

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS: MICHAEL EDWARD McADAMS and
 JOHN POWELL WALKER

RELIEF SOUGHT: RELIEF FROM IMPROPER) CAUSE NO. PUD 980000188
AND EXCESSIVE PURCHASED GAS COSTS)

TESTIMONY

PREPARED BY

STEPHEN P. DRESCH

ON BEHALF OF

APPLICANTS

MICHAEL EDWARD McADAMS

AND

JOHN POWELL WALKER

VOLUME TWO

1 ONG, because it reduced the quantity of inexpensively acquired PIK (“payment-in-kind”)
2 gas which could be sold to ratepayers at a substantial profit. As a result, ONG began to
3 seek means by which to abrogate the Creek Systems contract without penalty.

4 ONG cited the “priority rules,” promulgated by the Commission at the instigation of ONG,
5 as justification when, in 1990, it greatly curtailed its purchase of natural gas under the Creek
6 Systems contract [Exhibit SPD-18]. This led to a sequence of actions before the
7 Commission and in the courts. [Exhibit A of Exhibit SPD-17, Mutual Release and Covenant
8 as to Future Contracts, executed by principals of Gage and ONEOK/ONG in November
9 1993.]

10 In 1990 Creek Systems filed before the Commission Cause CD No. 154064, arguing that
11 the priority rules applied only to the “first purchaser” of gas, that Creek Systems and not
12 ONG was the first purchaser of gas on its system, and hence that the priority rules did not
13 apply to Creek’s contract with ONG. ONG argued not only that the priority rules did apply
14 to the Creek-ONG contract but also that Creek’s gas was not entitled to the relatively high
15 “Priority Two” status claimed by Creek.

16 On the issue of the applicability of the priority rules to the Creek-ONG contract, an
17 administrative law judge recommended a Commission ruling in favor of Creek. However, in
18 October 1990 Commissioners Townsend and Hopkins (Commissioner Anthony opposed),
19 in Order No. 350879, rejected the administrative law judge’s recommendation, ruled that
20 the priority rules were applicable to ONG’s purchases from Creek, and remanded the issue
21 of the priority status of the Creek gas to the administrative law judge. Creek immediately
22 appealed the Commission’s ruling on the applicability of the priority rules to the Oklahoma

1 Supreme Court (Case No. 76,514).

2 Creek Systems then sought from the Commission, in Cause CD No. 163035, a limited
3 deviation from the priority-schedule, to require ONG to take Creek's Priority Two gas for
4 the first six months of the heating year (November through April), pending the outcome of
5 the Supreme Court appeal on the applicability of the priority rules. While this application
6 was recommended for denial by an administrative law judge, Commissioners Anthony and
7 Watts approved Order No. 371437, which required ONG to take up to 4,000 MCF per
8 day from Creek over the period January to March 1993 or until the Supreme Court issued
9 a final ruling on the applicability of the priority rules. ONG immediately appealed to the
10 Supreme Court (Case No. 81,106).

11 On the remanded issue of the priority classification of Creek's gas in Cause CD No.
12 154064, the administrative law judge recommended a ruling that 10,000 MCF per day of
13 Creek gas was entitled to Priority Two status. ONG took exception to this
14 recommendation, and, in October 1992, in Order No. 369121, Commissioners Watts and
15 Graves (Commissioner Anthony opposed) ruled that only 4,000 MCF per day was entitled
16 to Priority Two status. In a rather comic sequence of events, the order was first withdrawn
17 and then, in January 1993, reinstated by the Commission. ONG and Creek Systems both
18 appealed to the Oklahoma Supreme Court (Case No. 81,105).

19 Creek Systems viewed ONG's payment-in-kind [PIK] program as providing ONG's
20 primary motive for seeking to abrogate its 1980 contract. In simplified terms, as approved
21 by the Commission, ONG was permitted to acquire PIK gas in exchange for gas-
22 transportation services and then to value the PIK gas at WACOG when it sold that gas to

1 its general system ratepayers, so it earned a profit equal to the spread between WACOG
2 and spot. (In fact, because of the gas-cost pass-through rules applying to purchased gas,
3 PIK gas was the only gas on which ONG could earn a profit on resale; thus, ONG's motive
4 was to sell large volumes of PIK gas and to keep WACOG extremely high so as to widen
5 the spread between WACOG and ONG's PIK gas acquisition cost, which constituted
6 ONG's profit in the sale of PIK gas.) Therefore, in 1990 Creek Systems applied to the
7 Commission (Cause PUD No. 889) to require that ONG reduce the flow of PIK gas to its
8 general systems ratepayers to the extent necessary to take all (or all Priority Two) gas for
9 which ONG had contracted with Creek Systems. When, in August 1990 Commissioners
10 Anthony and Townsend (in Order No. 349668) denied Creek's application for lack of
11 proof, Creek Systems appealed that order to the Oklahoma Supreme Court (Case No.
12 76,354).

13 While litigation concerning the application of the priority rules proceeded, in February 1990
14 ONG filed suit against Creek Systems, seeking a Creek Systems' accounting and alleging
15 fraud in Creek's sale of gas under the ONG contract (District Court of Tulsa County, Case
16 No. CJ-90-01011, with Case No. CJ-91-04455 by consolidation). Charging abuse of
17 process, Creek filed a counterclaim for actual and punitive damages.

18 Then, in March 1990 Creek filed a \$9.5 million breach-of-contract suit against ONG in
19 Oklahoma County (Case No. CJ-90-2440). The principal charges in this suit were
20 eventually consolidated as counterclaims in ONG's Tulsa County suit.

21 In the course of these various legal proceedings reports of a federal investigation into alleged
22 corruption involving the Commission began to appear in the news media. Then, on October

1 2, 1992, Commissioner Bob Anthony formally announced that, for the preceding four years,
2 he had been participating in a federal investigation in the initiation of which he had been
3 instrumental. In his announcement, Commissioner Anthony specifically identified Creek
4 Systems as a party which had been the victim of Commission decisions which had been
5 secured by “unethical conduct and ex parte communication” [Exhibit SPD-19, statement of
6 Commissioner Bob Anthony, October 2, 1992.]

