

ORIGINAL



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BEFORE THE ARIZONA CORPORATION COMMISSION

MIKE GLEASON  
Chairman  
WILLIAM A. MUNDELL  
Commissioner  
JEFF HATCH-MILLER  
Commissioner  
KRISTIN K. MAYES  
Commissioner  
GARY PIERCE  
Commissioner

Arizona Corporation Commission  
DOCKETED

MAY 18 2007

DOCKETED BY *ne*

IN THE MATTER OF THE APPLICATION )  
OF SOUTHERN CALIFORNIA EDISON )  
COMPANY AND ITS ASSIGNEES IN )  
CONFORMANCE WITH THE )  
REQUIREMENTS OF ARIZONA REVISED )  
STATUTES SECTIONS 40-360.03 AND )  
40-360.06 FOR A CERTIFICATE OF )  
ENVIRONMENTAL COMPATIBILITY )  
AUTHORIZING CONSTRUCTION OF A )  
500kV ALTERNATING CURRENT )  
TRANSMISSION LINE AND RELATED )  
FACILITIES IN MARICOPA AND LA PAZ )  
COUNTIES IN ARIZONA ORIGINATING )  
AT THE HARQUAHALA GENERATING )  
STATION WEST OF PHOENIX, )  
ARIZONA AND TERMINATING )  
AT THE DEVERS SUBSTATION IN )  
RIVERSIDE COUNTY, CALIFORNIA )

Docket No. L-00000A-06-0295-00130

Case No. 130

RECEIVED  
2007 MAY 18 P 4: 56  
AZ CORP COMMISSION  
DOCKET CONTROL

SOUTHERN CALIFORNIA EDISON COMPANY'S

NOTICE OF FILING

UNITED STATES DEPARTMENT OF THE INTERIOR

FISH AND WILDLIFE SERVICE RIGHT OF WAY PERMIT

Attached is a May 18, 2007, Right of Way Permit issued by the United States Department of the Interior Fish and Wildlife Service ("USF&W") granting Southern

1 California Edison Company ("SCE") a right of way special use permit through the  
2 northern portion of the Kofa National Wildlife Refuge ("Kofa") and finding that the  
3 use of the Kofa for the Devers to Palo Verde No. 2 transmission line is compatible  
4 with the purposes for which the land was acquired. Also attached is a May 11, 2007  
5 letter from the USF&W Regional Director containing findings related to the right of  
6 way. Since the evidentiary proceeding before the Arizona Power Plant and  
7 Transmission Line Siting Committee is completed, SCE requests that the Arizona  
8 Corporation Commission take administrative notice of this federal ruling.

9 RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of May, 2007.

10 LEWIS AND ROCA LLP

11   
12 \_\_\_\_\_

13 Thomas H. Campbell  
14 Albert H. Acken  
15 40 N. Central Avenue  
16 Phoenix, Arizona 85004

17 Attorneys for Southern California Edison  
18 Company

19 **ORIGINAL** and twenty-five (25) copies  
20 of the foregoing filed this 18<sup>th</sup> day of  
21 May, 2007, with:

22 The Arizona Corporation Commission  
23 Utilities Division – Docket Control  
24 1200 W. Washington Street  
25 Phoenix, Arizona 85007  
26

1 **COPY** of the foregoing hand-delivered  
2 this 18<sup>th</sup> day of May, 2007, to:

3 Chairman Mike Gleason  
4 The Arizona Corporation Commission  
5 1200 W. Washington Street  
6 Phoenix, Arizona 85007

7 Commissioner William A. Mundell  
8 The Arizona Corporation Commission  
9 1200 W. Washington Street  
10 Phoenix, Arizona 85007

11 Commissioner Jeff Hatch-Miller  
12 The Arizona Corporation Commission  
13 1200 W. Washington Street  
14 Phoenix, Arizona 85007

15 Commissioner Kristin K. Mayes  
16 The Arizona Corporation Commission  
17 1200 W. Washington Street  
18 Phoenix, Arizona 85007

19 Commissioner Gary Pierce  
20 The Arizona Corporation Commission  
21 1200 W. Washington Street  
22 Phoenix, Arizona 85007

23 Lyn Farmer, Chief Administrative Law Judge  
24 Arizona Corporation Commission  
25 1200 W. Washington Street  
26 Phoenix, Arizona 85007

