

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

February 22, 2017, 9:15 AM to 11:00 AM, Hualapai Health Department, Peach Springs.

Board members:

Charles Vaughn, Chairman – present
Joe Montana, Vice-Chairman – present
Jamie Navenma, Secretary – present
Rory Majenty – present (via telephone)

Support personnel:

Kevin Davidson, Planning Director
Patrick Black, Fennemore Craig (via telephone)
Lauren Ferrigni, Fennemore Craig (via telephone)
Bob Becherer, TTG (via telephone)
Lou Schmitt, TTG (via telephone)

1) Call to Order

2) Roll Call

3) Review and Approval of Minutes from January 30, 2017, meeting

In reference to page 3 of the minutes, Mr. Vaughn asked if an outside entity, such as UniSource, would ask for a limited waiver of sovereign immunity even if the contract required the case be heard in tribal court. Also, why did UniSource reject the limited waiver of sovereign immunity proposed to them? Mr. Davidson replied the limited waiver was only for declaratory and injunctive relief, not monetary damages. Mr. Black added that having a case heard in tribal court amounts to no waiver of sovereign immunity. Mr. Vaughn advised the process follow the Hualapai Law and Order Code which begins with applying tribal law and then has options for the use state law and federal law. Mr. Navenma made a motion to approve the January 22, 2017, meeting minutes, as presented. Motion seconded by Mr. Montana. Motion carried 3-0-1.

4) Status FY 2017 Budget Request Mr. Davidson reviewed the outcome of the Gaming Budget meeting held on February 6, 2016, and said Council would like to have the principals meet (Finance Committee, HTUA Board, members of the Grand Canyon Resort Corporation (GCRC) board and management) to discuss the power line and review the project's cash flow. Mr. Vaughn said the memo to be presented to the Finance Committee should discuss the need to bring power to Grand canyon West (GCW) to support the future residential community and supply power to pump water from the Colorado River. Mr. Vaughn advised that the project flow charts provided by TTG be simplified. Mr. Schmitt said he would revise them accordingly. The HTUA budget request should also be simplified to show the major expenditures by category vs. each line item within each category. Mr. Davidson said he would revise the budget table.

5) Project Updates

a. Proposed Power Line to Grand Canyon West

i. Environmental Review Funding Agreement with UniSource Mr. Davidson reviewed the outcome of February 20, 2017, teleconference with UniSource. As expected, UniSource has rejected the revised contract language which replaces state law and state court with tribal law and tribal court. Mr. Black said that UniSource also rejected the contract because it did not allow for recovery of monetary damages. However, UniSource is not opposed to the HTUA procuring its own NEPA consultant to perform the Environmental Assessment (EA) on an alternate route such as the one that uses Tenney Ranch Road. Soliciting for these professional services directly will give the HTUA leverage over the chosen consultant who will be offered the tribe's standard professional services contract which preserves sovereign immunity and the use of tribal law in tribal court. The Tenney Ranch Road option, also known as the Alternative B route under the UniSource procurement, would not require significant UniSource involvement, outside of procuring an interconnection agreement. However, if the Tenney Ranch Road option proves problematic, then the tribe will most likely have to approach UniSource to study the Pierce Ferry/Diamond Bar Road option which will require entering into a similar funding agreement as the one that was rejected.

Mr. Vaughn asked about the other advantages of using the Tenney Ranch Road alternative. Mr. Becherer replied that: 1) the tribe would administer the consultant contract and not have to pay UniSource for management costs, 2) save construction costs by not having to re-build the UniSource power line along Pierce Ferry Road and then pay UniSource the gross-up tax once the power line is rebuilt, and 3) can work directly with the BLM. Mr. Vaughn asked if UniSource would reject the findings of the EA if the HTUA administers the process. Mr. Davidson said the EA would be procured using the tribe's procurement procedures which include Indian Preference. Each consultant who bid on the UniSource procurement would be sent the HTUA's RFP. The NEPA process will follow the BLM's and tribe's rules (HERC). Mr. Black added that the HTUA requires an agreement with UniSource to connect to the Dolan Springs sub-station (i.e., interconnection agreement) and would look into it.

Mr. Vaughn asked about the Federal Energy Regulatory Commission's (FERC) review of the new 69 KV power line. Mr. Black said a 69 KV power line is typically considered "sub-transmission" and should not be subject to FERC review. Mr. Vaughn asked about FERC's review of a distribution line vs. a transmission line. Mr. Black replied that the power flow is one-way on a distribution line. However, if the power line accommodates two-way flow, for instance connecting a solar array along its route that delivers power to both Grand Canyon West and UniSource, then it could be argued it is a transmission line and subject to FERC review and if determined to be transmission the line would be opened up to serving land owners along its route. The Arizona Corporation Commission (ACC) defines a transmission line as being 115 KV or larger.

Mr. Majenty asked if the power was used to pump water from the Colorado River, even if the take out point was in Peach Springs (Diamond Creek), would the power line be considered a transmission line? Mr. Black said where the power is used on the reservation is not an issue. If the HTUA were to operate Mohave Electric Cooperative's grid in Peach Springs, it would be no different than supplying power to the mini-grid at Grand Canyon West.

