

1 VOLUME II

2

3 COUNCIL OF THE CITY OF PHILADELPHIA
4 PUBLIC MEETING
5 BEFORE THE COMMITTEE OF THE WHOLE

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- - -
Room 400, City Hall
Philadelphia, Pennsylvania
Thursday, December 11, 1997
9:35 a.m.
- - -

8 RES. 970801 - Approving the Execution of a Lease and
9 a Master Agreement between the Commonwealth of
10 PA, the Delaware River Port Authority, PAID, and
11 Kvaerner, Inc., for the development by Kvaerner
12 of a shipbuilding facility within the
13 Philadelphia Naval Business Center Tax Increment
14 Financing District.

15 RES. 970806 - Approving an amendment to the Venture
16 Agreement between the Philadelphia Facilities
17 Management Corporation and QST Energy, Inc.

18 - - -

19 PRESENT:

20

21 COUNCILMAN JOHN F. STREET, Chair
22 COUNCILWOMAN ANNA C. VERNA, Vice-Chair
23 COUNCILWOMAN HAPPY FERNANDEZ
24 COUNCILMAN JAMES F. KENNEY
25 COUNCILMAN W. THACHER LONGSTRETH
COUNCILWOMAN AUGUSTA A. CLARK
COUNCILMAN DAVID COHEN
COUNCILMAN FRANK RIZZO
COUNCILMAN ANGEL ORTIZ
COUNCILMAN FRANK DiCICCO
COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILMAN MICHAEL A. NUTTER
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILWOMAN MARIAN B. TASCO
COUNCILMAN BRIAN J. O'NEILL

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2 PRESIDENT STREET: Good morning,
3 ladies and gentlemen. This is a recessed hearing of
4 the Council Committee of the Whole.

5 Today we will take further testimony
6 on two resolutions: Resolution No. 970801, which is
7 a resolution approving the execution of a Lease and
8 Master Agreement between the Commonwealth of
9 Pennsylvania, the Delaware River Port Authority,
10 Philadelphia Authority for Industrial Development,
11 and Kvaerner for the development of the naval
12 shipyard.

13 And we have not taken any testimony,
14 but we have in front of us a Resolution No. 970806,
15 approving an amendment to the Venture Agreement
16 between Philadelphia Facilities Management
17 Corporation and QST.

18 At this time, we will go directly to
19 the Kvaerner resolution.

20 Mr. Hankowsky, I see, is here. We
21 appreciate his presence, with members of his staff,
22 and we will proceed with the questioning.

23 The Chair recognizes Councilmember
24 Nutter.

25 COUNCILMAN NUTTER: Thank you,

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2 Mr. President.

3 Mr. Hankowsky, yesterday we were
4 talking about the document put forward by the
5 Mayor.

6 And as I admitted that I didn't
7 remember what the CoreStates plan was, you actually
8 seemed to nod your head as if you might know what it
9 is, but we never got around to that.

10 Could you share with us, for the
11 record, what the CoreStates Center plan is?

12 MR. WILLIAM P. HANKOWSKY: Yes. And
13 I am going to do it from memory, but I think I have
14 a pretty decent recollection of it.

15 COUNCILMAN NUTTER: That's a good
16 disclaimer.

17 MR. HANKOWSKY: It had the good-faith
18 effort plan that was based on -- there was a
19 component that dealt with the construction phase,
20 set goals for subcontracting that were 20 percent
21 MBE, 10 percent WBE.

22 Set goals also in the construction
23 phase -- these are the employment of the work force
24 who would construct it -- which I believe were also
25 20 percent minority and 10 percent female.

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2 Then it had an operational phase that
3 dealt with the concession operation -- whatever,
4 that would be sort of the contracting outsourcing
5 opportunities, vis-a-vis the facility, set goals
6 there, which were lower than the others. I think 10
7 and 5, is my recollection.

8 And I don't believe there were any
9 employment goals for permanent jobs in terms of that
10 category.

11 COUNCILMAN NUTTER: You would be able
12 to get us some documents on that, though?

13 MR. HANKOWSKY: Yes.

14 COUNCILMAN NUTTER: To my office.

15 Let me just ask you general questions
16 about future operation of the Philadelphia Naval
17 Business Center and the shipyard area generally.

18 When the complete yard is turned over
19 to the city, whenever the Navy, in their wisdom,
20 gets finished messing around with that, the city
21 will have full responsibility for the naval shipyard
22 area, I guess, with the exception of a couple of
23 buildings that the Navy will still operate, that
24 maybe even in kind of secret, or you need security
25 clearance or something to get in?

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2 MR. HANKOWSKY: When title is
3 transferred, and to go to -- when it is all done, so
4 now -- there will probably be two transfers.

5 Transfer of the base, which is what
6 we are working on now; and then a subsequent
7 transfer of the shipyard. But assume both of those
8 transpire.

9 At that point, then, the Navy would
10 own in fee title 187 acres, and roughly 1.8 million
11 square feet of existing buildings. They would be
12 federal property, will remain not a ratable for tax
13 purposes.

14 They will be responsible for
15 everything; you know, maintenance, whatever.

16 We will own the remainder.

17 COUNCILMAN NUTTER: The remainder is
18 estimated at 1400 acres, 1100 acres?

19 MR. HANKOWSKY: No. It is actually
20 986, net of piering rights and real dirt.

21 So about 700 acres, plus or minus.

22 COUNCILMAN NUTTER: Right.

23 MR. HANKOWSKY: Now, the "we," to be
24 very precise, would be PAID, the Philadelphia
25 Authority for Industrial Development, not the city.

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2 In light of all of that, that there
3 is some city responsibility --

4 MR. HANKOWSKY: I'm sorry,
5 Councilman. As you recall in the June TIF hearings,
6 we talked about -- and it is included in the TIF
7 project plan -- the capacity to use TIF proceeds for
8 PAID to pay some of those costs. So I want to be
9 clear about that.

10 COUNCILMAN NUTTER: Right.

11 MR. HANKOWSKY: And we did not -- and
12 to the degree we want to do that, we bring you a
13 budget. So there will clearly be a dialogue and a
14 discussion about that.

15 So I just want to be clear that it
16 gets paid by PAID, that we might ask the consent of
17 Council to do that by some TIF revenue.

18 COUNCILMAN NUTTER: So it sounds like
19 there is clearly anticipated to be some City of
20 Philadelphia responsibility --

21 MR. HANKOWSKY: Yes.

22 COUNCILMAN NUTTER: -- in how this
23 place functions and operates.

24 MR. HANKOWSKY: Yes.

25 COUNCILMAN NUTTER: Which means that

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2 some city workers, from time to time, may have to go
3 to this site to do certain things?

4 MR. HANKOWSKY: Yes.

5 COUNCILMAN NUTTER: In light of that,
6 and in light of yesterday's discussion around this
7 new section to be substituted, which primarily deals
8 with construction, subcontracting, and the
9 construction employment, you and I engaged in a
10 little bit of discussion about operations and
11 operations employment, the 953 workers. And we went
12 through the --

13 MR. HANKOWSKY: Yes.

14 COUNCILMAN NUTTER: -- the discussion
15 of who could they be, who might they be, worst-case
16 scenario and the like.

17 Now, you shared with us yesterday the
18 updated employment figures on when the shipyard was
19 operating before.

20 MR. HANKOWSKY: Yes.

21 COUNCILMAN NUTTER: And I have them
22 as 75 percent white, 22 percent black, 2 percent
23 Hispanic, 1 percent other.

24 MR. HANKOWSKY: Correct.

25 COUNCILMAN NUTTER: Is it not

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2 possible, then, to try to establish, as you have on
3 the construction side and the firms, in that
4 discussion is it not possible, based on what we know
5 a little bit about the historical employment picture
6 at the yard, couldn't you put together some kind of
7 plan or proposal or at least, again, goals and
8 good-faith efforts that enable you to try to mirror,
9 at least, or reflect at some level what the
10 historical employment situation has been at the
11 yard, and at least set that as a goal -- whether it
12 is a floor or a ceiling, I guess that would be a
13 subsequent debate.

14 But we at least know that there is a
15 universe, and we know what the universe used to look
16 like.

17 And if you tell me you are going back
18 to that universe, then that should enable you to
19 start to talk about either some ranges or some
20 goals.

21 Because the next thing I am going to
22 ask you is, what are the demographics and
23 composition of all the unions that anticipate doing
24 work at the yard.

25 MR. HANKOWSKY: I probably can

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2 for training and some of the requirements that
3 that's bringing with it, the potential flow of, for
4 example, a union agreement with some union,
5 beginning to define universes by those variables,
6 that it is not possible -- that the parties would
7 not be comfortable agreeing to put percentages in
8 against those.

9 Because part of their feeling here --
10 and you may, to some extent you are taking my word
11 for it, because obviously you have never met these
12 people or know them -- they would loath to do it
13 simply, okay, we put something out there. If it
14 happens, it happens; if it doesn't, it doesn't.

15 They want to put things out there
16 that in fact they have a reasonable expectation they
17 are going to achieve. They are serious about it.

18 So what they are going to be, what
19 you will be seeing in the documents in terms of an
20 MBE/WBE plan, Kvaerner is not doing it because, oh,
21 okay, you want to see something like that, we'll
22 throw it in there, and let's just keep going.

23 They are putting it in there and
24 saying, okay, this is a real thing we are going to
25 have to go out and do.

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2 And so they loath to get into it on
3 the permanent employment side, because they are just
4 not at all comfortable how that's all going to shake
5 out with a union aspect, reaching the requirements
6 of the job training regulations, and then dealing
7 with displaced workers, and these displaced workers
8 in general, and these pools that they have to pull
9 from. I don't think that is possible to provide
10 that to you to the final documents.

11 I know that's not the answer you were
12 looking for me to give you, but I am also trying to
13 be forthright this morning.

14 COUNCILMAN NUTTER: That's as opposed
15 to any other morning?

16 MR. HANKOWSKY: No.

17 COUNCILMAN NUTTER: Well, I mean, you
18 can understand, naturally, my discomfort.

19 If you say that, you know, this is
20 the pool we expect to draw from, and things should
21 look the same, and it really kind of shouldn't be a
22 problem, then it's all well and good.

23 But then if for some reason you are
24 reluctant to either say it or write it down, that
25 gives me a little concern.

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2 They obviously are, I mean, whether
3 with a smile on their face or with their arms being
4 twisted, they obviously are willing to put something
5 in writing --

6 MR. HANKOWSKY: Absolutely.

7 COUNCILMAN NUTTER: -- as it relates
8 to construction and the firms.

9 Your response gives me reason to
10 think that we are leaning more in the direction of
11 it is less likely to happen than it may happen.

12 MR. HANKOWSKY: I don't think that's
13 true.

14 I think they are --

15 COUNCILMAN NUTTER: I guess I am
16 asking, give me something a little bit beyond, you
17 know, I am a good guy and I am telling you this, and
18 I really need you to trust me on it, that gives me
19 some confidence that this part is being dealt with
20 as seriously as all the various other parts.

21 I mean, I have to say to you -- and
22 this is not your fault -- this is not the first time
23 we ever had this conversation. But it is a
24 recurring issue that seemingly always gets done at
25 the end, almost under duress.

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2 And when I was thinking about this in
3 light of our conversation yesterday, you know, it
4 just strikes me that there is no other issue in any
5 of these deals which seems to draw as much
6 attention, if not concern, and at some level
7 consternation, but it always only comes from one
8 segment of the population.

9 I mean, I don't think anyone has had
10 to run in here and say, well, you know what are
11 going to be the white business enterprise goals, or
12 employment goals, or subcontracting goals.

13 Because there seems to be a fairly
14 well and automatic assumption that one segment of
15 the population really doesn't have to worry about
16 it.

17 And, I mean, it almost just kind of
18 gets tiring to have to continue to ask and ask and
19 ask and ask, and in the end almost be grateful for
20 whatever happens.

21 And in this particular case, we can't
22 even have a discussion about putting something in
23 writing because of someone else's discomfort level.

24 Well, I mean, if I only did things
25 because I felt totally comfortable with them, I

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2 might not do a lot of stuff.

3 So if you tell me that that's the
4 universe, that everyone in that universe has a
5 relatively fair chance, and if you think, and your
6 own answer in the caucus meeting was, "We think it
7 is going to look the same as it used to," then I
8 guess all I am asking you to do is, within some
9 reason and within some ranges, say that.

10 MR. HANKOWSKY: Right.

11 COUNCILMAN NUTTER: Or that is, at
12 least, our goal, or that is what we anticipate
13 doing, or this is what we would hope to do, or this
14 is what we will try to do, and acknowledge that.

15 MR. HANKOWSKY: Right.

16 Yes, I mean, you have correctly
17 characterized my prior comments on it, which is that
18 I do think -- and I think in fact I said this again
19 yesterday -- that it will, you know, with some
20 variance level, probably be reflective of the prior
21 reality.

22 COUNCILMAN NUTTER: We may not solve
23 this right now.

24 MR. HANKOWSKY: We may not solve this
25 at this point.

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2 COUNCILMAN NUTTER: And it is okay.

3 I just have three last questions.

4 In the Mayor's response to the
5 Council President's two letters, which, for the
6 record, I think are as long as, if not longer than,
7 any letters that I have written recently, there is a
8 question that says, "How will a potential labor pool
9 be identified?"

10 The answer is, "The labor pool will
11 be identified by the state Department of Labor and
12 Industry, working with the PSDC."

13 My only question about that, again,
14 is there any role for the city, or even our own
15 Private Industry Council, as opposed to just
16 depending on state L & I?

17 MR. HANKOWSKY: Yes.

18 And I think, again perhaps yesterday,
19 in one of the questions that was asked, in terms of
20 identifying the pool, when you start with the
21 displaced shipyard workers, the Private Industry
22 Council are going to need to be involved, the Navy
23 is going to need to be involved, to the degree it
24 is -- to the degree we end up with the Metal Trades
25 Council involved, because all of them will have

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2 access to where are the people.

3 When we move to the universe of
4 displaced workers, both state labor and industry and
5 the PIC deal with displaced workers. In fact, in
6 some cases, the PIC has even been asked to go out of
7 the city because of their capacity and help in
8 areas, communities that don't have the capacity,
9 where there has been a similar displaced work
10 issue.

11 So they, I think, were involved in
12 the Fairless shutdown and some others. So the
13 answer is, they would be involved.

14 Has all that been written up in some
15 detailed, formal plan? No.

16 COUNCILMAN NUTTER: One of the other
17 questions in that same letter was, "What are the
18 projected operating costs of PSDC? And who will
19 provide the funding?"

20 The answer from the Mayor was, "An
21 Operating Budget from PSDC has not been developed.
22 The city will not be a participant in funding it."

23 If the city is not a participant in
24 funding it, who is? And where would PSDC get money
25 from?

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2 for or against city involvement. But it strikes me,
3 I mean, if that is the answer, that the city is not
4 a contributing party, we have that whole discussion
5 about who is appointing people to PSDC.

6 It again seems that we may be in a
7 position where the collective PSDC Board, with the
8 exception of the city, people say to us, well, you
9 have got your seat or however many seats, or
10 whatever the breakout is, and you are not even
11 putting a dime into this.

12 It again seems to get into an issue
13 of who is controlling what and what our ability is
14 to tell PSDC what to do, since we seemingly won't
15 have any money in it.

16 MR. HANKOWSKY: Right. I
17 understand.

18 COUNCILMAN NUTTER: Lastly, in
19 response to a question about PSDC and its operation,
20 since PSDC is not subject to the Open Meetings law,
21 do you know why that is?

22 MR. HANKOWSKY: I am not a lawyer,
23 but I think the answer is, it is not a
24 governmental -- it wasn't created by a statute or it
25 is not a governmental authority.

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2 It is a private, nonprofit. And
3 private, nonprofits are not covered by the Open
4 Meetings Act.

5 COUNCILMAN NUTTER: Okay. This is a
6 private, nonprofit created by the government.

7 MR. HANKOWSKY: Yes, but even.

8 COUNCILMAN NUTTER: Okay.

9 MR. HANKOWSKY: And I said that as
10 much by historic reference.

11 There is the foundation we created.
12 What's it called? The cities, sometimes when people
13 want to donate --

14 COUNCILMAN NUTTER: The Hankowsky
15 foundation?

16 MR. HANKOWSKY: No. I wish.

17 Philadelphia Fund -- Fund for
18 Philadelphia, for example, isn't technically covered
19 by Open Public, even though it was created by the
20 government to facilitate so people could take
21 501-C(3) contributions -- deductions.

22 COUNCILMAN NUTTER: All right.

23 If you could, subsequently through
24 the President, get us any information you have.

25 I know there are a large number of

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2 unions. Whether they end up participating or not, I
3 guess, is a function of the Kvaerner negotiations
4 and transaction.

5 But I would be interested to know the
6 demographic and residential characteristics of all
7 of the various unions who even anticipate operating
8 at the Philadelphia Naval Shipyard.

9 MR. HANKOWSKY: Right.

10 COUNCILMAN NUTTER: Thank you.

11 MR. HANKOWSKY: Thank you.

12 PRESIDENT STREET: The Chair
13 recognizes Councilwoman Miller.

14 COUNCILWOMAN MILLER: Thank you,
15 Mr. President.

16 Mr. Hankowsky, I have questions
17 regarding work force, just some followup questions
18 to Councilman Nutter.

19 Can you tell me, what skills and
20 competencies does Kvaerner have now in its work
21 force in other parts of the world?

22 What admission criteria are they
23 going to be looking for? Is it an 8th grade reading
24 level, a 10th grade? What math level?

25 Because from your testimony

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2 yesterday, it sounds to me like a lot of people will
3 not be eligible to be applied to this work force.

4 MR. HANKOWSKY: Let me say it to
5 you -- and I should have said it to Councilman
6 Nutter -- if I am grimacing, it is not because of
7 the questions; it is because of the lights. It is
8 sort of difficult to look at you at the same time.
9 So I don't mean to.

10 COUNCILWOMAN MILLER: Many people --

11 MR. HANKOWSKY: We discussed this in
12 some parts yesterday during that portion of the
13 Public Hearing.

14 Kvaerner knows fairly well what a
15 worker's training level and skill levels will need
16 to be, as I would call it, at the end, at the end of
17 a five-year period of training.

18 Now, if a thousand people could walk
19 in the door today and have that training level, that
20 would be wonderful for everybody.

21 They know it is not there, and we
22 know it is not there. And that's why there is \$187
23 million in the transaction to make that happen.

24 And they had asked for it, and we
25 didn't offer it, because we didn't expect it to get

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2 probably very few people, if anybody, in the
3 Delaware Valley right now know how to do robotic
4 welding. Because, in fact, it wasn't done down at
5 the shipyard. So some people are going to have to
6 be trained on how to do some of those things.

7 And we have actually looked at a
8 scenario where, at the end of that five-year period,
9 these workers, between the training they will get,
10 with the addition of just a couple of courses in
11 like reading and writing -- and the community
12 colleges are prepared to do this -- would actually
13 not only have gone through a classic apprentice
14 program; they will earn an Associate's Degree.

15 Now, in terms of the skill level or
16 competencies that Kvaerner expects out of the gate
17 in terms of hiring, I think they are looking at the
18 skill levels that existed at the work force that was
19 there.

