

**Exhibit No.:**

### Issues:

### Fuel Adjustment Clause

**Witness/Type of Exhibit:**

## Brockway/Surrebuttal

**Sponsoring Party:**

AARP

**Case No.:**

ER-2007-0004

## SURREBUTTAL TESTIMONY

of

**NANCY BROCKWAY**

**Submitted on behalf of AARP**

**Aquila Networks-MPS and L&P**  
**Case No. ER-2007-0004**

March 20, 2007

BEFORE THE STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION

In the matter of the Tariff Filing of Aquila, ]  
Inc., to Implement a General Rate Increase ]  
For Retail Electric Service Provided to ]  
Customers in its Aquila Networks-MPS ]  
And Aquila Networks L&P Missouri Service]   
Areas [


Case No. ER-2007-0004

Affidavit of Nancy Brockway

STATE OF MASSACHUSETTS }  
COUNTY OF SUFFOLK }

Nancy Brockway, being of lawful age and being first duly sworn, deposes and says:

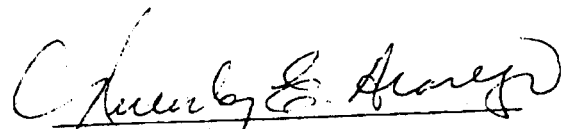
1. My name is Nancy Brockway. I am the Principal of NBrockway & Associates, Boston, MA.
2. Attached hereto and made a part hereof for all purposes is my surrebuttal testimony on behalf of AARP.
3. Filed on January 25, 2007 was the Direct Testimony of Ronald J. Binz on behalf of AARP, which I adopt as my own.
4. I hereby affirm that my statements contained in the attached testimony and those contained in the Direct Testimony of Ronald J. Binz filed on January 25, 2007 are true and correct to the best of my knowledge and belief.

  
Nancy Brockway

Subscribed and affirmed before me this 20 day of March, 2007.



NIURBIS E. ARAUJO  
NOTARY PUBLIC  
COMMONWEALTH OF MASSACHUSETTS  
MY COMMISSION EXPIRES 10/11/2007

  
Notary Public

My Commission Expires: October 11, 2007

**TABLE OF CONTENTS**

|    |                                |   |
|----|--------------------------------|---|
| 3  |                                |   |
| 4  |                                |   |
| 5  |                                |   |
| 6  |                                |   |
| 7  |                                |   |
| 8  | A. INTRODUCTION .....          | 3 |
| 9  | B. FUEL ADJUSTMENT CHARGE..... | 5 |
| 10 |                                |   |

**SURREBUTTAL TESTIMONY  
of  
NANCY BROCKWAY**

Submitted on behalf of AARP

**Aquila Networks-MPS and L&P  
Case No. ER-2007-0004**

**CASE NO. ER-2007-0004**

**A. INTRODUCTION**

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

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

**Q. Have you testified previously in this case?**

A. No. However, I am adopting the Direct Testimony of Ronald J. Binz that was filed on January 25, 2007.

**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

3 energy and utility matters. Since leaving the New Hampshire Commission in  
4 2003, I have provided consulting services to state and provincial commissions,  
5 state and provincial consumer advocates, unions, a utility, an environmental  
6 organization, low-income energy advocates and others. As a staff advocate,  
7 hearing officer and Commissioner, I have participated in numerous fuel  
8 adjustment clause proceedings. I have provided testimony recently on the  
9 problems associated with the introduction of a fuel adjustment clause. My  
10 resume, including a list of my testimonies, is attached as Exhibit NB-1.

11 **Q. What is the purpose of your surrebuttal testimony?**

12  
13 A. In this testimony, I adopt Mr. Binz' testimony and I respond to comments and  
14 criticisms of his testimony made by Messrs. Hadaway, Williams and Fetter for the  
15 Company. I note that failure to address other specific critiques of Mr. Binz'  
16 testimony does not constitute agreement with those critiques.

17 **Q. What topics will you address?**

18  
19 A. The topics I will address include whether a Fuel Adjustment Clause is warranted  
20 for Aquila at this time, and if so, how it should be structured.

