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DPW Order No: 181252

CITY AND COUNTY OF SAN FRANCISCO
DEPARTMENT OF PUBLIC WORKS

RULES OF PROCEDURE

REFUSE COLLECTION AND DISPOSAL RATE HEARINGS

These Rules of Procedure for Adjustment of Refuse Collection and Disposal Rates are in conformance with and supplement the San Francisco Sunshine Ordinance (Administrative Code Ch. 67), the procedures for adjustment found in Section 6 of the Refuse Collection and Disposal Ordinance of 1932 (codified in part in Article 6 of the San Francisco Health Code), and the 2006 Rate Adjustment Procedures and Director's Report. These Rules of Procedure supersede and replace Department of Public Works (DPW) Order No. 180,851, approved on November 20, 2012, and any and all amendments thereto.

The purpose of these procedures is to assure all parties, including ratepayers and other interested parties, fairness and justice at all stages of rate adjustment proceedings. All documents required to be submitted under this Order must be in plain and easily understood English or must be accompanied by brief summaries or explanations to assist the public in participating in the process. DPW will seek the assistance of staff of the Department of the Environment and other City departments in carrying out its responsibilities and processing the rate adjustment application.

I. PRE-FILING PROCEDURES FOR REGULATED ENTITIES

A. "Regulated Entities".

Section I of this Order applies only to applicants that are regulated entities. Sections II through IV of this Order apply to all applicants, including ratepayers or other interested parties, unless otherwise specifically stated. For purposes of this Order, "regulated entities" include those entities that are a party to a refuse handling or disposal agreement with the City, entities that have a permit to operate or to transport refuse on City streets or entities that are otherwise authorized to seek to impose rates under the 1932 Ordinance.



B. Notice of Intent to File Application.

In order to ensure adequate and full review of significant new programs and the underlying assumptions concerning revenues and costs during the limited timeframe for rate-making, an applicant for a rate adjustment must notify the Director of the Department of Public Works (the "Director") in writing of its intention to apply for a rate adjustment at least 180 days before filing the application. The notice must include, as applicable, a brief description of any significant new programs or projects or any fundamental changes in rate methodology.

The brief description should include a discussion of the underlying assumptions, impact on the rate, costs and revenues and other technical information or analyses to assist City staff and the public to understand the proposed programs and upcoming rate adjustment application.

C. Public Notice.

Upon receipt of the notice, the Director will notify the members of the Rate Board, designate a staff person to be the lead contact with respect to the application, and post the notice on the DPW website.

D. Draft Application.

The applicant must file a draft application with the Director at least 90 days prior to the date on which it intends to file a rate application. The draft application must be substantially in the format specified in DPW Order No. 173,617 ("Rate Adjustment Standardized Format"), approved on July 1, 2002. In the draft application, the applicant may propose modifications to the standardized format, provided the application contains comparable information that allows for evaluation and comparison with previous rate applications and rate orders. The Director may consider the applicant's proposed changes as part of the staff completeness determination in section I(F). The applicant must submit five complete copies of the draft application.

The draft application must also be submitted in an electronic spreadsheet format with linked schedules, and all formulas and assumptions must be transparent in the rate calculations. Supporting schedules must be sufficiently complete such that they stand on their own, rather than rely on exhibits with additional information produced during the course of the review.

E. Informational Workshop.

DPW staff shall hold a workshop with applicants. The purpose of the workshop is to ensure a full understanding of the rate application and to facilitate public input and understanding of the issues involved. The workshop must be held within 45 days after the draft application is submitted. At the workshop, the applicant must present current data and proposed rate changes and answer technical questions by staff and the public, so that staff and the public may fully understand the applicant's proposals and their potential impact on refuse collection and disposal rates. The workshop is not intended to result in any decisions, agreements or recommendations. The workshop will be informal in nature and will not be transcribed. DPW will post public notice of the time and place of the workshop at the San Francisco Main Public



Library Government Information Center, the workshop site, and on the DPW website. DPW will also publicize the workshop through its standard outreach procedures, and will notify interested parties as provided in section III(B)(2). At staff's request, the workshop may include site visits and observations of the applicant's operations.

