

MUNICIPAL REVIEW COMMITTEE, INC.

BOARD OF DIRECTORS

A quarterly meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Wednesday, July 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
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
William B. Devoe, Eaton Peabody
Denis St. Peter, CES, Inc.
Jessamine Pottle, CES, Inc.
George Aronson, CRMC

PERC Representatives:

Gary Stacey, PERC
Henry Lang, PERC

Auditor:

Donald Higgins, Loiselle, Goodwin & Hinds

Fiberight

Craig Stuart-Paul

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

Chairman Reeves convened the meeting at 10:07 a.m.

EXECUTIVE SESSION

At 10:07 a.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 pending litigation with PERC's general partner USAE. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

At 10:48 a.m., the executive session ended and the Board reconvened in regular session. Bill Devoe left the meeting.

APPROVAL OF MINUTES

The next order of business to come before the Board was approval of the minutes of the April 27, 2016 quarterly meeting of the Board of Directors and the July 11, 2016 special meeting of the Board of Directors. One minor typo was noted in the July minutes. There being no discussion, upon motion made and duly seconded, it was unanimously:

VOTED: That the minutes of the April 27, 2016 quarterly meeting of the Board of Directors and the July 11, 2016 special meeting of the Board of Directors hereby are approved in the forms presented to the Board at this meeting, as corrected.

CONSIDERATION OF THE AUDIT OF MRC FINANCIAL STATEMENTS FOR THE CALENDAR YEAR ENDING DECEMBER 31, 2015

Donald Higgins, CPA of Loiselle, Goodwin & Hinds presented the preliminary independent auditor's report and financial statements, including management's discussion and analysis, notes to the financial statements, and the summary of PERC's financial performance. The audit was noted as a clean and unqualified opinion. He noted that Joint Venture net position was \$36,780,717, and that the MRC's stand-alone net position was \$233,833 at the end of 2015.

Karen Fussell asked that clarifying statements related to the position of each Equity Charter Municipality and the value of PERC be highlighted when the audit is sent to all Charter Municipalities.

Mr. Higgins 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, as it has done in prior years. While this is regarded as a material weakness, no change was recommended, because a change would not be cost-effective.

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 as presented.

Mr. Higgins left the meeting.

CONSIDERATION OF THE FINANCIAL STATEMENTS AND BILLS PAYABLE

Sophie Wilson reported that the Finance Committee met prior to the Board meeting and reviewed the budget. The Finance Committee recommends amendment to the operating budget to increase the amount budgeted for advocacy by twenty-three thousand dollars (\$23,000), and to transfer that amount from the Operating Budget Stabilization Fund to cover the increased expense. The Finance Committee also recommends that the Fiberright Project Development & Engineering Services Operating Budget line item in the budget be increased by two hundred ninety-six thousand ninety-two dollars (\$296,092), as the budgeted amount has been overspent in that amount. Ms. Wilson noted that the reasons for the overage include the extended Department of Environmental Protection ("DEP") permitting process, the extended local permitting process, Hampden Planning Board technical consultant fees were higher than expected, and considerably more municipal outreach and legal assistance was needed than anticipated in responding to municipal attorneys and board/staff support requests. It was noted that funds to cover the budget

adjustments should be drawn from the Operating Budget Stabilization Fund and not from the Tip Fee Stabilization Fund.

Ms. Wilson also presented bills payable totaling \$264,713.14 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 budget adjustments to the Operating Budget to increase the expense line for Legislative Advocacy (5100) by twenty-three thousand dollars (\$23,000), and to increase the expense line for Fiberight Project Development & Engineering Services (5918) by two hundred six thousand ninety-two dollars (\$206,092), for a total budget adjustment of two hundred twenty-nine thousand ninety-two dollars (\$229,092), are hereby approved.

VOTED: That the transfer of two hundred twenty-nine thousand ninety-two dollars (\$229,092) from the Operating Budget Stabilization Fund to the Operating Account to cover the budget adjustments is hereby approved.

VOTED: That the financial statements are hereby accepted as presented, and the bills payable of \$264,713.14 presented to the Board at this meeting hereby are approved.

