

468 Lansdale Ave  
San Francisco, CA 94127  
June 24, 2013

City Administrator Naomi Kelly  
Chair of the Rate Board  
1 Dr. Carlton B. Goodlett Place  
Room 362 San Francisco, CA 94102

Re: Protest/Appeal of DPW Recommendation  
Recology Refuse rate application order  
(Hand delivered, June 24, 2013 before 5 pm)

Dear Sir or Madam:

Enclosed is my protest or appeal of the DPW Director's Recommended Orders approving an increase of over 19% for Recology refuse collection for residential customers in San Francisco. I appeared at the May 22, 2013 hearing and presented similar objections, which are included in the record of the hearing as Ex. 100. I am a resident of San Francisco receiving refuse collection service at the address above, and speak only for myself, although I note that many other residential customers also objected to the magnitude of the increase as reflected in reports of the San Francisco ratepayer advocate. (Ex 64)

The basis for my appeal is similar to the objections presented in Ex. 100 at the May 22 hearing:

First, moving abandoned materials collection to the Recology portfolio is not permitted by Proposition 218, and does not present any savings at all to San Francisco Residents. I object to this illegal transfer of a general public cost, previously borne by and provided through the Department of public works, to Recology at cost,

which will provide no savings to the public. As discussed further below, the cost estimate of Recology for this service of \$3,620,783 (EX. 41), allowing for an operating ration of 91%, will cost San Francisco almost \$4 million (EST. \$3,978,882) But not only will San Franciscans pay \$4 million to Recology, they will not see any savings in the DPW budget. This is unconscionable, illegal under Proposition 218, and should be either eliminated or reduced.

I note that in the last rate order, as shown in Ex. 40, a customer, David Pilpel, on May 25, 2012, already protested the re-allocation of the 1.3% surcharge previously accruing in the Reserve Account, to DPW for its litter control costs. Essentially, Mr. Pilpel's 2012 protest makes the same point I made in Ex 100 i.e., as he stated,

“DPW’s Litter Control Costs are more properly City General Fund costs and so I urge the Rate Board to deny DPW’s rate application accordingly.” Letter of David Pilpel, Ex 40.

Thus clearly the common perception of this issue is that litter control and abandoned property pickup are general city costs, not allocable to individual residences or homeowners. Therefore, going beyond the 7/23/12 DPW Order 180442 to reallocate the function of abandoned material pickup to Recology, at the costs shown in Ex. 41, of \$3.6 million, with a cost of \$4 million, when an operating ratio is included, and no offsetting savings anywhere, is not either good economic policy for the City of San Francisco or permissible under Proposition 218. Some offsetting savings must be found, or this further allocation of SF DPW functions to Recology must be denied.

I also note a continuing error in both the Staff Report and the Director’s June 7, 2013 Order, which both state that the 1.3% surcharge was reallocated to DPW as of October 2010. From my review of Ex. 40, and the Resolution of the Rate Board, re

2012-06-14, it appears that the March 29 DPW Application resulted in a Rate Order, after Appeal to the Rate Board, only as of October 1, 2011, not October 2010. See Attached DPW Order No. 180442 7/23/2012. This discrepancy in the history and timing of allocation of the 1.3 surcharge does not lend confidence to its current reallocation to Recology from DPW.

First Recommendation/Request justified by record:

I recommend removing this item from the calculation of the allowed increase and residential rates. Removal of the \$3,620,783 is legally required, and the associated \$3,978,882 total cost including Operating Ratio. Otherwise at a minimum, reduce the other operating expenses for Recology by half of this new "expense", ie \$2 million, to reflect savings from combining existing "pick-up" operations already included in rates with this new pick-up of abandoned property. (See, Attachment, San Francisco Examiner, January 13, 2011, Sidewalk Dumping is costly blight in San Francisco, Guest Column by Mohammed Nuru, which states, " What residents do not know is that they are already paying for this service in their monthly refuse bill. In simple math, residents are paying twice to get rid of their junk" Accepting this "simple math" at face value, I request, at a minimum, that the Rate Board eliminate some of the duplication, by reducing the element of cost already in rates if, despite objections under Proposition 218, abandoned material pickup unrelated to specific residences is to be reallocated from SF DPW to Recology.

Second, the Special Reserve Fund already established is approximately \$29 million, when the Staff Report (Ex. 65, pp.21-22) finds that \$15 million is an adequate reserve fund. There has, according to the Staff Report, only been one withdrawal in an amount of about \$5-6 million since the establishment of this

reserve fund in 1988. Therefore, \$15 million is more than adequate. In addition, the fund grows by \$160,000 per year just based on interest. I note that the Director's Proposed Order recommends that

Second Recommendation/request justified by record.

Reduce rates for residential customers by using \$3 million per year from the reserve fund for the next 3 years, RY14-15-16, for a total of \$9 million of return of excess revenues. This would leave the Reserve fund at \$20 million, providing more than \$5 million Above the adequate reserve level of \$15 million found by the Staff Report. (Combining this use of \$3 million annually from the Reserve Fund excess along with the \$2 million minimum reduction in recology expenses for combined pick-up operations would yield a total reduction in Residential costs, and presumably rates, by \$5 million per year of savings to which the citizens of San Francisco are currently entitled.

Third: The Recology request is based upon zero growth in residential and commercial customers. As shown by Ex 100, recalculation of residential and commercial numbers from Recology Schedule F-1, the lowest of either the 2 year average or 5 year average of growth in residential and commercial customers still shows growth in customers and revenues. The use of zero growth for setting rates in these categories is therefore not credible or just and reasonable.

Third Recommendation/Request justified by record: Consider Increasing recology estimated RY Revenues by showing customer growth based on either lowest of 2 year avg or 5 year avg customer growth history. This would produce additional revenue of in excess of \$1.5 million, to be conservative. Ignoring \$1.5 million of potential increased revenue clearly justified by minimum 2 or 5

year average revenue growth rates cannot be considered just and reasonable as an element of overall refuse disposal rates.

