

April 23, 2014

Karen Knuuti  
Environmental Specialist, Bureau of Remediation and Waste Management  
Department of Environmental Protection  
Eastern Maine Regional Office  
106 Hogan Road  
Bangor, Maine 04401

**RE: Municipal Review Committee's Application for Public Benefit Determination/ Initial Response to Opposition Filed by USA Energy, *et. al.***

Dear Karen:

On behalf of the Municipal Review Committee, Inc. ["MRC"], I am writing to provide an Initial Response to the opposition filed by USA Energy, LLC *et. al.* ["USA Energy"] to MRC's application for a Public Benefit Determination regarding a solid waste facility in Argyle or Greenbush [the "PBD Application"]. Thank you for sending the USA Energy response to Greg Louder of MRC on Friday; since we just received USA Energy's opposition on Friday, April 18, 2014, this Initial Response focuses on two issues raised by USA Energy in its opposition: (1) the status of current litigation between MRC and USA Energy; and (2) the authority of MRC to apply to the Department for a Public Benefit Determination. MRC will provide responses to all other issues raised by USA Energy in separate correspondence.

### **General Background**

As detailed in Appendix B to the PBD Application of MRC, the MRC represents all of its membership (known as Charter Municipalities). Its members include towns, cities, counties, refuse disposal districts, public waste disposal corporations and other quasi-municipal entities. MRC's membership is made up of 86 (not 79) entities known as Equity Charter Municipalities and 47 entities known as New Charter Municipalities. These entities have arranged for and provide solid waste disposal services for 185 Maine municipalities and 2 counties. A listing of all MRC-related entities is provided under Appendix B of the PBD application. With respect to the assertion that MRC represents only the so-called equity charter municipalities, we simply observe that the MRC Articles of Incorporation and Bylaws expressly provide for three classes of members. While certain rights are reserved

exclusively to Equity Charter Municipalities, all municipalities admitted to membership have delegated to the MRC Board of Directors through Section 2.2(10) of its Bylaws the power to take any action deemed by the Board of Directors to be necessary or desirable in order to effectuate the mission and general purpose of MRC.

### **Pending Litigation Between MRC and USA Energy on an Unrelated Corporate Dispute is Irrelevant to the Department's Review of the Application**

The litigation between MRC and USA Energy has no bearing, direct or indirect, on the MRC's pending PBD Application. The litigation arose from actions taken by USA Energy that are inconsistent with USA Energy's duties as General Partner of PERC, and which MRC alleges have resulted in economic harm to the PERC limited partners, including the municipalities represented by MRC. The litigation seeks to restore money that MRC alleges was, and continues to be, misappropriated by USA Energy from PERC. Far from putting the Orrington facility at risk, the litigation seeks to restore for the benefit of that facility funds diverted from the PERC Partnership by USA Energy. The litigation reflects the fact that USA Energy, and USA Energy alone, has put the Orrington facility at risk, and that MRC is taking appropriate steps to restore economic balance to the partnership.

From a temporal perspective, the litigation relates to a Partnership and an existing project with a firm end date in 2018, unless extended. By contrast, the PBD application relates to a timeframe and project subsequent to April 1, 2018.

### **MRC Has Authority to Apply for a Public Benefit Determination**

MRC has clear authority pursuant to its governing corporate documents and the Maine Hazardous Waste, Septage, and Solid Waste Management Act to apply for a Public Benefit Determination for a solid waste facility.

Authorizing Corporate Documents. MRC is a nonprofit organization pursuant to Title 13-B of the Maine Revised Statutes that also meets the criteria under 38 M.R.S. § 1304-B(5)(a) to be a solid waste "regional association." For convenient reference, we attach a highlighted copy of § 1304-B as **Exhibit A**.

MRC's Articles of Incorporation and Bylaws establish the authority of MRC to apply for a Public Benefit Determination. Plainly, it is within the scope of MRC's purpose to seek and apply for approvals for a solid waste facility that unequivocally relates to providing an affordable and environmentally-sound long-term solution for the disposal of municipal waste.

MRC's Bylaws provide clear authority to do so; a highlighted copy of same are attached as **Exhibit B**. Article II "Mission and Purpose" of its Bylaws contains the following relevant provisions:

*"The mission of this corporation is to better ensure the continuing availability to its members of **long-term, reliable, safe and environmentally sound methods of solid waste disposal at a stable and reasonable cost.**" - MRC Bylaws, Section 2.1 (Emphasis supplied).*

*"The purpose of this corporation on a continuous basis shall be to promote the common good and general welfare of the people of its members in the following manner on a regular basis: ... Perform such additional acts and functions as the Board of Directors deems necessary and/or desirable to effectuate the mission and general purpose of the corporation and the administration of the Agreements and any other instruments or agreements ancillary or collateral thereto." - MRC Bylaws, Section 2.2(10)*

At MRC's December 11, 2013 meeting of the Board of Directors, the Board acted consistent with the above framework by adopting a Resolution authorizing MRC to pursue an application for a Public Benefit Determination with the Department; a copy of that resolution is attached under **Exhibit C** to this letter. The Resolution specifically states:

**"RESOLVED:** That the MRC take steps to further develop a potential integrated solid waste management and resource recovery facility to accommodate the disposal of MSW [municipal solid waste] originating in the Charter Municipalities after March 31, 2018 including, without limitation, ... (iv) **preparing and filing an application with the Maine Department of Environmental Protection for a Determination of Public Benefit in connection therewith ... ."**

(Emphasis supplied.)

