

City of Philadelphia



(Bill No. 040367-A)

AN ORDINANCE

Approving certain contracts and transactions arising thereunder for the purchase, storage, distribution, transportation and/or transmission of natural and other gas entered into by the Philadelphia Facilities Management Corporation on behalf of the Philadelphia Gas Works, subject to certain terms and conditions.

WHEREAS, The Philadelphia Facilities Management Corporation (“PFMC”) must enter into contracts on behalf of the Philadelphia Gas Works (“PGW”) to purchase gas supply, storage, distribution, transportation and transmission services in order to ensure a gas supply sufficient for the estimated maximum requirements of gas users in the City of Philadelphia; and

WHEREAS, Paragraph 2 of Section II of the Agreement Between The City of Philadelphia and the Philadelphia Facilities Management Corporation for the Management and Operation of the Philadelphia Gas Works dated December 29, 1972, authorized pursuant to an Ordinance of Council approved December 29, 1972 (Bill No. 455), as further amended (“Management Agreement/Ordinance”) requires PFMC to submit such contracts to the Philadelphia Gas Commission (“Gas Commission”) for its recommendations and to Council for approval before entering into them, except in temporary or emergency situations, in which case PFMC must submit contracts for such purchases within thirty (30) days after initiating such purchases to the Gas Commission and Council for their approval; and

WHEREAS, Due to interstate pipeline deregulation in the early 1990’s, gas supply, storage, transportation and transmission service transactions now routinely occur in extremely short timeframes on a competitive basis such that PFMC on behalf of PGW must be able to enter into numerous authorized contracts on an expedited basis; and

WHEREAS, Current market conditions often make it impracticable for PFMC on behalf of PGW to obtain pre-approval of gas contracts under the requirements of Paragraph 2 of Section II of the Management Agreement/Ordinance, thereby jeopardizing PFMC’s ability to finalize the necessary arrangements with gas suppliers to secure sufficient gas supply and maximize its ability to secure such supply at favorable prices; and

WHEREAS, In light of the Enron bankruptcy and other recent similarly large financial crises in the gas and telecommunications industry, most gas suppliers have

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threatened or refused to supply gas supply, storage, distribution, transportation and transmission services without executed contracts from buyers; and

WHEREAS, Due to a number of exigent circumstances, PFMC on behalf of PGW, entered into certain contracts for gas supply, storage, distribution, transportation and/or transmission services on March 9, 2004 and is now seeking City Council approval of same as required by the Management Agreement/Ordinance; and

WHEREAS, The Gas Commission has approved such contracts and transactions arising thereunder, subject to the terms and conditions set forth in the Gas Commission Order and Resolution dated May 18, 2004; and

WHEREAS, The “Joint Petition for Settlement of Philadelphia Gas Works' 2003-2004 GCR Proceeding” dated May 14, 2003 submitted to the Pennsylvania Public Utility Commission (“PUC”) in accordance with the Pennsylvania Public Utility Code describes PGW’s gas procurement program for the Fiscal Years 2003-2004 and 2004-2005, and mandates a least cost fuel procurement policy for PGW pursuant to 66 Pa.C.S.A. §1318(a), NOW, THEREFORE,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. APPROVAL OF CERTAIN CONTRACTS AND TRANSACTIONS

a. Subject to and except as otherwise provided by all other provisions of this Ordinance, the contracts attached hereto as Exhibits “1” through “8” (the “Contracts”) for the purchase of natural and other gas supply (including volumes of gas associated with the production of Liquefied Natural Gas (“LNG”)), storage, distribution, transportation and transmission services (collectively, “Services”) entered into by PFMC on behalf of PGW for Services to be delivered to PGW no later than August 31, 2007, and transactions arising thereunder, are hereby approved, provided that each Contract approved as set forth in this Section includes a provision to the effect that it is understood and agreed that any payments required to be made by PFMC and/or PGW as a result of or arising out of entering into such contract shall be made solely from the revenues of the Philadelphia Gas Works.

