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

March 2, 1992

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

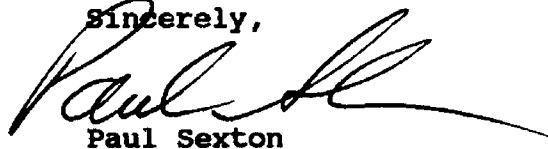
**ORIGINAL
FILE COPY**

920198-5Q
Re: Docket No. - 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 Petition of Monsanto Company for
a Declaratory Statement Concerning the Provision of Electric Power
to Facilities at its Pensacola Chemical Complex.

Sincerely,

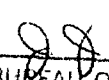


Paul Sexton

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DOCUMENT NUMBER-DATE

02139 MAR -2 1992

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Monsanto) Docket No.
Company for a Declaratory)
Statement Concerning the) Dated:
Provision of Electric Power to)
Facilities at its Pensacola) March 2, 1992
Chemical Complex.)
_____)

PETITION FOR DECLARATORY STATEMENT

Monsanto Company (Monsanto or Petitioner), by and through its undersigned attorneys, files this Petition for Declaratory Statement pursuant to Section 120.565, Florida Statutes, and Rule 25-22.020, Florida Administrative Code. Monsanto requests that the Commission issue a declaratory statement that Monsanto's planned installation and operation of additional cogeneration capacity at its Pensacola chemical complex, which will provide electric power to electric-power consuming facilities at that site: a) will not result in or deemed to constitute a sale of electricity; b) will not cause Monsanto to be deemed a public utility as that term is defined under Florida law; and c) will not cause Monsanto to be subject to regulation by the Commission.

1. The name and address of the Petitioner are:

Monsanto Company
P.O. Box 12830
Pensacola, Florida 32575-2830

2. All pleadings, motions, orders and other documents directed to Monsanto should be served on:

Richard A. Zambo, Esquire
Richard A. Zambo, P.A.
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

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THE ORDERS AND STATUTES INVOLVED

3. The orders and statutes on which a declaratory statement is sought include the following:

Section 366.02(1), Florida Statutes

a) Those provisions of Section 366.02(1), Florida Statutes, defining "public utilities" subject to the jurisdiction of the Florida Public Service Commission:

"Public utility" means every person, corporation, partnership, association, or other legal entity and their lessees, trustees, or receivers supplying electricity or gas (natural, manufactured, or similar gaseous substance) to or for the public within this state. . . .

The PW Ventures Order

b) Those provisions of Order No. 18302-A, issued in Docket No. 870446-EU on October 22, 1987, in which the Commission found that a sale of electricity by PW Ventures, Inc., to an unrelated consumer constituted a sale of electricity "to the public" under §366.02(1):¹

. . . The Commission's jurisdiction does not turn on the size of the territory or the number of customers but, more simply, on the supply of electricity to an unrelated entity. We hold that the statutory language "to the public" does not permit us to find that service to one, or a few, or some members of the public is nonjurisdictional, for once embarked on that course the statute does not tell us where to draw the line.

(at page 4)

¹In re: Petition of PW Ventures, Inc., for a declaratory statement in Palm Beach County, Order No. 18302-A, Docket No. 870446-EU.

. . . [W]e hold that the jurisdictional boundary is marked by the separateness of the supplier and the consumer of electricity, such that the supplier of electricity is serving a member of the public rather than itself, and not by the number of consumers involved. One indication of separateness is whether the risks of production associated with a cogeneration facility are assumed by the supplier rather than the consumer.

(at pages 6&7)

The 1986 Monsanto Order

c) Those provisions of Order No. 17009, issued in Docket No. 860725-EU on December 22, 1986, finding that a lease financing of a cogeneration facility by Monsanto would not result in or be deemed to constitute an unlawful sale of electricity, would not cause the lessor to be deemed a public utility under Florida law and would not subject Monsanto or its lessor to regulation by the Commission:²

This Commission has taken the position that a QF may not engage in a retail sale. In re: Amendment of Rules 25-17.80 through 25-17.89 relating to cogeneration, Order No. 12634, issued October 27, 1983, at 21; In re: Repeal of Rule 25-17.835 and Adoption of Rules 25-17.88, 15-17.882 (sic) and 25-17.883 - Wheeling of Cogenerated Energy; Retail Sales, Order No. 15053, Issued September 27, 1985, at 9-10.