Accordingly, there are no corporate governance prohibitions or limitations, or any need to ratify actions taken by MRC to file its Application with the Department. Those actions were authorized by the governing Board of MRC consistent with the purposes and Board powers under the Bylaws of the MRC.

Maine Hazardous Waste, Septage, and Solid Waste Management Act. There are also no statutory solid waste provisions that prohibit MRC from seeking a Public Benefit Determination. To the contrary, Maine law specifically authorizes regional associations such as MRC to seek to develop solid waste facilities.

MRC is a nonprofit organization that meets the definition of a “regional association,” which expressly defines permissible purposes of such entities to include “owning, constructing or operating a solid waste disposal facility.” 38 M.R.S. § 1303-C(24). On this basis alone MRC has the statutory authority to seek governmental approvals to own, construct, or operate a solid waste disposal facility. *See* 38 M.R.S. § 1304-B(5-A) (“A regional association may not pledge the full faith and credit of its members but it has all other powers necessary and incidental to carry out the purposes of this chapter.”). USA Energy’s argument that MRC cannot seek governmental approvals to own, construct, or operate a solid waste disposal facility is therefore in direct contradistinction with the plain language of the Act authorizing such activities.

Moreover, section 1304-B of Title 38 states any member or members of a regional association (such as MRC’s members), may invest or participate in the ownership of “(1) one or more solid waste facilities; [or] (2) an entity that owns one or more solid waste facilities.” 38 M.R.S. § 1304-B(5-A)(D). The Act therefore provides further support that not only can MRC itself pursue governmental approvals to own, construct, or operate a solid waste facility, but that its members can also invest and participate in the ownership of such facilities and pursue governmental approvals for such facilities.

In 1998, the MRC municipalities undertook to secure all necessary approvals to enter into an Amended, Restated and Extended Solid Waste Disposal Agreement; an example is attached under **Exhibit D** to this letter. Pursuant to that Authorizing Vote, the MRC members (i) authorized, ratified and confirmed their municipality, district or other public sector entity as a charter member of the Municipal Review Committee, Inc. (“MRC”) organized as a nonprofit corporation and acting as a regional association to manage solid waste disposal pursuant to Title 13-B and Title 38 of the Maine Revised Statutes, as amended (and specifically Section 1304-B(5-A) of Title 38); and (ii) acquired the right to purchase limited partnership interests in PERC and authorized MRC, pursuant to its articles of incorporation and bylaws, as amended, to exercise such right to purchase such limited partnership interests on behalf of said Charter Municipality; and (iii) to authorize MRC to hold, manage, apply or direct the cash distributions to be received from time to time by MRC on behalf of the Town from PERC for such purchase *or for such other purposes as may be declared in the MRC bylaws*.

Importantly, in the MRC Bylaws, Section 2.3 grants MRC all the powers, rights and duties normally incident to such corporations and all other rights granted to corporations organized under Title 13-B of the Maine Revised Statutes, *as well as* the powers, rights and duties granted by Title 38, Section 1304-B, subsection 5-A of the Maine Revised Statutes. See Exhibit A.

Both the 1998 Authorizing Vote and Section 2.3 reinforce the authority of the MRC to act on behalf of its members consistent with the MRC Bylaws and the Mission of the MRC; those Bylaws and the Mission are consistent with the authority of “other

regional associations” like the MRC acting under 38 MRS § 1304-B(5-A) to pursue governmental approvals and ownership of “one or more” solid waste disposal facilities. Again, please see 38 MRS § 1304(5-A)(D)(1).

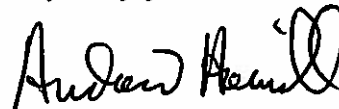
Finally, the claim that MRC and its municipal members cannot pursue a second course of action while there are pending contracts for disposal with PERC is contrary to (1) the above cited legal authorities, (2) the simple fact that those disposal contracts expire on March 31, 2018, unless extended, (3) the fact that the proposed facility which is the subject of the PBD application would not become operational until after expiration of the current contracts, and (4) the reality that there is a lengthy advanced planning cycle for any new integrated solid waste management facility (including the landfill facility component that is the subject of the PBD application).

\* \* \*

Although not directly stated in its opposition, USA Energy opposes MRC’s Application because its objective is to prevent MRC and its members from developing an integrated solid waste facility as part of its post-2018 planning effort. In short, USA Energy is using the regulatory process as a business tactic to further its own economic interests in the solid waste management market post-2018. The Department should reject this attempt to use the regulatory process in this manner, and should instead return its focus to the merits of MRC’s Application.

We thank the Department for its continued attention to this important matter. As noted, we will be filing separate correspondence on the additional issues raised by USA Energy. In the meantime, please feel free to contact me with any questions or concerns.