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

22  
23 A. After Mr. Binz assumed his position as Chair of the Colorado Public Utilities  
24 Commission earlier this month, I was engaged by AARP to present testimony on  
25 the topics as to which he had testified. I have reviewed his testimony and I adopt  
26 his Direct Testimony as my own. I will refer to it as Mr. Binz' testimony or the  
27 AARP Direct Testimony to avoid confusion.

**B. FUEL ADJUSTMENT CHARGE**

**Q. Addressing the question of a Fuel Adjustment Clause (FAC) please outline the rebuttal arguments made the Company's witnesses on behalf of the Company in favor of a FAC.**

**A.** Mr. Williams and Mr. Fetter dispute the testimony of Mr. Binz that a FAC would take away incentives for a utility to operate efficiently. They also dispute Mr. Binz' testimony on the extent of utility control over fuel costs, and the effect of an FAC on the ability of the utility to recover all of its fuel costs. Both dispute Mr. Binz' arguments in favor of an FAC option incorporating a graduated sharing of gains and losses relative to base rate fuel costs. Mr. Fetter and Mr. Hadaway argue that the absence of an FAC raises a company's cost of capital. Finally, Mr. Fetter argues that Mr. Binz and other critics of the FAC proposal have ignored "positive attributes" of a FAC.

**Q. Does the Company make other arguments in favor of a FAC?**

**A.** Yes. Mr. Fetter further rebuts the use by Ryan Kind of a quotation by AmerenUE's Chairman that supports the position Mr. Kind and I take in this case.

**Q. Please address the argument that an FAC does not remove incentives for a utility to operate efficiently.**

**A.** Both Mr. Williams and Mr. Fetter argue that after-the-fact prudence reviews by the Commission (implicit in Aquila's proposed FAC) are all that is needed to ensure that the utility will operate efficiently in its fuel and purchased power functions. Speaking as a former staff member and as a Commissioner who has participated in upwards of 80 fuel adjustment proceedings, that assertion has not been borne out in my experience.

3           First, prudence and efficiency are not the same concept, and should not be  
4           confused. Prudence is a higher standard than efficiency, in practice. While legal  
5           definitions vary, in my experience regulators are loathe to define utility actions as  
6           imprudent absent evidence of negligent behavior, or worse. Inefficiency by itself  
7           is typically not found to be imprudence, and does not lead to disallowances. In  
8           fact, in my experience utility commissions are very reluctant to impose any  
9           imprudence disallowances in fuel adjustment cases, and do so rarely.

10           Second, it is hard to identify imprudence, much less inefficiency, in the  
11           operations of any company, particularly in the truncated process of an FAC. I can  
12           think of only two kinds of cases where imprudence was found by commissions I  
13           worked for or was a member of. One involved unusually long forced outages of  
14           baseload (typically nuclear) power plants, causing extraordinary fuel use at  
15           higher-cost plants, and expensive power purchases. The other involved gross  
16           incompetence or affiliate abuse in the purchase of fuel. In both cases, the utility  
17           actions did not pass the so-called “front page” test. That is, the possible impact  
18           on rates was so great, and the evidence of utility malfeasance was so plausible,  
19           that the general public took an interest in the Commission proceedings, and public  
20           sentiment favored some level of disallowance. Ordinarily, concerns about  
21           justifying a finding of imprudence on the record of a legalistic administrative  
22           proceeding leads to caution and the allowance of all or most of the claimed  
23           expenses. So, even where commissions may believe that costs are excessive,  
24           prudence reviews do not always provide a vehicle for righting the balance.

3 Third, in practice if not in law, the burden to prove imprudence is on the  
4 party or parties challenging the utility's cost recovery. The utility can usually be  
5 sure that its general assertion of prudence will be accepted absent another party  
6 mounting a case against it, and bringing forth evidence to challenge it. These  
7 parties, including the Staff and a public advocate similar to the Office of the  
8 Public Counsel (OPC) in Missouri, typically have fewer resources than the utility  
9 for mounting cases requiring extensive expert evidence. This practical shift of the  
10 burden in FAC proceedings to the challengers further expands the room for  
11 inefficiency without consequences. By contrast, if and to the extent fuel costs are  
12 set between rate cases and not reconciled, the utility will have to pay close  
13 attention to its costs and efficiency, as it will not be able to rely on recovering  
14 them through the reconciliation process.

