

Section 1 - Bureau of Records and Hear Services Completes

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
Chemical Formulators, Inc.
Tampa Electric Company

Official Filing Date: _____ Expiration: _____
Last Day to Suspend: _____
Referred to: _____
("C" indicates OPR)

AUS	CAF	CCA	CMP	ECR	EXT	(GCL)	MMS	PIF
				X		X		

Section 2 - OPR Completes and returns to CCA in 10 workdays. Time Schedule

Program Module A9

**WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT
IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

Staff Assignments

OPR Staff

Current CASR revision level

Due Dates
Previous Current

Staff Counsel

OCRs

Recommended assignments for hearing and/or deciding this case:

Full Commission _____ Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with CCA: _____

Initials: OPR _____
Staff Counsel _____

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Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	

- Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: _____

Date: _____

DOCUMENT NUMBER-DATE

05542 JUN 23 08

FPSC-COMMISSION CL FRK

Section 1 - Bureau of Records and Hearings Services Completes

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
Chemical Formulators, Inc.
Odyssey Manufacturing Company
Tampa Electric Company

Official Filing Date: _____ Expiration: _____
Last Day to Suspend: _____

Referred to: _____
("C)" indicates OPR)

AUS	CAF	CCA	CMP	ECR	EXT	(GCL)	MMS	PIF
				X		X		

Section 2 - OPR Completes and returns to CCA in 10 workdays.

Program Module A9

Time Schedule

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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

Staff Assignments

OPR Staff M Brown, M Stern

Staff Counsel M Brown, M Stern

OCRs (ECR) E Draper

	Current CASR revision level	Due Dates	
		Previous	Current
1. Staff Recommendation on Motions to Dismiss		NONE	04/08/2004
2. Agenda		NONE	04/20/2004
3. Standard Order		NONE	05/10/2004
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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with CCA: 03/04/2004

Initials: OPR _____
Staff Counsel _____

Section 3 - Chairman Completes Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
X							

- Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: BB/ hnr
Date: 03/04/2004

Section 1 - Bureau of Records and Hearings Services Completes

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Official Filing Date: Expiration: Last Day to Suspend: Referred to: ("O") indicates OPR

Table with columns: AUS, CAF, CCA, CMP, ECR, FLL, (GCL), MMS, PIF. ECR and (GCL) have 'X' marks.

Section 2 - OPR Completes and returns to CCA in 10 workdays. Program Module A9

Time Schedule

WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT IT IS TENTATIVE AND SUBJECT TO REVISION. FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Staff Assignments OPR Staff M Brown, M Stern

2 Current CASR revision level

Due Dates Previous Current

Staff Counsel M Brown, M Stern

OCRs (ECR) E Draper

Main schedule table with 40 numbered rows and 3 columns: Item, Previous Due Date, Current Due Date.

Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel Hearing Examiner Staff

Date filed with CCA: 04/07/2004

Initials: OPR Staff Counsel

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Table for Hearing Officer(s) with columns: Commissioners (ALL, BZ, DS, JB, BD, DV), Hrg Exam, Staff.

- Prehearing Officer

Table for Prehearing Officer with columns: Commissioners (BZ, DS, JB, BD, DV), ADM.

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: [Signature] Date: Pending 4/12/04

N

Section 1 - Bureau of Records and Hearings Services Completes

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
Chemical Formulators, Inc.
Odyssey Manufacturing Company
Tampa Electric Company

Official Filing Date: _____ Expiration: _____
Last Day to Suspend: _____
Referred to: _____
("O" indicates OPR)

CCA	CMP	ECR	FLL	(GCL)	MMS	PIF	RCA	SCR
		X		X				

Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A9

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IT IS TENTATIVE AND SUBJECT TO REVISION.
FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Staff Assignments

OPR Staff M Brown, M Stern

Staff Counsel M Brown, M Stern

OCRs (ECR) E Draper

	Current CASR revision level	Due Dates	
		Previous	Current
1. Staff Recommendation on Motions to Dismiss	3	04/21/2004	05/06/2004
2. Agenda		05/03/2004	05/18/2004
3. Standard Order		05/24/2004	06/07/2004
4. Revised CASR Due		05/26/2004	06/08/2004
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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with CCA: 04/22/2004

Initials: OPR _____
Staff Counsel _____

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
X							

- Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.

Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: BB/RW

Date: 04/27/2004

Section 1 - Bureau of Records Complete

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
 Chemical Formulators, Inc.
 Odyssey Manufacturing Company
 Tampa Electric Company

Official Filing Date: _____ Expiration: _____

Last Day to Suspend: _____

Referred to: _____
 ("C") indicates OPR

CCA	CMP	ECR	FLL	(GCL)	MMS	PIF	RCA	SCR
		X		X				

Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A9

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 FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Staff Assignments

OPR Staff M Brown, M Stern

Staff Counsel M Brown, M Stern

OCRs (ECR) E Draper

	Current CASR revision level	Due Dates	
		Previous	Current
5			
1.	Staff Recommendation on Motions to Dismiss	05/20/2004	06/17/2004
2.	Agenda	06/01/2004	06/29/2004
3.	Standard Order	06/21/2004	07/19/2004
4.	Revised CASR Due	06/22/2004	07/20/2004
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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel _____
 Hearing Examiner _____ Staff _____

Date filed with CCA: 05/20/2004

Initials: OPR _____
 Staff Counsel _____

Section 3 - Chairman Completes Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
X							

- Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: B/B/hwr

Date: 05/24/2004

Section 1 - Bureau of Records Comp

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
Chemical Formulators, Inc.
Odyssey Manufacturing Company
Tampa Electric Company

Official Filing Date: _____ Expiration: _____
Last Day to Suspend: _____
Referred to: _____

CCA	CMP	ECR	FLL	(GCL)	MMS	PIF	RCA	SCR
		X		X				

Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A9

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FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Staff Assignments

OPR Staff M Brown, M Stern

Staff Counsel M Brown, M Stern

OCRs (ECR) E Draper

	Current CASR revision level	Due Dates	
		Previous	Current
1. Staff Recommendation on Motions to Dismiss	5	06/17/2004	06/24/2004
2. Agenda		06/29/2004	07/06/2004
3. Standard Order		07/19/2004	07/26/2004
4. Revised CASR Due		07/20/2004	07/27/2004
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Recommended assignments for hearing and/or deciding this case:

Full Commission X Commission Panel _____
Hearing Examiner _____ Staff _____

Date filed with CCA: 05/20/2004

Initials: OPR _____
Staff Counsel _____

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
X							

- Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: BB/hrs
Date: 05/24/2004



Section 1 - Bureau of Records Complete

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
 Chemical Formulators, Inc.
 Odyssey Manufacturing Company
 Tampa Electric Company

Official Filing Date: _____ Expiration: _____
 Last Day to Suspend: _____
 Referred to: _____
 ("()") indicates OPR

CCA	CMP	ECR	FLL	(GCL)	MMS	PIF	RCA	SCR
		X		X				

Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A9

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 FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770**

Staff Assignments

OPR Staff M Brown, M Stern

Staff Counsel M Brown, M Stern

OCRs (ECR) E Draper

6 Current CASR revision level

Due Dates
 Previous Current

1.	Staff Recommendation - Confidentiality Request	NONE	07/16/2004
2.	Revised CASR Due To Deferral at 7/6/04 Agenda	07/14/2004	07/16/2004
3.	Agenda - Confidentiality Request	NONE	07/20/2004
4.	Standard Order - Confidentiality Request	NONE	07/21/2004
5.	Revised CASR Due	NONE	07/22/2004
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Recommended assignments for hearing and/or deciding this case:

Full Commission Commission Panel _____
 Hearing Examiner _____ Staff _____

Date filed with CCA: 07/16/2004

Initials: OPR _____
 Staff Counsel _____

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg	Staff
ALL	BZ	DS	JB	BD	DV	Exam	
X							

- Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: BB/HW/rt
 Date: 07/16/2004

Section 1 - Bureau of Records Completes

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
 Chemical Formulators, Inc.
 Odyssey Manufacturing Company
 Tampa Electric Company

Official Filing Date: _____ Expiration: _____
 Last Day to Suspend: _____

Referred to: _____
 ("O" indicates OPR)

