BEFORE THE CORPORATION COMMISSION
OF THE STATE OF OKLAHOMA

APPLICANTS: HONORABLE SODY CLEMENTS, an Individual and Oklahoma Resident on behalf of herself and others similarly situated; LT. GENERAL (Ret.) RICHARD A. BURPEE, an Individual and Oklahoma Resident on behalf of himself and others similarly situated; JAMES PROCTOR, an Individual and Kansas Resident on behalf of himself and others similarly situated; RODD A. MOESEL, an Individual and Oklahoma Resident on behalf of himself and others similarly situated; RAY H. POTTS, an Individual and Oklahoma Resident on behalf of himself and others similarly situated; BOB A. RICKS, an Individual and Oklahoma Resident on behalf of himself and others similarly situated.	)	**CAUSE PUD NO.** 201500344
RELIEF SOUGHT: VACATE OR MODIFY OKLAHOMA CORPORATION COMMISSION ORDER NO. 341630 CAUSE NO. PUD 260; AND REDETERMINE ISSUES FOLLOWING INTRINSIC FRAUD	)	

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CORPORATION COMMISSION
OF OKLAHOMA

APPLICANTS' THIRD SUPPLEMENT TO RESPONSE TO MOTIONS TO DISMISS OF SOUTHWESTERN BELL TELEPHONE COMPANY AND ATTORNEY GENERAL

COME NOW the Applicants and hereby supplement their Response in Opposition to the Motions to Dismiss with the Third Supplemental Affidavit of James M. Proctor and exhibits thereto, attached to this filing.

Respectfully Submitted,

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ATTORNEYS FOR APPLICANTS

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THIRD SUPPLEMENTAL AFFIDAVIT OF JAMES M. PROCTOR

I, JAMES M. PROCTOR, of lawful age and being of sound mind, do hereby state under oath the following facts personally known to me to be true and correct.

INTRODUCTION

1. This third (supplemental) affidavit is submitted by the Applicants in Cause No. PUD 201500344 ("PUD 344") in order to provide the Oklahoma Corporation Commission ("Commission") with certain additional important information that may be helpful with regard to this matter. The Applicants have by motion requested a full evidentiary hearing with the Commission pursuant to

Oklahoma Constitution Article 9, Section 22 (this matter raising certain Constitutional issues); it is intended that at that time additional evidence, exhibits and other information not included with this Affidavit would be presented, if allowed and proper.

2. From 1990 to 1993, I served as the Director of the Commission's Public Utility Division. Because of my role and involvement in the regulatory matters before the Commission, I have extensive knowledge of events, circumstances, details and complexities of the Causes No. PUD 860000260 ("PUD 260") and No. PUD 890000662 ("PUD 662") which pertain to Southwestern Bell Telephone Company ("SBTC") rates. I was directly involved in these matters.

3. In this affidavit, I demonstrate how, in contrast to the earlier positions taken by Robert H. Henry, Attorney General of Oklahoma ("Attorney General Henry") and Susan Brimer Loving, Attorney General of Oklahoma ("Attorney General Loving") in the PUD 662 case, E. Scott Pruitt, Attorney General of Oklahoma ("Attorney General Pruitt") takes the side of SBTC in PUD 344, contradicting prior arguments of Attorney General Henry and Attorney General Loving. Paradoxically, the positions taken by Attorney General Pruitt in PUD 344 are instead consistent with arguments made by SBTC in PUD 662 – arguments Attorney General Loving described as "frivolous, and must be dismissed" and that the Commission itself has already rejected.

4. Also in this affidavit, I detail the troubled procedural history of the Commission's June 26, 1997 Order on Remand, Order No. 413667 ("Remand Order"), issued in the SBTC PUD 260 case in response to the Oklahoma Supreme Court's December 24, 1991 Order No. 74,194 ("Henry Decision") regarding the appeals in Commission Order No. 341630 ("SBTC PUD 260 Order"). I also detail the fundamental flaws in the Remand Order and demonstrate how, rather than closing the case forever as it purports to do, the Remand Order constitutes a further violation of due process for SBTC's ratepayers

and the State of Oklahoma.

5. Further, in this affidavit, I demonstrate that the Commission already has jurisdiction to vacate or modify the bribed SBTC PUD 260 Order. The Disposition of the Oklahoma Supreme Court's Henry Decision, "Affirmed in part and reversed in part; **Cause remanded for further proceedings not inconsistent with this pronouncement**," (Emphasis Added) clearly gives the Commission the authority to correct errors in the SBTC PUD 260 Order beyond the four issues specifically remanded, as long as those corrections are not inconsistent with the Henry Decision. The errors in the SBTC PUD 260 Order are significant, but since the Commission's June 23, 1987 Order No. 313853 ("SBTC Stipulation Order") placed SBTC's rates subject to refund until SBTC PUD 260 is ultimately determined with a final SBTC PUD 260 order, the SBTC Stipulation Order provides the Commission with the necessary mechanism to correct the errors in the SBTC PUD 260 Order.

6. The original (bribed) determination in the SBTC PUD 260 case was fundamentally flawed, unreasonable and unfair to SBTC's Oklahoma ratepayers from a utility ratemaking point of view. That original determination must be replaced with a constitutionally valid order which is reasonable and fair to SBTC's Oklahoma ratepayers. Thus (as sought by this Application, PUD 344) the Commission should vacate the bribed SBTC PUD 260 Order, re-determine the SBTC PUD 260 matter, and issue a valid and untainted order in the SBTC PUD 260 case, finally granting SBTC's Oklahoma ratepayers the due process and potentially significant refunds denied them for more than 25 years.

BACKGROUND

7. On September 20, 1989 in a 2 – 1 vote, the Commission issued Order No. 341630 ostensibly resolving the issue of SBTC's excess revenues resulting from the Tax Reform Act of 1986 ("Tax Act")

as investigated in SBTC PUD 260, though at the same time ignoring the Commission's own Order No. 313853, the SBTC Stipulation Order, requiring the refund of said excess revenues to ratepayers. Aspects of the decision were immediately appealed to the Supreme Court of Oklahoma ("Supreme Court").

8. On December 24, 1991, the Supreme Court issued its decision regarding the appealed SBTC PUD 260 Order, Order No. 74,194 – the Henry Decision. SBTC, Attorney General Henry and the American Association of Retired Persons ("AARP") had all appealed certain findings of the SBTC PUD 260 Order to the Supreme Court. The Supreme Court's Henry Decision resolved the issues raised in the appeals of SBTC, Attorney General Henry and AARP.

9. The Disposition of the Supreme Court's Henry Decision was stated in its Order No. 74,194 issued December 24, 1991 as: "Affirmed in part and reversed in part; **Cause remanded for further proceedings not inconsistent with this pronouncement.**" (Emphasis Added)

10. The first paragraph of the Supreme Court's Henry Decision enumerated a concise list of issues to be resolved by the Supreme Court for the appealed SBTC PUD 260 Order. The Supreme Court's list of issues to be resolved did not include: (1) whether the SBTC PUD 260 Order was tainted and should be vacated due to SBTC's use of fraudulent actions to influence the Commission's decision in the SBTC PUD 260 case; (2) whether SBTC's excess revenues were calculated correctly and accurately in the Commission's SBTC PUD 260 Order; or (3) whether the SBTC Stipulation Order required the Commission's SBTC PUD 260 Order to compel SBTC's excess revenues be refunded to Oklahoma ratepayers. These three issues were not resolved by the Supreme Court because none of these issues were raised on appeal by parties to the SBTC PUD 260 case.

Tainted SBTC PUD 260 Order

11. The SBTC PUD 260 Order was voted for and signed by Commission Vice Chairman Bob Hopkins and Commissioner James B. Townsend. Commission Chairman Bob Anthony dissented and voted against the SBTC PUD 260 Order. Therefore, when the SBTC PUD 260 Order was issued on September 20, 1989, it was believed to have been decided by a valid 2 – 1 vote, and, thus, met the Oklahoma Constitution's requirement for a Commission majority.

12. However, on February 14, 1996 the United States Court of Appeals for the Tenth Circuit in Denver, Colorado, upheld a ruling convicting Bob Hopkins of receiving a bribe from SBTC attorney William Anderson related to his vote on the SBTC PUD 260 Order. (William Anderson never appealed to the Tenth Circuit his conviction by the United States District Court for the Western District of Oklahoma, CR-93-137-A.) The Tenth Circuit ruling upheld a decision by the United States District Court for the Western District of Oklahoma, CR-93-137-A (filed February 24, 1995).

13. As of February 14, 1996 Bob Hopkins's vote was proven tainted and should be considered void due to the Tenth Circuit ruling. On that date, the SBTC PUD 260 Order was known by the Commission and the parties to the SBTC PUD 260 case not to have been decided by the Oklahoma Constitution's required Commission majority and, therefore, the SBTC PUD 260 Order was invalid.

14. It is easy to understand why the Supreme Court's enumerated list of issues to be resolved in the Henry Decision did not include whether the SBTC PUD 260 Order was tainted and should be vacated. When Attorney General Henry and AARP considered and filed their appeals to the SBTC PUD 260 Order, they simply did not have knowledge that the SBTC PUD 260 decision was tainted by the fraudulent actions of SBTC and Commissioner Hopkins. That is, the aggrieved parties did not have sufficient information to contest the Commission's SBTC PUD 260 decision on the ground that it did

not meet the Oklahoma Constitution's requirement for a Commission majority. Hence, the appeals filed by the Attorney General Henry and AARP did not include this issue. Other parties to the SBTC PUD 260 matter may have likewise filed appeals had they known of the fraudulent actions of SBTC.

Recalculation of SBTC's Excess Revenues

15. Similarly, the Supreme Court's enumerated list of issues to be resolved for the appealed SBTC PUD 260 Order did not include whether SBTC's excess revenues, in the aggregate, were accurately and correctly calculated by the Commission in its tainted SBTC PUD 260 Order. In my November 25, 2015 affidavit in PUD 344, I explain how SBTC's excess revenues were misestimated as adopted in the Commission's SBTC PUD 260 Order.

16. Additionally, the Supreme Court made no ruling as to whether or not the SBTC Stipulation Order provided legal authority for the Commission to require SBTC to refund its accumulated excess revenues. The Supreme Court never considered whether refunds of SBTC's excess revenues were required pursuant to the SBTC Stipulation Order because that argument was never made and, therefore, was not an issue to be resolved.

17. In the affidavits that I filed on November 25, 2015 and January 22, 2016, I debunked the written and oral arguments previously made in PUD 344 by SBTC and Attorney General Pruitt that the Commission has no legal authority to require excess revenues be refunded to SBTC's ratepayers, and I explain how it is absolutely clear that the basis of the Commission's authority to order refunds of the excess revenues collected by SBTC after July 1, 1987 flows from the SBTC Stipulation Order.

CHRISTMAS EVE 1991

18. On the afternoon of December 24, 1991 I was sitting in my office at the Commission preparing to leave for the Christmas holiday when one of my secretaries brought to me a document delivered from the Supreme Court. The document was the Henry Decision. I had become the Director of the Commission's Public Utility Division in November 1990 approximately one year after the SBTC PUD 260 Order was appealed to the Supreme Court. Until that Christmas Eve, my involvement in the SBTC PUD 260 matter and the appealed Commission decision rendered in the SBTC PUD 260 Order was limited.

19. That said, I had substantial experience in reviewing the impact of the Tax Act on Kansas and Oklahoma utilities' revenue requirements. My experience in Kansas reviewing the impact of the Tax Act on utilities' regulated earnings occurred prior to my becoming the Director of the Commission's Public Utility Division. In Kansas my work regarding the Tax Act was completed while serving as the Chief of Accounting and Financial Analysis for the Kansas Corporation Commission. My familiarity with the SBTC PUD 260 matter was not extensive even though I had been working on other PUD 260 audits and related matters for various Oklahoma utilities since November 1990. So, I began reading the Henry Decision to bolster my knowledge of the SBTC PUD 260 case.

20. While reading the Henry Decision, I became frustrated with some of the information discussed in the order: First, that the Henry Decision indicated the Commission's SBTC PUD 260 Order found the changes in the tax law under the Tax Act enabled SBTC to accumulate **only** $30,677,167 in excess revenues between January 1, 1987 and September 30, 1989. More specifically, the SBTC PUD 260 Order found from January 1, 1987 until September 30, 1989 (a thirty-three month period), a revenue excess of $27,479,480 with accrued interest in the amount of $3,197,687.

21. Second, I was surprised the SBTC PUD 260 Order did not comply with the SBTC Stipulation Order's requirement to refund the $30,677,167 in excess revenues to SBTC's ratepayers. Third and most surprising was that Attorney General Henry's arguments (summarized in the Henry Decision) concerning the legal basis supporting his appeal that the Commission should have ordered SBTC's excess revenues refunded to its ratepayers did not even mention the SBTC Stipulation Order as a basis for requiring refunds. Attorney General Henry **contended only** that the excess revenues should be treated as an "overcharge" within the meaning of 17 O.S. 1981 § 121 and thence refunded to Oklahoma ratepayers. This was surprising due to: (1) discussions I had had with Assistant Attorney General Robert A. Butkin ("Assistant Attorney General Butkin") predating the Supreme Court's December 24, 1991 Henry Decision; and, (2) the legal arguments filed earlier by Attorney General Henry and Attorney General Loving in the PUD 662 case, all of which I discuss below.

Excess Revenues Determined in SBTC PUD 260 Were Grossly Deficient

22. On August 12, 1991, as the Director of the Commission's Public Utility Division, I filed testimony in PUD 662 discussing the findings of the Commission's Public Utility Division Staff ("Staff") concerning SBTC's excess revenues for the 1989 calendar year based on Staff's audit of SBTC's revenue requirements. Also, under my direction, Staff filed revised exhibits in PUD 662 on November 18, 1991 supporting its calculation that for 1989 SBTC's revenues exceeded its revenue requirement by $128,637,002.

23. It seemed beyond reason that the SBTC PUD 260 Order could find from January 1, 1987 until September 30, 1989 (nearly three years), SBTC accumulated excess revenues of only $27,479,480 given that Staff, under my direction, had just filed testimony and exhibits in PUD 662 demonstrating

SBTC's excess revenues for 1989 alone were $128,637,002. Furthermore, **Staff's determination in PUD 662 that SBTC's 1989 excess revenues were $128,637,002 had accounted for and reflected the 1989 revenue excess found in the SBTC PUD 260 Order. That is, SBTC's excess revenues calculated in PUD 662 for 1989 of $128,637,002 were in addition to the amounts found in the SBTC PUD 260 Order.**

Attorney General Henry and Attorney General Loving on Commission's Authority (Other Than 17 O.S. 1981 § 121) to Make SBTC's Excess Revenues Refundable

24. Discussions I had with Assistant Attorney General Butkin prior to my reading the Henry Decision fully demonstrated that Attorney General Henry believed the Commission had jurisdiction to place SBTC's rates, or for that matter any regulated utility's rates, subject to refund pursuant to the Commission's ratemaking authority. (The Commission should read the Commission's Response filed at the Supreme Court of Oklahoma on June 14, 1991 in Case No. 77,521, attached as "Exhibit No. 2" to my November 25, 2015 affidavit, for a thorough discussion of lawful refundable rates and retroactive ratemaking.) That is, the Commission did not need to demonstrate SBTC's excess revenues were an "overcharge" within the meaning of 17 O.S. 1981 § 121 to justify requiring refunds to Oklahoma ratepayers. The SBTC Stipulation Order all by itself sufficiently provided the Commission's authority to require refunds in SBTC PUD 260.

25. I first learned of Attorney General Henry's understanding of refundable rates shortly after my appointment as Director of the Commission's Public Utility Division in November 1990. In late December 1990 or early January 1991 Assistant Attorney General Butkin visited my office at the Commission to discuss the SBTC rate case that is identified herein as PUD 662. Assistant Attorney

General Butkin shared with me that he was having significant problems with SBTC, specifically regarding his office's failure to receive timely and complete responses to discovery from SBTC in PUD 662 matters. Assistant Attorney General Butkin further explained that his expert accounting witnesses had initial findings indicating SBTC's rates were significantly excessive. Mr. Butkin explained he was preparing a motion that would ask for the Commission to place SBTC's rates subject to refund, and he wanted to discuss the motion with me to have the benefit of my experience in utility ratemaking and gain my support for it. We discussed the matter on more than one occasion, and I told him I fully supported his motion.

26. Attorney General Henry's understanding of refundable rates was further demonstrated shortly after my discussions with Assistant Attorney General Butkin. Subsequent to my discussions with Assistant Attorney General Butkin, on January 9, 1991, in PUD 662 Attorney General Henry filed Brief In Support Of Motion To Place Southwestern Bell Telephone Company's Rates Subject To Refund And To Compel Discovery ("Henry's PUD 662 Brief") (see Henry's PUD 662 Brief attached as "Exhibit No. 5" to my January 22, 2016 affidavit). Henry's PUD 662 Brief stated that absent placing SBTC's rates subject to refund, SBTC will be permitted to enrich itself at the expense of its Oklahoma customers. **In Henry's PUD 662 Brief, Assistant Attorney General Butkin argued that a Commission order placing SBTC's rates subject to refund pending a decision in PUD 662 would clearly not constitute impermissible retroactive ratemaking.** More specifically, **Mr. Butkin argued in Section I, Part C of Henry's PUD 662 Brief that placing SBTC's rates subject to refund is necessary to protect SBTC's ratepayers and is an appropriate exercise of the Commission's jurisdiction.**

27. Antithetical to the Commission's and Attorney General Henry's efforts to seek refunds from

SBTC in PUD 662, SBTC filed Southwestern Bell Telephone Company's Motion to Strike Order No. 356271, Testimony and Exhibits Relating to Refunds, and Motion in Limine ("SBTC Strike Motion") on September 11, 1991. SBTC filed the SBTC Strike Motion in response to my Staff's testimony and exhibits about excess revenues (discussed above) filed in PUD 662 on August 12, 1991.

28. Staff's August 12, 1991 testimony and exhibits that were the subject of the SBTC Strike Motion explained and supported Staff's determination of SBTC's revenue requirements and SBTC's related collection of excess revenues. Staff's testimony further explained that from April 19, 1991 until a final order is implemented in PUD 662 any of SBTC's excess revenues, as determined by the Commission, should be refunded to SBTC's Oklahoma ratepayers.

29. The Staff's authority for recommending the refund of SBTC's excess revenues in PUD 662 was Commission Order No. 356271, the order SBTC sought to strike in the SBTC Strike Motion. The Commission had issued Order No. 356271 on April 19, 1991 ordering, among other requirements, that: (1) the authorized return on equity of SBTC be 11.41 percent (as I recommended in testimony filed on March 1, 1991 in PUD 662) until December 31, 1991 unless extended by order of the Commission or until further order of the Commission; and, (2) the earnings of SBTC be subject to refund, with interest, to the extent they exceed 11.41 percent return on equity, from the date of its order until December 31, 1991 or until further order of the Commission, whichever shall occur first, unless extended by order of the Commission.

