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

Wednesday, December 16, 2015
2:00 p.m.
at
City Hall
One Dr. Carlton B. Goodlett Place, Room 263
San Francisco, CA 94102

REPORTED BY:
NOEL CARTER DEGNAN
CSR No. 6921

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A P P E A R A N C E S

CHAIRPERSON:

JENNIFER JOHNSTON, Deputy City Administrator

BOARD MEMBERS:

MICHAEL CARLIN, Deputy General Manager,
San Francisco Public Utilities Commission
TODD RYDSTROM, Deputy Controller

IN SUPPORT OF THE BOARD:

GINA GUTIERREZ, Clerk
BRADLEY RUSSI, Deputy City Attorney,
City Attorneys Government Team

FOR THE DEPARTMENT OF PUBLIC WORKS:

MOHAMMAD NURU, Director
JULIA DAWSON, Deputy Director for Finance
and Administration

FOR THE OFFICE OF THE CITY ATTORNEY:

THOMAS OWEN, Deputy City Attorney

FOR THE DEPARTMENT OF THE ENVIRONMENT:

JACK MACY, Senior Coordinator for Zero Waste

MEMBERS OF THE PUBLIC:

DAVID PILPEL
STUART GARDINER

1 Wednesday, December 16, 2015, 2:00 p.m., Room 263

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

4 MS. JOHNSTON: We'll go ahead and call this
5 meeting to order. For the record, this is Wednesday,
6 December 16th, 2015. It's approximately 2:00 o'clock.
7 I believe it's actually a little after 2:00, 2:10, and
8 we are in City Hall, Room 263. I'll now call the roll.

9 I am Jennifer Johnson. I am the Deputy City
10 Administrator. Today I am chairing the Refuse
11 Collection and Disposal Rate Board of the City and
12 County of San Francisco, at the direction of City
13 Administrator Naomi Kelly.

14 Joining me are the two other members of the
15 Rate Board, Michael Carlin, Deputy General Manager for
16 the San Francisco Public Utilities Commission, and Todd
17 Rydstrom, Deputy Controller.

18 Also present is Deputy City Attorney Bradley
19 Russi from the City Attorney's Office Government Team,
20 who will be serving as counsel of the Rate Board, and
21 Gina Gutierrez from the City Attorney's Government Team,
22 who will be serving as our clerk today.

23 Also present today is Mohammad Nuru, the
24 Director of Public Works; Julia Dawson, the Deputy
25 Director for Finance and Administration for Public

1 Works, and Jack Macy, the Senior Coordinator for Zero
2 Waste in the Department of the Environment.

3 Our hearing today is being transcribed by Noel
4 Carter Degnan. We're also recording this hearing, so I
5 ask that you speak one at a time and use the microphones
6 so you can be heard clearly and speak with some slow
7 pace so that it can be properly transcribed.

8 I now ask that you please turn off your cell
9 phones, pagers and other sound producing electronic
10 devices so that our meeting will not be interrupted.
11 Thank you.

12 Let's move onto Agenda Item Number II,
13 introductory remarks by the chair and discussion. So
14 the Rate Board is convening today to consider two
15 reports that we requested during our proceedings in
16 2013. Copies of the two reports are available in the
17 back of the room on the wall near the door. Actually,
18 at this table. Yes. Thank you.

19 In 2013 Recology Sunset Scavenger, Recology
20 Golden Gate and Recology San Francisco, collectively
21 referred to as Recology, submitted a rate application to
22 the Director of Public Works. The Director of Public
23 Works issued a report and recommended order on that rate
24 application. The Rate Board then convened to hear and
25 consider objections to Public Works report and

1 recommended order.

2 At the conclusion of that proceeding on July
3 23rd, 2013, the Rate Board issued a resolution and order
4 concurring with certain aspects of the objections and
5 otherwise concurring with the director's recommended
6 orders as modified by the Rate Board.

7 As part of that resolution, the Rate Board
8 requested the two reports be submitted prior to November
9 1st, 2015 and proposed reconvening before the end of
10 this year to consider those two reports.

11 The first report we will consider today is on
12 the Abandoned Materials Collection Program or the AMC
13 program. As part of the 2013 rate application, Recology
14 proposed assuming responsibility for the AMC program at
15 the city's request. The Rate Board concurred with
16 transferring responsibility from Public Works to
17 Recology on a pilot basis based on the expectation that
18 Recology would increase the amount of material diverted
19 from our landfill consistent with the city -- achieving
20 the city's goal of zero waste.

21 The Rate Board requested a report from Public
22 Works on Recology's effectiveness in collecting
23 abandoned materials and diversion from landfill during
24 the first two years of the pilot program. If the Rate
25 Board finds that the AMC program has increased diversion

1 from landfill in a cost-effective manner under the 2013
2 rate order, the AMC program will be continued beyond
3 June 30th, 2016.

4 The topic of the second report we will consider
5 today is the Special Reserve Fund. The fund was created
6 pursuant to the terms of the 1987 facilitation agreement
7 for the disposal of the city's municipal solid waste at
8 the Altamont Landfill.

9 The Rate Board requested a report on all
10 contributions to and expenditures from the fund since
11 its inception. The Rate Board also requested
12 recommendations for future uses of the fund now that the
13 Altamont Landfill agreement is about to expire.

14 The Rate Board will consider the future use of
15 the fund based on the information provided in the
16 department's report. We will consider each report
17 separately. Members of the public will have an
18 opportunity to provide comment before the Rate Board
19 considers what actions, if any, to take in response to
20 the two reports.

21 I'd also like to mention that we received two
22 written submissions by members of the public. One by
23 Mr. Kermit Kubitz and another by Mr. David Pilpel. The
24 copies of those responses will also be available and
25 they're available here at the table if you'd like a

1 copy.

2 I would like to make clear that we are not
3 hearing objections to the director's recommended order
4 on the 2013 rate application. The Rate Board has
5 already heard those objections and issued a resolution
6 and order based on our findings in 2013.

7 Rather, today's hearing is restricted to the
8 consideration of the two reports being presented today.
9 The only actions before us are whether to find that the
10 AMC program has increased diversion from the landfill in
11 a cost-effective manner and the proposed uses of the
12 Special Reserve Fund.

13 I do not anticipate that we will continue this
14 hearing to another day but will be able to take action
15 today.

16 Moving to Item Number III on the agenda, the
17 presentation and discussion of the report regarding the
18 Abandoned Materials Collection Program. At this time I
19 would like to invite Mr. Nuru, the Director of Public
20 Works, to provide introductory remarks and introduce the
21 AMC program report. Thank you.

22 MR. NURU: Good afternoon. Thank you,
23 Jennifer, for the introduction. Members, as you said, I
24 am Mohammed Nuru, the Director of Public Works for the
25 City and County of San Francisco.

1 You have before you today two reports that were
2 requested in the proceedings on the 2013 Recology rate
3 application. The first is on the Abandoned Materials
4 Collection Program.

5 As you know, in July of 2013 Recology assumed
6 responsibility for the program at the city's request.
7 Since then, Recology and Public Works have worked in
8 partnership to improve responsiveness to the public
9 complaints about refuse discard on our city streets and
10 public places.

11 The Rate Board requested a report on the
12 effectiveness of the first two years of the pilot
13 program, including an analysis of where there has been
14 an increase in material diversion from landfill. Julia
15 Dawson, my Deputy Director for Finance and
16 Administration, will present that report.

17 The second report concerns the Special Reserve
18 Fund. The report summarizes all contributions to the
19 expenditures from the fund since its inception and
20 describes the potential future uses of the fund now that
21 the Altamont Landfill agreement is about to expire.
22 Jack Macy of the Department of Environment will present
23 that report.

24 Before I turn it over to Julia, I would like to
25 share some information on the efforts of our outreach

1 and enforcement, the One Team, which was created in 2013
2 to reduce the incidence of illegal dumping on our city
3 streets and public property. One of their main jobs is
4 to ensure that residents and businesses are subscribing
5 to adequate refuse service and understand the
6 appropriate practices for leaving items out for
7 collection.

8 Under this program, Public Works created a team
9 of six public information officers and two program
10 support analysts providing oversight and management.
11 The public information officers assigned to each of the
12 department's six zones work on a full-time basis and
13 conduct daily inspections of litter and illegal dumping
14 hotspots and submit service requests, investigate and
15 issue notices of violation as well as citations, and
16 engage in an extensive community outreach and education
17 program.

18 They also survey the zones to determine the
19 effectiveness of the work that they are doing and
20 through their enforcement efforts. They also play an
21 important role during scheduled inspection corridors
22 which we have on a regular basis. They fill in the gaps
23 between community needs and Public Works operations.

24 The One Team has successfully collaborated with
25 Recology and the Department of Environment and the

1 Department of Public Health and other community
2 interests to support the city's zero waste code.

3 The One Team logged over 3,565 notifications in
4 its first quarter of the fiscal year 2015/16, including
5 1,781 outreach contacts and 1,460 warnings and 324
6 citations. The two most common categories for the
7 notices of violation and citations are for residential
8 and commercial garbage issues and illegal dumping.

9 As a result of the One Team's work, more than
10 \$200,000 in citation revenue has been returned to the
11 ratepayers.

12 The One Team together with Recology and Public
13 Works litter patrol and street cleaning teams are
14 working diligently to reduce illegal dumping and
15 littering. Nevertheless, San Francisco's booming
16 economy and dramatic growth are contributing to a higher
17 number of service requests. We are making every effort
18 to respond within our available resources.

19 I think we are making progress on improving the
20 overall cleanliness of the city streets and will
21 continue to encourage residents and businesses to
22 subscribe to adequate refuse service.

23 Now I will turn it over to Julia Dawson to
24 present the Abandoned Materials Collection report.

25 MS. JOHNSTON: Thank you. Ms. Dawson?

1 MS. DAWSON: Thank you, Mohammed. Members,
2 Julia Dawson, Deputy Director of Public Works.

3 This report on the Abandoned Materials
4 Collection Program was prepared in response to the Rate
5 Board's request to review the effectiveness of the pilot
6 program. Using the 311 call center data and information
7 from Recology's quarterly and annual rate reports, we've
8 compiled statistics to measure their performance based
9 on three criteria; response time, service level and
10 diversion.

11 So first, with respect to response time, the
12 city's response time goal for 311 calls is 48 hours.
13 When Recology assumed responsibility for abandoned
14 materials, Public Works director set new performance
15 standards. So within four business hours on weekdays
16 and within eight business hours on weekends.

17 Public Works staff coordinated with the 311
18 call center to establish a new protocol for tracking
19 Recology's response time. The response time measurement
20 starts when a request is referred to Recology and it
21 ends when Recology then reports the item as closed.

22 We only measure Recology's response time for
23 calls that they are ultimately responsible for. So, for
24 example, we don't count calls that were referred back to
25 Public Works or another city department, and I have the

1 first figure. This figure is also included in the
2 report, but if I could have it shown on the screen.

3 So in using this, you can see it actually goes
4 through the first two years of performance at Recology.
5 The orange line is weekend and the blue line is weekday
6 and then these two lines for blue and kind of I guess
7 tan are the respective goals.

