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Speaker



Stephen C. Burgess  
Deputy Public Counsel

May 24, 2004

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk  
and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0870

ON MAY 24 PM 3:17  
COMMISSION  
CLERK  
EVED-FPSC

RE: Docket No. 040086-EI

Dear Ms. Bayó:

Enclosed are an original and fifteen copies of a Motion for Determination of the Proper Treatment of Deposition Transcript of Mr. Patrick Allman for filing in the above-referenced docket.

Please indicate receipt of filing by date-stamping the attached copy of this letter and returning it to this office. Thank you for your assistance in this matter.

Sincerely,

Stephen C. Burgess  
Deputy Public Counsel

- CMP \_\_\_\_\_
- COM 5
- CTR \_\_\_\_\_
- ECR SCB/dsb
- GCL \_\_\_\_\_
- OPC \_\_\_\_\_
- MMS \_\_\_\_\_
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
- SEC 1
- OTH to cover tfr.

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05920 MAY 24 04

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 ) Docket No. 040086-EI  
Approving, as Modified and Clarified, the )  
Settlement Agreement between Allied ) Filed: May 21, 2004  
Universal Corporation and Chemical )  
Formulators, Inc. and Tampa Electric )  
Company and Request for Additional )  
Relief. )  
\_\_\_\_\_ )

**MOTION FOR DETERMINATION OF THE PROPER TREATMENT OF  
DEPOSITION TRANSCRIPT OF MR. PATRICK ALLMAN**

The Citizens of the State of Florida, through their attorney, the Public Counsel, hereby move the Commission to determine the proper treatment of the deposition transcript of Patrick Allman, taken in Case No. 01-27699 CA 25 in the Eleventh Judicial Circuit, on April 19, 2004. The Citizens submit:

1. On March 1, 2004, the Citizens intervened in this docket. As the disputed issue of material fact the Citizens questioned "whether the Contract Service Agreement between TECO and Odyssey Manufacturing Company comports with the requirements of Order No. PSC-98-1081-FOF-EI... ." In their April 23 Motion asking the Commission to examine the CSA, the Citizens made reference to Mr. Allman's April 19 deposition, as follows:

From Mr. Allman's description, it appears that either the actual rate is in violation of the filed tariff, or the tariff is in violation of the CISR order.

[Paragraph 4; April 23 Motion by Citizens]

2. In its response, Tampa Electric Company (TECO) stated:

If, on the other hand, OPC had access to the transcript of Mr. Allman's deposition at the time that it filed its Motion,

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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.

[Paragraph 13; Answer of Tampa Electric Company]

3. In fact, the Citizens possess a copy of the transcript of the April 19 deposition of Mr. Allman. This transcript was obtained as a public record from the Dade County Circuit Court. The entire transcript – totally unredacted – is being treated as a public record by the Circuit Court, openly obtainable by any citizen.

4. The case in which that deposition was taken is civil litigation in which the plaintiff is Allied Universal Corporation (Allied) and the defendant is Odyssey Manufacturing Company (Odyssey). The Circuit Court issued an order on the proper treatment of discovery obtained in that case. In pertinent part, the Court's order states:

The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service Commission ("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

5. That language puts the Citizens in something of a dilemma. Notwithstanding its open record treatment in Dade County, it appears the transcript may be subject to some restriction if a party seeks confidential classification. The Citizens do not believe any of the transcript can be classified as confidential at this point, but have no idea what portions of the transcript the parties will seek for confidentiality, nor what the Commission will recognize as confidential. Until that uncertainty is resolved, the Citizens must be cautious about violating the Circuit Court Order to avoid being vulnerable to a charge of

exposing confidential information. In order to avoid any controversy about the Circuit Court's Order, the Citizens need a ruling from the Public Service Commission. The Citizens intend to file relevant portions of the transcript. If the Commission finds any portion of the transcript confidential, however, the Citizens will need to tailor any filing accordingly. In order to respect the authority of the Circuit Court and the PSC, the Citizens are holding back at this point.

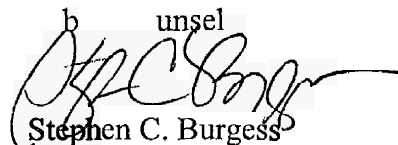
6. Nevertheless, TECO has dropped the gauntlet by challenging the Citizens to "[attach] the deposition transcript in question to its motion." This uncertainty about confidential classification should not be allowed to be used as both a shield and a sword.

7. Accordingly, the Citizens are hereby requesting that the Commission rule on the confidentiality status of the transcript of Mr. Allman's April 19 deposition.

WHEREFORE, the Citizens of the State of Florida respectfully request the Commission to rule whether any of this transcript of Mr. Allman's April 19 deposition is entitled to confidential treatment.

Respectfully submitted,

HAROLD MCLEAN

b unsel  


Stephen C. Burgess  
Deputy Public Counsel  
Office of Public Counsel  
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Attorneys for the Citizens of the  
State of Florida

**CERTIFICATE OF SERVICE**  
**DOCKET NO 040086-EI**

I HEREBY CERTIFY that a true and exact copy of the above and foregoing MOTION FOR DETERMINATION OF THE PROPER TREATMENT OF DEPOSITION OF MR. PATRICK ALLMAN has been furnished by hand-delivery\* or U.S. Mail to the following parties of record this 21<sup>st</sup> day of May, 2004.

Martha Carter-Brown, Esquire\*  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

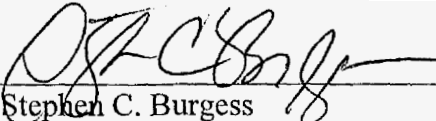
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