

FLORIDA PUBLIC SERVICE COMMISSION

Fletcher Building  
101 East Gaines Street  
Tallahassee, Florida 32399-0850

MEMORANDUM

April 22, 1992

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF ELECTRIC AND GAS (BALLINGER, FLOYD, TRAPP) <sup>TB</sup>  
DIVISION OF APPEALS (BELLAK) <sup>RCB RLT RJ</sup>

RE: COGENERATION: MONSANTO COMPANY <sup>DS</sup>  
DOCKET NO. 920195<sup>4</sup> EG EQ  
COUNTY: ESCAMBIA  
CASE: PETITION FOR DECLARATORY STATEMENT - RE:  
PROVISION OF ELECTRIC POWER TO FACILITIES AT  
PENSACOLA CHEMICAL COMPLEX BY MONSANTO COMPANY

AGENDA: MAY 5, 1992 - CONTROVERSIAL - PARTIES MAY NOT PARTICIPATE

CRITICAL DATES: NONE

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CASE BACKGROUND

Monsanto Company (Monsanto), by Petition filed March 2, 1992 has requested a Declaratory Statement pursuant to Section 120.565 Florida Statutes and Rule 25-22.020, F.A.C., that its planned installation and operation of additional cogeneration capacity at its Pensacola chemical complex will not result in or be deemed to constitute a sale of electricity, will not cause Monsanto to be deemed a public utility as that term is defined under, Florida law and will not cause Monsanto to be subject to regulation by the Commission.

The Petition describes a unified complex for chemical production including a Maleic Anhydride process and nitrogen gas manufacturing facility. The chief complication in the analysis of the case resides with the latter facility, owned by Union Carbide, and a compressed air facility owned by Niject, which is a component of the Maleic Anhydride process.

The contracts between Monsanto and Niject and Monsanto and Union Carbide for compressed air and nitrogen gas, respectively, are described as alternatives to the financing of such facilities by Monsanto itself. While the actual terms of the contracts are the subject of a confidentiality request by Monsanto, they are described in the petition as providing a fixed monthly charge for

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the availability of compressed air whether or not it is actually used and a fixed monthly charge for the availability of a minimum amount of nitrogen gas, whether or not actually used, along with a price per cubic foot for nitrogen gas produced beyond the specified contract minimum. Both the Niject and Union Carbide facilities are provided by Monsanto with thermal energy and electric power at no cost.

Monsanto's position is that the Niject and Union Carbide facilities are cogs in the larger wheel of the unified complex as a whole. Therefore, Monsanto argues, their disparate ownership is not dispositive of the "sale of electricity" issue given the unity of interest of the participants, the purchase of the entire output of Niject and Union Carbide by Monsanto and the net economic effect of "self-service". Whether this analysis or that of a sale of electricity governs is the essential issue created by the petition.

On April 2, 1992, Gulf Power Company filed its Motion to Intervene based on the assertion that its general body of payers will be substantially affected by the Commission's decision in this docket. Gulf asserts that the Commission must determine whether the present arrangement between Monsanto and Niject, Monsanto and Union Carbide and other such participants

constitutes the unlawful sale or sharing of electric services provided at retail by Gulf Power pursuant to its Commission approved contract for electric power with Monsanto and the company's tariff for Retail Electric Service filed with and approved by the Florida Public Service Commission and by reference made a part of the approved contract for electric power between Gulf and Monsanto.

Gulf Power's Petition For Leave To Intervene, p. 2

In its Response In Opposition, filed April 14, 1992, Monsanto asked that the prospective nature of a declaratory statement concerned with future conduct not be confused with Gulf's claim of substantial interest, §120.52(12)(b), F.S. based on Monsanto's present conduct. That point, while persuasive in the abstract, loses its force here where the conduct in the future as to which the declaratory statement is sought is, in many parameters, identical with the present conduct arguably affecting Gulf's and its ratepayers' substantial interests. Though the parameters that will change may be dispositive, that cannot be assumed at this point.

This recommendation address the above issues.

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### DISCUSSION OF ISSUES

**ISSUE 1:** Should Monsanto's Petition for Declaratory Statement be granted in the positive, granted in the negative or deferred pending the resolution of a collateral proceeding?

**RECOMMENDATION:** Monsanto's Petition for Declaratory Statement should be deferred pending resolution of a collateral proceeding.

**STAFF ANALYSIS:** See, analysis to Issue 2, infra.

**ISSUE 2:** Should Gulf's Petition for Leave to intervene be granted?

**RECOMMENDATION:** No, Gulf's Petition for Leave to Intervene should be denied with leave to file a complaint under another docket as to Monsanto's alleged violation of Gulf's Commission - approved tariffs.

**STAFF ANALYSIS:** Intervention in Declaratory Statement proceedings is not favored because resolution of issues of law rather than issues of fact are appropriate therein. In this case, that difficulty is compounded because the Declaratory Statement is prospective in nature and Gulf's argument identifies a present concern or complaint allegation.

Notwithstanding that, the near identity of issues Gulf's Intervention Petition raises with those in Monsanto's Declaratory Statement Petition indicates that the Commission would be well served in its consideration of Monsanto's Declaratory Statement Petition if the issues raised by Gulf were first resolved. Accordingly, it is recommended that consideration of Monsanto's Declaratory Statement be deferred until Gulf's issues are heard.

**ISSUED 3:** Should this docket remain open pending a collateral proceeding on Gulf's issues?

**RECOMMENDATION:** Yes, this docket should remain open pending a collateral proceeding on Gulf's issues. However, if Gulf files no complaint, the Declaratory Statement Petition should be considered without granting Gulf leave to intervene.

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