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COUNCIL OF THE CITY OF PHILADELPHIA

3

PUBLIC MEETING

4

BEFORE THE COMMITTEE OF THE WHOLE

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Room 400, City Hall
Philadelphia, Pennsylvania
Wednesday, October 29, 1997
11:50 a.m.

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RESOLUTION 970687 - Resolution approving a Venture
Agreement between the Philadelphia Facilities
Management Corporation and QST Energy, Inc.

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PRESENT:

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COUNCILMAN JOHN F. STREET, Chair
COUNCILWOMAN ANNA C. VERNA, Vice-Chair

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

3 PRESIDENT STREET: Good afternoon,
4 ladies and gentlemen. If I could have your
5 attention, please.

6 Good afternoon, ladies and
7 gentlemen. This is a public hearing by the Council
8 Committee of the Whole on Resolution No. 970687.

9 This resolution approves a Venture
10 Agreement between Philadelphia Facilities -- if I
11 could have your attention.

12 Councilman Cohen, can I have your
13 attention, please.

14 Approves a Venture Agreement between
15 the Philadelphia Facilities Management Corporation
16 and QST Energy, Inc.

17 The resolution was introduced at our
18 last Council session. And I believe every Council
19 member had delivered to his or her office a booklet
20 from the Law Department entitled "The PECO Energy
21 Pilot Program, Philadelphia Gas Works, QST Energy,
22 Inc., Venture Agreement."

23 Is there any member who did not get
24 this package of information? I didn't say is there
25 any member who does not have it. Is there any

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2 member who did not get it?

3 I believe that this material was all
4 delivered, and it is in at least your constructive
5 possession.

6 This is what we would like to do, if
7 I could have everybody's attention.

8 What we would like to do is take
9 testimony from the City Solicitor of Philadelphia.
10 And unless someone has a problem, I would like to
11 have her kind of walk us through the agreement.

12 After which, I would like to have
13 Council members raise any and all questions that you
14 might have about the agreement.

15 Questions that can be answered should
16 be answered. Questions that cannot be answered, in
17 the sense that any witness doesn't have all the
18 information to answer the question, a record should
19 be made of those questions, a commitment will be
20 gotten that that information be made available to us
21 between now and tomorrow.

22 It is unlikely that we will act on
23 the resolution today. I think it is fair that after
24 we have the explanation from the City Solicitor,
25 complete whatever discussion we have, Council

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2 members should have an opportunity to think about
3 all of this, to go back, reread whatever you wish to
4 reread, and then we can complete our action on it
5 tomorrow.

6 Is there anybody that has any
7 question about any of that?

8 If not, the Chair recognizes the City
9 Solicitor, Stephanie Franklin-Suber.

10 MS. STEPHANIE L. FRANKLIN-SUBER:

11 Good morning, Council President Street, members of
12 City Council.

13 For the record, I am Stephanie
14 Franklin-Suber, City Solicitor for the City of
15 Philadelphia.

16 I am pleased to appear before you
17 today to testify on Resolution No. 970687, which
18 would approve a Venture Agreement between the
19 Philadelphia Facilities Management Corporation,
20 acting on behalf of the Philadelphia Gas Works, and
21 QST Energy, Incorporated.

22 As I testified last week, Bill No.
23 970647, as amended, would authorize amendments to
24 the 1972 Management Agreement between the city and
25 PFMC, to permit PFMC to operate the Philadelphia Gas

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2 Works for the acquisition, marketing, brokering,
3 aggregation, and supply of electric power within the
4 city.

5 The amendments to the bill approved
6 by the City Council Committee of the Whole limit
7 that authorization to December 31, 1998, coinciding
8 with the end of the PECO Energy Company Electric
9 Pilot Program.

10 In addition, the amendments provide
11 that PFMC shall exercise that authorization only
12 through a Venture Agreement with QST containing
13 several specific provisions to protect the city and
14 PGW ratepayers.

15 The amendments to the bill also
16 require that the Venture Agreement with QST be
17 approved by resolution of City Council prior to
18 Council's enactment of the bill.

19 Prior to this hearing, as the Council
20 President indicated, I distributed to each member of
21 City Council and the Gas Commission a notebook dated
22 October 29.

23 This notebook has a blue cover page
24 and contains the bill, the amendments to the bill,
25 the resolution, a summary of the proposed Venture

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2 Agreement, a proposed form of Venture Agreement, an
3 opinion of the City Solicitor, and a Law Department
4 research memorandum.

5 Exhibit E to the notebook contains
6 the proposed form of Venture Agreement.

7 Exhibit D in the notebook includes a
8 summary of the Venture Agreement. I believe that
9 this summary demonstrates that the proposed Venture
10 Agreement complies with each and every condition
11 Council requires under Bill No. 970647, as amended.

12 At this point I would like to briefly
13 review the significant terms of the Venture
14 Agreement.

15 Purpose: The purpose of the venture
16 is narrow. It is to solicit, acquire, market,
17 broker, aggregate, and supply electric power to
18 customers within the City of Philadelphia only in
19 connection with this pilot program.

20 The term of the Venture Agreement
21 begins on November 1, subject to City Council
22 approval, and automatically expires on December 31,
23 1998.

24 In terms of QST's activities and
25 obligations, QST's obligations include the supply of

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2 all electric power and all costs related to the
3 supply of electric power.

4 QST will enter into individual
5 service contracts with customers. Those contracts
6 have to be, in form and substance, satisfactory to
7 the city.

8 The customers will receive a 10
9 percent discount and credit for the 15th month, if
10 they have been participants for the previous 14
11 months, and a \$15 enrollment check.

12 QST is responsible for maintaining
13 and providing all permits, approvals, licenses, or
14 authorizations necessary for it to act as an
15 electric-generation supplier in the pilot program.

16 QST will also provide training to PGW
17 personnel in the electric-generation business.

18 PGW's activities include providing
19 brand awareness and marketing. PGW will also
20 provide inbound and outbound telephone services,
21 call center services, and telemarketing services.

22 The joint activities include
23 marketing oversight; electric product development,
24 design, and production; sales training and sales
25 coordination; constructing and implementing

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2 business, marketing, sales, and advertising plans
3 and campaigns to direct the actions of the parties
4 throughout the program.

5 There is a Management Committee,
6 which will manage the venture with equal
7 representation on the part of both PGW and QST. The
8 day-to-day operations will be jointly supervised by
9 one designated representative from each of QST and
10 PGW.

11 The specific performance goals set
12 forth in Bill No. 970647 are expressly incorporated
13 and made the performance goals of the venture in the
14 Venture Agreement.

15 The Venture Agreement also includes
16 various provisions on the flow of funds and
17 segregated accounts to minimize the likelihood that
18 the revenues would be taxable, and to reduce the
19 likelihood of any adverse impact on the tax-exempt
20 status of PFMC.

21 In terms of liability, as required by
22 Bill No. 970647 as amended, QST expressly assumes
23 sole responsibility and liability for all activities
24 undertaken by both QST and PGW in connection with
25 the pilot program, both prior to, but no earlier

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2 than, September 30, 1997, and after the commencement
3 of the Venture Agreement for the term of the Venture
4 Agreement. And this obligation survives the
5 termination or expiration of the Venture Agreement.

6 In absolutely no event, and under
7 absolutely no circumstance, will any General Fund
8 revenue of the city be exposed or made available in
9 support of or in connection with the pilot program
10 or the Venture Agreement.

11 As required by Bill No. 970647, PGW
12 will provide regular written reports to the Mayor,
13 City Council, and the Gas Commission regarding its
14 performance goals.

15 As required by Bill No. 970647, QST
16 and PGW will use the venture as their exclusive
17 distribution channel for the sale of electricity in
18 the city.

19 As required by Bill No. 970647, QST
20 will not compete directly or indirectly with the
21 city, PGW, or PFMC in the solicitation, acquisition,
22 marketing, brokering, aggregation, operation,
23 supply, and/or distribution of electric power as
24 long as PGW is in the electric business, or of
25 natural gas to persons, businesses, or other

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2 entities in the City of Philadelphia for a period of
3 one year after the earlier of the termination or
4 expiration of the Venture Agreement, or December 31,
5 1998, without the prior authorization of City
6 Council by ordinance.

7 In terms of indemnification, as
8 required by Bill No. 970647, QST provides the
9 broadest possible indemnity to the city, PGW, and
10 PFMC for any and all losses, costs, or expenses
11 arising out of or relating to the solicitation,
12 acquisition, marketing, brokering, aggregation,
13 operation, supply, and/or distribution of energy in
14 connection with this agreement.

15 As required by Bill No. 970647, QST
16 provides all insurance ordinarily required by the
17 city, including but not limited to general liability
18 insurance, workers' compensation, employers'
19 liability, and professional liability insurance, all
20 as reviewed and approved by the city's Risk
21 Manager.

22 The Venture Agreement will terminate
23 at the latest on December 31, 1998, unless extended
24 by City Council authorization by ordinance. PGW may
25 also terminate for convenience on 30 days written

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2 understand you to have read that PGW may terminate
3 the agreement upon 30 days written notice, yet our
4 written report shows 90 days.

5 Is it 30 or 90?

6 MS. FRANKLIN-SUBER: It is 90 days.
7 That's as a result of late-night discussions with
8 QST.

9 COUNCILWOMAN VERNA: Thank you.

10 PRESIDENT STREET: So 90 days?

11 MS. FRANKLIN-SUBER: It is 90 days.

12 PRESIDENT STREET: Councilwoman
13 Verna, are you finished?

14 COUNCILWOMAN VERNA: I am finished.
15 Thank you.

16 PRESIDENT STREET: The Chair
17 recognizes Councilman Nutter.

18 COUNCILMAN NUTTER: Thank you,
19 Mr. President.

20 Madam Solicitor, in Exhibit E, which
21 I believe is now the Venture Agreement, on Page 8,
22 Item No. 9, under the heading of Flow of Funds and
23 Accounts, do I read Item A to now mean that PGW will
24 not be the billing entity in this proposal, and that
25 PECO will be the billing entity?

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2 MS. FRANKLIN-SUBER: That is
3 correct.

4 In response to certain concerns and
5 comments made by, as I recall, Councilman Cohen in
6 particular with regard to the confusion that
7 customers may have by receiving more than one bill,
8 PGW and QST will request that PECO handle the
9 billing and collection. So the customers will
10 receive one bill.

11 COUNCILMAN NUTTER: So without any
12 document in front of us, or those great charts that
13 we had here last week, theoretically, a person would
14 receive their regular PECO bill.

15 And somewhere in the billing scheme,
16 same page, back of the page, somewhere in that it
17 would, I assume, tell you as a pilot participant
18 that here is your listing of charges, similar to
19 what we saw in those charts, for the PGW/QST pilot
20 program? Is that how that bill would look, or
21 work?

22 MR. BUD Z. KARACHIWALA: My name, for
23 the record, is Bud Karachiwala, with Philadelphia
24 Gas Works.

25 What you are saying, Councilman

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2 Nutter, is correct.

3 PECO has agreed to do the billing for
4 November. I would say that we -- it is up to PECO
5 to exactly determine how it is going to show up in
6 the bill. And I do not have that firm document in
7 front of me.

8 COUNCILMAN NUTTER: What provisions,
9 I guess, have been made, if you are one of those
10 individuals -- and this may fall in the category of
11 a question that you don't have all the answers to --
12 but there was some discussion last week about where
13 funds get applied.

14 And this was even in the two- or
15 three-bill scenario, and now we have narrowed it
16 down to maybe one bill.

17 But you send your check in to PECO.
18 PECO has a charge already on their bill, and they
19 were always going to have a charge. You just send
20 the money in. The money is inadequate to cover the
21 entire bill.

22 How does PECO now decide the split of
23 the funds?

24 And, secondly, in that same item or
25 another item under the same heading, do I now

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2 understand that the customer pays the money to PECO;
3 PECO then transfers the funds, the appropriate
4 funds, to QST; the QST dollars sit in a segregated
5 account somewhere until the management group, the
6 six-member management group, figures out that it is
7 either right or it is appropriate or it is what it
8 is?

9 Taking all that into consideration,
10 how does PECO decide, on a \$150 bill, and I sent you
11 \$95, what goes where?

12 And, how do we know that PECO's
13 systems will work in concert with QST's systems,
14 when PECO sends QST the money, that the customer's
15 account is credited properly, and that is, not
16 intentionally, being inappropriately done by either
17 QST or PGW for lack of payment, when they have in
18 fact sent some money to PECO?

19 MR. KARACHIWALA: Councilman, to
20 respond to your question, it is one of those
21 categories where I have not been able to get a
22 definitive answer to that question from PECO. I am
23 in the process of getting that answer right now.

24 COUNCILMAN NUTTER: Because that's
25 going to be a billing dispute area. And, "I paid."

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2 "No, you didn't. You sent it over
3 here. No, we have to split it up. Six-member
4 Management Committee, we haven't looked at it." And
5 in the meantime, you know, you are fighting with one
6 of these companies.

7 MR. KARACHIWALA: The PUC rules do
8 provide very significant guidance on that. All I
9 need is to know exactly how PECO is going to do it.

10 COUNCILMAN NUTTER: All right. Let's
11 go to Page 9, Letter D.

12 The new word, I guess, by agreement
13 from last week, now appears to be "margin"; is that
14 the operative word today?

15 MS. FRANKLIN-SUBER: Yes.

16 COUNCILMAN NUTTER: It is a nice
17 word.

18 Do I read this to understand that QST
19 in this venture is now assuming all risk, and is
20 being asked to share 50 percent of the margin, the
21 margin being what's left over after all expenses are
22 taken out? Is that the way that reads?

23 MS. FRANKLIN-SUBER: That's correct.

24 COUNCILMAN NUTTER: And QST has
25 agreed to that?

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2 MS. FRANKLIN-SUBER: That's one of
3 the issues that's still under discussion with QST.