**CONSIDERATION OF TRANSFER OF FUNDS FROM THE TIP FEE
STABILIZATION FUND TO THE MRC OPERATING FUND CONSISTENT WITH
THE ADOPTED 2016 MRC CAPITAL ASSET MANAGEMENT BUDGET TO MEET
EXPENSES ASSOCIATED WITH EXISTING PERC INFRASTRUCTURE
RETIREMENT (USAE LITIGATION & PARTNERSHIP WINDUP)**

The Board discussed the amount of fees currently owed to Eaton Peabody relating to the ongoing litigation with USA Energy, Inc. The budget amount has been adjusted to include anticipated expenses through October, 2016. A discussion ensued regarding the timing of transferring funds to cover the budget adjustment. After discussion, and upon motion made and duly seconded it was unanimously:

VOTED: That the MRC hereby is authorized to transfer up to two hundred thirty-two thousand three hundred seventy dollars (\$232,370) from the Tip Fee Stabilization Account to the Operating Account to cover budgeted partnership wind-up and related litigation expenses.

THIRD QUARTER 2016 TIPPING FEE CALCULATION; TRENDS IN MSW DELIVERIES

George Aronson presented the PERC tipping fee calculation for the third quarter of 2016 of \$79.00 per ton. Tonnage from charter towns was down compared to the third quarter of 2016, but up slightly in year-to-date tonnage. Increased glass and grit, an increase in the amount of materials that PERC sends to the landfill, and an increase in nonprocessables all had an impact on the tip fee calculation. Based upon his review of the PERC materials, Mr. Aronson recommended that the Board vote to accept the tipping fee calculation. There being no further discussion, and upon motion made and duly seconded it was unanimously:

VOTED: To accept the tipping fee for the third quarter of 2016 at \$79.00 per ton as calculated by PERC.

PERC FACILITY OPERATIONS REPORT

Henry (“Hank”) Lang, PERC Plant Manager presented the PERC Facility Operations Report for the second quarter of 2016. Mr. Lang reported that PERC recently received an environmental award from the Environmental Protection Agency (“EPA”) for reducing discharge from twenty-five thousand (25,000) gallons per day to using all wastewater in-house with zero discharge to the river.

Mr. Lang reported that the plant continues to run well and achieved a capacity factor of 100.03% of projected electrical production during the month of June. Truck waiting times have been manageable, and PERC has been managing its inventory on the tipping floor to assist with waiting times. He reported that some tonnage data does not match with the heat rates during the

month of May and that he is currently reconciling that data. There were a couple of incidents which required the use of bypass, the most significant of which was that the A trommel went down and now requires replacement. Plant staff was able to achieve a temporary fix to keep it running until the trommel can be replaced, which will get PERC through the busy summer season. The expected cost of the new trommel is two hundred ninety-nine thousand dollars (\$299,000) and installation is approximately one hundred sixty thousand dollars (\$160,000). The expected delivery timeline is between sixteen (16) and eighteen (18) weeks and PERC would like to push the replacement into the next scheduled shutdown. So far in 2016, PERC has bypassed approximately nine thousand five hundred (9,500) tons. Mr. Lang reported that repairs are currently being made to the top of one of the stacks which had significant rust damage.

A discussion ensued regarding the grinding operation of nonprocessables on the tipping floor and the risks associated with that operation as loaders drive by. This has been the standard process for approximately eight (8) years, and there have been discussions of putting a compact grinder in place inside an explosion chamber so that the grinder is contained. Mr. Lang advised that this is a much safer option and Mr. Lang is looking into obtaining quotes now for this change. He reported that approximately ten thousand (10,000) tons of total nonprocessables go through the existing grinding operation per year and that, although there have been no workplace injuries, there have been close calls and cause for concern.

Mr. Lang reported that he has made a personnel adjustment at the plant, and that Doug Brittan, the current safety manager has also taken on the role of operation superintendent, and will have a lot more control over the day to day operations at the plant. This will free up time for Mr. Lang as Plant Manager for overall management of the plant.

CHARTER MUNICIPALITY ASSET MANAGEMENT REPORT – CUSTODY ACCOUNT, TIP FEE & OPERATING BUDGET STABILIZATION FUNDS, LP INTEREST/BOND PREPAYMENT & 3rd 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 Report noting that there are current balances of \$2,056,162.69 in the Custody Account, \$25,493,643.57 in the Tip Fee Stabilization Fund and \$422,522.35 in the Operating Budget Stabilization Fund. He recommended a quarterly cash distribution of \$623,938.56.

