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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

Monday, July 8, 2013

Volume I
(pages 1-102)

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
John Schenone
Nancy Wuerfel

1 Monday, July 8, 2013 1:30 p.m.

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

3 MS. YOUNG: Good afternoon. So call to order.
4 Will the hearing please come to order.

5 For the record, it is Monday, July 8th, 2013,
6 at 1:30 p.m. We're in Room 408 in City Hall.

7 Roll call. My name is Linda Yeung. I'm the
8 Deputy City Administrator and I'm the Chair of the
9 Refuse Collection and Disposal Rate Board for the City
10 and County of San Francisco.

11 On the Board with me are two other members,
12 Ben Rosenfield, Controller for the City and County of
13 San Francisco; Michael Carlin, the Deputy General
14 Manager for the City's Public Utilities Commission. So
15 thank you, Ben and Michael, for serving with me.

16 So in terms of introduction of other people in
17 the room, present with me is Deputy City Attorney Marie
18 Blits from the City Attorney's Government Team. She
19 will be serving as counsel to the Rate Board. Anna Low,
20 from the City Attorney's Government Team, will be
21 serving as our clerk today. Sitting at the table is
22 also DPW Director Mohammed Nuru; DPW Manager of Finance,
23 Budget, and Performance, Douglas Legg; and DPW Project
24 Manager, Ann Carey.

25 Our hearing today is being transcribed by

1 stenographer/reporter Freddie Reppond.

2 We will also be making a tape recording of
3 this proceeding. So please speak one at a time,
4 speaking directly into your microphone so you can be
5 clearly heard.

6 At this time I want to thank members of the
7 public for showing up and for your interest in this
8 application and that we welcome hearing your remarks.
9 Since this is a multi-day process, I just want to check
10 in at the end of the day and we'll see where we are on
11 the agenda and then we'll decide whether this will be a
12 two- or three-day process and we'll do a check-in at the
13 end of the meeting.

14 So I'm going to spend a few minutes talking
15 about the purpose of the hearings, what materials are
16 available in the general procedures.

17 So the purpose of this Rate Board hearing is
18 to hear and consider objections to the report and
19 recommended orders issued by the DPW Director on June
20 7th, 2013, that would increase residential refuse
21 collection and disposal rates. The report and
22 recommended orders were issued in response to the rate
23 application filed by the Applicants, Recology Sunset
24 Scavenger, Recology Golden Gate, Recology San
25 Francisco -- simply referred to afterwards as Recology.

1 Before issuing this report and recommended
2 order, the DPW Director held a series of public hearings
3 on this rate application. There are a number of
4 materials available in this hearing room. So copies are
5 on the side table for any of you to pick up. There are
6 copies of written objections that will be heard by this
7 Board, DPW's June 7th report and recommended order.
8 There are also binders of materials that you may review,
9 but they have to stay in the room. So the black binder
10 contains the agenda for this hearing and related
11 documents, including the objections filed by the five
12 objectors that will be heard and the DPW Director's
13 June 7th report and recommended order. The white
14 binders contain the reporter's transcripts and exhibits
15 from the DPW Director's 2013 hearings.

16 So the dates and times for this hearing.
17 Again, today's session will end at 5:30 p.m. We will
18 continue our hearing tomorrow, Tuesday, July 9th. And
19 if needed we will continue on Friday and Monday,
20 July 12th or July 19th (sic). It will all occur in this
21 room, Room 408, and it all starts at 1:30.

22 So procedures, generally. I will now explain
23 how we plan to proceed. So our hearing is primarily
24 governed by the City's 1932 Initiative Ordinance that
25 established this rate-setting process and by the rules

1 of procedure adopted by the DPW Director. If you would
2 like to follow along on your agenda, we're now on agenda
3 Item No. 2, "Introductory remarks by the Chair." When I
4 have completed my remarks, we will move to Agenda Item
5 No. 3 and hear opening comments from the Ratepayer
6 Advocate, Peter Deibler of HFH consultants.

7 Next agenda item, No. 4, we will hear
8 presentations from the five objectors who filed written
9 objections with the Rate Board by the June 24th
10 statutory deadline. We will hear the objectors in the
11 order listed on the agenda. We have identified a total
12 of 22 objections from the 5 objectors. Each of the 5
13 objectors will be given a maximum of 15 minutes to
14 present their particular objections. As members of the
15 Rate Board have questions, those questions and answers
16 will not be counted against objectors' 15 minutes.

17 Description of the objections on our notice
18 and agenda are for general information only and are not
19 intended to represent any position or decision by the
20 City or the Rate Board. If you disagree with the way
21 your objections are stated on the agenda, please let us
22 know when you make your presentation. Please remember
23 that, as provided in the City Ordinance establishing
24 this rate-setting process, no new or additional
25 objections may be raised orally or filed in writing at

1 this hearing for action by the Rate Board. Only
2 objections filed by the June 24th deadline can be heard
3 and acted upon by the Rate Board.

4 Also, please note that the only evidence
5 previously placed in the administrative record through
6 testimony or documents at the DPW Director's 2013 refuse
7 rate hearings may be used to support the objections or
8 respond to those objections. New evidence is not
9 admissible before the Rate Board. The DPW Director's
10 administrative record is contained in the white binder
11 of the reporter's transcripts and exhibits on the table
12 that I referenced a few moments ago. Objectors may make
13 their presentations orally and/or in writing. Each
14 objector should state their objections; tell us what
15 evidence in the administrative record supports their
16 objections; and tell us why they believe the
17 administrative record supports a change to the
18 Director's Report and Recommended Order on the issues.

19 After Applicant Recology has presented
20 objections under Agenda Item No. 6, the DPW Director or
21 his designee will be given 15 minutes to respond to the
22 objections from all the objectors and to review his
23 report and recommended orders.

24 Procedures to hear three types of public
25 comment. Each day of this special meeting at

1 approximately 2:30 p.m. we will move to Agenda Items 5,
2 7, and 8, and review these three types of public
3 comment. In order to conduct this portion of the
4 hearing most efficiently, we request that anyone who
5 wishes to speak complete a speaker card. There are
6 speaker cards available on the table at the back of the
7 room and from our clerk. I also suggest that any group
8 of persons with similar interests designate a
9 representative to act as spokesperson.

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

21 For the second public comment category under
22 Agenda Item No. 7, we will hear comments from persons
23 who wish to speak in agreement with any or all of the
24 DPW Director's Recommended Orders, up to a maximum of 15
25 minutes today for all of the speakers combined. Each

1 person will be given the same amount of time, maximum
2 three minutes per person. When you begin your comments,
3 please identify which of the DPW Director's points you
4 support and identify what parts of the administrative
5 record support your points.

6 For the third public comment category under
7 Agenda Item No. 8, we will hear general public comments
8 from the companies on matters within the jurisdiction of
9 the Board that have not already been heard as comments
10 on the objections or comment on the Director's
11 Recommended Order, up to a maximum of 15 minutes today
12 for all speakers combined. Each person will be given
13 the same amount of time, maximum three minutes per
14 person. Please be advised that although the Board will
15 listen to all general public comment in this third
16 category of public comment, the Board cannot use
17 information provided in finally deciding the rate unless
18 the comment specifically is tied to one or more of the
19 22 objections being heard or to the DPW Director's
20 responses to those objections.

21 So procedures for the Board to act. After all
22 the objections have been heard, the DPW Director's
23 presentation has been completed, and the three types of
24 public comment have been taken, the Board will close the
25 public hearing and move to Agenda Items 9 and 10; or it

1 will deliberate and take actions to approve or deny the
2 rate application in whole or in part and issue an order.
3 In this process the Board will separately address each
4 objection.

5 The Board acts by majority vote. If for any
6 reason the Board does not take action within 60 days of
7 the DPW Director's issued recommended order which was
8 just referenced, the DPW Director's Recommended Order
9 will be deemed the order of the Board.

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

19 I also want to emphasize that the Rate Board
20 may only consider evidence admitted into the
21 administrative record during the DPW Director's 2013
22 refuse rate hearings. The administrative record, again,
23 is contained in the white binders on the table. Any
24 other evidence is inadmissible. So this Board will not
25 hear items that are not properly before it. And it will

1 not rely upon facts outside the administrative record.

2 Also, please note that in my capacity as
3 Chair, I may modify these procedures as the hearing
4 progresses to ensure a fair and efficient proceeding.

5 At this time can I -- are there folks who
6 aren't English-speaking and do you need headsets or
7 anything? Translation? No. I can't see beyond this
8 thing. So no one raised their hand, right? Okay.
9 Thank you. Okay.

10 So at this time if I could open to Peter
11 Deibler from our Ratepayer Advocate. If you can please
12 present. And I do want to thank you for your help on
13 this process.

14 MR. DEIBLER: Thank you, Madam Chair, members
15 of the Board. Good afternoon.

16 I'd like to just provide a brief overview and
17 update of the role of the Ratepayer Advocate and the
18 material that was presented previously in the record. I
19 do have a one-page summary which I could distribute. It
20 is purely informational. It's not advocating, so if
21 that's admissible.

22 MS. YEUNG: Thank you.

23 MR. DEIBLER: Okay. I'm not sure what the
24 procedure will be.

25 I'll also put a stack of them on the table

1 here.

2 Thank you for the opportunity to speak.

3 MS. YEUNG: So let me just put on the record
4 that the Ratepayer Advocate has handed out a sheet. The
5 subject matter is the update of public comment and
6 summary of Ratepayer Advocate materials dated July 8th,
7 2013. Thank you.

8 MR. DEIBLER: Thank you.

9 So there are several points during the
10 Director's hearings where I provided material regarding
11 the role of the Ratepayer Advocate and summarizing the
12 communication aspect of the role, specifically Exhibits
13 18, 19 through 25 were materials related to it, and also
14 Exhibit 97 at the end of the process. This really
15 focuses on the primary function, which is to assist
16 ratepayers in understanding the process and
17 commenting -- providing a means for commenting.

18 And I just want to note, also, that the
19 Ratepayer Advocate did not have any specific role
20 regarding the 218 notification or hearing process. It's
21 not part of the charge.

22 So the first side of this sheet provides
23 information as of May 22nd, which is what was entered in
24 the record in Exhibit 97 and then providing an update
25 down below for each of the three main mechanisms for

1 communication; the first being the Website, which we've
2 had in May about 1,200 views; as of last week, somewhat
3 over 1,700 views of the Website. And so there seems to
4 be continued high interest. The phone calls and the
5 email was both dedicated -- one dedicated phone line and
6 a dedicated email address. And you can see, we've had
7 25 phone calls through May 26, an additional one through
8 July. And regarding the emails, somewhat more -- 35 in
9 May, 48 in July -- from 36 individuals. And in many of
10 those cases there's a trail or a set of email exchanges
11 back and forth in communication and also sometimes a
12 phone call with relation to it.

13 So in terms of the overall conclusions, since
14 the Website appears to address most needs that people
15 have and the goal was to have all the salient
16 information either on the Website or links to the DPW
17 Website for information, but, also, giving the phone and
18 email opportunity for personal contact for those that
19 wanted to ask specific questions or in some cases just
20 vent.

21 We also met with individual members of the
22 public. And in fact in one instance it helped
23 facilitate Recology assistance to a 30-unit apartment
24 owner/manager who was trying to figure out what the
25 impact of the new rate structure and rates would be on

1 his bill.

2 Second, on the back, the other perhaps key
3 function in terms of communication that we tried to play
4 is to take the vast amount of information in this
5 process and distill it down in a summary form. And this
6 is the list of ten materials that we developed along the
7 way, starting with the January workshop, the first
8 public workshop that was held, through to a summary of
9 the Director's Report. These are all on the Website and
10 most of them were entered in the record. The last two
11 were not because they were after the May 22nd hearing.

12 They fall into several types of material. One
13 is factual summaries, summarizing the workshop,
14 summarizing the draft and final application. And we
15 note that the summary of the final application was
16 translated into Spanish and Chinese and posted on the
17 site. Comments to DPW staff on the draft and final
18 application. So those are questions, comments.

19 And, lastly, several sets of requests to
20 Recology regarding how material -- primarily how
21 material is presented and how to -- requesting that
22 clarity be used, wherever possible. And they have done
23 a good job, I think, overall. But to provide
24 information in a way that's jargon-free, to the extent
25 possible, and understandable on the part of the public.

1 I also just wanted to mention quickly the DPW
2 Exhibit 98, which is a summary of outreach efforts made
3 by the department.

4 So I'd like to just ask that you listen
5 carefully to the objections. I'm available to assist
6 the objectors as requested. I've met several of them.
7 And I want to give thanks to DPW staff for providing
8 clear responses in their report back regarding the
9 objections.

10 So, with that, thank you very much.

11 MS. YEUNG: Thank you.

12 So for the purpose of this hearing, we're
13 going to stick to certain time frames. And we have
14 someone here from the City Attorney's office who will
15 give a signal when it's three minutes and then at one
16 minute so that people can keep their comments within the
17 time frames.

18 So thank you, Ratepayer Advocate.

19 And now if we could ask that the five
20 objectors who filed by the July -- sorry. Okay. So
21 presentations by the five objectors. I'm going to ask
22 each of the objectors, if you're here, to come up to the
23 podium. I'm going to remind you there's a 15-minute
24 maximum. And if the first one is not here, I'll move on
25 to the second group. Okay.

1 So the first objections were by Josephine
2 Zhao. Is she available? Okay. Is there anyone on
3 behalf of her group, Asian American Voters? Okay. I
4 may come back to this one later in case they show up
5 later.

