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July 3, 1989

HAND DELIVERY

Charles A. Lenzie
 Chairman and CEO
 Nevada Power Company
 6226 West Sahara Avenue
 Las Vegas, Nevada 89102

Re: Nevada Power vs. Monsanto et al.

Dear Chuck:

Enclosed is a copy of a Complaint which we propose to file against Monsanto, General Electric and Westinghouse before the end of this week. Although these defendants recently settled a case brought by a non-utility plaintiff (a major university which was forced to change out PCB transformers) represented by our co-counsel, they have told us that they want to "test our theories" on their liability. I take this to mean that they will file a Motion to Dismiss ~~our~~ Motion for Summary Judgment and attempt to dispose of our Complaint in that manner. Tom Kotoske, our co-counsel, thinks that after we survive the Motion to Dismiss there will be some serious negotiations.

Although you have already given us the authority to file the Complaint, as a matter of policy it is important to us that the client know what the Complaint says. I am also sending a copy of this letter and the Complaint to Gene, and I will appreciate it if both of you will look it over and call me if you have any comments. We will file the Complaint on Friday if we do not hear

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Charles A. Lenzie
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from you before then. We plan no publicity in connection with the filing.

Sincerely yours,

JONES, JONES, CLOSE
& BROWN, CHARTERED



Charles H. McCrea, Sr.

CHM:dlt:0858H
Enclosures

cc: M. Gene Matteucci, Esq.
(Via Hand-Delivery)

DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA POWER COMPANY,	)	
a Nevada corporation,	)	
	)	
Plaintiff,	)	
vs.	)	
	)	
MONSANTO COMPANY,	)	CASE NO. _____
a foreign corporation;	)	
GENERAL ELECTRIC COMPANY,	)	DEPT. NO. _____
a foreign corporation;	)	
WESTINGHOUSE ELECTRIC	)	DOCKET _____
CORPORATION, a foreign	)	
corporation; AND DOES	)	
I THROUGH XXV, INCLUSIVE	)	
	)	
Defendant(s).	)	
	)	
	)	

COMES NOW NEVADA POWER COMPANY, Plaintiff (hereinafter NEVADA POWER), by and through its attorneys of record, Jones, Jones, Close & Brown, Chartered, and for its claims for relief alleges as follows:

FIRST CLAIM FOR RELIEF

(Fraud and Misrepresentation)

1. NEVADA POWER is a corporation organized and existing under the laws of the State of Nevada.
2. NEVADA POWER is a public utility subject to the jurisdiction of the Public Service Commission of Nevada (hereinafter "PSC"). NEVADA POWER supplies electric energy as a public utility to more than 290,000 residential, commercial, industrial and other customers located in Clark and Nye Counties, Nevada.
3. Defendant Monsanto Company (hereinafter "Monsanto") has

its corporate headquarters in St. Louis, Missouri. Monsanto was the exclusive commercial manufacturer of polychlorinated biphenyls (hereinafter "PCBs") in the United States. Monsanto sold the PCBs to the other Defendants for use as a dielectric fluid in transformers, capacitors and other electrical equipment manufactured and sold by them. Monsanto was a contributing member to the National Electrical Manufacturers Association ("NEMA").

4. Defendant General Electric Company (hereinafter "GE") has its corporate headquarters in Fairfield, Connecticut. It is and at all times relevant hereto was engaged in the manufacture of electrical equipment, including many PCB containing transformers and capacitors that are the subject of this action. GE is a member of NEMA.

5. Defendant Westinghouse Electric Corporation (hereinafter "Westinghouse") has its corporate headquarters in Pittsburgh, Pennsylvania. It manufactures electrical equipment, including many PCB containing transformers and capacitors that are the subject of this action. Westinghouse is a member of NEMA.

6. DOES I through XXV, inclusive, are other manufacturers of electrical equipment, including PCB containing transformers and capacitors. The identities of DOES I through XXV are presently unknown. If and when any of these DOES are identified, they will be named as additional Defendants and made parties to this action as appropriate.

