

MUNICIPAL REVIEW COMMITTEE, INC.

BOARD OF DIRECTORS

A quarterly meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Wednesday, April 27, 2016 at 10:00 a.m. at the Town of Orono Municipal Building, 59 Main Street, Orono, Maine. In attendance were the following:

Directors:

Sophie Wilson, Orono
Elery Keene, Winslow
James Guerra, Mid-coast Solid Waste Corp.
Ken Fletcher, Winslow
Tony Smith, Mount Desert (attended by telephone)
Catherine Conlow, Bangor
Chip Reeves, Bar Harbor
Karen Fussell, Brewer
Mike Roy, Waterville

Staff:

Greg Louder, MRC Executive Director

Consultants:

Daniel G. McKay, Eaton Peabody
Denis St. Peter, CES, Inc.
Jessamine Pottle, CES, Inc.
George Aronson, CRMC
Gary Stacey, PERC
Henry Lang, PERC

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

Chairman Reeves convened the meeting at 10:15 a.m.

APPROVAL OF MINUTES

The first order of business to come before the Board was approval of the minutes of the January 27, 2016 quarterly meeting of the Board of Directors, the March 15, 2016 special meeting of the Board of Directors, the March 24, 2016 special meeting of the Board of Directors,

and the April 15, 2016 special meeting of the Board of Directors. There being no discussion, upon motion made and duly seconded, with Tony Smith abstaining, it was unanimously:

VOTED: That the minutes of the January 27, 2016 quarterly meeting of the Board of Directors, the March 15, 2016 special meeting of the Board of Directors, the March 24, 2016 special meeting of the Board of Directors, and the April 15, 2016 special meeting of the Board of Directors hereby are approved in the forms presented to the Board at this meeting.

FINANCE COMMITTEE REPORT, INCLUDING: CONSIDERATION OF THE FINANCIAL STATEMENTS, BILLS PAYABLE AS OF APRIL 22, 2016; AND FY16 OPERATING BUDGET ADJUSTMENT

Sophie Wilson presented bills payable totaling \$186,828.73 to the Board for consideration, reporting that the Finance Committee has reviewed the financial statements and bills payable and recommends payment. Upon motion made and duly seconded it was unanimously:

VOTED: That the bills payable of \$186,828.73 presented to the Board at this meeting hereby are approved.

Ms. Wilson reported that the Finance Committee has discussed a transfer to address the low cash balance after payment of bills and a budget amendment relating to administrative staff support. The MRC has identified a staffing agency and recommends moving forward with contracting someone to provide administrative support to Mr. Louder through the end of 2016 at which time the situation will be reassessed. The estimated cost is twenty-five thousand dollars (\$25,000). The Finance Committee recommends making a budget amendment and cash transfer of twenty-five thousand dollars (\$25,000) to cover the budget adjustment for staffing and seventy-five thousand dollars (\$75,000) to address the cash flow issues. Ms. Wilson noted that the recommended transfer to cover cash flow needs is temporary, and once cash flow is not an issue that amount will be restored to the Tip Fee Stabilization Account. Ms. Wilson reported

that the transfer of one hundred thousand dollars (\$100,000) will require cashing out a bond but that no major loss would be realized. Upon motion made and duly seconded it was unanimously:

VOTED: That a budget adjustment for staffing in the amount of twenty-five thousand dollars (\$25,000) is hereby approved, and that the transfer of the amount of one hundred thousand dollars (\$100,000) from the Tip Fee Stabilization Fund to the Operating Account to address the staffing adjustment and cash flow issues hereby is approved.

SECOND QUARTER 2016 TIPPING FEE CALCULATION

George Aronson presented the PERC tipping fee calculation for the second quarter of 2016 of \$77.00 per ton. Tonnage from charter towns was up nine percent (9%) compared to the second quarter of 2015, but it is unknown if this reflects a true increase in tonnage or just reflects that tonnage last year was down due to the hard winter. Overall residuals are close to projected. The ash rate was slightly below what was expected. There were several bypass incidents in the first quarter due to a major outage for boiler maintenance. Based upon his review of the PERC materials, Mr. Aronson recommended that the Board vote to accept the tipping fee calculation.

