to talk about that. I'm here to talk to the County, and I'm here to talk to AES to consider some of these alternatives to allowing us to break our addition to lithium ion batteries. And what I'm going to address quickly are what are called flow batteries.

The longevity of a flow battery, if it is cycled every day will go beyond 30 years, as compared to a lithium ion battery, if it's cycled every day, might meet eight years. We could debate that but if I were an investor and I wanted to pay once for a solution that

would last for 30 years rather than having to reinvest in replacing these battery systems based on lithium ion, it would give me consideration.

Power discharge is very important as well. Flow batteries can discharge for up to ten hours. Lithium ion batteries are limited, perhaps maybe around two or three hours. There are no flammable materials in flow batteries as there are in lithium ion. Flow batteries require space. Well, out on 500 or so acres I think we might have that space opportunity. And there may be a small additional cost but you spread that over 30 years and you have a really viable opportunity to break our addiction to lithium ion. Thank you.

HEARING OFFICER HEBERT: Thank you.

MEREDITH YOUNG: My name is Meredith Young. I live at 72 Cañada del Rancho, Santa Fe, New Mexico, 87508. So I'd just like to make a point about AES' strategy with the greenwashing here. I think just about everybody who's come up and spoken has felt the need to clarify that they aren't against solar energy, which is kind of crazy because most people aren't. The issue is safety and AES' history. They claim that they're doing this in order to expand clean energy infrastructure in Santa Fe and Albuquerque and to supply jobs. It sounds nice but historically they have caused incredible damage to the communities they've built their facilities in.

AES in the past 20 or so years have been fined about $19.5 million for air pollution violations so far, $6.8 million for environmental regulation violations, $6.3 million for energy market violations, $6.8 million for labor relations violations, and nearly $400,000 for OSHA violations. About $3.5 million of these fines were paid in 2024 alone.

In the Pallano versus the AES Corporation case about ten years ago the plaintiffs alleged that AES representatives told residents and government officials that the toxic coal tar ash that they were illegally dumping near homes, workplaces and recreational areas in the Dominical Republic was "a beneficial product that might be profitably utilized by the residents of Samaná as construction materials." Coal tar ash is filled with toxic heavy metals, causes cancer, all sorts of reproductive harm, and caused death and disability for many of those residents. That's just crazy that they were – I'm glad it's written in the lawsuit.

They also minimize the effects that the PFAS might have on our community which I don't see any reason for us to believe them but if they're able to do something so reprehensible to that community, why should we believe that they won't do something similar to ours?

HEARING OFFICER HEBERT: Thank you.

JILL CLIBURN: I'm Jill Cliburn and I live at 45 Crazy Rabbit Drive, 87508. I'm here as a 30-year resident of the San Marcos community and a veteran energy professional who's led work in solar PV nationwide and especially solar plus storage and load flexibility strategies. It's true, my first reaction to the Rancho Viejo Solar project was skeptical. Like most people I am not wired for change. But I checked my emotions, considered what climate change has already done and I studied the updated AES plan. I am now a strong supporter of this project.

So while public education is well served by tight definitions, I can assure you that terminology throughout the solar and storage industry is not set in stone and should not be the argument in making this project a go or no-go. For example, customer-site off-grid projects today can be larger than a utility grid project. Broad terms serve County planners

best. The overall acreage of this site which provides a huge buffer and its benefits compared to the irreversible impacts of other likely developments make this a project that's a good choice.

In my work experience with property value studies, home values are better retained when they are near a known controlled development instead of a future unknown neighbor. And my neighborhood which has none of these controls is a good example if you want to come visit.

Second, everybody seems to have a better idea for some day, because we all got used to solar as future power. But this project is ready today and it is equitable. Grid solar is solar for all. When it comes to loss or injury from fire citizens are listening to a storyteller instead of addressing real risks of fire. As mundane as your vehicle's sparks or ordinary electric lines down, or a failed propane water heater.

Through battery industry diligence, grid battery failure rates have fallen by 97 percent from 2018 to 2023. Rare failures, like the event in Escondido –

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

MS. CLIBURN: Get a big response because public safety demands abundant caution. Thank you.