7 In the wake of Commissioner Anthony’s announcement, on October 30, 1992, Creek
8 Systems filed a federal civil rights suit against William Anderson, an attorney who had
9 represented ONG before the Commission in its dispute with Creek Systems (U.S. District
10 Court for the Western District of Oklahoma, Case No. CIV 92-2157 B), claiming \$40
11 million in damages for “ex parte communications as part of a conspiracy,” “deprivation of
12 due process,” and “wanton and willful conduct.” The Creek Systems’ complaint and the
13 Gage announcement of this suit [Exhibits SPD-20A and -20B, respectively] clearly
14 indicated the plaintiff’s anticipation that the suit would be amended in the course of
15 discovery to name additional defendants, specifically including ONEOK/ONG and its
16 officers and attorneys.

17 When the Creek Systems’ suit against Anderson was dismissed by the federal district court,
18 Creek Systems appealed to the U.S. Court of Appeals for the Tenth Circuit (Appeal No.
19 93-6003).

20 Meanwhile, ONG brought an action before the Oklahoma Supreme Court (Case No.
21 80,661) challenging Commissioner Anthony’s October 2, 1992, announcement that
22 Commission decisions in the ONG-Creek cases had been tainted by corruption and seeking

1 to disqualify Commissioner Anthony from any participation in decisions involving ONG, on
2 grounds of bias as a result of his participation in the federal investigation of corruption at the
3 Commission. Gage (Creek Systems) intervened in this action, in large measure to obtain
4 information which would bolster its federal suit against Anderson.

5 In the course of these actions, on June 27, 1993, William Anderson, former commissioner
6 Bob Hopkins and Jewell Callaham, owner of a rural telephone company, were indicted on
7 charges related to the payment of bribes to Hopkins to influence the Commission's action in
8 a matter related to Southwestern Bell Telephone Company. [Exhibit SPD-21, Indictment,
9 U.S. District Court for the Western District of Oklahoma, Case No. CR 93-137 A.]

10 Evidence in the ONG disqualification action was scheduled to be heard on November 10,
11 1993, by Judge William S. Myers, Jr., special master appointed by the Oklahoma Supreme
12 Court.

13 On November 9, 1993, Gage/Creek Systems, ONEOK/ONG, Anderson, Robert
14 Huffman, Sr. (general counsel of ONEOK), and the law firm of Huffman Arrington Kihle
15 Gaberino & Dunn (which was the primary source of legal counsel to ONEOK/ONG and
16 which retained Anderson on behalf of ONG), and other related parties reached the "global
17 settlement." [Exhibit SPD-17] Under the terms of this settlement, all litigation between
18 Gage/Creek Systems, ONEOK/ONG and the various directly and indirectly related parties,
19 specifically including Anderson, was dismissed with prejudice. The global settlement also
20 resulted in the dismissal of the disqualification action scheduled to be heard by the special
21 master, Judge Myers, on the following day.

22 **Q Please explain how this "global settlement" was related the ONG-Dynamic gas**

1 **purchase contract at issue in this action.**

2 A ONG awarded the Dynamic contract as part of a complex web of transactions which
3 occurred on November 9, 1993: (1) Dynamic acquired the assets of Gage Corporation,
4 including its subsidiary, Creek Systems. (2) Creek Systems agreed to the termination of the
5 fifteen-year gas purchase contract which it had been awarded by ONG in 1980. (3) All
6 legal actions to which ONG and Creek Systems were parties were terminated with
7 prejudice (the “global settlement”).

8 **Q Have you researched the circumstances and chain of events leading to the**
9 **transactions of November 9, 1993?**

10 A Yes, since July 1999 I have devoted substantial time and effort to research into these
11 circumstances and events.

12 **Q Please describe the sources of information which you have consulted in the course**
13 **of this research.**

14 A Initially I worked entirely from material which was in the public record. First, I reviewed
15 material available in the archives of media (e.g., newspapers, magazines, broadcasting
16 companies) which had carried accounts directly or indirectly relating to these circumstances
17 and events. The most important of these, including articles from Business Week, The New
18 Yorker, the Honolulu Star Bulletin, the Legal Times, the Chicago Tribune and the
19 Associated Press (as carried by the Washington Post), are included as Exhibit SPD-22.
20 Also informative were the Public Broadcasting Service productions “The Fixers” (Frontline,
21 April 15, 1997) and “Follow the Money” (Frontline, September 12, 1997).

22 Second, I acquired information from governmental sources, most notably the Commission

1 (especially the files of Cause PUD No. 960000039) and the Committee on Government
2 Reform (formerly Reform and Oversight) of the U.S. House of Representatives.

3 Third, I submitted Freedom of Information requests to such agencies as the U.S.
4 Departments of Justice and Commerce.

5 Fourth, I obtained information available in the court files of many of the legal actions which
6 related to these circumstances and events (including the U.S. District and Bankruptcy
7 Courts for the Northern District of Oklahoma in Tulsa and the District Courts of Tulsa and
8 Cleveland Counties).

9 On the basis of the knowledge obtained from these public sources I initiated interviews with
10 many of the persons involved, directly or indirectly, in these events. These have included
11 persons publicly identified as participants in these events and persons associated with them
12 at the time of these events. I have conducted interviews, either in person or by telephone,
13 with persons in Oklahoma, Texas, Louisiana, California, Hawaii, Colorado, Arkansas and
14 Washington, D.C.

15 Finally, I have attempted to secure documentary information which I have been able to
16 identify but which is not in the public domain. For example, I have been successful in
17 obtaining the full text (but, thus far, not the exhibits) of a major unreleased report prepared
18 by staff of the House Government Reform Committee (know as the "Alicemary Leach
19 report"). Also, I have secured from the Oklahoma City office of the Federal Bureau of
20 Investigation copies of tape recordings which Mr. Miller caused to be made of many
21 telephone conversations and some meetings in which he had participated; Mr. Miller
22 provided these tapes to the FBI, under a subpoena which he requested, in early August

1 1997, approximately two months before his death.