At Sophie Wilson's request, Mr. Aronson explained the history of the Capital Maintenance and Reserve (CMRA) Fund. Mr. Aronson explained that funds have been set aside based on tip fees received, and withdrawals occur when PERC has completed capital and maintenance projects. The process worked well through the 1990's and early 2000's but at some point the requirements for capital and maintenance projects exceeded the amount set aside in the contract and as a result, those projects are now funded through cash flow. The set aside system remains in place but there is a backlog of requisitions. It is estimated that approximately fifty million (\$50,000,000) has been paid out of the account since it was created.

There being no further discussion, and upon motion made and duly seconded it was unanimously:

VOTED: To accept the tipping fee for the second quarter of 2016 at \$77.00 per ton as calculated by PERC.

PERC FACILITY OPERATIONS REPORT

Henry (“Hank”) Lang, Acting PERC Plant Manager presented the PERC Facility Operations Report for the second quarter of 2016. Mr. Lang has taken over the Plant Manager position within the last few weeks, and he provided a brief background of himself. He reported that boiler outages took place in February and March and that the boilers have been running extremely well since that time. Process line maintenance was performed as well as a minor outage on the turbine generator. A general discussion ensued regarding refining the measurement of truck waiting times to make that information more useful to the MRC. There were no environmental exceedences this quarter, and Mr. Lang reported that the PERC plant will be presented with an award from the Environmental Protection Agency (“EPA”) at Fanueil Hall in Boston on May 10th relating to environmental performance and invited MRC representatives to attend.

CHARTER MUNICIPALITY ASSET MANAGEMENT REPORT – CUSTODY ACCOUNT, TIP FEE & OPERATING BUDGET STABILIZATION FUNDS, CONSIDERATION OF WITHDRAWAL FROM THE TIP FEE STABILIZATION FUND FOR 2ND QUARTER CASH DISTRIBUTION

George Aronson presented an overview of the Charter Municipality Asset Management Report compiled by Commonwealth Resource Management. He summarized key elements of the Charter Municipality Asset Management Report noting that there are current balances of \$1,743,550.65 in the Custody Account, \$25,420,252.86 in the Tip Fee Stabilization Fund and

\$686,060.98 in the Operating Budget Stabilization Fund. He recommended a quarterly cash distribution of \$670,743.45.

He 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 noted that the cash in the Custody Account is unlikely to be needed for the third quarter cash distribution and recommended a transfer of nine hundred thousand dollars (\$900,000.00) from the Custody Account to the Tip Fee Stabilization Fund. 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 \$670,743.75 be made to the members.

VOTED: That the transfer of nine hundred thousand dollars (\$900,000.00) from the Custody Account to the Tip Fee Stabilization Account is hereby approved.

CONSIDERATION OF AMENDMENTS TO THE TARGET VALUE STEP INCREASE PLAN

George Aronson reported on his memo relating to the impacts of changes in the Target Value Increase Schedule. It was suggested to table this discussion until the July board meeting. Greg Louder stated that would not impact the timeline, but Cathy Conlow pointed out that it could be a problem for those municipalities with a July 1st budget deadline. The Board commended George Aronson on the detailed report and generally discussed the timeline for approving an increase. Several board members shared their various opinions on increasing the target values and the timeline for doing so. After discussion a motion was made and duly seconded to keep the Target Value at \$59 per ton for a period of one (1) year. Further discussion ensued. The motion failed by a vote of 5-3 with Board members Fletcher, Roy and Conlow

voting in favor, and Keene abstaining. The Board agreed to add this item to the agenda for the July meeting.

