

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

NEVADA POWER COMPANY, a Nevada
Corporation,

Plaintiff,

-vs-

MONSANTO COMPANY, a foreign
corporation; GENERAL ELECTRIC
COMPANY, a foreign corporation,
WESTINGHOUSE ELECTRIC
CORPORATION, a foreign
corporation; and DOES 1 through
XXV; inclusive,

Defendants.

Case No.
CV-S-89-555-LDG-LRL

DEPOSITION OF: CLARENCE W. BICKERSTAFF
VOLUME II

DATE: July 22, 1993
Thursday, 9:35 a.m.

PLACE: Westin William Penn Hotel
530 William Penn Place
Pittsburgh, PA 15222

TAKEN BY: Plaintiff

REPORTED BY: Janice L. Graham
Notary Public

CERTIFIED COPY

1 MR. MASKIN: Objection to form and
2 foundation to the extent this witness knows.

3 A. I know one for sure. And I can't -- I was not the
4 one who went out doing the testing, so I just can't
5 remember exactly which facilities still had some
6 inventory left.

7 Q. Do you know who went out and did the testing?

8 A. I believe one of the industrial hygienists from our
9 department.

10 Q. Did that industrial hygienist take samples and then
11 send those to an outside laboratory?

12 A. I believe at that time we were using Clayton
13 Laboratories to do our analysis.

14 Q. Over what period of time did you use Clayton
15 Laboratories?

16 A. I think as it indicates in here, we started using
17 Clayton, I believe, either late -- sometime in '79
18 or '80 we started using Clayton.

19 - - - -

20 (Whereupon, the phone rang.)

21 BY MR. SCHALK:

22 Q. Who did the testing before then? We have to go off
23 the record. The phone's ringing.

24 - - - -

1 (Whereupon, the following proceedings were
2 stenographically reported with Attorneys Paul
3 Merrell and Konrad Caiteux via speaker phone.)

4 MR. MERRELL: If we could go on the
5 record, this is Paul Merrell for Nevada Power
6 Company. I'm on the telephone from Nevada. On site
7 at the deposition we have David Schalk for Nevada
8 Power Company, Arvin Maskin for Westinghouse
9 Electric Corporation, and Konrad Caiteux is on the
10 line from New York also for Westinghouse.

11 Is there anyone else in the room?

12 MR. MASKIN: Yeah, there are various
13 people in the room.

14 MR. MERRELL: Could we get on the record
15 who they are, please?

16 MR. MASKIN: Well, I guess at the moment,
17 we have David Gartenstein, a colleague from my
18 office, and Meghan Wise from Westinghouse. We have
19 a videographer and the court reporter. That
20 basically covers it.

21 MR. MERRELL: The deponent is not in the
22 room at this point?

23 MR. MASKIN: He's not. I somehow forgot
24 Mr. McCrea.

1 MR. MERRELL: David McCrea's there?

2 MR. MCCREA: Yes, I'm here, Paul.

3 MR. MERRELL: What I'm calling about is
4 that I started speaking about this with Konrad
5 yesterday and had to interrupt, and we played
6 telephone tag for the rest of the day.

7 In the magistrate's July 16th order,
8 Section 4, he had ordered that Westinghouse -- or
9 no, it isn't Section 4, excuse me, Section 5 to
10 submit some indexes to him for in-camera review
11 forthwith. And the judge had indicated that he
12 expected to be looking at those last Monday and
13 would make a ruling.

14 When we didn't obtain a ruling, we called
15 over to the courthouse to see if we could find out
16 what was going on and learned that Westinghouse had
17 not complied with the Court's order and had not
18 submitted the documents in camera.

19 When I spoke with Konrad yesterday, he
20 indicated that Westinghouse had no intent do so
21 until Friday. As I understood it, it would be in
22 the afternoon.

23 The Judge has informed all parties that
24 he's going to be out of town next week. We need

1 those documents if the Court is going to release
2 them, we should have had them already, but we very
3 definitely need them before we do the portion of the
4 30(b)(6) that has to do with whether the documents
5 in the industrial hygiene collection still exist.

6 Now, I asked Konrad whether he would be
7 willing to lay over that portion of the deposition
8 into the week of the 2nd so that we could get a
9 ruling from the Court on those indexes before we
10 hold the relevant deposition. And Konrad, I
11 believe, was pretty clear that Westinghouse was not
12 willing to do that.

13 So at this point, I see two issues, one is
14 Westinghouse's disobedience with the Court order.
15 And the second is their refusal to accommodate the
16 deposition -- revise the deposition schedule to
17 accommodate the problems caused by their
18 disobedience.