20 Which are, people have to be
21 literate, people have to have basic mathematical
22 skills, and hopefully have had some experience in
23 shipbuilding or the industry, or whatever.

24 COUNCILWOMAN MILLER: They have to
25 base the curriculum on some education level. And I

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2 am just trying to find out how people can get in to
3 train.

4 I mean, there is no point in sending
5 a third grade person there. But do you send a
6 person there at tenth? Do you test people to
7 tenth? You have to start somewhere.

8 MR. HANKOWSKY: They wouldn't
9 necessarily, for example, have to have had a high
10 school diploma. Let's just take that as a base.

11 But to offset that, if you don't have
12 a high school diploma, you probably would have had
13 to have had some experience in the business, being a
14 welder or something like that.

15 And that the curriculum would, in
16 fact, for those that did not have a high school
17 degree, at a certain point, once you got through the
18 training, would have actually earned a GED.

19 So that, again, by the end, there
20 will be a presumption that everybody will have
21 equivalently done that.

22 But I think it is fair to say that if
23 somebody has a fifth grade education, and doesn't
24 have a particularly high level -- because you are
25 going to be needing to read, perhaps, computer

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2 manuals or, you know, manuals on how to run a
3 robotic welding machine.

4 There is going to have to be a base
5 level.

6 COUNCILWOMAN MILLER: Well, maybe
7 Community College or the Private Industry Council
8 can get more information on that?

9 MR. HANKOWSKY: Oh, yes.
10 They are in the process of working
11 with Kvaerner on, in fact, developing the
12 curriculum.

13 COUNCILWOMAN MILLER: That's the kind
14 of information I would like to get.

15 Thank you, Madam Chair.

16 (Councilwoman Verna assumes the
17 Chair.)

18 COUNCILWOMAN VERNA: You are welcome.
19 The Chair recognizes Councilman
20 Rizzo.

21 COUNCILMAN RIZZO: Thank you, Madam
22 Chair.

23 Mr. Hankowsky, could you tell me,
24 please, are there any deals already struck with
25 consultants, security firms?

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2 I guess the question, not to beat
3 around the bush, who is making the money here?

4 Are there already some deals cut and
5 done for various supplies, like consulting fees,
6 insurance, things like that?

7 Is there anything like that already
8 waiting to go tomorrow, after this deal is done?

9 MR. HANKOWSKY: Not that I am aware
10 of.

11 I mean, yesterday I was asked a
12 question -- I forget which Councilperson asked me --
13 but someone asked very specifically who was already
14 working on the deal in terms of third parties. And
15 Councilman Nutter is indicating he had asked the
16 question.

17 And I went through the list of the
18 law firms being used by ourselves, by the state, by
19 Kvaerner.

20 The only other consultant that's been
21 hired, other than law firms, has been an
22 environmental consultant, working with Kvaerner to
23 read the technical reports, and they are actually
24 doing some testing down there.

25 Other than that, nobody has been

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2 signed, no commitments have been made. And from
3 Kvaerner's perspective, they expect to go through a
4 process of, who is really good, who is competent,
5 who is out there, who is available.

6 There are no pre-arranged --

7 COUNCILMAN RIZZO: So most of the
8 negotiations for insurance, for security, for all of
9 the services required to make this operation
10 functional will be done by Kvaerner, and not the
11 city, not PIDC?

12 When eventually it is operational and
13 there is security, who will decide who the
14 contractor is?

15 MR. HANKOWSKY: Well, maybe I am not
16 being responsive because maybe I am confused by the
17 question.

18 In terms of the 114-acre tract that
19 goes to Kvaerner, that piece of property, what
20 happens inside that fence, the construction of the
21 shipyard, those are Kvaerner's decisions.

22 In terms of the whole Navy base -- I
23 am going back to Councilman Nutter's questions about
24 the operations -- in terms of picking the security
25 firm for the Navy base or who is going to do the

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2 landscaping, or whatever, those are decisions that
3 are done by PAID, by PIDC and PAID, since that's our
4 responsibility to do it.

5 So, for example, if that's the
6 question, if it is the whole complex, I mean, today
7 we use Cushman Wakefield to provide tenant services
8 and caretaker services.

9 We went through an RFP process. The
10 Navy had to participate in that because, in fact,
11 the Navy is footing some of the bill.

12 We short-listed people, went through
13 an interview process, they subcontract out.

14 There is an MBE/WBE component to
15 their package, as an example. And that might be an
16 example for Councilman Nutter, where we didn't think
17 about it after the fact.

18 There is an MBE/WBE component for our
19 caretaker operations, when we executed it. And we
20 didn't have to come here and ask about it.

21 COUNCILMAN RIZZO: In the deal, just
22 for, I guess, discussion sake, will the base look
23 like the base that we presently have?

24 In other words, when the Kvaerner
25 people come to work in the morning, the employees,

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2 the union people, will they still enter the same
3 gates and go, or will Kvaerner have a separate
4 operation that's totally different than what we see
5 now?

6 MR. HANKOWSKY: Well, one thing is,
7 we, having nothing to do with Kvaerner, we plan to
8 change the front door.

9 We have funding from the federal
10 government to build a new road at the front gate, at
11 the front gate. We will probably change the gate
12 experience.

13 It is because it was a military
14 installation, it had certain standards. If you have
15 been there, and if you don't have a pass, you know
16 you had to go into a building, you had to fill out a
17 bunch of stuff, bring your registration for your
18 car. We plan to have a more user-friendly front
19 door.

20 But it will be our front door; it
21 won't be Kvaerner's front door.

22 There is a back gate at 26th Street,
23 currently closed just because we don't have enough
24 volume to justify staffing it. That gate will
25 probably be reopened because of the Kvaerner deal,

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2 renting the shipyard for a buck. But they must pay
3 their share of the common area maintenance charges.
4 We are not subsidizing their sharing of that cost.

5 We anticipate that in Year One, and
6 it is based on our current budget, is about 350 to
7 360 thousand dollars that they are going to have to
8 pay.

9 And they will pay whatever the actual
10 increase in costs are over the term of the lease.

11 They pay their fair share of plowing
12 the snow and --

13 COUNCILMAN RIZZO: Lighting?

14 MR. HANKOWSKY: Yes.

15 COUNCILMAN RIZZO: They will pick up
16 that, too?

17 MR. HANKOWSKY: Yes.

18 COUNCILMAN RIZZO: Thank you.

19 Thank you, Madam Chair.

20 COUNCILWOMAN VERNA: You are
21 welcome.

22 The Chair recognizes Councilman
23 Cohen.

24 Councilman Cohen, do you wish to be
25 recognized?

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2 COUNCILMAN COHEN: In I think it is
3 today's Daily News -- just tell me I have been
4 dreaming and it doesn't exist -- there is a story
5 that Governor Ridge was asked about some think tank
6 in Harrisburg criticizing the state for being
7 inaccurate as to the amount of money the state is
8 investing.

9 There was some think tank in
10 Harrisburg that said the figure is not 182 million
11 by the state, but it is, in fact, 277 million.
12 Because the state is going to issue bonds, and the
13 state is going to be paying the interest.

14 And the Governor sort of waived that
15 away as being insignificant, or of no consequence.
16 He didn't dispute the figures. In fact, my
17 impression is, he indicated that it is probably
18 right. But what's the significance?

19 Well, I just have a little concern
20 about the whole transaction. If \$95 million is not
21 significant, how many other areas are we being given
22 the wrong information as to cost? Or are we going
23 to find out as we go along each step of the way?

24 Or are we suddenly going to find out
25 that there was certain information that the not made

1 RESOLUTION 970801

2 available to us?

3 MR. HANKOWSKY: Well, I think from
4 the standpoint of information made available to this
5 City Council, what you have is a fair and accurate
6 representation.

7 COUNCILMAN COHEN: But you have never
8 said, I never heard you say, credit the Governor
9 with and the state with \$277 million.

10 MR. HANKOWSKY: If I could have a
11 second to do it, I would be happy to.

12 It is very clear in the documents we
13 provided that the Commonwealth, through the Capital
14 Budget, is providing their contribution.

15 And in the same way when the city
16 provides a million dollars in the Capital Budget for
17 a recreation center, it is really not a million
18 dollars. It is a million dollars, plus whatever the
19 interest is that we are going to pay over the life
20 of the bonds that we are going to issue to make that
21 contribution.

22 And it is generally not presented
23 with that, you know, anywhere where we ever had to
24 do it. But it is clear that, yes, it is a bond
25 issue.

1 RESOLUTION 970801

2 COUNCILMAN COHEN: But when we are
3 talking benefits, we spread them over untold number
4 of years, how we are going to benefit.

5 So you mean we only, when we talk of
6 the alleged good things that are going to happen, we
7 used a lot of years, but we ignore that method when
8 we talk about expenses?

9 You know, I just think there is a
10 serious question that is being raised. I was
11 stunned to see that article.

12 MR. HANKOWSKY: But the fact is --

13 COUNCILMAN COHEN: Because I am just
14 concerned, is that the kind of loose mathematics?
15 Or is it that the project has holes in it which we
16 are trying to hide by indicating what a great
17 bargain we are getting, compared to what the German
18 government had to pay Kvaerner to get them to work
19 on something?

20 I suspect that probably we are paying
21 much more than the German government. That's 95
22 million in one fell swoop.

23 MR. HANKOWSKY: Well, I don't know
24 whether we are paying more than the German
25 government.

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2 But, once again, just to the specific
3 question of, yes, the Commonwealth's contribution is
4 a capital contribution. It will be funded by a bond
5 issue. And, yes, there are interest expenses to the
6 bond issue.

7 COUNCILMAN COHEN: And the state will
8 pay the interest expenses to the bond issue?

9 MR. HANKOWSKY: Yes.

10 COUNCILMAN COHEN: Including interest
11 payments?

12 MR. HANKOWSKY: Yes.

13 COUNCILMAN COHEN: Over, I think it
14 is over, a 20-year period.

15 MR. HANKOWSKY: I think they do
16 20-year bonds.

17 COUNCILMAN COHEN: I will just say
18 that it was a very troublesome fact that came out
19 this late in the game.

20 In the Project Summary, who pays, on
21 Page 9, the interest rate on the first paragraph, on
22 the PO loan?

23 MR. HANKOWSKY: Kvaerner.

24 COUNCILMAN COHEN: Kvaerner?

25 MR. HANKOWSKY: Correct.

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2 COUNCILMAN COHEN: Same question with
3 respect to Paragraph 2.

4 MR. HANKOWSKY: On the HUD 108 loan?

5 COUNCILMAN COHEN: Yes.

6 MR. HANKOWSKY: Kvaerner.

7 COUNCILMAN COHEN: And on the TIF
8 note?

9 MR. HANKOWSKY: The taxes; the tax
10 stream.

11 COUNCILMAN COHEN: Who will pay for
12 that?

13 MR. HANKOWSKY: The tax stream.

14 The TIF revenues pay the TIF note
15 off, principal and interest.

16 COUNCILMAN COHEN: Well, I don't
17 understand how that will work.

18 MR. HANKOWSKY: It is the way any TIF
19 works.

20 We would borrow the money, we put it
21 into the transaction, we then owe it back. We take
22 the taxes, and we pay the annual debt service on the
23 borrowing, principal and interest, using the tax
24 stream.

25 COUNCILMAN COHEN: They are going to

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2 be paying the full taxes?

3 MR. HANKOWSKY: Yes. Kvaerner, yes.

4 COUNCILMAN COHEN: Kvaerner will pay

5 the full taxes?

6 MR. HANKOWSKY: Yes.

7 COUNCILMAN COHEN: And that portion

8 that is covered by TIF?

9 MR. HANKOWSKY: Paid the debt service

10 on the TIF note.

11 COUNCILMAN COHEN: Pays the debt

12 service on the TIF?

13 MR. HANKOWSKY: Yes.

14 COUNCILMAN COHEN: So that the 30

15 million will be up front?

16 MR. HANKOWSKY: Yes.

17 COUNCILMAN COHEN: So that's the way

18 in which the city makes that contribution?

19 MR. HANKOWSKY: Correct.

20 COUNCILMAN COHEN: Which the city

21 doesn't use any of its own money?

22 MR. HANKOWSKY: Correct.

23 If it isn't there by the TIF revenue,

24 we don't obligate the General Fund. There is no

25 obligation to the General Fund.

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2 COUNCILMAN COHEN: There is no bond
3 issue, or anything?

4 MR. HANKOWSKY: No. No. Right.

5 COUNCILMAN COHEN: Now, what's the
6 significance on Table 2, in the Project Summary?
7 What's the significance of the figure Total Tax
8 Increment Revenue, 61 million, 100-odd thousand
9 dollars?

10 MR. HANKOWSKY: That's the summation
11 over the 20-year life of the TIF, of the taxes being
12 TIFed in the fund for the project. And it
13 represents the cost of principal and interest.

14 COUNCILMAN COHEN: Well, can you
15 compare for me that \$61 million figure with that \$30
16 million figure?

17 MR. HANKOWSKY: Yes. It is the exact
18 same scenario as when you get a mortgage on your
19 home.

20 You get a \$100,000 mortgage, and you
21 say, "I have \$100,000 mortgage on my home." Every
22 month you make mortgage payments that are principal
23 and interest.

24 The actual cost of the mortgage for a
25 20-year mortgage might be 200,000, 250,000 dollars,

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2 modernized, state-of-the-art shipyard will have a
3 value in the marketplace.

4 COUNCILMAN COHEN: Well, I am
5 concerned a bit about that.

6 Because if it does have value -- say
7 you are right, say the most optimistic, rosy views
8 turn out to be right, or even turn out to be an
9 understatement.

10 A successful shipyard 99 years from
11 now may be worth many billions of dollars,
12 particularly with the impact of inflation.

13 Yet I understand part of the deal is
14 that Kvaerner can have that for a dollar at the end
15 of 99 years. Now, we won't be around to see what
16 happens to that.

17 But was that put in? Did we offer
18 it, or was that requested by Kvaerner?

19 MR. HANKOWSKY: It was requested
20 by -- as in the flow of any long-term, two-year
21 negotiation. But it was requested by Kvaerner.

22 Understand that at the end of 99
23 years, if it is worth billions of dollars, it is
24 going to be worth billions of dollars because they
25 will have maintained it, they will have continued to

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2 invest in it, they would have kept it
3 state-of-the-art, they will have operated it as a
4 profitable undertaking, and they would have paid 99
5 years of taxes and employed for 99 years a group of
6 people who had worked there.

7 COUNCILMAN COHEN: But currently its
8 value -- I was a bit confused by statements. At one
9 point it is given a value of \$450,000, or that
10 approximate figure, somewhere around there.

11 And then later the same figure is
12 referred to as having changed in value to 4 and a
13 half million dollars.

14 MR. HANKOWSKY: No. The entire Navy
15 base, the 1,000 acres, is carrying an assessed value
16 via the Board of Revision of Taxes of approximately
17 4 and a half million.

18 And if you prorate that to the 114
19 acres, and in discussion for the Kvaerner tract,
20 that's approximately -- obviously it is about 10
21 percent. So it is approximately a \$450,000 assessed
22 value.

23 COUNCILMAN COHEN: PIDC is now, as
24 government agencies go, a pretty venerable and
25 ancient institution, with many years of experience.

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2 MR. HANKOWSKY: We will be 40 years
3 old next year.

4 COUNCILMAN COHEN: Yes. Somehow or
5 other you have maintained the same youthful
6 appearance as Councilman DiCicco, even after many
7 years of working in that agency.

8 Is there any study with respect to
9 the number of jobs that have, in fact, been produced
10 by the -- by this time billions of dollars in loans
11 for various economic development projects?

12 Did you have any hard nose --

13 MR. HANKOWSKY: Yes. We have.

14 COUNCILMAN COHEN: Did you have any
15 material, for example, that, in fact, during the
16 whole lifetime, 5,000 jobs might be 1 percent of a
17 number we have been promised over the years?

18 But would you have any material that
19 could do that?

20 MR. HANKOWSKY: Yes.

21 COUNCILMAN COHEN: Could that be made
22 available?

23 MR. HANKOWSKY: Yes.

24 COUNCILMAN COHEN: Say within a week
25 or so?

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2 MR. HANKOWSKY: Yes.

3 COUNCILMAN COHEN: I would like to
4 have that.

5 MR. HANKOWSKY: Sure.

6 COUNCILMAN COHEN: Thank you, Madam
7 Chair.

8 COUNCILWOMAN VERNA: The Chair
9 recognizes Councilman Mariano.

10 COUNCILMAN MARIANO: Thank you, Madam
11 Chairwoman.

12 Mr. Hankowsky, we might have went
13 over this before, but bear with me here. Unions.
14 Buildings trades build the buildings.

15 MR. HANKOWSKY: Yes.

16 COUNCILMAN MARIANO: People that are
17 going to get the jobs that work for Kvaerner will be
18 from the metal trades; correct? Or they get to join
19 the metal trades, the ones that aren't already in
20 the metal trades?

21 MR. HANKOWSKY: As I indicated
22 earlier, from a pure labor management/labor
23 relations standpoint, Kvaerner has not entered into
24 an agreement with the metal trades.

25 I think there is a very good --

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2 COUNCILMAN MARIANO: They are meeting
3 today or yesterday?

4 MR. HANKOWSKY: Right. But they
5 haven't actually enacted it, I want you to
6 understand.

7 COUNCILMAN MARIANO: I understand.
8 With that caveat, the metal trades
9 are the people that worked at the Navy Yard. They
10 are going to group all the trades together?

11 MR. HANKOWSKY: I am sorry?

12 COUNCILMAN MARIANO: The former Navy
13 Yard people are the metal trades.

14 MR. HANKOWSKY: Yes.

15 COUNCILMAN MARIANO: Now, when they
16 build new buildings, if they build any other
17 buildings besides what they are building now, they
18 will be built by the building trades?

19 COUNCILMAN MARIANO: Yes.

20 MR. HANKOWSKY: And the people in the
21 building trades are people that live in
22 Philadelphia, the City of Philadelphia and the
23 region?

24 MR. HANKOWSKY: Yes.

25 COUNCILMAN MARIANO: All races,

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2 thousand?

3 MR. HANKOWSKY: Right.

4 COUNCILMAN MARIANO: Any other people
5 that get hired -- Councilman Rizzo talked about
6 security people, service people -- they will be
7 picked out of, I mean...

8 MR. HANKOWSKY: Well, I was
9 responding to that in terms of operation of the
10 whole base.

11 But, yes, Kvaerner might contract --
12 the 953 people are the people building ships.

13 COUNCILMAN MARIANO: Shipbuilders.

14 MR. HANKOWSKY: There might be some
15 other jobs.

16 I mean, I will give a simple
17 example. There are offices, and they might hire a
18 janitorial firm to come in every evening and clean
19 the offices. I mean, that's not in that number.
20 That's part of the contracting.

21 Or the person that's going to man the
22 security gate; that's another number.

23 COUNCILMAN MARIANO: I have a friend
24 that worked at the Navy Yard, he has been out of
25 work for four years. And he was a shipbuilder and

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2 pipe fitter.

