

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

July 19, 2016, 9:10 AM to 12:25 PM, Hualapai Health Department, Peach Springs.

Board members:

Charles Vaughn, Chairman – present

Joe Montana, Vice-Chairman – present

Jamie Navenma, Secretary – present until 11:00 AM

Steve Malin, Treasurer – present

Rory Majenty – absent

Support personnel:

Kevin Davidson, Planning Director

Patrick Black, Fennemore-Craig, P.C. (via telephone)

Bob Becherer, P.E., TTG (via telephone)

1) Call to Order

2) Roll Call

3) Review and Approval of Minutes

Mr. Montana made a motion to approve the June 24, 2016 meeting minutes as corrected. Motion seconded by Mr. Malin. Motion carried 4-0-1. Minutes from the June 24, 2016, Executive Session were also reviewed and met with the approval of the HTUA Board.

4) Project Updates

- a. Follow-up on Amendment to Hualapai Constitution** Mr. Davidson reported that at the July 9, 2016, Regular Council Meeting, a resolution to memorialize the results of the Secretarial Election was tabled pending an investigation into the BIA's registration and voting process. Mr. Davidson reviewed the draft memo to council showing his findings to date which do not show any procedural mistakes by the BIA. The memo also covered findings from the US Postal Service on typical mail delivery times between Peach Springs and Valentine, the latter location being

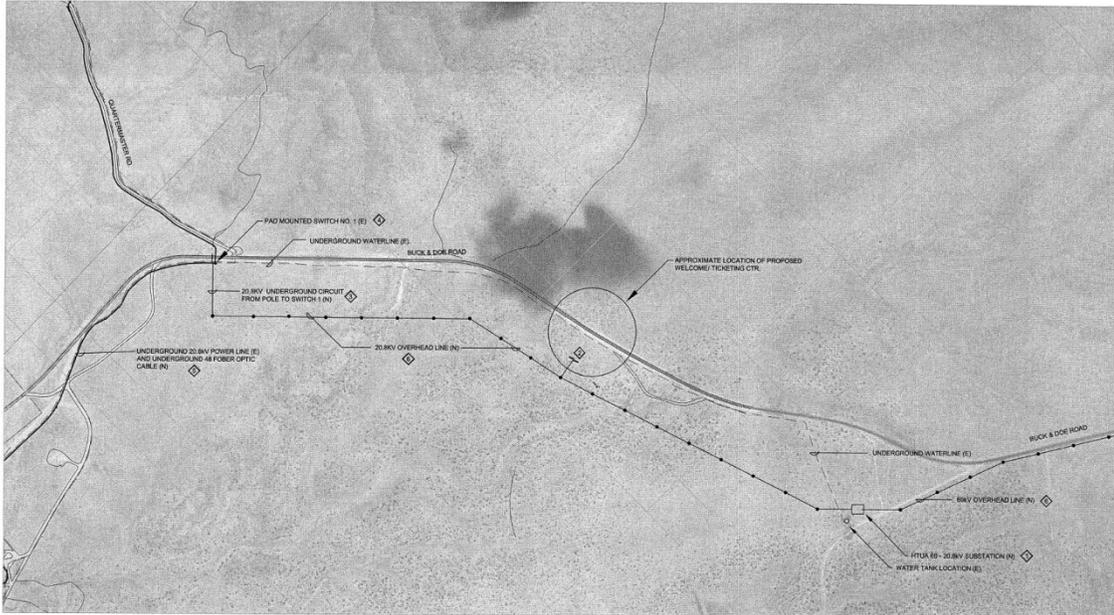
where the registration packets and ballots were due to the Truxton Canon Agency office of the BIA. Mr. Black suggested the memo include a definitive statement that due process was followed, no issues were discovered and the election is valid. Mr. Vaughn recommended any suppositions on the part of the US Postal Service be removed so the statements are precise. People should take responsibility for registering and voting in a timely manner. Mr. Navenma and Mr. Malin noted the clear registration instructions mailed by the BIA to the eligible tribal members.

