

MUNICIPAL REVIEW COMMITTEE, INC.

BOARD OF DIRECTORS

A meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Wednesday, July 29, 2015 at 10:00 a.m. in the Council Chambers, Rockland City Hall, 270 Pleasant Street, Rockland, Maine. In attendance were the following:

Directors:

Chip Reeves, Bar Harbor
Karen Fussell, Brewer
Joshua Reny, Fairfield
Tony Smith, Mt. Desert
Sophie Wilson, Orono
Elery Keene, Winslow
James Guerra, Rockport
Ken Fletcher, Winslow
Catherine Conlow, Bangor

Consultants:

Greg Louder, MRC Executive Director
George Aronson, CRMC
Daniel G. McKay, Eaton Peabody
Denis St. Peter, CES, Inc.
Dustin D. Brooks, Preti Flaherty
Jessica James, Preti Flaherty

Guests:

Greg Brown, City of Waterville
Peter Prata, PERC
Gary Stacey, PERC

Jennifer Baroletti kept the minutes of the meeting and President Reeves presided.

President Reeves convened the meeting at 10:07 a.m. He thanked the city of Rockland for hosting the meeting and board members and consultants introduced themselves to the audience.

CONSIDERATION OF MINUTES OF APRIL 29, 2015 BOARD OF DIRECTORS MEETING

The Board then considered approval of the minutes of the April 29, 2015 quarterly meeting of the Board of Directors. Upon motion made and duly seconded it was unanimously:

VOTED: That the minutes of the April 29, 2015 quarterly meeting of the Board of Directors of the MRC hereby are approved in the form presented to the Board at this meeting.

CONSIDERATION OF FINANCIAL STATEMENTS AND CURRENT BILLS PAYABLE

Sophie Wilson presented current bills payable in the amount of \$84, 959.85. She reported that the MRC currently has \$295,931.13 in the Operating Account prior to payment of these bills. Ms. Wilson reported that the Finance Committee has reviewed the monthly financial statements and bills payable and recommends acceptance. Upon motion made and duly seconded it was unanimously:

VOTED: That the bills payable of \$84,959.85 presented to the Board at this meeting for the period ending July 29, 2015 hereby are approved.

**CONSIDERATION OF MRC AUDITED FINANCIAL STATEMENTS FOR
YEAR-ENDED DECEMBER 31, 2014**

Christopher Hinds of Loiselle, Goodwin & Hinds reviewed the independent auditor's report and financial statements, which he regards as being fairly stated. He reviewed management's discussion and analysis, notes to the financial statements, and the summary of PERC's financial performance. He noted increased expenses as a result of post-2018 planning efforts. The equity investment in PERC increased, as PERC's income was up significantly from prior years. A brief discussion ensued regarding the estimate of the towns' share of the Joint Venture contained on the last page of the report, and it was clarified that figure is just an estimate as of today, and that there are several factors that can, and likely will, change that amount.

Mr. Higgins next reviewed the report regarding internal controls. The only deficiency noted is MRC's reliance on its auditors to propose certain year end adjustments and to assist in the preparation of

financial statements. While this is regarded as a material weakness, because a change would not be cost-effective, no change was recommended.

It was suggested that next year's review contain a more extensive analysis of the assets associated with the joint venture.

After discussion, and upon motion made and duly second it was unanimously:

VOTED: That the preliminary auditor's report prepared by Loiselle, Goodwin & Hinds is hereby accepted.

THIRD QUARTER 2015 TIPPING FEE CALCULATION

George Aronson presented the PERC tipping fee calculation for the third quarter of 2015 of \$79 per ton, noting that it falls slightly below the budgeted number. Aggregate tonnage from charter towns was down approximately 1,000 tons. Generation rates for glass and grit were stable and as projected at sixteen percent (16%). Based upon his review of the PERC materials, he recommended that the Board vote to accept the tipping fee calculation. Upon motion made and duly seconded it was unanimously:

VOTED: To accept the tipping fee for the third quarter of 2015 at \$79 per ton as calculated by PERC.

