Exhibit No.:	_____
Issues:	Fuel Adjustment Clause Class Cost of Service Rate Design
Witness/Type of Exhibit:	Brockway/Surrebuttal
Sponsoring Party:	AARP
Case No.:	ER-2007-0002

SURREBUTTAL TESTIMONY

of

NANCY BROCKWAY

Submitted on behalf of AARP

AMERENUE
(FAC, CLASS COST OF SERVICE AND RATE DESIGN)

CASE NO. ER-2007-0002

February 27, 2007

TABLE OF CONTENTS

SURREBUTTAL TESTIMONY
of
NANCY BROCKWAY

Submitted on behalf of AARP

AMERENUE
(FAC, CLASS COST OF SERVICE AND RATE DESIGN)

CASE NO. ER-2007-0002

A. INTRODUCTION

Q. Please state your name, title and business address.

A. Nancy Brockway, Proprietor, NBrockway & Associates, 10 Allen Street, Boston, MA., 02131.

Q. Have you testified previously in this case?

A. No. However, I am adopting the testimony of Ronald J. Binz, who filed Direct Testimony on December 29, 2006.

Q. Please summarize your background in utility regulation.

A. I have been working in the field of utility regulation since 1983. I served as a Commissioner on the New Hampshire Public Utilities Commission from 1998 to 2003. Before that service, I had served as a senior staff member of the Maine Public Utilities Commission (1983-1986), and later as hearing officer and ultimately General Counsel for the then-Massachusetts Department of Public Utilities (now the Department of Telecommunications and Energy)(1986-1991). From 1991 through 1998, I was an expert witness on low-income and consumer energy and utility matters. Since leaving the New Hampshire Commission in

2003, I have provided consulting services to state and provincial commissions, state and provincial consumer advocates, unions, a utility, an environmental organization, low-income energy advocates and others. As a staff advocate, hearing officer and Commissioner, I have participated in numerous cost allocation and rate design proceedings. I have participated as well in numerous fuel adjustment clause proceedings. I have provided testimony recently on the problems associated with the introduction of a fuel adjustment clause. My resume, including a list of my testimonies, is attached as Exhibit NB-1.

Q. What is the purpose of your surrebuttal testimony?

A. In this testimony, I adopt Mr. Binz' testimony, and I respond to comments and criticisms of his testimony made by Messrs. Mayo, Neff, Warwick, Cooper and Baxter on behalf of the Company, by Mr. Higgins on behalf of the Commercial Group, and by Mr. Brubaker on behalf of the Missouri Industrial Energy Consumers (MIEC). I note that failure to address other specific critiques of Mr. Binz' testimony does not constitute agreement with those critiques.

Q. What topics will you address?

A. The topics I will address include (a) whether a Fuel Adjustment Clause is warranted for AmerenUE at this time, (b) the proper allocation of production costs, (c) the proper allocation of distribution costs, (d) the proper split of demand-related costs between winter and summer, and (e) the proper allocation of off-system sales revenues.

Q. You state that you adopt Mr. Binz' testimony. Please be more specific.

A. After Mr. Binz assumed his position as Chair of the Colorado Public Utilities Commission earlier this month, I was engaged by AARP to present testimony on the topics as to which he had testified. I have reviewed his testimony and I adopt his Direct Testimony as my own. I will refer to it as Mr. Binz' testimony or the AARP Direct Testimony to avoid confusion.

B. FUEL ADJUSTMENT CHARGE

Q. Addressing the question of a Fuel Adjustment Clause (FAC) first, please outline the rebuttal arguments made by Mr. Neff and Dr. Mayo on behalf of the Company in favor of a FAC.

A. Mr. Neff argues that fuel costs have been very volatile. Dr. Mayo argues that a FAC is consistent with the "general adoption of efficient regulatory design mechanisms that promote economic efficiency," because (a) it sends more efficient price signals, (b) it addresses costs he states are not within the utility's power to affect, and (c) its absence will promote more frequent rate cases, thus lowering the efficiency-inducing effect of regulatory lag.

