Oklahoma Corporation Commission
Testimony of Nolanda Butler Hill and Stephen P. Dresch
Implicating Thomas F. McLarty III and Hillary Rodham Clinton
in the Matter of Dynamic Energy Resources, Inc., and Oklahoma Natural Gas (ONEOK)

Below you will find the texts of prepared statements presented under oath by Nolanda Butler Hill and Stephen P. Dresch on January 31, 2001, at Oklahoma Corporation Commission, Public Hearing on Purchased Gas Adjustment Clauses of Oklahoma Natural Gas Company and Reliant Energy Arkla, Cause No. PUD 200100018.

Ms. Hill directly implicates, in addition to the late Secretary of Commerce Ronald H. Brown, Thomas F. (Mac) McLarty III and Hillary Rodham Clinton in events stemming from an investigation of corruption at the Oklahoma Corporation Commission (including bribery of commissioners) and involving Dynamic Energy Resources (Nora and Eugene Lum, W. Stuart Price, Michael A. Brown et al.) and Oklahoma Natural Gas (ONEOK) et al.

Dresch develops evidence which demonstrates that a contract awarded by Oklahoma Natural Gas to Dynamic Energy Resources on November 9, 1993, which Dynamic resold (one-half presold) for about $19 million (netting the Lums, Price, Brown et al. in excess of $10 million), "represents the laundering of the costs of avoiding liability and preventing the exposure of defalcations, almost definitionally nonrecoverable, into recoverable purchased-gas charges." Dresch concludes: "In determining the appropriate purchased-gas charges and adjustments to be allowed ONG, the Commission should exclude the 'excess' or 'imprudent' costs incurred by ONG through its contract with Dynamic Energy Resources and its successors (ANG and Enogex). These are costs which ONG alone should bear, and they certainly should not be shifted to ONG’s natural gas consumers."

Public Comment
of
Nolanda Butler Hill
Oklahoma Corporation Commission

My name is Nolanda Butler Hill. Although I am a resident of Texas, I have long-standing ties with the state of Oklahoma and its citizens. My mother was born in Oklahoma and lived here with her grandmother during much of her life. My father grew up in Prague and was a highschool star athlete. He went on to Tulsa University where he earned a reputation as an outstanding member of the football, basketball, baseball, and track teams. His brothers also received their university training at Tulsa University. My maternal grandfather was a senior inspector for the State of Oklahoma Highway Department. After my grandmother's death, Granddaddy married a wonderful woman who was a career employee of the State of Oklahoma, spending most of her career as the administrative assistant to the Governor.

As an adult, I maintained my interest in Oklahoma, not only as a die-hard Bud Wilkinson supporter and OU fan, but also as a champion of Wilma Mankiller in her efforts to help her people who comprise the Cherokee Nation. I supported Wilma's efforts to twice be elected Chief of the Nation and even produced the commercials which she used in her campaigns. I have been privileged to have Wilma and her wonderful husband, Charlie Soap, as guests in my home.

Over the past years, I participated, on a volunteer basis, with the firm of Patton, Boggs in Washington, D.C. in efforts to help the Cherokee Nation set aside onerous contracts entered into through the Bureau of Indian Affairs for oil and gas rights in the Red River region. These rights were essentially given away to large oil companies, leaving the Cherokee people destitute.

As has anyone who reads newspapers or watches television, I have become aware of the problems surrounding public utilities and the supply of energy to homes and businesses in many parts of the United States. Coincidentally, I realized that I had some information which perhaps could be of benefit to the citizens of Oklahoma in their attempts to curtail escalating power costs. My past involvement with the Cherokee Nation and its members has given me insight into the high degree of poverty in Oklahoma. I am acutely aware of the hardships even five dollars a month increase in utilities places on many of the homes in this fine state. Certainly, if I can help those who most need it, the elderly, the single parents and their children, the under-employed, the unemployed, I must at least try.

In this regard, I learned several years ago, through my association with the late Ronald H. Brown, former Chairman of the Democratic National Committee and Secretary of Commerce, about the involvement of a highly placed Clinton Administration Official, Mack McLarty, in what became an egregious financial transaction centered around the supplying of gas to ONG. It is this information that I bring to the Commission with my appearance today.

