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July 14, 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 Tampa Electric Company's Response in Opposition to Allied Universal Corporation and Chemical Formulators Inc.'s Motion for Leave to File Amended Petition.

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

07635 JUL 14 2004

FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Allied Universal Corporation and)	
Chemical Formulators, Inc.'s Petition to)	Docket No. 040086-EI
Vacate Order No. PSC-01-1003-AS-EI)	
Approving, As Modified and Clarified, the)	Filed: July 14, 2004
Settlement Agreement Between Allied)	
Universal Corporation and Chemical)	
Formulators, Inc. and Tampa Electric)	
Company and Request for Additional)	
Relief)	

**TAMPA ELECTRIC COMPANY'S RESPONSE IN OPPOSITION TO ALLIED
UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC.'S
MOTION FOR LEAVE TO FILE AMENDED PETITION**

Pursuant to Rule 28-106.204, F.A.C., Tampa Electric Company ("Tampa Electric") files its Response in Opposition to the July 2, 2004 Motion for Leave to File Amended Petition ("Motion") filed on behalf of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied"). Putting aside, for the moment, the glaring substantive infirmities of Allied's proposed Amended Petition, which Tampa Electric is prepared to address if the Motion is granted, Allied's Motion is deficient on its face and comes perilously close to being a sham pleading within the meaning of Rule 1.150, Florida Rules of Civil Procedure ("FRCP"). Therefore, Tampa Electric respectfully submits that the Motion should be denied. In support whereof, Tampa Electric says:

1. Allied initiated this proceeding on January 30, 2004, with its Petition asking the Commission to set aside the settlement approved by the Commission in Order No. PSC-01-1003-AS-EI, issued on April 24, 2001 in Docket No. 000061-EI.

2. On February 19, 2004 both Tampa Electric and Odyssey Manufacturing Company (“Odyssey”) filed motions to dismiss Allied’s petition.
3. On February 20, 2004, Allied requested an additional 15 days to respond to the motions to dismiss, “in order to adequately and fully respond to Odyssey’s Motion to Dismiss, which is over forty pages, and TECO’s Motion to Dismiss which is fourteen pages.”
4. On March 2, 2004, Commissioner Jaber, as the Prehearing Officer, granted Allied’s motion based on her stated belief that the Commission would benefit in its deliberations from the more thorough responses to the motions to dismiss that might result from granting Allied additional time to consider and prepare its responses.
5. On March 12, 2004, Allied filed a detailed, twenty-five page response to the Motions to Dismiss. Over the next 16 weeks, the Commission Staff carefully considered the relevant pleadings.
6. On June 24, 2004, the Commission Staff issued its recommendation that Allied’s petition be dismissed, with prejudice. In recommending dismissal with prejudice, the Staff concluded:

Upon review of all the pleadings and the documents referenced in Allied’s petition, staff recommends that the facts Allied has alleged in the petition, even taken as true and viewed in the light most favorable to Allied, do not support a cause of action upon which the Commission can grant relief. Further, we believe that an amended petition would not cure the fundamental defects of the case. ... Pursuant to Rule 28-106.201, Florida Administrative Code, it is clear on the face of the Petition that amendment will not cure its defects, and therefore staff recommends that the Petition be dismissed with prejudice.

7. Pursuant to Rule 1.110, FRCP, a pleading requesting relief must include, among other things, “a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.”
8. In an apparent attempt to satisfy this requirement, Allied asserts, at Paragraph 5 of the Motion, that:

“The primary purpose of Allied/CFI’s Amended Petition is to allege additional facts obtained through recent discovery in the pending circuit court proceeding, Allied Universal Corporation and Chemical Formulators, Inc. v. Odyssey Manufacturing Company and Sentry Industries, Inc., Miami-Dade County Circuit Court Case No. 01-27699 CA 25 (Eleventh Judicial Circuit), to remedy the purported deficiencies in Allied/CFI’s original Petition, as set forth in the motions to dismiss and in the Commission Staff’s June 24, 2004 Memorandum issued in this docket, and to amend the relief sought by Allied/CFI from the Commission.”

9. However, Allied has failed to allege, either in the Motion or the proposed Amended Petition, any relevant new or additional facts that show that it is entitled to relief, as required by Rule 1.110. More precisely, Allied has failed to allege a single relevant fact disclosed in the recent civil case depositions with regard to the Odyssey Industrial Service Rider rate or the settlement agreement that Allied now seeks to overturn 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. Under these circumstances, a motion to amend based on the discovery of new and relevant factual information is little more than a sham and an inexcusable abuse of the Commission’s process.
10. In addition, Allied has chosen to redact key portions of its proposed Amended Petition, thereby making it virtually impossible for the parties to clearly discern

the amended factual basis, if any, for Allied's claim of entitlement to relief from this Commission. Given Allied's failure to offer and continued refusal to agree to a non-disclosure agreement that would have permitted the parties to review an unredacted version of Allied's proposed Amended Petition in a timely manner, one can only conclude that Allied is intentionally trying to obscure the lack of any relevant new factual information in its proposed Amended Petition. Certainly, no relevant new factual information is revealed in the unredacted portions of the proposed Amended Petition.

11. As noted above, Allied was given additional time to respond to the motions to dismiss precisely so that it would have time to thoroughly address the issues raised. If, after contemplating the arguments raised in those motions, Allied felt that it needed to request permission to amend its Petition, it could have and should have done so in March. Instead, Allied filed a lengthy response in opposition to the motions. The June 24th Staff recommendation raised no new facts or arguments. Instead, the Staff's recommendation was based on a reasoned evaluation of the facts and arguments raised by the Parties. Allied/CFI's sudden and urgent desire to amend its Petition is nothing more than a delaying tactic in response to an adverse but factually and legally sound Staff recommendation. These abusive delaying tactics are significantly harmful to the Commission and the parties to the extent that they result in a protracted and unnecessary waste of time and resources.
12. Given Allied's failure to clearly state any facts demonstrating its ultimate entitlement to relief and its failure to demonstrate that its Petition could be

rehabilitated through amendment, in light of Staff's conclusion, the Motion should be denied.

WHEREFORE, Tampa Electric respectfully requests that the Motion be denied, that no other relief be granted to Allied and that the Staff's June 24th Recommendation be scheduled for consideration by the Commission at the next agenda conference.

DATED this 14th day of July 2004.

Respectfully Submitted,

HARRY W. LONG JR.
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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 Response, filed on behalf of Tampa Electric Company, has been furnished by hand delivery(*) or U. S. Mail on this 14th day of July 2004 to the following:

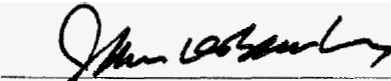
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