Moving back to the cost of constructing the power line using the Tenney Ranch Road alternative, Mr. Schmitt said the route, even though some six miles longer, would cost an estimated \$3 million less than building the power line along the Pierce Ferry/Diamond Bar Road

route. Mr. Vaughn asked if UniSource is likely to ask for a similar contract to connect to the Dolan Springs sub-station as they did for the NEPA consultant contract which included the use of state court and state law and a limited waiver of the tribe's sovereign immunity. Mr. Black said that an on-going agreement for the long-term purchase of power from UniSource would most likely require a similar agreement as the environmental consultant contract. This contract is different than obtaining permission to connect to the Dolan Springs which most likely will not require such an agreement.

Mr. Vaughn asked what action items the HTUA should consider in regard to the power line project. Mr. Black advised the HTUA rule on UniSource's contract counter-offer as presented and then decide whether or not the HTUA should procure the NEPA consultant directly to perform the EA. Mr. Davidson said that by choosing just the Tenney Ranch Road option and the no-action alternative, the EA should be less expensive because the pedestrian survey along the Pierce Ferry/Diamond Road route will be removed. However, it would be wise to have that route included in the RFP as a bid additive in the event that the Tenney Ranch Road alternative proves problematic. Mr. Becherer noted that parts of the canyon along the Tenney Ranch Road may prove difficult to construct a power line. Also, there are potential visual resource management issues with the BLM and need to traverse about one-half of a mile of private land at the reservation boundary, which could be bypassed.

Mr. Majenty asked about the HTUA's procurement process for the NEPA consultant. Mr. Davidson said the EA would be procured using the tribe's procurement procedures which include Indian Preference. Each consultant who bid on the UniSource procurement would be sent the HTUA's RFP. Mr. Vaughn asked if the UniSource procurement could be used "as is." Mr. Davidson said it is unlikely because UniSource used their procurement procedures instead of the tribe's. Mr. Davidson will verify this question with the tribe's Grants and Contracts office.

By consensus, the HTUA Board recommended the UniSource contract be rejected and that the HTUA procure a NEPA consultant to perform the power line EA with a focus on the Tenney Ranch Road alternative.

ii. **Cash Flow Analysis 2011 vs. 2017** Mr. Schmitt briefly reviewed the cash flow analysis for the power line that was requested by tribal council on February 6, 2017. In brief, the pay-back period is between 7 and 11 years depending upon the cost of diesel fuel, with the higher the cost of diesel fuel the shorter the pay-back period.

iii. **Diamond Bar Road Studies** Mr. Davidson said there have been no additional updates from Hualapai Public Works since the HTUA Board meeting briefing by Mr. Wisely on December 29, 2016.

b. Hydropower contracts with Western

i. **Review Draft Salt Lake City Area/Integrated Projects contract, 2024 – 2057** Mr. Davidson referenced the draft contract from SLCA/IP which is basically an extension of the existing hydropower agreement the tribe entered into in 2005. Western will not increase the power or energy delivery to existing customers nor will it create an additional customer pool given that the Colorado River system is under stress due to drought. The contract still allows tribes which are not able to receive power directly to enter into a benefit arrangement with another utility which can take the power directly. This would allow the tribe to continue the benefit arrangement it has with Navajo Tribal Utility Authority (NTUA) provided the NTUA offers a benefit arrangement for the new contract. Mr. Davidson said the current contract value for the hydropower is generous to the point where Western is losing money on the deal, so new contracts will likely be worth less to customers. The draft contract does not contain a dispute resolution clause tailored for tribes, so it would be appropriate to have the HTUA comment on this and request language similar to that which was added to the 2016 Boulder Canyon Power contracts be inserted into the SLCA/IP contract. Comments are due by April 4, 2017. Mr. Black added that the HTUA should consider a benefit arrangement because it may be more profitable than having to pay wheeling charges to bring power from Glenn Canyon Dam to the Hualapai Reservation. Given that this is the first time the HTUA Board has seen the contract, Mr. Vaughn asked that the contract be tabled until the next meeting. By consensus the Board agreed to table the contract review until the next HTUA Board meeting.

ii. **Follow up on Post-2017 Hoover power allocation and contracting** Mr. Davidson said that Western is still reviewing the final benefit arrangement contract between the tribe and the Pechanga Band of Luiseno Indians from Temecula, California.

c. **Community Wi-Fi**

i. **Proposal by Mural Project for free 4G LTE service to Peach Springs homes with students** Mr. Davidson said he had been contacted in January by Mr. Chad Hamill, Vice President of Native American Initiatives and Associate Professor, Applied Indigenous Studies, regarding an opportunity for the tribe to receive free wireless communication service from Mural, a company which has implemented wireless communications in sub-Saharan Africa and in Southeast Asia. The free wireless service would be provided to households with students attending school or in college so that they may continue their education when at home. Mr. Martin Casado and Mr. Brian Shih of Mural met with Mr. Davidson, Mr. Zacherson, IT manager for Grand Canyon Resort Corporation (GCRC) as well as Mr. Mikel Allen and Mr. Sean Hargreaves of the tribe's IT division to discuss the system's set up in late January. The attendees agreed that the existing radio tower on Honaga Hill would carry the transmitter for the first phase of the pilot program with the second phase transmitter placed atop the water tank located south of the intersection of Buck and Doe Road and Highway 66. Implementation should take about three months.

