

ORIGINALDecision 82 05 002 MAY - 4 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the Owens Valley
Indian Housing Authority to
deviate from mandatory requirements
for underground utility extensions
in Mono County, California.

Application 57645
(Filed October 21, 1977)

O P I N I O N

By this application, Owens Valley Indian Housing Authority (applicant) seeks authority to deviate from mandatory undergrounding requirements of Southern California Edison Company (Edison) Rule 15.1 and Continental Telephone Company of California (Continental) Rule 15 in a proposed subdivision near Bridgeport, Mono County, California.

The property is located approximately 1/2 mile northeast of Bridgeport and consists of one-eighth of a section owned by the United States Government, Bureau of Land Management (BLM), and held in trust for the Bridgeport Indian Community. The portion of the property being subdivided now amounts to approximately 30 acres for 21 homesites. The subdivision property is a portion of the S1/2 of the NE1/4 of Section 28 Township 5N Range 25E, MDB&M. A project location map attached to the application indicates that there is an existing overhead distribution line crossing the BLM property within approximately 1,100 feet of the proposed subdivision boundaries.

By letter dated October 6, 1978, our Legal Division advised applicant that the utilities' undergrounding rules do not apply to land belonging to and used by an Indian tribe. This

advice was based upon a federal statute which provides that no state may enforce its own laws and regulations to impose an "encumbrance" on real property belonging to an Indian tribe or held in trust by the United States for an Indian tribe. (See 28 USC § 1360(b).)

An "encumbrance" has been broadly construed to include any state or local regulation that restricts the use and economic development of the land. (Santa Rosa Band of Indians v Kings County (1975) 532 F 2d 655, 667-668.) If we were to apply the underground requirements to the Bridgeport Indian Community, we would be enforcing state regulations that restrict the use and development of land held in trust by the government for an Indian tribe. Federal law clearly prohibits our enforcement of such rules. Accordingly, we find that we lack jurisdiction to mandate undergrounding in the Bridgeport Indian Community.

The utilities, after receiving copies of the Legal Division's letter, installed overhead facilities in the subdivision. Thus, this application is moot. Applicant should have requested withdrawal of Application (A.) 57645. However, as the matter is still pending, we find it expedient to dispose of it with this order.

Findings of Fact

1. Applicant has requested overhead service from Edison and Continental.
2. Edison and Continental have complied with applicant's request making this application moot.

Conclusions of Law

1. The Commission lacks jurisdiction to apply undergrounding requirements to the land held in trust for the Bridgeport Indian Community.
2. Since the Commission lacks jurisdiction in this matter, it should be dismissed.

O R D E R

IT IS ORDERED that A.57645 is dismissed.

This order becomes effective 30 days from today.

Dated MAY 4 1982, at San Francisco, California.

JOHN E. BRYSON

President

RICHARD D. GRAVELLE

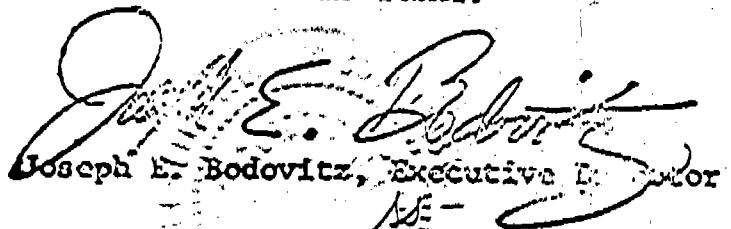
LEONARD M. GRIMES, JR.

VICTOR CALVO

PRISCILLA C. GREW

Commissioners

I CERTIFY THAT THIS DECISION
WAS REVIEWED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovitz, Executive Director