By way of background, Ron Brown and I were business associates for many years. Additionally, once Mr. Brown became Democratic National Committee Chairman, he increasingly relied on me to assist in managing his financial affairs. To this end, I was exposed to a wide swath of Mr. Brown's activities in his non-public life.

My initial exposure to the Gage matter transpired in the early Spring of 1993. Then Secretary of Commerce Brown arranged with me to pick me up at my office following his lunch meeting at the White House with First Lady Hillary Rodham Clinton. I remember distinctly the instance because Secretary Brown's first reaction upon my getting into his chauffeured car was that I was wearing the identical suit that the First Lady had been wearing at his private lunch earlier in the day.

Secretary Brown was enthusiastic about his meeting with the First Lady. It was the first time the two of them had spent significant time alone. They dined on the balcony upstairs at the White House and, according to Secretary Brown, she expressed appreciation of his efforts to get her husband elected. She also acknowledged his efforts toward resolution of Mack McLarty's problem in Oklahoma.

I questioned Secretary Brown as to this matter, and he briefly described a problem concerning a small gas company, Gage, with which Mr. McLarty had some association.

Secretary Brown's confirmation as Secretary of Commerce had been a difficult process with which I had been involved. Certain media and Congressional members had continued to apply pressure to me following his confirmation concerning Secretary Brown's business activities in prior years. I admonished Secretary Brown not to become involved in anything remotely questionable in Oklahoma or anywhere else.

Secretary Brown forcefully expressed his opinion that it was critically important for him to help Mr. McLarty in any way he could, as he, Secretary Brown, remained an outsider as regarded what he called the "Arkansas Mafia". This term defined, for Secretary Brown at least, what others might have seen as the White House Kitchen Cabinet.

My next exposure to the Oklahoma/Gage matter was in early November, 1993. Secretary Brown often came to an apartment at 2400 Pennsylvania Avenue in Washington, D.C., maintained by the company of which I was president, to make non-governmental phone calls. In this instance, Secretary Brown placed a call to Mr. McLarty's office where he initially spoke to Mr. McLarty's assistant, Patty McHugh. Ms. McHugh had been Secretary Brown's assistant at the Democratic National Committee. After brief family oriented chit-chat, Secretary Brown asked to speak to Mr. McLarty.

As I listened to Mr. Brown's end of the conversation, I became very concerned. Secretary Brown talked of a glitch in the timing of the Gage deal and the need for bridge financing to keep the deal from falling apart.

After Secretary Brown hung up the phone, I questioned the propriety of what he was doing and inquired as to why he had not solicited my help in arranging any needed financial assistance so as to keep even any appearance of impropriety at bay. This was especially important, I believed, because Secretary Brown was under investigation by a federal grand Jury in Dade County, Florida for alleged improprieties concerning Vietnamese trade status.

Secretary Brown was terse in his response, indicating that the Gage deal was something in which Mr. McLarty was already involved.

Statement of
Stephen P. Dresch
to
Oklahoma Corporation Commission
Public Hearing on Purchased Gas Adjustment Clauses of
Oklahoma Natural Gas Company and Reliant Energy Arkla
Cause No. PUD 200100018

Mr. Chairman and Commissioners:

Thank you for the opportunity to address the Commission concerning the above-referenced matter.

As an economist, I could begin with a disquisition on the theory of public utility regulation and specifically on the definition of recoverable costs and on the role of pass-through-cost adjustments in the context of rate-of-return-based utility pricing. However, the Commissioners have had vastly more experience in this area than I, and the public might well find this dissertation less than enlightening. Thus, I will state only one, simple, proposition:

When utility regulation permits the recovery or pass through to consumers of certain utility costs, it is assumed that these costs are determined through arms-length, competitive transactions. In other words, it is assumed that, all else equal, the costs incurred by the utility are the lowest possible.

