

3.4 Stipulation and Agreement of Compromise and Settlement

COMMONWEALTH OF MASSACHUSETTS SUFFOLK, SS. SUPERIOR COURT

[PLAINTIFF 1],)	
[PLAINTIFF 2] and [PLAINTIFF 3],)	SUPERIOR COURT
individually and on behalf)	
of all others similarly situated,)	
)	
Plaintiffs,)	
v.)	
)	
NSTAR ELECTRIC & GAS CORPORATION,)	
BOSTON EDISON COMPANY,)	
COMMONWEALTH ELECTRIC COMPANY, and)	
CAMBRIDGE ELECTRIC LIGHT COMPANY,)	
)	
Defendants.)	

Stipulation and Agreement of Compromise and Settlement

This Stipulation and Agreement of Compromise and Settlement (the “Stipulation” or “Settlement”) is entered into between the plaintiffs [plaintiff 1], [plaintiff 2] and [plaintiff 3] (the “Plaintiffs”) and the defendants in the above-captioned proceeding, Boston Edison Company (“Boston Edison”), Commonwealth Electric Company (“Commonwealth”), Cambridge Electric Light Company (“Cambridge”) and NSTAR Electric & Gas Corporation (“NSTAR Electric”), an affiliate that provides common administrative and professional services including, but not limited to, billing services to its affiliates. Collectively, the four defendants are referred to herein as the “NSTAR Entities” or the “Defendants”. The parties have agreed to this Settlement, and to the dismissal of claims against NSTAR, Inc.¹ (including NSTAR, a Massachusetts business trust and the parent company of the NSTAR Entities), subject to this Court’s approval, as provided below.

WHEREAS:

A. This action was commenced in this Court by the filing of a complaint on April 23, 2001 (the “Action”). The Action was brought on behalf of a class of electric utility customers claiming to be entitled to “standard offer service” and the lower rates currently obtained thereby. Plaintiffs alleged that the NSTAR Entities had misclassified them and other similarly situated customers by placing them on “default service”, which presently carries higher rates.

¹ There is no actual corporation with that name in the Commonwealth.

B. On November 25, 1997, legislation was enacted to introduce competition to the electric generation market. Chapter 164 of the Acts of 1997. The legislation provides, *inter alia*, that consumers will receive either the “standard service transition rate” (“standard offer rate”), the “default service rate” (“default rate”) or elect to be served through the competitive market. G.L. c. 164, §§1B(b); (d). The legislation requires that each electric distribution company provide the standard offer rate to customers within each electric distribution company’s service area as of March 1, 1998 who do not choose a competitive supplier. G.L. c. 164, §1B(b). The legislation provides that customers entitled to the standard offer rate will receive that rate from March 1, 1998 until February 28, 2005. *Id.* At all relevant times, Boston Edison, Commonwealth and Cambridge were subject to tariffs governing the provision of electric service within their respective service areas (the “tariffs”).

C. The NSTAR Entities are subject to and must abide by the tariffs. The tariffs govern electric generation service provided by the NSTAR Entities to customers within the NSTAR Entities’ respective service areas. The tariffs provide, in relevant part, as follows:

Standard Offer Service shall be available to each Customer who was a Customer of Record as of the Retail Access Date and who has not received Generation Service from a Competitive Supplier since the Retail Access Date.

A Customer receiving Standard Offer Service shall be allowed to retain such service upon moving within the service territory of the Distribution Company.

Plaintiffs alleged that, between March 1, 1998 and January 1, 2001, the NSTAR Entities failed to maintain procedures sufficient to ensure that customers who moved within their respective service areas would retain standard offer service.

D. Plaintiffs alleged that they and the class members had been damaged by the NSTAR Entities’ conduct in that they were misclassified and thereby charged the higher default service rate for their electric service during the period they were placed upon default service. Plaintiffs sought, among other things, a judgment declaring the NSTAR Entities’ conduct unlawful, ordering the NSTAR Entities to reclassify incorrectly classified customers, and requiring refund of overcharges paid.

E. Plaintiffs, by and through their counsel, have conducted an investigation of the facts, including reviews of the NSTAR Entities’ billing and classification procedures, review of the circumstances of more than one hundred (100) individual customers’ classifications, and have analyzed the relevant legal and factual issues. Plaintiffs’ counsel have conducted interviews with Defendants’ counsel and others concerning the NSTAR Entities’ policies and practices relating to service classification and billing. Plaintiffs’ counsel obtained substantial information about the nature and extent of the NSTAR Entities’ challenged practices through this informal discovery and, if this settlement is preliminarily approved, will confirm that information by additional formal discovery as set forth below.