6 Okay. The second objection was by Stuart
7 Gardiner. If you could please come up. Thank you for
8 your time and for sharing your comments with us today.

9 MR. GARDINER: Thank you, Chairperson Yeung,
10 Members of the Board.

11 My comments are intended to focus largely on
12 the Director's response to objections. I'm assuming
13 that --

14 MS. YEUNG: Oh, I am so sorry. Thank you for
15 the City Attorney.

16 So I have to ask that we administer a oath for
17 you as a witness.

18 MR. GARDINER: Am I giving testimony?

19 MS. YEUNG: It's a form of testimony.

20 MR. GARDINER: Okay. I have no objection to
21 taking an oath, but it doesn't seem to me that I'm
22 giving any testimony. Nevertheless, go ahead.

23 MS. YEUNG: Okay. So if you could raise your
24 right hand. Do you solemnly state or affirm under
25 penalty of perjury that the evidence you give in this

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

3 MR. GARDINER: I do.

4 MS. YEUNG: Thank you.

5 MR. GARDINER: The presentation is intended
6 largely to focus on the Director's response to the
7 objections rather than repeat all of my written
8 objections, which I hope I've made adequately clear in
9 writing.

10 I want to start with the abandoned materials
11 collection program and to a similar extent the public
12 litter can program. The abandoned materials collection
13 will increase Recology's annual revenues by about
14 \$4 million when you include the operating ratio. And
15 the use of Recology to collect public litter cans
16 apparently costs, as far as I can tell from the record,
17 about one and three-quarters million per year when you
18 include the operating ratio.

19 It's a win/win for DPW and Recology. DPW
20 frees up at least 931,000 and as much as 2.2 million
21 from its budget for abandoned materials alone and
22 Recology earns 4 million on that program. Only the
23 ratepayers lose from doubling the cost of the service
24 through outsourcing. Ratepayers also lose from funding
25 a municipal service from private refuse collection

1 rates.

2 I think it's worth repeating -- and I'll try
3 to be brief -- the text from Section 6(b) of Article 13
4 of the California Constitution which was added by
5 Proposition 218 in 1996. (reading) No fee or charge may
6 be imposed for general governmental services . . . where
7 the service is available to the public at large in
8 substantially the same manner as it is to property
9 owners.

10 And to be clear -- well, I've commented on
11 this in my objections. I would add only in terms of
12 understanding that part of the state constitution, it's
13 necessary to avoid the absurd result of government
14 outsourcing services with a regulated rate for private
15 business, particularly when you want to consider what it
16 means for the government to impose this, as this Board
17 or the Director is doing, whoever approves it, by
18 approving a rate increase that will include this program
19 for abandoned materials and public litter collection.

20 In the Director's objection (sic) there was no
21 dispute or reply that, for example, the program by
22 Recology, which was in the rate application itself, will
23 include, quote, Support for events identified by the
24 City, including selected parades, festivals, and
25 holidays. That's Exhibit 1 at pages 13 to 14 and also

1 Exhibit 41.

2 This has nothing to do with ratepayers
3 generating abandoned materials, let alone litter unless
4 the City plans to forbid anyone except property owners
5 from attending parades. It makes a mockery of the claim
6 that this is not a governmental service.

7 Further evidence that these are City services
8 and should properly remain so and funded by the City and
9 not the ratepayers is that the City's 311 system is used
10 and will continue to be used to request abandoned
11 materials collection. 311 is not used to obtain
12 nongovernmental services; and a caller, as far as I
13 know, need not be a resident or a property owner. There
14 was no response by the Director to this point in the
15 objection, I would note. It's not only unlawful for the
16 City at its own initiative to increase refuse rates to
17 pay for this municipal service, but Recology rates
18 cannot be just and reasonable when they conflict with
19 the state constitution.

20 The Director's response makes the fundamental
21 error of confusing the creators of abandoned material
22 and litter with those asking the City to clean it up. I
23 think this is a very important point, because throughout
24 the record what justification there is for shifting
25 these costs entirely to ratepayers rather than to the

1 public through the City's funding repeatedly says that
2 the ratepayers are the source, the cause if you will, of
3 the need for this service.

4 In the Director's response he says some
5 customers continue to leave materials on the street.
6 That's at page 4. On page 7 he says the cost for
7 collection of abandoned materials should not be
8 considered public costs, but rather costs for collecting
9 solid waste generated by ratepayers, albeit those who
10 are not complying with City codes. There's no evidence
11 that property owners are the source of all or even most
12 abandoned material. This confuses the causation of the
13 problem with those who actually want service from the
14 City to solve the problem. If I call 311 about
15 abandoned materials, I hope there's not the assumption
16 that I left them on the street in front of my house.

17 The reference to Exhibit 17 on page 5 of the
18 Director's response does not prove anything,
19 particularly because the exhibit is completely illegible
20 as posted online. It's not fair and it's not lawful to
21 rely on material in the record that cannot be seen by
22 people who want to comment on it. The Director's
23 response cites no other specific record evidence, just,
24 quote, extensive factual evidence. This is not a
25 showing from the record.

1 Since I arrived before the hearing, I looked
2 at Exhibit 17; and I would only comment that it exhibits
3 the same causation problem as the rest of the record
4 argument on this. It shows where calls for service have
5 come from and how much has been collected in abandoned
6 materials, but it does not show who caused the problem.
7 The public caused the problem and it's a public service
8 now and it should remain a public service. By the
9 Director's reasoning, only property owners should pay
10 for police services because the need for them was caused
11 only by those who don't comply with the laws.

12 Also, the Director's analogy on page 5 of his
13 comments to allow recovery of bad debt which are
14 uncollectibles from ratepayers is not persuasive and the
15 Board should not view it as persuasive. Bad debt is
16 accepted as a benefit for the service provider to allow
17 it to recover authorized operating costs and profit.
18 But the cost of abandoned material collection is
19 intended by the City as a service to refuse customers.
20 With bad debt -- with a bad debt allowance, Recology is
21 made whole, not punished for nonpayment by some
22 customers. But the City proposes that all customers
23 bear the burden of bad behavior by a few.

24 The Director's response points out that DPW
25 should be seen as spending more than \$2.2 million on the

1 abandoned materials collection currently. Although it
2 points out what is supposedly not included, no costs are
3 attached to this. Neither the Director not the Board
4 has any evidence from which to conclude that the \$4
5 million increase in Recology revenues for abandoned
6 materials collection is just and reasonable in relation
7 to current DPW costs for the program. And the
8 ratepayers have no assurance that this shift is not
9 unnecessarily more costly either on a unit-cost basis
10 for picking up a particular abandoned material or group
11 of them from an address or location or for the cost of
12 remedying this public refuse problem.

13 Let me shift to the conflict-of-interest
14 matter and comment briefly on that, because the Director
15 was thoughtful enough to offer a reply on that point and
16 my objection. The conflict-of-interest principle is
17 intended to deal with the appearance, not just the
18 actuality of self-dealing or corruption. The situation
19 here is a classic case of a fox guarding the ratepayers'
20 henhouse, raiding it for his organization's benefit.
21 The conflict of interest here is demonstrated by the
22 Director finding just and reasonable in his recommended
23 order to shift from his budget to Recology at nearly
24 twice the cost of the abandoned materials collection.
25 This results from his own department's request to

1 include the program in the rate application and he's
2 approving it.

3 Despite the Director's claim of no financial
4 interest -- and this is my last point on this topic --
5 he needs to demonstrate that under no circumstances
6 could the shift of abandoned materials collection to the
7 ratepayers and the redeployment of DPW funds affect his
8 compensation from the City, including raises, bonuses,
9 or promotions. Otherwise, he does have a direct
10 interest in the traditional sense of conflict of
11 interest under state law and City Ordinance.

12 Let me last comment on the issue of notice.
13 The issue of proper notice for the close of record is
14 open and shut. And the record was closed three weeks
15 before the date the public had been given. DPW's public
16 notice of the hearing schedule, which is posted online
17 and is on the DPW Web page for this process,
18 unambiguously stated that -- and I quote -- arguments in
19 favor or opposed to this application will be heard at
20 the public hearings of (sic) may be submitted in writing
21 by 1:00 p.m. on Friday June 14th, 2013. I believe that
22 "of" was meant to be an "or."

23 Contrary to the Director's claim, there was no
24 limitation to the Proposition 213 (sic) protest process,
25 which indeed was handled by the City as a separate

1 process. I think the Director's question about whether
2 that should be is well-taken. It shouldn't be. It's
3 confusing to the public and defeats the goal of vigorous
4 public participation. In any case, there was no
5 limitation in this notice to that process alone. It
6 talked about arguments in favor of or opposed to this
7 application, meaning the rate application.

8 Lastly, the Director's response to the
9 objection is in fact entirely consistent with my
10 objection. The response notes the announcement of a
11 hearing schedule and the hearing officer's expectations
12 during the hearings. The only reference to the close of
13 record is the statement that the record, quote, was
14 closed at the conclusion of the final director's
15 hearing, end quote, on May 22nd. There's no reference
16 to a contrary announcement of when the hearing would be
17 closed. The only statement available to the public is
18 the one that I quoted from. And there was another one
19 that was sent by mail to property owners that had
20 substantially the same language. Nothing conflicts with
21 the written hearing schedule permitting arguments on
22 applications to be submitted in writing by June 14th.

23 For these reasons, I believe my objections
24 stand and the identified remedies in my written
25 objection should be adopted by this Board, including the

1 removal of the costs of the abandoned material
2 collection and public litter can maintenance from
3 Recology revenues and rates.

4 I want to conclude by noting that the Director
5 in his Report and Recommended Orders apparently made no
6 changes to this rate application as a result of concerns
7 and comments from the public. It's hard to believe that
8 no one in a city of over 800,000 people has nothing
9 effective to say about the way refuse rates are set.
10 More likely, this indicates indifference at best to
11 public participation, a nuisance to be tolerated and
12 indulged. And it's illustrated by disowning the
13 publicly posted notice about closing the record on
14 June 14th and closing it, in fact, three weeks earlier.

15 I hope the Board will consider its job to
16 represent the public interest instead of defending the
17 bureaucracy that seems to know better than the public
18 what's good for them. I hope you will avoid another
19 example of the pretense of democratic participation
20 which only breeds cynicism and mistrust.

21 Thank you.

22 MS. YEUNG: Thank you.

23 MR. GARDINER: Any questions from the Board?

24 MS. YEUNG: Not at this time. I think we are
25 going to go through each of the objector's comments and

1 then we'll come back with questions.

2 MR. GARDINER: Thank you.

3 MS. YEUNG: Anything from the Members? Thank
4 you.

5 So if I could ask the next objector, Kermit
6 Kubitz, to please come to the stand.

7 MR. SCHENONE: Is he talking to Objection No.
8 2 right now? Is that correct?

9 MS. YEUNG: I'm asking Mr. Kubitz to please
10 come to the stand.

11 MR. SCHENONE: I'm not that guy.

12 MS. YEUNG: Okay. If you could please have a
13 seat.

14 MR. SCHENONE: So the general public is going
15 to have an opportunity to address objection No. 2?

16 MS. YEUNG: There will be, but later on in the
17 program.

18 MR. SCHENONE: Thank you. Sorry.

19 MS. YEUNG: No problem.

20 How are you this afternoon? If I could have
21 you raise -- excuse me. If I could have you take the
22 stand and raise your right hand. Do you solemnly state
23 or affirm under penalty of perjury that the evidence you
24 give in this matter shall be the truth, the whole truth,
25 and nothing but the truth?

1 MR. KUBITZ: I do.

2 MS. YEUNG: Thank you.

3 MR. KUBITZ: I have some materials for the
4 information of the Board and everybody else. I'll give
5 copies to Recology. I can give one copy to -- maybe two
6 copies, one to the clerk and one to the court. I have
7 one more copy if there's another party that should
8 receive it. Mr. Deibler? Okay. The City? I'll give
9 it to you.

10 MS. YEUNG: Mr. Kubitz, if I could ask you a
11 question. So on your table of contents you identify
12 nine different items. Do they directly correlate to the
13 objections that you've already filed?

14 MR. KUBITZ: Yes, they do.

15 MS. YEUNG: Then in your comments I'm going to
16 ask that you refer to your original objections.

17 MR. KUBITZ: Yes. Okay.

18 I had three objections. One was to the
19 abandoned materials topic. One was to the use of excess
20 funds, the special reserve fund, comprising \$29 million.
21 And one to the customer revenue growth numbers. And
22 these all relate to that.

23 It's tabbed -- everything is in the record
24 except for Item 1, which is kind of a summary of the
25 argument, and Item 10, which is a page from the DPW

1 Website about how much they collect. And so those are
2 not elements of the record at this point in time.

3 But what I wanted to do was to review the
4 developing state of play of information about what the
5 abandoned materials program is going to cost. In
6 exhibit -- in Tab 2 there's a letter from Peter Deibler;
7 it's dated April 2nd, 2013. And on page 5 of 7, Item 6,
8 it says, "abandoned waste collection. Do the proposed
9 staffing levels and expenses for this program accurately
10 reflect City plans for transfer of this program to
11 Recology and demonstrate a savings to ratepayers for
12 transfer of the program to Recology?" And the response
13 was, The question remains. So there was some
14 uncertainty about what the cost was, whether there was
15 going to be any savings as of Exhibit 19 and
16 Mr. Deibler's April 2nd, 2013, letter.