30. On page one of the SBTC Strike Motion, among other arguments, SBTC argued: (1) the Commission does not have the statutory power or authority to order refunds in PUD 662, and any refund order would be and is contrary to law; and, (2) any refund order would constitute retroactive ratemaking, which is unconstitutional. On page two of the SBTC Strike Motion, SBTC argued the only

statutory authorization for the Commission to issue refunds was and is contained in 17 O.S. 1981 § 121. SBTC further argued the Commission's only Constitutional authority regarding refunds is found at Article IX, Section 21 of the Oklahoma Constitution, and SBTC argued that section did not apply in the PUD 662 case.

31. Attorney General Loving demonstrated in the PUD 662 matter she believed the Commission had jurisdiction to place SBTC's rates subject to refund pursuant to the Commission's ratemaking authority despite the arguments presented by SBTC in the SBTC Strike Motion. Consequently, Attorney General Loving filed in PUD 662 on September 17, 1991, Attorney General's Opposition to Southwestern Bell Telephone Company's Motion to "Strike" Commission Order No. 356271, and Testimony and Exhibits Relating to Refunds and Motion in Limine ("Loving's Opposition to SBTC Strike Motion") (see Loving's Opposition to SBTC Strike Motion attached hereto as Exhibit No. 1).

32. On the first page of Loving's Opposition to SBTC Strike Motion, **Attorney General Loving declares SBTC's Strike Motion "is frivolous, and must be dismissed.**" Attorney General Loving points out the Commission has previously rejected SBTC's efforts to bar the Commission from exercising its constitutional duty to protect SBTC's customers by issuing an order placing SBTC's rates subject to refund. Specifically Attorney General Loving explains that by issuing Commission Order No. 356271, the Commission has already rejected SBTC's claims (heard and dismissed earlier by the Administrative Law Judge) that such an order constitutes "unlawful retroactive ratemaking".

33. Attorney General Loving explains in Loving's Opposition to SBTC Strike Motion, SBTC also made two separate filings at the Supreme Court in SBTC's failed efforts to overturn Commission Order No. 356271. Attorney General Loving explains SBTC was attempting to convince the Supreme Court that the Commission was without legal power to protect ratepayers by placing a utility's rates

subject to refund, and she further explains that SBTC even apprised the Supreme Court of the statute that SBTC attempts to rely on, 17 O.S. 1981 § 121.

34. In the affidavit that I filed in PUD 344 on November 25, 2015, I discussed these same efforts SBTC undertook at the Supreme Court to overturn Commission Order No. 356271. Specifically, on May 16, 1991, SBTC filed a Petition in Error with the Supreme Court (Case No. 77,563). SBTC was appealing the Commission placing its currently approved rates subject to refund. Further, SBTC filed another Petition with the Supreme Court (Case No. 77,521) requesting that the Court assume original jurisdiction. On June 20, 1991, the Supreme Court denied SBTC's request to assume original jurisdiction in Case No. 77,521. On September 9, 1991, the Court dismissed Case No. 77,563, indicating that the appeal was premature because it was an appeal to an Interim Order. The Commission should read my affidavit filed in PUD 344 on November 25, 2015 for additional discussion of Cases No. 77,563 and 77,521.

35. Clearly, Attorney General Henry's and Attorney General Loving's arguments about: (1) the Commission's ratemaking authority to place SBTC's rates subject to refund; and, (2) how placing SBTC's rates subject to refund is <u>not</u> retroactive ratemaking, in Henry's PUD 662 Brief and Loving's Opposition to SBTC Strike Motion, respectively, are consistent with the arguments proposed by the Applicants in PUD 344 on those very subjects.

36. Yet, in 2015, in contrast to the earlier positions taken by Attorney General Henry and Attorney General Loving in the PUD 662 case, **Attorney General Pruitt takes the side of SBTC in PUD 344, contradicting the prior arguments of Attorney General Henry and Attorney General Loving.** Paradoxically, the positions taken by Attorney General Pruitt in PUD 344 are instead consistent with those arguments made by SBTC in PUD 662 in the SBTC Strike Motion discussed above. In fact,

Attorney General Pruitt's arguments offered in PUD 344 are the very arguments Attorney General Loving describes as "frivolous, and must be dismissed" when she refers to the SBTC Strike Motion in the PUD 662 matter. (The Commission should refer to the affidavit that I filed in PUD 344 on November 25, 2015 for additional discussion of the positions taken by SBTC and Attorney General Pruitt in PUD 344 on the Commission's ratemaking authority and retroactive ratemaking. In that affidavit, I discuss in more detail the arguments made in PUD 344 by Attorney General Pruitt and SBTC in Attorney General's Motion To Dismiss And Brief In Support ("Pruitt Motion") and Motion To Dismiss Of Southwestern Bell Telephone Company d/b/a AT&T Oklahoma ("SBTC Motion"), respectively.)

37. On September 25, 1991, the Commission issued Order No. 360255 in the PUD 662 case, denying the SBTC Strike Motion.

38. Attorney General Henry and Attorney General Loving through the filing of Henry's PUD 662 Brief and Loving's Opposition to SBTC Strike Motion, respectively, demonstrated the Commission may, upon its own initiative, take steps to place SBTC's rates subject to refund. That is, Attorney General Henry and Attorney General Loving clearly believe the Commission has the constitutional authority (and duty) to protect SBTC's customers by issuing an order placing SBTC's rates subject to refund. Further, they demonstrated in their filings this authority was separate and in addition to the Commission's authority to require refunds under 17 O.S. 1981 § 121.

39. By law, the Attorney General has the statutory duty to represent and protect the collective interests of all utility consumers of the State of Oklahoma in rate-related proceedings before the Commission or in any other state or federal judicial or administrative proceeding (see 74 O.S. §18b(A)(20)). Clearly, from my knowledge of and participation in SBTC PUD 260 and SBTC PUD

662 matters, Attorney General Henry and Attorney General Loving were strong advocates for the interests of SBTC's ratepayers. Those SBTC ratepayers include individuals; local, state and federal governmental agencies; and, small and large businesses in the State of Oklahoma financially damaged by SBTC's fraudulent actions in PUD 260 and the Commission's subsequent failure to remedy that fraud. However, the arguments and positions taken in the Pruitt Motion and by Attorney General Pruitt, in general, in PUD 344 are largely indistinguishable from those of SBTC in either PUD 662 or PUD 344, and SBTC's arguments in those matters are made on behalf of its management's and shareholder's interests, not its ratepayers' interests.

COMMISSION'S ACTIONS TO ADDRESS THE HENRY DECISION

40. On June 1, 1992, some six months after the Supreme Court's Henry Decision, the Commission issued Notice and Order of Prehearing Conference Regarding Southwestern Bell Telephone Company as Order No. 365912 in the SBTC PUD 260 case.

41. In its Order No. 365912, the Commission ordered that a Prehearing Conference concerning the issues remanded to the Commission as a result of the Henry Decision be heard by the Commission en banc on August 12, 1992. The order further required that at said Prehearing Conference, the parties be prepared to schedule a hearing concerning the merits of the issues remanded to the Commission by the Supreme Court and be prepared to identify the remand issues and discuss the parameters of the Commission's jurisdiction and discretion concerning the remand issues for SBTC PUD 260. The Commission's Order No. 365912 further required any party desiring to present argument and testimony at the hearing on the merits to file a brief outline of the issues needing to be addressed at the hearing on the merits, by August 5, 1992.

42. In compliance with Order No. 365912 issued in SBTC PUD 260, I, as Director of the Commission's Public Utility Division, filed on August 5, 1992, Commission Staff's Outline of Issues to be Addressed During the Remand Hearing Concerning Southwestern Bell Telephone Company ("Staff's Outline of PUD 260 Remand Issues"). One of the issues I listed for the remand hearing on the merits for the SBTC PUD 260 case was whether the SBTC Stipulation between SBTC and Staff adopted by the Commission in the SBTC Stipulation Order affects the options available to the Commission for correcting any errors in the SBTC PUD 260 Order. That is, more specifically, due to the Disposition of the Supreme Court's Henry Decision stating in its Order No. 74,194 issued December 24, 1991, "Affirmed in part and reversed in part; **Cause remanded for further proceedings not inconsistent with this pronouncement**," (Emphasis Added) should the Commission correct other errors in the SBTC PUD 260 Order (as long as those corrections were not inconsistent with the Supreme Court's Henry Decision) since the SBTC Stipulation Order had placed SBTC's rates subject to refund until SBTC PUD 260 is ultimately determined with a final SBTC PUD 260 order.

43. The Prehearing Conference initially scheduled to be heard by the Commission en banc on August 12, 1992, in which the parties to the SBTC PUD 260 case were to discuss the issues remanded to the Commission as a result of the Henry Decision, was continued by Commission order, Order No. 367591. The Commission continued the Prehearing Conference at least ten times between June 1, 1992 and May 19, 1994 through issuing Order Nos. 367591; 368387; 369153; 371543; 372721; 373961; 375226; 379263; 382639; and, 383537. On May 19, 1994 the Commission issued Order No. 383537 continuing the Prehearing Conference from May 19, 1994 to June 8, 1994.

44. To the best of my knowledge, the Prehearing Conference initially scheduled to be heard by the Commission en banc on August 12, 1992, in which the parties to the SBTC PUD 260 case were to

discuss the issues remanded to the Commission as a result of the Henry Decision, never took place. That said, searching the SBTC PUD 260 case log of documents, neither can I find a Commission order continuing the Prehearing Conference last rescheduled for June 8, 1994. By this point in time, the Henry Decision had languished at the Commission for almost two-and-one-half years without resolution.

Commissioner Bob Anthony's Request for Legal Briefs in SBTC PUD 260

45. On May 1, 1996, Commissioner Bob Anthony issued Request for Legal Briefs in the SBTC PUD 260 case. He requested the parties to SBTC PUD 260 submit by June 10, 1996 briefs addressing the irregularities in the decision-making process which resulted in the SBTC PUD 260 Order then before the Commission on remand as a result of the Supreme Court's Henry Decision. At that time, the Henry Decision (issued December 24, 1991) had been before the Commission, waiting for Commission action and resolution, more than four years and four months.

46. On May 22, 1996, Commissioner Bob Anthony supplemented his Request for Legal Briefs with May 22, 1996 Supplement to May 1, 1996 Request for Legal Briefs ("Anthony's Supplemental Request for Legal Briefs") (see Anthony's Supplemental Request for Legal Briefs attached hereto as Exhibit No. 2). In Anthony's Supplemental Request for Legal Briefs, he specifically asked the parties of SBTC PUD 260 to address questions about the SBTC Stipulation Order. That is, Commissioner Anthony wanted input from the parties to SBTC PUD 260 as to the need for the Commission to consider the SBTC Stipulation Order when addressing the Henry Decision in resolution of the SBTC PUD 260 case.

47. As discussed above, I filed Staff's Outline of PUD 260 Remand Issues on August 5, 1992. One

of the issues in Staff's outline concerned whether the SBTC Stipulation Order affected the options available to the Commission for addressing the Henry Decision and correcting the errors in the SBTC PUD 260 Order. Commissioner Anthony's Supplemental Request for Legal Briefs asked the parties to address the very question that I had raised in Staff's August 5, 1992 filing.

Attorney General Edmondson's Brief in Response to Commissioner Anthony

48. On June 10, 1996, W. A. Drew Edmondson, Attorney General of Oklahoma ("Attorney General Edmondson") filed Brief in Response to Commissioner Anthony's May 1, 1996 Request for Legal Briefs. Attorney General Edmondson explained that the convictions of Commissioner Bob Hopkins and SBTC attorney William Anderson for bribery in the SBTC PUD 260 case constitute an **irrefutable denial of due process**. He further explained the denial of due process was not limited to the bribery but also includes the *ex parte* communications of SBTC's representatives with Bob Hopkins and Commissioner Bob Anthony.

49. The Commission can determine the actual financial effect of the lack of due process for SBTC's ratepayers by examining the evidentiary record of the SBTC PUD 662 case. In the affidavit that I filed in PUD 344 on November 25, 2015, I comprehensively explain why the Commission's finding in the SBTC PUD 260 Order of only $7.8 million in excess revenues for SBTC in 1989 is not a reliable measure of the actual excess revenues.

50. A substantially more accurate and reliable measure of SBTC's actual excess revenues for 1989 can be found in the evidentiary record of the SBTC PUD 662 case. Instead of using the $7.8 million estimated figure for 1989 presented in the tainted SBTC PUD 260 Order, the Commission should base a calculation for SBTC's excess revenues for 1989 on the evidence presented in the SBTC PUD 662

case. That evidence demonstrates that SBTC's excess revenues for test year 1989 exceed $100 million, as opposed to the grossly understated $7.8 million found in the tainted SBTC PUD 260 order. The Commission should refer to my November 25, 2015 affidavit for a more thorough discussion of the relationship between the SBTC PUD 260 and SBTC PUD 662 cases.

51. Beginning on page 8 of **Attorney General Edmondson**'s brief, he **explains the Commission has sufficient legal authority to reopen and rehear the merits of SBTC PUD 260**. He cites the Oklahoma Constitution requiring the concurrence of a majority of Commissioners to decide any question. (Oklahoma Constitution Article 9, § 18a.) When the tainted vote of Bob Hopkins is invalidated, the Commission's decision in the SBTC PUD 260 Order does not have the support of a majority of Commissioners. Attorney General Edmondson summarizes by explaining **the SBTC PUD 260 Order was not constitutionally adopted and, thus, a new trial is authorized by law**.

52. Attorney General Edmondson stated that if the Commission determines that a rehearing of the SBTC PUD 260 case is warranted, the evidentiary record in SBTC's PUD 662 case may be incorporated into the record of SBTC PUD 260 by judicial notice. I contend, **taking into account the flaws in the PUD 260 Order and the fraud by which they were adopted, it is certainly warranted and in the public interest of the State of Oklahoma, and of past and present SBTC telephone customers, for a rehearing of the SBTC PUD 260 case by the Commission.**

53. Taking this step is amply supported by the comprehensive amount of extrinsic evidence the Applicants have entered into the record of the PUD 344 case. **The extrinsic evidence provided by the Applicants describes and illustrates the inappropriate actions of SBTC's representatives and the significant benefits that can be made available to individuals; local, state and federal governmental agencies; and, small and large businesses in the State of Oklahoma financially**

damaged by those SBTC actions.

54. On page 6 of Attorney General Edmondson's brief, Attorney General Edmondson explains the step he believes the Commission needs to take in order to rule the SBTC PUD 260 Order void. Attorney General Edmondson explains the Commission needs to resort to extrinsic evidence to show the invalidity of the SBTC PUD 260 Order.

55. The Commission's determination as set forth in the SBTC PUD 260 Order is tainted and should be ruled void by the Commission in accordance with the comprehensive amount of extrinsic evidence of SBTC's use of fraudulent actions to influence the Commission's decision in the SBTC PUD 260 case. Once the SBTC PUD 260 Order is ruled void by the Commission, **the Commission should incorporate the tested evidentiary record of SBTC's PUD 662 case into the record of SBTC PUD 260 (as the Applicants of the PUD 344 case advocate). The SBTC PUD 260 case should then be reheard by the Commission in order to provide SBTC's customers the due process owed them and potential refunds amounting to between $8,000 and $16,000, on average, for each Oklahoma SBTC telephone number.**

Commission Staff's Brief in Response to Commissioner Anthony

56. On June 10, 1996, the Commission Staff filed Brief of the Commission Staff in Response to Commissioner Anthony's Request for Legal Briefs. In Staff's brief, Staff refers to a case decided by the Supreme Court, Harper v. Aetna Building & Loan Ass'n, 211 P. 1031 (Okl. 1923), 4 C.J. P. 1220 ("Harper Case") (see Harper Case attached hereto as Exhibit No. 3). Staff quotes from the Supreme Court's Harper Case stating:

> Generally, on the remand of a case, the trial court may make any order

> or direction in its further progress that is **not inconsistent with the decisions and direction of the appellate court**. And this rule is especially applicable where the mandate recognizes a certain discretion in the trial court. A very similar rule is that the trial court may consider and decide any matters left open by the mandate of the appellate court. The **trial court may take such action**, not inconsistent with the appellate court, **as in its judgement, law and justice require, when the case has been remanded** generally without directions, or for further proceedings, or **for further proceedings not inconsistent with the opinion** (Emphasis Added).

57. The Disposition of the Supreme Court's Henry Decision, Order No. 74,194 issued December 24, 1991, was stated as: "Affirmed in part and reversed in part; **Cause remanded for further proceedings not inconsistent with this pronouncement"** (Emphasis Added). The language in the Supreme Court's Disposition in the Henry Decision is strikingly consistent with the language above from the Harper Case. I believe it follows then **the Disposition of the Supreme Court's Henry Decision provides the Commission the authority to resolve the SBTC PUD 260 case, including all errors in the SBTC PUD 260 Order, as the Commission deems equitable, fair and reasonable as long as the Commission's resolution is not inconsistent with the appellate court's opinion.**

58. As discussed above in this affidavit, the Opinion of the Supreme Court's Henry Decision enumerated a concise list of issues to be resolved by the Supreme Court for the appealed SBTC PUD 260 Order. The Supreme Court's list of issues to be resolved **did not** include: (1) whether the SBTC PUD 260 Order was tainted and should be vacated due to SBTC's use of fraudulent actions to

influence the Commission's decision in the SBTC PUD 260 case; (2) whether SBTC's excess revenues were calculated correctly and accurately in the Commission's SBTC PUD 260 Order; or (3) whether the SBTC Stipulation Order required the Commission's SBTC PUD 260 Order to order SBTC's excess revenues be refunded to its Oklahoma ratepayers.

59. These three issues were not resolved by the Supreme Court because none of these issues were raised on appeal by parties to the SBTC PUD 260 case. Therefore, I believe it is reasonable and just for the Commission to now resolve: (1) whether the SBTC PUD 260 Order was tainted and should be ruled void and vacated; (2) whether SBTC's excess revenues calculated in the Commission's SBTC PUD 260 Order should be corrected as advocated by the Applicants in PUD 344; and (3) whether the SBTC Stipulation Order requires the Commission to order SBTC's excess revenues be refunded to its Oklahoma ratepayers.

