

# Landmark FERC Decision Paves Way for Clean Energy Tribal-Private Partnerships

## News

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On January 28, the Federal Energy Regulatory Commission (FERC) announced a monumental decision, approving transmission rates for Morongo Transmission LLC's 30-year leasehold interest in Southern California Edison's (SCE) upgraded West of Devers high-voltage transmission system that crosses the Reservation of the Morongo Band of Mission Indians (Morongo Band). The decision allows final implementation of the historic agreement between the Morongo Band and SCE allowing SCE to upgrade its vital transmission link across Reservation lands, with Morongo Transmission, majority-owned by the Morongo Band, having the option to participate in the financing of the project with no increase in cost to SCE's ratepayers.

Morongo Transmission's team, led by Jenner & Block's former FERC Commissioner Suede G. Kelly and Native American Law leader Charlie W. Galbraith, filed the request for approval of the option transaction and proposed rates implementing it. This type of partnership benefits ratepayers, Tribes, transmission infrastructure buildout, and climate change mitigation through enabling California's access to additional renewable power resources.

In 2012, after five years of negotiations with SCE, the Morongo Band agreed to allow the renewal of SCE's expiring rights of way (ROW) across its Reservation on the condition that it would have the option to become a participating transmission owner by investing in a substantial portion of the cost of the West of Devers Upgrade Project. By consenting to the grants of new ROW, Morongo would allow the utility, and ultimately the ratepayers, a chance to avoid the estimated \$500 million it would have cost to route the transmission lines around the Reservation either through wilderness areas or a national park.

To finalize Morongo Transmission's investment in the project, it had to secure FERC's approval of both the rate methodology, an unusual requirement for these matters, and the specific cost inputs that go into the methodology. Faced with a narrow window of time to arrange financing and exercise the lease option, Jenner & Block's Energy Practice worked hand-in-glove with Morongo Transmission, Morongo Band's government, and SCE, to secure FERC's approval of its proposed rate methodology.

After the team secured rate methodology approval, they then faced an uphill battle to get the rate finally approved at FERC.

"Our persistence, teamwork, and focus on the benefits this project brings to the Tribe and to ratepayers were critical for this matter," said Ms. Kelly, former FERC commissioner and current Co-Chair of the firm's Energy Practice. "Our team was uniquely positioned to carry this matter through a series of challenging negotiations. We objected to the Commission's decision to set the entire rate case for a trial-type hearing. The Commission ultimately agreed with our objection, setting only the issue of the return on equity for hearing. Morongo Transmission negotiated an uncontested settlement with intervenors on this issue, which held true to the original deal struck between the Morongo Band of Mission Indians and Southern California Edison."

The approved joint-venture marks a significant victory for both Indian Country and utilities. Throughout the 10-year process, the parties received support from the US Department of the Interior, the Governor of California, the California Public Utilities Commission, the California Independent System Operator, the Los Angeles Department of Water and Power, California lawmakers, and the Natural Resources Defense Council.

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