

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

September 13, 2017, 9:08 AM to 11:55 AM, Hualapai Health Department, Peach Springs.

Board members:

Charles Vaughn, Chairman – present

Joe Montana, Vice-Chairman – present

Jamie Navenma, Secretary – present

Rory Majenty – absent

Support personnel and guests:

Kevin Davidson, Planning Director

Andy Whitefield, BLM, Kingman Field Office (via telephone)

Lauren Ferrigni, Fennemore Craig (via telephone)

Patrick Black, Fennemore Craig (via telephone)

Patrick Bowman, Intergroup, Inc (via telephone)

Tom Mason, Rock Gap Engineering (via telephone)

Shaun Tsabetsaye, NextEra Energy (via telephone)

Bill Cyr, candidate for HTUA Board (via telephone at 11:00 AM)

1) Call to Order

2) Roll Call

3) Review and Approval of Minutes from August 16, 2017, meeting

Mr. Vaughn entertained a motion to approve the meeting minutes of August 16, 2017, as written. Mr. Montana made a motion to approve the minutes. Mr. Navenma seconded the motion. Motion carried 3-0-1.

4) Project Updates

a. Proposed Power Line to Grand Canyon West

i. Draft Interconnect agreement with UniSource and possible action on revision to Section 3.2

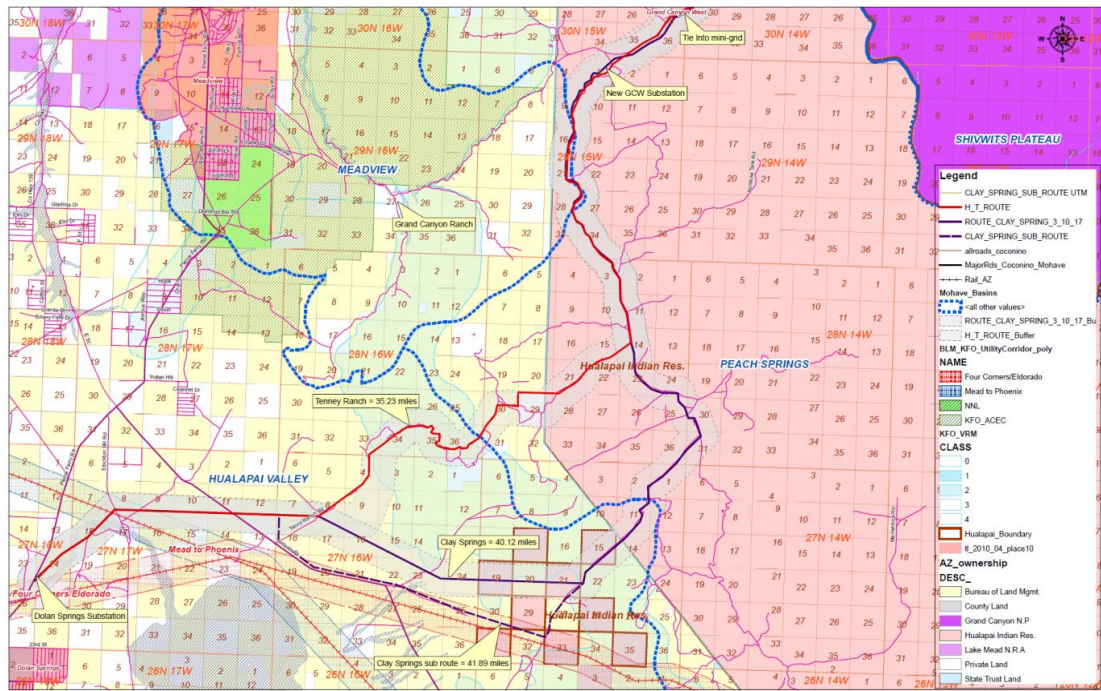
Mr. Davidson introduced the draft contract by saying the Board had tabled it at their August meeting to give more time for review. Under Default, Section 7.6.1, Mr. Vaughn questioned if 20 days was adequate time for a defaulting party to begin work on curing a problem once it had been given notice by the non-defaulting party. Mr. Black replied that 20 days was taken from UniSource's standard contract language so it should be adequate. Mr. Vaughn was concerned the HTUA Board may not be able to meet this time line if it were the defaulting party and if we should ask for additional time. Mr. Black suggested additional time for notice in Section 7.6.1.

