

Legislation Text

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Authorizing the continuation and modification of the extended trial program authorized by Bill No. 090003 by establishing an Authorized Program under which advance approval is given to the Philadelphia Facilities Management Corporation to enter into certain contracts and transactions arising thereunder for the purchase, storage, distribution, transportation and/or transmission of natural and other gas supply 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 make it impracticable for PFMC on behalf of PGW to enter into the necessary gas procurement contracts on a timely basis under the requirements of Paragraph 2 of Section II of the Management Agreement/Ordinance without 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, Purchased gas costs are borne exclusively by PGW’s ratepayers and comprise the single largest expense related to operating PGW; and

WHEREAS, After approval by the PFMC Board and upon recommendation of the Gas Commission, on July 1, 2004 the City enacted an Ordinance (Bill No. 040558) providing advance approval under various terms and conditions of certain contracts for the purchase of natural and other gas supply, storage, distribution, transportation and transmission services (collectively, “Services”) entered into by PFMC on behalf of PGW during a trial period ended August 31, 2006 (the “Trial Period”) for Services to be delivered no later than August 31, 2007; and

WHEREAS, Due to the results of the trial program established by Bill No. 040558, after approval by the PFMC Board and upon recommendation of the Gas Commission, on January 24, 2006 the City enacted an Ordinance (Bill No. 051096) extending the Trial Period for an additional year for Services to be delivered no later than August 31, 2008 (the “extended Trial Period”); and

WHEREAS, Due to the continuing results of the extended trial program established by Bill No. 051096, after approval by the PFMC Board and upon recommendation of the Gas Commission, on January 23, 2007 the City enacted an Ordinance (Bill No. 060799) extending the Trial Period for an additional two years for Services to be delivered no later than August 31, 2010 (the “second extended Trial Period”); and

WHEREAS, Due to the continuing results of the second extended trial program established by Bill No. 060799, after approval by the PFMC Board and upon recommendation of the Gas Commission, on March 25, 2009 the City enacted an Ordinance (Bill No. 090003) extending the second extended Trial Period for an additional two years for Services to be delivered no later than August 31, 2012 (the “third extended Trial Period”); and

WHEREAS, Due to the continuing results of the third extended trial program established by Bill No. 090003, PFMC would like to establish an Authorized Program for an additional four years with certain modifications to the third extended trial program to cover expanded Services to be delivered no later than August 31, 2016 (the “Authorized Period”), as set forth in the PFMC Board Resolution dated November 30, 2010; and

WHEREAS, At a public meeting held on February 8, 2011, the Gas Commission recommended that Council approve an Authorized Program for a period ending August 31, 2015 with certain modifications to the third extended trial program, to cover the purchase by PFMC on behalf of PGW of expanded Services to be delivered no later than August 31, 2016, subject to the terms and conditions set forth in the written Motion unanimously approved at that meeting; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. APPROVAL OF CERTAIN TRANSACTIONS.

a. Subject to and except as otherwise provided by all other provisions of this Ordinance (collectively, the “Authorized Program”), 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 and ancillary contracts related in whole or in part to management of PGW’s natural and other gas storage and/or transportation assets (collectively, “Authorized Services”) entered into by PFMC on behalf of PGW during a period commencing on the effective date of this Ordinance and ending August 31, 2015 for Authorized Services to be delivered no later than August 31, 2016 (the “Authorized Period”), transactions arising thereunder, and transactions arising during the Authorized Period under such contracts entered into by PFMC on behalf of PGW pursuant to the authorizations provided by Bill No. 040558, Bill No. 051096, Bill No. 060799 and Bill No. 090003 (“the prior gas purchase pre-approval Ordinances”) are hereby approved, provided that:

- (1) Each contract entered into pursuant to the approval set forth in this Section shall include 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 (which may be given electronically or otherwise) of the Chair of the Gas Commission, the President of City Council, and the City Solicitor or their respective designee(s) prior to agreeing to any material revision, modification, amendment or addition of any special or supplemental provision to the terms and conditions of a standard North American Energy Standards Board (“NAESB”) base contract that impacts the relative obligations or liabilities of the parties or the City, including without limitation any provision concerning waiver of sovereign immunity by PGW, PFMC or the City. If approval or disapproval is not given within two (2) business days of receipt of the proposed provision, such provision will be deemed approved; and
- (3) With respect to any such contract or transaction arising thereunder pursuant to which payment for the Authorized Services thereby purchased will not be made within thirty-one (31) days of the last day of the month of delivery of such Services to PFMC and/or PGW and/or storage or reservation of such Services on their behalf, but will be deferred to a future date (a “delayed payment”):
 - i. PFMC is required to obtain the advance written approval (which may be given electronically or otherwise) of the Chair of the Gas Commission, the President of City Council, and the City Solicitor or their respective designee(s) prior to agreeing to any delayed payment contract or transaction which:
 - (a) transfers to the contract counter-party any storage interest or storage right necessary to facilitate such delayed payment contract or transaction; and/or
 - (b) defers payments for a period greater than twelve (12) months from the execution or acceptance date of the contract or transaction or longer than the ending date of the next fiscal year; and/or
 - (c) involves volumes individually in excess of four (4) or in the aggregate in excess of five (5) billion cubic feet (“Bcf”) or an equivalent measure of natural or other gas supply; and/or
 - (d) requires a delayed payment fee which equates to an effective annual interest rate in excess of the prime rate plus three (3) percent.

If approval or disapproval is not given within two (2) business days of receipt of a proposed contract(s) or transaction(s) thereunder involving such a delayed payment structure, such delayed payment contract(s) or transaction(s) will be deemed approved, provided that PFMC has first complied with the following Section 1.a.(3)(ii).

- ii. Prior to seeking the advance written approvals required by the foregoing Section 1.a.(3)(i), PFMC shall, immediately after receipt from a proposed vendor of a written proposal for a delayed payment contract or transaction, provide written notice (which may be given electronically or otherwise) to the Chair of the Gas Commission, the President of City Council, and the City Solicitor of the commencement of negotiation of such a contract or transaction. Said written notice shall include information regarding the vendor selection process, a copy of the vendor’s written proposal and any other preliminary information regarding the key terms and conditions under discussion.

(4) No contract or transaction authorized by this Ordinance shall obligate PFMC for a period in excess of four (4) years from the date of execution of the contract or transaction.

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 and/or management of all or a substantial part of PGW’s gas supply, storage, distribution, transportation and/or transmission services and/or assets or capacity. For purposes of this Section 1, “outsourcing of the procurement and/or management” shall mean any arrangement between PFMC and a third party whereby such third party is contracted by PFMC and/or PGW to direct, operate and/or refill PGW’s gas supply, storage, distribution, transportation and/or transmission services, assets or capacity for any period of time on behalf of itself, PGW, or PFMC. Further, for purposes of this Section 1, “a substantial part” shall mean (i) with respect to the procurement of PGW’s gas supply, storage, distribution, transportation and/or transmission services and/or assets or capacity, thirty (30) percent or more and (ii) with respect to the management of PGW’s gas supply, storage, distribution, transportation and/or transmission services and/or assets or capacity, fifty (50) percent or more, of the volume of PGW’s gas supply, storage, distribution, transportation, or transmission services and/or assets or capacity, whether outsourced through one transaction, more than one transaction, or any combination thereof; or
- (3) Sale, lease or licensing of LNG facilities, including, without limitation, LNG capacity, and/or the land appurtenant thereto.

SECTION 2. MAXIMUM GAS COSTS.

The sum total of contracts and transactions arising thereunder entered into pursuant to the authorization provide in Section 1 for the delivery of Authorized Services during each PGW Fiscal Year within the Authorized Period 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 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:

- (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 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 following procurement standards shall apply to contracts entered into during the Authorized Period and transactions arising thereunder pursuant to this Ordinance, as well as transactions arising during the Authorized Period under contracts entered into pursuant to the authorizations provided by the prior gas purchase pre-approval Ordinances.

- a. Such contracts and transactions shall be consistent with the then-applicable 1307f Filing approved by the PUC. To the extent that an approved 1307f Filing requires PGW/PFMC to engage in financial hedging or outsourcing of the procurement and/or management (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. Such contracts and transactions shall be consistent with a least cost fuel procurement policy. This Section does not preclude PGW from retaining and utilizing a portion of the proceeds from off-system sales and/or capacity releases pursuant to an approved 1307f Filing.

