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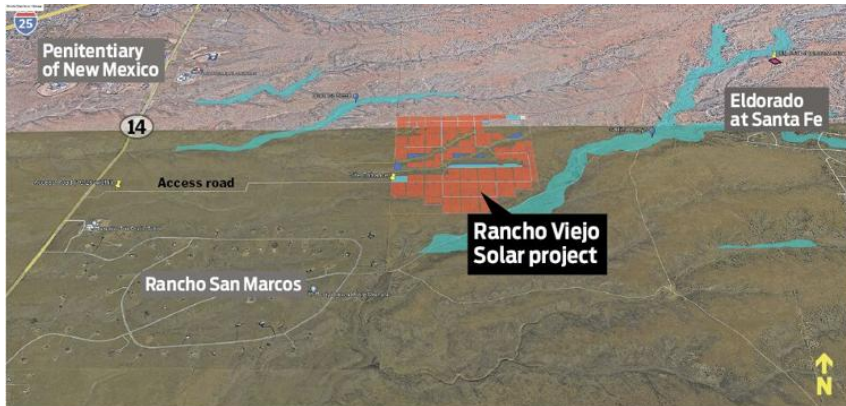
https://www.santafenewmexican.com/news/local_news/eldorado-resident-notice-not-given-for-change-to-county-code-for-solar-project/article_61fe3b2e-3d18-11ee-84a7-ffed0059fac2.html

SANTA FE COUNTY

Eldorado resident: Notice not given for change to county code for solar project

By Nicholas Gilmore ngilmore@sfnewmexican.com

Aug 20, 2023



The location of the proposed Rancho Viejo Solar facility near Eldorado at Santa Fe.

An Eldorado resident and former state employee who opposes a large commercial solar energy system planned south of Santa Fe has accused county staff of violating New Mexico's open meetings law more than a year ago.

Ashley Schannauer said he believes the 96-megawatt Rancho Viejo Solar facility, proposed for an 800-acre site near his home, required a small change to a Santa Fe County code that was improperly approved.

In an Aug. 14 letter to County Manager Greg Shaffer and County Attorney Jeffrey Young, Schannauer alleged staff violated the Open Meetings Act in 2022 by "burying" a change to the definition of "commercial solar facilities" in an ordinance on community solar projects.

Shaffer wrote in an email Friday county staff "strongly disagrees" the consideration and adoption of the ordinance "in any way" violated the law. Shaffer also noted the county printed a legal ad in the newspaper in advance of the meeting notifying the public the proposed change to the definition was being considered.

The ordinance, approved by county commissioners in July 2022, established standards for community-based solar facilities developed through a new state program intended to provide residents and businesses with opportunities to buy into renewable energy projects to offset their electricity bills. Included in the ordinance was the addition of three words to the definition of “commercial solar production facility” that paved the way for storage capacity at such energy plants.

The change defined a commercial solar production facility in the county’s Sustainable Land Development Code as “a renewable energy production facility that uses sunlight to generate, *and may store*, energy for sale or profit.”

Schannauer, a retired lawyer who recently worked for the New Mexico Public Regulation Commission, argues the words allowing solar energy storage were added specifically to accommodate a battery storage system planned for the solar development in the works by global energy firm AES Corp.

Rancho Viejo Solar, which would be built on private land about a mile off N.M. 14, northeast of the Rancho San Marcos subdivision and west of Eldorado, has drawn opposition from several residents in the area, in particular because of plans for a 48-megawatt battery storage system.

Opponents have raised concerns about the potential for the lithium-ion battery system to overheat in a “thermal runaway” event and cause a fire. They have cited such incidents at other solar farms in recent years, including one at an AES facility in Chandler, Ariz., in 2022.

The pushback from residents prompted the county to hire an outside firm to review AES’ plans.

Shannauer said he requested public records of communications between the county and AES and discovered even before the community solar ordinance was introduced to the County Commission in May 2022, the energy company had been meeting with county staff in preparation to apply for a permit to build its facility, including the lithium-ion battery storage.

Shaffer wrote in his email AES’ permit for a solar facility was unrelated to the amended definition of a commercial solar facility.

“The amendment was initiated so that the definitions of Commercial Solar Energy Production Facility and Community Solar Facility were consistent — both contain the ‘and may store’ language,” Shaffer wrote. “Moreover, that language was included to avoid any arguable ambiguity over whether either type of facility could include storage.”

The ordinance appeared on agendas for two County Commission meetings and one Planning Commission meeting between May and July of 2022. Schannauer argues the county ran afoul of the open meetings law by failing to note on the agendas the ordinance included changes to the commercial solar definition.

“The agendas for each meeting included only the title of the Community Solar Ordinance,” Schannauer wrote in his letter last week, “which was specific but in fact limited in its description of what the Ordinance accomplishes. The title indicated that it was adding a definition of ‘Community Solar,’ but it did not mention any changes to the then-current definition of Commercial Solar Energy Production Facility.”