REPORT ON STATUS OF MRC MEMBER COMMUNITY APPROVALS OF JOINDER AGREEMENTS COMMITTING TO THE MRC/FIBERIGHT PLAN FOR 2018

Mr. Louder presented an updated list of joining members which shows that the MRC has secured slightly more than seventy-eight thousand (78,000) tons, which is more than half of the minimum goal of 150,000 tons. Mr. Louder reported that several towns have meetings and votes scheduled over the next couple of weeks. Mr. Louder and George Aronson were asked to determine what amount of the committed tonnage is from equity charter members.

REPORT ON ITEMS OUTSTANDING AND STEPS REMAINING TO REACH FINANCIAL CLOSE AND THE CONSTRUCTION PHASE OF THE FIBERIGHT FACILITY IN HAMPDEN

George Aronson has completed the internal validation stage of Fiberight's updated pro forma, and has begun the external validation process, involving some of the providers of Letters of Intent relating to certain items. Mr. Aronson reviewed the numbers for the Fiberight facility running at capacity and at one hundred eighty thousand (180,000) tons. Fiberight has performed four different waste compositions by taking trailers of Maine waste down to its Virginia plant for test processing. Mr. Aronson noted that energy and water balance questions have been resolved and are reflected in the revised pro forma. The pro forma at 180,000 tons shows rebates from \$7-9 per ton. Mr. Aronson has asked for lower cases of 140,000 tons per year and 110,000 tons per year, and in both cases, using a set of assumptions, the results were still cash flow positive, and returns are lower but still in the investment range. In those instances rebates are significantly reduced but still viable. Mr. Aronson still needs to complete the external validation, however the pro forma certainly supports that the project is investable and indicates positive cash

flow, not only within the range currently contemplated but also if the size of the project is downsized.

The Board took a lunch break at 12:11 p.m.

At 12:55p.m., the board reconvened.

Board Member Karen Fussell thanked George Aronson for the overview and asked for a brief explanation of process efficiency insurances. Mr. Aronson explained that the MRC can expand the coverage to cover an entire scope of equipment or design and presumed performance levels. This lowers the risks of actual performance and costs associated with certain parts of the process. This is premised on receiving certain warranties against manufacturing defects from the equipment supplier and shifts the role of managing the equipment to another entity. Mr. Aronson explained that upfront payment of ten (10) years of premiums is required which is one of the larger soft costs contained in the pro forma. The process efficiency insurances are essentially a specialized performance bond.

Denis St. Peter of CES, Inc. joined the meeting at 1:04p.m.

When asked about the timeline of Mr. Aronson's evaluation of the pro forma, he indicated that the final product will likely not be available until the closing but that the draft should be released a few months before that.

Mr. Aronson reported that Fiberight anticipates financing by the end of October, 2016 but will need assurances that the infrastructure and road are in place by the end of August, 2016. A discussion ensued regarding the MRC's risk of building infrastructure prior to completion of the financing and discussions of ways to secure the MRC's interests through a surety bond or other similar means. After discussion, Chairman Reeves suggested having executive staff work with Craig Stuart-Paul of Fiberight on this. A general discussion ensued regarding the realistic timing

of beginning construction of the infrastructure, and Board Member Sophie Wilson noted that access to the TFSF is predicated on securing commitments of 150,000 tons, which has not yet been completed. With the deadline of June 30th fast approaching, it provides a tight window to exercise the option, buy the land, bid and build the road and infrastructure by September or October, 2016.