F. Staff Completeness Determination.

Within 60 days of the submittal of the draft application, DPW staff will make a written determination regarding whether the application is sufficiently complete to begin review, based on conformance with the “Rate Adjustment Standardized Format” specified in section I(D) and the factors for completeness listed in section II(B)(1) below. If the application is sufficiently complete, DPW staff will notify the applicant that it may file an application at the expiration of the 90-day period specified in section I(D). If DPW staff determines that the application is not sufficiently complete, it will notify the applicant of its decision in writing and will identify the specific areas of incompleteness. The applicant will have an additional 30 days to file the missing information. If applicant does not provide the additional information within 30 days, the applicant may not file a final application until such information is provided and DPW staff is satisfied that the final application may be filed. The Director will resolve any disputes with respect to the completeness determination between DPW staff and the applicant.

In making its determination of completeness, DPW staff will also consider any modifications to the standardized format proposed by the applicant in the draft application. DPW staff will make a written determination regarding whether the proposed modifications are acceptable.

II. RATE ADJUSTMENT APPLICATION

A. Filing with the Chair of the Rate Board (City Administrator).

An applicant shall file its application with the Chair of the Rate Board. If, after a preliminary review of the application, the Chair concludes that the application may be beyond the powers of the Rate Board, presents no substantial question as to the justice or reasonableness of the rates already in effect, or is otherwise frivolous, the Chair shall immediately convene the Rate Board to determine the issue. If, after a noticed public hearing, the Rate Board determines that the application is beyond the powers of the Rate Board, presents no substantial question as to the justice or reasonableness of the rates already in effect, or is otherwise frivolous, it shall deny the application without further proceedings. Otherwise, the Chair shall immediately refer the application to the Director for further proceedings as set forth below.

B. Director Determination of Completeness.

(1) For Applications by Regulated Entities.

Within 15 days of the referral of the final application by the Chair of the Rate Board, the Director will determine whether the filed application is sufficient to begin review based on the inclusion of the following:



- (a) A narrative summary section which highlights major components of the proposed rate adjustment, including the rationale and support for any proposed changes to programs or rates, and the underlying assumptions regarding revenues and expenses for such components;
- (b) An electronic spreadsheet with linked schedules, including all formulas and assumptions used in the rate calculations;
- (c) All schedules specified in the “Rate Adjustment Standardized Format” (incorporating modifications determined acceptable by DPW staff), including proposed rates and supporting calculations, historical and projected revenues and expenses, historical and projected refuse tonnage collected and disposed, historical and projected personnel and equipment requirements, and other data and assumptions, for the years subsequent to the last rate review and for the anticipated period of effectiveness of the proposed rates;
- (d) A summary of projection assumptions and significant changes in accounting policies, if any, for the initial 12 months of the proposed rate increase, if any, or other appropriate period depending on the anticipated period of effectiveness of the rate;
- (e) Audited Financial Statements for each entity applying for a rate adjustment for each year after the previous rate adjustment process;
- (f) A list of all leased assets not retained for the full term of the principal lease and the amount of reimbursement, if any, to the applicant for principal amounts paid in excess of the assets' accumulated depreciation; and all leased assets transferred from the applicant after the end of the term of their lease and amounts paid, if any, to the applicant for the assets' fair market value;
- (g) Evidence that a competitive bidding process is used in selecting a service provider or vendor for services or equipment provided by an entity other than the applicant. If the applicant does not present such evidence, the Director will consider that fact in determining whether the rates proposed in the rate application are just and reasonable;
- (h) A description of programs to continuously improve service levels and ensure quality services are delivered to all neighborhoods, including customer call logs and response reports for the prior five years;
- (i) A description of all permits, licenses or other governmental authorizations needed to implement the proposed rate adjustment, and the status of such permits or authorizations, including environmental review; and
- (j) An appendix of all reports filed during the preceding rate period required by the Director’s Rate Order.



The Director shall also accept or reject in writing the modifications to the Rate Adjustment Standardized Format proposed by the applicant. If the Director rejects a modification, he or she may request any necessary revisions to the application.

- (2) For Rate Applications filed by Non-regulated entities.

Applications by members of the public or other persons that are not regulated entities need not be filed in the Rate Adjustment Standardized Format, but must, to the extent applicable and available to that entity or individual, include the following in order to be considered complete:

- (a) Statement of how the entity or person is affected by the rates;
- (b) Narrative summary of the desired increase, decrease or adjustment in the rates, and the reasons and justification for the proposed changes;
- (c) Relevant documentary evidence, written statements, reports and any other factual or evidentiary support for the requested changes.

