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 NO. PUD 201500344**
RELIEF SOUGHT: VACATE OR MODIFY OKLAHOMA CORPORATION COMMISSION ORDER NO. 341630 CAUSE NO. PUD 260; AND REDETERMINE ISSUES FOLLOWING INTRINSIC FRAUD	)	

Dissenting Opinion of Corporation Commissioner Bob Anthony

Today's 2-1 dismissal vote prevents the six ratepayer Applicants and the federal government through the Department of Defense and the Federal Executive Agencies (DOD/FEA) from putting on their rate case. By not hearing this case, the Oklahoma Corporation Commission (OCC or Commission) forfeits an opportunity to perform its Constitutional duty "of correcting abuses" and joins AT&T in declaring to the public that "bribery wins" and "bribed votes do count" in Oklahoma. Respectfully, I dissent.

Applicants seek to correct an OCC rate order tainted by intrinsic fraud and to have the OCC exercise its constitutional ratemaking authority to follow its own order in PUD 260 that adopted a June 23, 1987 "stipulation" with Southwestern Bell Telephone Company (SWB or SWBT or Southwestern Bell).

The OCC has exclusive legislative jurisdiction to determine and prescribe public utility rates; however, today's vote denies constitutional due process and ratepayers' rights to be heard. These travesties of justice deserve Oklahoma Supreme Court judicial review. Today's dismissal is certainly not in the public interest.

In my opinion, the present Cause No. PUD 201500344 (PUD 344) is a Corporation Commission "rate case," and the case itself is legislative. In the words of *Cox v. State ex rel. Corporation Commission,* 2007 OK 55. 164 P.3d 150, "Ratemaking has been definitely labeled and treated as legislative."

This case is about money.

This case is about money, ratepayer money – how much it should be and over how many years do the excess revenues apply.

Bribery, neglect of constitutional duty, public corruption and estimates using stale data have projected excess Southwestern Bell revenues of $7.8 million annually starting with 1989. Actual audited data, an official record, and a 3-0 vote under a signed refund agreement with Southwestern Bell indicates $100.5 million annually. For decades Southwestern Bell and others have mislead the public to believe the controversy is about how much of the excess revenue pie should go to refunds or system upgrades and modernization. The real issue is, "How big is the pie?"

This case is also about allowing open, honest government in Oklahoma. Shamefully, no public comment was allowed at the Commission's "noticed" and supposedly "public" hearing on November 3, 2015. After months of delays, now the Majority stops tomorrow's public hearing before the Administrative Law Judge and makes numerous questionable Findings of Fact without ever letting the Applicants and federal government put on their case.

Overview

I join today's Majority when it apparently rejects the vociferous, coordinated "lack of jurisdiction" arguments put forth by Southwestern Bell and the Attorney General in their Motions to Dismiss. In fact, today in seven pages of Findings of Fact and Conclusions of Law by the Majority, not once is the word "jurisdiction" mentioned.

This is no surprise to me, because I received the advice and analysis reported by the law professor recently hired by the Oklahoma Corporation Commission who studied the PUD 344 and PUD 260 matters. I recall being told the position for dismissal put forth by Southwestern Bell and the Attorney General was not a valid basis upon which to dismiss the PUD 344 case.

Interestingly, Assistant Attorney General Abby Dillsaver insisted that the "jurisdiction" question had to be decided before the OCC could even consider any arguments about the merits of the application itself. And yet, having apparently decided the Commission *does* have jurisdiction, the Majority has hauled off and made numerous Findings of Fact about issues raised in the application without allowing the Applicants to argue their case!

Instead the Majority tries to find flexibility in vaguely declaring that the matter is "legislative" and that the "public interest" is somehow upheld by another victory for bribery, public corruption, and intrinsic fraud at the Oklahoma Corporation Commission. Notice the total silence of today's Commission Majority and the Order to Dismiss on the fundamental legal issue of bribery's "repugnancy" to the Oklahoma Constitution. Numerous court cases say victims of intrinsic fraud that occurred at the Oklahoma Corporation Commission must be brought before the "forum where fraud occurred."

Commission Majority Abdicates Its Constitutional Duty to Correct Abuses

The Commission has both continuing constitutional jurisdiction and "the duty" under Article 9, Section 18 "of correcting abuses" by transmission companies. Oklahoma Supreme Court case law since the 1910s affirms the broad "power and authority" of the Commission to correct abuses. *St. Louis & S.F.R. Co. v. Lewis, et al.*, 1911 OK 113, 114 P. 702.

If bribery of a commissioner by a regulated company isn't an "abuse," I don't know what is. Hiding behind contrived legal prohibitions and proclaiming "public inerest" to avoid performing a constitutional duty violates a commissioner's oath of office. In my opinion, the Commission should find that a Southwestern Bell attorney of record in Cause No. PUD 860000260 (PUD 260) bribing Commissioner Hopkins for his vote does constitute an "abuse" that must be corrected by an honest ultimate rate determination.

