

Legislation Text

File #: 000603, **Version:** 0

Authorizing the City of Philadelphia to terminate an agreement by and between the City of Philadelphia and the Philadelphia Facilities Management Corporation relating to the operation of the Philadelphia Gas Works and establishing the powers, duties and responsibilities of the Philadelphia Gas Commission with respect to the Philadelphia Gas Works.

WHEREAS, The City of Philadelphia (the "City") is the owner of a group of real and personal assets and gas works facilities known as the Philadelphia Gas Works (the "Gas Works"); and

WHEREAS, The City and the Philadelphia Facilities Management Corporation ("PFMC"), as authorized by an ordinance approved on December 29, 1972, (Bill No. 455), as amended, entered into an agreement relating to the operation and management of the Gas Works (the "Management Agreement"); and

WHEREAS, The Management Agreement authorizes PFMC to manage and operate the Gas Works for the sole and exclusive benefit of the City and also authorizes the Philadelphia Gas Commission (the "Gas Commission") to fix and regulate charges for supplying gas to customers, other than the City and the Board of Education; and

WHEREAS, The General Assembly of the Commonwealth of Pennsylvania recently amended Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes and enacted the Public Utilities-Natural Gas Act, Act No. 1999-21, ("Act 21") which provides that subject to certain provisions of Act 21, a "city natural gas distribution operation" shall be subject to regulation and control by the Pennsylvania Public Utility Commission and specifically provides at Section 2212(b) that, "Subject to the provisions of this section, commencing July 1, 2000, public utility service being furnished or rendered by a city natural gas distribution operation within its municipal limits shall be subject to regulation and control by the commission with the same force as if the service were rendered by a public utility."; and

WHEREAS, The Gas Works is a "city natural gas distribution operation," as defined in Act 21; and therefore on and after July 1, 2000, will be subject to the jurisdiction of the Pennsylvania Public Utility Commission with respect to the matters set forth in Act 21; and

WHEREAS, Section 2212(k) of Act 21 provides that a "city natural gas distribution operation shall be deemed an instrumentality of the city that owns it . . ." and further provides that “. . . . those individuals who render services exclusively and directly related to the operations of the city natural gas distribution operation shall be deemed employees of the city natural gas distribution operation as a distinct entity from the city."; and

WHEREAS, Section 2212(s) of Act 21 specifically preserves the legislative and executive powers of a municipality to determine the powers, functions, budgets, activities and mission of a city natural gas distribution operation, like the Gas Works, including but not limited to the ownership, governance, management and control of said city natural gas distribution operation; and

WHEREAS, The City has found it necessary and desirable to streamline the governance and management of the Gas Works in order to preserve this valuable asset of the City and to protect the interests of

local consumers of natural gas; therefore, the City and PFMC, by mutual consent, have agreed to terminate the Management Agreement; and

WHEREAS, In accordance with the Philadelphia Home Rule Charter (the "Charter"), adopted pursuant to the authorization of the First Class Home Rule Act approved April 21, 1949, P.L. 665, sec 1 et seq., (53 P.S. § 13101 et seq.) the City desires to establish the powers and duties of the Gas Commission with respect to the operation and management of the Gas Works to ensure that safe and reliable natural gas services are supplied to the customers of the Gas Works at reasonable rates; and

WHEREAS, In accordance with Section 5-900 of the Charter, the Department of Public Property of the City of Philadelphia (the Department) may contract for the operation of the gas works facilities and the City has found it necessary and desirable to authorize the Mayor acting through the Department to enter into a contract with the City instrumentality known as the "Philadelphia Gas Works" for the operation and management of said gas works facilities in accordance with the terms of this Ordinance; and

WHEREAS, The City has also found it necessary and desirable to authorize the Gas Commission to: (i) manage the Gas Works; (ii) represent the interests of the City and to appear before the Pennsylvania Public Utility Commission, the Federal Energy Regulatory Commission and other regulatory agencies on behalf of the City in any and all matters related to the Gas Works; and (iii) fix rates and charges for natural gas services in absence of the Pennsylvania Public Utility Commission's regulation of such rates and charges, and now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The City is hereby authorized to terminate the Management Agreement, except that Section VII.(7) authorizing reduced residential gas rates for senior citizen customers is not hereby revoked.

SECTION 2. The Gas Commission shall consist of five (5) members - two (2) members appointed by City Council, two (2) members appointed by the Mayor and one (1) member appointed by the City Controller of the City of Philadelphia (the "City Controller"). The members of the Gas Commission shall be designated for four year terms to hold office, unless they are removed for cause by their appointing authority, and shall serve until their successors are appointed and qualified.