HEARING OFFICER HEBERT: Thank you.

LARRY FIORETTA: Hello. I'm Larry Fioretta, live at 12 Encantado Road, Santa Fe, 87508, and that's in Eldorado. And I recognize I'm under oath. Given this deeply flawed proposal for all the reasons that we've heard today I want to just say that, yes, many of us are for solar, and yes, I am also, but not this particular proposal and certainly not this location. Given what we've heard today about the County's role in this I find many of these statements deeply disturbing, and so I'm going to have to put this question out. Have there been any other contacts between County officials and AES other than public meetings?

If so, were any issues raised in these discussions that were not raised in the public hearings? If so, were notes taken? If so, will these notes be released? And if so, when will these notes be released? We would really like to have the feeling that the County gets it, that they understand what we are talking about, our concerns, and that your role is supposed to be one of protection. So I would really like to feel better about the County, if they would answer these questions. Thank you.

HEARING OFFICER HEBERT: Thank you for your comments.

GLENN SCHIFFBAUER: Officer Hebert, my name is Glenn Schiffbauer, and I recognize that I'm under oath. As I said, my name is Glenn Schiffbauer and I'm the executive director for the Santa Fe Green Chamber of Commerce, New Mexico Sustainable Business, and a co-founder of the Next Generation Water Summit. The Green Chamber has been a steadfast advocate for clean, renewable energy initiatives since our founding in 2013. Our commitment to sustainability, economic growth and environmental justice has guided our efforts to promote solar energy and other renewable technologies.

We have a long history of leadership in renewable energy. We introduced the New Mexico first community solar bill to the state legislature in 2013 and are currently under agreement to recruit subscribers for community solar in New Mexico. We participated in and advocated and lobbied for transformative policies including the Energy Transition Act in 2019. It will take projects of this scale for us to get there. We

have promoted programs such as Solar for All, and the sustainable building tax credit to ensure equitable access to renewable energy and sustainable practices.

As a voice for renewable energy business, over a decade the Chamber proudly counts solar and clean energy companies among our members. Organizations like AES and other solar and renewable energy companies are naturally aligning with our mission and our sustainable energy solutions. We are also engaging with the EPA New Mexico, their Justice 40 communities and reaching out to communities that are already impacted. I keep hearing brownfields mentioned today, that is just looking at another impacted community and trying to foist some of our energy onto them.

In conclusion, we believe that AES and this solar project is an opportunity for Santa Fe County to lead by example, advancing renewable energy, addressing climate change and creating a sustainable future. We urge the County to embrace the opportunity and make a lasting positive impact. Thank you.

HEARING OFFICER HEBERT: Thank you.

SANDY FUQUA: Sandy Fuqua, 77 Encantado Loop, Eldorado, and I understand I'm under oath. So the County describes the subject property as vacant land. And yes, okay. It is, but it's also home to an intact ecosystem and acts as a corridor for wildlife moving from the Sangre de Cristo Foothills down to Glorieta and Galisteo Basins. It also is part of an aviary corridor for migrating birds moving back and forth from Canada to points south. If you want to see some of these take a look at these beautiful photographs right down this hallway and you'll see some of our neighbors – a cougar, a burrowing owl and a raven.

Remember, there's much more housing coming into the Rancho Viejo area to the north of this project. That's not just vacant land. So when does the land no longer support an intact ecosystem? When the County approves this project, and then another project, and another project next to that? Until it is no longer fringe agricultural. Is this the spirit of the SLDC? My question to the County is do you have anybody that looks at the overall area when projects are being developed? Instead of just this project, this biological survey. But are you addressing the spirit of SLDC and how wildlife moves through these greater areas?

There's no answer?

HEARING OFFICER HEBERT: This is your time for comment, so there's no answer.

MS. FUQUA: Okay. Also then I have a question about the review by Glorieta of the existing environmental reports and that is to what standard, what criteria is this land being evaluated for under the environmental impact statement? What are those criteria? We don't know.

HEARING OFFICER HEBERT: Thank you.

