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CITY AND COUNTY OF SAN FRANCISCO  
REFUSE COLLECTION AND DISPOSAL RATE BOARD  
SPECIAL MEETING AND HEARING

CITY HALL  
1 DR. CARLTON B. GOODLETT PLACE, ROOM 408  
SAN FRANCISCO, CA 94102

Tuesday, July 9, 2013

Volume II  
(pages 103-220)

REPORTED BY: FREDDIE REPPOND

FREDDIE REPPOND STENOGRAPHIC REPORTER

(415) 469-8867

1 FOR REFUSE COLLECTION AND DISPOSAL RATE BOARD:  
2 Linda Yeung, Deputy City Administrator, Chair  
3 Michael Carlin, Deputy General Manager, Public  
4 Utilities Commission  
5 Ben Rosenfield, City Controller  
6 Marie C. Blits, Deputy City Attorney, of Counsel  
7 Anna Low, Clerk

8 FOR DEPARTMENT OF PUBLIC WORKS:  
9  
10 Mohammed Nuru, Director  
11 Douglas Legg, Manager of Finance, Budget, and  
12 Performance  
13 Ann Carey, Project Manager  
14 Thomas C. Owen, Deputy City Attorney, of Counsel

15 FOR DEPARTMENT OF THE ENVIRONMENT:  
16  
17 Robert Haley

18 FOR THE APPLICANT:  
19  
20 Jon Braslaw, Assistant Group Manager, Recology  
21 Michael J. Baker, Esq., Arnold & Porter, LLP

22 FOR THE RATEPAYER ADVOCATE:  
23 Peter Deibler

24 MEMBERS OF THE PUBLIC:  
25 Stuart Gardiner  
Kermit Kubitz  
Nancy Wuerfel

1 Tuesday, July 9, 2013

1:30 p.m.

2 P R O C E E D I N G S

3 MS. YEUNG: Good afternoon. I call this  
4 hearing to order. For the record, it is Tuesday,  
5 July 9th, 2013, at 1:30 p.m. and we're in City Hall,  
6 Room 408. This is a special meeting of the City and  
7 County of San Francisco Refuse Collection and Disposal  
8 Rate Board continued from Monday, July 8th, when we met  
9 in the same room.

10 I am Linda Yeung, Deputy City Administrator  
11 and Chair of the Refuse Collection and Disposal Rate  
12 Board for the City and County of San Francisco. The two  
13 other members of the Rate Board are Ben Rosenfield,  
14 Controller of the City and County of San Francisco, and  
15 Michael Carlin, Deputy General Manager of the City's  
16 Public Utilities Commission. So thank you, Ben and  
17 Michael, for serving.

18 Also present is Deputy City Attorney Marie  
19 Blits from the City Attorney's Government Team, who is  
20 serving as counsel to the Rate Board; and her assistant,  
21 Anna Low, who is serving as our clerk today. Thank you  
22 to Anna and Marie.

23 Present for DPW are DPW Director Mohammed  
24 Nuru; DPW Manager of Finance, Budget, and Performance  
25 Douglas Legg; and Project Manager Ann Carey.

1           Our hearing today is again being transcribed  
2 by stenographic reporter Freddie Reppond.

3           We are still making a tape recording of this  
4 proceeding. So please speak only one at a time and  
5 speak directly into your microphone so that you can be  
6 clearly heard. Please turn off cellphones, pagers, and  
7 other sound-producing electronic devices so that our  
8 hearing will not be interrupted.

9           I'm going to ask again if there are members of  
10 the public who may need translation. Thank you.

11           As we noted yesterday, the purpose of this  
12 Rate Board meeting is to hear and consider objections to  
13 the report and recommended orders issued by the DPW  
14 Director on June 7th, 2013, that would increase  
15 residential refuse collection and disposal rates. The  
16 report and recommended orders were issued in response to  
17 a rate application filed by Applicant Recology Sunset  
18 Scavenger, Recology Golden Gate, and Recology San  
19 Francisco, also simply referenced as Recology.

20           Before issuing his report and recommended  
21 order, the DPW Director held a series of public hearings  
22 on that rate application. Copies of the agenda for this  
23 hearing are available on the side table for you to pick  
24 up, together with copies of the written objections that  
25 will be heard by this board. And the DPW Director's

1 June 7th report and recommended order.

2           There are also binders of material that you  
3 may review but which must stay in the room. The first  
4 one, the black binder, contains the agenda for this  
5 hearing and related documents, including the objections  
6 filed by the five objectors that were heard and the DPW  
7 Director's June 7th report and recommended orders. The  
8 second, the white binder, contains the reporter's  
9 transcripts and exhibits from the DPW Director's 2013  
10 hearings.

11           Today's session will end by 5:30 p.m. If  
12 we're not completed today, we will continue our hearing  
13 next Monday, July 15th; and we will not be meeting this  
14 Friday July 12th. And, again, we'll be meeting in this  
15 room at 1:30. So that is a change from what was posted  
16 in the agenda.

17           I will now briefly describe how we are  
18 proceeding. Our hearing is primarily governed by the  
19 City's 1932 Initiative Ordinance that established this  
20 rate-setting process and by rules of procedure adopted  
21 by the DPW Director. On Monday you heard introductory  
22 remarks from me as the Chair under Agenda Item No. 2,  
23 which I am again summarizing here this afternoon.

24           Next, under Agenda Item No. 3, we heard  
25 opening remarks from the City's Ratepayer Advocate,

1 Peter Deibler of HFH Consultants. Next, under Agenda  
2 Items No. 4.A. through 4.E., we heard presentations from  
3 four of the five objectors who filed written objections  
4 with the Rate Board by the June 24th, 2013, statutory  
5 deadline: Stuart Gardiner; Kermit Kubitz; Nancy  
6 Wuerfel; and Michael Baker, on behalf of the applicant  
7 refuse rate companies.

8 As the chair, I read into the record the  
9 objections filed by Josephine Zhao, with extended  
10 families of 15 members and members of the Asian-American  
11 Voters.org, as Ms. Zhao was unable to appear.

12 I would like to thank each of the objectors  
13 both for their thoughtful input for their adherence to  
14 our procedural rules and time limit. This aids in our  
15 conduct of a fair and efficient hearing and is much  
16 appreciated by this Board.

17 Under Agenda Item No. 6, DPW Director Mohammed  
18 Nuru reviewed DPW Director's process and resulting  
19 report and recommended orders and responded to  
20 objections from the objectors. We also heard public  
21 comment under Agenda Items 5, 7, and 8. This afternoon  
22 we plan to complete any further Board questions and  
23 public comment and then move into Agenda Items 9 and 10  
24 for Rate Board deliberations and possible action  
25 regarding the DPW Director's proposed order, objections

1 to the proposed order -- let me repeat that --  
2 objections to the proposed order and a resolution  
3 adopting findings of the Rate Board.

4 Today, as we did on Monday, at around 2:30 we  
5 will move to agenda Items 5, 7 and 8 and allow three  
6 types of public comment. In order to conduct this  
7 portion of the hearing more efficiently, I suggest that  
8 anyone who wishes to speak complete a speaker card.  
9 There are yellow speaker cards available on the table on  
10 the side of the room and from our clerk. I also suggest  
11 that any group of persons with similar interests  
12 designate a representative to act as spokesperson.

13 For the first public comment category under  
14 Agenda Item No. 5 we will hear comments from persons who  
15 wish to speak in agreement with any or all of the 22  
16 objections filed by the five objectors, up to a maximum  
17 of 15 minutes today for all of the speakers combined.  
18 Each person will be given the same amount of time, up to  
19 a three-minute maximum. When you begin your comments  
20 under this item, please identify the objection number  
21 and description on the agenda for each objection that  
22 you support and identify what parts of the  
23 administrative record support your points.

24 For the second public comment category under  
25 Agenda Item No. 7, we will hear comments from persons

1 who wish to speak in agreement with any or all of the  
2 DPW Director's responses to objections and recommended  
3 order, up to a maximum of 15 minutes today for all  
4 three -- all of these speakers combined. Each person  
5 will be given the same amount of time, up to three  
6 minutes maximum. When you begin your comments, please  
7 specifically identify which of the DPW Director's points  
8 you're supporting and identify what parts of the  
9 administrative record support your points.

10 For the third public comment category under  
11 Agenda Item No. 8, we will hear general public comment  
12 from persons on matters within the jurisdiction of the  
13 board that have not been heard as comments on the  
14 objections or comments on the Director's recommended  
15 order, up to a maximum of 15 minutes today for all of  
16 the speakers combined. Please be advised that although  
17 the Board will listen to all general public comments in  
18 this third category of public comment, the Board cannot  
19 use the information provided in finally deciding the  
20 rates unless the comment is specifically tied to one or  
21 more of the 22 objections being heard or to the DPW  
22 Director's responses to those objections and proposed  
23 order.

24 Procedures for the Board to act on the rate  
25 application -- so for procedures for the Board to act



1 today. After additional comments have been received  
2 this morning, the Board will close the public hearing  
3 and move to Agenda Items 9 and 10; or it will deliberate  
4 and take action to approve or deny the rate application  
5 in whole or in part and issue an order. In this process  
6 the Board will address each separate objection. The  
7 Board acts by majority vote. If for any reason the  
8 Board does not act within 60 days of the day that the  
9 DPW Director recommended his recommended order, which  
10 was June 7, 2013, the DPW Director's order will be  
11 deemed the order of the Rate Board.

12 I want to emphasize again to everyone  
13 addressing the Rate Board, whether the applicant, the  
14 public, or staff, that your comments must be strictly  
15 limited to the specific items that are subject to this  
16 hearing. In other words, the only items before the Rate  
17 Board are the objections to the specific issues in the  
18 Director's Report and Recommended Order that were filed  
19 with the Rate Board by June 24th, as listed on our  
20 agenda. The Board can act only on those items.

21 I also want to emphasize that the Rate Board  
22 may only consider evidence admitted into the  
23 administrative record during DPW Director's refuse rate  
24 hearings. The administrative record is contained in the  
25 white binder of the reporter's transcripts and exhibits

1 on the table. Any other evidence is inadmissible before  
2 this Rate Board. So this Board will not hear items that  
3 are not properly before it and it will not rely upon  
4 facts outside the administrative record. Also note that  
5 in my capacity as Chair I may modify these procedures as  
6 the hearing progresses as may be needed to ensure a fair  
7 and efficient proceeding.

8 So let me correct myself. So the meeting on  
9 Friday is cancelled, but next Monday is July 15th.

10 Okay. So at this time I'd like to hear  
11 additional information from a number of people. And I  
12 thank DPW Director Nuru for his responses of July 5th.  
13 And one of the first things he mentioned was that the  
14 City has retained the Ratepayer Advocate and he is here  
15 to assist members of the public as part of his  
16 application review process.

17 So I'm going to ask Mr. Deibler to come to the  
18 podium.

19 MR. DEIBLER: Good afternoon. Thank you.

20 MS. YEUNG: Mr. Deibler, I think yesterday I  
21 forgot to ask to swear you in, so I'm going to do that  
22 now.

23 If you could raise your right hand. Do you  
24 solemnly state or affirm under penalty of perjury that  
25 the evidence you gave and will give in this matter shall

1 be the truth, the whole truth, and nothing but the  
2 truth?

3 MR. DEIBLER: I do.

4 MS. YEUNG: As to what you testified to and  
5 what you may testify to?

6 MR. DEIBLER: I do.

7 MS. YEUNG: Thank you.

8 And you have five minutes. Thank you.

9 MR. DEIBLER: Okay. I'll try to make it  
10 short.

11 First of all, I want to congratulate the  
12 objectors, I think, both in terms of their written  
13 material and their spoken defense of their objections.

14 I want to make a few comments and ask several  
15 questions regarding some of the objections. And that's  
16 what I'll launch into now.

17 First, in Objection 5 there's an important  
18 correction that needs to be made, which is on page 3 of  
19 the Department of Public Works' responses regarding --  
20 at the end of the first paragraph is a statement that  
21 Ratepayer Advocate's outgoing phone message included  
22 translations. It did not. So that's an important  
23 clarification. That sentence should be struck.

24 Regarding Objection 10, on page 4 of the  
25 responses at the end of the third paragraph, I'd like to

1 add or suggest that the addition be made that the  
2 Ratepayer Advocate also be involved in terms of  
3 assisting with developing how information can be  
4 presented most clearly regarding the two processes and  
5 that information -- that the ratepayer Website in the  
6 future have a role in presenting that information, which  
7 it did not have this time, to help avoid confusion.

8 On Objection 14, I'd like to suggest that  
9 there might be value in determining whether the  
10 facilitation agreement could in fact be renegotiated in  
11 the near term to allow City discretion to withdraw funds  
12 in excess of the minimum balance of 15 million since  
13 there's 29 million and something and change in it now.

14 At page 18, the Director's report states that  
15 this land purchase -- at this point you're referring  
16 just the land purchase -- states that the use of the  
17 fund might require amending the facilitation agreement  
18 and procedures. So in my mind I guess there's a  
19 question of whether it's even certain that those funds  
20 can't be tapped for whether rate relief, land purchase,  
21 other purposes. And I guess you consider it.

22 I guess there was also a question that I was  
23 asked to ask to get a clarification. We know the  
24 answer, but we'd like to get it on the record to be  
25 clarified. In Exhibit 3, page 14, of the narrative --

1 Recology's narrative with the rate application -- it  
2 makes a statement regarding the rate -- I'm sorry -- the  
3 surcharge of 1.3 percent. And it sounds as though in  
4 present terms the surcharge is being added to the rates.  
5 Rather than on top of the rates, it's being built into  
6 the rates. My understanding from the Director's Report  
7 is that the surcharge is no more. I'd like to just have  
8 that confirmed for everyone. Thank you.

9           Objection 15, on page 7 of the DPW response  
10 there appears to me to state that costs are in effect  
11 overstated and that tonnage costs are all assigned to  
12 residential rates, although some of the tons are  
13 commercial in future, while revenues are understated  
14 because of the assumption of the minimum service level,  
15 rather than perhaps an average service level or some  
16 other measure. And the question would be, are those the  
17 best assumptions for calculating the added net revenue?

18           Objection 19. In general I think the question  
19 of abandoned materials transfer obviously is a key issue  
20 before the Rate Board -- the program transfer. And I  
21 think the issues have been discussed in detail and quite  
22 well. I have one comment, which is that, if the issue  
23 of the benefit versus the cost is of importance, which  
24 is what Objection 19 is about -- and it may not be if  
25 you decide this issue on other grounds, such as 218 or

1 overall eligibility. Then the statement is on page 8 of  
2 the response from DPW is that there are certain costs  
3 that were not included -- overhead costs and direct  
4 costs in their calculation of what the City currently  
5 pays to provide that service. And those -- that  
6 information could be provided. There might be some  
7 guess-estimation involved, but if that's of use in  
8 answering that question, you need that question  
9 answered. I suggest that you request that information.

10 Few more quick ones. On Objection 22, I just  
11 want to reiterate support for the Director's  
12 determination that the Brisbane fee is not eligible for  
13 application of the operating ratio. I say "reiterate"  
14 because I spoke to this also in the May hearings. And  
15 while I agree with the DPW response that -- I know it's  
16 in detail -- the risk to the company is minimal, this is  
17 really about whether there is a risk or not. I guess I  
18 agree with Mr. Baker that there may be a potential  
19 precedent here, but I think the proper precedent is to  
20 ensure the pass-through expenses are consistently  
21 treated as such.

22 Okay. May I have a last comment?

23 MS. YEUNG: I'm just going to extend it to ten  
24 minutes. Thank you.

25 MR. DEIBLER: I just have one more minute

1 maybe. Thank you.

2 In general, I'd just like to make a comment,  
3 which may be germane in part. It's not specific to one  
4 objection. And that is that the 1932 Ordinance and its  
5 subsequent interpretation results in a long and  
6 expensive revenue process. And that's just a fact that  
7 no one will dispute, I don't think.

8 One effect, though, of that process and  
9 associated expense is that each party needs to put  
10 significant effort into trying to anticipate risk and  
11 protect itself -- both the City and Recology in  
12 particularly Years 2 and 3 and, if longer, the outlying  
13 years. And the Brisbane fee is a good example that the  
14 1932 process does not allow any means for Recology to  
15 recover any potential increase except in the context of  
16 a full review such as this one. So Recology must then  
17 base the argument for being compensated now basically.  
18 But there is some potential risk, so need to be  
19 compensated now; and hence the argument for the  
20 operating ratio. It's puts everyone in a difficult  
21 position.