2 With reference to the last of the sources, the office of the Cleveland County district attorney
3 requested these tapes in late December 1999, approximately one week after Fred Jordan,
4 M.D., Chief Medical Examiner, Oklahoma Bureau of Medicolegal Investigations, at my
5 request reconsidered his office's classification of Mr. Miller's manner of death and
6 reclassified it from "natural" to "unknown." When the district attorney's request was denied,
7 I obtained Mr. Walker's assistance, on behalf of the widow of Ronald G. Miller, in
8 attempting to secure the return by the FBI of the personal property (the tapes) of the late
9 Mr. Miller. The FBI resisted this demand but eventually agreed to provide copies and an
10 accompanying log of the tapes. Contending that the original tapes are required for possible
11 future prosecutions, the FBI has agreed to return the originals when it receives authorization
12 from the U.S. Department of Justice. Thus far, the originals have not been returned.

13 While the copies of the Miller tapes provided by the FBI have been a significant source of
14 information, I have substantial reason to believe that the copies are incomplete. Specifically,
15 these tapes provide no recordings of conversations and meetings in the two months
16 immediately preceding the November 9, 1993, transactions. Also, certain recorded
17 conversations end abruptly, and certain tapes are largely blank. The FBI declined to sign an
18 affidavit prepared by Mr. Walker swearing that copies of all of the tapes had been provided
19 to Mrs. Miller. Although it appears unlikely that the conversations on the tape copies have
20 been fabricated, the integrity of the tapes, as a complete set of true copies of the originals, is
21 open to significant question. It appears obvious that the FBI has not provided copies of all
22 of the tapes to Mrs. Miller.

1 Mr. Miller's taping system (including recorders, microphones, etc.) was installed by Bruce
2 Dirks (also known as Bobby Sands, currently news director of radio station KKNG in
3 Oklahoma City), a private investigator retained by Mr. Miller. In independent conversations
4 with me and with Mr. Walker, Mr. Dirks has indicated that he is confident that the taping
5 system was in operation over the months preceding the November 9, 1993, transactions.
6 Mr. Dirks also reports that he strongly advised Mr. Miller not to provide the original tapes
7 to the FBI. However, Mr. Miller expressed confidence in the FBI, which had assured him
8 that the tapes would be returned for his use in then pending litigation against his former
9 partner, James H. Kitchens (later amended to include Don M. Sweatman and Kit Barron
10 Bradshaw as defendants). Because of the expense which would have been entailed, he
11 failed to retain copies of these tapes.

12 **Q Are you free to reveal the information which you have obtained in the course of this**
13 **research into the background of the events of November 9, 1993?**

14 A In general, yes. However, certain people involved in or knowledgeable concerning these
15 events, expressing fears for their lives, have agreed to speak to me only with assurances of
16 confidentiality or anonymity (and others have refused to speak even with those assurances).
17 With reference to information obtained subject to these assurances, I have felt free to reveal
18 that information only when I have been able to obtain independent confirmation.

19 **Q Please describe the chain of events leading to the transactions of November 9,**
20 **1993.**

21 A As I have described, the dispute between Gage Corporation (Creek Systems) and ONG
22 originated in the late 1980s. Formal actions before the Commission and the courts were

1 initiated in 1990.

2 At least by the time that reports of a federal investigation of corruption at the Commission
3 began to circulate, identifying William L. Anderson, attorney to a number of utilities including
4 Southwestern Bell, ONG and Arkla, as a principal target, ONEOK/ONG (or, possibly, its
5 attorneys, Huffman Arrington), decided to utilize political as well as legal means to attempt
6 to resolve its problems with Gage.

7 An FBI report dated April 26, 1993 [Exhibit SPD-23], provides evidence of ONG's
8 recourse to political intervention. In the summer of 1992 Alex Cunningham, appointments
9 secretary to Governor David Walters, approached Peter Hield, an associate of Gage
10 president James H. Kitchens and vice president Ronald G. Miller, and requested
11 information on the Creek-ONG dispute for what Cunningham represented as an Oklahoma
12 Attorney General's investigation in which he was participating. Deputy Inspector Jack W.
13 Dailey of the Oklahoma State Bureau of Investigation concluded that Cunningham, under
14 the direction of Governor Walters' energy secretary, Charles Nesbitt, had been attempting
15 to obtain intelligence on behalf of ONG.

16 David Walters had been elected governor of Oklahoma in 1990 and took office in January
17 1991, with DNC chairman Ron Brown present for his inauguration. In 1991 he appointed
18 Charles Nesbitt to the newly created position of energy secretary. Nesbitt held the office of
19 energy secretary throughout the period of the events which will be described in my
20 testimony.

21 Gage's Ron Miller had met with Nesbitt in November 1991, and in the course of that
22 meeting Nesbitt exhibited substantial familiarity with the Creek-ONG dispute [Exhibit

1 SPD-24, Miller memo to First Assistant AG Douglas Allen, January 14, 1993]. Then, in
2 August of 1992 Charles Nesbitt's son, Doug Nesbitt, contacted Miller. In a September 16,
3 1992, meeting Doug Nesbitt outlined his proposal for acquiring Gage assets (specifically,
4 Creek Systems), the Creek-ONG lawsuits and Creek's ONG contract. This was
5 apparently the first proposed version of the model for what, in November 1993, would
6 become the Dynamic solution to the "Gage problem."

7 In December 1992 Cunningham asked Hield to submit to a deposition to be conducted as
8 part of the Attorney General's investigation [Exhibit SPD-23]. To arrange for the deposition
9 Hield, at Cunningham's request, called a telephone number in Tulsa where he spoke to
10 Vincent Stone and Virgil Smith. Investigating Cunningham's claim that he was associated
11 with an Attorney General's investigation, Dailey learned that Stone and Smith were private
12 investigators who worked under contract for ONG's attorneys. With the agreement of
13 Attorney General Susan Loving, in April 1993 Dailey turned further investigation of the
14 matter over to the Oklahoma City office of the FBI, which secured the tentative agreement
15 of Assistant U.S. Attorney H. Lee Schmidt to prosecute. There, for reasons which are
16 unexplained, the investigation died.

17 With Commissioner Bob Anthony's announcement, on October 2, 1992 [Exhibits SPD-19
18 and -25], that, for four years, he had been cooperating with an FBI investigation of
19 Commission corruption which he had caused to be initiated, the Gage-ONG dispute
20 became even more politically charged.

