

## EXECUTIVE SUMMARY

### 1.0 Overview

This report presents the accounting records for 2010 for the individual municipalities, groups of municipalities and other public waste management districts or entities (together, the Charter Municipalities) that have each signed (or whose members have signed) a long-term waste disposal agreement (the Agreement) with Penobscot Energy Recovery Company, Limited Partnership (PERC or the Partnership); that are members of the Municipal Review Committee, Inc. (the MRC), and that are treated as individual accounting units by the MRC. The Agreement provides each Charter Municipality with the right to dispose of solid waste originating within its borders at the refuse-derived fuel (RDF) waste-to-energy facility (the Facility) in Orrington, Maine, that is owned and operated by PERC.

The Charter Municipalities can be divided into the following two groups that represent 187 Maine communities as shown in Figure ES-1:

- The Equity Charter Municipalities, which include 80 individual municipalities and six public waste management districts or entities that executed an Agreement with PERC in or prior to 1998. These 86 contracting entities represented a total of 118 Maine municipalities in 2010.
- The New Charter Municipalities, which include 45 individual municipalities and two public waste management districts or entities that executed an Agreement with PERC after 1998. These 47 contracting entities represented a total of 69 Maine municipalities in 2010.

In 1998, the Agreements of the Equity Charter Municipalities were amended, restated and extended to 2018 as part of a larger settlement agreement that also involved the refinancing of PERC's outstanding debt, and the renegotiation of the Power Purchase Agreement with Bangor Hydro Electric Company (Bangor Hydro), which purchases the electrical output of the Facility from PERC. As part of that settlement agreement, the Equity Charter Municipalities negotiated to receive compensation from PERC and Bangor Hydro that includes the following (see Figure ES-2):

- **Performance Credits from Facility operations.** The Equity Charter Municipalities, PERC and Bangor Hydro are each entitled to receive one third of the net distributable cash generated as the result of the operation of the PERC Facility. The share of such cash distributed to Charter Municipalities is known as Performance Credits. The Performance Credits consist of one-third of all revenue received by the Trustee on behalf of the Facility after (a) payment of debt service; (b) payment of Facility operating costs, and (c) satisfaction of other obligations set forth in the Trust Indenture and the Surplus Cash Agreement, which were negotiated as part of the 1998

refinancing. Performance Credits are transferred into the **Custody Account**, currently held at Bangor Savings Bank.

- **Promissory Note from Bangor Hydro.** As part of the aforementioned settlement agreement, the Equity Charter Municipalities received one million warrants to purchase Bangor Hydro common stock at a strike price of \$7.00 per share (the **Warrants**). The Agreements require that the proceeds of the sales of the Warrants be distributed to the Equity Charter Municipalities.

On October 10, 2001, Bangor Hydro completed a merger with a wholly-owned subsidiary of Emera, Inc. At that time, the MRC exercised all of the outstanding warrants in exchange for a **Promissory Note** from Bangor Hydro in the amount of the value of the outstanding warrants. The Promissory Note provided for payment of principal and interest to the MRC on a quarterly basis through May 1, 2008. The terms of the Promissory Note provide for payments of fixed amounts of principal with any Note Year (July 1 through June 30), but allow payments of principal to be deferred to subsequent quarters within any given Note Year. Interest on the unpaid balance was paid at a rate of five percent per annum.

Bangor Hydro met its obligations to make payments under the Promissory Note by wiring funds to the **Custody Account** on a quarterly basis. That obligation was satisfied as of May 1, 2008, and the Note no longer appears herein as an asset.

As part of the aforementioned settlement agreement, the Equity Charter Municipalities obtained the right to use Performance Credits to purchase limited partnership shares in the Partnership. The Equity Charter Municipalities can implement such purchases of shares in PERC by diverting Performance Credits directly to the Trustee in order to prepay a portion of PERC's outstanding bonds (a process known as **Bond Prepayment**) or by purchasing some of PERC's outstanding bonds directly from the bondholders and presenting such bonds to the Trustee for retirement (which has the equivalent effect of Bond Prepayment, but might be implemented at a cost to the Equity Charter Municipalities that is less than the par value of the bonds).

The Equity Charter Municipalities, in their role as limited partners, are entitled to receive a share of the cash distributions from the Partnership, or **Net Cash Flow**, in proportion to the limited partnership shares previously purchased. Net Cash Flow is determined on the basis of the allocation of PERC's share of Performance Credits among the general and limited partners of the Partnership, consistent with the Fourth Amended and Restated Agreement of Limited Partnership for PERC (the Partnership Agreement).