Very truly yours,



P. Andrew Hamilton

Cc: Greg Lounder  
Denis St. Peter

## Maine Revised Statutes

## Title 38: WATERS AND NAVIGATION

## Chapter 13: WASTE MANAGEMENT HEADING: PL 1987, c. 517, §4 (rpr)

**§1304-B. DELIVERY OF SOLID WASTES TO SPECIFIC WASTE FACILITIES**

**1. Findings and purpose.** The Legislature makes the following findings of fact. Subject to the provisions of chapter 24, the State requires each municipality to provide for disposal services for domestic and commercial solid waste generated within the municipality. Solid waste contains valuable recoverable resources, including energy. Many municipalities have found that energy recovery reduces the cost of solid waste disposal. Energy recovery technology is complex and the equipment requires a steady supply of waste to operate efficiently. Because of the complicated technology, most energy recovery facilities have high capital costs and long payback periods. In order to remain cost effective throughout their lives, these energy recovery facilities require a guaranteed, steady supply of waste. Consequently, municipalities utilizing energy recovery facilities are usually required to enter long-term agreements to provide the facilities with specific amounts of waste. In order to make these energy recovery facilities financially feasible, and thereby simultaneously improve the environmental impacts and the economics of municipal solid waste disposal, municipalities shall have the legal authority to control the handling of solid waste generated within their borders.

The purpose of this section is to promote the recovery of resources from solid waste by creating one of the conditions which make energy recovery economically feasible, assuring municipalities the authority to guarantee a steady supply of solid waste to specific waste facilities.

[ 1989, c. 585, Pt. E, §12 (AMD) .]

**2. Flow control.** Subject to the provisions of chapter 24, municipalities are expressly authorized to enact ordinances that control solid waste collection, its transportation or its delivery to a specific facility, when the purpose and effect of such an ordinance is to gain management control over solid waste and enable the reclamation of resources, including energy, from these wastes. This authorization includes, but is not limited to, ordinances:

A. Requiring segregation of wastes; [1987, c. 517, §14 (AMD) .]

B. Requiring delivery of wastes generated within the municipality, or any portion of those wastes, to a designated disposal or reclamation facility; [1991, c. 72, §4 (AMD) .]

C. Designating certain materials as recyclable and exempt from the provisions of paragraph B; and [1991, c. 72, §5 (AMD) .]

D. Designating yard wastes as compost material and requiring delivery of these wastes to a designated composting facility. [1991, c. 72, §6 (NEW) .]

[ 1991, c. 72, §§4-6 (AMD) .]

**3. Ordinances.**

[ 1989, c. 585, Pt. E, §14 (RP) .]

**4. Contracts.** In order to encourage and facilitate the financing and development of solid waste facilities, including, but not limited to, facilities for resource recovery, municipalities shall have the following powers, notwithstanding any law, charter, ordinance provision or limitation to the contrary:

A. To contract with a corporation described in subsection 5 or a refuse disposal district organized under chapter 17 or any person, including, but not limited to, the owner or operator of any waste facility, for

the collection, transportation, storage, processing, salvaging or disposal of waste. Any such contract may be for such term of years and may contain such other provisions as the municipality may approve. Any such contract may provide that, in consideration for the obligation of the facility owner or operator to handle all or any portion of the solid waste generated in the municipality, the municipality shall pay to the facility owner or operator such fees, assessments and other payments as shall be established in accordance with the contract. [1985, c. 593, §8 (AMD).]

B. Without limiting the generality of the powers conferred in paragraph A, to agree in such a contract to pay fees, assessments or other payments in such amounts as may be reasonably necessary to pay:

(1) Costs associated with financing, developing, constructing, repairing, maintaining and operating all or any one or more of the waste facilities owned or operated by the facility owner or operator, including, but not limited to, the payment of debt service and the maintenance of reasonable reserves or sinking funds in connection with the financing or operation of any such waste facilities;

(2) Any other costs incurred by the facility owner or operator in connection with the handling of solid waste, whether performed at any waste facility referred to in subparagraph (1) or at another such facility differently owned and operated; and

(3) Any deficiencies arising by virtue of the failure of any other municipality so agreeing to meet its obligations to pay the costs set forth in subparagraphs (1) and (2) in accordance with any similar agreement with the same facility owner; and [1985, c. 593, §8 (AMD).]

C. To pledge the full faith and credit of the municipality for the payment of fees, assessments and other payments, as provided in paragraphs A and B, and to levy upon and raise from taxable estates within the municipality by general taxes the amounts required to pay these fees, assessments and payments or to raise those amounts by means of any fee, user charge or other cost-sharing or assessment mechanism duly adopted and authorized by the municipality or to borrow those amounts by issuance of general obligation bonds or notes. [1985, c. 337, §3 (NEW).]

Any contract complying with the requirements of this subsection and subsection 6 shall be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection.

[ 1985, c. 593, §8 (AMD) .]

**4-A. Contract limitations.** Any contract, including any contract in existence on the effective date of this subsection, for the provision of waste disposal, transportation or handling services to municipalities is subject to the following limitations.

A. No contract for waste disposal, transportation or handling services may prevent a municipality from recycling any portion of its solid waste, provided that any minimum BTU content level and minimum tonnage level required by that contract is maintained by the municipality. [1987, c. 517, §17 (NEW) .]

