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June 18, 2004

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, Massachusetts 02110

Re: D.T.E. 03-121, NSTAR Electric Standby Rate Tariffs

Dear Secretary Cottrell:

Enclosed for filing in the above-referenced matter is an original and sixteen (16) copies of the Reply Comments of NSTAR Electric on the Settlement Agreement in the above-referenced case.

Thank you for your attention to this matter.

Very truly yours,

David S. Rosenzweig

Enclosures

cc: William Stevens, Hearing Officer
John Cope-Flanagan, Hearing Officer
Service List

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company d/b/a NSTAR Electric	))))))	D.T.E. 03-121

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing documents upon the service list in the above-docketed proceeding in accordance with the requirements of 220 C.M.R. 1.05.

Stephen H. August

Stephen H. August, Esq.
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Dated: June 18, 2004

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company	)))))	D.T.E. 03-121

REPLY COMMENTS OF NSTAR ELECTRIC ON THE SETTLEMENT AGREEMENT

BOSTON EDISON COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY

d/b/a NSTAR ELECTRIC

By its Attorneys,

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Dated: June 18, 2004

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company	)))))	D.T.E. 03-121

REPLY COMMENTS OF NSTAR ELECTRIC ON THE SETTLEMENT AGREEMENT

EXECUTIVE SUMMARY

The Settlement Agreement submitted to the Department of Telecommunications and Energy (the "Department") for approval has been entered into by parties to the proceeding who represent a wide range of the legitimate interests in the development of on-site generation. Signatories to the Settlement Agreement include: (1) those who have installed or would consider installing on-site generation (7,500 Massachusetts employers represented by the Associated Industries of Massachusetts); (2) advocates for the installation of self-generation (the Joint Supporters[1]); (3) advocates for environmentally beneficial on-site generation (Conservation Law Foundation and the Solar Energy Business Association of New England); and (4) the executive agency in the Administration responsible for establishing energy policy (Division of Energy Resources).

The Settlement Agreement is a reasonable "middle ground" that addresses the oft-competing policy objectives that have sometimes polarized parties interested in the implementation of standby rates for on-site generation. The Settlement Agreement balances many of these competing interests and considerations that were discussed at length on the record in this case. Among them are: (1) the need to protect customers without on-site generation from the shifting of cost responsibility associated with the distribution investments needed to "stand by" to serve customers with on-site generation; (2) recognition that the size of the on-site generation will have an impact on the costs incurred to provide standby service; (3) acknowledgement of the lead times needed to go forward with on-site generation, especially for municipal schools, which are on attenuated budget cycles; (4) concern that certain renewable generation sources can be

[1] The Joint Supporters are composed of: the Boston Public Schools, Co-Energy America, Inc., National Association of Energy Service Companies, Inc., Siemens Building Technologies, District One, The E Cubed Company, L.L.C., Predicate LLC, Energy Concepts Engineering, PC, Dgsolutions LLC and Pace Law School Energy Project.

encouraged without significant shifts of revenue responsibility to other customers; and (5) the desirability of including tariff language that explicitly permits negotiation for non-firm standby service and negotiated levels of contract demand for certain customers of standby service.

The Initial Comments filed by the prime opponents of the Settlement Agreement (the so-called NEDG Coalition and The Energy Consortium) resort to an unfortunate series of ad hominem attacks on the motives and integrity of the signatories for having "colluded" with NSTAR Electric (NEDGC/TEC Comments at 3-8).[2] TEC and certain members of the NEDGC also file separate "comments" requesting that the Department modify the Settlement Agreement. Of course, the Settlement Agreement is not subject to modification (Settlement Agreement at § 3.4), since it incorporates the serious negotiation and compromise among the signatories; parties who chose not to participate in the "hard bargaining" that resulted in the Settlement Agreement have no basis to demand changes.

As described in detail in these Reply Comments, the terms of the Settlement Agreement are consistent with Department ratemaking precedent and the extensive evidentiary record in this case. The tariff structure is similar to that proposed by NSTAR Electric and the changes are designed to deal with issues raised on the record during the proceeding. The Settlement Standby Tariffs achieve the objectives articulated by the Department by: (1) ensuring that customers with on-site generation pay an appropriate share of distribution system costs; (2) providing appropriate price signals to customers considering the installation of on-site generation; and (3) avoiding the shifting of costs to other customers. In sum, consistent with Department precedent on evaluating settlement agreements, the Settlement Agreement is reasonable, in the public interest and results in just and reasonable rates.

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2 Other non-signatory parties either have no opposition to the approval of the Settlement Agreement (Fitchburg Gas and Electric Light Company, Massachusetts Electric Company/Nantucket Electric Company, Western Massachusetts Electric Company) or have other concerns that are better dealt with in the future (the Attorney General).

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company Cambridge Electric Light Company Commonwealth Electric Company	)))))	D.T.E. 03-121

REPLY COMMENTS OF NSTAR ELECTRIC ON THE SETTLEMENT AGREEMENT

Boston Edison Company ("Boston Edison"), Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") d/b/a NSTAR Electric (together, the "Company" or "NSTAR Electric"), the Division of Energy Resources ("DOER"), Associated Industries of Massachusetts ("A.I.M."), Conservation Law Foundation ("CLF"), the Joint Supporters and the Solar Energy Business Association of New England ("SEBANE") (collectively, the "Settling Parties"), submitted a Joint Motion for Approval of Settlement Agreement and a Settlement Agreement with the Department of Telecommunications and Energy (the "Department") on June 4, 2004 (the "Settlement Agreement"). The Settlement Agreement included Settlement Standby Tariffs for each of the three NSTAR Electric distribution companies, and the Settlement Agreement is intended to resolve all issues in this case relating to the Company's standby rate tariff filing. NSTAR Electric submits these comments in support of the Settlement Agreement.

I. PROCEDURAL HISTORY

On October 31, 2003, NSTAR Electric submitted tariffs, with supporting testimony and exhibits, to the Department for cost-based standby rates for large and

medium-sized commercial and industrial customers who have their own on-site, self-generation facilities. On January 16, 2004, the Company refiled the tariffs in this docket (the "Standby Rate Tariff Filing"), in order for the Department to be able to extend the period by which the effective date of the rates could be suspended. On January 29, 2004, the Department suspended the effective date of the tariffs until August 1, 2004, in order to investigate the propriety of the Company's proposed tariffs.

Intervenor status was granted to the Attorney General of the Commonwealth ("Attorney General"), A.I.M., the Boston Public Schools, Co-Energy America, Inc., CLF, DOER, FuelCell Energy, Inc., Fitchburg Gas and Electric Light Company ("Unitil"), the Joint Supporters,[3] Low-Income Weatherization and Fuel Assistance Network and Mass Community Action Program Directors Association, Massachusetts Electric Company/Nantucket Electric Company ("MECo"), National Association of Energy Service Companies, Inc., the NEDG Coalition ("NEDGC"),[4] SEBANE, Siemens Building Technologies (District One), The Energy Consortium ("TEC"), UTC Power, LLC, Western Massachusetts Electric Company ("WMECo"), and the Western Massachusetts Industrial Customer Group ("WMICG"). The Department also granted limited-participant status to the following entities: the E-Cubed Company, LLC, DGSolutions LLC, Energy Concepts Engineering, PC; KeySpan Energy Delivery New

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3 The Joint Supporters are composed of: Boston Public Schools, Co-Energy America, Inc., National Association of Energy Service Companies, Inc., Siemens Building Technologies, District One, The E Cubed Company, L.L.C., Predicate LLC, Energy Concepts Engineering, PC, DgSolutions LLC and Pace Law School Energy Project.

4 NEDGC consists of the following companies: American DG, Inc., Aegis Energy Services, Inc., OfficePower LLC, Equity Office Properties Trust, Inc., Northern Power Systems, Inc., RealEnergy, Inc., Tecogen Inc., and Turbosteam Corporation.

England, Pace Law School Energy Project, Plug Power, Inc., Predicate LLC, Wyeth Pharmaceutical, Inc. ("Wyeth") and Constellation New Energy, Inc.

On February 12, 2004, the NEDGC filed a motion to dismiss the Company's Filing ("Motion to Dismiss"). The Company filed its opposition to the Motion to Dismiss on February 24, 2004. On April 23, 2004, the NEDGC, DOER, CLF and the Joint Supporters filed a second Motion to Dismiss ("Second Motion to Dismiss"), or in the alternative, a motion to strike certain portions of the Company's rebuttal testimony and/or to modify the procedural schedule. The Company filed its opposition to the Second Motion to Dismiss on April 26, 2004. The Motion to Dismiss and the Second Motion to Dismiss are currently pending before the Department.

In support of the Company's proposed standby rates, the Company sponsored the direct testimony of Henry C. LaMontagne, Director of Regulatory Policy and Rates for the regulated operating companies of NSTAR. The direct testimony of intervenor witnesses was filed on March 16, 2004 by Alvaro E. Pereira, on behalf of DOER; Sean Casten, Thomas W. Smith and Spiro Vardakas, on behalf of the NEDGC, Mark B. Lively[5] and David Hannus, on behalf of the Joint Supporters and CLF; Thomas S. Michelman on behalf of CLF and SEBANE; Andrew G. Greene on behalf of SEBANE; and Elaine Saunders, on behalf of TEC. Also on March 16, 2004, direct testimony was filed by Carlos A. Gavilondo, on behalf of MECo; Edward A. Davis, on behalf of WMECo; and David K. Foote, on behalf of Unitil.