- (1) Each contract approved as set forth in this Section includes a provision to the effect that it is understood and agreed that any payments required to be made by PFMC and/or PGW as a result of or arising out of entering into such contract shall be made solely from the revenues of the Philadelphia Gas Works; and
- (2) PFMC is required to obtain the advance written approval of the Chair of the Gas Commission, the President of City Council, and the City Solicitor prior to agreeing to any further revision, modification, amendment or

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addition of any special or supplemental provision to the terms and conditions of the standard North American Energy Standards Board (“NAESB”) base contract for any of the Contracts.

- b. The approval set forth in Section 1(a) of this Ordinance shall not apply to a Contract or transaction arising thereunder related to any of the following:
- (1) Financial hedging. For purposes of this Section 1, “financial hedging” shall mean the purchase of an insurance or derivative-based product intended to protect against the risk of financial loss due to fluctuations in the price of natural gas but which does not itself constitute the purchase or sale of gas supply, transportation, transmission, or storage services; or
 - (2) Outsourcing of the procurement of all or a substantial part of PGW’s gas supply, storage, distribution, transportation and/or transmission services. For purposes of this Section 1, “outsourcing of the procurement” shall mean any arrangement between PFMC and a third party whereby such third party is contracted by PFMC and/or PGW to direct PGW’s gas supply, storage, distribution, transportation and/or transmission services for any period of time on behalf of itself, PGW, or PFMC. Further, for purposes of this Section 1, “a substantial part” shall mean fifty (50) percent or more, outsourced through individual or aggregated transactions, of the volume of PGW’s gas supply, storage, distribution, transportation, or transmission services, whether outsourced through one transaction, more than one transaction, or any combination thereof, or
 - (3) Sale or lease of LNG facilities including, without limitation, LNG capacity, and/or the land appurtenant thereto.
- c. Council may at any time by Resolution direct PFMC to terminate any Contract or to not enter into any further transactions under any Contract without termination, after first receiving a recommendation from the Gas Commission.

SECTION 2. MAXIMUM GAS COSTS

The sum total of Contracts and transactions arising thereunder entered into pursuant to the authorization provided in Section 1 for the delivery of Services during each PGW Fiscal Year shall not exceed the projected sum for gas purchases for such Fiscal Year as set forth in PGW’s annual Gas Cost Rate (“GCR”, also referred to as Gas Cost Adjustment (“GCA”)) filing as approved by the PUC (the “approved 1307f Filing”), as updated by PGW’s quarterly GCR filings with the PUC; provided, however, that the foregoing not-to-exceed sum total of the Contracts and transactions arising thereunder for each PGW Fiscal Year shall be adjusted accordingly if PFMC:

- a. notifies the Gas Commission in writing prior to the end of any Fiscal Year that:

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- (1) the actual degree days for a PGW Fiscal Year exceed the projected number set forth in the approved 1307f Filing; and/or
- (2) the Near-Month New York Mercantile Exchange (“NYMEX”) closing pricing for non-locked-in-for-price volumes is actually greater than the pricing projected in the approved 1307f Filing; and/or
- (3) pricing set forth in an amended 1307f Filing which has been approved by the PUC exceeds the initial projected sum for such gas purchases, and

b. specifies in such notice the amount by which PGW’s not-to-exceed sum total of contracts has been adjusted and itemizes the resultant dollar impact of each of the applicable factors identified in the foregoing Sections 2(a)(1),(2) and (3).

c. For purposes of this Section 2, “degree day” shall mean a measure of the coldness of the weather experienced based on the extent to which the daily mean temperature falls below 65 degrees Fahrenheit. For example, on a day in which the daily mean temperature is 59 degrees Fahrenheit, there are six (6) degree days.

d. For purposes of this Section 2, “Near-Month New York Mercantile Exchange (“NYMEX”) closing pricing” shall mean the published NYMEX closing price for Henry Hub gas futures contracts for the last trading day of the previous month.

e. For purposes of this Section 2, “non-locked-in-for-price volumes” shall mean volumes of natural or other gas for which the unit price is determined by any means other than a fixed, express contract price.