B. No contract for waste disposal, transportation or handling services may prevent a municipality from meeting its obligations to supply a minimum BTU content level and minimum tonnage level required by that contract using solid waste generated outside its borders, provided that:

(1) The municipality is or will be unable, as the direct result of recycling or source reduction efforts, to meet the obligations using solid waste generated within its jurisdiction; and

(2) The municipality is liable for any damages caused by any solid waste it relies upon to satisfy the provisions of its contract. [1987, c. 517, §17 (NEW) .]

C. For those waste disposal, transportation or handling services contracts which do not principally rely upon requiring minimum BTU content level or minimum tonnage level to secure solid waste for the waste disposal facility, but which instead rely upon a requirement that the municipality provide all or most of its solid waste to the waste disposal facility, no such contract may prohibit a municipality during the term of the contract from recycling those materials which the municipality determines to be recyclable. [1987, c. 517, §17 (NEW) .]

D. A municipality that anticipates that it will be unable to meet its contract obligation to supply a minimum BTU content level or minimum tonnage due to waste reduction or recycling programs and is unable to reach an agreement with the incinerator for the anticipated reduction may request the department to intercede. The department shall assist the incinerator in soliciting solid waste to mitigate any anticipated shortfall in minimum BTU content level or minimum tonnage. If no agreement on mitigation of an anticipated shortfall is reached, the terms of the original contract prevail, except as otherwise provided in this chapter. [2011, c. 655, Pt. GG, §12 (AMD); 2011, c. 655, Pt. GG, §70 (AFF).]

[ 2011, c. 655, Pt. GG, §12 (AMD); 2011, c. 655, Pt. GG, §70 (AFF) .]

**5. Public waste disposal corporations.** Notwithstanding any law, charter, ordinance provision or limitation to the contrary, pursuant to an interlocal agreement entered into in accordance with Title 30-A, chapter 115, 2 or more municipalities may organize or cause to be organized or may participate in one or more corporations organized as nonprofit corporations under Title 13, chapter 81 or Title 13-B for the purpose, among other permissible purposes, of owning or operating one or more waste facilities described in subsection 4, paragraph A. A subscribing municipality may agree in an interlocal agreement to pay fees, assessments or other payments as described in subsection 4, paragraph B for such a term of years and on such other terms as the interlocal agreement may provide and may pledge the full faith and credit of the municipality to the same extent provided in subsection 4, paragraph C. The applicable interlocal agreement or the articles of incorporation or the bylaws of the corporation may provide that the municipal officers of a municipality participating in the corporation may appoint an alternate director or alternate directors to act as the municipality's representative to the corporation's board of directors in the absence of the director or directors elected by the municipal officers. A corporation described in this subsection is a public municipal corporation as that term is used in Title 36, section 651, subsection 1, paragraph D, and its real and personal property located in subscribing, participating and associate member municipalities is exempt from municipal property taxation to the extent provided by Title 36, section 651, subsection 1, paragraph D. The applicable interlocal agreement or the articles of incorporation or bylaws of the corporation must provide that:

A. The corporation must be organized and continuously thereafter operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; [1995, c. 81, §1 (AMD).]

B. The directors of the corporation must be elected by the municipal officers of the municipalities participating in the corporation; and [1995, c. 81, §1 (AMD).]

C. Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the corporation. [1995, c. 81, §1 (AMD).]

Any interlocal agreement complying with the requirements of this subsection and subsection 6 must be a properly authorized, legal, valid, binding and enforceable obligation of the municipality, regardless of whether the agreement was authorized, executed or delivered prior to or after the effective date of this subsection. Any corporation organized in a manner that satisfies the requirements set forth in this subsection and subsection 6, whether organized prior to or after the effective date of this subsection, is deemed for all purposes as organized pursuant to this subsection. If so provided in the applicable interlocal agreement, any such corporation has the power, in addition to any other powers that may be delegated under Title 30-A, chapter 115, to issue, on behalf of one or more of the municipalities participating in the corporation, in order to finance the facilities, revenue obligation securities issued in accordance with Title 10, chapter 110, subchapter 4 and any other bonds, notes or debt obligations that municipalities are authorized to issue by applicable law. For these purposes, the term "municipal officers" as used in Title 10, chapter 110, subchapter 4 means the board of directors of any corporation described in this subsection. Title 10, section 1064, subsection 6 may not be construed to prohibit the assignment or pledge as collateral security of any contract of a municipality authorized by this section or of any or all of the payments under this section, regardless of whether the provisions of subsection 4, paragraph C are applicable to the contract or payments. The provisions of Title 10, sections 1063 and 1064, subsection 1, paragraph A and paragraph C, subparagraph (4) do not apply to revenue obligation securities issued by any public waste disposal corporation described in this subsection.



[ 2007, c. 91, §1 (AMD) .]