Exhibits included in Record and relied upon in Appeal  
Ex.100 Letter of K. Kubitz and Recalculation of Customer  
Numbers from Recology Rate Application Schedule F-1.

- Shows estimated revenues with 2 or 5 year avg growth
- Ex. 41 Abandoned Materials Collection Recology  
( Shows \$3.6 million Recology cost, with no offsetting  
Cost savings for other pick-up operations. )
- Ex 65 Staff Report on the 2013 Refuse Rate Application  
(p. 21-22 shows Staff conclusion \$29 million Special  
Reserve Fund is more than adequate, and unique  
To San Francisco)
- Ex 40 Written Protest Against Proposed Rate Change, dated  
8/2/2010, and further documents regarding 2010-2012  
orders on reallocation of 1.3% surcharge to DPW
- Ex. 64 Public Comment received by The Ratepayer Advocate.  
Includes comments protesting allowing Recology to  
Earn a profit on new abandoned materials pickup.

Please consider seriously the issues raised in this appeal, including the duplicative costs for abandoned materials pick-up resulting from attempted diversion, despite Proposition 218, from DPW to Recology, and modify the Order to provide a reduction of at Least \$5 million for RY-14 for residential customers,

Thank you for your consideration of this evidence from the record and the changes in the rate order supported by the evidence.

Very truly yours,

  
Kermit R. Kubitz

(415) 412-4393

mesondk@yahoo.com

City and County of San Francisco

San Francisco Department of Public Works



Edwin M. Lee, Mayor  
Mohammed Nuru, Director

GENERAL - DIRECTOR'S OFFICE  
City Hall, Room 348  
1 Dr. Carlton B. Goodlett Place, S.F., CA 94102  
(415) 554-6920 [www.sfdpw.org](http://www.sfdpw.org)



Douglas Legg

**DPW Order No: 180442**

The Department of Public Works hereby issues the following order which supersedes in relevant part DPW Order No. 178,941 and supplements DPW Orders Nos. 176,099 and 176,100 based upon action by the Refuse Collection and Disposal Rate Board:

**Whereas**, On March 29, 2012, the Department of Public Works applied for a modification of DPW Order No. 178,941; and

**Whereas**, DPW sought the modification to continue the re-allocation of certain funds derived from a surcharge on residential garbage rates from the Special Reserve Account established under the Facilitation Agreement between the City and Recology San Francisco, to the Impound Account established under the rate orders to be used by DPW to offset its costs for recycling and waste management, which re-allocation was first authorized as part of DPW Order No. 178,941; and

**Whereas**, An independent hearing officer appointed by the City Administrator investigated the application and concluded in his Report dated May 8, 2012, that the proposed modification was justified and would result in rates that are just and reasonable; and

**Whereas**, Upon review of the hearing officer's recommended order, the Refuse Collection and Disposal Rate Board upheld the continued re-allocation of revenues; now therefore

**Be it ordered**, That effective October 1, 2011, the companies shall no longer deposit the 1.3 percent surcharge on residential collection and disposal rates in the Special Reserve Account under the Facilitation Agreement, but shall instead increase their contributions to the Impound Account by the same amount, for the use of DPW to offset its costs for recycling and waste management; and be it

**Further ordered**, That this re-allocation shall continue until the conclusion of the next regular rate setting hearings, unless the re-allocation is affirmatively continued through those proceedings; and be it



San Francisco Department of Public Works  
Making San Francisco a beautiful, livable, vibrant, and sustainable city.

Further ordered, That except as specifically provided otherwise by the Rate Board's decision and this Order, the remaining provisions of DPW Orders Nos. 176,099, 176,100, and 178,941 shall stay in effect.

7/23/2012

X Mohammed Nuru

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Nuru, Mohammed  
Approver 2



San Francisco Department of Public Works  
Making San Francisco a beautiful, livable, vibrant, and sustainable city.

Monday, Jun 24, 2013

Opinion » Guest Columns

**COMMERCIAL DOG WALKERS**

New Laws &amp; Requirements Starting July 1, 2013

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## Sidewalk dumping is costly blight in San Francisco

By Mohammed Nuru

Couches. Mattresses. An old shelf. Lamps. A worn-out recliner. On top of cost, the consequences of sidewalk dumping negatively affect the quality of life, and include needless damage to the beauty and reputation of our neighborhoods in San Francisco.

Traveling around The City, San Franciscans are well-aware of the universal practice of putting out used items onto the sidewalk with the seemingly harmless hope that someone will, in good faith, pick it up and use it. Unfortunately, this is a behavior that leads to a string of unintended consequences and misconceptions about costs that can double for each item dumped.

There is a misconception that if no one picks up your old stuff, there is a planned and budgeted city service that collects the items from sidewalks — things like that old busted fridge or an outdated exercise bike. There is no such service. When The City is picking up sidewalk debris, it is responding to a complaint about sidewalk dumping from nearby residents. The City receives a call and the Department of Public Works sends someone out to pick up and haul items to the transfer station.

What residents do not know is that they are already paying for this service in their monthly refuse bill. In simple math, residents are paying twice to get rid of their junk. It is included in your monthly refuse bill already and we all pay again when Public Works hauls away the items on the taxpayers' dime.

At a time when The City is tightening its belt, it is paramount that residents take advantage of easy ways to save money, and this is one of them. Save The City \$4 million by keeping junk off sidewalks, and that means \$4 million more for other services.



That old couch or mattress left on the sidewalk is a magnet for other problems on your street — graffiti, vermin and bacteria — and it attracts even more litter and dumping. Bulky items also block the sidewalks and reduce the right of way for pedestrians.

The solution is easy and just a phone call away. Through your refuse company (Sunset Recology or Golden Gate Recology), residents can receive free pickups of up to 10 items per year. Also, online classifieds and social networking programs are excellent venues for passing on your furniture. And there is always the Goodwill. Finally, if you cannot figure out what to do with an item, check out the Department of the Environment's EcoFinder ([www.sfenvironment.org](http://www.sfenvironment.org)), the premiere reference guide to unloading surplus items.