Ignoring "Repugnancy to the Constitution," Commission Majority injudiciously agrees with AT&T that "Bribed Votes Do Count," despite "irrefutable denial of due process"

About 50 years ago, dealing with the 1960s Corporation Commission scandal where OCC then-General Counsel Bill Anderson was taking money from a regulated utility, in *Wiley v. Oklahoma Natural Gas Company* 1967 OK 152, 429 P.2d 957 the Oklahoma Supreme Court held,

> ¶5 It is equally well settled that the judiciary cannot annul or pronounce void any act of the Legislature on any ground other than that of repugnancy to the constitution. Constitutionality of legislative acts is to be determined solely by reference to the limits imposed by the constitution. The Court may not inquire into the motives of the Legislature, as motives cannot be made a subject of judicial inquiry for the purpose of invalidating an act of the legislature. 16 Am.Jur.2d, Constitution Law, Secs. 158, 163, 169. (Emphasis added.)

In my opinion, such "repugnancy to the constitution" is not only evident when Bill Anderson, a Southwestern Bell attorney of record in PUD 260, bribes Commissioner Hopkins for his vote in the PUD 260 rate case, it is an appalling affront to honest government. Yet the Majority fails even to mention the "repugnancy" exception in *Wiley*, let alone explain why it doesn't apply. This is a fatal oversight of today's Order Dismissing Cause PUD 344 signed by the Majority.

The Oklahoma Constitution explicitly stands against bribery in Article 9, Section 40 when it states,

> No corporation organized or doing business in this State shall be permitted to influence ... official duty by contributions of money or anything of value.

The Oklahoma Constitution again stands against bribery in Article 15, Section 1 (Oath of Office for all public officers) explicitly stating,

> ... and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office ...

Furthermore, a brief of the Oklahoma Attorney General filed on May 1, 1996 in PUD 260 begins,

> As set forth more fully below, the convictions of Commissioner Hopkins and [Southwestern Bell attorney of record in PUD 260] William Anderson for bribery constitute an irrefutable denial of due process in this cause. (Emphasis added.)

Commission Majority ignores fundamental points of law and denies due process

The Commission Majority appears to be under the impression that reading an application is the same thing as hearing the case. Make no mistake, by today's action the Commission Majority has refused even to hear the Applicants' case, let alone consider the relevance of any evidence they were prepared to present or the merits of any arguments they were prepared to make.

An unbelievable denial of due process in this PUD 344 case occurs when the Majority issues its Dismissal Order thereby preventing James Proctor, the former Director of the OCC Public Utility Division, from testifying. He has firsthand and direct experience with PUD 260 stipulations and refund agreements involving numerous Oklahoma public utilities. Rather, the Majority seems happy to concoct a new theory of PUD 260 stipulations in an attempt to shut down this case without considering sworn testimony available from its own former Commission Staff. As I have raised before, including at the November 3, 2015 hearing, a fatal flaw in both the SWB and AG Motions to Dismiss is their failure to address whatsoever the PUD 260 Stipulation and its validity. Over twenty times the PUD 260 Stipulation is mentioned in the PUD 344 Application with Exhibits. The Majority Order now tries to remedy the SWB and Attorney General (AG) shortcoming by inventing the legal fiction that the Stipulation does not really mean what it says when it talks about the OCC "ultimately determines a rate reduction is appropriate" for SWB.

The Majority therefore has created its own Dismissal Order. In Section 7 on page 16 of today's order, the Majority correctly states,

> In order for this Commission to have the ability to consider Applicant's requested relief, the terms of the Cause 260 Stipulation would have to remain unsatisfied.

However, the Majority, without the benefit of expert testimony from witness James Proctor, goes on incorrectly to assert, "This simply is not the case." In the preceding paragraph the Majority asserted, "The terms of the Cause 260 Stipulation did allow SWBT's excess revenues (ultimately determined to be approximately $31 million) to be effective July 1, 1987." Not only has this never previously been claimed to have been the Commission's "ultimate" determination, but is the Majority really affirming that a determination made by bribery and deceit is "ultimate" and final? Shocking.

Today's order, and the Southwestern Bell and Attorney General motions filed October 2, 2015 that inspired it, seeks to dismiss totally, with prejudice, an entire public utility legislative Cause brought under a longstanding Commission Rule (OAC 165:5-17-2 Post Order Relief). This Rule allows an application " ... filed by any person, whether or not a party of record in the original cause, [that] shall be treated as a separate cause ..." The PUD 344 cause seeks to ultimately determine Southwestern Bell rates and protect consumer interests. It raises issues of the Commission's integrity. Because the matter addresses intrinsic fraud and public corruption at a public agency involving a regulated public utility, it deserves a fair and open hearing. Applicants cite *Moore's Federal Practice* indicating motions to dismiss are viewed with disfavor and are infrequently granted.

