

MUNICIPAL REVIEW COMMITTEE, INC.

BOARD OF DIRECTORS

A special meeting of the Board of Directors of Municipal Review Committee, Inc. was held on Friday, September 30, 2016 at 9:30 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
Catherine Conlow, Bangor
Chip Reeves, Bar Harbor
Tony Smith, Town of Mount Desert
Mike Roy, City of Waterville

Staff:

Greg Louder, MRC Executive Director

Consultants:

Daniel G. McKay, Eaton Peabody
George Aronson, CRMC (attended by telephone)
Jessamine Pottle, CES, Inc.
Denis St. Peter, CES, Inc.

Daniel G. McKay kept the minutes of the meeting and Chairman Reeves presided.

Chairman Reeves convened the meeting at 9:56 a.m.

EXECUTIVE SESSION

At 9:58 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 hereby is adjourned to executive session.

At 10:20 a.m., the executive session ended and the Board reconvened in regular session.

CONSIDERATION OF USAE SETTLEMENT

Mr. McKay reviewed the status of the settlement process in connection with the pending USAE litigation matter. Terms of a settlement have been agreed upon and presented to the Superior Court, subject to approval of those terms of the MRC Board.

Mr. Louder acknowledged the contributions of the negotiating committee, and particularly Ms. Wilson, to the settlement effort. He noted that the key to the settlement is that it goes beyond the litigation itself and encompasses terms for settlement of the PERC Partnership in 2018 and fixes the revenue stream to MRC communities between now and then. The settlement terms, as approved by the Court, include the following elements:

- The PERC Partnership will terminate as of March 31, 2018.
- The existing option of the Equity Charter Municipalities to purchase limited partnership interests will be extinguished.
- The aggregate value of the limited partnership interests held by Equity Charter Municipalities as of March 31, 2018 is set at \$1.5 million. Each Equity Charter Municipality has the option of accepting its pro rata share of this amount in exchange for its partnership interest or, alternatively, each has the option to reject this valuation and either retain its partnership interest or receive a distribution determined as provided in the partnership agreement.
- The payment stream flowing from PERC to the MRC's members (partnership distributions and performance credits) over the final 19 months of the PERC Partnership is fixed at \$5.4 million.

- USAE will make an additional settlement payment of \$600,000 within 15 days of the date of the settlement agreement.
- PERC will work with the MRC to secure from PERC's lender a release of \$1.33 million from existing reserve funds.
- PERC irrevocably waives GAT penalties, both past and future.
- USAE and PERC Holdings will receive an aggregate increase of \$30,000 per month in management fees.
- Each party will agree not to disparage the other.

The Board discussed the proposed terms. It was noted that the settlement, as currently postured, will not affect the pending DEP appeal which presumably will move forward. The Board inquired as to the basis for the terms of the economic settlement. Mr. Aronson indicated that the numbers agreed upon were within the range of his projections of partnership valuation and likely distributions over the remaining term of the PERC Partnership and, in his view, were favorable to the MRC membership. It was noted by several that the agreement on a fixed amount of aggregate distributions to the MRC membership over the remaining term of the PERC Partnership is important as it removes the likelihood of disagreements over Partnership capital and operating expenditures over the remaining term. In particular, the agreed upon increase in management fees will have only a timing impact and will not have the effect of reducing the aggregate amount to be received by the MRC membership. It also was noted that there also is value in reducing the prospects for conflict in conjunction with the MRC's exit from the PERC Partnership, and by settling on these values now there likely will not be the need to much of the \$1.7 reserve set aside for resolution of partnership termination issues. Following discussion, it as moved, seconded and unanimously voted as follows:

RESOLVED: That a settlement agreement among the MRC, USA Energy Group, LLC, PERC Holdings, LLC and Penobscot Energy Recovery Company Limited Partnership addressing the proposed settlement of pending litigation in the matter of *Municipal Review Committee, Inc. et al v. USA Energy Group, LLC*, Maine Superior Court Docket No. BCD-CV-15-22, hereby is approved in substantially the form and on substantially the terms presented to the court with such modifications to the final form of agreement as may be approved by the signing officer; and that each of the President and the Treasurer, acting singly, hereby is authorized to execute and deliver such agreement on behalf of the MRC and to take such other action on behalf of the MRC as may be necessary or appropriate in order to implement its terms.