3 Now, he is not going to be able to do
4 this work there, but he has some background in
5 shipbuilding.

6 So he was going to be trained by
7 Kvaerner on this robotic welding. And you heard the
8 electricians' business President, Harry Foy, I think
9 testified yesterday, that the apprentice program up
10 there -- and I know that they have been doing the
11 metric system, they have been going over robotic
12 welding, so it is available.

13 Councilwoman Miller asked if
14 community college might be offering something along
15 that line.

16 Now, our concern here is -- and it is
17 easy for me. Like I said, eight months ago I was
18 ready to go with this deal.

19 Because if you come to town and say
20 to me you are going to put jobs on the table, and it
21 is not going to cost the city anything, that's
22 okay.

23 Now, other people here have some
24 problems, and I respect that. But we need to get
25 this thing going.

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2 Back to the Community College thing
3 with Councilwoman Miller.

4 We did have some welding classes
5 somewhere in Philadelphia, at Community College, per
6 se. And they will upgrade, Community College would
7 be smart to upgrade, their welding facilities.

8 MR. HANKOWSKY: We are running
9 programs down at the Navy base today for companies
10 like Zeno Technic, and others, who are doing
11 specific -- went to Community College for specific
12 training, for a specific job, with a specific
13 company.

14 COUNCILMAN MARIANO: And I don't know
15 if I asked you in caucus -- it was in caucus, I
16 guess -- but I asked you, after we get through the
17 pool of workers and those jobs are full -- like I
18 have a group in my district called Congresso,
19 Congresso of Latino Affairs.

20 And what Congresso does is, they
21 supply different services. But one of the services
22 they can supply are people from North Philadelphia,
23 who are my constituencies, that might not get a
24 chance to get some of these jobs, we would look at
25 groups like that.

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2 I am sure every District
3 Councilperson has a group in their neighborhood.
4 They will get a chance?

5 MR. HANKOWSKY: Yes.

6 COUNCILMAN MARIANO: And then --

7 MR. HANKOWSKY: The required pools
8 that exist today, because of layoffs, yes.

9 COUNCILMAN MARIANO: This might be
10 out there. But say Terry Gillen and I decide to
11 open a machine shop down there, her and I go into
12 business. We are going to make diesel engines,
13 Terry and Rick's Diesel Engines -- we can call it
14 Terry's Diesel Engines -- and we get to hire
15 people.

16 We can hire those people from
17 Philadelphia?

18 MR. HANKOWSKY: Oh, absolutely.

19 COUNCILMAN MARIANO: We can hire
20 people, hopefully, from Congresso, or from
21 Councilwoman Miller or Councilman Nutter's district,
22 who they have groups that do this sort of thing?

23 MR. HANKOWSKY: Yes.

24 COUNCILMAN MARIANO: That's going to
25 be there. And that's on the record. So if you lie

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2 to us, we come to get you later.

3 MR. HANKOWSKY: And you know where I
4 live.

5 COUNCILMAN MARIANO: And your new
6 hair style is not worth anything. All right?

7 Thank you.

8 COUNCILWOMAN VERNA: Thank you.
9 Councilman Cohen.

10 COUNCILMAN COHEN: One other
11 question, following up the question I raised with
12 Mr. Hankowsky, with you, sir, before.

13 In the event of a default by
14 Kvaerner, and say we go through the various
15 processes that you say are currently available when
16 anybody is in default, who pays back, say, the HUD
17 loans? Does HUD lose the money?

18 Say nothing works, and you can't sell
19 the property, you can't recover anything. Take my
20 dismal view of what might happen.

21 Is there any responsibility whatever
22 by the city to make payments if Kvaerner fails to?

23 MR. HANKOWSKY: Well, there is a
24 theoretical possibility.

25 COUNCILMAN COHEN: What do you mean

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2 MR. HANKOWSKY: All the HUD 108 loans
3 that are outstanding.

4 COUNCILMAN COHEN: But, see, the
5 reason lawyers are cynics is, if everything goes
6 well, you never have to worry whether there was an
7 agreement or not. Everybody is happy. There is
8 prosperity, you share it.

9 The only time an agreement becomes
10 important, and its contents and the small print
11 become important, is if there are problems.

12 If there are no problems, you forget
13 the agreement. But if there are problems, is when
14 people can get hurt.

15 And that's the reason the small print
16 worries lawyers, because that's when the agreement
17 becomes important.

18 I just think it is important -- it
19 may well be a realistic thing that you have no
20 choice. It may well be that you choose to use the
21 HUD loan 108 because it may be the best way of
22 getting the necessary money. And then, in which
23 case, you may have to accept the responsibility.

24 But I just think, in fairness, every
25 aspect ought to be told about these loans. So that

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2 if anything ever happened at any time in the future,
3 you are not caught in the embarrassing position of
4 not having made available all the information.

5 MR. HANKOWSKY: Right.

6 COUNCILMAN COHEN: I am deeply
7 concerned about that.

8 And I think the Mayor is a very
9 effective salesperson. I have never seen anybody
10 that -- he could sell the Brooklyn Bridge. I never
11 found anybody else that I thought could sell the
12 Brooklyn Bridge to somebody just off the boat, as we
13 used to say. But I think the Mayor probably could.

14 But to do it without giving all the
15 information can, you know, cause a bounce-back.

16 Thank you very much.

17 MR. HANKOWSKY: Thank you.

18 COUNCILMAN COHEN: You know, you were
19 honest. All of you were honest in the Convention
20 Center, when you said that the city was going to
21 have to each year make up any deficit that existed.
22 We were the payers of last resort. You said that
23 openly, you know.

24 And the Council considered that, and
25 decided that was a risk worth taking, for the gain

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2 that may come from it.

3 I think it would be better if we got
4 to be clean on every aspect of this. Because if you
5 are not, then we worry about how many hidden traps
6 are there that may bounce up in our faces at some
7 point.

8 Thank you, Madam Chair.

9 COUNCILWOMAN VERNA: You are
10 welcome.

11 Are there any other questions from
12 members of the committee?

13 The committee will stand in recess
14 for ten minutes.

15 MR. HANKOWSKY: Madam Chair, do you
16 need me anymore?

17 COUNCILWOMAN VERNA: I beg your
18 pardon?

19 MR. HANKOWSKY: I should hang
20 around?

21 COUNCILWOMAN VERNA: Yes, please.

22 MR. HANKOWSKY: That's fine.

23 (Short recess.)

24 (Council President Street resumes the
25 Chair.)

1 RESOLUTION 970801

2 or most of our beloved media, who are with us
3 waiting for this historic vote, to be able to go
4 about their business.

5 And so, out of consideration for
6 them, I would recommend that we do that.

7 Is there any member of Council that
8 has any concern about the recommended procedure that
9 we take? Is that all right?

10 We will consider in a Public Meeting
11 the Kvaerner resolution, recess the Council
12 Committee of the Whole, have a caucus, come back,
13 convene the Council session, do our presentations,
14 consider the Kvaerner resolution, recess the Council
15 session, reconvene the Council Committee of the
16 Whole, consider the PGW/QST resolution in the
17 Committee of the Whole, then report it out to the
18 Council session, complete the Council session and
19 the QST resolution, and go home.

20 Is there anybody who misunderstands
21 that, of the Councilmembers?

22 I could do that in my sleep.

23 Councilman Nutter.

24 COUNCILMAN NUTTER: Thank you,
25 Mr. President. Just a timing question.

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2 What time do you think we will
3 actually start the Council session?

4 PRESIDENT STREET: I think we will
5 start the Council session in about 30 minutes.

6 COUNCILMAN NUTTER: Okay.

7 PRESIDENT STREET: I think by the
8 time we consider, which will only take a minute, but
9 we consider the Kvaerner resolution, convene a
10 caucus, and get back here for the Council session,
11 it could be 20, 30 minutes.

12 Any question about it? Does that
13 meet with the approval of the body?

14 The Chair recognizes Councilwoman
15 Fernandez.

16 COUNCILWOMAN FERNANDEZ: Just one
17 other comment.

18 I think, at least on other Thursdays,
19 there is often a lot of time lost between caucus and
20 coming back from the Public Meeting.

21 And I think, I mean, I would find it
22 very helpful if that did move. Because often a half
23 hour goes by in between.

24 PRESIDENT STREET: We will do the
25 best we can. As soon as we get a quorum, we will

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2 proceed.

3 COUNCILWOMAN FERNANDEZ: Thank you.

4 PRESIDENT STREET: If there are no
5 further questions or comments, then this Committee
6 of the Whole will stand in recess on Resolution No.
7 970806.

8 We will end our Public Hearing on
9 Bill No. 970801.

10 (Public Hearing stands in recess.)

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1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 PUBLIC MEETING
4 of the
5 COMMITTEE OF THE WHOLE
6 - - -
7 Thursday, December 11 1997
8 - - -
9 Public Meeting conducted by the Committee
10 of the Whole, held in Room 400, City Hall,
11 Philadelphia, Pennsylvania, on the above date, to
12 consider action on the following:
13 RESOLUTION 970801
14 - - -
15 PRESENT:
16 COUNCILMAN JOHN F. STREET, Chair
17 COUNCILWOMAN ANNA C. VERNA, Vice-Chair
18 COUNCILWOMAN HAPPY FERNANDEZ
19 COUNCILMAN JAMES F. KENNEY
20 COUNCILMAN W. THACHER LONGSTRETH
21 COUNCILWOMAN AUGUSTA A. CLARK
22 COUNCILMAN DAVID COHEN
23 COUNCILMAN FRANK RIZZO
24 COUNCILMAN ANGEL ORTIZ
25 COUNCILMAN FRANK DiCICCO
COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILMAN MICHAEL A. NUTTER
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILWOMAN MARIAN B. TASCIO
COUNCILMAN BRIAN J. O'NEILL
- - -

1 PUBLIC MEETING

2 PRESIDENT STREET: We will now go
3 into a Public Meeting on Resolution No. 970801.

4 There was an amendment that was
5 offered by the Mayor to that resolution. Does every
6 member of Council have that amendment?

7 Does any member of Council remember
8 that amendment? It was made available.

9 This is a resolution, an amendment to
10 the resolution, on Page 5 that reads as follows,
11 delete "to execute an MBE/WBE program for the
12 project similar to other programs for economic
13 development projects in Philadelphia." That
14 language will be out.

15 The following language will be
16 substituted for that language, "to implement an
17 MBE/WBE program for the project, which will include
18 good-faith goals for construction, subcontracting
19 and construction employment similar to those in the
20 MBE/WBE plan for the CoreStates Center, and
21 good-faith efforts to include MBE/WBE firms in the
22 operation of the shipyard and the
23 supplier/subcontractor infrastructure."

24 That's the new language that will be
25 included in the exhibit.

1 PUBLIC MEETING

2 Is there any question about that?

3 The Chair recognizes Councilwoman
4 Verna for a motion that the amendment be adopted.

5 The Chair recognizes Councilwoman
6 Tasco.

7 COUNCILWOMAN TASCO: Could we add to
8 the amendment "design"?

9 PRESIDENT STREET: It is my
10 understanding that design is included.

11 I talked to Miss Hamilton. And, I
12 mean, I think it is included.

13 I don't have any reservations about
14 doing that.

15 COUNCILWOMAN TASCO: Design,
16 construction; design and construction.

17 PRESIDENT STREET: So that, okay, I
18 think if we insert the word "design" between the
19 words "goals" and "for" in the second line of the
20 new language, that might do it for us.

21 So it would read "to implement an
22 MBE/WBE program for the project, which will include
23 good-faith goals for design, for construction
24 subcontracting and construction employment similar
25 to those," et cetera, et cetera, et cetera.

1 PUBLIC MEETING

2 Can we insert the word "design" in
3 there by agreement?

4 Is there any opposition to that?

5 Then it is so ordered.

6 The Chair recognizes Councilwoman
7 Verna for a motion.

8 COUNCILWOMAN VERNA: Thank you,
9 Mr. Chairman. I move that the amendments as you
10 have read be adopted.

11 (Duly seconded.)

12 PRESIDENT STREET: All in favor let
13 it be known by saying aye.

14 Those opposed say nay.

15 The amendment is adopted.

16 The Chair recognizes Councilwoman
17 Verna for a motion on Resolution No. 970801, as
18 amended.

19 COUNCILWOMAN VERNA: Mr. Chairman, I
20 move that Bill No. 970801 be reported out of
21 committee with a favorable recommendation, as
22 amended.

23 (Duly seconded.)

24 PRESIDENT STREET: All in favor let
25 it be known by saying aye.

1 PUBLIC MEETING

2 Those opposed say nay.

3 The ayes have it.

4 The Chair recognizes Councilman

5 Nutter.

6 COUNCILMAN NUTTER: Thank you,

7 Mr. President. I raise a question.

8 On the resolution document that we
9 received as amended, the two sheets, my only
10 question, Mr. President, is, in the original
11 Resolution, 970801, introduced December 4, 1997,
12 there is a "whereas" that was dropped, in a
13 comparison between the pink bill and the amended
14 version in front of us.

15 PRESIDENT STREET: Council will stand
16 at ease.

17 Councilman Nutter please approach the
18 Chair.

19 Can I get someone to get Mr. Ericson
20 and ask him to approach the Chair.

21 (Council stands at ease.)

22 PRESIDENT STREET: May I have your
23 attention, please.

24 Upon further consideration, it has
25 been pointed out to us by Mr. Ericson that that

1 PUBLIC MEETING

2 "whereas" was intentionally dropped because there
3 were some questions about whether or not the
4 contents of that resolution was accurate, in light
5 of the bill that we originally adopted.

6 And, therefore, that "whereas" was
7 dropped. I couldn't remember the reason.

8 Now, does everyone have in front of
9 him or her Resolution No. 970801 as amended?

10 I am going to make sure there was no
11 question here.

12 Let me have someone make some copies
13 of Resolution 970801, as amended. I would like to
14 distribute that to the members of Council. I want
15 to make sure we are together.

16 The original resolution was presented
17 to this Council. There are a series of changes that
18 were made in it. And that amended resolution was
19 made available to members of Council, and it was
20 circulated to everybody. And I know we had it,
21 because the Mayor was here with it.

22 I want to make sure that everybody
23 has the amended resolution that we have amended.

24 (Short recess.)

25 PRESIDENT STREET: Order, please.

1 PUBLIC MEETING

2 May I have your attention, please.

3 Does everyone now have a copy of the
4 Resolution No. 970801, as amended?

5 I need to make it clear that the
6 amendment, the MBE/WBE amendment that we just agreed
7 to amend and adopt, is to the Project Summary. It
8 is not an amendment to a resolution; it is to the
9 Project Summary, which you have.

10 Is there anyone who has any questions
11 about where we are?

12 If not, the Chair recognizes
13 Councilwoman Verna for a motion.

14 COUNCILWOMAN VERNA: Thank you,
15 Mr. Chairman.

16 I move that the amendments as
17 submitted to us regarding Resolution No. 970801 be
18 adopted.

19 (Duly seconded.)

20 PRESIDENT STREET: All in favor let
21 it be known by saying aye.

22 Those opposed say nay.

23 The Chair recognizes Councilwoman
24 Verna for a motion.

25 COUNCILWOMAN VERNA: I move that

1 PUBLIC MEETING

2 Resolution No. 970801 be reported out of committee
3 with a favorable recommendation, as amended.

4 (Duly seconded.)

5 PRESIDENT STREET: All in favor let
6 it be known by saying aye.

7 Those opposed say nay.

8 The resolution is adopted.

9 This is a resolution for which a
10 suspension of the rules is not necessary.

11 At this time the Council Committee of
12 the Whole will stand in recess.

13 We will now convene a caucus. We
14 would appreciate it very much if you will go right
15 directly to the Caucus Room.

16 We will have our caucus, come back,
17 convene the Council session, consider the Kvaerner
18 resolution, have our preliminaries, and then come
19 back into the session of the Council Committee of
20 the Whole, and then go back into Council session.

21 Thank you.

22 (Public Meeting stands in recess.)

23 - - -

24

25

1 PUBLIC MEETING

2 PRESIDENT STREET: If I could have
3 Councilmembers' attention.

4 Those of us who are here, I would
5 appreciate it if all Councilmembers would come to
6 the chamber. We would like to reconvene the Council
7 Committee of the Whole.

8 We have somewhat less than a quorum
9 at this moment. I think, Councilmembers, if you
10 were to please come to the chamber. I would
11 appreciate it very much if Councilmembers would come
12 to the chamber.

13 If we can't get a quorum today, what
14 we will have to do is recess this hearing until
15 tomorrow morning at 9 o'clock, and I know nobody
16 wants to do that.

17 I would appreciate it if
18 Councilmembers would come to the chamber. We would
19 appreciate it if all Councilmembers would please
20 come to the chamber.

21 At this time I would like to announce
22 that the Council session that's currently in recess
23 will stand in recess until 1:30.

24 (Short recess.)

25 PRESIDENT STREET: We would like to

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2 understanding, is inconsistent with the ordinance
3 that we passed because the Venture Agreement does
4 not comply with those things that we requested be in
5 the Venture Agreement, in the agreement that was
6 approved.

7 So that what we are now getting ready
8 to do is consider a set of changes to the Venture
9 Agreement which modify what it is that has been
10 agreed to.

11 Is that correct?

12 MS. STEPHANIE FRANKLIN-SUBER: Yes.

13 PRESIDENT STREET: And the
14 black-lined changes in the Venture Agreement, are
15 they in accordance with the discussions that you and
16 I and Councilwoman Tasco had earlier today?

17 MS. FRANKLIN-SUBER: Yes.

18 PRESIDENT STREET: Now, what I would
19 like to do is make available to the members of
20 Council the proposed changes to the Venture
21 Agreement that is attached as Exhibit A to the
22 resolution that was introduced.

23 MS. FRANKLIN-SUBER: Council
24 President, if I might provide a little bit more
25 clarity on what's being distributed to members of

1 RESOLUTION 970806

2 Council.

3 PRESIDENT STREET: I want to make
4 sure they all have it.

5 The Chair recognizes the City
6 Solicitor.

7 MS. FRANKLIN-SUBER: Thank you,
8 Mr. President.

9 The resolution had attached to it an
10 Exhibit A, which consists of a form of amendment to
11 the Venture Agreement.

12 The Venture Agreement was titled
13 Exhibit A to the ordinance that had been introduced
14 previously.

15 What members of Council currently
16 have for their consideration are black-lined changes
17 so that you can see how the proposed amendments fit
18 into the text of the Venture Agreement, as well as a
19 form of amendment as a separate document, which
20 incorporates those changes.

21 PRESIDENT STREET: Could you repeat
22 that.

23 MS. FRANKLIN-SUBER: The Venture
24 Agreement that Council originally approved by
25 ordinance and by resolution is being amended. It is

1 RESOLUTION 970806

2 being amended by a separate instrument called an
3 amendment.

4 You have that form of amendment, and
5 then you also have a document called black-lined
6 changes, which, for your convenience, show how the
7 changes fit into the actual text of the Venture
8 Agreement.

9 PRESIDENT STREET: The black-lined
10 changes, are these amendments to the proposed
11 amendments?

12 MS. FRANKLIN-SUBER: No; they are
13 just amendments to the Venture Agreement. And you
14 see them in two different documents.