21 Commissioner Anthony documented for the FBI numerous occasions on which cash was
22 provided to him by utility attorney Anderson [e.g., Exhibit 26, p. 4, entry for 2/6/89] and by

1 Anderson clients, notably including Southwestern Bell and Arkla. Although no
2 ONEOK/ONG official was directly implicated in these specific transactions, Anderson had
3 been retained by ONG's attorneys since at least the 1960s (when he simultaneously held
4 the post of general counsel to the Commission) [Exhibit SPD-27]. ONG's counsel, John
5 Gaberino, has admitted that Anderson's billing records, submitted through Huffman
6 Arrington, charged ONG for meetings which probably did not occur (later amended to
7 "impossible .. to determine whether or when [emphasis added] the meetings in question
8 took place") [Exhibit SPD-28, p. 40], and Anderson had informed Anthony that, with their
9 knowledge, he padded his bills to his utility clients to accumulate cash for payments to
10 public officials [Exhibit SPD-26, p. 5, entry for 5/26/89]. In light of his apparently unaudited
11 and uncontested bills to ONG (submitted via Huffman Arrington), Anderson had no reason
12 to specifically inform ONG or its attorneys of his payments to Anthony; in fact, in light of his
13 assessment of Robert Huffman, ONG's general counsel and senior partner of Huffman
14 Arrington, as suffering from "diarrhea of the mouth" [Exhibit SPD-29, p. 4], he had every
15 reason not to give a detailed account to Huffman, who would approve his bills in any event.
16 Gage's announcement of its civil suit against Anderson [Exhibit SPD-20B] clearly indicated
17 that it considered ONG to be exposed to serious charges of complicity in Anderson's
18 corrupt acts.

19 Evidence of direct involvement in corruption, in concert with Anderson, was unambiguous in
20 the cases of Southwestern Bell and Arkla. Thus, for example, a group from Arkla, including
21 president T. Milton Honea and Oklahoma managers Dick Moore and James Baker, met
22 with Commissioner Anthony in February 1989 and discussed Anthony's campaign "deficit"

1 [Exhibit SPD-26, p. 4, entry for 2/9/89]. Several weeks later Moore delivered cash and
2 checks totaling \$2,600 to Anthony and subsequently exchanged the checks (including those
3 of Honea and Arkla general counsel Kathleen Gardner) for cash [Exhibit SPD-26, p. 5,
4 entries for 4/4, 5/4 and 5/16/89]. Similarly, Dave Miller, a vice president of SWB, with the
5 knowledge of SWB general counsel Glenn Glass, delivered \$2,450 in cash to
6 Commissioner Anthony [Exhibit SPD-26, p. 4, entry for 2/21/89], a fact with which
7 Anthony later confronted SWB's newly appointed regional president, J. B. Ellis [Exhibit
8 SPD-26, p. 17, entries for 3/19/90, 3/23/90 and 3/28/90, and p. 18, entries for 3/28/90
9 and 4/2/90], who eventually responded, "What transpired, transpired. ... I'm not on a witch
10 hunt" [Exhibit SPD-30, p. 42].

11 When reports of the FBI investigation became public, and especially after Commissioner
12 Anthony's announcements of October 2, 1992 [Exhibits SPD-19 and -25], potential
13 criminal liability was a serious concern, especially on the part of Anderson and his clients.
14 Creek Systems, and especially Ron Miller, vice president and co-owner of its corporate
15 parent, Gage, immediately recognized that Anthony's accusations concerning Anderson's
16 improper conduct were potentially significant for purposes of its legal battles with ONG:
17 hence the federal suit which it filed against Anderson on October 30, 1992 [Exhibits
18 SPD-20A and -20B].

19 While Arkla was not even a prospective party to the Creek Systems actions against
20 Anderson and ONG, probing of Anderson's illegalities by Creek Systems' attorneys would
21 inevitably lead to the exposure of Arkla executives' illegal payments to Anthony. Thus,
22 Arkla had substantial reasons to fear the consequences of Creek's pursuit of its legal

1 remedies. Similarly, while ONEOK/ONG may have been only indirectly implicated in
2 Anderson's illegal payments, ONG had been a clear beneficiary of Anderson's corrupt
3 influence over commissioners and commission staff and would inevitably be tainted by its
4 association with Anderson, especially as that association would be exploited by Creek
5 Systems.

6 In short, the regulated utilities which had retained Anderson to represent them in matters
7 involving the Commission had a clear mutuality of interest in limiting, to the greatest extent
8 possible, the public exposure of the intimacy of their relations with Anderson and, either
9 directly or through him, with members and staff of the Commission.

10 Available evidence does not confirm whether Arkla chairman Thomas F. "Mac" McLarty
11 was directly implicated in the improper payments which his senior executives had made to
12 Commissioner Anthony. However, the direct implication of his immediate subordinate,
13 Honea (who would become CEO on McLarty's departure for the White House), and
14 general counsel, Gardner, rendered him vulnerable, particularly so in light of his close
15 personal relationship with presidential candidate Bill Clinton, by whom he would be
16 appointed White House chief of staff in January 1993. Thus, as early as the fall of 1992 the
17 situation in Oklahoma (specifically, the investigation of Corporation Commission corruption)
18 was a topic of discussion and concern within national Democratic Party circles.

19 The first evidence of national political involvement, although it would not be recognized as
20 such at the time, came in September 1992, when Gage employees Mike McAdams and
21 John Kitchen (an employee of Gage, not to be confused with Gage president and co-owner
22 James H. Kitchens) were informed, by gas producer Phil Elias, of the prospective sale of

1 Gage to settle the Creek-ONG disputes. Elias told McAdams and Kitchen that “Don
2 Sweatman was setting the deal up for Jim Kitchens and the Washington group” [Exhibit
3 SPD-31, entry for September/October 1992].

4 The “Washington group” to which Elias referred consisted of Nora and Eugene Lum and
5 Democratic National Committee chairman (and future Secretary of Commerce) Ron
6 Brown. The Lums had developed important political associations in Hawaii by serving as
7 conduits for political “contributions” from developers (especially Japanese developers) to
8 significant state and local office holders, including Governor John Waihee (who, in 1993,
9 was succeeded by Oklahoma governor David Walters as chairman of the Democratic
10 Governors Association). The Lums and their daughters had become friends of DNC
11 chairman Ron Brown’s son Michael in the course of the 1988 Dukakis campaign.
12 Recommended to Brown by Waihee, the Lums were recruited by Brown to relocate to
13 California, and, in July 1992, they established the Asia Pacific Action Counsel [APAC] –
14 Vote as a semiautonomous offspring of the Democratic National Committee, designed to
15 marshal Asian support for the Clinton-Gore ticket. Liaison to the DNC was provided by
16 John Huang, then an executive with Mochtar Riady’s Lippo Bank in Los Angeles, a DNC
17 fundraiser and a future political appointee of Ron Brown in the Department of Commerce,
18 and Melinda Yee, an aide to Brown at the DNC and future White House and Commerce
19 Department appointee.