(at pages 2&3)

Since it is clear from Monsanto's petition that it will not hold legal title to every piece of equipment constituting the proposed cogeneration facility, will a prohibited retail sale occur between the lessor

²In re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility, Order No. 17009, Docket No. 860725-EU.

of the QF and Monsanto? Based on the terms of Monsanto's proposed lease agreement, we conclude that no sale will occur. Monsanto is leasing equipment which produces electricity rather than buying electricity that the equipment generates.

(at page 3)

Were Monsanto to purchase its proposed cogeneration equipment, this Commission would have no jurisdiction over either the QF or Monsanto.

(at page 4)

Monsanto has leased an asset, the qualifying facility equipment, that will allow it to generate its own thermal and electric energy. Monsanto is, therefore, serving itself and neither it nor its lessor would be subject to Commission jurisdiction under Chapter 366, Florida Statutes.

(at page 5)

The Seminole Fertilizer Order

d) Those provisions of Order No. 23729, issued in Docket No. 900699-EQ on November 7, 1990, finding that a lease of a portion of a cogeneration facility by Seminole Fertilizer, Inc. (Seminole), from a limited partnership, of which the general partner was a wholly-owned subsidiary of Seminole, would not result in or be deemed to constitute an unlawful sale of electricity, would not cause the lessor to be deemed a public utility under Florida law and would not subject Seminole Fertilizer or its lessor to regulation by the Commission:³

³In re: Petition of Seminole Fertilizer Corporation for a Declaratory Statement concerning the Financing of a Cogeneration Facility, Order No. 23729, Docket No. 900699-EQ.

Notwithstanding the apparent dissimilarities between the Monsanto lease arrangement and the transaction presented here, our jurisdiction is not automatically triggered. The analysis by the Commission addresses whether the separate entities created primarily for "off-balance sheet accounting" are so strongly related as to be considered one and the same for jurisdictional purposes; and whether the Commission's jurisdiction is triggered by the combination of generation for Seminole's self-consumption and generation for sale to a public utility via the separate, related entity.

(at page 5)

The Commission deems Seminole and the lessor to have a "unity of interests" due to Seminole's wholly owned subsidiary being the general partner of the lessor. The structuring solely for financial and tax reasons does not result in Seminole or the limited partnership being deemed a public utility. Finally, none of the participants would become subject to PSC jurisdiction solely because of such a transaction.

The Commission finds that the lessee/QF (Seminole) and partnership/lessor (Seminole sub L.P.) are so "related" that the arrangement surmounts the jurisdictional boundary identified in Petition of PW Ventures, Inc., Order No. 18302; PW Ventures, Inc. v. Nichols, 533 So.2d 281 (Fla. 1988). It follows from that finding that the transaction at issue does not create a public utility which is subject to our jurisdiction.

The Commission finds no retail sale in the above presentation of facts. The petition presents a scenario where there is, on the one hand, Seminole's self-service generation; and, on the other hand, there is sale of energy to a utility via the limited partnership. None of the limited partners consume the energy. Neither transaction equals a retail sale. Section 366.02, Florida Statutes. . . .

(at page 6)

The Monsanto case is not directly dispositive of the issues presented by the Petitioner. The two-way flow of dollars between the lessee and lessor require different tests than those provided in Monsanto. However, the additional complexities do not, in this case, result in a prohibited retail sale.

(at page 7)

A Jurisdictional Continuum

4. The Commission has over time identified points on a jurisdictional continuum. At one end, it is clear that a person may engage in self-service by owning a cogeneration facility (in which case the Commission's jurisdiction would not vest). At the other end, it is equally clear that a person who simply sells electricity to another unrelated person engages in a prohibited retail sale (in which case the Commission's jurisdiction would vest). In Monsanto, the Commission recognized that financing arrangements may place ownership of cogeneration facilities in someone other than the person using the equipment to generate electricity for their own consumption. Similarly, in Seminole, the Commission found that adherence to prior fact patterns was not determinative of whether there was a retail sale and that a two-way flow of dollars was permissible if the parties had a unity of interests. Most importantly, the Commission found that such arrangements are not jurisdictional. Although Monsanto believes that the proposed expansion of its cogeneration capacity and the resulting provision of electricity to equipment within the complex which are not "owned" by Monsanto will not result in a juris-

dictional transaction, it seeks the Commission's confirmation of that fact.