8 You can see that actually Recology has met the
9 weekday goal on both weekdays and weekends, and there
10 have been no offsets levied for failure to meet response
11 time goals.

12 Now I'm going to move the discussion onto the
13 service level measurement. So Recology has completed
14 more than 50,000 service requests in each of the first
15 two years. So this next chart, as I said, it was
16 also -- wonder if I can adjust this so that I can see
17 more of it. Maybe not. Okay.

18 So the first chart on the top shows the monthly
19 service requests starting in July of 2013, then running
20 all the way through the first two fiscal years, and you
21 can see the seasonal fluctuation in this graph calls for
22 service. We're not currently reporting on any
23 unscheduled pickups that Recology drivers make along
24 their route because there's no 311 service request for
25 what we would describe as proactive work. As a result,

1 the packer measures response time. But these pickups we
2 did want to point them out because they're an added
3 benefit to the program and to the public.

4 So we looked at Recology service level compared
5 to the number of service requests that Public Works
6 received in the year prior to Recology assuming the
7 program. So if you look at the kind of figure below
8 here, Figure 3A, if you look at the first year, fiscal
9 year 2013, that is when Public Works was still
10 responding to all of this type of service calls for
11 abandoned materials. The darker kind of purple shows
12 what we would describe as packer vehicles, otherwise
13 kind of known as garbage trucks, and the yellow color
14 refers to our litter patrol, usually larger pickup
15 trucks.

16 So in fiscal year 2013 we responded to 5,000
17 service calls a month on average for abandoned
18 materials, and this number is comparable to the monthly
19 service level now being performed by Recology.

20 So you can see from this graph kind of in the
21 outbound years from 2014 and '15 that initially there
22 was kind of a slow ramp up as the program got going, but
23 now when we look out kind of to the edge of fiscal '15
24 and into '16, the levels that Recology is performing is
25 quite comparable to what we were doing prior to them

1 assuming the program.

2 So per the agreement with Recology, Public
3 Works did retain responsibility for some of the service
4 calls; for example, pickups of construction debris,
5 hazardous materials, broken bags or scattered items that
6 required additional cleanup, and the cleaning around
7 homeless encampments. Currently our litter patrols are
8 dispatched for this type of work.

9 So initially, as I already described, we did
10 see kind of a decrease in some of what Public Works was
11 doing which you could see on this line here, but over
12 time that has kind of crept back up based on calls for
13 service, particularly in the last 18 months.

14 So in December of 2014 we placed a few packer
15 trucks into service to support our litter patrol actions
16 based on demands for service from the public. At the
17 moment we are currently attributing the increase in
18 these calls to the rapid economic growth and the change
19 in the use in various parts of the city.

20 MR. CARLIN: May I ask a question?

21 MS. DAWSON: Sure.

22 MR. CARLIN: What would be the potential reason
23 for such a dramatic drop-off when the program was handed
24 over to Recology?

25 MS. DAWSON: I think it's really a transition

1 question. So when you first move a program over, it
2 takes a little time to determine who is actually doing
3 what and to ramp up the calls for service to the
4 appropriate balance. I think we always expected there
5 would be some amount of adjustment time between us and
6 Recology to figure out who should pick up work.

7 MR. CARLIN: So in June of 2013 you have almost
8 4,900 service calls and then in July this is what
9 Recology reported was 1,259. Was Department of Public
10 Works still implementing the program?

11 MS. DAWSON: Well, maybe I should explain. So
12 if you look at the -- that's actually why I have the two
13 charts on the same page even though it's a little
14 confusing in the report. This top one is Recology. So
15 in July of fiscal year '14 they were responding to 4,714
16 requests. The lower level shows Public Works.

17 MR. CARLIN: So you're still responding.

18 MS. DAWSON: So we're still responding through
19 our litter patrol to the kinds of abandoned materials
20 that Recology can't respond to. And the reason I'm
21 showing them together is partly because I wanted there
22 to be a disclosure that Recology is performing at about
23 the level that we were performing at when we handed it
24 over, but our calls for service had been increasing.

25 So in effect what's happened is Recology is

1 handling about as many abandoned calls as we were
2 handling before hand over, but we're handling some
3 additional work too.

4 MR. CARLIN: It looks like overall the amount
5 of material has increased significantly.

6 MS. DAWSON: Or at least the amount of
7 requests. One of the things that has changed is that
8 the city did launch a new mobile app so that citizens
9 could have easier access to calls for service.

10 The other thing that I think is very different
11 and we see it every day is that as more of these sites
12 in particularly areas that were once more commercial,
13 like the south of market area or even around Civic
14 Center, as those areas are developed there have also
15 been more calls for service generated in those areas for
16 abandoned materials or just cleaning, and so I think
17 we're seeing some of the impact of the way the city's
18 development is shaping the way that citizens --

19 MR. CARLIN: If I was to look at this say back
20 in June of 2013, 4,900 service calls total to the city
21 handled all by Department of Public Works and today we
22 have upwards of almost 8,500 being handled between
23 Recology and the Department of Public Works?

24 MS. DAWSON: That's correct.

25 MR. CARLIN: Okay. I would have stacked the

1 graphs.

2 MS. DAWSON: Okay. Well, I think we didn't
3 want to really be showing -- didn't want to be
4 claiming -- yes, that probably would have been a good
5 idea. That way we could have seen the cumulative
6 effect.

7 MR. CARLIN: Right. Thank you.

8 MS. DAWSON: So moving onto kind of the third
9 aspect of the report that we focused on, which is
10 important to the rate refuse process, is diversion.

11 So Recology's approach to collecting abandoned
12 materials by dividing the city into five zones and
13 dispatching two trucks per zone, which one of which is a
14 packer and one is what we call a box truck, has resulted
15 in a significant increase in the amount of materials
16 diverted from the landfill.

17 So I apologize. I've stacked the charts
18 together again.

19 The first Figure 4 shows the results of
20 Recology's program. So on the left here is the
21 abandoned materials and on the right are bulky items.
22 We showed those because there's -- they kind of have
23 comparable diversion rates. So the bulky items program
24 is where homeowners can call for a pickup of items.
25 Some of you may live in the city and use that program.

1 More than 60 percent of the waste has been diverted over
2 the last several years.

3 So by contrast, if you look at Public Works
4 diversion rate, our rates are only say between 12 and 36
5 percent of the materials, and Figure 5 kind of shows the
6 Public Works diversion rates over the last four years
7 starting in fiscal '12 and going through to fiscal '15.

8 So to be fair to Public Works, our tonnage does
9 include different kinds of items than what the Recology
10 program covers. We do street sweepings. There's event
11 cleanups. There's litter patrol pickups in the homeless
12 encampment as I mentioned before.

13 So the materials aren't exactly comparable for
14 diversion purposes, but we do feel that Recology has
15 been very successful in changing the diversion profile
16 of the Abandoned Materials Program for those items that
17 they are collecting which was one of the goals of the
18 program.

19 Finally, I do want to note overall that
20 Recology has collected more tons of materials in the
21 first two years of the Abandoned Materials Program than
22 they assumed in their rate application. So in the
23 initial rate application they assumed 3,000 tons per
24 year, but Recology has been collecting closer to 4,000
25 tons per year, which is about 20 to 25 to 30 percent

1 more than was factored into the rate base. So in effect
2 we are getting more than the rate base assumed.

3 And I'm happy to answer any other questions
4 that you might have.

5 MR. RYDSTROM: Just a couple of observations
6 and a question. Reading the report, I could just try to
7 recap it and ask a question. We're picking up things
8 faster. We're picking up more things and we're also
9 doing it in a way that's diverting more than what we had
10 assumed. So all very effective performance metrics.

11 Is there anything that you'd want to see being
12 done better at this point given the items you reflected
13 in the report?

14 MS. DAWSON: Well, I think the only thing I'd
15 say to that is they're doing more for the same price.
16 So in effect you're achieving even more effectiveness
17 than you assumed. I think we're pretty comfortable with
18 the level of service response between Public Works and
19 Recology and it is very collaborative in terms of our
20 ability to kind of refine as we go along.

21 So I think we're not looking to change the way
22 the program is working and feel that it's achieving the
23 objectives that were set out in the rate application.

24 MR. RYDSTROM: Thank you.

25 MS. JOHNSTON: Any other questions?

1 MR. CARLIN: No.

2 MS. JOHNSTON: At this point now I'll invite
3 members of the public to bring public comment on this
4 agenda item which is the AMC program report. Any
5 members of the public here to submit a comment?

6 When you approach, please state your name for
7 the record and please use the microphones so your
8 comments can be recorded and speak with some limited
9 pace and each speaker will have three minutes.

10 MR. PILPEL: Thank you, Madam Chair. David
11 Pilpel. Good afternoon, Rate Board.

12 I wanted to refer to my letter that you all
13 have. Copies are on the table. I think most of the, if
14 not all of the audience have seen it and hopefully read
15 it. I wanted to refer at this time to the second and
16 third paragraphs.

17 The first issue I wanted to raise was the
18 question of the ratepayer advocate being at these
19 proceedings. I don't see that person. Perhaps we could
20 have a little discussion with the board about that
21 absence, whether it's a huge problem, how to deal with
22 that. I thought that was going to be a feature of the
23 rate process and the Rate Board.

24 Anyway, as to the Abandoned Materials
25 Collection Program, in the next paragraph I raise my

1 continuing concern about who should bear the cost of
2 that program. I absolutely agree that Recology is doing
3 a much more effective job of collecting all of the
4 measures that were just talked about, but the question
5 still remains who should pay for that and I believe that
6 should be a city responsibility and not a residential
7 ratepayer responsibility.

8 The board previously chose to transfer both the
9 program and the costs to the rate base, but that's
10 something that you could undo or consider again.

11 And the other portion there and I think there
12 was a little discussion getting to that point was about
13 the diversion rates both by Recology and DPW, and
14 perhaps we should spend a second on DPW.

15 As the last Figure 5 shows, DPW does not
16 achieve the same diversion rate as Recology, didn't,
17 still doesn't. I don't want to speak for DPW, but it
18 appears that it's based on the factors including the
19 type of materials that they collect, the types of trucks
20 that they use, the ability to divert those materials,
21 street sweepings, et cetera.

22 I would suggest that as Recology looks to black
23 heart processing that the materials that come in through
24 DPW should be a candidate for one of the tests to see
25 about diversion of those materials. I believe that a

1 lot of those materials may prove to be compostible and
2 don't need to go to landfill. So I'm sure they will be
3 looking at that, but that's something that you could ask
4 for a further report on in the future proceedings.

5 I think we've also seen in these reports that
6 the type of trucks that are used really goes to how much
7 diversion can be accomplished. Once you put something
8 in a packer truck it's basically gone. Most of that
9 material is really going to landfill. So the more
10 materials that can be collected and are appropriate to
11 be collected in box trucks or other types of vehicles,
12 those materials may lend themselves more to diversion.

13 Unless you want to engage in discussion or have
14 any questions, thank you.

15 MS. JOHNSTON: Thank you. Again, please state
16 your name for the record.

17 MR. GARDINER: Certainly. My name is Stuart
18 Gardiner, S-t-u-a-r-t G-a-r-d-i-n-e-r.

19 Members of the board, I respectfully suggest
20 that there are at least two reasons why action on the
21 proposed resolution as concerns the Abandoned Materials
22 Collection Program is premature today.

