

Telephone: (702) 385-4202

BRADLEY & MERRELL
c/o Jones, Jones, Close & Brown
300 South Fourth Street, Seventh Floor
Las Vegas, Nevada 89101-6026

Fax: (702) 385-1655

July 23, 1993

VIA HAND DELIVERY

Honorable Lawrence R. Leavitt
Magistrate Judge of the United States District Court
District of Nevada
300 Las Vegas Boulevard South
Las Vegas, Nevada 89101

Re: Nevada Power Company v. Monsanto Company, et al.
USDC, District of Nevada Case CV-S-89-555-LDG (LRL)

Dear Judge Leavitt:

Enclosed please find a courtesy copy of "Plaintiff Nevada Power Company's Motion for Order for Counsel to Meet and Confer or, in the Alternative, Motion to Compel Interrogatory Responses and Motion for Protective Order." Exhibits to this Motion are still assembled and will be delivered to you shortly.

Sincerely,

BRADLEY & MERRELL


PAUL E. MERRELL
Coordinating Attorney

PEM:lsg
Enclosure

cc: Steven R. Kuney (via fax - w/enclosure)
Arvin Maskin (via fax - w/enclosure)
J. Bruce Alverson (via fax - w/enclosure)
John L. Thorndal (via fax - w/enclosure)
Bruce A. Featherstone (via fax - w/enclosure)

1 J. RANDALL JONES, ESQ.
CHARLES H. McCREA, SR., ESQ.
2 DOUGLAS M. COHEN, ESQ.
JONES, JONES, CLOSE
3 & BROWN, CHARTERED
700 Bank of America Plaza
4 300 South Fourth Street
Las Vegas, Nevada 89101-6026
5 Telephone: (702) 385-4202

6 RALPH A. BRADLEY, ESQ.
PAUL E. MERRELL, ESQ.
7 BRADLEY & MERRELL
c/o JONES, JONES, CLOSE
8 & BROWN, CHARTERED
700 Bank of America Plaza
9 300 South Fourth Street
Las Vegas, Nevada 89101-6026
10 Telephone: (702) 385-4202

11 Attorneys for Plaintiff
NEVADA POWER COMPANY
12 a Nevada corporation
13

14 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
15

16	NEVADA POWER COMPANY, etc.,	)	CASE CV-S-89-555-LDG (LRL)
		)	
17	Plaintiff,	)	PLAINTIFF NEVADA POWER
		)	COMPANY'S MOTION FOR ORDER
18	vs.	)	FOR COUNSEL TO MEET AND
		)	CONFER OR, IN THE
19	MONSANTO COMPANY, etc., et al.,	)	ALTERNATIVE, MOTION TO
		)	COMPEL INTERROGATORY
20	Defendants.	)	RESPONSES AND MOTION FOR
		)	PROTECTIVE ORDER

21
22 Plaintiff Nevada Power Company moves for an order requiring
23 counsel for Monsanto Company further to meet and confer regarding two
24 Rule 30(b)(6) deposition notices to Nevada Power and two sets of
25 Monsanto interrogatory responses to Nevada Power, all discussed
26 further below. These four discovery pleadings are all interrelated
27 and are attached hereto as EXHIBITS 1-4. In the alternative, Nevada
28 . . .

1 Power moves for a protective order regarding the deposition notices
2 and moves to compel adequate responses to the interrogatories.

3 MOTION FOR ORDER TO MEET AND CONFER

4 As will be explained at hearing today, Nevada Power has been
5 engaged in a good faith effort to negotiate a resolution to these
6 interrelated discovery issues and had been led to believe that the
7 depositions at issue would be postponed by stipulation so that the
8 negotiations would be completed. These discussions were being
9 fruitful, and Nevada Power reasonably relied upon Monsanto counsel's
10 statements that these deposition notices would probably be reset to
11 be taken following the July 23, 1993 cut-off date to allow time for
12 further negotiation. Nevada Power was not advised that Monsanto
13 intended to go ahead with these depositions as scheduled until the
14 morning of Thursday, July 22. Upon being advised that Monsanto would
15 force the issue to hearing, Nevada Power advised Monsanto that, as it
16 had repeatedly stated, it would file this alternative motion to
17 compel and for a protective order.