60. I believe the Commission should rehear the SBTC PUD 260 case in order to provide SBTC's customers the due process denied them and the potential refunds owed them. Further, based on Harper v. Aetna Building & Loan Ass'n and the Court's Disposition in the Henry Decision, it is not necessary for the Commission to first petition the Supreme Court to remand the entire cause to the Commission for reconsideration in order for the Commission to resolve these issues. After all, the Court's Disposition itself already says **"Cause remanded for further proceedings."**

AT&T Communications of the Southwest, Inc.'s Brief in Response to Commissioner Anthony

61. On June 10, 1996, Robert D. Allen, on behalf of AT&T Communications of the Southwest, Inc. (AT&T), submitted Response to Commissioner Bob Anthony's Request for Legal Briefs. On page 6 of its brief, citing the conviction of Bob Hopkins for having accepted a bribe for his vote on the

order, AT&T explains the Commission should vacate the SBTC PUD 260 Order and prescribe the procedures to be used in bringing the cause to a final conclusion.

62. On page 9 of its brief, **AT&T explains the vacation of the SBTC PUD 260 Order will mean none of the issues purportedly determined by the SBTC PUD 260 Order are concluded by it.** AT&T further explains there has not been a final order entered in the cause, and **the future proceedings of the Commission in the SBTC PUD 260 case will not be limited to the four matters remanded by the Supreme Court.**

63. On Page 11 of its brief, AT&T explains that when the issues involved in SBTC PUD 260 are finally concluded, if there are excess earnings during the period from July 1, 1987 to the date those rates have been changed, the excess earnings are subject to refund to SBTC's customers. **It is clear AT&T believed in June 1996 the Commission should rehear the entire SBTC PUD 260 case in order to provide SBTC's customers the due process and refunds owed them.**

COMMISSION'S ORDER ON REMAND

Commission Orders Remand Hearing for SBTC PUD 260 Case

64. On May 28, 1997, the Commission issued Order Directing Administrative Law Judge to Conduct Hearing, Order No. 412680, in SBTC PUD 260. In Order No. 412680, the Commission directed that Administrative Law Judge Bob Goldfield shall "immediately" conduct such hearings as may be necessary to examine the record and resolve the issues remanded to the Commission by the Supreme Court's Henry Decision and make a recommendation to the Commission concerning resolution of said issues. The SBTC PUD 260 case and Henry Decision had suddenly become an immediate concern for the Commission after languishing at the Commission for nearly five-and-one-

half years.

65. The Commission's Order No. 412680 unjustly limited the issues to be resolved in the SBTC PUD 260 case to the four issues remanded in the Henry Decision. Those four issues remanded to the Commission by the Supreme Court included: (1) the Commission's decision to upgrade certain central offices was not supported by substantial evidence; (2) the Commission's finding of a depreciation reserve deficiency lacked substantial evidence support; (3) the Commission should have considered SBTC's severance pay expenses; and (4) the Commission miscalculated SBTC's cash working capital.

66. In limiting the Commission's review of the SBTC PUD 260 Order and the Henry Decision to these four remanded issues, the Commission unjustly disregarded, (1) that the entire SBTC PUD 260 Order was tainted and flawed, and should be vacated due to SBTC's use of fraudulent actions to influence the Commission's decision and, (2) that, according to Attorney General Edmondson's brief filed June 10, 1996, the convictions of Commissioner Bob Hopkins and SBTC attorney William Anderson for bribery in the SBTC PUD 260 case constitute an irrefutable denial of due process.

67. Recall, on June 1, 1992, the Commission issued its Order No. 365912, therein ordering a Prehearing Conference concerning the Henry Decision for August 12, 1992. The order further required, at said Prehearing Conference, the parties be prepared to schedule a hearing and be prepared to identify the remand issues and discuss the parameters of the Commission's jurisdiction and discretion concerning the remand issues in its final order concerning SBTC PUD 260.

68. I filed Staff's Outline of PUD 260 Remand Issues in compliance with Order No. 365912. One of the issues I listed for the remand hearing on the merits for the SBTC PUD 260 case was whether the SBTC Stipulation Order affects the options available to the Commission for correcting any errors in the SBTC PUD 260 Order. That is, more specifically, should the Commission correct errors in the

SBTC PUD 260 Order beyond the four remanded issues (as long as those corrections were not inconsistent with the Supreme Court's Henry Decision).

69. When I filed Staff's Outline of PUD 260 Remand Issues on August 5, 1992, it was evident from my previous review of the SBTC PUD 260 case that the SBTC Stipulation Order required any excess revenues collected from SBTC's Oklahoma customers since July 1, 1987 must be refunded to them. So the refund of SBTC's excess revenues was an important issue needing discussion at the Commission's Prehearing Conference.

70. However, events occurring after August 5, 1992 made Staff's Outline of PUD 260 Remand Issues for the Prehearing Conference incomplete. That is, on August 5, 1992 when I filed Staff's outline of issues, the United States Court of Appeals for the Tenth Circuit in Denver, Colorado, had not yet upheld a ruling (Tenth Circuit ruling filed February 14, 1996) convicting Bob Hopkins for receiving a bribe from SBTC attorney William Anderson related to his vote on the SBTC PUD 260 Order. Furthermore, the lower court decision at the United States District Court for the Western District of Oklahoma, CR-93-137-A (District Court ruling filed February 24, 1995) had not even been rendered. Once these criminal court proceedings had been concluded, it became apparent to me the whole SBTC PUD 260 Order was flawed and invalid and, thus, the Commission should correct all errors in the SBTC PUD 260 Order.

Commission Issues Order on Remand

71. On June 26, 1997, the Commission issued Order on Remand, Order No. 413667, ("Remand Order") in the SBTC PUD 260 case. The stated intent of the two Commissioners who signed the Remand Order was to resolve only the four issues specifically remanded to the Commission in the

Henry Decision. Nevertheless, antithetical to itself, on page 10 of the Remand Order, the Commission ordered that the entire SBTC PUD 260 case not be reopened and that no further hearings, proceedings or orders are necessary with respect to the SBTC PUD 260 case. **Somehow, without reopening the case or hearing any arguments about other issues that might need to be examined or flaws corrected, the Commission majority decided there were no other issues worth examining, let alone correcting, and the entire case should be closed. How the entire case could be closed without first being reopened is a paradox worth pondering.**

72. The Remand Order was signed by Commission Chairman Cody L. Graves and Commissioner Ed Apple. Commission Vice-Chairman Bob Anthony did not sign the Remand Order and on July 2, 1997, Commissioner Anthony filed in SBTC PUD 260 Dissenting Opinion of Commissioner Bob Anthony to Order No. 413667 ("Anthony's Remand Order Dissent") (see Anthony's Remand Order Dissent attached hereto as Exhibit No. 4). Anthony's Remand Order Dissent discusses a comprehensive list of perspectives and findings Commissioner Anthony believed were flaws in the Remand Order.

73. As discussed above in this affidavit, the Opinion of the Supreme Court's Henry Decision enumerated a concise list of issues to be reviewed and resolved by the Supreme Court for the appealed SBTC PUD 260 Order. Those enumerated issues included the four remanded issues I identified and discussed above and, ultimately, the remanded issues were the only issues resolved by the Commission's Remand Order. The Commission majority ignored other obvious significant flaws in the tainted SBTC PUD 260 Order, not the least of which was its invalid deciding vote. It follows that the Remand Order failed to make ratepayers whole for the financial losses that resulted from SBTC's use of fraudulent actions to influence the Commission's decision in the SBTC PUD 260 case. As such, **the**

Commission's Remand Order constitutes an irrefutable denial of due process for SBTC's ratepayers and the State of Oklahoma, generally.

Flaws in the SBTC PUD 260 Order Unresolved by the Remand Order

74. [Note: In its sudden haste to issue the Remand Order less than a month after it finally ordered a hearing to resolve the issues remanded by the Henry Decision five-and-a-half years earlier, and just two weeks after said hearing, the Commission majority approved a document fraught with compositional errors in addition to its fundamental flaws. Among them, the "Findings and Recommendation" paragraphs were misnumbered, resulting in two paragraphs numbered "6." Hence, in the Remand Order references below, special care should be paid to the page numbers in addition to the paragraph numbers.]

75. The Supreme Court's list of issues to be resolved in the Henry Decision **did not** include: (1) whether the SBTC PUD 260 Order was tainted and should be vacated; (2) whether SBTC's excess revenues were determined and calculated correctly in the Commission's SBTC PUD 260 Order; or (3) whether the SBTC Stipulation Order required the Commission to order SBTC's excess revenues be refunded to its Oklahoma ratepayers. These issues had not been raised on appeal of the SBTC PUD 260 Order by any party, so the Supreme Court did not review or resolve these problems.

76. In paragraph 5, on page 8 of the Remand Order, the Commission majority found that the original decision rendered in the SBTC PUD 260 Order is voidable due to the bribery conviction of Commissioner Bob Hopkins. The Commission further explains voidable is not void and extrinsic evidence would be required to show that the SBTC PUD 260 Order is invalid. **It is confusing and troubling that the Commission majority signing the Remand Order chose not to review available**

extrinsic evidence to void the SBTC PUD 260 Order when so much was at stake financially for SBTC's Oklahoma ratepayers.

77. The Applicants have discussed and provided numerous documents with their Application, and otherwise, in the record of PUD 344. I have discussed and provided numerous documents in this affidavit and with my previous affidavits filed on November 25, 2015 and January 22, 2016. Therefore, the record of PUD 344 contains a substantial amount of evidence documenting SBTC's fraudulent actions tainting the Commission's determination in the SBTC PUD 260 Order. The SBTC PUD 260 Order should be declared invalid and void, and vacated in accordance with the extrinsic evidence of SBTC's use of fraudulent actions to influence the Commission's decision in the SBTC PUD 260 case.

78. In paragraph 6, on page 8 of the Remand Order, the Commission majority found it had no jurisdiction to modify or amend the issues affirmed by the Supreme Court, because more than 30 days had elapsed since the Commission issued its final orders in 1989, and, the majority believed, the Commission lacked permission from the Supreme Court to rehear the entire case.

79. First, the Commission should understand that the Henry Decision did not review, decide or affirm the issues raised above in my affidavit. That is, the Supreme Court did not address: 1) whether the SBTC PUD 260 Order was tainted and should be vacated; (2) whether SBTC's excess revenues in the aggregate were determined correctly in the SBTC PUD 260 Order; or (3) whether the SBTC Stipulation Order required SBTC's excess revenues be refunded to its Oklahoma ratepayers.

80. Second, the Commission did not need permission from the Supreme Court to rehear the SBTC PUD 260 case. Remember the Disposition of the Supreme Court's Henry Decision was stated as: "Affirmed in part and reversed in part; **Cause remanded for further proceedings not inconsistent with this pronouncement**" (Emphasis Added). This language appears to have allowed the

Commission to conduct proceedings reviewing and re-determining issues beyond the four specific issues remanded by the Supreme Court. **The Commission should have taken the initiative to rehear the SBTC PUD 260 case if for no other reason than to provide SBTC's customers the due process and potentially significant refunds owed them.**

81. Third, even if the Commission majority's finding in the Remand Order that it lacks permission from the Supreme Court to rehear the entire case were correct, accepting that assumption still begs the question why the Commission majority chose not to seek the Supreme Court's permission. Besides the bribery, the Commission was well aware of the potentially significant refunds owed SBTC's rate payers if the excess revenues found in the SBTC PUD 260 Order were re-determined based on revenue requirement evidence from the SBTC PUD 662 case. In connection with my comments here, the Commission should refer to my affidavits filed on November 25, 2015 and January 22, 2016 in PUD 344 for a thorough discussion as to the superiority of the calculations of SBTC's excess revenues in the PUD 662 case compared to the SBTC PUD 260 case.

82. The Commission was made aware of information indicating potentially significant refunds owed SBTC's rate payers, if the excess revenues were re-determined based on revenue requirement evidence from the SBTC PUD 662 case, more than a year before the Commission majority issued its Remand Order on June 26, 1997. That is, on May 22, 1996 in the SBTC PUD 260 case, Commissioner Bob Anthony had filed Anthony's Supplemental Request for Legal Briefs.

83. In Commissioner Anthony's Supplemental Request for Legal Briefs he specifically asked the parties of SBTC PUD 260 to address questions about the SBTC Stipulation Order. More specifically, Commissioner Anthony wanted input from the parties to the SBTC PUD 260 case as to whether revenue requirement evidence from the SBTC PUD 662 case could be incorporated into the record of

the SBTC PUD 260 case for determining SBTC's refundable excess revenues. As discussed in Anthony's Supplemental Request for Legal Briefs, such revenue requirement evidence from the SBTC PUD 662 case demonstrated SBTC's excess revenues exceeded $100 million for the year 1989. The Commission will find a more thorough discussion supporting the incorporation of the evidence from the SBTC PUD 662 case to the SBTC PUD 260 record in my previous affidavits filed on November 25, 2015 and January 22, 2016 in PUD 344.

84. In paragraph 7, on page 8 of the Remand Order, the Commission's majority defended its decision to not reopen and re-determine issues in the SBTC PUD 260 case, concluding that rehearing the entire SBTC PUD 260 case was neither warranted nor in the public interest. **This conclusion is irreconcilable with the convictions of Commissioner Bob Hopkins and SBTC attorney William Anderson for bribery in the SBTC PUD 260 case and their related denial of due process for SBTC's ratepayers.**

85. In paragraph 7, on page 9 of the Remand Order, the Commission's majority claimed the Supreme Court specifically found SBTC's ratepayers were not entitled to a refund of excess revenues pursuant to 17 O.S. 1981 § 121. Again, the Commission majority was fully aware of the SBTC Stipulation Order when it issued the Remand Order and, again, chose to disregard it. Further, the Commission majority was aware the Henry Decision did not address whether the SBTC Stipulation Order required SBTC's excess revenues be refunded to its Oklahoma ratepayers. **It seems unreasonable for the Commission's Remand Order not to discuss the relevance of the SBTC Stipulation Order to the Commission's authority to refund excess revenues, especially since the Commission Staff had advocated the Commission's authority in this regard years before.**

86. On August 23, 1989 the Staff filed Brief of the Commission Staff Concerning Interest on the

Southwestern Bell Refund. In its brief, the Staff explained its position concerning refunding excess revenues. The Commission Staff's arguments then agreed with the Applicants' arguments now in the PUD 344 case, namely that the legal basis for the Commission ordering a cash refund of the excess revenues in the SBTC PUD 260 case is not 17 O.S. 1981 § 121, but rather the SBTC Stipulation Order.

FURTHER AFFIANT SAYETH NAUGHT!

James M. Proctor
James M. Proctor

State of Kansas)
) ss
Douglas County)

Sworn before me as true and correct this 23rd of February, 2016.

NOTARY PUBLIC - State of Kansas
DIANE W. SIMPSON
My Appt. Exp 8/29/2016

Diane W. Simpson
Notary Public

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

44

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE RATES AND CHARGES OF SOUTHWESTERN BELL TELEPHONE COMPANY,

Case No. PUD-000662

IN THE MATTER OF THE APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY FOR APPROVAL OF TELESTATE 21 A PROPOSAL FOR RATE STABILITY NETWORK MODERNIZATION, AND PRICE REGULATION.

Case No. PUD 000837

FILED
SEP 17 1991
COURT CLERK'S OFFICE - OKC
CORPORATION COMMISSION
OF OKLAHOMA

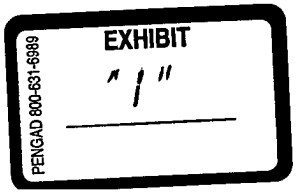
ATTORNEY GENERAL'S OPPOSITION TO SOUTHWESTERN BELL TELEPHONE COMPANY'S MOTION TO "STRIKE" COMMISSION ORDER NO. 356271, AND TESTIMONY AND EXHIBITS RELATING TO REFUNDS
AND
MOTION IN LIMINE

Bell's motion is frivolous, and must be dismissed.

The Commission has previously rejected Bell's efforts to bar the Commission from exercising its constitutional duty to protect Bell's customers by an order placing Bell's rates subject to refund.

On March 14, 1991, the Administrative Law Judge (ALJ), after two days of hearing and extensive briefing by the parties, including SWBT, issued his report recommending that Bell's rates be subject to refund. In Interim Order No. 356271, issued by the Commission on April 19, 1991, the Commission adopted the hearing officer's report, rejecting Bell's claims that the interim order constituted "unlawful retroactive ratemaking."

Having lost at the Commission level, Bell filed two actions before the Oklahoma Supreme Court. In the first action, an original proceeding styled "Application to Assume Original Jurisdiction and Petition for Writ of Prohibition", Bell attempted to convince the Court that the Commission was utterly without legal power to protect ratepayers by placing a utility's rates subject to refund, and even apprised the Court of the same statute that Bell attempts to rely on here, 17 O.S. § 121. The Court turned down Bell's efforts to have the Commission's actions declared unlawful in a unanimous order dated July 2, 1991 (Hodges V.C.J., disqualified). Bell also attempted to appeal the order to the Supreme Court. Petition in Error and Preliminary Statement, May 16, 1991, No. 77563. Just last September 9, 1991, the Court also



dismissed Bell's appeal. The Attorney General has attached hereto a copy of her brief filed on January 28, 1991, before this Commission, as well as a copy of her brief filed before the Oklahoma Supreme Court on June 10, 1991, and requests that these documents be incorporated into this response.

Both the ALJ and the Commission have found that this Commission has the legal authority to protect Bell's ratepayers when they are harmed by delays in the regulatory process, just as it has authority to protect utilities when they are harmed by delay. The ALJ and the Commission have rejected Bell's arguments to the contrary, and on two occasions the Oklahoma Supreme Court has declined to hear Bell's arguments. Bell's motion is an eleventh-hour attempt to upset a protective interim remedy already adopted by the Commission at a time when the efforts of the parties should focus on quantifying the amount of that rate refund and prospective reduction. Bell's motion should be denied.

Respectfully submitted,

SUSAN BRIMER LOVING
ATTORNEY GENERAL

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CERTIFICATE OF MAILING

On this 13th day of September, 1991, a true and correct copy of the foregoing was mailed to:

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE RATES AND CHARGES OF SOUTHWESTERN BELL TELEPHONE COMPANY,

Case No. PUD-000662

ATTORNEY GENERAL ROBERT HENRY'S BRIEF ON COMMISSION'S AUTHORITY TO ASSUME EN BANC JURISDICTION AND PLACE BELL'S RATES SUBJECT TO REFUND

I. INTRODUCTION

Attorney General Robert H. Henry requests that the Commission assume en banc jurisdiction and issue an order placing the Oklahoma rates of Southwestern Bell Telephone Company (Bell) subject to refund pending the completion of Bell's current rate case.

If Bell's rates are not subject to refund, hundreds of thousands of Bell's Oklahoma customers will be harmed, because they will not have returned to them excess rates paid while the case is pending.

