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March 1, 2001

By Hand Delivery

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

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RECORDS AND REPORTING

Re: Docket No.000061-EI

Dear Ms. Bayo:

Enclosed for filing on behalf of Allied/CFI are the original and fifteen copies of Allied/CFI's Response in Opposition to TECO's Motion to Dismiss.

Please acknowledge this filing by date 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
John R. Ellis

JRE/sy
Enclosures

- APP _____
- CAF _____
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Parties of Record

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02805 MAR-16
FPSC-RECORDS/REPORTING

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: March 1, 2001

ALLIED/CFI'S RESPONSE IN OPPOSITION TO TECO'S MOTION TO DISMISS

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 28-106.204, Florida Administrative Code, hereby submit their response in opposition to the Motion to Dismiss filed by Tampa Electric Company ("TECO"), and state:

1. TECO's motion to dismiss must be denied as having been untimely filed. Rule 28-106.204(2), Fla. Admin. Code, clearly requires that a motion to dismiss a petition involving disputed issues of material fact must be filed no later than 20 days after service of the petition:

Unless otherwise provided by law, motions to dismiss the petition shall be filed no later than 20 days after service of the petition on the party.

Allied's petition initiating this proceeding was served on TECO on January 20, 2000. TECO's motion to dismiss was not filed until one year later, on February 15, 2001. TECO's motion to dismiss is untimely by more than one year.

2. TECO's motion to dismiss is based on the single premise that Allied/CFI's statement of its contention (in its January 29, 2001 motion for reconsideration) concerning the relevance of

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certain discovery sought by TECO on issues of damages, must be considered to be an admission that Allied/CFI has not been damaged and, therefore, that Allied/CFI lacks standing to seek any relief in this proceeding. TECO's premise is absurd on its face and its motion is frivolous particularly in view of the fact that the motion was filed on the eve of the final hearing.

3. This docket involves the disparity between TECO's responses to: (1) Odyssey's 1998 request for discounted CISR tariff rates 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. The five issues presented to the Commission for decision in this proceeding, as stated in the draft Prehearing Order, are:

- Issue 1: Has TECO acted in violation of its CISR tariff, Commission Order No. PSC-98-1081A-FOF-EI, or relevant sections of the Florida Statutes in its response to Odyssey's request for CISR tariff rates?
- Issue 2: Has TECO acted in violation of its CISR tariff, Commission Order No. PSC-98-1081A-FOF-EI, or relevant sections of the Florida Statutes in its response to Allied's request for CISR tariff rates?
- Issue 3: Do the differences, if any, between the rates, terms and conditions stated in TECO's letter of October 18, 1999, to Allied and those agreed to between TECO and Odyssey constitute a violation of relevant Florida Statutes, the requirements of Commission Order No. PSC-00-1081A-FOF-EI, or the CISR tariff?
- Issue 4: Based on the resolution of Issues 1-3, what actions, if any, should the Commission take with respect to Odyssey, Allied and TECO?
- Issue 5: Does Allied have standing to maintain their complaint in this proceeding?

4. Allied/CFI's motion for reconsideration filed January 29, 2001, stated Allied/CFI's contention that the only relevance of any issues of damages to the issues to be decided by the Commission in the proceeding, involves the economic disadvantage to Allied/CFI's ability to compete with Odyssey if Allied/CFI's plant had been built and had been served at discriminatory rates, rather than the harm to Allied/CFI resulting from the fact that Allied/CFI's plant has not yet been built. Allied/CFI's contention is based on the acknowledged fact that the Commission lacks jurisdiction over any claim for damages. Therefore, Allied/CFI stated its contention that its ability to compete without a new plant, and the voluminous information sought by TECO's discovery requests including trade secret information concerning Allied/CFI's competition since 1998 with Odyssey and other companies in Florida, was not relevant to the issues being presented to the Commission for decision in this proceeding. Allied/CFI respectfully disagrees with the Prehearing Officer's decision and with the Commission's decision on reconsideration as to this issue; but Allied/CFI's contention as to the relevance of discovery on damages issues is obviously not an admission that Allied/CFI has not been damaged.

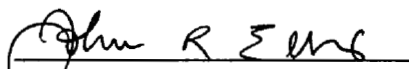
5. On January 22, 2001, Allied/CFI filed the rebuttal testimony of four witnesses demonstrating, among other matters: (1) that Allied/CFI complied with the CISR tariff requirement that an applicant must demonstrate that existence of a viable, lower cost alternative to taking electric service from TECO; (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. Allied/CFI clearly has standing to pursue its claims in this proceeding because the obvious purpose of Sections 366.03, 366.06(2) and 366.07, Fla. Stat., is to protect a disfavored customer such as Allied/CFI from the damages caused by the granting of preferential rates to the customer's business competitor. This purpose is demonstrated by the history of the interpretation of such statutory provisions in Florida and other states since the turn of the last century.

6. At the final hearing on February 19, 2001, a settlement in principle was agreed to between Allied/CFI and TECO and was announced on the record. But for the fact that Allied/CFI expects and intends to proceed with the settlement as agreed, an award of attorney's fees against TECO would be appropriate in connection with this frivolous motion.

WHEREFORE, Allied/CFI requests that TECO's motion to dismiss be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Response in Opposition to TECO's Motion to Dismiss was furnished by U. S. Mail or by hand delivery(*) or by facsimile telecopier (**) to the following this 1st day of March 2001:

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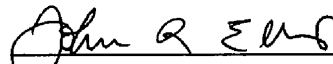
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