

# ***ALERT***

**To:** MRC Membership  
**From:** MRC Board of Directors  
**Date:** April 19, 2016  
**Re:** Sixth Amended and Restated Agreement of Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership

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The current General Partner of the PERC Partnership, USA Energy (USAE), has distributed to the MRC membership a proposed “Sixth Amended and Restated Agreement of Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership” with the implicit suggestion that the current PERC Partnership Agreement, as amended and restated, will continue on after 2018 with those current MRC members who wish to sign on remaining as limited partners.

We have reviewed the draft document as prepared by USAE believe it is important to inform you immediately of our concerns.

First, as a matter of process, under the terms of the currently effective Fifth Amended and Restated Agreement of Limited Partnership, the PERC Partnership expires at the conclusion of its stated term which is December 31, 2018. USAE does not have the power under that agreement to either amend its provisions or extend its term without the prior written consent of the MRC. Therefore, even if MRC member communities were to sign and return the purported Sixth Amendment, it would not have the legal effect of extending the term of the current PERC Partnership beyond December 31, 2018 absent the express written consent of the MRC on behalf of all Equity Charter Municipalities. Without that consent, the current PERC Partnership will dissolve under its own terms at the end of 2018 and the purported amendment would be of no effect.

Secondly, putting aside the procedural irregularities inherent in the manner in which USAE has postured this purported restatement, while at first glance this document may appear similar to the Fifth Amended and Restated Agreement under which the PERC Partnership currently operates, **it is not**. In fact, it is radically different in key respects from the agreement under which the PERC Partnership now operates, and it would have the effect of totally changing the historical relationship between the PERC Partnership and the MRC membership. Among the key changes proposed by USAE are the following:

- **Oversight Committee Eliminated.** The three member Oversight Committee which, as you know, currently oversees Partnership operations and which includes a representative from the MRC, would be eliminated entirely. All Partnership operations and decision making would be left solely in the hands of USAE as general partner with no opportunity

for input from, or even notice to, the MRC Communities or Board.

- **MRC Role as Umbrella Organization Eliminated.** There would be no role for the MRC in connection with management of the limited partnership interests held by the MRC communities after 2018. Each municipality remaining as a limited partner would be left on its own with sole responsibility to manage its own interest without any umbrella organization to offer guidance and support.
- **Checks on General Partner Powers Removed.** Under the current Limited Partnership Agreement, a number of fundamental Partnership decisions require the consent of the Oversight Committee or, in some cases, of the MRC specifically. For example, the MRC now must approve any change in the business of the Partnership, the admission of new limited partners, the removal or replacement of the General Partner, any transaction in which the General Partner has a conflict of interest, or any new operating and maintenance agreement. A vote of a majority of the Oversight Committee is required to approve major capital projects, sales of assets, major financings, or changes in partnership capital. The Oversight Committee currently must approve all capital and operating budgets. All of these checks and balances would be completely eliminated under the proposed new Partnership Agreement. USAE, and USAE alone, would have the unfettered power and discretion to impose its own unilateral decisions on the Partnership.
- **Ground Rules for Partnership Distributions Eliminated.** USAE would have total discretion over when, whether and in what amounts distributions to partners would be made.
- **No Limits on Admission of New Partners or Dilution of Existing Partners.** USAE would have the unilateral authority to issue new limited partnership interests to itself, its affiliates or to other third parties on terms it alone would determine. This could have the impact of significantly diluting the interests of the existing limited partners, including the current MRC communities, without their approval or input.
- **No Limits on Fees Billed By USAE or Affiliates.** USAE would have the unilateral power to determine the amount of its own compensation for services to the Partnership and to cause the PERC Partnership to pay other consulting fees to USAE, its affiliates or others without limit and without reference to the efficacy of the services rendered. These fees could be increased at any time in any amount in USAE's sole discretion without any consultation with or approval from the other partners. USAE could also approve other extraordinary expenses in its discretion without any input or approval from the MRC Communities. This would legitimize the very abuse which is the subject of the pending lawsuit against USAE.
- **No Limits on Conflict of Interest Transactions.** The current provisions giving the Oversight Committee the right to approve conflict of interest transactions would be eliminated.

- **No Power to Remove General Partner.** The other partners in the PERC Partnership, including the MRC communities, would lose the power they currently have to remove USAE as General Partner or to approve any successor general partner should USAE resign.
- **Unilateral Right to Dissolve.** USAE would have the unilateral right to dissolve the Partnership at any time without notice.

As can be seen from the above, USAE proposes to effectively eliminate the public/private partnership which has characterized the relationship between PERC and the MRC communities since the MRC's inception. That relationship would be replaced by a new regime in which USAE would have total and absolute control over all aspects of Partnership operations and finances without any check or balance and without any ability for the other partners to replace USAE as General Partner in the event of mismanagement. USAE would establish and approve its own compensation, could pay extraordinary consulting fees from Partnership funds to itself and its affiliates without any check or balance, and it would have the power to perpetuate itself as general partner indefinitely irrespective of its performance.

This proposal should be rejected both because it is not postured correctly from a procedural standpoint and because it is substantively a bad deal for the MRC communities.