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**BEFORE THE ARIZONA CORPORATION COMMISSION**

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

**MIKE GLEASON**  
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Commissioner  
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Commissioner  
**KRISTIN K. MAYES**  
Commissioner  
**GARY PIERCE**  
Commissioner

Arizona Corporation Commission  
**DOCKETED**

JUN 25 2007

DOCKETED BY

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

**APPLICATION FOR  
REHEARING AND  
RECONSIDERATION**

**I. INTRODUCTION**

Southern California Edison Company ("SCE") respectfully applies for reconsideration and rehearing of Arizona Corporation Commission ("Commission") Decision No. 69638 ("Decision") pursuant to A.R.S. §§ 40-253 and 360.07(C) and A.A.C. R14-3-111 for the reasons stated below.

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## II. BACKGROUND

On May 1, 2006, SCE filed an application for a Certificate of Environmental Compatibility (“CEC”) authorizing construction of the Devers to Palo Verde No. 2 500kV transmission line (“DPV2” or “Project”).

The Arizona Power Plant and Transmission Line Siting Committee (“Line Siting Committee” or “Committee”) held public hearings on June 26 and 27, 2006, August 21 and 22, 2006, September 11, 12, 25, and 26, 2006, October 3, 4, 15, 16, 17, 30, and 31, 2006, and February 28, 2007, involving 26 witnesses, 118 exhibits, and over 3,000 pages of transcripts. At the conclusion of the testimony, the Committee granted SCE a CEC.

As proposed, the Project would meet needs in Arizona and the southwest while being paid for by California utility users. In addition, DPV2 would have limited environmental impact because it would be constructed primarily on federal and state land, adjacent to an existing transmission line, and within a utility corridor that has existed for decades. A major portion of the route is on Bureau of Land Management (“BLM”) lands within a right-of-way that was granted to SCE in 1989 by the U.S. Department of Interior.

After the recent environmental study process conducted in 2005-2006, the BLM issued a Final Environmental Impact Statement in October 2006 finding the DPV2 project to be the environmentally preferred alternative. The U.S. Fish and Wildlife Service (“FWS”) also assessed the Project and in May 2007 found it to be environmentally compatible. The Arizona Game and Fish Department (“AGFD”), the Arizona State Land Department (“ASLD”) and the Maricopa County Planning and Development Department similarly concluded that the Project would not be detrimental to Arizona.

1 In addition, neither the Residential Utility Consumer Office nor any Arizona  
2 utility opposed the Project. The Central Arizona Water Conservation District  
3 (“CAWCD”) supported the Project because it would provide reliability benefits and  
4 cost savings.

5 Nonetheless, by the Decision dated June 6, 2007, the Commission overturned  
6 the CEC issued by the Committee.

### 7 III. DISCUSSION

#### 8 A. Under A.R.S. § 40-360.07, DPV2 Meets Important Needs While 9 Minimizing Environmental Impacts.

10 The statutory framework that guides the Commission’s review is as follows:

11 In arriving at its decision, the commission shall comply with the provisions of  
12 A.R.S. § 40-360.06 and shall balance, in the broad public interest, the need for  
13 an adequate, economical and reliable supply of electric power with the desire to  
minimize the effect therefore on the environment and ecology of this state.

14 A.R.S. § 40-360.07.B. DPV2 should be approved under this statutory framework  
15 because local and regional needs, short and long term, outweigh the environmental  
16 impact of the line as mitigated by the conditions adopted by the Committee and other  
17 regulatory agencies.

#### 18 1. Environmental impacts have been minimized.

19 One half of the balancing equation is the desire to minimize environmental  
20 impact. In that regard, the record in this case is clear; environmental impacts have  
21 been minimized because DPV2 would be constructed in an already-existing utility  
22 corridor paralleling an existing 500kV transmission line.

#### 23 a. Numerous agencies have found DPV2 to be environmentally 24 compatible.

25 The Line Siting Committee and the BLM found the Project to be  
26 environmentally compatible. The ASLD found the DPV2 line to be consistent with

1 the ASLD's plans. The AGFD found DPV2 would have no significant adverse  
2 impacts on wildlife.