Certain costs are explicitly excluded in determining the rates and charges which regulated utilities are permitted to assess their customers; the utility is permitted to recover only those costs prudently necessary to the provision of service. Thus, for example, while certain legal judgments may be recoverable (as, e.g., when an electrical utility's lines fall in a storm and electrocute a passerby), legal judgments resulting from malfeasance of management generally do not constitute recoverable costs.

Most simply stated, the gas supply contract into which Oklahoma Natural Gas entered with Dynamic Energy Resources, Inc., on November 9, 1993, represents an attempt to launder nonrecoverable costs into charges recoverable from ONG's ratepaying public.

Background of the ONG-DERI Contract:

In 1980, at a time of historically high energy prices, ONG entered into a 15 year gas supply contract with a small gas gathering firm, Creek Systems, a subsidiary of Golden Arrow Gas Energy (Gage) Corp., largely owned by James H. Kitchens and Ronald G. Miller. The price stipulated in this contract, $2.83/mmbtu, reflected the conditions prevailing in the market at that time. Perhaps even more significant than the price was the "take" provision of the contract, which required that ONG take the Creek Systems gas whether it needed it or not.

By 1989 gas prices had fallen significantly and, more importantly, ONG faced the obligation under its contracts of taking high-priced gas. Instead, ONG and Arkla could profitably replace purchased gas with "payment in kind" (PIK) gas. To deal with this problem and thus to exploit this opportunity created by PIK gas, ONG attempted to utilize the Commission's "priority-take" rules to avoid its contractual obligation to take gas for which it had contracted."

Because ONG was not the "first purchaser" of gas under the Creek Systems contract, Gage argued that the priority-take rules did not apply to Creek Systems and that ONG could not evade its contractual obligation to take the Creek Systems gas. Although Creek Systems' position was upheld by an OCC administrative law judge, the Commission, by a 2-1 vote, held that ONG could be considered the first purchaser and thus could curtail its acceptance of Creek Systems gas, notwithstanding its contract.

While it continued legal actions challenging ONG's interpretation of the priority take rules (and to defend itself against ONG claims that it had breached other provisions of the 1980 contract), Gage was economically devastated by the OCC decision, since the 1980 ONG contract represented its primary source of revenue.

Gage had been particularly dumbfounded by the Commission's rejection of the recommendation of the administrative law judge on the first-purchaser issue, but in October 1992 Commission Chairman Bob Anthony provided Gage with an apparent explanation for its experience before the Commission: On October 2, 1992, Chairman Anthony announced that, for almost four years, he had been participating in a federal investigation of corruption at the Corporation Commission, and he singled out Creek Systems (Gage) as a likely victim of decisions which had been tainted by corrupt practices (extending even to the alleged inappropriate authorship of Commission orders by ONG attorneys).

Gage immediately filed suit against attorney William L. ("Tater") Anderson, who had represented ONG, Arkla, Southwestern Bell and other utilities in dealings with the Commission. In the aftermath of Commissioner Anthony's revelations Anderson was most directly implicated as the conduit for illegal payments to commissioners, ex parte contacts with commissioners and staff and other illegal practices. Transcripts of meetings and telephone conversations between Anderson and utility executives, on the one hand, and commissioners, on the other, clearly revealed the pervasiveness of corruption and malfeasance at the commission.

At this point the pages of the Oklahoma Corporation Commission corruption scandal become interleaved with the pages of corruption scandals in Washington, D.C., and Hawaii.

Although the evidence developed in the course of the investigation clearly implicated utility executives and commissioners in Anderson's corrupt activities, in early 1993 the federal investigation became greatly circumscribed. Eventually, only Anderson, Commissioner Bob Hopkins and rural telephone executive Jewell Callaham were indicted; while Callahan died before trial, Hopkins and Anderson were convicted.

Particularly strong evidence of complicity of Arkla and Southwestern Bell executives existed, leading to the suspicion that higher authorities had intervened for their protection. While that suspicion can be only speculative, it is supported by claims expressed to associates by one Nora Lum, a later participant in these affairs, that Associate Attorney General Webster Hubbell, appointed in January 1993, had been responsible for the effective termination of the investigation and for the limited prosecutions.