San Francisco devotes an excessive amount of time and resources to the relentless, Sisyphean task of ridding the streets and sidewalks of illegally dumped materials. A "Don't Leave It on the Sidewalk" campaign has been launched to educate the public and encourage community involvement to prevent this activity and change behaviors.

This is a first step toward cultivating a new mentality around sidewalk dumping — a mentality that understands how convenient it is to toss old stuff, and an outlook that deeply realizes the real costs that come with placing junk on our streets.

The next time you see a couch on the sidewalk with a "free" sign attached to it, you will know that sidewalk dumping is not free. It impacts the beauty and cleanliness of our city and there is a better way. Visit [www.sfdpw.org](http://www.sfdpw.org) to learn more.



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**MOHAMMED NURU**

[Contact Us](#)

APPEAL TO OPPOSE RECOLOGY'S RATE INCREASE / 反对 Recology 垃圾费涨幅的上诉书

To: City Administrator Naomi Kelly San Francisco Rate Board

Chair of the Rate Board  
Room 348 at City Hall

1 Dr. Carlton B. Goodlett Place, Room 362, San Francisco, CA 94102

Deadline: 6/24/2013

6月24日前亲送市政厅362室的三藩市费率局

Date: 6/20/2013

Dear City Administrator Naomi Kelly and the SF Rate Board,

We and over 1,000 members at AsianAmericanVoters.org, a grass-root self-formed group of predominant monolingual Asian American immigrants, hereby in writing, appeal and strongly oppose the Department of Public Work's decision on 6/14/2013 on approving Recology's Proposed Changes in Residential Refuse Collection & Disposal Rates. / 我们1000多名亚裔垃圾费支付者强烈反对DPW批准Recology升垃圾费!

We had collected 1,400 signatures in a month, out of the 3,052 opposing. We believe the rate increase averaging 21.51%, or \$6.60/month for a typical single-family home, and \$2 per blue & green bins, are unreasonable based on:

1. Ratepayers are double charged. Part of the fee increase is used to cover the cost for Recology to take over from the City certain responsibilities for collecting refuse left on the streets and sidewalks, etc. This is tax we have already paid for, we should pay again!
2. Reducing black bin volume is not an option. We have been recycling and composting religiously in the past few years and have reduced the black bin's volume. We can not reduce the black bin any smaller. This increase of 21.5% is pure money gain for Recology.
3. Charging for recycling & composting is wrong. Why punish us who recycle and help the environment? Recology will get Toxin Collection Incentives from the manufactures, and can sell the blue & green bin content for monetary gain.
4. Prop. 218 Chinese explanation is inadequate. The English version occupies 1 ¼ page, but the Chinese version only has 2 short paragraphs.
5. Lack multi-lingual outreach. Most monolingual ratepayers couldn't read the 218 notice and didn't hear about the rate increase in the Chinese & Asian media. Outreach message should be splashed all over, outreach should have included AsianAmericanVoters.org.
6. Monolingual Opposer at the 6/11 hearing didn't know to file written protest. Over 100 opposers showed up at the hearing, most were our monolingual Chinese ratepayers. None submitted a written protest until told, few heard from the Chinese media. But they unanimously oppose strongly & verbally at the hearing. This proves #4 & #5, that both the Prop. 218 notice and language outreach are inadequate.
7. Hardship on ratepayers. This is a huge increase on the fixed income ratepayers, mostly seniors and minority. They simply can not afford it!
8. Hardship on all. Many small property owners have a hard time passing through the fee increases. Even if they can, renters would suffer!
9. Cost-of-Living Adjustment is unfair. Ratepayers have not received any COLA in the past few years due to bad economy, many even lost pay and some lost job. Charging COLA in the expense of ratepayers hardship hurts ratepayers and others affected.

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

Sincerely,



Josephine

Josephine Zhao, with extended families of 15 members, and over 1,000 members of AsianAmericanVoters.org

**Khaw, Lynn**

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**From:** Baker, Michael J. <Mike.Baker@aporter.com>  
**Sent:** Monday, June 24, 2013 3:02 PM  
**To:** Kelly, Naomi  
**Cc:** Khaw, Lynn; Legg, Douglas; 'Jon Braslaw'; John Glaub; John Legnitto; Eric Potashner; White, Gabriel N.; Owen, Thomas  
**Subject:** Objections to Director's Report  
**Attachments:** Objections to Director's Report.pdf

Dear Ms. Kelly:

Attached please find Objections to the Director's Report, which we submit on behalf of Recology Golden Gate, Recology Sunset Scavenger and Recology San Francisco.

Sincerely,  
Mike Baker

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Michael J. Baker

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June 24, 2013

**BY EMAIL**

Ms. Naomi Kelly  
Chair of the Refuse Collection and Disposal  
Rate Board  
City and County of San Francisco  
1 Dr. Carlton B. Goodlett Place (City Hall)  
Room 352  
San Francisco, CA 94102

Re: Objections By Recology San Francisco, Recology Sunset Scavenger, and  
Recology Golden Gate to the Director's Report And Recommended  
Orders on the 2013 Rate Application, dated June 7, 2013

Dear Ms. Kelly:

In accordance with Section 6 of the Refuse Collection and Disposal Initiative Ordinance of the City and County of San Francisco, Appendix 1 to the San Francisco Administrative Code ("the Disposal Ordinance"), Recology San Francisco, Recology Sunset Scavenger, and Recology Golden Gate (collectively, the "Companies") object to the Director's Report and Recommended Orders on the 2013 Rate Application, dated June 7, 2013 ("Director's Report") on one ground — that the Director's recommendation against the Companies' recovery of an operating ratio ("OR") on a new Brisbane business license fee be reversed as neither just nor reasonable under the Disposal Ordinance.