THE FACTS PRESENTED

Monsanto's Pensacola Complex

5. Monsanto owns and operates a major chemical production complex in Pensacola, Florida, which employs approximately 2,400 people and is located within the service area of Gulf Power Company (Gulf). Monsanto's Pensacola complex was constructed in the 1950's primarily to produce Nylon fibers but was designed as a "unified" plant that also produces the chemical intermediates from which Nylon is made. Some of these intermediate products are sold to other manufacturers and find their way into many consumer goods. In 1982, Monsanto added to the complex a facility that produces Maleic Anhydride, which is used as a raw material in the production of polyester resin and as an additive for foods, oils and agricultural chemicals. One important characteristic of this operation is that, in addition to producing Maleic Anhydride, the exothermic chemical reactions within the operation produce excess thermal energy, which is used to serve a substantial portion of the process steam requirements of the Pensacola complex.

Monsanto's 1986 Plans for Additional Generation

6. Since 1958, Monsanto has owned and operated a qualifying cogeneration facility of approximately 16MW capacity at its Pensacola complex, which produces electric and thermal energy. The electrical output of that cogeneration facility is used to serve a portion of the electrical needs at Monsanto's Pensacola complex,

while Gulf provides the balance of those needs. In 1984, Monsanto began analyzing the viability of expanding its cogeneration capacity, as well as its Maleic Anhydride production capacity. By 1986, Monsanto had developed a plan to expand the cogeneration capacity at its Pensacola complex by adding two 23MW combustion turbines, producing a total on-site generating capacity of 62MW. This would enable Monsanto to serve a substantial portion of the load at the complex.' The plans also included the installation of an air compressor to provide additional compressed air for the simultaneously-planned expansion of the Maleic Anhydride operation. Monsanto's plans initially provided for driving the new air compressor directly off the shaft of one of the new gas turbines, thereby allowing Monsanto to avoid adding a 19,000 horsepower electric motor drive.

Monsanto Defers the Generation Additions

7. During its planning process, Monsanto was also engaged in discussions with Gulf regarding retention of the Monsanto load and various alternatives to the cogeneration project. On March 10, 1988, Monsanto entered into an agreement with Gulf, whereby Monsanto agreed to defer the installation of the additional cogeneration capacity at its Pensacola complex and to increase its contracted electrical capacity with Gulf. This agreement was approved by the Commission by Order No. 20178, issued in Docket No. 880647-EI on October 17, 1988. Monsanto thereafter deferred

'Monsanto would likely also have purchased standby and supplemental electric service from Gulf.

expansion of its cogeneration facilities in accordance with the terms of the contract.

Monsanto Enters into the Niject Contract

8. Although the cogeneration expansion project had been deferred, it was still necessary for Monsanto to expand its supply of compressed air capacity in order to serve the expanding Maleic Anhydride operations.³ As an alternative to financing and constructing its own compressed air facility, Monsanto contracted with Niject Services Company (Niject) in 1988 for the delivery of compressed air from a facility to be located within Monsanto's Pensacola complex that would be owned and operated by Niject, all pursuant to a long-term contract between Monsanto and Niject. This contractual arrangement permitted Monsanto to increase its compressed air capacity without investing capital in the facility.⁴ (Because the Niject contract, as well as the Union Carbide contract discussed below, contain highly confidential information, this Petition will not discuss their terms in detail. The contracts will be provided to the Commission in a separate submission, along with a request for confidential classification, shortly after the filing of this Petition.)

³The increase in contract capacity with Gulf was due, in part, to the fact that, without a new gas turbine, it would be necessary to install an electric motor to drive the new air compressor.

⁴Although not technically a lease/finance agreement, the Niject contract provides benefits to Monsanto that are similar to those of lease/financing by providing an alternative to direct capital investment.

9. Under the Niject agreement, Niject constructed, owns and operates an electric-motor driven compressed air facility providing compressed air to Monsanto for use in the Pensacola complex. Monsanto, who is the sole purchaser of the output of the facility, presently uses the output itself. Potentially, Monsanto may sell the output to others who are now or in the future may be located within the complex.⁷ In exchange, Monsanto provided Niject with a site at its Pensacola complex and pays Niject a fixed monthly charge for the availability of compressed air, whether or not it is actually used.⁸ The agreement also required Monsanto to provide utilities to the Niject facility, including electric power and thermal energy, at no cost to Niject. From the inception of the Niject contract in 1988, to date, Monsanto has paid Gulf for the cost of all power delivered to Monsanto's Pensacola complex, including power delivered by Monsanto to the Niject facility, without any cost to Niject.