17 Similarly, Tab 3 is a transcript from the
18 April 15th hearings, at which Mr. Pilpel, who has been
19 following this matter and has been involved for several
20 years, at page 279, which is about the fourth page in,
21 says, With respect to the DPW programs Recology is
22 proposing to take over, it's not clear from the
23 four-page letter what the City's cost is and what
24 Recology's cost is. For example, if the City is now
25 paying a million one hundred and Recology is going to do

1 the same thing -- I'm paraphrasing -- for 800,000, then
2 I probably like that idea. If it's the reverse, I
3 probably don't like that idea. But it's difficult to
4 tease it out from that letter. So another member of the
5 public was concerned about the nature of the cost
6 presentation.

7 Tab 4 is Exhibit 13, which was presented by
8 the staff of DPW and shows, at least to the extent the
9 record shows what the existing costs are. And I point
10 to page 1 at the bottom. It says abandoned materials
11 collection, \$2,209,159. And in the paragraph at about
12 the last page of Exhibit 13, if you turn to "Recology to
13 assume abandoned waste pickup," the 2013 application
14 includes a provision for Recology to assume
15 responsibility of responding to 311 calls. Recology has
16 included an additional 3.3 million. So that's 2.2
17 million for the City's present cost, 3.3 million for the
18 understanding of the City as of the date of this
19 memorandum, April 11th.

20 There is -- the next tab is a document
21 introduced in the hearing, I believe, by a Recology
22 witness. Exhibit 41. And it's two pages. I believe in
23 the record it's one page back to back. But if you turn
24 to the number tab, it says page 101, 3/14/2013. The
25 total abandoned materials cost -- labor, supervision,

1 vehicles, electronics, supplies, and disposal -- is 3.62
2 and some thousands of dollars. So we had a 2.2 million
3 City cost. We had a 3.3 million initial estimate from
4 the City on April 11th. And then the Recology exhibit
5 shows -- Exhibit 41 -- 3.6 million.

6 Mr. Gardiner referred to the exhibits that
7 justify this. And I have copies taken from the public
8 Website in Tab 6. And you'll see -- maybe it's just the
9 way they're presented -- but Figure 3 is totally
10 incomprehensible to me -- percentage of street,
11 sidewalk, cleaning, and illegal dumping by zone. I
12 can't figure out from that.

13 I'm going to skip over Tab 7 because that
14 relates to the second objection, and go to Tab 8, which
15 is part of the transcript of the April 22nd hearing.
16 And the pages are numbered. And it says -- I believe
17 this is a Recology witness at transcript page 291. I
18 believe this is a Mr. Quillen.

19 In the middle of the page it says, Now, what
20 are the goals of Recology taking over this process? How
21 is Recology going to be able to do it differently?

22 Well, currently Recology operates trucks
23 throughout the City of San Francisco. We also operate
24 bulky item collection, so we believe that there will be
25 some synergies between bulky item collection, our

1 standard collection operations, and abandoned material
2 collection.

3 So in essence there should be some efficiency.
4 It isn't like they're creating a whole new service.
5 They're already running trucks that do bulky item
6 collection. There's nothing in the record that
7 establishes to what extent they have surplus capacity
8 for bulky item collection, as opposed to the claimed
9 need for five packing trucks and five cargo vans.

10 And the last tab that I have -- I won't refer
11 to Tab 10, since it isn't in the record -- says at
12 transcript page 608 Recology already does pickup
13 assisting the City. They do it on the first weekend of
14 the month; and they pick up white goods, meaning
15 appliances in some cases; and their proposal is based on
16 existing levels of illegal dumping.

17 And if you go back to Tab 4, you'll see that
18 the Department of Public Works has a proposal for
19 \$967,000 for two analysts and six public information
20 officers who are going to go around the City and tell
21 people don't dump illegally, there's a fine for dumping
22 illegally. And it says -- if you go to page 3 of the
23 April 11th, 2011, memorandum, it says, Through education
24 and enforcement, this program is intended to change
25 public behavior with fewer calls. DPW will be able to

1 reduce response time and improve the overall cleanliness
2 of the City streets.

3 This April 11th memorandum is also important
4 because there's a question of savings. And DPW has
5 proposed eliminating half or, like, eight full-time
6 equivalents from the abandoned materials program. And
7 so there are some savings. But they're also going to
8 hire six public information officers and two analysts to
9 support them. So they're going to hire eight more
10 people.

11 So on balance, if you go back to my argument
12 at the beginning, when I summarized what I get from
13 Exhibit 13, they're going to save \$930,768 and cost
14 \$967,000. So that's going to go up about \$30,000 as a
15 net result of firing and hiring associated with Recology
16 taking over that. That doesn't seem a savings to the
17 City.

18 And finally I'm just going to -- I'm not going
19 to worry about the customer revenue growth numbers. But
20 the question of excess revenues is important. The City
21 has \$29 million. The staff report says \$15 million is
22 adequate. That's \$14 million of excess funds. My
23 recommendation was to use some of those funds to offset
24 this increase either two or three million dollars a
25 year. If you used \$3 million a year for three years,

1 you take 9 million out, you still have 20 million.

2 You're 5 million over the excess revenue.

3 The Director's response said, Well, we can't
4 do that.

5 Look at Appendix E to my objection. That's
6 the special facilities procedures. Appendix E,
7 unfortunately, is not the contract or the special
8 facilities document, because it doesn't say anything
9 about the minimum \$15 million. It's kind of a summary.

10 And what I want to bring to your attention is
11 in Tab 7, page 5 of 9. This is the prior hearing on the
12 City asking, Okay, we want the money from the
13 1.3-percent surcharge. This produces \$2.6 million for
14 the City. And at page 5 of 9 near the bottom, the
15 hearing officer who heard this case the last time around
16 from DPW's request said, "I find the argument compelling
17 that there is evidence that funds could be redirected to
18 services benefiting ratepayers instead of continuing to
19 accumulate in a fund with no anticipated uses other than
20 an unspecified reallocation during a future rate
21 process."

22 So as of May 8th, 2012, there were no
23 anticipated uses; and the hearing officer found that the
24 fund should be reallocated for the benefit of
25 ratepayers.

1 Those are my comments. Thank you very much.

2 MS. YEUNG: Thank you very much.

3 So the next group -- is Ms. Nancy Wuerfel
4 available? Could you please come up?

5 Ms. Wuerfel, if you could raise your right
6 hand. Do you solemnly state or affirm under penalty of
7 perjury that the evidence you give in this matter shall
8 be the truth, the whole truth, and nothing but the
9 truth?

10 MS. WUERFEL: I swear.

11 MS. YEUNG: Thank you.

12 MS. WUERFEL:

13 Good afternoon, I am Nancy Wuerfel. I wrote
14 six objections for the record, but I could have added
15 many more to improve the process.

16 First, I am posing the most obvious of
17 objections for this Board to answer. What is the just
18 and reasonable standard test that the proposed rates
19 must meet? In all honesty, I believe the Rate Board
20 owes the ratepayers an answer to this question in plain
21 English.

22 The Director answered my objection by saying,
23 quote, The rates are based on the Companies' actual
24 costs for services necessary to collect and process
25 residential and commercial refuse. Also, he said the

1 rates, quote, reflect the actual costs for collecting
2 and processing San Francisco's refuse, unquote.

3 I agree with him that the proposed rates are
4 based on all the actual costs for collecting and
5 processing SF's refuse. But that is the problem in a
6 nutshell.

7 The 1932 Ordinance does not set garbage rates
8 for collecting and processing all of San Francisco's
9 refuse. The ordinance states that its rates for
10 collection and processing are just for residences,
11 flats, and apartment houses, not for commercial refuse,
12 not for City can refuse and a host of other add-on
13 services, or for all of San Francisco's refuse. So, the
14 fact that DPW has done a really fine job of determining
15 actual costs for lots of extra services, Recology is
16 only too happy to sell us beyond just collecting and
17 processing the refuse from the dwellings does not make
18 this finely tuned cost actually just and reasonable.

19 You need to tell us, the public, how you
20 decide the rates are right. Just saying so tells us
21 nothing about the decision. Do you just defer, quote,
22 to the process of rate hearings, unquote, assuming that
23 they are so comprehensive that all issues must have been
24 vetted? This is not the case, since the public cannot
25 cross-examine those who are testifying.

1 Do you look at the rate survey of other
2 jurisdictions and note where San Francisco is on the
3 list to reassure yourself that the rates aren't too
4 terribly awful?

5 If you choose this method, I suggest you look
6 at Exhibit 99 to see that San Francisco has now moved
7 into the eighth position of the most costly
8 jurisdictions after this new rate hike.

9 By the way, this list was updated to reflect
10 rates as of January 2013 rates. So what is the method
11 that you will use to decide the rates are just and
12 reasonable? The public wishes to know your standard.

13 Next, I object to transferring work previously
14 done by DPW to the garbage rates. I agree that there
15 are many services integral to and historically performed
16 by DPW that Recology is also capable of performing. But
17 that does not mean that services that can be called
18 eligible should be paid for through the garbage rates.

19 "Eligible" is a dangerous word. And it
20 describes all kinds of similar work that can conceivably
21 be transferred out of the City's workload onto the
22 unsuspecting ratepayer, as if that is the right thing to
23 do. I say "unsuspecting," because by the time we find
24 out about a scheme, the deal is buried so deeply in the
25 rates it's impossible to undo. DPW is showing no

1 restraint to charging ratepayers for either direct
2 cost-shifting or indirect underwriting through the
3 impound account.

4 First, there is a misperception that these
5 services magically become free, as if Recology is giving
6 us help out of the goodness of their heart. They are
7 not. They are in business and they recover every cost
8 they incur and they charge profit on allowable costs.
9 "Free to the City" only means that Recology will get
10 paid through the rates for these services. I am not
11 fooled, nor should you be.

12 Second, I clearly asked how much more of DPW's
13 refuse-related services will be shifted to the rates.
14 DPW has now shifted over 19 percent of their, quote,
15 eligible, unquote, services of their \$20 million in
16 refuse costs. What is to stop DPW from transferring the
17 entire \$20 million on the rates over time? There is no
18 stop order in sight. The staff report cites that DPW
19 does not anticipate increasing the amount funded from
20 ratepayers, but things could change. That is a direct
21 quote. Things could change. This is not a reassuring
22 answer. That tells me that DPW sees the garbage
23 ratepayer as a cash cow to be milked whenever it is
24 convenient. No holds barred.

25 Third, if Recology is so much better at

1 collecting abandoned waste than DPW, then this service
2 should be added to Recology's contract with the City.
3 Or maybe DPW should put this service out to bid
4 competitively. Also, taxpayers should be able to see
5 where their general-fund-budgeted money for this service
6 is actually going, after being told DPW would collect
7 the waste.

8 Fourth, there is creeping privatization of
9 City services apparent in this latest transfer of the
10 abandoned waste collection that must be called for what
11 it is. The Director stated that, quote, the costs for
12 collection of abandoned waste should not be considered
13 public costs, but rather costs for collecting solid
14 waste generated by ratepayers. Because the Director has
15 made this unilateral determination about the generation
16 of this waste and since it is no longer his department's
17 job to pick it up, the residential ratepayers are now
18 stuck with paying Recology to take it away. This is a
19 very slippery slope. Where does this cost shifting end?
20 No other City in the LAFCO study states that, quote,
21 abandoned waste collection, unquote, is a part of its
22 free-use service for either franchise or contract plans.

23 Next, I object to the \$3.3-million windfall to
24 DPW, since that means the ratepayers, many of whom are
25 also taxpayers, end up paying twice for the same

1 service. The Director kept the money in his budget
2 originally intended to pay for abandoned waste
3 collection, then transferred the money to pay for street
4 cleaning. The full disclosure of this maneuver was not
5 made known by the Director until his June 7th report.
6 By that time, the budget analyst had already completed
7 his report to the Board of Supervisors on the DPW
8 budget, which did not mention the switch. This sneaky
9 bait-and-switch is to keep general fund money in the DPW
10 budget without timely disclosure that the work is
11 contracted out to Recology.

12 I object to the conflict of interest inherent
13 in allowing the DPW Director to determine what costs can
14 be shifted onto the rates, that benefit his own
15 department, as being just and reasonable. His reply was
16 that he does not have a personal financial interest in
17 the decision and therefore no conflict of interest.
18 Technically, this is true. But the public perceives his
19 role in deciding rates that benefit his department as,
20 at least, unethical. It surely does create the
21 appearance of unprincipled behavior on behalf of the DPW
22 Director. The Director cannot overcome this appearance
23 that he violates the public trust. Allowing this
24 perceived lack of impartiality to continue is not in the
25 best interests of either DPW or this Rate Board.

1 The Director states that there is a public
2 process that, quote, allows all parties to review and
3 test the evidence presented, on which he relies to make
4 his impartial decision. This process is not as he has
5 described. The public is not allowed to test all
6 evidence during the hearings. When I wish to examine a
7 controversial piece of evidence, I am not allowed to be
8 part of the process to ask probing questions of the
9 person testifying under oath. I am allowed five minutes
10 during public comment to make my concerns known. There
11 is no cross-examination afforded me. I am allowed to
12 write my concerns, but, again, I am responded to only by
13 DPW staff or the Director, never Recology or anybody
14 else. Please do not tell me that this flawed process
15 informs the Director of the public's test of evidence.

16 It is also insulting for anybody to respond to
17 this important issue by saying, quote, it's only about
18 two percent of the collection rate, unquote, inferring
19 that this small amount of money makes the entire matter
20 inconsequential. We are dealing with principles here,
21 principles of trust, not dollar amounts.

22 The Rate Board is to serve as a check on the
23 Director, so do your duty. The Director should recuse
24 himself from the decisions affecting DPW's receiving any
25 money from garbage rates and an alternative impartial

1 process be created to review these requests and the
2 impound account budget.