Q. How do you respond to Mr. Neff?

A. Mr. Neff focuses only on wholesale market indices of prices. He performs no analysis of the following factors identified by Mr. Binz in his Direct Testimony at p. 15, all of which contribute significantly to the impact of volatility in indexed input prices on ultimate fuel costs of consumers:

- Basic choices in the utility's resource plan
- The ratio of owned generation and purchased power
- Terms of wholesale contracts
- Efficiency of system operations
- Transmission system design and operation
- Degree and type of fuel risk in purchase decisions

- Hedging activities
- Demand-side choices
- Advocacy for beneficial rate design proposals

Q. How do you respond to Dr. Mayo?

A. Dr. Mayo (a) erroneously assumes the legislative intent in allowing the Commission to create a FAC is to create more volatile prices for consumers, (b) ignores the many ways a utility can in fact manage its fuel price exposure without an FAC, and (c) misunderstands the role of rate cases in regulatory lag, ascribing to their frequency more importance than is warranted in reducing the incentives on utilities to lower costs.

Q. Please elaborate on your responses to Dr. Mayo's points.

A. With respect to Dr. Mayo's first error, he argues that economic efficiency is advanced when customers pay volatile fuel costs (when "consumer prices more accurately reflect the cost of providing service"). The legislature did not allow FACs to be considered in order to subject consumers to greater volatility in the name of an abstract econometric principal. Commissions have always and everywhere balanced the objective of providing accurate price signals with many other objectives of a sound rate design, including simplicity, understandability, public acceptability, feasibility of application, freedom from controversies as to interpretation, stability of the rates themselves, to take some from Professor Bonbright's famous criteria of a sound rate design.

With respect to Dr. Mayo's suggestion that more frequent rate cases (hypothesized in the absence of a FAC) would reduce the efficiency benefits of regulatory lag, Dr. Mayo ignores the reality that at any given point, rates are set

(capped) and the only way to increase profits is to increase sales, or efficiency, or both. This essential incentive is not eliminated merely because a utility may enjoy the benefits for a shorter time between rate cases if such cases come more frequently. On the contrary, it is the FAC that removes the incentive to efficiency, first because it eliminates regulatory lag for a significant component of overall costs, and thereby it relieves utility management of most of its obligations to squeeze the most efficiency out of its fuel use, and second because it distorts the build/burn (capital investment vs. fuel expense) planning consideration faced by a utility without an FAC.

With respect to the high costs of rate cases, Dr. Mayo ignores the reality that if rate cases became frequent, as he posits, they would in many senses become more routine, and take less regulatory time than more infrequent rate cases. No commission will tolerate the wholesale revisiting of issues year after year merely because a proceeding is labeled a "rate case" instead of a "fuel adjustment clause" review. Indeed, as the testimony of staff witness Wood concerning heat rate monitoring reveals, if the built-in efficiency incentive of a fixed rate between rate cases were removed by the introduction of a FAC, staff and intervenors would feel obliged to spend regulatory time and resources to delve yet more deeply into the fuel-related practices of the utility. They would not be able to rely at all on the company's own self-interest in lowering fuel costs.

With respect to the potential of a FAC to allow or even encourage utility managers to focus their managerial efforts on controllable, "endogenous" non-fuel-related costs, Dr. Mayo's argument is internally inconsistent. His argument

only makes sense if he presumes that utility managers are today focusing their managerial efforts at least in part on what he describes as non-controllable, "exogenous" fuel-related costs. But if they do focus on fuel-related costs now, they are imprudent to waste their time in that way, or the costs are not in fact non-controllable or "exogenous." Dr. Mayo cannot have it both ways. Of course, they are not imprudent to spend time on fuel costs, because managers can indeed affect the fuel costs incurred to serve their customers.

The core problem with Dr. Mayo's analysis, beyond his presentation of rate volatility as a positive value, is his uncritical assumption that a utility has no control over fuel costs. This is false, and as I mention above, Ron Binz' Direct Testimony set out a long list of functions a utility manager can perform with better or worse impacts on the resulting fuel costs to the company. To the extent the fuel adjustment clause moves the risk of substandard performance in these areas effectively to the customer, away from the utility (i.e. further down the line from 0% reconciliation of fuel costs and rates to 100%, as would be the case in the company's proposed FAC), the company has fewer incentives to manage its operations and planning in a fuel-prudent way.