15 Speaking from over two decades of utility regulatory experience, I would  
16 note that after-the-fact prudence reviews are a crude and considerably-less-than-  
17 perfect way to catch inefficiency. Costly after-the-fact reviews of a  
18 management's activities are no substitute for before-the-fact alignment of  
19 management motives and consumer interests.

20 **Q. But the utility's witnesses argue that the utility does not in fact have control**  
21 **over its fuel and purchased power costs, and thus a FAC does not reduce the**  
22 **incentives for efficiency a utility already has. How do you respond?**

23  
24 **A.** First, neither Mr. Williams nor Mr. Fetter perform any analysis of the following  
25 factors identified by Mr. Binz in his Direct Testimony at p. 13, all of which  
26 contribute significantly to the impact of volatility in indexed input prices on  
27 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

And in fact, neither Mr. Fetter nor Mr. Williams claims consistently that a utility has no control over its costs of fuel and purchased power. After all, they both go to some length to reassure the Commission that after-the-fact prudence reviews will keep a utility on its toes and prevent over-expenditure of ratepayer dollars on fuel. If utilities have zero influence on their fuel and purchased power costs, by definition they cannot over-expend. However, both Mr. Fetter and Mr. Williams acknowledge that this is not the case, despite their rhetorical claims that fuel costs are outside the utility's control.

**Q. Mr. Williams argues that a utility is affected by commodity prices in much the same way as a local gas station owner, and concludes that, as in the competitive market he describes, a FAC does not provide the utility the opportunity to increase its profit, only to adjust its prices to recover the prudent cost of the commodity it actually incurs. Do you agree?**

**A.** No. Mr. Williams' example does not support his argument, and betrays a lack of understanding of the operations of a competitive market, and indeed of his own business. Mr. Williams ignores the fact that the local gas station owner in his example must lower the price of gas at the risk of squeezing her own profit margin, if others around her are able to lower their price because of economies of scale, or superior efficiency of operations. Similarly, the firm that is more efficient can keep the price of gasoline higher than needed to earn a reasonable

3 return, if its actual competition is not so efficient and they are forced to maintain  
4 higher prices to stay in business.

5 Further, Mr. Williams' example of the gas station owner is misleading.  
6 Unlike a utility, which has a wide range of choices it can make with regards not  
7 only to its markets for fuel inputs, but its dispatch of plants, maintenance and  
8 outage management, and other similar decisions affecting its overall fuel costs,  
9 the gas station owner is typically locked into a single contract with a single  
10 supplier, and does nothing more with or to the gasoline than manage pumps used  
11 to get it from the storage tanks into the customers' gas tanks. The two cases are  
12 not comparable. The utility has more opportunities to save money on its fuel and  
13 fuel use, and correspondingly more opportunities to waste money that it will seek  
14 to recover from its ratepayers in an FAC. So, wholly aside from the fact that the  
15 gas station owner is in a competitive business, whereas the utility has a retail  
16 monopoly, the gas station analogy does not support the introduction of a FAC,  
17 much less a 100% FAC.

18 **Q. Please address the notion that without a 100% reconciling FAC, a utility**  
19 **cannot recover 100% of its fuel costs.**

20  
21 **A.** This proposition, advanced both by Mr. Williams and Mr. Fetter, misstates what a  
22 utility is entitled to recover, and ignores the balancing of risks and rewards  
23 included in base rate recovery of fuel costs. It also assumes a complete lack of  
24 utility control over fuel costs. First, a utility is not entitled to an iron-clad,  
25 unconditional recovery of 100% of everything it spends on fuel and purchased  
26 power in every period. Rather, it is entitled to a reasonable opportunity over time  
27 to recover its prudently-incurred costs plus a reasonable return. Second, and more