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[5] Mr. Lively also testified on behalf of DOER.

On April 21, 2004, the Company submitted the rebuttal testimony of Henry C. LaMontagne; Dr. Hethie S. Parmesano, vice-president at National Economic Research Associates ("NERA"); and Charles P. Salamone, Director of System Planning for NSTAR Electric.

From April 28, 2004 through May 13, 2004, the Department held eight days of evidentiary hearings. The evidentiary record in this case includes the transcripts of the evidentiary hearings as well as over 650 documents set forth in the "final exhibit list" approved by the Hearing Officer on May 24, 2004.

On June 4, 2004, the Settling Parties filed a Joint Motion and Settlement Agreement intended to resolve all issues in this case relating to the Company's Standby Rate Tariff Filing. On June 7, 2004, the Hearing Officer issued a memorandum indicating that comments by non-signatories would be due on June 11, 2004, and that replies to these comments would be due on June 18, 2004. Comments were filed by the following parties: the Attorney General, MECo, NEDGC/TEC, Unitil and WMECo. KeySpan and Wyeth, limited participants in the case, also filed comments.

II. DESCRIPTION OF THE SETTLEMENT AGREEMENT AND SETTLEMENT STANDBY TARIFFS

A. Introduction

As described below, the Settlement Agreement and the implementing Settlement Standby Tariffs were the product of extensive negotiations among a wide range of parties with a diverse group of interests over a significant period of time. Many of these parties took an active role in developing the evidentiary record in this case through witness testimony and the initiation of a large body of discovery requests. The Settlement Standby Tariffs that are now before the Department represent an important, effective and

practical contribution to the self-generation market as well as all other NSTAR Electric continuous-use customers.

Standby delivery service provides the capacity of the Company's distribution system to "stand ready" to provide delivery of an electricity supply to replace the portion of the customer's internal electric load normally supplied by the customer's own generation unit(s). The Settlement Agreement includes Settlement Standby Tariffs for Boston Edison, Cambridge and Commonwealth, each of which includes three primary price components: (1) a fixed customer charge; (2) a demand charge applied against an established level of "contract demand;" and (3) a supplemental delivery service distribution demand charge, which is applied on an "as used" basis (i.e., not on a contract demand basis) to that portion of a standby customer's load that exceeds the contract demand level.[6]

B. The Contract Demand Charge

The fixed contract demand charge reflects the fixed nature of the distribution system investment that must be made to provide firm standby distribution service to standby customers (see Settlement Standby Tariffs, Rate Per Month, "Determination of Billing Demand") (Exh. NSTAR-HCL-1, at 18; Exh. AG-1-18). A Supplemental Delivery Service is also included in the Company's proposed rates, which, like Standby Delivery Service, provides for the Company to "stand ready" to provide delivery of electricity supply to satisfy that portion of the customer's internal load that is not

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6 In addition, certain administratively determined rate elements, such as transition, DSM and the renewable energy charges are, by statute or regulation, collected through a variable charge. Standby customers who take any optional generation service from the Company would also pay for those services on an as-used basis.

otherwise typically served by the customer's generation unit(s) (see Settlement Standby Tariffs, "Types of Service") (Exh. NSTAR-HCL-1, at 22-23; Exh. NSTAR-HCL-10). It is made available to customers that have an internal load that is greater than the capability of the customer's on-site generation to satisfy.

The standby tariffs provide for an upward or downward adjustment of a customer's contract demand to reflect a customer's measured generation capacity levels (see Settlement Standby Tariffs, Rate Per Month, "Determination of Billing Demand") (Exh. NSTAR-HCL-10). A customer's standby contract demand level will increase if its actual generation exceeds its contract demand in any month. Similarly, the Company will reduce the customer's otherwise applicable contract demand to a level equal to the lower of the following:

a. The maximum output of the customer's generation in the current billing month and the prior eleven billing months; or

b. The mutually agreed-upon normal operating capacity of a combination of generating units for a customer having multiple independently operated unit(s) assuming that one or more of such units is normally held in reserve to backup the operation of units that become unavailable.

Id. See also Exh. RR-DTE-23; Tr. 7, at 1408.

C. The Availability Clause

The standby tariffs are available to customers who otherwise qualify for the Company's larger commercial continuous-use rates (e.g., G-2, G-3, T-2), based upon the customer's internal electric load requirements (see Settlement Standby Tariffs, "Availability"). A standby customer must also expect the Company to deliver electricity to satisfy its internal electric load when the customer's generation unit(s) is not supplying all of the customer's electric load requirements. Customers who do not have such an

expectation are not required to take standby service, provided that they are electrically isolated from the Company's distribution system (Tr. 1, at 24).

To qualify for the Company's standby tariffs, customers with self-generation units must either: (i) satisfy at least 30 percent of the customer's maximum internal electric load from generation unit(s) with a combined nameplate rating greater than 250 kilowatts ("kW");[7] or (ii) have installed generation unit(s) with a combined nameplate rating greater than 1,000 kW (see Settlement Standby Tariffs, Availability, Paragraph No. 2). Customers with "Renewable Energy Technologies," as this term is currently defined in G.L. c. 40J, § 4E(f)(1), are not subject to the Company's standby tariffs (see Settlement Standby Tariffs, Availability, Paragraph No. 5).[8] Such customers can purchase standby service under the otherwise applicable service tariffs offered by the Company.

The Company's standby service tariffs provide for grandfathering of any customer who began satisfying all, or a portion of, its electric load requirements from generation unit(s) before January 1, 2005 (see Settlement Standby Tariffs, Availability, Paragraph No. 4). To address the unique budget processes that face municipalities, public schools may be eligible to extend the "grandfathering" date if they have achieved certain milestones. In the case of generation serving a municipal public school, such

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7 Consistent with the requirements of the Restructuring Act, the 60 kW standard has been previously established as a legal threshold for on-site generation under the Department's Qualifying Facility ("QF") regulations; customers with backup requirements of less than or equal to 60 kW are allowed to net meter. See, e.g., G.L. c. 164, § 1G(g); 220 C.M.R. §§ 8.02, 8.04(8). As a result, such customers receive backup service directly under the otherwise applicable rate schedule for which they qualify (Exh. DOER-1-11; Exh. DTE-1-12).

8 The Company's standby tariffs shall apply to the customer if the renewable energy technology used by the customer's generation unit(s) is a fuel cell operating primarily on natural gas, if (a) the combined nameplate rating of the fuel cell(s) is greater than 2,000 kW; or (b) the fuel cell(s) is installed after the combined nameplate rating of all fuel cell(s) to which standby rates would apply installed in the Company's service territories after December 31, 2004, exceeds 10,000 kW (see Settlement Standby Tariffs, Availability, Paragraph No. 5).

customers are grandfathered from the applicability of the standby tariffs if: (a) the customer began satisfying all, or a portion of, its internal electric load requirements before January 1, 2006; (b) it had binding financial commitments to install the generation unit(s) on or before December 31, 2004; and (c) its generation unit(s) are less than 1,000 kW in aggregate (id.).

D. Provision for Non-Firm Service

The Settlement Standby Tariffs state that the Company "may provide non-firm standby service upon request by the Customer under terms of a separate contract" (see Settlement Standby Tariffs, "Non-Firm Service") (Exh. NSTAR-HCL-1, at 26-27; Tr. 3, at 409; Tr. 7, at 1362; RR-DTE-17). The contracts will establish the specific terms of interruption on a case-by-case basis, taking into account the operational configuration of the customer and the distribution feeder servicing the customer. According to the terms of the Company's Settlement Standby Tariffs, the Company will provide non-firm standby distribution service at the request of the Customer in accordance with the otherwise applicable rate schedule to the extent that local distribution capacity is available to serve the Customer when its generating facilities are not available (id.). The Company will require the Customer to interrupt its standby service in the event that local distribution capacity becomes unavailable to serve the Customer's standby load (id.).

E. Opportunity for Customer-Nominated Contract Demand

The Settlement Standby Tariffs include a provision specifically allowing a customer to request a special contract in lieu of the tariff if the customer wishes to set a Contract Demand that would be different from the level that would otherwise be established under the Settlement Standby Tariffs (see Settlement Standby Tariffs, "Customer-Nominated Contract Demand"; Exh. NSTAR-HCL-7, at 26-27; Tr. 2, at 308-

309; see also Tr. 1, at 38-39; Tr. 3, at 406; Tr. 4, at 667; Tr. 6, at 1147; Tr. 7, at 1354; Tr. 7, at 1361; Exh. RR-DTE-15). The Settlement Standby Tariffs indicate that the Company will enter into negotiations for such a special contract in good faith and promptly respond to such requests.

> Terms for such a contract may include the total maximum demand of the Customer (both standby and supplemental); provided, however, the elected contract demand may not be less than the metered demand. Further, the contract may include an adjusted demand rate to reflect levelized demand month to month with no deviation from contract demand, financial penalties for exceedances of the contract demand and other terms relevant to the unique circumstances of the Customer's operations and configuration on the distribution system. Such special contracts shall be filed for review and approval to the Department under G.L. c. 164, § 94. In the event the Customer and the Company are unable to reach agreement on such terms, the Customer may file a Petition with the Department pursuant to G.L. c. 164, § 92.

Id.