SECTION 3. The Gas Works shall adopt bylaws for the conduct of the business of the Gas Works and said bylaws shall provide that the Gas Commission shall serve as the board of directors of said Gas Works. The bylaws shall also provide for the purchase of such insurance as may be deemed necessary by the members of the Gas Commission including, but not limited to, officers and directors liability coverage and the costs for said insurance shall be considered an operating expense of the Gas Works.

SECTION 4. Members of the Gas Commission shall receive compensation as fixed by City Council from time to time.

SECTION 5. The Gas Commission shall have all such powers and authority as are necessary and convenient to conduct the business of and to ensure the effective operation and management of the Gas Works in accordance with the highest management practices and diligence and to ensure that safe and reliable natural gas services are supplied to the customers of the Gas Works at reasonable rates.

SECTION 6. The Gas Commission shall select and approve the terms and conditions of employment of the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer and Chief Information Officer of the Gas Works and such other personnel for the Gas Works as are deemed necessary and appropriate by the Gas Commission.

SECTION 7. The Gas Commission shall have the power and authority to obtain such professional services and to retain such experts and consultants as in its judgment shall be deemed necessary, their compensation and expenses to be considered an operating expense of the Gas Works. The Gas Commission shall also have the power and authority to select and supervise the employees of the Gas Works assigned to the Gas Commission.

SECTION 8. The Gas Commission shall file an annual statement of the expenses of the Gas Commission with the City Controller of the City of Philadelphia (the "City Controller") and copies thereof shall be transmitted by the Gas Commission to the Mayor of the City of Philadelphia, the Commissioner of the Department, the Director of Finance of the City of Philadelphia (the "Director of Finance") and City Council.

SECTION 9. The Gas Commission shall hold regular meetings and shall conduct all Gas Commission business thereat. The Commissioner of the Department and the Director of Finance, or their designates or deputies, shall attend all meetings of the Gas Commission.

SECTION 10. The Gas Commission after consultation with the Director of Finance of the City shall: (i) approve the form and content of each annual operating budget and forecasts prepared by the Gas Works; (ii) ensure that all Gas Works' expenditures and commitments therefor are made pursuant to approved operating budgets; (iii) review all capital budgets and forecasts of the Gas Works and make recommendations to City Council with respect to said budgets and forecasts for approval by City Council; (iv) approve the amount of short term loans and the method of effecting any such loans as are proposed by the Gas Works; (v) make recommendations to City Council for its approval in connection with any long term borrowing proposed by the Gas Works; (vi) approve all acquisitions, sales and leases of real estate proposed by the Gas Works, subject to approval by City Council by ordinance; and (vii) ensure that the Gas Works, within a reasonable time after the close of each fiscal year of the Gas Works, provides the Mayor, the City Controller, the Commissioner of the Department, the Director of Finance and the Gas Commission with a financial statement for such year which has been audited by a certified public accountant in accordance with generally accepted accounting principles.

SECTION 11. The Gas Commission shall oversee the Gas Works to ensure that the Gas Works has the capacity to provide and distribute sufficient gas for the estimated maximum requirements of gas users in the City at all times. The Gas Commission shall periodically review: (i) all contracts for the purchases of natural gas or other gas between the Gas Works and third parties; (ii) all contracts for the distribution and/or transmission of such gas to the Gas Works or its facilities which are ancillary, attendant or related in any manner to the purchase of gas; and (iii) all contracts for the storage of natural gas.

SECTION 12. Except for the purchase of unique articles or articles which for any other reason cannot be obtained in the open market, competitive bids shall be secured, pursuant to the standards adopted and promulgated by the Gas Commission, before any purchase by contract or otherwise is made or before any contract is awarded for materials and supplies, construction, alterations, repairs or maintenance of the facilities or for rendering any service to the Gas Works, other than professional services, or for the purchase of any other item, thing or service and the purchase shall be made from or the contract shall be awarded to the lowest responsible bidder. The Gas Commission shall adopt standards and procedures which shall provide that all residuals and by-products from operations of the Gas Works and all unserviceable property or equipment of the

Gas Works shall be sold to the highest bidder in a manner similar to that required for the award of contracts for the purchase of goods and services.

SECTION 13. All openings, excavations and repaving shall be made subject to such general rules, regulations, specifications, ordinances and such Acts of Assembly as may apply, as from time to time shall be in force concerning the opening, excavation and repaving of streets and the protection of travel along the same, and the trenches shall be refilled and repaved with the same material and character of paving as before they were opened, unless otherwise ordered by the Streets Commissioner. Refilling and making opening safe for traffic shall be completed by Company within five (5) days after the pipe, services, or mains have been laid, and said repaving shall be completed, weather permitting, within sixty (60) days thereafter.

