September 11, 1996

VIA FAX

Mary S. Hobson

Elam and Burke, P. A.

102 West Idaho St., 10th Floor

Boise, ID 83701

Fax 384-5844

RE: Draft Protective Agreement

Dear Mary:

Enclosed for your review is a draft protective agreement which might be utilized by the parties in the rate case.  As you can see, I have modified the protective agreement used by the parties in the EAS case, Case No. USW-S-96-4.

There are two substantive changes contained in the draft.  First, in those instances where a party’s expert is in a different location than the party’s counsel, an additional copy of confidential information may be made for the out-of-town expert.  For example, the Staff is contemplating the use of an out-of-town expert so we would have one copy and our expert would have one copy.  Restricting multi-location parties to a single copy of confidential information would greatly increase the difficulty in reviewing confidential information.

Second, I’ve included a more detailed section concerning challenges to the confidentiality of documents.  As indicated in paragraph 4(a), the agreement encourages parties to resolve confidentiality disputes informally.  In the event a confidentiality challenge is not settled among the parties, then this section outlines the procedures used to resolve such a dispute.

Turning to your question earlier this week regarding audit requests No. 72, Staff asked in subsections (b) and (c) for a description of existing “legal contingencies” for USWC and its major affiliates.  The term “legal contingencies” concern accounts or reserves which may have been created for contingent liability purposes.  Black’s Law Dictionary defines contingent liability as a potential liability which “is not now fixed and absolute, but which will become so in case of the occurrence of some future and uncertain event.”  4th Ed. (1979).  It is normal for such contingencies to be identified by outside auditors when examining a company’s operations.  Encompassed in these questions is the Staff’s desire to determine the allocation of legal expenses, i.e., what legal contingencies are allocated to Title 61, Title 62, or exempt services.  You could exercise an appropriate evidentiary privilege if the information concerning each contingency’s probability is protected information.

I am aware that you are in Montana but Carol indicated that she would fax this material to you.  Please feel free to call me (208) 334-0312 if you would like to discuss this matter before your return.

Sincerely yours,

Donald L.  Howell, II

Deputy Attorney General

DH/cm/L:hobson.dh

Enclosure

cc:Syd Lansing