



August 17, 2015

TO: Municipal Review Committee Member Communities

Greetings,

On July 31, 2015, Penobscot Energy Recovery Company, Limited Partnership (PERC) mailed to Municipal Review Committee (MRC) member communities a draft of a proposed "Sixth Amended and Restated Agreement of the Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership" which by its terms would purport to extend the current PERC Partnership beyond its current term which ends on December 31, 2018. The MRC Board does not believe that the proposed agreement is in the best interests of the MRC member communities and is recommending that this proposed extension of the existing partnership be rejected. Attached is a memorandum explaining why.

In the meantime, the MRC is continuing to work with Fiberright, a solid waste technology company, to develop a new state-of-the-art waste recycling and processing facility in Hampden. Development of this project is proceeding well, and we continue to believe that it offers the best path forward to assure that an affordable, long-term, and environmentally sound waste management option will be available to MRC members following expiration of the current contracts with PERC in 2018.

The MRC expects to have comprehensive draft agreements for the Hampden facility available for review by the member communities this fall with an opportunity for feedback before the documents are finalized and made available for consideration by member communities during the first half of 2016. Each community will have the opportunity to review both options and make a choice regarding post-2018 solid waste disposal.

As always, please don't hesitate to contact Greg Lounder at glounder@mrcline.org or 664-1700 if you have any questions or concerns.

Greg Lounder
Executive Director

Copies: MRC Board of Directors



MEMORANDUM

To: Municipal Review Committee Member Communities

From: Municipal Review Committee Board of Directors

Date: August 17, 2015

Re: Sixth Amended and Restated Agreement of Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership

On July 31, 2015, the current General Partner of the PERC Partnership, USA Energy (USAE), distributed to the MRC membership a proposed "Sixth Amended and Restated Agreement of Limited Partnership of Penobscot Energy Recovery Company, Limited Partnership" for review and comment. On behalf of member communities, the MRC has reviewed the draft proposal with our general counsel and felt it important to share our initial concerns.

First, under the terms of the current existing partnership agreement, the PERC Partnership expires on December 31, 2018 and USAE does not have the power to either amend its provisions or extend its term as it is attempting to do in this draft proposal without the prior written consent of the MRC. The MRC Board of Directors would provide its consent to proposed partnership agreement amendments that actually supported a continued mission of affordable, long term and environmentally sound disposal of MSW, but the proposal in no way supports this mission. 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, and the current PERC Partnership will dissolve under its own terms as of that date.

Secondly, while at first glance this document may appear similar to the partnership 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 may 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 of Directors.
- **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 partnership interest without any umbrella organization to offer technical 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 consider approval of 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 Cash Distributions Eliminated.** USAE would have total discretion over when, whether and in what amounts, if any, revenue sharing cash 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.
- **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.

This draft partnership agreement as presented would effectively eliminate the public/private partnership which has characterized the relationship between PERC and the MRC communities since the MRC's inception in 1991. 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.

The MRC Board of Directors does not believe that this proposed agreement is in the best interests of the MRC membership and recommends that it be rejected. Any community having additional questions or concerns should feel free to contact Greg Louder at 664-1700 or glouder@mrcmaine.org.