Laurie A. Woodall, Chairman  
Arizona Power Plant and Transmission Line Siting Committee  
Office of the Attorney General  
1275 W. Washington Street  
Phoenix, Arizona 85007

1 Keith Layton, Legal Division  
2 Arizona Corporation Commission  
3 1200 W. Washington Street  
4 Phoenix, Arizona 85007

5 **COPY** of the foregoing mailed/served electronically  
6 this 18<sup>th</sup> day of May, 2007, to:

7 William D. Baker  
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23 Scottsdale, Arizona 85250

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Phoenix, Arizona 85011-0862

Thomas W. McCann  
Central Arizona Water Conservation District  
23636 N. 7<sup>th</sup> Street  
Phoenix, Arizona 85024

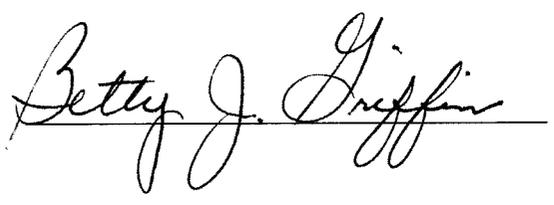
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Phoenix, AZ 85012-3205





## United States Department of the Interior

FISH AND WILDLIFE SERVICE

P.O. Box 1306

Albuquerque, New Mexico 87103

In Reply Refer To:  
R2/NWRS-RE

May 18, 2007

Mr. Ronald L. Litzinger  
Senior Vice President  
Southern California Edison  
8631 Rush Street  
Rosemead, California 91770

Dear Mr. Litzinger:

Pursuant to our prior discussions and correspondence, I am pleased to provide the enclosed Permit for the Right of Way (ROW) application for the Devers-Palo Verde No. 2 (DPV2) Transmission Line Project on the Kofa National Wildlife Refuge.

The permit has been executed by me and will also need your signature on the last page. Please take note on page 1 that the value of the use has not been determined. Additionally, the permit is for a period of (50) fifty years beginning today with my signature. Please execute the document for our records and return the original, executed document for our record.

Should you have any questions, please feel free to call me at 505-248-6282.

Sincerely,

Regional Director

Enclosure

PERMIT (E 4)  
SOUTHERN CALIFORNIA EDISON  
DPV NO. 2 ELECTRIC TRANSMISSION LINE  
KOFA NATIONAL WILDLIFE REFUGE  
IN LA PAZ COUNTY, ARIZONA

Right-of-way permit for a 550 kilovolt (kV) transmission line that is limited to 130 feet in width adjoining and running parallel to the existing southerly right-of-way line of the Southern California Edison's existing Devers-Palo Verde No. 1, 550 kV transmission line and crossing approximately 24 miles of the Kofa National Wildlife Refuge owned by the U. S. Fish and Wildlife Service. The additional 130 foot wide right-of-way is described in more detail on "Exhibit A" attached and made part of this permit.

The SECRETARY OF THE INTERIOR, through his authorized representative, the Regional Director, U. S. Fish and Wildlife Service, Region 2, in accordance with regulations published in 50 CFR 29.21 October 1, 1998, and in consideration of a future use fee to be determined by an Appraisal Services Directorate "Yellow Book" appraisal of the land affected by the permit, does hereby grant a right-of-way permit to Southern California Edison, 8631 Rush Street, Rosemead, California 91770, herein referred to as grantee, a right-of-way permit to use and occupy certain lands of the Kofa National Wildlife Refuge for the purpose of constructing and maintaining an estimated 24 linear mile, 550 kV electric transmission line.

This permit will be for a period of fifty (50) years commencing on May 18, 2007 and will expire on May 18, 2057.

The Refuge Manager or his designated representative, Kofa National Wildlife Refuge, is the coordinating official having immediate jurisdiction over and administrative responsibility for all the lands within the said refuge.

By accepting this permit the grantee agrees to the following terms and conditions:

(1) To comply with State and Federal laws applicable to the project within which the right-of-way is granted, and to the lands which are included in the right-of-way, and lawful existing regulations thereunder.

(2) To clear and keep clear the lands within the right-of-way to the extent and in the manner directed by the Refuge Manager ; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the Refuge Manager may specify.

(3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless the applicant has requested and received from the Regional Director approval of measures the applicant will take to perpetuate the location of aforesaid monument.

