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VIA FACSIMILE

TO: *Chuck McCrea*

FROM: ~~GORDON BALL~~ *Paul Medrell*

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PAGES INCLUDING COVER: 3

COMMENTS: *Chuck! If you wanted to use Ralph's*
comments, I think we could achieve it by

adding pre-judgment interest, then bargaining it
away.
PLEASE TELEPHONE 615/525-7028
IF YOU DO NOT RECEIVE CORRECT
NUMBER OF PAGES TO DOCUMENT(S) *-Paul*

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Paul Merrell
615-525-4679

To Paul, Bill, David Charles, and all the other good guys.

Here are my comments on the draft of the May 7, 1992 settlement letter on Nevada Power and the attached summary. These comments are not in order of importance but rather in order of presentation.

I would end the first sentence after "against all Defendants." It is my experience that defense counsel hate listening to Plaintiffs' attorneys talk about problems facing the defense. They know what the problems are and the remainder of that first sentence is not needed.

The biggest problem I see with the settlement proposal is its identification of a real bottom line. In my twelve years here in my little fish bowl in Eugene, I have never had a defense counsel believe me when I said my first offer was my bottom line. I am friends with some defense counsel and have spoken with them about this. They all smile or laugh and say there is no way they will treat an initial offer as a final offer - it just doesn't work that way.

I think that negotiations allow defense counsel to prove their worth. Obviously, defense counsel's opinion is important, if not persuasive, to most clients considering settlement. The trick then becomes manipulating figures and positions so that defense counsel wants a case to settle.

Here, defense counsel have made major errors and may be in a precarious relationship with their clients - or they may fear such a relationship. Our task is to make defense counsel look and feel good so that they will support a settlement of \$15 million.

I think the way we accomplish that task is to assume our first offer will not be treated as a bottomline. Instead, we should indicate our first offer is a firm bottomline, but be willing to move slightly. It is my opinion our first offer should be \$15 million plus our estimate of the defense counsels fees plus \$1 million. Our offer would then be about \$18 million. If we let defense counsel talk us down to \$15 million, they will feel good because they saved their clients \$3 million (\$1 million after their attorney fees), and the defendants should feel good because, at that point, Nevada Power is not making one

penney other than being reimbursed for its costs and not incurring its own attorney fees.

In the last sentence of the letter, we should specifically indicate that it is not our intent to have this settlement offer be used in any judicial proceeding. In Oregon, we have a rule of evidence (408) that precludes use of offers of compromise. It is standard that we cite that ORE provision in any settlement letter as a precaution. My guess is that Nevada has a similar rule and we may want to cite the specific rule of evidence.

In the summary, the second paragraph is not clear to me. The first point is not identified as a first point, but that is not the main problem. I think we are trying to say that if Nevada Power obtains a large jury verdict, it will be used against these defendants in subsequent litigation and in settlement negotiations accompanying those lawsuits. If that happens, the total cost to these defendants will be significantly higher than they would pay if they quietly settled our lawsuit. Is that what we mean in the first part of that paragraph? If so, we might want to make it clearer. If that is not what we mean, then what do we mean (I just spoke with Bill Snyder who indicated the meaning may be clear to the appropriate people on defendants' side so maybe my concerns are less compelling).

I really like the remainder of the summary, with the additions Bill indicated were being made, except for the ending which needs to be changed slightly if we ask for more than \$15 million in our initial offer.

I think your settlement approach is strong and may be accepted for the amount you are seeking. I even think they may agree right off to pay the \$18 million because it is probably substantially less than what they are expecting us to make as an initial offer.

If anyone wants me to review additional drafts, I will be in my office until 9:00 p.m. PPT.

Ralph