**5-A. Other regional associations.** Notwithstanding any law, charter, ordinance provision or limitation to the contrary, any 2 or more municipalities, counties, refuse disposal districts, public waste disposal corporations or other quasi-municipal corporations may organize or cause to be organized or may acquire membership in one or more regional associations for the purpose, among other permissible purposes, of facilitating the disposal of domestic and commercial solid waste generated within the geographic boundaries of each member of the regional association. In accordance with this subsection, a regional association may conduct business without an interlocal agreement.

A. The articles of incorporation or bylaws of the regional association must provide that:

- (1) The regional association must be organized and continuously operated as a nonprofit corporation, no part of the net earnings of which may inure to the benefit of any member, director, officer or other private person; the receipt, directing and application of money in accordance with paragraph E may not be considered to be part of the net earnings, income or profit of the regional association;
- (2) The directors of the regional association must be elected by the municipal officers, the trustees or the directors, as applicable, of the members of the regional association; and
- (3) Upon dissolution or liquidation of the corporation, title to all of its property vests in one or more of the municipalities participating in the regional association. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF) .]

B. Each member must enter into at least one solid waste disposal agreement with the owners of at least one solid waste disposal facility, including, but not limited to, a solid waste disposal facility that is a qualifying facility as defined in Title 35-A, section 3303. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF) .]

C. Each member must be in good standing with the regional association and abide by the bylaws of the regional association. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF) .]

D. Notwithstanding any limitation imposed by Title 30-A, chapter 223, subchapter III-A, or any other limitation on investments imposed on a member pursuant to state law, each member may invest its funds in and participate in the ownership of:

- (1) One or more solid waste disposal facilities;
- (2) An entity that owns one or more solid waste disposal facilities;
- (3) A transmission and distribution utility that has a power purchase agreement with the owners of a solid waste disposal facility that, in turn, has a solid waste disposal contract with the member;
- (4) A competitive electricity provider, as defined in Title 35-A, section 3201, affiliated with a public utility whether or not it is regulated by the Public Utilities Commission or a successor state agency; and
- (5) A subsidiary entity formed by a transmission and distribution utility. [1999, c. 657, §26 (AMD) .]

E. To the extent provided in its bylaws, a regional association may perform the following functions, among others, on behalf of its members:

- (1) Receive and direct distributions of cash from and ownership interests in the entities described in paragraph D as well as other revenues from activities authorized under this subsection, including, but not limited to:
  - (a) Distribution on behalf of members based on a minimum tonnage guaranteed to be delivered or actually delivered to solid waste disposal facilities; and
  - (b) Earnings and other distributions from the members' investments in and participation in the entities described in paragraph D in the form of capital stock, limited partnership interest, warrants for equity interest or other equity positions in entities;

- (2) Manage assets of its members that are related to the functions of the regional association, including, but not limited to, functions related to the entities described in paragraph D;
- (3) Manage money or other value received on account of members from any source;
- (4) Determine the use and application of assets on behalf of and for the benefit of its members, including investment and reinvestment in the entities described in paragraph D;
- (5) Purchase, sell and otherwise deal with ownership interests, including the authority to exercise warrants for the purpose of making any purchase, in the entities described in paragraph D; and
- (6) Administer the solid waste disposal agreement described in paragraph B and act as agent for its members under and pursuant to and to the extent provided by the solid waste disposal agreement, including the authority to bind its members through arbitration proceedings. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

F. A regional association may receive, direct and apply money as described in paragraph E without the need for further action by any member by appropriation or otherwise and, unless otherwise provided by a member in connection with its participation in a regional association, that money may not be taken into account for purposes of calculating any limitation on the member's annual expenditures or appropriations. [1997, c. 602, §2 (NEW); 1997, c. 602, §3 (AFF).]

A regional association may not pledge the full faith and credit of its members but it has all other powers necessary and incidental to carry out the purposes of this chapter. Notwithstanding any contrary provision in Title 13-B, a regional association may have more than one class of members as prescribed or established in its bylaws.

[ 1999, c. 657, §26 (AMD) .]

**6. Relationship to other laws.** The obligation of a municipality to pay any fees, assessments or other payments in accordance with any agreement entered into pursuant to subsection 4 or any interlocal agreement referred to in subsection 5 shall not constitute a "debt" or "indebtedness" of the municipality within the meaning of any statutory, charter or ordinance provision limiting the incurrence or the amount of municipal indebtedness nor shall the authorization or incurrence of the obligation or any municipal action to raise funds to meet the obligation by any means set forth in subsection 4, paragraph C, require or be subject to any voter referendum or approval under any law or any charter or ordinance provision.

A. A municipality may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with the provisions of any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments shall be made with respect to debt or any portion of debt which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

- (1) Three percent of the last full state valuation of the municipality; minus
- (2) The municipality's then obtaining allocable share of any debt or portions of debt described in paragraph B with regard to which it is obliged to make payments. [1985, c. 593, §10 (NEW) .]

B. Notwithstanding paragraph A, 2 or more municipalities may agree to make payments in accordance with subsection 4, paragraph B, or in accordance with any interlocal agreement referred to in subsection 5 with regard to all or any portion of debt incurred or to be incurred for the financing of one or more waste facilities, provided that no such payments may be made with respect to debt or any portions of debts which, when incurred, would cause the total principal balance of all then outstanding debt or portions of debt to which the payments apply to exceed:

- (1) Three percent of the sum of the last full state valuation of all municipalities so agreeing; minus
- (2) Any amounts of debt or portions of debt described in paragraph A in connection with which any such municipality is obliged to make payments.

