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January 29, 2001

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Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, FL 32399-0850

Re: Docket No.000061-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") are the original and fifteen copies of Allied/CFI's Motion for Reconsideration. Also enclosed is a disk in WordPerfect 6.0 format containing Allied/CFI's Motion for Reconsideration.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me. Thank you for your assistance with this filing.

Sincerely,



John R. Ellis

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Allied Universal)
Corporation and Chemical Formulators,)
Inc. against Tampa Electric Company)
for violation of Sections 366.03,)
366.06(2) and 366.07, Florida Statutes,)
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

Filed: January 29, 2001

ALLIED/CFI'S MOTION FOR RECONSIDERATION

Allied Universal Corporation ("Allied") and its affiliate, Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, and pursuant to Rule 25-22.0376, Florida Administrative Code, move for reconsideration of Order No. PSC-01-0231-PCO-EI issued on January 24, 2001 ("Order on TECO's Motions to Compel" or "the Order"), and state:

1. This docket is set for final hearing on February 19, 2001. Allied/CFI expects and intends to proceed with the final hearing as scheduled.
2. On September 14, 2000, Tampa Electric Company ("TECO") served its first set of interrogatories (nos. 1-24) and first request for production of documents (nos. 1-12) to Allied/CFI. In response, pursuant to Order No. PSC-00-0392-PCO-EI Allied/CFI served objections on September 25, 2000, and served answers to the interrogatories and responses to the request for production on October 4, 2000. At that time, the final hearing was set for October 31, 2000.
3. On October 9, 2000, TECO filed motions to compel further answers to the interrogatories and further responses to the request for production. Those motions are the subjects

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of the Order on TECO's Motions to Compel. On October 23, 2000, Allied/CFI filed responses in opposition to the motions to compel. In the interim, at a status conference on October 13, 2000, the final hearing date of October 31, 2000 was continued on Allied/CFI's motion.

4. The Order on TECO's Motions to Compel was issued on January 24, 2001. It orders Allied/CFI to provide answers to TECO's interrogatories nos. 2(b)-(e), 3, 8 and 9, and documents in response to TECO's requests nos. 1, 2 and 3, **by the close of business on Friday, January 26, 2001**, to the Commission's staff and to TECO. The Order prohibits disclosure to Intervenors Odyssey Manufacturing Company ("Odyssey") and Odyssey's affiliate Sentry Industries, Inc. ("Sentry").

5. Interrogatories nos. 2(b)-(e), 3, 8 and 9 (and their predicate, interrogatories nos. 1 and 2(a) and Allied/CFI's answers thereto) are as follows:

1. **List each of the bleach products and related speciality chemicals produced by Allied/CFI.**

[Answer:] Please see the attached "Allied Universal Corporation Product List."

2. **For each product identified in response to Interrogatory No. 1, please provide the following information:**

- (a) **The principal applications or uses for each product;**

[Answer:] The principal application or use for each of the products listed in answer to Interrogatory No. 1 is sanitation, primarily water purification and wastewater treatment.

- (b) **The annual volume of each product produced by Allied/CFI, by manufacturing facility;**

- (c) **Allied/CFI's market share in Florida for each product;**

- (d) **Allied/CFI's 15 largest customers (by volume sold) for each product; and**

- (e) Allied/CFI's annual gross revenue derived from the sale of each product in Florida.
- 3. Please identify Allied/CFI's competitors in Florida for each of the products identified in response to Interrogatory No. 1.
- 8. List each bid or written offer made in direct competition with Odyssey Manufacturing Company by Allied/CFI since October 1, 1998, for the sale of one or more the products identified in response to Interrogatory No. 4.
- 9. For each bid or offer identified in response to Interrogatory No. 8, provide the following information:
 - (a) The identify of the customer to whom the bid or offer was submitted;
 - (b) The product to be sold;
 - (c) The date on which the bid or offer was submitted to the customer;
 - (d) A detailed description of the price, terms and conditions bid or offered;
 - (e) An explanation of how the price offered or bid was calculated;
 - (f) The identity of the person or persons who formulated the bid or offer;
 - (g) The identity of the person or persons who presented or delivered the bid or offer to the customer;
 - (h) The price, terms and conditions bid or offered by Odyssey Manufacturing Company;
 - (i) The Customer's response to Allied/CFI's bid or the offer or current status of the bid or offer; and
 - (j) The substance of any communications between Allied/CFI and the customer with regard to Odyssey Manufacturing's bid or offer.