Applicants also cite *Conley v Gibson*, 355 U.S. 41, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957) indicating "dismissal of a claim is only proper if it is beyond a reasonable doubt that plaintiff could prove no set of facts in support of the claims that would entitled the plaintiff to relief." Yet the Majority fails to explain how it has determined beyond a reasonable doubt that the PUD 344 application cannot prove its claims when new applicants are bringing new facts and evidence previously unknown to the Commission and making arguments the Commission has never before considered. Moreover, PUD 344 has been brought by distinguished applicants represented by counsel that has already won refunds or credits for ratepayers in a similar case in the past.

The PUD 344 cause is a new application with several new Applicants. Collectively, the following descriptions apply: two former Commission staff members, two with law degrees, two with military service, and two Oklahoma businessmen. One is an elected official. One was the FBI Special Agent in Charge for all of Oklahoma when the FBI investigation concluded and guilty verdicts were obtained at the federal trial of Southwestern Bell attorney Bill Anderson and Commissioner Hopkins. One is the former commanding general of Tinker Air Force Base. One is the former Director of the Commission's Public Utility Division (PUD) whose staff once testified about falsified public utility legal billings by utility attorney Bill Anderson. This applicant has also formally testified or made filings for PUD in the PUD 260 and PUD 662 matters, and he finalized refunds from non-SWB companies who were original parties to PUD 260 and had Refund Orders and/or Stipulations like Southwestern Bell. He has since submitted three sworn affidavits as an expert witness for the Applicants in this cause and is intimately familiar with the details of PUD 260 and the consequences for ratepayers of its ethical shortcomings. In short, these are prominent citizens with distinguished records of service to Oklahoma and the public; that the Majority should refuse to hear their concerns is disturbing and shameful.

By today's action, the Majority also refuses to hear the concerns of the United States Department of Defense and all other Federal Executive Agencies, whose counsel filed an Entry of Appearance just last week, citing "compelling evidence of intrinsic fraud utilized by Southwestern Bell." In his motion to the OCC, counsel says, "DOD/FEA was affirmatively injured through the aforementioned criminal activity. To date, such injury has yet to be remedied." Apparently the Majority lends no more weight to the credibility of the military and federal government than it does to the PUD 344 applicants.

In my opinion, the OCC Court Clerk file for PUD 344 and the OCC transcripts of PUD 344 hearings contain new sworn affidavits, evidence and/or indications related to a commissioner "pay off," intrinsic fraud, perjury and/or fraud on the Commission and fraud on the Oklahoma Supreme Court. There are newly unsealed deposition transcripts of Southwestern Bell officials, documents and filings conveying new information pointing to widespread wrongdoing and/or deceit, and new (less than two years old) indications multiple Southwestern Bell attorneys or officers were involved in conspiracy and/or fraud related to PUD 260.

Also, as I've said repeatedly, the Commission can and should request an FBI Title III wiretapped conversation between SWB attorneys Bill Anderson and William J. Free recorded March 19, 1991, played as evidence in the 1994 federal bribery trial (Case No. CR-93-137-A), identified as U.S. Government Exhibit No. 211, purportedly referencing Southwestern Bell efforts to "pay off Hopkins" and quoting the SWB Oklahoma then-president as having said, "Do it and don't let me know how you do it."

Again, the preponderance of new evidence means there are new opportunities to "connect the dots" and contemplate the relationship between these new matters and those set forth in the "Government's Notice of Intent to Utilize Evidence of Other Crimes, Wrongs or Acts under Federal Rules of Evidence 404(b) and/or That Are Not 'Extrinsic' to The Crime Charged" as filed by The U. S. Justice Department on March 25, 1994 in its federal criminal case against Hopkins and Anderson (No. CR-93-137-A). These matters include Bill Anderson, as a Southwestern Bell attorney in PUD 260, making arrangements for $15,000 to each of two OCC commissioners before the PUD 260 vote. New matters and their relevancy to telephone rates, as argued by ratepayer Applicants and others in the PUD 344 rate case, deserve to be heard by the OCC.

Southwestern Bell attempts to distance itself from the wrongdoing in PUD 260 when, in its Motion to Dismiss on page 3, it states, "No employee of Southwestern Bell was ever charged with any crime." At the Supreme Court of the United States, October Term, 1994, No. 94-73 (at page 3, footnote 1), SWB Petition for Writ of Certiorari, *Southwestern Bell Telephone Company v. Oklahoma Corporation Commission*, SWB tells the Court, "For the record, Southwestern Bell's position is this: Any impropriety that may have been committed was not authorized by or attributable to it." As the Applicants propose in PUD 344, the Commission needs to assess old statements in view of new facts and new information.

The Majority appears to have fallen for this artful deception when it describes Southwestern Bell attorney of record in PUD 260 and convicted corporate bribery bagman Bill Anderson as just "a private outside attorney retained by SWBT." The implication that the bribery efforts by Southwestern Bell in PUD 260 were limited to Mr. Anderson is laughable. When facts so fundamental to the case are in dispute, dismissal of a cause is fundamentally unjustifiable and a violation of due process.

