

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

April 27, 2017, 9:10 AM to 11:45 AM, Hualapai Cultural Department, Peach Springs.

### Board members:

Charles Vaughn, Chairman – present

Joe Montana, Vice-Chairman – present

Jamie Navenma, Secretary – present

Rory Majenty – absent

### Support personnel:

Kevin Davidson, Planning Director

Dawn Hubbs, Cultural Resources Director

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 February 22, 2017, and March 16, 2017, meetings**

Looking at page 2 of the minutes Mr. Vaughn asked how much the cost would be to build the power line along the Pierce Road/Diamond Bar Road route. Mr. Becherer said even though the route is shorter than both the Tenney Ranch Road or Clay Springs Road proposals, it may cost more than \$14 million to construct given that the tribe will be paying to re-build UniSource's active power line for some ten miles and also pay a tax gross-up fee to Unisource of at least one million dollars. Mr. Vaughn asked if Mr. Davidson had researched the permit and lease site status of the radio tower on Honaga Hill in Peach Springs. Mr. Davidson replied he had located the EA but had not confirmed if the General Permit was approved by tribal council. Radio towers operated by the tribe typically do not have leases. Mr. Vaughn asked Mr. Davidson if he attended the Arizona Department of Water Resources (ADWR) meeting held in Kingman on February 28, 2017. Mr. Davidson said did not attend the meeting but noted that ADWR is holding a series of meetings with stakeholders in areas of the state where groundwater pumping is

putting the aquifers at risk. At the meetings, ADWR provides information on current water demand and also asks participants to brainstorm on water conservation measures. Some 15 years ago, ADWR was actively promoting the Rural Watershed Initiative which had a similar focus. Mr. Montana asked if the support letter to retain Mr. Deschene as head of the Office of Indian Energy was transmitted to the Department of Energy. Mr. Davidson replied that Chairman Clarke signed the letter in early March and it was mailed shortly thereafter. Mr. Vaughn entertained a motion to approve the meeting minutes of February 22, 2017. Mr. Navenma made a motion to approve the minutes as written. Mr. Montana seconded the motion. Motion carried 3-0-1.

Mr. Vaughn asked Mr. Davidson if he had consulted with the Hualapai Cultural staff on the power line routes as noted on page 2 of the March 16, 2017, minutes. Mr. Davidson said he had discussed the Tenney Ranch Road and Clay Springs Road routes with Ms. Hubbs, Tribal Historic Preservation Officer for the Hualapai Tribe, and a presentation is scheduled under Item agenda no. 5.a.iii. Neither route has been field surveyed. In regard to the draft interconnect agreement discussed on page 4 of the minutes, Mr. Vaughn asked if Fennermore Craig had discussed the draft language with UniSource. Ms. Ferrigni replied that they had not yet done so. In regard to the use of arbitration to settle disputes between the tribe and UniSource, Mr. Vaughn asked if the tribe would have an opportunity to select an arbitrator based upon the arbitrator's record of decisions. Ms. Ferrigni said that one option would be for the tribe and UniSource to mutually agree on the selection of a single arbitrator. In the event that the tribe and UniSource cannot come to an agreement, another option would be for the tribe would select an arbitrator, UniSource to select an arbitrator and then the two arbitrators to select a third arbitrator to form a panel. Mr. Vaughn asked what would happen if either party declines to go to arbitration. Ms. Ferrigni replied that mediation could be pursued. The next option is litigation. In the event that the parties cannot resolve a dispute through mediation and do not wish to submit to arbitration, that leaves the parties with the remaining route of litigation for resolving disputes. With no further comments on the meeting minutes for March 16, 2017, Mr. Vaughn entertained a motion. Mr. Montana made a motion to approve the minutes as presented. Mr. Navenma seconded the motion. Motion carried 3-0-1.