The limitations set forth in paragraphs A and B shall only apply to agreements by which a municipality or group of municipalities have agreed to make payments directly based, among other things, on a facility owner's costs of debt service and other costs of financing and shall not be construed to apply to contract payments calculated on any other basis, even if the facility owner uses the payments to meet its debt service obligations. [1985, c. 593, §10 (NEW).]

The obligation of the municipality to pay fees, assessments and other payments in accordance with subsection 4 or any interlocal agreement referred to in subsection 5 shall be binding upon and enforceable against the municipality without regard to whether all or any one or more of the waste facilities referred to in subsection 4, paragraph B, subparagraph (1), becomes operational or was or will be in operation during the period for which the fees, assessments or other payments are so charged.

No contract entered into in accordance with subsection 4 nor any ordinance adopted under the authority of subsection 2 may be deemed a contract in restraint of trade or otherwise unlawful under Title 10, chapter 201.

Notwithstanding any law, charter or ordinance provisions to the contrary, the powers conferred upon a municipality pursuant to subsections 4 and 5 and this subsection may be exercised by the municipal officers as defined in Title 30-A, section 2001, including the assessors of a plantation, only when authorized, in the case of a municipality with a city or town council, by action of the council and, in the case of a municipality without such a council, by action of the town meeting. This paragraph shall apply whether or not the action of the city council, town council or town meeting was taken before or after March 21, 1986.

Nothing in this section may be construed to be a limitation on the Home Rule powers granted to municipalities under Title 30-A, section 3001, or on the ability of communities to jointly exercise their powers as is recognized in Title 30-A, section 2201. This section provides an additional and alternative method for carrying out this subchapter.

[ 1987, c. 737, Pt. C, §§96, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8, 10 (AMD) .]

**7. Subjugation.** Notwithstanding any provision of this section to the contrary, the exercise of any power or authority granted under this section is subject to the provisions of chapter 24.

[ 1989, c. 585, Pt. E, §16 (NEW) .]

#### SECTION HISTORY

1983, c. 380, §1 (NEW). 1983, c. 726, §1 (AMD). 1983, c. 743, §16 (AMD). 1985, c. 337, §§3,4 (AMD). 1985, c. 506, §B38 (AMD). 1985, c. 593, §§8-10 (AMD). 1987, c. 517, §§14-17 (AMD). 1987, c. 737, §§C95,C96, C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1989, c. 585, §§E12-16 (AMD). 1989, c. 869, §C10 (AMD). 1991, c. 72, §§4-6 (AMD). 1995, c. 81, §1 (AMD). 1995, c. 656, §A24 (AMD). 1997, c. 602, §2 (AMD). 1997, c. 602, §3 (AFF). 1999, c. 657, §26 (AMD). 2007, c. 91, §1 (AMD). 2011, c. 655, Pt. GG, §12 (AMD). 2011, c. 655, Pt. GG, §70 (AFF).

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**PLEASE NOTE:** The Revisor's Office cannot perform research for or provide legal advice or interpretation of Maine law to the public. If you need legal assistance, please contact a qualified attorney.

AMENDED AND RESTATED  
BYLAWS  
OF  
MUNICIPAL REVIEW COMMITTEE, INC.

(Revised as of October 25, 2006)

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**ARTICLE I**  
**Name, Location and Corporate Seal**

**Section 1.1** The name of this corporation shall be Municipal Review Committee, Inc., and it shall be located in Bangor, County of Penobscot, State of Maine.

**Section 1.2** The corporate seal shall be the common wafer seal unless otherwise determined by the Board of Directors.

**ARTICLE II**  
**Mission and Purpose**

**Section 2.1** The mission of this corporation is to better ensure the continuing availability to its members of long-term, reliable, safe and environmentally sound methods of solid waste disposal at a stable and reasonable cost. Members may include counties, refuse disposal districts, public waste disposal corporations and other quasi-municipal entities in addition to municipalities.

**Section 2.2** The purpose of this corporation on a continuous basis shall be to promote the common good and general welfare of the people of its members in the following manner on a regular basis:

1. Act as a liaison for and representative of the members, which members are commonly known interchangeably as "Charter Municipalities" and "Member Municipalities", with the Penobscot Energy Recovery Company, Limited Partnership ("PERC") and Bangor Hydro-Electric Company ("Bangor Hydro");