Of those potentially threatened by the Oklahoma investigation, the most nationally prominant was Thomas F. ("Mac") McLarty III, appointed President Clinton's White House Chief of Staff in January 1993. From the mid 1970s until assuming his White House position McLarty had been chairman of Arkla. Arkla's president T. Milton Honea, its principal Oklahoma executive Richard Moore and a several other Arkla executives, including its general counsel, had been directly implicated in the covert transfer of cash to Commissioner Anthony. While McLarty himself was not directly implicated in OCC corruption, any claim that the chairman was ignorant of the direct involvement of a number of Arkla's most senior executives strained credulity. Thus, it is not implausible to speculate that, if the investigation was curtailed as a result of Department of Justice intervention, protection of McLarty was the motive.

While high-level Washington intervention, terminating the Oklahoma investigation and limitating the resultant prosecutions, served to protect McLarty and others who may have been at risk, no "higher authority" was available to neutralize the threat posed by the Gage litigation. While immediately targeting utility lawyer Bill Anderson, Gage's Ron Miller, who provided the driving force for the legal action, clearly stated through press releases that the suit would eventually be extended to include ONG, its officers and attorneys. Also, in the course of that suit, to demonstrate a pervasive pattern of corruption at the Oklahoma Corporation Commission, the evidence of illegal activities of utilities other than ONG, and specifically including Arkla, would be developed. Thus, the Gage suit constituted a threat not only to its primary target, ONG, but also to McLarty.

Subsequent events indicate that this threat was a matter of concern at the highest levels of the Clinton administration and in fact predated the presidential election of 1992.

In the fall of 1992 Hawaiians Nora and Eugene Lum entered the picture. While Michael Brown, son of Democratic National Committee chairman Ron Brown, had met the Lums' daughters previously through his father's DNC (and later Department of Commerce) aide Melinda Yee, in 1990 or 1991, in the course of stopovers in Hawaii on DNC fund-raising trips to Asia, Ron Brown met the Lums, who made substantial financial commitments to the DNC. In early 1992, at Brown's request, the Lums relocated to California to establish the Asia Pacific Action Council - VOTE (an informal and unchartered DNC "subsidiary" for which no financial reports were ever filed), and by late 1992 the Lums had been alerted to "McLarty's Oklahoma problems."

Associates of Brown indicate that he saw opportunities for the Lums and himself (through his son Michael) well beyond Oklahoma. He envisaged Nora Lum as the head of a minority business enterprise which could secure profitable minority set-aside contracts ranging from supplying natural gas to Chrysler Corp. to the supply of aviation fuel at the new Denver Airport. Brown worked to lay the groundwork for this venture from his position as DNC chairman and, after January 1993, as Secretary of Commerce.

In Hawaii the Lums, Governor John Wahiee and Honolulu mayor Frank Fazi had been the targets of an FBI investigation, and evidence had been developed of the Lums activities as "consultants" to developers who required state or local permits for their real estate projects (hotels, golf courses, etc.), serving as conduits of funds from the prospective developers to elected officials. A cooperating witness in that investigation, Charles Chidiac, relocated to California with the Lums and worked with them on APAC - VOTE. As in the case of the Oklahoma OCC investigation, in early 1993 the Hawaiian investigation was terminated on order of the U.S. Department of Justice. A principal FBI investigator, who had promised Chidiac eventual entry into the witness protection program, was forced into "retirement." Although his commitment to Chidiac was repudiated by the Department of Justice, prior to his departure from the FBI he was able to place Chidiac under the protection of associates in a foreign country.

In response to inquiries from me, transmitted through the ex-agent in Hawaii, Chidiac has reported that through the fall of 1992 one Don M. Sweatman made occasional visits to the APAC - VOTE headquarters in Torrance, California, presenting himself as "Bill Clinton's personal representative." This is notable because of the continuing role which Sweatman would play in Oklahoma. It is, perhaps, significant that Sweatman's wife, Donna, was a close friend of Linda Bloodworth Thomason who, with her husband Harry Thomason, was closely associated with the Clintons. For example, Harry Thomason was given White House credentials in 1993 to serve as an "image" advisor to the President, and a Thomason company was intended to be the primary beneficiary of the privatization of the White House travel office, leading to the "travelgate scandal."