In regard to Section 3.2, Mr. Black advised the language be open-ended without a termination date. Mr. Vaughn asked if Section 3.3.3 was written with residential service in mind, given that the power line will be physically disconnected. Mr. Black replied that the language also applies to commercial customers. Mr. Vaughn asked if the termination provisions are adequate for the HTUA. Mr. Black said he would provide a new red-line draft of the contract for the next HTUA Board meeting. Mr. Vaughn asked if last's month questions on any conflicts state law had been addressed. Mr. Ferrigni said yes and that a state court would be unlikely to award a higher dollar amount for damages than those specified in Section 12.13 of the contract. Contract interpretation is governed by State law. Courts have consistently held that limitations on remedies provided for in a contract are generally enforceable. Typically, such provisions are not enforceable only where a Court finds that the provision violates legislation or public policy. Public policy consideration looks at whether enforcement would be injurious to the public welfare. Courts are hesitant to declare contract provisions invalid based on public policy grounds.

Mr. Vaughn asked if the wording in Section 12.13 that omits consequential, incidental, special and punitive damages from the remedy amount is common for arbitration. Mr. Black said the language on what may constitute damages is common for arbitration, mediation and in a court of law. Mr. Montana asked if we have determined the amount of monetary damages. Mr. Black said this dollar amount will be negotiated with UniSource. Mr. Vaughn requested the contract be tabled for the review until the next Board meeting. Mr. Montana seconded the motion. Motion passed 3-0-1.

ii. **Status of Right-of-Way application and Plan of Development for BLM** Mr. Davidson said the revised SF-299 application for the right-of-way across BLM land and the Plan of Development (POD) which describes the power line design and construction in detail was re-submitted to Mr. Andy Whitefield at the BLM’s Kingman Field Office on September 1, 2017. Mr. Whitefield said the SF-299 and POD are in review and he will follow-up with Mr. Davidson in more detail after the Board meeting; however, there are no apparent defects in the application and proposal that would prevent the project from moving forward.

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



iii. **RFPs for power line survey and environmental assessment** Mr. Davidson said the RFP for the survey was published earlier this week with bids due on October 13, 2017. The RFP requests the bidders break out the additional cost of surveying the Clay Springs route in addition to the Tenney Ranch Road route which is the shorter of the two. Mr. Vaughn questioned the need to survey the Clay Springs route. Mr. Davidson replied that Councilman Clay Bravo is looking forward to seeing, if not requesting, the analysis of the Clay Springs route as part of the environmental assessment for the power line route, so such analysis may help the HTUA’s future efforts in general. The tribe typically request three alternatives when performing an environmental review under the Hualapai Environmental Review Code. Mr. Vaughn asked if the BLM has such a requirement for public lands. Mr. Davidson will follow-up with the BLM. Mr.

Montana asked if a route deviation, for example going around a cultural site, could be counted as an alternate route. There should be extra money in the consultant's budget to go around these sites.