Time is of the essence. Each day that the Commission delays action could cost Bell's customers more than $100,000 per day. After July 1, 1991, when a temporary $30 million a year depreciation charge expires, each day of delay could cost Oklahomans as much as $200,000 per day.

Bell, on the other hand, is not unfairly disadvantaged if the requested relief is granted. Bell's only refund liability will be that which the Commission ultimately determines Bell is overearning during the refund period.

Immediate Commission Action is Needed to Protect Ratepayers.

The Administrative Law Judge, Robert Goldfield, has denied our application to advance to the Commission en banc our motion to place Bell's rates subject to refund. Currently, our motion is not even scheduled to be heard before Judge Goldfield until March 7, 1991. Thus, in the absence of prompt relief, Bell's Oklahoma customers may have to wait for months before the Commission issues an order placing Bell's rates subject to refund--a period of delay

for which Bell's customers could not be refunded excessive rates paid to Bell. Each day of delay before the Commission makes Bell's rates subject to refund permanently deprives Oklahomans of tens of thousands of dollars. Accordingly, we urge the Commission to immediately agree to hear the case en banc, and to issue the order necessary to protect Bell's customers from further delay in the hearing process.

I. THE COMMISSION SHOULD ISSUE AN ORDER PLACING BELL'S RATES SUBJECT TO REFUND TO PROTECT BELL'S RATEPAYERS PENDING THE COMPLETION OF THE CURRENT BELL RATE INVESTIGATION.

Telephone Rates Have Declined Dramatically Nationwide.

State public utility commissions in 1989 ordered major telephone companies to cut rates by nearly $840 million, marking the continuation of a three-year downward trend in rates. Public utility commissions reduced rates for telephone subscribers a total of $2.72 billion between 1987 and 1989.[1]

Bell Customers in Other States Have Received Rate Cuts.

In our neighboring states, recent Commission proceedings involving Bell have led to significant rate reductions reflecting this national trend.

* Bell's customers in Texas received reductions in excess of $200 million.
* Bell's customers in Missouri received rate reductions in excess of $70 million.
* Bell's customers in Kansas received rates reductions in excess of $25 million.

Similarly, Bell Customers in Oklahoma Will Be Due Significant Rate Cuts As a Result of The Pending Bell Rate Case.

In Oklahoma, expert witnesses retained by the Attorney General's office have filed testimony in the pending Bell rate investigation, Cause PUD 000662, indicating that Bell's Oklahoma customers are due rate reductions of as much as $40 million and that these rate reductions will grow to approximately $70 million upon the expiration of a $30 million reserve deficiency charge in

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[1] Telephony, February 19, 1990, p. 8.

July, 1991.[2] While there will no doubt be adjustments to these calculations, it is critical that the Commission place Bell's rates subject to refund so that Bell's customers can be made whole at the conclusion of the case for excess rates paid to Bell while the case is pending.

Oklahoma Ratepayers Benefit From New Standards Adopted by the Oklahoma Supreme Court in the Landmark Turpen Decision, Which May Ultimately Increase the Amount of Rate Savings for Oklahomans.

The current rate proceeding, Cause PUD 000662, is the first case in which Bell's rates will be examined under the new standards established by the Oklahoma Supreme Court in Turpen v. Oklahoma Corporation Commission, 769 P. 2d 1309 (Okl. 1988) ("Turpen"). In that decision, the Court recognized the need to prevent Bell from using its captive Oklahoma customers to unfairly subsidize its entry into new, more speculative business ventures.

The Supreme Court now requires the Commission to protect Bell's customers in the following ways:

* The Commission must closely scrutinize Bell's financial relationship with its affiliate companies, and must make adjustments where necessary to insure that Bell is not unfairly overcharging its basic phone subscribers to gain competitive advantages in unregulated, speculative markets.

* The Commission must impute a capital structure when it finds that the structure chosen by Bell results in higher rates than necessary for basic telephone services.

* The Commission must develop standards to account for yellow pages revenues in order to insure that Bell's customers are properly benefitting from these revenues.

When all the adjustments authorized or required by the Turpen decision are made, the Attorney General's evidence may point to even greater rate reductions than $40 million per year (until July 1, 1991) and $70 million per year (after July 1, 1991)

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[2] See A.G. Exhibits 1 and 2, Prefiled Testimony of Michael L. Brosch and Michael Ileo, Exhibits in Support of Motion to Place Southwestern Bell Telephone Company's Rates Subject to Refund and to Compel Discovery.

Delays in the Pending Case Harm Bell's Ratepayers

The current Bell rate proceeding, Cause PUD 000662, has been pending for two years since it was filed on January 25, 1989. Throughout this proceeding, the Attorney General has been handicapped by Bell's failure to respond promptly to our discovery requests. Accordingly, on January 14, 1991, the Attorney General advised the Commission of the following:

* Bell had failed to respond to 340 data requests that were unanswered as of that date.

* Bell was averaging 150 days--five months--of delay for all data requests that were unanswered as of that date.

* Bell had failed to answer 18 data requests after a delay of 285 days-- more than nine months.

* Three months had passed since Bell had last responded to a data request.[3]

On January 16, 1991, Administrative Law Judge Robert Goldfield issued an order requiring Bell to more promptly respond to our data requests. That order also set a procedural schedule, under which the full hearing on the merits of the rate case will be held before the hearing officer in late August.

Even if Bell complies with the discovery schedules and the August hearing dates are not extended, it will probably be early 1992 before the briefing and appeal cycles are completed and a final order is issued by the Commission. Three years (or more) will pass between the filing of the case and the issuance of a final order by the Commission. A final order will probably not issue until the passage of another year (or more) from today's date.

Unless Bell's customers are protected by an order placing the utility's rates subject to refund, excess rates paid during the pendency of the case will be permanently lost to those customers.

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[3] See Updated Information Concerning Southwestern Bell Telephone Company's Delays in Responding to Data Requests from the Attorney General, filed January 14, 1991.

A. By Granting the Attorney General's Motion, the Commission Can Protect Bell's Ratepayers From Further Harm Caused by Delay, Without Unfairly Harming Bell.

The Attorney General's Motion requests that the Commission issue an order placing Bell's rates subject to refund, so that the rate reduction ultimately found appropriate by the Commission can be made effective as of the date of that order. The order would not require any immediate rate reduction or dollar amount of refund, not would it preclude Bell or any other of the parties from fully litigating any relevant issue in the context of a full rate hearing.

Counsel for Bell has represented that Bell opposes our motion because Bell "disagrees" with our evidence pointing to forthcoming rate reductions of $40 million to $70 million per year. We have advised the Commission and the parties that Bell's statements reflect a serious misunderstanding of the remedy sought in our motion.[4] The order we seek would protect this commission's constitutional power to protect Bell's ratepayers through refunds once it ultimately determines appropriate rates for Bell. That Bell currently "disagrees" with our numbers is irrelevant, as the only amount Bell would ever be required to refund would be the amount that the Commission determines Bell to be overearning. The remedy would protect Bell's customers from harm caused by additional delays, not fix the final amount of overearning or refund liability.

B. The Delays that Harm Bell's Customers in the Instant Case Are More Severe than the Delays That Have Led This Commission to Grant Interim Relief to Bell.

The Attorney General's motion presents even more compelling reasons for placing Bell's rates subject to refund than are present when utilities have received interim rate relief. Most recently, this Commission awarded an interim rate increase to Bell upon a showing that there would be an eleven month total delay between the filing of the original rate application and the

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[4] See letter from Assistant Attorney General R. Butkin to Administrative Law Judge Robert Goldfield, dated January 23, 1991, Attachment "A" hereto.

anticipated date of final hearing. Order No. 273137, issued February 13, 1985, p. 4 (testimony of D. Linnenbrink). In fact, in a twenty-month time frame of May 1983 to February, 1985, Bell received interim rate increases totaling more than $210 million. Turpen, supra, 769 P. 2d at 1316.

In the instant case, Bell's customers will suffer a total passage of three years or more between initial application and issuance of a final order, three times the delay that led the Commission to protect Bell with an interim rate increase in 1985.

II. THE COMMISSION HAS THE AUTHORITY TO PLACE BELL'S RATES SUBJECT TO REFUND PENDING THE COMPLETION OF THE CURRENT RATE CASE.

This Commission's broad constitutional power to regulate utilities includes the power to place Bell's rates subject to refund during the pendency of the current rate investigation. Upon a showing that Bell's customers may be harmed by delays in the hearing process, this Commission should promptly use these powers to protect those ratepayers. Only by promptly assuming en banc jurisdiction and granting our motion can the Commission insure that excess rates paid to Bell can be refunded to its customers.[5]

A. The Commission is Constitutionally Required to Protect Bell's Ratepayers From Excessive Rates.

Under Article IX, Section 18, of the Oklahoma Constitution, this Commission is charged with the broad "duty of supervising, regulating, and controlling all transportation and transmission companies doing business in State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies."

In the landmark Turpen decision, the Oklahoma Supreme Court has recognized that the Commission's constitutional duty is not just intended to permit a utility to earn a fair return on its investment, but includes the duty "to prevent a public utility

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[5] This pleading responds to the request of Administrative Law Judge Robert Goldfield that the parties prepare a brief of the relevant legal issues.

from making excess monopoly profits and to assure fair prices and adequate service to ...consumers." Turpen, supra, 769 P.2d at 1316.

B. The Commission Has Broad Powers By Which to Protect Utility Customers From Excessive Rates, Which Must Include the Power to Place a Utility's Subject to Refund to Protect Customers From Harm Caused by Delay During a Rate Investigation.

This Commission's powers are not limited to prescribing permanent rate schedules. Rather, the Commission's powers may be exercised as the "exigencies of the times and changing conditions demand." Lone Star Gas Co. v. Corporation Commission, 39 P.2d 547,550. The Courts have recognized that the Commission should be guided by "broad equitable principles" in the discharge of its duties, and that the Constitution has invested the Commission with broad legislative, administrative, and judicial powers so that it can structure appropriate remedies to meet the needs of particular situations. Id; Community Natural Gas Co. v. Corporation Com'n, 76 P.2d 393 (Okl. 1938)

The Supreme Court has recognized that this Commission has an affirmative duty to protect utility shareholders when they suffer as a result of delay. Southwestern Bell Telephone Co. v. State, 214 P. 2d 715 (1949) (interim rate increases).In the instant case, the "exigencies of the times" require that the Commission invoke its broad equitable powers and structure a remedy to protect ratepayers from the harmful effect of delay. Where each day of delay could cost Bell's customers as much as $100,000 per day, the only appropriate remedy is an order placing Bell's rates subject to refund so that excessive rates paid while the case is pending can be returned. Construing constitutional language similar to Oklahoma's, courts have held that the Commission's power to prescribe just and reasonable rates includes by necessity the power to declare rates "interim and subject to decrease" where necessary to protect a utility's customers. Pueblo Del Sol Water v. Arizona Corporation Com'n, 772 P. 2d 1138 (Ariz. App. 1988).

The Requested Order Would Not Constitute Retroactive Ratemaking.

The remedy sought by the Attorney General would not constitute prohibited retroactive ratemaking under Southwestern Public Service Com'n v. State, 637 P.2d 92,102 (Okl. 1981). In that case, the Commission attempted to reach back to a prior rate order and to correct mistakes made in the determination of rates in that order. Here, in contrast, we do not seek to correct alleged mistakes made in past Bell rate orders. Rather, we seek an order which would place Bell's rates prospectively subject to refund during the pendency of the current Bell rate investigation.

C. The Commission Has the Power to Immediately Issue the Requested Order and Thus Protect Bell's Ratepayers From Even One Day of Additional Delay.

Unlike an Interim Rate Increase, the Appropriate Remedy Here Does Not Require Any Immediate Rate Change and Therefore Can Be Implemented Immediately.

When this Commission awards an interim rate increase, the Commission recognizes that it has not yet had time to fully evaluate the relevant issues for the proper determination of permanent rates. See Southwestern Bell Telephone Co., Cause No. 28002, Order No. 250987, 57 PUR 4th 627, 643 (December 29, 1983) (imperative that rates be interim, because full data not yet available). Interim rate increases are always made subject to refund, because the issues are not fully tried and determined until the full hearing on permanent rates.

When the Commission awards an interim rate increase, however, there is still a need for some type of proceeding to quantify the amount of that interim increase. Thus, the Commission holds a hearing, usually of very limited duration. See, e.g., Kansas Power and Light Co., Order No. 346303 (April 9, 1990) (one day hearing); Southwestern Bell Telephone Co., Order No. 273137 (February 13, 1985) (one day hearing). The need for such an abbreviated hearing and preliminary quantification derives from the nature of the remedy sought by the utility: an actual immediate increase in rates charged to their customers.

The remedy sought here derives from a similar constitutional duty to protect Bell's customers from harm caused by delay, but it is a remedy of a different nature than an interim change in rates. There is no need, at the instant time, to quantify any precise level of rate savings, even on a preliminary basis, because the remedy we seek does not require an immediate reduction in rates. Accordingly, the Commission can place the remedy into effect immediately, knowing that the amount of refund and rate savings will be fully tried and determined in the full rate proceeding. In fact, each passing day of delay before the remedy is placed into effect destroys the effectiveness of the remedy, since it deprives the Commission of the power to refund excess rates paid during this period.

The Commission is Not Required to Limit Bell's Refunds to Return on Equity Established in Past Cases.

In interim rate increase proceedings, this Commission has not restricted itself to applying historical return on equity established in previous rate proceedings to determine the appropriate level of rate relief. Thus, in Order No. 238961, authorizing interim relief to Bell, the Commission, for the purposes of setting interim relief, reduced Bell's authorized return on equity from 15.0% to 13.5%. The Commission acknowledged that no evidence had been considered on this issue, but based its decision on downward trends in national interest rates since the last full case. Order No. 238961, Cause No. PUD 28002 (May 24, 1983).

Since Every Day of Delay Before Rates Are Placed Subject to Refund Harms Bell's Customers, The Order Should Issue Immediately, and Return on Equity for the Refund Period Can be Determined in the Full Rate Hearing.

In the instant case, the Commission will ultimately have to determine the appropriate return on equity during the refund period. However, every day that this Commission delays placing Bell's rates subject to refund may harm ratepayers by as much as $100,000. Because the protective remedy we seek does not require an immediate quantification of interim rate savings, the order

should promptly issue and determination of appropriate return on equity for the refund period should be deferred to the full hearing.

In United Telephone Co. of Florida v. Mann, 403 So.2d 962 (Fla. 1981), the Court authorized just such a determination. The Court held that the state Public Utility Commission had the power to place rates subject to refund during the pendency of a full rate case.

The Mann Court also recognized that the consideration of extensive testimony regarding return on equity would be too time-consuming for an interim rate hearing. Yet, the Court squarely rejected the view that the "amount to be refunded must necessarily be calculated by the previously authorized rate of return." Id. at 967.

> To so hold would defeat the purpose of allowing the utility to collect excess revenues subject to refund. The Commission is unable to determine at the time of the interim hearing the amount of the utility's revenues, if any, which are excessive. Such a determination can only be made after a comprehensive rate proceeding has been held. A part of that determination is the rate of return which the utility should be authorized to earn during the pendency of the full ratemaking proceeding.
>
> Therefore, the Commission may base its refund order upon the newly established rate of return so long as the new rate is based upon data that existed before the commission issued its interim order.

Id. at 967.

The Mann Court concluded: "The Commission properly ordered a refund of all revenues that were collected in excess of the newly authorized rate of return." Id. at 968.

Similarly, in our case, the determination of appropriate return on equity for the refund period can be determined in the full rate hearing, based on data that existed before the Commission issued its order placing Bell's rates subject to refund.

III. CONCLUSION

This Commission is constitutionally required to protect Bell's Oklahoma customers from excessive rates. In the instant case, every day of delay that the Commission fails to place Bell's rates subject to refund could permanently deprive Bell's Oklahoma customers of tens of thousands of dollars. Yet, Bell is not unfairly harmed by such an order, as the only refund liability Bell would have is that which this Commission ultimately determines Bell to be overearning.

We request that the Commission exercise its broad constitutional power, assume en banc jurisdiction, and immediately issue an order placing Bell's rates subject to refund.[6]

Respectfully submitted,

ROBERT H. HENRY
ATTORNEY GENERAL

ROBERT A. BUTKIN, OBA #10042
ASSISTANT ATTORNEY GENERAL

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CERTIFICATE OF MAILING

On this 28 day of January, 1991, a true and correct copy of the foregoing was mailed to:

Honorable Robert Anthony
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(INTERAGENCY)

Honorable Bob Hopkins
Oklahoma Corporation Commission
Jim Thorpe Building
(INTERAGENCY)

Honorable J.C. Watts
Oklahoma Corporation Commission
Jim Thorpe Buidling
(INTERAGENCY)

Honorable Robert Goldfield
Administrative Law Judge
Oklahoma Corporation Commission
Jim Thorpe Building
(INTERAGENCY)

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[6] The Attorney General is attaching a Proposed Order placing Bell's Oklahoma rates subject to refund. See Attachment "B", hereto.

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ROBERT A. BUTKIN

ATTACHMENT A

ROBERT H. HENRY
ATTORNEY GENERAL
STATE OF OKLAHOMA

January 23, 1991

The Honorable Robert Goldfield
Administrative Law Judge
Oklahoma Corporation Commission
Jim Thorpe Building
Oklahoma City, Oklahoma 73105

Re: IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE RATES AND CHARGES OF SOUTHWESTERN BELL TELEPHONE COMPANY, CAUSE NO. PUD 000662

Dear Judge Goldfield,

In your order dated January 16, 1991, you requested the parties to meet to discuss a possible stipulation of the issues raised in our pending motion to place Southwestern Bell's rates subject to refund during the pendency of the Southwestern Bell rate inquiry referenced above. In response to that order, we are advising you that we have communicated with both counsel for Southwestern Bell and Counsel for the Commission staff, and have not yet reached a stipulation as to any issues involved in the case.

In an effort to clarify the purpose of our motion, we have advised the parties during these discussions that the purpose of our motion is to protect Bell's Oklahoma customers from the harmful effect of delays in the regulatory process. Cause PUD 000662 was filed on January 25, 1989--two years ago. Even if there are no additional delays in the procedural schedule set by your order of January 16, 1991, a final order would probably not issue by the Commission until very late in 1991 or early 1992. This would result in a total passage of three years (or more) between the time the application was originally filed and the date of the final order. When our investigation of Bell's current revenue requirements points to significant forthcoming rate reductions, every month of continuing delay harms Bell's ratepayers. Accordingly, we have asked the Commission to issue an order placing Bell's Oklahoma intrastate rates subject to refund, so that the rate reduction ultimately found appropriate by the Commission can be made effective as of the date of that order.