22 Pages 19 and 20 of the Director's Report  
23 discusses future rate-making procedures and the concept  
24 of streamlined reviews. I realize that's not directly  
25 pertinent to the objection, but I think it is to the

1 Rate Board's purview, maybe more broadly. And I  
2 strongly support ongoing consideration of how to  
3 streamline the process to reduce costs while maintaining  
4 full opportunity for public input within the structure  
5 of the 1932 Ordinance, obviously. And one aspect of  
6 that that is focused on there is allowing for more  
7 targeted reviews, where maybe one issue is raised, for  
8 instance when a shift in disposal site comes up in two  
9 or three years, that that would be the only topic of  
10 discussion. It would narrow the focus and allow for  
11 probably a less complicated process and also one that's  
12 more understandable to the public.

13 So thank you.

14 MS. YEUNG: Mr. Deibler, do you have what you  
15 just read off -- copies available to us?

16 MR. DEIBLER: I'm sorry. I did not make  
17 copies. I can provide those.

18 MS. YEUNG: Or at a minimum, can you go back  
19 and just state what document you're referring to and  
20 then what the objection numbers are, because it was  
21 pretty fast.

22 MR. DEIBLER: Sure. Sorry. Well, I had five  
23 minutes. Sorry. No problem.

24 First is Objection 5; and that's page 3 of  
25 DPW's response. It's regarding the end of the first



1 paragraph, the statement in the last sentence.

2           The second is Objection 10, which is the third  
3 paragraph of page 4 of the response. I believe that's  
4 at the end of the paragraph. Yes. I'm referring to --  
5 prior to the next rate process I will work with the  
6 companies and the City Attorney's office to see if there  
7 are ways we can make these dual legal requirements  
8 clear.

9           I think the issue is not so much -- I think  
10 that on that question I think and am confident that  
11 legal requirements were met, but it's really what is  
12 required above and beyond that to make it clear.

13           Objection 14, I was referencing page 18 of the  
14 Director's report, which discusses the special reserve  
15 fund. And the second part of that item -- the item that  
16 I mentioned, there is a question about Exhibit 3, page  
17 14 -- Exhibit 3 regarding the -- in this case -- the  
18 1.3-percent surcharge on the fund. And that's  
19 Recology's narrative for the rate application.

20           Objection 15 is the last paragraph of page 7  
21 of the DPW responses.

22           19 is the first paragraph of page 8 of the DPW  
23 response.

24           Regarding the Brisbane -- Objection 22 -- I  
25 wasn't referring to -- I was making a comment and not

1 making a specific reference. The reference about the  
2 rate process and the streamlining of it -- that's  
3 discussed at pages 19 to 20 of the Director's Report.

4 MS. YEUNG: Thank you. Can we get a copy of  
5 that? Is it in a form that we can photocopy?

6 MR. DEIBLER: Can I email later? Yeah. I  
7 apologize. I don't. It came together quickly.

8 MS. YEUNG: Okay. Thanks.

9 At this time if I could ask the DPW Director  
10 and then objectors from yesterday if you have additional  
11 comments that you will make to the Board. If you can  
12 please come up to the mic.

13 MR. NURU: We don't have any additional  
14 comments at this time.

15 MS. YEUNG: Thank you.

16 Any of the objectors, would you like to come  
17 up?

18 MR. GARDINER: I would. Thank you, Madam  
19 Chairperson. My name is Stuart Gardiner. I believe  
20 I've already been sworn.

21 I wanted to comment on the hand-delivered  
22 letter from Mr. Baker to the Board dated today, which,  
23 as I understand it, is relevant to Objection 11, which  
24 was one of the ones I made; and other objectors made  
25 similar objections. I don't have the number right in

1 front of me.

2 But I first want to begin by saying that the  
3 case he cites is not something I've read, so I can't  
4 speak from any knowledge of that case other than as how  
5 Mr. Baker has described it in the memo. But I have a  
6 few points that lead me to suggest that the Board should  
7 dig further into this issue before rather than accept  
8 this legal memorandum from an advocate's position as the  
9 final word. I imagine the City Attorney will be  
10 interested in the issue and probably already is.

11 Let me begin by noting, if you'll turn to page  
12 3 of the first full paragraph of Mr. Baker's letter, he  
13 says, even though Proposition 218 has been on the books  
14 since 1996, no plaintiff has ever argued in a reported  
15 court decision that Prop 218 applies to charges billed  
16 by private companies and no court opinion has even  
17 suggested that would be a proper interpretation.

18 It logically follows that that there was no  
19 precedent on this point. Mr. Baker, on page 2, argues  
20 by analogy that, because the case of Schmeer versus  
21 County of Los Angeles dealt with tax or what was  
22 proposed to be a tax under Article XIII C and apparently  
23 XIII D, it should apply to the charges and fees  
24 collected by Recology in this present proceeding.

25 I think -- I hope it's fair to say that no

1 court has found that to be the case and it remains to be  
2 litigated what the outcome is. I'm not sure, although I  
3 would note that, for example, some of the references to  
4 cases interpreting other parts of Proposition 218, at  
5 least the one that stood out to me of the two he cited,  
6 Howard Jarvis Taxpayers Association versus City of  
7 Roseville talked about fees paid by a municipal utility  
8 and said the result would be different if a private  
9 utility were involved. And I would just note for your  
10 information that private utilities are regulated under  
11 an entirely separate part of the state constitution and  
12 the Public Utilities Code by the CPUC. So I question  
13 the degree to which that's applicable. And the --  
14 excuse me one second.

15           The last point I wish to make -- and this is  
16 just, I will freely admit, speculative because I'm not  
17 familiar with the materials asked you here -- but if the  
18 court were to hold, as Mr. Baker predicts, it would --  
19 the result would be absurd in the sense that any  
20 municipal government or an agency of a municipal  
21 government arrange for a private business -- or private  
22 individual for that matter -- to act as its agent and  
23 impose fees and charges with no limitation or even  
24 replacing municipal services generally available to the  
25 public. The results would be astounding, including

1 things like public safety that would be free rein for  
2 unlimited outsourcing in a way that I don't believe  
3 Proposition 218 or the courts interpreting it would  
4 intend.

5 Thank you.

6 MS. YEUNG: So for the record, can I just note  
7 that Mr. Gardiner was referencing a document dated July  
8 9th from Arnold & Porter LLP, submitted by Mr. Michael  
9 Baker, which was hand-delivered on July 9th, 2013.

10 And are you also submitting for the record  
11 your other written document?

12 MR. GARDINER: I am. The document I submitted  
13 by hand to the Board today was the copy of the notes I  
14 spoke from in my oral presentation yesterday and a  
15 little addition at the end for the public comment I  
16 offered later.

17 MS. YEUNG: Thank you.

18 Any other objectors would like to come? Or  
19 Mr. Baker?

20 MR. BAKER: Yes. Good afternoon.

21 Mr. Gardiner anticipated what I was going to  
22 say. But I just wanted to put it on the record that we  
23 submitted a letter today that the Chair just referenced.  
24 And it specifically relates to Objection 4, 5, 6, 10,  
25 11, and 13. Each of those objections relate in some way

1 to Proposition 218. And the purpose of our letter to  
2 make the point that, based on our analysis, Proposition  
3 218 does not apply to these proceedings because the  
4 residential refuse rates that we're talking about here  
5 are collected and retained by a private company, not by  
6 the government. And the case that we cite was one that  
7 was decided earlier this year by the Court of Appeals  
8 involving a charge that the Board of Supervisors decided  
9 that retailers had to charge customers for the use of  
10 paper bags a ten-cent charge. And the plaintiff there  
11 argued that that was governed by Prop 218. The Court  
12 said, no, it's not governed by Prop 218 because this is  
13 a charge that is collected by private companies and kept  
14 by the private companies.

15 So there was a lot of discussion of Prop 218  
16 yesterday. And we just wanted to make sure that our  
17 position was clear on behalf of the applicants that the  
18 substantive provisions of Prop 218, which place certain  
19 restrictions on fees and charges and other levies do not  
20 apply to these rate proceedings.

21 Thank you.

22 MS. YEUNG: Thank you.

23 Ms. Wuerfel?

24 MS. WUERFEL: Good afternoon. Nancy Wuerfel.

25 I'll be brief.

1           I wanted to give a little more substance to my  
2        comments about items -- my Objections No. 17 and 19 --  
3        having to do with the shift of services on to Recology.  
4        The background of my concerns was when I was focusing on  
5        the LAFCO report generated in 2011 that's part of the  
6        exhibits. And having read both volumes of it, it became  
7        very clear that the reasons that other municipalities  
8        and jurisdictions allow for and encourage the companies  
9        with whom they have contracts or franchises -- the  
10       reason they encourage to have these services is to allow  
11       them to -- in my words -- have an advantage, to show  
12       their concern, and to be able to win the bid. And we  
13       don't have that same circumstance here.

14           When you look at the charts -- and I'm sorry.  
15        I was unable because of illness to prepare a full  
16        presentation to you today. I want to tell you that the  
17        charts show that San Francisco is the only municipality  
18        in all of their study that has abandoned waste. But it  
19        also shows that they're the only one that does not have  
20        a contract or a franchise. We have our own unique 1932  
21        Ordinance that allows us to collect garbage by permit.  
22        And that's a totally separate arrangement than the way  
23        the other municipalities are conducting business with  
24        other businesses. It's perfectly okay to say, If you  
25        would like to work with us here in City X, this is how

1 we want you to perform. And they're all going to be on  
2 your side of the fence for rates. This is your problem.  
3 You figure it out. You make it attractive to us to give  
4 you the bid or to give you the franchise. It's a  
5 business deal and that's fine. RFPs are good things.  
6 Franchises are good things, because everybody in the  
7 world knows what the hell is going on.

8 This is the only place where you can have all  
9 of these hearings with all of the paper on this table  
10 and all of the experts that I've listened to for all the  
11 hearings and still not have a sense of the cost of a  
12 program or what we're really getting. And to have this  
13 slippery slope begin, where right now we're going to be  
14 talking about this. And I'm perfectly confident that  
15 you'll find that this particular camel's nose under the  
16 tent is okay this time. But how much of the camel is  
17 going to be coming time after time after time? I want  
18 you to have on you conscience right now this is the  
19 decision you're making. In 2020 you'll look me back in  
20 the eye and tell me, Gee, that was a great idea in 2013  
21 to let this happen.

22 This is not good. This brings in 218 issues.  
23 And this brings in a fairness issue I can't even begin  
24 to describe. But think about what it would be like to  
25 be in all the other municipalities and to realize that



1 they're conducting their businesses the way it's  
2 appropriate to do so. And we are now finding out as  
3 ratepayers at these hearings this is what you're going  
4 to be paying for and to have the secretness to the Board  
5 of Supervisors and not have all of this on the table.  
6 There is no thing as an impound account or anything to  
7 do with the rates when we hear about our budget process.  
8 That's not a category. But it certainly does affect  
9 things. And right now it's just being a little bit  
10 pregnant. But wait till we get to that eighth month.  
11 It's going to be very unpleasant.

12 So I encourage you to think in that direction.  
13 You're setting a precedent. And, believe me, you're not  
14 going to go backwards. Recology and the City will be so  
15 deep into this, if you don't draw the line in the sand  
16 now, we all have a problem.

17 Thank you.

18 MS. YEUNG: Thank you, Ms. Wuerfel.

19 Mr. Kubitz.

20 MR. KUBITZ: Good afternoon again.

21 I also have not read the case cited by  
22 Mr. Baker in its entirety. However, I note that the  
23 letter that he provides citing the Schmeer case  
24 emphasizes that the funds associated with the paper-bag  
25 fee are imposed, collected, and retained by a private

1 company.

2 I'd have to look at the definition, but I  
3 think "imposed" means direct the execution of or  
4 collection of. "Collected" means go through the process  
5 of collecting. "Retained" means keeping and not used  
6 for any other purpose, including a governmental purpose.

7 I note that, like garbage in this city,  
8 dollars go into different pots. And you have a pot that  
9 goes to Recology. You have a pot that goes to the city  
10 impound account, the Department of Environment, all the  
11 other programs. You have a pot that goes into a special  
12 reserve fund. So you have to ask yourself does this  
13 factual claim -- collected, imposed, and retained by  
14 Recology -- actually apply in the case of the taking  
15 over abandoned property -- abandoned materials  
16 collection.

17 And I'd like to pass out the document to which  
18 Mr. Deibler referred. This is the narrative summary.

19 This is page 14 of Exhibit 3 in the record.  
20 It's Recology's description of what was the basis for  
21 their application in this proceeding. And if you look  
22 at the bottom, the last sentence of page 14, it says, In  
23 the proposed rates the City has directed the companies  
24 to include the equivalent of the 1.3-percent surcharge  
25 in its rates and to eliminate the surcharge on top of

1 the rates.

2 I don't know what that means. I can find no  
3 evidence in the record of how that was considered or  
4 investigated. But when you look at the Director saying,  
5 Oh, well, we don't need to touch the surcharge. We made  
6 a lot of progress by eliminating the 1.3 percent, I find  
7 some inconsistency with this statement that says they  
8 directed the companies to include the equivalent of the  
9 1.3-percent surcharge in rates. And so somebody explain  
10 that to me.

11 And the other -- the only other comment I'd  
12 make is, to put things in an order-of-magnitude sense,  
13 there's been a lot of discussion -- I'm not going to  
14 take a position on the Brisbane tax operating ratio,  
15 but -- let' see. I don't know how to do this. Reverse  
16 Polish notation. \$2.1 million of taxes and operating  
17 ratio on that is, like -- call it \$180,000. The  
18 operating ratio component of taking over abandoned  
19 materials, 3.6 million, plus another 9 percent. I think  
20 I calculated that, but I don't know if I did it right.  
21 And nowhere in the record do you find what the total  
22 cost of the abandoned materials takeover. All I can see  
23 is 3.6 million plus an operating ratio of 9 percent is  
24 another 350,000-something, so that the total cost the  
25 City will be incurring -- that is us, the people of San

1 Francisco -- for abandoned materials transferred to  
2 Recology will be -- we're still paying the 2 million  
3 because the City isn't eliminating any positions and  
4 then we're paying 4 million, including 3.9 or whatever  
5 it is -- 3.6 plus an operating ratio. And that's almost  
6 double the operating ratio discussed for the Brisbane  
7 tax.

8 Those are my comments. Thank you.

9 MS. YEUNG: Thank you.

10 So at this time do the Board Members have any  
11 questions for the objectors? Any clarifying questions?

12 I'm going to talk a little bit about how we're  
13 proceeding today. So at 2:30 we will take a break and  
14 take public comment. At that time, after the public  
15 comment, we will have another period in which we'll ask  
16 for additional comment either from the Ratepayer  
17 Advocate, DPW Director, any of the objectors and members  
18 of the audience, only as it pertains to the objections.

19 And then at that time what we'll do is close  
20 public comment. And what we want to do is -- when we  
21 close the public comment portion, we actually have to  
22 review the objections.

23 So the 22 objections have been laid out for  
24 us. It's been formatted both numerically by the  
25 objections as well as being categorized into the types

1 of objections. So we as a body will review all of the  
2 objections and make comments this afternoon. And then  
3 at that time we will look at the DPW Director's proposed  
4 order and have some deliberation around that.

5 And then depending on where we are at that  
6 point, if it's clear where we stand as a body, then what  
7 we could do is start having discussions and directing  
8 the City Attorney's office to start putting some of  
9 these materials into resolution on behalf of this board.

10 So I'm thinking at that point, if it's very  
11 clear, we may very well recess at that point -- sorry --  
12 continue it to next Monday; and which we'll get a  
13 written document from the City Attorney's office  
14 outlining our resolution. And at that point we can  
15 actually go through and either correct or edit what the  
16 resolution looks like.

17 Does that sound acceptable?

18 Are there any questions regarding the process?

19 Can I take a question from Ms. Wuerfel?

20 MR. CARLIN: Go ahead.

21 MS. WUERFEL: Just quickly, you say you're  
22 going to organize the objections within categories.  
23 Will you tell us ahead of time what those are?

24 MS. YEUNG: Yes.

25 MS. WUERFEL: Is it a piece of paper that will

1 be forthcoming?

2 MS. YEUNG: There will be.

3 MS. WUERFEL: Okay.

4 MR. CARLIN: I have a question. I don't know  
5 if I should direct it at the Director or -- I'd like to  
6 discuss the special reserve fund. And it's one that's  
7 been collected -- the 1.3 percent. It's been suspended  
8 in 2010. It has what seems to be excess funds based on  
9 your expert opinion on risk associated with the  
10 landfill. It's set to expire in 2016, if I've read the  
11 material correctly. And those funds would actually  
12 revert back to the ratepayer base at the end of that  
13 expiration period.