23 The first set of reasons relates to the report
24 that you've been submitted and heard about from
25 Ms. Dawson. The proposed resolution in Item 1A contains

1 a finding that you're asked to make, but the program has
2 resulted in an increase in diversion from landfill.

3 But as the report, as supplemented by
4 Ms. Dawson's comments, concedes, the measures of
5 diversion are not compatible as between Recology's
6 diversion of abandoned materials and DPW's diversion.
7 It's apples and oranges. You don't have a factual basis
8 for concluding that there has been an increase. I'm
9 sure we all hope that there has been, but you don't have
10 the basis for that finding.

11 Secondly, as regards cost effectiveness, which
12 is another element of the report, there is again no
13 basis and data or analysis from which you can conclude
14 that the Recology program is cost effective. There is
15 no data tied to, for example, unit cost of materials
16 disposed. There is no analysis of comparable
17 performance of the same service other than total volume,
18 but that's not a cost effectiveness measure.

19 Lastly, I would point out to you, as was raised
20 in the 22013 proceeding, that there is serious legal
21 question about the constitutionality of this program.
22 It is in fact a tax illegally and unconstitutionally
23 being hoist on the ratepayers and to my recollection
24 there is no City Attorney's written opinion that finds
25 otherwise.

1 There is opinion that was offered by counsel
2 for Recology. There was contrary argument offered by
3 myself and other citizen participants. I would suggest
4 that you need -- before you affirm a program and make it
5 essentially permanent, which it is not at this point,
6 you need a finding backed by some legal analysis that
7 this is lawful. Thank you.

8 MS. JOHNSTON: Thank you. Are there any other
9 members of the public that would care to submit a
10 comment?

11 Okay. At this time I would like to open this
12 up to discussion with the other members of the Rate
13 Board. The issue before us again is whether to find the
14 AMC program has increased diversion from landfill in a
15 cost-effective manner consistent with the city's goal of
16 zero waste.

17 MR. RYDSTROM: If I may, Madam Chair, ask one
18 more question of the department. Ms. Dawson, Mr. Nuru,
19 the materials in the packet on pages 5 and 6 reflect the
20 diversion, the diversion of both Abandoned Materials
21 Collection as well as bulky items. My interpretation of
22 the report was that if I look at the green parts of the
23 stacking bars in 2015, for example, it would show
24 figures of 2,400, 3,600 and then also the DPW portion on
25 page 6 nearly 5,800 as far as the total of diversion

1 allowance. Taking that sum and comparing it to the
2 performance in 2012, my interpretation was that there
3 was a significant increase in diversion. So is that
4 also consistent with what you are conveying in the
5 report?

6 MS. DAWSON: Yes. What we were trying to show
7 here is that when we were doing all the work prior to
8 Recology doing work, we were handling all the abandoned
9 materials and only able to achieve a certain amount of
10 percentage of those materials to be diverted from
11 landfill. So in the period of time that Recology has
12 done the program in 2014 and '15 they're achieving 60
13 percent diversion, which when we were doing it before we
14 were only achieving either -- it ranged between 24 and
15 11 percent diversion. So for those items that were
16 shifted from Public Works to Recology, there is now a
17 substantial increase in diversion.

18 There were, however, still remaining items that
19 we still collect and those are harder potentially, some
20 of them, to divert and then also there may be
21 operational improvements that we could do to try to
22 improve them. We do that all the time.

23 But yes, for that subset of items that we used
24 to handle and Recology handles now there has been a
25 substantial increase.

1 MR. RYDSTROM: So is it fair to say then going
2 from about 7,400 tons in 2012 to nearly 12,000 tons
3 being diverted that that indeed substantiates a
4 significant increase?

5 MS. DAWSON: Yes.

6 MR. RYDSTROM: Thank you.

7 MR. CARLIN: If I could follow up with a
8 question, I'm looking at this as the entire program. Do
9 you feel looking at the program, not just Recology
10 versus DPW, but it's a program, combined program for the
11 city, that we are actually diverting more than we were
12 in the past as a program?

13 MS. DAWSON: I think that's fair to say;
14 although, what I would also say is that some of the more
15 challenging items that Public Works retained are more
16 challenging to achieve diversion on. That doesn't mean
17 we can't continue to try to do better and refine those
18 numbers.

19 MR. CARLIN: Do you do any sort of like sorting
20 of that material to see, given that you're using a
21 packer truck versus a box truck, if you were to change
22 your method of pickup, would that increase the amount of
23 material that would be diverted?

24 MS. DAWSON: I think we need to assess how we
25 can do that operationally. It is a little hard because

1 our items are so varied and we're moving in so many
2 different places around and don't have -- we've
3 essentially kept the harder to segregate items.

4 MR. CARLIN: Right. Would it be also fair that
5 given the fact that you are now ramping up your program
6 -- and I don't know the source of funding for your
7 program, I assume it's the general fund -- that the
8 argument that there is a portion to be paid by the
9 ratepayers for solid waste service and some portion to
10 be paid by the general fund and that has increased over
11 time?

12 MS. DAWSON: The amount that the general fund
13 has supported on this program has been reduced, though
14 there have been other items that have increased in the
15 general fund for different programs that we do. So when
16 the abandoned materials came in, we did scale down our
17 program on abandoned materials and reduced it to
18 essentially one funded collection truck and some
19 coverage for those items we knew would never be able to
20 go into the program.

21 I think the big surprise has been the increase
22 in calls for service and potentially in areas or
23 programs that made diversion harder.

24 MR. CARLIN: But your program has -- looks like
25 it's ramping up again because you've added the packer

1 trucks back in. So I'm assuming that's additional costs
2 being placed on the general funds?

3 MS. DAWSON: There are really based on calls
4 from the public. And so when we come up for our budget
5 conversation this year, we are going to be having to
6 talk about exactly how we're going to be addressing
7 those calls for service from the public.

8 MR. CARLIN: Thank you.

9 MR. RYDSTROM: And then is it fair to say for
10 clarity that as those calls have increased, the workload
11 has increased for DPW, there's no additional department
12 or revenue, so it is general fund support?

13 MS. DAWSON: That is true.

14 MR. RYDSTROM: And that the fines and citations
15 as mentioned by Mr. Nuru earlier today in his comments,
16 about \$200,000 actually reverted to the benefit of the
17 ratepayers?

18 MS. DAWSON: Correct. The promise of our
19 increased enforcement always was that any amount of
20 citation revenue collected would be credited back to the
21 impound account, and that has happened, and we are
22 continuing to do that.

23 MS. JOHNSTON: Either of you want to start a
24 discussion on this matter?

25 MR. CARLIN: I'm fairly satisfied. I think

1 that the program has been successful. I think it should
2 continue. I think it has some opportunity for greater
3 success in the future and I think we should allow it to
4 continue and measure that success, and perhaps what we
5 need to do is ask for another report in two years to see
6 how the program has progressed over time. So I'd be
7 happy to move the program to continue.

8 MR. RYDSTROM: I concur with that. Nicely
9 summarizes it.

10 MS. JOHNSTON: So then do I have a motion to
11 find that the AMC program has resulted in an increase in
12 diversion from landfill materials in a cost-effective
13 manner consistent with achieving the city's goal of zero
14 waste?

15 MR. CARLIN: I am glad to make that motion.

16 MR. RYDSTROM: I would second it.

17 MS. JOHNSTON: All those in favor?

18 MR. CARLIN: Aye.

19 MR. RYDSTROM: Aye.

20 MS. JOHNSTON: Motion passes.

21 Okay. Based on this finding of the Rate
22 Board's 2013 resolution order, the AMC program will
23 continue beyond June 30th, 2016 at the same rates of the
24 pilot program subject to any adjustments authorized in
25 the rate order. We'll now move on.

1 MR. CARLIN: Can I make a slight amendment that
2 we'd ask for a report in two years and that's on the
3 progress made on the program?

4 MS. JOHNSTON: Okay.

5 MR. RYDSTROM: Seconded.

6 MS. JOHNSTON: All those in favor?

7 MR. CARLIN: Aye.

8 MR. RYDSTROM: Aye.

9 MS. JOHNSTON: Aye. Motion passes with the
10 amendment.

11 We'll now move onto Item IV on the agenda, the
12 presentation and discussion of the report regarding the
13 Special Reserve Fund. We have a representative from the
14 Department of Environment here to provide a presentation
15 on that report.

16 If you could please state your name clearly for
17 the record.

18 MR. MACY: Good afternoon, members of the Rate
19 Board. I'm Jack Macy, Department of Environment, Zero
20 Waste Program.

21 So you have before you a Special Reserve Fund
22 report in the form of a memo addressed from myself to
23 Julia Dawson of Public Works. The Special Reserve Fund
24 was created by the 1987 facilitation agreement that went
25 along with the landfill agreement that we've been --

1 that's been in effect since 1987 and this fund was
2 created for the payment of extraordinary expenses
3 associated with Recology's obligation under this
4 landfill agreement that would normally be covered by the
5 rates but that wouldn't necessarily be anticipated in
6 the future. So when we come up, it kind of helps with
7 buffering the rates and paying that.

8 It required a minimum balance of \$15 million to
9 be maintained throughout the term of the disposal
10 agreement and until all Recology's obligations are met
11 under the Waste Disposal Agreement.

12 The fund was funded by a 1.3 percent surcharge
13 on the volumetric billings of residential and commercial
14 ratepayers starting in November 1988. On September
15 30th, 2010 the fund had reached nearly 30 million, and
16 at that time the Rate Board ordered that the proceeds
17 from the 1.3 percent be reallocated to cover costs for
18 Public Works prevention and management of the illegal
19 dumping and litter.

20 Then thereafter in October 2010 the 1.3 percent
21 was no longer deposited in the fund. In July 2013 the
22 surcharge was discontinued altogether from the beginning
23 of the fund in September -- through September 30th,
24 2015. So the data that was used for this report was
25 through that time. The total contributions plus all the

1 interest, minus the fees, came up to a net total of 38
2 million -- \$38.2 million.

3 In the report I summarized that and as well as
4 the expenditures. Help yourself here for the public if
5 they don't have one. You can see here. I can try to
6 focus. Maybe it's my eyes. Okay.

7 So these expenditures that -- there was a
8 process set up where the expenditures are approved by
9 the City Administrator upon recommendation by Public
10 Works, reviewed by staff and Public Works and Department
11 of the Environment, City Attorney's Office.

12 These expenditures included regulatory costs
13 that come up from time to time that not always can be
14 anticipated in the future; new construction costs of a
15 landfill waste water treatment plant; regulatory costs
16 mandated under subtitle D; e-waste, electronic waste
17 disposal costs mandated by state legislation and other
18 regulatory costs; and the last regulatory cost was back
19 in December 2007 and there were -- the last equipment
20 costs were May 2012, long haul tipper fee engines, and
21 there were some additional fees that the county imposed.

22 So this was for \$8.6 million of expenditures
23 out of this fund and that resulted in a balance as of
24 September 30th, 2015 of 29.6 million.