15 PRESIDENT STREET: Is Exhibit A the
16 Venture Agreement as authorized by City Council?

17 MS. FRANKLIN-SUBER: Exhibit A to the
18 resolution is the amendment document.

19 PRESIDENT STREET: So we are doing
20 amendments to the proposed amendments?

21 MS. FRANKLIN-SUBER: You are doing
22 amendments to the Venture Agreement.

23 PRESIDENT STREET: Then I ask you, is
24 Exhibit A the Venture Agreement that was entered
25 into between QST and PGW?

1 RESOLUTION 970806

2 MS. FRANKLIN-SUBER: No. Exhibit

3 A --

4 PRESIDENT STREET: So it is an

5 amendment to the Venture Agreement?

6 MS. FRANKLIN-SUBER: Correct.

7 PRESIDENT STREET: So these proposed

8 changes are amendments to the proposed amendments to

9 the Venture Agreement?

10 MS. FRANKLIN-SUBER: The proposed

11 changes are amendments to the Venture Agreement;

12 they are not amendments to the amendments.

13 PRESIDENT STREET: Wait a minute.

14 See, that's why I wanted everybody here for this

15 discussion. Because I know that if, after our

16 discussions, I am not clear on this -- and everybody

17 has a right to be unclear.

18 What we have in front of us is not

19 the Venture Agreement that we authorized, is that

20 correct, as Exhibit A to the resolution that was

21 introduced?

22 MS. FRANKLIN-SUBER: Correct.

23 PRESIDENT STREET: All right. That's

24 not the Venture Agreement?

25 These, Exhibit A, are the changes

1 RESOLUTION 970806

2 that PGW wished for us to make in the original
3 Venture Agreement that we authorized?

4 MS. FRANKLIN-SUBER: Correct.

5 PRESIDENT STREET: Because you
6 weren't authorized to enter into an agreement
7 anything other than what we authorized.

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

9 PRESIDENT STREET: And you did that,
10 knowing that it would never be implemented or
11 executed, unless we changed it to conform with the
12 changes that had been requested by QST, after it
13 went and dealt with whoever it had to deal with; is
14 that correct?

15 MS. FRANKLIN-SUBER: I'm not sure I
16 understand your question. I apologize.

17 PRESIDENT STREET: Here we are.
18 Pursuant to an Ordinance, we authorized PGW and QST
19 to enter into an agreement.

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

21 PRESIDENT STREET: It is over there
22 someplace. You did that.

23 QST said, "We don't like it and we
24 are not going to implement it. We need these
25 changes." But that agreement is over there.

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2 So that what we have in front of us
3 as Exhibit A to the original resolution is the
4 changes that PGW and QST are requesting to that
5 thing over there that we authorized you all to enter
6 into?

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

8 PRESIDENT STREET: Right.

9 These amendments to the proposed
10 amendment are the changes that we have discussed in
11 preparation for this hearing?

12 MS. FRANKLIN-SUBER: Yes.

13 PRESIDENT STREET: And that's why I
14 wanted us to have this discussion, so that everybody
15 could be here.

16 So that the black-lined changes are
17 proposed changes to Exhibit A, which are the
18 recommended changes to the Venture Agreement which
19 has already been entered into.

20 MS. FRANKLIN-SUBER: Yes. Yes. And
21 I think we are --

22 PRESIDENT STREET: All right.

23 MS. FRANKLIN-SUBER: Where there was
24 a little confusion is that we also provided a
25 substitute of the Exhibit A that had been

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2 distributed before to incorporate these changes.

3 PRESIDENT STREET: Well, see, what I
4 want to do is just make sure everybody understands
5 where we are.

6 Because I don't want people to
7 think -- because we are actually amending the
8 proposed amendments --

9 MS. FRANKLIN-SUBER: Yes.

10 PRESIDENT STREET: -- to the Venture
11 Agreement.

12 Now, what I would like to do is
13 simplify this process. I would like to simplify
14 this process in this way: What I would like to do
15 is have the Solicitor tell us what the exhibit has
16 in it, and explain how the proposed amendment to the
17 amendment works, so that people can understand what
18 the bottom line is.

19 And then what I would like us to do
20 is make sure we are straight on all of that. And if
21 there is any question about it, I want to make sure
22 that we answer those questions.

23 I would like to have -- I want to
24 consider it a possibility, depending on how complex
25 this thing gets -- because we can recess this and we

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2 gone, so I can't invite anybody at this point to
3 share it.

4 PRESIDENT STREET: That's all right,
5 Councilman.

6 COUNCILMAN COHEN: But I am not sure
7 what, quote, the amendment is.

8 I know there was a Venture Agreement
9 signed by PGW and QST that we knew nothing about.
10 Wasn't there a Venture Agreement, the
11 original one?

12 PRESIDENT STREET: Councilman Cohen,
13 there is a Venture Agreement that was entered into
14 that we knew everything about.

15 Because we had the Venture Agreement
16 in front of us as an exhibit to an Ordinance. And
17 we authorized QST and PGW to enter into that
18 agreement, subject to certain conditions and
19 limitations which were incorporated into the
20 agreement.

21 And it was entered into for technical
22 reasons that we don't really need to get into here.
23 Right?

24 At the time it was entered into, we
25 all knew, those of us who were following this, that

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2 it would have to come back here for proposed
3 changes.

4 Because as a result of discussions
5 that took place between QST and its parent
6 organization, it wasn't authorized to execute an
7 agreement that had everything in it that we were
8 requiring.

9 So what we have as an exhibit to the
10 resolution are the changes that QST and PGW agreed
11 to come and ask Council to implement.

12 Now, after a lot of discussion,
13 working with the Chairman of the Gas Commission and
14 myself, we requested some further amendments to the
15 proposed amendments to the Venture Agreement.

16 And those amendments are here, but
17 there are amendments to the proposed amendments to
18 the Venture Agreement that was attached as an
19 exhibit to the bill that we approved.

20 Do you follow that?

21 COUNCILMAN COHEN: Well, I follow it,
22 but it is very complex.

23 PRESIDENT STREET: And this has
24 nothing to do with the substance of it; this is the
25 procedure of this. This is just so we will know

1 RESOLUTION 970806

2 what it is we are doing here.

3 Because if we adopt the proposed
4 amendments to Exhibit A attached to the Ordinance,
5 that's going to authorize the changes in the Venture
6 Agreement that isn't in front of us in great
7 detail. We only have the proposed amendments
8 attached to the Resolution.

9 What I am hoping that we can do is,
10 without getting to all of the particulars, and
11 necessarily the dotting of the I's and crossing of
12 the T's, is have a discussion with the City
13 Solicitor that lets everybody know what the proposed
14 bottom lines are.

15 Do you understand what I am saying?

16 COUNCILMAN COHEN: Well, and by
17 "bottom line," do you mean what changes are now
18 being proposed, changes to the agreement that City
19 Council authorized PGW to execute?

20 PRESIDENT STREET: Yes. That's
21 precisely where we are.

22 COUNCILMAN COHEN: Right.

23 PRESIDENT STREET: But you get there
24 because what you have to do is, there is a set of
25 amendments that are proposed to the amendments to

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2 the original agreement which we authorized.

3 COUNCILMAN COHEN: Could we unite
4 them?

5 PRESIDENT STREET: Yes. That's what
6 this does, it unites them. But it is very
7 confusing. And I knew it would be confusing, and I
8 didn't want to have this discussion.

9 Because now if somebody walks out,
10 and you come back, at least you know what we have in
11 front of us, proposed changes to the proposed
12 amendments to the Venture Agreement. Now, I mean,
13 that's where we are.

14 Is there any Councilmember who has
15 any question about where we are? I see Councilman
16 Nutter's light.

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

19 No, I think I know where we are. And
20 I wanted to, I guess, get to the next phase.

21 Did you say that you were going to
22 ask the Solicitor to explain first Exhibit A as was
23 handed out -- I believe we received this last
24 week -- attached to a communication from the Mayor,
25 which was, I guess, the sent-back version from QST

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2 and its parent company conversations?

3 Is she going to explain that first,
4 and then tell us what this new amendment, which is
5 attached to the black-lined version, means in
6 conjunction with that, and then get to what the
7 bottom line is?

8 PRESIDENT STREET: I am hoping that
9 we can limit this and sort of drop to the bottom
10 lines. And if we can't do it, I mean, we can take
11 as much time as we need here.

12 And what I thought we might be able
13 to do is have a general discussion, a little bit of
14 a general discussion, and then sort of work our way
15 back.

16 For example, one of the things that
17 we decided in our original Ordinance was that no
18 further taxpayer or ratepayer's money would be able
19 to be used for the implementation of the pilot
20 PGW/QST electric project. That was a fundamental
21 point in our discussion.

22 COUNCILMAN NUTTER: Right.

23 PRESIDENT STREET: And what I wanted
24 to do is just, for example, have a discussion of
25 that point and find out what, if anything, has

1 RESOLUTION 970806

2 changed in all of that.

3 COUNCILMAN NUTTER: All right.

4 PRESIDENT STREET: Can we do that?

5 COUNCILMAN NUTTER: Let's get it on.

6 MS. FRANKLIN-SUBER: Thank you. I
7 will try to make this simple.

8 What Council did, through amendments
9 and in the Venture Agreement that was authorized,
10 was shift 100 percent of the financial and legal
11 risk of the pilot program to QST.

12 The proposed amendments generally
13 deal with two issues, limitation of liability and
14 indemnification.

15 QST continues to be responsible for
16 expenses of the pilot program, whether they relate
17 to activities of QST or activities of PGW, after
18 October --

19 PRESIDENT STREET: By "expenditures,"
20 you mean cash expenditures?

21 MS. FRANKLIN-SUBER: Out-of-pocket
22 expenditures related to the venture. They continue
23 to bear the financial responsibility.

24 The reason that you have amendments
25 to the amendments is because when QST originally

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2 proposed their changes to the Venture Agreement on
3 these liability points, the changes can be read to
4 undercut that obligation. That is not what they
5 intended to do.

6 And so we have added clarifying
7 language that makes it clear that they continue to
8 have, as they originally intended, and as Council
9 intended and as PGW intended, for them to have the
10 financial responsibility for the program.

11 MS. FRANKLIN-SUBER: So I think that
12 covers at least the first part.

13 PRESIDENT STREET: So if these
14 amendments in Exhibit A, in the black-lined
15 amendments to the proposed amendments in Exhibit A,
16 if they were all approved, could Councilman Cohen
17 and Councilwoman Blackwell and I say, well, PGW is
18 involved in this project, but no additional
19 ratepayer money or taxpayer money will be spent to
20 implement this pilot?

21 QST will spend all the cash. Those
22 people who receive the electric will pay for, of
23 course, their electric, and PGW will only be using
24 existing facilities, existing personnel, existing
25 equipment, as a part of its contribution to the

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2 partnership and to the Venture Agreement that we
3 would have authorized?

4 MS. FRANKLIN-SUBER: That is
5 correct.

6 You may recall that QST is
7 responsible for 50 percent of the same kinds of
8 expenses prior to October 23, and then they are
9 responsible for 100 percent of out-of-pocket
10 expenses after October 23.

11 So the Council President is correct
12 in that assessment, that is not paid for by the
13 ratepayers or by the taxpayers.

14 PRESIDENT STREET: Now, a major
15 concern of City Council was the potential liability,
16 people sue us in all kinds of ways.

17 Somebody is getting electrical
18 service and claims that, as a result of the
19 provision of this service, there was a fire. And
20 personal property was destroyed, and maybe injury to
21 somebody occurred.

22 And the city gets sued, PGW gets
23 sued, QST gets sued, everybody gets sued.

24 We wanted QST to indemnify us against
25 any and all expenses associated with those kinds of

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2 lawsuits.

3 How does QST and PGW propose to
4 change that with this set of amendments here?

5 MS. FRANKLIN-SUBER: Okay. For
6 personal injury and property damage claims, QST does
7 propose to limit the scope of their liability to
8 claims arising out of their activity.

9 But they are providing the electrical
10 service. So any fire or incident that's related to
11 the provision of electricity service, QST bears that
12 liability and QST agrees to indemnify the city and
13 PFMC and PGW for claims arising out of that
14 activity.

15 If there is a personal injury or
16 property damage claim that somehow arises out of
17 PGW's activity, what QST proposes to change is
18 accepting that risk. We would continue to have that
19 risk.

20 We are, however --

21 PRESIDENT STREET: Why should we have
22 that risk?

23 I mean, QST is responsible for buying
24 the electricity off of the grid, for buying the
25 electricity. And I guess somehow PECO, I mean, they

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2 are using PECO lines. I mean, we don't own any
3 lines, and I guess neither does QST or PGW.

4 I mean, what can we do that causes us
5 to be liable? And why wouldn't QST want to be
6 willing to indemnify us, since it appears that the
7 dangerous activity, if there is any -- phone calls
8 are not generally dangerous, although I guess they
9 could be -- I mean, it is QST's responsibility?

10 MS. FRANKLIN-SUBER: Well, let me try
11 to answer it this way: From a commercial
12 standpoint, from a corporate policy standpoint,
13 QST's position is simply, "We can't control your
14 activity, and, therefore, we don't want to accept
15 that risk."

16 As a practical matter, the claims are
17 going to arise out of what QST is doing. And we do
18 have the benefit of their indemnification for the
19 kind of claim that's going to arise out of their
20 provision of electricity service.

21 And even with the way that they
22 propose to change the language in the agreement, we,
23 nonetheless, the city, PGW, and PFMC, have the
24 benefit of QST's insurance -- we are named as an
25 additional insured -- PGW and PFMC have insurance

2 coverage to cover this kind of claim.

6 MS. FRANKLIN-SUBER: I don't know the
7 specifics.

16 PRESIDENT STREET: But I want to know
17 what the deductibles are. Because if the
18 deductibles are high enough, it doesn't matter.
19 These policies don't mean much to us.

24 The deductibles at PGW are \$500,000.

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2 MR. SHARBUTT: Per incident in this
3 case, sir. Yes, sir.

4 PRESIDENT STREET: So any claim under
5 \$500,000, we pay?

6 MS. FRANKLIN-SUBER: Tort Claims
7 Act.

8 PRESIDENT STREET: Tort claims.

9 MS. FRANKLIN-SUBER: Tort claims.

10 PRESIDENT STREET: So the insurance
11 kicks in in claims over \$500,000. How does that
12 help us? We pay the first \$500,000. I mean, that
13 is a monumental problem.

14 And I guess I would like to
15 complicate this discussion a little further. I
16 mean, as we see it, it is so unfortunate, it is a
17 terrible situation, and there is a fire, and PGW and
18 QST are delivering the electricity, and there is
19 injury involved.

20 And, of course, I mean, knowing, you
21 know, one or two lawyers in this room, they sue
22 everybody. And the juries come back, and they
23 sometimes will find everybody liable.

24 How does that get resolved?

25 MS. FRANKLIN-SUBER: Let me -- I

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2 having to pay \$10 million verdicts and \$100,000,000
3 verdicts. It is only like \$500,000, and that's very
4 important.

5 But if during the course of all of
6 this, all you need is one bad incident, and it could
7 end up costing us hundreds of thousands of dollars,
8 based on the way I understand what you are telling
9 us here.

10 Because the Tort Claims Act doesn't
11 help us. We end up having to pay our own attorney's
12 fees; right? Wouldn't we have to defend this? We
13 don't have any insurance that would pick up our
14 legal fees.

15 We have to pay our own attorney's
16 fees. And then we may end up having to pay our
17 share of any judgment that was rendered against us.

18 I rest my case.

19 MS. FRANKLIN-SUBER: Council
20 President, I think that we would have no exposure
21 because this comes within the Tort Claims Act. It
22 is the kind of claim that we would handle on a
23 regular basis.

24 Your point is well taken in terms of
25 the insurance deductible. But the fact of the

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2 that we pay the cost of litigation. I mean, we hire
3 the lawyers.

4 Some of it is handled by lawyers that
5 work for the city, and some of it is obviously
6 handled by lawyers that are on retainer from the Law
7 Department to defend against these claims.

8 MS. FRANKLIN-SUBER: Let me also
9 point out something that I think might add some
10 clarity. This is language that is covered in the
11 amendments.

12 And although QST has limited its
13 liability to its activities, it expressly, in
14 language that you have before you in the changes, as
15 between QST and PGW, QST assumes sole and absolute
16 responsibility and liability resulting or arising
17 out of the provision of electricity.

18 So, again, in terms of apportionment
19 of responsibility, the risk is not, I think, a real
20 one that the city would actually be involved in
21 providing electricity.

22 And based on the Risk Manager's
23 review of the insurance policies, the Tort Claims
24 Act, and the language changes proposed by QST, he
25 believes that the city, PFMC, and PGW are protected

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2 against these kinds of claims not simply in terms of
3 liability, but also in terms of cost of defense.

4 PRESIDENT STREET: Well, is there
5 anything in the agreement that speaks to how
6 disputes among and between PGW and QST, on who is
7 liable for these things, how they get resolved?

8 Is it possible we could end up in a
9 big dispute with QST about who is responsible?

10 MS. FRANKLIN-SUBER: We tried to be
11 clear in terms of allocation of responsibility.

12 There is no specific provision in the
13 agreement that provides for dispute resolution. And
14 it is always possible, as with any of our contracts,
15 that you could get into some disagreement with
16 regard to who did what at what point in time.

17 But for purposes of these kinds of
18 claims, we are talking about activity that is
19 clearly QST's activities.

20 QST is providing the electricity.
21 PGW is not providing electricity.

22 PRESIDENT STREET: I will tell you,
23 you know, we had some of these discussions before.

24 It just seems to me that under this
25 Venture Agreement, that the partnership is providing

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2 everything that is done in the provision of
3 electricity, and then we don't have to worry about
4 that.

5 And I think this seriously
6 complicates it, and I think it compromises our
7 position on it.

8 MS. FRANKLIN-SUBER: Council
9 President, if I might, I am now looking at the
10 Venture Agreement.

11 And, as I testified previously, this
12 is not a legal partnership, where it is a separate
13 legal entity, where we have combined our assets and
14 we are dependent on and intertwined with QST, and
15 what they do is considered what we do.

16 The obligations of QST and PGW are
17 specifically delineated in the Venture Agreement
18 that you reviewed and approved before.

19 It says, specifically in terms of QST
20 activities, that the provision of electricity is
21 QST's obligation; it is not an obligation of PGW's.

22 And, so, it is clear under the
23 Venture Agreement. And the proposed changes to the
24 Venture Agreement don't modify that or change that
25 obligation.

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2 And QST says that we will be
3 responsible for that liability, any liability
4 arising out of our provision of electricity, and we
5 will indemnify the city and PFMC and PGW for any
6 claims arising out of that.

7 PRESIDENT STREET: All right. The
8 Chair recognizes Councilman Rizzo.

9 COUNCILMAN RIZZO: Thank you,
10 Mr. President.

11 City Solicitor, just to make a very
12 basic example. If, when PGW starts selling
13 electricity, the customer at that location, a
14 contractor, is injured, electrocuted, could you just
15 describe who would be responsible?

16 Who would they sue? Would they sue
17 PECO? Would they sue QST? Would everybody get
18 sued?

19 Could you just paint a picture of how
20 that would work?

21 MS. FRANKLIN-SUBER: I think the
22 Council President's point in that regard was well
23 taken. Generally, everybody gets sued.