Shaffer said, however, a legal ad printed in *The New Mexican* in advance of the ordinance’s consideration and adoption stated it “would also amend Appendix A, Part 2, Definitions, of the [Sustainable Land Development Code] to amend the Commercial Solar Energy Production Facility definition.”

“In other words, anybody interested in the definition of Commercial Solar Energy Production Facility was given clear and unequivocal legal notice that the proposed ordinance was something in which they should be interested,” Shaffer wrote in the email.

The county land use administrator’s opinion was that storage would be allowed in such a facility even without the language change, he added.

County staff will elaborate on its position it did not commit an Open Meetings Act violation at an upcoming County Commission meeting Aug. 29, Shaffer wrote.

Schannauer maintains the legal notice wasn’t sufficient to comply with the state’s Open Meetings Act.

“The only thing the public sees is the agenda notice and that agenda notice was extremely misleading,” Shannauer said in an interview Friday.

The amendment to the commercial solar definition should be rendered invalid, he said, adding the county also should declare a moratorium on permitting commercial solar facilities.

“The inclusion of battery storage facilities at utility-scale solar farms represented a significant change to the definition of Commercial Solar Energy Production Facilities, especially given the history of fires at AES battery storage facilities and battery storage facilities of other companies,” Schannauer wrote in his recent letter.

Schannauer said he had not yet received a response from county officials regarding his letter.

Nicholas Gilmore

[Selected comments from the 51 comments]:

CF

Carl Friedrichs

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2 days ago

Right now, about 80% of our energy in New Mexico for electricity comes from coal or natural gas. This contributes to global warming. We are suffering through catastrophic environmental changes due to that global warming, and it is going to get a lot worse. I am a homeowner in Rancho Viejo and I have already invested in rooftop solar and electric vehicles to try to do my part. I welcome community solar in Santa Fe, this benefits our future and our children.

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PT

Phyllis Turner

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1 day ago

It is really important to understand that the AES facility is NOT the same as community solar or residential solar. This gigantic facility (800 - 1000 acres), with 1 million individual lithium ion battery cells, will transmit power to a PNM substation near El Dorado, and will be used as PNM determines in their entire service area. There is no direct benefit to the surrounding community, which bears all the risks of this enormous facility. It is simply WAY TOO CLOSE to El Dorado, and Rancho San Marcos, and should be placed in a far more remote area, which are plentiful in NM.

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NH

Naomi Harrison

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2 days ago

Carl, I too welcome community solar and residential rooftop solar. The AES proposal is NOT community solar. It's an enormous, commercial, solar power plant with a proposed approximate 1 million lithium battery cells that are a known fire hazard - proposed to be located in very dry open space between approximately 10,000 residential properties. They also propose above ground power transmission lines, which we've recently learned can also cause devastating fires. I'm all for getting off fossil fuels, but this proposed facility is a danger to public safety and is not the way to go. Thank you, Mr.Schannauer for bringing this to our attention.

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CC

Carol Culver

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2 days ago

The proposed project discussed in this article is not a community solar project. Community solar projects provide solar power to the surrounding communities. This is an 800-acre 48-megawatt commercial solar installation sandwiched in among three residential communities in dry, windy grassland. The goal is to generate power and build a power line in order to sell the power to PNM. PNM can then sell it to anyone, including out of state. Solar power is good, especially rooftop and community solar. But commercial-scale projects must be sited responsibly.

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CM

Chris Mechels

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1 day ago

This complaint describes one of many Open Meetings Act violation by the Board of County Commissions (BCC). The essential problem is that the BCC does not accept their legal responsibility for OMA. They, not the County Manager, have the OMA responsibility. I spoken to the Board on this an they just ignore it. Too busy with HOLTEC and Ukraine it seems.

I filed an OMA complaint with the Board and Attorney General on a December violation of OMA by the Ethics Board, a creation of the BCC. No Board response, and no response to date by the AG office. Meanwhile, I notice OMA violations in other BCC matters. They really are out of control, acting like ignorant children.

My experience is that the Boards and Committees aren't being trained on the OMA law, and simply rely on the County support staff to cover the matter. The staff, in turn creates the violations. Then the County Manager denies the problem. That's what happened with my complaint against the Ethics Board.

Complicating all this is that the County Manager is the former County Attorney, and had a hand in creating the OMA problems, including a flawed OMA Resolution. He needs to be dealt with, and the BCC isn't interested it seems.

It will likely take a lawsuit to open the eyes of the BCC, and WE, you and I, will pay for that lawsuit. The AG "should" step up, but seems busy with more attractive political prospects.

Life in New Mexico. Chaos reigns.

Reply · 👍 2 · 🗨️ · Share

CM

Chris Mechels

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1 day ago

Mr. Schannauer please contact me at cmechel@q.com.

I've been working on OMA issues involving the SF County BCC, since last November, and they seem totally unresponsive. Ditto with the Attorney General.

Perhaps we can compare notes.

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