3 My conclusions are the following:

4 My purpose in testifying to you is to put
5 these issues on the record. I am assured that my words
6 will be recorded in the transcript of these hearings,
7 even if I am unable to reach you with the importance of
8 my objections.

9 I ask you to do the following:

10 You can tell us how you arrive at your
11 decision that the rates are just and reasonable. You
12 can show the public that you understand the elasticity
13 of the garbage rates as finite. Do not allow these
14 purely optional cost transfers from the City to eat up
15 the capacity of the ratepayers to tolerate increases.
16 Later, you will need to add legitimate costs to the
17 rates to achieve zero waste, so I warn you, do not
18 alienate the ratepayers with high rates right now. You
19 can begin preserving your options by withdrawing the
20 abandoned waste costs and tell DPW not to allow any more
21 cost transfers in the future.

22 Failing this, you can require more
23 transparency from DPW about its intentions to cost shift
24 work onto the rates, both communicating with the public
25 and the Board of Supervisors, along with requiring full

1 disclosures when the DPW budget is submitted in February
2 about the work to be paid for by the impound account or
3 the work that they're going to send over to Recology to
4 do. Specifically, you should refer to the Board of
5 Supervisors this entire policy question discussing the
6 shifting DPW costs from taxpayers to ratepayers.

7 You can require the Director to put in his
8 report his intention to introduce an ordinance to the
9 Board of Supervisors to return penalty revenue to the
10 impound account, and his alternative intention to
11 account for these revenues and credit them to the rate
12 base in the next rate process. Right now, these
13 commitments are not part of the report or the orders.
14 Let's make them so.

15 You can appreciate the public perception that
16 DPW is biased on the decision of whether their increase
17 in the impound account funding or cost shifting is fair
18 and reasonable. You can fix this by requiring a
19 completely unbiased process for deciding the fairness of
20 any ratepayer underwriting to the DPW.

21 Lastly, there is a City policy decision that
22 is needed which is way beyond the scope of the rate
23 Board. You need to request the Director to refer to the
24 Board of Supervisors, before the next rate increase
25 hearing, the decision about whether the City should or

1 should not buy land for Recology to build a zero-waste
2 facility. DPW should craft a resolution posing this
3 question to allow the Board of Supervisors to decide the
4 issue. I don't want to see this in the rates. I really
5 want to see that this issue is before the entire City.

6 Thank you. I have given you a lot to think
7 about.

8 MS. YEUNG: Thank you.

9 So, next, is Michael Baker available? Good
10 afternoon.

11 MR. BAKER: Good afternoon.

12 MS. YEUNG: If you could raise your right
13 hand.

14 MR. BAKER: Sure.

15 MS. YEUNG: Do you solemnly state or affirm
16 under penalty of perjury that the evidence you give in
17 this matter shall be the truth, the whole truth, and
18 nothing but the truth?

19 MR. BAKER: I do.

20 MS. YEUNG: Thank you.

21 MR. BAKER: Good afternoon. My name is Mike
22 Baker. I'm a lawyer with the law firm of Arnold and
23 Porter in the city; and I represent the Applicants, the
24 Recology companies.

25 Recology filed an objection to the Director's

1 Report on one ground, namely that the Director's
2 recommendation that an OR or an operating ratio not be
3 allowed on a business license fees that Recology is
4 required to pay to the City of Brisbane. So that's what
5 I'm going to talk about now. Recology may have comments
6 on some of the other objections which we will ask to
7 offer later as appropriate as these hearings proceed.
8 But let me begin by reviewing the background of the
9 Brisbane business license fees as was discussed during
10 the rate hearings.

11 Recology San Francisco's Tunnel/Beatty
12 facility is located on the San Francisco/Brisbane City
13 line west of Highway 101 near Candlestick Park. Most of
14 the current facility is located in San Francisco, but an
15 organics processing annex is located in the City of
16 Brisbane. Recology has had discussions over the last
17 few years with officials in both San Francisco and
18 Brisbane about the possibility of developing a new
19 zero-waste facility at the current Tunnel/Beatty
20 location. But because there's not enough room there for
21 a new facility, the discussions have included the
22 possibility of Recology acquiring additional contiguous
23 land in Brisbane. In its rate application Recology
24 proposed a contingent rate surcharge that would be
25 triggered if and when Recology had the opportunity to

1 buy additional land for this purpose.

2 Now, this is not just a Recology brainchild.
3 DPW staff and the Director agree that expansion of the
4 Tunnel/Beatty site into San Mateo county is the best
5 location for a new zero-waste facility. And City
6 consultants have concurred in that and the Director
7 referred to this and reiterated this point on pages 14
8 and 15 of his report. But the DPW staff and the
9 Director would recommend in those rate hearings that a
10 decision on including the cost of new lands and the
11 rates of new land in the rates on a contingency basis be
12 deferred pending further development and analysis. And
13 Recology has not challenged that recommendation. So
14 that issue is not before you today.

15 But I mention it because it provides the
16 backdrop to Recology's objection regarding including an
17 OR for the City of Brisbane business license fee. In
18 November 2011 Brisbane voters approved a ballot measure
19 that was put on the ballot by the City Council
20 authorizing the City Council to impose a new business
21 license fee of up to \$3 million a year on recycling
22 businesses of a certain size, those handling more than a
23 hundred thousand tons per year. A year later, in
24 October 2012, the Brisbane City Council exercised the
25 authority that that measure gave it to impose this new

1 fee on Recology on the basis that it qualifies for the
2 fee. The new fee went into effect right away.
3 Therefore, Recology was obligated to pay \$2.1 million by
4 June 30 of this year, 2013, which Recology did. Now,
5 since that payment was due before a new rate went into
6 effect and because of laws against retroactive
7 rate-making, Recology made the payment without being
8 able to obtain reimbursement of that \$2.1 million
9 through future rates.

10 Now, the initial license fee that was imposed
11 by the City was \$2.1 million, not the full \$3 million
12 that this ballot measure authorized. And the ordinance,
13 which is Exhibit 32, anticipates that the fee eventually
14 would increase to \$3 million when a new zero-waste
15 facility is built, because it says that the fee is
16 2.1 million if it's 100,000 to 500,000 tons; but if it's
17 over 500,000 tons, it goes up to \$3 million.

18 But the important point here is that the
19 Brisbane City Council has been authorized by that city's
20 voters to increase the business license fee to
21 \$3 million or something above 2.1 whenever they might be
22 moved to do so. The Director's Report recommends that
23 Recology be allowed to recover the \$2.1 million business
24 license fee in the rates going forward. That is,
25 Recology is stuck with paying the fee that was due in

1 the rate year just completed but can recover the fee for
2 the coming year. However, the Brisbane City Council
3 could decide to make the fee higher than 2.1 before the
4 next rate proceeding. And Recology again would be
5 responsible for the difference without any possibility
6 for reimbursement.

7 Now, this is a business risk. It's the risk
8 of an unexpected change in the business fee. And it is
9 a risk of the business license fee and it's a risk of
10 doing business. We recognize that. Just like the risk
11 of fuel prices going up, just like the risk of an
12 unassured casualty loss or an unusually high workers
13 compensation responsibility, these various business
14 risks are why Recology is allowed to recover an OR or a
15 profit on its operating expenses and investment. OR
16 provides a regulated business like Recology the
17 incentive to make investments that entail risk. The
18 business license fee is an operating investment, just
19 like labor, fuel, truck maintenance, et cetera. These
20 expenses could all go up more than is anticipated in
21 these proceedings before the next adjustment in rates.
22 And that's why we believe Recology should be able to
23 recover an OR on the Brisbane business license fee just
24 like all its other operating expenses.

25 In the grand scheme of things we're not

1 talking about a lot of money. Inclusion of an OR for
2 the Brisbane business license fee would increase rates
3 by only 0.08 percent, which amounts to about 3 cents a
4 month on the rate. But the reason we press this is that
5 it's an important point going forward because it's just
6 one of the many investments that Recology is going to
7 have to make in the future to fulfill the City's
8 interest in developing a new zero-waste facility at the
9 Tunnel/Beatty site.

10 A point that we note in our objection is that
11 the Brisbane license fee is quite different from the
12 various fees that Recology and the City pay Alameda
13 County for the privilege of dumping waste at the
14 Altamont landfill. The difference is that the City
15 chose the Altamont landfill in 1987 and there are a
16 variety of Alameda County fees that go with that choice.
17 Funds to pay those fees are collected in the impound
18 account and Recology earns no OR on those amounts.

19 But the Brisbane fee is different, because it
20 is prompted by a business decision made by Recology, the
21 decision to locate facilities in Brisbane in the first
22 place and to work with the cities of San Francisco and
23 Brisbane on developing new zero-waste facilities.
24 Unlike the Alameda County fees, the Brisbane fee is a
25 business investment that carries risks. So Recology

1 asks the Rate Board to reverse this part of the
2 Director's Report and permit an OR to be earned on this
3 fee.

4 Thank you very much.

5 MS. YEUNG: Thank you.

6 So that's four of the five. Could I ask again
7 if Josephine Zhao or members of the
8 asianamericanvoters.org organization is available.
9 Okay.

10 So at this time what I'd like to do is
11 actually read on their behalf, since their objection was
12 only one page long. So it's roughly about three or four
13 minutes, if you could bear with me.

14 (Reading) Dear City Administrator Naomi Kelly
15 and the SF Rate Board: We and over 1,000 members at
16 asianamericanvoters.org, a grass-roots self-formed group
17 of predominantly monolingual Asian American immigrants,
18 hereby in writing appeal and strongly oppose the
19 Department of Public Works decision on June 14, 2013, on
20 approving Recology's proposed changes in residential
21 refuse collection and disposal rates.

22 We had collected 1,400 signatures in a month
23 out of the 3,052 opposing. We believe the rate increase
24 averaging 21.51 percent, or \$6.60 per month for a
25 typical single-family home and \$2 per blue and green

1 bins, are unreasonable based on:

2 One, ratepayers are double charged. Part of
3 the fee increase is used to cover the cost of Recology
4 to take over from the City certain responsibilities for
5 collecting refuse left on the streets and sidewalks, et
6 cetera. This is tax that we have already paid for. We
7 should pay -- and I think this is an error -- we should
8 not pay again.

9 Two, reducing black bin volume is not an
10 option. We have been recycling and composting
11 religiously in the past few years and have reduced the
12 black bin's volume. We cannot reduce the black bin any
13 smaller. This increase of 21.5 percent is pure money
14 gain for Recology.

15 Three, charging for recycling and composting
16 is wrong. Why punish us who recycle and help the
17 environment? Recology will get toxin collection
18 incentives from the manufacturers and can sell the blue
19 and green bin content for monetary gain.

20 Four, Proposition 218 Chinese explanation is
21 inadequate. The English version occupies one and
22 three-quarters page, but the Chinese version only has
23 two short paragraphs.

24 Five, lack of multilingual outreach. Most
25 monolingual ratepayers couldn't read the 218 notice -- I

1 think they're referring to Prop 218 notice -- and did
2 not hear about the rate increase in the Chinese and
3 Asian media. Outreach message should be splashed all
4 over. Outreach should have included
5 asianamericanvoters.org.

6 Six, Monolingual opposers at the June 11
7 hearing didn't know how to file written protest. Over
8 100 opposers showed up at the hearing. Most were our
9 monolingual Chinese ratepayers. None submitted a
10 written protest until told. Few heard from the Chinese
11 media. But they unanimously oppose strongly and
12 verbally at the hearing. This proves No. 4 and No. 5,
13 that both the Prop 218 notice and language outreach are
14 inadequate.

15 Seven, hardship on ratepayers. This is a huge
16 increase on the fixed-income ratepayers, mostly seniors
17 and minority. They simply cannot afford it.

18 Eight, hardship on all. Many small property
19 owners have a hard time passing through the fee
20 increases. Even if they can, renters would suffer.

21 Nine, cost of living adjustment is unfair.
22 Ratepayers have not received any COLA in the past few
23 years due to bad economy. Many even lost pay and some
24 lost job. Charging COLA in the expense of ratepayers'
25 hardship hurts ratepayers and others affected.

1 We strongly oppose the rate increase and the
2 charges on recycling and composting. Please drop the
3 \$2.00 on the blue and green bins.

4 Sincerely, Josephine Zhao, with extended
5 families of 15 members and over one thousand members of
6 asianamericanvoters.org.

7 So we're now at roughly 2:45. Okay all right.
8 So if we could move into the agenda item.

9 At this time are there other members of the
10 public who would like to submit a yellow speaker card?
11 If I can ask you, you do that now.

12 Sir, you didn't check a box. I wasn't clear
13 whether you were filing an appeal -- I'm sorry -- a
14 support of the objectors or --

15 MR. SCHENONE: I'm here against it.

16 MS. YEUNG: Okay. So it's going to be item --
17 hold on one second. Okay. On Item No. 5 is where we
18 have public comment in agreement with any or all of the
19 objections.

20 MR. SCHENONE: I'm here to address the
21 response from the Director of the Department of Public
22 Works primarily. You're trying to stick with what was
23 on the agenda, right?

24 MS. YEUNG: Right. And right now we are on
25 agenda No. 5, so -- which is at 2:30 or approximately we

1 were going to listen to public comment in agreement with
2 any or all of the objections No. 1 through 22 on agenda
3 No. 4.