Monsanto Enters into the Union Carbide Contract

10. In 1989, Monsanto contracted with Union Carbide Industrial Gases, Inc. (Union Carbide) for the delivery of nitrogen gas from a facility to be located within Monsanto's Pensacola complex that would be owned and operated by Union Carbide. As with the

⁷Under the contract, Monsanto purchases and owns 100% of the output of the Niject facility. Should Monsanto later decide to sell compressed air to third parties, the Niject contract would have to be amended to acknowledge Monsanto's sale of compressed air.

⁸This fixed monthly charge is subject to adjustment based on the availability of the facility to deliver compressed air.

Niject contract, this contractual arrangement permitted Monsanto to increase its Supply of Nitrogen gas without capital financing.'

11. Under the Union Carbide contract, Union Carbide constructed, owns and operates a Nitrogen gas production facility and provides Nitrogen Gas to Monsanto for use in the Pensacola complex. Monsanto, who is the sole purchaser of the output of the facility presently uses the output itself. Potentially, Monsanto may sell the output to others who are now or in the future may be located within the complex.¹⁰ In exchange, Monsanto provided Union Carbide with a site at its Pensacola complex and pays Union Carbide a fixed monthly charge for the availability of a minimum amount of Nitrogen gas, whether or not it was actually used, along with a price per cubic foot for Nitrogen gas produced beyond the specified contract minimum. The agreement also required Monsanto to provide utilities to the Union Carbide facility, including electric power and thermal energy, at no cost to Union Carbide. From the inception of the Union Carbide contract in 1989, to date, Monsanto has paid Gulf for the cost of all power delivered to Monsanto's Pensacola complex, including power delivered by Monsanto to the Union Carbide facility, without any cost to Union Carbide.

'As with the Niject contract, the Union Carbide contract provides benefits to Monsanto that are similar to those of lease/financing by providing an alternative to direct capital investment.

¹⁰Under the Union Carbide contract, Monsanto purchases and owns 100% of the output of the Union Carbide facility. Should Monsanto later decide to sell nitrogen to third parties, the Union Carbide contract may have to be amended to acknowledge Monsanto's sale of nitrogen.

Operation as a Unified Complex

12. Monsanto's Pensacola facility operates as a "unified" complex that produces products for use by Monsanto or sale to others. As a "unified" complex, Monsanto has integrated various production facilities, including some owned by third parties, for purposes of providing essential inputs for the complex. The Niject and Union Carbide facilities, which are integrated into and embedded within Monsanto's overall operation, provide their output solely to facilities within the complex, and are simply "cogs" on the very large "wheel" that is the Monsanto Pensacola facility. The Niject facility is essential to the Maleic Anhydride process, which not only produces a product for sale but also produces excess thermal energy as an input for use throughout the Pensacola complex. Similarly, the output of the Union Carbide facility is essential as an input for chemical production processes at the Pensacola complex. The contracts between Monsanto and these two companies create a unity of interests in the successful operation of each of their facilities as an integral part of Monsanto's unified complex.

13. Not only are these facilities integrated into a "unified" complex, but Monsanto, as the direct purchaser of the output of these facilities, is ultimately responsible for all electric power costs. Under the Niject and Union Carbide contracts, since Monsanto is the sole purchaser of the output of the facility, one way or another, Monsanto will have to pay for the cost of producing compressed air and Nitrogen, including (directly or indirectly) any

power purchased by Niject and Union Carbide. The net economic effect is self-service, which has been recognized as outside the scope of §366.02(1).