14 But the real question is what procedure do you  
15 have to go through to tap into that fund if you wanted  
16 to use it outside of the context of the Altamont  
17 landfill?

18 MR. NURU: I'll defer to staff to answer the  
19 procedure for --

20 MR. CARLIN: You can take a moment.

21 MR. NURU: Okay.

22 MR. OWEN: Tom Owen, City Attorney's office.

23 The contents of the special reserve fund are  
24 controlled by the facilitation agreement, so it's not  
25 something that the City or the Director of Public Works

1 can unilaterally make withdrawals. It's in a separate  
2 bank account and checks can only be issued with the  
3 consent of the president of Recology and the City  
4 Administrator.

5 But, more important, the facilitation  
6 agreement specifies the uses that can be made of the  
7 funds at this point. It can be drawn upon from time to  
8 time for extraordinary expenses resulting from  
9 undertakings and indemnities by Sanitary Fill Company,  
10 which is now Recology San Francisco, of the costs of  
11 control and alternative disposal of hazardous waste and  
12 designated waste. And it specifically says,  
13 "Withdrawals from the fund are not to take the place of  
14 normal rate-making processes by which rates are adjusted  
15 to recover costs as they are incurred, but rather to  
16 ensure that rates are not subject to major fluctuations  
17 from time to time and to protect Recology San Francisco  
18 against unusual circumstances."

19 So it's clear that when the parties signed  
20 this agreement they did not contemplate that any part of  
21 the special reserve would be used simply to even out  
22 rate increases between rate processes.

23 MR. CARLIN: But, Mr. Owen, is there any sort  
24 of limitation on how large the fund could grow? I mean  
25 it seems like in 2010 there was a decision made to stop

1 contributing to the fund.

2 MR. OWEN: Right. I don't have the  
3 facilitation agreement with me. I don't believe there's  
4 a cap on it. There was a minimum of 15 million. And  
5 because the surcharge is part of the rates, the Rate  
6 Board did have the discretion to say we don't need to  
7 continue to charge it, we've met our contractual  
8 obligations. But for the money that's already in the  
9 special reserve, that money is controlled by the  
10 contract.

11 MR. CARLIN: But since it's a contract -- and,  
12 again, I'm just exploring here -- hypothetically, could  
13 the contract be modified in such a way --

14 MR. OWEN: Yes.

15 MR. CARLIN: -- and agreeable to which  
16 parties? Recology and the City? Or --

17 MR. OWEN: I believe the two parties who are  
18 subject to the contract. However, the Rate Board could  
19 only recommend that, could not direct or compel the  
20 parties to do that.

21 MR. CARLIN: Okay.

22 MR. ROSENFELD: And while we're talking about  
23 the subject, Madam Chair, I don't know if you want to  
24 sort of come back to these item by item, it sounds like  
25 this afternoon for discussion. These are just simple



1 questions of fact. Okay. I'll hold my question then.

2 MS. YEUNG: Thank you.

3 Are there any other public comments? Seeing  
4 none.

5 So at this time we have the 22 objections that  
6 were raised. They have now been categorized into ten  
7 categories. Copies of this will be made available on  
8 the side table. The categories: I'm going to say, A,  
9 abandoned materials and public litter can cost-shifting.  
10 B is unfair rate increases and hardships. C is  
11 insufficient multilingual outreach and access. D,  
12 Director's hearing record was closed prematurely and the  
13 process was not clear. E, the DPW Director has a  
14 conflict of interest regarding windfalls, regarding  
15 cost-shifting from DPW. F, use of the special reserve  
16 fund excess. G, zero-growth projections under-estimate  
17 the revenues. H, please explain the just and reasonable  
18 standards test. I, no ratepayer-funded citations until  
19 illegal dumping fines benefit ratepayers. J is Recology  
20 recovery of the Brisbane business license fee via the  
21 operating ratio.

22 So there's two charts on the table. The first  
23 chart lists each of the objections numerically. And as  
24 it applies to the different categories, there's an X  
25 that's marked in the box. Chart No. 2 re-sorts the list

1 so that now we're looking at each of the columns. And  
2 as each of the objections relate to the category we will  
3 go through the categories of the objections, A, B, C,  
4 and so forth.

5 So at this time, rather than taking one at a  
6 time, I prefer to actually look at categories of the  
7 description, if that's okay with the Board. Thank you.

8 So looking at Chart No. 2, Category A,  
9 abandoned materials and public litter can cost-shifting,  
10 we found that there were certain items, 1, 11, 13, 17,  
11 19, related to category A. If you have it in front of  
12 you, the first one was submitted by Zhao relating to the  
13 double-charging. The second was by Stuart Gardiner, the  
14 third by Kermit Kubitz. Sorry. I should refer to the  
15 number. No. 1 was Zhao. No. 11 was by Mr. Gardiner.  
16 Number 13 was by Mr. Kubitz. Number 17 was by Ms.  
17 Wuerfel and No. 19 was also by Ms. Wuerfel.

18 I'm just going to go over the categories  
19 first. So Category B had Objections No. 2, 3, 7, 8, and  
20 9. All of these were submitted by Ms. Zhao.

21 And then Category C regarding insufficient  
22 multilingual outreach and access, again there were three  
23 items -- yeah, three items. So it's Objections 4, 5,  
24 and 6, again submitted by Ms. Zhao.

25 On Category D, which is the Director's hearing

1 record, was closed prematurely. There was one  
2 objection. That was objection No. 10, raised by  
3 Mr. Gardiner.

4 Category No. E, DPW Director's conflict of  
5 interest. There were three items related to this. It's  
6 Objection 12 by Mr. Gardiner, Objection 18 by Ms.  
7 Wuerfel, and also Objection 20 by Ms. Wuerfel.

8 Category F, regarding the use of the special  
9 fund, there's one objection; and that's Objection 14 by  
10 Mr. Kubitz.

11 For Category G regarding zero-growth  
12 projection under-estimates the revenues, there was one  
13 objection by Mr. Kubitz, No. 15.

14 Under Category H, which is explaining just and  
15 reasonable standard, Ms. Wuerfel raised Objection No.  
16 16.

17 Regarding Category I, ratepayer-funded  
18 citations, there was one objection, Objection No. 21 by  
19 Ms. Wuerfel.

20 For Recology's recovery of the Brisbane  
21 business license fee category, there was one objection,  
22 Objection No. 22, which was raised by Mr. Michael Baker  
23 on behalf of Recology.

24 Is there any question regarding the categories  
25 or how they're listed?

1 MR. BAKER: No. Thank you.

2 MS. YEUNG: Okay.

3 MR. ROSENFELD: The only thing I'd add to the  
4 categories is that maybe as we're talking through them,  
5 we can pick up D and E at about the same period of time,  
6 because they really are kind of related to each other.  
7 I understand that you're differentiating them because  
8 one is about the shift and the other is about the  
9 process. But to kind of talk about them at the same  
10 moment.

11 MR. CARLIN: I'd like to do that as well to  
12 see what possibilities there are if they are there.

13 MS. YEUNG: Thank you. At this time I'm going  
14 to -- so we're going into public comment. Can I get a  
15 show of hands the for categories, same as yesterday? So  
16 there's three categories of public comment. Could I get  
17 a raise of hands how many comments we may have? Hold on  
18 one second.

19 MS. WUERFEL: I have a point of order before I  
20 answer. I'm not clear what you're asking us to do. Are  
21 we going to debate categories of the questions? Or are  
22 we going to rehash our objections?

23 MS. YEUNG: The Board has now listed how we're  
24 going to talk about the objections and how they're being  
25 categorized. And the Board has decided, of the ten

1 categories, we are going to combine categories A and E  
2 together as a point of discussion.

3 MS. WUERFEL: Okay. And that's what you're  
4 taking the comment on is that combination?

5 MS. YEUNG: No. So the public comment refers  
6 to what was on the agenda regarding the three public --  
7 three categories of public comment, one of which is  
8 comments in agreement with any or all of the objections,  
9 comments in agreement with the DPW Director's  
10 recommended order, and general public comment.

11 MS. WUERFEL: In regard to being heard the way  
12 the charts are describing them?

13 MS. YEUNG: No. So at this time it's a  
14 general item that was on the agenda.

15 MS. WUERFEL: Okay. Okay. This is general  
16 public comment that we are now debating. Thank you for  
17 your help.

18 MS. YEUNG: Thank you. But I saw no show of  
19 hands, am I correct? Okay. So at this time --

20 MR. KUBITZ: I don't understand what you are  
21 asking for a show of hands about. And I'm sorry. I  
22 also didn't understand which you were combining. I  
23 apologize.

24 MS. YEUNG: No problem. Let me clarify then.  
25 So under the agenda we said at 2:30 we would have public

1 comment. General public comment was categorized in  
2 three categories in support of the objections, in  
3 support of the DPW Director's Recommended Order, and  
4 general public comment. So I was seeing if there was a  
5 show of hands. And if there were a lot of people who  
6 wanted to speak, I was going to keep the three  
7 categories separated. But at this time, if I see no  
8 hands, we actually skip public comment and take a break.

9 Okay. We'll take a 15-minute recess.

10 Is there any public comment at this time?

11 Thank you. It is now 2:30. We'll reconvene at 2:45.

12 Thank you.

13 (Recess from 2:30 p.m. to 2:45 p.m.)

14 MS. YEUNG: Good afternoon. If we could get  
15 started, please.

16 So at this time we're going to go over the  
17 Chart No. 2. We're going to discuss the categories and  
18 we're going to break it out into groupings of  
19 categories. So A, B, C, we'll discuss them as a body  
20 and then we will open it up for public comment on each  
21 of the categories, after we discuss them.

22 So if we could have Category A, abandoned  
23 materials and public litter can cost-shifting. Would it  
24 be helpful for me to read over the objections again?  
25 Great. Okay.

1           So Objection No. 1, ratepayers would be  
2 double-charged by Recology's collection of abandoned  
3 materials at ratepayer expense because those costs are  
4 already covered by taxes.

5           Objection 11, two programs would be shifted  
6 from DPW to Recology residential ratepayers in violation  
7 of Proposition 218; abandoned materials collection  
8 program and public litter can maintenance. Also, there  
9 is no showing of need for the proposed increased  
10 services by Recology and no demonstrated justification  
11 for the proposed increased costs.

12           Objection No. 13, moving abandoned materials  
13 collection from DPW to Recology is not permitted by  
14 Proposition 218, would not provide any the offsetting  
15 savings to residents, and no justification was  
16 demonstrated for the additional cost.

17           Objection 17, public program work should not  
18 be shifted to Recology for financing by ratepayers when  
19 DPW currently carries out that work with City general  
20 fund financing. This shift has been proposed without  
21 sufficient criteria and process.

22           Objection 19, rates paid to Recology for  
23 collection of City's abandoned waste would be higher  
24 than rates paid to DPW to perform this service without  
25 demonstrated utilization for the increase.

1           Now I'm going to tie Category E to this list.  
2           Category E, Objection 12: It is a conflict of interest  
3           for the DPW Director to decide whether to shift program  
4           costs from the DPW budget to ratepayer-funded Recology  
5           when the DPW budget could benefit.

6           Objection 18, DPW would receive a 3.3-million  
7           windfall from the City's general fund if DPW's work  
8           collecting abandoned waste is shifted to Recology and  
9           financed by ratepayers and that the general fund amount  
10          remains in the DPW budget.

11          Objection 20, it is a conflict of interest for  
12          the DPW Director to determine that costs shifted onto  
13          ratepayers are just and reasonable when that shift  
14          benefits his own department.

15          Members, are there any questions regarding the  
16          objections?

17          Opening for discussion.

18          MR. CARLIN: So I find this to be an  
19          interesting sort of category. One, I really like the  
20          performance metrics that are included in this proposal.  
21          I think that's something that we can track and judge the  
22          efficiency of actually shifting this responsibility to  
23          Recology. I also kind of note that the Department of  
24          Public Works, the Director, has reduced some of his  
25          costs. And while people might think that it's a general



1 fund sort of windfall, actually he just proposes a  
2 budget to the Mayor and includes what he would like to  
3 see as far as funding from the general fund.

4 I had a question regarding the proposal. One  
5 is on the disposal tonnage and the charge for that,  
6 because in the material that I read DPW did not pay for  
7 any disposal of the material from picking up abandoned  
8 things on the sidewalks and such. And in the proposal  
9 there is a charge for that. And I believe I read in the  
10 material that the charge for the tonnage was actually  
11 included in the rates.

12 So did Recology in their application back out  
13 whether they thought from the residential rates what was  
14 being paid for or not being paid for DPW and then being  
15 added back into this proposal, that it's cost neutral?  
16 And I look towards the Director or a representative from  
17 Recology. Douglas?

18 MR. LEGG: The companies did back out the  
19 tonnage from the DPW collection. Those tons that are  
20 through the abandoned waste that previously had been  
21 reported as DPW tons were reduced from DPW tonnage and  
22 they show up on the Recology side.

23 MR. CARLIN: But the charges -- in the report  
24 it said DPW was not paying for that. Rather, it was  
25 covered by the rates, so general?

1           MR. LEGG: That is correct. So the rates for  
2 many years have included disposal of DPW tonnages at no  
3 charge to DPW, but the cost for disposal of those tons  
4 has also been included in the rates. And so they are a  
5 part of those tons going to the pit and are hauled off  
6 to Altamont and we pay for -- the system pays for those  
7 tons. But they haven't been charged to DPW. In the  
8 same way that you may have a 32-gallon can at your house  
9 and within a week that can might be really heavy and one  
10 week it might be really light, you're not charged for  
11 the tons that you dispose of. The rate that you pay  
12 includes a portion -- a fair-share portion of all of the  
13 tons.

14           MR. CARLIN: I was just wondering. This  
15 should almost be like an offset somehow or is it not an  
16 offset? It seems like it was an additional disposal  
17 charge that was already paid for.

18           MR. LEGG: It's just showing up in a different  
19 place. There's nothing -- the offset is that there are  
20 tons that are calculated that don't have anybody paying  
21 for them. They're part of the total tonnage. And all  
22 ratepayers, commercial and residential, previously were  
23 paying a slightly higher bill in addition to paying for  
24 tons that DPW doesn't pay for. Now it's exactly the  
25 same thing. It's just that they're showing them on the

1 books as separate tons that have a certain cost-per-ton  
2 disposal cost. Before they weren't showing them -- it's  
3 just how they were accounting for them. You know,  
4 there's a total cost for total disposal and they divided  
5 over -- that total cost over the smaller number of tons.  
6 So residential/commercial ratepayers were paying a  
7 slightly higher amount per ton. Now they're showing  
8 them as regular tons. They're showing a larger amount.  
9 They're dividing it over the rate base, but the same  
10 tons are being paid for by the same residential and  
11 commercial customers. So in terms of the disposal costs  
12 that are part of the \$34.00 that you're paying every  
13 month, there's no difference at all. You're paying for  
14 them one way or the other. It just how they're  
15 accounting for them.

16 MR. CARLIN: And some of these start-up  
17 costs -- like computers, vehicles, and everything  
18 else -- will that go away in Year 2? Will there be a  
19 reduction in cost?

20 MR. LEGG: Those are amortized costs, I  
21 believe, over three years. So what they've done is  
22 they've taken those costs -- there's an assumption that  
23 that is a three-year rate and that they're going to be  
24 back within three years for a new rate application. If  
25 they don't come in in three years, that one-third cost

1 would continue; and for something like a truck,  
2 ratepayers would be overpaying because the truck is  
3 going to have a useful life of more than three years.  
4 Some of the other equipment costs, probably three  
5 years is a reasonable useful life for a computer.

6 MR. BRASLAW: Jon Braslaw. I'm with Recology.

7 MS. YEUNG: Okay. If I could ask you to state  
8 your name for the record again and would you please  
9 spell your name.

10 MR. BRASLAW: Certainly. Jon, J-O-N,  
11 B-r-a-s-l-a-w.

12 MS. YEUNG: If you could raise your right  
13 hand. Do you solemnly state or affirm under penalty of  
14 perjury that the evidence you give in this matter shall  
15 be the truth, the whole truth and nothing but the truth?

16 MR. BRASLAW: I do.

17 MS. YEUNG: Thank you.

18 MR. BRASLAW: So the costs that you're  
19 referring to, or the costs of starting up the program,  
20 as Mr. Legg said, are amortized over three years because  
21 that is the assumed period that this rate would last.  
22 It was the assumption that we would be back into the  
23 process at the end of that period.