24 The question then becomes whose
25 obligation, whose liability, whose responsibility is

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2 it as between the parties that have been sued.

3 We can't say we won't ever be sued.

4 But it is clear that, in the agreement, that it is
5 QST's responsibility, obligation, and liability.

6 So that it won't necessarily prevent
7 us from being sued. But, as I said previously, in
8 that kind of situation, it is QST's obligation.

9 They have agreed in the amendments to
10 the Venture Agreement to be responsible for the
11 liability, to indemnify us in connection with costs
12 of litigation arising out of their activities.

13 So if they have assumed the sole and
14 absolute responsibility for their provision of
15 electricity, their indemnification obligation, their
16 agreement to reimburse us for any expenses
17 associated with our being sued as a result of what
18 they have done, we are covered for the litigation
19 defense under the terms of the agreement.

20 We are also an additional insured to
21 their insurance policy. And if there is any
22 question at all, we have the benefit of the Tort
23 Claims Act, as well as PGW and PFMC's insurance.

24 So through the combination of all of
25 those different levels, the Risk Manager of the city

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2 has concluded that, under that kind of situation,
3 and under a situation where somehow conceivably,
4 even though PGW is not providing electricity, we
5 could be responsible, we are adequately protected
6 and covered.

7 COUNCILMAN RIZZO: Thank you.

8 Thank you, Mr. President.

9 PRESIDENT STREET: The Chair
10 recognizes Councilman Nutter.

11 COUNCILMAN NUTTER: Thank you,
12 Mr. President.

13 So, Madam Solicitor, let's go back to
14 one of the earlier questions, which was, what is it
15 that PGW could do as an action that would result in
16 any exposure under any of the circumstances?

17 And are you able, even in a
18 hypothetical case, to lay out in a chart fashion or
19 a grid what happens in a lawsuit, the issues raised
20 with regard to either legal fees, when you have to
21 pay your small portion -- I am forgetting that term,
22 the car gets banged up -- deductible -- hopefully no
23 one runs into my car -- deductibles and all other
24 potential expenses.

25 Are you able, I guess, to show either

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2 on paper or explain verbally what protection covers
3 what?

4 You talked about the Tort Claims
5 Act. You have talked about QST's indemnification of
6 us. We have talked about insurance that PGW
7 apparently has.

8 How do all these various things get
9 covered such that, I guess we get back to the goal,
10 which is, when you see the City of Philadelphia line
11 on that chart, it reads zero?

12 MS. FRANKLIN-SUBER: Councilman
13 Nutter, let me answer what I think your question
14 is. Because I think your question goes to the heart
15 of the impact of the proposed changes.

16 Looking at personal injury and
17 property damage claims is one category of potential
18 exposure.

19 Between the City Solicitor's Office
20 and the Risk Manager of the City of Philadelphia, we
21 reached the conclusion that the bottom-line risk,
22 there is, say, roughly zero, if not minimal. We are
23 adequately protected.

24 I don't think there is any
25 guarantee. But we do have, in terms of the

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2 agreement, the reimbursement obligations on the part
3 of QST, the indemnification; the assumption of the
4 liability; QST's insurance; the city, through PFMC
5 and PGW, insurance coverage; and the benefit of the
6 Tort Claims Act.

7 So in terms of risk, that category of
8 claims, we are protected.

9 The changes -- and where there is
10 potential exposure -- really relate to other types
11 of claims, nonpersonal injury, nonproperty damage.

12 So if we can put those kinds of
13 claims aside, the kinds of claims that are not
14 personal injury, not property damage, not covered by
15 insurance, we have no Tort Claims Act protection,
16 that's the category of claims and risk that I think
17 are relevant for purposes of your understanding the
18 impact of these proposed changes.

19 As to that category of claim, Council
20 intended for QST to bear 100 percent of the risk,
21 whether that kind of claim comes out of QST's
22 activity or whether it comes out of PGW's activity.

23 And let me give you an example.

24 COUNCILMAN NUTTER: I was going to
25 ask.

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2 MS. FRANKLIN-SUBER: The kind of
3 claim would be -- remember we had extensive
4 discussion and testimony -- for example, if a
5 competitor of PGW or if a ratepayer or a taxpayer
6 were to challenge our legal authority to engage in
7 the business of electricity; that's the type of
8 claim I am talking about.

9 The Venture Agreement approved by
10 Council passed the risk of that kind of claim to
11 QST. The proposed changes by QST would modify
12 that.

13 QST proposes to limit its liability
14 and its indemnification obligation to claims arising
15 out of its activity, not out of PGW's activity.

16 PRESIDENT STREET: Can I interrupt
17 you here?

18 COUNCILMAN NUTTER: How do you
19 separate the two?

20 PRESIDENT STREET: Because this is a
21 perfect point.

22 They sue, and they sue for 15
23 different reasons.

24 They say, one, you delivered the
25 wrong kind of electricity; two, the wires were

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2 faulty; three, you didn't come when we called, and
3 if you had come when we called; four, we called PGW
4 at the office, and it didn't have anybody come. PGW
5 says, well, we called QST; nobody went out there.

6 And then they say, and you weren't
7 authorized to go into this business in the first
8 place, and, therefore, you shouldn't have been even
9 in the business.

10 And they throw all this. Because
11 that's the way we lawyers do. We just throw it all
12 in.

13 And then a whole bunch of lawyers are
14 sitting in the back room of the judge's chambers
15 someplace. And the judge wants to leave because it
16 is Friday, and he wants to get out of town.

17 You know, it is 2:00 or 4 o'clock in
18 the afternoon, and the lawyers are there, and
19 everybody wants to go. And the judge is leaning on
20 the city -- because we now all have to be there,
21 because there are allegations involved -- and the
22 judge says, "Well, everybody kick in 50,000, or
23 everybody kick in 100."

24 Councilman Cohen, I mean, this is
25 what happens. Everybody kick in the money. Let's

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2 settle this, let's get this off the docket.

3 And I will tell you, that's precisely
4 what I had in mind when I say, we make QST
5 responsible for all of that. Then we don't have to
6 worry about it.

7 Because QST, I mean, is at the heart
8 of this thing, is delivering the electricity. And
9 QST is going to do that.

10 Let QST take the weight for all of
11 that, and then indemnify us, and then we don't have
12 to worry about trying to draw all those fine lines.

13 I am telling you, whether or not this
14 goes or does not go, this is a can of worms that
15 will never be resolved unless we decide today who is
16 going to be ultimately responsible for all of this.

17 Because Councilman Nutter is never
18 going to be able to figure out, and neither will I,
19 whether or not the judgment was given because PGW
20 didn't belong in the electricity, the electricity
21 business, or was acting outside of its statutory
22 responsibility, or whether some of these other
23 things were the case.

24 Because that's just the way this
25 stuff boils down. And we won't be able to be out of

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2 it.

3 Now, if QST has indemnified us
4 against everything, then do you know what we do?
5 All these claims, do you know what we do? We send
6 them to QST, and QST's insurance policy covers it.

7 And if there is any liability, QST's
8 insurance company pays. And, to me, that's simple.

9 And I apologize, because I think
10 that's where you were.

11 COUNCILMAN NUTTER: What is QST's
12 explanation for their position? And I asked this
13 once before, when we were dealing with this issue.

14 Are there any QST people here today?

15 MS. FRANKLIN-SUBER: If I might,
16 Councilman Nutter, I apologize, before we get to
17 that point, I do think it is important for me to try
18 to put into context what the Council President said
19 by way of example.

20 Let's assume you are right, and we
21 have a Complaint, and it makes a lot of different
22 allegations, a lot of different kinds of claims.

23 And, yes, we may end up in the room,
24 we have been sued, and there is a settlement. And
25 let's assume that we agree to pay \$50,000.

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2 To the extent those claims relate to
3 the obligations I just talked about, the provision
4 of electricity, QST's activities, we then, under the
5 Venture Agreement, QST has an obligation to
6 reimburse us.

7 So at least in terms of the personal
8 injury and the property damage claims, let's assume
9 we have paid \$50,000.

10 Then maybe as between QST and PGW and
11 the city, \$30,000 of that is attributable to those
12 kinds of claims. We get that money back.

13 The question then goes to the other
14 20,000 in that example, hypothetically.

15 That is not covered by insurance,
16 whether it is QST, or whether it is PGW, or the
17 city.

18 At this point in time it is a risk
19 that's not insured or insurable without a lot more
20 investigation.

21 It doesn't mean necessarily, though,
22 that in terms of the actual 20,000, that we believe,
23 for those kinds of claims that I'm calling
24 contingent liabilities, that arise out of the city's
25 or PGW's activities, that we wouldn't have strong

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2 legal defenses.

3 I believe that we do, and I believe
4 that the risk in terms of judgment and liability is
5 minimal, whether or not you ultimately settle and
6 whether or not there may be an expenditure to make
7 the nuisance of the suit go away.

8 I'm not going to say to you that it
9 is not possible that we could pay, say, \$20,000.
10 But that's the kind of claim or situation where I
11 assume that the Law Department would be actively
12 involved.

13 Those are the kinds of claims that
14 you would want us to be actively involved in.

15 COUNCILMAN NUTTER: But I think the
16 primary issue that is being raised is, there appears
17 to be virtually nothing that PGW could do, in the
18 course of whatever it is that it will be doing, that
19 would make it liable for anything, even in the
20 hypothetical. I mean, they are just there.

21 Why should they pay any money to
22 anybody? Even if a judgment is found, or even if it
23 is Friday at 5:00, and the pressure is on to settle,
24 and they kick in whatever they kick in, what did
25 they do to cause any harm to anybody to then be

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2 subject to suit and a payment?

3 MS. FRANKLIN-SUBER: I have spent
4 some time speaking with the lawyers and the
5 President of QST, so let me try to articulate their
6 position.

7 In terms of the actual --

8 COUNCILMAN NUTTER: They should be
9 articulating their own position, let me say that for
10 the record.

11 MS. FRANKLIN-SUBER: In terms of the
12 activities as between the parties as for the pilot
13 program, I think you are correct, PGW is not
14 providing the electricity. PGW's activities,
15 compared to QST's, are more limited.

16 And, again, QST has said, we will
17 bear responsibility for -- we will indemnify you for
18 anything that arises out of our activity.

19 QST takes the position that if,
20 however, there is a challenge that's based on a
21 claim that somehow we don't have the legal authority
22 to do this, or a ratepayer is concerned that somehow
23 there is an impact on the gas rate base, or if a
24 bondholder has some kind of issue that's related to,
25 you know, anything related to the possibility that

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2 the bonds could become private-activity bonds, those
3 are the kinds of things that QST takes the position
4 are not within their control.

5 They have no control over those kinds
6 of issues. That is a risk that the city and PGW
7 should bear. And from their perspective, that is
8 commercially reasonable.

9 Remember, they are assuming
10 responsibility for all of their activities. They
11 are indemnifying us for anything arising out of or
12 relating to what they do.

13 They are assuming financial
14 responsibility for the activities of both QST and
15 PGW on or after October 23. So they bear the
16 financial responsibility.

17 They also are bearing the legal
18 liability and indemnification for the period before
19 the Venture Agreement, the Memorandum of
20 Understanding.

21 PRESIDENT STREET: Can I interrupt?
22 Councilwoman Fernandez has to leave. She will be
23 back.

24 She would, in the event that this
25 discussion concludes before she gets back, she would

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2 outrageous exception.

3 I thank you.

4 I am sorry; I think Councilwoman

5 Tasco wished to have the floor.

6 Were you finished, City Solicitor?

7 MS. FRANKLIN-SUBER: I just wanted to
8 add that I think, as the Council President, you were
9 trying to figure out why we are where we are with
10 QST.

11 And I think as the Council President
12 said in his earlier remarks, QST has looked at this
13 risk.

14 They do believe that they agree with
15 our risk assessment in terms of it being minimal.
16 These are contingent liabilities.

17 But --

18 PRESIDENT STREET: Then why won't
19 they take it, if it is minimal?

20 COUNCILMAN NUTTER: Right.

21 MS. FRANKLIN-SUBER: Because, as a
22 matter of corporate policy -- and I think if you
23 shift perspectives for a minute, it is the same idea
24 as the city saying, "We will not indemnify you for
25 that which we don't have control over. If we don't

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2 control it, why should we be responsible for it?"

3 And that's QST's position as a matter of corporate
4 policy.

5 They are saying, "We will take on the
6 financial responsibility, even for what you are
7 doing."

8 If PGW, as part of its obligations,
9 whether it is marketing our whatever else, needs to
10 expend money, QST is paying for that, they are
11 assuming the financial responsibility.

12 They are saying, "We will cover you
13 for anything that we do. We have the bulk of the
14 activity that's related to the kinds of claims
15 that" -- you know, personal injury and property
16 damage, the major kinds of claims that I think would
17 really subject the city to risk, if we didn't have
18 adequate protection.

19 And they are simply saying that, if
20 there is an issue as to whether or not you have
21 authorization to do this, if there is an issue or a
22 claim that comes in from a ratepayer or a
23 bondholder, these are things that we have nothing to
24 do with, we have no control over, and, therefore,
25 why should we bear the risk of that?

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2 COUNCILMAN NUTTER: And at the same
3 time, we would not be sued if not for the
4 relationship between PGW and QST, and we haven't
5 done anything.

6 I mean, it is only the nature of the
7 relationship that would cause any of those, in the
8 three scenarios that you laid out, that someone
9 would go to court in the first place.

10 So QST cannot separate the
11 relationship when it is convenient. We wouldn't be
12 at the table; they would be at the table.

13 It is the mere existence of the
14 electricity relationship that causes a person to go
15 to court in the first place. You can't separate the
16 two.

17 Before you try to respond to that,
18 Madam Solicitor, I had asked the question kind of
19 off to the side.

20 Is there a representative from QST
21 here with us today?

22 MS. FRANKLIN-SUBER: No.

23 COUNCILMAN NUTTER: I mean, I have to
24 say that it baffles me at some level. For someone
25 who wants to do something so much --

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2 PRESIDENT STREET: He was here
3 earlier.

4 COUNCILMAN NUTTER: Well, somebody
5 was here last month.

6 MR. JAMES HAWES: He was here all
7 night, Mr. President.

8 PRESIDENT STREET: So you are saying
9 that he is sleeping now?

10 MR. HAWES: No. He went somewhere,
11 another town.

12 COUNCILMAN NUTTER: He is trying to
13 do another deal with somebody else.

14 It is just a little confusing to me
15 that people would spend all the time that they
16 apparently have spent trying to get this done, but
17 the one place that they don't want to be,
18 notwithstanding all their conversations with
19 Mr. Hawes, our Solicitor, or Bud or anybody else,
20 the one place that they don't want to be to explain
21 themselves and help us get to the bottom line is the
22 place where, I guess, some of us happen to believe
23 they need to be to make this happen.

24 I mean, this not-showing-up thing is
25 starting to get a little tiring. I mean, if I

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2 didn't show up as much as some other people around
3 here don't show up, we wouldn't get any work done.
4 Or I guess I wouldn't be here anymore.

5 So, Madam Solicitor, you can try to
6 explain the earlier question. I mean, what do they
7 want? Do they want to do it, or do they not want to
8 do it?

9 MR. HAWES: Council President Street,
10 and other Councilmembers, I am Jim Hawes, President
11 and CEO of Philadelphia Gas Works.

12 I think, Councilman Nutter, to the
13 question of do they -- I don't know that I can
14 defend QST, as to why they aren't here.

15 But I think they have demonstrated
16 from the beginning, in that I think they have given
17 in on almost everything that we have asked, I think
18 they have demonstrated, through some very tough
19 negotiations, over a very long period of time, that
20 they absolutely want to be a part of the terrain and
21 the marketplace in this part of the country.

22 So I think if you just look at where
23 we started and where we are today, and from a
24 financial perspective, they have literally --
25 notwithstanding the discussions on the indemnity --

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2 have literally taken all of the financial risk.

3 I think that in itself would suggest
4 to me that they are very, very much interested in
5 keeping this deal alive.

6 To the issue of why they aren't here,
7 I think because we probably didn't ask them to
8 come.

9 COUNCILMAN NUTTER: I am sorry?

10 MR. HAWES: I said, to the question
11 of why they aren't here, I am not sure the answer to
12 that.

13 But my last discussion in a three-way
14 call last night was, I think, around 11:20, and I
15 think there were two calls after that. And I think
16 there were two this morning, perhaps, before 7:00.

17 So I think they have been involved.
18 And other than the fact that they aren't here, I
19 don't know that I can add any more to that.

20 PRESIDENT STREET: Excuse me.

21 Mr. Hawes, something else is troubling me about all
22 of this.

23 Everything that we put in the
24 Ordinance conditioning the PGW/QST relationship was
25 done at a Public Meeting, right out here on the

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2 floor of Council, in the presence of the QST
3 officials.

4 They heard it. They were a part of
5 all of it. They let us go with it.

6 And I will tell you, the voice of
7 experience is a wonderful thing. Because I did not
8 just ask the members of Council to support
9 amendments. What I did was, I asked you to take
10 them to the Board of PFMC, take them to the Mayor.

11 And I asked the Mayor, the Board of
12 PFMC, yourself, and everybody, including the QST
13 people, to look at all of this.

14 We had those conditions right here.
15 They were sent here, they were endorsed by
16 everybody. And the QST people were here.

17 And then, a month later, six weeks
18 later, eight weeks later, now they have these
19 problems with these amendments.

20 And that's almost, to me, tantamount
21 to acting in bad faith. They let us go through all
22 of that.

23 We are now covering the same ground
24 we covered before, because we didn't want all these
25 sticky questions about liability. We didn't want

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2 of having to apologize for one of his own people not
3 being here at a critical moment. We will deal with
4 that later.

5 So, I mean, I hate to have you in
6 that kind of position.

7 But it makes no sense to me at this
8 point. And if they were in town last night, that
9 unless they are having a meeting with the President
10 of the United States, this seems to be fairly
11 serious business, they should have themselves over
12 here.

13 Because you can't always answer all
14 of their questions. And it is unfair, in my view,
15 to our own City Solicitor to have to not only
16 explain what you guys are doing, and then explain
17 what we are doing, but also have to defend a
18 for-profit company who doesn't have the common sense
19 enough to bring themselves in here and explain what
20 it is that they want to do. That makes no sense to
21 me.

22 The last time they had somebody over
23 here, we gave them one sticky issue about a
24 no-compete clause, we had a ten-minute break, and
25 the guy never came back.

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2 I mean, they can do it, not do it.

3 But I don't see why they have to be so mysterious
4 about it, and then want to fly off to somewhere
5 elsewhere, where maybe they are working on another
6 deal.

7 Well, God bless them. We are here.
8 I am ready to do some business. But it is difficult
9 to deal with someone who only wants to negotiate
10 through our own people.

11 MR. HAWES: Well, Councilman Nutter,
12 just sitting on the call last night, I believe --
13 and I really don't want to. The QST people are
14 grownups. I don't want to be put in a position of
15 speaking for them.

16 COUNCILMAN NUTTER: Right.

17 MR. HAWES: But I believe, in
18 listening to discussions with the City Solicitor
19 last night, I believe that they believed that they
20 were responding to the issues.