Finally, and speaking from over two decades of utility regulatory experience, I would note that after-the-fact prudence reviews are a crude and considerably-less-than-perfect way to catch inefficiency. First, the standard for finding imprudence is in practice, if not in law, higher than the standard for identifying inefficiency. Second, costly after-the-fact reviews of a management's

activities are no substitute for before-the-fact alignment of management motives and consumer interests.

C. PRODUCTION COST ALLOCATION

Q. Please turn to the question of production costs. What allocation method do you recommend?

A. As is set out in detail in Mr. Binz' December 29, 2006 testimony, I recommend that production costs be allocated based on the 4-CP Peak and Average method.

Q. What criticisms have other witnesses made of this recommendation?

A. Messrs. Higgins and Baxter argue that use of the Peak and Average method "double-counts" class average demand during peak periods. Mr. Brubaker complains that the Peak and Average method results in a roughly equal weighting to annual consumption and contribution to system peak, and concludes that this over-allocates generation costs to high load factor customers. Mr. Brubaker also argues that the Peak and Average method is improper unless fuel cost allocation is allocated on a basis other than loss-adjusted class energy requirements.

Q. Is it valid to say that the Peak and Average method double-counts average demand?

A. No. The Peak and Average does not double-count class average demand. The notion of "double-counting" is an accounting concept, and refers to adding an entry twice when totaling set of numbers, thus producing a sum greater than the sum of the parts. By contrast, the Peak and Average method merely recognizes that to allocate costs driven by average demand, class average demand is appropriate, whereas to allocate the costs driven by the utility's coincident peak,

class coincident peaks are the appropriate factors. The amount of class demand at the time of peak that does not exceed the average demand is not "double counted." Rather, at the time of peak, it is contributing to a different set of costs from the average demand costs, and it is thus being included in the factor for this different purpose.

Q. Mr. Brubaker in his Rebuttal testimony asserts that the Staff, OPC and AARP cost of service studies are "internally inconsistent in that they allocate above average generation capacity costs to high load factor customers, but do not give them the benefit of the lower energy-related costs that correspond to the above average capital cost allocation." How do you respond?

A. Mr. Brubaker's argument here amounts to the proposition that because a method of production cost allocation would raise the allocation of costs to his clients, some other allocation adjustment should be made to offset it. Mr. Brubaker opposes the allocation of energy costs on a relative energy basis only in the context of the Peak and Average or Time of Use allocators of production plant costs. He does not oppose it in the case of Average and Excess, but does not explain why he draws the line there, other than by pointing to the various results of the different studies. After all, Average and Excess (the method used by MR. Brubaker and the Company) shares with Peak and Average the characteristic of identifying some production plant costs as energy-related. Finally, if there is the relationship that he poses between class load factor and energy costs, Mr. Brubaker has not presented a method for allocating energy costs as he proposes.

D. DISTRIBUTION SYSTEM CLASSIFICATION

Q. What key recommendations does AARP's testimony include concerning distribution system allocation?

A. Mr. Binz' December 29, 2006 testimony, which I adopt, rejects the zero-intercept and minimum system methods for classifying certain distribution costs as customer-related. Instead, I would recommend, as did Mr. Binz, that accounts 364 (wires and devices), 365 (poles & fixtures), 366 (conduit), 367 (cable and devices) and 368 (line transformers) be classified as demand-related and allocated on the basis of non-coincident class peaks.

Q. Messrs. Higgins, Brubaker and Warwick disagreed with this recommendation. What are the bases of their objections?

A. Mr. Higgins and Mr. Warwick point to the 1992 NARUC cost allocation manual as support for the view that there is a customer component to accounts 364-367. Mr. Higgins further argues that the impact of density on distribution costs is not a valid reason not to allocate some costs in these accounts based on the number of customers. He also argues that Mr. Binz was wrong to criticize the zero-intercept method on the grounds that it is based on a "fictional or hypothetical" distribution system. Mr. Brubaker asserts that AARP's Direct Testimony is in error in classifying the costs of accounts 364-367 as demand-related, but does not explain his reasoning, beyond a cryptic argument relating to geographic dispersion and numbers of customers.

Q. Please address the significance of the 1992 NARUC cost allocation manual.

A. The 1992 NARUC cost allocation manual is a useful reference for understanding cost allocation issues. However, it is not received wisdom, and regulators can and do use methods that are not endorsed in that manual. I would note that since 1992, other methods have emerged, such as the hybrid minimum system

developed in Canada, which recognizes that some distribution plant should even be classified as energy-related.

