

## **Hualapai Tribal Utility Authority (HTUA) Meeting Minutes**

February 2, 2015, 9:10 AM to 11:45 AM, Hualapai Cultural Resources Department

Board members:

Charles Vaughn, Chairman - present

Rory Majenty, Vice-Chairman – present via telephone

Joe Montana, Secretary – present for Item 5c and thereafter

Jamie Navenma - absent

Steve Malin, Treasurer – present

Support personnel:

Kevin Davidson, Planning Director

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

### **1) Call to Order**

### **2) Roll Call**

### **3) Review and Approval of Minutes**

Motion made by Mr. Vaughn to table the January 12, 2015, meeting minutes to next HTUA Board meeting. Motion seconded by Steve Malin. Motion carried 3-0.

### **4) 2015 Budget Discussion**

**a. Review job description for General Manager - full or part-time, duties, salary.** Mr. Davidson reviewed several General Manager job descriptions which were for full-service utility companies with several thousand customers and scores of employees. The typical general manager must be adept with the technical and financial aspects of running the TUA and be politically savvy with Tribal leadership. Salaries are typically \$60.00 per hour or more. Salaries for general managers serving fewer than 10,000 customers range from \$125,000 to \$140,000 per year. Mr. Vaughn advised that a part-time general manager would be appropriate for the HTUA at this time. Office space should be identified and a budget created. Mr. Malin noted that office space is available at the Music Mountain School for the

monthly rate of \$1.00 per square foot. Mr. Majenty recommended that the HTUA continue its search for a general manager, office space and create a budget. Mr. Davidson will follow-up on his contacts with the Fort Mojave Indian Tribal Utility Authority on searching for a general manager.

**b. Review job description for Clerk/Secretary - part-time, duties, salary** Mr. Davidson briefly reviewed the job description of the Administrative Assistant employed by the Tribal Council. This job description can serve as a template for the administrative assistant to the HTUA Board. A motion was made by Mr. Majenty to continue the staffing discussion to the next meeting, so moved 3-0. On a related topic, Mr. Vaughn asked if individual Board members should be bonded to protect them from lawsuits. Mr. Black said he would look into this matter.

## **5) Project Updates**

**a. USDA/RUS grant and future USDA loan application for the Diamond Bar Road power line to Grand Canyon West and timing of referendum vote (TTG, Inc. and Planning)** Mr. Davidson noted that the Tribe's consulting engineer, Mr. Schmitt of TTG, was recently contacted by Larry McGraw of the USDA about the progress of the Tribe's referendum vote to allow for a limited waiver of sovereign immunity so the Tribe can enter into contracts greater than \$250,000. Mr. McGraw is evaluating the \$1.9 million USDA/RUS grant application submitted by the Tribe to build a portion of the Diamond Bar Road power line. Given Mr. McGraw's interest in the Hualapai's progress on the referendum, it appears the USDA is giving some consideration to the grant application.

**b. Review of Standard Clause for contracts and ideas on how to approach and advocate for the referendum vote to activate Sections 208 and 209 of the Ordinance (Fennemore-Craig, P.C. and Planning). Plus a discussion on the Tribe's Referendum process.** Mr. Black reviewed the language in the standard clause, which will require an addendum to the HTUA Ordinance, regarding waiver of tribal sovereign immunity, as follows:

*Whereas the Hualapai Tribal Utility Authority ("HTUA") and \_\_\_\_\_ entered into that agreement dated \_\_\_\_\_ (hereinafter the "Contract") in furtherance of the HTUA's charge to provide electric service, said parties hereby agree that the Contract shall in no way be considered as a waiver, expressed or implied, of the sovereign immunity*

*of the Hualapai Tribe, its officers, agencies, enterprises and corporations, except to the limited extent described as follows for the Hualapai Tribal Utility Authority:*

- 1. Claims or disputes arising out of or relating to the Contract, or the breach thereof, shall be brought in and may be enforced by the courts of the Hualapai Tribe or by the federal courts of the United States. This limited waiver shall not be construed as consent to the jurisdiction of any other court.*
- 2. This limited waiver of immunity shall not be construed to waive any immunity of the Hualapai Tribe, its officers, agencies, enterprises and corporations, nor to extend any liability to any assets, revenues, or incomes other than those of the Hualapai Tribal Utility Authority.*
- 3. This limited waiver of immunity shall be strictly limited to claims or disputes arising out of the Contract. The sole manner of relief awarded on such claims or in such disputes litigated pursuant to this limited waiver shall be the award of monetary damages as would ordinarily be recoverable in such claim or dispute; however, neither injunctive relief nor punitive or consequential damages shall be awarded.*
- 4. Except with the express written consent of the HTUA referencing this paragraph, this limited waiver of immunity shall extend to or be used for or to the benefit of only that party signatory to this Agreement with the Hualapai Tribal Utility Authority. Except with the express written consent of the HTUA referencing this paragraph, this limited waiver of immunity shall not extend to or be used for or to the benefit of any other person or entity of any kind or description whatsoever, including any assignee, contractor, employee, or other affiliate of that party signatory to this Agreement with the Hualapai Tribal Utility Authority.*
- 5. To the extent that the terms of this limited waiver conflict with terms and/or provisions of the Contract, the terms and provisions of this limited waiver shall control in lieu of the conflicting Contract terms and provisions.*