4 So at this time are there any comments for
5 that item?

6 Sir, are you speaking in support of the
7 objections? And if it is, then you can speak now.

8 MR. SCHENONE: No, I'm not speaking in support
9 of the objections.

10 MS. YEUNG: Okay.

11 MR. SCHENONE: Well, yes, I am.

12 MS. YEUNG: Okay. Then why don't you come up
13 and speak. Good.

14 MR. SCHENONE: Okay. Well, you know, I guess
15 I have three minutes, right? Right.

16 MS. YEUNG: Yes, you do.

17 MR. SCHENONE: Okay. So I'm just going to
18 kind of ramble through this, considering --

19 MS. YEUNG: Excuse me. Could I ask you to
20 stop and state your name and spell it for the record,
21 please.

22 MR. SCHENONE: Yeah. My name is John
23 Schenone. And it's spelled S-c-h-e-n-o-n-e.

24 Okay, you know, generally speaking, this
25 thing -- this whole thing has been poorly thought out.

1 On the attorney that was last up here concerning the
2 Brisbane deal, I'm going to one of these meetings
3 between now and April and I brought to their attention
4 the fact that, you know, if they want to expand their
5 operation, they can go literally across the road to
6 Candlestick Park here. The Rec and Park Department
7 wants to unload some property there. And as a
8 consequence then, the City and County would not be
9 captive to the extortion from San Mateo County like
10 they're already getting screwed by Alameda County, okay.

11 Now, they talk about, you know, their cost and
12 all that jazz. Well, you know, part of that is their
13 fault, because several years ago -- four or five, ten
14 years ago, whatever it was -- they used to have
15 once-a-month service. And then, Oh, well, we're not
16 making any money. We cannot do that.

17 Well, the fact of the matter is nobody's
18 generating garbage, which they acknowledge in their own
19 paperwork here, both the City Department of Public Works
20 and the company. So, you know, if they're not cutting
21 it, they ought to go back to that. No place in this
22 material here do they talk about the fact that they're
23 floating the invoices 60 days out in front. In other
24 words you get an invoice in January and they're billing
25 you for March. Okay. So you take that and you multiply

1 it by 150,000 accounts, works out to a lot of dough.

2 No place in the Director's objection he talks
3 about how wonderful it is that a homeowner can go from
4 32 to 20 gallons. Well, you know, if you already got
5 20 gallons, there's no relief there. So, again, they
6 should implement right away by pay per setout. When you
7 go to the supermarket and you get 5 pounds of potatoes,
8 you pay for 5 pounds of potatoes not 10 pounds of
9 potatoes. Okay. So to pay for something that you don't
10 really get anything for it is baloney.

11 Also, in the Director's comments he says that
12 the companies receive some value for the recovered from
13 blue and green. Well, the fact of the matter is there's
14 no proof that they're not making any money on this jazz,
15 as far as I'm concerned.

16 Let's see -- they talk about here that there's
17 a 19.91-percent rate increase. But as a matter of fact,
18 there's a 20-percent increase and --

19 Okay. I'm out of time. Thank you.

20 MS. YEUNG: Thank you very much.

21 MR. SCHENONE: Do I only get one shot at this
22 for three minutes?

23 MS. YEUNG: Yeah.

24 SPEAKER: Yeah. All right. Thanks.

25 MS. YEUNG: Thank you.

1 Okay. Moving on to the next public comment
2 area, Item No. 7. Are there any comments in agreement
3 with the DPW Director's Recommended Order?

4 Would you please state your full name and
5 spell it for the record. Thank you.

6 MR. GARDINER: Of course. My name is Stuart
7 Gardiner. I appeared previously. It's S-t-u-a-r-t
8 G-a-r-d-i-n-e-r.

9 I just want to say -- make one point with
10 respect to the Director's Recommended Order on the
11 business license fee for Recology, which is that I
12 support the Director's position. I basically think
13 that, like taxes, which of course can be varied by
14 government at any time much the same way a business
15 license fee can, assuming it's all done according to
16 applicable law, any regulated business whose rates like
17 Recology's here are set by a governmental entity is
18 subject to that risk. And taxes, I believe, are
19 virtually universally treated as a pass-through item.
20 And I think that's the appropriate treatment here.

21 Thank you.

22 MS. YEUNG: Thank you.

23 Any other public comment in agreement with DPW
24 Director's Recommended Order?

25 Hearing none, Item No. 7 -- sorry. Item No.

1 8. So this is general public comment before the Rate
2 Board. No? Thank you.

3 So we're going to go to item No. 6, DPW
4 Director's recommendations and response to objections.

5 Director Nuru, if I could ask you, I think
6 there are new materials that were presented today from
7 your office. If you could address them in your
8 testimony. Thank you.

9 MR. NURU: After my report I'll --

10 MS. YEUNG: That would be great. Thank you.

11 MR. NURU: Thank you. Good afternoon,
12 Chairperson Yeung, Board Members Rosenfield and Carlin.
13 I am Mohammed Nuru, the Director of Public Works in the
14 City and County of San Francisco.

15 In my presentation today I would like to
16 address the process that I undertook to review the
17 companies' rate application, my primary finding and
18 recommendations, and primary themes that have been
19 raised in the letters of objections to my report.

20 We are now at the end of a nearly one-year
21 rate-setting process. In April of 2012 I issued an
22 order setting the rules of procedure for the
23 considerations of rate application from the companies.
24 Following these procedures the companies notified the
25 City that they intended to file a rate application in

1 September of 2012. They filed a draft rate application
2 in December and a final application in March of this
3 year.

4 The City obtained the services of a Ratepayer
5 Advocate, whom you've heard from today, whose role was
6 to provide the public outreach and education and to
7 represent the ratepayers in the rate process.

8 Two workshops were held -- one in January on
9 the draft application and another in March on the final
10 application where members of public were able to engage
11 in a discussion with the representatives of both
12 companies and DPW on the program and cost information
13 included in the rate proposal.

14 As Director I held six public hearings on the
15 companies' application for a rate increase. Staff from
16 the Department of Public Works and the Department of
17 Environment along with financial and waste management
18 consultants spent countless hours reviewing and
19 analyzing material submitted by the companies.
20 Representatives of the companies submitted a
21 cross-examination about their proposed programs and
22 expenses, as did representatives of DPW, who presented
23 information about DPW programs and expenses that are
24 funded through the impound account.

25 When the companies submitted their draft rate

1 application, they requested a rate increase of
2 23.75 percent and two contingent rate schedules that
3 would increase rates further if certain conditions were
4 met. At the conclusion of the process, I issued a
5 report and rate order that approves a 19.91-percent
6 increase in residential and apartment rates. I
7 rejected -- 19.91-percent increase in residential rates.

8 I rejected a proposed contingent rate schedule
9 for a land purchase for future facility expansion that
10 would have raised rates a further 0.55 percent; and I
11 did approve a contingent rate schedule that would allow
12 construction of a facility for experimental process of
13 trash to increase San Francisco's diversion of waste
14 from the landfill. When building permits are issued, I
15 will approve activation of this contingent schedule that
16 will increase the rates by an additional 0.13 percent.

17 In response to my order, five letters of
18 objections were filed citing some 22 grounds for appeal.
19 I have submitted to you a brief responding to each of
20 those 22 objections. And I will not attempt to
21 summarize my responses in the 15 minutes I have been
22 allotted, but either my staff or I can answer any
23 questions you have on any of these issues.

24 I do want to address the main themes or
25 issues that were raised by the objectors. First, I

1 would like to address questions about the process and
2 particularly the process surrounding the hearing on Prop
3 218. The process that I have been describing thus far
4 is one that is governed by a section of the
5 administrative code that was adopted by voter initiative
6 in 1932. The 1932 Ordinance laid out the timeline for
7 application and hearings, the requirements for public
8 notice of Director hearings and recommendations, and
9 created the Rate Board to hear objections to the
10 Director's Report and Rate Order.

11 In 2010, the City Attorney advised that refuse
12 rates were also subject to the requirements of
13 Proposition 218. This year there was a separate but
14 concurrent process as governed by the Proposition 218.
15 I have provided a notice describing that process and its
16 outcome to the Rate Board. Copies of this notice are on
17 the table with other materials for public objections.
18 Numbers 4, 5, and 10 are about the Proposition 218
19 process. As my notice shows, hearings were adequately
20 notified in English, Chinese, and Spanish; and all
21 materials were available in those three languages. We
22 did not receive any request for translation in advance
23 of the Proposition 218 hearing, so no translators were
24 provided. Nevertheless, the objections are not germane
25 to the Rate Board's proceedings under the 1932

1 Ordinance.

2 I do agree that the dual proceedings are
3 confusing to the public; and in the next rate process I
4 will work with the City Attorney's office to more
5 clearly separate the two processes. I also want to say
6 that in the future I will recommend that Mandarin and
7 Cantonese translators be available at hearings under
8 both the 1932 process and the Proposition 218.

9 Next I want to address the sentiment that the
10 rate increase is too high and that it will be a hardship
11 on many ratepayers, as expressed in Objections 7 and 8.
12 I recognize that the 19.91 rate increase is significant.
13 And in my brief I describe how many ratepayers can
14 reduce their monthly bills, but I want to talk about why
15 I recommend the rate increase that I did.

16 First, the companies documented their costs to
17 provide the service; and then the costs were thoroughly
18 examined during the process. Most of these increases
19 are related to labor costs, including healthcare,
20 workmen's comp, and salaries that were negotiated and
21 documented in their collective bargaining agreements.
22 The last time refuse rates went up was three years ago
23 when the cost-of-living increase went into effect.

24 Second, the companies demonstrated that the
25 revenues have been actually going down at the same time

1 their costs have been increasing. Some of the decline
2 in revenue is attributable to the economic downturn of
3 recent years. Much of this decline in revenues is
4 attributable to the success of the City's recycling and
5 composting program where customers have reduced the size
6 of their black bins and have moved to blue and green
7 bins which are currently free.

8 This brings me to the proposed fixed charges
9 and the new nominal charges for recycling and composting
10 service. Because so many of the expenses of the
11 companies are fixed and not related to the volume of
12 materials they collect, I believe that a fixed charge
13 for each residential unit makes sense. This is the
14 direction that water, sewer, and other utilities took
15 long ago. I also believe that as customers move towards
16 more recycling and composting service that we must begin
17 to charge, at least to some extent, based on the cost of
18 service. If we do not do this, we will continue to see
19 sharp declines in revenues as customers pay for smaller
20 and smaller black trash bins but continue to receive
21 free collection of their recyclables and compostables.

22 I do want to note that as we implement these
23 charges, the relative cost of the black bin goes down.
24 It also means that as we implement charges for recycling
25 and composting, the cost increase for those who are

1 already doing as much as diversion as they can will see
2 larger increases in their rates relative to customers
3 who are not diverting their waste.

4 Now I want to talk about abandoned materials
5 collection. Illegal dumping has been a bigger and
6 bigger problem in San Francisco in recent years.
7 Instead of putting materials in their regular trash,
8 self-haul to the dump, or scheduling a bulky item
9 pickup, more and more ratepayers have been leaving their
10 junk on the streets or putting it next to our public
11 litter containers. Last year we received over 11,000
12 311 calls relating to abandoned mattresses alone.

13 Evidence was presented that shows that DPW has
14 not been keeping up with the collection of these
15 materials from the streets. The City asked the company
16 to make a proposal for how they could tackle the
17 problem. Waste collection is, of course, their core
18 competency. The companies responded that they would
19 assign two trucks to each area in the city, a packer
20 truck and a box truck, that will collect materials that
21 can be recycled like mattresses and furniture. When DPW
22 collects a full or queen-sized mattress now, they go
23 into our packer trucks and they end up in the landfill.
24 The companies propose to pick up materials within four
25 business hours of a 311 call on weekdays and within

1 eight business hours on weekends and holidays, much
2 faster than DPW is able to do with its funding levels.

3 Objections have been raised saying that it's
4 not appropriate to include these costs in the rates. I
5 disagree.

6 First, these questions were raised in the rate
7 process in 2010 and 2012. And an independent hearing
8 officer found these expenses were legitimately included
9 in the rates. Those decisions were upheld by the Rate
10 Board.

11 Second, we have demonstrated that the source
12 of materials collected from the sidewalk is residential
13 and commercial ratepayers. The programs are paid for
14 proportionally by each class of ratepayer.

15 Third, under the San Francisco Police Code.
16 It is property owners and not the general public who are
17 responsible for keeping litter and abandoned materials
18 off public sidewalks abutting their properties. It is
19 the ratepayers who benefit from the service, as they are
20 not required to pay for removal of refuse left on the
21 sidewalk fronting their property.

22 This concludes my presentation. Thank you for
23 the opportunity to speak to you today. My staff and I
24 are available to answer questions that you may have.
25 Thank you.

1 MS. YEUNG: Thank you, Director Nuru.

2 At this time, Members, if you have questions
3 for any of the speakers thus far?

4 If I could ask the Director to come back up, I
5 have a couple of questions.

6 Thank you for the explanation about the Prop
7 218. I believe you have a memo that was issued today.
8 And is it available to the public? I just want to make
9 sure that the public was aware of the memo, if it's
10 posted on the Website or if it's available here.

11 MR. NURU: Yes, it is. It is on the table,
12 yes.

13 MS. YEUNG: Thank you.

14 So one of my questions is, I think when people
15 talk about the economic hardship and the 19-percent
16 increase, I'm aware that you have programs that help the
17 low-income population. Is it clearly defined and is
18 this program communicated in Chinese, Spanish, and other
19 languages so that the population when they see this
20 increase will be able to access that program?

21 MR. NURU: We continue to work to do that and
22 reach out to the various communities and as we did in
23 the rate process itself. But I will ask staff to
24 respond to that. But both Department of Public Works
25 and Recology make an extra effort to make sure that we

1 reach the communities that we need to.