24 The vehicles that -- subject to that last  
25 question -- those are really amortized over a longer

1 period of time consistent with the lease period for all  
2 heavy equipment that we purchase. So the start-up costs  
3 specifically related to some of the equipment that we  
4 needed to get going was amortized over a shorter period  
5 of time. But the vehicles, that's amortized over a  
6 longer period.

7 MR. CARLIN: I believe it was seven years or  
8 something like that.

9 MR. BRASLAW: Correct.

10 MR. CARLIN: Okay.

11 MR. ROSENFELD: I know we've -- just  
12 generally speaking, I know we've talked about this issue  
13 before at this Board in, I believe, 2010 and 2012 about  
14 whether these costs felt fairly included within the rate  
15 base in another format. And as we've heard and seen in  
16 some of the evidence provided by the companies and DPW,  
17 I continue to think that, generally speaking, those  
18 costs feel -- generally speaking -- caused by ratepayer  
19 action -- the mattress example the Director references.  
20 And that the proposed enhancement to the program and  
21 transfer over to Recology, if it meets expectation, will  
22 improve diversion, which will benefit ratepayers. So  
23 generally speaking, that kind of fairness test that was  
24 discussed here I know twice prior feels -- continues to  
25 feel there for me at least.

1 I do have a question about a very specific  
2 mention that Mr. Gardiner made in his comments and  
3 letter related to a couple of very special types of  
4 occasions that we read that this crew is going to be  
5 used for. There's reference to -- my guesstimate this  
6 is really the department -- are these crews going to be  
7 used for parades and special events and fairs and  
8 holiday events, which are really much broader events  
9 that draw many more people than San Francisco residents  
10 and businesses to them?

11 MR. NURU: The program does include those  
12 special events, for some of the parades. And those  
13 costs for the abandoned waste material are in there.  
14 And I think it's a total of -- the total is about  
15 \$53,000.66 cents for all the events.

16 MR. ROSENFELD: Okay. So it's not the  
17 majority of the planned use of the --

18 MR. NURU: Absolutely not.

19 MR. ROSENFELD: But to me exclusion of those  
20 cost feels like it creates greater clarity regarding  
21 kind of the nexus between the ratepayer and the charge,  
22 which isn't to say that the City couldn't contract with  
23 Recology to provide that service, a point that I know  
24 has been discussed here, and pay them for it. Simply  
25 that the rate base itself wouldn't bear those costs

1 would be a suggestion.

2 MR. NURU: We'll be open to amending the  
3 parade part of it. We just see it as an operation that  
4 Recology is offering, but we would be open to clarifying  
5 the abandoned waste instance. Those are events that the  
6 City is involved in.

7 MR. ROSENFELD: And I wouldn't be arguing  
8 that Recology might not be the most efficient means to  
9 perform the work, simply that the source of money to pay  
10 them likely shouldn't sit with the rate base for  
11 clean-up after events that draw so heavily from  
12 non-ratepayers.

13 MR. NURU: We'll definitely clarify the  
14 abandoned waste program.

15 MR. CARLIN: I was just going to add, one of  
16 the things I'm kind of echoing some of the comments  
17 already made that I generally feel comfortable with this  
18 proposal, especially as it's been explained. And,  
19 again, I'm very much in favor of the performance  
20 metrics. And Mr. Nuru's comment yesterday about  
21 mattresses attracting other mattresses is actually true.  
22 Whether this is funded by property owners through  
23 property taxes into the general fund or the ratepayers,  
24 it's kind of like garbage doesn't follow any particular  
25 property. It's kind of an event that just happens all

1 over the place, if I can use the word "events" that we  
2 talked about.

3 But I think one of the things I would like to  
4 explore again is in Category, E the special reserve  
5 fund, and whether the Director would be kind of open to  
6 a recommendation to potentially look at negotiating  
7 opening up that fund to create some sort of, like,  
8 ratepayer reserve to fund this activity in the future,  
9 not that it can be done right away today but maybe in  
10 Year 2 or 3 or something like that nature, given that  
11 you have the \$29 million in there and --

12 MR. NURU: I'll defer that to the Board, but  
13 we would take that recommendation.

14 MR. ROSENFELD: Just so I understand the  
15 concept?

16 MR. CARLIN: If I understand Mr. Owen  
17 correctly, we could make a recommendation to the  
18 Director to go back and negotiate the special reserve  
19 fund, reduce the amount, and then put it into a  
20 ratepayer offset fund or something just for this kind of  
21 purpose, but not immediately, because you don't want to  
22 lose that service. But rather if this is going to be a  
23 three-years rate, as Mr. Braslaw stated, perhaps looking  
24 back a year from now come back and saying we've either  
25 negotiated this or we continue with just having it in



1 the general rate or we have this other fund to fund  
2 these activities.

3 MR. NURU: This is for the parades part we're  
4 talking about?

5 MR. CARLIN: I'm actually talking about for  
6 everything, from the abandoned -- since you have, it  
7 seems like an excess amount of money in the special  
8 reserve fund. I'm open, Mr. Nuru, to discuss it with  
9 you, so --

10 MR. NURU: Let me discuss it with my team.  
11 Yeah, that's a different proposal.

12 MR. CARLIN: Okay.

13 MS. YEUNG: Director Nuru, part of this item  
14 includes the public litter can maintenance program. And  
15 I feel like we have not had a chance to talk about that.  
16 Could you come up and talk about what that program looks  
17 like now and the cost associated with it and what under  
18 the proposal it would look like?

19 MR. LEGG: Just the abandoned materials  
20 collection?

21 MS. YEUNG: No the public litter can units.

22 MR. LEGG: I'm a little bit confused by the  
23 term "public litter receptacle maintenance," because as  
24 I understand, at this time the companies offered this  
25 year to perform certain maintenance activities on the

1 litter cans themselves, which is we've had -- we have a  
2 lot of theft and breaking of the doors. They're stolen  
3 because they have scrap metal value. People bend them  
4 off or break them in order to get in to access cans to  
5 dig around for recyclables with California redemption  
6 value. And so because the companies are servicing those  
7 cans, they have said it would be a marginal cost, barely  
8 noticeable. If you provided doors and liners we could  
9 replace those as we're servicing the cans. We're there  
10 every day right now.

11           The program that DPW receives a 311 call or  
12 supervisor or litter patrol or one of our corridor  
13 workers sees one of these cans. They radio it in. We  
14 send out a special truck to replace the door. Or in the  
15 case of liners, that's fairly easy and our trucks  
16 generally have liners on them because we're not  
17 necessarily making trips.

18           So that's how I interpreted that in  
19 Mr. Gardiner's written objection. That's what I took  
20 "maintenance" to mean. Yesterday when I heard  
21 Mr. Gardiner speaking to you, though, it sounds like  
22 he's talking about servicing the cans and emptying the  
23 cans. And that has been in the rates for many, many  
24 years and there isn't a significant change in that  
25 procedure. DPW does not empty those cans. We haven't

1 emptied the cans in the 15 years that I've worked for  
2 the department. I don't know if there was a time when  
3 we did, but it's been a very long time that that's been  
4 included in the rates.

5           And like with the abandoned materials, we  
6 believe that the waste is generated by a combination of  
7 residential and commercial ratepayers. A lot of the  
8 waste in the litter cans are Starbucks cups or things  
9 from fast-food establishments or other kinds of  
10 establishments that those -- that if you stayed there,  
11 you would throw it in their can. They're required to  
12 have that service. People leave home in the morning and  
13 they have their breakfast or something and they put the  
14 waste in the can. It's San Francisco waste that's  
15 traveling, essentially. And we believe that it's  
16 appropriately included in the rate base.

17           MS. YEUNG: Thank you.

18           Any other questions.

19           MR. ROSENFELD: On this cluster? Sure. A  
20 couple of others.

21           Just for my colleagues' consideration, a  
22 couple of other partially formed thoughts in this part  
23 of the world and I would be interested in the department  
24 kind of feedback on them. If we approve this new  
25 program as part of the rates in whatever form we do, I

1 would think it would be important to treat it as a  
2 pilot, to have some sort of a report regarding the  
3 effectiveness of the pilot in increasing diversion,  
4 which is ultimately what benefit ratepayers here. And  
5 to have a process that then allows for continuance of  
6 the pilot what we find in that report that the program  
7 is meeting its established goals.

8 So we have a lot of evidence about the past  
9 year. We have performance metrics to your point,  
10 Mr. Carlin, in the rates. But to have kind of a  
11 proactive decision made in the future based upon an  
12 analysis of a pilot program would seem positive to me.  
13 And I'd be open to comment on it. Assuming that sounds  
14 right, there would then be a question about how and who  
15 and when, but just as a concept.

16 MR. NURU: The department would be open to  
17 seeing the program as a pilot for the duration of this  
18 rate hearing. It would be fine with us.

19 MR. ROSENFELD: We've had a couple of  
20 questions here about the program. And they feel -- they  
21 boil down, I think, fundamentally to two. One, is it  
22 and to what extent will it increase diversion versus  
23 current practice. And then, secondly, is it  
24 cost-effective versus providing the same level of  
25 service with Public Works staff? And we've had heard

1 that repeatedly throughout and from the objectors. And  
2 it seems to me that both of those things could be  
3 analyzed more fully following the conclusion of, say, a  
4 one-year pilot period, codified in some sort of report  
5 and that could be part of an official record in the  
6 future.

7 MR. NURU: Yeah. We would be open for a  
8 pilot, but as we have designed the program, obviously  
9 the first 11 months is collecting data and then we'll  
10 need a little bit more time. And I think the duration  
11 of this hearing, the three years before the next rate  
12 application would --

13 MR. CARLIN: I guess, going back, it would be  
14 almost like a three-year pilot in some respects, because  
15 one year of data, looking retrospectively; and then the  
16 second year, you could see. But also, in demonstrating  
17 success, I guess the diversion is actually a really  
18 important factor. And I think you have forms that  
19 you're going have Recology fill out as part of that.

20 MR. NURU: Oh, yes.

21 MR. CARLIN: So I'm open to that concept.

22 MR. ROSENFELD: And I would wonder whether  
23 three years starts to feel not like a pilot but like  
24 something that's --

25 MR. CARLIN: Permanent.

1 MR. ROSENFELD: -- permanent. And so maybe  
2 some discussion of timeline. And I'll also note, of  
3 course, the rates that in front of us, while intended to  
4 be from all comment three-year rates, there's nothing in  
5 the rates themselves that don't say they couldn't last  
6 for longer.

7 And so the second one is a little --

8 MR. BRASLAW: One of the steps in implementing  
9 the abandoned materials program the purchase of  
10 vehicles. We spoke previously that they're being  
11 amortized over a seven-year period. So if we went  
12 through and did this as a pilot, that would impact the  
13 way we would look at deploying equipment in order to do  
14 it and could potentially impact the results of the  
15 program. It was our intent to go forward, purchase new  
16 equipment, and deploy it in the process of executing the  
17 program.

18 MR. ROSENFELD: Are these trucks ones that  
19 you wouldn't have other use for anywhere in your  
20 operations if not for this program?

21 MR. BRASLAW: We do a similar service with our  
22 bulky item collection, but those are vehicles that we've  
23 already got in place and deployed. If the intent is to  
24 do a pilot and then evaluate, we'd need to go back and  
25 look at whether we would want to lease the trucks

1 initially or to go out and purchase. So, again, it  
2 changes the way we would approach the acquisition of  
3 equipment necessary to perform the service.

4 MR. ROSENFELD: I understand. I also  
5 understand, of course, that if you've amortized your  
6 vehicle purchase over three years and then at the end of  
7 a pilot period that's less than that, you would need to  
8 allow the companies to continue to pay off that  
9 amortization, even if the pilot wasn't continued, of  
10 course.

11 MS. YEUNG: Can I ask bit about the  
12 11-month -- I want to understand how that's going to  
13 work. So if the program goes into place over 11 months,  
14 you're going to take all that data, you're going to look  
15 at what the original metrics were. So assuming four  
16 hours of picking up material weekdays and what not; and  
17 then you're going to look at the actual data versus what  
18 the performance metrics was. And then at that point you  
19 may revisit what the metrics are? Or is there some kind  
20 of --

21 MR. NURU: A penalty has been built in after  
22 that 11 months. That's why we have given them the time.  
23 There is financial penalties after that that are being  
24 built in based on percentage of -- so the request is  
25 being responded to. And then it would give a good sense

1 of what to expect and what operational changes need to  
2 happen and all that so that they can meet the goal.

3 MR. CARLIN: Going back to Mr. Braslaw's  
4 comments, is that kind of built into their model if  
5 there's a penalty associated with not meeting the  
6 metrics? One assumes not.

7 MR. BRASLAW: It's our assumption that we will  
8 meet performance standards. When we evaluated the  
9 program and developed our cost model, it was based on  
10 what we believe was necessary to meet the standards.

11 MR. CARLIN: Okay. Thank you.

12 MS. YEUNG: I was wondering, Director Nuru,  
13 for this part of the program, it seems like there's a  
14 lot of interest. Could this Board ask that you provide  
15 periodic reports on this program, maybe in a year's time  
16 to see how it's succeeding or not?

17 MR. NURU: Certainly. We will be glad to  
18 report annually on how well the program is doing.

19 MS. YEUNG: Thank you. That did it for me on  
20 that one.

21 MR. ROSENFELD: My only other one is a point  
22 that Ms. Wuerfel raised that part of it rings somewhat  
23 true to me. And I think it's been kind of  
24 mischaracterized a little bit and kind of the words that  
25 people are using. But kind of the term "conflict of



1 interest" is being used. But I think what we're really  
2 talking about here is kind of an organizational conflict  
3 between serving as a regulator and potentially an  
4 organizational beneficiary of the rates.

5 It strikes me that there is an important  
6 difference between what's proposed in these rates and  
7 other impound account-funded expenses. And that really  
8 sits in who else is involved in this approval process.  
9 So obviously we have a departmental process where the  
10 companies propose rates to the Director, who based on  
11 staff analysis develops recommended rates that we then  
12 as a body hear. And then that becomes the final action  
13 on the rates, except for expenses that are paid for out  
14 of the impound account.

15 And in the case of those expenses, because  
16 that money flows to the City, the use of those funds is  
17 then subject to review and approval by the Mayor and the  
18 Board of Supervisors through the budget process. And  
19 that ensures that we have many different stakeholders  
20 involved along the way that create different checks and  
21 balances against each other, right?

22 This specific program in the way that it's  
23 being funded is becoming an expense of the companies  
24 themselves and it won't flow through the city's budget  
25 process. And so absent something else, it really does

1 flow to the Director and then to this body. And I think  
2 that actually that alone creates a lot of brakes against  
3 any potential organizational conflict, because we are  
4 not the Department of Public Works and we're sitting  
5 here representing different interests.

6 But I wonder -- and this is somewhat of an  
7 operational question for the department or companies and  
8 somewhat of a legal question as well for our counsel --  
9 whether if we do kind of engage in a pilot program and  
10 then an affirmative decision needs to be made to  
11 continue the pilot program for a longer period, whether  
12 the Mayor and the Board via normal legislative process  
13 can't be the decision-maker regarding the continuance of  
14 that pilot, based on findings that we could work into  
15 the rates that says that, based upon the staff report,  
16 the Board finds that in extending the pilot that it's  
17 more cost-effective than providing the same service with  
18 Public Works and is improving diversion rates of these  
19 materials to the benefit of the ratepayers; that that  
20 would create just another step in this process that  
21 creates or at least alleviates at least some of the  
22 impression of a kind of organizational conflict.

23 MR. CARLIN: It's sort of like meeting the  
24 City's overall goal of zero waste which they've set --  
25 the City has set. And so it's actually contributing to

1 that discussion and that affirmation by the elected  
2 board and the elected Mayor, that it's contributing to  
3 that.

4 MR. ROSENFELD: And that the pilot has proved  
5 successful and that they understand that this program is  
6 occurring and that they're thereby approving it in  
7 essence.

8 MR. CARLIN: It's a good point.

9 MR. ROSENFELD: It's somewhat a question of  
10 counsel and is somewhat an operational question.

11 MS. BLITS: That's an interesting question.  
12 We will have to look at it more closely and how to  
13 structure it. But I would think that there would be a  
14 way to work that out. You might want to also, before  
15 we're done today, involve DPW and the Recology folks who  
16 would have to be part of that process about their  
17 reaction to it, which I know you will.