3 The Commission's major environmental concern seems to be the Kofa National  
4 Wildlife Refuge ("Kofa"), because a portion of DPV2 would traverse the Kofa. The  
5 FWS, the government agency charged with overseeing the Kofa, found DPV2 to be  
6 compatible with the mission of the Kofa and issued SCE a right-of-way. Additionally,  
7 when Congress established the Kofa and New Mountain wilderness areas, it  
8 specifically set aside this route for an additional transmission line. Moreover, this  
9 Commission found this route to be environmentally compatible when it approved the  
10 Devers to Palo Verde 1 line ("DPV1") twice in the late 1970s and early 1980s.<sup>1</sup>

11 **b. Key environmental factors from A.R.S. § 40-360.06 support a**  
12 **finding of environmental compatibility.**

13 Under Section 40-360.06.A, the Committee must consider specific factors as a  
14 basis for its action. The Committee did so, and concluded that DPV2 was  
15 environmentally compatible for a number of reasons, including the following<sup>2</sup>:

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16 <sup>1</sup> The Commission failed to explain its reasoning for departing from its decisions in Case 34 and Case  
17 48. When an agency departs from previous rulings or decisions, it must explain the reasons for the  
18 new ruling or decision. *See, e.g., Lehigh Valley Farmers v. Block*, 829 F.2d 409, 413 (3d Cir. 1987)  
19 ("[W]hen an agency changes its mind, 'it must supply adequate data and a reasoned analysis to  
20 support the change.' . . . Simply asserting that conditions have changed will not support a change in  
the agency's position without a showing that the assertion is supported by substantial evidence in the  
record.") (quoting *Nat'l Res. Def. Council Inc. v. United States E.P.A.*, 790 F.2d 289, 298 (3d Cir.  
1986).

21 <sup>2</sup> In support of statements in this application that refer to the evidence or the record, SCE incorporates  
22 by reference the following: its Application dated May 1, 2006; its two Amendments to its Application  
dated June 16, 2006 and August 14, 2006; its Exhibits filed September 22, 2006; its Form of CEC,  
23 Findings of Fact and Closing Statement filed November 29, 2006; Final EIR/EIS Excerpts filed  
December 15, 2006; Comment Letters of SCE and CPUC to the Kofa Compatibility Determination  
24 filed January 1, 2007; CPUC Order filed February 2, 2007; its Response to Agency Comment and  
Questions filed February 7, 2007; its Advice Letter and Supplemental Advice Letter filed March 5,  
25 2007 and March 7, 2007; its Response to Requests for Review and Supplemental Response filed May  
7, 2007 and May 8, 2007; U.S. Fish and Wildlife Compatibility Determination filed May 18, 2007;  
26 U.S. Fish and Wildlife Right of Way Permit filed May 22, 2007; Hearing Transcript vols. 1-16, and  
accompanying exhibits; and Hearing Transcript vols. 1-3 and accompanying exhibits in Docket No. E-  
20465A-06-0457.

1           i)     DPV2 will be in an existing utility corridor that already contains  
2 DPV1 and, for a portion of the route, natural gas pipelines. In addition, a substantial  
3 amount of right-of-way already has been acquired from federal and private  
4 landowners. As a result, land management agencies such as the BLM and the ASLD,  
5 planning agencies such as the Maricopa County Planning and Development  
6 Department, and land owners in the area have been aware of the Project for decades  
7 and voiced no objection to SCE's proposed route in this most recent filing.

8           ii)    Because DPV2 would be constructed in a common corridor with  
9 DPV1, SCE would use existing access roads to minimize land disturbances and  
10 impacts to wildlife and wildlife habitats. Accordingly, the BLM, FWS, and AGFD  
11 concluded that the Project would not adversely affect wildlife.

12          iii)   DPV2 would not create any noise problems or interference with  
13 communication signals, and SCE has agreed to mitigation measures to *improve*  
14 communication signals in Kofa at the request of the FWS.

15          iv)    The existing access roads would continue to be available for  
16 recreational purposes to the extent authorized by the FWS, BLM, and ASLD.

17          v)     The visual impact would be minimal because DPV2 would be  
18 adjacent to and matched in structure, spans, and size with the existing DPV1 line.

19          vi)    DPV2 poses no threat to endangered species, areas of biological  
20 wealth, cultural or historic sites, recreational facilities or existing development plans.

21          vii)   The use of existing double circuit structures in Copper Bottom  
22 Pass, approved by the amended BLM right-of-way grant, would minimize unnecessary  
23 land disturbance in this area of rugged terrain.