In several conversations, counsel for Bell has indicated that Bell opposed our motion because Bell "disagreed" with our numbers. We have advised Bell that this reflects a misunderstanding of the purpose of our motion. The order we seek would not require any immediate rate reduction of refund to Bell's ratepayers, nor would it preclude Bell from fully litigating any relevant issue in the final hearing on the merits. Rather, the order would insure that the Commission preserve its constitutional ability to protect Bell's ratepayers through refunds once it ultimately determines appropriate rates for Bell.

We have advised the parties that if our motion is granted, the only refund liability that Bell would have would be the amount which the Commission determines Bell is overearning. In our view, this does not disadvantage Bell. But if Bell's rates are not subject to refund, hundreds of thousands of Bell's Oklahoma customers would be disadvantaged because they could not have returned to them excess rates paid while the case is still pending.

To protect Bell's ratepayers from additional harm to them caused by delays in the hearing process, we have requested that Bell join us in a stipulated order placing their rates subject to refund. To date, parties have not entered into such a stipulation.

Sincerely,

/s/ R. A. Butkin

Robert A. Butkin
ASSISTANT ATTORNEY GENERAL

CERTIFICATE OF MAILING

The undersigned certifies that a copy of the above letter was mailed first class mail on this 23rd day of January, 1991, to the following:

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ROBERT A. BUTKIN

Attachment B

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE RATES AND CHARGES OF SOUTHWESTERN BELL TELEPHONE COMPANY,	)	Case No. PUD-000662

PROPOSED ORDER PLACING BELL'S RATES SUBJECT TO REFUND

Findings of Fact

1. On January 25, 1989, Cause PUD 000662, which is an inquiry into the rates and charges of Southwestern Bell Telephone Company (Bell), was filed with this Commission.

2. Cause PUD 000662 is the first rate case for Bell which will implement the new standards set forth by the Oklahoma Supreme Court in Turpen v. Oklahoma Corporation Commission, 769 P. 2d 1309 (Okl. 1988). In Turpen, the Court recognized the need, in the post-divestiture era, to insure that Bell did not charge excessive rates for customers of basic telephone services to subsidize its entry into new, competitive business ventures.

3. The Attorney General, Robert H. Henry intervened in the cause on March 13, 1989. The American Association of Retired Persons (AARP), AT&T, U.S. Sprint, MCI, and the Cable Television Operators have also intervened.

4. On January 9 and January 14, 1991, the Attorney General advised the Commission of serious discovery problems that his office had encountered with Bell. The Attorney General provided data request logs demonstrating that 340 data requests had gone unanswered for an average of five months, 18 data requests had been unanswered for more than nine months, and that no data request had been responded to for almost three months.

5. On January 9, the Attorney General submitted prefiled testimony under affidavit from two expert witnesses, Mike Ileo and Mike Brosch, indicating that Bell was currently overearning approximately $40 million per year, and that upon the expiration

of a temporary $30 million a year reserve deficiency charge in July, 1991, Bell's overearnings would grow to approximately $ 70 million.

6. We note that over the last three years, state public utility commissions have reduced telephone rates by approximately $ 2.72 billion. The reductions in 1989 alone were $840 million. Recent proceedings in other Southwestern Bell states have resulted in significant reductions that reflect this national trend, with rate reductions of in excess of $ 200 million, $70 million, and $25 million in Texas, Missouri, and Kansas, respectively.

7. On January 16, 1991, the Administrative Law Judge Robert Goldfield issued an order compelling discovery and also set a procedural schedule. Final hearing on the merits is not scheduled before the administrative law judge until late August, 1991. Even if the procedural schedule is not changed, it will probably be early 1992 before the briefing and appeal stages are completed and a final order setting rates for Bell has been issued by the Commission. Thus, a total of three years (or more) will pass between the time the case was initially filed and the time a final order issues. We face delays of a year or more from the present date to the date a final order issues by the Commission.

8. To protect Bell's ratepayers from the harm caused by delays in the hearing process, the Attorney General has filed a motion requesting that the Commission place Bell's rates subject to refund. If the requested order is granted, excessive rates paid by Bell's customers during the pendency of the rate investigation could be refunded to those customers. It is clear that the Attorney General is not seeking to require any dollar amount of refund or an immediate rate reduction. Nor would the requested order preclude Bell or any of the other parties from fully litigating any relevant issue in the final hearing on the merits. Rather the requested order would insure that this Commission could preserve its constitutional ability to protect Bell's ratepayers through refunds once it ultimately determines appropriate rates for Bell.

Conclusions of Law

1. Under Article IX, Section 18, of the Oklahoma Constitution, this Commission is charged with the broad "duty of supervising, regulating and controlling all transportation and transmission companies doing business in State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies."

2. In the Turpen decision, the Oklahoma Supreme Court has recognized that this Commission's constitutional duty is not just intended to permit a utility to earn a fair return on its investment, but includes the duty "to prevent a public utility from making excess monopoly profits and to assure fair prices and adequate service to... consumers."

3. This Commission's powers are not limited to prescribing permanent rate schedules, but may be exercised as the "exigencies of the times and changing conditions demand." Lone Star Gas Co. v. Corporation Commission, 39 P.2d 547,550. The Commission has broad equitable powers to structure appropriate remedies to protect ratepayers from excessive rates during the pendency of a rate case.

4. In the instant case, the Attorney General has made a showing that significant rate reductions are likely to be forthcoming as a result of the pending rate investigation. We also note the dramatic downward trend in telephone rates nationwide over the last three years, and that Bell's customers in Kansas, Texas and Missouri have participated in these rate savings.

5. This Commission has broad powers to structure an appropriate remedy to protect Bell's ratepayers from additional delays in the regulatory process. In the instant case, Bell's ratepayers will experience a total of three years regulatory lag (or more) between the time the case was filed and the date of the final hearing on the merits. The hearing is currently scheduled before the hearing officer in late August 1991, and even if there are no further procedural delays, it is unlikely that a final order will issue by the Commission until early 1992. These procedural

delays are in excess of those that led the Commission to award an interim rate increase to Bell in 1985. Order No. 273137, February 13, 1985 (eleven month total regulatory lag justified interim increase)

6. The nature of the inquiry and hearing required by this Commission depends on the remedy appropriate for addressing the particular problem we face. When utilities receive interim rate increases, there is a need to have some sort of proceeding to quantify the amount of rate increase to be provided on an interim basis. Even in the case of an interim rate increase, the Commission always recognizes that it has not had time to fully try the relevant issues, and it therefore places the utility's rates subject to refund.

7. In the instant case, the Attorney General is not seeking any immediate downward adjustment or refund. Rather, his concern is predicated on a concern that delays in the regulatory process harm Bell's ratepayers, because unless rates are placed subject to refund, there will be no mechanism for returning to Bell's customers excess rates paid to Bell while the case is pending. Accordingly, given the clear indications of forthcoming rate reductions and the harm to Bell's customers caused by regulatory lag, we find it unnecessary to delay the implementation of the remedy. In fact, every day of additional delay, before Bell's rates are placed subject to refund, weakens the effectiveness of the remedy, because it deprives the Commission of the power to refund excess rates paid during this period. Bell is not disadvantaged by an order placing its rates subject to refund, because its only refund liability will be that which the Commission ultimately determines Bell to have overearned during the refund period.

Conclusion

In view of the foregoing, the Commission hereby issues an order placing the Oklahoma intrastate rates of Southwestern Bell Telephone Company subject to refund. Return on equity appropriate for the refund period will be determined based on financial data that existed up to the date of this order.

No, 77,521

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SOUTHWESTERN BELL TELEPHONE COMPANY,

Appellant,

vs.

OKLAHOMA CORPORATION COMMISSION, and
STATE OF OKLAHOMA,

Appellees.

BRIEF IN OPPOSITION TO BELL'S APPLICATION TO THIS COURT TO ASSUME ORIGINAL JURISDICTION AND ISSUE A WRIT OF PROHIBITION

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ATTORNEYS FOR APPELLEES

June, 1991

I N D E X

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

SOUTHWESTERN BELL TELEPHONE COMPANY, Appellant, vs. OKLAHOMA CORPORATION COMMISSION, and STATE OF OKLAHOMA, Appellees.	)	Case No. 77,521

BRIEF IN OPPOSITION TO BELL'S APPLICATION TO THIS COURT TO ASSUME ORIGINAL JURISDICTION AND IN OPPOSITION TO A WRIT OF PROHIBITION

INTRODUCTION

The Attorney General submits this brief in opposition to Bell's application to assume original jurisdiction. Bell seeks to prohibit the Oklahoma Corporation Commission ("Commission") from enforcing Interim Order No. 356271. This order placed Bell's rates subject to refund, effective as of the date of the Order, so that Bell's ratepayers would not be harmed any further by delays in a pending Bell rate case, Docket No. PUD 000662, that had already consumed more than two years, and where a final Order will not issue until late 1991 or early 1992. [1]

Bell does not dispute the power of the Commission to award interim rate increases to protect utilities when regulatory delays

[1] The hearing on the merits of this rate case is currently scheduled to begin before the Commission's Administrative Law Judge on October 7, 1991. Thus, even assuming that there are no further procedural delays, it may be early 1992 before all administrative appeals are exhausted, and the Commission issues a final order on the merits.

postpone needed rate increases. (Bell Brief, p. 11) In fact, no utility in Oklahoma has more frequently sought and obtained interim or emergency relief than Bell, having received $210 million in interim rate increases during the 20-month time frame of May 1983 to February 1985. Turpen v. Corporation Commission, 769 P.2d 1308, 1316 (Okl.1988). Yet, Bell maintains that the Commission cannot lawfully fashion a protective remedy in a pending rate case -- an interim order placing rates subject to refund from the date of that order -- when it appears that regulatory delays postpone rate reductions and thus harm ratepayers.

The Order challenged by Bell falls within the scope of the Commission's constitutional powers, and Bell's application should be denied.

I. IN ORDER NO. 356271, THE COMMISSION FASHIONED AN APPROPRIATE INTERIM REMEDY TO PROTECT BELL RATEPAYERS WHEN THEY ARE HARMED BY DELAYS IN A PENDING RATE INVESTIGATION.

Bell maintains that any Order placing a utility's rates subject to refund is unconstitutional even if issued as a protective measure in a pending rate proceeding. Thus, Bell's application and brief are virtually devoid of reference to the record of the proceeding, consisting of more than 50 exhibits, extensive briefing, and two days of hearing where expert witnesses for Bell, the Attorney General, and the Commission staff addressed evidentiary issues deemed relevant by the Commission to the issue of whether Bell's rates should be placed subject to refund in the pending Commission proceeding.

The Commission's broad equitable powers must include the power to place a utility's rates subject to refund in appropriate circumstances. In the instant proceeding, the Attorney General sought an interim order placing the utility's rates subject to refund, from the date of the order, where it appeared that regulatory delays in the hearing process were postponing anticipated rate reductions thus disadvantaging ratepayers. The Commission recognized the need to protect ratepayers under these circumstances. After finding sufficient evidence that a rate reduction would be forthcoming in the final hearing on the merits, the Commission granted the requested relief.

II. A WRIT OF PROHIBITION IS NOT APPROPRIATE WHERE BELL HAS SUFFERED NO HARM AND WHERE THERE IS A REMEDY AT LAW THROUGH AN APPEAL.

The applicant has the burden of proving the necessity for a writ of prohibition. City Nat'l Bank & Trust Co. of Oklahoma City v. Owens, 565 P.2d 4 (Okl.1977). In the instant proceeding, Bell cannot sustain this burden because (1) it has yet to suffer injury as a result of the Commission's interim protective order; and (2) there is available to Bell a remedy at law through appeal.

A. Bell Has Not Demonstrated Harm

Interim Order No. 356271 has not cost Bell any money. No refund or rate reduction has been ordered. Rather, the interlocutory remedy merely preserves the Commission's power to protect Bell's ratepayers from delays that inhere in a lengthy administrative process. As such, the order stands as a

prophylactic remedy which protects ratepayers by preserving the Commission's power to return excessive earnings to the ratepayers, but which causes Bell no immediate harm or financial loss.[2]

Bell's claim that a writ must issue is based on unsupported allegations that the Commission's interim, protective order causes Bell "irreparable injury." See Bell's Brief, pp. 12-13. But Bell has not shown this Court that the utility introduced, or sought to introduce, exhibits or testimony supporting its claim of irreparable injury at the hearing on the merits before the Commission, or at any other stage of the proceeding. And even if such evidence had been introduced below, the Commission is the agency charged with balancing the interests of ratepayers and utilities, Turpen, supra. It would fall within that agency's expertise to weigh any hardship which the interim remedy imposes on Bell against the benefits provided the ratepayers. Such a factual inquiry does not fall within the scope of this Court's original jurisdiction.

B. Bell Will Have an Adequate Remedy of Appeal

Prohibition does not lie where remedies of appeal are or will be available. See Watchorn Basin Co. v. Oklahoma Gas & Electric Co., 525 P.2d 1357 (1974); Crews v. Bird, 285 P. 874, 141 Okl. 143 (1929). In the instant case, Bell will not suffer hardship until the completion of the proceedings, for no refund Order will be

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[2] In fact, no discussed infra, p. 11, the remedy afforded by the Commission is more protective of Bell than an interim rate decrease, as it preserves Bell's rights to fully litigate all issues relevant to the determination of its refund obligations.

issued by the Commission until that time. It is at that stage of the proceedings that an appeal would be appropriate, as the Court would then have available the full factual record to examine the evidentiary basis of the interim remedy and the refund order. In analogous situations, the Court has refrained from exercising original jurisdiction. See e.g., Albright v. Election Board of Payne County, 44 P.2d 995, 996, 172 Okl. 162 (1931) (writ of prohibition denied where lower tribunal has jurisdiction over general class of cases to which particular case belongs, absent showing of present danger of irreparable harm).

Bell alleges that if the writ is not issued, nothing would prevent the Commission from including a "subject to refund" provision in every future rate order. Bell Brief, pp 10-11. But this allegation ignores the factual and legal underpinning of the discrete order at issue here. Just as the Commission may not have the discretion to automatically grant interim increases at the beginning of every rate increase application, it may not have the discretion to place rates subject to refund in every single rate order. But this is not to say that the Commission may not constitutionally exercise its discretion in appropriate circumstances and provide interim relief as the need arises. Bell's writ application attempts to "lift" the Commission order from its specific legal and evidentiary underpinning, whereas an appeal would permit the Court to have the full record before it to determine whether the Commission properly exercised its discretion in the context of this particular case. When the Commission has

crafted a remedy for a new regulatory environment -- anticipated rate reductions -- it is particularly appropriate that the order be reviewed in the context of the entire evidentiary record, rather than in the more sterile environs of an original action.

Bell fails to draw the Court's attention to one important element of the legal and factual underpinning of Order No. 356271. On July 1, 1991, a $30 million a year temporary depreciation charge that Bell is authorized to collect from its ratepayers, pursuant to a previous Commission Order, will expire. See Order No. 341630 (September 20, 1989.) But since hearings in this cause are not scheduled until fall, 1991, an interim remedy must be provided to preserve the Commission's power to return savings to the ratepayers that accrue after July 1, 1991. In fact, had the requested relief not been provided by the Commission, the Attorney General and Commission staff may have had grounds for a mandamus action compelling the Commission to provide the requested interim relief.

III. THE COMMISSION HAS THE CONSTITUTIONAL POWER TO PLACE A UTILITY'S RATES SUBJECT TO REFUND TO PROTECT RATEPAYERS FROM REGULATORY DELAYS.

This Commission's broad constitutional power to regulate utilities includes the power to place a utility's rates subject to refund during the pendency of a rate investigation. Upon a sufficient showing that customers may reasonably anticipate rate reductions, and thus are harmed by delays in the hearing process, the Commission is empowered to protect those ratepayers.

A. The Commission is Constitutionally Required to Protect Utility Ratepayers From Excessive Rates.

Under Article IX, Section 18, of the Oklahoma Constitution, this Commission is charged with the broad "duty of supervising, regulating, and controlling all transportation and transmission companies doing business in State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies. . ."

In the landmark Turpen decision, the Oklahoma Supreme Court has recognized that the Commission's constitutional duty is not just intended to permit a utility to earn a fair return on its investment, but includes the duty "to prevent a public utility from making excess monopoly profits and to assure fair prices and adequate service to . . . consumers." Turpen, supra, 769 P.2d at 1316.

B. The Commission has Broad Powers by which to Protect Utility Customers from Excessive Rates, Which Include the Power to Place Revenues Subject to Refund to Protect Customers from Harm Caused by Delay During a Rate Investigation.

This Commission's powers are not limited to prescribing permanent rate schedules. Rather, the Commission's powers may be exercised as the "exigencies of the times and changing conditions demand." Lone Star Gas Co. v. Corporation Commission, 39 P.2d 547, 550 (1934). The courts have recognized that the Commission should be guided by "broad equitable principles" in the discharge of its duties, and that the Constitution has invested the Commission with broad legislative, administrative, and judicial powers so that it

can structure appropriate remedies to meet the needs of particular situations. Id; Community Natural Gas Co. v. Corporation Com'n, 76 P.2d 393 (Okla. 1938).

This Court has recognized that this Commission has an affirmative duty to protect utility shareholders when they suffer as a result of delay in the administrative process. Southwestern Bell Telephone Co. v. State, 214 P.2d 715 (1949) (interim rate increases authorized where a rate proceeding may consume an unreasonable length of time). In the instant case, the "exigencies of the times" authorize the Commission to invoke its broad equitable powers and structure a remedy to protect ratepayers from the harmful effect of delay. Where each additional day of delay postpones rate reductions, the Commission here has fashioned an appropriate remedy by placing Bell's rates subject to refund so that excessive rates paid while the case is pending can be returned. Construing constitutional language similar to Oklahoma's, courts have held that a regulatory commission's power to prescribe just and reasonable rates includes by necessity the power to declare rates "interim and subject to decrease" where necessary to protect a utility's customers. Pueblo Del Sol Water v. Arizona Corporation Com'n, 772 P.2d 1138 (Ariz. App. 1988).

IV. THE RELIEF GRANTED BY THE COMMISSION DOES NOT CONSTITUTE UNLAWFUL RETROACTIVE RATEMAKING, BUT RATHER AVOIDS RETROACTIVITY.