4 The proposed agreement before
5 Council, in terms of the discussions between PGW and
6 QST, is substantially negotiated, except for certain
7 aspects of this particular provision.

8 With that in mind, and also any
9 additional concerns or questions that Council may
10 raise today, we would envision resolving those
11 issues, getting any additional information, and
12 responding to questions by tomorrow.

13 COUNCILMAN NUTTER: Okay. I mean, as
14 a public policy matter, as a member of the body
15 reviewing the document, I mean, that's a pretty
16 interesting arrangement from our side.

17 If I take that hat off, though, as
18 with any small amount of business sense, I do wonder
19 how the private entity reacts to the notion of all
20 risk, and share half the profit -- I'm sorry;
21 margin.

22 And it will be interesting, I guess,
23 to see how that finally shakes out. But good try.

24 On Page 11, can you in plainer
25 English explain what the meaning of Letter D is?

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2 MS. FRANKLIN-SUBER: Letter D is one
3 of the requirements in the proposed amendments to
4 the bill adopted by the Committee of the Whole.

5 And, essentially, it means that, in
6 terms of this venture relationship, neither the
7 city, nor PGW, nor the company will expend any
8 additional funds on a going-forward basis to
9 participate in this venture and to participate in
10 the pilot program short of the use of existing PGW
11 staff materials, supplies, and equipment that they
12 have already been using in connection with the pilot
13 program as of October 23. That was the date of the
14 hearing.

15 COUNCILMAN NUTTER: Right. Okay.

16 Page 14, Item No. 16, the Covenant
17 Not To Compete. This is a much-discussed item which
18 has grown significantly since this started.

19 I just wanted to pose one scenario to
20 you, Madam Solicitor. I understand that there is
21 the one year No Compete.

22 Or if we, the city, through PGW, end
23 up not in the electric business after December 31,
24 1998, then it is kind of a mute issue, because QST
25 would not have anyone to compete against, because we

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2 would literally be out of the business.

3 MS. FRANKLIN-SUBER: In the electric
4 business, that's correct.

5 COUNCILMAN NUTTER: If the agreement
6 terminates prior to 12/31/98 -- there seem to be
7 three or four ways that the agreement could
8 terminate before 12/31/98 -- but PGW, although they
9 have a current application, has no license at that
10 point, prior to 12/31/98, would QST at that moment
11 be able to still provide electric service?

12 MS. FRANKLIN-SUBER: Yes. The
13 non-compete for QST in the electric business does
14 not apply, or is void, if PGW is not in the electric
15 business. The notion is competition.

16 But the non-compete as to gas would
17 be in effect.

18 COUNCILMAN NUTTER: Right.

19 Let's say the agreement between PGW
20 and QST terminates, for whatever reason, on March
21 31, 1998, and QST decides to continue in the
22 electric business.

23 And on March 31, 1998, PGW, still,
24 for whatever reason, does not have an electric
25 license, and in June of 1998, PGW does get its own

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2 are going to get something real soon here.

3 Please proceed.

4 COUNCILMAN NUTTER: Mr. President, I

5 have a number of other questions, but --

6 PRESIDENT STREET: Councilman

7 Nutter --

8 COUNCILMAN NUTTER: When you were

9 away from the Chair, I took advantage.

10 PRESIDENT STREET: -- no lights are

11 on.

12 COUNCILMAN NUTTER: Okay. Let me go

13 to Page 23.

14 On Page 23, No. 6, this seems to read

15 that -- and I believe this is under the Termination

16 section, No. 24 -- it says that all of the then

17 present customers in a pilot program under contract

18 with QST within the City of Philadelphia will become

19 customers of PGW and/or a venture containing PGW as

20 a participant.

21 Again, if at this termination point

22 PGW does not have its own electric license, either

23 in the previous public hearing or in the briefing,

24 wouldn't those people actually, technically, go back

25 to PECO?

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2 MS. FRANKLIN-SUBER: There is a
3 proviso to the provision.

4 If PGW has a license or if PGW is in
5 a venture relationship with another third party that
6 is not QST, then, working with PUC approval, we
7 would assign the customers to PGW or to the new
8 venture.

9 COUNCILMAN NUTTER: Right.

10 MS. FRANKLIN-SUBER: If PGW does not
11 have a license or is otherwise not in the
12 electricity business, QST has the contract with the
13 customers. The customers would stay with QST.

14 COUNCILMAN NUTTER: The customer
15 stays with QST.

16 MS. FRANKLIN-SUBER: Which is also
17 why the non-compete would not be in effect.

18 COUNCILMAN NUTTER: That also
19 automatically assumes, though, that if this venture
20 falls apart, PGW still has to come back to City
21 Council for a new participating partner.

22 MS. FRANKLIN-SUBER: That's correct.

23 COUNCILMAN NUTTER: And you assume
24 that between your notice, PGW gives QST notice. And
25 I believe one of the provisions is a 90-day notice.

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2 MS. FRANKLIN-SUBER: Correct.

3 COUNCILMAN NUTTER: Your assumption
4 is between them giving the 90-day notice and the
5 expiration of the agreement, or the termination
6 point, that Council will have approved a new
7 participating partner, or PGW will have its own
8 license, or the person ultimately stays with QST?

9 MS. FRANKLIN-SUBER: That is
10 correct.

11 COUNCILMAN NUTTER: Okay.

12 MS. FRANKLIN-SUBER: Because PGW
13 would also have to come back to City Council. Not
14 simply in the context of a new proposed venture, but
15 for authorization to proceed even with its own
16 license.

17 COUNCILMAN NUTTER: Right.

18 Item No. 7 talks about --

19 PRESIDENT STREET: Councilwoman Clark
20 wishes for Councilman Nutter to yield to her for a
21 followup question on that point.

22 COUNCILMAN NUTTER: Absolutely.

23 COUNCILWOMAN CLARK: What if PGW is
24 not in the electricity business? The customers then
25 will be QST customers?

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2 MS. FRANKLIN-SUBER: That is
3 correct.

4 COUNCILWOMAN CLARK: At no point will
5 the customers revert to being PECO customers?

6 MS. FRANKLIN-SUBER: Not unless they
7 switch. The customers could switch back to PECO.

8 COUNCILWOMAN CLARK: But absent a
9 switching, they become --

10 MS. FRANKLIN-SUBER: QST customers.

11 COUNCILWOMAN CLARK: -- the customers
12 of QST.

13 MS. FRANKLIN-SUBER: That's correct.

14 COUNCILWOMAN CLARK: Which is the
15 surviving part of the QST/PGW arrangement.

16 MS. FRANKLIN-SUBER: That is
17 correct.

18 COUNCILWOMAN CLARK: And under this
19 scenario, PGW is not and no longer contemplates
20 being in the electricity business?

21 MS. FRANKLIN-SUBER: Certainly would
22 not be in the electricity business at that point.

23 COUNCILWOMAN CLARK: There is no
24 license, there is no license pending. If you had a
25 license, you reject it. You are simply gas, and not

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2 electricity?

3 MS. FRANKLIN-SUBER: That's correct.

4 COUNCILWOMAN CLARK: Then any

5 customer would be a QST customer?

6 MS. FRANKLIN-SUBER: Customers signed

7 up during the pilot program, that's correct.

8 COUNCILWOMAN CLARK: Thank you for

9 the clarification.

10 COUNCILMAN NUTTER: No problem.

11 On Item No. 7, which seems like it

12 was partially answered by the previous Q and A, even

13 in the event of termination of the agreement between

14 PGW and QST, the customer now reverts, or solely

15 becomes, a QST customer.

16 And the agreement here is saying that

17 they still have to provide the 15th month free, even

18 if the relationship has been terminated between PGW

19 and QST. Is that what Item No. 7 means?

20 MR. KARACHIWALA: A customer, when it

21 reverts, he or she reverts back, to QST has to

22 remain a customer of QST for the 14-month period in

23 order to be eligible for that 15th month free

24 generation electricity.

25 So if they were to switch, then QST

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2 would not be obligated.

3 COUNCILMAN NUTTER: Okay. Right.

4 Okay.

5 I'm sorry to take this one out of
6 order. But back on Page 22, this item had never
7 been discussed in any of the previous hearings, and
8 it brings up potentially a delicate issue.

9 No. 23, on Page 22, this non-hiring
10 agreement, is essentially an agreement saying that
11 neither party can take the other party's people who
12 have participated in the putting together of this
13 pilot program for at least a year; is that --

14 MS. FRANKLIN-SUBER: That's the
15 essence of it, that's correct.

16 COUNCILMAN NUTTER: I believe in the
17 briefing, Bud, you may have shared with us some
18 information about your previous employment.

19 Do I recall somewhere that you may
20 have had a previous relationship with QST?

21 MR. KARACHIWALA: No, I do not have
22 any previous relationship with QST directly.

23 In my previous employment I was with
24 Mid-American Energy Company, which started the first
25 natural gas unbundling pilot program in the

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2 country.

3 And it was during the course of that
4 pilot project that representatives of QST were
5 discussing with me, because they were intending to
6 have an electric pilot program in their service
7 territory.

8 COUNCILMAN NUTTER: I appreciate that
9 clarification. And I meant no accusation towards
10 you.

11 I knew that you had mentioned some
12 level of relationship with QST.

13 But it was not as an employee; it was
14 as, I guess, a vendor company to a company that you
15 worked for.

16 MR. KARACHIWALA: I appreciate the
17 opportunity for clarifying that.

18 COUNCILMAN NUTTER: This is not
19 numbered, but it was the next page after the end of
20 exhibit -- I'm sorry; it is the first page after
21 Exhibit A, Customer Terms and Conditions.

22 Councilwoman Clark raised an issue
23 last week with regard to, I believe, this brochure.

24 This is not a great copy, but I
25 believe in Item No. 2, Length of Agreement, there

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2 was discussion about what appears to be an automatic
3 annual renewal.

4 And that seemed to be a problem, or
5 seemed to be in conflict with some provisions either
6 of the bill or proposed amendments from last week.

7 Has that been rectified?

8 MS. FRANKLIN-SUBER: Yes. Through
9 operation of the different terms of the Venture
10 Agreement, the way that we have structured the
11 termination provision, the pilot program is the 14
12 months.

13 After that, if PGW, through either
14 its own license or a new venture arrangement,
15 continues in the electricity business, the customers
16 then are going to be, with the approval of the PUC,
17 assigned to PGW and/or that venture.

18 So that, therefore -- and QST has
19 agreed to that.

20 So, therefore, the contract between
21 QST and the customer, which provides for the
22 automatic renewal, that will not occur by virtue of
23 the assignment.

24 COUNCILMAN NUTTER: Are we in any
25 position to change or amend literature that may go

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2 out in the future to reflect that change?

3 And I assume you are saying the
4 controlling document, notwithstanding the propaganda
5 that's out by the little materials, the agreement
6 that the customer signs with QST will reflect what
7 you just put on the record, versus what's in the
8 brochure?

9 MS. FRANKLIN-SUBER: The exhibit
10 covers the customers that have been signed up up
11 to October 25.

12 COUNCILMAN NUTTER: Right.

13 MS. FRANKLIN-SUBER: The Venture
14 Agreement will be effective, subject to Council
15 approval, November 1.

16 The Venture Agreement provides that
17 QST cannot, without the prior written approval of
18 the city, enter into a contract with customers.

19 So that in discussions that I
20 personally had with QST, we made it clear that this
21 form was not acceptable on a going-forward basis,
22 and that there will be a new form of contract with
23 the customers that we will review and approve.

24 COUNCILMAN NUTTER: Do we have a copy
25 of either the previous and now discredited contract,

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2 or the new contract?

3 MS. FRANKLIN-SUBER: You have the old
4 contract as part of this exhibit, and we would
5 supplement it with the new contract. We do not have
6 that at this point.

7 COUNCILMAN NUTTER: Well, is what you
8 are calling a contract what I am referring to as a
9 brochure? Is that Exhibit A?

10 MS. FRANKLIN-SUBER: Yes.

11 COUNCILMAN NUTTER: Okay.

12 COUNCILWOMAN CLARK: I have a
13 followup.

14 COUNCILMAN NUTTER: Yes.

15 PRESIDENT STREET: Councilwoman
16 Clark.

17 COUNCILWOMAN CLARK: Point of
18 clarification.

19 How many of these brochures have been
20 signed and returned and may operate as a registrant
21 in the pilot?

22 MR. KARACHIWALA: The deadline for
23 sending the list of customers to PECO was 5:00 p.m.
24 on Monday, October 27. The venture has sent 2,254
25 customers to PECO.

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2 Since then we continue to receive
3 sign-up cards, but those are not in the initial
4 batch that went to PECO.

5 COUNCILWOMAN CLARK: 2,254 signed
6 onto this brochure, which is our Exhibit A; is that
7 correct?

8 MS. FRANKLIN-SUBER: That is
9 correct.

10 COUNCILWOMAN CLARK: How will we
11 incorporate the nonautomatic renewal after the
12 2,254?

13 MS. FRANKLIN-SUBER: Let me try to
14 answer what I think your concern is.

15 The customers will be customers of
16 the venture, so that we get the benefit of the
17 revenue that they will pay.

18 QST bears any liability associated
19 with the contract, since we did not approve the
20 contract.

21 We deal with the automatic renewal
22 provision at the end of the pilot program. The
23 pilot program is 14 months. The way the contract --
24 the way the Venture Agreement is drafted, as long as
25 we are continuing in the business, the electric

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2 business, the customers will be assigned to PGW with
3 PUC approval. We are working through that process.

4 But the intent is that we would do
5 everything we could to make sure that we retain the
6 customers, which was the intent of Council.

7 So instead of addressing it by
8 changing the form of contract, because customers
9 have already signed it, we have tried to cover it in
10 a variety of different ways to at least address the
11 intent of Council.