19 Now, do you have any change in position?

20 MR. CAITEUX: This is Konrad Caiteux.
21 Paul, I just want to address a couple of things.
22 Number one, the conference with the Court was
23 recorded. We don't have the transcript yet, but the
24 transcript will be clear as to what the Court said

1 and didn't say. It is my recollection that the
2 Court never made any indication that he wanted the
3 documents in chambers on last Monday. What the
4 Court order says is forthwith. We have checked with
5 our local counsel, and we have been assured that if
6 we give our in-camera submission to the Court by
7 this Friday, that we would be in compliance with the
8 Court's order.

9 Number two, I made no representations as
10 to when we were going to get it in on Friday. I
11 never said that it would be Friday afternoon. And
12 what I think what I told you was that we're doing
13 our best to get it in as quickly as possible.

14 And number three, I don't believe that I
15 indicated to you that Westinghouse was unwilling to
16 put the depositions over. I think that where we
17 were when we broke off and then we were playing
18 telephone tag for the rest of the day was that I was
19 explaining to you that, in our view, that there are
20 two separate issues here. One is the Bair
21 memorandum and how that relates to documents in
22 industrial hygiene. And number two, the PCB
23 document collection which was made over a year
24 before the PCB -- or before the Bair memorandum was

1 written.

2 And as I said that in our view, those were
3 two separate issues, and I believe we were beginning
4 to discuss your position as to why you thought you
5 needed to have those two things simultaneously. And
6 that's where we left off.

7 MR. MASKIN: In terms of going forward, it
8 seems to me that on behalf of Westinghouse, I've
9 never ever heard anything in terms of a refusal on
10 the part of Westinghouse to attempt to accommodate
11 schedule of the Plaintiffs.

12 MR. MERRELL: You weren't on the telephone
13 call.

14 MR. MASKIN: And I'm not hearing it from
15 Konrad, but the long and short of it is, is that in
16 order to accommodate and just to move this along, we
17 will produce the 30(b)(6) witness on that issue.
18 We'll delay it until August 2nd or whatever, at a
19 time that's convenient, and that way, this other
20 process will have taken place in advance of that.
21 So that's not a problem.

22 MR. MERRELL: Now, which issue are you
23 discussing? You say on this issue, are you talking
24 about the portion of the 30(b)(6) that deals with

1 whether the documents still exist in the industrial
2 hygiene collection?

3 MR. MASKIN: Yes, sir. So as to that
4 portion of that deposition, if you want to resume
5 that for your timing reasons by August 2nd, we'll
6 pick the exact date, we'll work with you.

7 MR. MERRELL: Okay. With the stipulated
8 order that we've been putting together for the Court
9 on depositions that would go forward after the close
10 of the discovery schedule on July 23rd.

11 MR. MASKIN: Yes, sir.

12 MR. MERRELL: The portion of the 30(b)(6)
13 that has to do with whether those industrial hygiene
14 documents still exist can be entered under Section
15 A, which is that the depositions should go forward
16 after the discovery schedule with no reservation of
17 motions for protective orders to borrow the
18 depositions.

19 MR. MASKIN: I'm not sure I understand
20 what you're talking about. All I'm saying is to the
21 extent that we have a 30(b)(6) witness will speak to
22 the existence of documents from the industrial
23 hygiene department. That witness can go forward
24 after the close of discovery, official close of

1 discovery this Friday. And we'll work out a
2 schedule that works for you.

3 MR. MERRELL: Where I'm coming from is
4 that we have a Court scheduling order that says that
5 all fact depositions are to be completed by
6 tomorrow.

7 MR. MASKIN: Yeah. As I recall, the Court
8 is more than happy, and I think said so by
9 stipulation, we can work something out. The Court,
10 believe me, will be more than happy for us to agree
11 to something. And let's just do it.

12 MR. MERRELL: I'm telling you that we have
13 to get Court approval for any -- beforehand for any
14 depositions that need to go forward after that date.

15 MR. MASKIN: If you want to get up a
16 stipulation, Konrad and you could work that out. I
17 really don't want to slow down this deposition.

18 MR. MERRELL: You don't want to meet and
19 confer, counsel?

20 MR. MASKIN: We're in agreement, on this
21 point. Work out a stipulation with Konrad, and
22 let's get on to something else.

23 MR. MERRELL: Okay. Now, I have one other
24 question that relates to this. To me, forthwith

1 means just what it says in the dictionary,
2 immediately. And Konrad tells me that the reason
3 they're taking so long is that they're preparing an
4 in-camera submission.

