

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In Re: Provision of Electric ) DOCKET NO. 920198-EG  
Power to Facilities at )  
Pensacola Chemical Complex ) ORDER NO. PSC-92-0376-PCO-EG  
by Monsanto Company )  
ISSUED: 05/18/92

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The following Commissioners participated in the disposition of this matter:

BETTY EASLEY  
J. TERRY DEASON  
SUSAN F. CLARK  
LUIS J. LAUREDO

**ORDER DEFERRING MONSANTO COMPANY'S PETITION  
FOR DECLARATORY STATEMENT PENDING DISPOSITION  
OF COLLATERAL PROCEEDING**

BY THE COMMISSION:

**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 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

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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.

#### DISCUSSION

We conclude that Monsanto's Petition for Declaratory Statement should be deferred pending the resolution of a collateral proceeding. In addition, Gulf's Petition for Leave to Intervene

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should be denied with leave to file a complaint under another docket as to Monsanto's alleged violation of Gulf's Commission - approved tariffs.

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.

In view of the above, it is hereby

ORDERED by the Florida Public Service Commission that Monsanto's Petition for Declaratory Statement is deferred pending the resolution of a collateral proceeding. It is further

ORDERED that Gulf's Petition for Leave to Intervene is denied with leave to file a complaint under another docket as to Monsanto's alleged violation of Gulf's Commission approved tariffs. It is further

ORDERED that this docket shall remain open pending a collateral proceeding on Gulf's issues.

BY ORDER of the Florida Public Service Commission this 18th day of May, 1992.

  
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STEVE TRIBBLE, Director  
Division of Records & Reporting

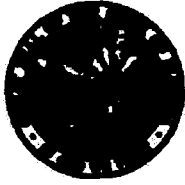
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**NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW**

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.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer 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 after the issuance 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.



Public Service Commission RECEIVED  
MAY 15 1992

-M-E-M-O-R-A-N-D-U-M RECORDS / REPORTING

DATE: May 14, 1992  
TO: DIVISION OF RECORDS AND REPORTING  
FROM: RICHARD BELLAK, DIVISION OF APPEALS *RB*  
RE: DOCKET NO. 920198-EG, PROVISION OF ELECTRIC POWER TO FACILITIES AT PENSACOLA CHEMICAL COMPLEX BY MONSANTO COMPANY

*PSC-92-0376-PCO-EG*

Attached is an order to be issued as soon as possible.

RC.ormemo.cc  
Attachments

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