12 But there will be a new form of
13 contract for customers once the Venture Agreement is
14 in effect.

15 COUNCILWOMAN CLARK: All right. I
16 thank you for that clarification. I now do
17 understand it better.

18 Thank you for the yield, Michael.

19 COUNCILMAN NUTTER: Mr. President, at
20 this point I am now prepared to ask my questions for
21 the day.

22 PRESIDENT STREET: Those were the day
23 questions? The other questions were --

24 COUNCILMAN NUTTER: Those were the
25 morning questions. I am now prepared for my

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2 afternoon questions.

3 PRESIDENT STREET: Okay.

4 COUNCILMAN NUTTER: My last question,
5 Madam Solicitor, there is an unmarked exhibit, but
6 it is two pages, entitled Philadelphia Gas Works
7 PECO Electric Pilot Program with QST.

8 And it seems to be an outlining of a
9 budget, and also seems to get into this issue of the
10 no more than 5 percent use of tax-exempt facilities
11 and activities of the company.

12 Can you give us a slightly more
13 expanded explanation of what this proposed budget is
14 about?

15 COUNCILMAN COHEN: Question,
16 Mr. President.

17 Can the Councilman give me a page?

18 COUNCILMAN NUTTER: There is no
19 page. It is the second page after Exhibit B, PGW
20 Asset List. It is the page with, it says,
21 "Exhibit," but it has no exhibit number.

22 COUNCILWOMAN CLARK: Is the next
23 line, "Philadelphia Gas Works," and is the next
24 line, "PECO Electric Pilot Program With QST"? Is
25 that the line we are reading?

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2 COUNCILMAN NUTTER: Yes. And it
3 reads "Postcards and Brochures and Postage Expenses
4 incurred, \$66,000," that page.

5 COUNCILWOMAN CLARK: This page right
6 here.

7 COUNCILMAN NUTTER: Madam Solicitor,
8 can you provide an expanded explanation of exactly
9 what this document is and what it means?

10 MS. FRANKLIN-SUBER: Yes. Page 6 of
11 the Venture Agreement refers to this as Exhibit B.
12 It is in Section 6, relating to PGW activities.

13 It is a list of all assets, including
14 personnel, which are being provided by PGW in
15 support of the pilot program.

16 This exhibit is also important for
17 Section 19, which is on Page 18. And that's the
18 covenant relating to the tax-exempt bonds.

19 COUNCILMAN NUTTER: And so you are
20 saying here that total PGW resources of capital and
21 other costs incurred that are estimated to be
22 incurred in the pilot is \$318,214, and that that
23 figure is somewhat below, whatever, 5 percent of the
24 total PGW either tax-exempt assets or facilities; is
25 that what that number is?

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2 this is Bud Karachiwala. If I can offer a
3 clarification with regard to the costs that
4 Mr. Sharbutt has indicated about.

5 The postcards, brochures, and postage
6 expenses incurred, \$66,000, that is a total cost
7 that has been incurred by both parties.

8 So I do not want to give the
9 impression -- the same goes for the telemarketing
10 expenses and the information/technology expenses.

11 Those are going to be a total cost
12 for the project, not just PGW's costs.

13 COUNCILMAN NUTTER: Well, that then
14 leads to a question on Exhibit D which reads, "PGW
15 expenses incurred prior to October 23, 1997." Maybe
16 it is just my book, but there is no page behind
17 Exhibit D to indicate what those expenses incurred
18 are prior to October 23, 1997.

19 But, Bud, you are telling me that you
20 have already expended, on a shared basis, at least
21 the \$66,000 for the postcards, brochures, and
22 postage, and there may be other expenses incurred
23 prior to.

24 Why is it that Exhibit D is either
25 blank or there is no page associated with it? And,

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2 here mean? Are we still going to limit PGW's
3 liability to something close to, it looks like,
4 \$6,734? Is that the maximum of our financial
5 exposure as to these costs?

6 MR. SHARBUTT: Councilwoman Clark,
7 the title will be changed to include costs. It is
8 shown in the next line down as Estimated Costs of
9 PGW Expenses.

10 COUNCILWOMAN CLARK: But that's
11 hardly a heading.

12 MR. SHARBUTT: Yes. I will change
13 the heading to reflect that, so it is more clearly
14 outlined.

15 The invoices on the way, we -- it has
16 only been a week or so since the 23rd. And if we
17 placed orders or made commitments for certain
18 things, such as cards or other --

19 COUNCILWOMAN CLARK: As, of course,
20 you have.

21 MR. SHARBUTT: Yes, we have. And we
22 have not yet received the invoices. But we know.

23 COUNCILWOMAN CLARK: How, then, will
24 you allocate those costs consistent with the
25 testimony that we are hearing today?

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2 MR. SHARBUTT: The cost of the
3 postcards and the brochures and others will be split
4 with QST once we know what -- once we actually get
5 the invoices. We will split that bill.

6 COUNCILWOMAN CLARK: So there is a
7 50/50 split in the costs to be borne by QST and
8 PGW?

9 MR. SHARBUTT: Up to October 23, yes,
10 ma'am.

11 COUNCILWOMAN CLARK: Okay. So the
12 costs that we are considering now, all those costs
13 are not in yet because only one week has passed?

14 MR. SHARBUTT: Some of the costs
15 shown on this exhibit are to be incurred in the
16 future, and they are noted on the end of the line.

17 For example, the employee costs, they
18 are to be incurred; not all of those have been
19 incurred at this point. That's what we estimate we
20 will incur by the end of the program, the pilot
21 program, over the next year.

22 COUNCILWOMAN CLARK: But if I
23 understand the City Solicitor's summary, it was that
24 public funds would not be used, and, therefore, QST
25 was being asked to accept all of the costs and split

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2 out-of-pocket expenses incurred relative to this
3 pilot project will be picked up by QST.

4 So I wanted to clarify that.

5 COUNCILWOMAN CLARK: I do appreciate
6 the clarification.

7 Now let me ask whether employee costs
8 can be designated as out-of-pocket expenses.

9 MR. KARACHIWALA: No.

10 COUNCILWOMAN CLARK: So that employee
11 costs will continue to be shared on a pro rata
12 basis?

13 MR. KARACHIWALA: QST is responsible
14 for their employees in kind. We are responsible for
15 our employees in kind.

16 COUNCILWOMAN CLARK: And those
17 salaries are not construed as a use of public
18 dollars?

19 MR. SHARBUTT: What we are under, in
20 terms of the restrictions in what we can use funds
21 for --

22 PRESIDENT STREET: Can you just say
23 yes or no, and then direct her question? That's how
24 we get in trouble here.

25 She asked a very direct question.

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2 You are going to give her information that she
3 didn't ask, and you are going to breed ten other
4 questions.

5 And I don't mean to be
6 disrespectful. Sometimes I think Council members
7 should get together and teach a course in how to
8 answer a question; right?

9 Because that can be a yes or no, with
10 an explanation, and then she will be happy.

11 MS. FRANKLIN-SUBER: I will try and
12 answer your question.

13 Yes, they are public funds, but they
14 are not borrowed, they are not debt.

15 And the amendments to the bill
16 contemplated that staff at PGW and on the payroll
17 existing as of October 23, PGW would continue to
18 provide those in-kind services, contributions to the
19 venture.

20 It is if there is an expansion beyond
21 that, that's what was prohibited by Council.

22 COUNCILWOMAN CLARK: Does that also
23 limit the number of people that PGW can assign to
24 this task, or are they free to augment or restrict
25 their personnel, depending on what's before them?

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2 Is that clear? Is that a clear
3 question?

4 MR. KARACHIWALA: There are no plans
5 to augment the staffing with regard to this pilot
6 program.

7 COUNCILWOMAN CLARK: But are we
8 permitted under the terms of the Venture Agreement?

9 MS. FRANKLIN-SUBER: The answer is
10 no, under the terms of the Venture Agreement and
11 under the terms of the bill as amended. It is staff
12 on the payroll as of October 23.

13 COUNCILWOMAN CLARK: Okay. Thank you
14 very much. I yield back.

15 COUNCILMAN NUTTER: Madam Solicitor.

16 COUNCILMAN COHEN: Question on the
17 same point.

18 COUNCILMAN NUTTER: Sure.

19 COUNCILMAN COHEN: I am very confused
20 by --

21 PRESIDENT STREET: Councilman Cohen,
22 we need you to speak right into that microphone.

23 COUNCILMAN COHEN: I am very confused
24 by the answers given to the question.

25 What is the purpose of all of this?

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2 Is it to meet certain requirements of a previously
3 issued bond?

4 Why are we concerned with which money
5 is public money and which isn't? Because it is all
6 public money.

7 What does the bond issue prevent us
8 from doing at PGW?

9 MS. FRANKLIN-SUBER: The short answer
10 to your question, Councilman Cohen, we actually are
11 starting to mix a couple of issues in our
12 responses.

13 Let me address the legal issue in
14 terms of the covenant on the tax-exempt bonds.

15 Basically, in a nutshell, the Exhibit
16 B shows costs, but also identifies certain assets,
17 facilities, equipment, that PGW will be using in
18 connection with the pilot program.

19 To the extent any of those assets,
20 facilities, equipment have been funded by the
21 proceeds of any tax-exempt bonds, arguably, because
22 they are used in connection with a private activity
23 with this relationship with QST, we could run afoul
24 of the tax laws and could have an adverse impact on
25 the tax-exempt status of the outstanding bonds.

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2 There is some latitude in terms of
3 the tax laws if the use is de minimis, less than 5
4 percent.

5 And what you have on the exhibit is a
6 tracking of the assets, the facilities, the
7 equipment, how they were financed, how they were
8 funded.

9 And in the footnotes, it gives you an
10 indication of whether or not it satisfies the de
11 minimis test. It does.

12 And the Law Department memorandum in
13 Exhibit G has as an attachment an opinion of bond
14 counsel to PGW.

15 The law firm of Wolf, Block, they
16 have reviewed this, they have discussed this with
17 the Law Department and conferred with the Chief
18 Financial Officer at PGW, and legally reached the
19 conclusion that there is no adverse effect on the
20 tax-exempt status of the outstanding bonds.

21 That's the legal issue.

22 COUNCILMAN COHEN: That particular
23 bond? The bond counsel on the particular bond?

24 MS. FRANKLIN-SUBER: That is
25 correct.

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2 COUNCILMAN COHEN: Thank you very
3 much.

4 COUNCILMAN NUTTER: Either Madam
5 Solicitor or the PGW personnel, I want to go back to
6 Page 9 of the Venture Agreement, Item Letter D.

7 The difference now between revenues
8 and expenses is referred to as the margin.

9 MS. FRANKLIN-SUBER: That is
10 correct.

11 COUNCILMAN NUTTER: And I would like
12 to, since we appear to be so close in this, to get
13 anyone's best estimate of what we think the margin
14 will be, and, at least as it is written today, what
15 we believe the split of the margin will be. And I
16 want to basically have a discussion about the
17 money.

18 How much, who gets what, how does it
19 happen?

20 MR. KARACHIWALA: With respect to
21 your question about how much the margin is likely to
22 be, we do not know for sure.

23 My best guess at this point would be,
24 it will be very close to zero. So it will be de
25 minimis margins.

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2 COUNCILMAN NUTTER: Let me go back to
3 the first part of your answer.

4 I mean, Bud, you have been in the
5 business for some time. You guys have spent a lot
6 of time and effort working on this.

7 And, so, an answer that goes from the
8 range of, I don't know, to zero, is an unusual
9 answer, I guess, for me.

10 I mean, I think in response to
11 Councilwoman Clark, you said that you have now --
12 was the figure 2,254 people signed up?

13 MR. KARACHIWALA: Yes.

14 COUNCILMAN NUTTER: You must have
15 some ballpark figures on what those people, or what
16 the average person, if there is an average person
17 left in this city, what an average person spends for
18 electric service.

19 MR. KARACHIWALA: Yes, sir.

20 COUNCILMAN NUTTER: You showed us a
21 chart last week on figures you received from PECO on
22 what the costs were of four different cost
23 categories.

24 You had a distribution charge, you
25 had a generation charge, you had a

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2 wake-up-and-see-the-sunshine charge. I mean, you
3 have charges all over the place.

4 I mean, there was a number that a
5 person was going to pay. I believe it was 70-some
6 dollars, minus a discount, and maybe ends up at
7 60-some dollars.

8 MR. KARACHIWALA: That's correct.

9 COUNCILMAN NUTTER: You know how many
10 people are going to be working. You know after
11 October 23 all your personnel are in kind because
12 they are on the payroll anyway.

13 We don't care what QST has, because
14 their people are on their payroll, and we are not
15 responsible for them.

16 At the end of the day, you have to
17 know that you are collecting X amount of dollars,
18 and you have Y amount of costs, which leaves you Z
19 margin.

20 I mean, I haven't known you that
21 long. But in a couple of weeks I respect you too
22 much to believe that you and the gentleman next to
23 you and Jim behind you and all these other people
24 here, that no one knows how much. Whether it is
25 positive, zero, or negative, somebody has to know.

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2 PRESIDENT STREET: QVC knows.

3 MS. FRANKLIN-SUBER: QST.

4 COUNCILMAN NUTTER: They know, too.

5 MS. FRANKLIN-SUBER: QST.

6 COUNCILMAN NUTTER: I mean, we are
7 all big boys and girls in this room here. This is
8 very serious business.

9 Someone has to know, within a 5 or 10
10 percent margin of error, what we're talking about
11 here.

12 I mean, we are not flying blind.

13 MS. FRANKLIN-SUBER: Councilman
14 Nutter --

15 COUNCILMAN NUTTER: We must be
16 arguing about something in these negotiations.
17 People don't argue over zero. They could get zero
18 somewhere else.

