

Michael E. Langton (NV SBN 290)
Law Office of Michael E. Langton
801 Riverside Drive
Reno, NV 89503
Tel: (775) 329-7557
Fax: (775) 329-7447
Email: mlangton@sbcglobal.net

Peter Saltzman (CA SBN 169698) [*will comply with LR IA 10-2 within 40 days*]
Matthew D. Ross (CA SBN 84703) [*will comply with LR IA 10-2 within 40 days*]
LEONARD CARDER, LLP
1330 Broadway, Suite 1450
Oakland, CA 94612
Tel: (510) 272-0169
Fax: (510) 272-0174
Email: mross@leonardcarder.com
Email: psaltzman@leonardcarder.com

Attorneys for Plaintiffs

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RITA WEISSHAAR, ROBERT VIEIRA,
VICKIE BORST, and RALPH GOEGG, on
behalf of themselves and others similarly
situated,

Case No.

**COMPLAINT FOR BREACH OF
LABOR CONTRACT**

CLASS ACTION

Plaintiffs,

vs.

SIERRA PACIFIC POWER COMPANY,
d/b/a NV ENERGY,

Defendant.

1. Plaintiffs Rita Weisshaar, Robert Vieira, Vickie Borst, and Ralph Goegg bring this action on behalf of themselves and all others similarly situated to recover medical and other benefits promised under Defendant Sierra Pacific Power Company's (doing business as NV

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

6. Plaintiff Rita Weisshaar is a retired employee of Defendant NV Energy. Plaintiff Weisshaar commenced her employment with NV Energy on August 6, 1984. Following more than 25 years of dedicated service, she retired from NV Energy effective December 30, 2009. Under the terms of the collective bargaining agreements described here, Plaintiff Weisshaar was eligible to receive retiree health care benefits upon retirement. She elected to have 80% of her retiree health benefits paid by NV Energy in lieu of receiving a lump sum payment into her 401(k), as described in this complaint.

7. Plaintiff Robert Vieira is a retired employee of Defendant NV Energy. Plaintiff Vieira commenced his employment with NV Energy on June 22, 1977. Following more than 32 years of dedicated service, he retired from NV Energy effective December 31, 2009. Under the terms of the collective bargaining agreements described here, Plaintiff Vieira was eligible to receive retiree health care benefits upon retirement. He elected to have 80% of his retiree health benefits paid by NV Energy in lieu of receiving a lump sum payment into his 401(k), as described in this complaint.

8. Plaintiff Vickie Borst is a retired employee of Defendant NV Energy. Following more than 26 years of dedicated service, she retired from NV Energy effective December 29, 2006. Under the terms of the collective bargaining agreements described here, Plaintiff Borst was eligible to receive retiree health care benefits upon retirement. She elected to have 80% of her retiree health benefits paid by NV Energy in lieu of receiving a lump sum payment into her 401(k), as described in this complaint.

9. Plaintiff Ralph Goegg is a retired employee of Defendant NV Energy. Plaintiff Goegg commenced his employment with NV Energy on February 24, 1969. Following more than 39 years of dedicated service, he retired from NV Energy effective February 28, 2008. Under the terms of the collective bargaining agreements described here, Plaintiff Goegg was eligible to receive retiree health care benefits upon retirement. He elected to have 80% of his retiree health benefits paid by NV Energy in lieu of receiving a lump sum payment into his 401(k), as described in this complaint.

10. Sierra Pacific Power Company is a subsidiary of NV Energy, Inc., a publicly-traded holding company which earns millions of dollars in net income each year. Sierra Pacific Power Company, d/b/a NV Energy, provides electricity and gas services to northern Nevada; it has its principal place of business in Reno, Nevada.

JURISDICTION AND VENUE

11. This court has jurisdiction over this action pursuant to section 301(a) of the Labor Management Relations Act of 1947 (“LMRA”), 29 U.S.C. § 185, because this suit is for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce.

12. Venue is appropriate in this district because Defendant NV Energy resides in this district, the labor contracts at issue were entered into in this district, and a substantial part of the events or omissions giving rise to the claim occurred in this district.

FACTUAL ALLEGATIONS

13. Local 1245 and NV Energy have been parties to a series of CBAs since 1947.

14. Pursuant to the CBAs and other promises, NV Energy has long provided 100% employer-paid retiree health benefits for all employees. Active employee and retiree health benefits have always been pooled, allowing retirees access to the same health benefit plans available to active employees. As a form of deferred compensation, retiree health benefits have provided long-term employees with an incentive to maintain their employment with NV Energy.

15. An individual is eligible to retire from NV Energy and to receive some form of retiree health benefit upon reaching 55 years of age and having 10 years of service with NV Energy. In many instances, individuals work for decades at NV Energy before retiring, and it is not unusual for a retiree to have spent his or her entire career at the company.