Q. Mr. Brubaker argues that "the more geographically dispersed the customers are, and the more of them that there are, the greater the extent of the primary distribution network needed to provide service." Does this argument rebut the AARP Direct Testimony approach?

A. No. In fact, Mr. Brubaker's statement here actually emphasizes the problem that minimum system or zero-intercept approaches ignore the reality that geographical dispersion by itself, regardless of the number of customers served, increases the cost of the primary distribution network.

Q. But Mr. Higgins says that the fact that distribution costs may differ with varying densities of customer population is not a valid reason for "ignoring" customer-related costs. How do you respond?

Q. Mr. Higgins' argument proves too much, and is unrelated to the valid critiques Mr. Binz and I make of the minimum system and zero intercept methods. First, Mr. Higgins acknowledges that varying densities of population have an impact on the level of customer costs. This proposition (unlike either the minimum system or zero intercept concepts) is a matter of common sense and observation. The more customers are dispersed geographically, the more poles and wires and other distribution plant investment will be needed to reach them. Neither the minimum system nor the zero intercept method takes this reality into account. Second, Mr. Higgins' statement that regardless of density, "a significant portion" of distribution plant is built to reach customers merely restates his conclusion, and provides no support for it.

Q. Mr. Higgins argues that applying the hypothetical (and fictional) distribution system modeled by the zero-intercept method to an actual distribution is

comparable to classifying production plant as energy-related or demand-related. Is his analogy apt?

A. No. When classifying production plant, actual energy levels and actual demand levels are used. Allocators are developed in an effort to track cost causation based on actual customer use of the system, on average and at peak times, and actual planning decisions made by utilities. By contrast, there is no zero-intercept distribution system, no customer has ever been served by a zero-intercept distribution system, no utility has ever built one, and by definition there cannot be one.

Q. Does this same observation apply to the minimum system approach?

A. Yes. No utility has ever built a minimum system distribution network, and no utility has ever built a zero-intercept distribution network. These concepts do not support the classification of distribution plant as driven by customer numbers. They are hypothetical, not real. In the absence of a reasoned basis for classifying costs as customer-related, and unless the commission were to entertain the arguments that have been made elsewhere for the classification of some distribution plant as energy-related, the costs in accounts 364 – 367 should be classified as demand-related, and allocated accordingly.

E. SUMMER-WINTER DEMAND-RELATED COST SPLIT

Q. Mr. Cooper argues that the Company has used the results of a study to allocate distribution demand-related cost to the summer and winter billing seasons. Does his testimony cause you to change the conclusion Mr. Binz drew in his Direct Testimony?

A. No. Given the increasing divergence between summer and winter prices noted by Mr. Binz in his Direct Testimony, and the fact that the differential will increase

even further if rates are increased in this case, I would recommend that the Commission temper the effect of the allocation, by setting the fraction of demand costs recovered in the summer to 55%, and thus spreading any rate increase more evenly between summer and winter rates.

F. OSS REVENUE ALLOCATION

Q. Mr. Brubaker argues that the AARP cost of service study "allocates revenues from off-system sales using a demand allocation factor, which is inconsistent with the allocation on an energy basis of the expenses for the fuel and variable purchased power used to supply these sales." Is his criticism valid?

A. No. He is correct in his identification of the allocation factor, but not in his argument that a demand allocator for OSS is inconsistent with the energy allocation of fuel and variable purchased power. As is pointed out by other witnesses, the off-system sales would not be possible if the company merely bought fuel and purchased power. Without the plants to create sufficient electricity to serve AmerenUE's own customers and have extra to sell at a margin, there would be no off-system sales. The costs of fuel and variable purchased power, on the other hand, vary directly with energy use, and should thus be allocated based on relative energy use.