(4) To take such soil and resource conservation and protection measures, including noxious weed control on the land covered by the right-of-way, as the Refuge Manager may specify.

(5) To do everything reasonable within his/her power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near lands to be occupied under the right-of-way, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

(6) To rebuild and repair such roads, fences, structures, and trails as may be destroyed or altered by construction work and to build necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the right-of-way.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by him/her or by his/her employees, contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the right-of-way, except where a right-of-way is granted hereunder to a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages.

(8) That all or any part of the right-of-way granted or access for operations and maintenance may be terminated by the Director, U. S. Fish and Wildlife Service, for failure to comply with any or all of the terms or conditions of this permit, or for nonuse for a 2-year period, or abandonment of the right-of-way granted. In the event of noncompliance, the Regional Director will notify the grantee in writing of the corrections needed, and the grantee shall have a period of 60 days from the date of the notice to complete corrective action. However, in the event of extenuating circumstances such as adverse weather conditions, disturbance of wildlife during periods of peak concentrations, or other compelling reasons, the Regional Director may grant an extension of time which in his/her judgment is reasonably necessary. In the event of termination of the permit for noncompliance, nonuse, or abandonment, a written notice of termination will be furnished to the grantee.

(9) To restore the land to its original condition to the entire satisfaction of the U. S. Fish and Wildlife Service, so far as it is reasonably possible to do so upon revocation and termination of the right-of-way, unless this requirement is waived in writing.

(10) To keep the Refuge Manager informed at all times of its address and the addresses of its principal place of business and the names and addresses of its principal officers.

(11) That in the construction, operation, and maintenance of the project, it shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(12) That the right-of-way herein granted shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of land affected thereby, and that the applicant agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees of any part of the right-of-way not actually occupied or required by the applicant for the purpose of the granted rights or the full and safe utilization thereof.

(13) That the right-of-way herein granted shall be subject to the express covenant that any facility constructed thereon will be modified or adapted if such is found by the Regional Director, U. S. Fish and Wildlife Service, to be necessary, without liability or expense to the United States, so that such facility will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed hereon under the authority of the United States.

(14) That the right-of-way herein granted shall be for the specific use described and may not be construed to include the further right to authorize any other use within the right-of-way unless approved in writing by the Regional Director.

(15) The grantee will execute specific mitigation measures and stipulations detailed in: (1) the proponent's October 2006 Final Environmental Impact Statement prepared by the U.S. Bureau of Land Management and the California Public Utilities Commission; (2) the "Kofa Compatibility Determination Stipulations" (Attachment D) prepared by the grantee and provided to the Regional Director on March 14, 2007; (3) Southern California Edison's May 8, 2007 letter to the Regional Director; and (4) the Regional Directors' May 11, 2007 letter to the grantee. The U.S. Fish and Wildlife Service will have final approval of all mitigation measures to be implemented on Kofa National Wildlife Refuge.

**SPECIAL TERMS AND CONDITIONS:**

(1) The grantee will reduce in-line views of land scars resulting from the construction of DPV No. 2.

(2) The grantee will reduce visual contrast of towers and conductors.

(3) As cited in the proponent's Final Environmental Impact Statement, the grantee will prepare and implement a Habitat Restoration/Compensation Plan subject to approval by the Refuge Manager, which addresses previous, ongoing, and anticipated environmental impacts caused by the construction, operation, and maintenance of both Devers-Palo Verde No. 1 and Devers-Palo Verde No. 2. Potential mitigation measures to be considered for environmental impacts from Devers-Palo Verde No. 1 may include: painting of towers, revegetation, repair of visual scars, reconfiguration of spur roads, and placement of erosion control structures.

(4) The grantee will donate \$4,500,000 to the National Fish and Wildlife Foundation (NFWF) to develop studies and monitoring protocols and fund other related activities that will minimize impacts to wildlife and their habitats on the Refuge. A Board of Director's, herein referred to as the Board, will be convened to provide oversight and approval of the application of

these funds to various projects and activities on Kofa National Wildlife Refuge. The Board will consist of the Refuge Manager, a representative of SCE, NFWF, and any other governmental or nongovernmental entity(s) to be named by the Refuge Manager. These funds will not be applied for the specific mitigation measures referred to in Part 15 and approved by the U.S. Fish and Wildlife Service for DPV No. 2.