CCA	CMP	ECR	FLL	(GCL)	MMS	PIF	RCA	SCR
		X		X				

Section 2 - OPR Completes and returns to CCA in 10 workdays. Time Schedule

Program Module <u>A9</u>		WARNING: THIS SCHEDULE IS AN INTERNAL PLANNING DOCUMENT IT IS TENTATIVE AND SUBJECT TO REVISION. FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770		
Staff Assignments				
OPR Staff	<u>M Brown, M Stern</u>	<input checked="" type="checkbox"/> 7	Current CASR revision level	Due Dates Previous Current
		1.	Staff Recommendation on Motion to Dismiss	NONE 09/23/2004
		2.	Agenda	NONE 10/05/2004
		3.	Standard Order	NONE 10/25/2004
		4.	Revised CASR Due	NONE 11/10/2004
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Staff Counsel	<u>M Brown, M Stern</u>	8.		
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OCRs (ECR)	<u>E Draper</u>	11.		
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Recommended assignments for hearing and/or deciding this case:		30.		
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Full Commission <input checked="" type="checkbox"/> Commission Panel _____		33.		
Hearing _____ Staff _____		34.		
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Date filed with CCA: <u>09/03/2004</u>		36.		
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Initials OPR _____		38.		
Staff Counsel _____		39.		
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Section 3 - Chairman Completes Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg Exam	Staff
ALL	BZ	DS	JB	BD	DV		
X							

Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: BB/aw
 Date: 09/03/2004

Section 1 - Bureau of Records Complete

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
 Chemical Formulators, Inc.
 Odyssey Manufacturing Company
 Tampa Electric Company

Official Filing Date: _____ Expiration: _____

Last Day to Suspend: _____

Referred to:

CCA CMP ECR FLL (GCL) MMS PIF RCA SCR

("O" indicates OPR)

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Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A9

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 FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Staff Assignments

Due Dates

OPR Staff	M Brown, M Stern	8	Current CASR revision level	Due Dates	
				Previous	Current
			1. Agenda (Deferred From 10/05/04 Agenda)	10/05/2004	10/19/2004
			2. Standard Order	10/25/2004	11/08/2004
			3. Revised CASR Due	11/10/2004	11/18/2004
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Staff Counsel	M Brown, M Stern		8.		
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OCRs (ECR)	E Draper		11.		
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Recommended assignments for hearing and/or deciding this case:			31.		
			32.		
Full Commission <input checked="" type="checkbox"/> Commission Panel <input type="checkbox"/>			33.		
Hearing <input type="checkbox"/> Staff <input type="checkbox"/>			34.		
			35.		
Date filed with CCA: <u>10/06/2004</u>			36.		
			37.		
Initials OPR _____			38.		
Staff Counsel _____			39.		
			40.		

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg Exam	Staff
ALL	BZ	DS	JB	BD	DV		
X							

Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: _____
 Date: 10/06/2004

133/Am
10/06/2004

Section 1 - Bureau of Records Complete

Docket No. 040086-EI Date Docketed: 01/30/2004 Title: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Company: Allied Universal Corporation
 Chemical Formulators, Inc.
 Odyssey Manufacturing Company
 Tampa Electric Company

Official Filing Date: _____ Expiration: _____

Last Day to Suspend: _____

Referred to:

CCA CMP ECR FLL (GCL) MMS PIF RCA SCR

("O" indicates OPR)

			X		X				
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Section 2 - OPR Completes and returns to CCA in 10 workdays.

Time Schedule

Program Module A9

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 FOR UPDATES CONTACT THE RECORDS SECTION: (850) 413-6770

Staff Assignments

OPR Staff	M Brown, M Stern	9	Current CASR revision level	Due Dates	
				Previous	Current
			1. Close Docket or Revise CASR	SAME	12/20/2004
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Staff Counsel	M Brown, M Stern		8.		
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OCRs (ECR)	E Draper		11.		
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Recommended assignments for hearing and/or deciding this case:			31.		
			32.		
Full Commission <input checked="" type="checkbox"/> Commission Panel <input type="checkbox"/>			33.		
Hearing <input type="checkbox"/> Staff <input type="checkbox"/>			34.		
			35.		
Date filed with CCA: <u>11/23/2004</u>			36.		
			37.		
Initials OPR _____			38.		
Staff Counsel _____			39.		
			40.		

Section 3 - Chairman Completes

Assignments are as follows:

- Hearing Officer(s)

Commissioners						Hrg Exam	Staff
ALL	BZ	DS	JB	BD	DV		
X							

Prehearing Officer

Commissioners					ADM
BZ	DS	JB	BD	DV	
		X			

Where panels are assigned the senior Commissioner is Panel Chairman: the identical panel decides the case.
 Where one Commissioner, a Hearing Examiner or a Staff Member is assigned the full Commission decides the case.