F. Notwithstanding agreement to settle this case, the NSTAR Entities deny the facts or claims alleged in Plaintiffs’ complaint and in this Action, and deny any

liability to any member of the Settlement Classes or to any third party. The NSTAR Entities also have contended, and continue to contend, that they have valid and complete procedural and substantive defenses to each of the claims for relief asserted by Plaintiffs in the complaint and each of the equitable or legal remedies or claims for damages sought by Plaintiffs on behalf of themselves and the proposed Settlement Classes in the Action. The NSTAR Entities have also weighed the risks and possible costs of litigation of the Action against the benefits of the proposed Settlement, and consider it desirable that the claims be settled on a global basis to avoid the time, risk, and expense of defending protracted litigation and in order to achieve a final resolution of the claims being settled.

G. After extensive negotiations and the provision of information relevant to the claims and their resolution, the parties negotiated the settlement contained in this Stipulation. Based on their review and analysis of the relevant facts and legal principles, Plaintiffs and their counsel believe that, in consideration of all the circumstances and after prolonged and serious arms' length settlement negotiations with the NSTAR Entities' counsel, the terms and conditions embodied in this Stipulation are fair, reasonable, and adequate, and beneficial to and in the best interests of the Plaintiffs and the proposed Settlement Classes (as defined below). Plaintiffs' counsel have determined to execute this Stipulation and urge its approval by the Court after consideration of the following substantial benefits that the Settlement bestows upon the Settlement Classes:

(a) The members of the Settlement Classes, as defined in Section 1 below, will receive a refund, in the form of a credit to their NSTAR Entities' electric bill, of 100% of the difference between the default service rate they improperly paid and the standard offer rate to which they are entitled;

(b) The members of the Settlement Classes, as defined in Section 1 below, will be reclassified as standard offer service customers and will thereby receive standard offer service and be charged such standard offer rates for as long as they continue to be eligible for such rates;

(c) The Settlement provides for members of the Settlement Classes to receive reclassification and refund credit in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated through trial and potential appeal, even if such claims were to be found to be meritorious in all respects – in fact, more than 23,000 class members have already been provided their credits;

(d) The Settlement provides for significant monetary and other benefits to the members of the Settlement Classes beyond reclassification and refund credit, including:

(i) the Settlement obliges the NSTAR Entities, at their sole expense, to identify members of the Settlement Classes who were misclassified based on NSTAR Entities' records, to the maximum extent practicable, and to provide the benefits of the Settlement to such persons without their having to take any affirmative steps;

(ii) the settlement obliges the NSTAR Entities to provide notice to potential class members who could not be identified from the NSTAR Entities' records and to provide reclassification and refund credit to those who respond and who are then determined to be misclassified;

(iii) that the NSTAR Entities, in settling these claims, will not assert claimed defenses available to them, whether procedural or substantive; and

(iv) attorneys fees payable to class counsel will be paid by the NSTAR Entities rather than from any funds that would otherwise be available to the class.

H. The parties intend that the proposed Settlement embodied in this Stipulation resolves all claims and disputes between the Plaintiffs, Settlement Class Members and the NSTAR Entities in the Action.

In light of the foregoing, the parties propose to settle this case in accordance with the terms, provisions and conditions of this Stipulation as set forth below.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to approval by the Court as provided herein below pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure by and between the NSTAR Entities and the Plaintiffs for themselves and for the Settlement Classes, by and through their respective counsel and representatives, that all claims, rights and causes of action, in law or in equity, including but not limited to claims arising under the G.L. c. 164, § 1B, G.L. c. 164, § 94, G.L. c. 164, § 93 and G.L. c.93A, or any other state law or regulation governing the provision of electric generation service by an electric utility, or otherwise, and including damages, losses and demands of any nature whatsoever (including, but not limited to, claims for compensatory damages, interest, consequential damages, restitution, punitive damages, contempt, sanctions, penalties, injunctive relief, declaratory relief, or otherwise), whether known or unknown claims, that are, could have been or might in the future be asserted by the Plaintiffs or any member of the Settlement Classes, whether directly, representatively or in any other capacity, against the NSTAR Entities or any of their present or former officers, directors, shareholders, employees, accountants, representatives, attorneys, parent companies (other than NSTAR), subsidiaries, affiliated companies, divisions, and all successors, predecessors-in-interest, heirs, agents and assigns in connection with or that arise out of the NSTAR Entities' charging of default electric service rates when standard offer service should have been provided to a member of the Settlement Classes, or any acts, facts, transactions or occurrences, alleged or otherwise asserted or that could have been asserted in this Action from the beginning of time through the date the Settlement Agreement becomes final (collectively, the "Released Claims"), shall be compromised, settled, released and discharged with prejudice (the foregoing shall herein respectively be referred to as the "Release"), upon and subject to the following terms and conditions:

1. *Settlement Classes.* This Action shall proceed on behalf of two classes for the purposes of settlement, the "Boston Edison Settlement Class", and the "Cambridge/Commonwealth Settlement Class."

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term “Settlement Classes Member” means any person who falls within the definition of either Settlement Class.

For the purposes of this Settlement, a person shall be deemed a “continuous customer” of the entity that provides their electric service if:

- a) the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and
- b) the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Each class includes a group of identified and a group of non-identified class members. The group of identified members of each class consists of those persons whose membership in the class is known to the NSTAR Entities by virtue of various searches of computerized information available to the NSTAR Entities by the methods described below. The group of non-identified members of each class consists of those persons who may be members of the class, but whose identity is not ascertainable by the means and methods of data review described below.

2. *Class Representatives.* For purposes of this Settlement only, Plaintiffs [plaintiff 1], [plaintiff 2] and [plaintiff 3] shall be designated as Class Representatives. It is hereby agreed, for purposes of this Settlement only, that Plaintiffs’ claims are typical of

the claims of the Settlement Classes and that Plaintiffs are adequate representatives of the Settlement Classes.

3. Class Counsel. For purposes of this Settlement only, the firm of Grant & Roddy shall be designated as Class Counsel.

4. Identified Members of the Settlement Classes. The NSTAR Entities have completed a review of customer billing records, pursuant to agreed procedures, including identification of multiple accounts containing identical social security number fields, and identification of multiple accounts containing identical last name and address fields. When an existing default service account was matched with a prior standard offer service account by these methods, additional review was conducted to determine if the default service account was that of a “continuous customer” of the entity that provides their electric service as defined in paragraph 1 above.

This review produced a list of misclassified customers who either have been or will soon be reclassified. Each such customer will be or has been reclassified and will receive or has received a refund credit based on the difference between service billed at the default service rate and service billed over the same period at the standard offer rate together with an explanatory letter in the form attached hereto as Exhibit A. As of the date of this Settlement Agreement, from this computerized review, the NSTAR Entities have identified approximately 19,800 Boston Edison customers and 3,900 Cambridge and Commonwealth customers who are entitled to relief as Identified Class Members.

4.1 In the class member identification process, the NSTAR Entities have acted diligently and have used reasonable efforts to identify members of the Settlement Classes who were misclassified. The processes and procedures utilized by the NSTAR Entities have been explained to Class Counsel, and by and through Class Counsel, to an expert in statistical methods. In addition, upon preliminary approval of this Settlement, the substance of those processes and procedures will be subject to confirmatory discovery as set forth in paragraph 20 below.

4.2. The NSTAR Entities will provide Class Counsel with a report setting forth the names and last known addresses of each Settlement Class Member so identified. Plaintiffs’ counsel shall use this information only for purposes of administering the Settlement and subject to the terms of the Confidentiality Stipulation dated November 30, 2001.

4.3. The identification process has been and shall continue to be conducted by the NSTAR Entities at their sole expense.

4.4 As of the date of this Stipulation, the total amount of credits to identified class members anticipated to be paid is approximately \$1,450,000, representing an average credit of more than \$61 per identified class member.

5. *Non-Identified Class Members.*

5.1. *Boston Edison.* There is a group of approximately 53,100 Boston Edison default service customers for whom the NSTAR Entities do not have social security numbers for the purposes of matching, but for whom the parties agree there is a reasonable possibility of misclassification. A letter and formal notice (in the forms attached hereto as Exhibits B and E2 respectively), will be sent to these customers explaining the grounds on which they may be misclassified and asking them to contact NSTAR Electric if they believe that they have been misclassified. The letter as well as

the notice will include an “800” number for customers who believe that they have been misclassified to request reclassification to standard offer service.