Q. Does this complete your testimony?

A. Yes.

Exhibit NB-1

Resume of Nancy Brockway

Education

B.A. with honors, 1970, Smith College, Northampton, MA
J.D., 1973, Yale Law School, New Haven, CT

Employment

Consultant and Principal, NBrockway & Associates, 2003 to present
Commissioner, New Hampshire Public Utilities Commission (1998-2003)
Member, New Hampshire Site Evaluation Committee (1998-2003)
Utilities consultant and attorney, National Consumer Law Center (1991-1998)
General Counsel, Massachusetts Public Utilities Commission (1989-1991)
Staff Attorney, Assistant General Counsel, Massachusetts Commission (1986-1989)
Hearings Officer, Senior Staff Attorney, Maine Public Utilities Commission (1983-1986)
Executive Director, Maine Legal Services for the Elderly, Inc. (1981-1983)
Staff Attorney, Directing Attorney, Pine Tree Legal Assistance, Inc. (1979-1981)
Staff Attorney, UMass Student Legal Services (1977-1979)
Staff Attorney, Western Massachusetts Legal Assistance, Inc. (1976-1977)
Staff Attorney, Legal Aid Society of New York (1974-1976)

NARUC and related Committee Memberships and Public Service (1998-2003)

NARUC Consumer Affairs Committee (Vice-Chair)
Consumer Affairs Committee, New England Conference of Public Utility Commissioners (Chair)
NARUC Committee on Communications
Steering Committee, National Council on Competition in the Electric Industry
ISO-NE Advisory Committee
NEPOOL Review Board Advisory Committee
NARUC Ad Hoc Committee on Competition in the Electric Industry
NARUC Ad Hoc Committee on Committee Structure, NARUC
FCC Joint Conference on Accounting
North American Numbering Council (FCC advisors on numbering policy)
NBANC Board of Directors (funds numbering oversight)

Other Current Activities:

Chair, Board of Directors, PAYS America, Inc. (private non-profit promoting innovative way to enable more consumers to take advantage of resource efficiency).

Bar Memberships

New York State and Massachusetts, Maine (inactive)

3

NANCY BROCKWAY: TESTIMONIES

Case name	Client Name	Topic	Juris. & Docket No.	Date Filed
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Proposed general rate increase, rate design.	Nova Scotia Utility and Review Board, P-886	12/07
Pike County Commissioners v. PCL&P	Pennsylvania Office of the Consumer Advocate	Options to address rate shock in transition to uncapped competitive POLR rates	Pennsylvania Public Utilities Commission, Docket No. C-20065942	11/06 (hearing in January 07)
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Extra Large Industrial Interruptible Rates	Nova Scotia Utility and Review Board, P-883	8/06
UGI/Southern Union, Proposed Merger	Pennsylvania Office of the Consumer Advocate	Impacts of the Proposed Merger on Ratepayers and Rates, Risks and Benefits of Proposed Merger, Synergies, Reliability	Pennsylvania Public Utilities Commission, Docket Nos. A-120011F2000, etc.	5/06
SEMCO Energy Services Gas Cost Recovery Plan	PAYS America, Inc.	Relationship Between DSM and Gas Costs	Michigan Public Service Commission, Docket No. U-14718	5/06 (not admitted)
Re: Electric Service Reliability and Quality Standards	Delaware Public Service Commission	Application of Proposed Rules to Competitive Suppliers and Cooperatives	Delaware Public Service Board, Docket No. 50	1/06
Exelon/Public Service Electric & Gas, Joint Petitioners	New Jersey Division of the Ratepayer Advocate	Impacts of Proposed Merger on Service Quality, Reliability, and Gas Safety, and Options to Maintain Historic Standards.	New Jersey Board of Public Utilities, BPU Docket No. EM05020106 OAL Docket No. PUC-1874-05	11/05-12/05
Exelon/Public Service Electric & Gas, Joint Petitioners	New Jersey Division of the Ratepayer Advocate	Risks and Benefits of Proposed Merger of Exelon and PSE&G, Options for Assuring Benefits and Mitigating Risk	New Jersey Board of Public Utilities, BPU Docket No. EM05020106 OAL Docket No. PUC-1874-05	11/05-12/05
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Economic Development Rates	Nova Scotia Utility and Review Board, P-882	10/05
Nova Scotia Power, Inc.	NS UARB Consumer Advocate	Revenue Requirements, Cost Allocation, Rate Design, Demand Side Management, Economic Development Rates	Nova Scotia Utility and Review Board, P-882	10/05 – 11/05
Bay State Gas Company	Local 273	Customer Service, Reliability, Low-Income Protections, Revenue Requirements	Massachusetts DTE, Docket No. 05-27	7/05
Nova Scotia Power, Inc.	Nova Scotia Utility and Review Board	Domestic Consumer Perspective on Proposed Rate Case Settlement Agreement	Nova Scotia Utility and Review Board, P-881	1/05
Cincinnati Bell Alt Reg	Communities United for Action	Universal Service and alternative regulation of telephone service	PUCO, Case No. 96-899-TP-ALT	12/97
UGI-Electric Utilities, Inc.	Pennsylvania OCC	Universal Service issues in electric industry restructuring plans	PA PUC, No. R-00973975	1997

