**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held September 13, 2012

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Wayne E. Gardner

James H. Cawley

Pamela A. Witmer

Application of NRG Energy Center Harrisburg A-2011-2239521

LLC for approval to abandon steam service on

the following seven segments of its low pressure

steam system in the City of Harrisburg, Dauphin

County, PA: a) North Third Street between

Forster and Reily Streets; b) Green Street

between North and Forster; c) Locust

Street between North Second and Court Streets;

d) North Second Street between North and Herr

Streets; e) Forster Street between North Second

and Bartine Streets; f) Bartine Street between

Briggs and Union Streets; and g) Briggs Street

Between North Second and Green Streets.

Ira and Sheila Weinstock C-2011-2245834

v.

NRG Energy Center Harrisburg, LLC

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision of Administrative Law Judge (ALJ) Dennis J. Buckley, issued on August 21, 2012. The ALJ recommended, *inter alia*, the approval of the Joint Petition for Settlement (General Settlement) and four separate Individual Settlements. The ALJ and the Parties submit that the proposed General Settlement and Individual Settlements are in the public interest. For the reasons stated below, we will approve the terms of all the Settlements, adopt the Recommended Decision, and modify the Order to include an ordering paragraph requiring that notice of compliance be filed.

**History of the Proceeding**

On April 27, 2011, NRG Energy Center Harrisburg LLC (NRG or Applicant) filed an Application (Application) with the Commission seeking a certificate of public convenience pursuant to Sections 1102 and 1103 of the Pennsylvania Public Utility Code (Code), 66 Pa. C.S. §§ 1102 and 1103, authorizing it to abandon steam service on the following seven segments of its low pressure steam system in the City of Harrisburg, Dauphin County, Pennsylvania: (a) North Third Street between Forster and Reily Streets; (b) Green Street between North and Forster Streets; (c) Locust Street between North Second and Court Streets; (d) North Second Street between North and Herr Streets; (e) Forster Street between North Second and Bartine Streets; (1) Bartine Street between Briggs and Union Streets; and, (g) Briggs Street between North Second and Green Streets.

Notice of the Application was published in the May 14, 2011 edition of the *Pennsylvania Bulletin*.[[1]](#footnote-1)

The Pennsylvania Office of Consumer Advocate (OCA) filed a Protest to the Application on May 27, 2011. Protests also were filed by a number of affected customers of NRG. These customers ultimately joined in the proposed General Settlement filed in this case by NRG. Other customers that filed Protests were the Broad Street Market Corporation; Historic Harrisburg Association; and James E. Ellison.

On May 31, 2011, Ira and Sheila Weinstock filed a Formal Complaint that was docketed at Docket No. C-2011-2245834. On June 21, 2011, NRG filed an Answer to the Complaint, and on that date NRG also filed a Motion to Consolidate the Formal Complaint with the Application proceeding.

On June 2, 2011, the Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance in this case.

On March 30, 2012, NRG filed: (1) Settlements in Resolution of All Issues (Confidential Version)[[2]](#footnote-2); (2) Settlements in Resolution of All Issues (Non-Confidential Version)[[3]](#footnote-3); and (3) a Joint Stipulation of Evidence and Facts. Statements in support of the General Settlement were filed by NRG, the OCA and I&E.

**Terms of Settlement**

The Parties agree upon the following settlement terms set forth below, using the headings specific to the General Settlement document itself:

A. CONVERSION CONTRIBUTION OPTIONS

19. Pursuant to Section 17 ("Transition Service") of NRG's Tariff Steam - PA PUC No. 4 ("Transition Service Tariff), a copy of which is attached hereto as Appendix A, NRG will make a contribution ("Conversion Contribution") toward a Settling Customer's cost of converting to an alternative heating system ("Conversion Cost"). NRG shall offer the following two Conversion Contribution options to a Settling Customer whose total Conversion Cost does not exceed $15,000:

(a) Option 1: NRG shall pay the applicable one-time, lump sum Conversion Contribution set forth in the sliding scale attached hereto as Appendix B.

