

City of Philadelphia



Council of the City of Philadelphia
Office of the Chief Clerk
Room 402, City Hall
Philadelphia

(Resolution No. 041015)

RESOLUTION

Calling upon the Mayor to submit to Council a proposed ordinance setting forth Council's approval of the waiver of the \$18 million due to the City from the Philadelphia Gas Works ("PGW") for Fiscal Year 2004 if the Mayor wishes to waive that payment; further calling upon the Mayor to provide Council with assurances that no future payments due the City from PGW will be waived or reduced without Council approval by ordinance; and, if the Mayor refuses to take such actions, authorizing Council to retain counsel to file suit to challenge the Mayor's unilateral waiver of payments due the City from PGW without Council's approval by ordinance.

WHEREAS, The Agreement authorized by ordinance approved December 29, 1972 (Bill No. 455), as amended, between the City of Philadelphia and Philadelphia Facilities Management Corporation ("PGW Management Agreement/Ordinance"), requires the Philadelphia Gas Works ("PGW") to make an annual payment to the City of \$18 million; and

WHEREAS, The PGW Management Agreement/Ordinance provides that the \$18 million is payable in the amount of \$4,500,000 on each February 1, March 1, April 1 and May 1, or payable with interest on June 30 of each year; and

WHEREAS, The PGW Management Agreement/Ordinance further provides that in lieu of the \$18 million payment, PGW may pay the City "such different amounts at such different times, not greater in annual aggregate principal amount, as City Council shall prescribe"; and

WHEREAS, PGW's obligation to make annual payments to the City was upheld by the Pennsylvania Supreme Court in *The Public Advocate v. Philadelphia Gas Commission*, 544 Pa. 129 (1996). The Court held that PGW's annual payment to the City is not merely a matter of contract, but "required by the 1972 City ordinance" which "has the force and effect of an act of the Pennsylvania assembly"; and

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WHEREAS, PGW did not make the \$18 million payment to the City for Fiscal Year 2004; instead, the Mayor purported to unilaterally “waive” the payment without Council approval, and the \$18 million remains unpaid; and

WHEREAS, Under the clear and unambiguous language of the PGW Management Agreement/Ordinance, payment in any amount less than \$18 million must be authorized by Council by ordinance; and

WHEREAS, Notwithstanding the City Solicitor’s opinion to the contrary, the Mayor had no authority to waive the \$18 million payment for Fiscal Year 2004 without Council’s approval by ordinance, and the Mayor has no authority to waive any such future payments without Council’s approval by ordinance. No such waivers should be granted without the public review that the process of enacting an ordinance affords; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the Council calls upon the Mayor, within two weeks after the adoption of this Resolution, to instruct the Director of Finance in writing (with copies to the President and all members of Council) that the \$18 million due from PGW for Fiscal Year 2004 shall be carried as a debt due the City on all official City accounting records until the \$18 million is paid or until Council by ordinance approves the waiver of such payment.

FURTHER RESOLVED, That Council calls upon the Mayor, within two weeks after the adoption of this Resolution, to submit to Council a proposed ordinance setting forth Council’s approval of the waiver in full of the \$18 million payment for Fiscal Year 2004, or, if the Mayor chooses not to submit such proposed ordinance, to demand in writing (with copies to the President and all members of Council) immediate payment of the \$18 million that PGW owes the City for Fiscal Year 2004.

FURTHER RESOLVED, That the Council calls upon the Mayor, within two weeks after the adoption of this Resolution, to provide the President and all members of Council with his written assurances that no future payments due the City under the PGW Management Agreement/Ordinance will be waived or reduced unless Council has first approved such waiver or reduction by ordinance.

RESOLVED FURTHER, That if the Mayor fails to take all actions requested by this Resolution within the specified time, Council is authorized to retain counsel to file suit to challenge the Mayor’s unilateral waiver of payments due the City under the PGW Management Agreement/Ordinance without Council’s approval by ordinance.

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CERTIFICATION: This is a true and correct copy of the original Resolution, Adopted by the Council of the City of Philadelphia on the eighteenth of November, 2004.

Anna C. Verna
PRESIDENT OF THE COUNCIL

Patricia Rafferty
CHIEF CLERK OF THE COUNCIL

Introduced by: Councilmembers Tasco and Nutter

Sponsored by: Councilmembers Tasco, Nutter, Rizzo, DiCicco, O'Neill, Goode, Reynolds Brown, Mariano, Miller, Krajewski, Ramos, Blackwell, Clarke, Kenney, Kelly, Cohen and Council President Verna