25 The Rate Board had requested that the

1 Department of the Environment and the Public Works do a
2 preliminary assessment of the current future conditions
3 of the use of this fund. We've done so and we have not
4 been able to identify any specific or potential
5 extraordinary expenses associated with Recology's
6 obligations under the Waste Disposal Agreement.

7 That agreement is coming to the end in
8 mid-January because it's based on achieving a cumulative
9 tonnage of 15 million tons.

10 Based on that, we now have the situation under
11 the new agreement where we have a new reserve fund that
12 is required. It's supposed to be not less than \$10
13 million as adjusted by the Consumer Price Index, subject
14 to approval of Director of Public Works and the Rate
15 Board, and it can be gradually funded over the first
16 four years of a new agreement.

17 The reserve fund is expected to be funded by 1
18 percent surcharge on all solid waste delivery. It's a
19 little different. Not 1.3 but one percent based on
20 solid waste delivery. Sole purpose of the new reserve
21 fund is to reimburse Recology for costs related to
22 obligations under the new agreement which are expected
23 to be recoverable through rates but have not yet been
24 recovered, such as landfill fees, and these expenditures
25 would be approved by the City Administrator similar to

1 the use of the current fund with review and advice by
2 Public Works and Environment.

3 So based on that, we now have this balance of
4 29.6 million and we have a new fund that we need to
5 create and we have obligations that Recology has. So
6 our recommendation is the following:

7 1. Transfer a portion of the required 10
8 million, 3.75 million, and that is based on the fact
9 that we can gradually fund the new fund and so we're
10 looking at the first 18 months roughly which is January
11 through June of 2016 -- sorry -- 2017 and that 18 months
12 is anticipated because we are expecting that there can
13 be a full yearlong rate process to create new rates as
14 of July 2017. So we're only looking at that time
15 period. If for some reason there's not a rate process,
16 that can be revisited later.

17 So we're looking at meeting a gap of the first
18 18 months which -- or just shy of 18 months -- cover the
19 additional costs -- sorry -- 18 months of the first four
20 years to allow the funding. So we need to go up to \$10
21 million to fund the fund and we're going to prorate the
22 first 18 months by initial deposit of 3.75 million and
23 then the rest of it can be revisited later in a future
24 rate process.

25 The second proposal use of the fund is -- to

1 the current fund is to transfer enough funds to cover
2 the increased cost that we anticipate Recology has to
3 cover the increased transportation and increased
4 disposal cost at the new landfill.

5 And they have done a calculation using the
6 methodology that we use in the rate setting process,
7 looking at all the different cost components of
8 transportation and disposal, and they've estimated an
9 average of \$12 for transportation and \$9.18 for
10 disposal. Transportation has more components so that's
11 averaged out to the nearest dollar.

12 So that adds up to \$21.18 and times the number
13 of times that we -- maximum number of times we
14 anticipate for the first 18 months results in \$12
15 million.

16 Recology will be reimbursed by submitting
17 quarterly reimbursement reports, showing their costs,
18 their actual costs as accurate as they can be. And
19 Environment and Public Works will review that, refer
20 that to the administrator for final reimbursement
21 approval.

22 So the total estimated cost is 12 million, but
23 those costs could be slightly less or more based on
24 actual costs. Fuel goes up and you know down.

25 And that after we transfer the 3.75 and the 12

1 million, that leaves us with remaining 13.9 million in
2 the current fund, and we anticipate that that is more
3 than enough to cover potential obligations and that
4 balance would stay and the Rate Board could revisit that
5 at the next rate process or when the Rate Board desires
6 for new uses.

7 Now, at the end of the first 18 months if we're
8 at a new rate process, we'll need to bring up -- look at
9 bringing up that new fund and there will be an option
10 there to pull further from the old rate fund.

11 And the summary of these proposed expenditures
12 and contributions are in that table on the back of the
13 report. So that summary is what you have in your
14 report. So if you have any questions at this time.

15 MS. JOHNSTON: I do have a quick question. I
16 realize the agreement's going to be expiring in January,
17 but the facilitation agreement requires a minimum
18 balance of 15 million to be maintained throughout the
19 term of the agreement. So the fact that you're going to
20 be depleting it below the 15 million threshold is not
21 going to have any liability or impact with the city;
22 right? Is that a correct statement?

23 MR. MACY: Correct. So my recommendation that
24 the transfer would actually happen once the new
25 agreement goes into effect. So as soon as we achieve

1 that 15 million tons, the old agreement is no longer in
2 effect, we then transfer the money. Since the uses of
3 reimbursement would not happen until after those costs
4 would incur, we don't need to actually pay out
5 reimbursement until the first -- quarterly basis would
6 be three months later.

7 MS. JOHNSTON: Okay.

8 MR. CARLIN: Do we anticipate any additional
9 costs with the closing of that contract at Altamont?

10 MR. MACY: The next contract --

11 MR. CARLIN: Not the next contract. The
12 existing contract. When it closes, do you expect any
13 extraordinary expenses?

14 MR. MACY: We have not been able to identify
15 any, but I think that for prudence sake it's important
16 that we don't just pull all of it out. So I think that
17 once that agreement ends we can make sure -- until that
18 agreement is completed, then we'll have a better picture
19 at the end of that agreement. The facilitation
20 agreement requires that this money -- the Rate Board has
21 up to five years after the end of the agreement to make
22 a determination.

23 The one thing that's worth pointing out that's
24 in my Special Reserve report is a 2002 amendment to the
25 facilitation agreement involved paying an additional 27

1 cents per ton to cover additional costs, but in that was
2 an agreement to release the city and the ratepayers of
3 any claims of foreclosure costs because there can be a
4 lot of long-term liability associated with the landfill
5 and that was an important step to take care of that
6 long-term liability.

7 MR. CARLIN: This goes back to the chair's
8 question. If we take action today, the fund would be at
9 13.9 million and that's below the 15. Does that cause
10 us any sort of liability having the fund being at 13.9
11 versus 15 until that the current agreement has expired,
12 until the we reached the tonnage requirement?

13 MR. MACY: Well, I guess we can get a legal
14 opinion on that.

15 MR. CARLIN: That's what I'm asking for.

16 MR. MACY: Right. My understanding is that if
17 the board concurs for that money to be transferred, the
18 transfer could happen at the end of the agreement. But
19 let me consult.

20 MR. OWEN: Tom Owen, City Attorneys office.
21 The proposal is to actually make the transfer effective
22 upon the termination of the old agreement. So there
23 should be no problems. Plus, the obligation is to
24 Recology as the other party to the facilitation
25 agreement. As long as they're comfortable with it.

1 MR. CARLIN: That's fine and I appreciate that
2 answer. That opens up another series of questions that
3 I'd like to ask you perhaps is, as being proposed today,
4 is to put the money into certain accounts and if we were
5 to change how we put those into certain accounts, it
6 does not affect the previous agreement at all?

7 For example, if we wanted to fully fund the
8 reserve today, contingent on the fact that the previous
9 agreement had expired, the \$13.9 million is sitting
10 there, put it all in the reserve, because what I kind of
11 heard is we have 12 million we want to put in the
12 account for extraordinary expenses, 3.75 to cover the
13 surcharge, but it could be higher or lower, so we might
14 be dipping into 3.75.

15 We don't know what all the extraordinary
16 expenses will be until we get into the next rate
17 setting, which is 18 months potentially when a decision
18 will be made because it will all be retroactive.

19 To protect ourselves we might want to consider
20 -- I'm speaking a discussion out a little bit -- if we
21 wanted to fund the Special Reserve at 10 million, we
22 could do that?

23 MR. OWEN: The new Special Reserve?

24 MR. CARLIN: Correct.

25 MR. OWEN: That would not change our

1 obligations or responsibilities under the old
2 facilitation agreement. That's correct.

3 MR. CARLIN: Thank you.

4 MR. RYDSTROM: I think this might be for the
5 City Attorney as well. I'm just not clear exactly where
6 in the proposed legislation the effective date is. If
7 you could help point that out to me. Maybe I'm missing
8 it.

9 MR. RUSSI: There's not a date in this order.
10 We could add that to make it more clear for everyone
11 involved, yes.

12 MR. RYDSTROM: So we'd want to do that as a
13 friendly amendment then.

14 MR. CARLIN: As an expiration of the -- nothing
15 can change until the expiration of the other agreement
16 it's all closed out and there's no liability; right?

17 MR. RYDSTROM: I think so.

18 MS. JOHNSTON: Unless you have any other
19 questions for Mr. Owen, I think we'll allow for public
20 comment at this time.

21 MR. RYDSTROM: I do have one for the
22 department.

23 MS. JOHNSTON: Mr. Macy.

24 MR. RYDSTROM: Mr. Macy. As a protection to
25 the ratepayers, the \$12 per ton that's associated with

1 increased transportation costs, what type of reviews and
2 protection for the ratepayer is there if we are to
3 continue to see such low transportation fuel costs? Is
4 there a way that this \$12 per ton would actually be
5 less?

6 MR. MACY: Yes. So there's essentially a
7 formula that takes into account the fuel costs, the type
8 of fuel. We've got both diesel, bio -- bio-diesel and
9 LNG and a transfer to LNG. Right now the gas costs are
10 low, so that's good and promising and could continue to
11 go lower. So they did their best estimate on current
12 prices to project that, but the idea would be they would
13 be putting in actual fuel costs. So if gas prices
14 continue to go down, that would reduce that cost.

15 MR. RYDSTROM: So the proposed transfer for the
16 increase or for those costs, it could actually end up
17 being something less?

18 MR. MACY: Right. But there could be something
19 else that increases.

20 MR. RYDSTROM: Thank you.

21 MS. JOHNSTON: No further questions. I'd like
22 to open up a discussion. I'm sorry. I'd like to now
23 invite members of the public to provide public comment
24 on this matter. Speakers will be limited to three
25 minutes. If you could state your name for the record.

1 MR. GARDINER: My name is Stuart Gardiner.
2 First I want to urge you to consider Mr. Carlin's
3 suggestion of fully funding, given appropriate
4 conditions, the new Special Reserve Fund. It seems to
5 me from a ratepayer's perspective that you don't want
6 the 13 odd million dollar balance hanging around after
7 the facilitation agreement has expired and there are
8 other good purposes to which it could be put.

9 Secondly, and along those lines, I hope you
10 will consider whether the one percent surcharge is
11 needed at this time. As I understand it, the purpose of
12 that surcharge is to fund the special -- the new Special
13 Reserve, and if you have it fully funded at least in
14 initial years, it seems to me that you might find a
15 basis for waiting to impose such a surcharge on
16 ratepayers until there's a genuine need for it.

17 Thank you.

18 MS. JOHNSTON: Thank you.

19 MR. PILPEL: David Pilpel again. Once again, I
20 note that my comment about the ratepayer advocate that
21 you didn't address earlier I'd really appreciate it if
22 you would address that one way or the other.

23 As to the Special Reserve, I refer to page 2 of
24 my comment letter, the two big paragraphs there. I
25 won't repeat what's in there. I do want to clarify that

1 there were some misunderstanding. I believe that the
2 use of the Special Reserve to cover the increased
3 disposal costs should be limited to only the next year
4 and not the next 18 months so as to in effect force the
5 rate process to start sooner.