5 Does Westinghouse have any intent to
6 submit affidavits or explanatory materials that we
7 are not going to see?

8 MR. MASKIN: Well, anything that's in
9 camera you're not going to see. So there's going to
10 be a submission, and we're not foot dragging here.
11 This is a real task, Paul.

12 MR. MERRELL: I'm asking a direct
13 question. I would like a direct answer.

14 MR. MASKIN: I think I've just given it.
15 I think the answer is I don't know, but the
16 materials we're sending, and the exact form of the
17 submission in camera, I can't tell you today.

18 MR. MERRELL: Will Westinghouse agree to
19 me participating in the in-camera review under a
20 protective order?

21 MR. MASKIN: Of course not. That's why
22 it's in camera.

23 MR. MERRELL: I would like to know whether
24 you are submitting explanatory materials that are

1 anything other than the documents that the Judge
2 ordered you to submit in camera.

3 MR. MASKIN: I don't know at this time.

4 MR. CAITEUX: This is Konrad Caiteux
5 again. Let me answer that. If you look at the
6 Court's order, what the Court told us to submit in
7 camera was the index and an explanatory memorandum
8 to the Court. That's what we intend to do.

9 MR. MERRELL: Okay. Then I'm probably
10 going to file a motion with the Court today to
11 participate in that in-camera review under the
12 protection of a protective order.

13 MR. MASKIN: File whatever you want, Paul.

14 MR. MERRELL: Okay. You feel like we've
15 met and conferred on that?

16 MR. MASKIN: Yeah, I think we've covered
17 this issue enough. Can we get on with our
18 deposition, Paul? Is there anything else we need to
19 talk about?

20 MR. MERRELL: Are there any other portions
21 of the 30(b)(6) that are going to need to be set
22 over until after July 23rd?

23 MR. MASKIN: I'll let Konrad speak to
24 this. There's going to be depositions next week,

1 not on the point we just discussed. But we have
2 Mr. Lawrence next week, we have Mr. Paschke, I
3 believe. There are a series of depositions relating
4 to this which we've discussed with you which we'll
5 go over and we can do it by stipulation.

6 And I believe, I think we're all
7 proceeding in good faith. I think if you're
8 concerned, once again, that somehow you're being
9 foreclosed because of the deadline, I believe the
10 magistrate understood that things were going forward
11 next week. And once again, you can work out a
12 stipulation with Konrad, and I'm sure we can work
13 that out. If you want to submit it to the
14 magistrate to protect yourself, if you think that's
15 necessary, go ahead.

16 MR. MERRELL: Arvin, you've been
17 particularly difficult to deal with in this
18 deposition. I'm asking you whether there are any
19 portions of the 30(b)(6) that we haven't discussed,
20 anything other than the portion relating to whether
21 those documents still exist that are going to be
22 continued past -- need to be continued past the
23 23rd.

24 MR. MASKIN: I think the answer to that is

1 yes, not that I've been difficult to work with. But
2 I think the fact that gentlemen like Mr. Lawrence,
3 for example, will be produced in part in a 30(b)(6)
4 type capacity, so to that extent, yeah. He will go
5 forward next week. Not on the issue of the
6 continued existence, but inasmuch as he does have
7 information to relate, as the person most
8 knowledgeable, at least in part, on the formulation
9 and decision not to implement the draft retention
10 proposal, he'll be going on next week.

11 MR. MERRELL: Then I propose that we word
12 the thing that the 30(b)(6) deposition itself will
13 be continued into the week of the 2nd.

14 MR. MASKIN: Well, I'm not sure I
15 understand what that means entirely. If to the
16 extent you're saying -- there are certain
17 individuals who we are putting up, because who we
18 designated as a 30(b)(6) deposition, of course, is
19 our decision.

20 We're not opening this up wholesale, but
21 to the extent that there are 30(b)(6) witnesses that
22 we intend to put up, I think I have to find them.
23 Those I'm happy to continue after the 23rd. I think
24 there may even be another witness as well who I

1 think we haven't found yet which is not a 30(b)(6)
2 witness who may go over. And I think we've had
3 agreements on that kind of stuff. Again, that's the
4 kind of stuff I think you can work out with Konrad.

5 MR. MERRELL: As I understand it, you're
6 willing to stipulate that the -- we enter an order
7 stating that the 30(b)(6) would be continued after
8 the 23rd to the extent it isn't completed by the
9 23rd?