20 Charles Chidiac, a Lebanese developer who had utilized the Lums’ “services” in his efforts
21 to obtain permits for a resort development in Hawaii and, compromised, was recruited as a
22 confidential informant for the FBI’s investigation of the Lums’ role in political corruption in

1 Hawaii, joined the Lums at their APAC-Vote offices in Torrance, California, in 1992.
2 Because Chidiac feared that his life would be in danger when his role as an informant
3 became known to the Lums, who, according to Chidiac, had connections to organized
4 crime, specifically the Japanese Yakuza, (now former) FBI special agent Calvin Uhlig
5 promised Chidiac eventual entry into the federal Witness Protection Program. When
6 permission was later denied by the U.S. Department of Justice, Uhlig placed Chidiac under
7 the protection of a foreign government. In response to my questions, relayed to Chidiac (in
8 hiding abroad) by Uhlig, Chidiac reports that Don M. Sweatman would frequently appear at
9 the APAC-Vote headquarters, representing himself as Bill Clinton's personal
10 representative. While Sweatman, in a personal conversation with me, dismissed Chidiac as
11 a criminal and a liar and denied that he presented himself as Clinton's representative, it is
12 possible that Chidiac was simply repeating a claim by Nora Lum that Sweatman was
13 Clinton's personal representative, since Lum is commonly characterized as a notorious
14 name-dropper.

15 Sweatman had been introduced to Gage's Jim Kitchens and Ron Miller by one of their
16 employees, Lee Haslam, in the early 1980s and had become involved in oil or gas
17 development with Kitchens and Miller. With the collapse of the energy market in the mid
18 1980s, Sweatman refocused his business interests in southern California, where he
19 apparently continued to be associated with Kitchens, whose construction company was
20 involved in residential and commercial development and in the construction of race tracks
21 for Mickey Thompson Enterprises. In the late 1980s Sweatman and his brother-in-law,
22 Larry Locke, of Texas, secured control of Whitworth-Towne Paulsen Pharmaceuticals,

1 and proceeded to drain the company's retirement fund via transfers through the Houston
2 branch of a Bahamian bank; although named as defendants in a civil action and under
3 criminal investigation, prosecution of Sweatman and Locke appears not to have been
4 pursued, again for reasons which are unknown [Exhibit SPD-32].

5 Nora and Gene Lum are reported by McAdams [Exhibit SPD-31, p. 2] and W. Stuart
6 Price [Exhibit SPD-33, p.43, line 17] to have had a prior association with Gage's Jim
7 Kitchens. This most plausibly dates back to the mid 1980s, when Kitchens constructed race
8 tracks in Hawaii for Mickey Thompson. In light of subsequent financial flows, it appears
9 likely that Kitchens had a financial interest in the Lums' golf-course-development, Akahi
10 Kona, on the island of Hawaii, [Exhibit SPD-31, p. 2], and that Kitchens had introduced
11 Sweatman to the Lums.

12 Precisely how developments unfolded is not yet known with certainty. It is known that Doug
13 Nesbitt brought the basic model to Ron Miller in early September 1992 and that, by the end
14 of September 1992, Elias was reporting to McAdams and Kitchen that Don Sweatman was
15 "setting the deal up for Jim Kitchens and the Washington group." McAfee & Taft attorney
16 David Stinson, representing Gage, was informed by Kitchens that he was meeting with
17 Nora Lum in California in the fall of 1992, and Stinson received an offer to purchase Gage
18 in October 1992; this offer was followed by a draft purchase agreement prepared by
19 Norman attorney Philip Redwine, who had been retained by Lum on the advice of Robert
20 Nafee and Doug Nesbitt [Exhibit SPD-34, p.62].

21 Several plausible scenarios for the appearance of the Lums can be suggested. In a personal
22 interview with me, Nolanda Butler Hill, a close associate of Ron Brown's, indicated that

1 Brown first learned of McLarty's "Oklahoma problem" from Little Rock lawyer and close
2 Clinton associate Bruce Lindsey. Perhaps Brown then mentioned the problem to the Lums,
3 as suggested by Jim Kitchens' claims to Ron Miller that he was contacted, probably by Don
4 Sweatman, after the problem was discussed at a Democratic fundraiser in California
5 [Exhibit SPD-35]. In this scenario, it is coincidental that the Lums had a prior association
6 with Kitchens.

7 Or, perhaps outside involvement originated in Oklahoma, with ONG and Governor
8 Walters' camp (Walters, Cunningham, Charles Nesbitt). Recognizing McLarty's Arkla
9 exposure, they may have sought national assistance, through persons such as Lindsey and
10 Brown, with whom Walters, certainly, was in contact.

11 Or, finally, perhaps matters originated with Miller's report of Arkla exposure and the
12 Nesbitt proposal to Kitchens, which Kitchens passed on to his friends the Lums and
13 Sweatman, who saw the opportunity to secure a role for themselves with the political
14 assistance of their mentor Ron Brown, a friend of Governor Walters.

15 Whatever the precise sequence of developments, by the fall of 1992 we know that, in
16 addition to ONG and Gage-Creek, direct or indirect participants included state Democratic
17 party figures, including members of the Walters administration (Cunningham and Nesbitt),
18 national Democratic party figures (McLarty, Lindsey and Brown), and Brown's minions
19 (the Lums and Sweatman).