Bell claims that an order placing its rates subject to refund from the date of that order somehow constitutes unlawful,

retroactive ratemaking. But the remedy would not constitute retroactive ratemaking as that concept has been defined in the case law. In Turpen, for example, the case cited by Bell in its brief, the Supreme Court equated retroactive ratemaking with "accounting for mistakes in past rates." Turpen, supra, at 1322, discussing Southwestern Public Service Co. v. State, 637 P.2d 92 (1981). In the instant case, the Attorney General and the Commission have not sought to retroactively adjust Bell's authorized rates due to any mistake in the prior case, Order No. 341630, Cause No. PUD 000260 (the "Tax Docket"). Nor has the Commission ordered Bell to refund revenues for periods prior to the effective date of the interim order, April 19, 1991. Rather, the Order insures that prospectively, from the date of that order, Bell's rates are interim and subject to refund.

A. The Commission's Order Avoids a Retroactivity Problem

In authorizing the Commission to award interim rate increases, the Oklahoma Supreme Court has explicitly recognized the retroactivity problem that would arise if the interim remedy were not available. Thus, in Southwestern Bell Telephone Co. v. State, 214 P.2d 715, 718 (1949), the Court stated:

> Under such arrangements [an interim rate increase during the pendency of a rate investigation] the patrons of the company will not eventually suffer if it be ultimately determined that the increase in rates was erroneously granted, for without expense to them all such increased charges will be refunded.

The court noted the adverse consequences to the utility if an interim, protective remedy were not provided:

> On the other hand, if it be eventually determined by the court that the company was entitled to such increase, there is no way by which the court can make the order of increase of rates so effectively retroactive as to relieve the company of the burden of the loss unjustly inflicted upon it, and to require the company's patrons to pay the deficiency for past service which they have been able to unjustly avoid.

It was specifically to avoid this retroactivity problem that this Court directed the Corporation Commission to award interim rate increases to a utility, subject to refund if the interim increase were later proven undeserved:

> Where it reasonably appears that a proceeding for a statewide raise in rates will consume a considerable length of time, and that the rates do not yield to the utility a reasonable return, it is the duty of the Commission . . . to permit a temporary increase in rates sufficient to yield . . . a reasonable return upon the investment of the utility.

Similarly, the Commission order avoids a retroactivity problem by placing the utility's rates subject to refund prospectively from the date of the order.

B. That Order No. 356271 Does Not Immediately Change Existing Rates Does Not Render It Unconstitutional or Retroactive.

Bell's contention that Order No. 356271 is automatically unconstitutional because it does not change existing rates also must fail. As indicated previously, the Commission order derives from the same duty that leads the Commission to award interim rate relief to utilities -- to protect from harm caused by delays in the administrative process. An appropriate remedy when utilities are harmed by delay is an interim rate increase -- albeit subject to refund -- during the pendency of the rate investigation. But when

ratepayers are harmed by regulatory lag, the Commission can provide an appropriate remedy without immediately changing rates, for ratepayers are fully protected by an order placing the utility's rates subject to refund from a date certain pending the completion of a rate proceeding.

If anything, the protective interim remedy of Order No. 356271 is a more precise and elegant remedy than one involving a rate change. In the instant case, the Order was issued after a threshold determination of evidence that reasonably indicated that a rate reduction would be forthcoming in the case. The Order was issued after a regulatory delay of two years, and will protect ratepayers from further delays in rate proceedings, beginning with the effective date of the order. But since the only refund obligation will be that which Bell is determined to be overearning during the refund period after full hearing on the merits, Bell is not unfairly prejudiced by the order. In fact, Bell is afforded further procedural protection than it would have if an interim rate reduction were imposed on it, based on the cursory review typical of interim proceedings.

This additional protection was recognized by the Commission in Order No. 356271, when it stated (at page 4):

> The Commission is very aware that if the Commission were to change the rates of SWBT at this time, in an attempt to ensure that SWBT does not earn in excess of 11.41 percent return on equity during this interim period SWBT could suffer a shortfall of revenues. In view of the fact that the Commission could not then allow the shortfall to be made up with future rates because that would be retroactive ratemaking, SWBT would never be able to

> recover those lost revenues. It seems absurd to suggest that although the Commission could reduce rates on an interim basis, the Commission lacks the authority to take action which will provide protection to SWBT during this interim period.

The Commission has structured remedy which fully protects the interests of ratepayers, but nevertheless affords the utility a full opportunity to litigate the appropriate level of refunds. If anything, the Commission's order is less vulnerable to constitutional attack than an order providing for interim rate reduction that may later prove to be unjustified.

Nor is there any merit to Bell's allegation that the Commission Order is infirm because it somehow reflects a "new view of reasonableness," the parameters of which are "yet to be determined," which will determine Bell's refund obligation. Bell Application, p.2. Bell confuses the threshold evidentiary standard that was used by the Commission as a predicate for placing the utility's rates subject to refund, with the well-established constitutional standards that apply when rates are set.

The Commission formulated an appropriate threshold standard for placing a utility's rates subject to refund during the pendency of a rate investigation. This was the presentation of sufficient evidence to support a finding that a reasonable man may find a rate reduction to be forthcoming at the hearing on the merits. See ALJ Report, p. 2, Attachment to Order 356271. A requirement that the movant fully litigate the precise amount of rate reduction or refund would have destroyed the effectiveness of the interim remedy, the purpose of which is to provide interim protection to

ratepayers during the pendency of the rate proceeding. But with the remedy in place, Bell's refund obligation and prospective rate reduction will be determined by reference to established norms, most recently set forth by this Court in the Turpen decision, and Bell will have an opportunity to fully litigate those issues in the forthcoming hearing. Thus, the April 19, 1991 Order reflects an appropriate balancing of the interests of the utility and ratepayers, well within the limits of the Commission's constitutional authority.

V. THE COURTS HAVE RECOGNIZED THAT REGULATORY COMMISSIONS ARE EMPOWERED TO PLACE A UTILITY'S RATES SUBJECT TO REFUND.

The courts have recognized that the broad constitutional power to regulate utility rates carries with it the power to place rates subject to refund pending the completion of a permanent rate investigation. Thus, in United Telephone Co. of Florida v. Mann, 403 So.2d 962 (1981), the Florida Supreme Court affirmed an order of the regulatory Commission placing rates subject to refund upon the completion of a comprehensive rate proceeding.

In fact, Commission Order No. 356271 is more protective of the utility than the order upheld in Mann. The Mann court upheld the order placing the utility's rates subject to refund, notwithstanding the fact that no findings had been made as to the appropriate return on equity that would be used to calculate the utility's refund obligation during the interim period. The Florida Court stated that consideration of return on equity testimony would

be too time consuming for an interim determination. Id. at 967. The Court reasoned:

> The Commission is unable to determine at the time of the interim hearing the amount of the utility's revenues, if any, which are excessive. Such a determination can only be made after a comprehensive rate proceeding has been held. A part of that determination is the rate of return which the utility should be authorized to earn during the pendency of the full ratemaking proceeding.
>
> Therefore, the Commission may base its refund order upon the newly established rate of return so long as the new rate is based upon data that existed before the Commission issued its interim order.

Id. at 967. (emphasis added)

The Mann Court concluded: "The Commission properly ordered a refund of all revenues that were collected in excess of the newly authorized rate of return." Id. at 968.

The Oklahoma Corporation Commission, in contrast to the Florida agency, permitted an interim hearing, at which Bell fully participated, to determine what return an equity would be used to compute refund obligations during the interim period, and thus provided advance notice to the utility of the return that would be used to compute refund obligations.

The principal Oklahoma case relied on by Bell, Southwestern Public Service Co. v. State, 637 P.2d 92 (1981), does not compel a contrary result. In that case, there was no interim Commission order issued which placed the utility's rates subject to refund from the date of that order. Further, in Southwestern Public Service, there was no interim finding that a rate reduction would

reasonably be expected to be forthcoming, which established the evidentiary predicate for the interim order challenged by Bell.

CONCLUSION

This Court has recognized that the Commission has broad legislative powers to fashion appropriate remedies as "the exigencies of the times and changing conditions demand." Lone Star Gas Co. v. Corporation Com'n, supra, 39 P.2d at 550. In the past, the Commission has fashioned appropriate interim remedies to protect utilities when regulatory delays postponed needed rate increase.

Oklahoma utility consumers may now be entering an era of declining rates for utilities. In the instant case, the Commission has used its broad equitable powers to fashion an appropriate remedy to protect ratepayers from the impact of regulatory delays that apparently postpone rate reductions. The Commission acted within its broad constitutional powers when it issued Interim Order No. 356271 placing Bell's rates subject to refund, and the Application to Assume Original Jurisdiction should be denied.

Respectfully submitted,

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BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE EFFORT OF THE 1986 TAX REFORM ACT ON OKLAHOMA UTILITIES

CAUSE NO. PUD 000260

DISSENTING OPINION OF COMMISSIONER BOB ANTHONY TO ORDER NO. 413667

Integrity and Justice

Bribery and corruption determined the original outcome in this public utility rate case. The Oklahoma Corporation Commission therefore should now make every effort to reach a fair and honest decision regarding all issues raised in this case, including those once anticipated to be resolved by the PUD 662 case. Confidence in state government and the integrity of the Oklahoma Corporation Commission are at stake here (see Appendix A). The people of Oklahoma deserve justice. Unfortunately, the Attorney General, the Administrative Law Judge (ALJ), and now the Oklahoma Corporation Commission majority have decided rehearing the evidence in this case (without the influence of bribery) is not in the public interest.

Narrow Scope and False Analysis

This Commission fails to meet its duty to ratepayers by narrowing the scope of its review to four remand issues which have diminished in regulatory importance over time. A full rate review of the evidence in both the PUD 260 record and the companion PUD 662 record is required. Unfortunately, the ALJ report and the majority's order have constructed the fantasy that the bribe paid in the PUD 260 case only influenced the refund/upgrades issue. This false analysis allows the majority to avoid dealing with the fact that the entire original PUD 260 order is tainted and constitutionally defective. The majority ignores the overall taint and then dismisses the tainted refund/upgrades decision as an issue which probably does not make any difference now. Fortunately, the majority does not make the claim that the PUD 662 settlement resolved the PUD 260 case. According to one review of the combined record of both of these cases, Southwestern Bell Telephone Company (SWBT) still owes its Oklahoma customers over $2.2 billion (see Appendix B).

Rate Reduction Stipulation

The June 23, 1987 "Stipulation Between Staff and Southwestern Bell Telephone Company" in this case (see Appendix B, Attachment 10) states, "...if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, ... said reduction will be effective as of July 1, 1987." It is unfortunate the Attorney General chose not to answer Question 5 of my "Request For Legal

Briefs" which addresses this topic. However, the Attorney General did state, "...the Commission may recognize and incorporate the evidence in the record of Cause No. 890000662 into the record of Cause No. 860000260..." (see p. 17 of Response Brief), and therefore he gives some support to the $2.2 billion analysis. Even if the SWBT "authorized rates" are not considered "over charges," they are still subject to reduction according to the signed stipulation. Furthermore, SWBT rates need not be found to be legal or illegal in this case for the Commission to order refunds because the company agreed to change the status of its rates from being permanent to being interim subject to refund as of July 1, 1987. With extremely large rate reductions for customers potentially at issue, I find it unbelievable the Attorney General and the Commission majority can decide it is not "in the public interest" to rehear this case. The PUD 260 and PUD 662 evidentiary records are available and would result in substantial benefits to ratepayers if decided in favor of the original arguments of Attorneys General Robert Henry and Susan Loving and Assistant Attorney General Robert Butkin.

Mischaracterization of Anthony Dissent to Order No. 341630

My dissent to the tainted September 20, 1989 Commission order in the PUD 260 case has been characterized by the Administrative Law Judge and now the Graves/Apple Commission majority as having a "main area of dissent" based on the refund/upgrades question. In fact, I voted against the entire order. But whatever my "main" area of dissent may have been does not change the fact that my dissent explicitly stated "a larger total amount could have been determined." Unfortunately, the current Attorney General, the ALJ, and the Graves/Apple Commission majority choose not to rehear the financial and legal arguments of Robert Henry, Susan Loving, and Robert Butkin, and therefore the people of Oklahoma are precluded from a rate adjustment reflecting a "larger total amount." It is interesting the ALJ finds importance in the original Staff position here but ignores the original positions of the Attorney General.

Commission Staff

The Administrative Law Judge and the order by the Commission majority rely on assertions about the credibility of Commission Staff, but the order ignores the firing "for lack of confidence" of the Applicant in PUD 260 and it further ignores the gifts of cash, football tickets, hundreds of hams and turkeys, etc. given by Mr. Anderson's law firm.

Contradiction in Findings 5 and 6 by ALJ and Commission Majority

The ALJ and Commission majority contradict themselves by saying, "the Commission finds that the original decision rendered in this case is voidable due to the bribery conviction of a former Commissioner,..." but then go on to say, "the Commission lost jurisdiction of this case 30 days after the Commission's final order was issued." What the Commission should do is exercise leadership and meet its constitutional responsibilities by seeking permission from the Oklahoma Supreme Court to rehear this case.

Fiction of an Earmarked Bribe

The ALJ and Commission majority create the fiction that William L. Anderson, a SWBT attorney of record in this case, bribed Commissioner Bob Hopkins only pertaining to his position on the refund/upgrade issue. The Hopkins bribery conviction was part of a long term, pervasive activity to buy influence and buy access to commissioners (see Appendix A). Other questions about this particular case, including whether to separate issues into the PUD 662 case, were the subject of wrongdoing and illegal conduct. It is absolute fantasy to suggest the Hopkins' bribe (paid after the vote) was for a single, narrowly defined aspect of the utility rate case. This construction by the majority is a weak attempt to say the bribery was limited or

had little effect. In fact, the entire 1989 decision is tainted, and all general rate case issues involved still deserve a fair hearing. Because the majority position depends on the earmarked bribe theory, it defies reality and common sense.

Oklahoma Bar Association

As stated on the record in this case, on October 1, 1992 as Chairman of the Oklahoma Corporation Commission, I filed formal bar complaints against William L. Anderson and the SWBT attorney and the Oklahoma Natural Gas general counsel to whom he reported. Except for the general counsel of the Oklahoma Bar Association approaching me at a girls basketball game saying he would visit me soon after his upcoming association meeting, I have received no acknowledgment whatsoever of my complaints. The Bar Association chose not to hear what I was willing to expose about corruption and attorney misconduct at one of Oklahoma's most active court operations. In my opinion, this neglect of duty by the Oklahoma Bar Association has contributed to the failure of ratepayers to see justice in this tainted public utility rate proceeding.

Conclusion

State government apparently does not have the courage to deal justly and effectively with bribery and public corruption when prominent companies and well-connected lawyers are involved. A deplorable and shameful decision has been made in this case. The financial cost to ratepayer families and the state's economy is staggering.

Bob Anthony
Bob Anthony, Commissioner

July 2, 1997

APPENDIX A

JIM STANDARD'S *Oklahoma*

Utility Scandals Nothing New At Commission

The practice of paying money to Oklahoma Corporation Commission regulators by utility firms should not come as news to William L. Anderson, Oklahoma City attorney accused last week of bribing a former corporation commissioner in connection with a Southwestern Bell rate increase case.

While corporation commission general counsel from 1958-66, Anderson received regular payments from at least one utility company and moonlighted for attorneys representing utility companies, all at the same time he was representing taxpayers in rate increase filings before the commission.

While hired as a public servant, Anderson received regular $150 per month checks from an attorney representing Oklahoma Natural Gas Co. during the time he was corporation commission general counsel ostensibly representing the public in utility rate increase cases.

In addition, Anderson admitted receiving an additional $5,500 during the same period for moonlighting at night with the same law firm.

The payments to Anderson provoked a public scandal when they were revealed in 1967. No action was taken against Anderson, primarily because Oklahoma at the time had no conflict of interest laws on the books pertaining to corporation commission employees.

At the time, Anderson displayed remorse, although he insisted there was no conflict of interest.

"I wish to God I hadn't done it," he said in a 1967 interview, "but I did receive the money and there's nothing I can do about it now." He added, "I swear to God I never sold the people down the river."

In 1966, Anderson resigned as corporation commission general counsel, presumably to give his full attention to the utility companies. He promptly signed on as a $500 per month representative of Oklahoma Natural.

By 1979, documents in public filings showed payments of more than $120,000 annually to Anderson by a myriad of firms regulated by the corporation commission. The figure included only firms involved in rate cases and not others who may have retained Anderson's services.

Come 1993, and Anderson again is in the news. A federal grand jury alleges he paid a $10,000 bribe to former Corporation Commissioner Bob Hopkins to influence the commissioner's vote in the Southwestern Bell rate case. Anderson has pleaded innocent.

Also, filings before the state Supreme Court allege Anderson and a Bell executive worked together to deliver $10,000 in cash to present Commissioner Bob Anthony to "gain access" to the public official. Anderson and Miller also are named in the supreme court filing as having offered $15,000 to Anthony to influence his vote in the Bell rate case.

Anthony says he reported the incidents to the FBI, touching off the probe that led to last week's indictments.

The scandal 30 years ago sheds insight into how things have always happened in Oklahoma. Corporation commissioners at the time said they had no problem with Anderson, their general counsel, accepting money from attorneys for utility companies. They also acknowledged they themselves had been recipients of utility company largess.

Anderson's predecessor as general counsel, James G. Welch, also acknowledged he had been a regular recipient of utility company money while on the public payroll. He also resigned to join ONG's law firm and then proceeded to hire Anderson for a moonlighting job.

Changing Internal Revenue Service regulations, campaign contributing reporting laws and conflict of interest legislation have altered the way the game is played, but Oklahomans have reason to wonder whether things have really changed.

Adjusted for inflation, the scenario has the appearance of being all too familiar.

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APPENDIX B

TO: Commissioner Bob Anthony

FROM: James M. Proctor, Aide to Commissioner Anthony

DATE: March 14, 1997

SUBJ: Cause No. PUD 860000260, Southwestern Bell Telephone Company.

On May 1, 1996, Commissioner Bob Anthony filed a "Request For Legal Briefs" (Attachment No. 1). This filing requested parties to Cause No. PUD 860000260 ("Cause 260") involving Southwestern Bell Telephone Company ("SWBT") to prepare briefs addressing the bribery and irregularities in the decision-making process which resulted in a tainted rate order now before the Commission on remand from the Oklahoma Supreme Court. This filing was supplemented with "May 22, 1996 Supplement to May 1, 1996 Request For Legal Briefs" (Attachment No. 2).

I have reviewed the briefs filed in response to "Request For Legal Briefs". Also, I have reviewed the record of Cause 260 and SWBT's most recent rate investigation, Cause No. PUD 890000662 ("Cause 662"). Based upon my examination of the briefs and evidence filed in the above rate cases, I believe the Commission:

1. has the authority and responsibility to hold a rehearing on the merits for Cause 260 after providing the parties proper notice;

2. may recognize and incorporate the evidence gathered and developed by the Commission staff, the State Attorney General and other parties to Cause 662 into the record of Cause 260; and

3. may consider SWBT's rates interim and subject to refund since July 1, 1987 with accrued regulatory liabilities for refunds subject to an 11.589% interest rate.