19 MS. FRANKLIN-SUBER: Councilman
20 Nutter, you are correct.

21 If I might at least try to respond
22 generally with some information that we have
23 obtained recently.

24 This, again, is one of the reasons
25 why the negotiations are not quite complete as to

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2 the flow of funds.

3 COUNCILMAN NUTTER: Because you are
4 arguing about the money.

5 MS. FRANKLIN-SUBER: But I can share
6 with you certain general information estimates that
7 I have discussed with the President of QST, Craig
8 Shephard.

9 QST is working with certain estimates
10 with regard to the market based on their
11 experience. As PGW management has testified --

12 COUNCILWOMAN CLARK: The hour is
13 still young. Give us the dollar.

14 MS. FRANKLIN-SUBER: QST estimates
15 that on an annual basis --

16 COUNCILWOMAN CLARK: A number.

17 MS. FRANKLIN-SUBER: -- it can
18 generate revenue of approximately 3 to 4 million
19 dollars.

20 Based on the expenses, 90 percent to
21 92 would go to the cost of supplying the
22 electricity.

23 COUNCILWOMAN CLARK: And the rest
24 would be margin?

25 MS. FRANKLIN-SUBER: No.

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2 Approximately 8 percent would be other charges;
3 discounts, award payments, incentive payments, if
4 you look at Page 9.

5 So that the margin could be anywhere
6 from zero to 2 percent.

7 So, for example, a good year could be
8 \$60,000, which would be shared equally by PGW and
9 QST. Those are the kinds of estimates that QST is
10 working with.

11 COUNCILMAN NUTTER: Thank you, Madam
12 Solicitor. Councilwoman Clark has a question.

13 COUNCILWOMAN CLARK: When, in your
14 long-range planning, do you see those numbers rising
15 to the level that could cause us as much skittering
16 around as we have done in the last two weeks?

17 I mean, surely we are not skittering
18 around for the last two weeks over our pro rata
19 share of \$60,000. Come on.

20 Now, when does it start to be real
21 money, sufficient to make it worthwhile?

22 MR. HAWES: Councilwoman Clark --

23 COUNCILWOMAN CLARK: Your name is?

24 MR. JAMES HAWES: I am Jim Hawes,
25 President and CEO of Philadelphia Gas Works.

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2 I think that when we started this
3 discussion, even before we knew QST's numbers, we
4 started with the proposition that this was not a
5 money-making venture because the revenues, the money
6 that you got from the revenues, would be generally
7 about what would cover the cost of the gas.

8 The expenses, which were start-up
9 expenses, would be the expense of the project. That
10 was what we started.

11 And I believe that, generally, that
12 is still where we are. Except at that time we
13 didn't know how many customers, the costs of the gas
14 were not certain.

15 And, so, therefore, I think, that's
16 why Councilman Nutter, when Bud used the number
17 zero, I think that's why he said it.

18 Because, again, the revenue in this
19 case always, from the time we started the briefings,
20 we thought the revenue was just about what it would
21 cost to purchase the gas.

22 And the expenses would be truly what
23 it would cost us to do -- in other words, we started
24 with a losing proposition. And the losing
25 proposition was the amount of the expenses that we

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2 had estimated to run the program. Because the
3 revenue would just offset the cost of the gas.

4 So it was never planned to be a
5 money-maker. And that was our position from the
6 beginning, in the pilot part of it. The numbers
7 were just too small.

8 COUNCILWOMAN BLACKWELL: I'm
9 following up on Councilwoman Clark, if that's okay,
10 Mr. President.

11 I just wonder why we are here in the
12 first place. Many of us have many, many concerns
13 about outsourcing things we do.

14 We are really worried about the gas
15 company, we are worried about entering into this
16 complicated agreement in the first place. And we
17 wonder, then, especially in protecting the gas
18 company, and we wonder why we are here, if it is not
19 even cost effective in the first place.

20 We were told initially that it makes
21 the gas company competitive, and that we need to
22 enter into this market.

23 But all that we're hearing doesn't
24 indicate that it is even worth it.

25 MR. HAWES: Well, I think what you

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2 have articulated is exactly the reason we are in it,
3 is posturing to put ourselves in the position to
4 participate when the whole market is open.

5 If you approve, I think in the
6 contract in May, that we go further, based on the
7 experience between now and May, then we will go
8 further, if you approve it.

9 If you do not, based on our
10 experience, then we don't go forward.

11 I think the price we are talking
12 about for not making a bigger mistake longer is a
13 very cheap price.

14 Somebody raised the other day, you
15 will recall, some concerns around us making mistakes
16 like we made with some of the generation plants
17 which were 6- and 7-billion-dollar mistakes. This
18 is a very cheap price to make sure that we don't
19 make a mistake.

20 We are learning how to do the
21 business. We are arm-in-arm with QST. And, in May,
22 we look at the results. And if you decide that we
23 don't need to go further, we don't go further.

24 But we now have postured ourselves to
25 grow the revenues which will hopefully offset some

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2 of the gas revenue loss, and will make less of a
3 financial burden on our gas customers and we go
4 forward.

5 COUNCILWOMAN CLARK: So your estimate
6 of zero to 2 percent speaks only to the margin in
7 the pilot program.

8 MR. HAWES: Yes, ma'am.

9 COUNCILWOMAN CLARK: I want to be
10 very clear that we are not going through all this so
11 in the Year 2090 we will still be barely breaking
12 even.

13 At one point you see the cost being
14 substantially less than the revenues, to produce the
15 margin sufficient to offset the cost of gas?

16 MR. HAWES: And the whole thing, this
17 whole scenario, gets more attractive as the scale
18 gets bigger.

19 We are only talking about, now, we
20 started out talking about a thousand customers, and
21 now maybe two.

22 But we could be talking about, in
23 less than two years, there will be roughly a million
24 and a half customers that will be open all over the
25 state.

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2 COUNCILWOMAN CLARK: And then it
3 would be profitable?

4 MR. HAWES: I would say so.

5 COUNCILWOMAN CLARK: Not profitable;
6 marginal.

7 MR. HAWES: No, I think profitable.

8 COUNCILWOMAN CLARK: We can't use
9 profit. That's not language for not-for-profit
10 corporations. It would be marginal.

11 Thank you for the clarification. I
12 yield back my time.

13 PRESIDENT STREET: The Chair
14 recognizes Councilman Cohen.

15 COUNCILMAN COHEN: First with respect
16 to that figure of 2,254, something like that, that
17 have signed cards, is that number, are all of those
18 2,254, or whatever the number was, are they all part
19 of the pilot program?

20 MR. KARACHIWALA: Yes, they are.

21 COUNCILMAN COHEN: They have been
22 accepted as part of the pilot?

23 MR. KARACHIWALA: That's correct.

24 COUNCILMAN COHEN: And what's the
25 difference between the thousand you expect to get

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2 and the 2,254?

3 Why don't you say, "We expect to have
4 2,254 customers"?

5 MR. KARACHIWALA: The short answer to
6 that question was, the goals were established very
7 early in the process, like in mid September. And at
8 that time we expected to get 1,000. Now we know
9 that we have 2,254. That's the reason.

10 COUNCILMAN COHEN: So the number now
11 is no longer a thousand? We have more than doubled
12 the original goal?

13 MR. KARACHIWALA: That's correct.

14 COUNCILMAN COHEN: All right. That's
15 a good sign. Now, I am not sure of what, but it is
16 a good sign.

17 Going to the Venture Agreement, Page
18 27 of 28 of the Venture Agreement, the top
19 paragraph, G, the entire agreement, what happens if
20 along the way there is not unanimity of agreement
21 between the Council President, the President of the
22 Gas Commission, and the City Solicitor as to whether
23 or not something is material?

24 I looked in that paragraph for an
25 explanation of what then happens, and I can't find

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2 it. And maybe I am missing it.

3 Or is it that since, apparently,
4 there is a burden that has to be established to
5 indicate that a proposed change in the agreement is
6 material, is a material change, and that it requires
7 three yes votes by the three offices I have
8 indicated that something is material before it comes
9 back to us in City Council?

10 MS. FRANKLIN-SUBER: Councilman
11 Cohen, I would expect that there would be
12 consensus. But your reading of this provision is
13 correct, all three would have to concur.

14 COUNCILMAN COHEN: Well, what would
15 be wrong with getting a copy sent to all Council
16 members, and we could all inform the President of
17 City Council if we thought there was any problem or
18 not, so that everybody could feel that there could
19 be no material change, whatever that might mean,
20 without us in City Council, as Council members,
21 having a chance to look at it?

22 I mean, why this elaborate
23 arrangement on the determination of what is
24 material?

25 MS. FRANKLIN-SUBER: This provision

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2 Solicitor. You may go on to some higher position,
3 and no longer with the City Solicitor. The next
4 City Solicitor will say, "I never said that I would
5 do that."

6 MS. FRANKLIN-SUBER: Councilman
7 Cohen, part of this process is to identify any
8 additional issues or concerns and see if we can
9 expressly address them in the agreement.

10 We can expressly address that in the
11 agreement.

12 COUNCILMAN COHEN: That, and I think
13 it ought to be clear that using this language, that,
14 as I would see it, if all of us in Council saw it
15 and made no comment to the Council President or
16 indicated that we didn't think it was material, that
17 his determination that something is material, his
18 one vote ought to be enough to bring it back to
19 Council.

20 It ought not to be that he has to get
21 the votes of the Chair of the Gas Commission and the
22 City Solicitor.

23 You know, you never know politically
24 at a given moment what the relationship between
25 parties are going to be. There are a lot of factors

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2 that may determine that.

3 And I just think we in Council ought
4 to have a chance to look at it. We may think
5 something is material, you know, and my colleague
6 may not think so. I may think it is. The same
7 applies to the President.

8 But once it is concluded by the
9 Council, in whatever form the Council, you know,
10 makes its decision, then I think that ought to alone
11 be enough to require it to come back to Council for
12 consideration.

13 Comment?

14 PRESIDENT STREET: Councilman Cohen,
15 can we agree that we have heard you and will make
16 the appropriate changes in the language to try to
17 address your concerns?

18 COUNCILMAN COHEN: Yes. Yes.

19 I don't have to get the third member
20 of the triangle to agree to that, do I?

21 Councilwoman Tasco, you also agree
22 that they are going to make an effort to deal with
23 the questions that I raised?

24 The City Solicitor has agreed and the
25 President of Council. You are the third member

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2 mentioned in this paragraph.

3 Thank you.

4 PRESIDENT STREET: The Chair

5 recognizes Councilman Rizzo.

6 COUNCILMAN RIZZO: Thank you,

7 Mr. President.

8 My question is directed to the PGW

9 management.

10 The Public Utility Commission has
11 extended the deadline until, I believe, November 14
12 for people selected to be in the pilot to respond,
13 because the prerequisite to be in the pilot is to
14 physically choose your energy supplier.

15 And if you don't do that, you are
16 rejected, you are thrown out of the pilot.

17 What has this extension to November
18 14 done or mean to this arrangement, the additional
19 costs, et cetera?

20 I know that QST has assumed all costs
21 after the 23rd of October. What does the extension
22 to the pilot mean?

23 MR. KARACHIWALA: Okay. The
24 extension to the pilot means that those customers
25 who indicated their electric-generation suppliers by

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2 October 25 will indeed get the benefits of the
3 contract with that supplier on November 1, 1997.

4 However, those customers that do not
5 choose by October 25, but do choose by November 14,
6 will then get their benefits under the contract with
7 their designated supplier thereafter, which right
8 now appears to be December 1.

9 Also, I would just clarify, if no
10 customer who has already been picked by PECO to
11 participate in this particular pilot program chooses
12 between then, it is my understanding that they can
13 still choose later on.

14 COUNCILMAN RIZZO: If you do not
15 choose a supplier, and you have been chosen for the
16 pilot, if you do nothing, you will be put out of the
17 pilot and be substituted by another person.

18 MR. KARACHIWALA: I do not know the
19 answer to that question.

20 COUNCILMAN RIZZO: That isn't a
21 question; that's a statement.

22 MR. KARACHIWALA: Then I will accept
23 your statement.

24 COUNCILMAN RIZZO: So what are you
25 doing, since now you have until November 14 to bring

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2 additional people that have been selected, the
3 residents of the City of Philadelphia that have been
4 selected, to bring them into your pilot?

5 And what does that do to the cost of
6 administering the pilot, because it hasn't stopped
7 on the 25th, it now is running to the 14th of
8 November?

9 MR. KARACHIWALA: Okay. All of the
10 costs associated with the venture after October 23,
11 1997, the out-of-pocket expenses, will be picked up
12 by QST.

13 So whatever we spend with regard to
14 the solicitation of customers and all that, those
15 costs will be picked up by QST.

16 COUNCILMAN RIZZO: Thank you.

17 Thank you, Mr. President.

18 PRESIDENT STREET: Thank you very
19 much.

20 The Chair recognizes Councilwoman
21 Tasco.

22 COUNCILWOMAN TASCO: Just a small
23 clarification. On Page 5 of Exhibit E, Paragraph
24 B. I guess Section B, Paragraph 1.

25 It says, "Would you define in

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2 Paragraph 1 who City would be"? It says, "QST shall
3 enter into an individual service contract with
4 customers for the provision of electricity solely
5 after the City's prior written approval of such
6 contracts."

7 MS. FRANKLIN-SUBER: The intent is
8 that the same mechanism for amending the agreement
9 in the entire agreement provision we just discussed,
10 it would require the approval of the City Solicitor,
11 the Council President, and the Chairperson of the
12 Gas Commission.

13 It does not expressly say that,
14 however.

15 COUNCILWOMAN TASCO: Thank you.

16 MS. FRANKLIN-SUBER: That is
17 something that we could certainly clarify.

18 PRESIDENT STREET: The Chair
19 recognizes Councilman DiCicco.

20 COUNCILMAN DiCICCO: I have a
21 question of an entirely different nature, but it is
22 a followup to, I think, a request of the Chair at
23 the last meeting concerning residency.