5.2. *Cambridge and Commonwealth.* There is a group of approximately 15,300 Cambridge and Commonwealth default customers for whom the NSTAR Entities do not have social security numbers for the purposes of matching, but for whom the parties agree here is a reasonable possibility of misclassification. A letter and formal notice will also be sent to these customers explaining the grounds on which they may be misclassified and including an “800” number for customers who believe that they may be misclassified. Copies of the Cambridge/Commonwealth letter and notice are attached hereto as Exhibits C and E2 respectively.

5.3 *Settlement Claims Administrator.* The NSTAR Entities will use CCS, of Newton, Massachusetts, as a claims administrator to obtain relevant information from non-identified claimants and assist the NSTAR Entities in processing and resolving such claims for settlement benefits. Class Counsel will work cooperatively with the NSTAR Entities to review disputed claims and to seek informal resolutions of disputes. The claims process will request that customers contact the claims administrator by telephone or in writing within 75 days.

5.4 As of the date of this Stipulation, the total number of non-identified class members and the total amount of any credit payable to them is unknown.

6. *Review of Claims to Identify Additional Class Members.* Non-identified members of the Settlement Classes, who claim eligibility for such membership by contacting the available “800” number or in writing, will be reviewed for eligibility as class members by the NSTAR Entities and/or the claims administrator. Class Counsel may also submit to the NSTAR Entities additional names and addresses of customers who are or do become known to the firm through independent investigation. The NSTAR Entities will investigate each claim submitted by telephone or in writing. The NSTAR Entities will reclassify claimants and provide a refund credit calculated in the same manner provided in paragraph 4 if circumstances warrant. If any claimant is denied relief after contacting the available “800” number or otherwise raising a claim, such person will be provided information including the name, address, and phone number of Class Counsel so that they may choose to pursue a dispute of that denial. The NSTAR Entities agree to work with Class Counsel to expeditiously review and resolve any disputes raised hereunder.

7. *Timing of Refund Credit.* For Class Members to whom a refund credit is due, if such credit has not already been made, it shall be made no later than sixty (60) days after the Settlement is final, or thirty (30) days after the status of any non-identified class member who is determined to be entitled to a credit is resolved, whichever is later. For any members of the Settlement Classes whose status is disputed, any refund credit shall be made as soon as practicable after the claim is resolved and the Settlement is final.

7.1 In addition to the settlement payments determined in accordance with paragraphs 4, 5 and 6, the NSTAR Entities shall pay each of the three named plaintiffs \$1,000 for serving in the capacity of Class Representatives, subject to approval of the Court.

8. *Treatment of Customers Who Cannot be Located.* Individuals who are no longer customers of the NSTAR Entities will not receive a refund. The parties agree that

the time, effort, and expense involved in locating such individuals is unwarranted in light of the potential benefit to those individuals.

9. *Full Settlement and Release.* The obligations of the NSTAR Entities under this Stipulation shall be in full settlement, compromise, release and discharge of the Released Claims and each of them. In accordance with the provisions of the Final Order, at the time the Settlement becomes final: (i) for good and sufficient consideration, the receipt of which is hereby acknowledged, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order shall have fully, finally, and forever released, relinquished and discharged all Released Claims against the NSTAR Entities; and (ii) the NSTAR Entities shall have no other or further liability or obligation to any Settlement Class Member in any court or forum (state or federal) with respect to the Released Claims, except as expressly provided herein.

10. *Certification of Settlement Classes.* For settlement purposes only, the parties hereto agree that, as part of the Settlement Notice and Order (as defined below), the Court may make preliminary findings and enter an order granting provisional certification of the Settlement Classes subject to final findings and ratification in the Final Order (defined below), and appointing both Plaintiffs and Class Counsel as representatives of the Settlement Classes.

11. *Dismissal as to NSTAR, Inc.* The parties are filing on this date a joint motion to dismiss this case as to the defendant NSTAR, Inc. without prejudice. The parties understand and agree that members of the class can achieve the relief provided for under this Settlement without NSTAR, Inc. as a party to this action or to this Settlement. The parties understand and agree that this action can have no preclusive effect with respect to the claims of any class member against any person or entity who is not a party to this agreement.