PERC FACILITY OPERATIONS REPORT

Peter Prata presented the PERC facility Operations Report, indicating that the plant experienced a couple of leaks in the boilers. There was a bypass condenser tube failure which impacted the water quality in the boilers, but the issue was promptly resolved. Repairs to the cooling tower have been completed and will resume in the fall when cooler temperatures return.

Mr. Prata has started to prepare the 2016 budget. There will be a mini-turbine outage in March, 2016. Mr. Prata explained the process for planning a turbine outage, and the limitations on a mini-outage, which involves balancing weather, MSW and GE's availability. GE will come to the plant in September to check all systems and to make recommendations of what should be looked at during the outage. This process is helpful prior to the scheduled outage in order to identify and order any necessary spare parts.

Mr. Prata next reported that PERC has renewed its air permit from the State of Maine Department of Environmental Protection (“DEP”). PERC received favorable responses on its requests from the DEP, and final comments were submitted to DEP a couple of days ago. The air permit will need to be renewed every five (5) years to stay current with any legislation at the federal level.

As of the date of this meeting, electrical production was at 84.6%, which is slightly less than last year at this time due to the cold winter. Glass and grit yield have been at 15.8% and 16.1% over the last couple of months which has steadied out from the high levels of 30% earlier this spring. Truck waiting times are average, and trucks were backed up only slightly during the bypass condenser incident.

CHARTER MUNICIPALITY ASSET MANAGEMENT REPORT – CUSTODY ACCOUNT, TIP FEE & OPERATING BUDGET STABILIZATION FUNDS, CONSIDERATION OF WITHDRAWAL FROM THE TIP FEE STABILIZATION FUND FOR 3rd QUARTER CASH DISTRIBUTION

George Aronson presented an overview of the Charter Municipality Asset Management Report compiled by Commonwealth Resource Management. He noted that there are current balances of \$1.632 million in the Custody Account, \$23.446 million in the Tip Fee Stabilization Fund and \$861,692.42 in the Operating Budget Stabilization Fund. He recommended a quarterly cash distribution of \$955,141.05.

Mr. Aronson reported that cash flows have been good this quarter, and there is no need to draw funds from the Tip Fee Stabilization Account in order to make the cash distribution. Mr. Aronson also reported that the cash in the Custody Account is not expected to be needed for the fourth quarter distribution and recommended that the Board consider transferring up to \$1.2 million from the Custody Account to the Tip Fee Stabilization Account.

Following Mr. Aronson’s presentation, and upon motion made and duly seconded it was unanimously:

VOTED: That the Charter Municipality Asset Management Report hereby is approved in the form presented to the Board at this meeting and that a cash distribution in the aggregate amount of \$955,141.05 be made to the members.

VOTED: That the amount of \$1.2 million be transferred from the Custody Account to the Tip Fee Stabilization Account.

**MRC BOARD REPORT ON POST-2018 PLANNING PROCESS CONTACTS
WITH MEMBER COMMUNITIES**

Chairman Reeves asked each Board member to report on their discussions with member communities regarding the post-2018 planning process.

Board member Ken Fletcher indicated that despite the challenges of reaching people during this time of year, he has made several contacts which have all been positive. Mr. Fletcher believes that people are reading the newsletters, want to see and understand the project, and are following its progress.

Board member Karen Fussell agreed that the newsletters have been helpful, but reported that some MRC communities are confused by conflicted mailing materials received from the MRC and PERC. Ms. Fussell provided clarification to those member communities who seemed appreciative of her efforts to reach out to them. Ms. Fussell reported that one member community is considering another option (not MRC or PERC) based on transportation costs.

Board member Sophie Wilson agreed that the newsletter has been well received, though there are some concerns from member communities concerning the viability of the Fiberight technology. Ms. Wilson suggested that this be considered as a topic of a newsletter to explain the technology and that it is not a new concept. Ms. Wilson also reported hearing concerns from member communities regarding MRC's dispute with its partners and that the MRC Board needs to effectively communicate that the Tip Fee Stabilization Funds are not being spent on the Fiberight initiative.

Chairman Reeves indicated a challenge finding the appropriate party to speak with in some of the smaller member communities, however most of the comments he received were with guarded anticipation. Member communities appeared to like the idea but want further information. Mr. Reeves explained the timing of the process and that information is coming, however all of the information is not yet available.

