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Washington D.C. 20004-2696
Telephone 202-508-5000



**EDISON ELECTRIC
INSTITUTE**

OFFICE OF GENERAL COUNSEL

July 20, 1993

FACSIMILE COVER SHEET

This facsimile is **TO: PAUL MERRELL, ESQ.**

Company name: **BRADLEY & MERRELL**

Facsimile number: **(702) 385-1655**

This facsimile is **FROM: JOSEPH T. YOST**

Telephone number: **(202) 508-5104**

Number of pages, including cover sheet: **7**

COMMENTS: Paul: I am enclosing a draft copy of our objection to Monsanto's subpoena and motion to quash. Please give me a call at your earliest convenience to discuss this matter further. Thank you, Joe

NOTICE OF CONFIDENTIALITY: The document conveyed by this facsimile transmission is intended only for the use of the individual, or entity named on this cover sheet. The enclosed document may contain information that is privileged, confidential and exempt from disclosure under applicable law.

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DRAFT**United States District Court
for the District of Columbia****NEVADA POWER COMPANY**

Plaintiff,

v.

MONSANTO COMPANY, et al.,

Defendants.

Case No. CV-S-555-LDG (LRL)
Pending in the U.S. District Court
for the District of Nevada**EDISON ELECTRIC INSTITUTE****OBJECTION TO SUBPOENA DUCES TECUM
AND MOTION TO QUASH**

Pursuant to Rules 45(c), and 30(b)(6) of the Federal Rules of Civil Procedure, the Edison Electric Institute (EEI), a non-party in the above-captioned litigation, objects to the *subpoena duces tecum* served upon it by Monsanto Company (Defendant) on July 13, 1993. A copy of the *subpoena* served on EEI is attached hereto as **Exhibit A**.

In the particulars set forth below, EEI objects on the grounds that Defendant failed to conform to the requirements of Federal Rules of Civil Procedure. Furthermore, EEI expressly reserves its rights to raise any and all other further objections to this *subpoena*, including, but not limited to, objections pursuant to Rules 26(c) and 45(c)(3)(B).

1. EEI, a Virginia nonstock corporation headquartered in Washington, D.C., at 701 Pennsylvania Avenue, N.W., is the association of America's electric utility companies. EEI member companies serve 99 percent of all customers served by the investor-owned segment of the industry. EEI member companies generate approximately 78 percent of all the electricity in America and service 76 percent of all ultimate customers in the nation.

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2. Defendant is one party to a suit filed by Nevada Power Company, a member of EEI, in an action pending in the United States District Court for District of Nevada.

3. Rule 45(c) of the Federal Rules of Civil Procedure requires that a *subpoena* "allow reasonable time for compliance" and not "subject[] a person to undue burden."

4. Rule 30(b)(6) of the Federal Rules of Civil Procedure requires that a *subpoena* must "describe with reasonable particularity the matters on which examination is requested."

5. Defendant served the attached *subpoena* via personal service on July 13, 1993. Defendant seeks to compel EEI to produce and permit inspection and copying of a broad range of documents or objects at EEI's offices on July 22, 1993.

6. Defendant's discovery request appears to violate the scheduling order and litigation plan governing this case. A copy of the scheduling order and litigation plan is attached hereto as Exhibit B. Paragraph 1 of the governing scheduling order establishes May 14, 1993, as the cut-off date for serving "all written discovery requests, including interrogatories, requests to produce documents and requests for admissions." The instant *subpoena* was served over two months after that deadline.

7. The *subpoena* violates Rule 45(c) because seven working-days notice is insufficient time to afford EEI the opportunity to appropriately analyze this open-ended and vaguely worded *subpoena*, search for and locate all documents responsive to Defendant's demand, or to coordinate the proposed deposition with the travel schedule of EEI's custodian of records.¹

8. The *subpoena* violates Rule 30(b)(6) because Defendant's request for production of documents lacks adequate specificity to allow EEI to identify all responsive documents with any reasonable degree of certainty.

¹ Further, Paragraph 4 of the scheduling order establishes July 23, 1993, as the cut-off date for deposing all "fact witness[es]," apparently giving rise to the deposition date proposed by Defendant. However, EEI responded to a previous *subpoena duces tecum* in this case prior to December 14, 1989. A copy of EEI's letter to counsel for Westinghouse Electric Corporation, a co-defendant represented by the same firm as Defendant Monsanto, dated December 14, 1989, is attached hereto as Exhibit C. EEI has not since heard from any party that it would be called as a witness. Therefore, the insufficient response time of this *subpoena* is particularly egregious.