10 MR. MASKIN: With the one proviso, let me
11 think about how to word this, Paul, but with the one
12 proviso is that discovery -- we've got certain
13 individuals who we are going to be producing as
14 30(b)(6) depositions. Anything we do, I do not want
15 construed to mean that we're agreeing to, consenting
16 to an ongoing process that involves more discovery
17 than we're essentially agreeing to now on this
18 subject. We won't agree basically to have more
19 discovery on this subject and go on indefinitely.
20 Therefore, I'd like it as narrow and focused as we
21 can make it.

22 By that I mean that we've got a very
23 limited number of 30(b)(6) depositions we intend to
24 produce. I'll tell you what they are, and those can

1 go over past the 23rd. And I will stipulate to
2 that. You can continue the 30(b)(6) overall
3 outstanding deposition notice, beyond the 23rd, and
4 we will designate those people who we think are
5 responsive. So I think we really do have a deal.

6 MR. MERRELL: One of the procedures that
7 happens in a 30(b)(6) is that you get in there,
8 inevitably you'll find out that the witness you're
9 dealing with does not have all the answers to all
10 the questions, creating an obligation of
11 Westinghouse to go out and find other people, so I'm
12 not willing to enter into an agreement that says
13 that your list of witnesses is it.

14 MR. MASKIN: No, no. I think you can -- I
15 think we're likely to oppose and anticipate opposing
16 discovery of any beyond the 30(b)(6) and the
17 witnesses that you've noticed already. People that
18 you've noticed or we're in the process of finding,
19 we'll put up past the 23rd, but to the extent that
20 we are opening this up to new discovery, I think we
21 would oppose that.

22 And as I sit here, I don't have the
23 notices in front of me, Paul, but I think Ray
24 Paschke may well also be appearing somewhat in a

1 30(b)(6) capacity to the extent he's talking about
2 documents -- the process of obtaining and collecting
3 PCB documents for preservation.

4 MR. MERRELL: Do you have any problem with
5 entering into an order that still simply states that
6 the 30(b)(6) deposition will be continued past the
7 23rd?

8 MR. MASKIN: Well, except to the extent,
9 and again, I'm not trying to be difficult, I'm
10 thinking allowed with you, Paul, but to the extent
11 of reopening depositions that have already been
12 taken, again, you can work out this language with
13 Konrad, but to the extent it speaks to keeping
14 depositions open that we feel ought to be over, we
15 wouldn't agree to that. But I'm sure you can come
16 up with some language we can all agree to.

17 MR. CAITEUX: This is Konrad Caiteux
18 again. Paul, you need to identify us also. I mean,
19 we talked a lot about a 30(b)(6), but the 30(b)(6)
20 has been noticed and renoticed so many times, I want
21 to get a definition, and I want the exact 30(b)(6)
22 notice that we're talking about, and then we can
23 negotiate from there.

24 - - - -

1 (Whereupon, there was a brief pause in the
2 proceedings.)

3 - - - -

4 MR. MERRELL: This is a notice dated March
5 12th, 1993.

6 MR. CAITEUX: March 12th, 1993?

7 MR. MERRELL: Yes.

8 MR. CAITEUX: Okay.

9 MR. MASKIN: Can I interrupt a second? I
10 am confident because I know the both of you get
11 along so well, that the two of you can work this
12 out. I believe, Paul, we're going to be able to
13 come up with a stipulation we can all live with so
14 we can get on with the deposition. It sounds like
15 we're on the right path.

16 MR. MERRELL: Arvin, you and I do not get
17 along. And I want final language for a stipulation
18 before we end this meet and confer.

19 MR. MASKIN: Maybe the two of you should
20 be talking and then you just let us know what you
21 finally agree upon and I'm sure we can work it out.

22 MR. CAITEUX: This is Konrad Caiteux
23 again. Paul, I don't see why we can't work it out.
24 We've been able to work out quite a bit of stuff

1 over the last week or so. And while there's a court
2 reporter there and we're on the record, I really
3 resent the implication that you're making that
4 Westinghouse is not trying to be cooperative in this
5 matter, because we are. It's not just a one-sided
6 process. I mean, all the Defendants noticed quite a
7 few 30(b)(6) depositions of Nevada Power this week,
8 but yet your request, we've elected to put those
9 over. So I mean, there's a lot going on here, and
10 you're focusing in on one thing and you're saying
11 we're being uncooperative, and I kind of resent
12 that, because we are trying to be cooperative.