18 If the Board structured their -- if your Board  
19 structured its resolution and decision that way, that  
20 gives some direction and criteria as to what's  
21 anticipated for completion of the process. I would  
22 think that we could figure out the way to involve the  
23 Board of Supervisors in them becoming involved in the  
24 way you just described.

25 MR. ROSENFELD: Thank you. We can certainly

1 do it later, but I don't know if there's any initial  
2 feedback from either the companies or the departments to  
3 that kind of concept. It could be now. It could be  
4 later.

5 MR. BAKER: I'll jump in. Michael Baker,  
6 counsel for the companies.

7 I guess the question would be the scope of the  
8 '32 Ordinance, because the '32 Ordinance gives  
9 authority -- the exclusive authority -- to determine  
10 rates for the collection and disposal of refuse in the  
11 city to this Rate Board and the Director. So if the  
12 Board of Supervisors was doing something that would  
13 intrude upon that authority, that could be a problem.

14 If there's been a service that traditionally  
15 has not been subject to the rate process but is being  
16 moved to the rate process now, obviously, there's an  
17 argument there that hasn't been dealt with by any court  
18 before as to what is within the concept of, quote,  
19 collection and disposal of refuse in the city and,  
20 therefore, what's subject to the '32 Ordinance and what  
21 could be dealt with by the Board of Supervisors outside  
22 the ordinance.

23 So that's not a crisp answer to your question.  
24 I'm just kind of framing the issue we'd have to think  
25 about.

1 MR. ROSENFELD: Yeah.

2 MS. YEUNG: I guess I have some concerns of  
3 this term "pilot" and what we mean by that. Could I ask  
4 you to elaborate a little bit more?

5 MR. ROSENFELD: Sure. I guess what I mean by  
6 "pilot" is a time-limited program that we would get up  
7 and running with the expectation being that it continues  
8 if it's meeting goals that we've established for it but  
9 it stops or reforms if it's not.

10 And I think in moving this cost to Recology  
11 and to the rate base, we're affirmatively kind of making  
12 the decision that we think that this is going to provide  
13 positive benefits to the ratepayers in the form of  
14 improved diversion. And a pilot period where we're  
15 affirmatively saying this is a pilot until you prove  
16 that to us and we make an affirmative decision based on  
17 the performance of the program during that period to  
18 continue it is certainly creating a checkpoint in the  
19 process of putting it in place that doesn't imply that  
20 it's permanent until that's happened.

21 MS. YEUNG: I'm going to ask what would, for  
22 the DPW Director, what kind of operational challenges  
23 that might impose.

24 MR. NURU: Operationally, I think it's -- I  
25 think it makes sense, because at the end of the day,

1 whether what DPW was getting off the streets is going to  
2 the same place. The difference is the way we get it and  
3 the way they get it. It's very different. And if we're  
4 trying to reach the City's goal of zero waste, we have  
5 to start sorting out this material. And so then since  
6 they're out there, they already have the manpower. The  
7 operations from Recology is far much stronger than DPW  
8 has in this area. So it means -- I think the logic is  
9 it makes sense that they perform that operation.

10 In terms of duration of a pilot, we need at  
11 least three years because of the seasons. San Francisco  
12 is a very -- can't get a lot of information just in one  
13 year, because times change. And so we have to get a  
14 good understanding month by month on what we're picking  
15 up and where we are picking up and the type of item. So  
16 we need some time to get the operation in place and get  
17 a good sense of it in terms of report. We can report on  
18 an annual basis and you can start to see trends or  
19 things that we're seeing.

20 MS. YEUNG: Thank you.

21 MR. LEGG: May I add a couple of thoughts  
22 about that? When we established the project and the  
23 reason that we didn't have penalties in the first year  
24 is we felt like we needed to establish a baseline. The  
25 companies were very concerned that if certain members of

1 the public saw Recology trucks picking up materials on  
2 the street that it would encourage increased levels of  
3 illegal dumping. So their estimates for the cost which  
4 they've committed to for the duration of the rates were  
5 based on the assumptions of the amount of deliveries,  
6 the number of stops, all of that kind of thing. We had  
7 thought that the first essentially 11 months of this  
8 rate would be used to set a baseline for what's actually  
9 happening.

10 And, Ms. Yeung, you were asking, I believe,  
11 can the standards and the penalties change. And we did  
12 want to make sure that if the companies were assuming  
13 that they were going to be setting their costs that  
14 they'd be responding to something like a hundred calls a  
15 day and it turns out that they're getting 200 calls a  
16 day, that we would want to adjust and not expect that if  
17 the level of dumping went way up that they would be able  
18 to do -- we really need to set a baseline is what our  
19 feeling was.

20 So my sense is that maybe a pilot that lasted  
21 a year and a half and that would give us -- that would  
22 give us enough time -- it would take us to January of  
23 2015. That would give us enough time to be preparing  
24 the budget and the budget changes that would have to go  
25 on. We submit that budget to the Mayor in February.

1 And so the pilot period would maybe be a year and a  
2 half. And the time that the change could take place, if  
3 it were to take place, would happen in Year 2. And they  
4 would already -- the penalty phase would already have  
5 kicked into effect the previous July 1 under the current  
6 Director's proposal.

7 I also -- we're just looking -- the companies  
8 also made estimates about the amount of refuse that  
9 could be diverted. And it is part of the application  
10 where they're looking at all the tons collected and  
11 disposed of and diverted; and that is on the record.  
12 And I would say that we would be comparing to what was  
13 proposed there.

14 MS. YEUNG: Could you give us an idea of what  
15 that diversion looks like at this time?

16 Since you're new to the mic, I'm going to ask  
17 that you state your name for the record. Please spell  
18 it.

19 MR. HALEY: Robert Haley, H-a-l-e-y. And I'm  
20 with the Department of the Environment.

21 MS. YEUNG: Could you please raise your right  
22 hand. Do you solemnly state or affirm under penalty of  
23 perjury that the testimony you give in this matter will  
24 be the truth, the whole truth and nothing but the truth?

25 MR. HALEY: I do.



1 MS. YEUNG: Thank you.

2 MR. HALEY: So I'm looking at the application  
3 that the companies submitted. And it's I believe  
4 Exhibit 3; is that correct? Exhibit 1. And in that  
5 exhibit there's a Schedule E for Recology San Francisco.  
6 And what it shows on page 12 is essentially the Recology  
7 Golden Gate -- I'm sorry -- Recology Sunset bulky item  
8 tonnage increasing from 4,038 tons to about seven tons  
9 7,140 tons. And that's the essentially -- the increase  
10 is the tonnage we're talking about here. It's around  
11 3,000 tons. And the diversion increasing from  
12 2,723 tons to about 3,040 tons. This is from Rate Year  
13 13 to 14. That's about an increase in 300 tons. So  
14 we're talking about a ten-percent diversion projection,  
15 300 tons divided into 3,000 tons. So that's essentially  
16 what Recology is projecting they can divert with this  
17 program. Currently it's not being diverted because it's  
18 going into packer trucks and going to the landfill.

19 MS. YEUNG: Thank you.

20 MR. LEGG: If I may, my Director has cautioned  
21 that he really does not think 18 months is going to be  
22 enough for a pilot. And he thinks that all of the  
23 issues that need to be worked out, the seasonality is  
24 going to take about three years.

25 Additionally, Recology informs me that they're

1 hiring full-time employees. So they're hiring ten  
2 drivers and two supervisors as full-time people. And  
3 if -- they feel like that if we're cutting this off  
4 after 18 to 23 months, that that puts them in a worse  
5 position than having a little bit more time so they can  
6 deal with attrition and firing people.

7 So it's the Department of Public Works'  
8 position that if we were to do a pilot, even though it  
9 sounds like a really long pilot, maybe we should find  
10 some other -- instead of calling it a pilot call it a  
11 testing period; and maybe we would add an additional 12  
12 months to the 18 months that I had suggested.

13 MS. YEUNG: Thank you.

14 Any other questions on A or E?

15 MR. ROSENFELD: I don't know if we want to  
16 pick up I here as well, actually because it's also  
17 related -- I'm sorry. But I is also related to the same  
18 kind of bucket of issues and just talk through them  
19 altogether. I is the --

20 MS. YEUNG: I thought -- and please clarify  
21 for me -- I thought this issue was a little different,  
22 because I thought it was DPW has people going out  
23 issuing citations. The revenues that come back from the  
24 citations, it wasn't clear whether it was going for  
25 general fund purposes or whether it was going back to

1 the ratepayers. Is that different?

2 MR. NURU: So the method in which DPW collects  
3 money from enforcement comes back to the City. What the  
4 proposal says is the part of it that is around recycling  
5 and enforcement that goes into the general fund, that  
6 portion be put back into the impound account. So that  
7 would be worked out with the controller's office.

8 MR. ROSENFELD: And that would then be  
9 available to you?

10 MR. NURU: It would go to the --

11 MR. ROSENFELD: The impound account.

12 MR. NURU: -- impound account.

13 MR. ROSENFELD: Or to whoever is going to --

14 MR. NURU: To refund it to ratepayers.

15 MR. ROSENFELD: And the additional funding  
16 for -- who writes the citation, is that paid for out of  
17 the impound account or is that general fund dollars?

18 MR. LEGG: We have a new program in these  
19 rates where the impound account would fund an additional  
20 eight FTE as essentially outreach and enforcement staff  
21 people. The objection says any penalty revenue that  
22 they collect, because it's paid for through ratepayer  
23 dollars, should accrue back to the benefit of  
24 ratepayers. And the Director agrees essentially that  
25 any penalty revenue that we collect should go into a

1 set-aside fund. And then it would be returned to the  
2 rate base, probably in the next rate proceeding. It's  
3 not going to be an especially large amount of money.

4 This year we found that we have an excess  
5 balance in the impound account that wasn't appropriated;  
6 and we are putting that back into the rate base. And it  
7 has the impact of lowering the revenue requirement.  
8 Essentially we'd be doing the same thing. It would be a  
9 balance that would be going back in and offsetting the  
10 cost of this program.

11 MR. ROSENFELD: Okay.

12 MS. YEUNG: Thank you.

13 MR. CARLIN: It sounds like they're agreeing  
14 to the comment.

15 MS. YEUNG: So any other questions on A, E, or  
16 I? Would you mind if I open now to -- okay. So if I  
17 could open now to public comment in the Categories A, E,  
18 and I.

19 MS. WUERFEL: Good afternoon. Nancy Wuerfel.

20 I appreciate the depth of this discussion.  
21 I'll just deal with it, because you just talked about  
22 it. It's fresh in your mind. I wrote the complaint or  
23 concern because I wanted to make sure legally can the  
24 department divert fines that would normally go into the  
25 general fund and not need an ordinance by the Board of

1 Supervisors to allow a separation? I don't know this  
2 answer. But, boy, I think it's a very interesting one  
3 if the department can simply say, I think I'm going to  
4 send in some fines, and by the way I get the proceeds.

5 I want money to go into a ratepayer benefit.  
6 I want that. But I don't know if legally the treasurer  
7 will take that money out of the general fund and give it  
8 back to us. So that's my point of that concern. Let me  
9 get right into --

10 MR. ROSENFELD: Just briefly to respond to  
11 you on that question, I think, at least from a  
12 controller's office perspective, if the final rate  
13 package imagines that's the way the world works, we can  
14 make sure that that happens in the real world, working  
15 with the department.

16 MS. WUERFEL: Okay. As long as there isn't  
17 going to be a problem from the department end in how it  
18 moves over.

19 MR. ROSENFELD: We'll have to work through  
20 these with the City Attorney and the Department of  
21 Public Works, but if that's part of the final rate  
22 action, I would think that --

23 MS. WUERFEL: It's doable?

24 MR. ROSENFELD: -- it's doable and we'll  
25 figure out how to make it work.

1 MS. WUERFEL: Procedurally I'll get back to  
2 you and you'll let me know and that sounds wonderful.  
3 So I appreciate your clarity on that.

4 On the issue of the pilot program, thank you,  
5 Mr. Rosenfield, for bringing that forward; and I  
6 definitely want to support the idea.

7 I want to bring into action the elephant in  
8 the room that's not been talked about that I haven't  
9 brought in. I've had the camel here, but I'm bringing  
10 the elephant back.

11 What we've got now is what does the Board of  
12 Supervisors and what does Rate Board do? This is a good  
13 question. In my mind the Rate Board is setting  
14 regulations and rates; and that's the how-to of things  
15 that are decided by policy by the Board of Supervisors.  
16 I do not want to see this body think that it is a  
17 policy-setting body. As much as you are very fine  
18 people, you're not elected. And so having this Rate  
19 Board make it very clear that you're not going to get  
20 into the policy decisions, then I think we're on good  
21 straight and good form. If we have information that  
22 goes from the Director in the Director's Orders approved  
23 by this Board about asking the Board of Supervisors to  
24 set policy after the testing period or the pilot,  
25 whatever we call it. If they want to then continue it

1 on, that will be a policy issue. Then this Board will  
2 implement that with the appropriate regulations and with  
3 the department; and that's how I think the world works.  
4 But for you to set policy when there's only five people  
5 in the audience at any given time from the public,  
6 that's not right. So let's not go into that very  
7 dangerous area, because there will be more to be said.

8 And I think that you're doing a fine job as  
9 long as we keep things very, very focused on what the  
10 good things are you can do with regulations. And I like  
11 regulations after the policy for the goals are set by  
12 the City people we elect.

13 Thank you.

14 MS. YEUNG: Any other public comment?

15 MR. KUBITZ: Good afternoon. I won't try your  
16 patience. It been a long day.

17 Mr. Legg, I believe, referred to the  
18 possibility that people seeing the Recology trucks going  
19 out and hauling away appliances, mattresses, blah-blah  
20 could stimulate more appliances, mattresses on the  
21 street. And so I think it's important to have the  
22 numbers on and one of the metrics be if you go through a  
23 pilot and as a result of this, you have more tonnage  
24 being tossed out on the street, take a careful look at  
25 this program.

1           And so I'd just like to point out from my --  
2   let's see -- I think this is my objection in Tab 4 --  
3   no, it's 5 -- where Exhibit 41 shows up, you see  
4   Recology's estimate of disposal, which is 3,062 tons.  
5   They have a different number for number of units. I  
6   don't know why that is. But 3,086 tons for abandoned  
7   materials collection and disposal, calculating the  
8   disposal-cost fee.

9           And Mr. Legg also pointed out -- I was trying  
10   to figure out whether the last tab was in the record.  
11   He says it is. And so I'd like to point out that this  
12   page on the current DPW collection says abandoned on  
13   streets, from their Website, 6,455 tons, 717 diverted.  
14   So right at that point it's ballpark 7,100 tons on the  
15   DPW Website. So I don't know what the difference is.  
16   But if those numbers go up, Recology made the estimate.  
17   Number one, I don't want to see a sudden application,  
18   Oh, well, we have a huge number of mattresses rolling  
19   out that we have to deal with. We have to have a rate  
20   increase. I don't want that. And, number two, if such  
21   a thing happens, I think you have to look at the pilot  
22   program.

23           And just the last point I'll make, when  
24   Mr. Quillen testified at about page 294, which is in Tab  
25   8, he says there's a change in the numbers because of a



1 change in the truck-leasing convention. So my  
2 assumption is these are leased trucks. I don't know if  
3 that affects the pilot nature; but he said they changed  
4 the truck-leasing convention which resulted in the  
5 change in cost.

6 Thank you.

7 MS. YEUNG: Thank you.

8 Mr. Gardiner.

9 MR. GARDINER: Thank you.

10 First I want to strongly endorse and  
11 appreciate Mr. Rosenfield's suggestion that, as I  
12 understood it, there be a specific exclusion of parades,  
13 holidays, public events if the abandoned materials  
14 collection program is to be transferred to Recology  
15 rates. And I hope that the Board will include that in  
16 any of your orders.

17 I would note with regard to that there are --  
18 well, particularly with regard to Mr. Carlin's  
19 appreciation of the improved diversion -- and  
20 Mr. Rosenfield's as well -- and performance metrics.  
21 There are two other ways to get those that don't raise  
22 the legal problems that shifting to the Recology rates  
23 would. One is to have the City do it. And I don't  
24 think we've heard any reason why the City can't -- I  
25 mean we rely on Department of Public Works for a lot of

1 services. And, again, I don't understand why that can't  
2 be done in the current legal framework or separately by  
3 contracting with Recology, such as would be the case  
4 for, apparently, parades and special events.