Mr. Davidson next referred to the draft RFP for the environmental review of the power line in the packet for the Board's review. The RFP also includes the Clay Springs route as part of the analysis and asks for the cost breakdown for adding the route. In addition, the Hualapai Cultural Resources Department (HCRD) and Tribal Historic Preservation Officer (THPO) have asked that they be hired to perform the cultural survey of the new power line route on the reservation. The consultant would sub-contract this portion of the work to the HCRD and the THPO. By consensus, the HTUA Board gave approval to publish the RFP.

b. Cost of Service Study

- i. Progress to Date** Mr. Bowman of Intergroup began his presentation by reviewing the three tasks from last month's Board meeting: 1) follow-up with MEC on their Operations & Maintenance (O&M) costs, 2) review O&M costs of comparable small-scale utilities, and 3) review MEC's reliability issues and see if the HTUA could enhance system reliability by operating the electric distribution system. For the first item, MEC is still collecting data and is asking for additional payment to do so. Mr. Davidson said this is an issue for the Board to act upon and the question is next on the agenda. For the second task, Mr. Bowman said of the five utilities referenced in the 17-page memo included in the Board's agenda packet, the Pleasant Hill Community Line offers the best comparison to the HTUA being about 80 percent of the size of the HTUA's potential service area. Pleasant Hill operates approximately 30 miles of power line without full-time staff, has no debt and offers similar electricity rates as those currently charged by MEC. The other four utilities have full-time staff and charge much higher rates. Pleasant Hill's annual expense for operations, mostly power purchases, and capital replacement is \$240,000 per year. Given the HTUA's annual budget limitation of \$170,000 to keep electricity rates comparable to MEC's, the HTUA is not economically sustainable without a significant budget increase which will come mostly from a rate increase to its customers and probably with no better service than customers currently receive from MEC. Mr. Vaughn said that customer service is the main issue given the long lead-times needed to access and then repair damage to

remote sub-stations and power lines many being on poorly maintained roads or even trails. Mr. Bowman asked if the HTUA could solve the reliability issues if it owned and operated the distribution system. Most likely not if electricity rates cannot be increased to cover additional capital improvements and have repair crews on stand-by.

To follow-up on the cause of system failures not attributed to MEC, Mr. Bowman reviewed information from APS on their Round Valley Substation that showed only 12 outages over a 10 year period. The average outage lasted less 60 minutes, with the exception of one outage attributed to Western which lasted 20 hours in January of 2010. This data shows that most of the reliability issues that result in power outages lasting hours at a time can be attributed to MEC. Filing a complaint with the ACC may be the next logical step. In conclusion, Mr. Bowman said purchasing the distribution system from MEC will not solve the reliability issue. Mr. Vaughn advised we discuss the reliability issues formally with MEC and see if MEC can supply Peach Springs with electricity from the Kingman Substation in instances when the Nelson and Round Valley Substations are off-line. Does the HTUA want to acquire the distribution line from these substations and then provide power to customers living off of the reservation? Mr. Mason noted that the community-scale solar array he is helping design (see below) could help in reducing the number of brown-outs and possible black-outs if they occurred during the day. Mr. Davidson advised the HTUA to think strategically because he and Mr. Mason are also looking at negotiating a favorable PPA with MEC and would not want to have it fall through due to long-standing issues that could be dealt with at a later date.

- ii. **Request to use HTUA funds to pay MEC for data needed to complete Cost of Service Study** Mr. Davidson noted that MEC is requesting \$6,100 to pay for the data request for their electrical distribution system information (book value, cost of power delivery, operational costs) on the Hualapai Reservation, namely Peach Springs. Mr. Vaughn made a motion to approve the budget expense request to complete the cost of service study. Mr. Montana seconded the motion. Motion approved 2-1-1, with Mr. Vaughn voting “no” citing the political environment that the HTUA would be thrust into.

c. Community-Scale Solar Array Feasibility Study

- i. Progress to Date and Draft Power Purchase Agreement** Mr. Mason reviewed the sites and noted that each had good solar potential. His team will soon be applying for a permit to perform the soils testing for each site. Mr. Davidson said the THPO's review of the project locations showed no cultural sites. Given the reliability issues with MEC, Mr. Vaughn asked if the solar array could help reduce brown-outs if they occurred at night. Mr. Mason said "no." Mr. Davidson said the community-scale solar array is designed to supply that part of the Peach Springs community that lies east of the MEC switch in Chinatown. This is most of the load on the reservation.