**INTRODUCTION**

On March 14, 2013, the Companies submitted a Final Rate Application for the adjustment of residential refuse collection and disposal rates for a one-year period beginning July 1, 2013. Being privileged to serve the City and County of San Francisco and its residents and businesses for nearly 100 years, the Companies are proud of the

Ms. Naomi Kelly  
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accomplishments they share with the City of being the national leader in innovative waste diversion programs.

San Francisco set a goal of 75 percent diversion by 2010 and by that year exceeded the goal, achieving 80 percent. The City has set an even more ambitious goal of Zero Waste by 2020. Meeting this challenge will require significant changes to the current service and rate structure, along with new facilities and processing capabilities. The Companies' Rate Application represents one of the steps that will be required to reach that goal.

The Companies' Final Application requested an overall rate increase of 21.51 percent. This increase would be the first change in rates since July 1, 2010. The requested increase was 2.24 percent less than the Companies' earlier draft application, reflecting revenue and cost adjustments based suggested by City Staff, the Ratepayer Advocate and the public during the draft application review period.

The Final Application was considered during six public hearings in April and May 2013. The Director's Report following those hearings is the subject of this objection.

The Companies appreciate the efforts of all involved in this rate process and are pleased the Director approved many aspects of the Final Rate Application. On several issues where the Director and the Companies disagree, the Companies have elected not to file objections, recognizing the Director's recommendations reflect an effort to strike a fair balance between competing considerations. The Companies believe, however, that there is one issue that warrants Rate Board review and, therefore, object to the Director's recommendation that recovery of an operating ratio ("OR") on a new Brisbane business license fee of \$2.1 million not be allowed. (Director's Report §8.1.2).

#### **OBJECTION**

The background of the new Brisbane business license fee is as follows. In November 2011, the voters of Brisbane approved an ordinance giving its City Council the authority to impose a new business license fee of up to \$3 million a year on recycling establishments that recycle 100,000 or more tons of material in a calendar year. Exh. 31. In October 2012, the Brisbane City Council exercised its authority by determining that an initial license fee of \$2.1 million would be due on June 30, 2013, and semi-annual fees of \$1,050,000 would be due each December 31 and June 30 thereafter. Exh. 32. Because a

Ms. Naomi Kelly  
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portion of the Recology San Francisco Tunnel/Beatty facility — specifically, its organics processing annex — is located in the City of Brisbane, that city has determined that Recology San Francisco is subject to the new business license fee. *See* Tr. 159:23-163:18; 767:9-11. The Director's Report agrees the Companies should be allowed to recover this expense — \$2.1 million for Rate Year 2014 — as part of its costs of operations, but recommends that the payment be treated only as a pass-through expense, with no OR added. Director's Report §8.1.2. The Companies object to this recommendation. The Brisbane fee should be treated as one of the usual and ordinary operating expenses of the Tunnel/Beatty facility, not only reimbursed but also eligible for OR.

OR, short for "Operating Ratio," is a methodology used by regulators to incorporate a reasonable profit factor into rate-making. In this case, the Director and the Rate Board have historically calculated collection rates by dividing OR-eligible operating expenses by an allowed OR. The concept behind permitting a reasonable OR is to give the Companies a profit incentive to make expenditures that promote City goals even though the expenditures carry a risk to the Companies of financial loss. The new Brisbane license fee is such an expense. It is one of several costs the Companies incur to operate the organics program at Tunnel/Beatty. The organics program could lose money; that is part of the risk the Companies accepted when they agreed with the City to collect and process organics and to locate part of their organics operations in Brisbane.

Moreover, the Brisbane City Council could at any time choose to increase the license fee and impose the increase between rate proceedings. As noted, the enabling ordinance passed by Brisbane voters authorizes a license fee up to \$3 million, and the City Council has so far chosen to impose only a \$2.1 million fee on recyclers the size of Recology. If the license fee happens to be increased between rate proceedings, the Companies would be exposed to an additional expense that could not be recovered retroactively in future rate proceedings.

The risks inherent in the organics program and its location in Brisbane are, in fact, illustrated by how this new license fee arose in the first place. Brisbane voters and its City Council enacted the fee between rate proceedings, with the first year's payment due June 30, 2013. Therefore, the Companies are compelled to pay Brisbane the first year's fee this month without any opportunity to obtain recovery through the rates, let alone an OR on that payment. *See* Tr. 802:21-24. Going forward, the risk remains: the Brisbane City Council or San Mateo County could decide at some point to increase the current fee or to add a brand new tax. These possibilities are a risk of doing business and a risk of

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developing new operations in different jurisdictions. Such business risks warrant an OR as a fair and reasonable mechanism to encourage the Companies to take such business risks, to develop programs that further the City's recycling and environmental goals.

The Director's Report's recommendation to disallow an OR on the Brisbane license fee analogizes the fee to those imposed by Alameda County for the City's disposal of waste at the Altamont Landfill. Director's Report §8.1.2; *see also* Exh. 65 (Staff Report) §8.16. The Companies earn no OR on those fees. The Director's analogy to the Alameda County fees, however, is flawed. The Companies' disposal of San Francisco waste at the Altamont Landfill is not the result of a business decision made by the Companies. Rather, the Companies haul waste to Altamont at the City's direction, as a result of the City's choice of landfills. *See* Tr. 768:22-769:4. Moreover, the Companies bear no risk with respect to those fees; in addition to reimbursement through the rates, a \$29.5 million Special Reserve Fund exists to reimburse the Companies for any unexpected costs that arise between rate proceedings relating to disposal of waste at Altamont. *See* Exh. 1 (Final Application), Narrative Summary at 14; Director's Report §12.

