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Ebon Bonnette, et al., individually and on behalf of a class of all other similarly situated persons v. Rochester Gas & Electric Co.

Judge Michael Anthony Telesca

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Ebon Bonnette, et al., individually and on behalf of a class of all other similarly situated persons v. Rochester Gas & Electric Co.

Keywords

Ebon Bonnette, Khalid Boston, Donna Cox, M. Diane Dixon, Odessa Dixon, Robert Ellis, Michael A. Foster, Jerel Griffin, Mark Hale, Jean E. Howard, Bertha Johnson, Ellen Johnson, Stephanie Johnson, Johnny Kegler, Mary Lalor-Timmons, Marcia Lane, Robert Lane, Gail Marshall-Johnson, Thomas Moore, Delray Morgan, Delores Prad, Toney Proctor, Willie Sanders, Lolita Smith, Brett Stevenson, Everlene Thompson, Ophelia J. Tisdale, Richard Walford, Wanda Webb, Patricia White, Robert Williams, Bonnie L. Wright, Rochester Gas & Electric Co., 6:07-cv-06635-MAT, Consent Decree, Disparate Treatment, Retaliation, Assignment, Compensation, Promotion, Termination, Race, African American, Black, Age, Utilities, Employment Law, Title VII

EXHIBIT 1

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

**EBON BONNETTE, et al., individually
and on behalf of a class of all other
similarly situated persons**

Civil Action No.

Plaintiffs,

v.

SETTLEMENT AGREEMENT

ROCHESTER GAS & ELECTRIC CO.,

Defendant

This Settlement Agreement and Release (the "Agreement") is entered into between Plaintiffs Ebon Bonnette, Khalid Boston, Donna Cox, M. Diane Dixon, Odessa Dixon, Robert Ellis, Michael A. Foster, Jerel Griffin, Mark Hale, JeanE. Howard, Bertha Johnson, Ellen Johnson, Stephanie Johnson, Johnny Kegler, Mary Lalor-Timmons, Marcia Lane, Robert Lane, Gail Marshall-Johnson, Thomas Moore, Delray Morgan, Delores Prad, Toney Proctor, Willie Sanders, Lolita Smith, Brett Stevenson, Everlene Thompson, Ophelia J. Tisdale, Richard Walford, Wanda Webb, Patricia White, Robert Williams, and Bonnie L. Wright, (the "Named Plaintiffs" or "Class Representatives"), as representatives of the plaintiff class described herein, all of whom are represented by their attorneys Berger & Montague, P.Q, Garwin, Gerstein & Fisher LLP, and The Chavers Law Firm, P.C. (collectively, "Class Counsel"), and Defendant Rochester Gas & Electric ("RG&E" or "Defendant"), which is represented by its attorneys Morgan, Lewis & Bockius LLP.

I- DEFINITIONS

The terms set forth below shall have the meanings defined in this Section wherever used in this Agreement and in all of its exhibits, including the Notice of Class Action Settlement and

the Claim Form.

I. I The "Civil Action" means the above-captioned action.

1.2 For purposes of this Agreement, the class is defined as all African-American individuals employed between May 24, 2002 and October 1, 2006 (the "Class Period" or "Relevant Period") by Defendant RG&E (the "Class") (together the "Proposed Class Members" and each a "Proposed Class Member"), except that Robin Johnson is expressly excluded from the class as she previously negotiated a settlement of the same claims advanced here. The list of all Proposed Class Members is attached as Exhibit A.

1.3 "Claims Administrator" means Heffler, Radetich & Saitta LLP, 1515 Market Street, Suite 1700, Philadelphia, Pennsylvania 19102, phone: (215) 665-8870, fax: (215) 665-0613 ("Heffler, Radetich & Saitta LLP").

1.4 The "Court" means the U.S. District Court for the Western District of New York.

1.5 "Class Counsel" means the law firms of Berger & Montague, P.C., Garwin, Gerstein & Fisher LLP and The Chavers Law Firm, P.C.

1.6 "Class Representatives" or "Named Plaintiffs" means Ebon Bonnette, Khalid Boston, Donna Cox, M. Diane Dixon, Odessa Dixon, Robert Ellis, Michael A. Foster, Jerel Griffin, Mark Hale, Jean E. Howard, Bertha Johnson, Ellen Johnson, Stephanie Johnson, Johnny Kegler, Mary Lalor-Timmons, Marcia Lane, Robert Lane, Gail Marshall-Johnson, Thomas Moore, Delray Morgan, Delores Prad, Toney Proctor, Willie Sanders, Lolita Smith, Brett Stevenson, Everlene Thompson, Ophelia J. Tisdale, Richard Walford, Wanda Webb, Patricia White, Robert Williams, and Bonnie L. Wright.

1.7 "Counsel for RG&E" or "Counsel for Defendant" means the law firm of Morgan, Lewis & Bockius LLP.

1.8 "Covered Position" means any position at RG&E.

1.9 "Defendant" and the "Company" mean Rochester Gas & Electric Company.

1.10 "Effective Date" means the date upon which all of the following have occurred:
(I) entry of an order by the Court certifying the Settlement Class, (2) entry of an order or orders

by the Court granting final approval to the Agreement, approving the amount of attorneys' fees and costs and dismissing this action in accordance with its terms, (3) the appeal period (i.e., 30 days) has run without an appeal of any Court order, or in the event of an appeal, the Parties have received actual notice that the settlement has received final approval after the completion of the appellate process, and (4) the period for RG&E to withdraw from the Agreement (Le., 30 days from the Claims Administrator's receipt of all timely and complete requests for exclusion submitted by a Class Representative and/or Proposed Class Member) has run.

1.11 The "Parties" means the Class Representatives and Defendant.

1.12 The "Plan of Allocation" means the allocation of the Settlement Fund, following reductions to the Settlement Fund set forth herein, for Qualified Claimants in accordance with the terms of this Agreement and a properly filed Claim Form.

1.13 The "Preliminary Approval Order" means the Order entered by this Court preliminarily approving the terms of this Agreement and the Plan of Allocation, certifying the Settlement Class, and approving the payments of attorneys' fees, attorneys' costs, and the Service Payment, as set forth in this Agreement, scheduling a final fairness hearing, and directing the mailing to the Settlement Class of the Notice of Class Action Settlement and the Claim Form.

1.14 "Qualified Claimant" means each member of the Settlement Class who is entitled to receive a Settlement Share because they have properly filed a Claim Form.

1.15 "Released Claims" means any and all claims of employment discrimination relating to or arising out of employment, of whatever nature, known or unknown, that the Named Plaintiffs and Qualified Claimants may have against RG&E, Energy East Corporation ("Energy East"), and New York State Gas & Electric Corporation ("NYSEG"), their subsidiaries and affiliated companies, and in the case of all such entities, their respective past and present owners, representatives, officers, directors, attorneys, agents, employees, insurers, successors and assigns (collectively referred to as the "Released Parties"), as a result of actions or omissions occurring through the effective date as defined, subject to the provisions set forth herein. Specifically

included in (his release are any and all claims of alleged employment discrimination under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e, et seq. ("Title VII"), 42 U.S.C. § 1981 ("Section 1981"), the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq. ("ADEA"), and any and all other employment discrimination claims relating to or arising out of employment, under any other federal, state, or local statutes, including but not limited to the New York Human Rights Law, §§ 296 et al., and the Municipal Code of the City of Rochester, §§ 63-1 et al., common law, or regulation, including but not limited to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001, et seq. ("ERISA"), except for vested benefits otherwise entitled. Furthermore, this Release includes all claims for monetary damages, injunctive, declaratory or equitable relief, and costs and attorneys' fees, whether arising under Title VII, Section 1981 or any other employment discrimination claims relating to or arising out of employment, under any other federal, state, local or common laws or regulations. Nothing in this Agreement shall affect or release any existing or potential workers' compensation claims of the Named Plaintiffs and Qualified Claimants.