Mr. Black recommended the standard clause be sent to Tribal Council for their approval. Also, if contractors are to be given relief in the Federal Courts, then Section 208 and 209 of the HTUA Ordinance

must be amended. Mr. Vaughn made a motion to table the discussion to later in the meeting, so moved, motion carried 3-0.

Mr. Black reviewed the one-page fact sheet which will be used as part of the public education and awareness campaign for the upcoming referendum vote. Mr. Majenty noted the need to emphasize the benefit of such a vote to individual tribal members who do not interact with Grand Canyon West or the Grand Canyon Resort Corporation (GCRC) on a daily basis. We should obtain a more precise estimate from TTG on the cost of the power line so it can be part of the outreach effort. Mr. Vaughn asked Mr. Black to condense the bullet points in the fact sheet into one sentence each. Mr. Black opined that all votes are no votes until convinced otherwise by the public outreach effort. Mr. Malin said the fact sheet should clearly explain how the new power will benefit the tribal members/voters as well as what the consequences would be for not voting for the referendum. Mr. Vaughn suggested the language of the outreach clearly state the benefit to the Tribe (we) rather than just the individual tribal member (me). This will make the position more inclusive. Freeing up money from GCRC's cost of operations may be used to provide better housing and increase medical benefits to tribal members. The fact sheet should be considered an advocacy sheet as well. Mr. Black suggested the HTUA set up a public meeting to introduce the issue, the facts and the benefits to the tribal members. Mr. Vaughn advised the public meeting should be referred to Council prior to the setting the meeting date.

In regard to facts behind the USDA grant and loan, Mr. Davidson said the overall project, for which the requested High Energy Cost grant would fund a key portion, will construct a new 21.4-mile, 20.8 KVA above-ground electric power tie-line, upgrade 12.5 miles of existing, public electric utility-owned above-ground power line and expand the utility's existing substation. The objective is to connect the Hualapai Tribe's Grand Canyon West community to the regional electrical grid operated by UniSource Energy Services. Doing so will reduce the current electrical costs from an estimated 46 cents per kilowatt hour (kWhr) from diesel generation to eight cents per kWhr from Unisource. The total cost for the construction of this project is estimated at \$11,545,055. Approximately 16.3% of the current electric load at Grand Canyon West is dedicated to residential purposes. The High Energy Cost grant request of \$1,881,130 would fund the prorated residential share (16.3 %) of the overall construction amount estimated at \$11,545,055. The Tribe has already invested \$5.7 million of its own capital to construct a mini-grid/diesel generator set at Grand Canyon West, representing Phase 1 of the electrification project. The Tribe intends to apply soon for \$9,663,925 to fund the balance of Phase 2 construction funds in the

form of a USDA-RUS electric program loan or loan guarantee, as appropriate, in accordance with the Rural Electrification Act. This project will enable the Hualapai Tribe to generate more revenue, reduce operating costs, and provide a higher quality of life for those employed at Grand Canyon West by creating additional housing options nearby. Overcoming the high energy costs associated with development in this region of the Reservation will enable the Tribe to fulfill its future growth plans for Grand Canyon West.<sup>1</sup>

**c. Review of potential Mohave County franchise agreement to place a power line in public right-of-way (BIA transfer to Mohave County) for a portion of Diamond Bar Road (Planning and Fennemore-Craig, P.C.).** Mr. Davidson briefly reviewed the Mohave County franchise agreement with the Fort Mojave Indian Tribal Utility Authority (FMTUA). The agreement does not charge FMTUA the typical county franchise fee nor infringe on the Tribe's sovereignty concerning indemnification. In regard to the BIA's transfer of the one-mile segment of Diamond Bar Road right-of-way that crosses private property to Mohave County, the "punch list" must be approved by BIA. Mr. Black noted that any BLM-based Visual Resource Management (VRM) restraints placed on new development along the right-of-way, e.g. a new above-ground power line, must be understood addressed by the Tribe's attorneys. The physical dimensions of the right-of-way to be transferred to Mohave County should be known so the Tribe's consulting engineer can determine if the right-of-way has sufficient area to place the power line next to the paved roadway surface. Mr. Montana, joined the meeting and asked for clarification if the transfer included the entire length of Diamond Bar Road from Pierce Ferry Road to the Hualapai Reservation boundary or just the one-mile segment. The transfer is just for the one-mile section that crosses private property. Mr. Majenty asked when the roadway right-of-way transfer is scheduled to take place. Ideally, the transfer will occur prior to the referendum vote discussed above. Mr. Davidson will follow-up with Public Services Director on the "punch list" and right-of-way transfer to the county.