In reviewing the record for these causes, I found that Commission staff filed a Proposed Administrative Law Judge Report of the Commission Staff ("Proposed Order") on April 15, 1992, for Cause 662. The Proposed Order based its findings and conclusions upon audits and evidence provided by Assistant Attorney General Robert Butkin, the Commission staff, the AARP and others. Further, the Proposed Order recommended that SWBT's rates be decreased by $126.5 million per year.

The recommendations in the Proposed Order suggest that a thorough review of the record in these causes could lead to substantial rate decreases and refunds for SWBT's Oklahoma customers after relevant evidence is presented in the rehearing. To illustrate the significance of unsettled issues involving Cause 260, one only needs to recognize that SWBT's rates as of July 1, 1997, will have been interim subject to refund for 10 years. Should the Commission find SWBT's rates have been excessive by $126.5 million annually, refunds with interest as of July 1, 1997, would be approximately $2.2 billion or $1.2 billion if only interest is considered after April 19, 1991.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE EFFECT OF THE 1986 TAX REFORM ACT ON OKLAHOMA UTILITIES.	))))	CAUSE NO. PUD 860000260

REQUEST FOR LEGAL BRIEFS

Commissioner Bob Anthony requests the parties by June 10, 1996 to submit briefs addressing the irregularities in the decision-making process which resulted in the rate order now before the Commission on remand from the Oklahoma Supreme Court.

Attempts to improperly influence Commissioners surrounded issuance of that order, hereafter referred to as the SWBT 260 order. On February 2, 1989 Dave Miller, then a Vice-president of Southwestern Bell Telephone Company ("SWBT") came to my office with a scheme to illegally raise cash for me. (See Attachment 1.) On February 21, 1989 Dave Miller personally delivered $2,450 in cash to me in my office. He indicated the money came from "myself [Miller] and our lawyer [Glenn Glass] and my boss [SWBT Oklahoma Division President Royce Caldwell]." (See page 1 of Attachment 2). I turned the money over to the Federal Bureau of Investigation (FBI) and worked with the FBI in its investigation of the incident. In that regard, Mr. Miller has refused to answer questions on the matter when posed in the SWBT 662 case. At a deposition on May 6, 1993, Miller took the Fifth Amendment when asked about the money paid to me.

(See Attachment 3.) In any event, on September 15, 1989 Bill Anderson, then an attorney of record for SWBT, told me by telephone that he had $7,500 for me in a briefcase in the trunk of his car. On September 18, 1989, Anderson once again told me that he had $7,500 in cash for me, to be used politically or otherwise. These dubious offers occurred only days before the September 20, 1989 vote on the SWBT 260 order. According to an October 1, 1993 Attorney General filing at the Oklahoma Supreme Court (see Attachment 4), "SWBT'S REPRESENTATIVES KNOWINGLY SOUGHT TO INFLUENCE ANTHONY THROUGH ILLEGAL CASH PAYMENTS." On October 5, 1993 Special Master William S. Myers, Jr. issued his report to the Oklahoma Supreme Court (see Attachment 5) which on page 3 stated:

> Such evidence was that Commissioner Anthony had received illegal cash contributions (which he immediately gave to the FBI) from William Anderson, attorney for SWBT in PUD-260 and PUD-662 pending before the Commission during the period in question and from David Miller, SWBT's Vice President in Oklahoma for Governmental and Regulation Affairs and also a registered lobbyist for SWBT. The further evidence in this regard was that the cash was accompanied by false lists of contributors. This was given for the asserted purpose of having "access" to him, which was no more or no less than an effort to have him look with favor on their pending rate matters.

The Attorney General in an October 13, 1993 motion to the Oklahoma Supreme Court (see Attachment 6) on page 3 stated:

> Judge Myers found that <u>but for</u> Bell's own illegal conduct, the grounds on which Bell bases its disqualification proceeding would never have arisen. Bell does not approach this remedy with just unclean hands, but with filthy, putrid hands, which, virtually from the moment that Commissioner Anthony took office, sought to reach out and touch and corrupt Commissioner Anthony with illegal cash contributions.

In any event, no matter how that they are characterized, the attempts to buy my vote failed to affect the outcome of the SWBT 260 order. I dissented in the SWBT 260 order and voted in favor of a refund to the public. Unfortunately, the same cannot be said of the majority decision. It is a matter of public record that agents of SWBT bribed Commissioner Bob Hopkins in exchange for his vote on the SWBT 260 order. Hopkins went to the federal penitentiary for taking the bribe. (See Attachments 7 and 8). The U. S. Court of Appeals for the Tenth Circuit on page 6 of its Order and Judgment states:

> The record contains substantial testimony by a witness, Mike Murphy, describing the payoff procedure and how Murphy shared cash payments with Mr. Hopkins. The 1991 tapes, properly admitted under Fed. R. Evid. 801(d) (2) (E), detailed efforts to conceal the payoffs from the FBI. From those tapes, the jury heard recorded conversations among Hopkins, Anderson, Murphy and other Southwestern Bell executives plotting their "story" in the event federal agents questioned them.

In regard to the Hopkins bribe, on February 5, 1991 Bill Anderson sent a letter to the headquarters of Southwestern Bell Telephone Company addressed to its Corporate Vice President and Assistant General Counsel William J. Free (see Attachment 9). On page 3, referring to Dave Miller and himself and an alleged agreement to get money for Commissioner Hopkins, Bill Anderson describes "... an agreement that he [Miller] and I [Anderson] had made on behalf of Bell Telephone Company, which I kept, and, it cost me several thousands of dollars, because, I'm old fashioned in belief in keeping my agreement. The present top management of Bell knows about that agreement ..." On page 5 referring to the SWBT 260 case, Bill Anderson states, "Bell Telephone Company has been good to the Anderson family, and I like to hope that I have made you some

money in the past, and do know that without my efforts you probably would not have been authorized to reinvest the tax over earnings on one-party upgrade rather than refund." As a result, the SWBT 260 order is tainted. Furthermore, the Attorney General and American Association of Retired Persons (AARP) argued for substantially greater benefits for customers than those found by the tainted SWBT 260 order.

Issues to be briefed

The taint on majority decision raises the following issues which need to be briefed:

Question 1.

What should we do about Hopkins' tainted vote?

Question 2.

In light of the above-described facts, is the current proceeding in this case limited to the issues remanded by the Oklahoma Supreme Court or is the entire order invalid due to the corruption involved.

Question 3.

If in response to Question 2, you support the proposition that a rehearing of the merits is required, what procedure do you recommend to resolve this case?

Bob Anthony

Commissioner Bob Anthony

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE EFFECT OF THE 1986 TAX REFORM ACT ON OKLAHOMA UTILITIES	))))	CAUSE NO. PUD 860000260

ATTACHMENTS TO REQUEST FOR LEGAL BRIEFS[1]

1. Transcribed audio tape recording of Robert Anthony and Dave Miller (February 2, 1989). transcript prepared by FBI.

2. Transcribed audio tape recording of Robert Anthony and Dave Miller (February 21, 1989). transcript prepared by FBI with editing marks by Bob Anthony on December 15, 1990.

3. Transcribed Deposition of David H. Miller (May 6, 1993), "In the Matter of the Application of Howard W. Motley, Jr., for an Inquiry into the Rates and Charges of Southwestern Bell Telephone Company," (Oklahoma Corporation Commission Cause No. PUD 890000662).

4. Motion for Applellant, Attorney General, "To Reopen the Record for the Admission of Additional Evidence," Southwestern Bell Telephone Company v. Oklahoma Corporation Commission and the State of Oklahoma, (Okl. Sup. Crt. 1993) (No. 80,333 consolidated with Nos. 80,340; 80,344; 80,342; and 80,345).

5. "Report of Special Master" (Okl. Sup. Crt. 1993), (No. 80,333 consolidated with Nos. 80,334; 80,340; 80,342; and 80,345).

6. Motion and Brief in Support for Appellant, Attorney General, "To Deny Southwestern Bell's Bias-Based Challenge to Corporation Commission Order No. 367868, or in the alternative, for an Evidentiary Hearing, "Susan B. Loving, Attorney General, v. Oklahoma Corporation Commission and Southwestern Bell Telephone Company, (Okl. Sup. 1993) (No. 80,333 consolidated with Nos. 80,340; 80,344; 80,342; and 80,345).

7. "Indictment of Robert H. "Bob" Hopkins," United States of America v. William L. Anderson, Jewel B. Callaham and Robert H. "Bob" Hopkins, (W.D. Okla. 1993), (No. CR 93-137-A).

8. "Order and Judgment," United States of America v. Robert (Bob) H. Hopkins, (10th Cir. 1996), (No. 95-6120).

9. Letter from William L. Anderson to William J. Free (February 5, 1991).

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[1]Copy of REQUEST FOR LEGAL BRIEFS provided herewith has margin and editing changes on pages 2 and 3.

2

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE EFFECT OF THE 1986 TAX REFORM ACT ON OKLAHOMA UTILITIES.	))))	CAUSE NO. PUD 860000260

MAY 22, 1996 SUPPLEMENT TO MAY 1, 1996 REQUEST FOR LEGAL BRIEFS

My administrative aide, James M. Proctor, has brought to my attention that Order No. 313853 was entered by the Commission on June 23, 1987 in Cause No. PUD 260 adopting a stipulation (see Attachment 10) between Commission Staff and SWBT. On July 6, 1987 Order No. 314277 was entered by the Commission to correct scrivener's errors in Order No. 313853. The stipulation entered in these orders stated:

> In order to allow the full benefits of the 1986 Tax Reform Act to accrue to the benefit of Respondent's Oklahoma customers, Respondent and Staff agree that if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, taking into account all known and measurable changes in Respondent's business, that said reduction will be effective as of July 1, 1987.

Hence, according to Mr. Proctor, the stipulation had the effect of placing SWBT's rates interim, subject to refund pending resolution of Commission Staff's examination of SWBT's cost of service and the issuance of a final Commission order in Cause No. PUD 260.

The Commission entered three rate orders pursuant to the examination of SWBT's cost of service in Cause No. PUD 260. These orders include Order No. 341630 (September 20, 1989), Order No. 341820 (September 27, 1989) and Order No. 342343 (October 19, 1989). I dissented to the majority's decision in Order No. 341630 and concurred in part and dissented in part to the majority's decision in Order No. 342343. The orders found, based upon the Commission Staff's recommendations developed and proposed under the direction of Public Utility Division Director Howard W. Motley, that SWBT had a revenue excess for 1987 of $9.5 million, for 1988 of $12.0 million and for 1989 of $5.9 million that should accrue interest on the uninvested balance at the rate of 11.589%, compounded annually from July 1, 1987 until the Commission-ordered service improvement program was fully implemented. From reviewing these orders, Mr. Proctor has found the period for which rates were subject to refund was presumed to end September 30, 1989 upon the issuance of a final Commission order implementing a $7.8 million rate decrease.

I have been reminded by James M. Proctor that under his direction as the Public Utility Division Director, the Commission Staff completed a review of SWBT's cost of service in Cause No. PUD 662 for the test year ended December 31, 1989. The Commission Staff filed a Proposed Administrative Law Judge Report of the Commission Staff "Proposed Order" on April 15, 1992. The Proposed Order, among other findings and conclusions, recommended a rate decrease for SWBT's customers of $126.5 million based upon the evidence entered in the record of Cause No. PUD 662.

Additional Issues to be Briefed

Question 4.

If in response to Question 2, you support the proposition that a rehearing of the merits is required, may the Commission recognize and incorporate the evidence gathered and developed by the Commission Staff, the State Attorney General and other parties to Cause No. PUD 662 into the record of Cause No. PUD 260?

Question 5.

If in response to Question 2, you support the proposition that a rehearing of the merits is required, should the Commission consider the status of SWBT's rates to be interim, subject to refund, beyond September 30, 1989 pursuant to the attached stipulation and until a final order is entered in Cause No. PUD 260?

Bob Anthony

Commissioner Bob Anthony

JUN 23 1987
SECRETARY
CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
HOWARD W. MOTLEY, JR., FOR AN)
INQUIRY INTO THE EFFECT OF THE 1986)
TAX REFORM ACT ON OKLAHOMA UTILITIES.) CAUSE PUD NO. 000260

STIPULATION BETWEEN STAFF AND
SOUTHWESTERN BELL TELEPHONE COMPANY

Howard W. Motley, Jr., Applicant, on behalf of the Public Utility Division (Staff) of the Oklahoma Corporation Commission and Southwestern Bell Telephone Company (Respondent), hereby stipulate and agree as follows:

1. The 1986 Tax Reform Act which was signed by the President of the United States on October 22, 1986, lowered the corporate income tax rate from 46% to 34%, effective July 1, 1987. Respondent's currently authorized rates and charges are based on a 46% income tax rate.

2. Applicant filed an application herein requesting that the Commission quantify the effect of the 1986 Tax Reform Act on certain public utilities, including Respondent.

3. An investigation and audit must be conducted by the Staff in order for Staff to make a final recommendation in this cause. Respondent and Staff further acknowledge that Staff's investigation and audit will not be completed for several months due to the number of utilities being investigated and the limited resources of Staff.

4. In order to allow the full benefits of the 1986 Tax Reform Act to accrue to the benefit of Respondent's Oklahoma customers, Respondent and Staff agree that if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, taking into account all known and measurable changes in Respondent's business, that said reduction will be effective as of July 1, 1987.

5. All parties to this Stipulation will cooperate in seeking its acceptance and approval by the Commission. If this Stipulation is not accepted and approved by the Commission without modification or condition, then it shall not be binding

on either party, and both parties shall in that event be deemed to have reserved all their respective rights and remedies in this proceeding.

6. It is agreed that nothing in this Stipulation shall constitute an admission by any part of the correctness or applicability of any claim, defense, rule or interpretation of law, allegation of fact, principle or method of ratemaking or cost of service determination. It is also agreed that, except as stated herein, the parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, method of ratemaking, cost of service determination, accounting method, design of rate schedule, terms and conditions of service, or the application of any rules or interpretation of law that may underlie, or may be thought to underlie, this Stipulation. It is further agreed that in any further negotiation or proceeding, other than any proceeding involving the honoring, enforcement or construction of this Stipulation, the parties shall not be bound or prejudiced by this Stipulation.

Dated this 23rd day of June, 1987.

PUBLIC UTILITY DIVISION
OF THE CORPORATION
COMMISSION OF OKLAHOMA

By: Jane P. Olson

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SOUTHWESTERN BELL TELEPHONE COMPANY

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Attorney for Southwestern Bell Telephone Company

HARPER v. AETNA BLDG. & LOAN ASS'N.

1922 OK 208
211 P. 1031
88 Okla. 128
Case Number: 12110
Decided: 06/13/1922
Supreme Court of Oklahoma

Cite as: 1922 OK 208, 88 Okla. 128, 211 P. 1031

HARPER
v.
AETNA BLDG. & LOAN ASS'N.

Syllabus

¶0 1. Appeal and Error--Remand--Subsequent Proceedings--Jurisdiction of Trial Court.
When a cause is reversed and remanded by the Supreme Court, and the mandate is received and entered of record by the trial court, then the trial court is vested with jurisdiction to make any order or enter any judgment in the further progress of the cause not inconsistent with the decision of the Supreme Court, and in making such orders the trial court has jurisdiction to interpret the decision and mandate of the Supreme Court.
2. Lis Pendens--Rights Acquired by Purchaser--Pendency of Action.
A purchaser of real property from a party to a pending action is bound by the judgment rendered in such action against his grantor and acquires no greater right than his grantor. This rule applies without regard to the form of action or whether the decree is erroneous.
3. Same--Right of Purchaser to Vacation of Judgment of Foreclosure.
Records examined, and held, the plaintiff in error was bound by the judgment, and that the motion to vacate was properly overruled.

Error from District Court, Oklahoma County; George W. Clark, Judge.

Action by Aetna Building & Loan Association in foreclosure against Lucie H. Holt [illegible] I. Holt. Judgment for plaintiff. C. B. Harper filed motion to vacate the

judgment, asserting an interest in the property involved in the foreclosure. Motion overruled. Movant brings error. Affirmed.

John H. Hayson and Wm. P. Harper, for plaintiff in error.
John D. Rogers and Suits & Hall, for defendant in error.

KENNAMER, J.

¶1 This is an appeal from the district court of Oklahoma county. On August 8, 1911, Lucie Holt and E. I. Holt executed a note to the Aetna Building & Loan Association, the defendant below and defendant in error here, for $ 3,200, payable according to the by-laws of said association, and executed a mortgage on lot 6 in block 20, in Jefferson Park addition to Oklahoma City, Oklahoma county, Okla., to secure the payment thereof. Because of the nonpayment of said note, as well as of insurance and the taxes, foreclosure action was instituted in the district court of Oklahoma county on May 21, 1913. Lucie M. Holt and E. I. Holt, defendants in this suit, by their attorney, William Harper, answered by general denial, except an admission was made as to the execution of the note and mortgage; and they affirmatively pleaded that said note and mortgage were usurious, asked for cancellation of said instruments, and for judgment against the association. Reply having been filed, in which the affirmative allegations of the answer were denied, trial was had on December 11, 1914, the defendants in said suit appearing in person and being represented by their attorney above named. The district court held the contract usurious, set off double the amount of interest, membership fees, and commissions paid against the claim of the association, and rendered judgment for it for $ 2,449 and the foreclosure of the mortgage.

¶2 An appeal to this court was taken by said association, and on June 8, 1920, judgment of reversal was rendered, it being held that the contract sued on could not be construed as a valid building and loan transaction under the laws of this state; that said association was not entitled to the protection of the Oklahoma building and loan association laws; that it occupied the same position as an ordinary lender of money; that the note and contract sued upon were not usurious; and that the said association should have judgment for the principal of the note and for the money advanced and insurance, after allowing credits on said sums for payments made on the stock purchased and for entrance fees collected when the loan was made, with six per cent. interest per annum from the time the money was received by the defendants or advanced for them, and the trial court was directed to render judgment accordingly. Holt et al. v. Aetna Building & Loan Ass'n, 78 Okla. 307, 190 P. 872.