Moving to the review of the draft Power Purchase Agreement (PPA), Mr. Vaughn said it should contain a provision for early termination. To this, Mr. Black said the PPA should also address sovereign immunity and clarify that electricity is being sold at the wholesale rate. Mr. Mason noted that the draft PPA was based upon the one signed between the Northern Pueblos Housing Authority and Kit Carson Electric Cooperative of New Mexico. Mr. Vaughn said the acreage of the project and value of the lease should be evaluated in light of the limits of the Hualapai Constitution. Mr. Black said given the small size of the lease area value, it should fit within the limits of the tribe's Constitution and not trigger a referendum vote. The PPA will be between the HTUA and MEC with the HTUA owning the solar array. Mr. Vaughn said the \$250,000 liability limit prescribed in Article XVI should be addressed as well in case the tribe seeks financing for the solar array. Mr. Black said he would review this provision of the Constitution. Mr. Mason concluded by saying the PPA's price will include an escalation clause to be adjusted every five years. Mr. Black said tying the escalation clause to the Consumer Price Index is an acceptable means of determining the dollar amount for the five-year adjustment.

d. Community Wi-Fi

- i. Exploration of New Internet Service with ACC Communications to provide Wireless Telecommunications for Peach Springs** To follow-up on the quest to bring more internet service to Peach Springs in general and to Hualapai students in particular, Mr. Davidson has contacted ACC Business, the wholesale provider of AT&T, to look at the possibility of tapping the

transcontinental fiber optic line that passes through the reservation. ACC Communications has asked the tribe to sign a non-binding service contract so they can begin the engineering assessment for making a physical connection between the fiber optic line and the tribe. If the construction cost is too high, the tribe may back out of the deal. Ms. Ferrigni noted that the language in the standard contract requires the use of New York State law and only provides for binding arbitration which is contrary to tribal sovereignty. Do the existing internet contracts with Frontier and Wecom have a “first right of refusal” provision which requires the tribe to still conduct business with these providers?

Mr. Black suggested the HTUA perform a cost benefit analysis between 1) the existing internet service provided by Frontier and Wecom, 2) the cost the tribe would pay for early contract termination with these two providers, and 3) the new cost of the ACC Business contract including cost to make the physical connection to the fiber optic line. Mr. Vaughn asked who would perform O&M on the new system. Mr. Davidson said the O&M would be under the purview of the HTUA. Also, Mr. Davidson noted that the Frontier contract is year to year, with the next term due for renewal on January 10, 2018. The two Wecom contracts have a 50% of the remaining value buyout clause. Both contracts will terminate in March of 2020. Estimated buyout amounts if terminated in October are \$171,825 and \$150,800 for GCRC’s operations in Peach springs and Grand Canyon West, respectively. Mr. Vaughn recalled a small building that was located west of his corral just north of town. The building was removed but the foundation remains. This structure may be associated with AT&T’s operations. Mr. Davidson said he will prepare the cost benefit analysis for the next HTUA Board meeting and then present it to tribal council in November.

5) Other Matters (Planning)

- a. **Presentation by NextEra for utility-scale solar array along APS 500 KV line** Mr. Davidson introduced Mr. Shaun Tsabetsaye, of Zuni Pueblo, project manager for NextEra’s Tribal Renewable Energy Development Program. Mr. Tsabetsaye began by saying that NextEra has in operation nearly 46 GWs of energy producing facilities in 30 states and Canada and had \$16.2 billion in annual revenue in 2016. NextEra is seeking to partner with a Native American tribe on a renewable energy venture. Mr. Tsabetsaye has provided public outreach and cultural

consultations to tribes, including work with the Penobscot Nation and Colorado River Indian Tribe on locating transmission lines. NextEra will cover the full costs of power plant development and can finance its own projects. NextEra invested some \$30 billion in energy development in 2016.

