

Hualapai Tribal Utility Authority (HTUA) Meeting Minutes

November 23, 2016, 9:22 AM to 10:42 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)

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

1) Call to Order

2) Roll Call

3) Review and Approval of Minutes from September 20, 2016, and October 18, 2016, meetings

In reviewing the September 20, 2016, meeting minutes, Mr. Vaughn asked about the need for the “under-build” on the proposed 69 KV power line. Mr. Becherer said the under-build will allow electric service to Meadview in the current 12.5 KV configuration and that UniSource will be paying for this part of the power line project; however, the HTUA should not be paying UniSource for the taller poles to accommodate the under-build. Mr. Becherer also added that the under-build will not be required if the Tenney Ranch Road alternative route is chosen. Mr. Navenma made a motion to approve the minutes with minor corrections. Mr. Montana seconded the motion. Motion was approved 3-0-1 with Mr. Majenty not voting. Mr. Vaughn made a motion to approve the October 18, 2016, meeting minutes. Motion seconded by Mr. Navenma. Motion carried 3-0-1 with Mr. Majenty abstaining.

4) **Project Updates**

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

i. **Outcome of interviews on Environmental Assessment and Tribal Council action** Mr. Davidson reviewed the outcome of the interviews of the three firms chosen to make presentations to the HTUA and UniSource on Friday November 4, 2016. Transcon had the best overall presentation, a good working relationship with the BLM Kingman Field Office (KFO) and the shortest project schedule. The ESM presentation was also very good, but the firm does not have the requisite experience with either the BLM, KFO or preparing National Environmental Policy Act (NEPA) documents for the USDA. The presentation by SWCA was ranked last even though the firm has good experience in working with the BLM and on USDA-funded projects. Mr. Davidson said he presented the results of the interviews to Tribal Council at their regular meeting on Saturday, November 5, 2016, and asked if the HTUA could get an advance approval on this portion of its FY 2017 budget to start the NEPA process; however, Council tabled the item until the budget committee reviews and makes a recommendation on an overall operating budget for the tribe for 2017.

ii. **Review and possible action on draft Environmental Review Funding Agreement with UniSource including limited waiver of sovereign immunity clause** Mr. Davidson reviewed the UniSource draft contract agreement which the HTUA will sign with UniSource to cover the cost of the consultant services as well as the internal costs incurred by UniSource to manage the project. Mr. Black suggested that the HTUA ask for a dollar cap on budget expenses (Section 4.3) and require the HTUA's consent prior to UniSource approving additional contract costs, e.g. change orders. The HTUA should obtain hourly rates and material costs from UniSource for those staff and resources involved in the contract. Mr. Becherer asked what amount of in-kind support for the project we should expect UniSource to offer. Mr. Davidson said that based on the 76 mile length of the two power line alternatives, UniSource may be able to support about 16% of the project costs for the approximately 12 miles of under-build. Mr. Vaughn noted that Section 8.9 contains a limited waiver of sovereign immunity and that it would be wise to have Tribal Council concurrence before signing. Should this language include mediation as referred to in Section 4.3? Mr. Black said that if a price cap is put into the contract, then mediation is not

required; however, if a cap is not agreed to, then the option for mediation should be added to Section 8.9. If mediation is not successful, the contract would be considered in default per Section 7. Mr. Vaughn asked how the dispute would be resolved. Mr. Black said, ideally, the HTUA would negotiate a cap and avoid disputed costs. Mr. Vaughn asked what the likelihood would of being taken to Court under Section 7.3? Mr. Black said it would be difficult to prove that UniSource's extra cost are unjustified, so the issue will most likely be settled before going court. Mr. Black noted that arbitration and litigation would be performed in state court. The consensus of the HTUA Board is for Mr. Davidson and Mr. Black to negotiate a cost cap with UniSource.

iii. Review and possible action on bids for Construction Work Plan and Long Range Financial

Forecast in support of loan application Mr. Davidson briefly reviewed the bids for the Construction Work Plan and the Long Range Financial Forecast. The bid by T&D Services for the Construction Work Plan and the bid by Cobb Consulting for the Long Range Financial Forecast both seem to be adequate and meet the budget allowance for each line item. Mr. Becherer said he has yet to make a full review of the four bids received in the last 24 hours, but will do so in the next week. The HTUA Board voted to table the review of the bids and selection of the winning bidder until the next Board meeting.

iv. Diamond Bar Road Studies Mr. Davidson said that Hualapai Public Works continues to work with the Mohave County Public Works Department to have 4,000 linear feet of additional guardrail installed along the roadway and to provide drainage improvements at various culverts, a prerequisite for the County to assume maintenance of the roadway. Mr. Vaughn asked about the cost savings in building the power line on the Tenney Ranch Road route. Mr. Becherer estimated the savings would be about three million dollars and another million dollars saved by avoiding the tax gross-up costs. The Tenney Ranch Road route would also avoid the issues associated with the Joshua Tree forest and have less of a visual impact on the BLM's Class II view shed. Mr. Black said the tribe can pay some three million dollars in tax gross-up and have the tax mostly rebated over a five-year period or pay just over one million dollars up-front with no rebate option. Mr. Becherer said that the gross-up cost maybe as high as six million dollars if the UniSource selects the most expensive "hot-build" option along Pierce Ferry Road.