6 What I understand is that there is still
7 uncertainty about various other elements not related to
8 the new landfill agreement and that perhaps rather than
9 six or -- rather than the next -- using the next six
10 months to resolve more of those issues, that if Recology
11 and the DOE and Public Works had up to 12 months, given
12 the notice and the final application, that they would be
13 able to resolve more of those issues.

14 I'm not particularly convinced. I think that
15 there's still a lot of outstanding questions and we're
16 only going to know what we know and that the ratepayers
17 benefit more by the rigorous and appropriate rate
18 process rather than this proposal to just trust them and
19 use a methodology to pass through both their direct
20 costs and the labor and fuel that you just talked about.
21 So I would rather limit that to 12 months rather than
22 18. You might consider 15.

23 And I've also heard concerns about the rate
24 process not tracking to the city's fiscal year
25 timeframe. I think there are ways to deal with that.

1 The sooner that -- notwithstanding allowing this to
2 occur, the sooner you put an end to it and force that
3 actual rate review I think the better off we are.

4 As to the other uses of the Special Reserve in
5 the next paragraph, I talked about kind of the longer
6 term. I would disagree with the previous speaker's
7 suggestion to put all of the money in the new Special
8 Reserve.

9 My understanding is that essentially there is
10 leftover of money that's sort of surplus to either the
11 Altamont needs, the road needs, the post closure, that
12 there's surplus money that is in the fund and will be in
13 the fund and that that should be used to the benefit of
14 the ratepayers.

15 I suggested some possible uses. There may be
16 others. Ultimately it should benefit the ratepayers and
17 I would suggest sooner rather than later. I understand
18 that we're getting interest on the fund, but at some
19 point there should be an ultimate use and I would like
20 you not to defer that decision forever because forever
21 is a long time.

22 Unless you have questions, thank you.

23 MS. JOHNSTON: Any other members of the public
24 interested in submitting comment? Okay. Then I'd like
25 to open this up to other members of the Rate Board for

1 discussion. The issue again before us is whether there
2 is a continuing need for the fund or some portion of it.
3 If some or all of the fund is no longer needed as of the
4 expiration of the 1987 Waste Disposal Agreement, the
5 Rate Board may make findings regarding the future use of
6 the fund.

7 And as mentioned in the presentation, the
8 Department of Environment is proposing a distribution of
9 the monies in the Special Reserve Fund which have a
10 current balance of approximately \$29.6 million as
11 follows: First, for one, transfer of 3.75 million to
12 the new reserve fund that is required under the new
13 landfill contract with Recology for the Hayward Landfill
14 and transfer 12 million to the new reserve fund to pay
15 for the incremental costs of hauling and disposing of
16 the city's solid waste at the new landfill for the next
17 18 months and retain \$13.58 million, which is the
18 balance, in the existing Special Reserve Fund until the
19 Rate Board determines there is no need for the fund, at
20 which time it may be used to the benefit of the
21 ratepayers.

22 I remind the Rate Board that distributions from
23 the fund are governed by procedures contained in the
24 director's report and recommend an order on the 2013
25 rate application. Those procedures specify the

1 allowable uses of the fund subject to the approval of
2 the City Administrator. Those procedures also specify
3 that if not later than five years after the expiration
4 of the Waste Disposal Agreement for the Altamont
5 Landfill the Rate Board determines there's no need for
6 the fund, remaining monies in the fund shall go to the
7 benefit of the ratepayers. The two distributions are
8 consistent with the Special Reserve Fund procedures and
9 as such can be made with the approval of the City
10 Administrator.

11 Nevertheless, I ask that the Rate Board
12 consider issuing a finding supporting that action. At a
13 future date the Rate Board may be asked to determine
14 whether there is a need for the Special Reserve Fund,
15 but that question is not before us today so we do not
16 need to take action on the balance.

17 Do my fellow Rate Board members have any
18 questions, additional questions for staff? If you would
19 like to start the discussion.

20 MR. CARLIN: I have one additional question in
21 the resolution. It says under "Regarding Special
22 Reserve Fund 2(A)" that there is a continuing need in
23 the Special Reserve Fund associated with the 1987
24 agreement, and I just would like to know -- I asked a
25 question if there is a need but it's unknown or is there

1 boundaries on it? Is it \$13 million liability or is it
2 a million or is it zero or we don't know?

3 MR. RUSSI: Are you asking me?

4 MR. CARLIN: I'm asking Mr. Macy. I'm sure you
5 wrote it, but you don't know what the answer is.

6 MR. MACY: As I stated in our report, we
7 haven't identified any specific needs, but we do
8 recommend that we keep -- we don't just empty that fund
9 right away.

10 MR. CARLIN: I'm not proposing to empty the
11 fund, but what I would propose is that we fully fund the
12 Special Reserve at 10 million and it doesn't become part
13 of the rate process in the future and we can just
14 concentrate on the rates and then one percent kind of
15 goes away, but that means that we would take 22 million
16 rather than the 15.75. It still leaves you with a very
17 nice balance of about 7 or \$8 million.

18 MR. MACY: Would you like my opinion on that?

19 MR. CARLIN: I would love your opinion on that.

20 MR. MACY: I don't have a problem with that.

21 MR. CARLIN: Okay. Thank you.

22 MR. BAKER: If it's convenient, I'm the
23 attorney for Recology. We have a point of view on that
24 question as well. If it's appropriate at a certain
25 time, I'd like to provide it.

1 MR. CARLIN: I was going to ask you to come
2 up -- not you in particular but one of the
3 representatives from Recology -- to talk about when your
4 rate application would come in. If you want to come up
5 and speak, with Chair's permission, on that issue of the
6 Special Reserve, that's fine.

7 MS. JOHNSTON: Please do.

8 MR. BAKER: My name is Michael Baker and I am
9 an attorney for Recology at the Arnold & Porter law
10 firm. Under the Waste Disposal Agreement, which is a
11 three-party agreement between Recology, the city and
12 waste management, Recology and the city are responsible
13 for certain expenses related to the landfill.

14 And as Mr. Macy indicated, an amendment to the
15 facilitation agreement that was entered into also in
16 1987 and that amendment in 2002 limited the expenses
17 that the city and Recology might be responsible for.
18 But there are certain expenses that the city and
19 Recology could still be responsible for and we will not
20 know for sure until the expiration of the Waste Disposal
21 Agreement and the facilitation agreement, which we
22 anticipate will be the middle of next month, as to
23 whether Waste Management will assert any additional
24 claims arising out of the operation of its landfill.

25 And the 2002 agreement, while it did include

1 the addition of a 27 cents per ton surcharge on the tip
2 fees in exchange for Waste Management releasing the city
3 and Recology from claims, there are certain claims that
4 were carved out of that release that relate to possible
5 additional expenses due to regulatory changes that Waste
6 Management might have incurred.

7 And as Mr. Macy said, we have not heard from
8 Waste Management that they are in fact going to assert
9 any such claims, but again they have until the
10 expiration of the current agreement to do so.

11 So I think for Recology's standpoint, Recology
12 supports the city's current proposal. We think 13
13 million will be far, far in excess of what may be
14 required, but again we have an unknown and so the
15 prudent approach would be to make sure that amount is
16 reserved until we know for certain what the final
17 claims, if any, would be.

18 MR. CARLIN: And when will they have to file
19 these final claims? How long after the agreement
20 expires before they have to notify you in advance of the
21 agreement expiring?

22 A. It's our interpretation of the agreements, that
23 is, the 1987 agreements, that the Waste Management has
24 until the date of the expiration of the 1987 agreements
25 to assert such claims. I think the City Attorney's

1 Office agrees with that, but we don't know whether Waste
2 Management does or not. And so that certainly would be
3 the position that we would assert very strongly that the
4 expiration date is the last day, but again we haven't
5 heard from Waste Management as to whether they're going
6 to argue about that.

7 MR. CARLIN: I guess the next question is that
8 you've probably done some risk analysis and say would
9 the exposure be 13.85 or could it be \$7.6 million and
10 since we've only spent almost -- take out all the
11 e-waste stuff, less than \$8 million over the past -- I
12 don't know -- 20 years, what could they assert now that
13 they haven't asserted in the past?

14 MR. BAKER: Again, there's a -- I'm sorry.

15 MR. CARLIN: From a regulatory standpoint.

16 MR. BAKER: Again, as I said, there's a carve
17 out in the 2002 agreement. I don't think Recology has
18 done a specific risk management analysis of that. I
19 know I haven't. My view is if there's any claim from
20 Waste Management for additional payments under the
21 agreement and from the fund, they would be small, much
22 less than 13 million and much less than 7 million. I
23 have a view there may be zero, but again we don't know.
24 We're only talking about what we believe is another
25 month or so to find out the answer.

1 So I think it's Recology's view let's be as
2 cautious as possible since no transfer of that 13 plus
3 million is necessary now to accomplish any immediate
4 need.

5 MS. JOHNSTON: It does make me a little
6 uncomfortable the interpretation. Doesn't sound like
7 there's a specific clause on point. So I would be
8 curious to know what our City Attorney's Office -- if
9 they concur with your interpretation of the agreement
10 that I -- the question is does the City Attorney's
11 Office concur with Recology's attorney that any
12 additional claims that they would have to submit would
13 have to be done prior to the expiration of the
14 agreement?

15 MR. OWEN: Tom Owen, City Attorney.
16 Unfortunately, I can't answer that question right now.

17 MS. JOHNSTON: Okay. Thank you.

18 MR. RYDSTROM: I have a question for the
19 department as well, unless you were still answering.

20 MR. MACY: I guess, if I may, the reason we
21 have recommended just the 3.75 million is that we're
22 just starting to put tons into this new landfill and so
23 the risk, the liability, the potential costs that came
24 up we see as being very small and build up over time.
25 So we don't see a need for more of that and there is

1 clearly this uncertainty.

2 I thank Recology's attorney for clarifying part
3 of the rationale for just holding on for now a little
4 bit more money in the current reserve as just reducing
5 risk.

6 MR. RYDSTROM: So the question is one for
7 operations. So there's three provisions here for the
8 use of the proceeds of the reserve. One appears to have
9 immediate needs for additional costs the \$12 million.
10 The other two components though, given that we may know
11 with greater certainty in a month as far as what the
12 liabilities could be, is there any operational harm or
13 additional burden to just continuing those two
14 provisions and not making a decision today?

15 MR. MACY: So are you asking just only transfer
16 the 12 million?

17 MR. RYDSTROM: Just the 12 million and leave
18 the other two sums open to continuation to reconvene
19 following the closure of the liability.

20 MR. MACY: Well, my recommendation would be to
21 put something into the new funds because once we start
22 using the landfill there is some potential for costs
23 that could come up. And so to not have -- to have only
24 the 12 million there -- and as I said that could be
25 potentially slightly less or slightly more, so the 3.75

1 allows for just a slight buffer around that 12. But I
2 do recommend that we put some amount, and putting 3.75
3 million for the first 18 months seemed like a reasonable
4 amount. Could potentially be a little bit less or more.
5 But to put nothing besides the 12 I don't recommend.

6 MR. RYDSTROM: So will we not then know with
7 certainty in a month as far as what the liability is?
8 You're talking about 18 months. I thought we would have
9 additional clarity possibility within a month's time.