Board member Josh Reny reported feedback from the member communities that they are paying attention and are appreciative of the MRC's efforts.

Board member Jim Guerra reported a high level of skepticism in his initial communications, but that the MRC newsletters and communications have been very helpful. Mr. Guerra indicated that he also has fielded questions regarding the MRC's use of the Tip Fee Stabilization Fund.

Board Member Tony Smith reported positive feedback received from member communities in the Downeast region. Communities are excited to move forward and view the project with guarded optimism.

Board member Elery Keane reported generally positive feedback as well, indicating that member communities want to understand the MRC's proposal and what the PERC deal will be so they can make an informed decision of what would be the best option for them.

Cathy Conlow joined the meeting at 10:46 a.m.

The Board generally discussed the resources available on its website, and making those resources available for those member communities who do not utilize the website. It was suggested that the Communications Committee consider visiting those member communities and broadcasting information for those interested. Karen Fussell indicated the need to make the audience aware that over the coming months they will be presented with information from the MRC, PERC, and perhaps other options as well, and that member communities will be asked to take a stand and make a decision for post-2018 within the next twelve months, by June, 2016. The Board generally discussed the options for recycling and the need for each town to conduct its own cost/benefit analysis to determine whether it is appropriate to handle recycling at the local level or send all MSW and recyclables to Fiberright. George Aronson suggested that the MRC provide guidance and work with the Maine Resource Recovery Association ("MRRA") to help communities make the right decision. Victor Horton of MRRA asked whether communities are aware that they can bring recyclables separately to Fiberright for a lower tip fee, and the Board agreed that this discussion should be addressed in the next newsletter as there is confusion around recycling and clarification on this issue may impact communities decision of whether or not to move forward with Fiberright.

**FINANCE COMMITTEE REPORT AND MRC BOARD DISCUSSION REGARDING THE
POTENTIAL USES FOR FUNDS HELD IN THE TIP FEE STABILIZATION FUND FOR THE
BENEFIT OF MRC MEMBER COMMUNITIES**

At the last meeting, the Board asked the Finance Committee to review the future of the Tip Fee Stabilization Fund (“TFSF”). Sophie Wilson indicated her awareness of concerns from member communities that the MRC will spend that money to fund the Fiberight project. George Aronson gave a brief synopsis of the report contained in the meeting materials. There is currently approximately \$23.5 million in the TFSF. \$1.2 million will likely be transferred later in the quarter. Assuming that the MRC continues the existing policy and practice of withdrawals only for quarterly rebates to the charter municipalities, the TFSF balance may reach \$25 million by 2018.

Mr. Aronson reviewed the potential uses of funds contained in the memorandum, including using up to \$5 million to fund acquisition of the Hampden site and related infrastructure that the MRC has committed to complete under the Development Agreement with Fiberight. Other potential uses include establishing a reserve for use at the end of the fifteen (15) year operating term of the agreements with Fiberight (in the event that a critical mass of joining municipalities elect not to extend the joinder agreements), a reserve against Delivery Sufficiency Payments in the event that delivery targets to the Fiberight facility are not met, and utilizing bridge disposal capacity in the event that the operating date of the Fiberight facility is delayed beyond April 1, 2018.

Dan McKay clarified that all expenditures for the site and reserves for other post-2018 activities would be paid from funds allocable to those communities participating in the Fiberight project and would not reduce the distributable share of those member communities which opt out of the joinder agreement with Fiberight, , however it is impossible at this time to project those figures since the MRC does not yet know which towns will sign joinder agreements. When a member community signs on to the Fiberight project by signing a joinder agreement, it would agree to the final plan of disposition of funds as part of that agreement. Conversely, if a member community elects not to move forward with the Fiberight project, it will sign a withdrawal agreement and its allocable share will be returned in March 2018.

An audience member asked the Board about Fiberight's capability to accept more than the MRCs 150,000 ton guarantee. The more tonnage that is processed, the more profitable the facility will be, which will feed into the rebate formula, which is still under discussion. A general discussion ensued regarding the 150,000 guarantee, and Greg Louder indicated that his understanding of the market indicates that although there are likely a small number of member communities that will elect not to sign a joinder agreement, there is additional tonnage historically delivered to PERC from non-charter Maine sources that may come to Fiberight after 2018. He expressed confidence that tonnage delivered to Fiberight will exceed the 150,000 ton threshold.