As one of the strange coincidences encountered in this saga, there is substantial evidence of an association between Gage Corporation's coowner James H. Kitchens and the Lums, dating back to the 1980s when Kitchens, a "dirt contractor," constructed race tracks in Hawaii and elsewhere for racing promotor Mickey Thompson. There is also some evidence of financial obligations between Kitchens and the Lums which may have created an economic interest of the Lums in the financial status of Gage. Through an employee Kitchens and his Gage partner Ron Miller had also become acquainted with Don Sweatman in the 1980s.

By late 1992 Kitchens was in contact with the Lums concerning a possible acquisition of Gage and its Creek Systems subsidiary. Notwithstanding the prior association between Kitchens and the Lums, it appears that the Lums' interest in

Gage stemmed from their DNC connections, and specifically Ron Brown.

In early 1993 the Lums, through their company Cal Pacific International [CPI] had reached a tentative agreement to acquire the assets of Gage. As this agreement was being negotiated, in the spring of 1993, according to a close associate of Brown's, Hillary Clinton expressed her appreciation for everything which he was doing to help McLarty. However, the Lums failed to consummate the CPI-Gage agreement, and by the late spring of 1993 they had retained Little Rock attorney John Tisdale, law partner of Presidential counsellor Bruce Lindsey and attorney to the 1992 Clinton-Gore campaign, to represent them in their efforts to acquire Gage. At least by the late summer of 1993 an active role was being played by W. Stuart Price, nephew-in-law of Maine Senator (and Senate majority leader) George Mitchell.

The fundamental problem for the Lums in their effort to realize the design of Ron Brown for a minority-owned energy company was that they had no money. By late October Price and the Lums had arranged a solution to their financial problem. Because the ultimate objective of their enterprise was to acquire minority set-aside contracts nationally, they had no great interest in the small Oklahoma gas-pipeline and -supply operations of Gage. Thus, they and ONG devised a very lucrative contract to supply gas to ONG. They would presell this contract to generate the cash for the Gage acquisition.

While it is not clear what role Ron Brown played in the securing of the ONG contract, associates of the late Secretary report that he considered utilizing Energy Secretary Hazel O'Leary to encourage ONG to accomodate the Lums but that he eventually worked through a federal energy regulator.

By early November 1993 all of the elements of this transaction were in place. The Lums and Price created a new company, Dynamic Energy Resources, Inc. [DERI], of which the Lums originally held a 70 percent interest, Price a 30 percent interest. With the assistance of Don Sweatman they had negotiated a purchase price for the Gage assets, including the 1980 ONG contract and the Gage litigation, for approximately $9 million. With ONG they had devised a very favorable 10 year gas-supply contract, one-half of which they presold to Associated Natural Gas for $7.2 million. Of the $9 million purchase price of the Gage assets, approximately $6 million was to be paid at closing, with the residual to be paid in installments over the following three years. At closing, the new ten-year ONG-Dynamic contract would replace the 1980 ONG-Gage contract (expiring in 1995), and all litigation between the parties would be dismissed.

Because evidentiary hearings before a special master of the Oklahoma Supreme Court, at which Gage's charges would be publicly developed and supported, were scheduled to begin on November 10, 1993, it was critical that the ONG-Dynamic-Gage transactions close before that date. However, financing was again a snag: Dynamic would not receive the $7.2 million from ANG (for one-half of the new ONG-Dynamic contract) until the Dynamic, ONG and Gage transactions had settled, but again Dynamic had no cash to complete the settlement.

At this point, a close associate of late Secretary Brown reports, Brown contacted McLarty at the White House. Apparently as a result of this call, made on or just before November 9, 1993, on the afternoon of November 9 a wire transfer (believed to have originated in Arkansas) in the amount of $4,582,111 was credited to the Dynamic account at State Bank of Tulsa, from which it was wired to the account of Gage at Republic Bank in Norman. This amount was apparently sufficient to close the transaction, transferring the Gage-Creek assets to Dynamic, replacing the 1980 ONG-Gage contract with the new ONG-Dynamic contract, transferring one-half of the ONG-Dynamic contract to ANG, and settling all litigation between Gage and ONG.

