

**MUNICIPAL REVIEW COMMITTEE, INC.**  
**BOARD OF DIRECTORS**

A quarterly meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Wednesday, October 26, 2016 at 10:30 a.m. at the Town of Hampden Municipal Building, 106 Western Avenue, Hampden, Maine. In attendance were the following:

**Directors:**

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:**

George Aronson, CRMC  
Daniel G. McKay, Eaton Peabody  
Denis St. Peter, CES, Inc.  
Jessamine Pottle, CES, Inc.  
Daniel Walker, Preti Flaherty

**PERC Representatives:**

Gary Stacey, PERC  
Henry Lang, PERC

**Fiberight**

Craig Stuart-Paul

Daniel G. McKay kept the minutes in the absence of Jennifer Baroletti. Chairman Reeves presided.

Chairman Reeves convened the meeting at 10:31 a.m. noting that most had come directly from the groundbreaking ceremony at the Fiberight project site off Coldbrook Road in Hampden.

## **APPROVAL OF MINUTES**

The first order of business was approval of the minutes of the July 27, 2016 quarterly meeting and the September 23 and September 30, 2016 special meetings of the Board of Directors. There being no discussion, upon motion made and duly seconded, it was:

**VOTED:** That the minutes of the July 27, 2016 quarterly meeting and the September 23 and September 30, 2016 special meetings of the Board of Directors hereby are approved in the forms presented to the Board at this meeting. (Fussell abstaining as to approval of September 30 minutes)

## **CONSIDERATION OF THE FINANCIAL STATEMENTS AND BILLS PAYABLE**

In the absence of Sophie Wilson, Greg Louder presented and reviewed the year-to-date profit and loss statement. He noted in particular that, as previously approved, \$1,620,173 was withdrawn from the Tip Fee Stabilization Account for the purpose of funding the first phase of construction of the access road to the Fiberright project site. He also noted the expenditure of \$87,600 as a wetlands mitigation fee in conjunction with the construction project.

Bills payable totaling \$216,728.43 were presented to the Board for consideration. Upon motion made and duly seconded it was unanimously:

**VOTED:** That the financial statements are hereby accepted as presented, and bills payable of \$216,728.43 presented to the Board at this meeting hereby are approved.

## **CONSIDERATION OF TOWN OF CARMEL'S REQUEST TO BE CONSIDERED AS A CHARTER MUNICIPALITY**

Kevin Howell, interim town manager of Carmel, presented a request that Carmel be admitted as a Joining Member and granted status as a Charter Municipality under the Municipal Joinder Agreement. He explained that the previous town manager had suffered a stroke in April and the first interim town manager had covered only essential functions and had not addressed MSW disposal planning. Upon assuming the role of interim town manager in July, Hr. Howell

brought the matter to the Board of Selectmen's attention which ultimately resulted in a vote on August 15 to become a Joining Member conditioned on being granted Charter Municipality status. The Board engaged in an extended discussion of this request. The uniqueness of the circumstances was noted. Also noted, however, was the fact that the MRC had presented to the Carmel Board of Selectmen in July which at that time stated that it had no interest in further considering the MRC/Fiberight proposal. Following discussion, and upon motion duly made and seconded, it was:

**VOTED:** That, having demonstrated good cause for its failure to become a Joining Member on or before June 30, 2016, admission of the Town of Carmel as a Joining Member hereby is approved, and the Town of Carmel is further granted Charter Municipality status such that it (i) will not be required to pay a surcharge of \$2.21 per ton delivered over the initial 15 year term of the Joinder Agreement as otherwise required by paragraph 6 of Exhibit B of the Joinder Agreement; and (ii) will be eligible for rebate payments on the same basis as other Joining Members notwithstanding the provisions of Section 4.3(d) of the Joinder Agreement. (Reeves and Fussell opposed)

### **PERC FACILITY OPERATING REPORT**

Hank Lang, PERC Plant Manager, presented the PERC Facility Operations Report for the third quarter of 2016. Mr. Lang reported that the Plant is running well. A bypass condenser is being rebuilt at a cost of \$57,000, a stack is being repainted, and the replacement of the A Trommel is expected to be completed this fall at an estimated cost of \$309,000.

The plant capacity factor year-to-date is at 87.5% which is slightly lower than projected. Mr. Lang expects the capacity factor to increase to budget projection by the end of the year.

There have been no emissions issues.

PERC recently received the 2016 Governor's Award for Environmental Excellence.

George Aronson inquired as to the status of budget preparation, noting that historically a draft budget has been delivered to the Oversight Committee for review in September. Mr. Lang stated that a draft budget should be circulated within the next couple of weeks.

### **USAE LITIGATION SETTLEMENT DISCUSSIONS**

Mr. Louder reported that he had engaged the previous day in talks with John Noer, president of USA Energy, LLC, in an effort to come to final resolution on the form of the settlement agreement embodying settlement terms agreed upon and entered into the court record in September, including necessary amendments to the PERC Partnership Agreement. He noted that he had worked from a matrix of issues with input from George Aronson and Dan McKay and that Mr. Noer's general reaction was that these issues could be successfully addressed. Mr. Louder believes that there is impetus on both sides to finalize the settlement as soon as possible, and he hopes the settlement agreement will be finalized and signed within the next couple of weeks.

### **FOURTH QUARTER 2016 TIPPING FEE CALCULATION; TRENDS IN MSW DELIVERIES**

George Aronson presented the PERC tipping fee calculation for the fourth quarter of 2016 of \$78.50 per ton. Tonnage is down somewhat. The decline seems to be attributable to a handful of towns with significant decreases. The Board noted that all MRC member municipalities continue to be obligated to deliver all MSW originating within their borders to PERC through March 31, 2018. The membership will be provided with a reminder to this effect.. 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 fourth quarter of 2016 at \$78.50 per ton as calculated by PERC.

