PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

January 12, 2012

Ms. Suzan Benz
Environmental Project Manager
Devers-Palo Verde No. 2 Transmission Project
6 Point Drive, 1st Floor
Brea, CA 92821-6320

RE: SCE Devers-Palo Verde No. 2 Transmission Line Project – Variance Request #18

Dear Ms. Benz,

On December 15, 2011, Southern California Edison (SCE) submitted a variance request to the California Public Utilities Commission (CPUC) to formalize changes to Mitigation Measures B-1a, B-1a(rev), V-2b and H-1a concerning revegetation/restoration requirements for the Devers-Palo Verde No. 2 (DPV2) Transmission Project. Additionally, SCE submitted a similar variance request for MM-BIO-4 and AM-BIO-5 applicable to the Red Bluff Substation on October 26 and 28, 2011. The CPUC provided comments to SCE on the Red Bluff variance on October 29th, but no response has been received to date. The Red Bluff Substation variance request is also addressed in this letter.

The CPUC voted on January 25, 2007 to approve the SCE DPV2 Transmission Line Project (Decision D.07-01-040). On May 14, 2008, SCE filed a Petition for Modification (PFM) of the existing Certificate for Public Convenience and Necessity (CPCN) approved per Decision D.07-01-040. SCE requested that the CPUC authorize SCE to construct DPV2 facilities in only the California portion of DPV2 and the Midpoint Substation (now called the Colorado River Substation) near Blythe, California. The CPUC approved SCE's PFM on November 20, 2009 in Decision D.09-11-007.

After the CPUC's 2009 Decision regarding the PFM, several large solar power projects were proposed in the Blythe and Desert Center areas. SCE filed Permit to Construct applications addressing expansion of the Colorado River Substation and construction of a new Red Bluff Substation. These components were not covered in the original DPV2 Final EIR/EIS, because the solar power projects had not yet been proposed, and supplemental environmental review has been conducted. The Colorado River Substation Expansion and the Red Bluff Substation were both approved by the CPUC on July 14, 2011 in Decisions D.11-07-011 and D.11-07-020, respectively.

The BLM issued a Record of Decision approving the Project on July 19, 2011 and approved exclusionary fencing activities on August 23, 2011. The Project also crosses lands under jurisdiction of the U.S. Department of Agriculture Forest Service on the San Bernardino National Forest within an existing Forest Service-issued easement. The Forest Service will issue a revised easement signed by the Forest Supervisor. The area requested under this variance does not fall under Forest Service jurisdiction.

The CPUC also adopted a Mitigation, Monitoring, Compliance and Reporting Program (MMCRP) to ensure compliance with all mitigation measures imposed on the DPV2 Project during implementation. The MMCRP also acknowledges that temporary changes to the project are anticipated and common practice for construction efforts of this scale and that a Variance Request would be required for these activities. This letter documents the CPUC's thorough evaluation of all activities covered in this variance,

and that no new impacts or increase in impact severity would result from the requested variance activities.

Variance Request #18 to formalize changes to Mitigation Measures B-1a, B-1a(rev), V-2b and H-1a concerning revegetation/restoration requirements for DPV2 and MM-BIO-4 and AM-BIO-5 for Red Bluff Substation has been **denied** by CPUC, in concurrence with BLM, for the proposed activities based on the factors described below.

SCE Variance Request. Excerpts from the SCE Variance Request, received December 15, 2011, for DPV2 are presented below (indented):

