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GARY A. DODGE

November 3, 1987

HAND DELIVERY

Mr. Robert S. Campbell, Jr.
Watkiss & Campbell
310 South Main Street
Salt Lake City, Utah 84101-2171

RE: Proposed Protective Order; UP&L/PP&L Merger;
Utah Public Service Commission

Dear Bob:

This letter is in response to your request for comments on the proposed protective order you provided last Friday. We have the following comments on the proposed order:

1. Paragraphs 1-2, pages 1-2: The findings of fact should be modified to reflect a claim, rather than a stipulation, that certain information is confidential. Although this was discussed at the meeting, I am not satisfied with the proposed revisions. The provisions seem to imply agreement that the documents are confidential. The relevant parts of paragraphs 1 and 2 should be changed to read: ". . . are claimed by certain parties to be of a confidential nature" (paragraph 1) and ". . . certain parties contend that disclosure of such confidential information could damage the provider. . . ." (paragraph 2).

2. Paragraph 1(a), pages 2-3: The definition of confidential information should be amended to exclude information available or obtained from a public source or other source or proceeding not subject to a protective order.

3. Paragraph 1(a), pages 2-3: The definition of confidential information should also define the specific types or areas of documents and information that may be claimed confidential. You indicated at the meeting last Friday that your client intends to invoke the confidentiality requirements in only narrow areas. The order should reflect those areas, with a procedure to add new areas of confidentiality if needed, through future stipulation or Commission Order.

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4. Paragraphs 1(a) and 1(b), pages 3 and 4: The provisions at the end of the first sentence of paragraph 1(a) and the last sentence of paragraph 1(b) should be amended to indicate that the information can be used in this case and in other regulatory proceedings in which the applicants are seeking approval of the merger. As we discussed at the Friday meeting, information produced in this forum may be relevant to other commissions considering approval of the merger. Your clients have a legitimate desire to ensure that confidentiality will be protected in the other forums and a mechanism should be adopted to provide an opportunity for your clients to do so. If, as I assume, you intend to seek protective orders in the other jurisdictions, you should include in this and the other protective orders a provision treating as confidential any information determined to be confidential in another jurisdiction. If you do not seek or obtain a protective order in a particular jurisdiction, the protective order should require 5 days' notice of intent to submit documents or information subject to a protective order to another jurisdiction so that you can take appropriate steps to ensure confidentiality in that forum.

5. Paragraph 1(a), page 3: We would change the word "furnished" to "produced" on line 8 of page 3.

6. Paragraph 1(b), pages 3-4: The "or" in the first sentence of paragraph 1(b) should be changed to "and" to read: "All confidential information made available pursuant to this Order shall be given solely to counsel for the parties and to persons designated by the parties as their experts" We assume you do not intend to require a party to choose between having its counsel or its experts review the confidential information.

7. Paragraph 1(b), page 4: The first full sentence on page 4 should be deleted in its entirety. Your letter acknowledges that this language should be deleted, but suggests that other language should be substituted. We do not know what language you intend to substitute, but we would object to any language that would limit the ability of a party to rely upon in-house experts in reviewing confidential information.

8. Paragraph 1(c), pages 4-5: As you agreed at the Friday meeting, this paragraph should specify that attorneys need not sign the nondisclosure agreement, although they will be bound by the order.

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9. Paragraph 1(d), pages 5-6: The need for specificity explained in paragraph 3, above, is even more pronounced in paragraph 1(d). Designation of documents or information as "highly sensitive" under these provisions would impose a significant burden on parties seeking to review the documents, both in terms of inconvenience, expense, and ability to prepare adequately for the hearing. This provision should be invoked only rarely and with respect to pre-disclosed areas. The burden should be on the party seeking to protect the documents to return to the commission for approval to add additional areas or types of documents in addition to those specifically identified in the order.

10. Paragraph 1(e), page 6: Confidential information should be required to be returned only after completion of all regulatory proceedings regarding the merger, including FERC.

11. Paragraph 2(b), page 7: The word "forthwith" in the second line of page 7 should be deleted. A party should not be precluded from challenging a designation as confidential on the alleged grounds that the challenge was not brought "forthwith". For example, it may take some time for a party to determine what information it intends to use or designate at the hearing, and only then will the party be able to decide if it is worthwhile to challenge the confidentiality designation.

12. Paragraphs 2(c) and 3(a), pages 7-8: Given the expedited nature of these proceedings and the short time periods allocated, the three ten-day advance notice requirements should be reduced to 5 days at most, or less, with Commission approval.

13. Paragraph 2(c), pages 7-8: A sentence should be added to paragraph 2(c) to confirm that the burden of establishing confidentiality of any document or information is upon the person claiming confidentiality.

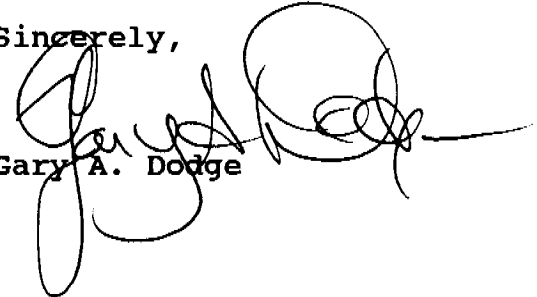
Assuming all of the changes and concerns addressed above are satisfactorily resolved, we should be able to stipulate to the entry of a protective order.

We have no objection to a central document depository, assuming we can obtain copies promptly and at reasonable cost. The times in December that would be difficult for us to attend depositions would be during the times that hearings or proceedings are going on in other states regarding the merger. This includes December 7-8 (Montana hearings) and December 14-17 (Wyoming hearings).

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Please call me if you want to discuss any of these matters.

Sincerely,


Gary A. Dodge

GAD:pls

cc: All counsel of record
Public Service Commission of Utah
Brian T. Stewart, Chairman
Brent H. Cameron, Commissioner
James M. Byrne, Commissioner