7. The electrical equipment which is the subject of this Complaint contains 500 or more parts per million of PCB's, and is

hereafter referred to as the "PCB electrical equipment", "PCB transformers," or "PCB capacitors," as the occasion demands.

8. During the 1960's and 1970's NEVADA POWER purchased PCB electrical equipment from Defendants GE and Westinghouse and incorporated ^{that} ~~the~~ equipment into the real property comprising its utility plant, which is an integrated public utility electrical generation, transmission and distribution system serving customers in Clark and Nye Counties, Nevada.

9. PCBs are members of a highly toxic family of chemical compounds consisting of two benzene rings in which chlorine takes the place of two or more hydrogen atoms. PCBs are extraordinarily stable, man made and do not exist in nature. They are oily substances used, among other applications, as insulating or dielectric fluid in electrical equipment.

10. PCBs are known to produce severe adverse health effects including cancer and birth defects in humans and animals exposed to them. PCBs also have a devastating impact upon the environment. Since they are not biodegradable, their adverse impact on humans, animals and the biosphere is long lasting and cumulative. PCBs have been determined to be a hazardous substance by Federal legislation and Federal regulations.

11. PCBs are the only chemical to be specifically banned, by name, by Congress. In October, 1976 Congress passed the Toxic Substances Control Act (15 U.S.C.A. § 2601 et seq.) by which it directed the Environmental Protection Agency ("EPA") to promulgate regulations banning the manufacture, sale and distribution of PCBs. By 1979 the sale, manufacture and distribution of PCBs were banned.

12. On August 21, 1985, the EPA published regulations that required NEVADA POWER, under penalty of civil and criminal fines and punishment, to remove, replace, refit, and/or dispose of all PCB transformers, PCB capacitors and other PCB electrical equipment owned by it and ^(integrated into) ~~located~~ in its public utility electric system notwithstanding that the various items of PCB electrical equipment required to be removed, replaced, refitted and/or disposed of were well within their anticipated or represented service lives. The deadline for compliance by Plaintiff is October 1, 1990.

13. As a consequence of Congressional legislation and orders issued by the EPA, NEVADA POWER has undertaken a costly and comprehensive compliance program in which NEVADA POWER has incurred and will incur expenses for the removal, replacement, refitting and/or disposal of the PCB electrical equipment in a manner complying with Federal legislation and EPA regulations.

14. That PCBs pose significant risks and dangers to humans and the environment has been known to the Defendants since the 1930s. Nevertheless, Defendants intentionally and deliberately deceived and mislead NEVADA POWER in connection with NEVADA POWER's acquisition of the PCB electrical equipment that is the subject of this action.

15. From the early 1930s until 1977 (when the manufacture of PCBs was banned) Monsanto produced approximately 1.4 billion pounds of PCBs.

16. From 1954 to 1977, Monsanto sold approximately 267 million pounds of PCBs to GE and 170 million pounds to Westinghouse.

17. GE and Westinghouse began using PCBs in the manufacture of their transformers, capacitors and other electrical equipment in the 1930s and continued to do so into the 1970s.

18. In the 1930s, Monsanto's own in-house confidential memoranda on material safety stated that PCBs were "highly toxic" and caused severe adverse health effects to humans exposed to PCBs. Monsanto became aware during the 1930s that PCBs had to be handled and disposed of with extreme care to avoid human contact.

19. By 1938, Monsanto and Westinghouse had received warnings from physicians that PCB exposure caused severe toxic results in humans. At or about this time, twelve to fifteen scientific papers were published that detailed the severe health risks to humans of PCB exposure. These scientific studies were known to Monsanto, GE and Westinghouse.

20. During the 1940s, scientific literature was published warning the electrical industry, of which Defendants are members, of the severe toxic consequences of exposure to PCBs.