Additionally, interrogatory no. 4 and Allied/CFI's answer thereto are as follows:

- 4. Please identify the products identified in response to Interrogatory No. 1 that Allied/CFI sells in competition with Odyssey Manufacturing Company in Florida.

[Answer:] Sodium hypochlorite.

6. Requests for production nos. 1, 2 and 3 state as follows:
 1. **Provide all documents created by or for Allied/CFI that relate to the topic of competition between Allied/CFI and Odyssey Manufacturing Company ("Odyssey") in Florida, including but not limited to: market analyses, marketing strategies or evaluations of competitors, to the extent that such documents discuss or pertain to Odyssey.**
 2. **Provide all documents created by or for Allied/CFI that relate to Allied/CFI's ability to compete in the Florida market for the sale of bleach or bleach products.**
 3. **Provide all documents that relate to competitive bids or formal proposals made by Allied/CFI for the sale of bleach to customers in Florida, including, but not limited to: requests for proposals, bids or offers submitted, workpapers detailing development of bids or offers, bidding strategy, timing of submission of bids or offers, acceptance of bids or offers by customers and information with regard to competing bids or bidders.**

6. It is undisputed that the interrogatories and requests at issue call for extremely sensitive trade secret information which Allied/CFI has not disclosed publicly. It is also undisputed that Allied/CFI makes no claim for damages in this proceeding, and that the Commission does not have jurisdiction to award damages. See, e.g., Southern Bell T.&T. V. Mobile American Corporation, Inc., 291 So. 2d 199 (Fla. 1974).

7. Allied/CFI objected to each of the four interrogatories at issue on the following grounds:

Allied/CFI objects to [each of the four interrogatories] on the grounds that [it] calls for trade secret information, and that the information requested is not relevant to the subject matter of this proceeding and not calculated to or likely to lead to the discovery of evidence which would be admissible in this proceeding. See, Southern Bell T.&T. v. Mobile American Corporation, Inc., 291 So.2d 199 (Fla. 1974).

8. Allied/CFI objected to each of the three requests for production at issue on the following grounds:

Allied/CFI objects to [each of these requests] on the grounds that it calls for trade secret information, and that it calls for documents containing information which is not relevant to the subject matter of this proceeding and not calculated to or likely to lead to the discovery of evidence which would be admissible in this proceeding. See, Southern Bell T.&T. v. Mobile American Corporation, Inc., 291 So.2d 199 (Fla. 1974).

9. This proceeding involves the disparity between TECO's responses to : (1) Odyssey's 1998 request for discounted rates under TECO's Commercial/Industrial Service Rider ("CISR") tariff for electric service to a liquid chlorine bleach manufacturing plant which Odyssey proposed to build; and (2) Allied/CFI's 1999 request for the same discounted CISR tariff rates for electric service to an essentially identical liquid chlorine bleach manufacturing plant which Allied/CFI proposed to build. It is undisputed that the cost of electric service accounts for approximately one-half of the variable cost of manufacturing bleach using the new plant technology in question, and that the cost of electric service therefore is a critical factor the ability of Odyssey and Allied/CFI to compete with each other using the new plant technology.

10. On January 22, 2001, Allied/CFI filed the rebuttal testimony of four witnesses demonstrating, among other matters: (1) that Allied/CFI complied with the CISR tariff requirement that an applicant must demonstrate that existence of a viable, lower cost alternative to taking electric service from TECO; (2) that Odyssey did not comply with this requirement; (3) that Allied/CFI knew that it was being offered a higher CISR tariff rate than Odyssey's, although it did not know how much higher its offered rate was; and (4) that the dollar difference in just two of the terms of the CISR tariff rates offered to and accepted by Odyssey and the CISR tariff rates offered to and rejected

by Allied/CFI is a very substantial and significant amount over the periods of the two offers. As stated in the prefiled rebuttal testimony of Allied/CFI's expert witness, Dr. Charles F. Phillips, no public utility should have such authority or power over the success or failure of two business competitors, and economic regulation of public utilities was undertaken in part to prevent just such price discrimination.