**4) Status FY 2017 Budget Request** Mr. Davidson said he has been unsuccessful in scheduling a meeting with the Finance Committee; however, he did present the revised cash flow analysis to the Finance Director and noted that the existing diesel generator set costs less to operate in the near term

than building a 69 KV new power line. The power line does become more economical as the load at Grand Canyon West grows and the cost of diesel fuel rises over time.

## 5) **Project Updates**

### a. **Proposed Power Line to Grand Canyon West**

- i. **Project schedule and consultant budget** Mr. Davidson reviewed the project tasks and cost for each prepared by Mr. Schmitt of TTG/IMEG. The project Gantt chart extends through the end of 2018 with the total cost is \$501,170 for both TTG's services and that of third-party consultants to perform tasks as follows: 1) preliminary power line survey = \$80,000, 2) environmental assessment (EA) = \$150,000, and 3) final power line survey and preparation of written legal description = \$125,000. These three tasks equate to \$355,000 or over 70 percent of the budget. Mr. Vaughn asked about the cost of services charged by TTG. Mr. Becherer explained that TTG would only charge for hours billed to the project. The routes would be flown with a helicopter to determine the most likely one or two to further study. This approach is less costly than walking each route. Ms. Hubbs asked if the pedestrian survey would be omitted. Mr. Becherer replied it would be part of the EA. The aerial reconnaissance will be used to determine which route should be staked by the surveyor so the route can be easily walked by the environmental consultant who will perform the EA. As sensitive sites are discovered during the survey, the power line route will be adjusted to avoid the sites. This approach is in line with Hualapai Cultural Resources expectations for the project. Mr. Navenma noted these engineering costs cover the scope of work and seem to fall in-line with other similar projects. The Board, by consensus, agreed that these cost estimates should be used when discussing the HTUA's budget amendment request with the Finance Committee.
- ii. **Comparison of costs between existing diesel generation and new 69 KV power line** Mr. Vaughn noted the lower cost of operating the existing diesel electric generation plant in the short term and as compared to building a new 69 KV power line. The review prepared by Mr. Becherer seems adequate.

**iii. Class I review of archeological sites along alternate power line routes** Ms. Hubbs referred to the maps displayed on the conference table which depicted the Tenney Ranch Road and Clay Springs Road routes to Grand Canyon West. The Tenney Ranch route has not been surveyed by the Cultural Resources Department. Ms. Hubbs suggested that Mr. Bungart, a former employee of the Cultural Resource Department, would be a good resource for the HTUA to employ to perform additional survey work. Mr. Vaughn asked about cultural sites in the area. Ms. Hubbs noted that this part of the state has multiple historic trails and trading routes that were used by tribes. The proposed route from the Dolan Springs substation crossing BLM lands (see map) is a new path and has not been surveyed. Given the high density of artifacts in the Hualapai Valley, this route is likely to pass through historic sites. Many archeological sites were discovered during the field work performed for the Hualapai Valley Solar Project proposed in 2009.<sup>1</sup> However, these sites have not been mapped. The Clay Springs Road, off-reservation, has not been surveyed and neither route which occurs on the Hualapai Reservation has been fully surveyed; however, Buck and Doe Road has been surveyed. Mr. Vaughn asked about the presence of historic buildings along the routes. Ms. Hubbs said she would look into the route in more detail once one is selected.

Ms. Hubbs noted the proposed power line route crosses existing transmission line rights-of-way (Western) with route option running parallel to the Arizona Public Service (APS) right-of-way for some distance. Mr. Davidson said he has contacted Ms. Wilcox at Western and sent her a sketch showing the proposed crossing at the corners of Sections 8 and 18 (T27N, R17W), some 2.5 miles northeast of the UniSource sub-station. The application is fairly straightforward and should not require extensive effort to complete (refer to sample in agenda packet). The longer of the two Clay Springs routes utilizes a portion of the one-mile-wide BLM designated "368" energy corridor. This area is much broader than the 200-plus-foot wide rights-of-way for the Western and the APS transmission lines which run through the center of the BLM corridors.