In 2000, the MRC voted to allocate to the New Charter Municipalities a share of the Performance Credits received by the Equity Charter Municipalities as required to sustain a target value of \$54 per ton (see below). The New Charter Municipalities do not have the right to use Performance Credits to purchase limited partnership shares in the Partnership, nor are they entitled to receive any share of Net Cash Flow or of the reserve accounts.

In addition to the above, the Charter Municipalities have a one-third claim on the balances in three reserve funds held by the Trustee to the bond financing: namely, the Capital Improvement Fund, the Operating Reserve Account and the Capital Reserve Account. These funds are not scheduled to be released until all of the bonds are retired and, being considered conditional assets under generally accepted accounting principles, are not included in net assets herein.

## 2.0 The Municipal Review Committee

Pursuant to Article XII of the Agreements, the Charter Municipalities formed the Municipal Review Committee, Inc. (the MRC or the Committee) to serve as their representative in administering, implementing and enforcing the various provisions of the Agreements. The duties of the MRC as defined in its by-laws include the following:

- Review, verify calculation of, receive or direct Performance Credits and determine the allocation, use and application thereof.
- Purchase, sell and otherwise deal with the limited partnership shares in PERC on behalf of the Charter Municipalities, as well as the Net Cash Flow and the share of the Borrower Reserve Account related to ownership of such limited partnership shares.
- Receive, hold, exchange, sell, exercise or otherwise administer and deal with the Warrants.
- Manage the Custody Account as an escrow account for accrued, but unpaid, Performance Credits.
- Otherwise represent and act as liaison for the Charter Municipalities in dealings with PERC and Bangor Hydro.

The MRC Board has approved a set of Transaction Guidelines to provide guidance in the implementation of the aforementioned tasks. A key guideline for 2010 was for the MRC to administer the assets of the Charter Municipalities such that the net cost of disposal does not exceed a **target value** of \$45 per ton on a system-wide average basis for Equity Charter Municipalities, or \$54 per ton for New Charter Municipalities. The MRC ensures that sufficient cash (in the form of Performance Credits, Net Cash Flow and proceeds of the sales of Bangor Hydro warrants, which were exchanged for the Promissory Note) is distributed to the Charter Municipalities to offset the difference between the tipping fee paid for waste disposal under the Agreements and the applicable target value. Performance Credits that are available in excess of the amounts distributed are either held in reserve in the Custody Account, invested in the Tip Fee Stabilization Fund (see below), or used for other purposes consistent with the Agreements, the MRC By-Laws and the vote of the Charter Municipalities.

In January 2001, the MRC Board of Directors voted to set aside a portion of Performance Credits in a tip fee stabilization fund for distribution in future quarters. Each quarter, the

funds are transferred to a special investment account under the management of Merrill Merchants Bank, known as the **Tip Fee Stabilization Fund**.

In 2004, the MRC Board of Directors voted to set aside funds from an extraordinary payment of Performance Credits for use by the MRC in the event of contingencies. Such funds were transferred to a special investment account under the management of Merrill Merchants Bank, known as the **MRC Operating Budget Stabilization Fund**. Funds released from reserves by the Trustee in December, 2005, were also deposited in the MRC Operating Stabilization Fund by vote of the MRC Board.

### 3.0 MRC Accounting Records

The accounting records compiled herein document the MRC's management of the aforementioned cash accounts and other assets and cash flows in 2010 on behalf of the Charter Municipalities. Section 4.0 presents the cash balances in the accounts held on behalf of the Charter Municipalities, including the Custody Account, the Tip Fee Stabilization Fund and the MRC Operating Budget Stabilization Fund, and describes the cash flows into and out of these accounts in 2010. Section 5.0 presents the value and changes in status of the other Charter Municipality assets in 2010. Section 6.0 presents the allocation of the cash accounts and other assets among the various Charter Municipalities. The cash flows among the various entities and accounts are illustrated in Figure ES-2.

Actual financial results for 2010 are described in the section of this report entitled "Management Discussion and Analysis." Table 1 provides a balance sheet for the PERC-related assets and liabilities of the Charter Municipalities for 2010. Table 2 summarizes the revenues and expenses and reconciles the excess of revenues over expenses with changes in the general fund balance for 2010.