SECTION 14. In the absence of the Pennsylvania Public Utility Commission's regulation of the Gas Works, the Gas Commission shall fix rates and charges for natural gas services in accordance with an ordinance adopted by City Council April 30, 1998, and signed by the Mayor on May 8, 1998 (Bill No. 980232) (the "Bond Ordinance"). In doing so, the Gas Commission shall fix rates and charges for supplying natural gas to customers, other than the City and Board of Education without further authorization of City Council, which (together with revenues for gas supplied to the City and to the Board of Education and other revenues of the Gas Works qualifying as "project revenues" as such term is defined in Section 2 of the First Class City Revenue Bond Act, approved October 18, 1972, Act No. 234, 53 P.S. 15901 et seq., as amended) will, in each fiscal year produce revenues, at a minimum:

(a) Sufficient to pay all of the operation and maintenance costs and expenses of conducting the Gas Works enterprise and to pay the interest and amortization becoming due in each fiscal year on debt incurred for the Gas Works, including, but not limited to:

- (i) A reserve for depreciation reasonably estimated to be adequate to care for the retirement (due to exhaustion, wear and tear and obsolescence) of property at original cost. The amount necessary to be credited to the reserve each year for such purposes shall be charged to operations of the Gas Works; and
- (ii) Costs for retired employees of the Gas Works and employees still in service in accordance with an ordinance approved on July 12, 1968 (Bill No. 480), as amended; and
 - (iii) Expenses of the Gas Commission; and
- (iv) All sinking fund charges payable in respect of principal and interest on all obligations of the City issued for or with respect to the Gas Works and, with respect to Gas Works Revenue Bonds issued pursuant to The First Class City Revenue Bond Act, such additional amount as may be required to comply with any rate covenant and sinking fund reserve requirement approved by ordinance of City Council in connection with the authorization or issuance of Gas Works Revenue Bonds.

(b) Sufficient also (together with the excess on a cumulative basis of internally generated funds available for the purposes set forth below in this subsection (b) of prior years, beginning after June 30, 1974 to the extent that such excess shall not have been applied to such purposes and shall be available for the payment of general expenses of such fiscal year and, subject and subordinate to the payment or provision for payment of all operation and maintenance costs and all sinking fund and sinking fund reserve requirements as set forth in

subsection (a) above, together with the excess funds provided by revenues of such fiscal year not required for such purposes):

- (i) To make base payments to the City in the aggregate annual principal amount of \$18,000,000 payable in the amount of \$4,500,000 on each February 1, March 1, April 1 and May 1, provided that the Gas Works may defer this payment to any time between said due date and June 30 of each year in which event it shall be assessed interest on the principal amount at prevailing rates, to be determined by the Director of Finance and the Gas Works, from the said due date of the date of payment or such different amounts at such different times, not greater in annual aggregate principal amount, as City Council shall prescribe; and
- (ii) To provide appropriations, to the extent not otherwise provided, for prepayment of debt and for capital additions which have been determined by the Gas Commission to be reasonable and which have been approved by City Council; and
- (iii) To provide cash, or equivalent, for working capital in such reasonable amounts as may be determined by the Gas Works to be necessary and as shall be approved by the Gas Commission.

SECTION 15. In fixing the rates and charges for natural gas services that are not under the regulation and control of the Pennsylvania Public Utility Commission, the Gas Commission shall comply with the following:

- (a) Ensure that the Gas Works budgets and pays out of its revenues all of the expenses set forth in subsections (a) and (b) of Section 14 above, and all other expenses necessary and proper to the operation of the Gas Works. For the purposes of subsections (a) and (b) of Section 14, to the extent that operating expenses do not represent an actual outflow of funds (e.g., depreciation) such amount may be included in ascertaining whether revenues are sufficient to meet other costs, expenses and requirements of said subsections (a) and (b).
- (b) Upon any change in the rates for gas, the Gas Commission, at least thirty (30) days prior to the effective date thereof, shall notify City Council and give public notice by advertisement once in one or more daily newspapers having a circulation of at least 10,000 published in the City of Philadelphia, of the rates for gas to be charged.
- (c) Take into consideration any gas rate study or matter related thereto, which the Gas Works shall furnish to the Gas Commission in connection with the regulation of rates and charges for supplying natural gas.
- (d) Establish and apply nondiscriminatory rates based on suitable and reasonable classification of the services provided, taking into consideration the preparation of such schedules, the nature and purpose of the use, the quantity used, the time of year when used, the available supply of gas and other competing fuels, the maximum demand, and such other factors, including state, and federal laws, regulations or guidelines, as may be appropriate to the economics of the purchase, transportation, storage, distribution and sale of gas and consistent with the intent and purpose of this Ordinance. Such rates may provide for sufficient revenue to stabilize them over a reasonable number of years.
- (e) If conditions warrant, recommend payments to the City, but only from any excess described in subsection (b) of Section 14 above, of such amounts, in addition to those set forth in subsection (b) (i) of

Section 14 above, as may be approved by City Council.