C. Application.

All applicants must submit four complete copies of the application (other than the appendix of reports specified in section II(B)(1)(j)) to the Chair of the Rate Board (the City Administrator) and twelve additional copies to the Director of Public Works, as well as one copy of the electronic spreadsheet with linked schedules. One of the copies submitted to DPW must include the appendix of reports specified in section (II(B)(1)(j) in both printed and electronic format.

D. Technical Workshop.

DPW staff will hold a technical workshop open to the public within 30 days after an application has been filed. The workshop will focus on any changes from the draft application to the final application. The purpose of the workshop is to help the public and DPW staff gain a full understanding of the rate application and to facilitate public input and understanding of the issues involved. DPW will post public notice of the time and place of the workshop at the San Francisco Main Public Library Government Information Center, the workshop site, and on the DPW website. DPW will also publicize the workshop through its standard outreach procedures, and will notify interested parties as provided in section III(B)(2). The workshop is not intended to result in any decisions, agreements or recommendations. The workshop will be informal in nature and will not be transcribed. At the Director's request, the workshop may include site visits and observations of all aspects of the applicant's operations.

III. HEARINGS BEFORE THE DIRECTOR OF THE DEPARTMENT OF PUBLIC WORKS FOR AN ADJUSTMENT OF THE REFUSE COLLECTION AND DISPOSAL RATE

A. Time to Commence Hearing.



A public hearing upon an application for rate adjustment shall be commenced within 30 days after receipt of a complete application by the Director of Public Works.

B. Notice of Hearing.

(1) The Director must publish notice of such public hearing at least once in the City's official newspaper not less than 20 days in advance of the hearing, and shall post copies of the notice at the San Francisco Main Public Library Government Information Center, the hearing site and on the DPW website not less than 72 hours in advance of the hearing. The notice shall:

- (a) specify the time and location of the hearing;
- (b) state that the hearing officer will take public comment;
- (c) state that the Director of the Department of Public Works shall consider and discuss the application(s);
- (d) summarize the rate adjustment proposed by the applicant and key issues raised in the application(s), staff report, or other matters to be heard;
- (e) provide a list of relevant documents that are available prior to the hearing and the name of a contact person and location where the public may inspect or obtain copies of these documents; and,
- (f) provide contact information for the Chair of the Rate Board.

(2) The notice shall state that persons desiring notice of further proceedings, actions, decisions and orders relating to the application(s) may file a written request for such notice with the Chair of the Rate Board.

C. Transcription.

The Director shall cause the hearing, including all continued sessions, to be transcribed. The Director shall make the draft transcript available to the public no later than 10 working days after the conclusion of the hearing. The draft transcript will become part of the DPW record.

D. Presiding Officer; Authority.

The Director or his or her designee shall serve as the Presiding Officer at the hearing. The Presiding Officer shall, subject to the requirements of the 1932 Ordinance and this Order: set the hearings and control the course thereof; administer oaths; receive evidence; hold appropriate conferences before or during hearings; rule upon all objections or exceptions at the hearing; receive and number exhibits; hear argument; and fix the time for filing of documents and written statements and arguments.

E. Order of Procedure.

(1) Presentations. Each applicant may first make a presentation on its application for a rate adjustment.



(2) Cross-examination. Persons making presentations shall, after their presentation, be subject to cross-examination by City staff and by the ratepayer advocate, if one has been appointed for the hearing; members of the public shall present their questions for cross-examination through the ratepayer advocate, or through the Deputy City Attorney if no ratepayer advocate has been appointed.

Such cross-examination shall be limited to the areas covered by the application, or as otherwise deemed relevant by the Presiding Officer. The Presiding Officer may limit questions that are cumulative or repetitious.

(3) City Staff Presentation. The City staff may make a direct presentation. The City staff will then be subject to cross-examination as specified in section III(E)(2).

(4) Ratepayer Advocate Presentation. The ratepayer advocate may give a presentation, provided one has been appointed for the hearing.

(5) Rebuttal. At the conclusion of the City staff and ratepayer advocate presentations, the applicant(s) shall have an opportunity to present rebuttal testimony. Such rebuttal will be subject to cross-examination as specified in section III(E)(2).

(6) Public Comment. At the conclusion of all presentations, cross-examination, and rebuttal, if any, all other interested persons, including members of the public, may offer public testimony. The Presiding Officer shall determine the order of public testimony, and may limit the amount of time given to speakers, provided that all speakers are given the same amount of time. If the Presiding Officer elects to continue the hearing prior to the conclusion of all presentations, cross-examination, and rebuttal, the Presiding Officer may allow public comment to be made prior to continuing the hearing.