JOHN MCPHEE: I recognize I'm under oath. My name is John McPhee. And I previously lived in Eldorado at #4 Taro Road, two miles from the location. I've been on that property probably over 100 times in the six years that I lived there. I now live at 2712 Sol y Luz Loop in Santa Fe.

I'm a fourth generation New Mexican and I've been in fire management off and on for 30 years, seven years in Colorado, Alaska, and California, for the National Park Service and 23 years as the Consumer Product Safety Commissioner on the fire

management team for New Mexico. I was a navigator for the Bandolier fires and for the Los Alamos fire.

The real issue, one of the main issues again, and I'll be brief. I'm sure you're grateful that I'm the last speaker. The west side of Eldorado is particularly dry and actually drier by a couple of inches a year, than up on the east side at the intersection of 285 and I-25. It usually gets two to three inches more rain per year. Still, there's a lot of flammable and combustible material on the west side and in the event of a fire, obviously it's gotten a lot drier in the last ten years. We can't put any people – the Fire Department – great people here; I work with them all the time, but we can't put people in front of a fire if there's a 30 mile an hour wind and so forth. So there's obviously that danger.

In terms of something people have not discussed is dust. When we build this whole facility and there'll be even less vegetation out there, the dust out there, we had for six years was suffocating all the time, even without anything of this nature up wind. And finally something we're all a victim of is Congress has never recognized magnetic fields as a danger and there are no regulations – EPA was taken out of the regulatory process in 1995, and there are no regulations for cell towers.

MR. FRESQUEZ: Madam Hearing Officer, the timer has expired.

MR. MCPHEE: And all other things involving electricity. Thank you.

HEARING OFFICER HEBERT: Thank you for your comments. Is there no one else in the room that wants to make a comment on this application? So I think we will now go to the people on line that want to make comments.

MR. FRESQUEZ: Madam Hearing Officer, we have one person online that would like to speak. His name is Bob; if you would please unmute and be sworn in.

HEARING OFFICER HEBERT: Maybe Bob left.

MR. FRESQUEZ: Okay, our next speaker is Glenn Smerage.

[Duly sworn, Glenn Smerage testified as follows via Webex:]

GLENN SMERAGE: I'm at 187 East Chili Line Road, Santa Fe. I have a question I would like the proponent representatives to answer. You have indicated the project will consume a little over 800 acres, but those 800 acres are within over 8,000 acres. What will happen to the balance of those 8,000 acres? What will the future of those nearly 8,000 acres be?

HEARING OFFICER HEBERT: I don't believe that the applicant would be able to answer that. My understanding is they're leasing the 800 acres. Is that correct?

MR. MAYER: That is correct. AES will only be leasing the fenced acreage of the facility. What I can say in relation to that question is that the sponsor landowner is making a movement to transfer development rights on 5,000 acres, approximately, of that land so that it will not be available for future development.

HEARING OFFICER HEBERT: So it would be some sort of a conservation easement? Is that what you're saying?

MR. MAYER: I would direct that question to the County and to the landowner himself, but that's been made known to us.

MR. SMERAGE: May we ask the County representative what will happen to that large land outside of the development?

MR. YUTZY: Hearing Officer Hebert, the landowner has indicated that he wants to do TDRs, transfers on that, which will indicate that land will be grazing land for the rest of its life.

MR. SMERAGE. Okay, so we don't have to worry about future housing developments or even industrial developments.

MR. YUTZY: There's no guarantees. If the TDRs are removed from the property. The ability to develop the property at that point in time is gone. So it will be open land.

MR. FRESQUEZ: Thank you, Mr. Smerage. Your time has expired. Madam Hearing Officer, I do not see any other users online raising their hands.

HEARING OFFICER HEBERT: Well, isn't that something? Okay.

With that then this hearing is concluded and I will issue a recommended order within 15 business days, and then this matter will go on to the Planning Commission. So thank you all for attending and for your comments. Very helpful.

4. Adjournment

Hearing Officer Hebert adjourned the hearing at approximately 4:52 p.m.

Approved by:

_____
Marilyn Hebert, SLDC Hearing Officer
Santa Fe County