16. In 1998, Local 1245 and NV Energy negotiated a change to the CBA to reduce retiree health benefits for current and future employees, in exchange for an early retirement pension benefit. However, and significantly, the 1998 CBA was intended to provide and did provide that then-current retirees—those who retired prior to January 1, 1998—were fully vested in their

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

2 retiree health and welfare benefits, that is, they would continue to receive 100% paid retiree
3 health benefits (the “100%-paid plan”) for life and regardless of future collective bargaining or
4 collective bargaining agreements between the bargaining parties. In part, this concession by the
5 employer was a trade-off for the fact that these employees and retirees did not receive the early
6 retirement benefit. Those who were hired prior to 1998 but who retired after January 1, 1998,
7 would receive 80% paid retiree health benefits (the “80%-paid plan”). Both the 100%-paid and
8 80%-paid plans would adjust the actual amount paid out based on how healthcare costs fluctuated
9 so that NV Energy would always pay the promised percentage of health benefit premiums.

10 17. For individuals hired after January 1, 1998, the 1998 CBA promised only a certain
11 dollar amount to be paid annually for retiree health benefits, calculated based on years of service.
12 This amount was a flat rate of \$1,250 per year of service. Unlike the 100%-paid and 80%-paid
13 plans, the benefit paid out under this flat rate plan would not change as healthcare costs increased,
14 but would remain fixed regardless of any fluctuation in actual costs.

15 18. In March 2007, the retiree health benefits were amended again but only for current
16 employees and in a way that was not intended to modify the vested retiree health and welfare
17 benefits of retired employees.

18 19. Under the 2007 CBA, employees who were hired prior to 1998 and who retired
19 within one year of ratification could choose between the 80%-paid retiree health benefit plan or a
20 “\$260/\$130 plan”. Specifically, for individuals retiring before age 65, NV Energy would pay
21 \$260 annually per year of service, and for individuals retiring after age 65, NV Energy would pay
22 \$130 annually per year of service (the “\$260/\$130 plan”). Unlike the 100%-paid and 80%-paid
23 plans, the benefit paid out under the \$260/\$130 plan would not change as healthcare costs
24 increased, but would remain fixed. Further, in no event would an individual be eligible to receive
25 credit for more than 35 years of service under the \$260/\$130 plan. If the individual chose the
26 \$260/\$130 plan, in exchange he or she would receive a “buy down” payment of up to \$52,000
27 into the individual’s 401(k) retirement account. In essence, NV Energy was attempting to buy out
28 eligibility under the 80%-paid plan and encourage individuals to retire under the \$260/\$130 plan.

20. The March 2007 CBA also provided that individuals who had at least 75 years of combined age and service—for example, someone age 50 with 25 years of service—by December 31, 2007 but who did not retire within a year of ratification would also be eligible to elect between the 80%-paid plan or the \$260/\$130 plan with the buy down payment. Individuals who did not have at least 75 years of combined age and service and did not retire within a year of ratification were automatically given the buy down and transferred to the \$260/\$130 plan.

21. Importantly, throughout the 1998 and 2007 negotiations to retiree health benefits, no change was made to the retiree health benefits for individuals who had already retired. The parties understood and agreed that the retiree health and welfare benefits to be fully vested and guaranteed for life absent consent by the individual, a benefit promised by Defendant in return for the many years of service provided by retirees. When changes were made to the retiree benefits for current employees, they were made in exchange for incentives such as the buy down payment.

22. Despite its promises to maintain benefits at 100% or 80% for eligible retirees, on October 2, 2009, NV Energy announced that effective January 1, 2010, it would limit the amount it contributed to retiree health benefits. NV Energy explained to retirees that it would establish an annual healthcare contribution ceiling, based on 2009 contributions, and that retirees would be responsible for all future cost increases for their respective health plans.

23. Additionally, at this time NV Energy increased medical and prescription drug copayments and out-of-pocket maximums, and eliminated several benefits, including newborn nursery services, infertility treatment, acupuncture, and others.

24. As a result of NV Energy's decision to freeze employer contributions at 2009 levels, the 100%-paid and 80%-paid retiree health benefit levels no longer cover 100% or 80% of retirees' health benefit premiums, as promised under the CBAs. Individual retirees have seen dramatic differences in the amounts they must pay to maintain their healthcare. As healthcare costs continue to rise, these retirees, many of whom are on fixed incomes, will be unable to pay these costs and will be forced to choose between maintaining their health insurance and paying for other essential needs.

CLASS ALLEGATIONS

25. Plaintiffs bring this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all former employees of NV Energy and their spouses and surviving spouses of former employees who were represented by the Union in collective bargaining and who retired from NV Energy eligible to have 100% or 80% of their retiree health benefit premiums paid by NV Energy, but as to whom NV Energy has frozen retiree health benefits at 2009 levels, and such subclasses as may be found appropriate.

