

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



May 25, 2011

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 #2

Dear Ms. Benz,

On April 21, 2011, Southern California Edison (SCE) submitted a variance request to the California Public Utilities Commission (CPUC) to address Mitigation Measure B-7d requirements with regard seasonal restrictions in Coachella Valley fringe-toed lizard and flat-tailed horned lizard habitat areas for the Devers-Palo Verde No. 2 (DPV2) Transmission Project.

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](#). The BLM is expected to issue a Record of Decision approving the Project in the near future. 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 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.

SCE has requested that Mitigation Measure B-7d be revised pertaining to seasonal restrictions in Coachella Valley fringe-toed lizard and flat-tailed horned lizard habitat areas to be consistent with the conservation measures contained within the United States Fish and Wildlife Service (USFWS) Biological Opinion (Reference FWS-ERIV-07B0060-10F0884 Dated January 7, 2011) for the flat-tailed horned lizard (FTHL) and Coachella Valley flat-tailed lizard (CVFTL). Variance #2 is granted by CPUC for the proposed activities based on the factors described below.

**SCE Variance Request.** SCE states that revision of the language in Mitigation Measure B-7d pertaining to seasonal restrictions in Coachella Valley fringe-toed lizard (*Uma inornata*; CVFTL) and flat-tailed horned

lizard (*Phrynosoma mcallii*; FTHL) habitat areas is necessary in order to construct the DPV2 Project in a linear/sequential manner, as well as within a timeline that will meet interconnection needs and outage schedules. Excerpts from the SCE Variance Request, received April 21, 2011, are presented below (indented):

The FEIR Mitigation Measure B-7d regarding the lizards is inconsistent with the Project's Biological Opinion (BO; attached) issued in accordance with Section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) relative to the survey requirements and seasonal restrictions for the flat-tailed horned lizard.

The Project's FEIR Mitigation Measure B-7d currently states:

"Purchase mitigation lands for impacts to fringe-toed lizard habitat. SCE shall purchase or enhance lands for all permanent loss of habitat that are within the CVFTL Critical Habitat unless otherwise directed by the USFWS Biological Opinion for the Proposed Project. Mitigation Lands shall be determined in consultation with the USFWS, CDFG, and CPUC.

Clearing work areas of CVFTL in the Coachella Valley Preserve. A temporary fence or other effective barrier that does not allow lizards to enter the work areas shall be constructed around the perimeter of each of the work areas in the refuge. Any lizards found within the barrier shall be relocated outside of the work areas.

Duration of Surveys for fringe-toed lizard and flat-tailed horned lizard. Surveys for CVFTL and FTHL shall be conducted during the appropriate seasons (May 1 through the end of summer) and conditions for species identification. The duration of the surveys shall coincide with the duration of construction activities in potential habitat for these species (particularly on the Coachella Valley Preserve) that occurs during the summer season. For any areas of suitable habitat, this measure shall apply. Construction shall not occur on the Preserve or in other potential habitat areas outside of the detection period for FTHL."

SCE requests that the California Public Utilities Commission (CPUC) accept the conservation measures contained within the project's BO issued January 7, 2011 for the FTHL (and the CVFTL) as the overriding measures to first avoid and then reduce potential impacts to these species below a level of significance. By implementing the BO conservation measures, SCE intends to initiate ground-disturbing construction activities during the active season as defined in the BO (April through October), establish exclusionary fencing, and implement biological monitoring controls. Construction activities will be allowed to continue beyond the active season provided the exclusionary fencing and biological monitoring are maintained and effective until construction is complete.

The conservation measures for FTHL (and CVFTL) contained within the BO state:

"27. To the extent possible, all construction activities within modeled/blow sand habitat will be conducted during the active season, between April and October (inclusive of both months). Construction activities in modeled/blow sand habitat may be extended beyond the active season if exclusionary fencing is installed during the active season.

28. A Qualified Biologist will conduct preconstruction clearance surveys immediately prior to the initiation of ground disturbing activities during the active season, between April and October (inclusive of both months), in modeled/blow sand habitat and be present during all construction activities in these areas. The name and qualifications of the Qualified Biologist will be submitted to the BLM, Service, and CDFG for approval at least 30 days prior to project construction in modeled/blow sand habitat.

29. If fringe-toed or horned lizards are found, the Qualified Biologist will capture and relocate any individuals to the nearest suitable habitat in modeled/blow sand habitat outside of the DPV1/DPV2 ROW.