**iv. Status of Right-of-Way application and Plan of Development for BLM** Mr. Davidson said he met with Mr. Andy Whitefield at BLM on April 18<sup>th</sup> regarding the SF-299 application for the right-of-way across BLM land and the drafting the Plan of Development (POD) which describes

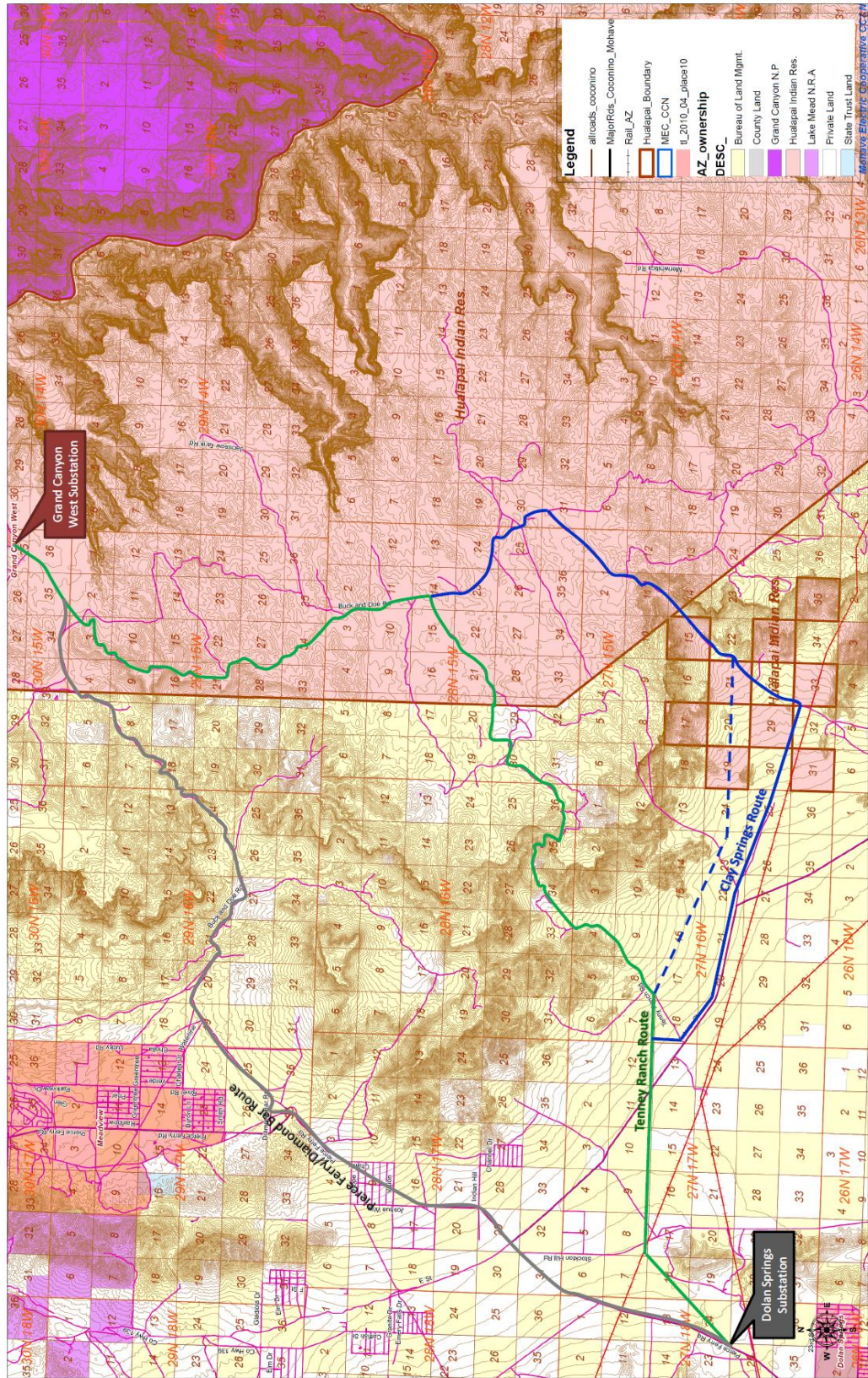
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<sup>1</sup> Hualapai Valley Solar Project consisted of 340 MW Concentrating Solar Power (CSP) plant covering over six square miles adjoining the southeast portion of the Red Lake Playa.

