

MEMORANDUM

TO: J. RANDALL JONES, CHARLES H. McCREA, SR.
FROM: NIK SKRINJARIC *N.S.*
RE: NEVADA POWER V. MONSANTO; INTERROGATORIES FROM
DEFENDANTS
DATE: AUGUST 24, 1989

As per Randall's request I have reviewed the Interrogatories received from Monsanto, Westinghouse and General Electric. The following is my analysis of these Interrogatories.

As far as the Interrogatories from GE and Westinghouse are concerned they mainly focus on the damages Nevada Power alleged to have incurred and the equipment delivered. For example, the Interrogatories request the price, date of purchase and remaining life expectancy for the various items of equipment purchased from GE and Westinghouse. Additionally, the Interrogatories request the identity of representatives of Nevada Power who have knowledge with regards to the equipment and the replacement policies.

As far as Monsanto is concerned, the focus of the Interrogatories is quite a bit different. In essence, Monsanto is asking questions which are targeted to provide the sort of information which proved to be fatal to the utility companies in the Tennessee suit (see Electric Power Board of Hattanooga v. Monsanto Company, et al., 1989 W.L. 76115 (Sixth Circuit Tennessee)). For example, Monsanto asks questions with regards to Nevada Power's membership in trade or technical associations and

any meetings of such associations. Monsanto also asks information about correspondence and communication between Nevada Power and government bodies or agencies as well as any reports or articles commissioned by or prepared within Nevada Power with regards to the toxicity of PCBs. Perhaps most telling is Monsanto's Interrogatory No. 11 which specifically asks questions with regards to any program maintained by Nevada Power which involved monitoring of developments in Federal, State or local regulation concerning PCBs or PCB equipment.

It is clear from Defendant's Interrogatories that they are essentially pursuing two attack strategies. The first, of course, concerns the damages and equipment bought by Nevada Power. As was stated by this author in previous memos, one of the ways that they may be able to defeat at least the products liability claim is to show that there was only economic damage. It is probably towards this goal that the Interrogatories of GE and Westinghouse are targeted.

Monsanto's Interrogatories on the other hand seem to seek the type of information that the Sixth Circuit Court in Tennessee found compelling enough to grant summary judgment to Monsanto, et al. Monsanto's Interrogatories seem to support my earlier point that the key to the Tennessee decision is the knowledge of the utility companies of the hazards associated with the use of PCBs. In the Tennessee case, the utility companies were active in EPA's rulemaking process with regards to PCBs. Indeed, the Tennessee utility companies not only monitored the proceedings

relating to PCBs but also actively sent comments on the proposed rules. As the Sixth Circuit Court stated, "It is sufficient to conclude that the record shows with crystalline clarity that the utilities had actual knowledge of the hazards of PCBs as used in electrical equipment more than three years before they filed this suit. . . . When the regulation they had feared was passed in 1985, only then did they become outwardly concerned about the hazards of their uses of PCB equipment and PCB contaminated equipment. This turnabout on the part of the utilities diminishes the credibility of their claims". Hattanooga, 1989 W.L. 76115, pg. 8.

At this time, it is unclear exactly to what extent Nevada Power was involved in the promulgation of the EPA Regulations concerning PCBs and PCB equipment. As soon as we discover the extent of Nevada Power's involvement, we can make a better assessment of the likelihood of success of our case.

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