31. To partially offset the impacts of permanent and temporary/long-term losses of horned lizard habitat, SCE will acquire at least 12.95 ha (32 ac) of horned lizard habitat. The compensation ratio will be 2:1 for permanent and temporary/long-term impacts to horned lizard modeled habitat [6.47 ha (16 ac) of impact  $\times 2 =$  a total of 12.95 ha (32 ac)]. The lands will be purchased either by SCE or SCE can deposit funds with the NFWF under the account governed by the REAT/NFWF MOA (REAT/NFWF MOA 2010); if funds are deposited with NFWF, a compensation fee will be assessed based on current fair market appraised value for the specific geographic area in which the acquisition occurs. The acquired lands will occur in horned lizard habitat with equivalent function and value. The replacement habitat is intended to benefit the population of horned lizard adversely affected by the project, and will be located within or adjacent to priority conservation areas in the CVMSHCP with comparable or better habitat value. The BLM and Service will coordinate to reach mutual agreement on the selection and ownership/management of acquired lands. If funds are provided to NFWF, the compensation (1) funds will be provided prior to project construction, (2) lands will be acquired prior to completion of project construction, and (3) lands will be conserved in perpetuity by a legal mechanism agreed to by the three agencies. If the conservation lands are acquired directly by SCE, steps #2 and #3 will apply. Regardless of the acquisition method (by SCE or NFWF), SCE will establish a management fund for the agency that owns and manages the acquired lands. The management fund will consist of an interest-bearing account (as described in the REAT/NFWF MOA), with the amount of capital commensurate to generate sufficient interest to fund all monitoring, management, and protection of the acquired lands, including reasonable administrative overhead, biological monitoring, improvements to carrying capacity, law enforcement measures, and other actions designed to protect or improve the habitat values of the acquired lands. A Property Analysis Record, as described at: [http://cnlm.org/cms/index.php?option=com\\_content&task=view&id=21&Itemid=155](http://cnlm.org/cms/index.php?option=com_content&task=view&id=21&Itemid=155) or comparable method, will be conducted by SCE and reviewed by the BLM and Service to determine the management needs and costs described above, which then will be used to calculate the amount of capital needed for the management fund. This management fund will be held and managed by NFWF or another entity approved by the BLM and Service.”

Additionally, the Project’s BO contains 16 general conservation measures that address construction monitoring, noxious weed control, speed limits, and other avoidance and minimization actions to protect the lizards and other covered species including the endangered Stephens’ kangaroo rat (*Dipodomys stephensi*), the endangered Coachella Valley milk-vetch (*Astragalus lentiginosus* var. *coachellae*), and the threatened desert tortoise (*Gopherus agassizii*) and its designated critical habitat. Combined, these conservation measures would more than compensate impacts to the flat-tailed horned lizard below a level of CEQA significance.

### **CPUC Evaluation of Variance Request**

In accordance with the MMCRP, the subject variance request was reviewed by CPUC to confirm that no new impacts or increase in impact severity would result from the requested variance activities. The following discussion summarizes this analysis for biological resources, noise, and other issue areas. A list of conditions is presented below to define additional information and clarifications regarding mitigation requirements. In some cases, these items exceed the requirements of the Mitigation Measures and Applicant Proposed Measures, and are based on specific site conditions and/or are proposed conditions by SCE.

**Biological Resources.** Construction activities will be allowed to continue beyond the active season provided the exclusionary fencing and biological monitoring are maintained and effective until construction is complete. The Biological Opinion was issued in accordance with Section 7 of the

Endangered Species Act and the conservation measures included therein were reviewed and approved by the USFWS. Further, the CPUC biological resource expert reviewed the subject variance request and concurs with its proposed recommendations.

**Cultural Resources.** Variance #2 will not affect Project cultural resources.

**Noise/Sensitive Receptors.** Construction, including noise generating activities, would be extended beyond the active season. However, the overall scope of construction activities has not changed and the modeled/blow sand habitat tends to be located in undeveloped areas with no nearby sensitive receptors.

**Other Issue Areas.** No concerns noted under this variance.

**Conditions of Variance Approval.**

1. The BO conservation measures described in this Variance shall be implemented in lieu of the existing Mitigation Measure B-7d.
2. SCE shall provide written documentation to the CPUC of compliance with these measures, including the acquisition and dedication of conservation lands.
3. All applicable project mitigation measures, APMs, compliance plans, permit conditions and NTP conditions shall be implemented. Some measures have on-going/time-sensitive requirements and shall be implemented prior to and during construction where applicable.
4. Copies of all relevant permits, compliance plans, and this Variance approval shall be available on site for the duration of construction activities.

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  
John Kalish, Bureau of Land Management  
Vida Strong, Aspen Environmental Group  
Hedy Koczvara, Aspen Environmental Group  
Jamison Miner, Aspen Environmental Group