2. Review PERC's monthly and annual financial performance and operating reports;
3. Review quarterly tipping fee adjustments by PERC;
4. Review projected/documentated utilization of Capital and Maintenance Reserve Account ("CMRA") monies;
5. Oversee the CMRA;
6. Review and verify calculation by PERC of cash and performance credits to be provided to Charter Municipalities under the Waste Disposal Agreements between each such Member Municipality and PERC (each individually an "Agreement" and collectively the "Agreements") as those Agreements may be amended from time to time;
7. Review any changes proposed by PERC to the line item definitions in the operating Profit and Loss Report;
8. Review of Sampling Methodology and PERC's compliance with performance standards;
9. Review of the financial operating information of Bangor Hydro and monitoring the operations of Bangor Hydro, as well as the process of the deregulation or restructuring of the electric power industry in Maine and its impact on Bangor Hydro; and
10. Perform such additional acts and functions as the Board of Directors deems necessary and/or desirable to effectuate the mission and general purpose of the corporation and the administration of the Agreements and any other instruments or agreements ancillary or collateral thereto.
11. With regard to so-called Equity Charter Municipalities who have further modified their respective waste disposal agreements with PERC by executing a Second Amended, Extended and Restated Waste Disposal Agreement prior to September 30, 1998:
  - A. Receive or direct cash distributions from PERC or its trustee (sometimes called "Performance Credits") and determine the

allocation, use and application thereof on behalf of Equity Charter Municipalities;

- B. Purchase, sell and otherwise deal on behalf of the Equity Charter Municipalities with limited partnership interests in PERC Limited Partnership;
- C. Receive, hold, exchange, sell, exercise or otherwise administer and deal with warrants for one million shares of common stock of Bangor Hydro as contemplated by the provisions of the Custodian Agreements between MRC and Bangor Savings Bank and the Warrant for Purchase of Common Stock issued by Bangor Hydro and as determined by a two-thirds majority vote of the Board of Directors present and voting;

On occasion, the Municipal Review Committee, Inc. will also perform the following functions:

- 1. Review any additional costs imposed by PERC on the basis of a change in law and approve, disapprove or suggest alternatives to same;
- 2. Formulate appropriate response to notification by PERC of a change in its financial condition that may result in a cessation of operations under the Agreements;
- 3. Enforcement of Member Municipalities' priority lien on CMRA monies including, determining each Charter Municipality's pro-rata share of same in the event of a termination of operations under the Agreements;
- 4. Administration of withholding, escrow, and release of monies resulting from a cumulative CMRA shortfall;
- 5. Exercise of options and other functions concerning tonnage contemplated by Article V and Article VIII of the Agreements including reallocation, trading, or replacement any tonnage shortfalls;

6. Review and recommend appropriate action pursuant to any request by PERC to assign its rights and responsibilities under the Agreements;
7. Establish an escrow account for accrued but unpaid Performance Credits;
8. If appropriate, consent to refinancing that may materially affect performance credits, book value of the PERC facility, or distributable cash;
9. Represent Charter Municipalities in arbitration of disputes arising under the Agreements including, consenting to be bound by such arbitration;
10. Periodically review and evaluate the fairness and practical aspects of the allocation of various benefits and risks among its members encumbrant in their respective waste disposal agreements and other relationships;
11. Interface with FAME and other lenders to PERC concerning the administration of loans and other credit relationships with PERC.

**Section 2.3** This corporation shall have all the powers, rights and duties normally incident to such corporations and all other rights granted to corporations organized under Title 13-B of the Maine Revised Statutes, as well as the powers, rights and duties granted by Title 38, Section 1304-B, subsection 5-A of the Maine Revised Statutes.

### **ARTICLE III Membership**

**Section 3.1 Designation of Members.** The corporation shall have three classes of members: (1) Original Charter Municipalities; (2) Amending Charter Municipalities; and (3) Equity Charter Municipalities, as those terms are defined in the municipalities' respective Waste Disposal Agreements with PERC and otherwise set forth in the Articles of Incorporation as amended from time to time or as set forth in the bylaws, as may be amended from time to time. Only municipalities and counties, inclusive of public

**Final - MRC Board Adopted 12.11.13 By 7-0 Vote****Resolution  
Regarding Post 2018 Planning Process  
December 11, 2013**

**WHEREAS**, the Municipal Review Committee, Inc. ("MRC") represents approximately 187 municipalities or groups of municipalities (the "Charter Municipalities") all of which have entered into long term Waste Disposal Agreements with the Penobscot Energy Recovery Company ("PERC") providing for waste disposal needs through March 31, 2018; and

**WHEREAS**, the mission of the MRC is to ensure the affordable, long-term, environmentally-sound disposal of the municipal solid waste ("MSW") of its members; and

**WHEREAS**, the Waste Disposal Agreements expire on or about March 31, 2018, unless extended; and

**WHEREAS**, the MRC, pursuant to a Resolution adopted by its Board of Directors on December 10, 2009, has been actively engaged in investigating alternative waste disposal arrangements to replace the existing Waste Disposal Agreements after March 31 2018; and

**WHEREAS**, in furtherance of its mission, the MRC proposes to continue its efforts to extend its mission beyond 2018 by developing one or more alternative solid waste management and disposal solutions for consideration by the legislative bodies of the Charter Municipalities, which alternatives may include potential development of an integrated solid waste management and resources recovery facility to be owned and controlled either by the Charter Municipalities or in partnership with other private partners; and

**WHEREAS**, the MRC has issued a Request for Expressions of Interest soliciting proposals for alternative technologies for the sorting, recycling, processing and disposal of MSW and is exploring several alternative sites for such a facility within the MRC Region with a view to securing options on one or more potential sites for this purpose;