2 And there is a portion that provides for
3 hardship.

4 MS. YEUNG: Can you just spend a little time
5 speaking about how that program can help the low-income.

6 MR. LEGG: Sure. Douglas Legg from the
7 Department of Public Works.

8 In 2001 we approved a LifeLine rate for
9 low-income ratepayers. And that's administered by the
10 companies. They're intending to advertise that in their
11 newsletters and announcements of the rate increase, what
12 the eligibility requirements are. I'm sure that they're
13 going to be having notices about it in both Chinese and
14 in Spanish in the materials that they're sending out.
15 They also have both Chinese -- both Mandarin and
16 Cantonese -- speakers at their customer-service centers
17 as well as Spanish-language people. So they are doing
18 multilingual outreach in those areas. The companies can
19 probably speak more directly to this, but it is
20 something that's funded through the rate process and has
21 been included in the rates, as I said, for about 12
22 years.

23 MS. YEUNG: Do you know approximately what
24 that relief is at a certain percentage --

25 MR. LEGG: It's a 25-percent discount over the

1 base charges.

2 MR. CARLIN: I'd like to ask Mr. Legg a
3 question. In the summary documents, which is Exhibit 13
4 that was given to us by -- I forget which person now --
5 Mr. Kubitz. Thank you. Your April 11th, 2013, memo it
6 says, "Abandoned materials collection, 2.209 million,
7 15.5 FTEs." Is that fully loaded with your overhead and
8 everything else?

9 MR. LEGG: It is.

10 MR. CARLIN: It is. So --

11 MR. LEGG: That's correct.

12 MR. CARLIN: Okay. So it's fully loaded.

13 Okay.

14 MR. LEGG: It is. What we didn't -- I mean
15 the differences between the DPW cost and the Recology
16 cost they're run twice as many trucks as we are. We run
17 a single packer truck. They running two trucks as they
18 do with bulky item collection. It means both they're
19 going to be able to do more diversion, we learned; and
20 it also means they have a lot more capacity to be
21 responding to calls. And so they're going to be doing a
22 much better job than we've been able to do over the last
23 few years in getting abandoned materials off of the
24 sidewalks quickly. Our costs did not include -- though
25 they're fully loaded with overhead, they don't include

1 supervision costs which are not in our overhead. These
2 are direct costs and we didn't try to allocate
3 supervisory costs that are in the general fund to that
4 program. And we don't currently pay for disposal costs
5 and Recology is really showing how -- so DPW has for
6 many, many years received a certain allotment of free
7 tons -- our street sweepings and those kinds of things.
8 We don't pay disposal costs. As it's shifted into
9 Recology's area, they become revenue tons. And a
10 summary showing cost of disposal for those tons. We did
11 not have to pay them directly out of our budget, but the
12 rate base has always paid -- we could have calculated
13 what those disposal costs are and have an
14 apples-to-apples comparison. We could have put them
15 into that analysis because the disposal costs are being
16 paid for now.

17 MR. CARLIN: And that's correct? It's in the
18 Recology analysis? They actually include disposal costs
19 and also the cost of new capital costs, trucks, and
20 things of that nature which are not included in your
21 analysis or --

22 MR. LEGG: Our cost -- our truck costs are
23 part of our loaded overhead rate.

24 MR. CARLIN: Okay.

25 MR. LEGG: So they are recovered and shown in

1 that 2.2 million.

2 MR. CARLIN: That's just for five trucks, not
3 ten?

4 MR. LEGG: That's right.

5 MR. CARLIN: Okay.

6 MS. YEUNG: Mr. Legg, it's in the materials;
7 and I thank you for that. But I think for this
8 particular program that abandoned materials, could you
9 speak simply about how you currently have the program,
10 how you pay for the program, what resources DPW uses,
11 and what the changes are under the Recology scenario?

12 MR. LEGG: Sure. Right now we have -- and in
13 this case in our 2012-'13 budget -- we had budget for
14 essentially five routes operating during the week and
15 about four routes on weekend, so it's more than ten FT.
16 That we're operating 24/7. And occasionally, also,
17 there's a swing-shift route that's included in those
18 costs. And we run packer trucks. They have a driver
19 and a laborer who is called a packer. That's what that
20 person is called. And they respond to 311 calls also as
21 they're cruising around the City. If they see a
22 mattress on side of the sidewalk, they stop, they pick
23 it up, they throw it into the packer truck. Those
24 packer trucks also have three meeting times during the
25 day where people in more outlying areas of the city

1 further from Tunnel and Beatty. All of our pickup
2 trucks that are part of our litter patrol who are also
3 picking up materials, they meet those trucks at
4 designated times and put the materials into the packer
5 trucks. That saves a lot of extra dead-heading back and
6 forth to Tunnel and Beatty during the day.

7 The Recology proposal is essentially the same
8 model, except they're going to have two trucks running
9 in the five zones in the city. They'll be responding to
10 calls. If they're heavy items that are identified in
11 311 and you need two people to get it into either truck,
12 the trucks will go in tandem. And I think much of the
13 time that's what they'll be doing as they're scheduled
14 they're going to get a run of locations they'll be
15 dispatched they'll probably run in tandem for the part
16 of the day that they already know the location of items.
17 And as I understand it, they're going to be dispatched
18 as calls are coming in during the day. They have
19 proposed service standards that say that they will pick
20 up materials within four business hours on weekdays of
21 any 311 calls that come in. So if you call at 4:30 in
22 the afternoon at the end of the day, they're going to
23 get that picked up by 8:30 at night. If you call at
24 5:00 o'clock, which is after the close of their business
25 hours, there's a longer time that they're doing to have

1 to respond. They are going to have a smaller number of
2 trucks as we go out on weekends and they're given an
3 8-hour performance standard. We currently do pick up
4 most in the majority -- I don't even want to say most --
5 but the majority of items we're picking up in that time
6 frame. But we have a service-level agreement that says
7 we're going to pick everything up within 48 hours of the
8 311 call. And we, through years of budget cuts and
9 taking down staff on that program -- we used to have
10 more people on that program -- we meet that
11 service-level agreement only about 75 percent of the
12 time. So almost 25 percent of the calls, stuff is out
13 there for more than 48 hours. Probably 50 percent of
14 calls materials are picked up within 4 hours. But
15 because of routing and staffing levels, we don't have
16 the ability to meet those standards.

17 Does that answer your question?

18 MS. YEUNG: If you could also address the cost
19 portion of this, like how much is it funded now through
20 DPW?

21 MR. LEGG: Oh, so --

22 MS. YEUNG: New costs?

23 MR. LEGG: You know, right now a portion --
24 about 20 percent of the costs of our street cleaning
25 services, including hazardous -- not hazardous wastes --

1 abandoned materials collection is covered through the
2 impound account. That's all of our manual street
3 sweeping, litter patrol, and abandoned materials
4 collection is on the impound account. Mechanical street
5 sweepers are not on the impound account. They're funded
6 through the gas tax and through a work order from the
7 Public Utilities Commission. A small -- that's getting
8 too much into the weeds, I think.

9 And then the remainder of those abandoned
10 materials costs are currently funded through the general
11 fund. So it's probably about \$500,000 is currently paid
12 for through our allocation of impound account funds; and
13 the other \$1.7 million or so is from the general fund.

14 And I should add that in the budget that's
15 currently before the Board of Supervisors we have
16 funding for one driver and one packer for abandoned
17 materials collection. That's mostly because we want to
18 have somebody available for dealing with homeless
19 encampments, for political activities, things like
20 Occupy San Francisco and other kinds of events like
21 that.

22 MR. ROSENFELD: Does something change related
23 to the diversion of materials collected between the way
24 it's currently being handled by Public Works staff and
25 the way it's going to be or proposed to be handled?

1 MR. LEGG: Yes, because of dual trucks, we
2 think that we got to the diversion area when we drove
3 our pickup trucks, probably about 1,000 out of those
4 11,000 mattresses that we got 311 calls, about 1,000 of
5 them were diverted to recyclers that Recology has
6 relationships with. And 10,000 of those went into our
7 packer trucks. They just get squished up with
8 everything else and they go into the pit.

9 And so that last -- the last tab on
10 Mr. Kubitz's under No. 10 it actually is part of the
11 record. It's Exhibit 98, so it's okay for you guys to
12 look at it. But you're going to see a huge portion of
13 DPW picked-up collected waste is not diverted right now.
14 A large proportion of that under the new proposal will
15 be diverted to landfill -- I mean from landfill. And I
16 don't have it in front of me so I can't speak to it
17 immediately, but I can give you more details if you
18 want.

19 But there's also a lot of furniture and other
20 kinds of material that's on the street that can be
21 diverted.

22 MR. ROSENFELD: Mr. Legg, I don't know that
23 you're the right respondent to this, so let me know if
24 not. But to Mr. Kubitz's concern regarding growth
25 projections and how they work into the rates, can you

1 talk a little bit about how the proposed rates -- we
2 talked about kind of economic deflation and recession
3 being a reason for the increase. That won't be
4 permanent. How are rates built going forward in terms
5 of population growth or economic activity in the City
6 resuming?

7 MR. LEGG: This was a very large concern for
8 the entire City team in investigating the rates. And
9 our initial reaction to it was to seeing revenues
10 remaining flat, as the companies propose in their rate
11 application, was the same as Mr. Kubitz. We thought
12 that's not reasonable. We're seeing property taxes, all
13 kinds of increases in economic activity; and we would
14 expect that waste generation would go up with those.
15 The companies provided an exhibit, Exhibit No. 49; and
16 what that showed was they compared all kinds of economic
17 indicators as they've been changing over recent years
18 with the revenue; and the revenues are largely driven by
19 what's going into the black can. And so we have a
20 situation that's kind of like with the gas tax. Even as
21 economic activity is increasing, diversion is
22 increasing. They're showing at a higher rate. And so
23 kind of revenue tons, if you will, are not going up
24 substantially. And they made arguments on the record.
25 They were showing that a lot of the new office space

1 development that's occurring is in the tech field and
2 that there's much, much less paper than there used to
3 be. And so paper generation, instead of being revenue
4 that comes to them through disposal, they're able to
5 sell that paper. And so with the disappearance of
6 newspapers and electronic offices, their revenues from
7 recyclables and that revenue is reduced from their net
8 revenue requirement. So the more they're able to
9 recover through recyclables, the lower the rates go.
10 That's also going down. So we did examine all kinds of
11 places where that was happening. We did find that there
12 are a lot of apartment buildings that are coming online,
13 a lot of apartment units. And we actually in the
14 Director's Report recommended increasing revenue on
15 those apartment buildings. We did not -- we're making
16 an assumption that the companies do not need to add
17 routes to pick up those additional services. So from
18 those 4,000 units that we think are going to come
19 online -- either have come online in the last couple of
20 months or come online during Rate Year 14 -- the revenue
21 is in the rates that have the effect of lowering the
22 required rate increase. And we assume that they would
23 not have to increase expenses by adding those.

24 So I believe that the record showed that we --
25 where there was additional revenue that would help lower

1 the rates that that's included in the Director's Report
2 and the evidence that we examined to make sure that we
3 were capturing all of that revenue from economic growth
4 is also there.

5 MR. ROSENFELD: And do I take it from the
6 Director's Report, or my reading of the Director's
7 Report, that you basically specifically picked up
8 several buildings that are in the pipeline for that
9 growth?

10 MR. LEGG: That's correct. And we looked at
11 the pipeline report. We actually went out and added --
12 we found a few more buildings that were -- had already
13 fallen off of the pipeline report that were either about
14 to open or had opened. So we really, in talking to the
15 Department of Building Inspection and Planning and the
16 Assessor's office, we really were digging for as many of
17 those calculations as we could find. And I think,
18 between the Department of Public Works and of Department
19 of Environment staff, I think we found the right number,
20 at least for Year 1, which is what we are setting rates
21 for.

22 MR. ROSENFELD: And then remind me how that
23 changes as we get into future years with the CPI and
24 kind of what staff grappled with there. So if this does
25 turn into several years before we see another rate

1 application we do apply CPI and we do see additional
2 residential growth in the city, how does that kind of
3 all play through, for one of the newcomers on this
4 Board?

5 MR. LEGG: Sure. So included in the
6 Director's Report -- and this has also been in the rates
7 at least since 2001 -- we do an annual cost of living
8 adjustment. It's based on a weighted formula on tying
9 certain costs to certain indices, primarily to CPI, but
10 there are capital costs that have a zero -- those costs
11 are fixed and they're not going to go up, so they have a
12 zero weighting. And so on the cost side, there will
13 likely be COLA increases in the years before they
14 come -- the company comes in for another rate increase.
15 We don't really have a revenue COLA mechanism. The
16 assumption is that, if revenues are growing by a
17 substantial amount, the cost of providing that service
18 and disposing of those tons or processing those tons is
19 also going to be going up.

20 MR. CARLIN: Is there a cap on CPI or the
21 COLA?

22 MR. LEGG: There is not a cap on CPI. I think
23 that there's a cap on a portion of it which is tied to
24 labor. But that portion is of the COLA mechanism and is
25 capped at 5 percent and based on CPI for the last ten

1 years. I don't imagine they're going to get close to
2 that cap.

3 MR. CARLIN: And if there are excess
4 revenues -- I mean this is all based on projections.
5 But if there are excess revenues, what happens to those
6 and how does that true up after the fact?