11. The Order on TECO's Motions to Compel finds that the first two interrogatories are relevant because: "The information TECO seeks is relevant to determining whether Allied has standing. . . . The information is relevant to assessing harm to Allied, and is therefore relevant to determining whether Allied's substantial interests are affected." Order, at p. 5. The Order continues with respect to interrogatories nos. 8 and 9:

With respect to relevance, I find that these questions are reasonably calculated to lead to evidence admissible at the hearing. Specifically, the questions may produce evidence on harm to Allied as a result of TECO's implementation of the CISR tariff. Therefore, the questions are within the scope of discovery.

Order, at p. 9.

12. There are three issues of fact or law that have been overlooked or have not been considered in the Order and that require modification of the Order on reconsideration. The three issues are discussed individually below.

13. First, the harm to Allied/CFI that is relevant in this proceeding is the economic disadvantage to Allied/CFI's ability to compete with Odyssey if Allied/CFI's plant had been built, not the harm to Allied/CFI resulting from the fact that Allied/CFI's plant has not yet been built. Allied/CFI's ability to compete without a new plant, and the voluminous and extremely sensitive trade secret information concerning its competition since 1998 with Odyssey and other companies in Florida, is not relevant to its claims before the Commission concerning the disparity in TECO's

responses to Odyssey and to Allied/CFI. Instead it is Allied/CFI's ability to compete with Odyssey with a new plant but served at a substantial disparity and disadvantage in TECO's rates compared to Odyssey's rates, that is the harm which must be proved in this proceeding.¹

14. To the extent that Allied/CFI is required in this proceeding to show harm resulting from TECO's offer of CISR tariff rates to Odyssey despite Odyssey's non-compliance with the CISR tariff requirements, on the issue of Allied/CFI' standing to assert that Odyssey's Contract Service Agreement with TECO should be invalidated, the fact of harm to Allied/CFI is admitted by both TECO and Odyssey. TECO's admission of this fact is contained in the March 27, 1998 memorandum prepared by Patrick Allman entitled "Potential New Industrial Customer-Bleach Plant," (Copies of the memorandum and drafts are Confidential Exhibit - (RMN-19) to the prefiled Rebuttal Testimony of Robert M. Namoff). Odyssey's admission of this fact was made by its President and Chief Executive Officer, Stephen W. Sidelko, at his deposition on December 1, 2000 (at page 22, lines 5-25 and at pages/lines 72:25 - 75:10). As distinct from the fact of harm to Allied/CFI from Odyssey's having obtained an advantageous rate for electric service for which it did not qualify, evidence concerning Allied/CFI's market share, customers, and revenues as evidence of the extent of that harm is not relevant to this proceeding and is not reasonably calculated to lead to the discovery of evidence which will be admissible in this proceeding.

15. Interrogatories 2(b)-(e), 3, 8 and 9 and request nos. 1, 2, and 3 are directed to Allied/CFI's competition with Odyssey from 1998 to the present. The issue of the harm to Allied/CFI's ability to compete with Odyssey from 1998 to the present is not before the Commission,

¹Production of approximately five hundred pages of documents documenting Allied/CFI's preparation and willingness to build the new plant, was made to TECO on January 19, 2001.

because the Commission does not have jurisdiction to award damages to Allied/CFI. The disclosure to TECO and to the Commission's staff of trade secret information concerning Allied/CFI's current competition with Odyssey will not lead to the discovery of evidence which will be admissible in this proceeding. Instead, it is an attempt by TECO to begin conducting discovery in this proceeding on an issue which would be relevant only if and when Allied/CFI files an action against TECO alleging damages resulting from the disparity in TECO's responses to Odyssey's and to Allied/CFI's requests.

