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May 4, 2004

HAND DELIVERED

Ms. Blanca S. Bayo, Director  
Division of Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Allied Universal Corporation and Chemical Formulators, Inc.'s Petition to Vacate Order No. PSC-01-1003-AS-EI Approving, as Modified and Clarified, the Settlement Agreement Between Allied Universal Corporation and Chemical Formulators, Inc., and Tampa Electric Company and Request for Additional Relief; FPSC Docket No. 040086-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Answer of Tampa Electric Company to Public Counsel's Motion for Public Service Commission to Examine the Contract Service Agreement between TECO and Odyssey.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

Sincerely,

  
James D. Beasley

JDB/pp  
Enclosure

cc: All Parties of Record (w/enc.)

DOCUMENT NUMBER DATE

05123 MAY-4 2004

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Allied Universal Corporation and )  
Chemical Formulators, Inc.'s Petition to )  
Vacate Order No. PSC-01-1003-AS-EI )  
Approving, As Modified and Clarified, the )  
Settlement Agreement Between Allied )  
Universal Corporation and Chemical )  
Formulators, Inc. and Tampa Electric )  
Company and Request for Additional )  
Relief )  
\_\_\_\_\_ )

Docket No. 040086-EI

Filed: May 4, 2004

**Answer of Tampa Electric Company to Public Counsel's  
Motion for Public Service Commission To Examine The  
Contract Service Agreement Between TECO And Odyssey**

Pursuant to Rule 28-106.204, F.A.C., Tampa Electric Company ("Tampa Electric") hereby files its Answer in opposition to the *Motion for Public Service Commission To Examine The Contract Service Agreement Between TECO And Odyssey*, filed by the Office of Public Counsel ("OPC") on April 23, 2004 (the "Motion"). As explained in more detail below, OPC's assertion that the Commercial Industrial Service Rider ("CISR") tariff rate negotiated between Tampa Electric and Odyssey Manufacturing Company is in violation of Tampa Electric's CISR Tariff or that Tampa Electric's CISR tariff is in violation of Order No. PSC-98-1081-FOF-EI is nothing more than an attempt to rekindle a dispute that the Commission has definitively addressed and conclusively resolved. The nature and derivation of the Odyssey CISR rate was thoroughly vetted by the Commission Staff and the Commission in Docket No. 000061-EI. In approving the Odyssey CISR rate and Contract Service Agreement ("CSA"), the Commission found the Odyssey rate to be reasonable on the basis of uncontroverted record evidence. OPC did not exercise its right to timely request reconsideration of the Commission's approval of the Odyssey CSA three years ago and has failed to identify and substantiate a single error of law or fact that

would justify the relief requested. Tampa Electric respectfully submits that OPC's Motion is nothing more than an untimely and groundless request for rehearing of Order No. PSC-01-1003-AS-EI that should be denied. In support whereof, Tampa Electric says:

1. Pursuant to Order No. PSC-98-1081-FOF-EI, issued on August 10, 1998, this Commission approved Tampa Electric's CISR tariff and Pilot Study Implementation Plan. The CISR tariff was intended to allow Tampa Electric to avoid uneconomic bypass of its system. Uneconomic bypass was presumed to occur when a customer left or avoided the company's system to take advantage of a price for electric service elsewhere that was lower than Tampa Electric's normally applicable rate but above the Company's marginal cost to serve the customer in question. The CISR tariff permitted Tampa Electric to negotiate a rate between its marginal cost to serve a particular customer and the rate otherwise applicable to that customer in order to preserve, for its general body of ratepayers, a contribution to fixed costs represented by such "at risk" loads. Negotiated rates within the above-mentioned range were to be based on the cost of electric service alternatives available to the customer outside of Tampa Electric's service territory rather than on Tampa Electric's cost of service. Ratepayer benefits were maximized by Tampa Electric's negotiating the smallest possible discount from the otherwise applicable rate that would secure the "at risk" load. The CISR Tariff Pilot Program expired as of December 31, 2003 and Tampa Electric did not request extension or renewal of the program.
2. On January 20, 2000, Allied filed a complaint against Tampa Electric with the Commission in Docket No. 000061-EI asserting that Tampa Electric had negotiated a preferential CISR rate with Allied's competitor, Odyssey, and asserting entitlement, as a

matter of law, to precisely the same CISR rate, terms and conditions that Odyssey had obtained as the result of its negotiations with Tampa Electric. In response, Tampa Electric vehemently denied Allied's allegations of favoritism and improper dealings by Tampa Electric in its CISR negotiations with Odyssey. To the contrary, Tampa Electric expressed its intention to demonstrate that its CISR negotiations with both Allied and Odyssey and the related Contract Service Agreements ("CSA") offered to each of them had been fair, reasonable, unbiased and entirely consistent with the provisions of Tampa Electric's CISR tariff.

