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Jennifer Johnston, Deputy City Administrator and Chair
Ben Rosenfield, Controller and Member
Michael Carlin, Deputy General Manager, Public Utilities Commission, and Member
Residential Refuse Collection and Disposal Rate Board
1 Carlton B Goodlett Pl Ste 362
San Francisco CA 94102-4683

December 15, 2015

Re: Comments Regarding the December 16, 2015 Rate Board Meeting

Dear Chair Johnston and Members,

I write to provide comments regarding the December 16, 2015 Rate Board meeting. Although the main topics are the Abandoned Material Collection Program (AMCP) and the Special Reserve Fund (SRF), I believe that there are some related matters at issue as well.

First, given the importance of these issues, particularly use of the SRF, the infrequency of Rate Board meetings, and the legal and technical nature of Rate Board proceedings, I question whether the Ratepayer Advocate established in the last few rate proceedings is being used here. I note that the 2013 Ratepayer Advocate website, ratepayeradvocatesf.org, no longer works. I would be able to better organize my thoughts with the assistance of the Ratepayer Advocate, and I believe that ratepayers would be better served with the Ratepayer Advocate than without. The Rate Board should consider whether or not to proceed with the December 16, 2015 Rate Board meeting if there is no Ratepayer Advocate, especially since this meeting follows up the 2013 rate process which included the Ratepayer Advocate.

Second, I have reviewed the October 30, 2015 Public Works report regarding the AMCP, and I agree with the conclusion that the AMCP operated by Recology has increased the diversion of abandoned materials in a cost-effective manner. However, that should not be the only issue. I still believe that the costs of collecting abandoned materials left on City streets are properly borne by the City, through its General Fund or another fund, rather than residential refuse ratepayers. While residents leave some, perhaps even much, of the abandoned materials, not all of those residents are ratepayers (many are non-ratepayer tenants or others), and there has not been sufficient evidence shown to connect the AMCP to residential refuse ratepayers by nexus and proportionality. Although Proposition 218 may not bear on this aspect of rate-setting right now, I think that it is only a matter of time before it does. While it seems clear that Recology is operating the AMCP more effectively and more efficiently than Public Works did, that does not address the question of who should pay for it. In fact, since costs were shifted to residential refuse ratepayers, how much City General Fund Support was freed up and how is that money now being used? Further, there should be lessons learned about materials reuse and recycling from using more box trucks instead of packer trucks, lessons that should be applied to other

Recology operations such as the Bulky Item Collection (BIC) Program, Public Disposal and Reuse Area (PDRA), Recycle My Junk (RMJ), and perhaps others. We need to better integrate education, producer responsibility, source reduction, and separation with collection, processing, and disposal operations to get to Zero Waste. What exactly have we learned here?

Third, I have reviewed the October 30, 2015 Department of the Environment (DOE) report regarding the SRF, and I agree in part with the recommendations about the use of the SRF. Specifically, I agree that funds should be used to seed a new SRF under the Hay Road Landfill Agreement. Further, I agree that the increased disposal cost at Hay Road may be borne by the SRF for a limited time. In my view, that is exactly the kind of extraordinary disposal cost not otherwise covered by existing rates that the SRF was designed to absorb. However, that arrangement should not continue indefinitely. Since the rate application review process can now take up to a year to complete, I believe that the Rate Board should allow use of the SRF to cover increased disposal costs only until December 31, 2016, or shortly thereafter, and that Recology should be implicitly (or explicitly) expected to file a Notice of Intent to File a Rate Application on January 1, 2016, or shortly thereafter, to address what are now known increased disposal costs, regardless of whatever other program or rate changes are unresolved at that time. While there is tension in addressing only one rate issue, albeit a significant one, versus a broader and more comprehensive rate review, it has now been almost 3 1/2 years since the last rate process began and yet long-term facility, program, rate, and technology questions are still up in the air. In fact, only the Hay Road Landfill Agreement was achieved since then, and it remains under litigation. Even the West Wing Project has yet to start construction.

Another issue related to the ultimate use of the SRF is how exactly to use the surplus to benefit the ratepayers. Should the Rate Board choose to rebate the surplus, that rebate could minimize or partially offset the next rate increase, reducing rate shock over a reasonable (i.e. 3 to 5 year) time period, which could be attractive if additional black cart processing, compostables digestion, mitigation fees, or other significant new costs are proposed. Another alternative is to purchase land, probably in Brisbane, to facilitate the long-term facilities plan. It would be interesting if San Francisco used its eminent domain power to acquire Brisbane land from an unwilling seller. Finally, if the Rate Board selects an up-front rebate it should do so sooner rather than later, so that more ratepayers who contributed to the surplus over the past nearly 30 years, at least those still alive, would benefit as opposed to new ratepayers who contributed less, or not at all, to the SRF over the years. I see it as a reverse of bond financing capital projects, where those who benefit from a long-lived asset pay for it over its depreciable economic life; in this case, ratepayers paid into the SRF but have seen limited benefit from it. What about them?

Fourth, as I have advocated many times, I believe that there should be another public venue to discuss refuse collection and disposal issues, one less formal and not adversarial like the rate process. Although I have tried to maintain a good working relationship with Public Works, DOE, and Recology over the years, there is still no San Francisco Zero Waste Council or other body similar to the Solid Waste Local Task Force in other counties despite the City's supposed leadership role in this area. Instead, issues are handled on a case-by-case basis by staff, sometimes at the Commission on the Environment, the Board of Supervisors, or elsewhere, but always with DOE and Recology in control, to the detriment of sustained public engagement on program and rate issues. Again, better integration to achieve Zero Waste requires a reasonable

investment in public engagement. The Rate Board should direct Public Works, DOE, and Recology to develop either a citywide Zero Waste Council or another equivalent public forum to discuss these issues outside of rate proceedings and report back in the next rate application.

Fifth, and finally, I referred earlier to the nearly year-long process that a rate application now requires. There really ought to be a way, consistent with the 1932 Ordinance, Proposition 218 noticing requirements, and other legal and practical considerations, to reduce that time period somewhat. For example, an application between general rate applications every 5 years or so, limited to 1 or 2 issues, where the average residential ratepayer would see a 5% or less increase, could have an expedited review process. While all parties (applicants, Recology, City departments, and ratepayers) should have a fair process, I believe that the current formulation is not serving anyone particularly well. At a minimum, the Rate Board should direct Public Works, DOE, and Recology to consider alternative rate-setting procedures, consistent with applicable law, that reduce the timeline for rate applications under all or certain appropriate conditions.

I may have additional public comments at the meeting, but I will stop here for now. Thank you for taking the time to review these comments. Please contact me at 415 977-5578 if there are any questions or need for clarification.

Sincerely,



David Pilpel

- cc: Mohammed Nuru, Director, Public Works
- Julia Dawson, Deputy Director of Finance and Administration, Public Works
- Jack Macy, Commercial Zero Waste Coordinator, Department of the Environment
- Tom Owen and Brad Russi, Deputy City Attorneys, Office of the City Attorney
- Paul Giusti, John Porter, and Eric Potashner, Recology