1.16 "Relevant Period" or "Relevant Time Period" means May 24, 2002 to October 1, 2006.

1.17. "Released Parties" means Energy East, NYSEG, and the Defendant RG&E, their subsidiaries and affiliated companies, and in the case of all such entities, their respective past and present owners, representatives, officers, directors, attorneys, agents, employees, insurers, successors and assigns.

1.18 "Settlement Class" means all African-American individuals employed by Defendant in Covered Positions between May 24, 2002 and October 1, 2006, who do not timely opt-out of the settlement pursuant to the terms of the Preliminary Approval Order (together the "Settlement Class Members" and individually each a "Settlement Class Member").

1.19 "Settlement Fund" means the amount of Two Million Dollars (\$2,000,000.00).

1.20 "Settlement Share" means each Qualified Claimant's total share of the Settlement Fund based upon the terms of this Agreement and the Plan of Allocation.

n. RECITALS

2.1 On December 21, 2007, a complaint was filed by Ebon Bonnette, Khalid Boston, Donna Cox, M. Diane Dixon, Odessa Dixon, Robert Ellis, Michael A. Foster, Jerel Griffin, Mark Hale, Jean E. Howard, Bertha Johnson, Ellen Johnson, Stephanie Johnson, Johnny Kegler, Mary Lalor-Timmons, Marcia Lane, Robert Lane, Gail Marshall-Johnson, Thomas Moore, Delray Morgan, Delores Prad, Toney Proctor, Willie Sanders, Lolita Smith, Brett Stevenson, Everlene Thompson, Ophelia J. Tisdale, Richard Walford, Wanda Webb, Patricia White, Robert Williams, and Bonnie L. Wright (the "Class Representatives") against RG&E in the United States District Court for the Western District of New York (hereafter the "Civil Action").

2.2 Some Class Representatives have filed Charges of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and the New York State Division of Human Rights ("NYSDHR"), alleging that RG&E has: 1) discriminated against the Proposed Class Members on the basis of race and age in hiring, job assignments, compensation, promotions, discipline, and terminations; 2) engaged in retaliation; and 3) created a racially hostile work environment.

2.3 After extensive analysis and deliberation, the Class Representatives and Class Counsel are of the opinion that the settlement set forth in this Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in light of all known facts and circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential appellate issues.

2.4 It is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims arising from or related to the Civil Action which exist between them and between the Released Parties and the Settlement Class.

2.5 It is the intention of the Parties that this Agreement shall constitute a full and complete settlement and release of all Released Claims against all Released Parties.

2.6 Defendant denies any liability or wrongdoing of any kind associated with the claims alleged in the Civil Action.

2.7 This Agreement is a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the Parties or the Released Parties. The Parties further acknowledge and agree that neither this Agreement nor the Settlement shall be used to suggest an admission of liability in any dispute the Parties may have now or in the future with respect to any person or entity. Neither this Agreement nor anything in it, nor any part of the negotiations that occurred in connection with the creation of this Settlement, shall constitute evidence with respect to any issue or dispute in any lawsuit, legal proceeding, or administrative proceeding, except for legal proceedings concerning the enforcement or interpretation of this Agreement.

III. THE SETTLEMENT FUND

3.1 To settle all claims on behalf of the Class Representatives and Settlement Class Members, Defendant shall provide the funds for the Claims Administrator to establish a Settlement Fund in the amount of Two Million Dollars (\$2,000,000.00) for payment of claims to the Class Representatives and Qualified Claimants, including attorneys' fees and costs, subject to the terms of this Agreement. The Claims Administrator shall distribute the Settlement Fund pursuant to the provisions, and on the time schedule of, Sections IV, V and VI and the orders of the Court. Specifically, attorneys' fees and costs; the Service Payments to the Class Representatives; and all Claims Administration costs shall be paid directly from the Settlement Fund, and these payments will reduce the Settlement Fund awarded to the Settlement Class.

IV. ATTORNEYS' FEES, LITIGATION COSTS, CLAIMS ADMINISTRATION COSTS, AND SERVICE PAYMENTS.

4.1 Within thirty (30) days of the Effective Date, the Claims Administrator will pay Class Counsel attorneys' fees in the amount of 33% of the Settlement Fund (\$660,000.00), and expenses in an amount not to exceed \$90,000.00. Class Counsel's total expenses as of the date of this Settlement Agreement are \$79,594.61. These payments shall be made provided that they are approved by the Court. The Claims Administrator shall pay the attorneys' fees and costs directly from the Settlement Fund, and the payment will reduce the Settlement Fund awarded to

the Settlement Class. At least seven days prior to the date of payment, Class Counsel will provide the Claims Administrator with tax-payer identification numbers for Class Counsel and executed Form W-9s.

4.2 The Claims Administrator will also pay, from the Settlement Fund, each of the Named Plaintiffs a gross amount of fifteen thousand dollars (\$15,000) (in addition to their Settlement Share) for their services on behalf of the class (the "Service Payment"), provided the Court approves such payment, and provided they do not opt-out of the Settlement. The Claims Administrator will pay the aforementioned Service Payment to each Named Plaintiff within thirty (30) days after the Effective Date. Each Named Plaintiff shall also be entitled to receive their Settlement Share of the Settlement Fund provided they do not opt-out of the Settlement. The Claims Administrator shall pay the Service Payment directly from the Settlement Fund, and such payment will reduce the Settlement Fund awarded to the Settlement Class. If any Named Plaintiff declines to join the Settlement, (they will not be eligible to receive a Service Payment. If any Named Plaintiff declines to join the Settlement, or requests to be excluded from the Settlement, then RG&E shall have the absolute right to withdraw in writing from the Agreement, subject to the provisions of paragraph 10.2 of this Agreement.

4.3 The Claims Administrator will pay to itself, from the Settlement Fund, the Claims Administrator a total amount not to exceed \$40,000, provided the Court approves such payment, to cover the reasonable costs of the Notice and of the administration of this Settlement (the "Claims Administration costs").

4.4 Except for the fees, costs and other expenses set forth in this Section, and except as provided in paragraphs 4.1, 4.2, 4.3, and 4.4 herein, the Parties and the Settlement Class shall bear responsibility for their own fees, costs and expenses incurred by them or arising out of this litigation and will not seek reimbursement thereof from any party to this Agreement or the Released Parties.

V. ALLOCATION AND PAYMENT OF THE SETTLEMENT FUND

5.1 Each Qualified Claimant shall be paid a pro rata portion of the Settlement Fund, remaining subject to the reductions described above, based on a formula set forth in paragraph 8.2, subject to the terms of this Agreement, and based upon a properly filed Claim Form.

5.2 The monies payable to Qualified Claimants and Named Plaintiffs out of the remaining Settlement Fund, including the Service payments, will be allocated in the following manner: 50% of the payment each receives will be allocated in settlement of their claims for back pay and 50% will be allocated in settlement of their claims for compensatory and punitive damages, including emotional distress. The Claims Administrator will withhold from the back pay portion of each payment all applicable taxes under federal, state and/or local laws. The Claims Administrator will ensure that such monies withheld are paid to the appropriate authorities for each Qualified Claimant and Named Plaintiff and will issue IRS Forms W-2 and 1099 for the amounts reportable on each Form.

5.3 For purposes of tax reporting, the Claims Administrator will allocate among the Qualified Claimants and Named Plaintiffs a share of attorneys' fees and costs paid by the Claims Administrator in proportion to the point allocation of each Qualified Claimant and Named Plaintiff. The Claims Administrator will issue to each Qualified Claimant and Named Plaintiff an IRS Form 1099 to reflect the amounts of attorneys' fees and costs allocated to each of them and shall issue an appropriate IRS 1099 form to Class Counsel for the attorneys' fees and costs paid.