5 If you do go ahead with the shift and some  
6 sort of pilot program, I urge you to establish a clear  
7 and unambiguous baseline with numbers that you, the  
8 Board, set upon recommendation, presumably, from DPW. I  
9 think even in the past few minutes we've heard a number  
10 of different numbers for total collection, anticipated  
11 collection, diversion, and so on. And I urge you to  
12 agree now on one set so that you can have a presumably  
13 successful measurement of the success -- degree of  
14 success -- of the pilot.

15 And lastly, noting Mr. Haley's reference to  
16 Schedule E, page 12, in the application and the numbers  
17 he read out, if I'm reading it correctly, from Rate Year  
18 2013 to Rate Year 2014, the projected increase in the  
19 amount in the tons diverted is 2,723 to 3,040, which is  
20 roughly 10 percent, where the total increase in the  
21 amount collected from bulky items is 4,000-some to  
22 7,000-some, which is not a very impressive change and,  
23 in fact, results in a reduction of the percentage  
24 diverted from 67 to 43.

25 So I have to wonder if you're going to see any

1 success in the pilot. And I just raise this as an issue  
2 for your further consideration of how you want to  
3 measure success.

4 MS. YEUNG: Thank you.

5 Any other public comment? Okay. Could I ask  
6 for a ten-minute break at this time? Thank you.

7 (Recess from 2:28 p.m. to 2:40 p.m.)

8 MS. YEUNG: Good afternoon.

9 Before moving on to the next category, I just  
10 wanted to ask DPW director to come back up regarding  
11 Objection No. 1 and to clarify for the record.

12 Ratepayers would be double-charged by  
13 Recology's collection of abandoned materials at the  
14 ratepayers' expense because those costs are already  
15 covered by taxes. I thought I had heard clarification  
16 yesterday from the department about during the budget  
17 process that these funds were actually covering other  
18 services that the department was doing. But I just  
19 wanted to note it for the record.

20 MR. NURU: That's accurate.

21 HEARING OFFICER: Thank you.

22 Okay. Any other questions for Categories A, E  
23 and I?

24 MR. CARLIN: No.

25 THE COURT: Thank you. So if we could move on

1 to Category B. Again, I'm going to read off the  
2 objections and then we'll ask comments.

3 Objection No. 2, reducing black bin volume is  
4 not an option because diligent recycling and composting  
5 ratepayers have reduced black bin volume as much as they  
6 can and any rate increase is unwarranted.

7 Objection No. 3, charge ratepayers for  
8 recycling and composting is wrong because Recology  
9 receives incentives for this collection and sells what  
10 it collects.

11 Objection No. 7, rate increases would be a  
12 hardship on fixed-income ratepayers, mostly seniors and  
13 minorities.

14 Objection No. 8, rate increases would be a  
15 hardship on all, especially on many small property  
16 owners and tenants.

17 Objection No. 9, the cost-of-living adjustment  
18 for Recology will not be fair to ratepayers.

19 So on this one if you don't mind if I go ahead  
20 and start asking the DPW Director, on the black bins my  
21 understanding is that there's 32-gallon and 20-gallon.  
22 Are there any plans to provide even smaller cans to the  
23 public?

24 MR. NURU: Not at this time.

25 MS. YEUNG: Not at this time. So for those

1 members of the public that's already trying to divert as  
2 much as possible to blue and green bins, a 20-gallon  
3 can, that's the smallest can that they can go, correct?

4 MR. NURU: In this application, yes.

5 MS. YEUNG: Got it. Thank you.

6 MR. ROSENFELD: But on that point, they are  
7 expanding the pay-per-set-out pilot in the rates here,  
8 which would be comparable in future cycles if we're able  
9 to roll it more globally to that same concept, meaning  
10 you still have a 20-gallon cap but you're only charged  
11 to put it out every two weeks rather than weekly. So I  
12 know it's not specifically built into this rate  
13 city-wide, but it is kind of a concept that I think  
14 getting to the point you're making here, Madam Chair.

15 MS. YEUNG: Thank you.

16 Do you have questions on any of these?

17 MR. CARLIN: So on the issue of -- the  
18 recycling and composting, that Recology just sell what  
19 it collects, I believe is reflected in the rates as well  
20 that the revenue from the selling of recyclables is  
21 actually put back into the rate base as covering some of  
22 your cost.

23 MR. LEGG: That is correct.

24 MR. CARLIN: And you also have a LifeLine rate  
25 for economically disadvantaged people as well, I

1 believe, something for apartment houses or nonprofit  
2 housing?

3 MR. LEGG: That's right. So there's a  
4 25-percent LifeLine discount for low-income ratepayers  
5 at the residential level. And there's a 10-percent  
6 discount to nonprofit providers of low-income housing,  
7 people like Mercy and Bridge Housing.

8 MS. YEUNG: Can I ask the company to come  
9 forward and talk a little bit about the outreach  
10 programs for, especially, minority communities, where  
11 English is not the primary language? I'm still in  
12 Category B where it talks about rate increases would be  
13 a hardship.

14 MR. BRASLAW: We do have in our customer  
15 service, we have the availability of different  
16 languages, so if people call in Cantonese, Mandarin.  
17 We've also got a language line we do put out in our  
18 newsletter. We often include information so that people  
19 who speak in other languages know where to contact us.  
20 We do also have speakers in different languages that are  
21 available to go out to the community groups to go out  
22 and provide interface as part of outreach that we've  
23 developed for this rate. We have been doing a series of  
24 community meetings and those meetings where we believe  
25 there will be a significant number of non-English

1 speakers we'll provide somebody that speaks, again,  
2 either Cantonese or Spanish, as appropriate.

3 MS. YEUNG: And I assume in your materials you  
4 also have them in multiple languages.

5 MR. BRASLAW: We do. We have them available,  
6 again, primarily as people come and request that  
7 information. We don't distribute everything in multiple  
8 languages. Places where we know that would be  
9 appropriate we provide that.

10 MS. YEUNG: Thank you.

11 MR. CARLIN: Can you also elaborate a little  
12 bit about how you reach out to customers about the  
13 LifeLine rates and the availability of that.

14 MR. BRASLAW: Again, we provide information  
15 through a newsletter, through our Website.

16 We've got a group of employees that go out and  
17 meet in community meetings, both at the kind of  
18 residential level with the apartment owners and  
19 apartment communities. So we go out there to try to put  
20 out the information with respect to these programs.  
21 Also, when people call, our customer-service department  
22 is all well-versed in the process and directing people  
23 to these services.

24 MR. CARLIN: Thank you.

25 MS. YEUNG: Any other questions on B?

1 MR. CARLIN: No.

2 MS. YEUNG: Okay. Category C, insufficient  
3 multilingual outreach and access. Objection No. 4,  
4 Proposition 218 Chinese-language notice was inadequate.

5 Objection No. 5, the process lacks sufficient  
6 multilingual outreach.

7 Objection No. 6, many non-English speakers who  
8 objected to the rate increases at DPW Director's June 11  
9 (sic), 2013, hearing did not know how to file written  
10 protest when they came to the hearing.

11 So that's Category C. Any comments on that?

12 MR. ROSENFELD: I think there's a set of  
13 these where the Director's response to the objection  
14 kind of speaks to the process that was conducted and  
15 clearly that there weren't legal problems with it, but  
16 that better outreach is likely part of the Director's  
17 plans in future meetings as well.

18 I wonder if, Mr. Nuru, you could kind of  
19 briefly talk us through what you're envisioning for  
20 future cycles as enhancements -- or Mr. Legg or anyone  
21 on staff.

22 MR. LEGG: This year we provided a small  
23 number for the 1932 Ordinance of full translations about  
24 what the rate application anticipated and we had  
25 translations on the Website about the hearing schedule.



1           I think that for next rate process, under the  
2 '32 Ordinance, we just need to be more conscious of  
3 getting materials translated and having those on the  
4 Website. I don't think we're going to be translating  
5 all of the exhibits, all of those materials, unless  
6 we're getting some kind of specific requests to do that.  
7 But we -- on the general outreach information, we would  
8 do more of that.

9           We did do extensive outreach to all of the  
10 Chinese press in town. And I know that the official  
11 information about the rate process was picked up in  
12 those newspapers. And we had a couple of articles in  
13 the Chronicle and in the Examiner as well at different  
14 stages in the process.

15           We did not automatically provide translation.  
16 And at the Director's hearings there wasn't anybody that  
17 requested it. This is a challenging issue for all  
18 departments because it's kind of expensive to provide  
19 translation. We have notification on all of our agendas  
20 that we'll provide it if we get notification. During  
21 those hearings there were no non-English speakers who  
22 came up and had trouble accessing the hearings. We did  
23 have a number of Mandarin and Chinese speakers that came  
24 to the Prop 218 hearing. And next -- if there's a Prop  
25 218 hearing in the future, I think we would

1 automatically provide translation there.

2 The Prop 218 process was, I believe, very  
3 thoroughly noticed in English, Spanish, and Chinese.  
4 And on the notices themselves there was a paragraph of  
5 information that provided the hearing date, the main  
6 information, and information about where to go on the  
7 Website to get a full translation of the notice. And  
8 the notice itself was translated into both Chinese and  
9 Spanish and those translations were available on the  
10 Website.

11 So I've looked at other -- the PUC's notices  
12 on the 218 hearings, on East Bay MUD's notices on other  
13 kinds of notices; and we did a little bit more than on  
14 the notice themselves than they've done. I really  
15 believe that we did an adequate job on that.

16 MS. YEUNG: It's my understanding that when  
17 you put in the notice that members of public have to  
18 give you 24 hours' notice in advance if they require  
19 translation services.

20 MR. LEGG: I believe that that's the standard  
21 that's noticed. It's whatever required of Tier 1  
22 departments through the Office of Immigrant Services.  
23 That's what we do.

24 MS. YEUNG: Okay. Thank you.

25 MR. ROSENFELD: And if I could briefly ask

1 the Ratepayer Advocate if he's got further thoughts or  
2 comment regarding his perception of the process and  
3 possibilities for enhancement in the future.

4 MR. DEIBLER: Thank you Mr. Rosenfield.

5 I guess again a comment, I think. And I would  
6 concur from what I saw that it was well-noticed and the  
7 two processes were well-noticed. And I think all the  
8 legal requirements were met. I can't say that for sure.  
9 But I think it's really a matter of going beyond  
10 certainly the legal requirements.

11 I think -- I guess my suggestion would be  
12 there could be a simple, graphic way to show two  
13 timelines. One is the 1932 rate process. One is the  
14 218 process. And clear summary and text that shows how  
15 they do or do not relate to each other. And something  
16 like that on the DPW Website, on the Ratepayer  
17 Advocate's Website in the future could really help, in  
18 addition to meeting the legal requirements for noticing.  
19 And I think, again, making it as graphic as possible.

20 The one other comment I have is that I believe  
21 that one source of confusion is the use of the same  
22 language, typically the term "objection," both with  
23 relation to 218 and the 1932 process. And maybe that's  
24 unavoidable, but if it's explained in clear English you  
25 could use different terminology and separate them

1 further.

2 Thank you.

3 MS. YEUNG: Any other questions?

4 MR. ROSENFELD: No.

5 MS. YEUNG: Okay. For Category D, Director's  
6 hearing record was closed prematurely. Process was not  
7 clear. For that one, there's one item. So Objection  
8 No. 10 filed by Mr. Gardiner, The Director's hearing  
9 record was closed before the notice date of June 14th,  
10 2013, and the Director's Report and Recommended Rate  
11 Order was issued before that date.

12 Any comments?

13 MR. CARLIN: I thought this was clarified  
14 yesterday by the Director; and I was satisfied.

15 MR. ROSENFELD: Likewise. I think we've  
16 talked quite a bit about the fact that the dual  
17 processes are confusing and we can do a better job with  
18 communication of them and streamlining them in future  
19 cycles. I understand that that's the gist of this. So  
20 although it does not create a legal challenge for us,  
21 certainly it's something that we want to improve in  
22 future cycles.

23 MS. YEUNG: So for the three categories of B,  
24 C, and D, I'm opening it now for public comment. Seeing  
25 none.

1           So Category F, use of special reserve fund  
2 excess. So on this one, Objection No. 14, part of  
3 approximately 29 million in the special reserve fund  
4 should be used to ameliorate proposed rate increases.  
5 And the staff report found that the 15 million for  
6 special reserve fund is adequate.

7           Comments?

8           MR. CARLIN: I raised this issue. And I guess  
9 what I'm looking for, maybe from the department or  
10 Recology, is there an anticipation in the future that  
11 this fund is going to be used for another purpose rather  
12 than for extraordinary expenses associated with the  
13 Altamont landfill?

14           MR. BAKER: Michael Baker, counsel for  
15 Recology.

16           I would just say on behalf of Recology that,  
17 as you know, in 1987 there were two agreements, the  
18 facilitation agreement and the waste-disposal agreement.  
19 The waste-disposal agreement is between Waste Management  
20 and Recology and the City. The facilitation agreement  
21 is between Recology and the City. Under the  
22 waste-disposal agreement, the City and Recology have  
23 potential liabilities. The facilitation agreement was  
24 to anticipate those liabilities and to allow for them.

25           So if, from Recology's standpoint, we were to

1 consider reducing the amount in the special reserve  
2 fund, the first thing we would do is talk to Waste  
3 Management, so that we can assess the level of risk and  
4 determine whether Waste Management would be willing, for  
5 example, to cap the risk so that if funds were released  
6 from the special reserve fund there wouldn't be a risk  
7 to either the City or Recology of an unanticipated  
8 liability arising from the waste-disposal agreement that  
9 was not adequately covered by the special reserve fund.  
10 If on the other hand, Waste Management were to respond  
11 by saying, We hope it's not going to be more than  
12 15 million; or, We hope it's going to be not more than  
13 29 million, but we won't provide you that absolute  
14 guarantee that you could never have liability over  
15 29 million, then we'd be nervous.

16 MR. CARLIN: But one would assume that you  
17 have a well-run company like yours, has a risk  
18 registering -- kind of makes little assumptions about  
19 risk and can say, This risk is very high, this risk is  
20 kind of medium, this risk is kind of low, and can assign  
21 maybe some sort of monetary cost associated with that.  
22 So one assumes that you have that conversation with  
23 Waste Management each and every year, since that risk is  
24 always out there.

25 MR. BAKER: We don't have that conversation

1 with Waste Management each and every year, because the  
2 special reserve fund is there to provide the protection  
3 that was anticipated when these agreements were signed  
4 in 1987.

5           So I understand your point that someone can  
6 make an assessment of what the potential risk was and  
7 come up with probabilities, et cetera. But from a  
8 liability standpoint, if Waste Management wants to  
9 retain the right that it currently has under its  
10 agreement to seek recovery from the City or Recology in  
11 whatever amount that might be, to the extent the amount  
12 in the special reserve fund is reduced, then a risk is  
13 being taken.

14           MR. ROSENFELD: So we're talking here about  
15 risk that will become known at the close of the  
16 agreement in 2015; is that correct?

17           MR. BAKER: I'm not a landfill closure expert,  
18 but from the little bit I know about it you generally  
19 don't know the answer to that question the day that the  
20 time landfill is closed. And there are regulators who  
21 are responsible for overseeing these things. I think  
22 that the five-year period that was selected in 1987 was  
23 considered to be -- a five-year period was considered to  
24 be kind of a best guess as to when people ought to feel  
25 comfortable. But nonetheless under the facilitation

1 agreement, five years after Altamont closes, if Recology  
2 or the City were to come before the Rate Board and say,  
3 We've talked to the regulators, we've talked to Waste  
4 Management, there is still a risk out there for the  
5 following reasons, then the issue for your consideration  
6 is whether maintaining the special reserve fund at some  
7 level for some additional period of time would be  
8 necessary to provide continued protection. But we won't  
9 know the answer to that until the landfill -- until the  
10 contract is over and five years goes on.

11 I'm sorry to continue, but there's one other  
12 point. Once this contract with Altamont ends, say, in  
13 2016, Altamont goes on because Altamont has additional  
14 capacity. And Altamont is not going to be closed for  
15 years. So this is an issue that lawyers and regulators  
16 are going to be studying once the question comes for  
17 your decision of what to do with this special reserve  
18 fund five years after the contract is over and whether  
19 we will have sufficient certainty regarding Recology and  
20 San Francisco's future liability to feel comfortable  
21 releasing money from the special reserve fund.

22 MR. CARLIN: This is very helpful, I think,  
23 for the public in general as well, because having been a  
24 former state regulator, I understand about landfill  
25 enclosures and how they can actually last for years.