F. Other Settlement Provisions

In addition to the Settlement Standby Tariffs, the Settlement provides that the Company may not file a request with the Department to alter the Availability provisions of the standby tariffs before August 1, 2008; provided, however, that the rates themselves may change for standby and supplemental service consistent with any rate changes that become effective for the rate schedules that would otherwise apply to standby customers (e.g., the applicable customer charge) (Settlement Agreement at Paragraph No. 2.3). Any customer with on-site generation that comes on line before August 1, 2008, and who is not required to take service under the Settlement Standby Tariffs, will be grandfathered from any changes in the Availability terms that occur on or after August 1, 2008 (id. at Paragraph No. 2.4).

III. OVERVIEW OF STANDBY RATE PRINCIPLES

Standby delivery service is the provision of distribution capacity to retail customers who generate all or a portion of their own electricity requirements, but who request the local electric distribution company to build and maintain a portion of its distribution system to "stand by" in the event that their self-generation capability is reduced or unavailable as a result of planned or unplanned outages.[9] Before restructuring and the unbundling of distribution service from electricity sales service, standby service was provided as a bundled sales service, which included back-up distribution and electricity sales service. Standby rates became prevalent after the enactment of Public Utility Regulatory Policies Act of 1978 ("PURPA"), which was intended, in part, to encourage the development of cogeneration and small power production facilities. To facilitate this development, PURPA required that traditional electric utilities make bundled standby service available to QFs on the basis of traditional ratemaking and without discrimination to these new forms of electricity generation.

In Massachusetts, the design of standby rates historically has varied by utility. There have been three general categories of standby service that have been approved by the Department: (1) application of the generally available rate schedule if the customer's total load was served by the utility; (2) specially designed standby rates; and (3) special contracts. See Eastern Edison Company, D.P.U. 92-148, at 36-37 (1992); Boston Edison Company, D.P.U. 92-92, at 58-63 (1992); Western Massachusetts Electric Company,

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9 Supplemental Delivery service is also included in the Company's proposed rates, which, like Standby Delivery Service, also provides for the Company to "stand ready" to provide delivery of electricity supply to satisfy that portion of the customer's internal load that is not otherwise typically served by the customer's generation unit(s) (Exh. NSTAR-HCL-1, at 20).

D.P.U. 91-290, at 70-71 (1992); Western Massachusetts Electric Company, D.P.U. 90-300, at 82-87 (1991); Nantucket Electric Company, D.P.U. 88-161/168, at 226-227 (1989). In the most recent contested Department order reviewing and ruling on standby and supplementary service rates, which was issued before the passage of Chapter 164 of the Acts of 1997 (the "Restructuring Act"), the Department observed that it "has not adopted a single method for the design of these rates," and that "[a]s such, there is no Department precedent in this area." Cambridge Electric Light Company/MIT, D.P.U. 94-101/95-36, at 46-55 (1995).

As a result of the Restructuring Act, electric utilities in Massachusetts divested their electric generating facilities and transitioned themselves to provide service primarily as distribution companies. Consistent with this divestiture and unbundling process, standby service provided to self-generation customers consists of standby delivery service from the electric distribution company and electricity service separately from a competitive retail supplier (or from the competitive wholesale market through the local electric distribution company with Default Service or Standard Offer Service).

The Department's order opening an investigation into on-site generation stated three policy goals that should be used to establish an appropriate method for the calculation of standby rates:

1. Standby service tariffs should ensure that customers pay an appropriate share of distribution system costs.

2. Standby service tariffs should provide an appropriate price signal to customers seeking to install DG (i.e., the price should reflect the full cost of providing the standby service to the DG customer).

3. Standby service tariffs should reflect the actual cost of providing standby service to DG customers in order to avoid shifting these costs to other customers.

Order Opening Investigation into Distributed Generation, D.T.E. 02-38, at 4 (June 13, 2002). The Department's standby rate design objectives are consistent with the Department's longstanding rate design goals for all other Department-approved rates, which are: (1) efficiency; (2) fairness; (3) simplicity; (4) continuity; and (5) earnings stability. See Electric Industry Restructuring, D.P.U. 96-100, at 51 (1996); Massachusetts Electric Company, D.P.U. 95-40 (1995); Cambridge Electric Light Company, D.P.U. 92-250 (1993); Boston Gas Company, D.P.U. 93-60 (1993); Commonwealth Gas Company, D.P.U. 95-102, at 28 (1995).

IV. STANDARD OF REVIEW

The Department evaluates proposed settlements using consistent criteria, whether contested or not. Housatonic Water Works Co., D.P.U. 90-284-A at 16 (1992). See also Massachusetts-American Water Co., D.P.U. 90-146 (1990) (contested Settlement accepted by the Department as reasonable). The Department applies a standard of reasonableness in reviewing an offer of settlement. Western Massachusetts Electric Company, D.T.E. 01-99, at 7 (2002). In assessing the reasonableness of an offer of settlement, the Department must review the entire record to ensure that the settlement is consistent with Department precedent and the public interest. Bay State Gas Company, D.P.U./D.T.E. 97-97, at 6 (1997), citing, Boston Edison Company, D.P.U. 92-130-D at 5 (1996); Bay State Gas Company, D.P.U. 95-104, at 14-15 (1995); Boston Edison Company, D.P.U. 88-28/88-48/89-100, at 9 (1989). See also Telecommunications Relay Service, D.P.U./D.T.E. 96-118, at 7 (1998).

> This reasonableness determination is required by the Department's statutory obligation under G.L. c. 164, §§ 93, 94 and 94A to reach decisions that are consistent with the public interest and that result in just and reasonable rates and charges.

Housatonic Water Works Co., D.P.U. 90-284-A at 14 (1992).

Settlement differs fundamentally from adjudication in that a settlement may be founded on a less-than-full record or may achieve results that would differ from those reached through adjudication. Mass American Water Co., D.P.U. 95-118, at139 (1996), citing Housatonic Water Works Company, D.P.U. 90-284, at 3, *Interlocutory Order on Appeal* (August 27, 1991). See also Boston Edison Company, D.P.U./D.T.E. 97-95, at 25 (2001); citing, Massachusetts-American Water Company, D.P.U. 95-118, at 138-39 (1996) (settlement may achieve results that would differ from or even go beyond those reached or reachable through adjudication).

V. ARGUMENT

A. The Settlement Agreement and Settlement Standby Tariffs Are Reasonable, Consistent With Department Precedent and Should Be Approved.

The Settlement Standby Tariffs, like the illustrative standby tariffs submitted by the Company as an exhibit to Mr. LaMontagne's rebuttal testimony, ensure the continued development of cost-effective self-generation and full compliance with the Department's ratemaking principles (see Exh. NSTAR-HCL-10; Exh. NSTAR-HCL-1; Exh. NSTAR-HCL-7). As described in the Settlement Agreement, the primary differences between the Settlement Standby Tariffs and the Company's illustrative tariffs relate to specifically negotiated price reductions to certain rate elements, extensions of grandfathering provisions and other agreed-upon modifications designed to broaden the conditions that must be satisfied before the Settlement Standby Tariffs apply to self-generation customers (Settlement Agreement at 3-6). The structural similarity between the Settlement Standby Rates and the Company's illustrative tariffs, together with the

significant record evidence presented in this case on the issues addressed by the Settlement Agreement, demonstrate that the Settlement Standby Tariffs are fully consistent with the Department's most recent statement of standby service ratemaking principles. See Order Opening Investigation into Distributed Generation, D.T.E. 02-38, at 4 (June 13, 2002).

> [S]tandby or back-up service tariffs should ensure that customers pay an appropriate share of distribution system costs. When determining these costs, it is important to provide an appropriate price signal to customers seeking to install distributed generation. Back-up rates that are too high may inappropriately discourage the development of distributed generation. However, back-up rates that are below the actual cost of providing service could shift these costs to other customers.

Id., at 4. These principles mirror the Department's traditional rate design principles of fairness and economic efficiency, and are separately restated as follows:

1. Standby rates should reflect the cost to provide standby service.
2. Standby customers should not be subsidized by other customer classes through the design of standby rates.
3. Standby rates should send accurate economic price signals to customers considering the installation of self-generation.

The Department has adopted the corollary rate design principle that cost responsibility should follow cost causation. See Natural Gas Unbundling, D.T.E. 98-32-B at 31 (1999), citing, Boston Gas Company, D.P.U. 96-50 (Phase I), at 133-134 (1996); Boston Gas Company, D.P.U. 93-60, at 331-337, 410, 432 (1993), Bay State Gas Company, D.P.U. 92-111, at 54, 283-284, 311-312 (1992); Boston Edison Company, D.P.U. 1720, at 114 (1984); Generic Investigation of Rate Structures, D.P.U. 18810, at 14 (1977). It is a matter of fundamental fairness that customers pay only for what they consume, rather than the costs attributable to providing service to others. The record

evidence in this case demonstrates unequivocally that the Settlement Standby Rates are consistent with the Department's standby service ratemaking principles, are just and reasonable, and should be approved.