21. In 1947, Monsanto and Westinghouse were warned again by medical experts that exposure to PCBs was severely toxic to humans, and that they should warn the public about the severe toxic consequences of exposure to PCBs.

22. During the 1950s scientific articles were ^{published warning} ~~produced that~~ ~~warned~~ the electrical industry including these Defendants of the severe toxic consequences of exposure to PCBs. Both Monsanto and Westinghouse, as shown by their own in-house confidential memoranda, were fully aware of the ^(contents of these articles warning of the) adverse health consequences of exposure to PCBs.

23. During the 1960s the international scientific community

published scientific studies that documented the global damage 5
resulting from the unchecked disposal and other release of PCBs
into the environment. ~~Contemporaneously, These studies~~
~~During this time, Monsanto falsely~~
~~were known to the Defendants,~~
~~declared and deceitfully reported, by mass media statements, that~~
~~PCBs were a harmless chemical substance.~~ 5

24. In 1968, in Japan, hundreds of people ingested PCBs by mistake. The follow-up medical studies done on these people and their progeny document the severe adverse consequences to humans exposed to PCBs. This incident and the resulting studies were known to Monsanto, GE and Westinghouse.

25. During the 1960s, GE, as shown by its own in-house confidential memoranda, corresponded with Monsanto concerning the dangerous environmental consequences attending exposure to and disposal of PCBs. In October of 1969, GE published a paper, circulated to all of the Defendants as members of the electrical industry, entitled "PCB: An Industry Problem," which described in detail the severe consequences to humans of exposure to PCBs and the problems attending disposal of PCBs.

26. During the 1970s, Monsanto warned all of the co-Defendants in this action of the adverse consequences and dangers associated with the exposure to and disposal of PCBs. Monsanto's own in-house toxicologist, Dr. Kelley, warned Monsanto that PCBs were dangerous and that Monsanto had a duty to warn about their toxic effects.

27. In the 1970s, the Federal Government launched nationwide hearings concerning the problems of PCBs. During these hearings, NEMA, of which all Defendants were members or contributing members, submitted to Federal agencies and hearing

panels false documents and false information in an effort to forestall a ban on PCBs. ✓

~~28.~~ More specifically, during the early to mid-1970s, Monsanto engaged the services of Industrial Bio-Test Laboratories ("IBT") to conduct animal toxicological studies regarding PCBs. These studies were supervised by Paul Wright and Joseph

H 28. Calandra. Wright and Calandra were subsequently convicted under Federal law of felonies concerning the submission of false animal studies and reports (requested by Monsanto) to Federal agencies with regards to Trichlorocarbarilide, an ingredient in deodorant soaps. U.S. v. Keplinger, 776 F.2d 678 (7th Cir. 1985).

29. Both Wright and Calandra, at the behest of Monsanto, falsified and forged PCB toxicological studies that all the Defendants used in an attempt to deceive Congress and Federal agencies among others into believing that PCBs were harmless chemicals that should not be banned.

30. From the 1930's to the 1970's Defendants, through mass media advertising, represented to the public and NEVADA POWER that PCBs were safe and posed little if no danger to humans or the environment.

31. The foregoing actions as set out in paragraphs 27 through 30, undertaken by all the Defendants, were intentional and specifically designed to mislead Congress, Federal agencies, NEVADA POWER and the public into believing that PCBs are harmless chemicals and that electrical equipment containing PCBs is safe.

32. The aforementioned conduct of the Defendants was intended to prevent the public and NEVADA POWER from suspecting that PCB electrical equipment presented any toxic hazards, and

led NEVADA POWER to believe that there was no need to conduct independent inquiry or investigation into the toxicity of PCBs or the safety of PCB electrical equipment. This conduct also induced NEVADA POWER to purchase PCB electrical equipment from Defendants GE and Westinghouse.