(b) Option 2: NRG shall offer interest-free financing for the Conversion Cost (less a $1000 Conversion Contribution subsidy) for the applicable term set forth on the schedule attached hereto as Appendix C. The Settling Customer shall be responsible for making monthly payments to NRG pursuant to an executed promissory note and NRG may, in its discretion, take a lien on the customer's new heating system until payment in full is made. If necessary, OCA and I&E shall support a tariff supplement filing by NRG to allow financing for terms in excess of five (5) years.

20. NRG shall, on a case-by-case basis, negotiate an appropriate Conversion Contribution with a customer whose total Conversion Cost exceeds

$15,000.

B. COSTS INCLUDED IN CONVERSION COST

21. The Conversion Cost, to which the Conversion Contribution shall apply, shall include the items listed in Appendix D attached hereto.

22. To the extent that a Settling Customer requires physical modifications to the property to accommodate conversion (as satisfactorily demonstrated to NRG), NRG will include associated costs in the Conversion Cost; provided, however, that the Conversion Cost shall not include the cost of correcting existing code violations or structural defects.

C. PAYMENT OF CONVERSION COST

23. The Conversion Cost, upon which the maximum Conversion Contribution under Option 1 shall be based and by which the amount to be financed under Option 2 will be determined, will be the actual Conversion Cost or the estimate given by UGI HVAC, whichever is less.

24. Under Option 2, the $1000 Conversion Contribution subsidy shall be deducted from the Conversion Cost (which shall be initially paid by NRG) in order to determine the amount to be financed by the customer.

25. NRG shall work with the Settling Customer and the applicable installer so that NRG pays the Conversion Contribution amount directly to the installer. Payment of the Conversion Contribution shall be made to the installer within the time frame set forth in the final Conversion Cost invoice issued by the installer to NRG.

D. SUBSEQUENT REMEDIAL MEASURES

26. If the new system requires remedial measures or repairs after the initial installation (such as the installation of a condensate pump system), the Settling Customer will first seek recourse with the installer. If the installer refuses to provide the needed repairs, NRG shall assist the customer in dealing with the installer to correct the problem. If the installer ultimately refuses to correct the problem, NRG shall arrange for the needed repairs at its expense; provided, however, that such obligation by NRG shall continue only for a period of two (2) years following installation.

E. AVAILABILITY OF STEAM SERVICE

27. NRG shall make steam service available to the Settling Customers for their affected properties through the end of the 2011-12 heating season.

28. No other persons or entities shall be permitted to receive, begin, or reinstate steam service from the lines to be abandoned.

**Discussion**

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a “settlement” reflects a compromise of the parties’ positions and arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest. *Pa. PUC v. CS Water and Sewer Associates*, 74 Pa. P.U.C. 767, 771 (1991).

Once the settling parties have submitted their joint settlement petition for approval, the principal issue for Commission consideration is whether the agreement serves the public interest. *Pa. PUC v. Philadelphia Electric Company*, 60 Pa. P.U.C. 1, 21 (1985); *Pa. PUC v. CS Water and Sewer Associates*, 74 Pa. P.U.C. 767, 771 (1991).

The ALJ made twenty-seven Findings of Fact and reached five Conclusions of Law. R.D. at 8-13, 28-29. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment, unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

NRG is seeking Commission approval to abandon steam service to seven segments of its low pressure steam system in the City of Harrisburg. NRG alleges that these seven segments have deteriorated and are uneconomic to repair. NRG also seeks to concentrate on its core business of serving Commonwealth government customers and asserts that it is necessary to shrink its system and reduce lost and unaccounted for steam so that it can remain economically viable. A General Settlement has been entered into by the parties setting forth the relevant terms and conditions of abandonment. Separate settlement agreements were entered into by NRG and the Broad Street Market Corporation, the Historic Harrisburg Association, and two individual customers, and were filed simultaneously with the General Settlement for Commission review and approval.

