

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Petition for approval of ) DOCKET NO. 921167-EQ  
separately negotiated contract ) ORDER NO. PSC-93-0466-FOF-EQ  
for purchase of firm capacity ) ISSUED: 03/29/93  
and energy from Monsanto Company )  
by Gulf Power Company. )  
\_\_\_\_\_)

The following Commissioners participated in the disposition of this matter:

J. TERRY DEASON, Chairman  
THOMAS M. BEARD  
SUSAN F. CLARK  
JULIA L. JOHNSON  
LUIS J. LAUREDO

NOTICE OF PROPOSED AGENCY ACTION

ORDER APPROVING NEGOTIATED CONTRACT  
BETWEEN GULF POWER COMPANY AND MONSANTO CHEMICAL COMPANY

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein is preliminary in nature and will become final unless a person whose interests are adversely affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

The Florida Public Service Commission (Commission) in Docket No. 910004-EU approved Gulf Power Company's (Gulf) 1995 combustion turbine (CT) as Gulf's next avoided unit and the basis for its standard offer contract. This contract had a subscription limit of 79 megawatts (MW) and was available until June 1, 1992.

Monsanto Chemical Company (Monsanto) produces various products, including chemicals and manufactured fibers at its Pensacola, Florida plant. Monsanto has had three cogeneration units with a combined capacity of 16 MW on site since the 1950s, and has relied on Gulf to meet the majority of its electrical needs. On May 14, 1992, Monsanto notified Gulf of its intent to expand its cogeneration capacity by constructing an 86 MW unit. This would allow Monsanto to self-serve its electrical needs and

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sell excess capacity to Gulf. On May 15, 1992, Monsanto delivered a signed standard offer contract for 16 MW to Gulf. Docket No. 920581-EQ was opened to handle the closure of Gulf's standard offer based on the 1995 CT, and the signed standard offer by Monsanto.

On August 7, 1992, the Commission issued Order No. PSC-92-0772-PCO-EQ granting the joint motion by Gulf and Monsanto for stay of the proceedings in Docket No. 920581-EQ. The parties requested this action to allow time for negotiation of a contract for the purchase of firm capacity and energy from Monsanto's proposed 86 MW cogeneration unit.

The result of these negotiations was a proposed contract for the purchase of 21 MW from Monsanto's new cogeneration unit. On November 6, 1992, Gulf filed a notice of contingent settlement agreement in Docket No. 920581-EQ. Gulf stated that the standard offer contract for 16 MW filed by Monsanto in May 1992, would be withdrawn by Monsanto once the proposed negotiated contract is executed by the parties. On November 10, 1992, Gulf filed its petition in this docket for approval of the proposed negotiated contract with Monsanto for 21 MW. A letter of agreement was signed by the parties which included a provision to execute the proposed contract upon Commission approval.

Monsanto's new cogeneration unit is expected to be on-line in August of 1993. At that time Monsanto will no longer require electric service under its current rate schedule. Monsanto will only require standby service from Gulf.

As part of the discovery process in this docket, staff received copies of two unexecuted lease agreements between Monsanto and Niject Services Company (Niject), and Monsanto and Praxair Energy Services Corporation (Praxair), a subsidiary of Union Carbide. These leases raise the question of whether Monsanto would be making retail sales of electricity after the expansion of Monsanto's cogeneration facility. Niject owns a plant on Monsanto's property which produces compressed air, which is used by Monsanto as an input in its overall operation. Likewise, Praxair owns a nitrogen production facility on Monsanto's property, and nitrogen is also an input in Monsanto's production. Once the 86 MW cogeneration unit is completed, Monsanto will provide the power to these pieces of equipment.

The lease agreements with Niject and Praxair respectively, provide for Monsanto to operate both facilities and utilize the

outputs for Monsanto's purposes. Monsanto will pay Niject and Praxair a monthly rental charge regardless of the level of output from the compressed air and nitrogen facilities. Electricity is not supplied to Niject or Praxair; rather, Monsanto is merely providing power for Monsanto's use of equipment which it has leased. Monsanto is paying rent for the right to operate the equipment and to utilize the output as part of its overall process. Therefore, a retail sale does not occur under this arrangement and Monsanto would not be considered a utility. We put Monsanto on notice, however, that should this relationship change so that Monsanto supplies electricity to another entity, Monsanto would become a public utility subject to the regulatory jurisdiction of this Commission. See Section 366.02, Florida Statutes, and P.W. Ventures, Inc. v. Nichols, 533 So. 2d 281 (Fla. 1988).

Section 25-17.082, Florida Administrative Code, requires electric utilities to purchase electricity produced and sold by qualifying facilities (QFs) at rates which have been agreed upon by the utility and qualifying facility, or at the utility's published tariff rate.

Section 25-17.0832(2), Florida Administrative Code, states that in reviewing a negotiated firm capacity and energy contract for purposes of cost recovery, the Commission shall consider the certain factors that affect the purchasing utility's general body of retail and wholesale customers. Discussion of those factors is set forth in the following paragraphs.

