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COGENERATION
ALTERNATIVE ENERGY
ENERGY REGULATORY LAW
PUBLIC UTILITY LAW
ADMINISTRATIVE LAW
APPELLATE LAW

March 18, 1992

Mr. Steve Tribble
Director
Division of Records and Reporting
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399-0850

**ORIGINAL
FILE COPY**

Re: Docket No. 920198-EQ - Petition of Monsanto Company for a Declaratory Statement Concerning the Provision of Electric Power to Facilities at its Pensacola Chemical Complex.


Dear Mr. Tribble:

Enclosed for filing in the above Docket please find an original and fifteen copies of the Request of Monsanto Company for Confidential Classification of the following documents:

- The contract, dated July 8, 1988, between Monsanto Company and Niject Services Company, entitled, "Supply Agreement to Monsanto Company for Compressed Air for the Monsanto Pensacola Plant."
- The contract, dated April 18, 1989, between Union Carbide Industrial Gases, Inc., and Monsanto Company, entitled, "Pensacola Plant Nitrogen Generator, Linde Division of Union Carbide," with an amendment, entitled, "Amendment Number One," attached.

Enclosed please also find one copy of each of the documents with the confidential material identified and highlighted. These documents are contained in an envelope marked "Confidential" and contain confidential proprietary business information. Monsanto requests that these documents be accorded stringent internal procedural safeguards against public disclosure in accordance with the requirements of Rule 25-22.006(3)(d).

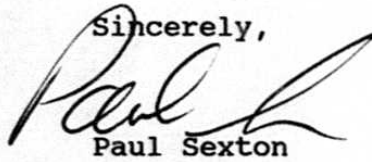
Also enclosed are two copies of each document, with the confidential portions edited out.

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Please contact this office in the event of any questions regarding this submittal.

Sincerely,

Paul Sexton

PS:bl

cc: Richard Bellack, Esquire (w/request only)
Robert L Kelley, Esquire
Bruce Hollinger
Joseph R. Kaple, Jr.

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Monsanto) Docket No. 920198-EQ
Company for a Declaratory)
Statement Concerning the) Dated:
Provision of Electric Power to)
Facilities at its Pensacola) March 18, 1992
Chemical Complex.)
_____)

REQUEST FOR SPECIFIED CONFIDENTIAL CLASSIFICATION

Monsanto Company (Monsanto), by and through its undersigned attorneys, files its request for classification of certain information as "Specified Confidential" pursuant to Rule 25-22.006. Monsanto requests that the two contracts and one contract amendment submitted with this Request be classified as Specified Confidential for as long as they are in the Commission's possession, that the contracts and contract amendment be returned to Monsanto when the Commission rules on its Petition for Declaratory Statement or otherwise closes this Docket and that the accompanying edited versions of the contracts be approved for public inspection.

INTRODUCTION

1. On March 2, 1992, Monsanto filed a Petition for a Declaratory Statement which related to the provision of electricity by Monsanto to power-consuming facilities located at Monsanto's Pensacola chemical complex. The Commission Staff has expressed an interest in reviewing certain contracts that relate to two power-consuming facilities at Monsanto's Pensacola Chemical complex and Monsanto has agreed to provide these contracts to the Commission. However, as will be discussed further below, these contracts contain confidential proprietary business information which must

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be accorded protection from public disclosure. Accordingly, Monsanto is submitting these contracts in conjunction with this request for confidential classification. Monsanto is also providing edited versions of the contracts, in conformity with Rule 25-22.006.

MONSANTO'S REQUEST

2. Monsanto requests that the Prehearing Officer enter an order granting Specified Confidential Classification to the following documents:

- The contract, dated July 8, 1988, between Monsanto Company and Niject Services Company, entitled, "Supply Agreement to Monsanto Company for Compressed Air for the Monsanto Pensacola Plant" (hereinafter referred to as the "Niject contract").
- The contract, dated April 18, 1989, between Union Carbide Industrial Gases, Inc., and Monsanto Company, entitled, "Pensacola Plant Nitrogen Generator, Linde Division of Union Carbide," with an amendment, entitled, "Amendment Number One," attached (hereinafter collectively referred to as the "Union Carbide contract").