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WHEREFORE, pursuant to Rule 45(c) of the Federal Rules of Civil Procedure, third-party deponent EEI objects to this *subpoena* and moves that it be quashed.

Dated: July 21, 1993

Edward H. Comer
Deputy General Counsel

Peter B. Kelsey
Vice President, Law
and Corporate Secretary

Edison Electric Institute
701 Pennsylvania Avenue, N.W.
Washington, D.C. 20004-2898
(202) 508-5620

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CERTIFICATE OF NOTICE

The undersigned certifies that a copy of the foregoing objection and motion to quash of Edison Electric Institute to the *subpoena duces tecum* issued by Defendant was mailed, first class mail, postage prepaid, or sent via Federal Express overnight delivery (as indicated) this 21st day of July, 1993, to the following counsel for parties to the above-captioned proceeding.

Douglas B. Snyder, Esq.
Well, Gotshal & Manges
1615 L Street, N.W.
Washington, D.C. 20036
(202) 682-7000

via hand delivery

Laurie A. Basch
Well, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153
(212) 310-2384

via facsimile transmission

Counsel for Monsanto Company

Paul E. Merrell, Esq.
Bradley & Merrell
c/o Jones, Jones, Close & Brown
300 South Fourth Street, Seventh Floor
Los Vegas, Nevada 89101-6026
(702) 835-4202

Counsel for Nevada Power Company

Edward H. Comer

EXHIBIT C

EDISON ELECTRIC INSTITUTE

The association of electric companies

1111 18th Street, N.W.
Washington, D.C. 20036-3591
Tel: (202) 778-6400

December 14, 1989

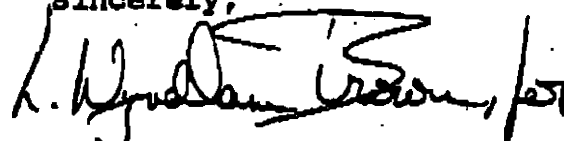
Eric Ordway, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, New York 10153

RE: Nevada Power Company v. Monsanto Company, et. al
CV-8-89-555-LDG-LRL

Dear Mr. Ordway:

This is to inform you that the cost of providing documents pursuant to the subpoena served on EEI in the above captioned proceeding, including copying costs at \$.25/page, shipping by Federal Express, and overtime for EEI employees, is \$ 2,128.81. A breakdown of costs is enclosed for your convenience. Please remit your payment, made payable to Edison Electric Institute and sent to my attention, as soon as possible.

Sincerely,



Edward H. Comer
Associate General Counsel,
Industry Affairs

EHC:jlt
Enclosure

Nevada Power Co. v. Monsanto

<u>Material Provided</u>	<u>PAGES</u>	<u>COST</u>
EI Committee Documents	53	\$ 13.25
EI Committee Directories	79	\$ 19.75
10 Printed Directories	\$1.50 each	\$ 15.00
Microfiche Documents	172	\$ 43.00
	109	27.25
	131	32.75
bad copies (microfiche)	7	1.75
File Documents	4487	\$1121.75
EPA Report	724	\$ 181.00
<u>Statutory Authorities for Federal Regulation</u>		
<u>of Groundwater Quality (Two Volumes; 1985 ed.)</u>		
Volume I	37	\$ 9.25
Volume II	62	\$ 15.50
<u>Groundwater - Emerging Issues for the</u>		
<u>Electric Utility Industry</u>		
	122	\$ 30.50
<u>How Clean is Clean? Clean-up Standards for</u>		
<u>Groundwater and Soil #06-86-54</u>		
		\$ 50.00
<u>How Clean is Clean? Clean-up Standards for</u>		
<u>Groundwater and Soil (exp. edition) #06-88-71</u>		
		\$ 50.00
<u>The Effects of Groundwater Quality on</u>		
<u>Groundwater Use and Supply Two vols. #06-87-81</u>		
		\$ 60.00
<u>State Programs for Groundwater Quality</u>		
<u>Management Vol. I and II #06-87-58</u>		
		\$ 50.00
<u>State Programs for Groundwater Quality</u>		
<u>Management Vol. I and II (Copied)</u>		
		\$ 50.00
<u>Issues Management - Lessons from Superfund</u>		
<u>and RCRA</u>		
		\$ 25.00
<u>EI Employee Overtime</u>		
Janet Trautvatter		\$ 43.06
Raymond Wilson		\$ 29.67
<u>Postage/Shipping</u>		\$ 260.33
<u>TOTAL</u>		<u>\$ 2,128.81</u>