**NOW THEREFORE**, in recognition of the above, it hereby is:

**RESOLVED:** That the MRC take steps to further develop a potential integrated solid waste management and resource recovery facility to accommodate the management and disposal of MSW originating in the Charter Municipalities at PERC or other facilities after March 31, 2018 including, without limitation, (i) exploring available alternative technologies for the sorting, recycling, processing and disposal of MSW originating in the Charter Municipalities; (ii) engaging in discussions with possible joint venture partners or other third parties with respect to the potential financing, development and/or ownership of an alternative facility



## **Final - MRC Board Adopted 12.11.13 By 7-0 Vote**

either under the control of the MRC or under shared control with other private partners; (iii) securing options or other rights in land on one or more potential sites for such a facility, and (iv) preparing and filing an application with the Maine Department of Environmental Protection for a Determination of Public Benefit in connection therewith (the foregoing elements being referred to collectively in the following resolutions as the "MRC Post-2018 Planning Initiative"); and

**RESOLVED:** That the actions taken to date by the MRC Board and staff in furtherance of the MRC Post-2018 Planning Initiative hereby are ratified and confirmed, and MRC staff hereby is authorized and directed to take additional appropriate action in furtherance of the MRC Post-2018 Planning Initiative; and

**RESOLVED:** That the reasonable expenditure of additional funds to support the foregoing efforts and other extraordinary technical, legal, engineering and other necessary advisory costs related to those efforts to be funded from an Operating Budget Stabilization Fund established and administered by the MRC for this purpose hereby is approved.

**RESOLVED:** That the MRC will present the results of and a recommendation related to the MRC Post-2018 Planning Initiative to the MRC membership for consideration as soon as practicable but in any event not later than January 1, 2017.

Adopted December 11, 2013 Unanimous Voted Decision (7-0)

### **Present and Voting**

**Cathy Conlow - Bangor**

**Karen Fussell - Brewer**

**Elery Keene - Winslow**

**Chip Reeves - Bar Harbor**

**Joshua Reny - Fairfield**

**Tony Smith - Mount Desert**

**Sophie Wilson - Orono**

### **Excused Absent**

**Phil McCarthy - Clinton**

**Bob Peabody - Rockland**

**ART 38.** To see if the Town of Exeter will vote (i) to authorize, ratify and confirm the Town as a charter member of the Municipal Review Committee, Inc. ("MRC"), organized as a nonprofit corporation and acting as a regional association to manage solid waste disposal pursuant to Title 13-B and Title 38 of the Maine Revised Statutes, as amended (and specifically Section 1304-B (5-A) of Title 38) and (ii) to acquire limited partnership interest, and options therefore, in PERC and to authorize MRC, pursuant to its articles of incorporation and bylaws, as amended, and the Modified Waste Disposal Agreement posted with these articles and present to this Town meeting to purchase such limited partnership interest and options, from time to time by MRC on behalf of the Town; and (iii) to authorize MRC to hold, manage, apply or direct the cash distributions to be received from time to time by MRC on behalf of the Town from PERC for such purchases or for such other purposes as may be declared in the MRC bylaws or the Modified Waste Disposal Agreement, and (iv) to acquire and accept Bangor Hydro Electric Company ("Bangor Hydro") common stock warrants with respect to the Restructuring Transaction and to authorize MRC, on behalf of the Town, to hold and manage such stock warrants, all as prescribed in the MRC bylaws and in the Modified Waste Disposal Agreement, all of the foregoing as permitted under Section 1304-B (5-A) of Title 38 of the Maine Revised Statutes.

**ART 39.** To see if the Town of Exeter will approve amendments to its waste disposal agreement with Penobscot Energy Recovery Company (PERC) and authorize a majority of the Selectmen to execute and deliver on behalf of the Town, a Second Amended and Restated Waste Disposal Agreement with PERC (the "Modified Waste Disposal Agreement") substantially in the form on file with the Town Clerk and posted with this Article and to execute and deliver such other documents and take such other actions which they deem necessary or appropriate to effect the transactions described in such Agreement and in the Restructuring Transaction described in an offer to the Town set forth in the Term Sheet dated December 31, 1997, on file with the Town Clerk and posted with this article.

**ART 40.** To see if the Town will vote to have the Selectmen contract the Superintendent of Schools to have a sign stating "No dogs allowed on the Exeter School grounds or associated play areas". Said sign to be placed in various place in the school area.

**ART. 41.** To see if the Town will vote to amend the Setback Ordinance to change paragraph 9.2 to 9.2A and add paragraph 9.2B. "An accessory structure may be constructed closer than 100 feet from the centerline of the road layout if it does not come closer to the road than the family dwelling already in place on the lot.

**ART 42.** To see if the Town will vote to set the date for the next Annual Town Meeting?

The Registrar of Voters will be in session at the Town Office 1:00 p.m. March 30, 1998 for the purpose of registering voters and correcting voter lists.

Hereof, fail not and have you there and then this Warrant with your doings thereon.

Given under our hands in the Town of Exeter, Maine this 6th day of March, 1998

Attest: A True Copy

    / s/      
James Crane, Chairman

    / s/      
Stephen Colbath

    / s/      
Ronald Agnew