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 Public Advocate with copies of each contract and transactions thereunder entered into on behalf of PGW pursuant to Section 1 of this Ordinance within ten (10) business days of entering into such contract or transaction. When any such contract or transaction thereunder pertains to outsourcing of the procurement and/or management of less than a

substantial part of PGW's Authorized Services, as provided in Section 1(b)(2) of this Ordinance, or involves delayed payment terms for which advance written approval is not required by Section 1(a)(3) of this Ordinance, PFMC shall provide the Gas Commission and Public Advocate with a report on the purpose and total cost of the underlying 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. If the Gas Commission or the Gas Commission's designee determines that any such contract or transaction thereunder appears to exceed the authorization provided by or 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, the Mayor and the City Solicitor.

- b. PFMC shall provide the Gas Commission and 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.
- c. PFMC shall provide the Gas Commission and 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 of each year, beginning with March 1, 2011 and ending with March 1, 2015, shall provide the Gas Commission and Public Advocate with PGW's proposed gas procurement program for the two-year period beginning with the next September 1. In addition, PFMC shall provide the Gas Commission and Public Advocate 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, the Mayor and the City Solicitor.
- e. PFMC shall file a report with the Gas Commission and 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. In the event either party to a contract entered into pursuant to this Ordinance or the prior gas purchase pre-approval Ordinances terminates such contract for any reason, PFMC shall file a report with the Gas Commission and Public Advocate within ten (10) business days of such termination identifying the terminated contract and the reason(s) for termination.
- g. PFMC shall file reports on October 1, 2011, October 1, 2012, October 1, 2013 and October 1, 2014 with the Gas Commission, Public Advocate and Council reviewing its implementation of and compliance with this Ordinance.
- h. The Gas Commission shall submit reports to Council during December 2011, December 2012, December 2013 and December 2014 with respect to PGW's implementation of and compliance with this

Ordinance.

SECTION 5. EARLY TERMINATION OF AUTHORIZED PERIOD.

The Authorized Period may be terminated at any time prior to August 31, 2015 by Council by ordinance, provided that such ordinance shall set forth a date of termination which shall not be earlier than ninety (90) days after such ordinance becomes law. This Ordinance shall not constitute approval of any contract entered into after any such date of termination or of any transaction after any such date of termination which arises under a contract entered into prior to such date of termination.

SECTION 6. FURTHER EXTENSION OR RENEWAL OF AUTHORIZED PERIOD.

- a. The Authorized Period set forth in Section 1 of this Ordinance may be extended or renewed by ordinance. If PFMC on behalf of PGW wishes to further extend or renew the Authorized Program beyond the Authorized Period, it shall file with the Clerk of Council (with copies to all members of Council) no later than March 15, 2014 a proposed ordinance to extend or renew the Authorized Program (whether on the same or different terms and conditions), accompanied by PGW's most current update on gas costs, which shall include at a minimum PGW's most recent 1307f filing with the PUC and quarterly update thereto, its most recent gas costs comparison report, and its proposed gas procurement program for the period to be covered by the proposed ordinance. PFMC shall simultaneously file a copy of any such proposed ordinance and gas cost update with the Gas Commission.
- b. No ordinance to further extend or renew the Authorized Program shall be enacted unless such ordinance was first submitted to the Gas Commission for its recommendations.

SECTION 7. EFFECTIVE DATE; CONTINUED APPLICABILITY OF BILL NO. 040558, BILL NO. 051096, BILL NO. 060799 AND BILL NO. 090003.

- a. This Ordinance shall take effect on the date it becomes law ("Effective Date").
- b. On and after the Effective Date, no new contracts or transactions shall be entered into under the authority of Bill No. 040558, Bill No. 051096, Bill No. 060799 or Bill No. 090003 ("the prior gas purchase pre-approval Ordinances"). All contracts executed on or after the Effective Date must be authorized under the provisions of this Ordinance, and all transactions entered into on or after the Effective Date (including any transactions arising under contracts executed under the authority of the prior gas purchase pre-approval Ordinances) shall be governed by this Ordinance. Except to the extent inconsistent with any of the provisions herein, the prior gas purchase pre-approval Ordinances shall continue to govern all contracts executed under their respective authority and all transactions arising under such contracts before the Effective Date.