In January of 1994 Dynamic sold Gage compressors to ANG for $1.2 million, and in March it sold the remaining half of the ONG contract to Enogex for $11.25 million. Thus, in a period of four months Dynamic had grossed $19.65 million and netted about $10 million, without any significant investment of the funds by its principals.

Nora Lum immediately gave ten percentage points of her 70 percent interest in Dynamic to various persons, including 5 percent to Michael Brown and 1 percent to Helen Yee, mother of Ron Brown's DNC and Commerce associate Melinda Yee. In addition, Michael Brown received consulting fees, a $60,000 golf-club membership and, eventually, a Washington office from Dynamic.

All of this had been made possible by the ONG-Dynamic contract. That contract relieved ONG of any potential legal liability to Gage, prevented any Gage legal victory from setting a precedent for other suppliers, and protected ONG, Arkla and, especially, McLarty from the adverse consequences of evidence which Gage might have developed of their complicity in the defalcations at the Oklahoma Corporation Commission.

Most importantly for ONG, all of this had been accomplished at no cost to itself. The immediate costs, including the $9 million paid to Gage and the $10 million received by Dynamic as its "fee" for concluding the settlement, were converted into what appeared to be purchased gas charges which could be passed on to ONG's Oklahoma utility customers.

That the ONG-Dynamic contract was not arms-length and did include a substantial premium to Dynamic over the cost of gas is deductively obvious. Why would ANG and Enogex immediately purchase the contract from Dynamic for a total of almost $19 million if the provisions of the contract were not unduly favorable to the supplier?

I refer the Commission to James Proctor's (OCC memorandum, Cause No. PUD 960000039, August 14, 1997) estimates of "excess gas costs" over the ten year term of the ONG-Dynamic contrat, ranging between $50 million and $62 million (depending on whether the final two years of the 1980 ONG-Gage contract, replaced by the ten-year 1993 ONG-Dynamic contract). In a more recent analysis (January 3, 2001), the commission staff has estimated that, through November 2000, the ONG-Dynamic contract has imposed excess costs (over spot prices) of $35 million; adding interest (at nine percent) to the staff's monthly estimates, Mr. Proctor has concluded that the present value of "imprudent costs" (through November 2000) totals $50 million, and almost three years remain on the contract.

Conclusion

While purchased gas charges and purchased gas adjustments are generally viewed as determined by what are simply arithmetic computations, these arithmetic computations are implicitly assumed to reflect appropriate gas-supply performance on the part of the utility, in this case ONG. With reference to the November 9, 1993, ONG-Dynamic gas supply contract this assumption is flagrantly violated. A meaningful interpretation of this contract must recognize that it represents the laundering of the costs of avoiding liability and preventing the exposure of defalcations, almost definitionally nonrecoverable, into recoverable purchased-gas charges.

In determining the appropriate purchased-gas charges and adjustments to be allowed ONG, the Commission should exclude the "excess" or "imprudent" costs incurred by ONG through its contract with Dynamic Energy Resources and its successors (ANG and Enogex). These are costs which ONG alone should bear, and they certainly should not be shifted to ONG's natural gas consumers.

Biographical Note: Stephen P. Dresch, Ph.D., is an independent scholar and consultant (Ph.D., economics, Yale University) who served as an elected member of the Michigan House of Representatives in 1991-2 , previously served as professor of economics and business and dean of the School of Businss and Engineering Administration, Michigan Technological University (1985-90), reseach scholar, International Institute for Applied Systems Analysis (1983-5), chairman, Institute for Demographic and Economic Studies (1975-), director, Research in the Economics of Higher Education, and lecturer, Institution for Social and Policy Studies, Yale University (1972-5), consultant in residence, Ford Foundation (1970-2), and research associate, National Bureau of Economic Research (1969-77). Opdateret d. 5.2.2001