Regarding the need for power, Section 25-17.0832 provides that the Commission shall consider whether the additional firm capacity and energy is needed by the purchasing utility and by Florida utilities from a statewide perspective. Monsanto's expansion of its cogeneration capacity with the addition of the 86 MW unit will allow Monsanto to self-serve its electrical needs. This action has the effect of removing approximately 60 MW from Gulf's system and obviating the previously identified need for power in 1995. A need for capacity in 1996 was identified and became the basis for negotiation of the proposed contract.

Regarding cost-effectiveness, Section 25-17.0832 provides that the Commission shall consider the present worth of utility's payments for firm capacity and energy to the QF over the life of the contract is projected to be no greater than the present worth of the year-by-year deferral of the construction and operation of generation by the purchasing utility over the life of the contract;

or the present worth of other capacity and energy costs that the contract is designed to avoid. The proposed contract provides for capacity payments commencing in June 1996, which is premised on the deferral of a CT Gulf otherwise plans for construction in June 1996. The contract runs through May 2005. Our analysis indicates that the present value of Gulf's payments to Monsanto for firm capacity and energy will be no greater than the present worth of the value of a year-by-year deferral of Gulf's avoided costs. As a result of this contract, there is projected to be a savings to Gulf and its ratepayers.

Section 25-17.0832 also provides that the Commission shall consider the extent that annual firm capacity and energy payments made to the QF in any year exceed that year's annual value of deferring the construction and operation of generation by the purchasing utility or other capacity and energy related costs, whether the contract contains provisions to ensure repayment of such payments exceeding that year's value of deferring that capacity in the event that the QF fails to deliver firm capacity and energy pursuant to the negotiated contract. Monsanto will not receive early capacity payments from Gulf; however, the payment for the first year of the proposed contract is projected to exceed Gulf's avoided capacity costs. In order to protect Gulf's ratepayers in the event of non-performance, the contract contains three performance reviews in the first year. If Monsanto fails to meet the performance requirements in the first three months of operation, Monsanto will be required to refund \$206,250 plus interest.

Section 25-17.0832 directs the Commission to consider the technical reliability, viability and financial stability of the QF, whether the contract contains provisions to protect the purchasing utility's ratepayers if the QF fails to deliver firm capacity and energy as specified by the contract. The contract contains security to protect Gulf's ratepayers in the event Monsanto fails to deliver firm capacity and energy as required in the proposed contract. Monsanto pledges \$420,000 as security that it will deliver the committed capacity to Gulf on June 1, 1996. The proposed contract calls for the refund of capacity payments during any contract year in which Monsanto fails to deliver capacity in the agreed upon manner.

In conclusion, the negotiated contract between Gulf and Monsanto is a viable generation alternative for the following

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reasons: the capacity and energy generated by Monsanto is needed by Gulf and Florida's utilities; the contract appears to be cost-effective to Gulf's ratepayers; Gulf's ratepayers are reasonably protected from default by the terms of the contract; and the contract meets all the requirements and rules governing qualifying facilities.

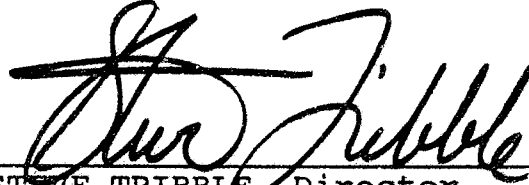
For these reasons we find that the contract between Gulf Power Company and Monsanto Company is approved and that Gulf is permitted to recover the costs of the contract through the Commission's periodic review of fuel and purchased power costs. We also find that copies of the executed contract be filed with the Commission within six months from the date the proposed agency action order becomes final and effective. In addition, since the unexecuted lease agreements between Monsanto and Niject, and Monsanto and Praxair, respectively, are critical to the decision in this case, complete copies of the executed agreements shall be filed with the Commission within six months from the date the proposed agency action order becomes final and effective.

It is, therefore,

ORDERED that Gulf Power Company's proposed negotiated contract for the purchase of firm capacity and energy from Monsanto Chemical Company is approved and that Gulf Power Company shall be permitted to recover the costs of the contract through the Commission's periodic review of fuel and purchased power costs. A copy of the executed contract between Gulf Power Company and Monsanto Chemical Company, as well as a copy of the executed lease agreements between Monsanto Chemical Company and Niject Services Company, and Monsanto Chemical Company and Praxair Energy Services Corporation, shall be filed with the Commission within six months from the date the proposed agency action order becomes final and effective. It is further

ORDERED that this Order shall become final and effective and this docket shall be closed unless an appropriate petition for formal proceeding is received by the Division of Records and Reporting, 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on the date indicated in the Notice of Further Proceedings or Judicial Review.

By ORDER of the Florida Public Service Commission this 29th  
day of March, 1993.



STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )  
DLC:bmi

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

The action proposed herein is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on April 19, 1993.

In the absence of such a petition, this order shall become effective on the day subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

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If this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.