1. The Settlement Agreement and Settlement Standby Rates Reflect the Costs to Provide Standby Service.

The distribution system needed to serve all firm distribution customers, *including standby customers*, must be in place and instantaneously "ready" to serve all of the customers that are on line within the appropriate section of the Company's distribution system (Exh. NSTAR-HCL-7, at 3-4). Because the distribution company must construct its circuits to be of sufficient size to meet the peak load of the internal requirements of all customers (including those with self-generation in the event the self-generation is not available), the Company builds its distribution system no differently to serve its continuous-load customers or customers with self-generation (Exh. NSTAR-CPS-1, at 13). Accordingly, the Company designed its proposed standby rates to reflect the same level of cost recovery for standby service based upon the same cost-of-service study as is reflected by the otherwise applicable continuous-service rate schedules (Exh. NSTAR-HCL-1, at 16).[10] The Settlement Standby Tariffs stand on the same footing with the proposed tariffs concerning the cost responsibility of self-generation customers. These "comparable" prices for standby service and distribution service are based on the fact that the Company is required to incur the same costs to serve both types of customers (Exh. HCL-7, at 7). Basing standby rates on the rates in effect for other similar customers who

[10] Mr. Salamone testified that at the distribution substation level, the distribution company must size its circuits to meet the peak load of the internal requirements of all customers (including those with self-generation in the event the self-generation is not available) (Exh. NSTAR-CPS-1, at 13).

take all-requirements service (making appropriate adjustments to reflect avoidable costs for standby service) is both equitable and economically efficient because it prevents cross-subsidization among customers and sends more accurate price signals to customers about the real cost to provide a particular service (Exh. NSTAR-HCL-7, at 10; Exh. NSTAR-HSP-1, at 9; Exh. DTE-6-2; Tr. 1, at 87; Tr. 6, at 1058-1059, 1141-1142, 1154).

> Q. [Mr. Francisco] Is it fair to make this conclusion from your responses, that the critical consideration in the case of NSTAR for the design of its standby rates is that it should be designed on the basis of the existing continuous-use customer rate?
>
> A. [Dr. Parmesano] Yes, that it's very important that the two rates be comparable.

Tr. 6, at 1154.

As a matter of compromise, and to address issues raised by intervenors in this case, the Settlement Standby Tariffs reduce the standby demand charges by approximately 15 percent on average from the Company's illustrative tariffs (Settlement Agreement at 3).[11] This reduction is reasonable and consistent with the public interest in reaching a negotiated settlement in this case.

2. The Settlement Agreement and Settlement Standby Tariffs Prevent Improper Subsidization by Residential and Other Customers.

To comply with the Department's policy on fairness among customer classes and the responsibility for costs needed to provide service, standby rates must also be designed so that the costs of providing standby service are recovered from standby customers *and*

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[11] Although not a party to the Settlement Agreement, TEC, through its witness, Ms. Saunders, admitted that she had testified on behalf of the Texas Retailer Association in favor of an 85 percent contract demand level for standby rates before the Texas Public Utility Commission (Tr. 6, at 1006-1007). This level is consistent with the compromise struck by the Settling Parties in this case.

not shifted to other customers (Exh. NSTAR-HSP-1, at 9) (emphasis added). If each customer is responsible for the costs associated with providing the customer with service, there will be no cross subsidies among customers (Exh. NSTAR-HCL-1, at 12). The Department has held that, as a matter of fairness, undue cost shifting among customers should be avoided in any movement to a more competitive market (id., citing Natural Gas Unbundling, D.T.E. 98-32-B at 38 (1999).

> To comply with the Department's policy on fairness among customer classes and cost of service, standby rates must also be designed so that costs of providing standby service are recovered from standby customers and not shifted to other customers.

Exh. NSTAR-HCP-1, at 9. Because the costs incurred by the Company for standby customers are the same as those for other customer in the rate class, and because standby rates are based on the rates approved by the Department for all customers in the class, the Company's standby tariffs are designed to recover "no more or no less than the actual cost associated with providing standby service" (Exh. NSTAR-HCL-1, at 31).

It should also be noted that, although the Settlement Standby Tariffs do not apply to certain customers with generation from renewable energy sources, there will not be significant shifting of cost responsibility to other customers. For example, standby customers using wind and solar technologies will inevitably experience periods during each month when the wind doesn't blow or the sun doesn't shine, thereby incurring regular as-used demand charges (i.e., no subsidies will be created for such renewables). Similarly, customers with relatively small on-site generation (250 kW or less) will not be cross-subsidized because, in the planning process, the Company does not explicitly adjust the size of its distribution system based on these relatively small standby requirements (Exh. NSTAR-CPS-1, at 5).

The Settlement Standby Tariffs, which maintain the identical structure, underlying cost foundation and rate design elements as the Company's proposed tariffs similarly will prevent cross-subsidization among customer classes (compare Settlement Standby Tariffs with Exhibit NSTAR-HCL-10). Accordingly, the Settlement Standby Tariffs are reasonable and in the public interest because they are consistent with the Department's ratemaking goal of preventing cross-subsidization among customer classes.

3. The Settlement Agreement and Settlement Standby Tariffs Will Send Accurate Economic Price Signals to Customers Considering Self-Generation.

Were standby customers artificially to face significantly lower rates than their comparable continuous-service customers, all other customers who are not receiving the same service effectively would be subsidizing the service to standby customers. Not only is this unfair to all other customers, but it would have the undesirable effect of sending incorrect (i.e., uneconomic) price signals to self-generation customers about the real cost to provide standby service (Exh. NSTAR-HCL-1, at 13).

> Improper pricing signals will lead to an inefficient allocation of society's resources because certain goods or services that are artificially priced too low will result in greater customer demand than their actual cost would otherwise determine based on traditional principles of supply and demand.

Id. at 14. Boston Edison Company, D.P.U./D.T.E. 96-23, at 37 (1998) (Department concerned that proposed rate does not provide reasonable representation of cost of distribution service to customer); Electric Industry Restructuring, D.P.U. 95-30, at 45 (1995) (after customers are provided with accurate price signals, they should be able to evaluate and choose among an array of electricity products and services to maximize their individual benefits); Pinehills Water Company, D.T.E. 01-42, at 27 (2001) (Department approves separate water rate for fire protection service because it prevents

cross-subsidization, and provides customers with appropriate price signals concerning the need for such services).

When standby rates are consistent with the comparable costs for alternative distribution service, the customer will face an appropriate economic decision whether self-generation is a cost-effective alternative to purchasing generation service and having it delivered by traditional utility distribution service (Exh. NSTAR-HCL-7, at 5-6). If prices for standby service were artificially set at levels significantly lower or higher than those for continuous-use service, the differential costs and/or benefits seen by the potential self-generation customer would be distorted and would lead to uneconomic substitution of one service for another (id. at 7). The Settlement Standby Tariffs, like the Company's illustrative standby tariffs, send appropriate economic price signals to customers considering self-generation because the rates are based on the existing distribution tariff rates for a comparable non-standby customer who otherwise purchases all of its electricity from either the Company or a third-party supplier (Exh. NSTAR-HCL-7, at 10). Establishing the rates in this manner assures that a standby customer receives an accurate price signal regarding the relative cost of standby service and the continuous-use service (id.). Accordingly, the Settlement Standby Tariffs are reasonable and in the public interest.

4. The Settlement Agreement and Settlement Standby Tariffs Include Unique Elements That Were the Product of Extensive Negotiations Among Diverse Parties in the Case.

The Settlement Standby Tariffs will facilitate the continued successful development of economically efficient self-generation in Massachusetts because the Settlement Standby Tariffs were the product of extensive negotiations among a wide range of parties with a diverse group of interests. The Settlement Standby Tariffs are an

important, effective and practical contribution to the interests of standby *and* continuous-use customers. Several new provisions were included in the Settlement Standby Tariffs as a result of the settlement process that demonstrate that the Settlement Standby Tariffs are reasonable and will serve the public interest:

a. Extended Grandfathering Provisions

The Settlement Standby Tariffs provide for an extended period of time over which a customer may complete the installation of self generation without being required to use the Settlement Standby Tariffs to obtain standby service (see Settlement Standby Tariffs, Availability Provision, Paragraph No. 4). According to the terms of the Settlement Standby Tariffs, a customer who satisfies all, or a portion of, its internal electric load requirements before January 1, 2005 is grandfathered from the applicability of the Settlement Standby Tariffs. This provision provides an additional five months (compared to the Company's illustrative tariffs that established an August 1, 2004 deadline) to any customer who is in the process of installing self-generation, but requires additional time to bring the generation on-line. Thomas Smith, witness for NEDGC, testified that large on-site generation units in downtown facilities could be installed and operational in 6-8 months (Tr. 5, at 944). Therefore, the Settlement Standby Tariffs provide generous notice for projects that are currently in progress, given that the Company's standby tariff filing was made in October 2003 (i.e., 14 months will have elapsed before the December 31, 2004 grandfathering deadline).

In addition, under the terms of the Settlement Standby Tariffs, self-generation facilities serving municipal public schools are conditionally given an additional 12-months (until January 1, 2006) to bring their self-generation on-line to obtain grandfathered status. This provision is critical for public school systems, which are

experiencing particularly constrained and uncertain budgets. Such provisions serve the public interest because they recognize that certain municipal school customers may have made financial commitments to the acquisition and installation of self-generation units before it was possible to know the structure and charges established by the new standby tariffs.

b. Renewable Energy Technologies May Take Service Under the Otherwise Available Rate Schedule.

The Settlement Standby Tariffs provide that customers' generating units that use "renewable energy technologies" as that term is defined in G.L. c. 40J, § 4E(f)(1) are not required to take standby service under the Settlement Standby Tariffs. This provision was not previously included in the Company's illustrative tariffs. This statute defines renewable energy technologies to include the following:

> Solar photovoltaic and solar thermal electric energy; wind energy; ocean thermal; wave, or tidal energy; fuel cells; landfill gas; waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use; naturally flowing water and hydroelectric; low emission, advanced biomass power conversion technologies, such as gasification using such biomass fuels as wood, agricultural, or food wastes, energy crops, biogas, biodiesel, or organic refuse-derived fuel; and storage and conversion technologies connected to qualifying generation projects . . .