F. Limiting Number of Witnesses.

To avoid unnecessary cumulative evidence, the Presiding Officer may limit the number of witnesses or the time for testimony upon a particular issue.

G. Rules of Evidence.

The Presiding Officer is not required to conduct the hearing according to technical rules of evidence. In ruling on the admission of evidence, the Presiding Officer shall seek to preserve the substantial rights of all the parties.

H. Documentary Evidence, Written Statements and Arguments.

(1) Submission. The applicant(s) or any interested party may submit relevant and material documentary evidence and written statements and arguments in addition to or in lieu of oral testimony. Such evidence, statements and arguments shall be entered into the record as an exhibit.



(2) Access to Documents. Documentary material on file with the City or submitted as part of the hearing shall be available for public inspection.

(3) Additional Evidence. At the hearing, the Presiding Officer may require the production of further evidence upon any issue. The Presiding Officer may authorize or order the filing of specific documentary evidence as part of the record within a fixed period of time.

I. Studies and Investigation.

The Presiding Officer may direct the parties to carry out any further studies and investigations that he or she deems pertinent to the application(s). The party conducting the study or investigation shall present the results at a subsequent hearing.

J. Cross-examination on Documentary Evidence, Written Statements and Reports on Studies and Investigations.

All documentary evidence, written statements and reports on studies and investigations, including those referred to in sections H and I above, intended to become part of the evidentiary record as distinguished from argument based on evidence already in the record, shall be subject to cross-examination at the hearing, and the party submitting the written evidence, statements or reports shall designate a representative to testify on cross-examination for this purpose.

K. Continuances.

The Presiding Officer may continue the hearing from time to time. The applicant(s) and all persons filing a written request pursuant to section III(B)(2) shall be entitled to notice of any further proceedings. Where possible, the Presiding Officer shall give notice of a continued session at least 72 hours in advance of the session by causing notice to be posted at the San Francisco Main Public Library Government Information Center, the hearing site and on the DPW website.

L. DPW Hearing Record.

The Presiding Officer will give advance notice of the date that the record will be closed. The Presiding Officer will not be required to accept evidence or documents submitted after this date, and may not do so without re-opening the hearing.

M. Majority Protest Procedures.

The Presiding Officer will conduct a separate public hearing to consider written protests submitted pursuant to Section 6 of Article XIID of the State Constitution. DPW will provide public notice of the hearing as specified in Section 6 of Article XIID of the State Constitution. At the hearing, the Presiding Officer shall count any written protests submitted and determine whether a majority of the ratepayers have joined in such a protest. The procedures for submission and tabulation of protests shall be governed by a separate order of the Director.

N. Report and Recommended Order.



(1) Time for Filing. Upon the conclusion of the hearing and within 90 days after referral to the Director of the application(s), the Director shall make and file with the Chair of the Rate Board a Report on the application(s) and a Recommended Order.

(2) Contents. The Report shall include a set of findings of fact made by the Presiding Officer from the evidence taken and record made at the proceeding and a Recommended Order setting forth the effective date of any proposed change in rates, as well as any other discussion or material that the Presiding Officer considers necessary or appropriate.

Such effective date shall not be less than 15 days from the date of filing of the Recommended Order with the Chair of the Rate Board.

O. Notice of Report and Recommended Order.

Immediately upon receipt of the Report and Recommended Order, the Chair of the Rate Board shall publish the Recommended Order together with notice of filing thereof in the official newspaper and shall mail notice of the filing of the Report and Recommended Order to the applicant(s) and all persons requesting notice pursuant to section III(B)(2). The Recommended Order and notice shall also be posted on the DPW website.

IV. HEARINGS BEFORE THE RATE BOARD ON OBJECTIONS TO THE DEPARTMENT OF PUBLIC WORKS' RECOMMENDED ORDER FOR A REFUSE COLLECTION AND DISPOSAL RATE ADJUSTMENT

A. Filing of Objections to Recommended Order.

Within 15 days after the filing of the Recommended Order with the Chair of the Rate Board, the applicant(s) or any interested party may file with the Chair of the Rate Board any objections to the Recommended Order. An objection must be in writing, must be specifically and clearly stated, and must be based on evidence already in the record.

If no objections to the Recommended Order are filed, the Recommended Order shall be deemed the Order of the Rate Board and shall take effect according to its terms without further action by the Rate Board.