(f) Make recommendations to City Council for the rates and charges for natural gas services furnished to the City and the Board of Education of the City of Philadelphia and delivered to the various public buildings of the City and said Board for public purposes.

SECTION 16. Short-term loans not exceeding twenty million dollars in amount or twelve months in duration may be negotiated in anticipation of revenues. If such loans are required, plans therefor shall be submitted to the Gas Commission and the Director of Finance for approval of amount of loan. The amount of any such loan shall also be subject to the approval by resolution or by ordinance of City Council.

The Gas Works may also receive temporary advances from the City in anticipation of revenues which are anticipated to be received by the Gas Works provided that such advances do not exceed twenty million dollars in amount or twenty-four months in duration; provided further, however, that during the period September 1, 2000 through August 31, 2002, such advances may exceed twenty million dollars but shall not exceed forty-five million dollars in amount. The amount of each such advance shall be subject to the prior approval of the Director of Finance and the Gas Commission and to the approval by resolution or by ordinance of City Council.

In addition to the foregoing authorized borrowings, loans not exceeding one hundred million dollars in aggregate principal amount at any time outstanding may be incurred for financing accounts receivable and the purchase of inventory for the Gas Works, as authorized by applicable law. If such loans are required, plans therefor shall be submitted to the Gas Commission and the Director of Finance for approval of the aggregate principal amount of such loans which may be outstanding at any single time. Such aggregate principal amount shall also be subject to the approval by resolution or by ordinance of City Council.

SECTION 17. The Gas Works shall make base payments to the City in the aggregate annual principal amount of \$18,000,000 payable in the amount of \$4,500,000 on each February 1, March 1, April 1 and May 1, provided that the Gas Works may defer this payment to any time between said due date and June 30 of each year in which event it shall be assessed interest on the principal amount at prevailing rates, to be determined by the Director of Finance and the Gas Works, from the said due date of the date of payment or such different amounts at such different times, not greater in annual aggregate principal amount, as City Council shall prescribe. If conditions warrant, the Gas Works shall pay to the City, but only from any excess described in subsection (b) of Section 14 above, such amounts, in addition to those set forth in subsection (b) (i) of Section 14 above, as may be determined and agreed upon by the Gas Commission and City Council.

SECTION 18. The Gas Commission shall represent the interests of the City and appear before the Pennsylvania Public Utility Commission, Federal Energy Regulatory Commission and other regulatory agencies on behalf of the City in any and all matters related to the Gas Works.

SECTION 19. The Law Department of the City of Philadelphia shall be the legal advisor for the Gas Commission and the Gas Works. It shall supervise, direct, and control all of the law work of the Gas Commission and the Gas Works including, but not limited to, litigation or other legal representation, investigation, and drafting of documents including contracts, bonds and all other legal instruments for the Gas Commission and the Gas Works.

The City Solicitor shall determine whether legal services for the Gas Works shall be performed by other counsel, and in such event he shall designate such counsel and the compensation therefor in

his sole discretion.

All legal services rendered, by the Law Department and by other special legal counsel, to the Gas Commission and to the Gas Works shall be billed to the Gas Works and shall be payable out of gas revenues.

SECTION 20. The Gas Commission as it is presently constituted shall be retained, pending appointment of their successors as provided in Section 2 above.

SECTION 21. The Gas Works shall continue in effect the reduced rates for senior citizen gas customers established by the Gas Commission pursuant to an Ordinance of City Council (Bill No. 1021) approved by the Mayor on December 14, 1973 and effective January 1, 1974, pursuant to which the Gas Works provides a reduction in gas rates in the amount of 20% of charges for non-heating and heating purposes to the residence of any individual 65 years of age or older, residing in the City of Philadelphia, who directly makes payment to the Gas Works for gas services at such residence. In order to qualify for this reduction, a person must first apply to the Gas Works for a rate reduction at least thirty (30) days before the next scheduled meter reading. The reduction shall then take effect at the start of the succeeding billing period.

SECTION 22. Bill No. 455, as amended, is repealed.

SECTION 23. This Ordinance shall take effect immediately.