> SCE requests a variance for clarification of restoration activities and performance standards that will occur at temporarily disturbed areas described in MM B-1a and B-1a (rev) to reflect the project's MMCRP interpretations and approach, and most recent version of the HRCP. Additionally, SCE requests clarification on the restoration/remedial activities described in V-2b and H-1a. The language in measures V-2b and H-1a should reference the agency-approved HRCP.
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> **MM B-1a - Prepare and implement a Habitat Restoration/Compensation Plan** - states:
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> *"SCE shall restore/remediate (e.g., additional planting, weeding, or erosion control) all areas disturbed by project construction, including temporary disturbance areas around tower construction sites, laydown/staging areas, temporary access and spur roads, and existing tower locations that are removed during construction of the Proposed Project. Where onsite restoration is planned for mitigation of temporary impacts to sensitive vegetation communities, SCE shall identify a qualified Habitat Restoration Specialist to be approved by the CPUC/BLM. Hydro-seeding, drill seeding, or an otherwise proved restoration technique shall be utilized on all disturbed surfaces using a locally endemic native seed mix approved by the CPUC/CDFG/FWS and BLM.*
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> **MM B-1a (rev) - Prepare and implement a Habitat Restoration/Compensation Plan** - states:
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> *"The creation or restoration of habitat shall be monitored for five years after mitigation site construction, or until established success criteria are met, to assess progress and identify potential problems with the restoration site. ~~The following p~~Performance standards will be included in the HRCP for CPUC/BLM review and approval and must be met by the end of the monitoring period~~: (a) at least 80% of the vegetative cover observed within the restoration area shall be native species that naturally occur in desert scrub habitats; (b) absolute cover and density of native plant species within the restoration areas shall equal at least 60% of the pre-disturbance or reference vegetation cover; and (c) the site shall have gone without irrigation or remedial planting for a minimum of three years prior to completion of monitoring~~. Remedial activities (e.g., additional planting, weeding, or erosion control) shall be taken during the monitoring period if necessary to ensure the success of the restoration effort. If the mitigation fails to meet the established performance criteria after the five-year maintenance and monitoring period, monitoring shall extend beyond the five-year period until the criteria are met or unless otherwise noted by the CPUC/BLM."*
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> **MM V-2b - Reduce visual contrast from unnatural vegetation lines -** states:
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> *"In those areas where views of land scars are unavoidable, the boundaries of disturbed areas should be ~~aggressively revegetated~~ remediated (e.g., additional planting, weeding, or erosion control) as described in the project's HRCP to create a less distinct and more natural-appearing line to reduce visual contrast. Furthermore, all graded roads and areas not required for on-going operation, maintenance, or access shall be returned to pre-construction conditions. This measure partially encompasses BLM permit requirement BLM B 7.9."*
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> *"SCE shall submit final construction and restoration plans demonstrating compliance with this measure to the BLM and CPUC for review and approval at least 60 days prior to the start of construction."*
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> **MM H-1a - Restore disturbed soil with re-vegetation or construction of permanent erosion-control structures -** requires:
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> *"Soil disturbance at towers and access roads shall be the minimum necessary and designed to prevent long-term erosion through ~~revegetation~~ remedial activities (e.g., additional planting, weeding, or erosion control) as described in the project's HRCP or construction of permanent erosion control structures according to plans to be reviewed and approved by the U.S. Forest Service. Copies of the final approved plans shall be submitted to the CPUC/BLM for their files."*
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> Per the MMCRP, restoration/remedial activities per MM B-1a will be implemented as follows:
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> "All areas temporarily disturbed will be re-contoured, as appropriate, to restore natural slopes and pre-construction contours. Unavoidable impacts to special status vegetation communities or habitats that support listed species shall be mitigated through either offsite compensation or onsite restoration…SCE has interpreted special status vegetation communities to include those habitat types primarily defined by the CDFG (2003, 2009), support species protected by state and federal Endangered Species Acts (ESAs), as well as areas falling under federal, state, or regional jurisdiction as waters of the US or waters of the state."