Mr. Majenty asked how much the equipment would cost and will it use the 100 Mbps of capacity that GCRC has at the Honaga Hill location. Also, will this new wireless service be in competition with Frontier Communication's service? Mr. Davidson said the equipment is being provided free of charge by Mural and that Mr. Zacherson considers the Honaga Hill site a good location because GCRC supplies that location for the benefit of Peach School Elementary School. As for competition with Frontier Communications, the free service will most likely be viewed as such but the system is designed for education purposes only (search filters implied). Mr. Vaughn asked Mr. Davidson to check the status of permit for the existing radio tower to see if it is in order.

ii. **Council direction on February 4, 2017, and HTUA's role in implementation** Mr. Davidson said he and Mr. Hamill discussed the matter with tribal council at their February 4, 2017, meeting

and council gave permission for Mr. Davidson to proceed with implementing the wireless communication system and also directed the HTUA to assume the long-term maintenance responsibility for the wireless system. To do so the HTUA must expand its mission, currently described in Section 108 of the HTUA Ordinance, to include telecommunications. Mr. Davidson presented a red-line version of the ordinance showing the recommended textual changes to accommodate telecommunications and the companion resolution to be presented at the March 4, 2017, tribal council meeting. Mr. Montana asked that the HTUA's mission also be expanded to provide electric, water and wastewater services beyond the narrow confines of Grand Canyon West and be applied reservation-wide (Sections 104, 107, etc.). Doing so will indicate to tribal members that the HTUA was not just created to serve the interests of Grand Canyon West. Mr. Black noted that sub-section 107.a.5 allows for the expansion of the service area. Mr. Vaughn recommended that reference to "Grand Canyon West" be replaced with "other tribal lands" to make the service area clear in Section 107, etc. The ordinance should be forward-looking. Mr. Majenty made a motion to replace references to "Grand Canyon West" with "Hualapai Reservation and other tribal lands," and to also add telecommunications to the HTUA mission as defined in the HTUA Ordinance. Mr. Montana seconded the motion. Motion carried 4-0.

- iii. **Contract development** Mr. Davidson said he is working Mr. Shih on the contract to create sole-source, zero-dollar-value-contract and should have it ready for review by the tribe's Grants and Contracts Office shortly. Mr. Majenty asked how Mural benefits from the deal. Mr. Davidson said Mr. Casado, the founder of Mural, is looking to give back to his home state after having a rewarding and profitable career in information technology. Mr. Majenty advised the system have a firewall to keep students away from certain web sites.

6) **Other Matters (Planning)**

- a. **Trip to Temecula, California, to meet with Pechanga Band of Luiseno Indians** Mr. Davidson referred to the e-mail from Breann Nu'uhiwa, Associate Advocate General of the Pechanga Indian Reservation, inviting the HTUA to Temecula on March 14, 2017. Mr. Davidson said he will confirm the trip to Temecula with Ms. Nu'uhiwa after today's Board meeting and arrange for travel. Mr. Majenty said he will provide a van for transportation.

b. Announcements Mr. Davidson noted a Western webinar on February 23, 2017, to discuss Hoover's operations and a public meeting with the Arizona Department of Water Resources at Mohave Community College on February 28, 2017, to discuss the mounting groundwater crisis facing Hualapai and Sacramento Valleys largely due to the increased pumping of groundwater for industrial-scale agricultural pursuits (alfalfa). There could be some negative impact to the depth of the water table under the Hualapai trust lands around Clay Springs Road. Mr. Montana said the springs in the area could also be negatively affected as the water table is drawn down along the perimeter of the Hualapai Valley.

Mr. Montana reviewed a new solar technology which can be set up by individual home owners in their back yard and simply plugged into their home. The solar array tracks the sun and then folds up at night, somewhat like a flower. Mr. Montana said the devices may be deployed in en masse and used for a community-scale solar array. Mr. Davidson said he sent an e-mail inquiry to the company's US distributor in Boston, MA.

Mr. Davidson presented Mr. Vaughn with the recommendation letter to Senator Lisa Murkowski, chair of Energy and Natural Resource Committee, asking that she consider retaining Mr. Chris Deschene as head of the Office of Indian Energy under the Department of Energy. Mr. Vaughn asked that the Hualapai Tribal Council Chairman Clarke sign the letter being this is a government-to-government request. Mr. Davidson said he would revise the letter and present it to Chairman Clarke for his signature.

8) Set time and location for next meeting The next meeting will be held on Thursday, March 16, 2017, at 9:00 AM at the Hualapai Health Department, Peach Springs.

9) Adjourned at 11:00 AM