21 And I believe that they believed that
22 because of the number of issues we started with, and
23 the fact that we were down to one fairly sizable
24 issue, I guess I would say that their position they
25 thought was represented through discussions with the

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2 City Solicitor and, therefore, there wasn't a need
3 to be here.

4 I don't know. But the City Solicitor
5 may want to respond to that. That was my view.

6 COUNCILMAN NUTTER: All I can tell
7 you, Mr. Hawes, is, my father used to tell me,
8 "Don't assume, because we know what 'assume'
9 means."

10 PRESIDENT STREET: The Chair
11 recognizes Councilman Cohen.

12 COUNCILMAN COHEN: Thank you,
13 Mr. President.

14 I wanted to ask the City Solicitor,
15 in your opinion, is there any possibility of QST
16 changing its position on this subject matter to come
17 closer to what City Council is thinking about?

18 I just don't want us to just be
19 wasting our time with QST. If this is their final
20 position, then we have got to consider whether we
21 want to go ahead or not.

22 I assume that this matter is before
23 us in City Council not because we are interested in
24 helping QST, but because we are interested in
25 helping PGW.

And I think the decision we have to make is whether the whole situation, including whatever risks that may exist, are of sufficient nature to warrant their saying no or, on the contrary, to warrant our reaching a decision, yes, it is good for Philadelphia. That's the only decision we had.

But, yet, the decision we have to make is, is this good for Philadelphia. And if we are unhappy about QST, but if, nonetheless, it is good for Philadelphia, I think we ought to make a decision along that line.

Now, I have asked you two questions. One, I have asked you, is there any possibility of any further change in QST.

Would they, for example, say, what we

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2 have in mind is, and then to use the examples you
3 did, about they don't want to be responsible for PGW
4 taking action? Something that would help guide a
5 Court if it ever had to make a decision.

6 And, secondly, I would like to know,
7 would you be willing, as the City Solicitor, to
8 write a legal opinion as to what you believe the
9 extent of risk is to PGW under the circumstances of
10 the current language, if there is no possibility for
11 change in that language?

12 PRESIDENT STREET: You have to say it
13 to the city. Councilman, you have to say it to PGW
14 and the city.

15 COUNCILMAN COHEN: And the city.
16 Yes, I agree on that.

17 MS. FRANKLIN-SUBER: Councilman
18 Cohen, as to your first question, it is my personal
19 opinion, after conversations with the President of
20 QST and with their General Counsel, as Mr. Hawes
21 indicated, through last night and early this
22 morning, that from QST's perspective, this is their
23 final position.

24 We did attempt to discuss possible
25 ways that we could reach a compromise between the

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2 an acceptable business risk. And at least the
3 Mayor, the PFMC Board, PGW's senior management,
4 based on at least input from the Law Department as
5 to the strength of our legal defenses, believe that,
6 on balance, the benefits outweigh this risk.

7 PRESIDENT STREET: Can I interrupt
8 you?

9 Because I think that it is
10 unfortunate that these people are not here. But I
11 would like to ask the City Solicitor, in conjunction
12 with Mr. Ericson and some of our staff, to consider
13 further language.

14 And I would like for them to consider
15 some language that further defines what it is and
16 how it is you interpret the general principle of
17 what's caused by whose responsibility.

18 For example, I would like some
19 language that says, where there has been a claim of
20 injury to someone's person or to someone's property
21 that grows out of the provision of electrical
22 service pursuant to this agreement, and where, for
23 example, among the numerous claims are a claim that
24 we weren't authorized to do this, and all of those
25 kinds of claims that we are now talking about, that

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2 QST agrees that, where there was such injury, it
3 could not have been caused simply because we weren't
4 authorized to be in this activity.

5 And I give you an example. And I
6 want you all to think about this a little bit, and
7 get us some language.

8 If a person is driving an automobile
9 and gets in an accident, and doesn't have a driver's
10 license, then you are not guilty of negligence
11 simply because you didn't have a driver's license.
12 You know what I am talking about?

13 And if there is an injury that
14 resulted from the provision of electricity, and one
15 of all the claims is that they shouldn't have been
16 in the electricity business in any event, then I
17 don't want anybody to now be able to say, "You
18 should be responsible because you didn't belong in
19 the electric business," and then I have to get in a
20 fight with QST and these people about apportionment
21 of responsibility. I want language.

22 Now, if some ratepayer somewhere
23 decides to file some class action and say, "You
24 shouldn't be in it," there wasn't any physical
25 damage, no fire or anything, but just raises the

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2 theoretical question that we didn't have a right to
3 be in this business and that PGW was using its
4 existing personnel and using its existing facilities
5 to provide electricity in conjunction with this, and
6 shouldn't have been doing it, and, therefore, you
7 know, asks the Court to adjoin the activity, and we
8 end up having to -- because we would have to defend
9 that suit.

10 Now, I could agree that maybe QST
11 shouldn't be responsible for that, because we all
12 decided to enter into that Venture Agreement. I
13 could live with that part of this issue.

14 And I am cutting it just a little bit
15 finer. It is like an onion. I am trying to peel
16 this thing back a little bit. That kind of case, we
17 can accept the risk for.

18 The kinds of cases that I do not wish
19 to accept the risk for is, there is a big fire, and
20 there is a big problem, houses burn down, the whole
21 block burns down. Somebody says, "Oh, a fire. PGW
22 is in this agreement, in this, and should never have
23 been there," and then we end up having to defend
24 ourselves and hire batteries of lawyers and get into
25 all kinds of experts; that's QST.

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2 And I wouldn't care about whether or
3 not we had -- just because they say we didn't belong
4 in the business, that doesn't in any way make us
5 liable for anything that resulted in that incident.

6 Do you get a feel? Does everybody
7 here get a feel for where I am on this?

8 And what I would like for somebody to
9 do is to work on some language that covers us in
10 that respect, and that amends these various
11 amendments, and that requires these people to agree
12 to this.

13 But I am very uncomfortable with the
14 situation the way it is right now. I want more.
15 And I want these people to certify that they should
16 have been, or they weren't here.

17 I want them to acknowledge the notes
18 of testimony here, and what's going on, and agree to
19 that language, so we have some defense against
20 them.

21 And I also want them to agree that,
22 in these situations, if there is a situation like
23 this, where these defenses, you know, these
24 allegations are made, that there aren't any
25 circumstances where we end up having to pay any

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2 expense of any kind associated with these
3 incidences.

4 And if we can get that kind of
5 language, maybe we can get comfortable enough to be
6 able to do something here.

7 But right now I am very
8 uncomfortable. Because I think what we are asking
9 for is a little bit of a can of worms.

10 And the problem is that, after a
11 while, the cost of litigating the thing is such that
12 you just end up throwing in the towel and giving
13 them money anyway. And I don't really want to have
14 to be doing that in this case.

15 COUNCILMAN COHEN: Can we get them to
16 put in language the kind of thing that the President
17 is speaking about?

18 PRESIDENT STREET: Councilman Cohen,
19 let me tell you what my feeling is on this.

20 If we can get language that sort of
21 mirrors what we have been talking about here, if
22 these folks can get on the phone and find somebody
23 from QST, fine.

24 If they can't, and if we think that
25 this is what we need in order to be able to pursue

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2 this, then we amend it into the agreement, and then
3 they have a decision to make.

4 I mean, I have some small sympathy,
5 albeit very, very tiny. Councilwoman Tasco is going
6 to owe me big on this. She is looking at me shaking
7 her head.

8 I have tremendous respect for the
9 people on the Gas Commission who are our
10 representatives, who think this is a good idea to do
11 this.

12 And I am going to do everything I can
13 to work with Councilwoman Tasco and Councilwoman
14 Fernandez, as our representatives on the Gas
15 Commission. Because they are the people that we
16 rely on to try to do something within the limits of
17 what it is we can do here.

18 But I would like to have some further
19 language, because I think we can do better than
20 what's in front of us.

21 I need a point of clarification. It
22 was originally said to me -- and I know it was said
23 to Councilwoman Tasco at one time -- that QST is
24 objecting to this agreement because it somehow
25 imposes on QST the responsibility and liability to

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2 a quick point of information.

3 Madam Solicitor or Mr. Hawes, is
4 there a time issue involving these amendments? Is
5 there a time pressure issue here?

6 I recall in the October hearings, the
7 time issue at that time was that the pilot program
8 was starting on November 1, and that we needed to
9 get the bill at that time, and the subsequent
10 Venture Agreement, which was being approved, I
11 believe, by a resolution, they needed to get done
12 prior to November 1 so that PGW/QST and, really, QST
13 could get into the pilot program.

14 We have done all that. Now we are
15 back for amendments. Now the President has asked
16 for language. I have raised, very strongly, an
17 issue with regard to lack of presence of QST.

18 What are the time constraints, if
19 any, other than the general interest in getting it
20 done as soon as possible?

21 Are there any statutory time issues
22 that we are dealing with here?

23 MS. FRANKLIN-SUBER: If the
24 amendments are adopted, the Venture Agreement will
25 be signed as amended, and the effective date of the

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2 Venture Agreement is November 1. So it would cover
3 the intervening period.

4 So from that standpoint, we would
5 still be in the same position.

6 COUNCILMAN NUTTER: Whenever it is
7 adopted?

8 MS. FRANKLIN-SUBER: The Venture
9 Agreement would still start November 1.

10 COUNCILMAN NUTTER: What, if any,
11 impact is there on PGW during this time that we,
12 apparently, have an unsigned Venture Agreement, we
13 have had some back and forth between the company
14 and/or the city and QST, now we are talking about
15 potentially making changes to these amendments based
16 on legal discussions between yourself and Tom
17 Ericson, and responding, in essence, to QST with,
18 this is it, from our side, and then Mr. President
19 said they have to make a decision?

20 What, in all of this, is the impact,
21 if any, on PGW?

22 MR. HAWES: Councilman Nutter, from
23 an operational standpoint, which is what I believe
24 the question is, we literally can do nothing of any
25 magnitude in terms of the marketplace and going

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2 after customers without the approval of these
3 documents from this Council.

4 We have at this point 8600 customers
5 that are available. Part of the reason for doing
6 this -- and if you look back at some of the
7 performance criteria that we agreed to, report to
8 you on each month -- most of those we can't even
9 impact right now because we can't go after these
10 customers.

11 And time is getting away, and we have
12 made, I think, a relatively good showing up to this
13 point.

14 Now that these 8600 customers are
15 available, we would like to be able to go out and
16 get those customers as a part of the trial.

17 And at this point we are unable to do
18 that, or anything else, related to the marketing and
19 testing of strategies that we had agreed to some
20 months ago.

21 COUNCILMAN NUTTER: Well, let me ask
22 this last question, because I interrupted the
23 President on a point of information.

24 What's been the impact, if any, on
25 QST? What are they doing?

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2 MR. HAWES: The impact on QST of not
3 having --

4 COUNCILMAN NUTTER: Of an unsigned
5 Venture Agreement between QST and PGW.

6 MR. HAWES: I think they suffer from
7 the same thing we do. We could have bigger
8 numbers. But the supply of electricity hasn't
9 suffered.

10 COUNCILMAN NUTTER: I thought my
11 understanding was that whoever it signed up is
12 presently a QST customer?

13 MR. HAWES: That's correct.

14 COUNCILMAN NUTTER: So what's been
15 the impact on QST, other than having a whole lot of
16 customers, or some customers?

17 MR. HAWES: I was saying that they
18 are in the same boat that we are, as we talk about
19 the 8600 customers unsigned.

20 There's been no impact at this
21 point. Because the customers that have signed up,
22 the almost 3,000 customers, or whatever the number
23 is, are ones who have signed up on the strength of
24 the fact that I believe the majority of them saw the
25 PGW connection in the joint venture.

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2 So I don't think QST has suffered a
3 great deal up to this point.

4 PRESIDENT STREET: Can I interrupt
5 you, Councilman?

6 Wasn't there a mailing just
7 recently?

8 MR. HAWES: Yes. That was what I
9 referred to as the 8600 customers.

10 PRESIDENT STREET: And I am talking
11 about as of like Monday of this week?

12 MR. HAWES: Correct.

13 PRESIDENT STREET: Who did that
14 mailing?

15 MR. HAWES: You mean who signed? I
16 signed the letter, and Craig signed the letter.

17 It was to the new customers that PECO
18 made available because of all of those who did not
19 sign up from the first group.

20 PRESIDENT STREET: So, to that
21 extent, anybody who signed up as a result of that
22 mailing believes that there is an existing Joint
23 Venture Agreement between PGW and QST?

24 MR. HAWES: Yes; but no different
25 than the first mailing.

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2 PRESIDENT STREET: I understand
3 that.

4 But the first mailing was done prior
5 to all of our discussions on all of this ordinance;
6 right?

7 MR. HAWES: Correct.

8 PRESIDENT STREET: Why was there a
9 mailing?

10 I mean, if there is no Venture
11 Agreement, why was there a mailing? And wasn't the
12 fact that there was a mailing in violation of the
13 authority, or lack of authority, of this Council?

14 MR. HAWES: Well, I can assure you,
15 we didn't view it that way.

16 The mailing was a requirement, I
17 believe, of the PUC. Is that correct?

18 President Street, we did not view it
19 as a violation.

20 PRESIDENT STREET: Well, let me get
21 this straight.

22 COUNCILMAN NUTTER: Was it a
23 requirement or was it not a requirement?

24 PRESIDENT STREET: Look, we said that
25 unless and until QST and PGW agreed on a Venture

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2 Agreement in compliance with an Ordinance that we
3 passed, there was no agreement.

4 And there wasn't any. Because there
5 was a resolution here, there was a pending Public
6 Hearing.

7 In spite of that, notices were sent
8 to all of the pool of customers saying, PGW and QST,
9 select us as your provider. Is that what it said?

10 MR. HAWES: I guess my view, as I
11 think back on it, was, we sent the letter out to the
12 new customers, which we had to do.

13 PRESIDENT STREET: I don't understand
14 what you mean, which you had to do.

15 MR. HAWES: Hold on just a minute. I
16 mean, if we were going to go after the customers.

17 I think my point, President Street,
18 is that, in terms of the agreement, I thought that
19 we were in compliance, in that, first of all, the
20 expenses were covered by QST, we invoiced them for
21 the cost of the mailing. And I guess I thought that
22 that was consistent with the agreement.

23 PRESIDENT STREET: Well, there is no
24 Joint Venture Agreement. You don't have a Joint
25 Venture Agreement with QST.

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2 And as far as I am concerned, I don't
3 know how anybody could believe that there is a Joint
4 Venture Agreement.

5 Because if there was, we wouldn't be
6 here having this discussion. We just wouldn't be
7 here.

8 And I would like to ask the City
9 Solicitor what her position is on this.

10 I mean, there is no Joint Venture
11 Agreement. Isn't QST authorized to go after these
12 customers on its own?

13 I mean, couldn't QST have just sent
14 them notice saying, "Pick QST"? And if this doesn't
15 happen, if this agreement doesn't get modified,
16 won't QST just proceed to go after those customers
17 outside of this Joint Venture Agreement?

18 And if nothing happens here, if this
19 thing doesn't get done today, and then maybe in
20 January we authorize this, after some more study,
21 then won't you all then just proceed to work as a
22 joint venture team?

23 I guess in some ways the fact that
24 you sent out all those letters sort of moots this
25 whole process because you are acting as QST's joint

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2 venture partner.

3 Let me hear from the City Solicitor.

4 MS. FRANKLIN-SUBER: Council

5 President Street, I have not had an opportunity to
6 look at the letters.

7 But I would say that if the language
8 changes that we're discussing, if Council favorably
9 approves the amendments to the Venture Agreement,
10 and the Venture Agreement is put into place, as I
11 stated previously, it is effective as of November
12 1.

13 So to the extent you could argue that
14 somehow PGW was acting without authorization, all of
15 that is cured by putting the Venture Agreement into
16 place.

17 PRESIDENT STREET: I am not talking
18 about what is cured now. I don't need you to answer
19 a question I didn't ask.

20 In your judgment -- and I know you
21 are in a funny position here, because you are, in
22 some respects, everybody's lawyer in this room.

23 In your judgment, was a letter by PGW
24 and QST to attract customers within the letter and
25 the spirit of the Ordinance that we passed?

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2 I mean, what difference does it make
3 if we have an Ordinance? Because if it wasn't, then
4 there is no reason for us to do this. We could do
5 this when we come back in January.

6 Because if you say that doesn't
7 matter, then PGW or QST can do another mailing next
8 week and do another mailing the next week and do
9 another mailing the next week.

10 And I need to have your ruling on
11 that.

12 COUNCILMAN ORTIZ: Mr. President, may
13 I ask something in reference to what you are
14 saying?

15 COUNCILMAN NUTTER: What was the
16 question?

17 COUNCILMAN ORTIZ: To, I think
18 Mr. Hawes, this whole process is being affected
19 because of the market and the PUC, and their
20 position of the market --

21 PRESIDENT STREET: Councilman, I need
22 you to move that microphone up or speak a little
23 louder or do something, because we are having
24 trouble hearing you.

25 COUNCILMAN ORTIZ: First of all, I

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2 earlier question was, they invoiced the company,
3 QST, for it.

4 MR. HAWES: That doesn't solve your
5 problem.

6 COUNCILWOMAN VERNA: They are not
7 supposed to be doing that, either.

8 COUNCILMAN NUTTER: That goes to the
9 heart of Council President Street's question.

10 COUNCILWOMAN VERNA: Exactly. So we
11 are asking two questions here.

12 MR. HAWES: Let me try to answer,
13 Councilwoman Verna, the question of the QST
14 expense.

15 We, I think, under the agreement,
16 have a letter anticipating that -- not for this
17 reason, but we wanted to be covered in that
18 situation. We wanted to make sure that we were
19 covered.

20 We have an invoice to QST for the
21 work that we did. And we have a letter from QST
22 making sure that they understood that they would be
23 billed for that as an out-of-pocket expense.

24 We think that is consistent with what
25 we have agreed to. It results in no out-of-pocket

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2 expense to PGW, none whatsoever.

3 COUNCILWOMAN VERNA: I don't think
4 that was our understanding, Mr. President, at all.

5 COUNCILMAN NUTTER: The question is,
6 there is no signed Venture Agreement; isn't that
7 correct?

8 And if you don't have a signed
9 Venture Agreement, what actions is PGW allowed to
10 take as it relates to the pilot electric program, in
11 an environment or under a circumstance in which they
12 don't have a signed Venture Agreement with QST?

13 What are they allowed to do?

14 MS. FRANKLIN-SUBER: They do not have
15 authorization.

16 PRESIDENT STREET: So you are saying
17 that the letter was not authorized pursuant to this
18 Council's process?

19 MS. FRANKLIN-SUBER: There is no
20 signed Venture Agreement.

21 The authorization that Council
22 granted to PGW and PFMC to engage in the pilot
23 program specifically relates to engaging in the
24 program through the Venture Agreement.

25 So if not --

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2 COUNCILMAN NUTTER: And, presently,
3 there is no venture, because there is no Venture
4 Agreement. Therefore, you cannot --

5 PRESIDENT STREET: There should not
6 have been a letter. There should not have been a
7 letter.

8 COUNCILWOMAN VERNA: Who authorized
9 it?

10 PRESIDENT STREET: Mr. Hawes,
11 Councilwoman Verna has a question I think you can
12 answer.

13 MR. HAWES: I didn't understand the
14 question.

15 COUNCILWOMAN VERNA: Who authorized
16 this letter to go out to the customers?

17 MR. HAWES: Craig Sheppard and I
18 signed the letter.

19 And I think when we did it, it never
20 even crossed my mind that we were in violation, as
21 is becoming clear we did.