¶3 The mandate of this court in said cause was spread upon the records of the district

court, and on September 11, 1920, the said association filed a motion for judgment on the mandate, which, when the same came on to be heard, was overruled. Said cause was thereupon assigned for trial in the district court on November 29, 1920, and on said date was regularly tried and judgment rendered for said association for the sum of $ 4,617.22 and for a foreclosure of the mortgage on the real estate hereinbefore referred to. This judgment was not appealed from and became final, and said association caused an order to be issued for the sale of said real estate under said foreclosure. On December 31, 1920, after the rendition of the judgment above referred to on November 29, 1920, the plaintiff in error, C. B. Harper, filed her motion in the court below to vacate the judgment in so far as the same constitutes a decree of foreclosure against the real estate described in the mortgage, and to modify the judgment as to the amount of recovery adjudged in favor of said association from the sum of $ 4,617.22 to the sum of $ 4,267.74; the grounds for said motion being, first, that the movant was then, and had been for several years, the owner of the said real estate described in said mortgage, and in the actual occupancy of the same as a homestead; and, second, that said judgment, in so far as the same is a decree of foreclosure of the mortgage sued on in said action against the said property claimed by said movant, is void, and that the district court was without power or jurisdiction to adjudge said mortgage to be a lien upon said property; and, third, that the amount of the money judgment rendered was excessive and should be reduced. This motion was by the district court overruled on January 10, 1921, and it is from the action of said court on said motion that this appeal is prosecuted in this court.

¶4 The records of this court show that in case No. 12012 in this court, the plaintiff in error, C. B. Harper, as petitioner, filed her petition against George W. Clark, as judge of the district court of Oklahoma county, Okla., in which she prayed that this court direct the trial court to vacate that part of the judgment involved in this appeal upon the ground that said district court had exceeded its authority and jurisdiction in that it had not followed the mandate and opinion of this court. This court in that case refused to issue the writ of mandamus asked for.

¶5 Plaintiff in error makes the following assignments of error:

> "First. The court erred in overruling plaintiff in error's motion to vacate and set aside all that portion of said judgment which finds and adjudges that the mortgage sued on in this action is a valid lien upon and against the property in said mortgage and judgment described, and decrees the foreclosure thereof and orders that said property be sold in satisfaction of said judgment.
>
> "Second. The court erred in overruling plaintiff in error's motion to vacate such portion of said judgment for this, that such portion of such judgment constituted relief in excess of that directed by the mandate of this court in said cause, and was so rendered and entered in violation of and contrary to the direction of such mandate and is void.

> "Third. The court erred in overruling plaintiff in error's motion to vacate such portion of such judgment for this, that under the pleadings in said action and decision, judgment and mandate of this court in said cause such portion of such judgment was so made and entered in violation of the provisions of the Constitution and laws of the state of Oklahoma and the Constitution of the United States relating to due process of law, and is void."

¶6 As stated by the plaintiff in error in her brief, the several assignments of error involve but one proposition, viz.:

> "That the portion of the judgment constituting a foreclosure of the mortgage sued on against the property of plaintiff in error is in excess of the power granted, and directed to be exercised, by the mandate of the Supreme Court, and is void; that under the directions of the mandate the court had no power to render any other or further judgment than a judgment against the defendants for the sums mentioned and directed in the mandate."

¶7 As has been shown, the plaintiff in error, C. B. Harper, was not a party of record in the cause in which the judgment complained of was rendered. After that judgment was rendered, said plaintiff in error filed her motion in the district court alleging that she was the owner of the real estate covered by the mortgage which was foreclosed, and asked that the court vacate said judgment because, as she alleged, the same was void. It is not shown in the record when the plaintiff purchased the property, but it is not claimed by her that such purchase was made before the suit was filed by the defendant in error, the Aetna Building & Loan Association, against Lucie M. Holt, E. I. Holt, and others, which was on May 21, 1913. The record further shows that the answer of the defendants in the case last mentioned was filed May 8, 1914, and that Wm. P. Harper signed said answer as attorney for said defendants. The statement in the brief of the defendant in error in this case that said Wm. P. Harper is the husband of the plaintiff in error, C. B. Harper, has gone unchallenged. We therefore take it as conceded that the plaintiff in error became the owner of the property pendente lite.

¶8 Section 4732, Revised Laws, Oklahoma, 1910, provides as follows:

> "When the petition has been filed, the action is pending so as to charge third persons with notice of its pendency, and while so pending no interest can be acquired by third persons in the subject-matter thereof as against plaintiff's title."

¶9 The rule which we think applies to the plaintiff in error is thus stated in 25 Cyc. 1476:

> "One acquiring interests pendente lite in a proceeding which is lis pendens is bound by the decree without regard to its form or whether it is erroneous."

¶10 It is so held in the cases of Norris v Ile, 152 Ill. 190, 38 N.E. 762, 43 A.S.R. 233, and McIlwrath v. Hollander, 73 Mo. 105, 39 Am. Rep. 484. This court has laid down the same rule in Lumber Co. v. Epps, 48 Okla. 372, 150 P. 164; Blackwell v. Harts, 66 Okla. 94, 167 P. 325; Smith v. Curreather's Merc. Co., 76 Okla. 170, 184 P. 102. In the case of Baker v. Leavitt, 54 Okla. 70, 153 P. 1099, it was said.

> "One who purchases real property from a party to an action involving the title thereto, after the institution and during the pendency of the action, is bound by the judgment rendered therein against his grantor and acquires no greater right than his grantor."

The first paragraph of the syllabus of the last cited case is as follows:

> "A final judgment of a court of competent jurisdiction is conclusive between the parties and their privies in a subsequent action involving the same subject-matter, not only as to all matters actually litigated and determined in the former action, but as to all matters germane to issues which could or might have been litigated and determined therein."

In the case of McWhorter v. Brady et al., 41 Okla. 383, 140 P. 782, this court stated the essential elements of lis pendens as follows:

> "(1) The property must be of a character to be subject to the rule; (2) the court must have jurisdiction both of the persons and the res; (3) the property or res invoked must be sufficiently described in the pleadings."

¶11 The plaintiff in error, C. B. Harper, having purchased the property covered by the mortgage of the defendant in error at some time during the nine years covered by this litigation, during all of which time her husband, Wm. P. Harper, was the attorney of record of the parties opposing the foreclosure of said mortgage, she is bound by the judgment of foreclosure to the same extent as though she had been a formal party of record at the time said judgment was rendered.

¶12 In reversing the case of the Holts against the Aetna Building & Loan Association, the following was the language and direction of this court:

> "It follows that plaintiff is entitled to judgment for the principal of the note sued on and for insurance money advanced on the property, after allowing credit on said sums for entrance fees collected when the loan was made, with 6 per cent. interest per annum from the time the money was received by defendants or advanced for them. This cause is therefore reversed, with directions to the trial court to render judgment accordingly."

¶13 The mandate, as shown by the records of this court, was as follows:

> "Whereas, the Supreme Court of the state of Oklahoma did at the June, 1920, term thereof, on the 8th day of June, 1920, render an opinion in the above-entitled cause, appealed from the district court of Oklahoma county, reversing the judgment of the trial court, with directions. Now, therefore, you are commanded to cause such reversal to be shown of record in your court and further proceedings herein shall accord with right and justice."

¶14 The decision of this court in that case was to the effect that the plaintiff therein, the Aetna Building & Loan Association, having entered into a contract with the Holts that was not strictly a building and loan contract, the dues upon stock, fines, membership fees, and all other payments made, except interest actually due, and the necessary and statutory fees for examining the title and preparing the abstract, must be credited on the loan; that the status of its loan to the Holts could not be worse than that of an ordinary loan, and that, considering the uncertainty of the law and the decisions relating thereto, the association ought to have whatever security the law could throw around it as a loan, and not be subjected to the severe penalties imposed on those who wantonly and flagrantly violate the law; that the loan was not usurious, and that the Holts, having given their note in good faith to procure the loan, are morally bound to pay the debt and to return the money actually received, with interest at the legal rate. This court was not asked in that case to decide, and did not decide, that the mortgage by the Holts to secure said loan was void. This court only held that the items hereinbefore mentioned were not legal obligations as to the Holts, and that the amounts thereof should be created on the loan. These items representing illegal indebtedness are readily separable from that part of the indebtedness which is legal. The conclusion naturally follows that the mortgage was valid as security for the legal indebtedness which the Holts were by this court found to be due to said association. The position of the plaintiff in error, C. B. Harper, is that because this court did not direct the trial court to proceed with the foreclosure of the mortgage executed by the Holts to secure their valid indebtedness, that part of the judgment of the trial court which finds and adjudges that said mortgage is a valid lien upon and against the real property therein described constituted relief in excess of that directed by the mandate of this court. With this we cannot agree. There was no question touching the validity or invalidity of said mortgage decided by this court in that case. The only question decided was that a part of the indebtedness of the Holts to the association was illegal, and they were relieved from the payment thereof. The mortgage and the foreclosure thereof were mere incidents to the indebtedness of the Holts to the association.

¶15 This case is readily distinguished from the case cited by plaintiff in error of St. L. & S. F. Ry. Co. v. Hardy, 45 Okla. 423, 146 P. 38. In that case this court held in effect that where the findings and conclusions of this court cover the entire case made by the pleadings and evidence in the trial below, and nothing is left open for further examination in the trial court, and the case is simply reversed without directions, it is the duty of the trial court to enter judgment in accord with the opinion; and that such trial

court is without jurisdiction to permit amendments to the petition, alleging an entirely different state of facts as the direct and proximate cause of plaintiff's injuries, and which facts had been adversely determined by the opinion of the court. In this case this court made no finding or conclusion whatsoever relative to the mortgage which secures the indebtedness of the Holts, and the direction in the opinion was that the case was reversed with directions to render judgment for the principal of the note sued on and for insurance money advanced on the property, after allowing certain credits hereinbefore referred to, and in the mandate the trial court was "commanded to cause such reversal to be shown of record in your court, and further proceedings herein shall accord with right and justice." The trial court construed the mandate to mean that "right and justice" required a judgment of foreclosure of the mortgage executed by the Holts, in addition to the money judgment against them, and in this construction we concur.

¶16 The general rule upon this subject is thus stated in 4 C. J. p. 1220:

> "Generally, on the remand of a case, the trial court may make any order or direction in its further progress that is not inconsistent with the decisions and directions of the appellate court. And this rule is especially applicable where the mandate recognizes a certain discretion in the trial court. A very similar rule is that the trial court may consider and decide any matters left open by the mandate of the appellate court. The trial court may take such action, not inconsistent with the decision of the appellate court, as in its judgment, law and justice require, when the case has been remanded generally without directions, or for further proceedings, or for further proceedings not inconsistent with the opinion."

¶17 In the case of Lynn v. McCue, 99 Kan. 400, 161 P. 613, it was held that "When the mandate was spread of record and the case was again brought before the trial court, that court was vested with jurisdiction and power to interpret the decision and mandate of the Supreme Court which, it is held, were fairly open to interpretation." The reason for the rule is that the trial court must interpret the mandate of the appellate court in order to proceed as directed.

¶18 In Harding v. Garber, 20 Okla. 11, 93 P. 539, this court held that a mandate to an inferior court, reversing an order setting aside a decree of foreclosure, and directing an order to be made in the foreclosure proceeding that will permit one of the defendants therein to appear and defend, but which will not disturb the possession of another defendant who is a mortgagee in possession, does not deprive the inferior court of jurisdiction to appoint a receiver when grounds exist therefor.

¶19 In the case of State ex rel. Goldsborough v. Huston, 28 Okla. 718, 116 P. 161, this court held that "The district court may determine any matters left open by the mandate of this court, and judgment rendered thereon can be reviewed in this court by new proceedings in error only."

¶20 In Oklahoma City Land & Development Co. v. Hare, 66 Okla. 190, 168 P. 407, it was said:

> "Where the proceedings in a cause, directed by the appellate court to the trial court, is not clearly and explicitly expressed in the mandate, the lower court may look to the opinion and syllabus in said cause to ascertain what action the appellate court has directed the lower court to take. * * *
> "'In construing the mandate, or in determining the action to be taken thereon, in case of a general order or incomplete directions, the lower court should look to the reasons stated in the opinion of the appellate court, and be governed thereby in the action taken. Especially is this true when the remand is for further proceedings in accordance with, in conformity to, or not inconsistent with the opinion, for in such cases the opinion is practically a part of the mandate.' 3 Cyc. 491; Bloxham v. Fla. Cen. & P. R. Co., 39 Fla. 243, 22 So. 697; Noonan v. Orton, 31 Wis. 265; West v. Brashear, 14 Pet. 51, 10 L. Ed. 350."

¶21 The judgment of the trial court overruling the motion of the plaintiff in error to vacate the judgment of the trial court foreclosing the mortgage of the defendant in error is in full respects affirmed.

¶22 JOHNSON, McNEILL, ELTING, and NICHOLSON, JJ., concur.

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

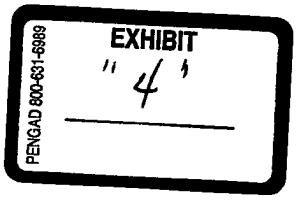
IN THE MATTER OF THE APPLICATION OF HOWARD W. MOTLEY, JR., FOR AN INQUIRY INTO THE EFFECT OF THE 1986 TAX REFORM ACT ON OKLAHOMA UTILITIES.	))))	CAUSE NO. PUD 860000260

MAY 22, 1996 SUPPLEMENT TO MAY 1, 1996 REQUEST FOR LEGAL BRIEFS

My administrative aide, James M. Proctor, has brought to my attention that Order No. 313853 was entered by the Commission on June 23, 1987 in Cause No. PUD 260 adopting a stipulation (see Attachment 10) between Commission Staff and SWBT. On July 6, 1987 Order No. 314277 was entered by the Commission to correct scrivener's errors in Order No. 313853. The stipulation entered in these orders stated:

> In order to allow the full benefits of the 1986 Tax Reform Act to accrue to the benefit of Respondent's Oklahoma customers, Respondent and Staff agree that if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, taking into account all known and measurable changes in Respondent's business, that said reduction will be effective as of July 1, 1987.

Hence, according to Mr. Proctor, the stipulation had the effect of placing SWBT's rates interim, subject to refund pending resolution of Commission Staff's examination of SWBT's cost of service and the issuance of a final Commission order in Cause No. PUD 260.



The Commission entered three rate orders pursuant to the examination of SWBT's cost of service in Cause No. PUD 260. These orders include Order No. 341630 (September 20, 1989), Order No. 341820 (September 27, 1989) and Order No. 342343 (October 19, 1989). I dissented to the majority's decision in Order No. 341630 and concurred in part and dissented in part to the majority's decision in Order No. 342343. The orders found, based upon the Commission Staff's recommendations developed and proposed under the direction of Public Utility Division Director Howard W. Motley, that SWBT had a revenue excess for 1987 of $9.5 million, for 1988 of $12.0 million and for 1989 of $5.9 million that should accrue interest on the uninvested balance at the rate of 11.589%, compounded annually from July 1, 1987 until the Commission-ordered service improvement program was fully implemented. From reviewing these orders, Mr. Proctor has found the period for which rates were subject to refund was presumed to end September 30, 1989 upon the issuance of a final Commission order implementing a $7.8 million rate decrease.

I have been reminded by James M. Proctor that under his direction as the Public Utility Division Director, the Commission Staff completed a review of SWBT's cost of service in Cause No. PUD 662 for the test year ended December 31, 1989. The Commission Staff filed a Proposed Administrative Law Judge Report of the Commission Staff "Proposed Order" on April 15, 1992. The Proposed Order, among other findings and conclusions, recommended a rate decrease for SWBT's customers of $126.5 million based upon the evidence entered in the record of Cause No. PUD 662.

Additional Issues to be Briefed

Question 4.

If in response to Question 2, you support the proposition that a rehearing of the merits is required, may the Commission recognize and incorporate the evidence gathered and developed by the Commission Staff, the State Attorney General and other parties to Cause No. PUD 662 into the record of Cause No. PUD 260?

Question 5.

If in response to Question 2, you support the proposition that a rehearing of the merits is required, should the Commission consider the status of SWBT's rates to be interim, subject to refund, beyond September 30, 1989 pursuant to the attached stipulation and until a final order is entered in Cause No. PUD 260?

Bob Anthony

Commissioner Bob Anthony

ATTACHMENT 10

SWB-5

FILED

JUN 23 1987

SECRETARY
CORPORATION COMMISSION
OF OKLAHOMA

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

IN THE MATTER OF THE APPLICATION OF)
HOWARD W. MOTLEY, JR., FOR AN)
INQUIRY INTO THE EFFECT OF THE 1986)
TAX REFORM ACT ON OKLAHOMA UTILITIES.) CAUSE PUD NO. 000260

STIPULATION BETWEEN STAFF AND
SOUTHWESTERN BELL TELEPHONE COMPANY

Howard W. Motley, Jr., Applicant, on behalf of the Public Utility Division (Staff) of the Oklahoma Corporation Commission and Southwestern Bell Telephone Company (Respondent), hereby stipulate and agree as follows:

1. The 1986 Tax Reform Act which was signed by the President of the United States on October 22, 1986, lowered the corporate income tax rate from 46% to 34%, effective July 1, 1987. Respondent's currently authorized rates and charges are based on a 46% income tax rate.

2. Applicant filed an application herein requesting that the Commission quantify the effect of the 1986 Tax Reform Act on certain public utilities, including Respondent.

3. An investigation and audit must be conducted by the Staff in order for Staff to make a final recommendation in this cause. Respondent and Staff further acknowledge that Staff's investigation and audit will not be completed for several months due to the number of utilities being investigated and the limited resources of Staff.

4. In order to allow the full benefits of the 1986 Tax Reform Act to accrue to the benefit of Respondent's Oklahoma customers, Respondent and Staff agree that if the Commission, after hearing, ultimately determines a rate reduction is appropriate for Respondent, taking into account all known and measurable changes in Respondent's business, that said reduction will be effective as of July 1, 1987.

5. All parties to this Stipulation will cooperate in seeking its acceptance and approval by the Commission. If this Stipulation is not accepted and approved by the Commission without modification or condition, then it shall not be binding

on either party, and both parties shall in that event be deemed to have reserved all their respective rights and remedies in this proceeding.

6. It is agreed that nothing in this Stipulation shall constitute an admission by any part of the correctness or applicability of any claim, defense, rule or interpretation of law, allegation of fact, principle or method of ratemaking or cost of service determination. It is also agreed that, except as stated herein, the parties shall not be considered as necessarily agreeing with or conceding the applicability of any principle, method of ratemaking, cost of service determination, accounting method, design of rate schedule, terms and conditions of service, or the application of any rules or interpretation of law that may underlie, or may be thought to underlie, this Stipulation. It is further agreed that in any further negotiation or proceeding, other than any proceeding involving the honoring, enforcement or construction of this Stipulation, the parties shall not be bound or prejudiced by this Stipulation.

Dated this 23rd day of June, 1987.

PUBLIC UTILITY DIVISION
OF THE CORPORATION
COMMISSION OF OKLAHOMA

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