26. The exact number of class members is not presently known, but class members are believed to be so numerous that joinder of the individual members in this action is impracticable.

27. Common questions of law and fact exist as to all members of the class, including whether and to what extent the promised retiree health benefits were vested benefits and guaranteed for life, and whether NV Energy violated the applicable CBAs by unilaterally freezing the promised benefits at 2009 levels.

28. The claims of the named Plaintiffs are typical of the claims of the class members they seek to represent, because all of them assert that NV Energy is obligated under LMRA § 301, 29 U.S.C. § 185, to provide the promised retiree health benefits throughout retirement and that NV Energy cannot unilaterally change, reduce, or terminate the benefits without individual consent.

29. Plaintiffs will fairly and adequately protect the interests of the members of the class and have retained counsel who are competent and experienced in the field of labor law and class action employment litigation. Plaintiffs do not have interests that are in conflict with the members of the class whom they seek to represent.

30. Class certification is appropriate under Federal Rules of Civil Procedure 23(b)(1)(B) and (b)(2), because adjudication with respect to individual members of the class would as a practical matter be dispositive of the interests of other non-party members and Defendant NV Energy has acted in grounds generally applicable to the class, making declaratory, injunctive, and other equitable relief appropriate on a class-wide basis.

31. Alternatively, this action is maintainable as a class action under Federal Rule of Civil

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

Procedure 23(b)(3), because common questions of law and fact, as described in this complaint, predominate over questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

**FIRST CLAIM FOR RELIEF
(Labor Management Relations Act § 301, 29 U.S.C. § 185)**

32. Paragraphs 1 through 31 are realleged and incorporated herein by reference.

33. The Plaintiffs and members of the class had their terms and conditions of employment established through collective bargaining agreements negotiated between Local 1245 and NV Energy. The CBAs provided for retiree health benefits at the promised levels, as described in this complaint.

34. The benefits provided under the CBAs were and are vested benefits intended to last for the lifetime of Plaintiffs and members of the class. Both Local 1245 and NV Energy understood the benefits to be vested and immutable upon retirement, and employees relied on that understanding in deciding to maintain their employment with NV Energy with the belief that they would receive the promised health benefits upon retirement.

35. NV Energy's unilateral reduction and elimination of these benefits violates the collectively bargained obligations undertaken by the company pursuant to the CBAs and is actionable under § 301 of the LMRA, 29 U.S.C. § 185(a).

**SECOND CLAIM FOR RELIEF
(Breach of Contract Under Nevada State Law)**

36. Paragraphs 1 through 35 are realleged and incorporated herein by reference.

37. Plaintiffs and members of the class had a valid and existing agreement with NV Energy for the company to provide 100%- or 80%-paid retiree health benefits for life, as applicable, in return for Plaintiffs' and the class members' years of service and meeting the requirements to retire from NV Energy as described in this complaint.

38. Plaintiffs and members of the class performed their obligations under the agreement by providing valuable and dedicated years of service for Defendant NV Energy.

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

39. Despite the promise made by NV Energy and despite the fact that Plaintiffs and the class members performed their obligations, NV Energy nevertheless breached its obligation by freezing retiree health benefits at the 2009 levels.

40. Plaintiffs and members of the class have sustained damages as a result of NV Energy's breach, including but not limited to having to pay significantly more money for health benefits than would otherwise be the case had NV Energy maintained its promise.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the court:

1. Certify this action as a class action, appointing the named Plaintiffs as class representatives and Plaintiffs' counsel as class counsel;
2. Declare that the retiree health benefits set forth in the applicable collective bargaining agreements are vested and guaranteed for life and may not be unilaterally modified, reduced, or terminated by NV Energy, and that by doing so, NV Energy has violated the applicable collective bargaining agreements;
3. Permanently enjoin NV Energy from modifying, reducing, or terminating the benefits they are obligated to provide to the class members under the terms of the applicable collective bargaining agreements;
4. Order NV Energy to rescind all benefit reductions or terminations announced or made since October 2009, and award class members such benefits or monetary damages necessary to restore them to the position they would have been in but for NV Energy's contractual and statutory violations;
5. Award Plaintiffs reasonable attorneys' fees and costs incurred in this action; and
6. Grant such further relief as may be just and proper.

Respectfully submitted,
LAW OFFICES OF MICHAEL E. LANGTON

/s/

DATED: May 19, 2011

By: _____

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

LEONARD CARDER, LLP
ATTORNEYS
1330 BROADWAY, SUITE 1450
OAKLAND, CA 94612
TEL: (510) 272-0169 FAX: (510) 272-0174

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Michael E. Langton
Attorney for Plaintiffs

and

LEONARD CARDER, LLP
Peter W. Saltzman & Matthew D. Ross

/s/

DATED: May 19, 2011

By: _____
Peter W. Saltzman & Matthew D. Ross
Attorneys for Plaintiff