13 MR. MERRELL: Where I'm coming from,
14 Konrad, is that I made a deal with Arvin yesterday
15 morning and he entered into that deal expressly to
16 avoid getting a ruling by the Judge. Well, then he
17 broke the deal later in the day and we had to go
18 back to the Judge again.

19 MR. MASKIN: Boy, I must be confused. You
20 and I didn't even speak yesterday.

21 MR. MERRELL: Excuse me, the day before
22 yesterday. But if we have this spirit of
23 cooperation, let's get some language written right
24 now.

1 MR. MASKIN: Why don't you work it out
2 with Konrad?

3 MR. MERRELL: No, I'm going to work it out
4 with you present, because you're the one saying you
5 have problems with the language I keep suggesting.
6 And I keep coming up with new ways of wording it,
7 and you keep coming up with something being wrong
8 with it. Why don't you propose some language,
9 Arvin?

10 MR. CAITEUX: Paul, I think that's
11 tremendously unfair. They're in the middle of a
12 deposition. If anything, this is delaying
13 discovery.

14 MR. MASKIN: Absolutely.

15 MR. MERRELL: Will you quit talking about
16 delaying discovery and let's write some language?

17 MR. CAITEUX: Well, why don't you let them
18 get on with the deposition. Paul and I will talk on
19 the phone and we'll negotiate some language.

20 MR. MERRELL: Arvin, are you going to live
21 with what Konrad and I work out?

22 MR. MASKIN: Konrad will confer with me as
23 necessary --

24 MR. MERRELL: Then let's deal with it now.

1 I want language.

2 MR. MASKIN: You've tied up this
3 deposition and this witness enough already. We've
4 got to leave. We have a deposition to take. My
5 designee, Konrad, I have the utmost confidence in.
6 We'll work this out together.

7 MR. MERRELL: He doesn't have your
8 authority to enter into the stipulation without
9 going back to you.

10 MR. MASKIN: Konrad knows what his
11 authority is, and I'll look forward to hearing from
12 him as necessary.

13 MR. MERRELL: Okay. The Judge has time
14 available in the West Coast time.

15 MR. MASKIN: That's fine, but --

16 MR. MERRELL: Okay. And I'm not going
17 into a process where Konrad has to go back to you to
18 get approval.

19 MR. CAITEUX: Paul, wait a minute. I
20 resent that. Paul, we negotiated all last week, and
21 everything that I agreed on, you got.

22 MR. MASKIN: If I want to go to the
23 magistrate with this record again, go right ahead,
24 Paul.

1 MR. MERRELL: Okay. You said that I can
2 work it out with Konrad, and then Konrad can check
3 it out with you, and then we can get it approved,
4 okay? I'm telling you, if you have to approve it
5 and Konrad has to approve it both, let's work it out
6 now.

7 MR. MASKIN: I understand that, and we
8 respectfully disagree. We've got a deposition to
9 take, Paul. We've got business to do. Then the
10 Court said, how many lawyers do you have,
11 Mr. Maskin, and you have multiple lawyers here at
12 the deposition, we all have things to do, Paul. Go
13 ahead and talk to Konrad.

14 MR. MERRELL: It's our deposition.

15 MR. MASKIN: Yes, I understand that, but
16 it's my witness that you're tying up.

17 MR. MERRELL: Are you refusing to meet and
18 confer with me on specific language for a
19 stipulation?

20 MR. MASKIN: No. Konrad, I think you're
21 going to have to address this. The answer is no,
22 we're not disagreeing to meet and confer, but when
23 you say me, that includes the Westinghouse lawyers
24 which include, I'm happy to say, Konrad.

1 MR. MERRELL: I want everyone who has to
2 approve this language to agree to a language right
3 now.

4 MR. MASKIN: I understand you'd like that,
5 but the answer's no. We will proceed the way I
6 described it. And I know what you'd like, but we
7 can't always have it the way we like, Paul, and
8 we've got a deposition to begin.

9 MR. MERRELL: When this deposition begins
10 is up to us, not to you. Okay?

11 MR. MASKIN: Paul, are you holding up this
12 deposition because -- Paul, we have nothing more to
13 discuss, I think. Why don't you get with Konrad.
14 We're ready to go with this deposition. You're
15 keeping my witness up for no reason.

16 MR. MERRELL: Are you going to relinquish
17 your request that Konrad consult with you before he
18 enters into a stipulation?

19 MR. MASKIN: No, and I'm not going to
20 discuss this. This subject, I think, we've talked
21 to death already. If you want to go to the
22 magistrate, please, go ahead, but -- well, that's
23 your decision.

