

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Petition of Monsanto)
Company for a declaratory)
statement concerning the)
provision of electric power to)
facilities at its Pensacola)
Chemical Complex.)

Docket No. 920198-EQ
Filed: April 14, 1992

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**RESPONSE OF MONSANTO COMPANY IN OPPOSITION
TO GULF POWER COMPANY'S REQUEST FOR HEARING**

Monsanto Company (Monsanto), by and through its undersigned attorneys, requests that the Commission deny Gulf Power Company's (Gulf) request for hearing contained within its Petition for Leave to Intervene dated April 2, 1992, and in support thereof states as follows:

1. Monsanto incorporates herein by reference its Response in Opposition to Gulf Power Company's Petition for Intervention filed on this same date and realleges each and every statement contained therein.

2. Gulf has not alleged facts which support its allegations of substantial interests in this proceeding as detailed in Monsanto's Response in Opposition to Gulf Power Company's Petition for Intervention filed on this date. Accordingly, because Gulf is not a party and cannot be granted party status under applicable statutes and rules, it has no right to request an evidentiary

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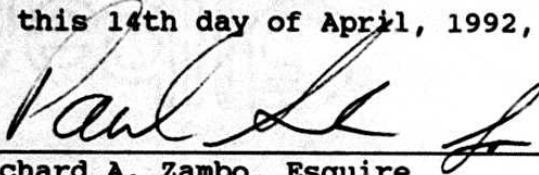
proceeding. Gulf's request for an evidentiary hearing is moot.¹

3. Further, Section 120.57 hearings are discretionary with the Commission in declaratory statement proceedings. Rule 25-22.022(1), F.A.C.; Section 120.565, F.S. The Commission is only required to hold an evidentiary hearing where there is a disputed issue of material fact which must be determined in order to provide the legal interpretation requested. San Souci v. Division of Florida Land Sales, 448 So.2d 116, 119-20 (Fla. 1st DCA 1984). Gulf has not alleged any disputed issues of material fact regarding the proposed cogeneration facility, Niject or Union Carbide (nor by definition can any exist), only regarding AES. AES is specifically not the subject of this declaratory statement. See: Clarification of Petition for Declaratory Statement filed by Monsanto on March 20, 1992. Gulf can not expand the scope of this request in order to force a Section 120.57 hearing, nor should Gulf be allowed to raise extraneous "factual" issues in order to confuse the issues presented by Monsanto for resolution or delay the Commission's timely decision on same.

WHEREFORE, Monsanto Company respectfully requests that the request of Gulf Power Company for an evidentiary hearing in this docket be denied.

¹ See: Order No. 16581, issued on September 11, 1986, in which a similar request by Gulf in a declaratory statement proceeding was denied on these grounds.

Respectfully submitted this 14th day of April, 1992, by



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided to the following persons by U.S. Mail or Hand-delivery (*), this 14th day of April, 1992.

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