

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Sections 366.03, 366.06(2), and 366.07, F.S., with respect to rates offered under commercial/industrial service rider tariff; petition to examine and inspect confidential information; and request for expedited relief.

DOCKET NO. 000061-EI
ORDER NO. PSC-01-0013-PCO-EI
ISSUED: January 2, 2001

ORDER GRANTING MOTION FOR AUTHORIZATION TO DISCLOSE
CONFIDENTIAL INFORMATION PURSUANT TO PROTECTIVE AGREEMENT

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI. Odyssey Manufacturing Company (Odyssey) and Sentry Industries (Sentry) are intervenors. They are separate companies but have the same president. Allied, Odyssey and Sentry manufacture bleach.

On October 13, 2000, Allied filed a Motion for Authorization to Disclose Confidential Information Pursuant to Protective Agreement (Motion for Authorization). In that Motion, Allied requests that attorneys Daniel K. Bandklayder and Phillip L. Allen be allowed to enter into the protective agreement so that they are able to review confidential information produced in this case. TECO and Odyssey filed responses in opposition on October 18, 2000. Both parties object to Mr. Allen signing the protective agreement but not Mr. Bandklayder.

The Motion also requested that Robert Namoff, Allied's President, be allowed to sign the protective agreement. The Motion was granted with respect to Mr. Namoff by Order No. PSC-00-2430-

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

PCO-EI, issued December 18, 2000, in this docket. A ruling regarding the two attorneys is provided in this order.

Allied states that: 1) both attorneys are members of the Florida Bar; 2) Mr. Bandklayder has served as counsel to Allied for several years and advises Allied in this proceeding; and 3) Mr. Allen was retained by Allied and has advised Allied since the start of this proceeding.

Allied asserts that TECO and Odyssey never, until now, expressed any concern over attorneys reviewing confidential information in this case. Allied states that TECO's previously asserted justifications for limiting disclosure were to protect Odyssey's trade secrets and to prevent a chilling effect on TECO's ability to negotiate for at-risk load. Allied maintains that neither concern is affected by limiting the number of attorneys who enter into the protective agreement.

Allied states that neither TECO nor Odyssey has been limited in the number or type of attorneys who sign the agreement. Allied notes that Scott A. Fuerst became the third attorney for Odyssey to sign the protective agreement.

TECO does not object to Mr. Bandklayder signing the agreement but does object to Mr. Allen doing so. TECO states that Mr. Bandklayder is acceptable because he has been representing Allied in this proceeding.

TECO claims that Allied wants Mr. Allen involved "as a mechanism for gathering confidential information for use in other contemplated or potential legal proceedings in other forums." As further justification for his exclusion, TECO claims that Mr. Allen is not representing Allied in this proceeding, but rather is providing advice and counsel. Finally, based on information in Martindale-Hubble (a directory of lawyers), TECO claims that Mr. Allen's area of expertise is antitrust law, and that his experience is not relevant to this case.

Odyssey shares TECO's positions on Mr. Bandklayder and Mr. Allen. Odyssey further contends that Mr. Fuerst's authorization to review confidential information is not comparable to Mr. Bandklayder and Mr. Allen reviewing confidential information. The distinction, claims Odyssey, is that Mr. Fuerst has acted in a capacity similar to a general counsel to Odyssey and Sentry

throughout this litigation. Odyssey notes that Mr. Fuerst also represented Odyssey and Sentry in CISR negotiations with TECO.

TECO and Odyssey have cited no law that enables one party to restrict the opposing party's selection of counsel or the opposing party's right to share information produced through discovery with its counsel. TECO acknowledges as much in its response by stating, it "has neither the right nor the desire to limit the nature and scope of Allied/CFI's legal representation."

TECO objects to Mr. Allen's participation because TECO suspects he will be using confidential information from this proceeding in other proceedings. The protective agreement bars Mr. Allen from doing this. If Allied litigates related claims, it will have to initiate an entirely independent discovery process. If, in a future claim, Allied introduces into evidence any information obtained in this docket that was not independently produced in the future proceeding, TECO would know and could take action against Allied. TECO has cited no authority that would allow me to limit Allied's selection of counsel based on speculation that Allied might violate the protective agreement, and I am aware of no such authority.

TECO also objects to Mr. Allen because he might help Allied formulate claims for related proceedings. TECO has cited no authority that would allow me to limit Allied's selection of counsel for that reason, and I am aware of no such authority.

TECO attempts to support its argument by claiming that Mr. Allen's area of expertise, antitrust law, is not relevant to the issues in this docket. TECO cites no authority for excluding Mr. Allen from signing the protective agreement based on the relevance of his past legal experience, and I am aware of no such authority. I would note that according to Martindale-Hubbe, Odyssey's attorney, Scott Fuerst, specializes in real estate law, yet TECO did not object to his entering into the protective agreement.

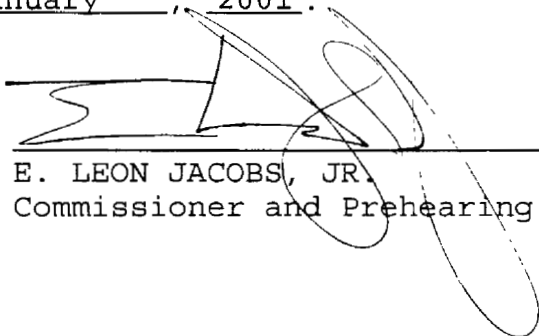
Finally, TECO attempts to support its position by claiming that Mr. Bandklayder is representing Allied in this proceeding but that Mr. Allen is not, so Mr. Allen should not be able to sign the protective agreement. Allied asserts that both attorneys have provided counsel to Allied since the beginning of this proceeding, but that Mr. Bandklayder also provided counsel to Allied before this proceeding started. In fact, neither attorney has filed a Notice of Appearance in this case, so neither is representing

Allied in this docket. To properly represent Allied in this docket, both individuals must file notices of appearance. Allied's Motion for Authorization to Disclose Confidential Information Pursuant to Protective Agreement is granted subject to each lawyer filing a notice of appearance in this docket.

Based on the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr., as Prehearing Officer, that the Motion for Authorization to Disclose Confidential Information Pursuant to Protective Agreement filed by Allied Universal Corp., and Chemical Formulators, Inc. is granted subject to each lawyer filing a notice of appearance in this docket.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 2nd Day of January, 2001.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

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Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) 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 wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.