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 fourth quarter cash distribution and recommended a transfer of one million five hundred thousand dollars (\$1,500,000.00) from the Custody Account to the Tip Fee Stabilization Fund. Mr. Aronson noted that if the Board approves a change to the target value to fifty-nine dollars (\$59) per ton (a later item on the meeting agenda) than the recommended transfer amount would be revised to one million three hundred twenty thousand dollars (\$1,320,000). 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 \$623,938.56 be made to the members.

VOTED: That the transfer of one million five hundred thousand dollars (\$1,500,000.00) from the Custody Account to the Tip Fee Stabilization Account is hereby approved, with the condition that if the target value is changed to fifty-nine dollars (\$59) later in the meeting, this transfer amount shall be reduced to one million three hundred twenty thousand dollars (\$1,320,000).

**STATUS OF JOINING MEMBERS AND DEPARTING MUNICIPALITIES
(INCLUDING THOSE SEEKING EXTENSIONS) AS OF JUNE 30, 2016 AND STATUS
OF SUBSEQUENT ACTIONS; DETERMINATION OF GOOD CAUSE SHOWN FOR
WAIVER OF TERMS OF RE-ADMITTANCE AS A JOINING MEMBER FOR ACTION
AFTER JUNE 30, 2016 BY MEMBERS AFFORDED ADDITIONAL TIME BY MRC
BOARD APPROVAL ON JULY 11, 2016, PURSUANT TO JOINDER AGREEMENTS,
SECTION 4.3(D) AND EXHIBIT B, SECTION 6**

Greg Louder reviewed the current list of joining members with tonnage totaling ninety-eight thousand six hundred sixty-one (98,661) tons. Mr. Louder noted that these tonnage amounts are estimates based on tons recommended in the white book. He needs to go back and reconcile the list with the actual tonnage estimates from the joinder agreements that members have signed.

Mr. Louder next reviewed the list of Departing Municipalities and noted that Surry/Blue Hill voted to sign on with Fiberight during their meeting last night and Bucksport also has voted to sign on with Fiberight. It was clarified that although the July 11th special meeting minutes do not reflect it, the Board intended that the town of Orland be included in the extension granted to Bucksport. Eddington, Sebec and Orland have been granted their requests for additional time and have indicated that this item is on their warrant or agenda for the regularly scheduled town meeting. The Midcoast region is meeting this evening.

**CONSIDERATION OF ADJUSTMENT TO THE JULY 1, 2016, SCHEDULED STEP
INCREASE IN THE TARGET VALUE STEP INCREASE PLAN AND/OR
SUBSEQUENT SCHEDULED STEP INCREASES**

Chairman Reeves noted that the Finance Committee discussed this agenda item during the meeting this morning. George Aronson provided an updated memorandum to the Board, indicating that we have increased the projection of the Tip Fee Stabilization Fund ("TFSF") balances as of March 31, 2018. If the target value is rolled back from sixty-three dollars (\$63) per ton to fifty-nine dollars (\$59) per ton, funds would need to be reallocated in order to achieve

a balance of sources and uses. For Joining Members, it would be reallocation of reserve funds and for Departing Municipalities it would be a shift in timing of when the funds would be paid out (August 2016 to May 2018).

The option of having different target values for departing members was discussed. After discussion, it was the consensus of the Board that a change the target value increase schedule was not warranted and that we should stay the course, but keep this item on the agenda for further updates.

The Board took a lunch break at 12:15 p.m.

At 12:54 p.m., the board reconvened.

DISCUSSION OF END-OF-TERM PROVISIONS OF WASTE DISPOSAL AGREEMENTS, INCLUDING (A) OBLIGATION OF PERC TO NOTIFY THE MRC OF ANY MATERIAL ADVERSE CHANGE OR POTENTIAL CHANGE IN FINANCIAL CONDITION WHICH IN ITS OPINION COULD RESULT IN A CESSATION OF OPERATIONS UNDER ARTICLE XII, PARAGRAPH C; AND (B) OPTION TO PURCHASE PARTNERSHIP INTERESTS IN PERC AT MARKET VALUE AS OF MARCH 31, 2018, PER ARTICLE XIX, PARAGRAPH B; AND DISCUSSION OF TERMS UNDER WHICH JOINING MEMBERS WOULD OFFER TO SELL PERC LIMITED PARTERSHIP SHARES TO THE PERC GENERAL PARTNER, USAE, OR TO DEPARTING MUNICIPALITIES