PROPOSED INTERIM INFRASTRUCTURE PROJECT

Mr. St. Peter presented a PowerPoint summary of the proposed project, explaining that the objective is to begin construction of the access road this fall so that Fiberight will be able to access the site next year just as soon as the DEP appeal is resolved and the financing closes. It was noted that revisions to the project have been made in order to bring it in under the original \$5 million allotted for the project. Following discussion, each of the following resolutions was approved unanimously:

Approval of License Agreement for Road Construction

RESOLVED: That a license agreement between the MRC and Hickory Development, LLC granting to the MRC and its invitees the right to construct an access road on property now owned by Hickory Development, LLC, and under option to the MRC, hereby is approved in substantially the form and on substantially the terms presented to the meeting with such modifications to the final form and terms of agreement as may be approved by the signing officer; and that each of the President and the Treasurer, acting singly, hereby is authorized to execute and deliver such agreement on behalf of the MRC and to take such other action on behalf of the MRC as may be necessary or appropriate in order to implement its terms.

Approval of Acquisition of Project Real Estate

RESOLVED: That the MRC hereby is authorized and directed to exercise a certain Option to Purchase among H.O. Bouchard, Inc., Hickory Development, LLC and the MRC dated December 1, 2014, as amended by instrument dated February 25 (collectively, the "Option"), and to purchase the property and rights described therein

(collectively, the "Option Property"), on the terms described in the Option with such modifications as may be approved by the signing officer; and that each of the President and the Treasurer, acting singly, hereby is authorized to execute and deliver such documents, and to take all such further actions on behalf of the MRC as may be necessary or appropriate in order to acquire the Option Property.

Approval of H.E. Sargent Agreement

RESOLVED: That a construction contract between the MRC and H.E. Sargent, Inc. [confirm legal name], pursuant to which H.E. Sargent, Inc. will be engaged to construct a certain access road, utility lines and related infrastructure on property now owned by Hickory Development, LLC and under option to the MRC, hereby is approved in substantially the form and on the terms presented to the meeting with such modifications to the final form and terms of agreement as may be approved by the signing officer; and that each of the President and the Treasurer, acting singly, hereby is authorized to execute and deliver such agreement on behalf of the MRC and to take such other action on behalf of the MRC as may be necessary or appropriate in order to implement its terms.

Approval of CES Construction Management Agreement

RESOLVED: That an agreement entitled Interim Access Road and Partial Utility Construction Agreement (Phase 1) between the MRC and CES, Inc. pursuant to which CES, Inc. will provide construction quality assurance, design, regulatory interface and other project management services in connection with the construction of an access road and related infrastructure on property in Hampden, Maine now owned by Hickory Development, LLC and under option to the MRC, hereby is approved in substantially the form and on the terms presented to the meeting with such modifications to the final form and terms of agreement as may be approved by the signing officer; and that each of the President and the Treasurer, acting singly, hereby is authorized to execute and deliver such agreement on behalf of the MRC and to take such other action on behalf of the MRC as may be necessary or appropriate in order to implement its terms.

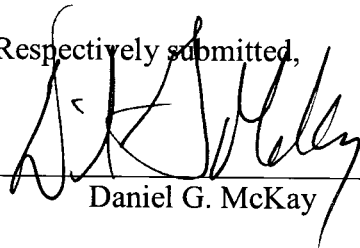
Withdrawal from Tip Fee Stabilization Fund

RESOLVED: That a withdrawal from the Tip Fee Stabilization Fund of up to \$1,620,173 is hereby approved for deposit in the MRC operating fund to be available for payment of expenses that the MRC Board may approve as payable in connection with the so-called Interim Access Road and Partial Utility Construction project pursuant to which the MRC will exercise an option to purchase and fund the construction of an access road and related infrastructure related to the so-called Fibrighthouse project in Hampden, Maine, such expenses being anticipated to include the following: \$140,000 for Construction Management Services; \$285,000 for Exercise of property purchase option; \$87,600 for "in lieu fee" in lieu of wetlands mitigation; \$987,212 for Interim Access Road and Partial Utility Construction project construction; \$5,000 for town peer review escrow account and \$115,361 for contingency.

RESOLVED: That the MRC hereby is authorized to expend up to \$1,620,173 for payment of expenses that the MRC Board may approve as payable in connection with the so-called Interim Access Road and Partial Utility Construction Project up to the following amounts: \$140,000 for Construction Management Services; \$285,000 for Exercise of property purchase option; \$87,600 for "in lieu fee" in lieu of wetlands mitigation; \$987,212 for project construction; \$5,000 for town peer review escrow account and \$115,361 for contingency.

There being no further business to come before the Board, the meeting adjourned at 11:30 a.m.

Respectively submitted,



Daniel G. McKay

Dated: October 26, 2016