24 MR. MERRELL: You're saying that you have

1 to approve it, but you will not deal with me; is
2 that what you're saying?

3 MR. MASKIN: No. This is one of those
4 times when it is important that we do have a record.
5 And we'll discuss this with the magistrate.

6 MR. MERRELL: If you aren't refusing to
7 deal with me on specific language, then let's work
8 it out.

9 MR. MASKIN: I think we've had enough of
10 this. We're happy to work with you with specific
11 language. Konrad stands ready to work it out with
12 you. Go ahead and do it.

13 MR. MERRELL: Okay. I am hearing that you
14 are refusing to deal with me on specific language,
15 yet retaining the right to veto what Konrad and I
16 work out.

17 MR. MASKIN: I'm not going to characterize
18 it. This conversation on this point, I think we've
19 reached a conclusion. I don't know what you're
20 hearing anymore, Paul.

21 MR. MERRELL: But you're not responding,
22 Arvin.

23 MR. MASKIN: I have responded. We've got
24 work to do and you're tying us up.

1 MR. MERRELL: Why don't we do the work,
2 Arvin, and then you can get on with your deposition.
3 We've spent longer than it would take to write
4 language with you arguing about whether you should
5 have to deal with me.

6 MR. MASKIN: I have nothing else to say,
7 Paul, on this. I mean, go ahead, work out your
8 stipulation. I'm finished. I'm not going to
9 proceed this way.

10 MR. MERRELL: Konrad, are you going to
11 stipulate with me without having to go back to
12 Arvin?

13 MR. CAITEUX: Paul, I think the record is
14 clear as to what Arvin has proposed. We're trying
15 to work with you. And quite frankly, if you really
16 seriously want to bother the magistrate with an
17 issue of such minor importance, then I guess you
18 have to do that.

19 MR. MERRELL: Arvin, can I call you and
20 get a final deal without any more interruptions?

21 MR. MASKIN: This requires a judgment call
22 on the part of Konrad. He'll call me if he thinks
23 it's appropriate. Paul, think about what you're
24 saying. Step back, take a breath and think about

1 what you're saying. We're tying this up over -- how
2 I dictate and how I practice law is my own business,
3 and I should say, I think we're conducting it in
4 good faith. I know your counsels may think -- well,
5 I won't involve them in this, but suffice it to say
6 that we're ready to go with the deposition. I can't
7 believe we're having this conversation, Paul.

8 I think we're finished. At this point, if
9 you don't like anything I'm saying, we're signing
10 off. Go ahead and talk to Konrad.

11 MR. MERRELL: Do you have problems, if I
12 can't get language out of Konrad by 1 o'clock that
13 this goes to the Judge?

14 MR. MASKIN: Let's see what your progress
15 is. If we really can't agree -- well, let's see,
16 I'm really confident that we're going to come up
17 with language we can agree with. I don't want to
18 speculate. We don't have a disagreement at this
19 point. We just need to work out language.

20 MR. MERRELL: That's what I agree we need
21 to do, and we could have done it in half the time
22 trying to duck working on it.

23 MR. CAITEUX: Arvin is not trying to duck
24 on it. What he's trying to do is propose a

1 procedure that seemed to work last week because we
2 got quite a lot done, and let's you and I negotiate.
3 And Westinghouse will employ the same process they
4 used last week when decision making was done while
5 they go on with their deposition. It won't in any
6 way, shape or form interfere with your rights to
7 take the depositions.

8 MR. MERRELL: I want to deal directly with
9 the person who has the authority to enter into a
10 language. That is not an unreasonable request.

11 MR. MASKIN: Konrad has authority to enter
12 into language. However, to the extent that he feels
13 it's appropriate to contact me, he will.

14 MR. MERRELL: Let's deal with it.

15 MR. MASKIN: That's all there is to it.
16 Now, let's get going, Paul. I'll talk to you later.

17 MR. MERRELL: Okay. Let the record
18 reflect that Mr. Maskin has refused to deal with me
19 on language. Now, if I don't have language by 1
20 o'clock, I am going to the Judge. Is that clear?
21 Is anyone there?

22 MR. MASKIN: Paul, I'm sorry, I was
23 talking to one of your colleagues. I take it you're
24 announcing that I'm refusing to do something?

1 MR. MERRELL: Yeah. You've refused to
2 negotiate language with me, and you're running away
3 from me. And I am saying that the record is pretty
4 clear that you are refusing to deal with me on
5 language, and you're refusing to identify anyone for
6 me who has authority to enter into language without
7 going through any more running around the bush.