CONSIDERATION OF A 10-YEAR AGREEMENT WITH WASTE MANAGEMENT TO PROVIDE SERVICES FOR DISPOSAL OF RESIDUALS GENERATED AT THE MRC/FIBERIGHT FACILITY TO PROVIDE BYPASS AND BRIDGE DISPOSAL SERVICES ASSOCIATED WITH THE START UP AND OPERATION OF THE MRC/FIBERIGHT FACILITY

Greg Louder provided a brief overview of the negotiations with Waste Management. Mr. Louder, George Aronson and board members Chip Reeves, Josh Reny, and Jim Guerra have been engaged in lengthy discussions with Waste Management to develop a business arrangement to meet the needs of member communities, beginning April 1, 2018. Those negotiations are complete and a draft disposal agreement was contained in the board materials for the Board's consideration. Mr. Louder summarized the key provisions of the agreement. The term of the agreement is ten (10) years, with disposal fees of \$47/ton for residuals and \$62/ton for bypass. Mr. Louder indicated that, in light of questions regarding the reliability of the timeline for the Fiberight project and concerns of what will happen if the Fiberight facility is not online April 1, 2018, the MRC wanted to ensure that member communities were insulated against any service gap with alternate disposal arrangements at an affordable rate. In addition, Fiberight is expected to be able to accept 650 tons of MSW per day, but may find it is only able to accept 300-400 tons per day. If that is the case, the MRC has also negotiated bridge capacity with Waste Management, which allows the MRC communities to deliver MSW to Norridgewock for a year-one tip fee of \$62/ton.

Waste Management has also agreed to load any MSW delivered directly to the Norridgewock facility by MRC member communities for placement in empty residual trailers for backhaul to the Hampden MRC/Fiberight facility for a year one charge of \$7.50 per ton. Mr. Louder introduced Jeff McGown of Waste Management. Mr. McGown indicated that the negotiations over the last six (6) months have gone very well. Waste Management is looking for long term customers at its Norridgewock facility. He expressed his view that the negotiations were worthwhile and the proposed agreement is very fair. He extended an open invitation to anyone who wishes to tour the Norridgewock facility.

The Board generally discussed the approval needed for the agreement with Waste Management. Dan McKay clarified that unacceptable waste as defined in the agreement, if delivered, is the responsibility of the individual town delivering it, however if the town of origin cannot be identified, it would be the responsibility of the MRC. Based on information received from the operating facility at Norridgewock, it is likely that any unacceptable waste would be identified on the front end, and the town of origin would also be identified. Mr. McGown indicated that over the last twenty-four (24) years, the facility has had very limited amounts of unacceptable waste, and that he has never experienced a case in which the source was not identified. It was noted that this agreement is mainly for residuals which are mostly derived from MSW at Fiberight, so any unacceptable waste from residuals delivered to Norridgewock would be Fiberight's liability. It was suggested to add MRC's counsel, Eaton Peabody, to the Notice provision in the agreement. Following this discussion, and upon motion made and duly seconded it was unanimously:

VOTED: That the Solid Waste Disposal Agreement with Waste Management is hereby approved in the form presented at this meeting, and the Executive Director is hereby authorized to make any necessary non-substantive changes to finalize the language of the agreement.

REPORT ON EVALUATION OF PERC WASTE DISPOSAL SERVICES CONTRACT OFFER TO MUNICIPALITIES INCLUDING PROPOSED TIPPING FEES OF \$84.36 PER TON FOR A 15 YEAR CONTRACT AND \$89.57 PER TON FOR A 10 YEAR CONTRACT AFTER MARCH 31, 2018

Greg Louder reported that PERC representatives have sent out mailings to municipalities advertising tip fees of \$84.36/ton for a 15-year contract and \$89.57/ton for a 10-year contract, in each case beginning April 1, 2018. The MRC has received questions from member communities about those figures, and has determined to reach out to USAE principals to learn more about how those tip fees were calculated. The MRC sent a letter to USAE indicating MRC's assumption that those tip fees were calculated based on the model that was jointly developed with the MRC, and that the MRC further presumes that the basis was based on HDR report. The letter asked to review the analysis that supported that tip fee calculation so that the MRC can report to its member communities with that information. The letter also invited USAE principals to this meeting to discuss this issue. It was noted that no USAE representatives were in attendance at the meeting.