20 In her sworn testimony before the Commission in Cause PUD No. 200100018 [Exhibit
21 SPD-36, January 31, 2001] and in conversations with me, Brown associate Nolanda Butler
22 Hill has reported that Brown was particularly attracted by the possibilities of (a) his

1 resolution of McLarty's "Oklahoma problems" (which would ingratiate him with the
2 Arkansas clique surrounding Bill Clinton) and (b) the Lums' establishment of an energy
3 company which could compete for minority-set-aside contracts, especially at the new
4 Denver airport, for which Brown (a partner in the Washington law firm of Patton Boggs)
5 had served as Washington lobbyist and where Brown had close ties with Colorado
6 governor Roy Roemer (who would be Brown's successor as DNC chairman) and Denver
7 mayor Frederico Pena (Brown's future cabinet colleague as Secretary of Transportation).

8 That the Gage-ONG problem was a continuing source of high-level political concern in late
9 1992 and early 1993 was confirmed to Miller in February 1997, when he was told of a
10 January 1993 White House meeting of the President, Hillary Clinton, Terry McAuliffe of the
11 DNC, McLarty and Miller's source, in which the topic of discussion was "McLarty's
12 problems in Oklahoma with ONG" [Exhibit SPD-37A, transcript of a telephone
13 conversation between Miller and Peter Boyer, author of The New Yorker articles
14 constituting part of Exhibit SPD-22 and the PBS Frontline programs referenced above at p.
15 7, lines 20-21]. Miller characterized his source as even more shadowy than Don Sweatman.

16 I have verified that, on the evening prior to this conversation, i.e., on February 26, 1997,
17 Miller met with a politically well-connected but extremely low-profile individual in Norman
18 to discuss development of a race track in the Oklahoma City vicinity. This person had been
19 instrumental in David Walters' rise to political power, for example, by bringing Walters
20 together with one of his principal financial backers, construction-company owner Ron
21 Yordi, and enjoyed access to the White House at least through 2000. While he admits the
22 meeting with Miller, he denies that he was Miller's source for the reported January 1993

1 White House meeting, although he did suggest that Miller might have been given this report
2 by someone to whom he introduced Miller on the evening of February 26, 1997.

3 In the same vein, Nolanda Hill [Exhibit SPD-36] reports that Hillary Clinton invited Ron
4 Brown to a private luncheon on a White House balcony in early spring 1993. In the course
5 of that lunch, Mrs. Clinton “expressed appreciation of [Brown’s] efforts to get her husband
6 elected. She also acknowledged his efforts toward resolution of Mack McLarty’s problem
7 in Oklahoma.” Prior to that luncheon, Ms. Hill has reported in conversation with me, Brown
8 had not been considered a Clinton-administration insider; after the luncheon Brown was
9 brought into the inner circle, the “Arkansas Mafia,” and included in the weekly evening
10 gatherings of the President and his most intimate associates.

11 With the continuing active involvement of Charles Nesbitt [Exhibit SPD-35, pp. 17-19] and
12 legal representation by Redwine, by spring 1993 “the deal” for acquisition of Creek
13 Systems by a Lum company (either KI Corporation or Cal Pacific International [CPI]) was
14 almost completed.

15 For reasons which can only be surmised, the spring 1993 deal collapsed. In subsequent
16 telephone conversations with Ron Miller [Exhibits SPD-38A (7/8/93), pp. 19-ff, -38B
17 (7/27/93), p. 6, and -38C (8/18/93), p. 8], Sweatman identified the “Oklahoma boys,” and
18 specifically Charles Nesbitt, as the primary problem. In these conversations Sweatman also
19 refers repeatedly to the lack of sufficient “cash” in the deal to meet Gage’s demands.
20 Sweatman’s references to cash suggests that ONG was being asked to provide the funds
21 for the Lums’ acquisition of Creek Systems. Because a cash payment would not have been
22 recoverable from ratepayers and thus would have directly reduced ONEOK’s “bottom

1 line” (net income), it is plausible that ONG was resistant.

2 Under the pressure of a scheduled September 7, 1993, date for evidentiary hearings before
3 Judge William S. Myers, as special master for the Oklahoma Supreme Court in the ONG
4 suit against Anthony, in early August David Kyle (ONG) and Jim Kitchens (Gage) held
5 another of what had become recurrent “turnpike meetings” midway between Tulsa and
6 Oklahoma City. Subsequent developments suggest that there had been two interrelated
7 barriers to a settlement. First, Gage had been holding out for a price which was simply too
8 high, and, second, the Lums’ and Ron Brown’s profit expectations had been too great.
9 These problems had been exacerbated by the Lums’ requirement for up-front cash from
10 ONG for the purchase of Creek Systems.

11 Perhaps because he was involved (without the knowledge of his partner, Ron Miller) in both
12 sides of the Lum-Gage transaction, Kitchens was more flexible in his approach to a
13 settlement than Miller. Miller had “drawn a line in the sand” at \$16.5 million as the price
14 required by Gage to reach a settlement [Exhibit SPD-38D (8/24/93), pp. 34 ff.]. The deal
15 which had been tentatively reached in the spring had apparently been at that price, but
16 ONG had failed to provide the Lums terms which would make the transaction profitable (or
17 perhaps even feasible) at that price. For example, even if ONG had then been offering a
18 gas-purchase contract comparable to the ultimate Dynamic contract, the value of that
19 contract (\$18 to \$22 million, given the prices later paid by ANG and Enogex for their
20 halves of the Dynamic contract) may have left too small a profit for the Lums, Brown et al. if
21 Gage was demanding in excess of \$16 million.

22 Kyle certainly knew that Kitchens was more eager for an “amicable” settlement than Miller,

1 who was prepared to carry the battle through to a conclusion in the courts (where he
2 anticipated that the Anderson suit would evolve into a civil RICO action). It may have been
3 in the course of the turnpike meeting that Kyle, to encourage Kitchens' inclination toward a
4 settlement, reportedly observed that "someone could get killed out of this if this wasn't
5 settled" [Exhibits SPD-31, p. 1, and SPD-35, pp. 1-3].

6 The principal outcome of the Kyle-Kitchens meeting was agreement on the need to identify
7 a substitute for the Lums as the intermediary to facilitate a settlement between ONG and
8 Gage. When Kitchens reported to Miller that Kyle had asked for suggestions of someone
9 else with whom the deal could be done, Miller immediately suggested Bob Alexander of
10 Alexander Energy, a person well-known in the Oklahoma natural-gas circles. When Kyle
11 responded favorably to Kitchens' suggestion of Alexander Energy, Miller contacted Phil
12 Lohmann, an engineer with the company.