8 MR. MASKIN: Konrad has authority. If he
9 feels it's appropriate to call me, that's it.

10 MR. MERRELL: Arvin, if Konrad and I do
11 not have language by 1 o'clock, this is going to the
12 Judge. Is that the way you want it?

13 MR. MASKIN: That's not the way I want it,
14 but enough said on the subject. But at least this
15 is another one of those occasions I'm glad we have a
16 transcript. Good luck, gentlemen.

17 MR. MERRELL: David, could you go out and
18 call me, please?

19 - - - -

20 (Whereupon, there was a discussion off the
21 record.)

22 - - - -

23 MR. MASKIN: Again, let the record
24 reflect --

1 MR. CAITEUX: Paul, this is Konrad from
2 New York.

3 MR. MERRELL: Okay. Thank you, Konrad.
4 I'll be back with you in a few minutes, Konrad.

5 MR. MASKIN: One second. I'm still
6 talking. Let the record reflect that we've got a
7 witness who has been waiting to go forward with the
8 deposition --

9 MR. McCREA: Don't take more time.

10 MR. MASKIN: It's now been a half-hour of
11 a witness waiting to complete his deposition. We'd
12 like to proceed with the deposition. We've been
13 interrupted either by having reporters show up late
14 because of scheduling, new reporters for no reason.
15 And at one point yesterday, we had to wait until we
16 got a new camera crew. I mean, we've got witnesses
17 here already on time to take depositions. Let's get
18 on with it.

19 MR. MERRELL: I'm trying to work in
20 accommodation with you from a situation where you
21 have disobeyed a Court order. And I want language
22 that's going to accommodate the mess you have made
23 by your disobedience of the Court's order.

24 MR. MASKIN: Let's go now. We've never

1 disobeyed an order -- well, I think we've taken this
2 as far as we can. Good luck, gentlemen. Work out
3 the language. I'm sure it will come out find.
4 Thank you.

5 - - - - -

6 (Whereupon, there was a lunch break in the
7 proceedings.)

COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE

COUNTY OF ALLEGHENY) SS:

I, Janice L. Graham, a Notary Public in and for the Commonwealth of Pennsylvania, do hereby certify that the witness, CLARENCE W. BICKERSTAFF, was by me first duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the foregoing deposition was taken at the time and place stated herein; and that the said deposition was recorded stenographically by me and then reduced to printing under my direction, and constitutes a true record of the testimony given by said witness.

I further certify that I am not a relative, employee or attorney of any of the parties, or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office this 23 day of July, 1993.



Notary Public
Notarial Seal
Janice L. Graham, Notary Public
Pittsburgh, Allegheny County
My Commission Expires July 1, 1996
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY)

E R R A T A
S H E E T

I, CLARENCE W. BICKERSTAFF, have read the foregoing pages of my deposition given on July 22, 1993, and wish to make the following, if any, amendments, additions, deletions or corrections:

Pg. No.	Line No.	Change and reason for change:
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In all other respects the transcript is true and correct.

CLARENCE W. BICKERSTAFF

Subscribed and sworn to before me this
_____ day of _____, 1993.

Notary Public

(JG)

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

NEVADA POWER COMPANY, a Nevada)
Corporation,)

Plaintiff,)

-vs-)

MONSANTO COMPANY, a foreign)
corporation; GENERAL ELECTRIC)
COMPANY, a foreign corporation,)
WESTINGHOUSE ELECTRIC)
CORPORATION, a foreign)
corporation; and DOES 1 through)
XXV, inclusive,)

Defendants.)

Case No.
CV-S-89-555-LDG-LRL

DEPOSITION OF: JEFFREY J. BAIR
VOLUME II

DATE: July 20, 1993
Tuesday, 3:30 p.m.

PLACE: Westin William Penn Hotel
530 William Penn Place
Pittsburgh, PA 15222

TAKEN BY: Plaintiff

REPORTED BY: Janice L. Graham
Notary Public

CERTIFIED COPY

1 hygiene.

2 Q. What was being audited in these reports?

3 MR. MASKIN: Just objection to foundation.

4 THE WITNESS: Industrial hygiene would go
5 out and audit Westinghouse sites.

6 BY MR. SCHALK:

7 Q. Would that be manufacturing facilities?

8 A. I believe that would include manufacturing
9 facilities.

10 Q. Would it include dump sites?

11 MR. MASKIN: Again, objection to
12 foundation.

13 THE WITNESS: I have no idea.

14 - - - -

15 (Whereupon, there was a recess in the
16 proceedings.)