24 Have we gotten any information on
25 that?

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2 PRESIDENT STREET: I have a couple of
3 questions on that.

4 COUNCILMAN DiCICCO: Thank you. I
5 will yield to you.

6 PRESIDENT STREET: Councilwoman Clark
7 has questions on this issue. We will recognize her
8 first.

9 COUNCILWOMAN CLARK: Mr. President,
10 by way of clarification for me, if I were to ask the
11 team to write the preamble for a report on all that
12 we have done in the last few days and weeks, the gas
13 company, a municipally owned utility, seeks to
14 provide electricity for blank reason, can you tell
15 me the answer to that?

16 Why are we, when many people are
17 saying we ought to go out of the provision of
18 utilities, not only not just gorging gas, but
19 enlarging our participation, so that should we
20 approve this venture, the City of Philadelphia would
21 be providing gas, electricity, and water? Help me
22 understand that.

23 MR. HAWES: Councilwoman Clark, I
24 would answer that as shortly and succinctly as
25 possible, and you can follow up with another

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2 question if I don't do a good job.

3 There are two reasons. I believe one
4 is offensive and one is defensive.

5 Number one, for selfish reasons, I
6 don't want our customers, our gas customers, to have
7 to go anywhere for their energy supply in the future
8 other than Philadelphia Gas Works.

9 They will have new people coming to
10 their houses they have never seen before, new
11 companies, new names. And, quite frankly, some of
12 those new names, if not all of them, also have gas
13 components.

14 So my defensive reason is that I want
15 to protect our market share of our customers so that
16 they don't have to go to these new entrants to get
17 that electricity. And that's the defensive reason.

18 COUNCILWOMAN CLARK: Does it at any
19 point benefit the customer base to have PGW provide
20 both gas and electricity? And, if so, how does it
21 benefit us?

22 MR. HAWES: I believe that, number
23 one, in, I would guess, 18 months or less, we will
24 have -- our gas customers will have choice. The
25 whole marketplace will be in an uproar. Customers

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2 will be able to get both of those supplies, both of
3 their energy sources, from one supplier.

4 We think that we have a very good
5 relationship with the vast majority of our
6 customers.

7 COUNCILWOMAN CLARK: You might need
8 more. Is it going to be cheaper, more dependable,
9 higher quality? Tell me.

10 MR. HAWES: Well, I think we have, on
11 the dependability and the reliability side, our
12 record is probably second to none in this country in
13 terms of reliability of supply and things like
14 emergency services.

15 So a lot of our customers are a lot
16 more comfortable with us than what a lot of people
17 think.

18 On the business and industrial side,
19 our customers have been asking us now all of my
20 tenure, why is it, now that we like this
21 relationship, you can't offer us electricity?

22 So I think there are -- and the
23 marketplace, because we will be in a competitive
24 marketplace, the marketplace will certainly drive
25 the prices down.

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2 So I think we will have to be
3 competitive, as will everybody else, if they are
4 going to be in the marketplace.

5 But I think one of the greatest
6 values is that we build a financially strong company
7 so that all of the pressure won't have to be on the
8 gas customers for all of the changes that are going
9 on in the industry.

10 COUNCILWOMAN CLARK: Is providing
11 electricity going to make your ability to provide
12 continued high-quality gas better?

13 MR. HAWES: I think one of the
14 advantages of this trial is that we can talk for
15 days about competition, and try to simulate war
16 games to get people ready for competition.

17 You will never understand war until
18 you have been to war. And one of the things that
19 we'll learn --

20 COUNCILWOMAN CLARK: And war is
21 hell. Oh.

22 MR. HAWES: One of the things that we
23 expect to learn and to transfer back into the gas
24 side are the experiences that we are having -- that
25 we will be having, assuming that this is approved,

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2 in this war, which is a real one, of competition in
3 the electric business. We hope to transfer those
4 learnings over to the gas side.

5 And a lot of the people, as you
6 pointed out earlier, who will be working on some of
7 the electricity components will be people also in
8 the gas side.

9 So we actually are getting some
10 inexpensive, on-the-job training for how we will
11 have to behave when we are in a competitive
12 situation.

13 COUNCILWOMAN CLARK: Thank you.

14 PRESIDENT STREET: The Chair
15 recognizes Councilman Cohen.

16 COUNCILMAN COHEN: Thank you,
17 Mr. President.

18 I wanted to mention that the reason
19 I'm leaning in support of this proposal is that I
20 think residents of Philadelphia need help.

21 I think they have been treated very
22 badly over many years by the present supplier of
23 electric energy.

24 I don't know of any for-profit
25 company that would not also do things that I think

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2 hurt Philadelphia residents and Philadelphia
3 businesses.

4 The cost of electric energy, in the
5 recent article I saw in the Inquirer Business pages,
6 was cited as the number one reason a lot of
7 businesses folded, because of the enormity of the
8 cost of electric energy.

9 I don't blame PECO for it. I don't
10 have any love for any of the private energy
11 companies. Because in their effort to make profits,
12 I think that consumers have often gotten the wrong
13 end.

14 If PGW can get into this field, and
15 if I can take Mr. Hawes' statements some months from
16 now as being factual statements of how people feel,
17 then I think the people of Philadelphia, the
18 business groups as well as the residents, have
19 another arsenal in their weaponry to get fair
20 treatment in whoever, you know, is furnishing the
21 electric energy.

22 That's the reason I view this as a
23 very positive step, provided, Mr. Hawes, that you
24 give the kind of leadership that I believe you are
25 capable of giving at the level of the kind of

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2 service rendered.

3 We ought to be able to make
4 Philadelphians proud of the company that they own,
5 you know, that the taxpayers own, that services them
6 with energy.

7 And at the same time we would have a
8 weapon, if any of them still choose PECO or Enron or
9 Southern Company, or any of the companies, in the
10 event any of those companies don't treat the
11 consumers right. So that's the reason I think that
12 this is good.

13 I do agree with your analysis that
14 this is kind of an inexpensive way to get the
15 experience you would have to have if you were to
16 compete successfully when the market gets wide open,
17 or to defend the gas works when gas itself becomes
18 deregulated.

19 So I would certainly wish you well in
20 this.

21 Incidentally, I am very much
22 impressed by the testimony today, Mr. President. I
23 think we have come a long way from when the hearings
24 began last Wednesday, both in our understanding and
25 in the development of the kind of agreement that I

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2 think truly begins to protect the citizens of
3 Philadelphia, as well as enable you to engage in
4 this very important experiment.

5 Thank you, Mr. President.

6 PRESIDENT STREET: Thank you very
7 much.

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8           There don't seem to be any other
9 lights on.
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10 Mr. Hawes, is Mr. Collins here?

11 MR. HAWES: Yes, sir.

12 PRESIDENT STREET: Can we have him
13 come to the witness table, please.

14 Mr. Hawes, can you join him at the
15 witness table.

16 MR. HAWES: President Street, could I
17 also have Mrs. Estrin, our Vice-President of Human
18 Resources, come up, too?

19 PRESIDENT STREET: Certainly.

20 Mr. Collins, would you state your
21 name and address for this record.

22 MR. THOMAS J. COLLINS: My name is
23 Thomas J. Collins, and my address in the City of
24 Philadelphia is 5450 Wissahickon Avenue.

25 PRESIDENT STREET: Why did you say

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2 your address in the City of Philadelphia?

3 MR. COLLINS: Because I maintain a
4 residency in the City of Philadelphia.

5 PRESIDENT STREET: And what other
6 residences do you have?

7 MR. COLLINS: I have a domicile in
8 North Whales, 1609 Claudia Way.

9 PRESIDENT STREET: Mr. Collins, are
10 you married?

11 MR. COLLINS: Yes, I am.

12 PRESIDENT STREET: Do you have
13 children?

14 MR. COLLINS: Yes, I do.

15 PRESIDENT STREET: Where do they
16 live?

17 MR. COLLINS: They live at 1609
18 Claudia Way.

19 PRESIDENT STREET: Where is that?

20 MR. COLLINS: In North Whales.

21 PRESIDENT STREET: And how long have
22 you been with this company?

23 MR. COLLINS: Two years.

24 PRESIDENT STREET: And who recruited
25 you?

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2 MR. COLLINS: Phoenix Resources.

3 PRESIDENT STREET: Are you one of the
4 people who came here at the time Mr. Hawes came
5 here?

6 MR. COLLINS: I was hired a month
7 before Mr. Hawes got here.

8 PRESIDENT STREET: Okay.
9 Did anybody talk to you at all about
10 the PGW residency requirement?

11 MR. COLLINS: Yes, they did.

12 PRESIDENT STREET: What were you
13 told?

14 MR. COLLINS: At the time that I was
15 hired, I asked the question, in fact I was told,
16 that there was a residency policy, and that I should
17 discuss it with PGW officials, which I did.

18 I spoke with the Vice-President of
19 Human Resources at that time, and he clearly --

20 PRESIDENT STREET: Who is that?

21 MR. COLLINS: Bob Pierson.

22 PRESIDENT STREET: What did he say to
23 you.

24 MR. COLLINS: He clearly defined the
25 definition between domicile and residency, explained

1 RESOLUTION 970687

2 that the policy required residency, and that
3 residency would be acceptable if met through the
4 establishment of a permanent address in the City of
5 Philadelphia.

6 PRESIDENT STREET: And where did you
7 live prior to living in North Whales?

8 MR. COLLINS: Tulsa, Oklahoma.

9 PRESIDENT STREET: So you relocated
10 from Tulsa, Oklahoma, to take the job at PGW?

11 MR. COLLINS: No, I did not. I
12 relocated from Tulsa to Philadelphia to continue an
13 assignment that I had with Sun Company.

14 PRESIDENT STREET: And where did you
15 live prior to living in North Whales?

16 MR. COLLINS: In Tulsa, Oklahoma.

17 PRESIDENT STREET: And you came from
18 Tulsa, Oklahoma, to Philadelphia?

19 MR. COLLINS: That's correct.

20 PRESIDENT STREET: To to go to
21 work --

22 MR. COLLINS: To North Whales, that's
23 correct.

24 PRESIDENT STREET: To go to work for
25 PGW?

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2 MR. COLLINS: No, Mr. President. I
3 had an assignment with Sun Company, and I was
4 transferred from Tulsa, Oklahoma, to Philadelphia.

5 PRESIDENT STREET: So when you took
6 your job with PGW, you lived in North Whales?

7 MR. COLLINS: That's correct.

8 PRESIDENT STREET: And all you did
9 was get an apartment in the City of Philadelphia?

10 MR. COLLINS: That is correct.

11 PRESIDENT STREET: And how long have
12 you had that apartment?

13 MR. COLLINS: I signed the lease in
14 December of '96 and took physical possession in
15 January.

16 PRESIDENT STREET: And, now, you
17 regard this as your residence in Philadelphia?

18 MR. COLLINS: That is correct.

19 PRESIDENT STREET: In an average
20 week, how much time do you spend, how many nights do
21 you spend, at your Philadelphia residence?

22 MR. COLLINS: I do not spend a time
23 there at night at all.

24 PRESIDENT STREET: So you have a
25 residence, and you don't go there at night; you go

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2 to North Whales at night?

3 MR. COLLINS: That is correct.

4 That's where my family is.

5 PRESIDENT STREET: Well, when do you

6 go to your residence in the city?

7 MR. COLLINS: I go to the residence

8 on a regular basis to pick up mail, to pay the

9 bills, to check the apartment, but I don't use it at
10 night.

11 PRESIDENT STREET: Do you use it at

12 all?

13 MR. COLLINS: For other than the

14 reasons I just described, no.

15 PRESIDENT STREET: So you just have

16 it because you think it is necessary in order to

17 have it to have this job?

18 MR. COLLINS: I acquired the

19 residence in compliance with the policy to establish
20 a residence.

21 PRESIDENT STREET: There is a simple

22 answer to that question, Mr. Collins. It is yes.

23 MR. COLLINS: Yes.

24 PRESIDENT STREET: How many children

25 do you have?

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2 MR. COLLINS: Two.

3 PRESIDENT STREET: And how old are
4 they?

5 MR. COLLINS: I have a daughter that
6 is 18 and another daughter that's 13.

7 PRESIDENT STREET: And what schools
8 do they attend?

9 MR. COLLINS: They attend Wissahickon
10 Public School.

11 PRESIDENT STREET: Is this a public
12 school in North Whales?

13 MR. COLLINS: Public school in
14 Ambler.

15 PRESIDENT STREET: In Ambler.

16 Did anybody ever suggest to you that,
17 under the residency requirement, you might be
18 expected to live in the City of Philadelphia every
19 now and then, maybe spend a night or two here?

20 MR. COLLINS: Yes, there have been
21 discussions about that.

22 And, quite frankly, my problem has
23 been the amount of time that I do have available to
24 spend outside of the office, I have chosen to try to
25 spend it with my family.

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2 PRESIDENT STREET: Mr. Collins, isn't
3 it true that you are just not going to live in the
4 City of Philadelphia? I mean, you are going to live
5 with your wife and your family.

6 And that if you have to have an
7 address, you will have an address, but you have no
8 intentions of living here?

9 MR. COLLINS: Under the current
10 residency policy, I didn't think that was required.

11 So in response to the policy that I
12 thought I was trying to comply with, yes. The
13 answer is yes.

14 PRESIDENT STREET: Well, what was
15 your idea about what the purpose of a residency
16 requirement was that led you to believe that you
17 could just get an address and go pick up mail and
18 then go on out to North Whales?

19 I am just real interested in why you
20 thought this was all right.

21 MR. COLLINS: In discussions that I
22 had with the officials at PGW, talked about what was
23 required to be compliant with the policy, and that
24 was identified as being acceptable.