On July 20, 2015, the MRC received a reply from USAE indicating that the calculations are confidential and that the MRC is welcome to use the model to come to its own conclusions but that USAE would not provide the information requested. George Aronson indicated that he has reviewed market data on recent wholesale prices of electricity to provide perspective on the economic performance of PERC given the tip fees calculated and proposed by PERC. If, in 2014, PERC received the market price for electricity instead of the contract price, PERC would have experienced a \$2 million deficit in cash flow. The Board generally discussed the importance of this issue, as member communities have indicated their reservation in taking a risk on the unknown of Fiberight when PERC has committed to a tip fee of only \$15 more than Fiberight. Sophie Wilson expressed the Board's responsibility to member communities to provide as much accurate information as possible so they may make an informed decision. The Board asked for guidance to be able to respond to member communities with regard to this issue. The Board requested that George Aronson run the model with the \$85/ton tip fee.

The Board generally discussed the scope of the MRC's role in evaluating the PERC contract on behalf of the member communities. The MRC could provide general guidance on its interpretation of the contract. A representative in the audience from a small member community indicated that MRC's input is valuable and would be welcomed. Chairman Reeves indicated that the Board will work with the Communications Committee to determine at what level this information will be provided.

**ADMINISTRATIVE REPORT – NEW CHARTERS, WASTE DELIVERY TRENDS,
MRC/FIBERIGHT PROCESSING AND FACILITY LICENSE APPLICATIONS
FILED WITH DEP**

Greg Louder presented his Administrative Report to the Board, reporting that waste delivery trends continue to be tracked each quarter, and there is nothing substantial to report at this time. Mr. Louder turned the presentation over to the MRC's consultant, Denis St. Peter of CES, Inc., to provide an overview of the various applications that have been submitted to the Department of Environmental Protection ("DEP") related to the Fiberight project. Mr. St. Peter indicated that seven (7) applications have been filed with the DEP to support the facility itself, proposed access and utilities. The MRC was co-applicant with Fiberight on all applications relating to the facility. The MRC is the single applicant on one (1) application which pertains to the access road. Mr. St. Peter indicated that prior to submitting the applications, three (3) public informational meetings were held in accordance with regulatory guidelines. The first two (2) meetings were required, and the third was voluntary and led by Craig Stuart-Paul of Fiberight to address local citizens concerns, which was very helpful.

All applications were submitted in June, 2015 and all were accepted as complete on July 15th. Mr. St. Peter reported that DEP was complimentary of the volumes of paper submitted with the applications. This substantial project involves several bureaus, and as part of permit application, DEP prepared a communication plan and dedicated one project manager across all bureaus to ensure that the applications are timely processed. Lead permit analysts in each bureau also were identified. CES is acting as a consultant for both MRC and Fiberight.

DEP's feedback on the applications thus far has been positive. DEP has committed to process all applications within one (1) year. The timeline is driven by the solid waste permit application, which takes

the longest. Mr. St. Peter reported that based on his conversations with the DEP project manager, the timeframe could be much sooner than one (1) year. To date there have been no public comments, which is a good sign. There is one interested party, Rod Carr of Doyle and Nelson which is a paid consultant to USAE. Mr. St. Peter reported that there will be DEP comments which will require the MRC's response but he does not foresee anything unusual.

A general discussion ensued regarding the impact of DEP's one (1) year timeline on the MRC's timeline for the project. George Aronson indicated that the MRC's timeline for infrastructure is tight, as town approvals are needed in order to begin construction of the road prior to the winter of 2016, so that the facility can be built during that winter. The town permit is still in progress but should be filed soon. Mr. St. Peter indicated that comments on the DEP applications should be documented within the next six (6) months, with the goal of obtaining all approvals and permits by March, 2016. In his experience, Mr. St. Peter reported that he is not aware of any criteria that the MRC has not met and is confident that the MRC will hear something before the end of the one (1) year timeframe.