Lastly, how can the Majority recognize that the PUD 344 application is "legislative" and therefore *res judicata* doesn't apply, but still dismiss it "with prejudice"? Such a legal finding is oxymoronic.

Commission Majority believes Bribed PUD 260 Order is still good legislation; apparently dirty hands can produce unsullied utility rates.

The Majority finds:

> In the [Bribed] Cause 260 Order, the Commission addressed such known and measurable changes, and specifically found that Staff appropriately considered this information pursuant to the Cause 260 Stipulation.

Subsequently, again citing the [Bribed] Cause 260 Order, the Majority declares:

> Consistently, the Commission has found upgrading service and modernizing SWBT's central offices—as opposed to ordering a refund—to be in the public interest.

The fact that the Majority treats findings made in the Bribed Order as legitimate is highly questionable.

The Majority also imputes the Oklahoma Supreme Court:

> The Supreme Court likewise recognized there was no doubt the service improvements were inherently beneficial. *See Henry* 1991 OK 134 …
>
> The Court further acknowledged the [Bribed] Cause 260 Order, which explained that: One of the most important goals espoused consistently over the years by this Commission has been the goal of universal service. …

If a baby were stolen from the hospital, and the abductor subsequently raised the child – feeding, clothing, educating and loving it – a judge asked to determine the fitness of the abductor parent might reasonably conclude he/she had been a good parent. But such positive attributes would be deemed completely immaterial if the birth parents subsequently came forward and proved to the judge that the child had been abducted, demanding it back. No amount of good stewardship after the fact can abrogate the criminal act that removed the child from its legal guardian.

Likewise I suspect the Oklahoma Supreme Court would bristle at its 1991 *Henry* decision, made before the bribery in the PUD 260 case was publicly known, being used to legitimize findings in the Bribed PUD 260 Order.

Commission Majority also wrong to believe a Bribed Order can "ultimately determine" anything, including the rate reduction allowed for in the Stipulation.

The Oklahoma Supreme Court in its decision *State ex rel. Henry v. Southwestern Bell Telephone Co.,* 1991 OK 134, 825 P.2d 1305 at paragraph 2 addresses both PUD 260 "rates" and a June 23, 1987 PUD 260 "Stipulation" when it states,

> Staff and SWB stipulated in writing that if the Commission, after taking into account "all known and measurable changes" in SWB's business, determines a reduction in the utility's rates to be warranted, the reduced rates would become effective July 1, 1987, the effective date of the Tax Reform Act of 1986. The Commission approved the stipulation.[7] (Footnote: [7]The Commission expressly found the terms of the stipulation between SWB and Staff to be "fair, reasonable and equitable.") (Emphasis added.)

The Oklahoma Supreme Court in *State ex rel. Henry v. Southwestern Bell Telephone Co.* also addresses, under "The Critical Facts in Litigation" at paragraph 6(a), the annual percent interest that was supported in 1989 by all three commissioners in PUD 260 stating,

> ¶6 In accordance with these findings the Commission ordered that (a) interest is to be applied to SWB's surplus cash (or revenue excess) at the annual rate of 11.589% ...

The ratemaking and legislative nature of PUD 260, and therefore also of PUD 344, is further indicated by the actual language of both the all-important Stipulation (sometimes called the Refund Agreement) and the Commission's June 23, 1987 Order No. 313853 (Stipulation Order) adopting the Stipulation. Paragraph 4 of the (still legally binding) Stipulation states,

> 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. (Emphasis added.)

The Stipulation Order includes the Stipulation as its "Attachment 'A'" and concludes,

> It is further ordered that if the Commission ultimately determines that a rate reduction is required for Respondent, Southwestern Bell Telephone Company, that said reduction shall be effective July 1, 1987. (Emphasis added.)

The Brief of the Commission Staff filed in PUD 260 on August 23, 1989 contains the subtitle "The Commission's Authority to Require a Refund is Derived from the Stipulation." The Brief of the Commission Staff states,

> The Commission has jurisdiction to require a refund of the revenues in question pursuant to the stipulation signed by Southwestern Bell on June 23, 1987. Absent the stipulation, the Commission would be unable to order a refund because Southwestern Bell was charging their authorized tariffed rates at all times in question.

Commission Staff's Responses to Appeals Concerning Southwestern Bell Telephone Company filed in PUD 260 on July 12, 1989 (p. 10) state,

> Southwestern Bell has apparently forgotten that the stipulation they signed [seven days before] June 30, 1987, stated that any rates found to be appropriate as a result of the Commission's review of this cause will be retroactive to the time of July 1, 1987. But for

> the stipulation, the Staff agrees that this would be retroactive ratemaking. However, because of the stipulation and Southwestern Bell's agreement to have the rates reduced as of July 1, 1987, the Oklahoma ratepayers should be compensated for the use of their money during the time that the refund has accrued and during such time as the refund is returned in some manner to the ratepayers of Oklahoma.