12. *Certification for Settlement Only.* The NSTAR Entities do not consent to certification of the Settlement Classes for any purpose other than to effectuate the settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or the Settlement does not become final for any reason, the order certifying the Settlement Classes, and all preliminary and/or final findings regarding the Court's provisional class certification order, shall be automatically vacated upon notice of same to the Court, and the Action shall proceed as though the Settlement Classes had never been certified and such findings had never been made, without prejudice to any party to either request or oppose class certification on any basis, including but not limited to lack of jurisdiction. In such event, the NSTAR Entities shall also be entitled to raise any jurisdictional or other challenges or defenses to the complaint or any claims for legal or equitable relief or damages of any kind, and Plaintiffs, Class Counsel and members of the Settlement Classes shall be barred and estopped from asserting that the NSTAR Entities' conduct or actions in negotiating and proposing the Settlement through and including the termination of the Settlement constituted a waiver or other bar (including but not limited to laches) to the assertion of any such challenges or defenses.

13. *Motion for Entry of Initial Order.* As soon as practicable after this Stipulation has been executed, Plaintiffs shall move the Court for preliminary approval of the Settlement and provisional certification of the Settlement Classes for purposes of implementing the Settlement. Plaintiffs shall apply for an Order substantially in the form annexed hereto as Exhibit D (the "Order"), providing, among other things:

(a) That for purposes of settlement only, the requirements for provisional certification of the Settlement Classes have been satisfied, this action shall be maintained and proceed as a class action, pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, on behalf of the Settlement Classes, and the Plaintiffs and Class Counsel shall be appointed as representatives of the Settlement Classes;

(b) That the Settlement is preliminarily approved as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Classes;

(c) That the Notice of Proposed Class Action Settlement substantially in the form annexed hereto as Exhibits E-1 and E-2 (the "Notice") is approved by the Court; and that the mailing of the Notice in the manner and form set forth in the Order meets all the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, the Constitution of the United States, and any other applicable law, constitutes the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all persons entitled thereto;

(d) That the Order and form of judgment substantially in the form of Exhibit F hereto is approved;

(e) That a hearing or hearings (the "Settlement Hearing") shall be held before this Court, at the respective time and date to be set by the Court, to consider and determine whether the requirements for final certification of the Settlement Classes have been met and whether the proposed Settlement of the Action on the terms and conditions set forth in the Stipulation, including as part of the settlement the payment of Class Counsel's attorneys' fees and reimbursement of expenses, is fair, reasonable and adequate and should be approved by the Court, and whether the judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and members of the Settlement Classes should be entered, and to consider such other matters as may properly come before the Court in connection with the Settlement Hearing;

(f) That the Settlement Hearing may, from time to time and without further notice to the Settlement Classes (except those who filed timely and valid objections), be continued or adjourned by order of the Court;

(g) That all members of the Settlement Classes will be bound by the Final Order dismissing the Action on the merits and with prejudice;

(h) That any objections by any member of the Settlement Classes to: (i) the certification of the Settlement Classes and the proposed settlement contained in the Settlement Agreement and described in the Notice and/or (ii) the entry of the Final Order, shall be heard and any papers submitted in support of such objections shall be considered by the Court at the Settlement Hearing only if, on or before a date (or dates) to be specified in the Notice and Order, such objector files with the Court a notice of his or her intention to appear, submits documentary proof that he

or she is a member of the Settlement Classes, states the basis for such objections, and serves copies of the foregoing and all other papers in support of such objections upon counsel for the parties identified in the Notice so that such papers are actually received by such counsel by the date set by the Court; and

(i) That the parties shall file and serve all papers in support of the application for final approval of the settlement and/or in response to any valid and timely objections received by the designated counsel for the parties identified in the Notice on or before a date (or dates) set by the Court.

14. *Order and Final Judgment.* If, at or after the Settlement Hearing, the Settlement (including any modification thereto made with the consent of the parties as provided for herein) shall be approved by the Court, Plaintiffs shall promptly request the Court to enter an Order and Final Judgment (the “Final Order”) substantially in the form attached hereto as Exhibit F that contains language:

(a) Finding that the numerosity, commonality, typicality, adequacy and superiority requirements necessary for certification of the Settlement Classes on a full and fair basis have been satisfied, approving both the final certification of the Settlement Classes and the Settlement, judging its terms to be fair, reasonable and adequate and in the best interests of the Settlement Classes, directing consummation of the Settlement in accordance with its terms and provisions and ordering implementation of its terms and procedures;

(b) Dismissing the Action and the Released Claims as to the NSTAR Entities on the merits, with prejudice and without costs except as herein provided, against Plaintiffs and all members of the Settlement Classes, and releasing and discharging the Released Claims;

(c) Reserving continuing and exclusive jurisdiction to implement, enforce, administer, effectuate, and interpret the Settlement and this Stipulation; and

(d) Awarding attorneys’ fees and expenses to Class Counsel, or reserving jurisdiction with respect thereto.