33. NEVADA POWER used reasonable care and due diligence in acquiring PCB electrical equipment, was ignorant of the Defendants' fraudulent and deceitful conduct until ~~July~~ 1988, and previously had no reason to suspect that Defendants were engaged in a campaign of deceit and fraud to conceal the toxic and dangerous consequences of exposure to PCBs and the attendant PCB disposal problems.

34. NEVADA POWER relied on Defendant's misrepresentations that the PCB electrical equipment was safe and presented no significant danger to humans or the environment. Based upon this reliance, NEVADA POWER purchased PCB electrical equipment from Defendants GE and Westinghouse.

✓ 35. As a direct and proximate result of NEVADA POWER's reliance on the ~~misrepresentations~~ ^{fraud and} of Defendants and its ~~subsequent~~ ^{resulting} purchase of PCB electrical equipment from GE and Westinghouse, NEVADA POWER has incurred general and special damages in excess of \$10,000 for the EPA mandated removal, replacement, refitting and/or disposal of PCB electrical equipment.

36. Because the aforementioned conduct of Defendants was fraudulent, malicious, and otherwise oppressive, NEVADA POWER should be additionally awarded punitive damages in excess of \$10,000, the actual amount of which is to be determined at a

later date.

SECOND CLAIM FOR RELIEF

(Implied Warranty)

37. NEVADA POWER restates and realleges the allegations in paragraphs 1 through 36 as if set forth fully herein and incorporates them by this reference.

38. At the time that ^{NEVADA POWER purchased the PCB electrical equipment,} ~~the various sales were entered into,~~ Defendants knew that the PCB ^(electrical) equipment ^(purchased by) ~~was sold to NEVADA POWER~~ was ^(incorporated into and utilized) to be ^{used} in NEVADA POWER's public utility electric system serving customers in Clark and Nye Counties, Nevada. Furthermore, Defendants knew that NEVADA POWER ^{relied} ~~was relying~~ on Defendants' technological expertise, engineering and manufacturing skill, reputation and judgment in ^(its decisions involving purchases of) ~~furnishing~~ electrical equipment, ^(and in reliance thereon believed that the PCB electrical equipment) ~~that~~ was safe and otherwise suitable for incorporation ^(into) and use in NEVADA POWER's public utility electric system.

39. Because of the highly toxic and dangerous nature of the ^(manufactured by Monsanto and the) PCBs, ~~Defendants' inclusion of PCBs in various electrical~~ ^(manufactured by GE and Westinghouse and sold by them to) equipment ^{was and is} ~~purchased by NEVADA POWER, made this equipment unfit for~~ use in NEVADA POWER's public utility electric system, as ^(conclusively) evidenced by Congressional legislation and EPA regulations mandating that such PCB ^(electrical) equipment be removed, replaced, refitted and/or disposed of well before the expiration of ~~its~~ ^{lives.} expected service ~~life~~.

40. As a direct result of the PCB electrical equipment and the PCBs themselves being declared dangerous and otherwise unfit for use in NEVADA POWER's public utility electric system, and of the EPA mandated removal, replacement, refitting and/or disposal

of PCBs and PCB electrical equipment, NEVADA POWER has suffered general and special damages in excess of \$10,000.

THIRD CLAIM FOR RELIEF

(Strict Products Liability)

41. NEVADA POWER restates and realleges the allegations in paragraphs 1 through 40 and incorporates them herein by reference.

42. The PCB electrical equipment and the PCBs themselves are and were defective in that they are inherently and unreasonably dangerous. Accordingly, ^(the PCB electrical equipment) they failed to perform as ^(, inasmuch as their anticipated service lives and use were) reasonably expected ~~since their expected service life and use was~~ cut short by Congressional legislation and EPA regulations mandating the removal, replacement, refitting and/or disposal of such PCBs and PCB electrical equipment.