the power line design and construction in detail. Mr. Whitefield said that he would like the application submitted to the BLM in May so his office can budget time in FY 2018 to review the documents prepared by the tribe's yet-to-be-determined environmental consultant.

Mr. Vaughn noted that the example SF-299 and POD for the Golden Valley 69KV line seem to have extra material not relevant to the tribe's pending application. Mr. Davidson said he would work with Mr. Whitefield and Mr. Becherer to customize the application to fit the tribe's project. Mr. Davidson added that the power will cross private property in either Section 13 or 19, T27N, R17W and require that the tribe obtain an aerial easement from the landowner. These private lands are owned by Pierce Ferry, LLC and EB Acquisitions, LLC both of Las Vegas, Nevada.

# 69 KV Powerline Routes from Dolan Springs Substation to Grand Canyon West



**v. Interconnect agreement with UniSource for Dolan Springs substation** Ms. Ferrigni began her review of UniSource's Open Access Transmission and Tariff (OATT), via the nine-page memo prepared by Fennermore Craig, by stating that UniSource has yet to create a "wires-to-wires" interconnection agreement where the company makes a physical connection with another utility company, so the HTUA will be proposing new language to UniSource on this new type of agreement. As noted at the March 16, 2017, HTUA Board meeting, indemnification is an issue for tribes because it can be considered an infringement on sovereign immunity. Ms. Ferrigni said that indemnity is often negotiated so the contract clearly identifies the responsibilities of each party. The UniSource clause provides for mutual or reciprocal indemnification which is beneficial to both parties vs. one-way indemnification. Mr. Vaughn asked who would be responsible for broken power poles. Mr. Davidson referred to page 9 of the Fennermore Craig memo noting either party would be responsible for paying the cost for direct damage they may cause to the other party. Ms. Ferrigni added that damages cover actual costs such as non-payment for services. Neither party pays for indirect damages incurred by the other party.

In regard to insurance coverage, Ms. Ferrigni noted that the Large Generator Interconnection Agreement (LGIA) requires the tribe have a significant amount of insurance coverage (automobile, workmen's compensation, etc) in addition to general liability insurance which is all that that is required to enter into a Small Generator Interconnection Agreement (SGIA) with UniSource. Mr. Vaughn asked Mr. Davidson if the insurance premium quoted by The Mahoney Group covers the substation interconnection as well as the new power line. Mr. Davidson said he would check on the insurance coverage. Ms. Ferrigni briefly reviewed the Force Majeure clause and noted that each party is required to notify the other of any instances of disruption of service and perform corrective action. The clause is standard and should be considered acceptable to the tribe.

Ms. Ferrigni next referred to the dispute resolution clause which requests the two parties meet to discuss the issue at hand prior to invoking arbitration. Arbitration should only be chosen if it is agreeable to both parties. Under LGIA, if arbitration is not agreeable to the either party, then the dispute will be settled by litigation; however, in the language of the SGIA, parties may request that Federal Energy Regulatory Commission's (FERC's) Dispute Resolution Service (DRS) settle the issue. Ms. Ferrigni recommended the tribe's draft interconnect agreement pattern

itself after the language of the SGIA. Mr. Vaughn asked if the DRS process is binding. Ms. Ferrigni replied that the DRS process, by itself, would not be binding on the tribe and UniSource. Only if the tribe and UniSource establish a written and signed settlement agreement through the DRS or an alternative mediation process will it be binding on the parties. Mr. Vaughn asked how the parties would select a mediator. Ms. Ferrigni said she would do more research on the selection process.