25 It created a tax address for me, so

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2 that my taxes would be paid from the Philadelphia
3 address, and provided a permanent address and also a
4 place from which I was obligated to pay utility
5 bills and apartment rent.

6 So there was a real substantive
7 transaction taking place, in addition to --

8 PRESIDENT STREET: Do you own
9 automobiles?

10 MR. COLLINS: Yes, I do.

11 PRESIDENT STREET: They are
12 registered in the City of Philadelphia?

13 MR. COLLINS: They are registered at
14 my North Whales address.

15 PRESIDENT STREET: Do you have a
16 driver's license?

17 MR. COLLINS: Yes, I do.

18 PRESIDENT STREET: Which address is
19 that? North Whales?

20 MR. COLLINS: North Whales.

21 PRESIDENT STREET: Do you have any
22 connection with the City of Philadelphia, other than
23 the lease?

24 MR. COLLINS: A lease that requires
25 the payment of both the rent and the utility bills,

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2 and the payment of taxes as a Philadelphia
3 resident.

4 PRESIDENT STREET: Well, this is a
5 lease. You are suggesting that you pay taxes as a
6 result of the fact that there is some provision in
7 the lease that there is a pass-through on the
8 taxes? Is that what you mean?

9 MR. COLLINS: As a Philadelphia
10 resident, I think my tax rates are different than if
11 I was not a Philadelphia resident.

12 PRESIDENT STREET: You are talking
13 wage tax?

14 MR. COLLINS: Wage taxes, I'm sorry.

15 PRESIDENT STREET: All right.

16 The Chair recognizes Councilwoman
17 Clark.

18 COUNCILWOMAN CLARK: Mr. Collins,
19 when you took the apartment, was it in bare
20 compliance or an attempt to defraud us?

21 MR. COLLINS: Under no circumstances,
22 Madam Councilwoman, was I attempting to defraud
23 anybody.

24 I have been very open about my
25 actions and my intentions. I really believe in good

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2 faith that I have done what was required to comply
3 with the policy.

4 COUNCILWOMAN CLARK: Did you
5 understand that our insistence on people living in
6 Philadelphia would not be met by barely and merely
7 paying rent?

8 It is the willingness to pay rent and
9 utilities and not live here that troubles me most.

10 Each month when you pay your
11 utilities, what did you see it as, a license to live
12 somewhere else?

13 How do you characterize those
14 expenses?

15 MR. COLLINS: The expenses that I was
16 paying to the apartment, Councilwoman?

17 COUNCILWOMAN CLARK: Yes, sir. The
18 rent and the utilities that you pay to give us the
19 appearance of living in Philadelphia.

20 I mean, do you think we are in the
21 business of collecting rent from people who don't
22 live here?

23 Why would we ask you to live in
24 Philadelphia, and then be so easily confused by the
25 fact that you merely pay rent here?

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2 Something about that just doesn't
3 feel right, does it?

4 MR. COLLINS: Councilwoman, I
5 understand your question. And, again, at the point
6 of time that I was hired, there was a very
7 significant distinction drawn between domicile and
8 residency. And domicile clearly was defined as --

9 COUNCILWOMAN CLARK: Please don't
10 play legal games with me, because I am a lawyer and
11 I don't want to do that. I just now want to talk
12 about what it feels like.

13 MR. COLLINS: The decision that I
14 made to rent the apartment and pay all of the fees
15 and the utilities and whatnot was done to comply
16 with the policy.

17 The dilemma that I faced, once I had
18 the apartment, was where would I have the best use
19 of my time, in the apartment by myself at night, or
20 with my family, where I have opportunities to do
21 things with the children.

22 COUNCILWOMAN CLARK: Well, we
23 shouldn't be having that discussion, Mr. Collins,
24 you and me. We should not be having that
25 discussion.

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2 out that I have a dilemma and a decision to make.
3 If the expectations of compliance with this policy
4 has changed -- and obviously, at least in this
5 proceeding, it appears it has -- then I can no
6 longer continue --

7 PRESIDENT STREET: Mr. Collins, you
8 have stepped across the line.

9 Because the expectation in this
10 legislative body has always been the same. You are
11 in error if you believe or are suggesting that your
12 private conversation with a personnel officer at PGW
13 entitles you to infer what the expectation of this
14 legislative body is or has been.

15 I will tell you that there has never
16 been a time when this legislative body has endorsed
17 or in any way supported any sham residence. And
18 that's exactly what it is you have said somebody has
19 encouraged or at least condoned your doing.

20 Please do not put that on this
21 legislative body. We have not changed our position
22 about this one iota, I will tell you that.

23 I don't think you are in a position
24 to know what our position is, and don't expect you
25 to know. And wish that you would not comment on

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2 it.

3 And I don't want to be unreasonably
4 harsh in dealing with your situation. Your
5 situation is just an example of what we see in
6 numerous other situations.

7 Before we get to the other Council
8 members, however, I would like to ask Mr. Hawes a
9 couple of questions.

10 Mr. Hawes, what is your understanding
11 of what the residency requirement requires of people
12 who are a part of your staff who are subject to it?

13 MR. HAWES: It is our policy, and I
14 think I can almost say -- and I might want Deborah
15 to make sure I don't say the wrong thing. Miss
16 Estrin is our Senior Vice-President of Human
17 Resource.

18 For the hiring that we have done
19 since I have come here, we have viewed residency as
20 a condition of employment.

21 COUNCILWOMAN CLARK: And that is what
22 it is.

23 PRESIDENT STREET: City residency.

24 COUNCILWOMAN CLARK: That's what it
25 is.

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2 PRESIDENT STREET: Do you condone
3 today the kind of arrangement that Mr. Collins has
4 maintained over these years?

5 MR. HAWES: And the arrangement being
6 having an apartment and not living in it at all?
7 That's the arrangement you are talking about?

8 PRESIDENT STREET: That's the
9 arrangement he has indicated to us that he has and
10 believed was acceptable.

11 MR. HAWES: That is not the kind of
12 arrangement that we would expect our employees to
13 have.

14 PRESIDENT STREET: Well, what kind of
15 arrangement do you think is acceptable, short of
16 living in the City of Philadelphia, and the City of
17 Philadelphia only?

18 MR. HAWES: The arrangement that I
19 believe is acceptable is the one that we have
20 required of the people who we have brought here.

21 We expect them to -- and in the case,
22 I think eight cases, of people who are officers of
23 PGW, they all are homeowners and they live in those
24 homes seven days a week.

25 PRESIDENT STREET: In the City of

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2 Philadelphia?

3 MR. HAWES: In the City of
4 Philadelphia.

5 PRESIDENT STREET: You have to keep
6 saying that.

7 MR. HAWES: In the City of
8 Philadelphia.

9 We have two officers who are in
10 transition, because they had to have houses
11 remodeled.

12 But in the case -- in every case that
13 I am aware of over the last 20 months, we have
14 required our officers to live in the city and we
15 have attempted to make -- and I say attempt, because
16 I can't guarantee every case -- but it has been my
17 view, and our philosophy, that we tell people up
18 front that it is a condition of employment.

19 And I will go one step further. The
20 residency issue is a real problem in the high-demand
21 jobs like systems and data processing.

22 Our commitment to residency is
23 probably not evidenced anywhere better than the fact
24 that we have lost in the neighborhood of 20, 25
25 people, 60 percent of our offers, because we told

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2 them up front that, if you don't want to live in the
3 City, then we don't need to take this discussion any
4 further.

5 So I don't know if that answers your
6 question.

7 PRESIDENT STREET: Well, that's
8 helpful. But I am now going to ask you to supply us
9 with some information, before recognizing Councilman
10 DiCicco.

11 Please supply us with a written copy
12 of PGW's residency policy and any written
13 explanatory information you have regarding it.
14 Explain in writing what you say to new employees
15 about its meaning and implementation.

16 Please supply us by the end of the
17 day the names of all PGW employees who are subject
18 to the residency requirement, and the address of
19 each employee which brings the employee into
20 compliance with the policy.

21 Also, please advise us of any
22 employees who have more than one residence.

23 COUNCILWOMAN CLARK: One
24 clarification, Mr. President.

25 PRESIDENT STREET: The Chair

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2 recognizes Councilwoman Clark.

3 COUNCILWOMAN CLARK: Your last
4 question was exactly where I wanted to be.

5 Mr. Hawes --

6 PRESIDENT STREET: Do you understand
7 that request?

8 MR. HAWES: I understand the
9 request. I just need to confirm the timing, whether
10 or not we can get all the addresses by the end of
11 the day.

12 COUNCILWOMAN CLARK: It is on the
13 computer.

14 PRESIDENT STREET: This is the
15 computer age, Mr. Hawes.

16 MR. HAWES: I understand.

17 But the second part of that is, you
18 wanted to know whether there are dual residences.
19 And I don't know if we would have a way of knowing
20 that.

21 We have a requirement to ask for
22 validation every two years.

23 PRESIDENT STREET: If you don't have
24 that, then I wish for you to tell us in this
25 correspondence how long and when it will take you to

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2 are going a little bit afar here.

3 I would like to recognize Councilman
4 DiCicco. It seems like you are now trying to not
5 just ask a followup.

6 COUNCILWOMAN CLARK: It is a
7 clarification of the exemption, but I will wait my
8 turn.

9 PRESIDENT STREET: The residency
10 requirement hopefully will be in writing, and we
11 will be able to see what, if any, exemptions or
12 anything that's in it.

13 But I would like to get to Councilman
14 DiCicco, then we can get to Councilwoman Clark.

15 COUNCILMAN DiCICCO: Two questions.
16 In the list that you just requested, I believe one
17 of your questions was the requirements for
18 residency.

19 And I would like that to be extremely
20 specific as to what proof is required on the
21 residency.

22 Is it a copy of a deed to home
23 ownership, a copy of a lease agreement? And is
24 there any followup to that? Is there any internal
25 followup?

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2 PRESIDENT STREET: That's the reason
3 why I say, explain in writing what you say to new
4 employees about its meaning and implementation.

5 Because they ought to be told, this
6 is what it means and this is how we go about
7 implementing the residency requirement; i.e., we do
8 random checks, we don't do any checks, we do
9 whatever it is. This is what we need to know.

10 COUNCILMAN DiCICCO: Traditionally
11 there are people that use their mother-in-law, their
12 cousin's or aunt's properties as a place of
13 residence, and there is no followup investigation.
14 It does require a lot of work, and I think it is
15 something that is really important.

16 And the other question -- I don't
17 know if this was already asked; I was doing a
18 sidebar with Councilwoman Clark -- does Mr. Collins
19 have use of a PGW car?

20 MR. COLLINS: Yes, I do.

21 COUNCILMAN DiCICCO: And is that the
22 car you take home to North Whales at night?

23 MR. COLLINS: Yes, it is.

24 COUNCILMAN DiCICCO: And I assume it
25 is the gas, if it is natural gas or regular gas,

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2 that is gas that's supplied by way of PGW, and the
3 insurance to the car, also?

4 MR. COLLINS: The gas is paid for by
5 myself through the commuting mileage.

6 COUNCILMAN DiCICCO: Through the what
7 mileage?

8 MR. COLLINS: Commuting mileage.

9 COUNCILMAN DiCICCO: Is that an
10 expense account that is provided to you by PGW?

11 MR. COLLINS: No. My commuting
12 mileage is identified separately, and then it is
13 paid on --

14 PRESIDENT STREET: He pays to drive
15 the car home.

16 MR. COLLINS: I pay for the commuting
17 mileage myself.

18 COUNCILMAN DiCICCO: And the vehicle,
19 obviously, is insured by PGW; am I correct in that?

20 MR. COLLINS: That's correct.

21 COUNCILMAN DiCICCO: Thank you,
22 Mr. President.

23 PRESIDENT STREET: At this time the
24 Chair recognizes Councilwoman Clark. She is not
25 here.

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2 The Chair recognizes Councilwoman
3 Fernandez, who has been uncharacteristically silent
4 in these hearings today. Just today.

5 COUNCILWOMAN FERNANDEZ: Yes.

6 Mr. President, on this issue of residency and
7 domicile, I think Councilwoman Tasco noted it in the
8 record last week, but I think it is important for
9 people to know PGW used to have a domicile ruling.

10 There was the controversy over this
11 rejection of a candidate to head PGW as the CEO
12 because the person did not have domicile in the
13 city, and was not willing to take up domicile in the
14 city.

15 And then, after that time, the PFMC
16 Board did change the policy from domicile to
17 residency. And I think it is important to note
18 that.

19 And it is my understanding the
20 residency requirement is not from City Council, but
21 it was a decision made by the PFMC Board.

22 I think some of us think it might
23 have been wiser to leave it as domicile, because
24 then there is absolutely no question.

25 Thank you.

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2 PRESIDENT STREET: Thank you very
3 much.

4 The Chair recognizes Councilman
5 Rizzo.

6 COUNCILMAN RIZZO: Thank you,
7 Mr. President.

8 Mr. Collins, this apartment that you
9 have, and you believe that you are --

10 PRESIDENT STREET: I need you to
11 speak much more directly into the microphone.

12 COUNCILMAN RIZZO: Okay. We will
13 move it up a little bit.

14 Mr. Collins, the apartment that you
15 presently rent and is vacant, is it vacant or do you
16 receive any income? Is it subletted to anyone?

17 MR. COLLINS: No, it is not.

18 COUNCILMAN RIZZO: So it is just
19 vacant? Furniture, nothing?

20 MR. COLLINS: There is furniture
21 there. It is fully furnished.

22 COUNCILMAN RIZZO: Councilman DiCicco
23 asked one of the questions, so I will get right to
24 my next one.

25 Do you believe you are the only

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2 understand the expectations. And having been an
3 auditor, I can assure you I know how to design it.