> "…All disturbance (temporary and permanent) within the BLM's Northern and Eastern Colorado Deserts Coordinated Management Plan (NECO) Plan Area, which spans from the Colorado River Substation to approximately the Cactus City Rest Area, will be mitigated/restored through an in lieu fee program approved by the BLM, USFWS, and CDFG at no greater than a 5:1 ratio. Special status vegetation communities that provide habitat for Coachella Valley fringe-toed lizard, flat-tail horned lizard, and Coachella Valley milk-vetch within the CV MSHCP Plan Area will be mitigated/restored through offsite mitigation programs approved by the BLM, USFWS, and CDFG. All other temporary disturbance to special status vegetation communities will be accomplished by onsite habitat restoration directed by the Habitat Restoration Specialist."
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> "Compensation for temporary and permanent impacts to vegetation communities will be equivalent to, and not duplicate, the restoration measures (offsite mitigation) SCE will implement for impacts to species protected by state and federal endangered species acts (ESA) as directed in the Project's ESA Section 7 Biological Opinion and Fish and Game Code Section 2080.1 Consistency Determination. For the purposes of the project's state and federal ESA effects analysis (Section 7 Biological Opinion and Section 2080.1 Consistency Determination) relative to the 30-year life of the project, all temporary impacts were considered equivalent to permanent impacts since full recovery in the desert can take decades or longer. Therefore, offsite compensatory mitigation instead of onsite habitat restoration was preferred by the USFWS, BLM, and CDFG to offset impacts to listed species and their habitat (which is considered a special status vegetation community). Since a majority of the project occurs on BLM-administered lands, SCE intends to incorporate post-construction reclamation/rehabilitation efforts as required by the BLM to re-establish a vegetative cover that is similar to pre-construction conditions via erosion control and invasive species control efforts. A sufficient seed bank exists in the first several inches of soil to naturally re-vegetate temporarily disturbed sites, particularly locations of drive and crush activities. However, in some instances depending on the disturbance level, soil salvage and/or broadcast of native seeds may be implemented to re-vegetate areas."
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> "Temporary impacts to special status vegetation communities that are not compensated for offsite as required in the project's Biological Opinion or Consistency Determination will be mitigated on-site through habitat restoration based on the disturbance level as described in the HRCP. SCE anticipates that refinements to the HRCP may be required following initial approval of the plan."

Excerpts from the SCE Variance Request, received October 26, 2011, for Red Bluff Substation are presented below (indented):

> SCE requests a variance for deletion of all seeding, planting, and revegetation requirements described in MM-BIO-4 and AM-BIO-5. Per the MMCRP, MM-BIO-4 and AM-BIO-5 will be implemented as follows:
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> *"Compacted soils at the material laydown yard will be treated through ripping, tillage, or pitting, and the soil surface will be left sufficiently "rough". Seeding with native shrubs and forbs from locally gathered/commercially available seed will be conducted one time, to encourage restoration (Bainbridge, 2007).*
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> *SCE will mitigate for all habitat lost, at a 5:1 ratio. Salvage efforts will be monitored for a period of 10 years or until the defined performance standards are achieved (whichever is sooner)."*

CPUC Evaluation of Variance Request

In accordance with the MMCRP, the subject variance request was reviewed by CPUC in consultation with BLM. Based on a meeting held between the agencies on January 4, 2012, ongoing dialogues and its review of this letter, BLM agrees with the discussion and conclusions included herein and supports denial of SCE's Variance Request #18.

As discussed above, SCE has submitted a variance request to the CPUC requesting revisions of mitigation measures requiring revegetation, restoration, or similar post-construction remediation of temporarily disturbed habitat for Red Bluff Substation and DPV2 on lands under BLM jurisdiction. The reason for the request is that SCE will compensate for temporarily disturbed habitat areas according to the ratios and other requirements for permanently disturbed habitat. The compensation requirements are stated in the Biological Opinion, pursuant to the BLM's federal Endangered Species Act Section 7 consultations with the US Fish and Wildlife Service, and the Consistency Determination issued by California Department of Fish and Game, under Section 2080.1 of the California Endangered Species Act.