24          viii)   Construction of the Harquahala Junction Switchyard would  
25 eliminate the need for Palo Verde to TS-5 participants to construct a 500kV  
26 transmission line from the location of the switchyard to the Palo Verde Hub.

1                   c.       **SCE answered environmental issues raised by intervenors.**

2                   Some intervenors argued that DPV2 will indirectly increase air emissions  
3 because currently underutilized, state-of-the-art plants in Arizona will be able to sell  
4 more power once the Arizona-California congestion is reduced. In response, SCE  
5 demonstrated that emissions, including greenhouse gases, will be reduced on a region-  
6 wide basis. This is a real benefit to Arizona. Small increases in NOx emissions in  
7 Arizona (0.05%) are well within the air emission limits that the Line Siting  
8 Committee, the Commission and the relevant county and state environmental agencies  
9 found environmentally compatible when the Arizona generating plants were approved.

10                  The Sierra Club's evidence was limited to the personal observations of one of  
11 its employees and testimony concerning impacts from utility corridors generally (not  
12 limited to electric transmission) in the Mohave Desert. The Mohave Desert is  
13 physically and biologically distinguishable from the Sonoran Desert that the DPV2  
14 line would traverse in Arizona. The Sierra Club presented no evidence to contradict  
15 the evidence presented by SCE and the conclusions of AGFD, BLM, and FWS (the  
16 agencies uniquely qualified to assess these concerns) that DPV2 would not impact  
17 bighorn sheep, the species for which Kofa was created.

18                  The findings of these governmental agencies, the mitigation conditions adopted  
19 by the agencies, and the factors discussed above, support the conclusion that DPV2 is  
20 environmentally compatible and, in fact, has less environmental impact than other  
21 major transmission lines approved by the Commission.

22                  **2.       DPV2 helps meet significant needs.**

23                  In 1971, Arizona adopted the statutes that govern transmission line siting  
24 (codified at A.R.S. §§ 40-360 through 40-360.13, collectively the "Line Siting  
25 Statutes"). At that time, the legislature found and declared that there was and will  
26 continue to be a need for electric service that will require the construction of major

1 new facilities. Because the legislature made an explicit finding of need, an applicant is  
2 not required to present evidence and make a showing of need. *See* A.R.S. § 40-  
3 360.03; A.A.C. R14-3-219. Nonetheless, at the specific request of the Commission,  
4 SCE provided copious evidence concerning the need for DPV2.

5 **a. DPV2 reduces interstate congestion and fosters wholesale**  
6 **energy markets.**

7 DPV2 would significantly reduce current congestion between Arizona and  
8 California that has been recognized by the Department of Energy, the Southwest  
9 Transmission Expansion Plan (“STEP”) Study Group and the Commission’s Biennial  
10 Transmission Assessment. In addition, it will support a robust, liquid wholesale  
11 market. A transmission line that reduces congestion and strengthens the wholesale  
12 market meets very important national, regional and Arizona needs.

13 **b. The Project meets needs in California.**

14 DPV2 is needed by California as attested to by the orders and findings of the  
15 California Public Utility California (“CPUC”) and the California Independent System  
16 Operators (“CAISO”). Those decisions are in the record in this case and the rationales  
17 and explanations for the California need are incorporated by reference in this  
18 application. The Commission erred when it failed to consider or give sufficient weight  
19 to evidence concerning California’s needs. *See, e.g.*, Open Meeting Transcript (“OM  
20 Tr.”) at 250:17-22.

21 **c. DPV2 meets Arizona’s need for an adequate, economical and**  
22 **reliable supply of electric power.**

23 The extensive record demonstrates that DPV2 will address Arizona’s needs.

24 **i) DPV2 addresses a critical need for increased reliability.**

25 As has been recognized in prior proceedings, (*see, e.g.*, Line Siting Case No.  
26 127), Arizona needs an alternative to bring power into the Phoenix area in the event of

1 an emergency outage at the Palo Verde Hub. As approved by the Line Siting  
2 Committee with the Harquahala Junction Switchyard, DPV2 would provide that  
3 critically needed alternative. This reliability benefit alone justifies approval of the  
4 Project.<sup>3</sup>

5 **ii) DPV2 meets the need for economical power.**

6 Because Arizona must build generating facilities to meet its summer peak  
7 demand, it will always have excess power at off-peak times and seasons. DPV2 will  
8 allow Arizona utilities to increase their off-system sales of excess power in the off-  
9 peak times and seasons, thereby reducing the cost of power to Arizona ratepayers.

