

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Allied Universal)
Corporation and Chemical Formulators,)
Inc. against Tampa Electric Company.)
_____)

DOCKET NO. 000061-EI
FILED: February 15, 2001

**TAMPA ELECTRIC COMPANY'S
MOTION TO DISMISS COMPLAINT
AND REQUEST FOR EXPEDITED RESPONSE**

Tampa Electric Company ("Tampa Electric" or "the company") moves the Commission for entry of an order dismissing for lack of standing the complaint filed in this proceeding and, as grounds therefor, says:

1. As Staff has indicated in its Staff Recommendation dated February 2, 2001 filed in this proceeding, in order to have standing, Allied Chemical Corporation and Chemical Formulators, Inc. ("Allied/CFI") must suffer actual and immediate injury. Citing Agrico Chemical Co. v. Department of Environmental Protection, 406 So.2d 478, 482 (Fla. 2nd DCA 1981), the Staff Recommendation points out that this standard was cited in the Commission Order No. PSC-01-0231-PCO-EI in which Allied/CFI was ordered to respond to various interrogatories and requests for production of documents.

2. The Staff's February 2, 2001 recommendation goes on to state:

Allied would not have standing if the only relevant harm occurs if the 'plant had been built.' This type of harm is theoretical not actual.

3. When tested against the foregoing legal requirements for standing, Allied/CFI's own pleading filed in this case demonstrate that the standard is not met. In its January 29, 2001 Motion for Reconsideration of Order No. PSC-01-0231-PCO-EI, the very order that recited the

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legal requirements for standing, Allied/CFI alleges that 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. . .

4. Allied's Motion for Reconsideration goes on to allege that it is:

Allied/CFI's ability to compete with Odyssey with a new plant but served at a substantial disparity in disadvantage in TECO's rates compared to Odyssey's rates, that is the harm which must be proved in this proceeding. (emphasis in original; footnote omitted)

5. By its own admission in its Motion for Reconsideration Allied/CFI lacks standing in that it claims that the only relevant harm occurs if the "plant had been built." This is exactly the type of theoretical non-actual harm which the Prehearing Officer in Order No. PSC-01-0231-PCO-EI and the Staff in their February 2, 2001 recommendation concludes is not actual and immediate injury under the standard articulated in Agrico Chemical Co. v. Department of Environmental Protection, supra. It follows that Allied/CFI's complaint should be dismissed based on Allied/CFI's lack of standing.

6. Allied/CFI also lacks standing because its complaint fails to meet the requirement in the Agrico decision that its alleged injury must be of the type or nature that the proceeding is designed to protect. In applying this "zone of interest" test, the court in Agrico stated that mere economic interest is insufficient. This Commission has adhered to the zone of interest test. In dismissing a petition on proposed agency action by certain solar energy interests in Tampa Electric's 1994 demand side management plan proceeding, the Commission, after discussing the Agrico zone of interest test, concluded:

We do not agree with ISPC/SOLAR's position. While FEECA encourages the use of solar energy and other renewable resources,

it was not designed to protect the economic interests of the solar industry.¹

Here, too, the complainants are attempting to use the regulatory arm of the Commission to advance their competitive economic interests ahead of a competitor. This effort should be dismissed based on the holding in Agrico.

7. Given the proximity of the hearing in this cause, Tampa Electric requests that the Commission require the parties to respond to this Motion at the outset of the hearing scheduled for February 19, 2001.

8. This Motion to Dismiss is predicated on Allied/CFI's recent admission that the injury alleged is the speculative economic disadvantage to Allied/CFI's ability to compete with Odyssey if Allied/CFI's plant had been built. Thus, the 20 day time limitation on motions to dismiss set forth in Rule 28-106.204 of the uniform rules is either inapplicable or excused.

WHEREFORE, Tampa Electric moves the Commission for entry of an order dismissing the complaint of Allied/CFI for lack of standing and requests that the parties be required to respond to this Motion at the outset of the February 19, 2001 hearing in this cause.

¹ In re: Approval of Demand-Side Management Plan of Tampa Electric Company, Order No. PSC-95-1346-S-EG, issued in Docket No. 941173-EG on November 1, 1995, at page 5.

DATED this 15th day of February 2001.

Respectfully Submitted

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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion to Dismiss Complaint and Request for Expedited Response, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 15th day of February 2001 to the following:

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