G.L. c. 40J, § 4E(f)(1). Through this and other provisions, the Restructuring Act establishes public policy support for the development and promotion of renewable energy projects in the Commonwealth. See, for example, Restructuring Act, § 20. Such projects will lead to a broader spectrum of energy alternatives than are currently available to

consumers. The Settlement Standby Tariffs provides tangible support for this important public policy objective.[12]

c. Availability of Non-Firm Service

The Settlement Standby Tariffs include a separate section, not included in the Company's illustrative tariffs, that identifies the availability of non-firm standby service and the general conditions that must be met for obtaining such non-firm service. Such non-firm service may provide economic benefit to certain customers who are able to discontinue their operations for periods of time when distribution service cannot be provided on a firm basis (Exh. NSTAR-HCL-1, at 26). According to the terms of the tariff, non-firm service will be provided under the terms of a separate contract with the customer.

> Generally, the Company will provide non-firm standby distribution service at the request of the Customer to the extent that local distribution capacity is available to serve the Customer when its generation facilities are not available.

The price of non-firm standby service would be identical to the demand and energy charges under the otherwise applicable rate schedule on an "as-used" basis for any distribution service actually taken. This provision establishes tariff language that implements the proposal that the Company presented on the record in this case (Exh. NSTAR-HCL-1, at 26-27; Tr. 7, at 1362; RR-DTE-17). The inclusion of this non-

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12 At the same time, as noted above, many renewable energy technologies will experience regular periods when weather or other factors will require monthly as-used demand charges to be incurred (i.e., no subsidies will be created for renewables). As a result, the renewables exemption will not unduly shift revenue responsibility to other customers. Similarly, gas-powered fuel cells have specific limits on their size, thereby preventing the potential for large shifts in revenue responsibility to others. These negotiated provisions reflect a reasonable tradeoff among the parties to the Settlement Agreement.

firm service provision is in the public interest because it: (1) identifies the availability of an additional alternative non-firm service to potential customers who may not otherwise be aware of this option; and (2) describes in a clear and concise manner the conditions that must be met to qualify for such an arrangement.

d. Customer-Nominated Contract Demand

The Settlement Standby Tariffs include a provision for customer-nominated contract demand, which was not previously included in the Company's illustrative tariffs, that serves the public interest by informing customers directly in the tariff itself of the Company's willingness to negotiate a special contract (in lieu of the tariff) in good faith that would include a customer-nominated level of contract demand (Exh. NSTAR-HCL-7, at 26-27; Tr. 2, at 308-309; see Tr. 1, at 38-39; Tr. 3, at 406; Tr. 4, at 667; Tr. 6, at 1147; Tr. 7, at 1354; Tr. 7, at 1361; Exh. RR-DTE-15). Such special contracts may include financial penalties for exceedences of the contract demand and other terms relevant to the unique circumstances of the Customer's operations and configuration of the distribution system. During the course of evidentiary hearings in this case, several intervenors questioned the inability of standby customers under the Company's illustrative tariffs to nominate their own level of contract demand (Exh. DOER-AEP-1, at 13; Tr. 3, at 426; Tr. 5, at 826). As a result of the settlement process in this case, this provision is now included in the tariffs and serves the public interest by providing additional alternatives to customers who wish to proceed under a special contract. These

special contracts would be filed for review and approval of the Department pursuant to G.L. c. 164, § 94.[13]

B. The Arguments in Opposition to the Settlement Agreement Presented by NEDGC, TEC and WMICG Are Without Merit.[14]

The NEDGC/TEC Comments indicate that they recognize that the Settlement Standby Rates "represent a modest improvement over the latest version" of NSTAR Electric's proposed standby tariffs (NEDGC/TEC Comments at 5). Nevertheless, NEDGC/TEC attacks the Settlement Agreement, characterizing it as "a series of horse trades that are targeted to benefit the Settling Parties" (id. at 4). Black's Law Dictionary defines a settlement agreement without the invective as "an agreement by which parties having disputed matters between them reach or ascertain what is coming from one to the other." Black's Law Dictionary, 5th Edition (1979). The fact that NEDGC/TEC did not obtain their desired outcome through the settlement process in no way establishes a legal challenge to the Settlement Agreement itself. Indeed, as shown herein, the Settlement Agreement establishes a fair and reasonable outcome in this case that is consistent with Department precedent and the public interest. Alternative proposals to the Settlement Agreement, proposed for the first time in comments, reflect a last-gasp attempt by the non-settling parties to obtain more favorable results than were reached over long and difficult negotiations. The negotiations have ended, a settlement has been reached based

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13 The Settlement Standby Tariffs provide that "[i]n the event the Customer and the Company are unable to reach agreement on such terms, the Customer may file a Petition with the Department pursuant to G.L. c. 164, § 92."

14 The Company does not address the comments of KeySpan, MECo, WMECo and Unitil because they each recommend approval of the Settlement Agreement and associated Standby Settlement Tariffs.

on a series of interrelated compromises and no further modifications are appropriate or reasonable without destroying the basis of the settlement (Settlement Agreement at § 3.4). The Settlement Agreement reflects the agreement of a diverse and broad set of parties who elected to participate in the give and take required to reach a reasonable settlement in this case. The Department's review of the Settlement Agreement should not be understood as an opportunity to second guess the result of this extremely difficult and unique settlement process in the case.

1. The Settlement Standby Tariffs Are Not Unduly Discriminatory.

NEDGC/TEC argue that the Settlement Standby Tariffs are unduly discriminatory because NSTAR Electric may not charge customers with on-site generation a higher rate than other customers unless the conditions presented in supplying service are different (NEDGC/TEC Comments at 12). According to NEDGC/TEC, the Department has held that it is discriminatory to treat customers who have similar load patterns differently (id. citing Boston Edison Company, D.P.U. 85-266-A/85-271-A (1986).[15] NEDGC/TEC and WMICG maintain that the load characteristics of customers with on-site generation are "the same" as customers without on-site generation (WMICG Comments at 3; TE/NEDGC Brief at 19).[16] The Settlement Standby Tariffs are not unduly discriminatory and NEDGC/TEC's arguments are without merit.

As described in Section V.A, above, but for the average 15 percent reduction to the contract demand charge for standby customers as a result of the Settlement

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15 Similar comments were submitted by Wyeth (Wyeth Comments at 6-7).

16 "Because the load characteristics are *the same*, the Department must reject NStar Electric's proposed standby rates and require that NStar Electric continue to serve DG customers under the otherwise applicable rate schedules" (NEDGC/TEC Brief at 19) (emphasis added).

Agreement, the rates that are included in the Settlement Standby Tariffs are based on the existing distribution tariff rates for a comparable non-standby customers (Exh. NSTAR-HCL-1, at 16). Therefore, contrary to the arguments of NEDGC/TEC, the Settlement Standby Rates are actually *lower*, not higher, than the rates available to continuous-use customers.

Although the Company incurs the same costs to serve standby and continuous-use customers, the collection process to recover these costs must be different for standby customers because of their infrequent and intermittent use of the distribution system (Exh. NSTAR-HSP-2, at 5; Exh. TEC-NSTAR-3-25; Exh. NSTAR-HCL-7, at 4). The Company's collection of the same as-used demand charges based on metered demand, rather than a contract-demand, would result in an undercollection of the revenues needed to pay for the distribution system (i.e., "as-used" monthly demand charges recover no revenue in those months when a standby customer does not take electric service over the Company's distribution system) (Exh. NSTAR-HCL-1, at 17; Tr. 2, at 311-312).

> Allowing DG customers to purchase standby service on such standard rates would significantly undercharge them; they use too few kWh to pay for the fixed distribution costs of serving them.

Exh. NSTAR-HSP-2, at 5. It is neither reasonable nor appropriate for the Company to assume that self-generation customers would have the same metered demands before and after installation of self-generation (Tr. 6, at 1116-1117).

In order to collect the costs associated with fixed distribution plant, the Settlement Standby Tariffs require that for each customer, a fixed contract level of demand be determined, which reflects the internal generating capability or the expected output of the customer's generation unit (Exh. NSTAR-HSP-2, at 18). This result is not unlawful discrimination. To the contrary, the use of a fixed contract level of demand is a

reasonable collection method to recover the fixed costs that are incurred to provide firm standby service, whether or not the standby customer actually calls upon the Company's distribution system to deliver energy in any given month (Exh. NSTAR-HCL-7, at 4).

> A difference in rates between classes of customers cannot be held illegal, unless it is shown that it is not justified by the cost of the respective services, by their values, or by other conditions. United States v. Illinois Central R.R., 263 U.S. 515, 524 (1924).

Hull Municipal Light Plant, D.P.U. 87-19-A at 42 (1990). Similarly, the Supreme Judicial Court has held that "[i]t is 'axiomatic in ratemaking' that 'different treatment for different classes of customers, reasonably classified, is not unlawful discrimination." American Hoechest Corp. v. Department of Public Utilities, 379 Mass. 408, 411 (1979) ("American Hoechest"), citing Boston Real Estate Board v. Department of Public Utilities, 334 Mass. 447, 495 (1956).