The ALJ concluded that the proposed Settlements properly balance the public interest and the interest of the utility and recommended that the Commission approve the General Settlement and the separate Individual Settlements without modification. No Party has filed Exceptions. We agree with the ALJ’s recommendation to approve the Settlements. Although the terms outlined in the Settlements are consistent with the Commission’s procedure for the approval of abandonment of service, nothing in the Settlements requires NRG to inform this Commission when compliance with the Settlements has been completed. Therefore, upon fulfilling its obligations under the Settlements, we shall require NRG to file a notice of compliance with the Secretary of the Commission within thirty days from the date of completion and satisfaction of the terms and conditions set forth in the Settlements, and the date of completion of each of the individual abandonments subject to the Settlements.

**Conclusion**

In accordance with the foregoing discussion, we shall adopt the ALJ’s recommendation to approve the General Settlement and the four Individual Settlements. We also shall require NRG to file a notice of compliance with the Secretary of the Commission consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition for Approval of Settlement of the General Settlement and Individual Settlements at Docket Nos. A-2011-2239521 and C‑2011-2245834 is approved.

2. That the Joint Stipulation of Evidence and Facts, the Joint Petition for Approval of Settlement Between NRG Energy Center Harrisburg LLC, the Office of Consumer Advocate, the Bureau of Investigation and Enforcement, an Intervening Customer and Various Protesting Customers, and all Appendices, filed on March 30, 2012, are admitted into the record of this proceeding.

3. That, for purposes of filing, to the extent that Confidential information, as identified and marked by the Parties, is placed in the Commission's report folders, such information shall be handled in accordance with routine Commission procedures inasmuch as the report folders are not subject to public disclosure.

4. That, to the extent that Confidential information is placed in the Commission's testimony or document folders, such information shall be separately bound, conspicuously marked, and not subject to public disclosure.

5. That the Secretary of the Commission issue a Certificate of Public Convenience authorizing NRG Energy Center Harrisburg LLC to abandon service along Green Street between North and Forster Streets, Locust Street between North Second and Court Streets, North Second Street between North and Herr Streets, Forster Street between North Second and Bartine Streets, Bartine Street between Briggs and Union Streets, and Briggs Street between North and Second Streets.

6. That the abandonment of NRG Energy Center Harrisburg LLC's line along North Third Street between Forster and Reily Streets serving the Broad Street Market is conditioned upon satisfaction of the conditions precedent set forth in the Broad Street Market Settlement. NRG Energy Center Harrisburg LLC will file a notice of compliance with the Secretary of the Commission upon satisfaction of the conditions precedent, at which time the Secretary of the Commission will issue a separate Certificate of Public Convenience authorizing NRG Energy Center Harrisburg LLC to abandon this line.

7. That the Complaint of Ira & Sheila Weinstock at Docket No. C-2011-2245834 be dismissed as satisfied.

8. That upon receipt of the approval from the City Engineer of the City of Harrisburg for its Phase 2 abandonment proposal, NRG will file a copy of that approval with the Commission.

9. That upon fulfilling its obligations pertaining to all matters contained in the Settlement Agreements, NRG shall to file a notice of compliance with the Secretary of the Commission, within thirty (30) days from the date of completion and satisfaction of the terms and conditions set forth in the Settlement Agreements, and the date of completion of each of the individual abandonments subject to these Settlements.



**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 13, 2012

ORDER ENTERED: October 2, 2012

1. 41 *Pa.B.* 2504. [↑](#footnote-ref-1)
2. NRG entered into separate transition service/settlement agreements with the Broad Street Market Corporation; the Historic Harrisburg Association; James Ellison, Esq.; and Ira Weinstock, Esq. These proposed Settlements were included with the General Settlement for Commission review and approval. R.D. at 21. [↑](#footnote-ref-2)
3. Enclosures 2 through 5 of the Confidential Version contain Confidential Transition Service/Settlement Agreements with specific customers and contain customer-specific information. [↑](#footnote-ref-3)