43. As a direct and proximate result of the Defendants' defective formulation of PCBs and ^(improper and) defective design and/or manufacture of PCB electrical equipment, NEVADA POWER has been forced to tear down and dismantle portions of the real property comprising its utility plant by removing, replacing, refitting and/or disposing of PCBs and/or PCB electrical equipment ^(, NEVADA POWER) and as a direct consequence thereof ^{including} has suffered and will suffer general and special damages in excess of \$10,000, ^(to) ~~This amount includes~~ future damages ~~which will~~ be determined at a later date.

44. Because the aforementioned conduct of Defendants was fraudulent, malicious and otherwise oppressive, NEVADA POWER should additionally be awarded punitive damages in excess of \$10,000, the actual amount of which is to be determined at a later date.

FOURTH CLAIM FOR RELIEF

(Failure to Warn)

45. NEVADA POWER restates and realleges the allegations contained in paragraphs 1 through 44 as though set forth fully herein and incorporates them by this reference.

46. Defendants knew or should have known that the PCBs and the PCB electrical equipment were inherently and unreasonably dangerous and defective. Because of this, Defendants had a duty to warn all users and potential purchasers of PCBs and PCB electrical equipment, including NEVADA POWER, of the defective and dangerous nature of such equipment.

47. Defendants breached this duty by failing to warn NEVADA POWER and other users that this equipment was defective and unreasonably dangerous.

48. Defendants' failure to warn NEVADA POWER was the direct and proximate cause of NEVADA POWER being damaged in excess of \$10,000 for the EPA mandated removal, replacement, refitting and/or disposal of the PCB electrical equipment and the PCBs. These damages include future damages, the amount of which is to be determined at a later date.

49. Because the conduct of the Defendants was fraudulent, malicious and otherwise oppressive, NEVADA POWER should be awarded punitive damages in excess of \$10,000, the actual amount of which is to be determined at a later date.

FIFTH CLAIM FOR RELIEF

(Negligence)

50. NEVADA POWER restates and realleges the allegations contained in paragraphs 1 through 49 as though set forth fully

herein and incorporates them by this reference.

51. Defendants, in formulating the PCBs and designing and manufacturing the PCB electrical equipment, failed to exercise the degree of care which an ordinarily careful and prudent person would exercise under the same or similar circumstances.

52. As a direct and proximate result of Defendants' failure to exercise that degree of care which an ordinarily careful and prudent person would exercise in formulating PCBs and designing and manufacturing PCB electrical equipment for inclusion in electric utility plant at thousands of diverse and unprotected locations exposed to the public, NEVADA POWER has suffered general and special damages in excess of \$10,000 for the EPA mandated tearing down and dismantling of certain of its real property and the concomitant removal, replacement, refitting and/or disposal of PCBs and PCB electrical equipment. These damages include future damages, the actual amount of which is to be determined at a later date.

53. Because the aforementioned conduct of the Defendants was not only negligent but fraudulent, malicious and otherwise oppressive, NEVADA POWER should additionally be awarded punitive damages in excess of \$10,000, the actual amount of which is to be determined at a later date.

SIXTH CLAIM FOR RELIEF

(Nuisance)

54. NEVADA POWER restates and realleges the allegations contained in paragraphs 1 through 53 as if set forth fully herein and incorporates them by this reference.

55. The presence in NEVADA POWER's electric system of the

PCB electrical equipment that is the subject of this complaint is injurious to public health and safety. The PCB electrical equipment which has been and which has yet to be removed from NEVADA POWER's property was and is a continuing interference with the full and quiet enjoyment by NEVADA POWER of the property owned and/or used by it in the operation of its public utility electric system.

56. The presence of PCB electrical equipment in NEVADA POWER's electric system is a direct result of the fraudulent and tortious conduct of Defendants, and presents a nuisance as above described.

57. As a direct and proximate result of the above described nuisance caused by Defendants, NEVADA POWER has been damaged in a sum exceeding \$10,000.