10 Additionally, no party disputed the truism that a liquid hub reduces costs to  
11 consumers. DPV2 increases the liquidity of the Palo Verde Hub, which reduces the  
12 transaction costs for Arizona utilities and thereby reduces costs for Arizona ratepayers.

13 Finally, because SCE would pay for a portion of the Harquahala Junction  
14 Switchyard, DPV2 would reduce costs otherwise borne by CAWCD, Arizona utilities,  
15 and ultimately, their customers.

16 **iii) DPV2 will increase Arizona's electric supply.**

17 The Commission recently adopted renewable portfolio standards. As a result,  
18 Arizona needs improved access to renewable resources. DPV2, as found by the Line  
19 Siting Committee, helps meet that need in a variety of ways. For instance, the  
20 approval of the line will result in transmission studies and potential investment by  
21 California in transmission related infrastructure such as a switchyard in western  
22 Arizona to help develop renewable, particularly solar, resources. The contention that  
23 any renewables built as a result of this line will be used by California is not supported  
24 by any evidence. In fact, renewables are currently sold into Arizona from California

25 \_\_\_\_\_  
26 <sup>3</sup> Staff attempted to discount the reliability value of DPV2 based on its concern about the special protection system. The record does not support this concern. See discussion *infra*, Section III.E.3.

1 despite California's rigorous renewable requirements.

2 Arizona also has ambitious plans to invest in very large interstate transmission  
3 facilities to access many thousands of Megawatts of low-cost coal and renewable  
4 generation resources in New Mexico and the Rocky Mountain states. DPV2  
5 complements these projects by supporting the feasibility of these projects. *See*  
6 *Committee Finding of Fact No. 12.*

7 All parties agree that Arizona needs to build new electric infrastructure with or  
8 without DPV2. This line helps Arizona meet this need by providing additional  
9 investment incentives and lowering investment costs in the new Arizona infrastructure  
10 because demand begets supply, and investors who will have access to the California  
11 market, as well as to the Arizona market, will more readily invest and at lower rates in  
12 needed Arizona infrastructure.

13 In summary, the record contains substantial evidence of the needs met by this  
14 Project. *See, e.g., Ex. A-14.* That is why the CEC issued by the Committee contained  
15 several findings of fact identifying needs met by DPV2. *See Committee Findings of*  
16 *Fact Nos. 1-13.*

17 **B. Section 40-360.07 Does Not Require a Showing of Need for Adequacy,**  
18 **Reliability, or Economics.**

19 As stated in the Declaration of Policy for the Line Siting Statutes, "[t]he  
20 legislature hereby finds and declares that there is at present and will continue to be a  
21 growing need for electric service which will require the construction of major new  
22 facilities." Laws 1971, ch. 67, § 1. Section 40-360.07.B does not provide the  
23 Commission with the authority to determine whether a need exists, but rather requires  
24 the Commission to balance the need that the Legislature identified with the desire to  
25 minimize the effect thereof on the environment and ecology.  
26

1           Any other interpretation of A.R.S. § 40-360.07 would contradict the will of the  
2 legislature. First, A.R.S. § 40-360.07 cannot be interpreted in a manner that conflicts  
3 with other Line Siting Statutes, which do not require an applicant to make a showing  
4 of need or authorize the Commission to require such a showing. Under A.R.S. § 40-  
5 360.03, an application “shall be accompanied by information with respect to the  
6 proposed type of facilities and description of the site . . . .” In accordance with the  
7 limited authority granted by the Legislature, the application form prescribed by the  
8 Commission does not require or authorize a showing of need. *See* A.A.C. R14-3-219.

9           Additionally, the Legislature provided the Line Siting Committee with the  
10 authority to hold hearings, review evidence, and issue a CEC taking into consideration  
11 the factors enumerated in A.R.S. § 40-360.06. *See* A.R.S. §§ 40-360.03 though 40-  
12 360.06. Need is not one of the factors listed in this section.

13           No explicit language exists in A.R.S. § 40-360.07 that authorizes the  
14 Commission to reject the Legislature’s presumption and require or review evidence  
15 concerning need. It would be an unusual statutory regime that would allow a  
16 reviewing body to use a different test and consider new factors when reviewing the  
17 decision of a lower tribunal. Absent such an explicit legislative directive justifying  
18 such a novel interpretation, the Commission’s review is limited to the same factors that  
19 govern the Line Siting Committee’s analysis.