17 - - - -

18 MR. MERRELL: This is Paul Merrell for
19 Nevada Power. My understanding is that Westinghouse
20 has agreed that we will continue the present
21 30(b)(6) deposition with Mr. Bair testifying and
22 complete the 30(b)(6) deposition portion of
23 Mr. Bair's testimony at a later time. And that we
24 will also be taking Mr. Bair in his personal

1 capacity at a later time. Is that correct with
2 Westinghouse?

3 MR. MASKIN: Well, no, it's not exactly
4 right.

5 MR. MERRELL: Okay. Then let's get the
6 Judge on the phone.

7 MR. MASKIN: Well, no, let me finish my
8 thought.

9 MR. MERRELL: You have one minute before
10 I'm calling the Judge, counselor. Make it fast.

11 MR. MASKIN: Go call the Judge. Let's
12 call the Judge.

13 MR. MERRELL: I'll put you on hold. I'm
14 dialing the Judge right now.

15 - - - -

16 (Whereupon, there was a brief pause in the
17 proceedings.)

18 - - - -

19 MR. SCHALK: (Speaking to Judge Leavitt's
20 clerk). My name is Paul Merrell. I have the
21 participants in the Westinghouse deposition in
22 Pittsburgh on the line with me. And I guess we need
23 to have the Judge resolve another dispute.

24 MR. MASKIN: We can't hear him again.

1 memos as I recall them which would suggest that the
2 document production program might have been under
3 way.

4 In light of the numerous affidavits and
5 representation made by Westinghouse in its own
6 defense since that, clearly this Court is certainly
7 not prepared to make the kind of pronouncement that
8 the Texas Judge made. I haven't made up my mind at
9 all yet. Where we find ourselves right now is
10 trying to find some way for you to get to the bottom
11 of this as efficiently as possible and put this
12 inquiry to rest one way or another.

13 I'm certainly appreciative of the gravity
14 of the allegations and the importance of this
15 inquiry, but what I'm telling you is that hopefully
16 you'll find an answer one way or another here very
17 soon, because we can't let you just go on, you know,
18 without end.

19 MR. MERRELL: I hear, Your Honor, and I
20 don't want to argue with you, but I want to point
21 out that we are now in the first day of our
22 depositions on this subject.

23 JUDGE LEAVITT: Right.

24 MR. MERRELL: There is one thing I would

1 ask for a little guidance on before we leave today
2 which is the process you'd like us to go through
3 before we involve you. Part of my problem is that
4 your time is, of course, limited and the times you
5 are available are limited. And so I feel some
6 pressure to alert you that there is a problem coming
7 and to set a time so that counsel have some impetus
8 ~~to try to reach their agreements before that time.~~

9 JUDGE LEAVITT: I appreciate that, but at
10 the same time, it does put everybody in a bit of an
11 awkward position. You know, obviously before you
12 alert me and we set a time certain, I certainly
13 expect that counsel will have made every effort to
14 resolve the differences, if not narrow them
15 considerably. I know you're somewhat at a
16 disadvantage because Mr. Schalk is there in
17 Pittsburgh dealing face to face with Mr. Maskin, and
18 you're not, you're here. And that makes it a little
19 bit difficult for you, but I don't want you to call
20 me unless it is clear that the principals involved,
21 Mr. Maskin and Mr. Schalk and Mr. Cailteux, have
22 given this a thorough bona fide meet and confer
23 before you get a hold of me and we set a time
24 certain.

1 This is the second consecutive call now in
2 which Mr. Maskin has asked why are we on the phone,
3 I thought we were trying to work this out. That may
4 be partially true, but --

5 MR. MASKIN: Your Honor, may I be heard
6 for a second?

7 JUDGE LEAVITT: Although I only have until
8 the end of this week, I don't have that schedule
9 right in front of me. I believe I do have a couple
10 of hours tomorrow, not that I'm inviting you to use
11 all of those. And on Thursday, I will be free for
12 two and a half hours in the afternoon, and then
13 Friday, I'll be free for two and a half hours in the
14 morning.

15 MR. MASKIN: Your Honor, before you hang
16 up, can I be heard for two seconds?

17 JUDGE LEAVITT: Yes, certainly.

18 MR. MASKIN: Thank you. First, to the
19 extent that we are having a 30(b)(6) opportunity and
20 another opportunity for the witness to testify in
21 his so-called individual capacity, is there any
22 reason, as we're all gathered here, why the witness
23 can't immediately, upon the conclusion of the
24 30(b)(6) deposition, and presumably will have an