3 importantly, the opportunity to recover all prudently-incurred costs does not  
4 require retrospective ratemaking, such as a fuel adjustment clause. Prospective  
5 ratemaking satisfies the requirements of providing such a reasonable opportunity,  
6 even though in some periods a utility's return may dip below the amount  
7 allowable as reasonable, and in other periods it may come in above that  
8 reasonable return level. Over time, the periods of overearning and underearning  
9 balance out. Indeed, retroactive ratemaking is disfavored in lieu of prospective  
10 ratemaking, whose regulatory lag provides incentives for efficiency. Finally, only  
11 if and to the extent the Commission adopts the utility's position that it has zero  
12 influence over its fuel and purchased power costs does the argument make any  
13 sense.

14 **Q. Are there any additional reasons to suggest that, if an FAC is warranted, a**  
15 **graduated or shared-risk/reward FAC is appropriate?**  
16

17 **A.** Yes. Mr. Williams himself promotes a shared-risk/reward mechanism for  
18 handling off system sales margins. Under his proposal, if OSS margins exceed  
19 the amount included in base rates, Aquila would pass on 50% of the additional  
20 profits and retain the other half. Conversely, if OSS margins fell below the  
21 amount in base rates, Aquila would absorb 50% of the losses, and only ask  
22 ratepayers to make up the other half of the losses relative to the base rate figure.  
23 Mr. Williams does not explain why sharing of risk and reward is appropriate for  
24 this component of the proposed FAC, but not for other components. There is no  
25 reason to provide sharing here and not with respect to other aspects of the FAC.  
26 If only 50% of the difference between forecast and actual fuel costs is shifted to  
27 consumers, it will dampen the adverse impact on consumers while providing half

3 of the increased revenue stability desired by the utility (and maintaining some  
4 built-in incentive for efficiency in utility procurement and operations). It is in  
5 my opinion a fair way to graduate the risks and benefits of fuel cost adjustments  
6 between utility and shareholder, in the event that the Commission determines an  
7 FAC to be warranted for Aquila.

8 **Q. Please address Mr. Fetter's assertion that use of purchased power is a benefit**  
9 **of FACs.**

10  
11 A. First, utilities have used and will continue to use short-term purchases to balance  
12 loads and resources, with or without a fuel adjustment clause. Mr. Fetter is saying  
13 in effect that a company with zero risk of loss on purchased power will use that  
14 tool more often. This example shows clearly one of the main problems with a  
15 FAC. It skews the investment/expenditure decision, in this case in favor of  
16 purchased power. Purchased power may in any given situation be the least cost  
17 alternative, but making purchased power a risk-free option is the wrong way to  
18 encourage its proper use.

19 **Q. Please discuss Mr. Fetter's assertion that FACs reduce regulatory costs.**

20  
21 A. FACs substitute one set of regulatory costs for another, and require additional  
22 regulatory oversight. They substitute annual proceedings both to set the fuel  
23 clause charge and to reconcile the prior period actual costs with the amounts  
24 recovered. They require Staff and ultimately the Commission to exert closer  
25 oversight of the fuel and power procurement activities of the utility, because  
26 regulatory lag is eliminated and with it the built-in incentives to operate the  
27 system most efficiently. They require prudence investigations to sort out who is  
28 liable for excessive costs, where regulatory lag would have given the utility

3 incentives to avoid such situations and incentives to minimize wasteful actions,  
4 and would have put responsibility for imprudence and inefficiency on the utility  
5 automatically, between rate cases. FAC prudence investigations must be  
6 conducted under difficult circumstances, as the time limits for FAC proceedings  
7 are typically quite short. Work-arounds must be implemented to provide  
8 sufficient time to address questions of prudence. As I note above, given my 13  
9 years as a staffer or member of regulatory commissions with FACs, I am familiar  
10 with the staff and Commission resources needed to manage the FAC system in  
11 three states. They are substantial, and no Commission should expect that its  
12 regulatory duties, and the associated cost to all from regulatory proceedings, will  
13 be eased just because a FAC is in place.