7 MR. LEGG: There isn't a true-up. So as
8 Mr. Baker mentioned, we don't do retroactive
9 rate-making. There are caps on -- because many of the
10 apartment customers under these new rates, especially as
11 we're beginning to have fixed per-unit charges and the
12 charges on recycling and composting, there are a number
13 of apartment units that would actually be seeing -- the
14 19.91 percent is the overall increase. Some customers
15 would be seeing significantly larger increases, up to
16 50 percent. I think some slightly above that. And so
17 the company is capping the increase at 25 percent in the
18 first year; and it increases to 50 percent in the second
19 year.

20 But we're anticipating that after the cap
21 comes off, there's going to be about \$4 million in new
22 revenues through that COLA mechanism. We're proposing
23 splitting -- half of it comes back to the ratepayers and
24 would reduce whatever the COLA increase is. And we're
25 assuming that the other half is actually going to

1 evaporate as those apartment buildings start using more
2 and more diversion service.

3 And the people that are going to be paying
4 larger increases, we are assuming that, as the cost for
5 picking up the black cans gets harder, that they're
6 going to be incentivized to actually change the level of
7 service and reduce their capacity. And it's a best
8 guess. It's not anything else.

9 I believe that if there's a huge amount of
10 excess revenue -- we get quarterly reports and annual
11 reports on expenses and revenues -- the City can come in
12 with a rate application to lower rates in order to
13 accommodate the new revenues. There are other kinds of
14 safeguards that we could use in order to make sure that
15 the company isn't getting too much excess profit. I
16 should say we're anticipating another rate application
17 that would reset everything in two or three years.

18 MR. ROSENFELD: Can I ask another question of
19 either you or the Director. Your recommendation not to
20 have an OR on the Brisbane fee -- can you explain that
21 or elaborate a little bit on that.

22 MR. LEGG: We believe it's a pass-through. We
23 believe that the risk to the companies is relatively
24 low, that the fee is going to go up substantially before
25 they come in with another rate application. We looked

1 at an OR study that found similar fees and taxes were
2 generally considered pass-through fees, so we felt that
3 that was appropriate.

4 MR. ROSENFELD: Is San Francisco's business
5 tax treated as a pass-through.

6 MR. LEGG: It is not. So there are a number
7 of fees that historically have not been treated as
8 pass-through fees; and the San Francisco one is not --
9 has not been treated as a pass-through fee. They are
10 eligible for OR.

11 MR. ROSENFELD: What defines that line? Is
12 it similar or is it really staff's determination --

13 MR. LEGG: You know, it's this process every
14 year. So I don't know how long it was an OR expense,
15 but disposal tons used to be the actual cost. The
16 tipping fee at Altamont was an OR expense and in the
17 2006 rate process we made that a pass-through fee. The
18 Director recommended and the Rate Board approved that
19 that be a pass-through fee. But at the same time we
20 adjusted the OR. And so it was essentially
21 revenue-neutral for the companies, because we had a
22 pretty high OR. A higher OR means lower profit margin.
23 When we took that \$4- or \$5 million out of the base for
24 calculating OR, we increased -- we lowered the OR so it
25 would essentially be revenue-neutral on the companies.

1 We took disposal tons out because we felt it was a
2 perverse incentive. On one hand we are saying we're
3 going to reward you if you reduce the number of tons
4 that you dispose and on the other hand we're giving you
5 extra profit if you dispose more tons.

6 MR. ROSENFELD: Counter-intuitive.

7 So what would be an example of a tax that is
8 current pass-throughs? Is it property tax, for example,
9 or -- thinking of things that are analogous --

10 MR. LEGG: In our OR study we found that
11 different jurisdictions who use OR use many different
12 formulas and they have different things that are
13 pass-through and not pass-through. Right now the only
14 things that are pass-through are the impound account,
15 which are all of the kind of regulatory fees related to
16 disposal and the disposal tons at Altamont itself. And
17 then nothing else is used -- nothing else is considered
18 a pass-through expense in the rates.

19 The companies argued six years ago OR was
20 not -- except on this business question -- was not at
21 issue in this rate proceeding. The companies in the
22 past have argued that their OR is too high and it should
23 be lowered. And they have in the past shown a lot of
24 kind of surveys that show that. So it's not as easy as
25 this should be a pass-through/this shouldn't be a

1 pass-through. It really is a lot of moving parts in
2 that question.

3 MS. YEUNG: Can I ask you to address -- so we
4 understand the percentage. But for an average household
5 in San Francisco, what are they currently paying and
6 what would they pay, given the new rate increase?

7 MR. LEGG: Right now they're paying \$27.91 a
8 month. And I think that they would pay \$6.00 -- this is
9 what the application called for -- about \$6.60 more a
10 month. It's lower than that. So 34.08. And if you
11 reduce -- if you move from a 32-gallon black bin to the
12 20-gallon bin, you actually see a reduction to about
13 under \$26. So the average household right now has three
14 32-gallon bins. Reducing the size of the black bin
15 actually can lead to a rate decrease.

16 MS. YEUNG: So let me assume the 34.88, that
17 would include a \$2.00 blue bin and \$2.00 green bin as
18 well?

19 MR. LEGG: It does. That's the entire --
20 we're trying to compare what the average household bill
21 now to the average household bill -- everything.

22 MS. YEUNG: Everything. Okay. Thanks for
23 clarifying that.

24 MR. LEGG: Yeah. The charge on the black bin,
25 which right now is 27.91, goes down to below -- the

1 32-gallon bin goes down to \$26.00 or so. So it
2 actually -- the charge on the black goes down.

3 MS. YEUNG: Thank you.

4 MR. ROSENFELD: Can you talk a bit about the
5 special reserve fund which we've been talking about for
6 the last couple of years. Again Mr. Kubitz's objection
7 related to the 29 million versus the 15 million.

8 MR. LEGG: Yeah. Mr. Kubitz, in responding,
9 is referring to -- I believe it was Exhibit 14. And he
10 cited where it says it's enough and you should -- it's
11 okay not to be adding to that is essentially what the
12 2012 hearing officer's report said. And so in 2012 we
13 stopped adding to it and instead redirected the
14 1.3-percent surcharge that was going into the special
15 reserve instead to the impound account to pay for DPW
16 services at that time.

17 The Rate Board said this is kind of -- this
18 doesn't make a lot of sense to us. Eliminate the
19 surcharge when you do a rate process next time. And so
20 that's what we've done. But we have not added anything
21 to the special reserve since 2010, when deposits into
22 the special reserve ceased. There have been nominal
23 interest earning since then. I think my recollection
24 from the 2012 Rate Board is that it's difficult to take
25 funds out of the special reserve once they have been

1 deposited there.

2 And there was discussion at the rate process
3 this time, particularly related to the issue that Ms.
4 Wuerfel talked about a new land purchase which the
5 companies had submitted a contingent rate schedule to
6 purchase. There was some discussion that it makes sense
7 to use revenues in the special reserve to buy that
8 property. It's about a \$15 million cost, if you will,
9 so ratepayers, probably through the City, could
10 potentially own the property; and then Recology would be
11 operating it. I think that there's a lot of interest in
12 using any remaining special reserve revenue once our
13 obligations at Altamont are either completely closed
14 down or whether at such time that we don't, that we
15 don't have such a large obligation that we would use
16 those funds for future zero-waste facilities, be it land
17 or equipment or process, that those funds would be
18 rolled back into the rates to reduce further rate
19 increases as we're moving towards zero waste. I don't
20 recall, except at the very end of the rate process, any
21 suggestion that we start spending down special reserve
22 now in order to contain the rates.

23 MR. ROSENFELD: So in your mind the event
24 that triggers a review of the size of that reserve is
25 really the closure of our relationships at Altamont?

1 MR. LEGG: Well, it's really through the
2 facilitation agreement. And I'm going to ask that
3 somebody who knows a lot more about this than I do
4 speak.

5 MR. OWEN: Thank you. Tom Owen, City
6 Attorney's office.

7 The Rate Board has jurisdiction at this point
8 over the surcharge. I don't believe there's any
9 proposal to continue the surcharge at this point. The
10 funds currently in the special reserve are controlled by
11 our contractual obligations under the facilities
12 agreement. Technically, the Rate Board could not reach
13 into those funds. However, under the facilitation
14 agreement at the end of our contract with Altamont and a
15 period after that, the Rate Board will have jurisdiction
16 over how to use any remaining funds; but it must be for
17 the benefit of the ratepayers.

18 MR. ROSENFELD: Remind me of the duration of
19 that agreement as it currently stands.

20 MR. OWEN: It's expected to end in 2015, 2016,
21 depending on how much we actually dump there.

22 MR. CARLIN: Thank you.

23 MS. YEUNG: Mr. Legg, for the illegal dumping
24 issue, did I hear correctly that that cost is being
25 shared by both residential ratepayers and commercial?

1 MR. LEGG: In the proposal, yes.
2 Proportionately, it's a cost. In the way we're setting
3 rates right now, it's on everybody. So the cost of the
4 abandoned materials collection would come
5 proportionately from commercial -- I think Mr. Nuru said
6 this is from all classes of ratepayers -- commercial,
7 apartment, residential ratepayers. So it's not
8 exclusively on the residential and apartment rate base.

9 MS. YEUNG: Thank you.

10 MR. ROSENFELD: Another one for the Director
11 for Mr. Legg. To Mr. Gardiner's Objection No. 10. Can
12 you talk us through the regarding the process and
13 closure of process prior to the issuance of the
14 Director's Report?

15 MR. LEGG: This is an issue where I think
16 there has been confusion around the dual processes. The
17 July 14th date was the date of the Prop 218 hearing.

18 MR. CARLIN: June.

19 MR. LEGG: June 14th was the Prop 218 hearing.
20 And the record on the 1932 Ordinance proceeding closed
21 with the last Director's hearing. I think that there
22 was confusion about when the record was closed. And I
23 do feel like the City Public Works did not do everything
24 that we could do to clearly delineate those two
25 processes. And I think you see that in more than one of

1 the objections that's been raised.

2 We don't know of any factual objections or
3 evidence or any more material that would have come into
4 the record. I haven't heard from Mr. Gardiner what it
5 was that closing the record meant could not have been
6 entered and that he didn't include in his objections
7 today. And it would be helpful to what it is that the
8 record could have included. And I don't think that we
9 would object if something from the Prop 218 process was
10 introduced.

11 We have heard a lot of information about that
12 Prop 218 process here. It doesn't seem like we're -- I
13 leave it to the attorneys to say what's on the record
14 and what is not on the record at that time.

15 MR. CARLIN: The logical follow-up to
16 Mr. Gardiner, if you're available: Are there specific
17 findings you feel like that closure did not allow you
18 the opportunity to bring forward?

19 MR. GARDINER: Personally, no. The problem is
20 we don't know what was submitted in the three weeks
21 between the close of the last hearing and the ordinance
22 process, specifically June 14th. We just don't know.
23 And what I was suggesting is that the record ought to be
24 reopened to at least include those materials, see
25 whether there are any comments or objections that might

1 flow from them. I have no way of knowing whether you
2 would find anything of merit in that or not.

3 But if I may take just a moment more, I want
4 to emphasize, because there were two notices posted on
5 the DPW Website. One of them is attached to the memo
6 that was referred to earlier about the Prop 218 process,
7 dated July 5 from Mr. Nuru. But the other one which I
8 quoted -- well, I quoted both of them in my written
9 objections, but I quoted the other one in my oral
10 presentation earlier. And that was a notice of the
11 schedule of the rate hearings themselves. It was not a
12 Prop 218 document. And so I think that "confusion"
13 would be a polite word to apply to what that may have
14 created among the public.

15 MR. CARLIN: Thank you.

16 MR. BAKER: May I address that point?

17 MS. YEUNG: Please.

18 MR. BAKER: Mike Baker, attorney for Recology.

19 I just wanted to point out that the record
20 that closed on May 22nd at the last Director's hearing
21 was the evidentiary record. When the Prop 218 hearing
22 occurred, people were allowed to submit objections,
23 which some did. And then at a later date was the
24 deadline for filing objections to the Director's Report.
25 But I think it's important to distinguish between the

1 evidentiary record and objections. And no one has come
2 forward, including Mr. Gardiner, to say that there's any
3 evidence that he or others wanted to put forward at the
4 time of the 218 hearing that they were somehow not
5 offered an opportunity to do before the evidentiary
6 record closed.

7 And also I think that the Prop 218 notice in
8 its entirety does make clear that under Prop 218 what's
9 invited is objections to the rate change and that if a
10 certain number of objections are filed, namely more than
11 half, then action would occur under Proposition 218,
12 according to that notice. But I don't think the Prop
13 218 notice, fairly read, could be interpreted to say
14 that the evidentiary record under the '32 Ordinance was
15 remaining open.

16 Thank you.

17 MS. YEUNG: Thank you.

18 Mr. Legg, can I ask you to address item No. 18
19 by Ms. Wuerfel regarding DPW receiving a \$3.3-million
20 windfall from the City's general fund if DPW-collected
21 abandoned waste is shifted to Recology and financed by
22 ratepayers and that the general fund amount remain in
23 the DPW's budget.

24 MR. LEGG: DPW asked for -- DPW submitted in
25 its budget and stated very clearly that we were

1 intending to eliminate positions related to abandoned
2 materials collection and illegal dumping collection.
3 And the Mayor's Budget Office was keenly aware that it
4 was subject to the rate process that was going on. And
5 they indicated that we should go forward with that. And
6 it resulted in a not quite \$2.2-million savings, because
7 we didn't eliminate every single position related to
8 that.