The detailed accounting records, including copies of bank statements for all accounts held by the Trustee on behalf of the Charter Municipalities for the start and close of 2010, as well as a complete detailed bank statement of transactions, with supporting information, for the Custody Account held by the MRC and the basis for the allocations of cash flows and assets among the individual Charter Municipalities, are presented in Appendixes A through C. Appendix D presents information on the Guaranteed Annual Tonnage (GAT) that each Charter Municipality is obligated to deliver to the Facility pursuant to the Agreements. The GATs are utilized along with data on historical waste deliveries to allocate cash flows among Charter Municipalities. The Transaction Guidelines are presented in Appendix E. Minutes from quarterly meetings of the MRC Board of Directors are presented in Appendix F.

The accounting records presented herein compile information, in the form of financial statements and spreadsheets, which are representations of the MRC and its staff. Although the MRC intends to have these records reviewed by an independent entity, such audit has not yet been performed as of this writing. Accordingly, the presentation of

these records does not in and of itself represent an opinion or other form of assurance regarding these records.

The MRC's accounting records for 1999 through 2002 were reviewed by the independent accounting firm of Loiselle, Goodwin & Hinds, CPAs (the CPAs), in order to assist in evaluating the recorded transactions and ending balances of the accounts over which the MRC has oversight on behalf of its members. The review was performed in accordance with standards for evaluation of agreed-upon procedures established by the American Institute of Certified Public Accountants. In 2003 through 2009, the CPAs performed an audit of the MRC's accounting records and provided opinions on the audit. The accounting records for 2010 reflect recommendations made in the course of the audit and reviews of the accounting records for the previous years. These reports are available for review from the MRC upon request.

#### **4.0 Accounts Balances and Cash Flows**

##### **4.1 The Custody Account**

The Custody Account is held and managed by the MRC in accordance with the Transaction Guidelines. Routine deposits into the Custody Account include Performance Credits and Net Cash Flow from PERC, which are typically transferred monthly; and interest earned (see Table 1, Appendix A-1 and Appendixes B-1 through B-3). In addition, there was one transfer into the Custody Account from the Tip Fee Stabilization Fund in May 2010.

Routine withdrawals from the Custody Account included cash distributions to the Charter Municipalities, which occurred quarterly as required to achieve the target values. There were no prepayments and purchases of bonds and/or purchases of partnership shares through direct payments to PERC in 2010 at the direction of the MRC Board of Directors.

##### **4.2 The Tip Fee Stabilization Fund**

The Tip Fee Stabilization Fund received no transfers in 2010 from the Custody Account. There was one transfer into the Custody Account from the Tip Fee Stabilization Fund in May 2010 (see Appendix A-2).

##### **4.3 MRC Operating Budget Stabilization Fund**

No funds were deposited into or withdrawn from the MRC Operating Budget Stabilization Fund in 2010 (see Appendix A-3).

## **5.0 Non-Cash Assets**

### 5.1 Limited Partnership Shares in PERC

The MRC did not purchase or receive any additional limited partnership interests in PERC on behalf of the Equity Charter Municipalities in 2010 (see Appendix C-2).

## **6.0 Allocations Among Charter Municipalities**

### 6.1 Allocations of cash distributions

In each quarter of 2010, the sources of the cash distributed to the Charter Municipalities included Performance Credits, Net Cash Flow and funds from the prior balance of the Custody Account or the Tipping Fee Stabilization Account. To document these distributions, this report presents the following materials:

- Total amounts payable to each Charter Municipality in each quarter, broken down by Performance Credits, Net Cash Flow and other distributions for each Charter Municipality (Appendixes B-2, B-3 and C-1).
- Net Cash Flow allocated to each Equity Charter Municipality in each quarter at each ownership level (Appendixes B-2 and C-1).
- Performance Credits allocated to each Charter Municipality in each quarter, as well as data on shares of tonnages of acceptable waste that were used to perform the allocation (Appendixes B-3 and C-1).

### 6.2 Allocations of the Custody Account and the Tip Fee Stabilization Fund

At any given time, the Custody Account contains reserve funds, interest earned, and other funds held in reserve at the direction of the MRC Board of Directors. To allocate these funds among the Charter Municipalities, Appendix A-1 provides an allocation of all deposits into and withdrawals from the Custody Account in 2010, along with the basis for the allocations. Note also that allocations are also provided for the share of each Equity Charter Municipality of the transfers from the Tip Fee Stabilization Fund. Earnings on the prior balances in the Tip Fee Stabilization Fund and the MRC Operating Budget Stabilization Fund are allocated on a quarterly basis (see Appendixes A-1 through A-3).

**Figure ES-2  
Cash Flows and Accounts, 2010**