10 MR. MACY: Well, we might. I think we should
11 have different clarity for the Altamont truly, but then
12 I'm not sure how that plays out. Do we have to convene
13 again? I think that would be -- we would need to do
14 that. Just thought we could take care of it being
15 prudent now enough anticipated for the new fund with
16 plenty left in the old fund and then come next time the
17 Rate Board is here around it a rate process and the
18 opportunity to decide how best to use those funds. That
19 was the basis of our recommendation.

20 MR. RYDSTROM: And the one percent surcharge
21 that was mentioned earlier, when is that being felt by
22 the ratepayers for the new agreement?

23 MR. MACY: So the agreement calls for that
24 mechanism. That would be then considered in the future
25 rate process. So that can't be added to the rates

1 without going through the rate process.

2 MR. RYDSTROM: So there they are protected
3 under the provision.

4 MR. MACY: We're not touching the rates until a
5 new rate process.

6 MS. JOHNSTON: Who bears the cost if there are
7 cost increases for the additional costs? It's not the
8 ratepayer. It's borne by somebody; right?

9 MR. MACY: Under the new agreement?

10 MS. JOHNSTON: Yes.

11 MR. MACY: What we're saying is because this
12 fund allows for those costs the funds would reimburse
13 those costs on an interim basis until the new costs,
14 increased transportation and tip fee can be factored
15 into the rates as that's part of the rate process, but
16 what's in the rates now of course is the existing
17 Altamont costs.

18 We'll actually have a really good handle on
19 those costs -- you know -- if we anticipate in a year we
20 have a rate process, you would have real data on what
21 those costs are that can be put in the rates going
22 forward, and the rate setting is of course just for
23 prospective numbers.

24 MR. OWEN: I did want to add to Mr. Baker's
25 remarks that we'll have more clarity on claims in

1 January. That doesn't mean we'll have a definitive
2 answer necessarily. They may claim something that we
3 dispute. They may claim something that would take a
4 certain amount of time to solve.

5 As the department suggests, it may be prudent
6 to at least partially fund the new reserve now, and if
7 the Rate Board is willing to come back fairly soon just
8 consider the sole issue of releasing part of the
9 remaining balance of the old Special Reserve to fully
10 fund the new one prior to subsequent rate proceedings, I
11 think the department would be willing to commit to
12 bringing that back to you in a timely fashion.

13 MR. CARLIN: When do we expect the rate
14 application from Recology? Recology, you're out there
15 somewhere.

16 MR. ARSENAULT: Good afternoon members of the
17 Rate Board. My name is Mark Arsenault. I'm the area
18 manager for Recology. We anticipate notice in July of
19 '16 for a rate to take effect in July of '17. So that's
20 the schedule we're on. It's a very rigorous process.
21 There are, as you can tell, some unknowns here. So we'd
22 like to get through some of that information to make
23 sure we have the right information for that rate
24 application.

25 Additionally, we're in the middle of processing

1 the black can material through new technology and we
2 want to have some time with that technology to see if it
3 can be applied to the entire 1,100 tons a day that we
4 currently send to the landfill.

5 A lot to do in still a short amount of time
6 even with that 18-month window.

7 MR. RYDSTROM: I have one additional question
8 for Mr. Owen. I wasn't here in the 2013 proceedings.
9 On the issue that the ratepayer advocate -- if you could
10 at least for my education refresh what that process was
11 for the ratepayer advocate for the 2013 proceedings.

12 MR. OWEN: If I recall correctly -- somebody
13 can correct me if I don't -- the Department of Public
14 Works put out an RFP or RFQ for someone to serve as the
15 ratepayer advocate that were under contract to
16 participate in the hearings, to set up a notification
17 system, a website for the general public to coordinate
18 comments and objections that were received from the
19 general public. It's something we did in 2013.
20 Something we've done in earlier rate proceedings because
21 of the scope and the technical complications of the full
22 rate proceedings. For today's work probably would be
23 unnecessary to have someone else come up.

24 MR. RYDSTROM: And the matters before us today
25 that reflect the reallocation of a reserve fund, the

1 impact of that is really going to be discussed during
2 the upcoming rate cycle as well?

3 MR. OWEN: That's correct.

4 MR. RYDSTROM: So if we were to take action on
5 the proposal here today, we could still at a later time
6 reconvene and choose at that time to do additional
7 transfers to the new reserve?

8 MR. OWEN: That's correct. Or other -- approve
9 other releases from the old reserve.

10 MR. RYDSTROM: Thank you.

11 MR. CARLIN: So Mr. Rydstrom made a very
12 interesting proposal and I am open to that kind of
13 proposal to kind of come back once more as known about
14 the closure of existing facilitation agreements and
15 perhaps even limiting the amount of money that we put
16 into the reserve fund now for six months to force us to
17 come back to have to put more money into it if that's
18 the only action we have to take.

19 But to fully fund the 12 million, put 1.25
20 million into the Special Reserve now for six months,
21 come back in six months, see where we're at with closure
22 of the existing agreement, and then we can make some
23 decisions about the perhaps disbursements of those funds
24 as we go into the rate setting process, because these
25 are monies that actually would have been collected by

1 the ratepayer so it should go back to the ratepayers in
2 some way.

3 And we would have the promise of the
4 application for a new rate increase from Recology by
5 July or June 30th of 2016. So we could meet in July.
6 Then we could set a schedule how we were going to move
7 forward with that and also perhaps instruct the
8 Department of Public Works to prepare an RFQ to get a
9 ratepayer advocate on board at that time so that we can
10 actually jump start the whole process.

11 MR. RYDSTROM: I like that idea and I also like
12 the benefit that it keeps the existing reserve over the
13 15 million.

14 MR. CARLIN: Yes. That's what I was thinking
15 as well based on the Chair's comment.

16 MR. RYDSTROM: Thank you.

17 MS. JOHNSTON: In terms of the 15 million
18 threshold, I think we could address that by having --
19 it's at the conclusion of the agreement. But so I'm
20 sorry. Can I understand the motion then?

21 MR. CARLIN: The motion would be to fund the 12
22 million -- I have to go back to the report. So I would
23 propose that the initial allocation to seed the new
24 reserve fund would be 1.25 million. I would propose
25 that the allocation for increased costs of the new

1 agreement would be 12 million, and I would propose that
2 the remainders remain in the existing fund expenditure
3 for the Special Reserve in the existing contract.

4 MR. RYDSTROM: And then my, Michael, also add
5 the resolve to direct the Department of Public Works to
6 then prepare the materials for a ratepayer advocate.

7 MR. CARLIN: Correct.

8 Mr. Nuru, is that satisfactory if you do an RFQ
9 for a ratepayer advocate?

10 MR. OWEN: One caveat should be a resolve
11 clause requesting DPW to do so because the department --

12 MR. CARLIN: Yes.

13 MR. NURU: If that's what you're recommending,
14 that's fine. Time does fly and six months will before
15 we'll blink our eyes. It's quite a bit of work.

16 MR. CARLIN: Okay. Thank you.

17 MR. RYDSTROM: I would second that motion.

18 MS. JOHNSTON: I'll in favor?

19 MR. CARLIN: Aye.

20 MR. RYDSTROM: Aye.

21 MS. JOHNSTON: Aye.

22 One thing I do want clarity on, do we need to
23 determine at this meeting whether or not for purposes of
24 Section 5 of the 1987 agreement, the facilitation of
25 waste disposal, if there's a continuing need for the

1 fund or some amount in the fund? Is that something we
2 have to decided to per the previous Rate Board's
3 directives in 2013? Is that correct?

4 MR. OWEN: You do need to in effect release
5 part of the old reserve to move the money to the new
6 reserve, yes.

7 MS. JOHNSTON: I'm sorry. But also find
8 there's a continuing need for it.

9 MR. CARLIN: Continuing need for funds in the
10 old funds. That's correct. Right?

11 MR. OWEN: Yes. Six of one, half a dozen of
12 the other. You need to say you don't need X dollars or
13 you need Y dollars.

14 MR. CARLIN: So the unallocated remaining
15 balance is needed in that fund, in the current Special
16 Reserve Fund. That's what we're saying.

17 MR. OWEN: Correct.

18 MS. JOHNSTON: Okay. So I think then, just to
19 clarify the motions, it's to transfer 1.25 million to a
20 new reserve fund, create it pursuant to the landfill
21 disposal agreement between the city and Recology dated
22 July 22nd, 2015, to provide for initial funding of the
23 reserve fund, the new reserve fund. And then the second
24 motion -- and in addition to transfer 12 million onto a
25 new reserve fund to be used to cover the incremental

1 costs of hauling and disposing city waste under the 2015
2 landfill disposal agreement and then to retain the
3 remainder in the existing Special Reserve Fund until
4 such time as the Rate Board determines there is no need
5 for the fund, at which time remaining monies must be
6 used to the benefit of the ratepayers.

7 In addition to that, we are requesting the
8 Department of Public Works to issue an RFQ or RFP,
9 whichever is appropriate, to obtain the services of a
10 ratepayer in time for Recology's submission for new
11 rates in June or July.

12 Have I captured everything?

13 MR. RYDSTROM: Yeah. I would just clarify that
14 to say I'm requesting of the department to undertake the
15 process to retain a ratepayer advocate in anticipation
16 of the upcoming rate cycle to give the department a
17 little more flexibility as far as the timing. The need
18 may not be right in July.

19 MS. JOHNSTON: Okay.

20 MR. RYDSTROM: Future proceeding.

21 MS. JOHNSTON: Okay. Was that I think the
22 idea?

23 MR. CARLIN: Yeah.

24 MS. JOHNSTON: So in the interest just of
25 making sure it's clean, shall we take another vote to

1 make sure we're all clear on it?

2 MR. RYDSTROM: Certainly.

3 MS. JOHNSTON: So I second that motion. I'm
4 sorry. That's the motion.

5 MR. CARLIN: I'll make that motion.

6 MS. JOHNSTON: Thank you. I'll second it. All
7 those in favor? Aye.

8 MR. RYDSTROM: Aye.

9 MR. CARLIN: Aye.

10 MS. JOHNSTON: It's unanimous.

11 Moving onto to agenda Item Number V which is I
12 think where we're going to get a little messy, but it's
13 good to be specific and clear. The City Attorney's
14 Office has prepared a draft resolution and order with
15 respect to the Abandoned Materials Collection Program
16 and the Special Reserve Fund. Copies of which are
17 available on this table here where Mr. Owens is seated.

18 Mr. Russi, I think you've made a number of
19 amendments to it. We can just walk through this and
20 make sure we all agree with respect to wording.

21 One amendment I'd like to make it and then I'll
22 allow you to read is the changing of Ben Rosenfield as
23 the Rate Board member to reflect Mr. Rydstrom as his
24 designated alternate.

25 MR. RUSSI: Okay.

1 MS. JOHNSTON: Do you want to take a crack at
2 reading the resolution and we can make amendments to it
3 as we go?

4 MR. RUSSI: Sure. And I'll start from whereas
5 clauses. Whereas the --

6 MS. JOHNSTON: I'm sorry. I think before we
7 can start reading the amendment we have to accept public
8 comment. Right?