In contrast, the Companies *elected* to construct a Tunnel/Beatty facility that crosses the county line and *elected* to dedicate an annex located in Brisbane to organics operations. By making those business choices, the Companies became exposed to the risk of a Brisbane license fee. However, unlike fees and taxes relating to disposal at Altamont, there is no reserve fund from which the Companies can seek reimbursement for unexpected changes in taxes and fees in San Mateo County. The Brisbane business license fee may increase between rate-setting proceedings, just like the cost of equipment, labor, and utilities might go up. The Companies bear the risk of these cost increases. *Id.* at 767:25-768:21. Just and reasonable compensation to the Companies for incurring those risks warrants allowance of an OR on all the Companies' expenses relating to its organics operations, including the Brisbane business license fee.

The Companies urge, therefore, that the Director's recommendation to treat the new Brisbane business license tax as a pass-through expense, not eligible for an operating ratio, be rejected. An OR should be allowed on this expense.

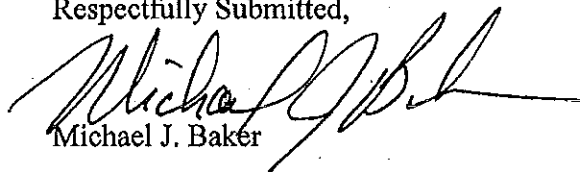
The Companies look forward to the opportunity to participate in the hearings before the Rate Board. In that regard, the Companies recognize that other interested parties may file objections to one or more of the Director's recommendations. Therefore, the Companies reserve the right to supplement this response to specifically address



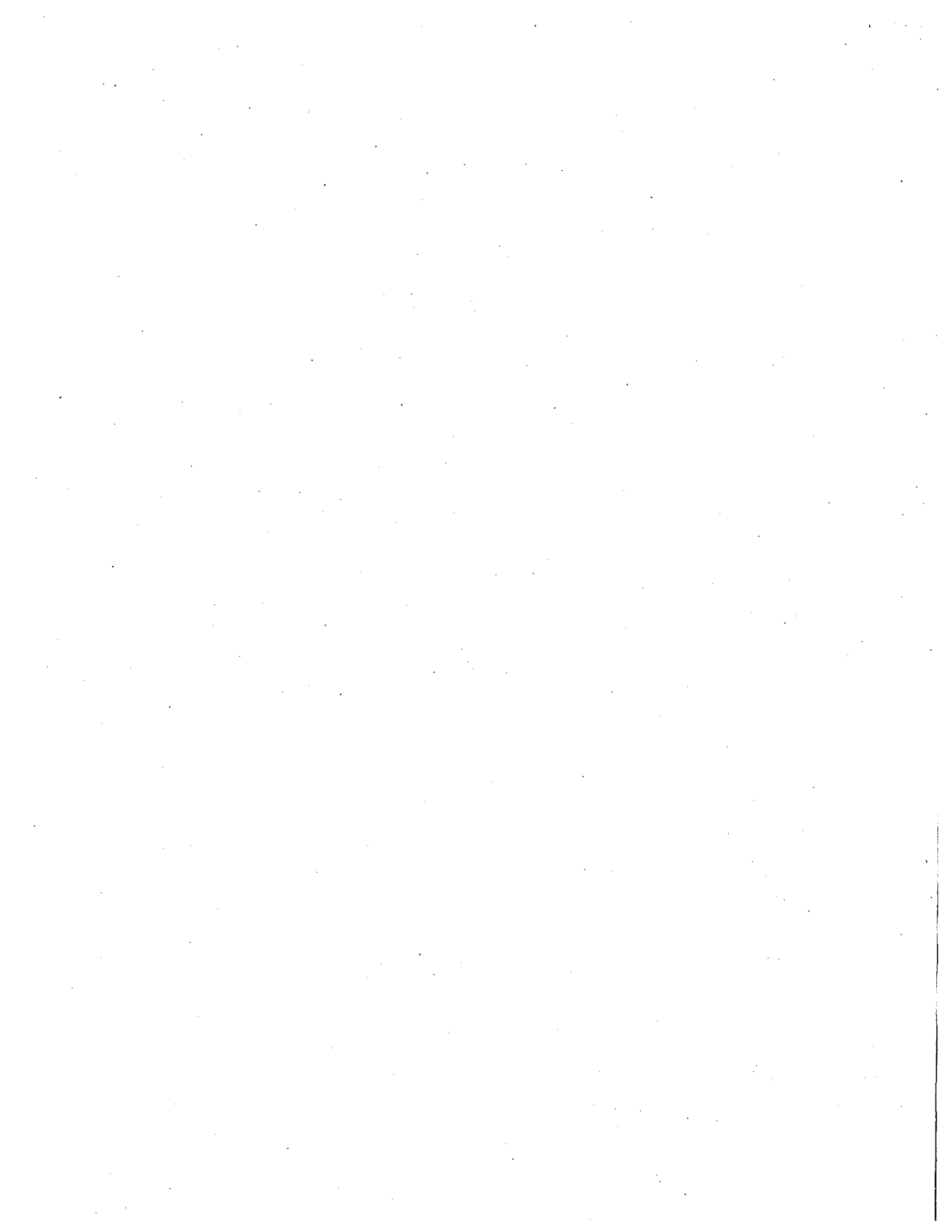
Ms. Naomi Kelly  
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objections raised by other parties and to seek appropriate relief with regard to any such additional issues.

Respectfully Submitted,



Michael J. Baker



21 Ardenwood Way  
San Francisco, California 94132  
June 24, 2013

VIA HAND DELIVERY

City Administrator Naomi M. Kelly  
Chair of the Rate Board  
1 Dr. Carlton B. Goodlett Place, Room 362  
San Francisco, California 94102

Subject: Objection to Recology residential and apartment refuse collection rates proposed to be effective August 1, 2013

Dear Ms. Kelly and other Refuse Rate Board Members:

This letter is a written objection to the rates for those services proposed to become effective August 1, 2013, according to the Director's Report and Recommended Rate Orders dated June 7, 2013 ("Director's Report"). This Objection is filed under the Notice of Recommended Orders on Residential Refuse Rates from the City and County of San Francisco ("City") issued around June 7, 2013.