4 COUNCILMAN RIZZO: Could you just
5 take a moment to explain, the employees that do not
6 live in the city, what year did that change?

7 There are some people that are
8 grandfathered presently that live outside of the
9 city. They take PGW vehicles home, both in this
10 state and in New Jersey. Because occasionally on
11 weekends I see PGW cars in the State of New Jersey.

12 So we have people living in New
13 Jersey that take company vehicles home. And do they
14 also pay this mileage for commute?

15 MS. ESTRIN: I am Deborah Estrin.

16 Councilman Rizzo, I can answer part
17 of that question. I don't have the information to
18 answer all of the question.

19 As a condition of employment with
20 PGW, all employees hired after January 1, 1983, were
21 required to establish residency.

22 So there are a group of employees who
23 are grandfathered, who were hired prior to January
24 1, 1983, and who have been allowed to continue
25 living at the residence or domicile that they had

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2 sentiment, and so it doesn't get lost on the next
3 group of people who come in, that you go back and
4 recommend to the Board that they change it back to
5 domicile and leave it that way, and there is no
6 misunderstanding about what the rules are.

7 Because we can find ourselves again,
8 20 years later, having this discussion again. And
9 if you leave it at domicile, then there is no
10 question about what the rules require, and not up to
11 interpretation.

12 PRESIDENT STREET: The Chair
13 recognizes Councilman Nutter.

14 COUNCILMAN NUTTER: Thank you,
15 Mr. President.

16 To follow on Councilwoman Tasco's
17 point, I guess I am left to ask the question,
18 notwithstanding whatever PFMC does, isn't it
19 possible, through the fairly lengthy agreement
20 between the city and PFMC, that we could insert in
21 that agreement the domicile, and then we don't have
22 to worry about what PFMC does? I mean, it is just
23 the policy.

24 And the only change to be made would
25 come as a result of subsequent amendment by

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2 ordinance by City Council.

3 Doesn't that resolve this entire
4 matter?

5 PRESIDENT STREET: Probably. Spoken
6 like a well-intentioned lawyer. Probably.

7 COUNCILMAN NUTTER: I would have
8 gotten that answer from the solicitor, if she was at
9 the table.

10 My question is, Mr. Collins, if I
11 understand your response to a question by the
12 Council President with regard to who approved the
13 arrangement, did I hear you say that you had told
14 someone, Human Resources person or someone else, I
15 guess, what you were going to do or how you were
16 going to respond to the residency requirement?

17 I could have misheard.

18 MR. COLLINS: Yes. What happened
19 was, in the process of the hiring, the hiring
20 process, one of the things I needed to do was,
21 investigate the residency policy and what was
22 required and how compliance would take place.

23 And I met with the HR VP at that
24 time, before I was hired, and discussed in detail
25 what the policy was, what the requirements were, and

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2 how I could achieve a compliance.

3 And based on that discussion, I was
4 able then to make a judgment that I could accept the
5 job and meet the requirements to the residency
6 policy. So that was the basis for the decision.

7 COUNCILMAN NUTTER: And do you have
8 any recollection as to what the HR VP said when you
9 shared -- I assume you told them what you were going
10 to do, or how you were going to do this?

11 MR. COLLINS: We had a discussion.
12 And the discussion was, "Describe the policy. What
13 is the policy?" And we looked at the policy and
14 we --

15 COUNCILMAN NUTTER: I understand
16 that.

17 Did you tell the person what you were
18 going to do?

19 MR. COLLINS: I told him that I was
20 not able for personal reasons to move my family into
21 the city, and that understanding how to comply with
22 residency would be an extremely important part of
23 the decision to accept the job, and that this is how
24 I would intend to do it. And it was acceptable in
25 that discussion to proceed that way.

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2 COUNCILMAN NUTTER: And what did the
3 person say?

4 MR. COLLINS: That that was an
5 acceptable practice from the standpoint of achieving
6 compliance with residency.

7 COUNCILMAN NUTTER: And who was this
8 individual?

9 MR. COLLINS: Vice-president of HR at
10 the time was Bob Pierson.

11 COUNCILMAN NUTTER: I assume, based
12 on that statement, that means that person is no
13 longer with the company?

14 MR. COLLINS: That's correct.

15 COUNCILMAN NUTTER: Given all of this
16 testimony -- and Mr. Hawes indicated that there is
17 an audit coming up -- what system exists today, that
18 short of this hearing and under these circumstances
19 and based on the information, or the statement, that
20 was made by the Council President last week -- and
21 we certainly knew coming into this hearing that this
22 issue was going to arise at some point in time --
23 what comfort do we have that absent this hearing,
24 this issue would have ever been addressed by
25 whatever mechanisms exist within PGW to deal with

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2 this kind of situation?

3 And who, if anyone, was aware of this
4 previous agreement/arrangement with regard to
5 Mr. Collins?

6 MR. HAWES: The answer to the first
7 question -- my name is Jim Hawes, President and CEO
8 of Philadelphia Gas Works.

9 The answer to the first question
10 is -- and I would like to have Deborah respond,
11 also -- is that I have believed, and I still
12 believe, that it is clear when we interview
13 employees what we expect. I don't believe that
14 there is much confusion over that.

15 So I guess for people that we have
16 hired since I have been here, I don't know that we
17 have done -- I don't know what we have done, if
18 anything, to ensure -- and we are a pretty small
19 company, so in a lot of cases you just know.

20 I mean, I know where the people who I
21 deal with most frequently live, because we ride to
22 work together, we visit, we talk about problems we
23 have had in closing houses, we talk about yard work,
24 and those kinds of things. But I don't know beyond
25 that about every employee.

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2 I think the short answer, though, is
3 that I don't think there is much confusion, if any,
4 around expectations.

5 I think we have got to make sure, and
6 I will make sure, that we don't have problems that
7 have been there for a while that may need to be
8 corrected.

9 COUNCILMAN NUTTER: Okay.

10 MS. ESTRIN: When people are hired,
11 they are given --

12 PRESIDENT STREET: Please identify
13 yourself for the record.

14 MS. ESTRIN: Excuse me. I am Deborah
15 Estrin, Senior Vice-President Human Resources.

16 PRESIDENT STREET: Can you spell your
17 last name.

18 MS. ESTRIN: E-S-T-R-I-N.

19 We give people who are not already
20 residents of the city a copy of our residency
21 policy.

22 We routinely advertise in the
23 newspaper that Philadelphia residency is required as
24 a condition of employment.

25 Because of that --

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2 PRESIDENT STREET: Can you speak a
3 little closer to the microphone.

4 I am sorry. We have a
5 state-of-the-art system here.

6 MS. ESTRIN: Normally I talk too
7 loudly, so I am trying to modulate a little bit and
8 not run everybody out of here.

9 We do give all new hires who are not
10 already residents of the City of Philadelphia a copy
11 of the residency policy.

12 I think we have made it clear in the
13 Human Resources process that there is an expectation
14 that people live within the city.

15 We do conform with the policy in
16 requesting the verification of residency in the
17 format that we currently use, in part because of
18 some -- as I understand it, because of some
19 arbitration decisions that were rendered at the time
20 of the policy change.

21 There was an exception made to an
22 invasion of privacy when people were checked up on
23 at their residence.

24 There was also an accommodation made
25 when objections were raised by employees about their

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2 documentation being included in their personnel
3 files.

4 COUNCILMAN NUTTER: Hold on for a
5 second.

6 MS. ESTRIN: That their managers were
7 allowed to do that.

8 COUNCILMAN NUTTER: Let me better
9 understand a part of your statement.

10 Are you saying that it was or is
11 believed that, in a job, one of whose requirements
12 is that you live in the City of Philadelphia, that
13 the checking of that information is believed or
14 perceived to be an invasion of privacy?

15 MS. ESTRIN: By some people, yes,
16 sir.

17 COUNCILMAN NUTTER: Some people used
18 to believe the world was flat.

19 What people are we talking about?

20 MS. ESTRIN: In the files that I have
21 around residency, there are some documents involving
22 grievance proceedings and arbitrations.

23 And the outcome of those labor
24 relations issues resulted in the company's not being
25 allowed to be as directly involved in verifying

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2 department.

3 And, three, based on what I put
4 forward earlier -- and I know Councilwoman Clark
5 wants to speak on the same point -- it sounds to me
6 like it really needs to be resolved at the ordinance
7 level, and then there is no confusion for anybody,
8 there is no expectation of any particular privacy,
9 because the policy is what it is.

10 It is the same policy that we operate
11 under in the City Charter. There could be no
12 expectation of any kind of privacy or violation of
13 privacy.

14 And the company in your case, or the
15 city in our case, has to be able to verify the
16 information. There shouldn't be any big issue about
17 that.

18 Councilwoman Clark.

19 And I still have two last questions.

20 PRESIDENT STREET: The Chair
21 recognizes Councilwoman Clark.

22 Are you yielding to Councilwoman
23 Clark?

24 COUNCILMAN NUTTER: Yes.

25 COUNCILWOMAN CLARK: Thank you.

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2 requiring domicile? And that has been a settled
3 law.

4 Now, is it convenient? Maybe not.
5 Would you rather live somewhere else? Maybe so.
6 Not relevant to the discussion of, do we have a
7 public purpose in requiring domicile in exchange for
8 accepting a paycheck. That is the narrow issue, and
9 all else is a red herring.

10 Mr. Collins has positioned himself, I
11 think, correctly, if you accept his premise that he
12 didn't think he was doing anything wrong. And I
13 will not on this record express any opinion about
14 that.

15 But I will say to you that his
16 principal position of discussing with his family the
17 two choices, which is the entire universe of choices
18 open, you may stay and move in, you may stay where
19 you live and leave your employment, and there are no
20 more choices. There are no more choices.

21 But if you raise the legal question
22 of whether his privacy is invaded because we asked
23 him to show proof that he stays where he says he
24 stays, then you take us down a path that burdens
25 this record, confuses the issue, and doesn't help

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2 seems to me that he was led down a garden path if
3 someone has said to him, to Mr. Collins, "It is
4 required of you that you establish your domicile in
5 Philadelphia" -- don't play those legal games about
6 what is residence, what is domicile, where do you
7 live? -- whatever that means, "We want you to live
8 in Philadelphia."

9 I don't mean to say that you can't
10 have ten homes all over the country, all over the
11 world. But where you live and where you visit,
12 there is no confusion about that, is there,
13 Mr. Collins? There is no confusion.

14 There are no children in this game.
15 All of these are adults. And we all know when we
16 are complying and when we are appearing to comply.

17 And I know that when Mr. Collins
18 engaged that apartment, and every month when he
19 writes out all those checks, he writes those checks
20 as a fee without living in Philadelphia.

21 Now, let's not kid each other. And
22 now the game is up. He is either going to live in
23 Philadelphia or he is going to live where he lives,
24 and we are going to come out of this. And that is
25 my last word on that for the moment.

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2 (Councilwoman Verna assumes the
3 Chair.)

4 COUNCILWOMAN VERNA: The Chair
5 recognizes Councilman Nutter.

6 COUNCILMAN NUTTER: Thank you, Madam
7 Chair.

8 In light of all that's been put on
9 the record -- and I realize that this must be a
10 pretty difficult situation -- I have a short-term
11 and a longer-term question.

12 In the venture, as a part of the
13 Venture Agreement, there is an Exhibit C. And it
14 lists the six Management Committee members. For PGW
15 those members are listed as Mr. Hawes, Mr. Martin,
16 and Mr. Collins.

17 Under the present circumstances, one,
18 what, if anything, will PGW do as relates to
19 Mr. Collins' status as a member of the Management
20 Committee? That's the short-term question.

21 And then the longer-term question is,
22 again, given all that has been put on the record and
23 the explanations that have gone with it, what is
24 Mr. Collins' status as it relates to his employment
25 with PGW?

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2 MR. HAWES: I think my answer to that
3 would be the same as Mr. Collins.

4 He has to decide whether or not he
5 wants to move into the city, in a residence as
6 defined by this body, or whether he wants to stay in
7 his current location and seek employment somewhere
8 else.

9 And, just for the record, I hope he
10 will not choose to seek employment somewhere else.

11 COUNCILMAN NUTTER: Well, I
12 appreciate the answer, Mr. Hawes. I guess we also
13 have a short- and longer-term decision to make
14 ourselves.

15 Exhibit C is a part of a Venture
16 Agreement which is in front of this body. And based
17 on the discussion from the President earlier today,
18 more than likely there will not be action on the
19 Venture Agreement and the Resolution to which it is
20 attached today, but more than likely we will take
21 action on the Venture Agreement tomorrow for the
22 resolution and then the bill.

23 In view of everything that is now on
24 this record, it creates a difficulty to consider, in
25 addition to 25 other issues that are pertinent to

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2 the Venture Agreement, but on this particular issue,
3 it makes it that much more difficult to deal with
4 the Venture Agreement, which is obviously a
5 significant part of your ability to go forward with
6 the bill and with the agreement, if there is not
7 some resolution to the Management Committee
8 composition, given Mr. Collins' situation.

9 And I don't know how long you will
10 give him to make the decision as you laid out he
11 must make.

12 But I am, under the circumstances,
13 uncomfortable dealing with Exhibit C as it is
14 presently written, given what has been shared with
15 us today.

16 Before you respond, do I understand
17 in the Venture Agreement, in the decision-making
18 process for who sits on the Management Committee,
19 either party has what I think was almost an
20 automatic right of substitution of individuals?

21 And it seems to me in the short term,
22 you may make one decision as it relates to
23 Mr. Collins, Mr. Collins may make another decision
24 for himself that could find him in compliance, and
25 you could then make a substitution decision as it

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2 relates to Mr. Collins. Isn't that correct?