This request is accompanied by one copy of each of the contracts identifying the confidential information and showing it in highlighted form. Monsanto requests that these contracts be accorded stringent internal procedural safeguards against public disclosure in accordance with the requirements of Rule 25-22.006(3)(d).¹ This request is also accompanied by two edited copies of each contract for public inspection, with the confidential information excised. Monsanto requests that these edited versions be approved for public inspection.

¹This request encompasses the original Union Carbide contract and the attached amendment.

3. Because of Monsanto's current and long-term need to purchase services like those addressed in these contracts, Monsanto requests that the classification be maintained for as long as the contracts are in the Commission's possession.² Monsanto also requests that the unedited versions of the contracts be returned to Monsanto at the time the Commission rules on Monsanto's petition or otherwise closes this Docket.

BACKGROUND

4. As described more fully in its March 2, 1993 Petition, Monsanto owns and operates a "unified" chemical production complex at Pensacola, Florida, where Nylon and other chemical products are produced for sale. The market for Monsanto's products is highly competitive, as is the market for inputs to Monsanto's Pensacola complex. Accordingly, information relating to the production processes at the Pensacola complex, the economics of the processes and the specifications for and costs of inputs to those processes is carefully protected from disclosure. Monsanto's business operations will be harmed by the disclosure of proprietary confidential business information relating to its Pensacola complex.

THE CONFIDENTIAL NATURE OF THE CONTRACTS

5. In accordance with Subsection (4) of Rule 25-22.006, Monsanto provides the following justification for Specified Confidential Classification of the above documents.²

²This request encompasses the original Union Carbide contract and the attached amendment.

6. The contracts that accompany this request contain confidential proprietary business information relating to two important inputs to production processes at Monsanto's Pensacola complex. The Niject contract concerns the operation of a facility to produce compressed air for use in the production of Maleic Anhydride. The Union Carbide contract concerns the operation of a facility to produce nitrogen for use in the production of chemical products at the Pensacola complex.³

7. The contracts contain important information about production processes at the Pensacola complex, the economics of the processes and the specifications for and costs of inputs to those processes. They set forth the full terms under which Niject and Union Carbide will provide their inputs to Monsanto, including detailed specifications for compressed air and nitrogen, the warranties provided by Niject and Union Carbide, the structure and method of calculating payments by Monsanto for the availability of compressed air and nitrogen, as well as terms governing insurance, indemnification and other proprietary information. The contracts contain strict confidentiality provisions and the contracts themselves have been maintained as confidential by Monsanto, Niject and Union Carbide since their execution.

³This description encompasses the original Union Carbide contract and the attached amendment.

8. The following types of proprietary confidential business information are contained in the contracts:

- the structure, components and basis for calculating the prices and charges to be paid by Monsanto, as well as the conditions affecting those prices and charges;
- detailed performance requirements and specifications for compressed air and nitrogen, as well as the conditions that affect those performance requirements;
- the warranties provided to Monsanto by Niject and Union Carbide and the conditions under which claims must be made;
- the division of and limits of liability, as well as insurance requirements between Monsanto, Niject and Union Carbide, their agents and subcontractors;
- termination and default provisions;
- purchase option provisions; and
- plant site information.

9. The above contractual information constitutes confidential proprietary business information within the meaning of Section 366.093, Florida Statutes, in that:

- the information in the contracts is owned or controlled by Monsanto, who is making the request for confidentiality;
- the information in the contracts is intended to be and has been treated as private, in that disclosure would cause harm to Monsanto's business operations; and
- the information in the contracts has not been disclosed to third persons, except under conditions described in §366.093(3).