SECTION 3. PROCUREMENT STANDARDS

The approval set forth in Section 1 of this Ordinance is conditioned upon the following:

a. The Contracts and transactions arising thereunder shall be consistent with the then-applicable 1307f Filing approved by the PUC. To the extent that the 1307f Filing requires PGW/PFMC to engage in financial hedging (as defined in Section 1) if approval of the local authorities is obtained, Section 1 of this Ordinance shall neither constitute nor be construed as such approval.

b. The Contracts and transactions arising thereunder shall be consistent with a least cost fuel procurement policy.

SECTION 4. REPORTING AND DISCLOSURE

The approval set forth in Section 1 of this Ordinance is conditioned upon the following:

a. PFMC shall provide the Gas Commission and the Public Advocate with copies of each transaction arising under the Contracts pursuant to Section 1 of this Ordinance within ten (10) business days of entering into such transaction. When any such

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transaction pertains to outsourcing of the procurement of less than a substantial part of PGW's Services, as provided in Section 1(b)(2) of this Ordinance, PFMC shall provide the Gas Commission and the Public Advocate with a report on the purpose and total cost of the transaction, which report shall be provided no later than with the next quarterly comparison report to be provided pursuant to Section 4(b) of this Ordinance.

b. PFMC shall provide the Gas Commission and the Public Advocate with a quarterly report comparing the GCA approved by the PUC for PGW with the then-current PUC-approved GCAs for other Pennsylvania natural gas utilities. Whenever this comparison report shows that, of the eight (8) largest natural gas utilities, PGW is not among the four (4) with the lowest GCAs, PFMC shall include an explanatory narrative. This report shall be due on the tenth (10th) business day of September, December, March, and June of each fiscal year until August 31, 2007.

c. PFMC shall provide the Gas Commission and the Public Advocate, within five (5) business days of filing with the PUC, copies of all documents filed relative to PGW's GCA. If not already provided as part of such PUC filings, PFMC, by no later than March 1, 2005, shall also provide the Gas Commission and the Public Advocate with PGW's proposed gas procurement program for the period September 1, 2005 to August 31, 2007. In addition, PFMC shall provide the Gas Commission with copies of all orders and secretarial letters issued by the PUC regarding PGW's GCA within three (3) business days of issuance.

d. PFMC shall promptly furnish the Gas Commission or the Gas Commission's designee with the terms of any proposed agreement and/or settlement with the PUC and/or with any parties to a PUC proceeding relating to gas procurement. Such terms may be furnished telephonically but must be confirmed by an e-mail or other writing within twenty-four (24) hours. If the Gas Commission or the Gas Commission's designee determines that any term of such proposed agreement and/or settlement appears to contravene any provision of this Ordinance or of the Management Agreement/Ordinance, the Gas Commission or the Gas Commission's designee shall promptly notify PFMC, Council and the Mayor.

e. PFMC shall file a report with the Gas Commission and the Public Advocate at any time that PFMC projects that PGW will exceed or whenever PGW actually exceeds the cost maximums set forth in Section 2 of this Ordinance. PFMC will explain the reasons for the anticipated or actual variance.

f. PFMC shall file on October 3, 2005 a report with the Gas Commission, the Public Advocate and Council reviewing its implementation of and compliance with this Ordinance.

g. The Gas Commission shall submit a report to Council during December 2005 with respect to PGW's implementation of and compliance with this Ordinance.

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SECTION 5. EXHIBITS

The Exhibits “1” through “8” referred to and incorporated in this Ordinance shall be kept on file by the Chief Clerk of City Council and shall be available to the public for inspection, reading or copying at reasonable times.

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EXHIBITS "1" THROUGH "8"

CONTRACTS

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 21, 2004. The Bill was Signed by the Mayor on July 1, 2004.

A handwritten signature in black ink that reads "Patricia Rafferty". The signature is written in a cursive, flowing style.

Patricia Rafferty
Chief Clerk of the City Council