I. Objection to closing the record before the noticed date of June 14, 2013, and issuing the Director's Report and Recommended Rate Orders before that date

Two public documents in this rate proceeding, at least one of which was mailed to a large number of residential property owners, stated that documents received by 1 p.m. on June 14, 2013, would be part of the record. *Refuse Rate Hearing Notice*, undated, <http://sfdpw.org/modules/showdocument.aspx?documentid=3131> ("Arguments in favor or and opposed to this application will be heard at the public hearings of [sic] may be submitted in writing by 1 p.m. on Friday, June 14, 2013, to the Refuse Rate Hearing officer, c/o Department of Public Works, City Hall Room 348, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102."); *Notice of Public Hearing on Proposed Changes to Residential Refuse Collection and Disposal Rates*, undated, <http://sfdpw.org/modules/showdocument.aspx?documentid=3128> ("All written comments, including protests, will also become part of the record of the rate hearing process. The hearing on the written protests, previously scheduled for late May 2013, has been rescheduled to June 14, 2013, at 1:00 p.m., and will be held in room 400 at City Hall, located at 1 Dr. Carlton B. Goodlett Place, San Francisco. Protests must be received by the end of that hearing."). A public notice to submit arguments for or against the rate application by a date certain and another public notice with the same deadline and the statement that all "written comments ... will also become part of the record of the rate hearing process" unambiguously provide the public with the opportunity to submit written comments or arguments about the

the public with the opportunity to submit written comments or arguments about the rate application and have them considered in the rate setting process. Otherwise, why offer the public the opportunity to submit written comments or arguments if they could not possibly have any influence?

Part III.L. Of the Rules of Procedure for this rate proceeding, issued April 26, 2013, provides that, "The Presiding Officer will give advance notice of the date that the record will be closed." A diligent search of the record and other documents available on or linked to the Department of Public Works ("DPW") Website for refuse rates (<http://sfdpw.org/index.aspx?page=737>) reveals no public notice altering the date for close of record.

Despite the public notices giving June 14 as the date the record will be closed, the Director's Report was issued June 7, 2013, and no exhibits or apparently other documents submitted after May 22, 2013, were entered into the record. DR pp.2 (record content and procedure) and 29 (date of final group of exhibits).

The result is that the record in this proceeding arbitrarily excluded documents received by June 14, 2013 but after May 22. It must be supplemented accordingly and made available to the public; the Director must issue a new report based on the complete record; and the period for written objections must be extended for a period at least the same as provided for objections to the initial Director's Report. Failure to do this would make all further decisions by the Director or the Refuse Rate Board unlawful for deliberately excluding consideration of material properly included in the record.

Any further notice about objections should inform the public that objections filed to date need not be resubmitted in order to be considered, although people filing them may want to review the newer Director's Report and full record before deciding whether to file additional or revised objections.

## II. Objections to two programs shifted from DPW to Recology residential ratepayers

The second part of this Objection is about two new Recology programs (Hearing Exhibits, Exh. 1, pp.13-15, items B.1. and 2.) whose costs are included in the proposed rates: (1) the abandoned materials collection program ("AMCP") and (2) public litter can maintenance ("PLCM"). Both programs (a) violate CAL. CONST. Art. XIII D, Sec. 6 ("Prop. 218"), mainly by requiring property-owner ratepayers alone to pay for a municipal service available to any individual or organization in the City, (b) cannot properly be approved for inclusion in rates by the Director of Public Works because of a conflict of interest, (c) would substantially increase costs over the amount currently spent by the Department of Public Works ("DPW") for these services without adequate justification, and (d) are arbitrary and capricious and

therefore unlawful as a matter of administrative law because they are not based on factual record evidence. Consequently, the Rate Board should reject entirely the proposed Recology revenue, and associated rate increase, associated with these new programs. The costs of these activities, which benefit the general public and not property owners specifically, should continue to be covered by the City's budget. If the City wants to contract with Recology for these services, Recology should be paid by the City, not by the class of residential and apartment ratepayers.

A. Paying for these programs from refuse collection rates is contrary to law.

Both programs proposed to be transferred to Recology service and property-owner rates, AMCP and PLCM, are currently operated by DPW and funded in that department's budget. Exh. 13. The services provided under these programs are currently identified as general government services. Calls to the City's 311 line result in dispatch of DPW refuse trucks to collect abandoned materials. *Id.* This service is proposed to be performed by Recology instead once new rates take effect. Exh. 1, pp.13-14. The service would also include "support for events identified by the City, including selected parades, festivals and holidays." As for PLCM, Recology has already assumed the collection of refuse from public litter cans at DPW's request, and approval of this rate application would increase the services provided by Recology under this program, including replacement of liners and doors for public litter cans. *Id.*, p.14.

Article 13D of the California Constitution, added by Proposition 218, allows certain fees and charges to be imposed on parcels, or persons as an incident of real property ownership. Section 6 of this article contains rules for imposing such fees and charges. In particular, Sec. 6(b)(3) requires that "The amount of a fee or charge imposed upon any parcel or person as an incident of property ownership shall not exceed the proportional cost of the service attributable to the parcel." Section 6(b)(5) provides that

No fee or charge may be imposed for general governmental services, including but not limited to, police, fire, ambulance or library services, where the service is available to the public at large in substantially the same manner as it is to property owners.

The proposed revenue and rates for both AMCP and PLCM violate both of these sections. (Alternatively, the costs could be recovered as a tax, but that would require an affirmative vote of at least two-thirds of City voters, which has not been obtained.) There is no limitation of service in either program to property owners. Anyone can call 311 to request removal of abandoned materials; you need not even need to be a City resident, let alone a residential or apartment property owner. Although the record does not include such statistics, a substantial amount of

abandoned materials are removed from public lands in the City, including parks and other open space, not to mention public streets. Yet as proposed in the rate application, the City itself would not pay for any service to the property it owns. In addition, a variety of people in the City, including many visitors from near and far, generate litter. Similarly, its collection and removal benefits all individuals and organizations in the City, regardless of their ownership or even occupation of property. By including refuse collection for such events obviously intended for the general public and not just property owners as "parades, festivals and holidays," Recology and DPW could not more clearly show that these programs have nothing expressly to do with the incidents of property ownership.

