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DATE: July 9, 1993

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FROM: Bradley & Merrell

MATTER/MATTER NO.: Nevada Power v. Monsanto, et al., #11927.2

DOCUMENT(S) DESCRIPTION: Table of Contents and Outline of documents for July 9, 1993 telephonic hearing on plaintiff's July 8, 1993 motion to compel entry upon Westinghouse's headquarters for purposes of inspection, copying, and depositions

NUMBER OF PAGES (including cover page): Five (5)

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**Documents for July 9, 1993 Hearing on
Plaintiff Nevada Power Company's July 8, 1993
Motion to Compel Entry upon Westinghouse's Headquarters
for Purposes of Inspection, Copying, and Depositions**

**Telephonic Conference
10:00 a.m.**

- 1. Outline of Issues**
- 2. Magistrate Lawrence R. Leavitt's April 5, 1993 denial of Westinghouse's Motion for Protective Order**
- 3. Plaintiff Nevada Power Company's March 12, 1993 Notice of Taking Depositions (of C.W. Bickerstaff, Jeffrey Bair and person identified as "you" in Exhibit 1212)**
- 4. Plaintiff Nevada Power Company's April 13, 1993 Re-Notice of Depositions and Request for Permission to Enter Upon Land for Purposes of Inspection, Copying and Depositions (of C.W. Bickerstaff, Jeffrey Bair and person identified as "you" in Exhibit 1212)**
- 5. Plaintiff Nevada Power Company's May 14, 1993 Request for Permission to Enter Upon Land for Purposes of Inspection and Copying**
- 6. Plaintiff Nevada Power's Second May 14, 1993 Request for Permission to Enter Upon Land for Purposes of Inspection and Copying to Defendant Westinghouse**
- 7. Excerpt from Westinghouse Electric Corporation's Response to Nevada Power's Motion for Entry of Default (Westinghouse Industrial Hygiene had PCB-related documents in 1986 and waiver of privilege)**
- 8. Waivers**
- 9. Plaintiff Nevada Power Company's July 8, 1993 Motion to Compel Entry upon Westinghouse's Headquarters for Purposes of Inspection, Copying, and Depositions**
 - a. April 13, 1993 letter of Paul E. Merrell, attorney for Nevada Power Company, accompanying their request to inspect property**
- 10. Motion to Compel Discovery Relevant to Alleged Destruction of Documents by Westinghouse**
- 11. Motion for Hearing on Plaintiff's Planned Depositions of Certain Westinghouse Employees**

HEARING OUTLINE

I. PENDING MOTIONS AND SUGGESTED DISPOSITION:

A. NPC motion to compel discovery:

1. Contention is that subject of WEC retention/destruction of documents from Industrial Hygiene Dept. is not privileged.

a. Need stipulations/judicial determination on:

- (1) Proper scope of privilege objections during depositions. RECOMMENDED DISPOSITION: Parties instructed to continue conferring, set hearing date to reduce issues prior to depositions.

(a) issues primarily involve application of principles of work product and attorney client privileges, waiver thereof, and crime/fraud exception thereto.

- (2) Production of purportedly privileged documents appended to Bair 22-page memorandum, approximately 10 documents. RECOMMENDED DISPOSITION: Expedited ruling of waiver by incorporation into no-longer privileged document or by waiver of subject matter. Alternative, expedited submission for in camera review.

(a) Parties have conferred. If in camera inspection, parties should discuss before Court reviews, to determine possible further compromise.

B. NPC motion to compel inspection of property

1. Contention is that NPC should be allowed to depose witnesses in presence of records at issue. RECOMMENDED DISPOSITION: expedited ruling. Briefing should not be necessary.

C. NPC motion for discovery hearing. RECOMMENDED DISPOSITION: no separate action needed; subsumed in above suggestions for hearing.

II. ISSUES TO BE SCHEDULED

- A. Request to inspect records gathered in 1986 company-wide sweep for PCB records. RECOMMENDED DISPOSITION: Establish briefing schedule; consider potential need to take relevant portion of Rule 30(b)(6) related deposition after fact deposition cut-off date.
- B. Redefinition of subpoena duces tecum to redefine request and privilege claims. RECOMMENDED DISPOSITION: Set expedited hearing date; WEC to provide privilege log if contested; decision and production to occur prior to relevant Rule 30(b)(6) deposition.
 - 1. Intimately related to Rule 30(b)(6) deposition -- needs expedited decision
 - 2. Contains privilege claims for which there has been no privilege log. Parties have conferred, but need at least one further conference since Court's opinion received.

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