22 No disrespect was intended. The
23 letter was simply in line with the requirements.

24 When PECO authorized the new
25 customers, we had to send a letter out to those

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2 customers telling them that they were customers as a
3 part of the agreement. That is all we thought we
4 were doing.

5 We thought that we had covered the
6 contract piece of it by making sure that we were
7 reimbursed for those expenses. At least that was
8 the intent.

9 COUNCILMAN NUTTER: I want to go back
10 and ask the Solicitor now, who is PGW, under this
11 circumstance, responsible to as it relates to anyone
12 requiring them to do anything, whether it is PECO or
13 whether it is the PUC, in the environment and under
14 the circumstance that they have no signed Venture
15 Agreement?

16 If a requirement by the PUC comes
17 down telling them that they must do X, can they do
18 X, given the fact that they don't have a signed
19 Venture Agreement, and there is no venture?

20 And, what should they do?

21 COUNCILMAN NUTTER: Try to answer the
22 first one first.

23 MS. FRANKLIN-SUBER: The short answer
24 is that PGW, PFMC's authorization to engage in
25 activity in this pilot program, derives from City

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2 Council.

3 COUNCILMAN NUTTER: So
4 notwithstanding a ruling by the PUC, no matter what
5 PECO says about notification or anything else that
6 has to be done, if you don't have a venture, which
7 you can't have if you don't have a signed Venture
8 Agreement, you can't do those things; is that
9 correct?

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

12 COUNCILMAN NUTTER: Okay. Thank
13 you.

14 PRESIDENT STREET: The Chair
15 recognizes Councilman DiCicco.

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

18 My question is not germane to what is
19 being asked, so I will hold off on my question.

20 It is a question to Mr. Hawes
21 regarding personnel at PGW.

22 PRESIDENT STREET: The Chair
23 recognizes Councilman DiCicco. You might as well
24 get it now.

25 COUNCILMAN DiCICCO: Thank you.

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2 Mr. Hawes, I was just wondering if
3 you could bring us up to date on the status of
4 Mr. Collins and his employment, or his decision
5 whether or not he wishes to stay as an employee of
6 PGW, and wishes to remain as a resident of whatever
7 county he was, or is he moving into Philadelphia?

8 MR. HAWES: Mr. Collins -- I can
9 address that.

10 Mr. Collins' decision is that if the
11 current policy of PGW around residency is the
12 prevailing policy going forward, he will comply by
13 moving into the city in compliance with that policy,
14 and establishing a residence where he would stay in
15 the evenings.

16 COUNCILWOMAN KRAJEWSKI: That's nice
17 of Mr. Collins.

18 COUNCILMAN DiCICCO: So his family
19 would remain in Buckingham Palace, or whatever that
20 was, and he will come to Philadelphia?

21 MR. HAWES: Yes.

22 COUNCILMAN DiCICCO: Which means he
23 is going to continue to do what he has been doing
24 since he has been employed?

25 MR. HAWES: Yes.

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2 And I think the -- but to clarify,
3 and I think this is where -- this is what I think is
4 really germane in this case. That was the first
5 part of it.

6 I am prepared to support and
7 recommend to the PFMC Board a domicile policy.

8 If that, in fact, becomes the law,
9 then it will supersede the current residency issue.
10 And, therefore, anybody not in compliance would not
11 be eligible to work in the Philadelphia Gas Works.

12 COUNCILMAN DiCICCO: Correct me if I
13 am wrong. That means he would not be grandfathered
14 in?

15 MR. HAWES: What?

16 COUNCILMAN DiCICCO: Would he be
17 grandfathered in? You are saying, "supersede."

18 MR. HAWES: See, I don't know what
19 decision the Board would make.

20 But I think one of our
21 recommendations would be that we have got roughly
22 500-something employees who are currently
23 grandfathered prior to March of 1983.

24 I don't know what the Board would
25 decide, but it would not be my recommendation that

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2 we impact those.

3 But beyond that, I don't know what
4 the Board's position would be, but that would be the
5 only strong feeling that I would have at this time,
6 that those be grandfathered, the ones prior to.

7 PRESIDENT STREET: What about the
8 rest?

9 COUNCILMAN DiCICCO: The rest of the
10 employees.

11 PRESIDENT STREET: The other
12 employees.

13 MR. HAWES: Well, the only thing I
14 can do is, I would recommend and I would support the
15 grandfathering -- I mean, the continuation of those
16 500-and-something employees that are already
17 grandfathered.

18 PRESIDENT STREET: And what about the
19 others who are now under the residency provision, as
20 opposed to the domicile provision, after '93?

21 MR. HAWES: It's 83. '83 was the
22 grandfather. '93 was the change of the policy from
23 domicile to residence.

24 I can't tell you what the Board's
25 position would be. But I would be prepared to

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2 support some language that would suggest, at least
3 in general, that everybody be under the same policy,
4 other than those already grandfathered.

5 COUNCILMAN DiCICCO: Another
6 question. Mr. Sharbutt, I believe his name is, do
7 you know, could you give me his title?

8 MR. HAWES: Mr. Sharbutt is the Chief
9 Financial Officer.

10 COUNCILMAN DiCICCO: Do you know what
11 his salary is?

12 MR. HAWES: His salary?

13 COUNCILMAN DiCICCO: Yes; ballpark.

14 MR. HAWES: 175.

15 COUNCILMAN DiCICCO: More than City
16 Council, I assume.

17 About 175,000?

18 MR. HAWES: Right.

19 COUNCILMAN DiCICCO: Would you happen
20 to know Mr. Sharbutt's address?

21 MR. HAWES: I don't know the exact
22 address, but it is in East Falls. And I don't know
23 exactly the absolute address.

24 COUNCILMAN DiCICCO: So it wouldn't
25 be 800 West Montgomery Avenue?

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2 MR. HAWES: No; that's the
3 Philadelphia Gas Works.

4 COUNCILMAN DiCICCO: I don't have
5 that in front of me, but I was informed earlier
6 today that that was the address he was using.

7 If that's incorrect, I would
8 apologize.

9 MR. HAWES: That's incorrect.

10 COUNCILMAN DiCICCO: But he is a
11 Philadelphia resident?

12 MR. HAWES: Yes. No question about
13 it.

14 COUNCILMAN NUTTER: He is in the room
15 today.

16 COUNCILMAN DiCICCO: Are you a
17 Philadelphia resident, sir? It is not 800 West
18 Montgomery?

19 MR. SHARBUTT: That's my office
20 address.

21 PRESIDENT STREET: Can we ask the
22 witness to come to the witness table, identify
23 yourself.

24 MR. SHARBUTT: I am Ramon Sharbutt,
25 Chief Financial Officer. I reside every night of

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2 the week as a resident of Mr. Nutter's district.

3 And the address is on Timber Lane in East Falls.

4 COUNCILMAN DiCICCO: Is that along
5 with your family, Mr. Sharbutt?

6 MR. SHARBUTT: Yes.

7 COUNCILMAN DiCICCO: Thank you. It
8 is good to know we have some people.

9 PRESIDENT STREET: Well, why did you
10 put your address down as over there at the PGW
11 office building?

12 MR. SHARBUTT: When I first moved
13 here, I didn't have an address, and that was when I
14 filled out the forms. I didn't have an address at
15 that time.

16 And I didn't realize that nobody
17 changed it. I bought a house about a month after --

18 PRESIDENT STREET: It is that
19 computer thing again. There it goes again.

20 MR. SHARBUTT: I bought the house
21 within a month after I moved here.

22 PRESIDENT STREET: Please continue,
23 Councilman.

24 COUNCILMAN DiCICCO: I am through
25 with my questions.

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2 MR. HAWES: President Street, could I
3 comment?

4 COUNCILMAN DiCICCO: I am not clear
5 on that yet, but...

6 MR. HAWES: Let me just comment. You
7 said it is good that somebody lives in the city.

8 I think all of the people, other than
9 Mr. Collins, who have moved into the city, since we
10 have been here, have all bought houses in the city
11 who are under my direct reporting staff.

12 COUNCILMAN DiCICCO: I am going to be
13 asking of you, as I have done with some of the other
14 agencies, Pennsylvania Convention Visitor's Bureau,
15 as an example, and Pennsylvania Convention Center a
16 list of the employees and their addresses.

17 MR. HAWES: Sure.

18 COUNCILMAN DiCICCO: And, for your
19 information, just as an example. The latest report,
20 which I received about a week ago, of the 64
21 employees at the Pennsylvania Convention and
22 Visitor's Bureau, 30 of them live outside of the
23 City of Philadelphia.

24 Their salaries amount to \$1.5
25 million. And one employee lives in Fairfax,

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2 1983, are employees who were at PGW prior to 1983, a
3 substantial amount of them, over a thousand of them,
4 were grandfathered in, they are still there. We are
5 not talking about them.

6 Between 1983 and 1993, there was a
7 domicile requirement. So people who came during
8 that period of time should have to live in the city,
9 domicile requirement.

10 It is my understanding that in 1993,
11 the domicile requirement was changed to a residency
12 requirement. So at that time, there were certain
13 people who could be hired to be in Mr. Collins'
14 position.

15 And our position -- and I think this
16 is pretty much a unanimous position of this
17 Council -- is that we would like for you to lead the
18 charge and support a change in the policy from a
19 residency to a domicile policy, and require that all
20 employees that may have come in after 1993, between
21 1993 and now, have a domicile in the City of
22 Philadelphia where they and their family lives.

23 And not this residency stuff, and
24 some nights I sleep here, and some nights I am over
25 there, and all of that. That doesn't work for us,

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2 not at PGW. And that's where we would like for you
3 to be.

4 And can you give us the comfort that
5 that's where you are, and that's the recommendation
6 you will take to that Board?

7 MR. HAWES: Yes, sir.

8 PRESIDENT STREET: Thank you.

9 The Chair recognizes Councilman
10 Nutter.

11 COUNCILMAN NUTTER: Thank you,
12 Mr. President.

13 Mr. Hawes, I did not completely
14 understand your explanation in response to
15 Councilman DiCicco, specifically to Mr. Collins and
16 what he thinks or what he feels or what he plans to
17 do.

18 And it seemed to be tied to, if
19 somebody else does something, then I will do
20 something. If somebody doesn't do anything, then I
21 am not going to do anything. And I was confused by
22 that.

23 MR. HAWES: Let me try to be
24 clearer.

25 Under the policy that is in place

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2 today, and that has been in place since 1993,
3 Mr. Collins would be required to move in the address
4 that he mentioned before in Wissahickon, get a voter
5 registration card, register his vehicle, stay there
6 at least during the week, during the work week.
7 That is what he said before he did not do.

8 That would be what he would be
9 required to do under the policy that is in effect
10 today at the Philadelphia Gas Works.

11 COUNCILMAN NUTTER: I am sorry.
12 Under the policy in effect today, he would be
13 required to do what?

14 MR. HAWES: The policy in effect
15 today in the Philadelphia Gas Works, since 1993, is,
16 he would be required to establish a residency, not a
17 domicile.

18 COUNCILMAN NUTTER: I understand
19 that. And what is involved in that?

20 MR. HAWES: Involved in the
21 residency?

22 COUNCILMAN NUTTER: Yes.

23 MR. HAWES: First of all, living
24 there at least continuously during the week.

25 COUNCILMAN NUTTER: Okay. That's

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2 one.

3 MR. HAWES: A voter registration.

4 COUNCILMAN NUTTER: Two.

5 MR. HAWES: Vehicle registration.

6 COUNCILMAN NUTTER: All right.

7 MR. HAWES: And we have changed
8 recently a number of our monitoring programs and
9 internal control programs to make sure that people
10 are doing and complying with that policy.

11 But I think that those are the policy
12 requirements as they exist today.

13 COUNCILMAN NUTTER: Okay. But now
14 Mr. Collins' testimony, when he was here with us on
15 October 29, states that he does not live at 5450
16 Wissahickon Avenue, he does not stay at 5450
17 Wissahickon Avenue, he does not sleep at 5450
18 Wissahickon Avenue, his family is not there, his car
19 is not registered there.

20 I would hope that he would get a
21 voter registration card, because he is in my
22 district, also. Although, at this point, also, he
23 would probably not be voting for me.

24 So, I mean, he is not in compliance
25 with the current residency policy.

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2 MR. HAWES: That is correct.

3 COUNCILMAN NUTTER: And gives no
4 indication, at least in his last appearance here,
5 that he had any intention of complying with the
6 residency --

7 MR. HAWES: But my answer is.

8 COUNCILMAN NUTTER: -- as he
9 articulated.

10 MR. HAWES: What I said earlier was
11 that he was given an X amount of time to --

12 COUNCILMAN NUTTER: How much time?

13 MR. HAWES: Originally it was
14 December 1. But he was having some appraisal work
15 and so forth on his home, trying to look at all of
16 the factors that you have to take into consideration
17 in this kind of situation.

18 As of last week, he told me that he
19 was prepared to move and comply with the residency
20 requirement that is in effect today at the
21 Philadelphia Gas Works.

22 I think the point is that, as we move
23 now beyond that to domicile, that would become a
24 moot point.

25 But at this point, you asked me what

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2 his decision was; that was the original question.

3 And my answer was and is that he has agreed to

4 comply with the policy that is in effect today and

5 has been in effect since 1993.

6 COUNCILMAN NUTTER: When?

7 MR. HAWES: When, what?

8 COUNCILMAN NUTTER: When will he

9 comply?

10 MR. HAWES: Right away.

11 COUNCILMAN NUTTER: January 1,

12 February 1, March 1, tomorrow?

13 MR. HAWES: January 1. January 1.

14 COUNCILMAN NUTTER: Okay. Thank

15 you.

16 (Councilwoman Verna assumes the

17 Chair.)

18 COUNCILWOMAN VERNA: Councilman

19 DiCicco, just looking at you, I know there is

20 something you are dying to say.

21 COUNCILMAN DiCICCO: Madam Chair, the

22 object here was, hopefully, that he would make a

23 decision to move himself and his family into the

24 City of Philadelphia.

25 And, with all due respect to

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2 Mr. Hawes, I mean, you can't answer for what
3 decisions he and his wife and family make. But I
4 think he came from -- where is it?

5 COUNCILMAN NUTTER: Tulsa, Oklahoma.

6 COUNCILMAN DiCICCO: Oklahoma. I
7 mean, he traveled across this country to take the
8 job at PGW. And he has had --

9 MR. HAWES: No. He came here to work
10 for Sun Oil.

11 COUNCILMAN DiCICCO: Well, at some
12 point he made a decision to move halfway across this
13 country to take a job in the Philadelphia area.
14 Subsequently, he makes application for a job at
15 PGW.

16 My point is, it had to be much more
17 difficult, I would assume, for he and his family to
18 make the decision to move from Oklahoma.

19 And it has to be a lot easier to make
20 a decision to move from Bucks County, into
21 Philadelphia, I would think, than from Oklahoma to
22 Philadelphia.

23 And for some reason, I guess -- and I
24 wish he were here today -- I always want to ask
25 people, why is it you find it so difficult to live

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2 amongst people like us who are trying to make PGW
3 have an opportunity to compete, continue to work and
4 pay the high salaries that people like Mr. Collins
5 are making today.

6 It is a look of frustration. I fight
7 this fight, and I have probably said this a dozen
8 times, and my colleagues are probably tired of
9 hearing me.

10 When we go out in the community, we
11 talk to people who are thinking about leaving. We
12 ask them to stay and fight the fight, and you can't
13 run away from your problems. But for some reason
14 people just think that it is beneath them.

15 And that's the impression I get, that
16 it is beneath them to live with people in the City
17 of Philadelphia, people like us.

18 You know, I am a neighborhood guy. I
19 went to high school. I raised two sons. One is a
20 dentist today, born and raised in the heart of South
21 Philadelphia, in a little old row house, whose
22 father only had a high school education, played
23 hockey in the street, played stick ball in the
24 schoolyard, did all the things that everybody else
25 does in the city.

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2 And I am so proud that my son is a
3 dentist. And my youngest son is in the second year
4 of law school.

5 Do they think that -- thank you.
6 More confusion in this world, another lawyer.
7 That's what we need, right.

8 PRESIDENT STREET: We both have one
9 second-year law students.

10 COUNCILMAN DiCICCO: Present company
11 excluded, Miss City Solicitor.

12 It just drives me nuts. And I look
13 at this in every department. And we keep making an
14 excuse. Are there not any qualified people here?

15 And I have no reason not to like
16 Mr. Collins. I am sure he is a decent guy, and he
17 is a good family man. But why do they do this?

18 Registering to vote, which may or may
19 not be good for Mr. Nutter or the rest of us, and
20 registering a car in Philadelphia, really gets me
21 nowhere, as far as I am concerned. It doesn't help
22 me.

23 I want him to be really a part of our
24 community. I want his kids to be able to interact
25 with kids in our city, the kids that we are trying

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2 to help out and make a better life for, and all the
3 things that are important to us, why most of us took
4 this job.

5 MR. HAWES: Right. I guess I don't
6 want to speak for Tom.

7 But I think for the rest of us who do
8 live in the city, we do understand that, and we do
9 support that. And we do have children who live and
10 go to school here. And we do love living in the
11 city.

12 I can't speak for Tom. I know that
13 Tom was already where he is. And I think there was
14 some economic reasons, which we were not able to
15 help him with, that would have perhaps caused him to
16 do some of the transition.

17 But I am having to speak for too many
18 people, and I don't want to do that.

19 I can tell you that our view, I
20 think, Deborah, who lives in Center City, I think
21 Ray, who lives in East Falls, I think Bud, who lives
22 in Mt. Airy, I think myself, who lives in Mt. Airy,
23 I think we all agree with that.

24 But I don't necessarily believe that
25 Tom isn't a good person because he wants to say

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2 where he was and because he wants to keep his
3 children where they are.

4 I don't want to make excuses for
5 him. I don't want you to think it is a prevailing
6 situation.

7 COUNCILMAN DiCICCO: I don't expect
8 you to make excuses.

9 And it is kind of sad that it is one
10 person we are centering on. But it is one person in
11 a universe of many people.

12 The School District, over 5500
13 employees have gotten waivers over the years, they
14 don't live here. And Philadelphia Convention and
15 Visitor's Bureau, they don't have people that live
16 here, but are paid by our tax dollars or the hotel
17 tax.

18 The Pennsylvania Convention Center,
19 they have 10 or 15 employees who live in New
20 Jersey. Again, it is our tax dollars.

21 We have to deal with tax issues,
22 raising taxes, liquor by the drink tax, all these
23 things that pay their mortgages.

24 And if we are not good enough for
25 them and their families to live with us, then maybe

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2 they ought to go find a job in the counties and
3 states where they reside.

4 Let those Commissioners figure out a
5 way of getting the tax revenue to pay for their
6 jobs.

7 We have enough people in Philadelphia
8 who need jobs, enough qualified people who need
9 jobs.

10 And I know I get in trouble with the
11 Mayor. Because he always says we are trying to
12 encourage regionalization. Well, I don't know if
13 that will happen in my lifetime. God bless us, if
14 it does.