9 MR. RUSSI: Is that what we have in here?

10 MS. JOHNSTON: I think that's right.

11 MR. RUSSI: I was going to read what it is now
12 and then we can take public comment and we can talk
13 about the amendments.

14 MS. JOHNSTON: Okay.

15 MR. RUSSI: "Whereas, the 1932 Refuse
16 Collection and Disposal Ordinance, as amended,
17 establishes and governs the process for approving
18 residential refuse collection and disposal rates for the
19 City and County of San Francisco; and,

20 "Whereas, on March 14, 2013, Recology Sunset
21 Scavenger, Recology Golden Gate, and Recology San
22 Francisco (Recology) filed an Application with the City
23 Administrator requesting an increase in the Companies'
24 residential refuse collection and disposal rates (the
25 2013 Rate Application); and,

1 "Whereas, on July 23rd, 2013, the Rate Board
2 issued a Resolution and Order on Director of Public
3 Works' Recommended Orders on the 2013 Rate Application;
4 and,

5 "Whereas, the Rate Board requested in its July
6 23, 2013 Resolution and Order that the Director of
7 Public Works, prior to November 1st, 2015, submit a
8 report regarding the effectiveness of the Abandoned
9 Materials Collection (AMC) pilot program in diverting of
10 materials from landfill in a cost effective manner,
11 consistent with the City's goal of zero waste; and,

12 "Whereas, on October 30th, 2015, the Director
13 of Public Works submitted a report regarding the AMC
14 Program consistent with the Rate Board's July 23rd, 2013
15 Resolution and Order, in which Director concluded that
16 the AMC Program has resulted in an increase in diversion
17 from landfill in a cost-effective manner; and,

18 "Whereas, the Rate Board requested in its July
19 23rd, 2013 Resolution and Order a report on the Special
20 Reserve Fund (Fund) identifying all contributions to and
21 expenditures from the Fund since its inception, and an
22 assessment of future conditions that may require use of
23 the Fund; and,

24 "Whereas, on October 30th, 2015, the Director
25 of Public Works submitted a report from the Department

1 of the Environment on the Fund addressing the request of
2 the Rate Board in its July 23rd, 2013 Resolution and
3 Order and proposing certain distributions from the Fund;
4 and,

5 "Whereas, the Rate Board, consisting of
6 Chair/Deputy City Administrator Jennifer Johnston,
7 Member/Controller Ben Rosenfield, and Member/San
8 Francisco Public Utilities Commission Deputy General
9 Manager Michael P. Carlin, convened a public hearing on
10 the reports on December 16th, 2015; and,

11 "Whereas, upon consideration and discussion
12 following presentations of the reports at the December
13 16, 2015 hearing, the Rate Board has recommendations
14 concerning the Abandoned Materials Collection Program
15 and the Special Reserve Fund; now, therefore, be it

16 "Resolved, that the Rate Board takes the
17 following actions and adopts the following findings:

18 "1. Regarding the AMC Program:

19 "A. The Rate Board finds that the AMC
20 Program has resulted in an increase in diversion from
21 landfill of materials, consistent with achieving the
22 City's goal of zero waste, in a cost-effective manner.

23 "B. Based on this finding, the AMC Program
24 shall be continued beyond June 30th, 2016, at the same
25 rates as in the pilot program, subject to any

1 adjustments authorizing the rate orders.

2 "2. Regarding the Special Reserve Fund:

3 "A. The Rate Board finds, for purposes of
4 Section 5 of the 1987 Agreement and Facilitation of
5 Waste Disposal between the City and Sanitary Fill
6 Company (now Recology San Francisco), that there is a
7 continuing need for \$13.85 million in Special Reserve
8 Fund, and the remaining monies in the Fund may be and
9 are allocated for the benefit of current and future
10 ratepayers and commercial accounts of the City's refuse
11 collection companies.

12 "B. The Rate Board finds that the
13 Department of the Environment's proposed distributions
14 from the Fund are consistent with the intended uses of
15 the Fund and benefit the ratepayers.

16 "C. The Rate Board concurs with the
17 Department of the Environment's proposed distributions
18 from the Fund, including:

19 "i. Transfer \$3.75 million to a new
20 reserve Fund (create pursuant to the Landfill Disposal
21 Agreement between the City and County of San Francisco
22 and Recology San Francisco (Landfill Disposal Agreement
23 dated July 22, 2015) and to provide for initial funding
24 of the Reserve Fund.

25 "ii. Transfer \$12 million to a new Reserve

1 Fund to be used to cover the incremental cost of hauling
2 and disposing of city waste under the Landfill Disposal
3 Agreement; and,

4 "iii. Retain \$13.5 million (the balance)
5 in an existing Special Reserve Fund until such time as
6 the Rate Board determines there is no need for the Fund,
7 at which time the remaining monies must be used to the
8 benefit of the ratepayers."

9 Do you want to take public comment?

10 MS. JOHNSTON: Let's go ahead and do that and
11 we can try to take a shot at crafting language. So at
12 this time we'll go ahead and allow for public comment.
13 Each speaker will be limited to three minutes. Members
14 of the public, if you're interested in submitting a
15 comment, please approach.

16 MR. PILPEL: I may be the only public left.
17 David Pilpel. I'll try to do it in three minutes, but
18 let me see if I can go through.

19 I don't think I have any issues on page 1. I
20 think that's straightforward.

21 Page 2 I think Todd instead of Ben on line 10.
22 That's the only thing that I've got.

23 Actually, no. I take that back. On page 2,
24 line 14, the language "the Rate Board has
25 recommendations," I'm not sure I like that. I would

1 suggest maybe "has made determinations."

2 On page 3 and I'm not sure where you're putting
3 the direction or request to DPW for a further report on
4 the AMC Program, if that goes at the top of page 3 or on
5 4. I think on line 5 that becomes 16.35 million. Line
6 14 becomes 1.25.

7 And actually, lines 9 through 13 you're
8 probably going to have to reword because you're not
9 actually concurring with the proposed distribution by
10 DOE. I mean, yes, I think B is true that their proposed
11 distributions are consistent, but you're not going
12 exactly in that direction.

13 So 1.25 on line 14.

14 To clarify on line 18, instead of "to a new
15 Reserve Fund," to be clear that it's the same new
16 Reserve Fund because someone could read that as creating
17 two different new reserve funds and I don't think that's
18 the intent.

19 Top of page 4, again 16.35, perhaps a provision
20 in here about the board reconvening sometime in the next
21 six months. That would be -- reword that.

22 And the request to DPW about the ratepayer
23 advocate. I think the language about future proceedings
24 could include, if they can get it together in time,
25 could include your next meeting of this board in the

1 next six months. It shouldn't take that long for just
2 that particular segment.

3 I'm just trying to see if there's anything
4 else.

5 Based on your discussion on page 3, line 5, I
6 think the language of a continuing need, I think that
7 does make sense. I'm not sure that you're required to
8 make that finding, but I think it helps for all kinds of
9 reasons.

10 Part of the request or direction for your
11 future hearing that you would ask the city and Recology
12 to report back on any claims made by Waste Management
13 under the existing agreement because presumably they
14 might have done that by that time and there either will
15 be or won't be.

16 I think that's all. Thanks.

17 MS. JOHNSTON: Thank you. Okay. Can I just --
18 A, I'd like to make sure that the departments understand
19 what we're proposing and I'd like to make sure that I
20 understand any consequences should we move as proposed
21 today. Is somebody -- I just want to make sure that we
22 have captured and we understand the full consequences
23 and concerns by the departments.

24 MR. CARLIN: Yes? No?

25 MS. DAWSON: I can do my best to speak to some.

1 I can ask Jack if he wants to come up.

2 You know, as far as the ratepayer advocate,
3 Public Works was intending to do that solicitation as
4 part of the next rate process. So we're totally
5 comfortable with that recommendation.

6 And the follow-up on the AMC program, that's
7 also perfectly fine with us. The only thing I guess
8 that I have at all a concern about is if you don't
9 convene or if you convene a little later and some
10 extraordinary expense would come up that you might not
11 have enough money in the new reserve and that's the only
12 thing that's making me a little bit nervous. Mostly
13 because we're all busy people and we had a hard time
14 coming up with this date for the hearing.

15 So while I fully believe you all will reconvene
16 at some point, I want to make sure we don't make it so
17 tight that there might be any -- if something
18 extraordinary did come up in the new agreement that
19 would result in us having a challenge and having not
20 being able to reimburse, that's the only thing I'm only
21 a little bit worried about, but I don't know that it's a
22 huge worry.

23 MR. CARLIN: I kind of see it that you have \$12
24 million recovering a lot of expenses and you have 1.25
25 for extraordinary expenses. If something -- you're

1 burning through that money really fast, we're going to
2 need to know about that because something's not working.

3 MS. DAWSON: Of course. If they're indeed in
4 the same reserve, then I don't think it's really of
5 great concern.

6 MR. CARLIN: That's why I read Special Reserve
7 as Special Reserve and the funds could actually be 13.25
8 as far as I was concerned.

9 MS. DAWSON: Right. So if we are indeed
10 joined, then I think that risk goes away.

11 MR. CARLIN: Right.

12 MS. JOHNSTON: For the purposes of reconvening,
13 I think we set it in a month or two. The purpose of
14 that would be to receive a report from the department as
15 to whether or not Waste Management submitted any
16 additional claims or to get a better sense as to whether
17 or not there's any liability or what the --

18 MR. CARLIN: I was thinking maybe six months
19 from now.

20 MS. JOHNSTON: Okay.

21 MR. CARLIN: That way enough period of time so
22 we get a report from the City Attorney's Office or any
23 other party, you know, representatives of Recology,
24 whether or not there's been any claims.

25 I'm hoping that you will research whether or

1 not there is a statute of limitation or limitations
2 within the contract that they can't file after a certain
3 date.

4 MS. JOHNSTON: And we can also determine at
5 that time whether or not we want to move the remaining
6 request of the 3.75 to the new special fund.

7 MR. CARLIN: Correct.

8 MS. JOHNSTON: So Mr. Russi, do you want -- I'm
9 wondering in the interest of clarity did we want to read
10 out and agree on what the changes are to this or do we
11 think that we captured our previous motions adequately
12 and sufficiently enough to kind of proceed? I actually
13 just made another amendment, didn't I, the six months.

14 MR. RYDSTROM: On that, if I could, I'd
15 recommend that it be July or August just because of
16 budget hearings.

17 MR. CARLIN: Correct.

18 MR. RYDSTROM: Folks will be busy in six months
19 with still the budget.

20 MS. JOHNSTON: Okay.

21 MR. RUSSI: I would be more comfortable reading
22 it out and being clear what exactly we're approving here
23 today. If we could maybe take a five-minute recess.

24 MS. JOHNSTON: Okay. Are you going to propose
25 language or would you like me or one of my fellow rate

1 members to try and come up with some language?

2 MR. CARLIN: Are you proposing -- you're going
3 -- do you want to take a five-minute recess and you
4 actually go and work on some language and come back and
5 read it out?

6 MR. RUSSI: Yes. That's what I am proposing.
7 Thank you.

8 MS. JOHNSTON: Thank you, Mr. Russi. Okay.
9 Thank you.

10 MR. CARLIN: In recess for five minutes?

11 MS. JOHNSTON: Yes. Thank you. Pardon me.
12 We'll recess for five minutes. We'll reconvene at 3:52
13 on the dot.

14 (Recess taken.)