> While cost of service is a well-recognized basis for utility rate structures, it need not be the sole criterion. Monsanto Co. v. Department of Public Utilities, ante 317, 320 (1979), and cases cited. See Jones, *Judicial Determination of Public Utility Rates: A Critique*, 54 B.U.L. Rev. 873, 890-892 (1974). Any number of factors may justify a separate classification [citation omitted]. 'The nature of the use and the benefit obtained from it, the number of persons who want it for such a use, *and the effect of a certain method of determining prices upon the revenues to be obtained* by the city, and upon the interests of property holders, are all to be considered' (citation omitted).

American Hoechest, at 411-412 (emphasis added). In this case, the record establishes that the cost to serve standby customers and continuous-use customers is the same (Exh. NSTAR-HCL-1, at 16; Exh. NSTAR-CPS-1, at 13). Therefore, there is no discrimination where the Company has used the same rates and underlying cost-of-service study to provide service to continuous-use and standby customers. As described above, although the costs are the same to serve both types of customers, a self-generation customer's "non-continuous" use requires a different collection mechanism (i.e., contract

demand) to recover the fixed costs needed to provide firm standby service. The collection mechanism of continuous-use service – as used energy and demand charges – *does not provide sufficient revenues to cover the costs when applied to standby service* (Exh. NSTAR-HCL-7, at 4).

NEDGC/TEC's contention that the load characteristics of customers with on-site generation are "the same" as customers without on-site generation is neither accurate nor persuasive in reaching the conclusion that the Department "must reject NSTAR Electric's standby rates" and continue to serve self-generation customers under the otherwise applicable rate schedules (NEDGC/TEC Brief at 19). According to NEDGC/TEC, because customers with on-site generation have "the same" load characteristics as continuous-use customers, it would be unduly discriminatory not to allow standby customers to continue to take service as if they were continuous-use customers (id.). However, the sole basis for the NEDGC/TEC claim is the MECo load data, with minimum-to-maximum ratios, presented by Ms. Saunders in her direct testimony. Exh. TEC-1, at 3-5. Yet, this data is annualized information and it does not show the month-to-month variation that occurs for both continuous-use customers and customers with on-site generation. Tr. 6, at 979-980. Thus, under Ms. Saunders' testimony, on-site generating customers and continuous-use customers could have precisely the same annual minimum-to-maximum ratio, but have far different monthly usage characteristics and resulting cost contribution over the year.[17] Id. The fact is, however, that there is no

[17] For example, consider an on-site generating customer that is able to operate its generating facility to avoid imposing a demand during the peak period 10 or 11 months of the year, versus a continuous-use customer of the same size who imposes a peak demand each month of the year. Id.; Tr. 5, at 849. Although the distribution system to serve the two customers is identical, without a contract demand structure, the cost contribution of the two customers would differ dramatically.

discrimination where standby customers are paying the same rates as customers in the otherwise applicable rate class. As proposed in the Settlement Agreement, the difference between the two types of customers is not in the costs incurred to serve them or the rates charged to them, but only in the collection mechanism that is used to recover the costs.

Accordingly, failure to implement this collection mechanism would actually be discriminatory to all other customers who are not purchasing standby service. Rates must be just and reasonable to *all* customers, including those not directly involved in this case (e.g., residential customers).

> Standby rates which did not recover the cost-of-service would unfairly discriminate against other customers by requiring them to subsidize the standby service.

C.F. Industries v. Nichols, 100 P.U.R. 4th 560, 536 So.2d 234, at 238-239 (Fla. 1988).

Moreover, NEDGC/TEC and WMICG's contention that the load characteristics of customers with on-site generation are "the same" as continuous-use customers is unsupported by the record. The information relied upon by NEDGC/TEC, as reflected in the response to Record Request DTE-22 and Exhibit TEC-NSTAR-3-5, indicates that the ratio of average demand to maximum demand for continuous-use customers is more than 12 percent higher than the 14 self-generation customers with available demand data.[18] Of course, sample sizes this small make it difficult, at best, to infer that the load patterns of continuous use and self-generation customers are "the same" (Exh. NSTAR-HCL-7, at 14).

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[18] Comparison of Attachment RR-DTE-22(b) (0.73571) with the simple average of each tariffs' weighted average shown in Attachment RR-DTE-22(a) (0.83842 + 0.81945 + 0.84348 + 0.82000 + 0.80399 + 0.83091 / 6) = 0.82604. (0.82604 minus 0.73571) / 0.73571 = 0.09033 / 0.73571 = 12.28 percent.

> This is further complicated by the differing percentages of DG capacity to total customer load within the sample. What we do have some certainty about is the fact that the DG customer who desires firm standby service will require intermittent, infrequent and unscheduled service from the distribution system for that portion of its internal load and that distribution capacity must be built and placed in reserve to serve that load whenever it is needed.

Id. Similarly, Dr. Parmesano, an expert in the field of utility costing and pricing, challenged NEDGC/TEC's conclusion that the load characteristics of self-generation and continuous-use customers are "the same." According to Dr. Parmesano, the result of such an assumption would be the underrecovery of distribution costs from standby customers (Exh. NSTAR-HSP-1, at 12).

> Although the facilities are in place to serve [self-generation] customers every month, they would pay only in months that they experienced a generator outage. This result would be neither efficient nor fair from the perspective of all customers.

Id. at 12-13. Accordingly, the Settlement Standby Tariffs are reasonable and cannot properly be construed as unduly discriminatory.

2. The Settlement Agreement and Settlement Standby Tariffs Are Consistent With the Requirements of PURPA and Applicable Federal and Massachusetts Regulations.

WMICG argues that the Settlement Standby Tariffs would violate the requirements of PURPA and the Department's regulations (WMICG Comments at 4-5).[19] These arguments largely were previously included in NEDGC's Motion to Dismiss, filed in this case on February 12, 2004. NSTAR Electric's Opposition to the Motion to Dismiss, filed on February 24, 2004, demonstrates that the Motion to Dismiss is without merit and should be dismissed. NSTAR Electric will not reargue each of the arguments

[19] Similar arguments are also made by NEDGC/TEC with respect to the Company's illustrative tariffs (NEDGC/TEC Brief at 43-50).

here, but instead will summarize the reasons its Settlement Standby Tariffs are fully consistent with the requirements of PURPA, federal and state regulations. It should be noted here, however, that Section 210(f) of PURPA delegates to state public utility commissions the authority to implement the PURPA rules prescribed by FERC. See MIT v. Department of Public Utilities, 941 F.Supp. 233, 235 (1996). Accordingly, it is for the Department to decide whether, on a factual, policy and legal basis, the Settlement Standby Tariffs comply with the requirements of PURPA.

a. The Settlement Standby Rates Comply With the Nondiscrimination Requirements of PURPA.

NEDGC/TEC cites PURPA's requirement that rates charged to QFs cannot discriminate against such customers as compared to continuous-use customers with similar load characteristics (NEDGC/TEC Brief at 49). NEDGC/TEC cite a FERC regulation, which sets forth the requirements for the design of non-discriminatory rates:

> Rates for sales which are based on accurate data and consistent systemwide costing principles shall not be considered to discriminate against any qualifying facility to the extent that such rates apply to the utility's other customers with similar load or other cost-related characteristics.

Id., citing FERC Order No. 69, 18 CFR Part 292.305(a)(2). The Settlement Standby Rates are in full compliance with this requirement based on the unrefuted record evidence in this case that all standby service customers are being charged the same rates (less the 15 percent rate reduction for contract demand) and pursuant to the same cost-of-service study as all other customers in the otherwise applicable rate classes. As explained above, the collection mechanism for standby customers must be adjusted to reflect the intermittent nature of a standby customer's load. The rates themselves are identical (less

the 15 percent reduction for contract demand). In explaining the PURPA rule against nondiscrimination, the FERC stated:

> [W]here the utility must reserve capacity to provide service to a qualifying facility, the costs associated with that reservation are properly recoverable from the qualifying facility, if the utility would similarly assess these costs to non-generating customers.

Small Power Production and Cogeneration Facilities; Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978, 18 C.F.R. Part 292, 45 Fed. Reg. 12214, at 12228 (February 25, 1980) ("FERC Order No. 69"). The Company has demonstrated that it must incur the same costs to reserve distribution capacity for continuous-use and standby customers (Exh. NSTAR-HCL-1, at 16; Exh. NEDGC-1-15). Accordingly, the Settlement Standby Tariffs do not discriminate against QF customers. See Massachusetts Institute of Technology v. Department of Public Utilities, 425 Mass. 856, 867 (1997) ("[W]e agree with the [D]epartment that the imposition of a customer service charge that applies to a broad class of customers, and that does not single out QFs for unlawful discriminatory treatment, does not violate the State's PURPA regulations").

b. The Settlement Agreement and Settlement Standby Tariffs Properly Reflect the Costs Incurred to Provide Standby Service to QFs.