b. Proposed Power Line to Grand Canyon West along Diamond Bar Road

- i. Cost estimates from TTG and UniSource** Mr. Davidson introduced Mr. Becherer and TTG's proposal to construct a 69 KV power line between the UniSource interconnection point on Diamond Bar Road and a new substation proposed near the water storage tanks, east of the intersection of Diamond Bar and Buck and Doe Roads. Mr. Becherer said the new substation will step down the voltage to 20.8 KV for connection to the mini-grid. Mr. Vaughn asked why the substation is needed. Mr. Becherer replied that a substation is required to make the voltage transition from 69 KV to 20.8 KV. At the western end of the new power line on Diamond Bar Road, near Pierce Ferry Road, there is a switching station planned to provide power at 69 KV for the feeder line to Grand Canyon West and for the continuation of the 12.5 KV feeder line to Meadview. Mr. Black asked if a full substation, or just a switch, is required at the 69 KV to 20.8 KV transition point. Mr. Becherer said a substation with a single 5 MVA transformer is needed to accommodate the current electrical load at Grand Canyon West, with enough room for an additional 5 MVA transformer to accommodate future loads anticipated at 6.5 MW. The substation should occupy an area 100' x 120'. Mr. Black asked if the costs of preparing NEPA documentation and right-of-way acquisition were included in the estimate. Mr. Becherer replied that they were not.

Mr. Vaughn asked if the mini-grid could deliver enough energy to also pump water. Mr. Becherer said the reserve capacity at the substation can serve the water pumping load and also allow for additional growth at Grand Canyon West. The substation is as near to the existing power loads as possible to avoid line losses. The overhead power line from the substation to the mini-grid is to be placed as near to the road as possible without affecting aesthetics (see

plan on page 3). In addition to the power line, UniSource can provide 48 fiber optic strands for GCW to rent to provide a data line to the outside world rather than having to rely upon the existing cellular telephone network. The 69 KV line would carry the fiber optics to the substation and then to the mini-grid, which has already been fitted with fiber optic cable.



According to UniSource, Mr. Black said the utility will not be subject to the BLM right-of-way permitting process if they are constructing the power line along the Diamond Bar Road right-of-way. The new power line does cross some private property, however. Mr. Becherer said there is a trade-off between acquiring new right-of-way through BLM land to allow for easier construction, or paying higher construction costs to stay within the existing roadway right-of-way and avoid environmental concerns. For example, following the right-of-way will require more poles where as going overland will allow for greater spans between poles. The power line will have to move outside of the road right-of-way at Grand Canyon Ranch (private land) and move up to the embankment on the north side of the roadway. Mr. Vaughn asked if the new power line will be placed on the north side of Diamond Bar Road. Mr. Becherer said the power line would stay on the north side of the road for the most part with occasional crossings to reduce the number of guy-wired poles and to avoid washes. Following the roadway will prove difficult in all cases, so the power line will be placed on as much level ground as possible to lower the cost of construction and maintenance. Mr. Montana asked if the power line could be buried. Mr. Becherer said burying a 69 KV power line requires a considerably higher level of

insulation as compared to the amount of insulation required for a buried 20.8 KV power line, which will greatly increase construction costs, and be subject to greater failure than a comparable 20.8 KV power line and strongly advised against it.

Mr. Malin asked why the cost estimate from UniSource for the new power line was nearly \$20 million while TTG's estimate was only \$7 million. Mr. Becherer replied that UniSource had estimated the cost to build a 20.8 KV line at \$18 million which includes a heavier electric circuit (wires) and more poles spaced closer together. In addition, the UniSource costs are based upon using their own construction crew which must travel and back and forth each day between their home base in Kingman and the job site some 40 miles to the north. The construction cost includes the daily commuting for the workers and prolongs the construction schedule because there is only about 5 hours of work done per day.

In reviewing the cost to re-build the existing 12.5 KV line between the Dolan Springs substation and the take off point for the new line to Grand Canyon West, Mr. Becherer asked why the HTUA should pay for the 12.5 KV under-build on the new 69 KV power poles. How will the HTUA be financially compensated by UniSource when new customers connect to the new power line that was funded by the HTUA? Also, how will the tax gross up be addressed? Mr. Black said he would like to see more detail in the UniSource cost estimate, especially the cost split between components and labor. For example, the cost of the new Diamond Bar Road switch seems excessive. Mr. Becherer said the design would be similar to the re-build of the Dolan Springs substation and have a meter to measure the tribe's electric usage and load. The new 69 KV power line will be used to serve other loads in Meadview, so Hualapai should not have to pay for all of the construction costs associated with the rebuild that will benefit UniSource's existing customers and new customers now made possible by the HTUA paying for construction of the improved power line. UniSource has already set aside some funds to upgrade the existing 12.5 KV power line to Meadview, so those funds should be clearly included in this project. Mr. Black suggested a conference call with UniSource to discuss these issues.