5.4 The Claims Administrator shall distribute the remainder of the Settlement Fund to the Qualified Claimants no later than thirty (30) days after the Effective Date. The face of each check sent to Qualified Claimants shall clearly state that the check must be cashed within one hundred and twenty (120) calendar days. All payments distributed by the Claims Administrator must be accompanied by a cover letter stating words in bold to the effect that "the check must be cashed within one hundred and twenty (120) calendar days or it will become void." The back of each check will contain a legend stating: "By negotiating this check and accepting payment I

agree that I have waived and released the Released Parties from all Released Claims as defined in the Settlement Agreement and in the Notice in this matter." Qualified Claimants must sign the check in the space following the legend, provided that the release of claims shall still be enforceable if any Qualified Claimant is permitted to negotiate a check without a signature.

5.5 Payments made under this Agreement are not intended to and will not: (1) form the basis for additional contributions to, benefits under, or any other monetary entitlement under; (2) count as earnings or compensation with respect to; or (3) be considered to apply to, or be applied for purposes of, Defendant's bonus, pension, any 401 (k) and/or other retirement plans or similar programs, including but not limited to the Rochester Gas & Electric Retirement Savings Plan and the Rochester Gas & Electric Pension Plan. Defendant retains the right, if necessary, to modify the language of its benefit plans and pension, bonus and other programs, if necessary, to make clear that any amounts paid pursuant to this Agreement are not for hours worked, hours paid or any similar measuring term as defined by any plans and programs for purposes of eligibility, vesting, benefit accrual or any other purpose.

5.6 The Claims Administrator shall be responsible for remitting to the tax authorities Defendant's share of payroll taxes for the settlement payments which amount Defendant shall provide to the Claims Administrator. Such payments shall not act in any way to reduce the Settlement Fund and will not be paid out of the Settlement Fund.

VI. SETTLEMENT "CLAIM FORM" REVIEW

6.1 The Parties have agreed to the appointment of Heffler, Radetich & Saitta LLP to perform the duties of Claims Administrator, including but not limited to mailing the Notice forms, responding to Proposed Class Members' inquiries, receiving and independently reviewing the Claim Forms, verifying the amounts due to Qualified Claimants as set forth in this Agreement, distributing checks to the Qualified Claimants, withholding the Qualified Claimants' share of taxes, paying all appropriate taxes to taxing authorities, and performing such other duties as the parties may direct. The Claims Administrator shall report to the Parties, in summary or narrative form, on all of the actions it takes. Defendant will provide the Claims

Administrator with information on the Proposed Class Members' names, last known address and telephone number, social security number, and employee ID number. All disputes relating to the Claims Administrator's ability and need to perform its duties shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until all payments and obligations contemplated by the Agreement have been fully carried out. In no event shall the Claims Administrator be construed as the agent of the Proposed Class Members or of the Class Representatives or of Class Counsel or of RG&E or Counsel for RG&E.

VH. NOTICE TO THE SETTLEMENT CLASS

7.1 Within ten (10) calendar days of the Preliminary Approval Order, Defendant shall provide to the Claims Administrator a list of all Proposed Class Members, including last known address and telephone number, social security number and employee ID number. Defendant agrees to provide this information in a format reasonably acceptable to the Claims Administrator. The Claims Administrator will maintain this list in the strictest confidence and not disclose any information contained in the list to the Class Representatives or Class Counsel or to any other individual or entity, except for the purpose of locating any individual for whom a Notice is returned as undeliverable.

7.2 A Notice of Class Action Settlement (the "Notice") in substantively the form attached hereto as Exhibit B, and as approved by the Court, shall be sent by the Claims Administrator to Proposed Class Members, by first class mail, within fourteen (14) calendar days from the date that Defendant provides the list of all Proposed Class Members described in Paragraph 7.1. Attached to the Notice of Class Action Settlement will be a Claim Form, in substantively the form attached hereto as Exhibit C, and as approved by the Court. If envelopes from the mailing of the Notice are returned with forwarding addresses, the Claims Administrator will re-mail the Notice of Class Action Settlement and the Claim Form to the new address within three (3) business days.

7.3 Class Counsel shall provide the Court, at least five (5) calendar days prior to the final fairness hearing, a declaration by the Claims Administrator of due diligence and proof of mailing with regard to the mailing of the Notice of Class Action Settlement and Claim Form to Proposed Class Members. In the event that a Notice of Class Action Settlement and Claim Form is returned to the Claims Administrator by the United States Postal Service because the address of the recipient is no longer valid, *i.e.*, the envelope is marked "Return to Sender," the Claims Administrator shall perform a standard skip trace in an effort to attempt to ascertain the current address of the particular Proposed Class Member in question and, if such an address is ascertained, the Claims Administrator will re-send the Notice within three (3) business days of receiving the newly ascertained address; if no updated address is obtained for that Proposed Class Member, the Notice of Class Action Settlement and Claim Form shall be sent again to the Proposed Class Member's last known address. In either event, the Notice of Class Action Settlement and Claim Form shall be deemed received once it is mailed for the second time.

7.4 The Claims Administrator shall provide to Counsel for RG&E and Class Counsel, at least ten (10) calendar days prior to the final fairness hearing, a list of Settlement Class Members to whom notices were returned as undeliverable and for whom efforts to obtain an alternative address failed.

VIII. CLAIM PROCESS

8.1 In order to receive payments resulting from the Claim Process under the Settlement, each Proposed Class Member and Class Representative must complete, sign and return the Claim Form (attached as Exhibit C) to the Claims Administrator no later than thirty-five days from the date that the Notice of Class Action Settlement and the Claim Form were mailed by the Claims Administrator. The Claim Form must be postmarked on or before the thirty-fifth day in order to be considered timely. If the Proposed Class Member or Class Representative does not return the Claim Form on a timely basis, he or she is not entitled to any payment. All Claim Forms must be signed under penalty of perjury to be considered.

8.2 Proposed Class Members and Class Representatives who file a Claim Form must notify the Claims Administrator of any change of address. A failure to notify the Claims Administrator of a change of address may result in the forfeiture of a monetary award. The Claims Administrator shall be available through the toll-free telephone number and via email to respond to requests from Proposed Class Members and Class Representatives for assistance in completing and filing Claim Forms. Class Counsel shall also be available to consult with and provide assistance to Proposed Class Members who request assistance from Class Counsel in completing their Claim Forms. Claim Forms may be filed by deceased Proposed Class Members through representatives of their estate, in which case, claim payments shall be made payable to the estate of the deceased claimant.

8.3 RG&E will pay a monetary amount for the purpose of providing individual monetary awards to the Qualified Claimants according to the objective formula set forth in Exhibit D (Claim Form Point Allocation). The Claims Administrator shall make the determination as to whether a Claim Form is complete. If it is not complete, the Claims Administrator shall request additional information from the claimant, if it appears that such additional information would complete the Claim Form. Such requests for information may be in writing or by telephone but the Claims Administrator shall document all requests for additional information in writing for the file, including by specifying the information that was requested and the date of the request. Claimants shall have twenty (20) days to respond to any requests for additional information. Any additional information provided shall be considered part of the original Claim Form and will relate back to the original filing date. All issues resolving any late-filed claims or late-filed responses to a request for additional information shall be resolved by the Court at the Final Fairness Hearing.

8.4 Each Proposed Class Member and Class Representative who seeks to receive an award under the Claim Process must fill out the Claim Form and supply information related to his or her claim, as set forth on the Claim Form. Each claim on the Claim Form is allocated a certain number of points (see Exhibit D). Following the claim period, the Claims Administrator

shall total the points applicable to all eligible claimants, determine each eligible claimant's proportionate share of the total points, and allocate each eligible claimant's proportionate share of the Settlement Fund.

8.5 For example, if the amount available for distribution from the Settlement Fund to eligible class members is \$1,000,000, and the Claims Administrator has awarded 10,000 points to eligible class members and if an eligible class member were awarded 10 points, then that class member would receive an award of \$1,000 since each point would be worth \$100 (\$ 1,000,000 divided by 10,000).

8.6 The Claims Administrator shall keep a log of any interaction with individual Proposed Class Members. If the Claims Administrator cannot adequately assist a Proposed Class Member who asks for assistance, the Claims Administrator will refer the Proposed Class Member to Class Counsel for further assistance.