NEDGC/TEC contend that the Company's proposed standby rates improperly assume that QFs will be out of service simultaneously at the time of system peak (NEDGC/TEC Brief at 46). In support of their argument, NEDGC/TEC cite FERC regulation 18 C.F.R. § 292.305(c)(1), which states that rates for standby service:

> (1) shall not be based upon an assumption (unless supported by factual data) that forced outages or other reductions in electric output by all qualifying facilities on an electric utility's system will occur simultaneously, or during the system peak or, or both;

NEDGC/TEC's argument overlooks, however, the unequivocal factual record in this case supporting the conclusion that the distribution system must be constructed in the same manner and configuration (and with the same materials), whether or not a particular customer on the distribution system is able to generate its own electricity (Exh. NSTAR-HCL-1, at 30; Exh. NSTAR-HCL-7, at 4; Exh. NSTAR-CPS-1, at 13; Exh. DTE-6-2; Exh. DOER-1-4). The apparent expectation by certain intervenors is that standby customer loads could be "hidden" in the system's load and not be considered as part of the planning requirement for the Company's system peaks:

> Now, I'm generally happy with the otherwise applicable rate, because if you're massed in there together with the otherwise applicable rate, it's kind of hard for someone to do nasty things to you. You have to do it to the whole rate class, and that kind of hard to do. *So I like being able to hide the DG in the otherwise applicable rate schedule . . .*

Tr. 5, at 893-894 (emphasis added). This "head-in-the-sand thinking" is refuted directly by NSTAR Electric's Director of System Planning, Mr. Salamone:

> In order to be able to provide reliable service to all firm customers, the full, peak internal load of a standby customer must be included in the peak demand analysis for purposes of determining the size of capacity of the distribution system, unless there are multiple standby customers on a circuit or substation and the generation units are always operated, subject to random and non-coordinated, unavoidable unplanned or maintenance outages, when the customer needs the power.

Exh. NSTAR-CPS-1, at 8. Notably, the FERC explained that the data requirement imposed by its rule "need not be in the form of empirical load data." FERC Order No. 69, at 12229. In other words, the Company is required to provide only a credible

refutation of the assumption. Mr. Salamone's uncontroverted testimony[20] demonstrates that, unless and until there are multiple self-generation customers on the same circuit (which do not exist), the Company must have sufficient distribution capacity to meet the non-coincident peaks of each of its customers, including standby customers:

> If there is only a single DG unit on a circuit, the distribution company must have in place facilities to meet the internal load requirements of the customer, since it must plan for the possibility that the unit will be unavailable at the time of peak demand. This is precisely the way the Company must plan for all of its customers at the circuit level; it must have sufficient capacity to meet the non-coincident peaks of each of its customers.

Exh. NSTAR-CPS-1, at 9 (see also Exh. NEDGC-1-15). Accordingly, the Company's planning criteria that QFs, like all other self-generating customers on its distribution system, may be unavailable at the time of the system peak is firmly grounded in the Company's distribution system planning and the associated construction necessary to provide reliable electric service.

c. PURPA Does Not Require That QFs Receive Service Under the Otherwise Applicable Rate Schedules.

NEDGC/TEC argue that the Department's regulations implementing PURPA require that a distribution company must supply a QF with service under rate schedules applicable to all customers, regardless of whether they generate their own power (NEDGC/TEC Brief at 44-45, citing 220 C.M.R. 8.06(1)). This contention is false and reflects a misunderstanding of the anti-discrimination requirements of PURPA.

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[20] In fact, every intervenor witness who was questioned about how they would plan a distribution circuit with an on-site generator agreed that the distribution facilities would have to be constructed to meet the standby customer's load normally served by the on-site generation (Tr. 3, at 440-441; Tr. 4, at 567-568; Tr. 5, at 879-881, 931).

First, the rates that are included in the Settlement Standby Tariffs are based on the existing distribution tariff rates for a comparable non-standby customer (Exh. NSTAR-HCL-1, at 16). Indeed, as a result of the Settlement Agreement, Standby Rates are actually *lower* than the rates available to continuous-use customers in the otherwise applicable customer classes. The difference between the two types of customers is not in the costs incurred to serve them or the rates charged to them, but only in the collection mechanism that is used to recover the costs.

NEDGC/TEC's contention fails of its own weight because were it to be accepted, there would be no need for the Company to propose standby rate tariffs – such customers would simply be able to take service under the rates available to all-requirements customers. Yet, standby rates are commonly in effect throughout the country that apply specifically to standby customers. The Settlement Standby Tariffs, as well as those standby tariffs in other jurisdictions, exist because customers taking such service are not continuous-use customers, and therefore, have different usage characteristics pursuant to which the Company must recover its distribution costs.

In proposing 220 C.M.R. 8.06(1), the Department explained the intent of the provision, as follows:

> This section would require utilities to establish rate schedules under which power would be provided to QFs. It is completely new and replaces a previous section of the same heading. The language in this section clarifies the intent of the Department. The new section would require utilities to provide power to QFs under rate schedules which are non-discriminatory with respect to a customer's sources of power. The section would allow utilities to establish rates based on voltage levels and load patterns which are applicable to all similarly situated customers and *are designed to reflect the costs a utility incurs in serving the types of load which characterize QFs.*

PURPA Regulations, D.P.U. 84-276-A at 78 (1986) (emphasis added). Put simply, PURPA contemplates and requires that standby rates be based on traditional cost-of-service concepts. The Company's standby rates clearly comply with this requirement.

As the legislative history from PURPA makes clear:

> The conferees use the phrase "not discriminate against cogenerators or small power producers" because they were concerned that the electric utility's obligations to purchase and sell under this provision might be circumvented by the charging of unjust and non-cost based rates for power solely to discourage cogeneration or small power production. This phrase should not be construed to permit discrimination against the electric consumers of an electric utility in formulating rates under this provision. The provisions of this section are not intended to require the rate payers of a utility to subsidize cogenerators or small power producers.

H.R. REP. No. 95-1750, at 98 (1978), *reprinted in* 1978 U.S.C.C.A.N. at 7832.

The Department's regulations establish the fact that rates charged to QFs may, in fact, be different from the rates otherwise available to customers without self-generation provided that it is not done on a discriminatory basis.

> [T]he utility must commit energy and capacity in order to provide these services. The utility must, therefore, charge a rate to the customer which reflects the costs of providing these services. *Because these rates may be different from those charged to conventional customers which buy all of their power requirements from the utility, they may affect a customer's decision to install a QF.* A utility can potentially lose electricity sales and revenues if its major customers decide to install QFs. The utility, however, can discourage the installation of QFs by charging relatively high rates for [standby service]. In recognition of this potential problem, the FERC regulations governing sales of electricity between QFs and utilities require that [standby service] rates not discriminate against any QF in comparison to rates for sales to other customers served by the electric utility. See 18 C.F.R. 292.305(a)(1)(ii).

PURPA Regulations, D.P.U. 84-276, at 91-92 (1985) (emphasis added). Thus, the provision cited by NEDGC/TEC is not intended to permit customers to avoid approved cost-based standby rates, but to ensure that such rates: (i) are designed to recover the

costs associated with providing such service; and (ii) are non-discriminatory to all customers.[21]

3. A New Cost-of-Service Study Is Not Necessary or Appropriate.

NEDGC/TEC contends that the Settlement Standby Tariffs should not be approved by the Department without a cost-of-service study for standby service customers (NEDGC/TEC Comments at 11). The fact is that the Settlement Standby Tariffs are indeed based on three separate cost-of-service studies – one for each of the three distribution companies (see Exh. NSTAR-HCL-1, at 16; Tr. 6, at 1060). The Settlement Standby Tariffs rely on the existing distribution and transmission tariff rates for a comparable non-standby customer who otherwise purchases all of its electricity from either the Company or a third-party supplier (Exh. NSTAR-HCL-7, at 10). The existing tariff rates have been previously approved by the Department and are the result, in part, of Department-approved cost-of-service studies performed in each company's most recent base rate case (Tr. 1, at 84). Consistency between the standby rate and the otherwise applicable rate promotes fairness and economic efficiency (Exh. NSTAR-HCL-7, at 10; Exh. DOER-1-16).

Dr. Parmesano testified concerning the critical importance of this relationship, stating that customers facing a decision to build on-site generation look at "the difference

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[21] It should also be noted that PURPA itself was established into law before the restructuring of the electric industry in Massachusetts. As a result, PURPA makes no distinction between stand-alone distribution services and electricity sales. At the time, standby service was considered to be a bundled sales service only. Electric distribution companies under the Restructuring Act make electricity sales available to QFs at the same price (i.e., default and standard offer prices) as all other continuous-use customers regardless of whether they generate their own power. Similarly, the same standby tariffs apply in this case to QFs under PURPA and all other comparable on-site generators who are not QFs. Thus, no discrimination occurs under the Settlement Standby Tariffs, nor is there any conflict with the Department's QF regulations. See Massachusetts Institute of Technology v. Department of Public Utilities, 425 Mass. 856, 867 (1997).

between what they will pay on the current full-service rates, no matter what they're based on, and what they'll pay after installation of the [on-site generation]" (Tr. 6, at 1058-1059). "So it's very important for there to be a relationship between the rates – that they have the same basis, the rates for full service ad the rates for standby" (id. at 1059).

> If standby service was priced separately using a different costing methodology or using costs from a different time period than that used for the equivalent continuous service rate, artificial rate savings would result, thereby distorting the cost/benefit factors used to evaluate the project.

Exh. NSTAR-HCL-7, at 10. Accordingly, the most important issue concerning cost is *not* the development of a new cost-of-service study, but whether the rates for standby customers are set in accordance with the corresponding rates for all-requirements customers. In the context of the Settlement Standby Tariffs, a new cost-of-service study is neither reasonable nor in the public interest.