The services are available "to the public at large in substantially the same manner as it is to property owners." Sec. 6(b)(5). And given the costs and benefits attributable to the general public and public property in contrast to each residential parcel owner, the proposed rate increases for these two programs "exceed the proportional cost of the service attributable to the parcel." Sec. 6(b)(3). Both AMCP and PLCM are general governmental services, benefitting everyone who lives in, works in or visits the City. It is not only bad policy for City government to slough these costs off, it is illegal. The solution is to continue to fund these necessary and desirable services within the City budget, where they have been and continue to belong. If the City chooses to contract with Recology for these services, they must be paid from the City's budget, not the pockets of ratepayers.

B. The Director of Public Works cannot properly review and approve any rate increase for these two programs because of his conflict of interest.

DPW instead of Recology filed the 2012 Refuse Rate Application because it concerned "the continued reallocation of certain funds derived from a surcharge on residential ... refuse rates ..." Exh. 14, p.1. "Because DPW itself had filed the Application," a hearing officer independent of the Director of Public Works was appointed to review and issue a report on the application. *Id.* This sensibly proceeded from the principle that the Director should not make rate decisions directly affecting his department's budget because there is necessarily a conflict of interest.

The same situation exists in Recology's 2013 rate application with respect to AMCP and PLCM, regardless of the identity of the applicant. As stated in the Director's Report, p.11, "At the City's request, the Companies included costs for the assumption of responsibility from the City for responding to 311 calls for abandoned materials." The rate application is similar: "At the request of the City, the Companies have proposed the assumption of a part of the abandoned materials collection program currently operated by the DPW compactor trucks." Exh. 1, p.13.

Similarly, DPW requested that Recology assume costs and responsibility for litter can maintenance. Exh. 1, p.14.

The necessary result of the Director approving this shift of responsibility and expense from the DPW budget to Recology rates, which his organization actually proposed, is to reduce DPW expense for these programs, which frees amounts currently, spent for different purposes. The Director has every reason to approve this part of the proposed rates and cannot reasonably be expected to act impartially on it. For this reason, those portions of the Director's Report and all other decisions of DPW that would otherwise approve rates for these two new programs must be deleted, and the Refuse Rate Board must make a decision on the proposed additions *de novo* based on the record.

C. The proposed revenue and rate increase for these two programs substantially increases their cost without justification.

In the Recology rate application, AMCP is planned to cost \$3.62 million per year (Exh. 41, table) and the PLCM cost is set at \$1.59 million. Exh. 19, p.5 of 7, item 5. Because I could not find in the record any current cost for PLCM, in the absence of such information this must be treated as all additional cost, and it lacks justification for absence of a comparison with current costs for litter can maintenance, presumably done by DPW workers. However, the comparison is all too clear for AMCP: even DPW management concedes that it is higher than DPW's current cost for this service, \$2.21 million. Exh. 13, pp.1,4. Even worse, DPW anticipates savings to the City budget not of \$2.21 million for shifting AMCP to Recology and its ratepayers, but only \$0.931 million per year. This means that if the shift from the City budget to ratepayers is allowed, the annual program cost will increase by \$2.699 million [ $\$3.620\text{ M} - \$0.931\text{M}$ ], well more than its current cost of \$2.21 million! DPW's proposal to offload some of its responsibilities to Recology residential ratepayers is itself no rational justification for such a large increase. If there is an increased service level that accompanies the large percentage increase in cost, neither the City nor Recology has shown that the current level has resulted in deficient service or that the new proposed level is desirable let alone necessary. This is an unjustified increase for no reason other than to reallocate City funds to other purposes by imposing an unlawful tax increase on its residential property owners.

D. The record fails to justify the proposed rate increases.

It is a fundamental principle of administrative law at both the federal and California levels, based on constitutional foundations like due process, that agency decision making must be supported by record evidence, without which it is arbitrary and capricious and therefore unlawful. Three instances concerning the proposed rate increases for AMCP and PLCM illustrate this deficiency.

In DPW Staff's Report of May 10, 2013, on the rate application, Section 16 (Response to Comments), item 15 (Exh. 65, p.29) deals with the AMCP and PLCM. Apart from statements elsewhere in the record that Recology proposes to assume this (and PLCM) at the request of DPW, which offers no rational justification whatsoever, this item addresses the question of how these programs benefit the ratepayer. The response is that "Almost all of the abandoned materials *on the streets* and materials in the public litter containers is generated by ratepayers or tenants or customers of ratepayers." (emphasis added) There is no evidence at all in support of this over-generalization. Nor is there anything that differentiates the types of individuals held to be the source of all abandoned materials from the general public found in the City or any other governmental jurisdiction. Lacking any record evidence of the origin of abandoned materials, it is no less reasonable to infer that non-residents who pay no refuse rates here dump them in the City. In addition, the streets are public, not private property. It also makes no sense to refer to "customers" of residential and apartment property owners, as these are not commercial enterprises. Because Recology offers its residential customers bulky item pickup as part of their rates, it does not make sense to attribute abandoned materials to this customer class when they have no need to dispose by dumping. And as noted above, the inclusion in AMCP of refuse from parades and holidays, with visitors from all over the world let alone the Bay Area, makes the attribution to residential property owners, such as the quote above, irrational if not ludicrous.

Second, the rate application proposes performance standards for abandoned materials collection (Exh. 83) and DPW claims the shift to ratepayers makes sense because it cannot meet such standards itself. Exh. 13, p.2. What the record lacks is any evidence that the current performance, as well as the current standard, is deficient from the perspective of the consumer of such services, presumably City residents operators, or that the standards proposed by Recology will be sufficient or overly so, at higher cost. The very same public officials in DPW who want to free up their budget by shifting these costs to ratepayers are the ones pronouncing the standards reasonable. Without evidence in the record to support the standards, any decision on adding these two programs to rates will be arbitrary and capricious.