20           The Decision also is legally inconsistent to the extent that purported evidence  
21 concerning economic impacts was considered (*see* Decision Findings of Fact Nos. 7,  
22 10, 11, 12, 13, and 19), but concrete testimony concerning economic benefits was  
23 deemed “not relevant” under A.R.S. § 40-360.07 (*see* Decision at 4:5-7; Decision  
24 Findings of Fact Nos. 6 and 9). To the extent that the Commission deemed relevant  
25 statements relating to economic costs, it had a legal obligation also to consider the  
26 substantial evidence identifying positive economic impacts resulting from DPV2.

1 See, e.g., Committee Findings of Fact Nos. 2, 3, 6, 7, 9, 10, 11, 12, 13, and 15.

2 Finally, even though the Commission lacked the independent authority to  
3 determine need, in this case, the Commission used an undefined, unquantified, three-  
4 pronged need test. See, e.g., Decision at 3:8-9 (“DPV2 does not meet the adequacy  
5 prong of the three-part test for the Commission to determine the need for the Project.”)  
6 In other words, under the Commission’s interpretation, a project must meet some  
7 minimum Arizona need threshold from an Arizona perspective in each of three areas:  
8 adequacy, economics, and reliability. SCE believes this was the first use of this test in  
9 over 125 line siting cases and respectfully submits that the balancing statute does not  
10 support such an interpretation.<sup>4</sup>

11 **C. Reasons Given for Disapproval of this Line Are Outside the Scope of**  
12 **A.R.S. § 40-360.07 and Are Inconsistent with Arizona’s Policy to Support**  
**a Competitive Wholesale Market Identified in A.R.S. § 40-202.**

13 SCE respectfully suggests that the following reasons given for the disapproval  
14 of this line “are not specifically authorized” under A.R.S. § 40-360.07 and therefore  
15 violate A.R.S. §§ 41-1001.01.A.7 and 41-1030.B<sup>5</sup>:

16 1. Keeping merchant power in Arizona solely for Arizona’s use and  
17 unavailable to California. (OM Tr. at 250:17-22; Decision at 2:20-21; Decision  
18 Findings of Fact Nos. 3, 4, and 5.)

19 2. Keeping the Arizona to California transmission path congested to avoid  
20 any possibility that increased demand could increase wholesale prices at the Palo  
21 Verde Hub. (OM Tr. at 177: 3-10, 244:19-245:3; Decision at 3:15-17; Decision  
22 Findings of Fact Nos. 11, 12, and 13.)

23  
24 <sup>4</sup> Even if the statute allows the Commission to consider need, the Commission can balance any one  
25 type of need and determine that need alone outweighs the environmental impact. There is no  
26 requirement that a project meet an undefined Arizona need in each of these categories.

<sup>5</sup> In addition to being outside the scope of analysis under A.R.S. §40-360.07, these statements are not  
supported by the record. See Section III.D.

1           3.       Dissatisfaction with California's past and current energy policies. (OM  
2 Tr. at 134:16-20; 141:7-10; 141:23-24; 152:21-153:25; 157:8-159:11; 177:21-178:2;  
3 220:19-221:18; 244:2-7; 246:6-247:3; 248:25-249:6.)

4           4.       Dissatisfaction with California's recent and planned construction of  
5 electric infrastructure. (OM Tr. at 133:23-134:6; 248:10-24.)

6           5.       A concern that California may benefit from this line more than Arizona.  
7 (OM Tr. at 243:10-18; 246:17-21; 249:7-14; Decision at 3:11-14; Decision Findings of  
8 Fact Nos. 5 and 13.)

9           6.       A concern that this line will "force" Arizona to build more generation.  
10 (OM Tr. at 250:3-9; Decision at 4:22-24; Decision Findings of Fact No. 3.)

11           7.       A concern that this line does not meet purported Arizona reliability  
12 standards that are not contained in any Commission rules or regulations. (OM Tr. at  
13 244:8-18; Decision at 4:27-28; Decision Findings of Fact Nos. 15, 16, 17, and 18.)

14           8.       A concern that the future improvements in the regional interstate grid  
15 may increase the capacity of DPV2. (Decision at 4:22-26.)

16           9.       Concerns with CAISO's operational control of DPV2. (OM Tr. at  
17 174:15 24; 176:9-13; 177:3-18.)