3 MR. HAWES: That is correct.

4 COUNCILMAN NUTTER: The question is
5 now, what are you going to do?

6 MR. HAWES: Well, I think the basis
7 on that decision is the same basis of the other two
8 discussions.

9 I think until Mr. Collins reaches a
10 decision -- and I don't expect it to be by
11 tomorrow -- we will take him off of that committee
12 until such time he reaches a decision.

13 So, in other words, that seat spot
14 will have somebody else in it or it will be vacant.

15 COUNCILMAN NUTTER: Thank you.

16 Thank you, Madam Chair.

17 COUNCILWOMAN VERNA: The Chair
18 recognizes Councilwoman Fernandez.

19 COUNCILWOMAN FERNANDEZ: Instead of a
20 mouthful of words, in light of this discussion I
21 would like to make a suggestion.

22 And that is that, I did check with
23 the City Solicitor. And we in the city have a
24 residency requirement, not a domicile requirement.
25 Yet I heard some requests that perhaps the PFMC

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2 Board, or even the management agreement between the
3 city and PGW, be altered to require a domicile
4 requirement.

5 We also had these kinds of
6 discussions with the school district, where a
7 compromise was reached, even though, again, the
8 policy wasn't clear.

9 I am troubled to have this City
10 Council request that some other body, like the
11 school district or PGW, have a clear domicile
12 requirement, when we only have a residency
13 requirement. I always figure you have to clean up
14 your own house first.

15 So if there is confusion around what
16 residency means, perhaps we need to first start with
17 ourselves and establish a domicile requirement.

18 Because I think, for me, at least,
19 that does clarify and make absolutely crystal clear
20 in a legal way what is meant.

21 And it is my understanding the
22 intention behind a residency or a domicile
23 requirement is so that people who are being paid
24 with public funds and taxpayer dollars from the City
25 of Philadelphia, that people who work directly for

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2 the government, or a clear government agency, have
3 not only a financial stake in the city, but
4 essentially this is where their heart, their family,
5 their neighborhood, their community investment is.
6 And, in my sense, that's what's behind either a
7 residency or a domicile requirement.

8 But whatever the intent is, it is
9 that people are really here and engaged and involved
10 and clearly invested in the city.

11 So I would like to propose that we
12 look first at ourselves in the city. And if this
13 City Council Administration feels that's what we
14 really want, is domicile, let's start with
15 ourselves, and then later deal with PGW.

16 But I essentially hear the leadership
17 of PGW saying you fully intend to have your
18 employees actually live in the city with their
19 families and be fully invested here, and that you no
20 longer have any mistaken understanding of what
21 residency may mean.

22 MR. HAWES: I am Jim Hawes,
23 President/CEO of the Philadelphia Gas Works.

24 In my mind, Councilwoman, that has
25 never been an issue. I think the question that I

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2 now realize is a real issue is, how do you define
3 residence.

4 I defined it closer to what you call
5 domicile than what I am hearing as residency today,
6 but I guess I did it unconsciously.

7 Because I believe that, to the extent
8 that we can, our employees ought to live where our
9 customers lives.

10 COUNCILWOMAN VERNA: I believe the
11 City Solicitor would like to clarify this for us.

12 MS. FRANKLIN-SUBER: Thank you.

13 Yes, I did want to clarify one
14 comment for Councilwoman Fernandez that I made
15 previously.

16 Through the combination of the
17 Charter and the Code, we have a two-tier system.

18 For exempt city employees, it is a
19 residency requirement which must be established
20 within six months. For nonexempt employees, it is a
21 domicile requirement, without the six-month
22 transition period.

23 We would be happy to try to look into
24 some of these issues, though, in more detail, if it
25 would assist Council.

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2 COUNCILWOMAN FERNANDEZ: I would like
3 that.

4 I don't understand why you would have
5 the difference, particularly if people can get
6 confused.

7 COUNCILWOMAN VERNA: The Chair
8 recognizes Councilwoman Clark.

9 COUNCILWOMAN CLARK: Madam City
10 Solicitor, under any circumstance, domicile or
11 residence, does the arrangement that Mr. Collins has
12 meet either one of those?

13 MS. FRANKLIN-SUBER: No.

14 COUNCILWOMAN CLARK: No further
15 questions.

16 COUNCILWOMAN VERNA: The Chair
17 recognizes Councilman Rizzo.

18 COUNCILMAN RIZZO: Thank you, Madam
19 Chair.

20 My question is directed to
21 Mr. Hawes.

22 I am starting to get a little
23 confused now about exactly what Mr. Collins did.

24 My question: Do you believe that
25 when Mr. Collins met with the HR Vice-President at

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2 the time, and was explained the situation, and was
3 told that if he established, rented an apartment,
4 ghost apartment, that that qualified him for
5 employment with PGW?

6 And, if Mr. Collins believed that
7 that satisfied the requirement, should Mr. Collins
8 be exempt from this domicile requirement, since he
9 satisfied something that -- I don't know if there is
10 any documentation in writing, if this is just a
11 verbal conversation between two people.

12 Mr. Collins appears to be in a
13 position where he was told something from an
14 authority, complied with it, and now he is in this
15 position here today.

16 You have already stated that you
17 believe that he should correct this situation. Do
18 you think you want to look at that again?

19 MR. HAWES: Let me tell you what I
20 said.

21 What I said was -- my name is Jim
22 Hawes, President and CEO of the Philadelphia Gas
23 Works.

24 I think what Mr. Collins said was,
25 that he was told in 1995, prior to when I was

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2 here -- I cannot and do not know the circumstances
3 under which he came in, other than what he told me.
4 And I believe him.

5 I think what we are talking about
6 today is, what do we do going forward.

7 COUNCILMAN RIZZO: But, Mr. Hawes,
8 you are talking about removing him from a committee,
9 the executive committee?

10 MR. HAWES: No. I think all we are
11 talking about now is the committee that has to be
12 voted on tomorrow.

13 COUNCILWOMAN VERNA: The venture.

14 MR. HAWES: The Management
15 Committee. Until at such time he makes a decision
16 about ultimately where he will live and work.

17 COUNCILMAN RIZZO: But where I am
18 coming from is that it appears that, Mr. Hawes, I
19 think we are fooling with interpretations here.

20 I think, from what I am starting to
21 hear, is that Mr. Collins was basically told, do it
22 this way, and it is okay with us, and now the rules
23 are changing.

24 And you are about to remove him from
25 a -- it doesn't sound like he really has his day in

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2 court to deal with this issue.

3 I think we are reacting to something
4 that sounds improper. But, in his particular case,
5 he might be a learning experience for us that you
6 may want to look at a little more carefully before
7 we start making decisions.

8 MR. HAWES: I was responding to the
9 fairly clear message that I thought I was getting
10 from this Council, as to the fact that he had two
11 choices.

12 COUNCILMAN RIZZO: Well, I don't
13 think --

14 MR. HAWES: And that is what I was
15 responding to.

16 COUNCILMAN RIZZO: I don't think it
17 is really the Council's position -- you are the
18 President and CEO of the gas company -- to make that
19 decision.

20 MR. HAWES: Well, I will tell you
21 what I was responding to.

22 It has always been our assumption
23 that we -- and I just said a little while ago --
24 that we have taken as a condition of employment that
25 we would like for our employees to live in the

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2 city.

3 And the only thing I am saying to you
4 is that, if the rule -- and I was responding,
5 because I thought that what I was hearing was that
6 it is clear now and has always been the position of
7 this Council that there is a domicile requirement.
8 That is what I just heard.

9 COUNCILMAN RIZZO: But does PGW today
10 have a domicile requirement or a residency
11 requirement?

12 MR. HAWES: Residency.

13 COUNCILMAN RIZZO: Does Mr. Collins
14 meet the residency requirement?

15 COUNCILWOMAN CLARK: No.

16 MR. HAWES: I think it depends on how
17 you define it.

18 He has a residence that he doesn't
19 live in. So I would refer you to the City
20 Solicitor.

21 COUNCILMAN NUTTER: Point of order,
22 Madam Chair. The Solicitor has answered that
23 question. The answer was the clearest, shortest
24 answer she has given in the last two weeks. The
25 answer was no.

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2 The City Solicitor of the city
3 answered the question from Councilwoman Clark as to
4 whether or not Mr. Collins met either a residency or
5 a domicile criteria. The City Solicitor said no.

6 Mr. Hawes responded to my question
7 and statement that was, the Venture Agreement, and
8 Exhibit C, lists a Management Committee, which is
9 solely at the option of PGW and QST, to name each of
10 their three members that they are allowed.

11 All I suggested to Mr. Hawes was
12 that, as a member of this body, I am uncomfortable.
13 This is not personally directed at Mr. Collins.

14 But that given the information on
15 this record, I am personally uncomfortable in voting
16 on the Venture Agreement, which is the resolution in
17 front of us, that lists in Exhibit C a person who
18 has this situation.

19 Mr. Hawes has the option to structure
20 his three-member team any way he wants. And if
21 Mr. Hawes has figured out that it is in his best
22 interests, for the moment, to restructure the team
23 in such a way as to get this resolution and this
24 bill in and out of this body, I will leave it to
25 Mr. Hawes' best judgment to figure out who he wants

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2 on his team under the circumstances. That was the
3 question that he was responding to.

4 Mr. Collins will have his day
5 wherever he has his day, probably not in this --
6 this is not a court. He has to deal with an
7 employer/employee problem over at PGW, and they will
8 decide how they deal with Mr. Collins under the
9 circumstances.

10 COUNCILWOMAN VERNA: Councilman
11 Rizzo.

12 COUNCILMAN RIZZO: Thank you, Madam
13 Chair.

14 Mr. Hawes, to finish my question, you
15 are the President and the CEO of PGW. So I believe
16 that the interpretation of domicile, residency, if
17 Mr. Collins was employed based on the fact that he
18 established a residency, and even though the City
19 Solicitor said that he meets neither of those two,
20 I'm still not clear whether he does or he doesn't.

21 And I don't know if a decision or
22 response made like that is what we need here on such
23 a serious subject.

24 MR. HAWES: But I think the question
25 that we are talking about, the short-term question

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2 that Councilman Nutter raised, is not a question of
3 employment or not employment. That's a separate
4 question.

5 COUNCILMAN NUTTER: I am interested
6 in him going on a committee which Mr. Collins could
7 have been on or not have been on.

8 And if he wasn't on it, then I
9 wouldn't have had to ask the question. But that is
10 a decision to be made by Mr. Hawes.

11 COUNCILMAN RIZZO: But two hours ago
12 Mr. Collins was on that committee.

13 Thank you.

14 COUNCILWOMAN VERNA: The Chair
15 recognizes Councilwoman Clark.

16 COUNCILWOMAN CLARK: I have no desire
17 to continue this, but it seems that the throw-away
18 comments are lengthening the hearing.

19 I don't know that I agree with Jim
20 Hawes' decision that Mr. Collins shouldn't stay on
21 the committee. I think he has information and
22 experience that would be useful. I would not like
23 to see the PGW team weakened.

24 You are going to continue to pay him,
25 aren't you? As long as you pay him, use what he has

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2 got.

3 We gave him a time to tell us what he
4 is going to do, but let's not put him in a Catch
5 22.

6 And don't make a decision publicly.
7 I think we need to look at what is in our best
8 interest and work from there.

9 So, Mr. Hawes, if I could get
10 Mr. Nutter to take the question back, we would not
11 be dealing with whether Collins is or is not on the
12 management team.

13 As long as Collins is senior
14 management and has experience that will help us make
15 an experiment, a pilot project, work, why would we
16 bind ourselves wrist to ankle and guarantee that we
17 take away one of the pegs of a three-legged stool?
18 Don't do that.

19 So while I don't agree with
20 Mr. Rizzo's reason, because I don't think you meet
21 residency, I do think you have experience and
22 information that is essential to this experiment
23 being successful.

24 And I don't think you, Mr. Hawes,
25 have to answer right now whether he is or is not on

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2 the management team. But I would not like to see
3 you make your decisions on faulty grounds.

4 Mr. Collins, you don't meet
5 residency. You don't meet domicile. But you do
6 have experience that is important to this
7 experiment, this one-year pilot project.

8 And I don't see any reason why we
9 shouldn't maximize our use of you and the experience
10 you have gained which helps our team put the A team
11 on the floor.

12 COUNCILWOMAN VERNA: Councilman
13 Nutter, are you going to make a motion?

14 COUNCILMAN NUTTER: I hadn't made a
15 motion previously, Madam Chair, with all respect to
16 all of my colleagues.

17 I never asked Mr. Hawes to take
18 Mr. Collins off the team. I merely suggested that
19 he needed to take a look at that.

20 I will leave it to Mr. Hawes' best
21 policy, political, and business judgment to decide
22 who he wants on his team, off the team.

23 Because Mr. Hawes did not ask me who
24 he was going to place on the team. I learned of
25 this this morning when I read Exhibit C. I have no

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2 vote in the matter.

3 MR. HAWES: Madam President, may I
4 clarify something?

5 Mr. Collins' role in the organization
6 is not the issue around the three-member Management
7 Committee. His role, as long as he works at PGW, is
8 absolutely the same. We have not removed him from
9 PGW.

10 His role in the organization and his
11 role in terms of managing the project is not
12 contingent on whether or not he is on the Management
13 Committee.

14 COUNCILWOMAN Verna: Thank you.

15 Are there any other questions or
16 statements from members of the Committee?

17 Thank you. The Committee will stand
18 in recess until tomorrow morning at 8 o'clock.

19 (Public Hearing adjourned at 2:30
20 p.m.)

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C E R T I F I C A T I O N

I HEREBY CERTIFY that the foregoing
proceedings of the Council of the City of
Philadelphia of Wednesday, October 29, 1997, were
reported fully and accurately by me, and that this
is a correct transcript of same.

RE: COMMITTEE ON THE WHOLE

DEBRA A. WHITEHEAD, RPR