18 Nevada Power negotiated in good faith and did not realize that
19 Monsanto had a secret agenda. While negotiations regarding these
20 discovery requests were going forward, Monsanto was persuading
21 counsel for Nevada Power to rush Nevada Power's previously scheduled
22 depositions of Monsanto officials, as a courtesy, so that senior
23 counsel for Monsanto could visit with his daughter on Friday, July
24 23. Nevada Power extended this courtesy, not realizing that
25 Monsanto's real agenda was to free up its senior counsel to conduct
26 the 30(b)(6) depositions at issue. It appears that senior counsel
27 for Monsanto misled Nevada Power and would not have been available to
28 conduct these depositions but for a subterfuge.

1 **ALTERNATIVE MOTION FOR PROTECTIVE ORDER**

2 Monsanto should not be allowed to proceed with its Rule 30(b)(6)
3 notice regarding "reliance" issues because the issues are such that
4 they can only be answered by Nevada Power's attorneys if they were
5 treated as interrogatories. The Court has previously granted a
6 defense motion for a protective order requiring Nevada Power to seek
7 similar information through interrogatories only. Monsanto's Rule
8 30(b)(6) notices are a straightforward end run around the discovery
9 cut-off date for written discovery.

10 **ALTERNATIVE MOTION TO COMPEL ADEQUATE INTERROGATORY RESPONSES**

11 Monsanto is attempting to take further discovery on Nevada
12 Power's damages calculation despite the fact that Monsanto has never
13 provided its contentions on what it believes to be wrong with
14 plaintiffs' damages report, which defendants have had since January
15 and upon which they have taken extensive discovery. It would be
16 grossly unfair for Nevada Power to continue providing unfettered
17 discovery on the damages issue if there is to be no quid pro quo.
18 Therefore, Nevada Power seeks an order requiring Monsanto to provide
19 contentions regarding the flaws it sees in Nevada Power's damages
20 report.

21 Nevada Power also asks the Court to compel Monsanto to
22 adequately respond to its statute of limitations defense
23 interrogatories. The Court has previously prevented Nevada Power,
24 upon defendants' motion, from acquiring this information through Rule
25 30(b)(6) depositions and confined Nevada Power to interrogatories.
26 Monsanto's claims are spurious that its answers to most of these
27 interrogatories are privileged or otherwise objectionable. Without

28 . . .

1 this information, Nevada Power has no way of preparing for trial on
2 the sole issue left remaining by the Ninth Circuit.

3 DATED: July 23, 1993

BRADLEY & MERRELL
RALPH A. BRADLEY
PAUL E. MERRELL
DEBORAH N. MAILANDER
DAVID E. SCHALK
ROBERTA J. STRAUB

7
8 By: 

PAUL E. MERRELL
Coordinating Attorney
BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN
300 South Fourth St., Suite 700
Las Vegas, Nevada 89101
(702) 385-4202

Attorneys for Plaintiff
NEVADA POWER COMPANY, a Nevada
corporation

14 Other Counsel for
15 Plaintiff Nevada Power Company:

16 DAVID S. McCREA, ESQ.
McCREA & McCREA
17 119 South Walnut Street
Post Office Box 1310
18 Bloomington, Indiana 47402
Telephone: (812) 336-4840

19 FREDERICK M. BARON, ESQ.
20 RUSSELL WILLS BUDD, ESQ.
JANE N. SAGINAW, ESQ.
21 BRIAN D. WEINSTEIN, ESQ.
PAUL F. DONSBACH, ESQ.
22 BARON & BUDD
3102 Oak Lawn Avenue, Suite 1100
23 Dallas, Texas 75219
Telephone: (214) 521-3605

24 MICHAEL T. GALLAGHER, ESQ.
25 CRAIG LEWIS, ESQ.
JOHN H. KIM, ESQ.
26 FISHER, GALLAGHER & LEWIS, L.L.P.
1000 Louisiana, 70th Floor
27 Houston, Texas 77002
Telephone: (713) 654-4433