14 **Q. Please address the assertion that Wall Street prefers utilities with FACs.**

15  
16 A. All things equal, Wall Street analysts state that they prefer a utility with an FAC,  
17 because it shifts risk to consumers away from shareholders. But all things are  
18 never equal. None of the Company witnesses makes any attempt to (a) isolate the  
19 effect of the presence or absence of an FAC on Aquila in Missouri, nor (b)  
20 quantify the effect of the presence or absences of an FAC for Aquila in Missouri.  
21 Accordingly, their generalization should be given little weight when making the  
22 particular decision presented in this case.

23 **Q. Mr. Hadaway asserts that the absence of an FAC will increase the cost of**  
24 **capital for a utility. Does his data support his conclusion?**

25  
26 A. Not very well. Mr. Hadaway states that only 6 of the 24 utilities in his reference  
27 group for purposes of running a DCF model do not have a fuel adjustment clause.  
28 He argues in rebuttal to Mr. Trippensee that if Aquila were denied a FAC, the

3 result would be to raise the cost of equity capital he has estimated for the  
4 Company. To explore this proposition, I recomputed the group average DCF  
5 model results shown on Schedule SCH-15, page 1, removing the 6 utilities  
6 identified by Mr. Hadaway in Schedule SCH-14 as not having a FAC. I then  
7 estimated the average DCF results for a reference group consisting only of  
8 utilities with FACs, and a reference group consisting only of the utilities  
9 identified by Mr. Hadaway as not having FACs. Only in the case of the  
10 Traditional Constant Growth DCF model, did the removal of the non-FAC  
11 utilities make an appreciable difference. Mr. Hadaway at pp. 6-7 of his testimony  
12 stated that the Traditional Constant Growth method for computing DCF ROEs is  
13 outmoded and should not be relied on. In the case of the more up-to-date  
14 methods (the Constant Growth, Long-Term GDP model and the Low-Near-Term,  
15 Two-Stage Growth model), removal of the non-FAC members of the reference  
16 group lowered the average DCF result for return on equity by 4 basis points, or  
17 increased it by 13 basis points, respectively.

18 **Q. What is the significance of these results?**

19  
20 A. They call into question the underlying premise of Messrs. Williams, Fetter and  
21 Hadaway that Wall Street investors will bid up the stock price of a utility with a  
22 FAC higher than that of a utility without a FAC. While this assertion seems to be  
23 supported by the difference in average DCF results using the traditional constant  
24 growth model, it is not supported by the two models preferred by Mr. Hadaway. I  
25 conclude that Mr. Hadaway's results from the two DCF models he prefers do not

3           prove the proposition that the presence or absence of an FAC has any appreciable  
4           impact on a utility's cost of capital.

5   **Q.   Please address the assertion that FACs produce desirable revenue stability**  
6   **for utilities.**

7  
8   A.   To the extent FACs produce desirable revenue stability for utilities, they produce  
9       undesirable rate volatility for consumers.

10   **Q.   Mr. Fetter points to aspects of his Michigan experience that he says lend**  
11   **weight to his argument against any scaling of the extent of fuel costs subject**  
12   **to reconciliation. Do you not agree?**

13  
14   A.   No. The Michigan purchased power adjustment clause process is different from  
15       that proposed by Aquila. Michigan has the requirement that the utility file a one-  
16       year and a five-year Plan for procuring fuel and purchased power to meet  
17       anticipated needs. In theory at least, this aspect of the Michigan approach  
18       provides a structured way to examine in advance the utility's anticipated need and  
19       plans to meet that need. There is no such proposal in this docket. Further, my  
20       own experience suggests that plan or no plan, utilities understand that prudence  
21       reviews are an imperfect tool for catching inefficiency and eliminating its effects  
22       from rates. Scaling of the extent of reconciliation recognizes that reality.