15. *Definition of Finality.* The approval by the Court of the Settlement proposed by the Stipulation shall be considered final, and the Settlement shall be considered final (and the NSTAR Entities’ obligations hereunder shall arise) for purposes of this Stipulation, on the date five business days after the Final Order becomes “final.” As used in this Stipulation, “final” means: (a) upon the entry by the Court of the Final Order and when the applicable period for the filing or noticing of an appeal of such Final Order shall have expired without an appeal having been filed; or (b) if an appeal is taken, upon entry of an order affirming the Final Order and when the applicable period for the filing or noticing of an appeal or petition for review of such affirmance of the Final Order shall have expired without a further appeal or petition for review having been filed, or upon entry of any stipulation dismissing any such appeal with no right of further

prosecution of the appeal; or (c) if an appeal is taken from or a petition for review is filed relating to any decision affirming the Final Order, upon entry of an order in such appeal finally affirming the Final Order or dismissing such petition for review without right of further appeal or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal. None of the obligations of the NSTAR Entities pursuant to the Settlement shall become effective until the Settlement becomes final. Notwithstanding the above, the NSTAR Entities shall have the option to declare the Settlement effective and final upon approval by this Court or upon such approval having been finally affirmed on appeal or no appeal therefrom having been taken within the applicable time period limiting the taking of such an appeal.

16. *Class Counsel Application for Attorneys' Fees and Expenses.* Plaintiffs' counsel shall apply to the Court for approval of an award of attorneys' fees, plus reimbursement of costs and expenses (including experts' fees). The NSTAR Entities will assent to this motion. As an additional benefit to the Settlement Classes, any expenses and fees so awarded shall be paid by the NSTAR Entities (subject to the limits in the following sentence) and shall not diminish the benefits of the Settlement to the Settlement Classes. Class Counsel shall apply for an award of fees and expenses not to exceed \$217,500, and the NSTAR Entities shall not object to Class Counsel's request for fees and expenses up to that amount and will pay such amount if awarded by the Court subject to the terms of this Stipulation. The NSTAR Entities agreed to the payment of such fees and expenses only after reaching agreement upon all other material terms of this Settlement. Any attorneys' fees and expenses so awarded to Class Counsel shall not be payable unless and until the Final Order becomes final. Any attorneys' fees and expenses awarded to Class Counsel shall be paid as the Court may direct within ten business days after the Settlement becomes final.

16.1 Except as expressly provided in this Stipulation, the NSTAR Entities shall not be liable for any additional fees or expenses of any plaintiff or Settlement Class Member in connection with the Action. If any application is made to this Court by a person other than those identified in this Stipulation for an award of attorneys' fees or expenses with regard to this Settlement, the NSTAR Entities shall not be restricted from opposing such application. Class Counsel agree that they will not seek any additional fees or costs (whether for service provided before or after the approval of this Stipulation) from the NSTAR Entities in connection with the Settlement of this Action.

17. *Notice and Administration Costs.* The NSTAR Entities will pay the costs of preparing and mailing the Notice to Class Members and all other settlement administration costs. Plaintiffs and Class Counsel shall have no responsibility for any such costs regardless of whether the Settlement is consummated.

17.1 The Notice of the proposed Settlement shall be provided to each member of the Settlement Classes by first-class mail in accordance with the terms and conditions of the Order. If a Notice sent by the NSTAR Entities to a member of the Settlement Classes in accordance with the Order is returned with a forwarding address provided by the Postal Service, the NSTAR Entities will cause it to be remailed to the address provided. If a Notice is returned without a forwarding address provided by the Postal Service, or is otherwise designated by the Postal Service as being an invalid address, the NSTAR Entities shall not be required to take further steps to provide the Notice to such Class Members.