The Stipulation is the one most significant and controlling document in PUD 260. Again, over 20 times the PUD 344 Application with Exhibits references the PUD 260 Stipulation or the Commission's Stipulation Order. The Stipulation Order is the lynchpin to the Applicants' case here.

The Southwestern Bell and Attorney General Motions to Dismiss, claiming no OCC jurisdiction, fail to discuss or acknowledge even once this cornerstone of the PUD 344 Application, let alone address this legal basis of jurisdiction. Disallowing PUD 344 testimony, a hearing on the merits and Administrative Law Judge recommendations, the Majority's order demonstrates a complete failure to comprehend the infectious and defective consequences of bribery, claiming "the Cause 260 Stipulation was fully satisfied" by the determination in the Bribed Order.

To repeat, the Majority finds:

> In the [Bribed] Cause 260 Order, the Commission addressed such known and measurable changes, and specifically found that Staff appropriately considered this information pursuant to the Cause 260 Stipulation.

Again, how the Majority can affirm findings of the Bribed Order without reopening the record of the PUD 260 case and properly redetermining its tainted determinations is stupefying.

In my opinion, the Southwestern Bell Motion to Dismiss sets forth disputed facts or gives mischaracterizations that compromise the legitimacy of its Motion. Some of these are addressed in Applicants' Combined Response to Motions. Other examples from just the first page of the Southwestern Bell Motion occur with "the seventh time" inaccurate statement, when Southwestern Bell mischaracterizes Applicants as seeking to argue "Bell owes a refund of alleged overcharges" (instead of "excess revenues" per the Stipulation), and with Southwestern Bell claiming, "Applicants lack any legal basis for their position." On page 5, Southwestern Bell inaccurately says OCC Order No. 477436 was "unanimous" when, in fact, one of the commissioner signature lines is blank.

In point of fact, if, as the Majority claims, the Bribed Order "fully satisfied" the Stipulation and "ultimately determined" $31 million surplus cash, why did the Commission initiate another cause and issue the 3-0 order with 1989 as the test year in PUD 662?

The year 1989 was the last year Southwestern Bell's "excess revenues" were subject to a rate order determination by the Commission. But actually, Southwestern Bell's revenue requirements and "excess revenues" for the year 1989 now have been determined twice by the Commission. PUD 260, started in 1986, determined $7.8 million of Southwestern Bell "excess revenues" for the year 1989, but the companion case PUD 662, started in 1989, determined

$100.5 million of SWB "excess revenues" for the same 1989 year. In today's PUD 344 case the Applicants ask the OCC to use its ratemaking jurisdiction to ultimately determine between these two "excess revenue" outcomes (or otherwise resolve the discrepancy). The $7.8 million annual amount for 1989 from the PUD 260 order came from projections, old and criticized test year data, and a bribed 2-1 vote. The $100.5 million annual amount for 1989 from the PUD 662 order followed a full on-the-record hearing of actual audited data (not estimates) and received a unanimous and constitutionally valid 3-0 vote.

Applicants have argued that applying the 11.589% annual interest to the Commission's ultimate determination of $100.5 million in excess SWB revenues for test year 1989 and beyond could yield some $16 billion for Southwestern Bell customers. It is instructive to observe the "rate refund" term used just above the signature of Assistant Attorney General Robert A. Butkin in the September 17, 1991 filing of the Attorney General in PUD 662. In my opinion, the Attorney General's PUD 662 concluding admonition using the term "rate refund" applies equally to PUD 260 at this time. It states,

> ... the efforts of the parties should focus on quantifying the amount of that rate refund and prospective reduction. Bell's motion should be denied.

The "full benefits of the 1986 Tax Reform Act" involve a great deal more than a reduction of corporate tax rates from 46 percent to 34 percent. This federal legislation had over 800 pages containing numerous provisions (e.g., depreciation, accounting, amortization, and investment tax credits) that were meant to favorably impact the economy and consumers. Therefore, "taking into account all known and measurable changes in Respondent's business" is forward-looking and includes the years into the future until the Corporation Commission finally makes its ultimate determination of rates.

Majority misinterprets the relationship between PUD 260 and PUD 662

The problems, inaccuracies, mischaracterizations and, yes, injustice of deciding a case without the Corporation Commission first hearing the case is demonstrated by today's Majority trying to re-characterize the relationship between PUD 260 and PUD 662.

In section 8 on pages 16-17 of its Findings of Fact and Conclusions of Law, the Majority states:

> However, the Commission specifically addressed the interrelation of Cause 260 and the Cause 662 Order. *See* discussion, *supra,* ¶¶17-18. The Cause 662 Order unequivocally addressed Cause 260, and the Commission specifically found the matters to be separate proceedings [and provided for specific treatment therein]. ... The Commission, through both the Remand Order (June 1997) and the Cause 662 Settlement Order (October 1995), made significant ratemaking decisions affecting SWBT after it was aware of the bribery. In both instances, the Commission took into account SWBT's [bribery] actions in making its decisions.