Third, the Director's Report does not even mention the PLCM, unlike its endorsement of the AMCP. (The Staff Report does not discuss the merits of this program or its legality but only discusses the volume of waste from litter cans.) There is no finding or discussion to support the new inclusion of this program and its cost in refuse rates, and doing so would therefore be arbitrary and capricious.

For the reasons discussed above, the Director's Report must be reissued after considering the entire record through June 14, 2013; additional public notice and



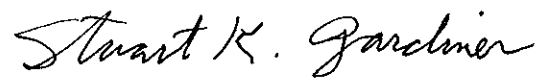
City Administrator Naomi M. Kelly

June 24, 2013

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time must be permitted for objections to that revised report; and the proposed addition of the AMCP and PLCM costs to Recology rates must be rejected.

Sincerely,

A handwritten signature in cursive script that reads "Stuart K. Gardiner". The signature is written in black ink and is positioned below the word "Sincerely,".

Stuart K. Gardiner

June 24, 2013

City Administrator Naomi Kelly  
Chair of the Rate Board  
City Hall, Room 362  
San Francisco, CA 94102

RE: Objection to the Director's Report on the 2013 Rate Application

Dear Chairperson Kelly:

The following comments record my objections to items that are in the Director of Public Work's Report and Recommended Order (DR & O) and to issues that the DR & O have failed to address.

I. I object to the DR & O not disclosing what is the "just and reasonable standard" test that the proposed new rates must meet in order to approved. The 1932 ordinance section 6 (a) "procedure for adjustment" states: "Any revised rates, schedules of rates or regulations placed in effect pursuant hereto shall be just and reasonable." Page 22 of the DR & O describes a rate review process to determine that proposed rates are just and reasonable and that the recommended adjustments to the rates will meet "the just and reasonable standard." However, the Director's Report does not state specifically that this standard WAS met and HOW that determination of justice and reasonableness was made.

A measurement standard for rates is inferred from Exhibit 35 Table 1," 32 g Residential Rates" that compares San Francisco's garbage rates with other cities who also have the 3 bin system. The chart shows San Francisco as 22<sup>nd</sup> on the list with the current rates. My Exhibit 99 shows San Francisco in the 8<sup>th</sup> position if the new rates are approved. At what point will the just and reasonable standard be exceeded? Will San Francisco be allowed to have the most expensive rates and still be considered just and reasonable? I ask the Rate Board to direct the DPW Director to define and set this standard for future rates in his DR & O.

II. I object to the incremental cost shifting onto the garbage rates of certain city services currently financed by city funds for the performance of the city's work. Page 16 states that "less than 19 % of DPW 's annual expenditures for refuse-related services" have been shifted to the garbage rate's Impound Account. Are we to expect that over time the other 81% will be on the rates also? There is no process to decide what costs are "eligible," much less to limit the continuance of transferring city responsibilities to Recology to perform on a cost plus profit basis. These new services add to increasing the garbage rates.

III. I object to the conflict of interest that is inherent in allowing the DPW Director to determine that costs shifted onto the rates that benefit his own department are "just and reasonable." He has a conflict of interest by his department's benefiting from the decision that these additional costs to ratepayers are just, thereby securing the funding for DPW services. Even though the Board of Supervisors approves DPW's budget, the Director is able to guarantee the funds

through the rates that is a prerequisite for BOS approval of his budget. Rate Board must instruct Director to recuse himself from deciding the just and reasonable nature and amounts of these cost shifts that benefit DPW paid through the Impound Account by the rates. The Board must also establish an impartial decision-making process regarding garbage rates that pay for DPW services.

IV. I object to DPW's receiving a \$3.3 million windfall of money from the General Fund for budgeted work of collecting abandoned waste that will now be shifted to and performed by Recology paid through the rates. The DPW city budget was not reduced to reflect this shift in costs, so the originally budgeted city funds remain but are not going to pay for collecting abandoned waste. There is an unpleasant appearance of "bait and switch" in this kind of last minute budget reassignment, in addition to the conflict of interest stated above by the DPW Director deciding the propriety of these actions.

V. I object to the rates being charged to pay Recology more money to collect the city's abandoned waste, than the city paid DPW to perform this service. Part of the increase in the expense to collecting abandoned waste is for Recology to earn a 9% profit on all approved costs to perform this service. The cost effectiveness of this cost shift has not been proven.

VI. I object to the garbage rates being used to fund DPW staff to issue Notices of Violation and citations for illegal dumping, with the fines collected being deposited into the city's General Fund. Ratepayers will now be paying the salaries of DPW workers (instead of the General Fund paying these workers) to enforce city laws by issuing citations to people who illegally abandon waste in public areas. The money from the citations goes into the city's General Fund. Since the garbage rates will be paying salaries to issue citations, then the fines should go to offset the costs paid by the rates. This will require a change by Board of Supervisors to the legislation that governs what funds these fines are credited to. The Rate Board must instruct the DPW director to amend the DR & O to require this change in the legislation by BOS prior to assigning ratepayer-supported staff to issue citations, the fines of which directly subsidize the General Fund.

Lastly, I support the Director's decision to postpone discussions on the land acquisition for the zero waste facility. I also urge him to schedule public meetings about this very important topic outside of the conventions of the rate setting process. I believe San Francisco will benefit from an early discussion of ownership issues and the implications of and commitments to financing land acquisition in support of city policies. I believe Recology would appreciate knowing whether or not and how the rates will be impacted with the real estate purchase BEFORE the next rate application is prepared. I request that Rate Board also support my request for timely public meetings on this topic.

Thank you for considering my objections to the 2013 Director's Report and Recommended Orders. I look forward to further discussion of the issues raised here during the Rate Board Hearings and to reading your final comments.

Sincerely,



Nancy Wuerfel