Greg Lounder noted that this agenda item relates to a couple of provisions in the current agreements with PERC, and that no action is needed at this time but that some communities have expressed interest in purchasing interests in the PERC limited partnership. Mr. Lounder asked if the Board wants management to spend any time on this. Dan McKay clarified that the partnership, under the terms of the partnership agreement, ends in December 31, 2018 and George Aronson noted that he would encourage any selling member to sell an option to buy at the April 2018 time so there are no changes to the cash flow. After a brief discussion, the Board agreed that there is no need for further discussion or staff time to be spent on this issue.

UPDATE ON ACQUISITION OF PERMITS FOR THE FIBERIGHT PROJECT

Greg Louder turned the discussion over to Denis St. Peter as President and CEO of CES, Inc. to provide an update on the permits. Mr. St. Peter reported that he has received from DEP the stormwater permit for the road, National Resources Protection Act permit for the road and the site; the solid waste processing license and the air emissions permits. He has not yet seen the final order from the Town of Hampden. This was a lengthier process than we had anticipated, however it shows that DEP was very thorough. There was some opposition to the permits, both locally and nonlocally, which is to be expected.

UPDATE ON STATUS OF AND SCHEDULE OF REQUIREMENTS FOR FIBERIGHT TO ACHIEVE CONSTRUCTION FINANCING

Craig Stuart-Paul of Fiberight reported to the Board that in addition to Covanta, Fiberight has received offers and is negotiating with five (5) other potential financing partners and is ahead of schedule to close the financing before the deadline at the end of the year. Fiberight met with Covanta last Friday with proposed language which was well received. It is currently being reviewed by Covanta's counsel but Fiberight doesn't expect any issues. Most importantly, the smaller scale project was very well received. Mr. Stuart-Paul noted that the MRC has a termination right under the Master Waste Supply Agreement ("MWSA") if the January 1, 2017 deadline for Fiberight to reach its financial close has not been met.

George Aronson noted that if the MRC were to commence construction prior to January 1, 2017 and Fiberight did not achieve financial close, then we would want to have a plan in place to reimburse the MRC for funds expended to date for infrastructure.

MRC ACTIONS RELATED TO FIBERIGHT’S FINANCING, INCLUDING (A) AMENDMENTS TO THE MASTER WASTE SUPPLY AGREEMENT AND (B) AMENDMENT OF THE LANGUAGE OF THE SITE LEASE

The Board reviewed the proposed amendment contained in the board materials, and after a brief discussion determined to wait until Covanta’s counsel has reviewed and commented before approving the amendment.

DISCUSSION OF PROCESS FOR COMPLETING THE NEXT MRC STEPS IN THE DEVELOPMENT OF THE SITE FOR THE FIBERIGHT PROJECT, INCLUDING INFRASTRUCTURE CONSTRUCTION AND AUTHORIZATION OF EXPENDITURE OF UP TO FIVE MILLION DOLLARS (\$5,000,000) OF FUNDS FROM THE TIP FEE STABILIZATION FUND FOR SITE ACQUISITION AND INFRASTRUCTURE DEVELOPMENT

George Aronson briefly explained the details of what is involved in the next steps in the acquisition and development of the site and the timing of each step, and proposed that this task be delegated to a subcommittee. Denis St. Peter suggested further review of the budget, as we had conservative figures for wetlands mitigation and the costs came in under budget.

Board Member Sophie Wilson suggested that the Board review benchmarks needed to begin this work, review the budget, and then have an ad hoc construction committee to implement the Board’s recommendation. After discussion, Chairman Reeves suggested that the Board wait to take any action on this as we will be having discussions in executive session that will impact this matter. Board member Sophie Wilson noted that because the MRC will be using public funds in the Tip Fee Stabilization Fund (“TFSF”), the Board needs to ensure that the MRC is using funds appropriately and making sure that additional information is made available to towns before expending any funds from the TFSF.

EXECUTIVE SESSION

At 1:29 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 legal rights and duties regarding potential construction contract negotiations. Whereupon, it was unanimously:

VOTED: That the meeting is adjourned to executive session.

At 2:31 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 2:31 p.m.

Respectively submitted,



Jennifer S. Baroletti

Dated: 10/26/2016