b. Follow up on Post-2017 Hoover power allocation and contracting

i. Benefit Arrangement with Pechanga and Western Mr. Davidson next reviewed the draft benefit arrangement contract from the Pechanga Band of Luiseno Indians from Temecula California courtesy of Western. Tribal Council approved the draft contract at its November 5, 2016, regular meeting. The Bureau of Reclamation is also reviewing the contract but is not expected to make substantive changes.

ii. Tribe's representation on Boulder Canyon Project technical, operating and coordinating committees Mr. Davidson referred to the table provided by Western that requests tribal and HTUA membership on the three committees that help operate the Boulder Canyon Project. Mr. Vaughn asked about the qualifications for the committee members. Mr. Davidson reviewed the e-mail from Western as follows: 1) Technical Review Committee (TRC) - participants usually have a background in engineering, operations, or other technical capabilities, 2) Engineering & Operating Committee (E&OC) - participants typically consist of program managers, and 3) Coordinating Committee - participants to consist of program or senior managers who have decision-making authority to resolve disputes arising from the actions of the TRC or E&OC. Mr. Davidson noted that the Tribal Council Resolution No. 95-2016 designated the Hualapai Tribal Chairman or Vice-Chairman, the HTUA Chairman or Vice-Chairman and the HTUA General Manager to be assigned to these three committees.

iii. Bill Credit Agreement with Mohave Electric Cooperative Mr. Davidson noted that Tribal Council Resolution No. 96-2016 formally approved the bill credit with Mohave Electric Cooperative (MEC) and that the MEC Board will consider the bill credit at their December meeting.

5) Review of FY 2017 Budget Request (Planning)

a. Budget amendment Mr. Davidson noted that the dollar amount for the NEPA study for the power line to Grand Canyon West has been increased from \$150,000 to \$165,000 in the FY 2017 budget request due to the requirement from UniSource for the HTUA to cover their internal costs for the study. Mr. Majenty made a motion to approve the budget request. Motion seconded by Mr. Montana. Motion carried 4-0.

b. Update on budget request to Finance Department Mr. Davidson said that he turned the budget into Finance on November 10, 2016. The budget will be reviewed by the tribe's budget committee. This review should occur in the next few weeks.

6) Other Matters (Planning)

a. Review and possible action on Standard Contract Clause for HTUA Mr. Davidson gave an overview of the draft standard clause as follows:

Limited Waiver of Sovereign Immunity. HTUA agrees to a limited waiver of sovereign immunity solely as to arbitration of and litigation in state court for enforcement of this Agreement. Aside from this limited waiver, nothing in this Agreement, or in any current or future attachments, exhibits, or amendments, is intended to be or shall be construed as a waiver of the HTUA's sovereign immunity, and the Parties understand and agree that neither this Agreement nor any underlying law or procedure abrogates or waives the HTUA's sovereign immunity from suit in any state or federal court ~~or~~ confers jurisdiction on any such court.

Mr. Black said it would be best to have standard wording vs. creating a custom addendum for each contract. This would require standard clauses for a contract to be disputed in state court or federal court. The proposed language is based upon the Arizona Power Authority contract for Schedule D power. Federal court may be added after mention of state court in the first sentence. This language would be used for smaller contracts that the HTUA decides to enter into. Special language would be drafted for the multi-million dollar contracts. Mr. Vaughn asked that "Standard" be added to the beginning of the title to differentiate it from the bigger contracts that will have special language. Mr. Black said he would revise the language accordingly, pick up any typographical errors, and have it ready for the next HTUA Board meeting.

b. Review and possible action on draft 2016 Annual Report to Tribal Council per Section 110, HTUA Ordinance Mr. Davidson reviewed the highlights of the draft 2016 Annual Report and congratulated the board members for achieving much in 2016, namely amending the Hualapai Constitution to allow the Tribe Council to utilize limited waivers of sovereign immunity and securing

Boulder Canyon Project hydropower contracts. Mr. Navenma noted a typographical error on page 9. Mr. Montana made a motion to approve the 2016 Annual Report as amended. Mr. Navenma seconded the motion. Motion was approved 4-0.

c. Announcements Mr. Davidson gave a brief review of the discussion held on November 22, 2016, with staff from Public Services, Natural Resources, Planning and the Tribal Chairman to develop a solar facility to serve the Hualapai people. Providing back-up power to the community when the electric grid is incapacitated was also discussed at the meeting. To help this project along, the tribe, through the help of the Planning Department, has received a \$75,000 grant from BIA, DEMD to perform a Community-Scale Solar Feasibility Study for the Hualapai Indian Tribe. In addition the tribe has also received a \$32,960 grant from DEMD to perform a cost of service study which will help the HTUA set electric rates. These studies will be performed in 2017.

Mr. Vaughn asked for the web link to the New Directions in Indian Land Management conference at NAU on November 28th to the 30th.

7) Set time and location for next meeting

The next meeting will be held on December 21, 2016, at 9:00 AM at the Hualapai Health Department, Peach Springs.

8) Adjourned at 10:42 AM