3. After many months of multi-party interrogatories, document requests, depositions, objections to discovery and motions to compel, Tampa Electric and Allied engaged in settlement discussions that culminated in the filing of a Settlement Agreement and related settlement documents with the Commission on March 22, 2001.
4. On April 24, 2001, the Commission issued Order No. PSC-01-1003-AS-EI approving the above-mentioned Settlement Agreement. After carefully describing each provision of the proposed Settlement Agreement and noting Odyssey's objections to various aspects of the proposed settlement, the Commission approved the Settlement Agreement, with several clarifications and modifications.
5. With regard to paragraph 1 of the Settlement Agreement, the Commission stated at page 7 of its Order that:

*Paragraph 1 of the Agreement requires that an evidentiary record be created from the prefiled testimony, depositions and the exhibits referenced in each of those documents. The Agreement shall be modified to include all of TECO's*

*discovery responses in the evidentiary record, because those responses are needed to support a finding that Allied and Odyssey's CSA's are prudent.*

6. With regard to paragraph 4 of the Settlement Agreement, the Commission stated at page 8 of its Order that:

*Paragraph 4 of the Settlement Agreement requires this Commission to find that Allied's and Odyssey's CSAs are prudent and provide benefits to the general body of ratepayers. Subparagraph 4(a) appears duplicative in light of subparagraphs (b) and (c). TECO believes that each subparagraph demonstrates that this Commission has actively supervised TECO's implementation of the CISR tariff. With that clarification, the paragraph is acceptable. With the inclusion in the evidentiary record of all of TECO's discovery responses, there is sufficient information to conclude that both Allied and Odyssey are "at risk" within the meaning of Order No. PSC-98-1081-FOF-EI. Further, based on the RIM analysis provided by TECO, there is sufficient information to conclude that the rates offered to Odyssey and Allied exceed the incremental cost to serve those customers. Accordingly, the requested findings are supported by competent substantial evidence and are approved.*

7. Finally, the Commission stated at page 8 of its Order that:

*With respect to subparagraph 7(a), TECO and Allied clarified that the importance of this paragraph is to settle, for all time, the prudence of Allied's and Odyssey's CSA with respect to matters within our jurisdiction. We agree that, based on the findings in this order, this is appropriate. This is consistent with our past decisions concerning prudence and the doctrine of administrative finality.*

8. At paragraph 4 of its Motion, OPC reiterates the unsupported assertion contained in its March 1, 2004 Notice of Intervention that: “The disputed issue of material fact is whether the Contract Service Agreement between TECO and Odyssey Manufacturing Company comports with the requirements of Order No. PSC-98-1081-FOF-EI, and whether that agreement serves the interests of TECO’s aggregate customer base.” However, as noted above, these are precisely the issues that were addressed and conclusively resolved in Order No. PSC-01-1003-AS-EI. These conclusions were supported by an ample evidentiary record. OPC did not file a timely request for rehearing of Order No. PSC-01-1003-AS-EI and is now barred from doing so.
9. At paragraph 3 of its Motion, OPC attempts to buttress its unsupported assertion with an apparently irrelevant reference to an excerpt taken from the March 12, 2003 deposition of Patrick Allman in Dade County Circuit Court Case No. 01-27699-CA-25. Specifically, OPC alludes to Mr. Allman’s alleged statement that “*TECO’s motive in agreeing to contract with Odyssey was simply to create a prototype contract, in order that a subsequent contract wouldn’t receive near the same level of scrutiny*”. OPC concludes that this statement is a “red flag” signaling the need to scrutinize TECO’s process for contracting CISR agreements. Tampa Electric respectfully submits that OPC’s apparent alarm is completely unjustified. The Odyssey CSA has already been subjected to the highest possible level of scrutiny by the Commission and its Staff. During a discovery process in Docket No. 000061-EI that lasted well over a year, thousands of pages of documents were produced for review, hundreds of pages of deposition transcripts were accumulated and extensive prepared testimony was filed by all parties, all of which covered even the most minor details of Tampa Electric’s CISR negotiations with both

