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March 20, 2001

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Re: Docket No. 000061-EI Allied/CFI v. TECO

Dear Ms. Bayo:

On behalf of Odyssey Manufacturing Company and Sentry Industries, Inc. (the Intervenors), this will provide our preliminary comments on the draft Settlement Agreement among the Complainants, Allied Universal Corporation and Chemical Formulators, Inc., and the Respondent, Tampa Electric Company.

The draft was provided to us by counsel for Respondent on March 3, 2001. Over the last two and one half weeks, we have been repeatedly advised that execution of the draft Settlement Agreement by the Complainants and the Respondent, and its filing with the Commission, was imminent.

The draft, as provided to us, consists of nine pages, together with an unexecuted General Release of the Respondent by the Complainants, identified thereon as Exhibit "C." At no time have we been provided with the Contract Service Agreement (CSA), identified as Exhibit "A," or the force majeure clause, identified as Exhibit "B." A reasonable opportunity to review and comment on the latter two exhibits is a critical factor in determining the positions the Intervenors would take on the settlement purportedly contemplated by the Complainants and the Respondent.

In that regard, the Commission should be aware that the Intervenors have been excluded from settlement discussions involving the Complainants and the Respondent, from the inception of those discussions. Counsel for the Respondent has advised us that our exclusion has been at the insistence of the Complainants. This exclusion is exemplified by our inability by telephone to be put through to counsel for the other parties engaged in settlement discussions on February 19, 2001, during an adjournment of the Commission hearing granted to facilitate settlement discussions among the parties. Later that day, when we attempted to present our suggested approach for a "global" settlement involving all parties to counsel for the Respondent, we were led to believe our approach was untimely raised.

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I should add that there were in fact discussions involving counsel for the Intervenors and the Respondent regarding potential terms and conditions of a "bilateral" settlement solely involving those parties. These discussions bore no fruit, and, unless agreed to by counsel for the Respondent, we shall refrain from commenting on their substance.

The draft provides, in paragraph 2, that

> Pursuant to its Commercial Industrial Service Rider ("CISR") tariff, TECO and Allied/CFI shall execute a Contract Service Agreement ("CSA") for electric service to a new sodium hypochlorite manufacturing facility to be constructed and operated by Allied/CFI and/or their affiliate(s) in TECO's service territory, upon the same rates, terms and conditions as those contained in the existing CSA between TECO and Odyssey, provided that the new sodium hypochlorite manufacturing facility must begin commercial operations within 24 months from the date of the PSC's order approving this settlement agreement. The TECO-Allied/CFI CSA shall be in a form substantially identical to the CSA attached hereto as Exhibit "A", and shall include the force majeure clause attached to this settlement agreement as Exhibit "B".

The draft further provides, in paragraph 10, that

> Tampa Electric has agreed not to disclose to Odyssey or Sentry, absent Commission authorization or Allied/CFI's express written approval, the force majeure provision attached hereto as Exhibit "B" in light of Allied/CFI's position that this provision constitutes confidential, proprietary business Information. To the extent it may be deemed necessary to file Exhibit "B" with the PSC in connection with the PSC's approval of this settlement agreement, it shall be filed under seal and protected against disclosure to Odyssey, Sentry and others.

The phrase "substantially identical" to the CSA to be attached as Exhibit "A", as set forth in paragraph 2, is amorphous and therefore inappropriate. The Commission should not be placed in the precarious position of later being called upon to interpret whether deviations from what will be attached to this settlement agreement are substantial or not. The Complainants and the Respondent have had more than ample time to negotiate their CSA. They should not be permitted to further stray from the representation by counsel for

the Complainants on February 19, 2001, that "We'll take their [Odyssey's] deal word for word. Just change the names and the dates and the starting times." (T. 31)

The nondisclosure of the force majeure clause to the Intervenors is wholly unacceptable. As I stated at the February 19, 2001 hearing,"force majeure, of course, can be defined to include just about anything." (T. 52) The Intervenors suspect that the Complainants have taken substantial liberties with the term's traditional coverage. The Intervenors must not be put to any disadvantage, legal or otherwise, through a broad assertion of privilege. Simply put, the Intervenors will vigorously oppose any effort to provide greater protection to the Complainants' CSA than that accorded to Odyssey's own CSA during the course of this proceeding.

If Complainants do not yield on this point, and were the Commission inclined to sustain greater confidentiality protection to the Complainants' CSA than granted to the Odyssey CSA, there are a number of other provisions within the draft which the Intervenors would vehemently oppose. For example, Intervenors would oppose the provisions of

> paragraph 1, which provides for the admission into evidence, without the opportunity of cross-examination and other challenge, of all "prefiled testimony, deposition testimony, and exhibits thereto, which have been filed in the PSC litigation to date....as a record basis for the PSC's prudence review in this docket";
>
> subparagraphs 4(a)and (c) which provide findings of fact favorable to the Complainants' CSA;
>
> subparagraphs 7(a), which purports in part to foreclose any further challenge to Complainants' CSA or the rates, terms, or conditions contained therein.

The Intervenors cannot be bound by (nor will they agree or acquiesce to) what they have not seen.

Two other provisions of the draft merit discussion, keeping in mind the Complainants' oft-repeated assertions of their intent to sue the Intervenors, and certain individuals in their employ.

Paragraph 5 provides in pertinent part that the Complainants agree not to contest certain findings of fact, rulings and determinations, "provided that no findings of fact or conclusions of law shall be made with respect to the allegations of Allied/CFI's Complaint in this proceeding." More precision as to what allegations are being referred to is needed for this paragraph to have any coherence.

Also, the Intervenors are dismayed with paragraph 7(c) of this draft, which provides

> The Commission order approving the settlement proposed herein shall have no precedential value.

This provision is utterly internally inconsistent with the balance of the draft. The Intervenors are unable to reconcile this provision with the substantive findings of fact, conclusions of law, and other assurances intended to bind the parties and the Commission on the matters addressed therein. We further oppose any effort to accord some sort of second-rate status to a Commission order in this case, which would not be fairly applied to other comparable Commission orders. Again, given the Complainants' avowed intention to pursue other legal remedies before other forums, and in light of the Commission's own exclusive jurisdiction over many of the matters raised in this proceeding, the Intervenors vehemently oppose any provision which would likely confound a state circuit court or federal district court judge, or otherwise needlessly complicate litigation before them, in determining the significance of any order approving settlement of this proceeding.

The Intervenors appreciate this opportunity to provide comments on the draft settlement. We look forward to discussing this matter at the April 3, 2001, agenda conference.

Sincerely,

Wayne L. Schiefelbein

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Copies to: All counsel of record

March 20 odyssey letter.doc