1 And this is just a contractual relationship until 2016.  
2 There is an exposure. But it sounds like we really  
3 haven't had that discussion about how large that  
4 exposure might be or we haven't gauged it very well with  
5 Waste Management.

6 And so I would encourage you to have that  
7 discussion so that we can have an honest discussion in  
8 public about what that might look like in the future,  
9 because Altamont Pass will continue beyond 2016.

10 MR. BAKER: Yes.

11 MR. CARLIN: But we have a responsibility  
12 because we have a contractual relationship. And if the  
13 risk is higher than 29 million, it would be nice to know  
14 as well in these rate hearings, because we should  
15 actually be reserving more money for the future. But it  
16 helps, because you see a large pot of money sitting  
17 there. The public doesn't understand what it's exactly  
18 for. And it grew to such a large amount and then we  
19 stopped putting money into it, because we kind of said  
20 we don't need to put anymore money into it. Well,  
21 there's still that exposure. And what you're telling me  
22 is that that exposure is still unknown or we really have  
23 not quantified it at this point in time. And we should  
24 take steps to actually quantify if so that we understand  
25 in this process what that money is actually reserved

1 for, what our exposure is, what's the real timeline,  
2 because as you said 1987 was a long time ago. It's  
3 going to go on into the future. So people don't have  
4 this expectation like that's money that just should be  
5 returned to the ratepayers.

6 MR. BAKER: That's right. And another thing  
7 that will have to be considered as part of that analysis  
8 is \$15 million is a number that was chosen in 1987.

9 MR. CARLIN: Correct.

10 MR. ROSENFELD: And I think your comment in  
11 essence is to say that there will be no proposed draw on  
12 this fund until five years after the closure, the ending  
13 of the agreement?

14 MR. BAKER: Well, the facilitation agreement  
15 specifies that five-year period.

16 MR. ROSENFELD: Absent mutual agreement of  
17 both parties, right?

18 MR. BAKER: That's right. So it says not  
19 later than five years after the expiration of the  
20 contract the Rate Board shall determine whether there is  
21 any continuing need for the fund.

22 MR. CARLIN: I recommend that perhaps what we  
23 need to have is a much more detailed explanation about  
24 this fund, its use, what the exposure is for just future  
25 reference as we kind of move forward.

1 MR. BAKER: We'd be happy to help with that.

2 MR. ROSENFELD: The interest can come off the  
3 fund. It's held by a third party. It's invested. How  
4 is it kind of managed and what happens with it?

5 MR. BRASLAW: The fund is maintained in a  
6 separate bank account. There's a series of investments.  
7 The investment policy that's covered is to preserve  
8 capital. Unfortunately, in today's environment there's  
9 not a great return, but the money has continued to be  
10 invested in a series of -- invested with different  
11 maturities in the event that some of the money is needed  
12 on shorter-term basis and is invested kind of on a  
13 rolling basis.

14 MR. ROSENFELD: And the agreement speaks to  
15 the investment income on the fund as well?

16 MR. BRASLAW: The investments are just rolled  
17 back into the fund. There's no withdrawal from the  
18 fund, so any investment earnings are then reinvested  
19 into the following period.

20 MR. ROSENFELD: And that's subject to the  
21 same contractual arrangement between the City and  
22 Recology as the corpus of the fund, I is guess my  
23 question.

24 MR. BRASLAW: Correct.

25 MR. ROSENFELD: Thank you.

1 MS. YEUNG: So for Category G, zero growth  
2 projections underestimate revenues. Objection 15  
3 states, This Recology request for increased rates is  
4 based on zero-growth projections for residential and  
5 commercial customers which is not credible and  
6 underestimates future revenues.

7 MR. ROSENFELD: I can make a couple of  
8 comments. I know we talked about this a little bit  
9 yesterday. I know that the staff recommendation  
10 includes assumptions about growth in the shorter term  
11 that won't require additional service or expense to pick  
12 up. I think that's a credible shorter-term projection.  
13 As is the case with any rate-setting process,  
14 projections the further out are going to be less and  
15 less certain and more and more based upon reasonable  
16 estimates. And we have a very robust process here in  
17 this rate-setting process to have a vetting of those  
18 assumptions involving professional staff reviewing  
19 proposals. So I'm comfortable with the methodology  
20 that's been used.

21 Having said that, I do find that one of the  
22 things that would be helpful for me in the next  
23 rate-setting process would be a review of how actual  
24 performance during that rate period has compared to what  
25 the assumptions are we're making today. And so for the

1 committee's consideration, one of the things I would  
2 suggest for our final action would be to have a final  
3 report prepared by staff -- by the department, reviewed  
4 by staff -- and entered into the official record in the  
5 next rate action that kind of tracks actual revenue,  
6 expense profit, and some of these key assumptions versus  
7 the model that we're using to estimate them, just to see  
8 kind of how we performed versus our model.

9 I mean I'm stopping short here of suggesting a  
10 true-up or a balancing account or something that  
11 actually says gains or losses would be reinvested, but  
12 it would be something that would kind of at least let us  
13 know and let the public know kind of how we did in terms  
14 of our projections.

15 MR. CARLIN: I concur. Mr. Legg actually did  
16 bring up the fact that they did have growth assumptions  
17 in their model. And as all models that you have, you  
18 make certain assumptions. And I agree that some sort of  
19 report after -- a couple of years from now or something  
20 like that showing what were your projections, did you  
21 hit those and such, and may be even casting a wider net  
22 looking beyond their ABAG, Association of Bay Area  
23 Governments, projections and things of that nature of  
24 growth in certain sectors and using those in your model  
25 in the future would make it a little bit more robust.

1           MR. ROSENFELD: And I don't know if either  
2 the department or the companies have got any concerns,  
3 questions, or comments on that point.

4           MR. LEGG: I wanted to cite the Director's  
5 Report, page 20, under "Additional Reporting  
6 Requirements."

7           This issue of what the -- as I said  
8 yesterday -- what the actual revenues would be was of  
9 great concern to us; and we believe that we did the best  
10 possible job in estimating what those revenues would be.  
11 On page 20 discussed this; and in the third full  
12 paragraph we say that we're requiring the companies to  
13 make quarterly reports on actual revenues and expenses  
14 in each of those quarters. And we also wanted  
15 information about the number of customers whose monthly  
16 bills are subject to the rate cap and an assessment of  
17 how apartment customers are modifying their levels of  
18 service.

19           We are intending to compare actual revenues in  
20 the various categories to what was projected in the  
21 rates and be ensuring that revenues and expenses aren't  
22 getting too far out of line from what was projected.  
23 And I would assume that we will have exhibits showing  
24 that comparison in the next rate process.

25           MS. YEUNG: Thank you.

1 MR. ROSENFELD: Maybe this is the right  
2 moment to mention another question, or concern, I have.

3 So we've talked -- in any projection process  
4 the further out you go, the less certain the projection  
5 becomes, of course, regardless of how robust the staff  
6 work is that prepares it and then monitors it; and I'm  
7 comfortable that both are true here. But this is at the  
8 moment an open-ended rate-setting process. We are  
9 talking about setting a base year and then establishing  
10 a COLA that flows through many years, which does leave  
11 open the possibility that we will not be back at this  
12 for a long time. I think the methodology used in the  
13 last rate-setting process -- and please correct me if my  
14 understanding here is wrong -- is that the corpus rates  
15 remain in effect in perpetuity until the next  
16 rate-setting process reopen them. But the COLA  
17 provision itself paused after a certain number of years,  
18 which provided an incentive for this process to kind of  
19 rebegin and a more robust review to happen.

20 I wonder whether we shouldn't consider a  
21 similar provision here that ensures that the more robust  
22 true-up that happens through this approval process  
23 occurs sometime in the not-too-distant future. I know  
24 we're talking here and all parties have talked about a  
25 three-year expectation, so I don't know if providing

1 that the COLA provision remains into effect for four  
2 years and then after that it pauses, absent a rate  
3 reopener. But I raise it here because I also think it's  
4 responsive to a point to the kind of concern that the  
5 further out you get, the less likely these projections  
6 of future activity are going to be as accurate as they  
7 are in the short term.

8           Again, I don't know, colleagues, if you have  
9 thoughts or if the department or the companies have any  
10 initial thoughts or concerns regarding that kind of a  
11 future.

12           MS. YEUNG: Do we need clarification on the  
13 question?

14           MR. ROSENFELD: So in he essence to state it  
15 really simple, I'm talking about approving a four-year  
16 COLA; and after four years the COLA provision would  
17 expire if a subsequent rate application hasn't replaced  
18 it.

19           MR. CARLIN: So there would be -- this is a  
20 three-year rate application, one assumes, right now.

21           MR. ROSENFELD: This is -- but it's -- it's  
22 being talked about as a three-year rate application --

23           MR. CARLIN: It's really in perpetuity until  
24 there's another application. But this would kind of,  
25 like, then, having the COLAs pause after Year 4 would



1 force the issue of bringing back sort of a rate  
2 application for Year 4 and revisit some of these  
3 assumptions and seeing how they kind of matched up. And  
4 it kind of ties in nicely, I think, if we wanted to  
5 think about -- I'm going to use the word "pilot program"  
6 once again and how that kind of plays into all of this  
7 for the abandoned materials.

8 MR. LEGG: I think the City and DPW is  
9 comfortable with ending the COLA increase. I'm hearing  
10 that the companies are also comfortable with that.

11 I do want to just clarify what four years  
12 means. Last time we had what we called a five-year rate  
13 and so we set rates in year one and then we adjusted for  
14 an additional four years. So the COLA -- there were  
15 four COLA adjustments. And that was also the case in  
16 the 2001 rate. So I just want to find out if four years  
17 means this year plus three or this year plus four.

18 MR. ROSENFELD: Your suggestion on that  
19 front?

20 MR. LEGG: I would continue with the five  
21 years, because that's what we've done in the past. And  
22 as we've said, we know that the contract with Altamont  
23 is going to come to an end in three years. And we are  
24 assuming that disposal costs are going to be up to such  
25 an extent that a new rate application is going to be

1 desired by the companies.

2 MR. ROSENFELD: Thank you.

3 MS. YEUNG: I believe we're now at Category H,  
4 Objection 16, the DPW Director's Report and Recommended  
5 Order does not disclose just and reasonable standard  
6 test applied to approve the new rates or adequately  
7 explain how the standard was applied in this instance.

8 Any comments?

9 MR. ROSENFELD: I can say just that my own  
10 impression is here, generally, that I found both the  
11 staff report and the Director's Report both very  
12 thorough in their work and clear and easy to understand  
13 and represented a depth of analysis that in and of  
14 itself seemed to me to provide an assurance that a just  
15 and reasonable -- that a quest for a just and reasonable  
16 rate has been kind of pursued in this process. I don't  
17 know that more is required here, from my perspective.

18 MR. CARLIN: I concur. I think we've  
19 presented information in a way that's transparent. It  
20 is very thorough by the staff. They've answered a lot  
21 of our questions over these hearings; and I don't see  
22 anything that is not -- would be not fair or  
23 unreasonable.

24 MS. YEUNG: For those who may not have had the  
25 opportunity to read the Director's Response, I'm just

1 going to read that section of his report.

2 (reading) "The 1932 Ordinance states that  
3 rates be just and reasonable, a standard that is  
4 commonly used in utility rate-setting and regulation.  
5 This standard does not require regulating agencies to  
6 employ a particular formula or process. As noted in the  
7 staff report, the Director follows a carefully  
8 constructed public process during which the application  
9 is thoroughly reviewed. The rates are based on the  
10 company's actual costs for services necessary to collect  
11 and process residential and commercial refuse. These  
12 costs were validated by City staff and expert  
13 consultants. In a number of cases, City staff  
14 recommended adjustments to both cost and refuse  
15 projections."

16 So I agree.

17 On Category J, Recology recovery of Brisbane  
18 business license fee via operating ratio. And it's  
19 Objection No. 22, DPW Director's Report and  
20 Recommendations against Recology's requested recovery of  
21 operating ratio, OR, on the new 2.1 million Brisbane  
22 license fee is not just or reasonable.

23 MR. CARLIN: I was going to say -- I was going  
24 to maybe ask the Director to come up and maybe clarify  
25 your thoughts of why -- against from Recology's

1 recovering an operating fee are or -- or operating  
2 ratio -- sorry.

3 MR. NURU: So I guess from our point of view,  
4 it's a new expense and we see it as a pass-through. So  
5 that was our recommendation just for operating costs and  
6 the opposition.

7 MR. CARLIN: But other types of fees and such,  
8 the OR is applied to them, so this is kind of exception  
9 to the rule or just that you see it as a new fee?

10 MR. NURU: I think similar. I think from  
11 staff's findings, it's similar to what has happened with  
12 other ventures.

13 MR. LEGG: Actually, in the Director's Report  
14 we actually say that we think we should look at the  
15 other pass-through costs. And, you know, we -- as I  
16 said yesterday, as we change what's included as an  
17 operating ratio expense, historically the operating  
18 ratio itself has changed. And so last year we did  
19 exclude existing disposal -- when I say "last year" I  
20 mean 2006 -- we excluded existing costs from the  
21 operating ratio, but we granted a lowering of that  
22 operating ratio so that the total profit owed by the  
23 company didn't change.

24 In this case we believe that this is a new fee  
25 that is required by the City of Brisbane. We think the

1 risk is very low, that it would change. The companies  
2 have made a lot of arguments about how this is a  
3 business decision and it carries a lot of risk and  
4 therefore it should be subject to OR. That's the part  
5 on this particular pass-through that we disagree with.  
6 We just don't see very much risk. And we also believe  
7 that, because it's new cost that doesn't bear much risk,  
8 it doesn't make sense to us that just by the fact that  
9 they have to pay this new fee that they should earn an  
10 additional approximately \$350,000 profit.

11 MR. ROSENFELD: The only thing that strikes  
12 me as awkward here is the fact that we're not applying  
13 the same criteria to the San Francisco business tax as  
14 we are to the Brisbane one. That strikes me as  
15 incongruous.

16 MR. LEGG: I understand that and I think it  
17 was incongruous. On the Director's Report, page 9, as  
18 he's talking about the business license expense, the  
19 Director also considered this and he says, "Furthermore,  
20 I recommend that in the next full rate process staff  
21 examine whether there are other pass-through expenses  
22 which should be excluded from the operating ratio  
23 calculation."

24 And so I think it is a live issue and I would  
25 discourage the Rate Board from deciding to have this --

1 to kind of pre-decide that issue, because I think going  
2 back and removing it from operating ratio expense, if it  
3 is -- if it's in the operating ratio now, I think staff  
4 and the Director would have a difficult time just  
5 removing them without then changing the operating ratio.  
6 And I think the two pieces are connected when we're  
7 looking at the reasonableness of the operating ratio. I  
8 don't think we can look at just what's included as an  
9 expense without looking at what that rate is.

10 MR. ROSENFELD: I guess that would be my  
11 flip-side question or comment to the company would be:  
12 Assuming that the Board would actually apply a profit  
13 margin to this expense, as you're requesting, you would  
14 be secondarily asking the Board to say that we think the  
15 profit assumed that are in the rates above us are  
16 understated by that amount as well, right? Because if  
17 we -- if we feel that the profit overall to the  
18 companies is a result of the rate application, as  
19 recommended by the director, appropriate, the effect of  
20 making something eligible for this or not is just going  
21 to result in a different percentage that we allow for  
22 the profit markup. It's going to result in no  
23 additional profit to Recology if we make the logical  
24 jump of expanding the base and then accordingly reducing  
25 the percentage to arrive at the same profit/dollar

1 value. I don't know if that was at all clear.

2 MR. CARLIN: I got it.

3 MR. BAKER: I guess I would question whether  
4 there's a link between the two, which is Mr. Legg's  
5 argument. If Recology's expenses go up because of a new  
6 program -- the abandoned waste program, for example --  
7 the OR is not adjusted to account for that. Recology  
8 may make more profit because its expenses are greater  
9 because it's providing additional service. By the same  
10 token here, this is an additional expense. We call it  
11 an operating investment or operating expense because  
12 it's an additional expense that has been imposed by the  
13 City of Brisbane to operate this organics program. And  
14 it is a first step toward what will be the additional  
15 expense of expanding into a larger and new zero-waste  
16 facility in San Mateo County and San Francisco.

17 So I guess I would question the premise of  
18 Mr. Legg's point that every time an expense is added to  
19 the base upon which an OR is earned, that that means  
20 that you have to adjust the OR. Maybe I didn't catch  
21 your question right, but that's what I understood it to  
22 be.