B. Notice of Hearing.

After objections to the Recommended Order for rate adjustment have been filed with the Chair of the Rate Board, the Rate Board, upon not less than 10 calendar days notice by mail to the applicant(s) and persons that request notice pursuant to section III(B)(2) above, shall hold a hearing to hear objections to said Recommended Order. The notice shall:

- (1) specify the time and location of the hearing;
- (2) state that the Rate Board will take public comment;
- (3) state that the Rate Board will take action to approve or deny the application in whole or in part;



- (4) specify each objector and describe each objection; and
- (5) provide a list of relevant documents and the name of a contact person and location where the public may inspect or obtain copies of these documents.

The Rate Board shall cause copies of the notice and agenda for the hearing to be posted at the San Francisco Main Library Government Information Center, at the hearing site and on the DPW website not less than 72 hours in advance of the hearing.

C. Transcription.

The Rate Board shall cause each hearing of the Rate Board to be transcribed. The Rate Board shall make the draft transcript available to the public no later than 10 working days after the conclusion of the hearing.

D. Membership; Quorum; Action by Rate Board; Presiding Officer; Authority of Presiding Officer.

The Rate Board shall consist of the City Administrator, the Controller and the Manager of Utilities or their designated representatives. The City Administrator, or his or her designated representative, shall act as chair and preside at the hearing. The Chair of the Rate Board shall set the hearings and control the course thereof.

The Rate Board shall convene upon call of the Chair or the other two members of the Rate Board and two members shall constitute a quorum. The Rate Board shall act by majority vote.

E. Order of Procedure.

(1) Presentations by Objectors. The party or parties filing written objections to the Recommended Order shall be the first to make presentations before the Rate Board.

(2) Presentation by Non-Objectors. After presentations by objectors have been made, non-objectors will be afforded an opportunity to make presentations. "Non-objectors" shall include, but not be limited to, City staff and all other parties favoring the Recommended Order.

(3) Presentation by Ratepayer Advocate. The ratepayer advocate shall be given an opportunity to make a presentation, provided one has been appointed for the hearing.

(4) Public Comment. The Chair of the Rate Board shall set the amount of time that will be allowed to each speaker for public comment.

F. Limitation on Presentations: Issues and Evidence.

(1) Presentations by any and all parties at the Rate Board hearing shall be limited to the subject matter of the written objections. The Rate Board will not entertain new issues or matters.



(2) Presentations shall be made upon the basis of evidence taken and record made at the hearing before the Director of Public Works. The Rate Board will not accept any new evidentiary material.

G. Limiting Number of Presentations.

Groups with similar interests should designate representatives to act as spokespersons. To avoid repetition, the Chair of the Rate Board may limit the number of presentations or the time for a presentation upon a particular issue.

H. Written Statements and Arguments.

The applicant(s) or any interested party may submit relevant and material written statements and arguments (but no new evidentiary materials) to the Rate Board in addition to or in lieu of oral testimony. The applicant or interested party must deliver the written statement and argument to the Rate Board at least 48 hours prior to the Rate Board hearing, and at the same time deliver written or electronic copies of the documents to the participants in the proceedings. For purposes of this requirement, the participants in the Rate Board proceedings shall be the applicant, the Chair of the Rate Board, the Department of Public Works, the Department of the Environment, and the ratepayer advocate, if one is appointed. The Rate Board shall make such written statements or arguments available to all parties who have requested notice pursuant to section III(B)(2).

I. Order.

The Rate Board, after hearing the objections made, shall grant or deny the application(s) for a rate adjustment in whole or in part and shall issue an Order; said order to take effect at such time as may be just and reasonable as directed by the Rate Board. The Rate Board shall address each objection individually or collectively.

In the event of inability or failure of the Rate Board to render a decision within 60 days after the Director has filed his or her Report and Recommended Order with the Rate Board, said Recommended Order shall be deemed the order of the Rate Board and shall take effect upon expiration of said 60-day period.

J. Notice of Order.

Within 10 days of a decision by the Rate Board, the Rate Board shall provide notice to the applicant(s) and other persons who have requested notice pursuant to section III(B)(2) of the decision. The Rate Board shall cause copies of the notice and Order of the Rate Board to be posted at the San Francisco Main Public Library Government Information Center and on the DPW website.



4/26/2013

X Mohammed Nuru

Nuru, Mohammed
Approver 1