For tribal projects, NextEra offers to lease tribal lands and also make royalty payments to the tribe. Having direct access to an electrical transmission line is critical to siting these energy production facilities. For sizing and locating a solar facility, NextEra typically requires seven acres per each MW of capacity. NextEra is proposing a 200 MW facility, possibly in two, 100 MW phases on the Hualapai Reservation and adjoining trust lands. The first location is on Hualapai Tribal Trust Sections 29 and 31 of T27N, R15W along Clay Springs Road. The project's land area would be two-fifths Hualapai and three-fifths BLM (Section 30, T27N, R15W and Sections 25 and 36, T27N, R16W). The site offers good access to Western's Mead-Liberty 345 KV and Mead-Phoenix 500 KV transmission lines as well as Arizona Public Service's Eldorado-Moenkopi 500 KV transmission line, the latter traversing Trust Section 31. Even though the site has good access to transmission and is on level terrain, it is not ideal from a permitting point of view because NextEra would also have to navigate through the BLM's permitting process in addition to the tribe's permitting process.

Mr. Tsabetsaye reviewed the Plain Tank site next. This site has good access to the APS 500 KV transmission line and also has suitable topography for a solar array. The site is preferred by NextEra because the land is wholly on the reservation. Mr. Vaughn asked Mr. Tsabetsaye about his experience with tribes and how he and NextEra have handled the issue of visual blight. Mr. Tsabetsaye said that the visual impacts of renewable energy development on the land are difficult to mitigate, especially for wind farms. NextEra must consider a tribe's concerns on visual impacts and on the history of the site. NextEra will defer to the tribe's wishes on whether or not to develop a renewable energy project on its lands.

Mr. Tsabetsaye next reviewed pre-construction, construction and operations of a solar farm. Pre-construction activities would include assessing value of the land and then negotiating a lease with the tribe. Part of the land value assessment includes placing solar monitoring station(s) on the land to determine potential solar productivity of the site, with 12 to 18 months

of monitoring recommended. The solar productivity potential would be used to calculate lease payments to the tribe. Mr. Vaughn asked how the solar farm would benefit the tribe beyond just receiving lease payments. Mr. Tsabetsaye said NextEra could make royalty payments to the tribe based upon annual energy production. Hualapai could also entertain an ownership interest in the solar farm to take part of the profits; however, a 100 MW to 200 MW facility which is estimated to cost between \$160 million and \$260 million dollars to construct, is an amount which is typically beyond the ability of most tribes to buy into. On a more modest scale, NextEra could construct a 1 MW community-scale solar array as part of the overall solar project and give it to the tribe to operate.

Mr. Vaughn asked how the tribe's disputed location for its western boundary line would impact the solar array proposal in the Clay Springs area. The Tribe's claim to the BLM sections in this area could be an issue on whose jurisdiction the land is actually under. Mr. Tsabetsaye said locating the solar farm along Clay Springs road is problematic given the mixed ownership with BLM and subjecting a lease agreement to two different jurisdictions. Mr. Vaughn asked if NextEra had encountered any issues with other tribes when proposing energy projects on their reservations. Mr. Tsabetsaye noted that Hualapai would be the first tribe that NextEra will work with on developing a utility-scale renewable energy project. However, he is currently working with the Hualapai THPO on mitigation for the Perrin Ranch wind farm in Coconino County. Mr. Black commented that NextEra is a successful solar developer and has a good reputation in the energy industry.

To conclude the review of potential sites on Hualapai, Mr. Tsabetsaye turned to the site on Route 18. The site is has good access to the APS 500 KV line and is on rolling terrain with sparse vegetation. This site is, however, located in prime pasture area for Grazing District No. 3. Each of the three sites would include at least 3,000 acres. Mr. Vaughn noted the limitation in the Hualapai Constitution (Article V, Section N) that requires a referendum vote if the tribe seeks to enter into a lease of tribal lands involving more than 1,000 acres or with a value of more than \$50,000. Given the high percentage of voter participation required to approve such a lease, the project may not be able to proceed beyond this point in pre-construction activities. Mr. Tsabetsaye said a letter of intent from the tribe to start the process and set-up the solar monitoring stations would be an appropriate next step. Once the solar data has been analyzed,

a discussion could be had on the lease arrangement. Mr. Davidson advised that the parties arrange for a field trip to visit these three sites as precursor to drafting a letter of intent. Mr. Davidson will set the field trip up before the next HTUA Board meeting.