18       **D.       Findings and Factual Predicates on Which the Decision Is Based Are Not**  
19       **Supported by the Record.**

20           1.       **The following findings and statements relating to adequacy are not**  
21           **supported by the record.**

22           a.       "[T]he Project will not improve the resource adequacy for  
23 Arizona and Arizona ratepayers and could have a deleterious effect in subsequent  
24 years." (Decision Findings of Fact No. 5.)

25           b.       The Project "would . . . impair Arizona's ability to provide for its  
26 growing energy demands." (Decision at 2:19-20.)

1           c.       The Project would force Arizona utilities “to build additional  
2 generation and transmission to fill the gap created by the exportation of power from  
3 Arizona to California.” (Decision at 2:22-24.)

4           d.       SCE believes that additional generation will have to be built in  
5 Arizona simply to allow it to take full advantage of DPV2, meaning that Arizona  
6 power resources would be conscripted for California’s use. (Decision at 2:24-27.)

7           e.       “[I]ncreased access to renewable energy will be likely  
8 monopolized by California.” (Decision at 3:27-28.)

9           f.       “[I]mproved capacitors on the California side of the line” could  
10 eventually increase import capability of this line to 1800 MW and “would further  
11 strain the Arizona grid and hamper the state’s ability to provide energy and power  
12 reserves to Arizona ratepayers.” (Decision at 4:22-26.)

13           The statements above are not supported by the record and contradict the  
14 Committee’s findings that DPV2 would improve Arizona’s resource adequacy by  
15 providing access to renewable resources (Committee Findings of Fact No. 11) and  
16 complementing Trans-West Express and Project SunZia (Committee Findings of Fact  
17 No. 12) that will bring power from other states into Arizona.

18           Additionally, the Committee found that DPV2 will be used primarily during  
19 Arizona’s off-peak hours and seasons when Arizona by definition has excess  
20 generating capacity (Committee Findings of Fact No. 2). Arizona will soon need new  
21 generation to meet its peak loads with or without DPV2. Construction of DPV2 will  
22 allow Arizona to share the costs associated with constructing this new generation with  
23 California.

24           Furthermore, these statements contradict the evidence presented by Staff. *See*  
25 Staff Exhibit 28, Slide 8, “Arizona Resource Adequacy Not Jeopardized.”  
26

1           **2. The following findings and statements relating to economics are not**  
2           **supported by the record.**

3           a. The economic benefits to Arizona and Arizona ratepayers are  
4 temporary, indirect, illusory or speculative. (Decision Findings of Fact No. 9.)

5           b. The economic cost will be borne by Arizona and Arizona  
6 ratepayers (Decision Finding of Fact No. 13) because the spot market wholesale prices  
7 at the Palo Verde Hub will increase by 5% and, therefore, Arizona ratepayers will  
8 suffer a net economic loss of \$242 million over the life of the line (Decision Findings  
9 of Fact Nos. 11 and 12).

10          c. The economic cost to Arizona and Arizona ratepayers outweighs  
11 the modest transmission and commercial enhancements to the western grid. (Decision  
12 Findings of Fact No. 19.)

13          d. This Project will result in rate increases for Arizona consumers.  
14 (Decision at 3:14.)

15          e. The efficiencies and benefits from an improved investor climate  
16 are amorphous and loosely defined. (Decision at 3:28-4:1.)

17          f. Arizona benefits are hypothetical and not related to the tests set  
18 forth in A.R.S. § 40-360.07.B. (Decision at 4:3-5.)

19          g. SCE failed to prove the existence of an economic need for the  
20 Project. (Decision at 4:7.)

21           With respect to the evidence concerning economics, SCE provided significant  
22 evidence concerning the economic needs met by the Project. *See, e.g.,* Exhibit A-14.  
23 The Committee found that DPV2 would reduce transaction costs for Arizona utilities  
24 and would increase the opportunities for Arizona utilities to make off-system sales so  
25 that some of their costs would be paid by California customers. (Committee Findings  
26 of Fact Nos. 7 and 10.)