**d. Advice on current Colorado River Storage Project (CRSP) contract with Navajo Tribal Utility Authority (NYUA) (Fennemore-Craig, P.C.).** Mr. Black reviewed the value of the electrical power in the CRSP agreement with NTUA. The CRSP agreement brings power from the Salt Lake City Integrated Projects and compared this to the pending Boulder Canyon Project power for the Post-2017 Resource Pool (see table below). The total value of the CRSP contract is \$50,948.86 per year to Hualapai. Mr.

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<sup>1</sup> Previous two paragraphs are based on the August 1, 2014, High Energy Cost loan application to Rural Utility Service, USDA.

Black suggested that the HTUA perform an assessment to determine if terminating (or not renewing) the NTUA contract would be economical in light of the costs to wheel the power versus the savings gained from displacement of wholesale generation purchased from Unisource..

|                | <b>Salt Lake City Area/Integrated Projects Power</b>  |                                   | <b>Boulder Canyon Power</b>  |                                 |
|----------------|---|-----------------------------------|--|---------------------------------|
| <b>Source</b>  | 11 hydroelectric power plants consolidated into 1 single power rate, located in Utah, Texas and Arizona (Glen Canyon Dam)   |                                   | 3 hydroelectric power plants at Hoover, Parker and Davis dams and Navajo Generating Station (coal)   |                                 |
|                | <b>Winter</b>   | <b>Summer</b>                     | <b>Winter</b>  | <b>Summer</b>                   |
| <b>Amounts</b> | .609 kw / 1,163,130 (kWh) capacity  | .625kw / 1,118,127 (kWh) capacity | 381 kw / 249,939 (kWh) capacity  | 381 kw / 581,866 (kWh) capacity |
| <b>Rate</b>    | Demand Charge: \$5.18 kw/month<br>Energy Charge: 0.01219 kwh (paid by NTUA to Tribe)<br>Transmission: None<br>(Depends on Delivery Point and Wheeling Agreement with WAPA and UNSE) |                                   | Demand Charge: \$1.61 kw/month (2015)<br>Energy Charge: 0.00814 kwh (2015)<br>Transmission: TBD<br>(Depends on Delivery Point and Wheeling Agreement with WAPA and UNSE) |                                 |
| <b>Term</b>    | Contract with NTUA – Power Pooling and Scheduling Agreement expires September 30, 2024  |                                   | Subject to future contract with WAPA   |                                 |

Mr. Black said the Tribe would need to enter into an agreement with UniSource to manage the transmission of the Boulder Canyon and CRSP allocations, similar to the 2004 agreement with NTUA.

Mr. Malin asked if there would be a financial loss to the Tribe by entering into such an arrangement with UniSource. This question should be posed to Mr. Schmitt of TTG to determine how much power is being used at Grand Canyon West and what the savings would be by switching to BCP/CRSP at approximately one cent per KWHr and away from diesel power generation at roughly 50 cents per KWHr. Mr. Majenty asked for an assessment of the energy needs at Grand Canyon West and requested that the Tribe obtain as much hydro power as possible to reduce the electricity costs at Grand Canyon West and in the Peach Springs community.

Mr. Vaughn asked if Mohave Electric Cooperative (MEC) was approached in 2004 to wheel power to the reservation. Mr. Davidson said he would investigate. Mr. Black noted that MEC is required to wheel power pursuant to its OATT if, 1) the Cooperative has sufficient line capacity, and 2) if there is a wholesale customer to receive the power. The HTUA can serve as the wholesale customer and provide low cost power to both Grand Canyon West and Peach Springs. Mr. Davidson added that this benefit could be stated as a bullet point in the one-page fact sheet advocating for the referendum to construct the power line along Diamond Creek Road.

Mr. Montana inquired as to where the current CRSP benefits, paid to the Tribe by NTUA, are deposited. These funds - \$50,948.86 per year - are given to the Tribe's General Fund. Mr. Vaughn stated that in order to terminate the Hualapai contract with NTUA, the HTUA must approach UniSource on the language the utility would require in a contract with Hualapai, including the cost of wheeling the power, for both the existing CRSP allocation from Salt Lake City Integrated Projects and Post-2017 Boulder Canyon Project power. The HTUA Board agreed to have Mr. Black contact UnSource.