- b. Discussion and possible action on recommendation to Tribal Council on re-appointment of Board members or possible replacement candidates (Section 202.b.3, HTUA Ordinance)** Mr. Davidson introduced Mr. Bill Cyr who is applying for a position on the HTUA Board. Mr. Cyr noted he had 10 years of experience in managing the Aha-Macav Power System (AMPS) and five years operating the Fort Mojave Tribal Utility Authority. He helped turn both utilities around by improving service, lowering customer's rates and was able to make AMPS debt-free. He also worked with Western on building a 69 KV power line to Needles, California. Prior to employment with the Fort Mojave Indian Tribe (FMIT), he spent 22 years with Maine Public Service Company as an engineer to eventually become Senior Vice-President of engineering and operations.

Mr. Vaughn asked how much water the South Point/Calpine power plant used for electric generation. Mr. Cyr said the power plant is a combined-cycle natural gas turbine plant with water for the steam turbine heated by natural gas combustion. The power plant is located on the FMIT Reservation and land is leased by the tribe. Mr. Vaughn asked how much of the power plant's revenue the FMIT received. He would like to know the arrangement in order to help structure a lease/royalty payment for Hualapai with a would-be power producer. Mr. Cyr said he has success in negotiating contracts advantageous to tribes. He also noted that the stipulations in the fiber optic contract with AT&T may have to be accepted by the tribe in order receive the benefit of greatly enhancing access to the internet in Peach Springs.

Mr. Cyr also noted he had a dozen years of experience in developing solar arrays on Indian lands. Mr. Vaughn asked Mr. Cyr about new solar energy technologies that allow the photovoltaic cells to be placed on trees and other vertical structures found in a community. Mr. Cyr said he had seen such applications on light poles.

In regard to the Cost of Service Study being performed by Intergroup, Mr. Cyr said he was able to successfully negotiate the purchase of some of MEC's assets within AMPS service area. He

also knows Mr. Tyler Carlson, CEO of MEC. Mr. Cyr would like to help the HTUA provide electric service to the residents of Peach Springs and at Grand Canyon West. The HTUA should be not be hesitant to use the tribe's sovereign immunity in contract negotiations. Mr. Montana opined that Mr. Cyr would make a good general manager for the HTUA as well. By consensus, the Board recommended Mr. Cyr to Chairman Clarke for appointment to the HTUA Board. Mr. Davidson will follow-up with Chairman Clarke and schedule the confirmation hearing at the next regular council meeting on October 7, 2017.

Mr. Davidson asked the HTUA Board members if they have any objection to having Mr. Montana and Mr. Majenty reappointed to the HTUA Board. Hearing no objections, Mr. Davidson said he would present their re-appointment requests to tribal council at their next regular meeting on October 7, 2017.

c. Hoover FAX and Technical Review Committee Mr. Davidson noted the Hoover Dam Technical Review Committee is meeting as we speak at the Spillway House. The meeting covers the Bureau of Reclamation's FY 2017 accomplishments and plans for FY 2018. Western will also present a budget update and potential rate changes for FY 2018 and FY 2019.

d. Announcements Mr. Davidson announced the Department of Energy, Office of Indian Energy is having their annual program review in November where each tribe's renewable energy achievements are highlighted. The event allows tribes to network, share experiences and learn from each other in developing renewable energy projects. No other announcements.

6) Set time and location for next meeting The next meeting will be held on Wednesday, October 18, 2017, at 9:00 AM at the Hualapai Health Department, Peach Springs.

7) Adjourned at 11:55 AM