This contractual information meets two of the specific examples of confidential proprietary business information set forth in §366.093(3):

- It is information concerning contractual data, the disclosure of which would harm the efforts of Monsanto to contract for goods and services on favorable terms; and
- It is information relating to competitive interests, the disclosure of which would impair the competitive business of Monsanto, Niject and Union Carbide.

10. The above contractual information is confidential proprietary business information within the meaning of the statute for several reasons.

a. The market for Monsanto's products is highly competitive and information regarding production processes at the Pensacola complex, the economics of those processes and the specifications for and costs of inputs to those processes is quite sensitive. The compressed air provided by the Niject project is a key component of the Maleic Anhydride production process at Monsanto's Pensacola chemical complex. Should Monsanto's competitors become aware of any of the above contractual information in the Niject contract, it will place Monsanto at a disadvantage in the marketplace for sale of Maleic Anhydride and harm Monsanto's business operations.

b. In addition, the market for inputs to Monsanto's production processes is highly competitive. The Niject and Union Carbide contracts reflect the give and take of negotiations between Monsanto and two of its input suppliers.

Monsanto's ability to contract for inputs to its production processes at favorable prices and under favorable terms and conditions will be harmed if the above contractual information from either contract is made known to potential suppliers.

c. Finally, Niject and Union Carbide themselves are involved in highly competitive markets. Monsanto has agreed with Niject and Union Carbide to maintain the confidentiality of information regarding their contracts, information regarding the economics and characteristics of their projects and the economics and characteristics of Monsanto's operations. Both contracts require each party to preserve the confidentiality of all business information provided by the other party or obtained during the process of performing under the contract. The Union Carbide contract, in particular, contains a confidentiality provision that clearly includes the contract itself. Counsel for Niject has expressed Niject's opinion that the confidentiality provision in the Niject contract also encompasses the contract itself. Should any of the above confidential contractual information from either contract be made public, it would harm the operations of Niject and Union Carbide and could adversely affect Monsanto's business relationship with Niject, Union Carbide and other suppliers, to the detriment of Monsanto's business operations.

DISCUSSION OF SPECIFIC PROVISIONS

11. This section of Monsanto's request specifically identifies those portions of the unedited version of the contracts

that contain the confidential contractual information identified above, and provides justification for approving only the edited versions for public inspection. The sensitive portions of the contracts have been highlighted and numbered for ease of reference. In some cases, Monsanto has proposed to delete entire sections from public inspection. While it is possible to leave certain words and phrases open to public inspection, they would create a risk that the reader would be able to draw inferences as to the deleted information. Each contract will be discussed in turn.

THE NIJECT CONTRACT

Highlighted Portion

Description of Confidential Information

Item I-a	The highlighted language describes the structure of the prices and charges to be paid by Monsanto.
Item I-b	The highlighted language describes the structure of the prices and charges to be paid by Monsanto.
Item I-c	The highlighted language describes the structure of the prices and charges to be paid by Monsanto.
Item II-a	The highlighted language describes the structure of the prices and charges to be paid by Monsanto.
Item II-b	The highlighted language describes the structure of the prices and charges to be paid by Monsanto.
Item II-c-1	The highlighted language describes conditions affecting the prices and charges to be paid by Monsanto.

Highlighted Portion

Description of Confidential Information

- Item II-c-2 The highlighted language describes conditions that affect the requirements for Niject's performance.
- Item II-d-1 The highlighted language describes the structure, components and basis for calculating the prices and charges to be paid by Monsanto, as well as performance requirements for compressed air and conditions that affect those requirements.
- Item II-d-2 The highlighted language describes conditions that affect performance requirements.
- Item II-d-3 The highlighted language describes conditions that affect performance requirements.
- Item II-d-4 The highlighted language describes conditions that affect performance requirements.
- Item II-e-1 The highlighted language describes conditions affecting the prices and charges to be paid by Monsanto and conditions that affect performance requirements.
- Item II-e-2 The highlighted language describes conditions that affect the prices and charges to be paid by Monsanto.
- Item II-e-3 The highlighted language describes conditions that affect the prices and charges to be paid by Monsanto.
- Item II-e-4 The highlighted language describes conditions that affect the requirements for Niject's performance.
- Item II-f The highlighted language describes a component of the prices and charges to be paid by Monsanto.