(5) If in the course of studies and monitoring supported by funding administered by NFWF, evidence of unanticipated environmental impacts not otherwise mitigated is documented, the grantee and the Refuge Manager will meet and confer to consider permit amendment(s) providing for implementation of additional mitigation measures.

(6) The grantee will provide a minimum of 6-12 months prior to initiation of construction for necessary studies to occur that will establish baseline condition against which environmental impacts of the project will be measured. Funding for baseline studies will be made available to NFWF even in the event project initiation is delayed due to potential litigation.

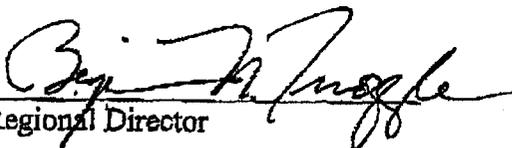
(7) The grantee will develop a transplanting plan for native vegetation on the Refuge.

(8) The grantee will provide a minimum of 30-day notice to the Refuge Manager of any planned maintenance activities associated with DPV No. 2 on Kofa National Wildlife Refuge. A Special Use Permit will be required from the Refuge Manager prior to the initiation of these activities.

**Please provide a copy of this permit to all contractors that may work on the Refuge. All persons working on the Refuge as well as the person signing below are responsible for abiding the conditions of this permit.**

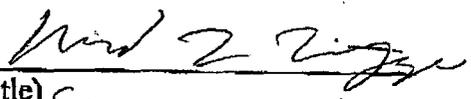
IN WITNESS WHEREOF, I have hereunto set my hand this 18 day of May, 2007.

U. S. Fish and Wildlife Service

  
Regional Director

The above instrument, together with all conditions thereof, is hereby accepted this 18 day of May, 2007.

Southern California Edison

  
(Title) Senior Vice President



# United States Department of the Interior



FISH AND WILDLIFE SERVICE

Post Office Box 1306  
Albuquerque, New Mexico 87103

In Reply Refer To:  
R2/RD

May 11, 2007

Mr. Ronald L. Litzinger  
Senior Vice President  
Southern California Edison  
8631 Rush Street  
Rosemead, California 91770

Dear Mr. Litzinger:

This letter is in response to your request on behalf of Southern California Edison (SCE) to reconsider the March 2007 Compatibility Determination (CD) prior to rendering a decision on SCE's Application for the issuance of a Right of Way (ROW) for the Devers-Palo Verde No. 2 (DPV2) Transmission Line Project on the Kofa National Wildlife Refuge (Refuge). Per the decision by the Refuge manager of the Refuge, with concurrence by the Regional Refuge Chief, the Project was determined to be "not compatible" with the purposes of the Refuge and the National Wildlife Refuge System mission. The pending decision on the ROW application must consider the CD finding and other pertinent information relevant to the issuance of the ROW permit.

The proposed DPV2 Project is a 550 kilovolt (kv) transmission line that would run parallel and adjacent to SCE's existing Devers-Palo Verde No.1 550 kv transmission line that transverses approximately 24 miles of the northern part of the Refuge. It is anticipated that the Project will directly impact approximately 100 acres of Refuge lands along the transmission corridor, with approximately 378 acres of Refuge lands included within the 24 mile Refuge segment of the Project. The proposed 130-foot wide ROW is designed to accommodate 85 new four-legged lattice towers that will be of adequate distance from the existing DPV1 towers to prevent arcing. The proposed DPV2 Project will also be constructed outside the Refuge's designated wilderness, with the use of spur roads restricted to the ROW.

The February 26, 2007, CD for this Project on the Refuge to the greatest extent possible provided a determination that reflects the intent of The National Wildlife Refuge System Administration Act of 1966, as amended by the National Refuge System Improvement Act of 1997. In doing so, the CD focused on several issues as they relate to direct and indirect impacts of the Project on the Refuge. Among the concerns for direct Project impacts were issues such as vegetation and soil impacts, introduction of non-native invasive species, wildlife, and increased unlawful use. Other anticipated issues of concern included impacts such as noise from the transmission lines, visual

and recreational impacts, and impacts to ongoing biological studies on bighorn sheep. The CD identified several significant scientific data gaps that make it difficult for me to ascertain definitive correlated impacts with Project construction.