8.7 Class Counsel shall have the right in their discretion to take appropriate steps to assist Proposed Class Members in filling out Claim Forms.

8.8 If completed, all original Claim Forms shall be sent directly to the Claims Administrator at the address indicated on the Claim Form. Claim Forms shall be analyzed consistent with the process described in paragraph 5.2 above. The Claims Administrator shall review the Claim Forms and provide copies of the Claim Forms to Counsel for RG&E and Class Counsel. The Claims Administrator will make any calculations of payments to be distributed as described above based upon the completed Claim Forms. The Claims Administrator is responsible for issuing the payments, calculating and withholding for all required state, federal and local taxes, calculating Defendant's share of taxes, and remitting all taxes and withholding to the appropriate taxing authorities. Upon completion of its calculation of payments, the Claims Administrator shall provide Class Counsel and Counsel for RG&E with a report listing the amount of the payments to be made to each Qualified Claimant. The Claims Administrator will supply Class Counsel and Counsel for RG&E with an updated address list for the Qualified Claimants, reflecting any updates discovered by the Claims Administrator over the course of

administering notice to the Proposed Class Members and receipt of the Claim Forms. A declaration of payment will be provided to Class Counsel and Counsel for RG&E by the Claims Administrator within ten (10) calendar days of making payments to Qualified Claimants.

8.9 Qualified Claimants shall have one hundred and twenty (120) calendar days after mailing of the settlement checks to them by the Claims Administrator to cash their settlement checks as set forth in paragraph 5.4 above. If any Qualified Claimant does not cash his/her check within that 120-day period, such checks will be void. In such event, those Qualified Claimants will be deemed to have waived irrevocably any right to a Settlement Share, but this Agreement, and the Release contained herein, nevertheless will be binding upon them.

8.10 It is anticipated that pursuant to the above Claim Process, there will be no residual monies left over in the Settlement Fund. Should there remain any residual monies from the Settlement Fund after all payments are made under this Agreement, however, any unclaimed amounts will be returned to Defendant, and shall be dedicated to expanding RG&E's recruiting and diversity efforts.

IX. RELEASES

9.1 Upon the negotiation of a settlement check, or upon the Effective Date whether or not a settlement check has been negotiated, whichever is earlier, each member of the Settlement Class shall be deemed to, and shall have, released and discharged all Released Parties with respect to all Released Claims.

9.2 Every Settlement Class Member, as defined above, shall be deemed to and shall have knowingly and voluntarily waived, released, discharged and dismissed the Released Claims, with full knowledge of any and all rights they may have, and they hereby assume the risk of any mistake in fact in connection with the true facts involved, or with regard to any facts which are now unknown to them.

9.3 The Parties acknowledge that the covenants and promises made by RG&E herein constitute adequate consideration in exchange for the Released Claims as defined in paragraph 1.15 above.

9.4 Nothing in this Settlement Agreement shall be construed to bar any claims of Settlement Class Members or the Class Representatives based on or arising out of events occurring after the date of the Final Approval by the Court of the Settlement Agreement.

X. OPTING OUT OF THE SETTLEMENT AND RG&E'S RIGHT TO WITHDRAW

10.1 Any person who does not wish to participate in the Settlement, *Le±*, who wants to opt-out of the Settlement, may file a timely request for exclusion pursuant to section VIII of the Notice of Class Action Settlement. The request for exclusion must be signed, must contain the statements set forth in section VIII of the Notice of Class Action Settlement, and must be sent by mail or courier to the Claims Administrator so that it is actually postmarked (or received, if by courier) within thirty-five (35) days after it was mailed by the Claims Administrator. Any person who timely submits such a request for exclusion shall be barred from participation in the Settlement, and shall receive no benefit from the Settlement.

10.2 If any of the Class Representatives submits a timely and complete request for exclusion that is in compliance with paragraph 10.1 above, RG&E shall have the absolute right, in its sole discretion and notwithstanding any other provisions of this Agreement, but subject to all the provisions and time limits of this paragraph 10.2, to withdraw in writing from this Agreement, or to modify this Agreement through further negotiations with Class Counsel. If RG&E does withdraw in conformity with the provisions and time limits of this paragraph 10.2, the Agreement will be null and void for all purposes and may not be used or introduced in further litigation except to determine whether RG&E is entitled to withdraw from the Agreement and has validly done so. The Claims Administrator shall each calendar week notify counsel for RG&E and Class Counsel by fax or email of the number of individuals who have to that date submitted timely and complete requests for exclusion that are in compliance with paragraph 10.1 above, and at the same time shall send to said counsel by fax, email or by overnight delivery copies of all the timely and complete requests for exclusion which Class Counsel has received. RG&E shall have thirty (30) calendar days after the expiration of all Proposed Class Members'

deadlines in paragraph 10.1 above to withdraw from (or modify through negotiation) this Agreement.

10.3 In addition, if a total of twelve (12) or more Proposed Class Members submit timely and complete requests for exclusion that are in compliance with paragraph 10.1 above, RG&E shall have the absolute right, in its sole discretion and notwithstanding any other provisions of this Agreement, but subject to all the provisions and time limits of this paragraph 10.3, to withdraw in writing from this Agreement, or to modify this Agreement through further negotiations with Class Counsel. If RG&E does withdraw in conformity with the provisions and time limits of this paragraph 10.3, the Agreement will be null and void for all purposes and may not be used or introduced in further litigation except to determine whether RG&E is entitled to withdraw from the Agreement and has validly done so. The Claims Administrator shall each calendar week notify counsel for RG&E and Class Counsel by fax or email of the number of individuals who have to that date submitted timely and complete requests for exclusion that are in compliance with paragraph 10.1 above, and at the same time shall send to said counsel by fax, email or by overnight delivery copies of all the timely and complete requests for exclusion which Class Counsel has received. RG&E shall have thirty (30) days after the expiration of all Proposed Class Members' deadlines in paragraph 10.1 above to withdraw from (or modify through negotiation) this Agreement.

XL DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

11.1 Promptly upon execution of this Agreement, but by no later than fourteen (14) calendar days after the filing of the Complaint, the Parties shall apply to the Court for the entry of an order (the "Preliminary Approval Order"):

(a) Scheduling a fairness hearing as soon as practicable on the question of whether the proposed settlement should be finally approved as fair, reasonable and adequate as to the members of the class;

(b) Approving as to form and content the proposed Notice of Class Action Settlement;

- (c) Approving as to form and content the proposed Claim Form;
- (d) Directing the mailing of the Notice and Claim Form by first class mail to the Proposed Class Members;
- (e) Preliminarily approving the Agreement and Plan of Allocation, as well as the payment of attorneys' fees, costs, and Service Payments set forth in this Agreement; and
- (f) Certifying the Settlement Class.

11.2 In computing any period of time prescribed or allowed by this Settlement Agreement, unless otherwise stated, such computation or calculation shall be made consistent with Federal Rule of Civil Procedure 6(a) as it exists at the time at issue.

XII. DUTIES OF THE PARTIES FOLLOWING FINAL COURT APPROVAL

12.1 In connection with the final approval by the Court of the Agreement, Class Counsel and Counsel for Defendant will submit a proposed final order and judgment:

- (a) Granting final approval to the Agreement, adjudging the terms thereof to be fair, reasonable and adequate, and directing consummation of its terms and provisions;
- (b) Dismissing the Civil Action with prejudice and permanently barring all members of the Settlement Class including the Named Plaintiffs from prosecuting against any Released Parties any of the Released Claims; and
- (c) Retaining jurisdiction to enforce the terms of the Agreement.