23   **Q.   Mr. Fetter responds to Mr. Kind's use of a quotation by AmerenUE's**  
24   **Chairman from the Company's 1998 Annual Report to Shareholders,**  
25   **characterizing the quotation. Is Mr. Fetter's characterization correct?**

26  
27   A.   No, Mr. Fetter has mischaracterized Mr. Mueller's statement. As quoted by Mr.  
28       Kind, Mr. Mueller explained to his shareholders that the fuel adjustment clause  
29       the Company had abandoned in Illinois "called for offering credits if certain fuel  
30       costs dropped or increasing customer bills if they rose." In the opinion of Mr.  
31       Fetter, "Mr. Mueller was talking about a situation where a fuel factor was

3 included in base rates, and thus any savings that beat that level would not be  
4 reconciled as they would under an FAC, but rather would go to the audience that  
5 Mr. Mueller was addressing: Union Electric Co.'s shareholders!" Fetter  
6 Surrebuttal, pp. 18-19. In fact, Mr. Mueller was *not* describing such a situation.  
7 Rather, looking at the Illinois statute and code for application of a fuel adjustment  
8 clause, it is clear that any savings on fuel that "beat" the fuel cost level included  
9 in base rates would be returned to consumers during the annual reconciliation. In  
10 other words, the FAC Mr. Mueller was describing in Mr. Kind's quotation has  
11 exactly the operative effect of the FAC proposed in this docket, rather than the  
12 effect contained in Mr. Fetter's mischaracterization.

13 **Q. Mr. Fetter argues that it is a positive attribute of FACs that they are in place**  
14 **in a majority of states. Do you agree?**

15  
16 **A.** No. First, according to research done by AmerenUE, and presented in Martin J.  
17 Lyon's Direct Testimony in Docket ER-2007-0002 on p. 5, FACs are authorized  
18 in 27 states. This is a bare majority of the 50 states, and only about 2/3 of the  
19 states where utilities did not divest their generation as part of restructuring. But if  
20 FACs had all the positive attributes claimed for them by Aquila's witnesses, and  
21 none of the drawbacks FAC critics have pointed out, one would expect 100%  
22 adoption of this device in states without divestiture. Also, most of these FACs  
23 were instituted in the 1970's, when oil prices were experiencing unprecedented  
24 and extreme spikes as a result of disruption of world oil markets, and simply  
25 never repealed. Indeed, because of the institutional inertia that tends to keep a  
26 practice in place beyond the time of its necessity, the federal government in the  
27 Public Utilities Regulatory Policy Act of 1978 required that every two years,



3 PSCs examine the operations of their fuel clauses, to ensure that they were  
4 consistent with incentives for efficient operation. Three states did abolish their  
5 fuel clauses in subsequent years, including Missouri, Texas and Indiana. In  
6 addition, in states where a FAC is authorized, not all utilities are actually granted  
7 a FAC at all times. In Kansas, for example, over the past ten years, most  
8 regulated customers in that state have not been subject to fuel surcharge, and  
9 currently only three of its four electric utilities have been allowed to charge a  
10 FAC by the Kansas Corporation Commission. Thus, I do not place as much  
11 weight as Mr. Fetter on the numbers of states with FACs. Where, as here, the  
12 regulator has been given legislative authorization to approve an FAC, I believe it  
13 is sensible and proper for the regulator to move deliberately and carefully, and not  
14 merely approve whatever proposal comes before it.

15  
16 **Q. Does this complete your testimony?**

17  
18 **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)

**NANCY BROCKWAY: TESTIMONIES**

| Case name   | Client Name                                   | Topic   | Juris. & Docket No.  | Date Filed                       |
|---|---|---|--|----------------------------------|
| AmerenUE  | AARP  | Cost of Service, Fuel Adjustment Clause   | Missouri PSC, Docket No. ER-2007-0002  | 2/07                             |
| 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<br>(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<br>(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                            |

### NANCY BROCKWAY: TESTIMONIES

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| UGI-Electric Utilities, Inc.  | Pennsylvania OCC   | Universal Service issues in electric industry restructuring plans  | PA PUC, No. R-00973975   | 1997            |
| 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 Intervenor | 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     |

**NANCY BROCKWAY: TESTIMONIES**

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|---|---|--|----------------------------|---------|
| 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 |
| 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    |

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