1           The Decision's certainty that spot market prices would rise 5% and lead to  
2 consumer price increases is inconsistent with Committee Findings of Fact No. 15 and  
3 Staff's own testimony. Although one Staff witness presented a model based on  
4 economic assumptions that do not exist in Arizona, that witness, other Staff witnesses,  
5 and Staff's counsel downplayed the magnitude of the impact shown in the model. *See,*  
6 *e.g.:*

- 7           • Tr. at 1991:1-1998:9; 2397:21-2398:3: "But again, I would be more focused on  
8 the direction of the change than on the number, especially when you think about  
9 the impact on the consumers, because it is simply a fact that the consumers in  
10 Arizona are not 100 percent reliant on the wholesale market to receive their  
11 power. So this increase in wholesale prices is not going to have a direct impact  
12 on, you know, ratepayers in Arizona."
- 13           • Staff Exhibit 28, Slide 8: "Future Arizona Utility Resources Were Not Modeled  
14 in TEAM Studies – Will Likely Ameliorate Implied Arizona Market Impacts of  
15 PVD2."
- 16           • Staff Exhibit 29, Slide 7: "Arizona consumers are not 100% reliant on  
17 wholesale markets for their energy needs."
- 18           • OM Tr. at 64:14-18: "Staff witness Matt Rowell recommended to the  
19 Committee and the Commission that you shouldn't rely on the exact numbers or  
20 even the magnitude of numbers."

21           **3. The following findings and statements relating to reliability are**  
22           **unsupported.**

23           a. The Special Protection System ("SPS") will weaken the reliability  
24 of the grid. (Decision Findings of Fact No. 15.)  
25  
26

1           b.     SPS will compromise system reliability. (Decision at 4:14-18.)

2           These findings contradict the findings of the Committee concerning reliability.  
3     The Committee concluded that the Project will reduce congestion on Path 49, thereby  
4     strengthening the Southwestern transmission grid (Committee Findings of Fact No. 1)  
5     and will enhance interconnection opportunities at the Harquahala Junction Switchyard  
6     (Committee Findings of Fact No. 13).

7           Additionally, SPS will be used only if and when a highly unusual event causes  
8     a simultaneous outage of both DPV1 and DPV2 in which case, load will be dropped in  
9     California to help keep the regional system in balance. (Tr. at 2783:19-2784:7.) In  
10    response to Staff's request, SCE modified its SPS to ensure that any load dropped will  
11    be in California, not in Arizona. (Tr. at 2840:13-2841:4.) As a result, any impact of  
12    the SPS will be in California. There was no evidence identifying a specific Arizona  
13    problem created by the Project's SPS. To the contrary, it benefits Arizona. (Tr. at  
14    2784:13-19). SPS is consistent with Western Electric Coordinating Council Planning  
15    Criteria, North American Electric Reliability Corporation reliability standards, and  
16    general industry standards. (Tr. at 2780:1-2781:18.)

17           **4.     The following findings relating to the environment are not**  
18           **supported by the record.**

19           a.     Arizona would be forced to become host to new power plants  
20     designed purely for use by California customers. This would represent an unnecessary  
21     use of Arizona land, water and air shed. (Decision at 2:27-3:2.)

22           b.     DPV2 would cause "deleterious and irreparable impacts to  
23     wildlife." (Decision at 5:21-22.)

24           Simply put, there was no evidence introduced that construction of DPV2 would  
25     force Arizona to become host to new power plants designed purely for use by  
26     California consumers. Even assuming that such testimony existed, under the current

1 statutory regime, the Commission would have the opportunity to review and approve  
2 any new power plant designed purely for California's use to ensure that it was  
3 environmentally compatible.

4 With respect to the second statement, again, the evidence in the record is clear.  
5 The BLM, FWS, and AGFD all evaluated DPV2 and concluded that it would not have  
6 significant impacts on wildlife. There is no testimony in the record which contradicts  
7 these knowledgeable agencies' findings.

8 **E. The Decision Violates the Interstate Commerce Clause.**

9 Denial of the DPV2 project violates the Interstate Commerce Clause, U.S.  
10 CONST. art. 1, § 8, cl. 3, because the Commission's intention and the Decision's effect  
11 is to limit the interstate sale of power from Arizona to California in order to give  
12 preference to Arizona consumers. *See, e.g.*, Decision at 2:18-3:2. The United States  
13 Supreme Court has consistently held that the Interstate Commerce Clause "precludes a  
14 state from mandating that its residents be given a preferred right of access, over out-of-  
15 state consumers, to natural resources located within its borders or the products derived  
16 therefrom." *New England Power Co. v. New Hampshire*, 455 U.S. 331, 338 (1982).