**e. Post 2017 Boulder Canyon Project Schedule D1 allocation from WAPA (Planning)** Mr. Davidson recapped the Hualapai's success in obtaining 381 KWs of Schedule D1 power from the post 2017 Boulder Canyon Project power pool. Western Area Power Authority (WAPA) will be holding an orientation meeting on February 24, 2015, for new allottees. Mr. Malin asked about the length of the contract's term. Mr. Davidson said he believed it to be 50 years, subject to verification. If the HTUA cannot physically receive the power, it may look to a third-party to manage the power, similar to the Tribe's current arrangement with NTUA in regard to the CRSP allocation.

**f. Post 2017 Boulder Canyon Project Schedule D2 allocation from Arizona Power Authority (APA) and summary of APA workshop (Planning)** Mr. Davidson reviewed the current Arizona Power Authority re-allocation process of Post 2017 Boulder Canyon Project power to both new and existing Schedule A (190.9 MWs), B (189.9 MWs) and D2 (11.4 MWs) applicants in the State of Arizona. The Hualapai submitted a pre-application to the APA in November of 2014 and have been preliminarily designated with between 93 KW and 170 KW of Schedule D2 power. The APA will consider a way to fairly and equitably allocate this power to some 50 applicants beginning with their March 3, 2015, Board meeting. Given the fact that the APA's allocation process appears to be as much a matter of following state law as it is of the exercise of the APA board's broad policy discretion in determining the eligibility and the amount awarded, the Hualapai application may have a chance of receiving a power allocation. Mr. Davidson, in association with Fennemore-Craig, would like to prepare an advocacy paper for additional power to be awarded to the HTUA and to present it to the APA at their March 3, 2015, meeting. The HTUA Board agreed to have Mr. Davidson and Chairman Vaughn draft a letter to the APA.

**g. Upcoming BIA grant-funded training (Planning)** Mr. Davidson noted that the bids for the four BIA, Indian Energy and Economic Development (IEED) RFPs for energy capacity development are out for bid and should be ready for presentation at the next HTUA Board meeting.

**6) Other Matters** Mr. Davidson reviewed the Arizona Tribal Energy Association (ATEA) application sent to the HTUA. Annual dues for full membership are \$5,000 which include voting privileges and entitles the members to be represented in all position papers authored by the ATEA to agencies such as WAPA. The associate membership fee is \$1,500 per year and includes information updates from the ATEA and an invitation to attend all its meetings and events. Mr. Montana asked how valuable these benefits would be to the HTUA.

Mr. Black added that the Arizona Competitive Alliance meeting will be held on March 4<sup>th</sup> in Phoenix and that he would be happy to reserve seats for the HTUA. This meeting will feature speakers on topics including wholesale and retail markets in the west, the integration of renewable energy onto the grid and integrated resource planning. It is also an opportunity to network with energy industry members.

**5b. Review of Standard Clause for contracts and ideas on how to approach and advocate for the referendum vote to activate Sections 208 and 209 of the Ordinance (Fennemore-Craig, P.C. and Planning). Plus a discussion on the Tribe's Referendum process.** A motion was made by Mr. Vaughn to un-table Item no. 5b, seconded by Mr. Malin, vote 4-0 to un-table item No. 5b. Mr. Majenty asked if arbitration could be an option in the standard clause and the HTUA Ordinance in addition to resolving cases in Tribal or Federal Courts. Mr. Black said the Tribe could enter into binding arbitration. This would require an amendment to the HTUA Ordinance. Mr. Black asked how GCRC resolves its legal disputes. Mr. Majenty said GCRC has an arbitration option. Mr. Malin said he would prefer not to arbitrate because doing so proves to be more costly than standard legal proceedings. Mr. Black offered mediation as a legal option; it is less costly and not binding. Mr. Vaughn voiced his favorable opinion of mediation over that of arbitration. The arbitration process may not yield the best results for the Tribe because a third-party arbiter may be biased against the Tribe. Mr. Vaughn also noted the decision of the Tribal Court or the Federal Appellate Court is final. This is so, Mr. Black added, because the plaintiff must choose the judicial venue up-front. Mr. Black said the language of the standard clause can be expanded to include the Federal Courts. Federal Court could be used as a negotiating tool when a large vendor or contractor insists upon availability to this venue. It should be made clear that sovereign immunity will only be waived for any contract that contains this specific clause and that all other tribal immunities remain in place nonetheless. Mr. Black concluded by saying that if a vendor's contract contained an arbitration clause, the HTUA would not be precluded from entering into the contract based

upon the current language in the standard clause and HTUA Ordinance. The standard clause is designed for all HTUA contracts, not just those in excess of \$250,000. Mr. Majenty made a motion to amend the standard clause as described above, second by Mr. Malin. Vote 4-0 to approve.

**7) Set time and location for next meeting**

The next meeting will be held on March 9, 2015, starting at 9:00 AM at the Hualapai Cultural Resources Department.

**8) Adjourned at 11:45 AM**