12.2 In connection with the final approval by the Court of the Agreement, RG&E agrees that:

- (a) RG&E will not retaliate in any way against any of the Class Representatives or Proposed Class Members who participated in this action;
- (b) within 60 days of the Effective Date, RG&E will redistribute to all of its employees, its written policies on Equal Employment Opportunity and a Harassment Free workplace. The distribution shall be accompanied by a written statement reiterating the Company's commitment to and support of these policies;

(c) within 365 days of the Effective Date, RG&E will provide training to its managers about its EEO and anti-harassment policies;

(d) RG&E's internal complaint procedure will continue to provide for the prompt and full investigations of any complaints of employment discrimination;

(e) RG&E will continue to use its best efforts to ensure that its compensation practices are applied in a non-discriminatory fashion; and

(f) RG&E will continue to use its best efforts to ensure that its disciplinary practices are applied in a non-discriminatory fashion.

XIII. PARTIES' AUTHORITY

13.1 The signatories hereby represent that they are fully authorized to enter into this Agreement and to bind the Parties hereto to the terms and conditions hereof

13.2 All of the Parties acknowledge that through this document, they were advised to consult an attorney regarding their participation in this Agreement, and that they in fact have been represented by competent, experienced counsel throughout all negotiations which preceded the execution of this Agreement, and this Agreement is made with the consent and advice of counsel who have jointly prepared this Agreement.

13.3 All of the Parties acknowledge that they are participating voluntarily and knowingly in exchange for the consideration described herein. The Parties further acknowledge that they were provided with a reasonable period of time within which to consider this Agreement.

XIV. MUTUAL FULL COOPERATION

14.1 The Parties agree to use their best efforts and to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement and effectuate the terms of this Agreement.

XV. NOTICES

15.1 Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly given as of the third business day after mailing by United States registered or certified mail, return receipt requested, addressed as follows:

To the Class Representatives or to any Settlement Class member:

BERGER & MONTAGUE, P.C.
Shanon Carson, Esq.
1622 Locust Street
Philadelphia, PA 19103

To the Defendant:

MORGAN, LEWIS & BOCKIUS LLP
Michael S. Burkhardt, Esq.
1701 Market Street
Philadelphia, PA 19103-2921

XVI. MODIFICATION

16.1 This Agreement and its attachments may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court.

XVII. ENTIRE AGREEMENT

17.1 This Agreement and its attachments constitute the entire agreement between the Parties concerning the subject matter hereof. No extrinsic oral or written representations or terms shall modify, vary or contradict the terms of this Agreement. In the event of any conflict between this Agreement and any other Settlement-related document, the Parties intend that this Agreement shall be controlling.

XVIII. CHOICE OF LAW/JURISDICTION

18.1 This Agreement shall be subject to, governed by, construed, enforced, and administered in accordance with the laws of the State of New York, both in its procedural and substantive aspects, and shall be subject to the continuing jurisdiction of the United States

District Court for the Western District of New York. This Agreement shall be construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this Agreement or any specific term or condition thereof.

XIX. COUNTERPARTS

19.1 This Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to all Parties.

XX. CONFIDENTIALITY AND PUBLIC COMMENT

20.1 Class Counsel and the Class Representatives agree not to issue a press release or respond to any media inquiries regarding the settlement of the claims related to this matter. If Class Counsel and/or any of the Class Representatives are contacted by the media, they may only respond that the case has been resolved to the mutual satisfaction of all parties.

20.2 Class Counsel agrees to use the contact information for Settlement Class Members that is provided to it by the Claims Administrator and Counsel for RG&E solely for purposes of communicating regarding this action and implementing this Agreement and for no other purpose, at any time, or for any reason. Nothing in this Agreement restricts, or is intended to restrict, communications between Class Counsel and individual Settlement Class Members regarding this action or the terms of the Agreement. Nothing in this Agreement restricts, or is intended to restrict, Class Counsel's communications with its clients.

XXI. VOIDING THE AGREEMENT

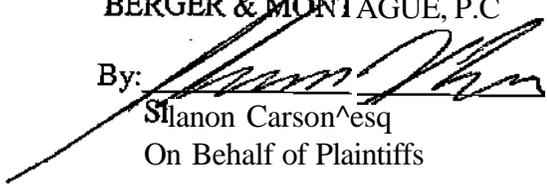
21.1 In the event this Agreement, or any amended version agreed upon by the Parties, does not obtain judicial approval for any reason, this Agreement shall be null and void in its entirety, unless expressly agreed in writing by all Parties. In the event this Agreement becomes null and void for any reason, the Defendant, the Class Representatives, and Class Counsel agree that they shall keep strictly confidential the terms of the Agreement, the existence of the

Agreement, any information concerning the Agreement, or any of the discussions and or negotiations regarding the Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date indicated below:

Dated: December 1, 2007

BERGER & MONTAGUE, P.C

By: 

Shanon Carson^{esq}
On Behalf of Plaintiffs

1622 Locust Street
Philadelphia, PA 19103
Phone:(215)875-4656
Facsimile: (215)875-4604

Of Counsel:
BERGER & MONTAGUE, P.C.
William T. Coleman in
Shanon J. Carson
1622 Locust Street
Philadelphia, PA 19103

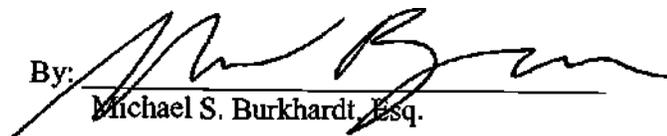
GARWIN, GERSTEIN & FISHER LLP
Jan Bartelli
1501 Broadway, Suite 1416
New York, NY 10036

THE CHAVERS LAW FIRM, P.C.
Clayborne E. Chavers
1250 Connecticut Avenue, NW, Suite 200
Washington, D.C. 20036
Counsel for Class Representatives and
Settlement Class Members

Dated: December 7 2007

MORGAN, LEWIS & BOCKTUS LLP

By:



Michael S. Burkhardt, Esq.

101 Park Avenue
New York, New York 10178-0060
Tel: (212)309-6092
Fax: (212)309-6273

Of Counsel:
MORGAN, LEWIS & BOCKIUS LLP
Judith Harris, Esq.
Michael S. Burkhardt, Esq.
Michael J. Puma, Esq.
1701 Market Street
Philadelphia, PA 19103-2921
Counsel for Defendant Rochester Gas & Electric

EXHIBIT A

PROPOSED CLASS MEMBERS

1. Roslyn Aaron
2. Astraf Ali
3. David Ashley
4. Wanda Bailey
5. Harold Bain
6. Debra Baker
7. Michael Barnes
8. Zebedee Barnes, Jr.
9. William Bamett
10. Ernestin Becoats
11. Olive Blakney
12. Lydia Boddie-Rice
13. Ebon Bonnette
14. Khalid Boston
15. Fannie Bouie
16. Bryan Bradford
17. Tiffany Brandon
18. Kimberly Brown
19. Ebony Brumfield
20. Charles Campbell
21. Mark Carpenter
22. Sparkle Clark
23. Roshawn Cole
24. Andra Coleman
25. Wayne Coleman, Jr.
26. Martha Collins
27. Jeffry Cottom
28. Patricia Cotton
29. Robert Cotton, Jr.
30. Calvin Cottrell
31. Donna Cox
32. Titania Crawford
33. Tyrees Cray
34. Roxanne Crosby
35. Essandra Davis
36. Mallory Dixon
37. Mary Dixon
38. Odessa Dixon
39. Sylveste Duhart
40. Kelvin Edwards
41. Bobby Ellis
42. Russell Ellis
43. Janette Everett
44. Dennis Felder
45. Clyde Forbes
46. Michael Foster