Mr. Black asked about the UniSource design standards for the 69 KV line and if they were overbuilding. Mr. Becherer said the power line could easily be upgraded to 138 KV given the size of the insulators. By comparison, the new 69 KV power line along Diamond Bar Road is using

“off the shelf” equipment and a third-party, private contractor whose selection will be approved by UniSource.

Mr. Vaughn asked why Unisource did not expect significant electrical load growth in Meadview. Mr. Becherer said that load growth may not be evident to UniSource. It may be convenient to say in this case to lessen UniSource’s contribution to the construction costs of the power line upgrade. Mr. Becherer said the 12.5 KV under-build on the new 69 KV power line may help reduce the cost of the upgrade to the Dolan Springs substation. Could the HTUA place its meter at the Dolan Springs substation and avoid building a switch on Diamond Dar Road? This would allow for the HTUA to build its own power line to Grand Canyon West; however, UniSource will not allow mixed ownership of their power lines. Mr. Becherer said he will contact UniSource to set up a conference call to discuss these options.

ii. **USDA loan application process** Mr. Davidson noted that at their July 9th meeting, Council approved TTG’s contract amendment which will be used to fund consultants who will work on the loan application. Mr. Davidson then briefly reviewed the draft RFPs for the Construction Work Plan and the Long-Range Financial Forecast. The scope of work is taken primarily from the relevant parts Section of 7 CFR 1710. The RFP for the Construction Work Plan should be advertised first but must reflect and changes in design based upon the planned discussion with UniSource as mentioned above.

c. **Western Area Power Authority Post-2017 Hoover power allocation and contracting.** Mr. Davidson briefly reviewed the Western contract, the 24-page summary prepared by Somach Simmons and Dunn (APA legal counsel), the two benefit credit proposals and a draft resolution to approve the Western contract. The contract is for 50 years and has a value of about \$800,000 over the term. The contract contains a limited waiver of sovereign immunity for dispute resolution in federal courts. The benefit arrangement from the Navajo Tribal Utility Authority is for 10 years and is valued at approximately \$27,000. The offer from the Southern Nevada Water Authority is for 20 years and valued at approximately \$91,000. Benefit arrangements are designed to give some benefits to tribes and municipalities that cannot receive the low-cost hydro-electric power directly. Mr. Black said both benefit arrangements are long-term as compared to the HTUA’s goal to build the power line to Grand Canyon West in

the near term. Also, the resolution should define the difference between a benefit arrangement and a bill credit. Mr. Black asked if the resolution must be approved at today's meeting. Mr. Davidson referred to Western's fairly tight time line and preferred the resolution be considered at today's meeting. Mr. Vaughn asked where the resolution should be edited to address the bill credit and Mr. Davidson referenced the last "Whereas." Mr. Vaughn made a motion to adopt Resolution No. 01-2016, as amended, to accept the Western Area Power Administration Electric Service Contract and Amended Restated Implementation Agreement for Boulder Canyon Project Post-2017 Schedule D Capacity & Energy. Mr. Malin seconded the motion, motion approved 3-0-1-1 (Mr. Navenma left meeting at 11:00 AM).

- d. Arizona Power Authority Post-2017 Hoover power allocation and contracting and potential bill crediting.** Mr. Davidson briefly reviewed the APA contract, the 16-page summary prepared by Somach Simmons and Dunn (APA legal counsel), the draft bill credit contract with MEC and three draft resolutions to approve the APA contract, intent to sign and option to increase the capacity allocation amount by 10 percent. The contract is for 50 years and has a value of about \$240,000 over the term. The contract contains a limited waiver of sovereign immunity for dispute resolution in federal courts. Mr. Montana made a motion to adopt Resolution No. 02-2016 to accept the Notice of Intent to Sign Arizona Power Authority Power Sales Contract for Boulder Canyon Project Post-2017 Schedule D Capacity & Energy. Mr. Malin seconded the motion, motion approved 3-0-1-1. Mr. Vaughn made a motion to adopt Resolution No. 03-2016 to accept the Increase in Allocation Amount of up to Ten Percent for Boulder Canyon Project Post-2017 Schedule D Capacity & Energy as set forth in the Arizona Power Authority's Power Sales Contract. Mr. Malin seconded the motion, motion approved 3-0-1-1. Mr. Montana made a motion to adopt Resolution No. 04-2016 to accept the Arizona Power Authority Power Sales Contract for Boulder Canyon Project Post-2017 Schedule D Capacity & Energy. Mr. Malin seconded the motion, motion approved 3-0-1-1.