17 In *New England Power*, New Hampshire issued an order prohibiting New  
18 England Power from selling its hydroelectric energy outside the State of New  
19 Hampshire because "New Hampshire's population and energy needs were increasing  
20 rapidly" and the order would save New Hampshire customers approximately \$25  
21 million per year. *Id.* at 335-36. In its decision overturning the New Hampshire order,  
22 the unanimous Supreme Court stated:

23 The order . . . is precisely the sort of protectionist regulation that the Commerce  
24 Clause declares off-limits to the states. The Commission has made clear that its  
25 order is designed to gain an economic advantage for New Hampshire citizens at  
26 the expense of New England Power's customers in neighboring states . . . .  
Such state-imposed burdens cannot be squared with the Commerce Clause  
when they serve only to advance "simple economic protectionism."

1 *Id.* at 339 (quoting *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978)). Because  
2 Decision No. 69638 is based on the same grounds as the New Hampshire order, it too  
3 is unconstitutional.

4 **F. The Decision Unlawfully Adopts New Reliability Rules.**

5 The Decision states, “[t]he Commission has the authority to establish reliability  
6 standards higher than the minimum requirements established by regional and national  
7 reliability organizations,” (Decision Findings of Fact No. 16), and concludes, DPV2  
8 “does not meet Arizona’s reliability standards” (Decision at 4:28). While the  
9 Commission may have the authority to establish reliability standards, it has not done  
10 so in accordance with Arizona statutes governing the rule making process.

11 A rule is “an agency statement of general applicability that implements,  
12 interprets or prescribes law or policy . . . .” A.R.S. § 41-1001.17. Reliability  
13 standards that prohibit the use of SPS or 500kV double-circuit towers meet the  
14 definition of a rule. In this case, the Commission did not adopt these standards “in  
15 substantial compliance with §§ 41-1021 through 41-1029 and articles 4, 4.1, and 5” of  
16 A.R.S. Title 41, Chapter 6, Administrative Procedure. A.R.S. § 41-1030.A; *see also*  
17 A.R.S. § 41-1001.01.A.7. A public rule making process with the participation of all  
18 stakeholders, not an individual CEC proceeding, would be the proper forum if Arizona  
19 wishes to impose its own reliability standards that differ from national, regional and  
20 industry standards. *See* A.R.S. § 41-1023; Tr. at 3159:2-11.

21 Accordingly, these reliability standards are invalid, and are an erroneous reason  
22 to deny the CEC granted by the Committee.

23 **G. The Commission Lacks Jurisdiction Over BLM and FWS Lands.**

24 The Decision mentions concerns about environmental impacts on the Kofa and  
25 reliability questions with towers on BLM lands even though both BLM and FWS  
26

1 approved DPV2. Federal jurisdiction, however, preempts the Commission from  
2 prohibiting the line on federal lands.

3 The Property Clause of the Constitution gives Congress plenary power over  
4 federal lands. U.S. CONST. art. IV, § 3, cl. 2; *Kleppe v. New Mexico*, 426 U.S. 529,  
5 539 (1976) (“we have repeatedly observed that ‘[t]he power over the public land thus  
6 entrusted to Congress is without limitations.’” (quoting *United States v. San*  
7 *Francisco*, 310 U.S. 16, 29 (1940))). When state laws conflict with federal legislation,  
8 then “state laws must recede.” *Kleppe* at 543.

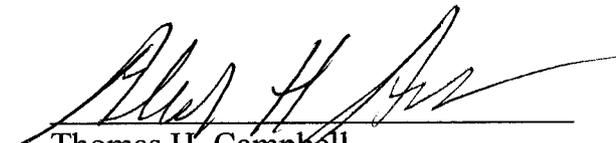
9 While a state may have the authority to impose environmental conditions to  
10 regulate activities on public land, it does not have the authority to prohibit private  
11 activities on public lands. *See, e.g., California Coastal Comm’n v. Granite Rock Co.*,  
12 480 U.S. 572, 586-87 (1987). Accordingly, the Commission lacks the authority to  
13 consider impacts on Federal lands as reason to deny the Project.

#### 14 IV. CONCLUSION

15 For the reasons set forth above, SCE respectfully requests that the Commission  
16 reconsider and rehear DPV2, which is environmentally compatible and meets critically  
17 important Arizona, California, and regional needs.

18 RESPECTFULLY SUBMITTED this 25th day of June, 2007.

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