Monsanto's New Plans to Expand Generation

14. The agreement between Monsanto and Gulf is due to expire on December 31, 1992 and Monsanto is again planning to expand the cogeneration capacity at its Pensacola complex by adding approximately 90MW of combustion-turbine driven electric generation, producing a total on-site generating capacity of approximately 106MW. This additional cogeneration capacity will enable Monsanto to serve the entire load at its Pensacola complex, including the Niject and Union Carbide facilities, as well as deliver excess energy to Gulf or another utility.¹¹ The retail sale issue arises because, subsequent to the operation of Monsanto's cogeneration expansion, the power delivered by Monsanto to Niject and Union Carbide will be generated by Monsanto cogeneration facilities, rather than by Gulf. Monsanto believes, however, that there would be no retail sale under these circumstances because:

a) The Niject and Union Carbide facilities were constructed to serve Monsanto's Pensacola chemical complex as an alternative to construction and financing by Monsanto;

b) The Niject and Union Carbide facilities are integrated into Monsanto's "unified" complex:

¹¹Monsanto would likely also purchase standby electric service from Gulf.

- i. The output of the Niject facility is an essential input to the Maleic Anhydride process, which in turn produces excess thermal energy for process steam used throughout the Pensacola complex;
- ii. The output of the Union Carbide facility is an essential input for chemical production processes at the Pensacola complex;
- iii. Both the Niject and Union Carbide facilities receive from Monsanto, among other things, process steam;
- c) All electric power delivered to the Niject and Union Carbide facilities would be at no cost to Niject or Union Carbide;
- d) Payments by Monsanto to Niject and Union Carbide for their products are unaffected by the amount or cost of producing and delivering electric power to the Niject or Union Carbide facilities;
- e) Because Monsanto currently owns all electric power delivered to Niject and Union Carbide and would own the electric power delivered to Niject and Union Carbide after the planned cogeneration facility is installed, the only change from the present situation would be a shift in the generating source from Gulf to Monsanto.

THE DECLARATORY STATEMENT SOUGHT

Introduction

15. Monsanto requests that the Commission issue a declaratory statement that Monsanto's planned installation and operation of additional cogeneration capacity at its Pensacola chemical complex,

which will provide electric power to electric-power consuming facilities at that site: a) will not result in or deemed to constitute a sale of electricity; b) will not cause Monsanto to be deemed a public utility as that term is defined under Florida law; and c) will not cause Monsanto to be subject to regulation by the Commission.

16. Monsanto is seeking a determination that the delivery of cogenerated power by Monsanto to the Niject and Union Carbide facilities at no cost to Niject or Union Carbide is part and parcel of existing bona fide financial arrangements and contractual relationships between Monsanto and these two companies and, that under the facts presented, there will be no "retail sale" of electricity that would subject any party to the regulatory jurisdiction of the Commission under Chapter 366, Florida Statutes.

The Jurisdictional Continuum

17. The Commission has entered a series of orders construing Section 366.02(1). Initially, the Commission determined that QFs were prohibited from making "retail sales", which it defined as the sale of electricity to an unrelated party. Over time, the Commission has identified a jurisdictional continuum which, at one end identifies a "prohibited retail sale" and at the other, identifies clearly permissible self-service by a QF. The prohibited situation occurs when the owner of generating facilities sells electricity to one or more unrelated persons such as in the

Timber Energy and PW Ventures cases.¹² The permissible situation occurs when a QF consumes the electricity generated by a facility it owns.

18. The Monsanto case dealt with the issue of whether the consumer must actually own the generating facility it uses to produce electricity for its own consumption. The Commission held that Monsanto's proposed lease-financing of a facility did not involve a retail sale and that it constituted a bona fide self-service arrangement. Similarly, the Seminole case dealt with the issue of whether a consumer could enter into a "partial" lease of a facility from a related entity for financing purposes. The Commission held that the proposed lease, even with the complexity of a two-way flow of dollars, did not involve a retail sale, as the lessor and lessee had a unity of interests.

Ownership is Not the Key

19. While the specific facts of these cases are instructive, Commission policy regarding Chapter 366, rather than strict adherence to the literal fact patterns of previous cases, should dictate the analysis. In Monsanto, the Commission focused on who bore the risks of operation of the facility, rather than ownership of the facility. In that case, Monsanto would pay a fixed annual amount for the use of the facility, would operate the facility and would bear risks associated with operating the facility. In PW

¹²In re: Petition of Timber Energy Resources, Inc., Docket No. 861621-EU; In re: Petition of PW Ventures, Inc., for a declaratory statement in Palm Beach County, supra.

Ventures, the Commission again focused on the risk of operation which risks, unlike the Monsanto or Seminole proposals, were borne by the owner of the equipment rather than the consumer of the electric power. In Seminole, however, the Commission recognized that the risk of operation should not be the sole focus of the analysis.