In my evaluation, I examined information that was provided in the Environmental Impact Statement, the CD, the history of the both DPV1 and the proposed DVP2 projects, Executive Order 13212 and 13302, as well as legislation such as the Arizona Desert Wilderness Act and the National Wildlife Refuge System Improvement Act of 1997. During my deliberations I also met with the Refuge manager and his staff, visited the proposed site on the Refuge and met on one occasion with you and other representatives of SCE. The conversations with the Refuge Manager and SCE on the Project footprint, potential impacts to sensitive species and habitats and possible modifications to reduce Project impacts were enlightening, substantive, and productive.

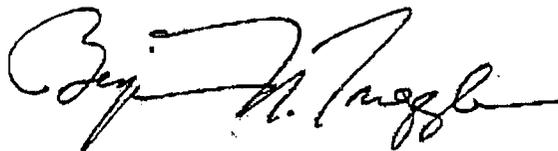
In your letter dated May 8, 2007, SCE proposes a number of minimization and mitigation measures and Project modifications that move in a positive direction in order to address the Project's direct and indirect impacts on the Refuge. The Project modifications and mitigation measures are projected to cost approximately \$9,165,000, including a \$4,500,000 fund established with the National Fish and Wildlife Foundation (NFWF) to specifically address scientific data gaps, development of monitoring protocols and other related activities that will minimize impacts to wildlife and habitats on the Refuge. Specifically, with regard to your proposed mitigation and minimization measures, I make the following findings:

1. Certain proposed mitigation measures avoid impacts altogether by not taking a certain action or parts of an action. For example, SCE will reduce the size of the construction area around each tower from 0.9 acres to 0.6 acres per tower; SCE will follow APLIC standards for protection against tower conductor collisions; SCE will use existing roads to the maximum extent practicable; SCE will reduce in-line views of land scars; and SCE will reduce visual contrast of towers and conductors.
2. Certain proposed mitigation measures will minimize impacts by limiting the degree or magnitude of the action and its implementation. For example, SCE will institute a program to prevent the establishment and spread of noxious and invasive weeds; SCE will avoid construction between January 1 and April 30; SCE will evaluate the corridor for bighorn sheep breeding between August and October and avoid construction in areas that are actively supporting breeding activities during this construction period; and SCE will conduct pre-construction surveys for small mammals and reptiles within areas to be disturbed by construction.
3. The proposed mitigation measures will rectify impacts by repairing, rehabilitating, or restoring the affected environment and reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action. For example, SCE will perform post-construction monitoring and eradication of weeds within areas disturbed by or used for construction for 5 years after construction on the Refuge; SCE will create and implement a revegetation/restoration plan that includes annual monitoring and remedial work for five years; SCE will prepare and implement a Habitat Restoration/Compensation Plan; SCE will donate \$4,500,000 to NFWF to develop monitoring protocols and fund other related activities that will minimize impacts to wildlife and habitats on the Refuge; and SCE will develop a transplanting plan.

In my opinion, and critical to my decision, the intent to establish a second transmission line within the existing ROW was foreseeable and the scope of the right-of-way reflects the uses to which the right-of-way area has traditionally been used. It was anticipated with the issuance of the Certification of Right-Of-Way Compatibility issued by the Regional Director on March 1, 1989, and expected due to the modification of acres to be excluded from wilderness in the report language of the Committee on Energy and Natural Resources for the Arizona Desert Wilderness Act of 1990. In addition to the DPV1 Transmission line, this corridor is also being used as an interstate gas transmission pipeline. The use of this ROW for the proposed DPV2 Project will also confine the Project impacts to a predetermined location and will minimize the impacts that would occur with the siting of a new transmission ROW in other sensitive and protected areas that might likely have, in my view, more detrimental ecological impact on the habitat characteristics of the area.

In light of the record, which in my opinion definitively shows advanced planning for the intended use of this land as a transmission line ROW, and subject to the SCE agreement to fulfill all of the terms and conditions of the proposed project modifications and mitigation measures that will minimize the impact of DPV2 on the Refuge, I am compelled to find that this non-programmatic use of this area is compatible with the purposes for which the land was acquired and issue a ROW Special Use Permit for the SCE DPV2 Transmission Line Project on the Refuge. The granting of this ROW permit is contingent on SCE fully complying with the terms and conditions of the permit in order to prevent its suspension or revocation. If you have any questions, please feel free to call me at 505-248-6282.

Sincerely,

A handwritten signature in cursive script, appearing to read "Greg A. Traylor".

Regional Director