NANCY BROCKWAY: TESTIMONIES				
West Penn Power Co.	"	"	PA PUC, No. R-00973981	1997
Duquesne Light Co.	"	"	PA PUC, No. R-00974101	1997
PECO, Inc.,	"		PA PUC, No. R-00973953	1997
PP&L	"	"	PA PUC, No. R-00973954	1997
Met Ed.	"	"	PA PUC, No. R-00974008	9/97
Penelec	"	"	PA PUC, No. R-00974009	9/97
In the Matter of the Electric Industry Restructuring Plan	New Hampshire Legal Services	Low-income rates and DSM, impacts of restructuring on low-income consumers	New Hampshire Public Utilities Commission, D.R. 96-150	Nov., Dec. 1996
Notice of Inquiry/ Rulemaking. establishing the procedures to be followed in electric industry restructuring.	Mass. CAP Directors Association, Mass. Energy Directors Association, named Low-Income Intervenors	Electric industry restructuring	Massachusetts Department of Public Utilities, D.P.U. 96-100.	to 10/98
Universal Service Docket	Pennsylvania Office of Consumer Advocate	Rate rebalancing, universal service, telephone penetration.	Pennsylvania Public Utilities Commission Docket No. I-00940035	1996
In Re: Complaint of Kenneth D. Williams v. Houston Lighting and Power Co.	Named Low-Income Consumers	Customer service, rate design, demand-side management, revenue requirements	Texas Public Utilities Docket No. 12065	1994-5
Open Access Non-Discriminatory Transmission Services ... and Recovery of Stranded Costs	Direct Action for Rates and Equality, Providence, Rhode Island	Open transmission access in interstate commerce, and stranded costs recovery.	FERC, Nos. RM95-8-000, RM94-7-000.	1994-5
Bath Water District, Proposed Increase in Rates	Maine Office of Public Advocate	Water district cost allocation, rate design, low-income water affordability	Maine Public Utilities Commission, Docket. No. 94-034	12/94, 3/95
Application of Ohio Bell Telephone Co. for Approval of Alternative Form of Regulation	Legal Aid Society of Cleveland and Dayton	Definition of universal telecommunications service, proposal for Universal Service Access program (USA).	Public Utilities Commission of Ohio, Case No. 93-487-TP-ALT	5/4/94
Pennsylvania PUC vs. Bell Telephone of Pennsylvania	Pennsylvania Public Utility Law Project	Definition of "universal telecommunications service"	Pennsylvania PUC No. P-930715	filed 12/93
Joint Application for Approval of Demand-Side Management Programs, etc.	LG&E; Legal Aid Society of Louisville, other Joint Applicants	Cost-effective DSM programs for low-income customers; collaborative process to design DSM programs; cost allocation and cost recovery.	Kentucky PSC No. 93-150	11/8/93

NANCY BROCKWAY: TESTIMONIES				
Texas Utilities Electric Company	Texas Legal Services Center	Costs and benefits of DSM targeted to low-income customers	Texas PUC No. 11735	1993
Texas Utilities Electric Company	Texas Legal Services Center	Proposed Maintenance of Effort Rate for low-income customers	Texas PUC No. 11735	1993
Philadelphia Water Department	Philadelphia Public Advocate	Costs of Unrepaired System Leaks	Philadelphia Water Comm'r.	1992
New England Telephone	Rhode Island Legal Services	DNP for non-basic service	Rhode Island PUC, No. 1997	1991
Kentucky Power Co.	Kentucky Legal Services	Low Income Rate	Kentucky PSC No. 91-066	1991
Investigation into Modernization	Invited by Commission	Impact of modernization costs on low income telephone users	New York PSC	1991

3