23 MR. ROSENFELD: I've been assuming in the  
24 rate-setting process that we kind of arrive at some of  
25 these numbers as a result of an analysis of what we

1 think is a reasonable dollar-value profit for the  
2 companies as a result of providing this service. If we  
3 arrive at a dollar value and then from there, through  
4 the rate-setting process, calculate how we're going to  
5 arrive at that dollar value in actual terms including  
6 what's the base upon which a profit margin will be  
7 allowed and then what's the percentage of that profit  
8 margin, then if we change those last two inputs --  
9 sorry -- if we change the bottom-line profit that's  
10 assumed under the contract, it changes those other two.  
11 Likewise, if we're not going to change the profit  
12 allowed under the overall contract, we need to change  
13 both of those other inputs together.

14 MR. BAKER: That's not my experience as to how  
15 this has worked. I was involved in 2001, 2006, and now  
16 this year; and my recollection is that the analysis of  
17 the OR and the question of whether the OR should be  
18 adjusted was triggered by the companies' application to  
19 lower the OR and to thereby increase its profits. And  
20 so as part of that process the City -- DPW responded by  
21 saying, Well, if we lower the OR and thereby increase  
22 your profit margin, we'll only feel comfortable doing  
23 that if we change -- do some fine tuning over here as to  
24 what's eligible for OR.

25 So I do think that in the City's mind and the



1 department's mind in terms of how they responded to  
2 Recology's request for a lower OR, they may have linked  
3 the two. But in terms of the decisions that were made  
4 in 2001, 2006, there was no linkage between the two; and  
5 Recology in its application does not perceive there to  
6 be a linkage between the two. So I think that the City  
7 and we may look at it a little differently in terms of  
8 how we rationalize the result, but I don't recall, at  
9 least, that the two as a matter of process go hand in  
10 hand.

11 MR. ROSENFELD: In my own head, as just kind  
12 of a mathematical question, I feel like they're related  
13 to each other and just --

14 MR. BAKER: Well, they're clearly related to  
15 each other, but why I was questioning or suggesting, I  
16 had a different recollection. I don't think the process  
17 is that determination is made what is a fair profit in  
18 dollars and let's see how that mathematically backs into  
19 an OR and mathematically backs into what items are  
20 eligible for OR. Rather, the process from my perception  
21 has been two things -- three things: What are allowable  
22 costs, number one. Number two, which costs are eligible  
23 for OR? And, Number three is what's the OR percentage?

24 MR. ROSENFELD: Thank you.

25 MS. YEUNG: Any other comments on J?

1           So I'll open it up now for public comment for  
2 categories G, H, and J. Mr. Gardiner.

3           MR. GARDINER: With respect to Category J, I  
4 want to support the Director and his staff's position.  
5 Uniformity is certainly desirable for pass-through. We  
6 don't have that as present, but I think that's a poor  
7 reason to ask ratepayers to give this service company a  
8 profit on a public entity's fee or tax. In traditional  
9 utility rate-making, where you don't have an operating  
10 reserve, you have a return on capital basically. All  
11 operating expenses -- every one of them is not eligible  
12 for any return, as you folks may know. And forgive me  
13 if I'm repeating the obvious, but only the cost of  
14 capital to attract continued capital investment to  
15 provide a healthy business is considered. Now, the City  
16 has a different model for its refuse rates and I  
17 understand that. But I think to the extent it makes  
18 sense to the Board, you would be well-advised not to  
19 create perverse incentives for locality, especially  
20 outside the city, to increase their taxes, especially at  
21 the expense not only of the ratepayers for covering the  
22 basic expense but for covering the profit of the service  
23 provider.

24           MS. YEUNG: Ms. Wuerfel.

25           MS. WUERFEL: Good afternoon again. Nancy

1 Wuerfel.

2 Well, that special reserve now has opened up a  
3 very interesting can of worms -- my other animal.

4 MR. ROSENFELD: Elephant, camel --

5 MS. WUERFEL: He got that right. Now we're  
6 getting into the little guys because there are so many  
7 of them. But I really appreciate this conversation  
8 because it's going to open up more discussion that I  
9 hope you address in the report.

10 Number one, the special reserve is something  
11 that can't be defined as we sit here today because we're  
12 missing an ingredient, which is the conversation with  
13 Applied Waste Management people over there. And so the  
14 first thing I would recommend is that there's a timeline  
15 by which that conversation is had.

16 Number two, that timeline then will be driven  
17 by when you all are going to get back together again.  
18 I've just been hearing that if you have a COLA that goes  
19 out five years, you may not be back here for five years.  
20 So by definition what we've got is everything is going  
21 to stay in place. Now, I can't influence on when you  
22 feel you need to get together, but I'm not hearing of a  
23 process whereby we're going to get the answers to what  
24 is necessary for Recology and the City to hold the  
25 appropriate amount of money aside in order to protect

1     itself. We can't do that without some answers and then  
2     reconvening. Are you suggesting you'll get together?  
3     There will be an ad in the paper or something? How are  
4     we all going to know this is going happen minus the rate  
5     process? That's the only time we get to talk to each  
6     other. So we need to talk about that right away.

7             Also, the idea that came up in the 2006  
8     hearings -- I was so honored to be here -- included the  
9     fact that maybe we don't have to have a special reserve.  
10    We can buy an insurance policy. Let me just put that on  
11    the table. I'm not in favor of getting rid of the  
12    special reserve, but possibly -- all right, I don't have  
13    a clock -- so beyond these things, possibly we need to  
14    discuss that half the money should be left -- the  
15    15 million. The other 15 million should maybe be  
16    dispensed with in a way this Rate Board decides. And,  
17    also, we need to talk about if we have an insurance  
18    policy that's going to take in effect after a five-year  
19    time that might buy comfort level on everybody's platter  
20    so that we're not left as an exposure because nobody's  
21    has got a crystal ball about the future. So I want to  
22    put those issues out there.

23             Next I want to talk about the just and  
24    reasonable rates, which I appreciate you're struggling  
25    with. And what I think I heard you say was that just

1 and reasonable means that there's a proper analysis of  
2 the costs and the whole discussion of what is Recology's  
3 need. I appreciate that's how you're seeing this, but I  
4 want to talk about the fact that we don't know what the  
5 programs cost. And from a human's point of view, if you  
6 will tell us that you evaluated the programs and you  
7 evaluated the costs and you tell us what those things  
8 are, we'll feel a little bit better about what is just  
9 and reasonable because we'll have more information.

10 I look forward hearing from you when you're  
11 going to meet again. Thanks.

12 MS. YEUNG: Thank you. Any other public  
13 comment?

14 Would the Ratepayer Advocate like to speak  
15 again.

16 MR. DEIBLER: I've been asked to convey that  
17 there's \$160,000 in interest per year on the account.

18 I'd just like to make one comment, if I might,  
19 with regard to if we're looking at a three-year rate, a  
20 four-year rate, a five-year rate. This process can be  
21 initiated by either the City or Recology. Recology will  
22 initiate it when it's beneficial to do so. That can be  
23 counted on. I'd like to suggest that, hopefully, the  
24 City would initiate it if it's beneficial for the City  
25 to do so, if it's beneficial for ratepayers.

1           So I guess with that in mind, I'm wondering if  
2 there's -- if it's within the purview of the Rate Board  
3 to consider whether there are parameters for what would  
4 trigger a City-initiated review. There will be  
5 additional information collected. We've heard through  
6 the reporting mechanism and tracking the key parameters  
7 the assumptions regarding revenue, regarding expenses --  
8 there's a lot of assumptions; and some way to know --  
9 for ratepayers to, I think, have some assurance and  
10 understanding of what happens if there is -- if they are  
11 beyond a certain amount beyond what was expected, what  
12 would trigger a review on the part of the City in two  
13 years, three years, whatever.

14           Thank you.

15           MS. YEUNG: Any other comments?

16           So at this time we've reviewed all 22  
17 objections and categories. I'm going to ask the City  
18 Attorney for some advice on how to proceed.

19           MS. BLITS: Thank you, Madam Chair.

20           You've gone through many Board questions and  
21 answers and further input from your participating public  
22 and parties. If the Board has -- wants to discuss any  
23 further consensus or direction to our office to draft  
24 the document and the rules for your consideration next  
25 Monday, we would always welcome that. If you think we

1 have another direction, we will do the best we can with  
2 what we have and be back next week.

3 I know you're not -- I perceive that you're  
4 not intending to take actual votes today and that's  
5 fine. But if you have any further direction about your  
6 consensus or lack thereof or your direction on any  
7 particular points that you would like to see in the  
8 draft, we can do that. We can also write in alternative  
9 pieces if that would be helpful to your thought process  
10 if you tell me what you would like to see.

11 MS. YEUNG: Would someone like to try to take  
12 a crack at summarizing where I think we are?

13 MR. ROSENFELD: Should I take a shot at just  
14 my own notes and from my own perspective and obviously  
15 for discussion?

16 I think what I have from my notes on A and E,  
17 we're talking about explicitly excluding parades, street  
18 fairs, and holidays from the rate calculations.

19 We had discussion regarding either a pilot or  
20 a testing period for the refuse collection program and a  
21 report at the close of that period and a process to  
22 continue the pilot. Feels like the open questions there  
23 were the length of the pilot and the form of the  
24 approval process. We went back and forth about the  
25 length of a pilot. I would suggest maybe the 30 months,

1 which would be two and a half years, might be a  
2 compromise between what feels too short and too long.  
3 But we can certainly talk about that further and then an  
4 approval process, with Counsel's help, that would  
5 involve a proactive decision by the Board of Supervisors  
6 to continue the pilot at the close of it. I guess we  
7 could also -- kind of teasing through different ideas --  
8 we could also have this Board reconvene to consider the  
9 pilot at that same 30-month point, and so that both the  
10 Board and the Refuse Board would be meeting that  
11 30-month period.

12 Mr. Carlin, you raised the idea of the special  
13 reserve fund as well here as a use; and we need to  
14 talk -- when we get to the special reserve fund, talk  
15 about that.

16 On the no return of citation revenue, I think  
17 we're in agreement with the Director's recommendation  
18 that appropriate balance of citation revenues generated  
19 by impound account-funded staff would be applied in the  
20 subsequent rate period to the rate base; and I think  
21 that's pretty well understood.

22 I don't sense any, at least from my own  
23 perspective, on the rate increase as a hardship.  
24 Objections -- it feels like, while if the rate increase  
25 is a burden, of course, that there's adequate



1 protections in place here to do what we can to mitigate  
2 it on the most vulnerable populations.

3 C, process and outreach. We've talked  
4 about -- again, I think we're in concurrence here  
5 largely with the Director's recommendations that  
6 improved translation services of key meetings,  
7 translation of key Website and other materials, and  
8 clarification of the dual public processes and public  
9 forum are all desired in the subsequent rate-setting  
10 process. The Director's hearing, similarly, kind of  
11 roll those into the same kind of feeling of better  
12 clarification of process in the future.

13 Use of the special reserve is an open  
14 question. I don't sense any desire to recommend drawing  
15 on the reserve in the rate-setting process. But whether  
16 there's more than that that's desired here, I refer to  
17 colleagues.

18 MR. CARLIN: I guess what I would like to see  
19 for the special reserve is a better understanding of it,  
20 perhaps that Recology and the department would work  
21 together and prepare reports on what the potential risk  
22 and exposure is, especially as 2016 starts to approach,  
23 since it seems that's a key date for the special reserve  
24 fund and what the relationship will be with Waste  
25 Management in the future and the County of Alameda. So

1 I would like to set a timeline for a report on that to  
2 come back. And perhaps that's also a trigger to  
3 reconvene just to hear testimony on that report and what  
4 the special reserve is about and what the risks might be  
5 as we go into the future.

6 MR. ROSENFELD: What sort of timeline were  
7 you envisioning?

8 MR. CARLIN: Well, I would like to tie it to  
9 the 30 months, which would actually then be part of that  
10 sort of reconvening and reaffirming some issues that  
11 we're raising today.

12 MR. ROSENFELD: And then on future  
13 projections of growth, we're talking about limiting the  
14 COLAs to four years after the base year. So for a  
15 five-year period total and a summary report at the end  
16 of the rate cycle of actuals versus projections, which  
17 as Mr. Legg points out, information that's going to be  
18 provided on a quarterly basis in the interim, but a  
19 summary of that at the close of the period.

20 And we haven't talked about the Brisbane tax.  
21 My sense is that I would support the Director's  
22 recommendation.

23 MR. CARLIN: I'm in the same -- in agreement  
24 with that.

25 MS. YEUNG: I agree with the provision that

1 the department will look at other pass-through costs and  
2 applying a consistent standard across those.

3 Did we provide clarity?

4 So I'm going open it up one more time for  
5 public comment.

6 Mr. Gardiner.

7 MR. GARDINER: Thank you. I think all of you,  
8 especially Mr. Rosenfield, were very thorough in  
9 recounting what sounds like your consensus. There's one  
10 point I wanted to add, which is one thing I had  
11 recommended, if you agree with it, which is to pin down  
12 very clearly the baseline for your pilot study.

13 MR. LEGG: We would recommend using Schedule  
14 E, which was cited earlier, which is in the record, as a  
15 baseline for diversion tons and tons collected.

16 We have also -- it's been presented to you --  
17 elucidation of the number of staff people that Recology  
18 is planning on hiring and their costs. I would use that  
19 as a baseline for those costs. And we can provide by  
20 next Monday a baseline -- or a comparison which the  
21 Ratepayer Advocate at the beginning of today's hearing  
22 recommended, where you have more of an apples-to-apples  
23 comparison. And in that we would take out the disposal  
24 costs on the Recology side. We would list our -- we  
25 would add in our supervisory costs which would be an

1 allocation of costs from our existing budget -- from the  
2 '12/'13 budget. And, finally, I would include last  
3 2012/'13 reports on our service reports an our response  
4 time average -- average days to respond over that  
5 12-month period, which we have -- which we collect on a  
6 monthly basis and which is easy to compile from our  
7 database.

8 MS. YEUNG: Thank you.  
9 Ratepayer Advocate.

10 MR. DEIBLER: Just one comment. If you're  
11 considering meeting in 30 months, which would be the  
12 halfway point, if there is a potential five-year rate,  
13 could it explicitly be part of that to get the report  
14 from DPW that summarizes the quarterly data so you have  
15 the ability to look at the assumptions and where the  
16 reality is at that point?

17 MR. ROSENFELD: I think that's a good  
18 thought.

19 MR. DEIBLER: Thank you.

20 MS. YEUNG: Ms. Wuerfel.

21 MS. WUERFEL: I too want to thank everyone for  
22 their thoughtfulness.

23 And I want to put in another plug for the  
24 Ratepayer Advocate. When we have another meeting in 30  
25 months, we the public would be very grateful if we had

1 the services of a Ratepayer Advocate with the quality  
2 that we have now, if not the same person. So I want to  
3 make sure that that's clear.

4 I want to put two more things on your agenda  
5 which you're now going to be running. We're going to be  
6 back again talking about the landfill, what comes up  
7 after Altamont. So I really want that on the list,  
8 whether you've got a month to month or whatever the hell  
9 is going to happen over at Alameda or whether the City  
10 is going to have a new contract with Recology for its  
11 new sources. That all depends on so many lawsuits and  
12 so many things. Just put it on the list. You can  
13 always take it off. But we need to have that out there.

14 Also, we need to talk about what's going to  
15 happen with this purchase of land, which I am hoping  
16 that will be discussed openly at the Board Of  
17 supervisors. But certainly whatever happens as a City  
18 policy, it should also come back as part of your  
19 deliberations, because these are the two things that are  
20 going drive Recology to want to come back and ask for  
21 increased rates; and that's going to be a lot sooner  
22 than five years. So we might as well have the big juicy  
23 conversations outside of asking Recology to spend a lot  
24 of money on putting them in the rates if we are not all  
25 in agreement that the assumptions are okay and all the

1 rest of that discussion. I like the idea of having a  
2 discussion of really substantive things before we have  
3 to deal with the increase in rates.

4 So thank you very much.

5 MS. YEUNG: Okay. Seeing no other public  
6 comment, I'm going to continue this meeting to next  
7 Monday, July 15th, at 1:30 in the same location, City  
8 Hall, Room 408. Thank you.

9 (The session was adjourned at 5:04 p.m.)

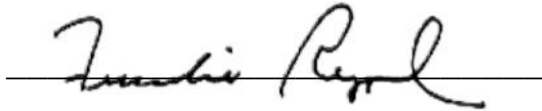
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FREDDIE REPPOND