There is No Cream Skimming

20. The basic reason for the prohibition against retail sales was to prevent third parties from "cream skimming" and enticing high volume customers to forsake the utility as their primary supplier. This was a policy argument that the Supreme Court invoked in PW Ventures v. Nichols, 533 So.2d 281 (Fla. 1988) when it upheld the Commission's interpretation of Section 366.02(1):

What PW Ventures proposes is to go into an area served by a utility and take one of its major customers. Under PW Venture's interpretation, other ventures could enter into similar contracts with other high use industrial complexes on a one-to-one basis and drastically change the regulatory scheme of this state. The effect of this practice would be that the revenue that otherwise would have gone to the regulated utilities which serve the affected areas would be diverted to unregulated producers.

(at page 283)

21. Monsanto's planned cogeneration expansion, which will provide power to the Niject and Union Carbide facilities, as well as Monsanto's entire Pensacola complex, does not in any way involve a developer seeking to "skim" utility revenues. To the contrary, Monsanto's situation simply involves generating and delivering

power to facilities that were constructed on-site by a third party to allow Monsanto to obtain the benefits of off balance sheet financing. Further, because Monsanto must deliver power to Niject and Union Carbide without charge, there are no electric sales revenues being diverted to an unregulated producer and no developer can economically interject itself into and market this type of arrangement in Florida. This is a unique, customer-initiated and controlled transaction that simply involves self-service generation and which also serves off-balance sheet financed facilities at no charge.

There is No Sale

22. Even if ownership of facilities was decisive, there is no sale of electricity in this case. Because Monsanto is obligated to provide utilities to Niject and Union Carbide, Niject and Union Carbide will receive all electricity at no cost. The Commission has long recognized that a key element in determining whether a sale is taking place is whether there is a charge for the service. In fact, the Commission has expressly recognized that submetering of electricity, with charges not exceeding cost, is not a sale of electricity that renders the "seller" a public utility.¹³ Rule 25-6.049(5)(b)6 specifically authorizes the submetering of electricity by customers at charges that do not exceed the cost to the customer. Clearly, if submetering electricity at cost is not a

¹³In re: investigation of the practice, policy and procedures of public utilities engaged in the sale of electricity to be resold, Order No. 4874 (April 23, 1970).

retail sale, then providing electricity at no cost is not a retail sale.

CONCLUSION

23. Monsanto believes that there would be no retail sale under the circumstances set forth in this petition because:

a) The Niject and Union Carbide facilities were constructed to serve Monsanto's Pensacola chemical complex as an alternative to construction and financing by Monsanto;

b) The Niject and Union Carbide facilities are integrated into Monsanto's "unified" complex:

i. The output of the Niject facility is an essential input to the Maleic Anhydride process, which in turn produces excess thermal energy for process steam used throughout the Pensacola complex;

ii. The output of the Union Carbide facility is an essential input for chemical production processes at the Pensacola complex;

iii. Both the Niject and Union Carbide facilities receive from Monsanto, among other things, process steam;

c) All electric power delivered to the Niject and Union Carbide facilities would be at no cost to Niject or Union Carbide;

d) Payments by Monsanto to Niject and Union Carbide for their products are unaffected by the amount or cost of producing and delivering electric power to the Niject or Union Carbide facilities;

e) Because Monsanto currently owns all electric power delivered to Niject and Union Carbide and would own the electric power delivered to Niject and Union Carbide after the planned cogeneration facility is installed, the only change from the present situation would be a shift in the generating source from Gulf to Monsanto.

WHEREFORE Monsanto requests that the Commission issue a declaratory statement that Monsanto's planned installation and operation of additional cogeneration capacity at its Pensacola chemical complex, which will provide electric power to electric-power consuming facilities at that site:

a) will not result in or deemed to constitute a sale of electricity;

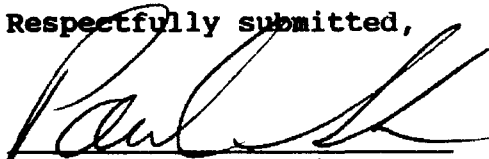
b) will not cause Monsanto to be deemed a public utility as that term is defined under Florida law; and

c) will not cause Monsanto to be subject to regulation by the Commission.

Dated: March 2, 1992

Respectfully submitted,

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Attorneys for Monsanto Company