Note especially, in 1995 the statement from the Attorney General, "... 260 remand to be settled or litigated separately." Contrary to the Majority's assertion, PUD 662 did not settle PUD 260, at least according to a written OCC legal opinion. The Majority statements above are moreso problematic when compared to settlement and other official documents now made public, as indicated below:

> A May 20, 2002 written legal opinion to the General Counsel of the Oklahoma Corporation Commission addresses "the question of whether or not Cause No. PUD 860000260 was concluded by the settlement of Cause No. PUD 890000662." The document states, "In my opinion, the answer to your question is 'no'."
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> A June 21, 1994 letter from Attorney General Susan B. Loving regarding SBC 662 settlement discussions with SBC states, "Finally, [SBC] 's proposed treatment of the [SBC] 260 remand is unacceptable."
>
> The September 13, 1994 Commission proposal regarding the SBC 662 case addresses "Other Issues" by saying, "Settlement of [SBC] 260 and the future treatment of the effects of FASB 106 not to be considered in settlement of [SBC] 662."
>
> A March 1, 1995 letter from SBC circulates a new page 3 of a proposed settlement of the SBC 662 case. The referenced section from page 3 in part states, "... those parties agree that this [662] Agreement shall not become effective until the [SBC] 260 Settlement Agreement is approved by the Corporation Commission by a final order." Significantly, however, this provision was rejected and omitted prior to the drafting and signing of the final SBC 662 Settlement Agreement.
>
> A March 30, 1995 Attorney General's settlement proposal for [SBC] 662 and related cases has a section entitled "[SBC] 260 REMAND" which states, "No consideration: [SBC] 260 remand to be settled or litigated separately."

Now, what does the final PUD 662 Settlement document itself say? The actual Settlement Agreement for the SBC 662 case was approved by the Commission on October 30, 1995. The signed Settlement Agreement omits any mention of the PUD 662 case settling the SBC 260 case.

Commission Majority doesn't understand its authority (or doesn't want to)

The Majority order (carefully avoiding the word "jurisdiction") states:

> ...Applicants fail to recognize the Commission is still without authority to grant their requested relief.

The Majority obviously didn't look very hard to find that authority.

A subtitle on page 8 of the May 1, 1996 Attorney General Brief in PUD 260 states, "There is Ample Legal Authority for the Commission to Reopen and Rehear the Merits of this Cause."

At a minimum, the Commission has jurisdiction in Cause No. PUD 201500344 to grant the relief requested in the second paragraph of "*Relief Requested by Applicants.*" (Application pp. 10-11) This second paragraph requests "determination of the Excess Revenues for 1989 and each year thereafter" by asking the Commission to perform its legislative ratemaking duty to "determine that a refund of the Excess Revenues to the ratepayers ... should be ordered ... as per the parties' 'stipulation' that was adopted by the OCC on June 23, 1987." Indeed, the ratepayer Applicants certainly can ask the Commission to follow its own Stipulation Order in PUD 260. This second paragraph of *Relief Requested* can also be seen as an outstanding duty and responsibility of the Commission that should be performed on a stand-alone and legislative basis regardless of any other outcomes of PUD 344. In other words, surely the Commission has jurisdiction to follow its own Stipulation Order issued in PUD 260 with its attached Stipulation signed by both Southwestern Bell and Commission Staff.

AT&T Communications of the Southwest, Inc. in a June 10, 1996 filing in PUD 260 on page 11 states,

> The status of the rates of SWBT from July 1, 1987, until the conclusion of Cause 260 are stipulated to be interim and subject to refund. When the issues involved in Cause 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. ... The Oklahoma law is clear, however, on the effect of Bob Hopkins' corruption which affected his vote on Order No. 341630. That order was not constitutionally adopted and should be vacated. (Emphasis added.)

Commission does have certain Jurisdiction, despite SWB and AG arguments otherwise.

The Oklahoma Supreme Court in its decision *State ex rel. Henry v. Southwestern Bell Telephone Co.,* 1991 OK 134, 825 P.2d 1305 in Paragraph 7 clearly states, "The State, AARP and SWB each seek corrective relief from various portions of the Commission's order. For the reasons to be stated we affirm in part, reverse in part and remand this cause for further proceedings." (Emphasis added.) Note that only "portions" of the Commission's September 20, 1989 order were appealed, and Paragraph 1 of the opinion numbers and names them 1 through 6 followed by 7(a), (b), (c) and (d). Note further that the Oklahoma Supreme Court decision twice states that "this cause" is remanded back to the Commission. *Henry* does not say, "Just the four remand issues are remanded." Therefore, the Commission has jurisdiction to deal with the entire Cause PUD 260 as allowed under the *Henry* decision and *Stetler v. Boling,* 1915 OK 625, 52 Okla. 214, 152 P.2 452 and *Harper v. Aetna* 1922 OK 208, 211 P.2 1031 and *Anson Corp. v. Hill* 1992 OK 138, 841 P.2d 583. *Stetler v. Boling,* in its Syllabus states,

> When the Supreme Court acquires jurisdiction of a case by appeal, the jurisdiction of the trial court is ousted as to any question involved in the appeal; but jurisdiction of collateral matters, not involved in the appeal, or matters happening subsequent to the appeal, remains with the trial court.