Odyssey and Allied. In light of the fact that Tampa Electric has entered into no CSA's other than those approved by the Commission in Order No. PSC-01-1003-AS-EI and given the termination of Tampa Electric's CISR tariff as of December 31, 2003, it is difficult, if not impossible, to understand the nature of the "red flag" to which OPC alludes. There is nothing left to scrutinize that has not been previously thoroughly scrutinized by the Commission and its Staff.

10. At paragraph 4 of its Motion, OPC refers to an unspecified "subsequent" deposition given by Mr. Allman in the above-mentioned civil proceeding and asserts, without elaboration or support, that "from Mr. Allman's description, it appears that either the actual [Odyssey] rate is in violation of the filed tariff or the tariff is in violation of the CISR order."
11. First, the cost effectiveness of the negotiated rates extended to both Odyssey and Allied under the settlement approved in Order No. PSC-01-1003-AS-EI was thoroughly vetted by both the Commission and Staff. The Commission's conclusions were fully supported by an ample evidentiary record and there is no indication that the statements attributed to Mr. Allman revealed any contemporaneous information about the rates in question that was not known to the Commission at the time of the deliberations that lead to the issuance of Order No. PSC-01-1003-AS-EI.
12. Second, the basis for OPC's assertions in paragraph 4 of its Motion is, at best, obscure. OPC does not disclose the date of the "subsequent" deposition referred to or the precise comments of Mr. Allman that formed the basis for OPC's conclusions with regard to the Odyssey rate. Vague and unsubstantiated assertions and unsupported conclusory statements provide no reasonable basis for the relief that OPC has requested. In fact, it is

not clear that OPC has any first hand knowledge of Mr. Allman's testimony during the deposition in question.

13. To the extent that the "subsequent" deposition to which OPC refers is the April 19, 2004 deposition of Mr. Allman, it is Tampa Electric's understanding that OPC did not participate in that deposition. Furthermore, it is Tampa Electric's understanding that transcripts of that deposition were not mailed to the parties in the civil proceeding until April 23, 2004, the same day that OPC filed its motion with the Commission. Without direct participation in the deposition or access to the deposition transcript, it is difficult to understand how OPC would have any basis for forming an opinion about what Mr. Allman may have said during the deposition in question. If, on the other hand, OPC had access to the transcript of Mr. Allman's deposition at the time that it filed its Motion, then it should have attempted to provide some support for its interpretation of Mr. Allman's alleged remarks by attaching the deposition transcript in question as an exhibit to its Motion. In any event, OPC has provided no factual basis for confidence in the credibility of its conclusory assertions.
14. The matters raised by OPC's Motion have been considered and conclusively addressed by the Commission in Order No. PSC-01-1003-AS-EI. OPC failed to take advantage of the opportunity to make a timely request for reconsideration of that order. OPC has offered no explanation for its tardiness and has tendered no evidence that would justify reconsideration of a reasonable settlement reached in an extremely difficult and contentious proceeding.

WHEREFORE, Tampa Electric respectfully requests that OPC's Motion be denied and that no relief be granted to OPC.




DATED this 4<sup>th</sup> day of May, 2004.

Respectfully Submitted,

HARRY W. LONG JR.  
Assistant General Counsel – Regulatory  
Tampa Electric Company  
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and

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By: 

**ATTORNEYS FOR TAMPA ELECTRIC COMPANY**

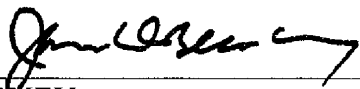
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer, filed on behalf of Tampa Electric Company, has been furnished by hand delivery(\*) or U. S. Mail on this 4<sup>th</sup> day of May 2004 to the following:

Ms. Martha Carter Brown\*  
Ms. Marlene Stern  
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ATTORNEY