15 But, in the meantime, my
16 responsibility is to the city.

17 Thank you, Mr. President.

18 Thank you, Mr. Hawes.

19 PRESIDENT STREET: Thank you.

20 The Chair recognizes Councilman
21 Mariano.

22 COUNCILMAN MARIANO: DiCicco said
23 everything I was going to ask.

24 But this is what boggles my mind.
25 Why do we even actively recruit people, so he has to

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2 time, I have had this discussion one hundred times.
3 And Councilman Longstreth will tell you, I have had
4 this one hundred times.

5 Philadelphia Home Rule Charter
6 requires different things of different people. The
7 Charter requires and authorizes people who are
8 recruited into this government by a Mayor, the
9 Charter says you get six months to move into the
10 city.

11 Because it is unrealistic to expect
12 that we are going to find all the people to run this
13 big government who all live in the city.

14 And it is not unusual to do national
15 searches for a variety of different searches. We
16 did a national search to find Mr. Hawes, and to find
17 the City Solicitor and Mr. Hayllar and all. And
18 that is not unreasonable.

19 And what the Charter says is that you
20 have to live in the city. You get six months to
21 move in. But you have to live here while you are an
22 officer of the City of Philadelphia.

23 But what it does is, it allows them
24 to maybe maintain a house someplace else. Because
25 they are here. And the average person who comes

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2 into Administration stays probably between two and
3 three years, not four years, not five, not eight.
4 It is a rather short period of time.

5 The City Council of Philadelphia
6 imposes by way of ordinance the domicile requirement
7 on city workers.

8 If a majority of the members of this
9 Council wanted to, we could say that people who work
10 for the City Council of Philadelphia do not have to
11 live in the city.

12 We would never say that. We will
13 never, ever say that. Because people who work in
14 the police department, the fire department, the
15 recreation department, and all these agencies, ought
16 to live in our neighborhoods. And they just ought
17 to be here.

18 We had a terrible problem with a
19 former Police Commissioner who wanted to say, "I
20 live in the City of Philadelphia," but wanted to
21 have his wife and children someplace else.

22 But that's not the situation we have
23 at PGW. Because it is assumed that people who come
24 to work for PGW are making a commitment to this
25 city, not to an Administration. It is a commitment

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2 to the city.

3 And we want them to live here. We
4 want them to do the kinds of things that we do, to
5 feel the pain that we feel, and to feel the joys
6 that we feel.

7 And it is unreasonable to think that
8 people will come to work for a wholly owned
9 subsidiary of the City of Philadelphia, and then
10 live someplace else and have an apartment in the
11 City of Philadelphia.

12 Now, those situations ought to be
13 distinguished from the Kvaerner situation, where we
14 are creating jobs, we are spending money, and we
15 know that all the people who have those jobs are not
16 going to be residents of the City of Philadelphia.

17 We have terrible problems with the
18 situation that the Councilman has mentioned, where
19 we have a convention and visitor's bureau, that gets
20 paid out of tax dollars that's raised by the hotels
21 in this city, and live all over the region.

22 The Convention Center Authority now,
23 again, is a little different. Because its Board
24 members are appointed from people all over the
25 Commonwealth, because the Governor has appointees

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2 finish this.

3 It is not these three at the table
4 here. I look around the room, I see two Civil
5 Affairs cops here.

6 The one over there on the left, Eddie
7 Maynor, he grew up four blocks away from me. So I
8 know when I ask him a question about the police or
9 Civil Affairs, he has sort of a mindset how it is to
10 have grown up in Philadelphia.

11 Now, we all can't be fortunate enough
12 to have grown up in Juniata Park or even
13 Philadelphia. I understand that. We are glad to
14 bring talent from other cities and other
15 neighborhoods. We are glad to have them.

16 But if it is good enough to be a
17 Philadelphia policeman, to sit there for a year
18 before they do anything -- I understand we need all
19 these big, high-priced talents. And maybe the next
20 Mayor will think about, when he starts recruiting
21 people, that maybe a little regionalism or that a
22 little city experience is something to add into the
23 mix.

24 We went to Boston looking for
25 somebody who is in charge of the Parking Authority,

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2 and we have probably 30,000 people here who could do
3 the job.

4 And it is not intended as a shot for
5 Miss Cutler or these people. We have to start
6 looking at the talent we have here.

7 We sit here, and we are putting kids
8 through public school and parochial school. We have
9 people that can do these jobs. And you are welcome
10 to them.

11 They weren't handed anything. They
12 were certainly qualified. But if it is good enough
13 for the Police Police department and Eddie Maynor,
14 it is good enough for us.

15 That's what it is all about. It is
16 Philadelphia. We were here. We were here long
17 enough. And I am going to go out on a limb here.

18 If everybody wants to live in New
19 Jersey, they can continue to live in New Jersey, but
20 they just can't work here. It is simple.

21 They can bring their company here and
22 work here, but they are not going to get paid the
23 tax dollars that people do. Eventually that's going
24 to change.

25 Thank you, Mr. President.

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2 PRESIDENT STREET: Thank you very
3 much.

4 No lights are on. The Chair
5 recognizes Councilman Nutter, wherever he may be.

6 COUNCILMAN NUTTER: I would like to
7 recommend we take a couple-of-minute break.

8 PRESIDENT STREET: I may want to go
9 further than that.

10 I need to ask the City Solicitor as
11 to whether or not there are any other parts of this
12 agreement where either the amendments to the
13 original QST/PGW agreement or the proposed
14 amendments to the amendments take anything away from
15 what we put in the original ordinance?

16 MS. FRANKLIN-SUBER: The only
17 additional change, Mr. President, I would like to
18 point out to members of Council, it is in the
19 section on indemnification, but it has to do with
20 who controls the defense of the potential claims.

21 PRESIDENT STREET: Oh, boy. Tell us
22 what it is.

23 MS. FRANKLIN-SUBER: Originally the
24 language provided that the city would direct and
25 manage the defense of any claim through Council

4 So QST is still reimbursing us,
5 assuming the liability for claims related to their
6 activity. And their position is, they should then
7 be in the position to manage and direct how that
8 claim is defended.

10 COUNCILMAN NUTTER: Is the last
11 statement, that it is not unreasonable, based on the
12 fact or the supposition that whatever judgment or
13 damage that comes out of that case, they would have
14 the responsibility for paying?

18 This simply relates to who between
19 QST and the city would actually call the shots in
20 terms of how the claim is handled, how we defend
21 it.

25 It doesn't change the fact that as

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2 far as claims arising out of their activity, that
3 they would have the liability for it.

4 It simply goes to the question of who
5 is going to be in control of how the claim is
6 managed.

7 But it can't be settled, no money can
8 go out, without our consent.

9 And the only change there --

10 COUNCILMAN NUTTER: And whose money
11 is going out?

12 MS. FRANKLIN-SUBER: Since it relates
13 to -- it ties to the scope of QST's indemnification
14 obligation.

15 So, again, here the context is that
16 QST is indemnifying us, they are assuming liability,
17 they are indemnifying the city in connection with
18 anything that arises out of their activity, the
19 provision of electricity.

20 So this relates to, in any of those
21 claims or actions, they still have the
22 indemnification obligation.

23 They can't settle the claim or action
24 without our consent, but it simply shifts as between
25 QST and the city who actually manages.

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2 with a lot of bills and all on it. And that we do
3 the calendar for today, complete our Council
4 session, of course have the Committee of the Whole
5 stand in recess.

6 And if we can work out some language,
7 I will, of course, make it available to every
8 Councilmember.

9 We can discuss it. And if people are
10 satisfied with it, then we can consider it.

11 If there is, you know, no agreement,
12 then we can decide then what it is we want to do
13 about that.

14 But can we put the Committee of the
15 Whole in recess? And we will say we will be in
16 recess, I think it will take us probably, if we
17 could do a consent addenda, Mr. Cohen -- just
18 kidding.

19 Maybe we could stand in recess until
20 4 o'clock for the Council Committee of the Whole,
21 and then do our Council session, and then come back
22 into session here, and then go back into session, if
23 it is necessary.

24 With your agreement, this committee
25 will stand in recess.

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2 your convenience, the preceding sentence was retyped
3 so that you could view the change in context.

4 PRESIDENT STREET: So that if a
5 member of Council takes the black-lined, indicating
6 changes to the Venture Agreement, and looks on the
7 first page under 10, you will see the underlined
8 language, "As between QST and PGW, QST assumes sole
9 and absolute responsibility and liability resulting
10 or arising out of the provision of electricity," as
11 described in a couple of other paragraphs.

12 And after that, we propose to add the
13 language, "The liability described in the previous
14 sentence shall in no event be limited, denied,
15 expunged, or otherwise circumscribed as a result of
16 any degree, holding, or finding by any agencies,
17 commission, or Court that PGW, the city, or PFMC is
18 or is not authorized to engage in the activities set
19 forth in this agreement"?

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

21 PRESIDENT STREET: Does every member
22 see where we are?

23 Now, would you tell us why this is
24 important to us? What does it have to do with all
25 the other stuff that we said earlier?

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2 MS. FRANKLIN-SUBER: This change
3 makes it absolutely clear that in the event there is
4 a lawsuit, and we are sued along with -- and by
5 "we," I mean the city, PFMC, PGW -- we are sued
6 along with QST, and the claim arises out of QST's
7 provision of electricity, its activity, and there is
8 a count or some part of the Complaint that also
9 raises the question or alleges that PGW has no
10 authorization to enter into the Venture Agreement,
11 that QST, nonetheless, remains responsible for any
12 liability arising out of its activities, and that
13 liability is not limited in the event it is
14 ultimately determined that we do not have authority
15 to engage in the activities.

16 PRESIDENT STREET: The Chair
17 recognizes Councilman Nutter.

18 COUNCILMAN NUTTER: So, Madam
19 Solicitor, you are saying that if we are sued, QST
20 cannot then turn to us and say, well, but, you know,
21 Count No. 5, out of a 20-count charge, is that you
22 shouldn't have been in this business in the first
23 place, and, therefore, you have to go and defend
24 yourselves on that particular count. And, if that
25 were found to be the case, you, the city would have

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2 to go and pay for it?

3 Even if someone said that, that QST
4 is still responsible?

5 MS. FRANKLIN-SUBER: What it means is
6 that QST could not take the position that, if all of
7 the allegations in the Complaint, except one,
8 related to the property damage that arose because of
9 their provision of electricity, that simply because
10 of that one count, that they no longer are
11 responsible for paying for any liability.

12 It does not mean -- its liability.
13 It does not mean that, in that context, we would not
14 defend that count.

15 So, in other words, QST --

16 COUNCILMAN NUTTER: Or be responsible
17 for the expenses of that defense?

18 MS. FRANKLIN-SUBER: For liability,
19 correct. Or liability arising out of the fact that
20 we don't have authorization. But QST cannot back
21 away from its responsibility.

22 And what would happen in that
23 situation, as a practical matter, let's assume we're
24 talking about a Complaint where all of the
25 allegations except for one count relate to the

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2 building that blows up because of the provision of
3 electricity.

4 QST will defend the city on all of
5 those other counts. They will have the liability.
6 They will reimburse us for any liability that we
7 have that is related to that activity.

8 As to the count that relates to our
9 legal authorization, while theoretically we would
10 have to pay the costs of outside counsel, because,
11 practically, they are assuming the bulk of the
12 defense -- and I would personally be interested in
13 the outcome of an allegation of that nature -- the
14 Law Department would defend and work closely with
15 QST and cooperate in the defense of that Complaint.

16 So that, as a practical practical
17 matter, we may not incur any expense of outside
18 counsel in defending the city and PGW in that
19 situation.

20 COUNCILMAN NUTTER: Okay. Thank you,
21 Mr. President.

22 PRESIDENT STREET: Thank you very
23 much.

24 Is there any other member of Council
25 that has any questions about this amendment?

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2 So that you will understand, what we
3 will be doing is, amending this language onto the
4 black-lined set of amendments, to the proposed set
5 of amendments to the Venture Agreement. And all of
6 it gets merged into one agreement.

7 Is there any question that anyone
8 else has? Any question that anybody wishes to ask
9 of anyone at the table?

10 Anybody have any more residency
11 questions? Just kidding. I think we beat that
12 residency thing.

13 Councilman Nutter.

14 COUNCILMAN NUTTER: Mr. Chairman, I
15 have a question of Mr. Hawes.

16 Mr. Hawes, you responded very
17 definitively on the question of Mr. Collins.

18 In light of the bill introduced by
19 Councilwoman Tasco, that was introduced during the
20 earlier Council session regarding domicile, your
21 statement was that you would ask, I guess, the PFMC
22 Board to adopt its own domicile requirement.

23 The question is, when would you
24 expect that to happen?

25 MR. HAWES: The request?

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2 COUNCILMAN NUTTER: The request and
3 the placement of the request?

4 MR. HAWES: I would make the request
5 at the December Board meeting, which is a week from
6 today.

7 COUNCILMAN NUTTER: And when would
8 you expect the PFMC Board to take action?

9 MR. HAWES: That's, I would assume,
10 in a reasonable time. Maybe at that meeting, but I
11 can't answer that.

12 I would assume they would act
13 reasonably fast, but I can't answer that.

14 COUNCILMAN NUTTER: Then all I would
15 ask you is, if you make the request in the December
16 meeting, and if the action has not taken place by
17 February 1, that you report to the Chair of the
18 Committee of the Whole what action has been taken,
19 what action has not been taken by the PFMC Board.

20 And then at that point we can do
21 whatever it is that we decide to do on this side.

22 MR. HAWES: I would be glad to.

23 COUNCILMAN NUTTER: Okay. Thank
24 you.

25 PRESIDENT STREET: Thank you very

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2 much.

3 The Chair recognizes Councilman
4 Cohen.

5 COUNCILMAN COHEN: Mr. President,
6 some day we are going to get modern amplification.

7 PRESIDENT STREET: Not while I am
8 here.

9 COUNCILMAN COHEN: This appears to me
10 to deal quite effectively with the questions that
11 were raised.

12 But I am wondering -- and I direct
13 the question to the President -- do you share my
14 feeling, or is there something that I am missing?

15 PRESIDENT STREET: Councilman Cohen,
16 we determined that we were not going to have to go
17 over this ground again.

18 We believe we have reasonable
19 assurances that if the amendment is made in this
20 way, that the agreement will be accepted by QST and
21 its parent corporation.

22 If not, somebody is going to get
23 killed. For us to go through this and then these
24 people not agree to this, somebody gets shot, all
25 the residents and non-residents. We won't be

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2 distinguishing between whose blood will flow.

3 But, actually, I think we have an
4 agreement that if we do this -- this adds, this
5 actually adds a layer of protection that we didn't
6 have before.

7 And this language, coupled with all
8 of this discussion and our ability now to go to QST
9 in the event that there is litigation around all of
10 this, really puts QST at a monumental disadvantage,
11 which is part of the reason why we wanted to have
12 this discussion and then have this language in the
13 first instance.

14 So now, I mean, nobody, I think, will
15 be able to question what we intended by this
16 language. Because clearly this language and the
17 record of this hearing would work in favor of the
18 city and the Council and PGW and PFMC, in the event
19 that there was any real litigation.

20 The other thing that's probably very
21 important to us is that the company has changed its
22 position about being responsible for all the cash
23 outlays.

24 I mean, we will not spend cash to
25 implement this program. PGW won't spend cash, the

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2 wishes to testify or say anything else about
3 anything that's in front of us?

4 You can even say something about
5 things that are not in front of us.

6 No? Okay.

7 (Public Hearing adjourned.)

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1
2 COUNCIL OF THE CITY OF PHILADELPHIA
3 PUBLIC MEETING
4 of the
5 COMMITTEE OF THE WHOLE
6 - - -
7 Thursday, December 11, 1997
8 - - -
9 Public Meeting conducted by the Committee
10 of the Whole, held in Room 400, City Hall,
11 Philadelphia, Pennsylvania, on the above date, to
12 consider action on the following:
13 RESOLUTION 970806
14 - - -
15
16 PRESENT: COUNCILMAN JOHN F. STREET, Chair
17 COUNCILWOMAN ANNA C. VERNA, Vice-Chair
18 COUNCILWOMAN HAPPY FERNANDEZ
19 COUNCILMAN JAMES F. KENNEY
20 COUNCILMAN W. THACHER LONGSTRETH
21 COUNCILWOMAN AUGUSTA A. CLARK
22 COUNCILMAN DAVID COHEN
23 COUNCILMAN FRANK RIZZO
24 COUNCILMAN ANGEL ORTIZ
25 COUNCILMAN FRANK DiCICCO
COUNCILWOMAN JANNIE L. BLACKWELL
COUNCILMAN MICHAEL A. NUTTER
COUNCILWOMAN JOAN L. KRAJEWSKI
COUNCILMAN RICHARD T. MARIANO
COUNCILWOMAN DONNA REED MILLER
COUNCILWOMAN MARIAN B. TASCO
COUNCILMAN BRIAN J. O'NEILL
- - -

1 PUBLIC MEETING

2 PRESIDENT STREET: The Chair
3 recognizes Councilwoman Verna for a motion.

4 COUNCILWOMAN VERNA: Thank you,
5 Mr. President.

6 I move that the amendment as read by
7 the City Solicitor to be added to the end of section
8 10(a), be adopted.

9 (Duly seconded.)

10 PRESIDENT STREET: All in favor let
11 it be known by saying aye.

12 Those opposed say nay.

13 It is so ordered.

14 The Chair recognizes Councilwoman
15 Verna for a motion.

16 COUNCILWOMAN VERNA: Mr. President, I
17 move that the amendments as provided to us by the
18 City Solicitor for the Venture Agreement be
19 adopted.

20 (Duly seconded.)

21 PRESIDENT STREET: All in favor let
22 it be known by saying aye.

23 Those opposed say nay.

24 And just for purposes of
25 clarification, these are the amendments that we have

1 PUBLIC MEETING

2 in our possession under a document entitled
3 "Black-Lined Indicating Changes to Proposed" -- it
4 should be "Proposed Amendments to the Venture
5 Agreement."

6 We all have it. So that there is no
7 misunderstanding, that this is the black-lined
8 indicating changes. And these changes are not to
9 the Venture Agreement itself, but to the proposed
10 amendments to the Venture Agreement.

11 Any question about that? Thank you.

12 Now the Chair recognizes Councilwoman
13 Verna for a motion on Resolution No. 970806, as
14 amended.

15 COUNCILWOMAN VERNA: Mr. Chairman, I
16 move that Resolution No. 970806, as amended, be
17 reported out of committee with a favorable
18 recommendation.

19 (Duly seconded.)

20 PRESIDENT STREET: All in favor let
21 it be known by saying aye.

22 Those opposed say nay.

23 It is so ordered.

24 This brings us to the end of our
25 Public Meeting.

1 PUBLIC MEETING
2 (Public Meeting adjourned at 5:00
3 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 Thursday, December 11, 1997, were
reported fully and accurately by me, and that this
is a correct transcript of same.

RE: COMMITTEE OF THE WHOLE

DEBRA A. WHITEHEAD, RPR