The current Attorney General ignores this case law relevant to Commission jurisdiction. For example, Assistant Deputy Attorney General Abby Dillsaver at the November 2, 2015 hearing (Transcript Page 82, Lines 11-13) stated, "It's the fact that this order was appealed to the Oklahoma Supreme Court, and the Commission lost jurisdiction at that point."

Commission doesn't need this application to "correct abuses" but has a moral and constitutional duty to correct them regardless.

As if "repugnancy to the constitution" of Oklahoma is not enough, our legal process should look to the United States Supreme Court decision to "set aside fraudulently begotten judgments" stated in *Hazel-Atlas Glass Company v. Hartford-Empire Company,* 1944, 64 S.Ct. 997, 322 U.S. 238, 88 L.Ed. 1250. The U.S. Supreme Court, in an opinion by Justice Black, held that the judgment must be vacated; stating,

> Every element of the fraud here disclosed demands the exercise of the historic power of equity to set aside fraudulently begotten judgments. This is not simply a case of a judgment obtained with the aid of a witness who, on the basis of after-discovered evidence, is believed possibly to have been guilty of perjury. Here, even if we consider nothing but Hartford's sworn admissions, we find a deliberately planned and carefully executed scheme to defraud not only the Patent Office but the Circuit Court of Appeals. (64 S.Ct. at 1001, 322 U.S. at 245.) (Emphasis added.)

The U.S. Supreme Court thought it immaterial that Hazel may not have exercised proper diligence in uncovering the fraud. It first pointed out that the case did not concern only private parties and that there are "issues of great moment to the public in a patent suit." (64 S.Ct. at 1001, 322 U.S. at 246.)

> Furthermore, tampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. It is a wrong against the institutions set up to protect and safeguard the public, institutions in which fraud cannot complacently be tolerated consistently with the good order of society. Surely, it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud. (Emphasis added.)

Applicants and DOD/FEA both explicitly raise Intrinsic Fraud, seeking relief and justice.

Yes, the Oklahoma Corporation Commission does have a history of intrinsic fraud – not all of which involves bagman attorney Bill Anderson. The United States Tenth Circuit *Optima Oil v. Mewbourne Oil* case No. 11-6230 (D.C. No. 5:09-CV-00145-C) (W.D. Okla.) and the *Leck* case both address intrinsic fraud at the Commission as well as the Commission's jurisdiction to hear

allegations of the intrinsic fraud and rule upon them. In Paragraph 22 of *Leck v. Continental Oil Co.* 1989 OK 173, 800 P.2d 224, the Oklahoma Supreme Court states,

> Relief from intrinsic fraud must be made by direct attack in the same case in which the fraud was committed. Since the Oklahoma Corporation Commission has the power and authority of a court of record in this state, it naturally follows that if intrinsic fraud occurred during an adversarial trial before the commission, then under our holding in *Chapman,* the proper forum to hear allegations of the intrinsic fraud and rule upon them is the commission.

More recently than the *Leck* decision, a Southwestern Bell Telephone Company ("SWBT") Motion and Brief from The District Court of Oklahoma County, Case No. CJ 99-6569-63 was filed by SWBT also at the Oklahoma Supreme Court in Case No. 96,164, *State ex rel. Henricksen v. State ex rel. Corporation Commission,* 37 P.3d 835 (2001). In it, SWBT on the first page states, "... allegations of intrinsic fraud ... must be addressed at the Corporation Commission ...." Page 4 of this SWBT Motion and Brief contains a section entitled, "III. Complaints of Fraud Intrinsic to a Corporation Commission Order Must Be Brought at the Commission." Presumably the Commission has jurisdiction to hear cases raising intrinsic fraud that indeed actually occurred at the Commission. However, dismissing PUD 344 denies Applicants their ability to follow case law telling them to seek relief from intrinsic fraud at the Commission. Conveniently, while disclaiming responsibility, the Majority fails to offer any suggestion as to where else such relief might be sought.

In my opinion, dismissal of this ratepayer application is inconsistent with historical legislative intent. Although the Applicants in PUD 344 have not stated as their authority giving Oklahoma citizens the ability to come forward under Oklahoma Laws 1907-08 at Title 17, Section 2, this particular statute does provide,

> In case of failure of any corporation, person or firm to obey or comply with any order or requirement of the Corporation Commission, ... contempt proceedings may be instituted by any citizen of this State ...

Majority finds correcting the abuse of bribery is not in the public interest; $16 billion says otherwise

Without citing any case law, arguments or evidence to support it, the Majority finds:

> ... the Commission is confident it has met its constitutional duty to the best of its ability—given the priority of serving the overall public interest.