Ms. Ferrigni stated that the governing law provisions, in both the LGIA and SGIA, require the use of state law at the point in which the interconnection is made to resolve disputes. However, given that the tribe is developing a new agreement, the tribe can request Hualapai Law and Hualapai Court. Mr. Vaughn asked if UniSource's standard clause would place the case in Mohave County Superior Court. This venue could be problematic for the tribe. Ms. Ferrigni said that the governing law provision is different than the choice of venue where the case will be heard. Mr. Vaughn requested that the contract clearly state the location of the court and the choice of governing law. This would most likely be an Arizona State Court and Arizona State Law.

To conclude, Ms Ferrigni reviewed tribal sovereign immunity. Neither the LGIA nor SGIA mention sovereign immunity. If UniSource requests a waiver of sovereign immunity greater than the tribe is likely to grant, then this should be discussed with tribal council before the project proceeds to the next step, e.g. surveys, environmental analysis, etc. The HTUA may request the contract include a limited waiver of sovereign immunity as discussed in previous board meetings.

**b. Hydropower contracts with Western**

- i. Follow up on Post-2017 Hoover power allocation and contracting** Mr. Davidson said that the Bureau of Reclamation has made comments on the draft benefit arrangement contract between the tribe and the Pechanga Band of Luiseno Indians from Temecula, California. Section 16 deals with disputes between the two tribes. Mr. Vaughn advised that the resolution period be increased from 30 to 60-days to read as follows: "If the dispute is not resolved within 60 days after the meeting and conferring, the Tribal Contractor and the Power Recipient will proceed to



arbitration.” Mr. Vaughn also asked if Pechanga has any issue with the new Bureau of Reclamation language in Section 8.1 regarding the penalties Pechanga would have to pay if they are unable to schedule the power. Mr. Davidson said he would follow up with Ms. Nu'uhiwa at Pechanga.

**c. Community Wi-Fi**

- i. Status of contract with Mural** Mr. Davidson said the Peach Springs Unified School District and Grand Canyon Resort Corporation have a dispute over another issue and this may prevent the use of the school’s communications infrastructure to set up the wi-fi system.

**6) Other Matters (Planning)**

- a. Review and possible action on bids for Cost of Service Study for HTUA electric service (BIA grant)** Mr. Davidson briefly reviewed the four bids for the Cost of Service study. Intergroup (82.3 points) and Baker Tilly (82.1 points) are in a virtual tie for first place based upon the composite ranking from six reviewers. Mr. Becherer added that Intergroup provided a very thorough proposal including a detailed discussion on Grand Canyon West. Their Canadian origin may be a drawback having not dealt with many American Indian tribes. By consensus the HTUA board members recommended to tribal council that Intergroup perform the Cost of Service study.
  
- b. Review and possible action on bids for Community-Scale Solar Array Feasibility Study for Peach Springs (BIA grant)** Mr. Davidson briefly reviewed the four bids for the Community-Scale Solar Array Feasibility study. Rock Gap Engineering (85.8 points) leads Baker Tilly (81.2 points) based upon the composite ranking from five reviewers. Mr. Davidson was concerned that Rock Gap may lack some of the financial analysis expertise that was shown by Baker Tilly and third-ranked ABB Power Consulting who also submitted an addendum lowering their bid amount by \$10,000 to allow for the System Impact Study required by Mohave Electric Cooperative (MEC). Mr. Vaughn and Mr. Navenma were impressed by Rock Gap’s technical knowledge in siting and designing a solar facility. Mr. Montana preferred Baker Tilly. After additional discussion and by consensus the HTUA board members recommended to tribal council that Rock Gap Engineering perform the Community-Scale Solar Array Feasibility Study.

c. **Announcements** No announcements.

**8) Set time and location for next meeting** The next meeting will be held on Wednesday, May 24, 2017, at 9:00 AM at the Hualapai Health Department, Peach Springs.

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