Highlighted Portion

Description of Confidential Information

- Item II-g The highlighted language describes responsibilities of Monsanto and Niject when Monsanto's demands exceed the capabilities of Niject's facilities.
- Item II-h The highlighted language describes in detail the structure, components and the basis for calculating a key element of the prices and charges to be paid by Monsanto. Revealing any portion of the highlighted language will reveal important details regarding the structure of pricing under the contract.
- Item II-i The highlighted language describes in detail the structure, components and the basis for calculating a key element of the prices and charges to be paid by Monsanto. Revealing any portion of the highlighted language will reveal important details regarding the structure of pricing under the contract.
- Item II-j The highlighted language describes the structure for the prices and charges to be paid by Monsanto and conditions that affect the prices and charges to be paid by Monsanto.
- Item II-k The highlighted language describes components of the prices and charges to be paid by Monsanto.
- Item III The highlighted language describes the warranties provided to Monsanto by Niject under the contract and the conditions under which claims must be made. Revealing any portion of the highlighted language will reveal important details regarding the nature and limitations of any warranties and the conditions under which claims must be made.

Highlighted Portion

Description of Confidential Information

Item IV

The highlighted language describes the termination and purchase options under the Niject contract and the conditions under which they may be exercised. Revealing any portion of the highlighted language will reveal important details regarding the nature of any termination and purchase options and the conditions under which they must be exercised.

Item V

The highlighted language describes the division and limits of liability between Monsanto and Niject and their agents and subcontractors, and the insurance requirements imposed on Monsanto and Niject and their agents and subcontractors. Revealing any portion of the highlighted language will reveal important details regarding the responsibility for insurance and the limits and allocation of liability among the parties.

Item VI

The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto. Revealing any portion of the highlighted language will reveal important details regarding the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.

Item VII

The highlighted information describes the termination and purchase conditions under the Niject contract. Revealing any portion of the highlighted information will reveal important details regarding the charges to be paid by Monsanto in the event of termination by Monsanto.

Item VIII

The highlighted information describes the detailed performance requirements and specifications for compressed air under the contract. Revealing any portion of the highlighted information will reveal important details regarding the performance requirements and specifications for compressed air under the contract.

Highlighted Portion

Description of Confidential Information

Item IX

The highlighted language describes the division and limits of liability between Monsanto, Niject and Niject's contractor and the insurance requirements imposed on Niject's contractor. The deletion is extensive because revealing any portion of the highlighted language will reveal important details regarding the division and limits of liability between Monsanto, Niject and Niject's contractor and the insurance requirements imposed on Niject's contractor.

THE UNION CARBIDE CONTRACT⁴

Highlighted Portion

Description of Confidential Information

Item I

The highlighted language describes performance requirements under the contract.

Item II

The highlighted language describes performance requirements under the contract.

Item III

The highlighted language describes detailed performance requirements and specifications under the contract and the warranties provided to Monsanto by Union Carbide. Revealing any portion of the highlighted language will reveal important details regarding the performance requirements and specifications under the contract and the warranties provided to Monsanto by Union Carbide.

⁴This description encompasses the original Union Carbide contract and the attached amendment.

Highlighted Portion

Description of Confidential Information

Item IV

The highlighted language describes performance requirements under the contract, as well as the basis for calculating the prices and charges to be paid by Monsanto under certain conditions. Revealing any portion of the highlighted language will reveal important details regarding the performance requirements and pricing provision under the contract.

Item V

The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto. Revealing any portion of the highlighted language will reveal important details regarding the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.