PROPOSED CLASS MEMBERS

47. Hassan Furqan
48. Theodus Gilley
49. Gloria Graham
50. Kevin Graham
51. Reginald Granville
52. Kenneth Green
53. Latosha Greene
54. Jerel Griffin
55. Mark Hale
56. Danielle Hamilton
57. Teresa Hannah
58. Donna Henry
59. Billie Heyward
60. Lamont Hillery
61. Rose Hines
62. Cheryl Holland
63. Sherlock Holmes
64. Dennis Hough
65. Jean Howard
66. Jarred Jackson
67. Jimmie Jackson
68. Bertha Johnson
69. Ellen Johnson
70. Pamela Johnson
71. Peter Johnson
72. Stephanie Johnson
73. Tia Johnson
74. W. David Johnson
75. Frederick Jones
76. Jimmy Jones
77. Johnny Kegler
78. F. Jean Kendrick
79. Keith Kendrick
80. Brandon King
81. Crescent Lagroon
82. May Lalor-Timmons
83. Marcia Lane
84. Robert Lane
85. Terry Lattimore
86. Tahra Lawson
87. Stephani Lee
88. Stanley Lewis, Jr.
89. Alexande Lucas
90. Maria Manley
91. Gail Marshall-Johnso
92. Cedric McClary

PROPOSED CLASS MEMBERS

93. Luther McGill
94. Patrick McLamore
95. Tyrone McRay
96. Cynthia Miller
97. Timothy Miller
98. Thomas Moore
99. Delroy Morgan
100. Steven Murphy
101. James Murphy, III
102. Dennis Norman
103. Chrisotp Northington
104. Vincent Ocholi
105. Dewitt Overton, Jr.
106. John Owens
107. Laura Owens
108. Patrick Parks
109. Darwin Perry
110. Lucious Peters
111. Priscill Pipkins
112. Jonah Pollocks
113. Shirley Pope
114. Levi Powell
115. Delores Prad
116. Any Procope-Archer
117. Toney Proctor
118. Larry Richardson
119. Sylvia Ryndock
120. Willie Sanders
121. Margot Sandy
122. Gary Scott
123. Massie Scott
124. D'Wayne Simmons
125. Demiah Smith
126. Fletcher Smith
127. Lolita Smith
128. Raymond Smith
129. Sonya Smith
130. Shellie Smith, Jr.
131. Brett Stevenson
132. Brenda Thomas
133. William Thomas
134. Everlene Thompson
135. Ophelia Tisdale
136. Gwendoly Turner
137. Richard Walford
138. Wanda Webb

PROPOSED CLASS MEMBERS

139. Mark Welch
140. Carnell White
141. Patricia White
142. Sandra White-Williams
143. Chet Williams
144. Eddie Williams
145. Louise Williams
146. Robert Williams
147. Teretha Wilson
148. Bonnie Wright
149. Jeffrey Wyatt
150. Donald Young

EXHIBIT B

EXHIBIT B TO SETTLEMENT AGREEMENT

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

EBON BONNETTE, KHALID BOSTON,
DONNA COX, MARY DIXON, ODESSA
DIXON, ROBERT ELLIS, MICHAEL
FOSTER, JEREL GRIFFIN, MARK HALE,
JEAN HOWARD, BERTHA JOHNSON,
ELLEN JOHNSON, STEPHANIE
JOHNSON, JOHNNY KEGLER, MARY
LALOR-TIMMONS, MARCIA LANE,
ROBERT LANE, GAIL MARSHALL-
JOHNSON, THOMAS MOORE, DELRAY
MORGAN, DELORES PRAD, TONEY
PROCTOR, WILLIE SANDERS, LOLITA
SMITH, BRETT STEVENSON, EVERLENE
THOMPSON, OPHELIA TISDALE,
RICHARD WALFORD, WANDA WEBB,
PATRICIA WHITE, ROBERT WILLIAMS
and BONNIE WRIGHT, individually and on
behalf of all others similarly situated,

Plaintiffs,

ROCHESTER GAS & ELECTRIC CO.

Defendant.

CIVIL ACTION NO.:

**NOTICE OF CLASS ACTION
SETTLEMENT**

**THIS IS A NOTICE OF A PROPOSED CLASS ACTION SETTLEMENT
FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK**

**PLEASE READ THIS NOTICE CAREFULLY.
THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS.**

This Notice is being sent to you, as ordered by the United States District Court for the Western District of New York, to advise you of the preliminary approval of the settlement of an employment discrimination class action against Rochester Gas & Electric Co. ("RG&E"). You have received this Notice because RG&E's records reflect that you are African American and were employed by RG&E between May 24, 2002 and October 1, 2006 (the "Class Period"), and therefore may be a Class Member in the lawsuit. The purpose of this Notice is to provide you with a summary of the proposed settlement, and to advise you of your rights with respect to the proposed settlement.

I. Important Deadlines

- ! To participate in the monetary relief portion of the settlement, and receive any money to which you may be entitled, you must mail a Claim Form to the Claims Administrator postmarked no later than [DATE OF CLAIMS DEADLINE]. A Claim Form and return envelope are included in this Notice packet.

- ! If you want to exclude yourself from the settlement (that is, not receive any monetary relief from the settlement, and not be bound by the judgment and release), you must mail an opt-out statement to the Claims Administrator post-marked by [DATE OF OPT-OUT DEADLINE].

- ! If you want to object to the settlement, or some part of the settlement, you must mail your written objection to the Claims Administrator post-

marked by [DATE OF OBJECTION DEADLINE]. You may object and still participate in the settlement.

II. Summary Of Litigation

The Plaintiffs (*i.e.*, the people who filed this lawsuit), claim that RG&E discriminated against African Americans: 1) by paying African Americans less than white employees of similar experience and qualifications; 2) by failing to promote African Americans at the same rate as similarly qualified white employees; 3) by disproportionately terminating and taking other disciplinary actions against African Americans; 4) by creating a racially hostile work environment for African Americans; and 5) by retaliating against employees who complained about the discrimination. RG&E denies any liability or wrongdoing of any kind associated with the claims alleged in this lawsuit.

III. Litigation And Settlement Background

In September 2005, a group of African American employees of RG&E retained Class Counsel and requested that they begin an investigation as to whether RG&E was engaged in a pattern or practice of discrimination against its African American employees. Subsequently, some of these African American employees filed charges of discrimination against RG&E with the United States Equal Employment Opportunity Commission (the "EEOC"), and the New York Division of Human Rights.

On January 13, 2006, Plaintiffs advised RG&E in writing of the class nature of the allegations made by their clients, requested that RG&E preserve all relevant evidence, and indicated that Plaintiffs were open to potentially resolving this matter through a pre-filing alternative dispute resolution ("ADR") mechanism. The

parties ultimately agreed to an ADR process which included extensive discovery.

The parties then engaged in a series of meetings in which they discussed and agreed on the scope of discovery to be produced in order to allow informed settlement discussions to proceed. Ultimately, RG&E produced thousands of pages of documents, including the hard copy personnel files of many of the Plaintiffs, as well as RG&E's relevant human resource policies and equal employment opportunity policies. RG&E also produced an electronic copy of its human resource ("HR") database.

Plaintiffs retained a prominent labor economist and statistician to analyze RG&E's HR database and to determine whether there were statistically significant disparities affecting African American Class Members. Plaintiffs later produced the results of that investigation to RG&E, along with a sample of detailed individual claim summaries. The individual Plaintiffs were very much involved in this process, gave statements, and regularly responded to requests for information from Class Counsel and RG&E.

After exchanging large amounts of information, the parties began settlement discussions. Numerous meetings took place between April 2007 and November 2007. Ultimately, the parties agreed to settle the litigation on the terms set forth below. Based upon their investigation, Class Counsel have concluded that the terms of the settlement are fair, reasonable, adequate, and in the best interests of the Class. In reaching this conclusion, Class Counsel have analyzed the benefits of the settlement and the risk of an unfavorable outcome (*i.e.*, losing), as well as the expense and length of continued proceedings necessary to prosecute this action. RG&E does not admit any wrongdoing or liability by entering into this settlement, and has agreed to these settlement terms because it wishes to avoid further costly, disruptive, and time-consuming

litigation, and desires to obtain complete and final settlement of the claims of the Plaintiffs and Class Members.