13 Over a period of weeks, Miller, Lohmann and Bob Alexander formulated a proposal to
14 ONG [Exhibits SPD-35, pp. 21-42, and SPD-37B and SPD-39]. Essentially, it would
15 have involved a ten-year ONG contract for 25,000 MCF per day, from multiple delivery
16 points, at a price equal to the greater of spot plus \$1 or WACOG. Alexander Energy would
17 pay Gage an initial \$3 million for Creek Systems and 50 percent of the premium over spot
18 over the term of the contract. When Alexander presented this proposal to Kyle and Steve
19 Guy on August 25, 1993, Kyle was apparently receptive. However, after a break the tenor
20 of the meeting changed, and it became apparent to Alexander that ONG had decided to
21 proceed with the Lums.

22 Under the pressure of the competing Alexander Energy proposal, over the course of August

1 1993 the Lums completely restructured their Oklahoma-project “team” and, perhaps
2 inspired by the Alexander Energy proposal, began to evolve the complete model, under
3 which a newly formed company with no assets would finance the purchase of Gage with the
4 proceeds of the sale of a new ONG contract.

5 Sweatman remained part of team (primarily as an intermediary to Miller, giving Miller’s
6 partner Kitchens plausible deniability, because Miller was unaware of Kitchens’ prior
7 association with the Lums). However, Charles Nesbitt was apparently removed from the
8 roster. John Tisdale, a member of the Little Rock law firm of Wright, Lindsey and Jennings
9 (and thus a partner of White House functionary Bruce Lindsey) who had served as legal
10 counsel to the Clinton-Gore campaign, became the Lums’ legal representative, replacing
11 Redwine. William Stuart Price, with business interests in the oil and gas industry, became
12 the lead negotiator for the Lums with ONG and, eventually, with the purchasers of ONG’s
13 “Dynamic contract.” Price, a nonpracticing Tulsa attorney who had been finance chairman
14 of the Clinton-Gore campaign in Oklahoma, whose wife was the niece of then Senate
15 majority leader George Mitchell and who would become a congressional candidate in 1994
16 (losing to Steve Largent), had been recommended to the Lums by Jim East, on the staff of
17 Tulsa mayor Susan Savage. East had been contacted by Fred Humphries of the DNC,
18 seeking someone with oil and gas experience to assist the Lums [Exhibit SPD-34, p 64]. In
19 a later interview by investigators from the Office of the Inspector General of the Department
20 of Commerce, Price identified a DNC contact, Monica Aboud, then at the U.S. Department
21 of Energy, as the source of his introduction to the Lums [Exhibit SPD-40, p. 1].

22 Prior to the August 25, 1993, meeting among Bob Alexander, David Kyle and Steve Guy,

1 the Lums' negotiations with ONG had remained stalled. It appears that ONG had yet to
2 offer the pricing terms of the eventual Dynamic contract (the greater of spot plus \$0.40,
3 \$2.78 or WACOG); a telephone conversation between Miller and Sweatman [Exhibit
4 SPD-38D (8/24/93), p. 13] suggests that ONG's offer had even been reduced from spot
5 plus \$0.40 to spot plus \$0.15.

6 With breathing space provided by a delay of Judge Myers' evidentiary hearing from
7 September 7 to November 10, 1993, after the Alexander meeting the Lums' new team
8 made rapid progress. By early September Nora and Eugene Lum, Price and Tisdale were
9 in the Gage offices, the ultimate terms of the Dynamic contract appear to have been
10 negotiated with ONG, and Price was actively negotiating with ANG for the latter's
11 acquisition of one-half of this ONG contract.

12 Simultaneously, Sweatman was delegated the task of dealing with the stumbling block
13 presented by Ron Miller's insistence on a \$16.5 million purchase price for the Gage assets.
14 By late August, with Kitchens pressuring Miller to agree to a settlement, Sweatman
15 convinced Miller to agree to an initial price of \$10 to \$11 million, with the shortfall from
16 Miller's \$16.5 million to be made up through what became known as a "side deal," under
17 which \$1 million would be invested in a shadowy European fund which would generate
18 returns of 100 percent per year over five years, giving Miller his \$16+ million [Exhibit
19 SPD-38E (8/24/93)]. While Miller, a practical man with some financial experience, was
20 skeptical of Sweatman's European fund, pressure from Kitchens, Sweatman's reassurances
21 and financial exigency apparently overcame Miller's initial doubts concerning the "reality" of
22 this scheme.

1 Miller also resisted payment of a seven percent “finder’s fee” demanded by the Lums.
2 While Sweatman agreed to a reduction in the fee, to be paid to the Lums’ KI Corporation
3 (of which Michael Brown would later be identified as president), Sweatman insisted that a
4 minimum fee of three percent was necessary as a payment to some unidentified third party.
5 After the November 9, 1993, closing of the complex of transactions this fee would be paid
6 on behalf of Gage by Kitchens, simply to prevent Miller from learning its ultimate
7 disposition. The fee became a source of difficulty for Gage in the course of a later federal
8 tax audit, when Kitchens refused to provide documentation of the payment or the identity of
9 the recipient.

10 As finally closed on November 9, 1993, in the offices of Gage’s attorneys, McAfee & Taft,
11 in Oklahoma City, with Tisdale, the Lums, Price, Sweatman, ONG attorney Tom Kirby,
12 Kitchens and Miller in attendance (although Kitchens represented Gage, insuring Miller’s
13 ignorance of many of the details), a newly-formed Delaware corporation, Dynamic Energy
14 Resources, Inc., in which Nora Lum held a 70 percent interest and Linda Mitrchell Price
15 held the remaining 30 percent, acquired Gage assets (principally Creek Systems) for \$9.4
16 million, of which \$6.3 million was paid in cash [Exhibit SPD-33, p. 48]. The remaining \$3.1
17 million balance of the purchase price was to be paid in monthly installments over three
18 years, commencing in February 1994, and was personally guaranteed by Nora and Eugene
19 Lum, Stuart and Linda Price and their companies. Prior to the closing ONG agreed to the
20 transfer of one-half of the contract to ANG, and the ONG-ANG contract, for which
21 Dynamic received \$7.5 million, also closed on November 9 [Exhibit SPD-41, ONG/ANG
22 assignment letter].