Item VI

The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto, as well as certain termination provisions. Revealing any portion of the highlighted language will reveal important details regarding the structure, components and the basis for calculating the prices and charges to be paid by Monsanto, as well as the termination provisions.

Item VII-a

The highlighted language describes the limitations of liability between Union Carbide and Monsanto and the conditions under which claims can be made under the contract for non-performance. Revealing any portion of the highlighted language will reveal important details regarding the limitations of liability between Union Carbide and Monsanto and the conditions under which claims can be made under the contract for non-performance.

Item VII-b

The highlighted language describes the limitations of liability between Union Carbide and Monsanto. Revealing any portion of the highlighted language will reveal important details regarding the

Highlighted Portion

Description of Confidential Information

limitations of liability between Union Carbide and Monsanto.

Item VII-c

The highlighted language describes the limitations of liability between Union Carbide and Monsanto. Revealing any portion of the highlighted language will reveal important details regarding the limitations of liability between Union Carbide and Monsanto.

Item VII-d

The highlighted language describes the conditions under which claims of nondelivery of nitrogen must be made.

Item VIII-a

The highlighted language describes detailed performance requirements and specifications under the contract.

Item VIII-b

The highlighted language describes detailed performance requirements and purchase obligations under the contract.

Item VIII-c

The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.

Item VIII-d

The highlighted language describes detailed performance requirements and specifications under the contract.

Item VIII-e

The highlighted language describes detailed performance requirements and specifications under the contract.

Item VIII-f

The highlighted language describes detailed performance requirements and specifications under the contract.

Item VIII-g

The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.

Item VIII-h

The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.

Highlighted Portion

Description of Confidential Information

- Item IX The highlighted information describes the site where the Union Carbide facility is located.
- Item X The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.
- Item XI The highlighted language describes conditions associated with termination of the contract.
- Item XII The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.
- Item XIII The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.
- Item XIV The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.
- Item XV The highlighted language describes the structure, components and the basis for calculating the prices and charges to be paid by Monsanto.

12. Monsanto has acted in good faith to identify only those portions of each contract which it believes contain confidential proprietary business information and has proposed to edit those portions only as necessary to preserve this information.

CONCLUSION

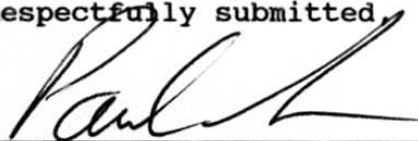
13. The Niject and Union Carbide contracts have been shown to contain confidential proprietary business information. The unedited version of the contracts should be classified as specified confidential, in accordance with Rule 25-22.006(3) and accorded

stringent internal procedural safeguards against public disclosure, as required by subsection (3)(d) of that rule. This classification should be effective for as long as the contracts are in the Commission's possession and the contracts should be returned to Monsanto when the Commission rules on Monsanto's petition for a declaratory statement or otherwise closes this Docket. The edited versions of the contracts, from which the confidential information has been excised, should be approved for public inspection.

WHEREFORE Monsanto Company requests entry of an order classifying the unedited version of the Niject and Union Carbide contracts (including the amendment to the Union Carbide contract) as "specified Confidential" for as long as they are in the Commission's possession, requiring that the contracts be returned to Monsanto when the Commission rules on Monsanto's Petition for Declaratory Statement or otherwise closes this Docket and approving the edited versions of the contracts for public inspection.

Dated: March 18, 1992

Respectfully submitted,



Richard A. Zambo, Esquire
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598 S.W. Hidden River Avenue
Palm City, Florida 34990

Paul Sexton, Esquire
Richard A. Zambo, P.A.
2544 Blairstone Pines Drive
Tallahassee, Florida 32301

Attorneys for Monsanto Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided to the following persons by U.S. Mail (hand-delivery*), this 18th day of March, 1992.

Richard Bellack*
Associate General Counsel
Division of Legal Services
Florida Public Service
Commission
101 East Gaines Street
Tallahassee, FL 32399-0850


Paul Sexton