58. Because the aforementioned conduct of the Defendants was fraudulent, malicious and otherwise oppressive, NEVADA POWER should be awarded punitive damages in excess of \$10,000, the actual amount of which is to be determined at a later date.

SEVENTH CLAIM FOR RELIEF

(Indemnity)

59. NEVADA POWER restates and realleges the allegations contained in paragraphs 1 through 58 as though set forth more fully hereinabove and incorporates them by this reference.

60. As a direct result of NEVADA POWER's ownership of property containing and including the PCB electrical equipment that is the subject of this action, and the regulations of the EPA mandating the removal of such equipment, NEVADA POWER has incurred liability for the removal, replacement, refitting and/or

disposal of both the aforementioned PCB electrical equipment and the PCBs themselves.

61. NEVADA POWER's liability for removal, replacement, refitting and/or disposal of PCBs and PCB electrical equipment pursuant to the mandatory regulations of the EPA, and the expenditures NEVADA POWER has been forced to make in consequence thereof, are solely the result of the wrongful and tortious conduct of the Defendants.

62. NEVADA POWER is without fault in this action. NEVADA POWER used the PCB electrical equipment manufactured and supplied by Defendants for its intended purpose and in conformance with written instructions and verbal information ^{supplied} ~~relayed~~ to NEVADA POWER by Defendants. ✓

63. Because NEVADA POWER, without fault on its part, is liable to the EPA for the removal, replacement, refitting and/or disposal of the PCB electrical equipment, the Defendants should be held liable to NEVADA POWER for their tortious and wrongful conduct in supplying ^{(PCBs and} PCB electrical equipment to NEVADA POWER, which PCBs and PCB electrical equipment Defendants knew were an imminent threat to humans and the environment.

64. NEVADA POWER has served notice on each Defendant to assume NEVADA POWER's liability to the EPA so as to protect the interests of NEVADA POWER. The Defendants have refused to accept the assumption of NEVADA POWER's liability.

65. As a direct and proximate result of the mandatory operation of the EPA regulations, NEVADA POWER has been generally and specially damaged in a sum exceeding \$10,000 for the EPA mandated removal, replacement, refitting and/or disposal of both

PCBs and PCB electrical equipment.

ATTORNEYS FEES AND COSTS

66. In respect of all claims for relief set forth in this complaint, NEVADA POWER has been required to retain the services of Jones, Jones, Close & Brown, Chartered to prosecute this action and is therefore entitled to reasonable attorneys fees and costs of suit.

WHEREFORE, NEVADA POWER prays for judgment as follows:

1. For general, special and punitive damages, including future damages, in excess of \$10,000 on Nevada Power's First Claim for Relief (Fraud and Misrepresentation).
2. For general and special damages, including future damages, in excess of \$10,000 on Nevada Power's Second Claim for Relief (Implied Warranty).
3. For general, special and punitive damages, including future damages, in excess of \$10,000 on Nevada Power's Third Claim for Relief (Strict Products Liability).
4. For general, special and punitive damages, including future damages, in excess of \$10,000 on Nevada Power's Fourth Claim for Relief (Failure to Warn).
5. For general, special and punitive damages, including future damages, in excess of \$10,000 on Nevada Power's Fifth Claim for Relief (Negligence).
6. For general, special and punitive damages, including future damages, in excess of \$10,000 on Nevada Power's Sixth Claim for Relief (Nuisance).
7. For general and special damages, including future damages, in excess of \$10,000 on NEVADA POWER's Seventh Claim for

Relief (Indemnity).

8. For attorneys fees and costs of bringing suit in respect of all Claims for Relief.

9. For such other and further relief as this Court may deem proper.

DATED this ____ day of _____, 1989.

By _____

J. RANDALL JONES, ESQ.
CHARLES H. McCREA, SR., ESQ.
JONES, JONES, CLOSE
& BROWN, CHARTERED
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ATTORNEYS FOR PLAINTIFF
NEVADA POWER COMPANY

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