18. *Effect of Settlement Not Being Final.* In the event that the Stipulation is terminated in accordance with its terms, or the Settlement as provided for in this Stipulation is not approved by the Court or otherwise does not become final or effective for any reason, then the Stipulation shall become null and void and of no further force and effect with respect to the parties, all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors shall be restored to their respective positions existing as of the date of the Stipulation. In such event, this Stipulation, to the extent permitted by law, shall not be used in any action or proceeding for any purpose and any Order entered in accordance with the terms of the Stipulation shall be treated as vacated, *nunc pro tunc*.

19. *No Admissions.* This Stipulation, and all negotiations, statements, proceedings, acts performed and documents executed or exchanged pursuant to or in connection or furtherance of the Stipulation are not, and shall not in any event: (i) be construed as or used as, or deemed to be evidence of, the validity of any claim, an admission or concession on the part of the NSTAR Entities of any liability of or wrongdoing by the NSTAR Entities, or a waiver of any claim, defense or argument; or (ii) be offered or received in evidence, or used in any way as an admission, concession or evidence of any fault, omission, liability or wrongdoing of any nature on the part of the NSTAR Entities, or a waiver of any claim, defense, or argument, in either case in any action or proceeding in any court, legislative session or hearing, administrative agency or other tribunal. This Stipulation and the Settlement also shall not be construed as, or deemed to be evidence of, an admission or concession that the Plaintiffs or any member of the Settlement Classes have suffered any damage, or on the part of the Plaintiffs or any member of the Settlement Classes, that any of their claims asserted in the Action are without merit or that damages recoverable in the Action do not exceed the aggregate of the amounts payable pursuant to this Stipulation.

20. *Confirmatory Discovery and Other Proceedings.* The NSTAR Entities shall continue to cooperate in the production of relevant information to Plaintiffs regarding the merits of and the scope of Plaintiff's claims. Within forty-five (45) days of executing this Stipulation, the NSTAR Entities agree to designate and make available current employees who are knowledgeable as to the NSTAR Entities' investigation of billing and service classification procedures for confirmatory interviews or depositions related to: (i) the NSTAR Entities records concerning Settlement Class Members and potential settlement refund credit amounts; and (ii) the extent, nature and procedures used by the NSTAR Entities in their search for Class Member billing and classification records. Any such information provided in the course of such confirmatory discovery shall be protected by and subject to the terms and conditions of the Confidentiality Stipulation dated November 30, 2001.

21. *Due Authority of Attorneys.* Each of the attorneys executing this Stipulation on behalf of a party hereto warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of each such respective party.

22. *Extensions of Time.* Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this

Stipulation, provided such agreements to extend time are signed by counsel for the parties and filed with the Court.

23. *Entire Agreement; Amendments; Interpretation.* This Stipulation, including all Exhibits annexed hereto, constitutes the entire agreement among the parties and supersedes any prior or contemporaneous agreements or understandings between them relating to the subject matter hereof. This Stipulation may not be modified or amended except in a writing signed by or on behalf of all parties hereto or their successors-in-interest. All the Exhibits are material and integral parts hereof, and all terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all parties hereto.

24. *Successors.* All provisions of this Stipulation are and shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns; all parent, subsidiary and related corporations and entities, divisions, employees, agents, directors, officers and attorneys of any settling party hereto and all other persons claiming any interest in the subject matter hereto through any of the parties hereto, including Plaintiffs and any Settlement Class Member. The entity NSTAR is specifically excepted from the provisions of paragraph 24.

25. *Counterparts.* This Stipulation may be executed in any number of actual counterparts and by the different settling parties hereto on separate counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.

26. *Waivers.* The waiver by any party of any breach of this Stipulation shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Stipulation.

27. *Governing Law.* This Stipulation shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

28. *Retention of Jurisdiction.* The administration, implementation, consummation and interpretation of this Stipulation and the Settlement as provided herein shall be under the exclusive and continuing jurisdiction and authority of this Court with respect to all parties hereto and all beneficiaries hereof, including Plaintiffs, Class Counsel, the NSTAR Entities, Settlement Class Members and Released Parties. Any and all disputes, requests or petitions regarding or arising out of the enforcement, construction, administration or interpretation of the Stipulation or any of its provisions, or the Notice, Order or Final Order, must be made, if at all, to this Court by motion to the Court with service on all parties and their counsel.

IN WITNESS WHEREOF, the parties have executed this Stipulation individually as of the date first above written.

[Attorneys for Plaintiffs]

[Attorneys for Defendants]