16. The second issue of fact or law requiring reconsideration is that the scope of the information ordered to be disclosed and the time period allowed for disclosure under the Order are unreasonably overbroad and short. Allied/CFI was acting within its rights to stand on its objections that TECO's discovery requests call for trade secret information on issues of damages which are beyond the jurisdiction of the Commission. The Order gave Allied/CFI only 48 hours, on the eve of the depositions of its four witnesses (currently scheduled for January 31 and February 1 and 5), to produce voluminous and extremely sensitive trade secret information identifying its market share, its largest customers, its volume of sales by product line, and its revenues by product line of all of its products sold in Florida since 1998. As stated in Allied/CFI's answer to interrogatory no. 4, there is one product which Allied/CFI sells in direct competition with TECO, namely liquid chlorine bleach (sodium hypochlorite). Even if evidence concerning Allied/CFI's existing ability compete with Odyssey was relevant to an issue before the Commission in this proceeding, the Order should have limited discovery on that issue to the one product line identified.

17. Concerning the time period in which Allied/CFI was ordered to respond, it must be noted that as recently as January 4, 2001, Allied/CFI was receiving the last installment of TECO's documents in response to Allied/CFI's first request for production of documents (nos. 1-14) which

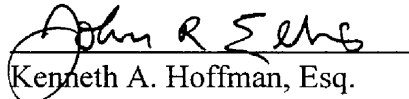
had been served on TECO on February 2, 2000. The balance of the responsive documents were not produced by TECO to Allied/CFI until August 14, 2000 and October 24, 2000. TECO was permitted to delay for months, with repeated motions for reconsideration, its production of these documents to Allied/CFI which were undisputedly relevant to Allied/CFI's claims in this proceeding. Now, on the eve of the final hearing and within days of Allied/CFI's witnesses' depositions, the Order directed Allied/CFI to produce within 48 hours voluminous and extremely sensitive trade secret information that is not relevant to Allied/CFI's claims in this proceeding and that is relevant only to potential claims that Allied/CFI has not yet asserted and that undisputedly are beyond the jurisdiction of the Commission. The Order contains no discussion of these issues of scope and timing.

18. The third issue of fact or law which has been overlooked or has not been considered in the Order is that, if and when Allied/CFI files an action alleging damages caused by TECO's responses, under the Federal Rules of Civil Procedure TECO (and Odyssey) would be limited to one deposition of each witness, and would be required to complete each deposition within six hours, unless it could be demonstrated on motion that additional time was required. Here, the Order not only would give TECO (and ultimately Odyssey) a "jump start" on damages discovery that is relevant only to an action which has not been filed, at a time when Allied/CFI must prepare for the final hearing in this proceeding; it would also give TECO and Odyssey an extra deposition of each Allied/CFI witness on the subject of damages. Although Allied/CFI expects and intends to proceed with the final hearing on February 19, 2001, it cannot be expected to give full discovery to TECO on irrelevant damages issues on 48 hours' notice in the midst of preparation for the final hearing in this case, as a condition to going forward with the final hearing on February 19.

19. In the interest of keeping the final hearing date of February 19, 2001 and of going forward with the depositions of its four witnesses scheduled for January 31 and February 1 and 5, 2001, Allied/CFI will produce documents in response to requests nos. 1, 2, and 3 for the four counties of Hillsborough, Pasco, Polk and Pinellas in which TECO provides electric service, and will answer interrogatory no. 3 with respect to sodium hypochlorite. Production of those documents will be made to TECO pursuant to the Protective Agreement and to the Commission's staff by the close of business on Monday, January 29, 2001. The Allied/CFI witnesses most knowledgeable concerning those documents, Mr. James W. Palmer, will be prepared to identify and discuss the documents at his deposition scheduled for Thursday, February 1. Allied/CFI's production of those documents and its disclosure of this information is made: (1) without waiver of the objections it has asserted and without waiver of its request for relief made by this motion; and (2) for the reason that Allied/CFI believes that production of these documents will demonstrate that TECO's discovery requests are not reasonably calculated to lead to the discovery of evidence which will be admissible at the final hearing.

WHEREFORE, Allied/CFI requests that its motion for reconsideration be granted, and that TECO's motions to compel be denied.

Respectfully submitted,



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Attorneys for Allied Universal Corporation and
Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Motion for Reconsideration was furnished by U. S. Mail or by hand delivery(*) or by facsimile telecopier (**) to the following this 29th day of January 2001:

Robert V. Elias, Esq.(*)
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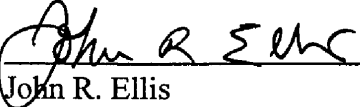
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