1 While Price's company, Denver Oil and Minerals, had paid \$20,000 prior to the closing to
2 satisfy certain Gage creditors, no other cash was put into Dynamic by the Lums or Prices.
3 Thus, Dynamic's sale of the ANG contract provided the cash for the entire transaction. At
4 the conclusion of the November 9 transactions, Dynamic was left with about \$1.2 million.
5 Of the \$6.3 million received by Gage, approximately \$4 million was absorbed by Gage
6 debts and contingent fees to its attorneys, McAfee & Taft. Also, through Kitchens Gage
7 paid the finder's fee of at least \$300,000 to the Lums (possibly KI Corporation). Thus, at
8 the conclusion of the November 9 transactions, Gage's bank, Republic Bank of Norman,
9 was instructed to credit \$1 million each to the accounts of Miller and Kitchens. Miller and
10 Kitchens remained personally liable for a significant debt to a Creek Systems creditor,
11 Capitol Energy Group of New York, to be repaid from the installment payments which
12 were to commence the following February.

13 One problem emerged in the course of the November 9 closing of these transactions. While
14 the ANG purchase of its half of the Dynamic contract would provide sufficient funds for the
15 closing and, in fact, leave Dynamic with a positive cash balance of about \$1.2 million, the
16 ANG funds would not be received until the ONG-Dynamic-Gage transactions had closed.
17 Miller, however, refused to agree to the closing of the transaction unless the Dynamic cash
18 to be received by Gage was actually in the possession of Gage's bank, Republic Bank of
19 Norman.

20 Nolanda Hill [Exhibit SPD-36] reports that Ron Brown was notified of the problem on or
21 shortly before November 9. From her company's Washington apartment, Brown called
22 McLarty at the White House and informed him of the problem and of the urgent need for

1 bridge financing.

2 With the completion of the transactions in the balance, Republic Bank agreed to keep its
3 bank-wire open beyond usual hours, and late in the afternoon on the 9th a wire transfer of
4 \$4,584,111 arrived from a Little Rock bank via Dynamic's bank, State Bank of Tulsa
5 [Exhibit SPD-42]. Miller was later to learn from Chuck Thompson, president of Republic
6 Bank, that the wire originated from an account of Llama Corporation [Exhibit SPD-37B], a
7 venture-capital company controlled by Alice Walton, a member of the "Walmart" Walton
8 family. While at the Rose law firm in Little Rock, Hillary Clinton had substantial connections
9 with various Walton companies, and it can be surmised that she or McLarty made
10 arrangements for this source of bridge financing.

11 Upon the signing of the mutual release [Exhibit SPD-17] between Gage and Creek
12 Systems, on the one hand, and ONG, Huffman Arrington and Anderson Waddell, on the
13 other, all litigation in which they were involved was dismissed, and the evidentiary hearing
14 scheduled to be conducted by Judge Myers on the following day, November 10, 1993,
15 was avoided.

16 **Q Has the substance of your testimony in Volume Two influenced in any way your**
17 **economic analysis and conclusions, as presented in Volume One of your testimony?**

18 A No.

19 **Q In what way is this volume relevant to your testimony in Volume One?**

20 A As I indicated in Volume One, the Dynamic contract can be explained only by either (a)
21 incompetence or (b) the existence of something other than natural gas which
22 ONEOK/ONG (or its officers or employees) acquired by means of the contract. The

1 evidence presented in this volume extrapolates on the settlement of litigation which is the
2 “something else,” other than natural gas, which ONG did acquire, on behalf of itself and
3 others, by the award of the Dynamic contract.

4 **Q Does this conclude your testimony for Volume Two?**

5 A Yes, it does.

6 **Q Thank you.**

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICANTS: MICHAEL EDWARD McADAMS and
 JOHN POWELL WALKER

RELIEF SOUGHT: RELIEF FROM IMPROPER) CAUSE NO. PUD 980000188
AND EXCESSIVE PURCHASED GAS COSTS)

TESTIMONY

PREPARED BY

STEPHEN P. DRESCH

ON BEHALF OF

APPLICANTS

MICHAEL EDWARD McADAMS

AND

JOHN POWELL WALKER

EXHIBITS TO VOLUME TWO

RELIEF FROM IMPROPER AND EXCESSIVE PURCHASED GAS COSTS
CAUSE NO. PUD 980000188
Exhibits of Stephen P. Dresch – Volume Two of Testimony

Title	Exhibit
Magazine and newspaper articles on Dynamic, the Lums, etc.	SPD-22
FBI Report: Alec Cunningham et al., April 26, 1993	SPD-23
Ronald Miller Memo to D. Allen, First Asst. Attorney General, Jan. 14, 1993	SPD-24
Bob Antony Statement re Southwestern Bell, Oct. 2, 1992	SPD-25
Anthony Chronology	SPD-26
Oklahoman Anderson column, June 20, 1993	SPD-27
Prefiled Testimony, Randy L. Smith (excerpts), Cause PUD No. 910001151	SPD-28
Anthony-Anderson Transcript, Jan. 30, 1989	SPD-29
Anthony-Ellis transcript,	SPD-30
McAdams Memo, Dec. 1, 1995	SPD-31
Los Angeles Times article on Don M. Sweatman, Nov. 25, 1990	SPD-32
Price Testimony, Price v. Lum et al., July 7, 1995	SPD-33
House Govt. Reform (Leach) Report (unpublished excerpts)	SPD-34
Ron Miller – James Proctor Telephone Transcript, Feb. 27, 1997	SPD-35
Nolanda Butler Hill, Sworn Testimony, OCC, January 31, 2001	SPD-36
Ron Miller – Peter Boyer Telephone Transcripts, Feb.-March 1997	SPD-37A/B
Ron Miller – Don M. Sweatman Telephone Transcripts, June – Aug. 1993	SPD-38A/E
Phil Lohmann (Alexander Energy) Daily Work Log, Aug. 4-26, 1993	SPD-39
Inspector General, Commerce Dept., Price Interview Notes, Aug. 17, 1995	SPD-40
ONG-ANG Assignment letter	SPD-41
Republic Bank wire transfer document, November 9, 1993	SPD-42

* Confidential. Not submitted for filing with testimony and other exhibits.