**CHARTER MUNICIPALITY ASSET MANAGEMENT REPORT – CUSTODY ACCOUNT, TIP FEE & OPERATING BUDGET STABILIZATION FUNDS, LP INTEREST/BOND PREPAYMENT & 4th 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 \$653,658.67 in the Custody Account, \$27,736,948.18 in the Tip Fee Stabilization Fund and \$192,179.68 in the Operating Budget Stabilization Fund. He recommended a quarterly cash distribution of \$776,784.96.

He noted that the value of the aggregate partnership interests of the Equity Charter Municipalities has been fixed at \$1,500,000 as a result of the USAE litigation settlement, and that is reflected in his report. He also noted that the September and October payments of Performance Credits will count toward the guaranteed minimum distribution figure of \$5,400,000 agreed upon as part of the settlement. As a result, \$980,741 of that guaranteed payment already has been paid. Based on current projections, he expects that the aggregate distribution guaranty of \$5.4 million will be reached by late in 2017. No movement of funds between accounts appears indicated and none is recommended. 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 \$776,784.96 be made to the members.

**CONSIDERATION OF ADJUSTMENT TO TARGET VALUE STEP INCREASE PLAN**

Chairman Reeves noted that the Board in July had declined to modify the existing step increase plan but had directed that the matter be kept on the agenda for update at future meetings.

In light of the pending USAE settlement, which alters some of the variables affecting the need for step increases, Ken Fletcher suggested that Mr. Aronson review the impact of the settlement and present to the Board at its December meeting a recommendation with regard to revision of the step increase plan.

### **REPORT ON ROAD AND INFRASTRUCTURE CONSTRUCTION PROJECT**

Mr. Lounder reported on the groundbreaking ceremony held at the Fiberight project site immediately prior to the Board meeting. Denis St. Peter then reviewed the current project status. He noted that there was a two week delay in obtaining a necessary DEP approval to commence construction but that the project is now back on track. Grubbing and clearing will be completed in November and it is also expected that erosion control, culvert installation, fill and grading will all be underway in November and December with work to finish in January.

### **REPORT ON STATUS OF APPEAL OF GRANT OF MRC/FIBERIGHT DEP PERMIT APPROVALS**

Dan McKay reported that the record has been filed with the Superior Court and that the matter has been transferred to the Business Court division which is viewed as a positive development. A briefing schedule has been set following which the court may request oral argument before rendering its decision. Mr. McKay estimated that the best case for a final ruling would be early February but noted that the parties have no control over the timing of the Superior Court in issuing its decision.

### **REPORT ON FIBERIGHT PROGRESS TOWARD FINANCIAL CLOSE AND FACILITY DEVELOPMENT SCHEDULE**

Craig Stuart-Paul reported that a pro forma process guaranty insurance policy has issued. Fiberight has selected a financing partner from among three candidates. This partner, taken

together with Covanta, is capable of financing the entire project. Financial close will not occur until the DEP appeal is resolved, but due diligence is proceeding in the interim.

### **APPROVAL OF SLATE OF NOMINEES FOR 2016 ANNUAL ELECTION OF DIRECTORS**

Mr. Louder presented the slate of nominees standing for election as directors at the 2016 annual meeting. He advised the Board that he has reviewed the qualifications of each nominee as required by Section 5.1 of the MRC Bylaws and has found each nominee to be qualified. He advised that ballots will be mailed to members by the end of the week and must be returned by December 13 in anticipation of the annual meeting which is scheduled to be held at the Cross Insurance Center in Bangor on December 14. Upon motion duly made and seconded, it was unanimously

**VOTED:** That the slate of nominees to stand for election as directors of the MRC hereby is accepted as presented.

### **ADMINISTRATIVE REPORT**

Mr. Louder reported that several communities have reduced their deliveries to PERC. He will remind them of their delivery obligations through March 31, 2018.

The recent Maine Municipal Association conference was well attended. The MRC booth was well received.

As mentioned, the MRC annual meeting will be held at the Cross Insurance Center in Bangor on December 14, 2016 at 3:00 p.m. The regular Board meeting schedule for 2017 has been set. Meetings will be held on the fourth Wednesday in January, April, July and October.

Mr. Louder noted that a number of Joining Members have yet to return their legal certificates which will be a precondition to project financing. He will follow up.

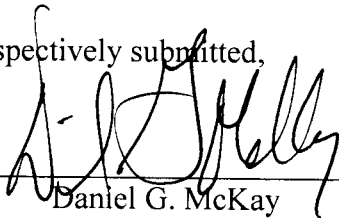
Casella has filed its request for a capacity expansion at JRL. The application includes an increase in MSW capacity which would be antithetical to waste processing efforts in the region and to the State's solid waste hierarchy.

Mr. Louder then introduced Dan Walker who reported on the upcoming legislative session. He is forecasting some Democratic gains in the House. The Senate likely will be fairly evenly balanced. There will be some changes in the Energy and Natural Resources Committee but they won't be known until December. Mr. Walker recommended that the MRC hold a series of legislative briefings after the election to bring legislators up to speed. He noted that the MRC participated in the JRL expansion hearings. The next step is the filing of post-hearing briefs.

#### ADJOURNMENT

There being no further business to come before the Board, the meeting it was adjourned at 12:03 p.m.

Respectively submitted,

  
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Daniel G. McKay

Dated: December 15, 2016