9 At the same time we submitted initiative
10 requests totaling more than, I think, \$5 million for
11 additional supervision of youth workers of some of our
12 workforce, development people and Project 20 people. We
13 submitted general fund requests for a lot more money for
14 tree maintenance. We submitted, as I said, about \$5
15 million worth of additional requests for services. And
16 we were fortunate enough to have the funds that were
17 previously earmarked for illegal dumping cleanup
18 transferred to beefing up our supervision. We had --
19 about five years ago we had something like 60 general
20 Laborer Supervisor I's in our budget. Over time, with
21 the budget cuts, not only did illegal dumping get cut,
22 but almost everything else in our budget was reduced.
23 We were down to about 32 people. We simply didn't have
24 the staff to be managing all of the people from the Jobs
25 Now program that we're getting from Project 20 and SWAP

1 that were supervising on weekends. So that is where
2 those funds were reallocated to. And I know other
3 departments also had a lot of general fund initiatives
4 that were funded.

5 I don't consider it to be a windfall. I
6 consider it to be a part of the budget process. And I
7 think that it was very transparent and shared in the
8 hearings what it was that we were requesting. It is
9 true that when the hearing started in April that we did
10 not know exactly what the Mayor's Office out of all of
11 our initiatives was going to fund. And we promised as
12 soon as that information was available, that we would
13 make it available, which we did.

14 MS. YEUNG: Thank you.

15 MR. ROSENFELD: One last question. I
16 apologize.

17 MR. LEGG: No, it's fine.

18 MR. ROSENFELD: One last question for me for
19 today anyway, which I'll say until I ask another
20 question.

21 So to Ms. Wuerfel's question: What do you
22 think establishes the reasonable bound for waste
23 recovery programs that Recology themselves can bear? I
24 mean in terms of a service level, for example, what's
25 appropriately borne by the rate base through Recology?

1 How do you determine that line through the budget
2 process?

3 MR. LEGG: I'm not sure I'm understand your --
4 I'm not sure what you're asking.

5 MR. ROSENFELD: What determined this specific
6 amount of reduction that occurred in the Public Works
7 budget would be one way of asking it. And then how did
8 you arrive at the service-level expectation with
9 Recology for the program that they're assuming? What --
10 if you can define briefly both sides of the equation,
11 what did you determine was appropriate to eliminate and
12 then how -- what was the service level and how was it
13 crafted with Recology?

14 MR. LEGG: The Director of Public Works will
15 answer that.

16 MR. ROSENFELD: Thanks.

17 MR. NURU: Thank you. So as you heard from
18 testimony, as a department we haven't been really doing
19 a good job at collecting all the abandoned waste. And
20 mostly it's mattresses, it's computer equipment, it's
21 furniture.

22 So obviously when the rates were coming up,
23 this is an area that we felt that by working closely
24 with Recology that since they are out there and they
25 perform a similar service for the residents and

1 commercial that then we should look at a better way to
2 capture a lot of abandoned waste. That led to looking
3 at service level and what we would be able to capture.
4 I think that then led to a discussion of what would be
5 an ideal operation where we would have two different
6 trucks going out, looking at the type of material that
7 we're getting. So one of the things we looked at was
8 mattresses, for example -- 11,000 mattresses, 10,000 of
9 those were going to the dump -- to try to separate and
10 sort out. On the service level we also know that if we
11 did not get them on time they end up becoming items on
12 our streets. Homeless people pick them up. Other
13 people pick them up. And they stay on the streets for a
14 long time.

15 So we kind of figured out that, at least
16 during the week when in full operation, that a four-hour
17 service level makes sense. I think a couple of pilots
18 were done just to get an idea. And I think the
19 discussion resulted in the number of calls of what was
20 reasonable by number of calls. On weekends, obviously,
21 a service level was set because of less staffing in
22 terms of being able to recover those items. And so
23 that's how we kind of set the service levels. And I
24 think it's experimental for both sides. So we're
25 definitely going to collect data. That data is coming.

1 All those requests do come through our 311. And
2 eventually we'll see how operational it is in recovering
3 them.

4 MR. ROSENFELD: Excuse my lack of expertise
5 in parts of this world, but is there something about the
6 longer something is on the street the less likely it is
7 able to be diverted from a landfill? Does contamination
8 of a mattress, for example, occur the longer it sits on
9 the street?

10 MR. NURU: Well, I mean just like graffiti or
11 any other items, it breeds, so it collects -- it
12 attracts more abandoned material. So by cutting that
13 time I think saves more attraction of what garbage
14 brings.

15 Then, secondly, when they're wet or they get
16 damaged, then it's much harder to recycle them. So it
17 becomes harder. So the sooner we get them -- the sooner
18 we can get them off the street, I think the more we're
19 able to recycle and reuse.

20 MR. CARLIN: Let me ask a follow-up question.
21 Now you have performance metrics. And is that part of
22 the agreement with Recology on those performance
23 metrics? And how do you monitor those? And if you
24 don't meet those, what happens?

25 MR. NURU: So in terms of performance metrics,

1 I think what we worked out is a certain number of items
2 that would be reasonable and I don't know what that
3 number --

4 MR. LEGG: I apologize. What was the question
5 about the penalties and performance standards?

6 MR. CARLIN: So there are now performance
7 metrics that you've talked about in this rate
8 application of four hours, eight hours, two trucks. And
9 it exceeds performance metrics that you had when you
10 were saying, like, 48 hours. What happens? Are you
11 monitoring those performance metrics? What happens if
12 they don't meet the performance metrics? Does the cost
13 stay the same? Is it only, like, 3.6 million and that's
14 it and they have to meet the performance metrics or
15 exceed them?

16 MR. LEGG: We actually have in the Director's
17 Report -- thank you for the question. We are set up to
18 track the opening and closing of 311 requests. We have
19 confirmed that we can have hourly measurement. And the
20 Director's Report proposes that we start doing it about
21 11 months from now. And so this is a new service for
22 Recology. We're not going to have any penalties for the
23 first year.

24 And then on page 12 of the Director's Report
25 you'll see what we have as a performance standard. And

1 you'll see that if they are missing their performance
2 standard, if they're not hitting their standard
3 75 percent of the time, we're going to take \$300,000 and
4 kind of reduce it through the COLA annual adjustment.

5 So right now if they did not meet their
6 diversion incentives -- they're called zero-waste
7 incentives -- that money gets fed back into the rates as
8 a reduction to the COLA essentially. And we are
9 planning on doing that starting in Year 2 of this rate
10 in the same way. So it means that even without these
11 incentives, potentially the COLA can go down one year.
12 Because fuel prices went way up one year, the COLA went
13 up and then they came way down. It had a depressive
14 effect on the COLA mechanism. It's conceivable that the
15 various incentives, if they're not met, that rates would
16 actually go down as a result of that annual adjustment.

17 MR. CARLIN: Okay. Thank you.

18 MS. YEUNG: So we've been at it for two and a
19 half hours. If I could ask people's patience if there
20 are -- Director Nuru, do you have any additional
21 comments you would like the Board to hear? Are there
22 additional comments from the public, if you could come
23 to the stand. And we're going to have a three-minute
24 mark.

25 Please state your name for the record.

1 MR. KUBITZ: Good afternoon again, ladies and
2 gentlemen, and thank you for your time. But I sat
3 through four hours of languid and desultory
4 cross-examination at one of those hearings.

5 I would point out that in the -- I'd like to
6 respond to a comment that was just made. Someone asked
7 would it be 3.6 million. I have to point out it isn't
8 3.6 million, because as funded currently the 2.2 million
9 does not have an OR or a profit margin on it. So it's
10 3.6 million plus 9 percent, which means -- I believe I
11 put the only estimate in the record in one of my
12 objections -- 3.6 million plus 9 percent is 3,988,000
13 and some change. And then you throw in the fact that
14 between eliminating 930,000 of full-time -- half the
15 full-time IPE's for the abandoned projects -- but adding
16 in another 967,000 for net increase of 30-something
17 thousand, you're within spitting distance of \$4 million
18 for the abandoned material project. And so that four
19 million has to be compared. Is it really worthwhile to
20 spend \$4 million with an operating margin as opposed to
21 2.2 million as cost to the City, at least the most
22 available record?

23 And the other real quick comment I would say
24 is are there efficiencies, because I tried to make that
25 point. If Recology is doing it, if Recology is helping

1 the City pick up garbage once a month already, if they
2 have half-time rovers doing -- what do you call it --
3 public litter can on call, then there must be some
4 efficiencies in there that you don't need to double the
5 cost to have the abandoned materials pickup.

6 And the other thing I would say is, because
7 I'm not sure that -- we're not taking new evidence, so
8 we're all equally subject to any perjury penalties,
9 Mr. Gardiner was sworn in, I was sworn in, Mr. Baker was
10 sworn in. I recommend that you swear in Mr. Nuru, Mr.
11 Legg, and Mr. Owen.

12 MS. YEUNG: Thanks for that. So if -- excuse
13 me one second. Sorry. You have three minutes. And
14 then if I could ask the Director and Mr. Legg to come
15 back up and be sworn in thank you.

16 MR. SCHENONE: You know these bureaucrats come
17 in here to tell me about how their City staff is going
18 through this and all that jazz. But, you know, I have
19 real difficulty in buying into how thoroughly they do
20 their work, particularly with the testimony associated
21 with the Department of Public Works' track record in
22 general.

23 But as far as what they have agreed in
24 reaching their conclusions, I think the scavenger
25 company should earn a profit, which they're entitled to

1 through the charter process. But they come in here --
2 they came in here to one of those meetings and they come
3 in here and they say that -- and let me illustrate.
4 Their average weighted cost of capital is 8.25 percent.
5 And when I was at this meeting and they pointed this
6 out, I said, "I'd like to get in on that action because
7 you can't get 8 percent any place except for guys that
8 are doing it illegally."

9 So the point being is that, you know, right
10 now in this meeting you are asking the city -- citizenry
11 of city and the county to place a lot of trust and faith
12 and confidence in these conclusions that they've drawn
13 from information that they've been fed from a company
14 that is privately held. And has -- I mean it wouldn't
15 be the first time somebody ran two sets of books, okay?

16 So for all of the other reasons that we've
17 discussed today, I think you ought to take a harder look
18 at this proposal, particularly in light of the fact that
19 they acknowledge the amounts of garbage in black bins is
20 going down and the green and the blue is going up. And
21 you go to these recycle places they got people lined up
22 all day seven days a week making dough. And these guys
23 come in here and tell you they ain't making any money.
24 They're playing the violin, "Oh, we ain't making any
25 money."

1 Thank you again.

2 MS. YEUNG: Last public comment.

3 MR. GARDINER: Thank you. This is Stuart
4 Gardiner again.

5 With regard to the Q and A about the
6 performance standards and expectations and the redesign,
7 if you will, of the abandoned materials collection
8 process, I personally take no issue with it. It sounds
9 very exciting.

10 But I have a comment and a question that I
11 hope would make some sense to you. And the comment is
12 there's no reason that the City itself could not
13 contract with Recology for exactly the same services,
14 presumably at the same price but without burdening the
15 ratepayers and raising questions of legality under the
16 state constitution.

17 The question I'd ask is why are the ratepayers
18 more capable, more affluent somehow, of funding this
19 program at enhanced service levels than the City, for
20 whom we are all residents and taxpayers?

21 Thank you.

22 MS. YEUNG: Thank you.

23 Director Nuru, could I ask you to raise your
24 right hand.

25 Do you solemnly state or affirm under penalty

1 of perjury that the evidence you give in this matter
2 shall be the truth, the whole truth, and nothing but the
3 truth?

4 MR. NURU: Yes, I do.

5 MS. YEUNG: Thank you.

6 Mr. Nuru, could I ask you to come back up,
7 please? So the oath you just took applies to the
8 testimony that you have given, including the testimony
9 that you may give in the future. I just want to
10 clarify.

11 MR. NURU: Yes.

12 MS. YEUNG: Thank you.

13 Mr. Legg. Similarly, for the testimony you
14 have already given and that you will give, do you
15 solemnly state or affirm under penalty of perjury that
16 the evidence you give in this matter shall be the truth,
17 the whole truth, and nothing but the truth?

18 MR. LEGG: I do.

19 MS. YEUNG: Thank you.

20 Is there anyone else I need to swear in? Mr.
21 Owen, are you still here? Sorry. I can't see beyond
22 the --

23 So, again, for the testimony that you have
24 given and will give, do you solemnly state or affirm
25 under penalty of perjury that the evidence you give in

1 this matter shall be the truth, the whole truth, and
2 nothing but the truth?

3 MR. OWEN: I do.

4 MS. YEUNG: Thank you. So I apologize for
5 that oversight.

6 If there's no objections -- we've heard a lot
7 of testimony today -- I would ask that we recess at this
8 point and maybe come back for deliberations tomorrow.
9 So that this hearing be continued for today. There's no
10 objection?

11 We encourage anyone who had public comment and
12 others that didn't today, if you want to come back
13 tomorrow, where we can hear further public comment and
14 any other questions you may have. Thank you so much.
15 We will continue for tomorrow.

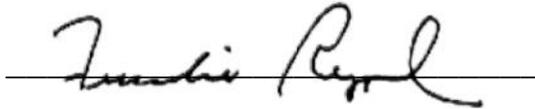
16 (The session was adjourned at 4:08 p.m.)
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CERTIFICATE OF REPORTER

I, FREDDIE REPPOND, a duly authorized
Shorthand Reporter and licensed Notary Public, do hereby
certify that on the date indicated herein that the above
proceedings were taken down by me in stenotype and
thereafter transcribed into typewriting and that this
transcript is a true record of the said proceedings.

IN WITNESS WHEREOF I have hereunto set my hand
on this 24th day of July, 2013.



FREDDIE REPPOND