

## CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT is entered into as of this 26<sup>th</sup> day of January, 2010 among USA ENERGY GROUP, LLC (formerly SET PERC Investment, LLC), a Minnesota limited liability company ("SET PERC"), PERC HOLDINGS, LLC, a Minnesota limited liability company ("PERC Holdings") and MUNICIPAL REVIEW COMMITTEE, INC., a Maine nonprofit corporation ("MRC").

### RECITALS

WHEREAS, SET PERC, PERC Holdings and certain municipalities represented by MRC (as further described below) collectively own one hundred percent (100%) of general and limited partnership interests in the Penobscot Energy Recovery Company, Limited Partnership ("PERC"); and

WHEREAS, PERC owns and operates a facility (the "Facility") located in Orrington, Maine, that generates electricity from the processing and combustion of municipal solid waste; and

WHEREAS, there are 133 municipalities, solid waste districts, and other public entities (known collectively as the "Charter Municipalities") that have entered into long-term waste disposal agreements (the "Waste Disposal Agreements") to deliver their municipal solid waste to the Facility; and

WHEREAS, there are 86 Charter Municipalities (known collectively as the "Equity Charter Municipalities") that own limited partnership interests in PERC; and

WHEREAS, pursuant to the Waste Disposal Agreements, the Charter Municipalities established the MRC to represent their interests as to matters that arise under the Waste Disposal Agreements and to represent the Equity Charter Municipalities as to partnership matters; and

WHEREAS, the Waste Disposal Agreements and certain other agreements that PERC has entered into in order to facilitate waste disposal at the Facility all expire on or around March 31, 2018, unless extended; and

WHEREAS, the PERC Partnership Agreement expires in December of 2018 unless extended; and

WHEREAS, the parties wish to explore continuation of the Facility beyond 2018 by extending or restructuring PERC and/or by exercise by the Equity Charter Municipalities of their

existing option to purchase the partnership interests of SET PERC and PERC Holdings, and the parties have indicated a desire to jointly explore these and other potential alternatives (such joint explorations being referred to elsewhere in this Agreement as the "Joint Discussions"); and

WHEREAS, in connection with the Joint Discussions, access to certain confidential business information belonging to other parties and to PERC may be required in order to adequately evaluate the available alternatives; and

WHEREAS, in order to facilitate the Joint Discussions and related discussions among them, each party has agreed to disclose "confidential information" (as that term is defined below) upon the condition that the other parties shall not disclose such information to anyone other than their respective members, officers, directors, stockholders, managers, employees, outside legal counsel, accountants, consultants and other agents and shall not use such information for any purpose other than in connection with the Joint Discussions; and

WHEREAS, the parties desire to set forth their agreements with regard to the above-described matters in writing.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. Definition of Confidential Information. For purposes of this Agreement, "Confidential Information" means information not generally known to the public that relates to the existing business of the party disclosing it (the "Disclosing Party") which has been expressly or implicitly protected by the Disclosing Party or which, from all of the circumstances, the recipient of the Confidential Information (the "Receiving Party") knows or has reason to know that the Disclosing Party intends or expects the secrecy of such information to be maintained. Confidential Information includes, but is not limited to, information relating to proposed or existing policies, plans, services, designs, samples, trade secrets, research and development plans, proposals and techniques, descriptions, test data, other data, reports, recommendations, commercial, technical, operating, manufacturing, strategic planning, pricing, vendor, customer and financial information and other proprietary information of the Disclosing Party, whether written, oral or communicated in another type of medium, whether disclosed directly or indirectly, whether originals or copies, and whether or not legal protection has or has not been obtained or sought under applicable law. Each Receiving Party shall treat all such information as Confidential Information regardless of its source and whether or not marked as confidential. Notwithstanding the foregoing, Confidential Information shall not include any information that (i) becomes known to the general public without fault or breach on the part of the Receiving Party; (ii) the holder customarily provides to the other party or to others without restriction on disclosure; or (iii) the Receiving Party obtains from a third party without breach of any nondisclosure obligation and without restriction on further disclosure.

2. Confidentiality. Each of SET PERC, PERC Holdings and the MRC (each a "Party" and collectively, the "Parties") agrees (i) to keep confidential any and all Confidential Information furnished by another Party in conjunction with the Joint Discussions, except that any Party may disclose such information to its officers, directors, stockholders, members, managers, agents and outside legal counsel, accountants and other consultants to the extent required in connection with the Joint Discussions; (ii) to take reasonable steps to safeguard the confidentiality of any such limited disclosure; and (iii) not to make any public announcement with respect to the Joint Discussions without the prior written approval of each of the other parties. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to preclude the MRC from sharing with its member communities general information with regard to the nature and progress of the Joint Discussions nor shall any Party be precluded from making any disclosure required by law (including, without limitation, disclosure by the MRC pursuant to Maine's Freedom of Access Law), provided that, in the latter instance, to the extent practicable, the Party making such disclosure shall provide prompt notice of its intended disclosure to each other Party such that the Party whose Confidential Information is to be disclosed may have an opportunity to seek an appropriate protective order.

3. Return of Materials. All Confidential Information disclosed by a Party (the "Disclosing Party") to any other Party or any of its representatives (the "Receiving Party"), including copies, summaries, restatements, records, and other documentation thereof, shall be returned to the Disclosing Party within ten (10) days after written request of such Party or upon termination of the Joint Discussions, whichever shall occur first.

4. Use of Confidential Information. Each Party agrees that it will not use any Confidential Information obtained from any other Party for any purpose whatsoever other than in connection with the Joint Discussions and its evaluation of any proposal derived from the Joint Discussions.

5. Amendment, Termination. This Agreement shall be amended or terminated only by a writing signed by all parties hereto.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine without regard for conflict of law principles.

7. Waivers. No waiver of any right hereunder by any party shall operate as a waiver of any other rights, or of the same right with respect to any subsequent occasion for its exercise.

8. Assignment; Binding Effect. The rights and obligations of any party hereunder may not be assigned without the prior written consent of each other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Each individual signing this Agreement represents and warrants that he is duly authorized and has legal

capacity to execute and deliver this Agreement.

9. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one in the same instrument.

10. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall have no effect upon the construction of interpretation of this Agreement.

11. Specific Performance. The parties agree that a breach of this Agreement by any Party could result in irreparable harm to the Disclosing Party for which monetary damages would not be an adequate remedy. In the event of such a breach, and without limiting any other remedies available to the Disclosing Party, the Disclosing Party shall be entitled seek injunctive or other equitable relief and, in the event such relief is granted, to recover all costs of such action, including reasonable attorneys' fees. Such right shall be in addition to, and not in lieu of, any other rights or remedies otherwise available to the Disclosing Party.

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Confidentiality Agreement as of the day and year first written above.

WITNESS

MUNICIPAL REVIEW COMMITTEE, INC.



By John F. Carisholm  
President



USA ENERGY GROUP, LLC

By JANOR



PERC HOLDINGS, LLC

By Allen Wood