**IV. Injunctive Relief — Summary Of Employment Practices
Affected By The Proposed Settlement With RG&E**

a. RG&E will not retaliate in any way against any of the Class Representatives or Proposed Qkss Members who participated in this action;

b. within 60 days of the Effective Date, RG&E will redistribute to all of its employees, its written policies on Equal Employment Opportunity and a Harassment Free workplace. The distribution shall be accompanied by a written statement reiterating the Company's commitment to and support of these policies;

c. within 3 65 days of the Effective Date, RG&E will provide training to its managers about its EEO and anti-harassment policies;

d. RG&E's internal complaint procedure will continue to provide for the prompt and full investigations of any complaints of employment discrimination;

e. RG&E will continue to use its best efforts to ensure that its compensation practices are applied in a non-discriminatory fashion; and

f. RG&E will continue to use its best efforts to ensure that its disciplinary practices are applied in a non-discriminatory fashion.

V. Money Being Paid By RG&E

In addition to the steps described above, RG&E has agreed to pay \$2 million to resolve the Class Action. From this \$2 million, each of the named Plaintiffs will receive an award of \$15,000 to compensate them for their time involved in this matter, filing charges of discrimination with the EEOC (where applicable), and filing this lawsuit. Class Counsel will petition the Court for an award of attorneys' fees constituting 33 % of the monetary portion of the settlement, and reimbursement of their out-of-pocket litigation expenses which are currently \$79,594.61. Costs of providing this notice to the class and administering the settlement will also be paid from the \$2 million Settlement Fund. The remainder of the Settlement Fund will be paid to the Class Representatives and Class Members who fill out a Claim Form as set forth below and as set forth in the Settlement Agreement.

VI. How To Make A Claim For Money

If you think that you are entitled to a share of the monetary award because you believe that RG&E discriminated against you on the basis of your race, then you may be eligible to receive money from this settlement. **You will only receive money if you submit a written Claim Form to the Claims Administrator, signed under oath, and postmarked by [DATE OF CLAIM FORM DEADLINE].** If you do not submit a claim form postmarked by [DATE OF CLAIM FORM DEADLINE], then you will not receive any money from the settlement. However, even if you do not submit a claim form, you will still be bound by the settlement and release, unless you opt out, or exclude yourself, from the settlement.

A Claim Form and return envelope is included in this Notice packet. Make sure to carefully answer all questions. Finally, sign and date the Claim Form, and return it in the return envelope

postmarked no later than [DATE OF CLAIM FORM DEADLINE]. Those Claim Forms that are submitted on time will be evaluated by a Claims Administrator, and payments will be made to Class Members on the basis of the answers provided in the Claim Forms, pursuant to a formula approved by the Court.

VII. Release Of Claims

If the Court grants final approval of the Settlement, then all Class Members who do not opt out will release RG&E for all employment discrimination claims certified by the Court in the lawsuit, pursuant to Paragraph 1.15 and Section IX of the Settlement Agreement. When claims are "released," that means that a person covered by the release cannot sue RG&E for any of the claims that are covered by the release. Nothing in the Settlement will be construed to release claims of Participating Class Members which may not be legally waived or that post-date the Effective Date of the Settlement Agreement. By this Notice, you are advised to consult with class counsel or an attorney of your choosing regarding your participation in this Settlement.

By participating in the Class Settlement, you acknowledge that:

you are participating in the Settlement voluntarily and knowingly in exchange for the injunctive and monetary covenants and promises described in parts VI and V of this Notice.

the injunctive and monetary covenants and promises described in parts VI and V of this Notice are an adequate exchange for the Release of Claims defined in Paragraph 1.15 of the Settlement Agreement.

you were provided with a reasonable period of time within which to consider the Settlement, which is available for your review.

VIII. Can I "Opt-Out" Or Ask To Be Excluded From This Settlement?

If you want to opt out or exclude yourself from this Settlement, you must send a letter requesting exclusion to Kevin K. Kealey, Supervisor, HEFFLER, RADETICH & SAITTA LLP, 1515 Market Street, Suite 1700, Philadelphia, PA, 19102. Your exclusion request must be postmarked by [DATE OF OPT-OUT DEADLINE]. If you exclude yourself from this Settlement, you will not be eligible to receive any money. If you exclude yourself, you will not be legally bound by the Court's judgments in this class action.

IX. The Settlement Process And Final Fairness Hearing

Every class action must be approved by the court that presided over the class action lawsuit. Thus far, the Court has only decided that the proposed settlement may be fair and, therefore, justifies the distribution of this Notice. In order to decide whether to give final approval to the proposed settlement, the Court will consider related papers and comments submitted by the parties or others and hold a hearing in open court. A Final Fairness Hearing will be held on _____, 2007, at _____, in the Courtroom of Judge ____, United States District Court, Western District of New York, 2120 U.S. Courthouse, 100 State Street, Rochester, NY 14614. You may, but are not required to, attend this hearing. You may also enter an appearance in the case through your own attorney, if you so desire. You may also submit any objections to the proposed settlement in writing. For any such written objections to be considered, they must be mailed to Kevin K. Kealey, Supervisor, HEFFLER, RADETICH & SAITTA LLP, 1515 Market Street, Suite 1700, Philadelphia, PA, 19102, and postmarked by [INSERT DATE]. Please do not send any comments directly to the Court or attempt to reach the Judge in person. You may, however, review a copy of the Settlement

Agreement at the Clerk's Office at the Court (100 State Street, Rochester, NY 14614), or online at_____.

If you have any questions concerning this settlement, you may contact the Claims Administrator, as follows:

Kevin K. Kealey, Supervisor
HEFFLER, RADETICH & SAITTA LLP
1515 Market Street, Suite 1700
Philadelphia, PA, 19102
Tel: (215)972-5058

You may also contact Class Counsel, as follows:

SHANON J. CARSON, ESQ.
(scarson@bm.net)
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Tel: (215)875-3000

JAN BARTELLI, ESQ.
(jbartelli@garwingerstein.com)
GARWIN, GERSTEIN & FISHER, L.L.P.
1501 Broadway, Suite 1416
New York, New York 10036
Tel: (212)398-0055

CLAYBORNE E. CHAVERS, ESQ.
(chavlaw@comcast.net)
THE CHAVERS LAW FIRM, P.C.
1250 Connecticut Avenue, NW
Suite 200
Washington, DC 20036
Tel.: (202)756-4820

RG&E's counsel is as follows:

MICHAEL S. BURKHARDT, ESQ.

(mburkhardt@slmorganlewis.com)

MORGAN LEWIS

1700 Market Street

Philadelphia, PA 19103

Tel.: (215)963-5130

PLEASE DO NOT CONTACT THE COURT.

/s/ HON.

EXHIBIT C

EXHIBIT C TO SETTLEMENT AGREEMENT

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

EBON BONNETTE, KHALID BOSTON,
DONNA COX, MARY DIXON, ODESSA
DIXON, ROBERT ELLIS, MICHAEL
FOSTER, JEREL GRIFFIN, MARK HALE,
JEAN HOWARD, BERTHA JOHNSON,
ELLEN JOHNSON, STEPHANIE
JOHNSON, JOHNNY KEGLER, MARY
LALOR-TMMONS, MARCIA LANE,
ROBERT LANE, GAIL MARSHALL-
JOHNSON, THOMAS MOORE, DELRAY
MORGAN, DELORES PRAD, TONEY
PROCTOR, WJIXIE SANDERS, LOLITA
SMITH, BRETT STEVENSON, EVERLENE
THOMPSON, OPHELIA TISDALE,
RICHARD WALFORD, WANDA WEBB,
PATRICIA WHITE, ROBERT WILLIAMS
and BONNIE WRIGHT, individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

ROCHESTER GAS & ELECTRIC CO.,

Defendant.

CIVIL ACTION NO.:

CLAIM FORM

TO: [INSERT QUALIFIED CLAIMANT NAME]

I. DESCRIPTION OF SETTLEMENT

The Court has preliminarily approved the settlement of this case. The settlement provides for changes to the employment practices of Rochester Gas & Electric Co. ("RG&E"), and creates a settlement fund to pay appropriately supported claims of discrimination. If you are a Class Member, you may be entitled to a monetary payment from the settlement fund. The paragraphs below explain the claim procedure and the steps that you need to take to qualify for a share of the settlement fund. Please read these instructions carefully. Failure to follow these instructions may result in your losing benefits to which you might otherwise be entitled.