28 P:\USERS\LSG\PLD\MEETCONF.NOT

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of July, 1993, the foregoing PLAINTIFF NEVADA POWER COMPANY'S MOTION FOR ORDER FOR COUNSEL TO MEET AND CONFER OR, IN THE ALTERNATIVE, MOTION TO COMPEL INTERROGATORY RESPONSES AND MOTION FOR PROTECTIVE ORDER was served on the following parties:

KEY:

F - Via fax
FE - Via Federal Express
H - Via hand delivery

F

Steven R. Kuney, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, DC 20005
Fax No.: (202) 434-5029
Attorneys for Defendants MONSANTO COMPANY, GENERAL ELECTRIC
COMPANY and WESTINGHOUSE ELECTRIC CORPORATION

F

Arvin Maskin, Esq.
Konrad L. Cailteux, Esq.
Weil, Gotshal & Manges
767 Fifth Avenue
New York, NY 10153
Fax No.: (212) 310-8007
Attorneys for Defendant WESTINGHOUSE ELECTRIC CORPORATION

F

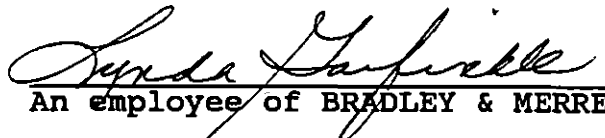
J. Bruce Alverson, Esq.
Alverson, Taylor, Mortensen & Nelson
3821 West Charleston Boulevard
Las Vegas, NV 89102
Fax No.: (702) 385-7000
Attorneys for Defendant GENERAL ELECTRIC COMPANY

F

John L. Thorndal, Esq.
Thorndal, Backus, Maupin & Armstrong
1100 East Bridger Avenue
Las Vegas, NV 89101
Fax No.: (702) 366-0327
Attorneys for Defendants MONSANTO COMPANY and
WESTINGHOUSE ELECTRIC CORPORATION

F

Bruce A. Featherstone, Esq.
Kirkland & Ellis
1999 Broadway, Suite 4000
Denver, CO 80202
Fax No.: (303) 291-3300
Attorneys for Defendant MONSANTO COMPANY


An employee of BRADLEY & MERRELL

I, Ralph A. Bradley, under penalty of perjury and pursuant to statute, state that I am one of the attorneys for Plaintiff Nevada Power Company and that I have conducted most, if not all, of the depositions taken of employees of Monsanto Company.

Because of the existing discovery deadlines, I scheduled depositions in St. Louis, Missouri, during last week, July 14-16, and this week, July 19-23.

I spoke on the telephone with Bruce Featherstone, attorney for Monsanto, prior to the depositions scheduled for the week of July 19, 1993. Mr. Featherstone indicated that if possible he did not want depositions to occur July 23, 1993 because he needed to be in Denver, Colorado to be with his daughter. He stated he could cancel or alter his plans with his daughter, but requested that we conclude depositions on July 22, 1993, if at all possible.

To accomodate Mr. Featherstone's personal request, I cut short several depositions during the week of July 19-23, and did not insist on the continuation of a deposition of Dr. Levinskas, whose FRCP 30(b)(6) deposition was halted to enable him to obtain information necessary to answer a question as Monsanto's corporate designee.

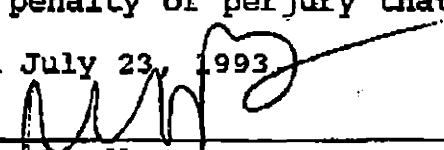
Between July 14, 1993 and July 22, 1993, I was in St. Louis conducting depositions of Monsanto employees. On at least one occasion, I indicated to Mr. Featherstone that I would honor his personal request to have the depositions completed before Friday,

July 23, 1993. On at least one occasion, I informed Scott Bauer, an attorney who works for Mr. Featherstone, that I would honor Mr. Featherstone's personal request to have the depositions completed by July 22, 1993, to enable Mr. Featherstone to be in Denver July 23, 1993 with his daughter.