5) Amendment to HTUA Ordinance (Planning)

Mr. Davidson reviewed the proposed amended language to Sections 208 and 209 of the Hualapai Tribal Utility Ordinance. This new language is necessary given the addition of Section 3 to Article XVI of the Hualapai Constitution which allows Tribal Council and the HTUA to enter into contracts which contain a

limited waiver of sovereign immunity clause. Mr. Vaughn made a motion to approve the proposed language and read it into the record as follows:

Section 208, Bonds and Notes for Support of the Utility, (c) Remedies of Note or Bond Holders, (1) By mandamus or other suit, action, or proceeding at law or in equity ~~in the Courts of the Hualapai Tribe~~ to compel HTUA and its Board, officers, agents, or employees to perform and carry out their duties and obligations under HTUA's covenants and agreements with such holders; and after (5), Unless otherwise agreed between HTUA and such holder or trustee for any such holder, such rights shall be enforceable only in the courts of the Hualapai Tribe. No remedy conferred by this Section upon any holder of the notes or bonds, or any trustee for such a holder, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy, and may be exercised without exhausting and without regard to any other remedy conferred by this section or by any other law. (d) *Limited Waiver of Sovereign Immunity.* . . . The waiver in subsection (c) is expressly limited to actions in the Courts of the Hualapai Tribe, unless otherwise agreed between HTUA and the holder or trustee for any such holder. A waiver of sovereign immunity pursuant to this Section will require a referendum ~~in accordance with~~ to the extent required by the Hualapai Constitution.

Section 209, Enforceability of Contracts, (a) Contracts in the Course of Utility Operations. HTUA is authorized to enter into contracts in the course of conducting its operations, and such contracts shall be enforceable in a proceeding at law or in equity in the Courts of the Hualapai Tribe and/or the federal courts of the United States (at the discretion of HTUA), in accordance with this Section. The Board shall develop a standard clause ~~(in accordance with subsection (b) below)~~ to be included in such contracts, which clause shall be presented to the Tribal Council for approval. Said clause may limit the extent of HTUA's liability for damages and shall govern the extent to which HTUA may waive immunity. Once such a clause has been approved by the Tribal Council, no further action by the Council is required for such a contract to be enforceable in ~~the Courts of the Hualapai Tribe~~ accordance with this subsection (a). Until such a standard clause has been approved, or in the event that a party to a contract with HTUA does not agree to be bound by terms within the extent of the waiver contemplated by the standard clause, a clause on enforceability of any such contract will require approval by the Tribal Council. (b) *Enforceability of Service Agreements and Special Contracts.* The Board ~~shall~~ may develop a standard clause to be included in its service agreements and special contracts with customers to ensure that such contracts can be enforced in the Courts of the Hualapai Tribe. The standard clause may limit the extent to which HTUA will be liable for damages resulting from power outages, disruptions in water or

wastewater services, or other service failures. This standard clause shall be presented to the Tribal Council for approval. ~~Once such a clause has been approved by the Council, no further action by the Council is required for such a contract to be enforceable in the Courts of the Hualapai Tribe.~~ (c) *Limited Waiver of Sovereign Immunity.* Subsections (a) and (b) of this Section, and any waiver of sovereign immunity included in any contract other than those contracts contemplated by those subsections, shall be construed as an explicitly limited exception to the sovereign immunity of the Hualapai Tribe and shall not be construed to waive any immunity of the Hualapai Tribe, nor to extend any liability to any assets, revenues, or incomes of the Hualapai Tribe, other than those of HTUA. A waiver of sovereign immunity ~~pursuant to this Section~~ will require a referendum ~~in accordance with~~ to the extent required by the Hualapai Constitution.

Mr. Montana seconded the motion to adopt the language as presented, motion carried 3-0-1-1. Mr. Vaughn made a motion to adopt Resolution No. 05-2016. Mr. Montana seconded the motion, motion approved 3-0-1-1.

6) Other Matters (Planning)

Mr. Davidson announced there will be a solar conference in Las Vegas from September 12th to the 15th and will bring more information to the next meeting. Mr. Vaughn said he is excited.

7) Set time and location for next meeting

The next meeting will be held on August 24, 2016, at 9:00 AM at the Hualapai Health Department, Peach Springs.

8) Adjourned at 12:25 PM