A finding so completely contrary to logic requires some justification. What, if indeed any, efforts has the Commission undertaken to meet "its constitutional duty" to correct the abuse of bribery in PUD 260?

PUD 344 is legislative and OCC has jurisdiction and duty to hear it.

Southwestern Bell and the Attorney General argue the "matter has been presented" many times before and "here we go again." However, recently the Commission in Cause No. PUD 201600059, after declaring the case to be "legislative," ruled favorably on OG&E's third application for a $500 million plan to install scrubbers at its Sooner Generating Facility. The scrubbers had already been denied twice by the Commission. Motions to dismiss the third application were denied. The Commission's Order No. 652208 on page 7 states,

> The Commission finds that Cause 229 and this current proceeding [Cause 59] are legislative in nature and that the Oklahoma courts have concluded on several occasions that the res judicata doctrine is inapplicable to a legislative action by this Commission. *See e.g., Chicago, Rock Island & Pacific R.R. Co.* **i'.** *State et al.,* 225 P.2d *363,* 368 (Okla. 1950) (the doctrine of res judicata is not recognized in legislative proceedings before the Corporation Commission); *Phillips v. Snug Harbor Water and Gas Co., 596* P. 2d 1273, 1275 (Okla. Ct. App. 1979) (questioning applicability of doctrine of res judicata in legislative action of Corporation Commission and citing *United States v. Utah Constr. & Mining Co.,* 384 U.S. 4 (1966) for proposition that Corporation Commission rate order was legislative in nature and therefore not *res judicata); Community Natural Gas Co. v. Corporation Commission et al., Lone Star Gas Co.* v. *Same,* 76 P. 2d 393, 398 (Okla. 1938) ("Ordinarily, the rule of res judicata applies only to judicial proceedings. As we pointed out in the Prentis Case ... the findings of fact and rules of law announced in a legislative proceeding cannot be res judicata upon the issue subject to the *scrutiny of a court in judicial review.") See also Cox Oklahoma Telecom, LLC v. State ex rel. Oklahoma Corporation Commission,* 164 P.3d 150 (Okla. 2007) (addressing legislative action by this Commission.)

The Oklahoma Supreme Court in *Cox Oklahoma Telecom, LLC v. State ex rel. Oklahoma Corporation Commission, 164 P.3d 150 (Okla. 2007)* states, "This court has adopted *Prentis's* classic definition of legislative and judicial proceedings and has held that the kind of process that is a litigant's due flows from the label attached by law to a proceeding." *Prentis v. Atlantic Coast Line Co.,* 211 U.S. 210 *(1908)* states,

> Proceedings legislative in nature are not proceedings in a court, ... , no matter what may be the general or dominant character of the body in which they may take place. ... That question depends not upon the character of the body, but upon the character of the proceedings. ... The decision upon them cannot be res judicata when a suit is brought. ... The nature of the final act determines the nature of the previous inquiry. ... So, when the final act is legislative, the decision which induces it cannot be judicial in the practical sense, although the questions considered might be the same that would arise in the trial of a case.

As already stated, the present Cause PUD 344 is a Corporation Commission "rate case," and the case itself is "legislative." In the words of *Cox v. State ex rel. Corporation Commission,* 2007 OK 55. 164 P.3d 150, "Ratemaking has been definitely labeled and treated as legislative."

Conclusion

The Relief Sought in PUD 344 includes, "Vacate or Modify the Oklahoma Corporation Commission Order No. 341630, Cause No. PUD 260" (the Bribed Order). The Bribed Order was entitled, "Order Regarding Rates of Southwestern Bell Telephone Company" and was issued on September 20, 1989 by a tainted 2-1 vote. Order No. 413667 dated June 26, 1997 was entitled "Order on Remand" and was the last OCC order issued in PUD 260. By its own terms, the Order on Remand restricted itself to only the four issues remanded to the Commission by the Supreme Court and did not reopen the entire PUD 260 case. Interestingly, no order entitled "Final Order" has ever issued in the legislative PUD 260 rate matter. In fact, certain aspects of PUD 260 are still open and unresolved, among them which rate reduction amount is right, the $7.8 million for 1989 that is part of the PUD 260 $31 million (as found in the Bribed Order) or the annual $100.5 million (as found in the evidentiary record of PUD 662)?

Finally, as stated on the last page of an Oklahoma Attorney General October 1, 1993 Motion to Reopen the Record submitted to the Special Master of the Oklahoma Supreme Court in Case No. 80,333 that involved PUD 260,

> Justice demands that SWBT not benefit from its own wrongdoing in the case below.

Note the Attorney General doesn't say Bill Anderson's wrongdoing, but Southwestern Bell's.

Justice demands the Commission correct the abuses of Southwestern Bell in PUD 260. Today's Majority order is a foolhardy, headstrong leap in the opposite direction.

September 7, 2016

P. S. In 1988, a friend and Crowe & Dunlevy attorney advised me that someone like me should not to run for election to the Oklahoma Corporation Commission, calling it the "perjury palace."