I flew from St. Louis, Missouri on the same flight with Mr. Featherstone, though we did not sit together. We did speak, however, during our flight. Never did Mr. Featherstone indicate that his personal plans had changed. Instead, it was my understanding that Mr. Featherstone was returning to Denver to be with his daughter.

If Mr. Featherstone appears in Las Vegas, Nevada July 23, 1993, it will be contrary to numerous statements he made to me, and to my paralegal. The depositions I hurried to accomodate Mr. Featherstone's personal request could have, and should have, continued into today, July 23, 1993. I would continued those depostions through July 23, 1993 had I known that Mr. Featherstone apparently had no personal obligations to be in Denver July 23, 1993, as he indicated on some many occasions.

I swear under penalty of perjury that the foregoing is true and correct. Dated July 23, 1993



Ralph A. Bradley

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 23, 1993

TO: John Tatlock, Esq.

FAX #: (303) 291-3334

PHONE #: (303) 291-3000

FROM: Paul E. Merrell, Esq.

CLIENT/MATTER: Nevada Power v. Monsanto, et al.

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Copy of July 23, 1993 letter to Honorable Lawrence R. Leavitt; "Plaintiff Nevada Power Company's Motion for Order for Counsel to Meet and Confer or, in the Alternative, Motion to Compel Interrogatory Responses and Motion for Protective Order;" and July 23, 1993 Affidavit of Ralph A. Bradley

NUMBER OF PAGES (including cover page):

nine(9)

MESSAGE:

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THE TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THE INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

**IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Operator, Ext. 615**

BRADLEY & MERRELL
c/o JONES, JONES, CLOSE & BROWN, CHARTERED
Seventh Floor — Bank of America Plaza
300 South Fourth Street
Las Vegas, Nevada 89101-6026
(702) 385-4202

MESSAGE FROM XEROX 7024: (702) 385-1655

DATE: July 23, 1993

TO: John Tatlock, Esq.

FAX #: (303) 291-3334

PHONE #: (303) 291-3000

FROM: Paul E. Merrell, Esq.

CLIENT/MATTER: Nevada Power v. Monsanto, et al.

CLIENT/MATTER NO.: 11927.2

DOCUMENT(S) DESCRIPTION: Copy of July 23, 1993 letter to Honorable Lawrence R. Leavitt; "Plaintiff Nevada Power Company's Motion for Order for Counsel to Meet and Confer or, in the Alternative, Motion to Compel Interrogatory Responses and Motion for Protective Order;" and July 23, 1993 Affidavit of Ralph A. Bradley

NUMBER OF PAGES (including cover page):

nine (9)

MESSAGE:

THIS TELECOPY IS INTENDED ONLY FOR THE ADDRESSEE NAMED ABOVE. IT MAY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU HAVE RECEIVED THIS TELECOPY IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, DESTROY ALL COPIES, AND DO NOT DISSEMINATE THIS INFORMATION TO ANYONE. THANK YOU FOR YOUR ASSISTANCE.

IF YOU EXPERIENCE PROBLEMS WITH THIS TRANSMISSION,
please call (702) 385-4202 and ask for: Operator, Ext. 615

TRANSMISSION REPORT

THIS DOCUMENT WAS CONFIRMED
(REDUCED SAMPLE ABOVE - SEE DETAILS BELOW)

**** COUNT ****

TOTAL PAGES SCANNED : 9

TOTAL PAGES CONFIRMED : 9

*** SEND ***

No.	REMOTE STATION	START TIME	DURATION	#PAGES	MODE	RESULTS
1	TATLOCK	7-23-93 9:50AM	10'32"	9/ 9	EC	COMPLETED 4800

TOTAL 0:10'32" 9

NOTE:

No. : OPERATION NUMBER 48 : 4800BPS SELECTED EC : ERROR CORRECT G2 : G2 COMMUNICATION
PD : POLLED BY REMOTE SF : STORE & FORWARD RI : RELAY INITIATE RS : RELAY STATION
MB : SEND TO MAILBOX PG : POLLING A REMOTE MP : MULTI-POLLING RM : RECEIVE TO MEMORY