4. The Settlement Standby Rates' Use of a Contract Demand Charge Is Reasonable and Not Prohibited.

NEDGC/TEC allege that the Company's use of a contract demand charge, as opposed to an as-used demand charge, constitutes a demand ratchet contrary to Department precedent (NEDGC/TEC Brief at 32-34; see also Wyeth Comments at 5). According to NEDGC/TEC, the Department decided this issue in Cambridge Electric Light Company/MIT, D.P.U. 94-101/95-36 (1995) ("Cambridge/MIT") (id.).[22] Actually, NEDGC/TEC made this argument before in its earlier Motion to Dismiss. The charge is without merit and should be rejected.

[22] In fact, in Cambridge/MIT, the Department approved a stranded-cost recovery mechanism that was based upon the internal load of the customer, not its as-used metered demand. Cambridge/MIT at 56, 86-87; see also Exh. AG-3-13.

Dr. Parmesano dispelled the mistaken assumption that the label of "ratchet" applied to a demand charge establishes an automatic basis for its rejection (Exh. NSTAR-HSP-1, at 12). To the contrary, "[t]erming a rate design a ratchet does not provide one with any insight as to whether it is desirable or not" (id.). Reviewing the record and the Company's rationale for implementing an annual contract demand rate, Dr. Parmesano concluded:

> Whatever NSTAR Electric's proposed contract demand charge may be called, *it is the most appropriate mechanism* for recovering the local distribution costs (and substation distribution costs) of serving standby customers.

Id. (emphasis added).

In Cambridge/MIT, the Department did not rule that demand ratchets are always prohibited, or even that the specific outcome in Cambridge/MIT is mandated forever as a matter of law. Indeed, some seven years later, on June 13, 2002, the Department issued an order identifying the need to reconsider the proper structure for standby rates on a going-forward basis. Order Opening Investigation into Distributed Generation, D.T.E. 02-38, at 2 (2002). The Department noted "the lack of uniformity and uncertainty" in standby rates as a basis to investigate the appropriate method for calculation of standby rates (id.). The unsettled status of policies for designing standby rates for distribution companies in the post-Restructuring world in Massachusetts, as acknowledged by the Department, completely belies the charge that prior Department precedent bars the Department from approving the Settlement Standby Tariffs in this case.[23]

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[23] The Department has previously approved standby rates with contract demand charges in Boston Edison Company, D.P.U. 92-92, at 58-63 (1992); Nantucket Electric Company, D.P.U. 88-161/168, at 226-227 (1989); and Western Massachusetts Electric Company, D.P.U. 92-290 (1992).

5. The Settlement Agreement and Settlement Standby Tariffs Are Not Contrary to the Stated Goals of the Commonwealth and the Department.

Wyeth contends that the Settlement Standby Rates are contrary to the stated goals of the Commonwealth and the Department and the Department "to promote customer choice, energy efficiency and reliable service at the lowest possible cost for all consumers" (Wyeth Comments at 7-8). Wyeth apparently believes that the Settlement Standby Rates are contrary to these goals because the Settlement Standby Rates will allegedly deter and/or eliminate the deployment of DG technologies (id., citing Exh. NEDGC-1, at 8-9). Wyeth's contention is disputed by the large number and breadth of parties to the Settlement Agreement who share the same stated goals as Wyeth of promoting on-site generation, customer choice, energy efficiency and reliable service (e.g., the Joint Supporters, DOER, A.I.M., CLF and SEBANE). Moreover, Wyeth's position fails to recognize the policy goals adopted by the Department for standby rates, which include economic efficiency, appropriate price signals to customers (including customers considering the installation of DG), and that rates (including standby rates) should reflect cost incurrence in order to prevent cost shifting. Order Opening Investigation into Distributed Generation, D.T.E. 02-38, at 4 (June 13, 2002). Wyeth's argument is without merit and should be rejected by the Department.

C. The Comments of the Attorney General

1. There Are No Discounts Included in the Settlement Standby Rates.

Although supporting approval of the Settlement Agreement, the Attorney General suggests that there are "discounts given" to on-site generation customers included in the Settlement Standby Tariffs, which will require the Company to recover the associated shortfall from other continuous-use customers to meet revenue requirements (Attorney

General Comments at 11-12). Citing Department cases involving special contract discounts, the Attorney General argues that the Department should not allow the Company to recover the value of these alleged discounts from remaining customers (id. at 12). The Attorney General's position reflects a misunderstanding of the rates established by the Settlement Standby Tariffs.

The Settlement Agreement and the Settlement Standby Tariffs represent the results of a bargained-for exchange of outcomes that reflect both the merits and weaknesses in the positions of each party. The resulting rates are not properly understood standing alone without reference to the overall settlement package. In particular, the fact that the Settlement Standby Tariffs are 85 percent of the Company's proposed rates is a settled-upon amount reflecting differing views among the parties with respect to the "benefits" of on-site generation, which benefits as they materialize would reduce a distribution company's cost to serve. Accordingly, the Attorney General's conclusion that there is a "discount" resulting in a shortfall in revenues that has been shifted to other customers is without merit.

2. It Is Not Appropriate to Establish a Deadline for Changing the Settlement Standby Tariffs.

The Attorney General argues that the Department should approve the Agreement only if the Settlement Standby Tariffs are "temporary" (Attorney General Comments at 8). The Attorney General states that the Settlement Standby Tariffs "should remain in effect only until the Company's next rate case" when it would be more appropriate to develop a more permanent rate design (id. at 9). The Company agrees with the Attorney General that its next general rate case would provide the appropriate forum for

investigating all of the Company's tariffs, including the Settlement Standby Tariffs.[24] Until that time (which is now unknown), the Settlement Standby Rates reflect reasonable standby tariffs that are in the public interest and consistent with Department precedent.

The Attorney General asserts that the Settlement Agreement "may result in unjust and unreasonable rates" by exempting future on-site generation customers who come on line before August 1, 2008 and who do not meet the availability criteria of the Settlement Standby Tariffs (id.). The Attorney General is mistaken. The grandfathering provision included in Section 2.4 of the Settlement Agreement serves the same purpose as grandfathering generally — to protect those customers who entered into financial commitments based on reasonable assumptions about the applicability and structure of standby rates. In this case, there may be on-site customers who develop their projects in the next few years based on the assumption that they would not be subject to the Availability clause of the Settlement Standby Tariffs. It is reasonable to protect such customers in the future in the event that the Availability clause is changed in a way that would make future standby tariffs apply to them on or after August 1, 2008. Such an approach is consistent with good public policy and is not inconsistent with Department precedent.[25]

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24 In that sense, all Department-approved tariffs are, somewhat "temporary" in nature, i.e., they are subject to change at a company's next rate proceeding.

25 The cases cited by the Attorney General, D.P.U. 93-41 and D.T.E. 98-51, do not establish a Department policy against the type of provision included in Section 2.4 of the Settlement Agreement.

3. The Settlement Standby Tariffs Should Not Be Modified to Require Recovery of Transition Costs.

The Attorney General contends that the Department should require the Company to recover transition charges as a fixed charge component of the standby tariffs rather than on the proposed as-used basis (Attorney General Comments at 10). According to the Attorney General, the Settlement Standby Tariffs do not recover the transition charge in a non-bypassable manner because they recover transition costs on an as-used basis (id.).[26] The Attorney General suggests that, if the Department will not require that the Settlement Standby Tariffs include a contract demand based transition charge, it should order that the reconciliation for the otherwise applicable rate class include the cost recovery shortfall associated with the related standby class (id. at 11).

The Company's standby tariff proposal in this case did not include the recovery of transition charges in the contract demand, and the Settlement Standby Tariffs are consistent with this approach. No party raised this issue during hearings, and there is no evidence on the record that transition charges are properly included in standby service rates. The issue before the Department is the Settlement Agreement and Settlement Standby Tariffs, which have been agreed to by a large number of diverse parties based on a series of interrelated compromises. No further modifications are appropriate or reasonable without destroying the basis of the settlement (Settlement Agreement at § 3.4). Although the Company would have no objection to maintaining the recovery of transition costs associated with standby customers from the "otherwise applicable" rate

[26] Similarly, the Attorney General also argues that the Department should require that the Settlement Standby Tariffs include a contract demand transmission charge (Attorney General Comments at 10, ftnt. 13).

class, that is an issue to be resolved in an appropriate transition cost reconciliation proceeding.

4. Requirements for Collecting Data Are Outside of the Scope of the Settlement Agreement and Settlement Standby Tariffs.

The Attorney General maintains that the Department should require all of the utilities to begin collecting data immediately on all on-site generation currently on the distribution system, regardless of size, to compare those characteristics to similar all-requirements customers (Attorney General Comments at 13). The Attorney General identifies a list of no less than a dozen separate elements that should be collected, including, for example, "costs unique to [on-site generation], such as safety requirements, communications, metering and billing service needs that are outside of the average all requirements customers' requirements" (id.). Although the Attorney General is no doubt well-intentioned, his recommendations are outside the scope of the Settlement Agreement before the Department. The Department should resist from muddling its review of the Settlement Agreement with other directives and investigations that are not currently before the Department. Nonetheless, the Company fully intends to monitor the development of on-site generation in its service territories and should have available relevant information at the time of its next rate case after August 1, 2008, when it would be making any additional recommendations with regard to the future structure of standby rates.

VI. CONCLUSION

For all of the foregoing reasons, NSTAR Electric respectfully requests that the Settlement Agreement and the Settlement Standby Tariffs be approved by the Department.

Respectfully submitted,

BOSTON EDISON COMPANY
CAMBRIDGE ELECTRIC LIGHT COMPANY
COMMONWEALTH ELECTRIC COMPANY

d/b/a NSTAR ELECTRIC

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