15 MS. JOHNSTON: We are now back on the record.
16 The time is 3:55.

17 So during recess I met with the City Attorney's
18 Office Deputy City Attorney Mr. Russi to I think make
19 the tweaks to the resolution that we've all determined
20 to be the best course of action. So I'm going to ask
21 Mr. Russi to read them aloud and then I'll ask the Rate
22 Board to take a final motion on the resolution.

23 MR. RUSSI: And Ms. Johnston, if I make a
24 mistake, please feel free to interrupt me.

25 MS. JOHNSTON: Okay.

1 MR. RUSSI: Providing the AMC Program, we would
2 add Subsection C stating in effect the Rate Board
3 requests the DPW Director prior to November 1st, 2017 to
4 submit a report regarding the AMC Program to the City
5 Administrator and the Rate Board regarding the
6 effectiveness of the program and concurrently post the
7 report on DPW website and distribute the report to
8 interested parties.

9 MS. JOHNSTON: Thank you. Okay. I'm sorry.
10 The additional actually that the change of the Deputy
11 Controller to Todd Rydstrom.

12 MR. RUSSI: That's right. So the first change
13 would be the whereas clause on page 2 changing
14 Controller Ben Rosenfield to Deputy Controller Todd
15 Rydstrom.

16 Moving onto the Special Reserve Fund language,
17 under Subsection 2(A) we would change there's a
18 continuing need for the 13.85 million to 16.35 million.

19 Under Subsection C of Section 2, the Rate Board
20 concurs in part with the Department of Environment's
21 proposed distributions from the fund with the following
22 modifications.

23 Under 1, transfer 1.25 million to a new Reserve
24 Fund and create it pursuant to the Landfill Disposal
25 Agreement between the City and County of San Francisco

1 and Recology dated July 22nd of 2015 to provide for
2 initial funding of the Reserve Fund.

3 2, transfer 12 million to the new Reserve Fund
4 to be used to cover the incremental costs of hauling and
5 disposing City's waste the under the Landfill Disposal
6 Agreement.

7 And 3, retain 16.35 million, the balance, in
8 the existing Special Reserve Fund until such time as the
9 Rate Board determines there's no need for the fund, at
10 which time the remaining monies must be used to benefit
11 the ratepayers.

12 We would then add a Subsection 3 stating in
13 effect the Rate Board requests that the Director of
14 Department of Public Works initiate the process of
15 retaining a ratepayer advocate prior to its submission
16 of Recology's anticipated Rate Application in July 2016?

17 MS. JOHNSTON: In and or around.

18 MR. RUSSI: And or around.

19 MS. JOHNSTON: July 2016.

20 MR. RUSSI: Okay. And Section 4 would be the
21 Rate Board -- did you have language on this about
22 reconvening the meeting? I think we were going to
23 say --

24 MS. JOHNSTON: We need reports -- we need a
25 report on whether or not there's been any additional

1 claims submitted.

2 MR. RUSSI: Sorry. So we should put that
3 underneath --

4 MS. JOHNSTON: 3(D) or 2(D).

5 MR. RUSSI: 2(D).

6 MS. JOHNSTON: And at that time -- maybe this
7 is not in the resolutions, but at that time we can
8 determine whether or not additional funds should be
9 moved to the new Reserve Fund.

10 MR. RUSSI: So the under Section 2(D), the Rate
11 Board requests that the Department of Public Works
12 submit a report regarding any claims made against the
13 existing Special Reserve Fund under the 1987 agreement.

14 MR. CARLIN: So the close out of the 1987
15 agreement and any claims made against that agreement?

16 MR. RUSSI: Yeah.

17 MS. DAWSON: Department of Environment.

18 MR. CARLIN: Department of Environment.

19 MR. RUSSI: The Department of Environment will
20 submit that report and not the Department of Public
21 Works and the Rate Board intends to reconvene and meet
22 at some point during the summer of 2016 to consider the
23 report submitted by the Department of Environment.

24 MS. JOHNSTON: Yes. And do we need to include
25 whether or not additional funds should be shifted from

1 the --

2 MR. RUSSI: To consider the proposed --

3 MR. CARLIN: The --

4 MR. RUSSI: To consider the further allocations
5 from the existing Special Reserve Fund.

6 MS. JOHNSTON: To the new Special Reserve Fund.

7 MR. RUSSI: Right.

8 MS. JOHNSTON: Does that --

9 MR. CARLIN: Yes.

10 MS. JOHNSTON: Okay. So do I hear a motion?

11 MR. CARLIN: I make a motion to adopt as
12 amended.

13 MR. RYDSTROM: Seconded.

14 MS. JOHNSTON: All those in favor?

15 MR. PILPEL: It's up to you.

16 MS. JOHNSTON: Does the board want to entertain
17 additional public comment for clarification purposes?

18 MR. PILPEL: Just three quick things. Sorry.

19 Page 2, line 14, still has "have
20 recommendations."

21 MR. RUSSI: We determined to keep that as
22 recommendations.

23 MR. PILPEL: Okay. Page 3, line 17, "funding
24 of the new Reserve Fund." Could we add "new" there so
25 it's consistent maybe? And your new 2(D), the report

1 from DOE on any claims, I didn't hear that you put a
2 date on that. Did you want a deadline?

3 MS. JOHNSTON: Well, no. So the resolution is
4 to meet -- reconvene again --

5 MR. PILPEL: In the summer of 2016 to consider
6 the report, but the report you asked for DOE I didn't
7 hear a deadline date on the report about claims under
8 the new agreement.

9 MR. RUSSI: Within six months from today?

10 MS. JOHNSTON: Yeah.

11 MR. CARLIN: Six months from today is fine.

12 MS. JOHNSTON: Okay, Mr. Pilpel?

13 MR. PILPEL: Thank you.

14 MS. JOHNSTON: So I'll entertain those changes.

15 MR. CARLIN: I'll amend my motion. I don't
16 know what I'm doing now. Yes, I move the amended
17 resolution as amended.

18 MR. RYDSTROM: Seconded.

19 MS. JOHNSTON: All those in favor?

20 MR. CARLIN: Aye.

21 MR. RYDSTROM: Aye.

22 MS. JOHNSTON: Aye.

23 All right. We are concluding. Thank you very
24 much.

25 MR. RUSSI: Also, then request a motion that

1 the City Administrator -- that the board delegate to the
2 City Administrator the ability to make any technical
3 changes to the resolution as adopted to conform with the
4 intent of the board in its adoption?

5 MS. JOHNSTON: That's my motion.

6 MR. CARLIN: I'll second.

7 MS. JOHNSTON: All those in favor?

8 MR. CARLIN: Aye.

9 MR. RYDSTROM: Aye.

10 MS. JOHNSTON: Aye.

11 Okay. Actually, I think we need to -- forgive
12 me. It's been a long day. I think we need to allow for
13 general public comment -- am I correct on that -- before
14 we conclude?

15 MR. RUSSI: Yes.

16 MS. JOHNSTON: Moving onto Agenda Item Number
17 VI, general public comment, I will now invite members of
18 the public to comment on any matter of jurisdiction of
19 the Rate Board. Please limit your comments to three
20 minutes and state your name clearly for the record.

21 MR. PILPEL: David Pilpel. Thank you. Just
22 want to refer the last time to my letter, page 2, the
23 last paragraph and the first paragraph on the top of 3
24 where I made comments about having an additional venue
25 to discuss these issues outside the rate process.

1 I'm not sure that you need to or that you can
2 take action on that today, but you could certainly ask
3 DPW to consider that along with the DOE and Recology so
4 you might have other opportunities for maybe other
5 members of the public, not just me, to be involved in
6 this. That would be nice.

7 And the other item was about the length of the
8 application process and the review process, and you
9 could also ask DPW to consider a shortened timeframe
10 under certain conditions so that it doesn't always have
11 to take a year.

12 And I know that they've explored that in the
13 past and perhaps they could do that again with the DOE,
14 Recology and perhaps interested members of the public so
15 that we could have other ways to look at rate
16 applications. Yes, we should have the full blown
17 process, but do we have to do that every time? Are
18 there ways that we could shortcut that still consistent
19 with 218 noticing requirements, the 32 ordinance and any
20 other applicable law?

21 So I would ask respectfully if the board would
22 ask DPW to consider those things.

23 MS. JOHNSTON: If I understand you correctly,
24 you're asking for a condensed process, but you want more
25 ratepayer input?

1 MR. PILPEL: Yes. But for more ratepayer input
2 outside that process so that we can talk about programs,
3 effectiveness, diversion, et cetera, in a way that's not
4 part of the adversarial or somewhat adversarial rate and
5 review process. Some of that already occurs and it
6 occurs informally and occurs in other ways, but I'm
7 asking that there be a more robust effort at public
8 engagement to that end.

9 MS. JOHNSTON: Yeah. No. Thank you. That
10 meeting was not agendized as an item for consideration.

11 MR. PILPEL: It was not, but these are items
12 within your jurisdiction. All I'm asking you to do is
13 to ask DPW to consider those things, not from a
14 resolution, but you can say would they please talk to me
15 and could we discuss these things so that that might
16 also be issues that they could discuss with this board
17 at your now upcoming summer 2016 meeting, which we're
18 all looking forward to.

19 MS. JOHNSTON: Thank you.

20 MR. PILPEL: Thank you.

21 MS. JOHNSTON: So before I adjourn the meeting,
22 I just want to thank members of the audience, the
23 public, that came here to provide comment as well as the
24 stellar staff, City Attorney's Office, thank you
25 Mr. Russi, thank you to everybody who set this up and

1 it's been a difficult process this afternoon, but I
2 think that we've moved in a very prudent manner. And I
3 also want to thank my fellow Rate Board members, and
4 with that we'll conclude. Thank you.

5 MR. CARLIN: Thank you.

6 MR. RYDSTROM: Thank you.

7 MS. JOHNSTON: The time is 4:05.

8 (Proceedings adjourned at 4:05 p.m.)
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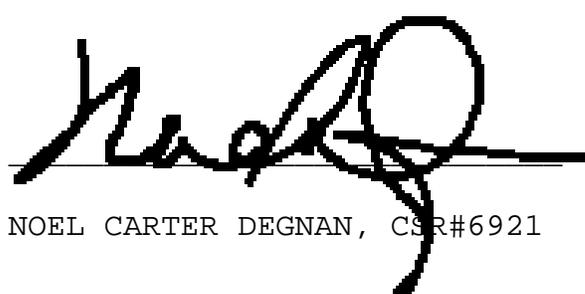
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CERTIFICATE OF REPORTER

I, NOEL CARTER DEGNAN, CSR 6921, duly authorized to administer oaths pursuant to Section 2093(b) of the California Code of Civil Procedure, hereby certify that the foregoing proceeding was reported by me and thereafter transcribed by me or under my direction into typewriting.

I further certify that I am not of counsel nor attorney for either or any of the parties in the foregoing proceeding and caption named, or in any way interested in the outcome of the cause named in said caption.

Dated: December 27, 2015



NOEL CARTER DEGNAN, CSR#6921

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