II. INSTRUCTIONS FOR COMPLETING AND RETURNING THE CLAIM FORM

A. Eligibility To Receive A Monetary Payment

To qualify for any payment from the settlement fund:

1. You must be a Class Member. That is, you must be an African American who was employed by RG&E at any time between May 24, 2002 and October 1, 2006.
2. You must fully complete Claim Form Sections III and IV and return the completed Claim Form signed under penalty of perjury postmarked no later than [INSERT CLAIM DEADLINE DATE]. Enclosed is a self-addressed envelope for returning the Claim Form. You must mail the Claim Form to:

Kevin K. Kealey, Supervisor
HEFFLER, RADETICH & SAITTA LLP
1515 Market Street, Suite 1700
Philadelphia, PA, 19102
Tel: (215)972-5058

Note that if you do not return this Claim Form postmarked by [INSERT CLAIM DEADLINE DATE], your claim will be rejected and you will lose all rights to receive any money from this settlement.

B. Determination Of The Value Of Your Claim

The amount that you may be entitled to receive from the settlement will be determined by a Claims Administrator appointed by the Court. The Claims Administrator shall determine the amount based upon the allocation of points for specific claims that you set forth in this Claim Form that have arisen from your employment by RG&E. If you believe that RG&E did not discriminate against you on the basis of your race, African American, then you must state that in response to Question No. 1 in Section IV below.

The Claims Administrator will total the points applicable to all Qualified Claimants, determine each Qualified Claimant's proportionate share of the total points, and allocate each Qualified Claimant's proportionate share of the settlement fund. The claims procedure has been approved by the Court.

C. Payment Of Claims

Checks for payment of claims will be mailed to all Qualified Claimants following the determination of all claims and final approval of this settlement by the Court.

D. Change Of Address

It is important that you notify the Claims Administrator in writing of any changes to your address while your claim is pending. A failure to notify the Claims Administrator of a change of address may result in you not receiving your award. Notification of any change of address should be mailed to:

Kevin K. Kealey, Supervisor
HEFFLER, RADETICH & SAITTA LLP
1515 Market Street, Suite 1700
Philadelphia, PA, 19102
Tel: (215)972-5058

E. Questions And Assistance In Completing Your Claim Form

If you have questions regarding the claims procedure or how to complete the Claim Form, you may contact the Claims Administrator. There will be no charge for your call.

III. PERSONAL INFORMATION

(ALL CLAIMANTS MUST FULLY COMPLETE THIS SECTION)

1. _____

Full Name (include all last names ever used and any nicknames)

2.

Current Street Address

3. _____

City

State

Zip Code

Telephone Number

Social Security Number

6. I (Check below if the statements are true):

am African American.

_____ was an employee of RG&E at some time between May 24, 2002 and October 1, 2006.

IV. DESCRIPTION OF CLAIM OR CLAIMS OF DISCRIMINATION

(ALL CLAIMANTS MUST FULLY COMPLETE THIS SECTION)

1. I believe that RG&E discriminated against me because of my race, African American.

_____ Yes _____ No (if answer is no, you do not have to complete the rest of this Claim Form)

2. I believe that between May 24, 2002 and the present, RG&E discriminated against me because of my race, African American, with respect to my compensation. I believe that during this time period, RG&E paid me less than similarly situated white employees (*i.e.*, white employees who held the same or a similar job title than me).

_____ Yes _____ Not Applicable

3. I believe that between May 24, 2002 and the present, RG&E discriminated against me because of my race, African American, with respect to its denying me a promotion. When I applied for a promotion, a less qualified white employee was assigned to the job.

_____ Yes _____ Not Applicable

4. I believe that between May 24, 2002 and the present, RG&E discriminated against me because of my race, African American, with respect to a job assignment(s).

_____ Yes _____ Not Applicable

5. I believe that between May 24, 2002 and the present, RG&E discriminated against me because of my race, African American, with respect to a performance evaluation(s) that I received.

_____ Yes _____ Not Applicable

6. I believe that between May 24, 2002 and the present, RG&E demoted me because of my race, African American, and would not have demoted a similarly situated white employee.

_____ Yes ___ Not Applicable

7. I believe that RG&E discriminated against me because of my race, African American, with respect to discipline that I received while employed by the Company (termination does not count for this question).

_____ Yes _____ Not Applicable

8. Complete this question only if your employment with RG&E was involuntarily terminated by the Company. I believe that RG&E discriminated against me because of my race, African American, with respect to my termination by the Company.

_____ Yes _____ Not Applicable

9. During the period from May 24, 2002, I personally was subject to a racially hostile work environment at RG&E, in that I witnessed a racist epithet(s) or racist joke(s) or witnessed racist graffiti or racist written material.

_____ Yes _____ Not Applicable

10. I believe that I was retaliated against by RG&E after I made a complaint(s) about racial discrimination at the Company.

_____ Yes _____ Not Applicable

11. I have treated with a medical provider (e.g., doctor, psychologist, psychiatrist, counselor, etc.), concerning the emotional distress I experienced as a result of the racially discriminatory events that occurred to me at RG&E.

_____ Yes _____ Not Applicable

Please review the above answers you have provided to ensure that they are complete. If you are finished filling out the Claim Form, please sign the under oath affirmation below.

I, _____, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the information and facts I have stated in this Claim Form are true and accurate to the best of my personal knowledge. I understand that making a knowingly false statement may subject me to prosecution for perjury.

Dated: _____

Signature of Claimant

Print Name of Claimant

Your Claim Form must be postmarked on or before [INSERT CLAIM FORM DEADLINE DATE]. A self-addressed envelope has been enclosed for returning the Claim Form. A Claim Form postmarked later than this date will not be accepted for any reason. This Claim Form must be mailed to:

Kevin K. Kealey, Supervisor
HEFFLER, RADETICH & SAITTA LLP
1515 Market Street, Suite 1700
Philadelphia, PA, 19102
Tel: (215)972-5058

EXHIBIT D

EXHIBIT D TO SETTLEMENT AGREEMENT
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

EBON BONNETTE, KHALID BOSTON,
DONNA COX, MARY DIXON, ODESSA
DIXON, ROBERT ELLIS, MICHAEL
FOSTER, JEREL GRIFFIN, MARK HALE,
JEAN HOWARD, BERTHA JOHNSON,
ELLEN JOHNSON, STEPHANIE
JOHNSON, JOHNNY KEGLER, MARY
LALOR-TMMONS, MARCIA LANE,
ROBERT LANE, GAIL MARSHALL-
JOHNSON, THOMAS MOORE, DELRAY
MORGAN, DELORES PRAD, TONEY
PROCTOR, WILLIE SANDERS, LOLITA
SMITH, BRETT STEVENSON,
EVERLENE THOMPSON, OPHELIA
TISDALE, RICHARD WALFORD,
WANDA WEBB, PATRICIA WHITE,
ROBERT WILLIAMS and BONNIE
WRIGHT, individually and on behalf of all
others similarly situated,

Plaintiffs,

ROCHESTER GAS & ELECTRIC CO.,

Defendant.

The following shall be the point allocation related to affirmative answers given in response to each question in Section IV of the Claim Form.

Question 1 (general):	0 points
Question 2 (compensation):	10 points
Question 3 (promotion):	10 points
Question 4 (job assignment):	10 points

CIVIL ACTION NO.:

CLAIM FORM POINT ALLOCATION

FILED UNDER SEAL

Question 5 (evaluation):	10 points
Question 6 (demotion):	10 points
Question 7 (discipline):	10 points
Question 8 (termination):	10 points
Question 9 (hostile environment):	10 points
Question 10 (retaliation):	10 points
Question 11 (medical treatment):	15 points