ADMINISTRATIVE REPORT – NEW CHARTERS/CONTRACTS, WASTE DELIVERIES TRENDS, MRRA CONFERENCE, 2015 MRC FINANCIAL AUDIT, FLOW CONTROL, PERC/CASELLA WASTE DISPOSAL AGREEMENT

Greg Louder turned the discussion over to Denis St. Peter as President and CEO of CES, Inc. to provide an update on the state regulatory process. Mr. St. Peter reported that the new Department of Environmental Protection (“DEP”) commissioner is very interested in the project and there was a recent transition which caused a bit of a delay. Mr. St. Peter understands that the new commissioner is now open to meet with MRC representatives and others within the next couple of weeks. He understands from the permit analysts that the solid waste permit is drafted with the exception of the wetland component, and that he was told last week that the air license has gone through the internal review process and the analysts just need to do sampling on post-hydrolysis solids which should be available next week. Mr. St. Peter reported that he is putting pressure on the DEP and expects permits at any time, however the state regulatory process takes time. With regard to the status of local permitting in Hampden, Mr. St. Peter reported that the first meeting went well and there are two outstanding issues – traffic and odor. John Pottle has recommended additional traffic analysis. Mr. St. Peter thought that the odor issues were resolved but it appears there may be additional issues to be addressed and Hampden officials are preparing a memo in this regard.

Board member Sophie Wilson reported that a representative from the Town of Hampden recently visited the Fiberright facility in Virginia unannounced and reported that there was no odor at all. This representative is preparing a report for the planning board to that effect.

Mr. Lounder noted the difference in waste delivery trends between this year and last which is likely based on the mild winter this year compared to last. Mr. Lounder reported that the MRC has signed up as a participant for the upcoming Maine Resource Recovery Association (“MRRA”) conference. Fiberright is scheduled to speak at the conference.

Mr. Lounder reported that he requested a copy of the Casella/PERC contract through his role on the PERC Oversight Committee but was unsuccessful, as he was told that PERC is not a party to the contract.

A general discussion ensued regarding flow control. Dan McKay explained that flow control ordinances that are in effect now will need to be amended as they all reference PERC, but that there are a couple of manageable amendments which could be incorporated that would increase the odds of withstanding a constitutional challenge. The larger risk is the expense of a challenge since, if the ordinance is violated, the municipality presumably would have to bring a legal action to enforce the ordinance.

REPORT ON PENDING WIND UP AND DISSOLUTION OF PERC PARTNERSHIP

Greg Lounder reported that a letter was recently sent to the PERC partners outlining key concerns relating to wind up and dissolution of the partnership, and asked Dan McKay to elaborate on the concerns outlined in the letter. Mr. McKay reported that under the terms of the Partnership Agreement, the Partnership can only be extended by a vote of all partners. In the letter, the MRC conveyed its message that it is USAE’s fiduciary duty, as the General Partner, to maximize the efficiency of the partnership and to maximize the value to partners as of the

scheduled date of dissolution. The MRC wants to be clear with the General Partner, USAE, that its obligation after 2018 is to conduct an organized wind down and distribution of assets, not to continue operating the partnership as it is currently operating. Despite the MRC's request, this item was not put on the agenda for the Oversight Committee meeting. Mr. Louder noted that each private partner attended by phone and after routine matters were covered, he was afforded some time at the end of the meeting to address these concerns. He acknowledged that the other partners have a different vision for the future than the MRC holds, but he made the point that the windup needs to occur and received a general acknowledgement that it would be healthy to make that separation from our differing visions of the future.

Mr. Louder reported that he addressed the ten year agreement during the Oversight Committee meeting, noting that it wasn't proper and that it seemed that partners understood that process was fraught with problems. Mr. McKay noted that the letter takes the position that this contract also qualifies as a material expansion of the partnership which is one of the items that requires MRC approval at the oversight committee level, which approval has not been obtained.

EXECUTIVE SESSION

At 2:08 p.m., a motion was made and duly seconded to adjourn the meeting to executive session pursuant to 1 M.R.S.A. §405(6)(E) for the purpose of discussing with legal counsel rights and duties regarding the windup and dissolution of the PERC partnership and pending litigation with PERC's general partner USAE. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

At 2:53 p.m., the executive session ended and the Board reconvened in regular session.

There being no further business to come before the Board, the meeting adjourned at 2:53 p.m.

Respectively submitted,



Jennifer S. Baroletti

Dated: July 27, 2014