UPDATE REGARDING LITIGATION FILED BY THE MRC AGAINST USA ENERGY GROUP AND THE JOINING OF CERTAIN EQUITY CHARTER MUNICIPALITIES AS ADDITIONAL PLAINTIFFS

Greg Louder reported that Waterville, Orono, Mount Desert, Bar Harbor, and Fairfield have all joined the lawsuit against USAE as Plaintiffs, and the town of Winslow is currently considering joining. A general discussion ensued regarding the consideration of an indemnity agreement by the MRC in favor of those Equity Charter Municipalities that agree, contingent upon the granting of such indemnity, to join the pending litigation between the MRC and USAE, as co-plaintiffs with the MRC. A motion was made and duly seconded to indemnify such municipalities that have agreed to join the litigation as co-plaintiffs, for any damages or losses they might sustain in the event of any adverse ruling on any counterclaim that might be filed by USAE against the municipalities, or any of them. After further discussion, and upon motion made and duly seconded it was unanimously:

VOTED: That the MRC shall indemnify those Equity Charter Municipalities that choose to join the litigation between the MRC and USA Energy Group, LLC, as co-plaintiffs, to the extent of any damages or losses sustained by the municipalities in the event of any

adverse ruling on any counterclaim filed by USA Energy against the municipalities, or any of them.

**STATUS REPORT ON DRAFT POST 2018 MUNICIPAL DISPOSAL CONTRACT
STRUCTURE, PROGRESS TOWARD SEPTEMBER 1 DEVELOPMENT AGREEMENT
MILESTONE AND PROJECT FINANCING PLANS**

Chip Reeves, Greg Louder and George Aronson recently traveled to Baltimore for a meeting with representatives of Fiberight, including Craig Stuart-Paul, and made significant process on the Master Waste Supply Agreement, Site Lease and Joinder Agreement. George Aronson provided an update on Fiberight's progress toward achieving the September 1st milestone as outlined in the Development Agreement, requiring Fiberight to provide updated process flow diagram; mass, energy and water balances, facility design plans; estimates of capital costs and operating expenses; and a project pro forma with supporting information. Fiberight is required to provide the information with sufficient detail to enable the evaluation and verification of the feasibility of the project at the proposed performance levels and tip fees by an independent engineer, which information is necessary for investors.

On July 13, 2015, Fiberight provided the pro forma (with revenues, expenses and tip fees) and Mr. Aronson reported that he is reviewing the information pursuant to a confidentiality agreement and preparing a recommendation to the Board. Mr. Aronson further reported Fiberight has provided the required information but we may need to ask for more detail or clarification. Some of this information was provided in detail for the permitting process with DEP. Mr. Aronson advised that the timeline is certainly on schedule to come close to meet that milestone by September 1st, and that he will report to the Board with the next level of detail when it is available.

Karen Fussell next addressed the Board, indicating that Dustin Brooks of Preti Flaherty has been instrumental in guiding and enhancing the MRC's communication efforts over the last two (2) years. He was the chief architect of the newsletter which has enhanced MRCs communication with its member communities. Dustin will be leaving Preti Flaherty to pursue higher education in business at Stanford University. Ms. Fussell thanked Dustin for his service to the MRC and introduced his highly capable replacement, Jessica James.

At 12:43 p.m., the meeting adjourned for lunch.

At 1:18 p.m., the meeting reconvened.

EXECUTIVE SESSION

A motion was made, and duly seconded, at 1:18 p.m., to adjourn the meeting to executive session pursuant to 1 M.R.S.A. §405(6)(e) for discussion with legal counsel concerning legal rights and duties regarding negotiations of a Site Lease, Master Waste Supply and Municipal Joinder Agreements with Fiberright, as well as pending litigation with PERC's general partner USAE, and pursuant to 1 M.R.S.A. §405(6)(a) to discuss the annual evaluation of the Executive Director. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

At 3:15 p.m., executive session ended and the regular meeting reconvened.

There being no further business to come before the Board, the meeting adjourned at 3:15 p.m.

Respectively submitted,



Jennifer S. Baroletti

Dated: October 28, 2015