The DPV2 MMCRP describes the interpretation and approach to implementing each measure, as agreed by SCE, CPUC, and BLM. SCE's specific approach to post-construction remediation of temporarily disturbed sites is described in the DPV2 Habitat Restoration and Compensation Plan (HRCP) and the approved Red Bluff Habitat Restoration Plan (HRP). Rather than reseeding or other habitat restoration techniques, SCE generally proposes to replace topsoil on work sites, recontour the sites to minimize

erosion, relieve soil compaction as needed, and implement weed control and other applicable requirements of other mitigation measures.

However, the mitigation measures requiring restoration, revegetation, or remediation were included in the DPV2 Final EIR/EIS and Desert Sunlight Final EIS to mitigate several other impacts, including biological resources and in a more general sense, visual resources and hydrology/water resources for DPV2 and visual and geologic resources for Red Bluff Substation. Therefore, the CPUC, in concurrence with BLM, **denies** SCE's variance requests and SCE should revise the tentatively-approved DPV2 HRCP and approved Red Bluff HRP to address the following concerns:

- **Reseeding (per MM B-1a)**: SCE has indicated that construction activities at many of the disturbed sites will be conducted by "drive and crush" without grading natural soils. In these circumstances, the CPUC and BLM expect native seed banks and shrub rootstocks to generally survive the construction activities, and natural vegetation would recover over time without additional seeding. SCE has also indicated that it will salvage and replace topsoil at sites where grading is necessary. The CPUC and BLM believe that reseeding may be necessary on some sites, and that a qualified restoration biologist should make this determination on a site by site basis. On National Forest lands, the USFS must also approve the seed mix and restoration technique. Therefore, please revise the HRCP to address compliance with this portion of MM B-1a. The Red Bluff HRP should similarly be revised to comply with MM-BIO-4 and AM-BIO-5.
- **Performance Standards (per MM B-1a[rev]):** The performance standards for the mitigation measure were included in the Final Supplemental EIR for the Colorado River Substation expansion, to ensure that the restoration (or remediation) requirement would not be vulnerable to challenge as "deferred mitigation," consistent with current CEQA practice. The CPUC and BLM believe that these performance standards are feasible. The performance standards were written to avoid "double mitigation" of sensitive species habitat, with the understanding that CDFG and USFWS require habitat compensation for temporary disturbance. Instead, they were written with the intent of reducing on-site project impacts to general biological, visual, and hydrology/water resources.

  The CPUC and BLM believe that the specified performance criteria could be readily met through measures such as those SCE proposes (recontouring, topsoil replacement, and weed control), perhaps with additional seeding of native early-successional grasses and shrubs such as desert needlegrass, snakeweed, rabbitbrush, and burrobrush. SCE should revise the DPV2 HRCP to include a discussion of the weed and erosion control measures and related performance standards.
- **Visual Resources (per DPV2 MM V-2b and Red Bluff MM-VR-1 and MM-VR-6)**: The requirement for revegetation to mitigate visual impacts is unrelated to SCE's and the lead agencies' concern about "double mitigation" for impacts to special status species habitat. The HRCP does not include performance standards or other criteria related to visual resources. Two of SCE's proposed remediation activities (weeding and erosion control) are only indirectly related to the visual image of disturbed vs. undisturbed vegetation. Therefore, SCE should revise the DPV2 HRCP and Red Bluff HRP to adequately address visual resource impacts with respect to restoration.

The CPUC and BLM understand that approval of the DPV2 HRCP is required prior to the start of transmission line construction. Therefore, the CPUC and BLM are willing to conditionally allow SCE to begin construction activities based on the tentatively approved HRCP and approved HRP with the understanding that SCE shall revise the DPV2 HRCP and Red Bluff HRP to address revegetation and reseeding with respect to the aforementioned erosion control, noxious weed and visual resources issues ***within 60 days of issuance of this letter***. Prior to SCE's draft revisions, the CPUC and BLM recommend a joint meeting with SCE and its subconsultants to review both plans and to specify needed changes.

Please contact me if you have any questions or concerns.

Sincerely,

Billie Blanchard
CPUC Environmental Project Manager
DPV2 Transmission Project

cc: Ryana Parker, Southern California Edison
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