Approved: BB/Am
 Date: 11/23/2004

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 1-30-04

TO: Keneth Hoffman

FROM: Therry, Division of the Commission Clerk and
Administrative Services

RE: Acknowledgment of Receipt of Confidential Filing

040086

01404-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

NER1 or (if filed in an undocketed matter) concerning _____

Petition & Exhibits, and

filed on behalf of Allied Hoffman. The

document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/04)

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

February 2, 2004

Rutledge, Ecenia, Purnell & Hoffman
Kenneth Hoffman
P.O. Box 551
Tallahassee, Florida 32301-1841

Re: Docket No. 040086-EI

Dear Mr. Hoffman:

This will acknowledge receipt of 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, by Allied Universal Corporation and Chemical Formulators, Inc., which was filed in this office on January 30, 2004, and assigned the above-referenced docket number. Appropriate staff members will be advised.

Mediation may be available to resolve any dispute in this docket. If mediation is conducted, it does not affect a substantially interested person's right to an administrative hearing. For more information, contact the Office of General Counsel at (850) 413-6248 or FAX (850) 413-7180.

Bureau of Records

DOCUMENT NUMBER-DATE

05542 JUN 23 08

FPSC-COMMISSION CLERK

I:\records\acklet-no-app.wpd

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

MEMORANDUM

March 4, 2004

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: OFFICE OF THE GENERAL COUNSEL (BROWN) MCB

RE: DOCKET NO. 040086-EI - 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, BY ALLIED UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC.

Attached is an ORDER GRANTING MOTION FOR EXTENSION OF TIME, to be issued in the above-referenced docket. (Number of pages in order - 3)

DATE ORDER SENT ELECTRONICALLY TO CCA 3-5-04.

MCB/anc
Attachment
I: Motion for Extension of Time2.mcb.doc

03211-04

Matilda Sanders

PSC-04-0248-PCO-EI

From: Andrea Cowart
Sent: Thursday, March 04, 2004 4:06 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

Date and Time: 3/4/2004 4:04:00 PM
Docket Number: 040086-EI
Filename / Path: Motion for Extension of Time2.mcb.doc
Order Type: Signed / Hand Deliver

Order Granting Motion for Extension of Time

3 pgs

RECEIVED PSC
04 MAR -4 PM 4:39
COMMISSION
CLERK

4/3

03211-04

Matilda Sanders

0246-PCO

From: Andrea Cowart
Sent: Thursday, March 04, 2004 1:08 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

1.

Date and Time: 3/4/2004 1:08:00 PM
Docket Number: 040086-EI
Filename / Path: 040086opc.mcb.doc

Order Acknowledging Intervention

4/3

03176-04

Matilda Sanders

0232-PCD

From: Andrea Cowart
Sent: Tuesday, March 02, 2004 12:13 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

3

Date and Time: 3/2/2004 12:11:00 PM
Docket Number: 040086-EI
Filename / Path: extension of time.mcb.doc
Order Type: Signed / Hand Deliver

RECEIVED FPSC
MAR - 2 PM 12:31
COMMISSION
CLERK

Order Granting Motion for Extension of Time

4/3

03072-04

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 4.22.04

TO: Odyssey
FROM: Thermy, Division of the Commission Clerk and
Administrative Services
RE: Acknowledgment of Receipt of Confidential Filing

04796-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.
040096-ET or (if filed in an undocketed matter) concerning _____
transcript of S. Sidelko, and
filed on behalf of Odyssey / Schiefelbein. The
document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/04)

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 5.12.04

TO: J. Stephen Menton

FROM: Thermy, Division of the Commission Clerk and
Administrative Services

RE: Acknowledgment of Receipt of Confidential Filing

05528-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

05528-04 or (if filed in an undocketed matter) concerning _____

Deposition transcript, and

filed on behalf of Allied SCF (Menton). The

document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/04)

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LAW OFFICES
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2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

FREDERICK L. ASCHAUER, JR.
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ROBERT C. BRANNAN
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JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDBSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

ROBERT M. C. ROSE, *OF COUNSEL*
WAYNE L. SCHIEFELBEIN, *OF COUNSEL*

(850) 877-6555
FAX (850) 656-4029
www.rsbatorneys.com

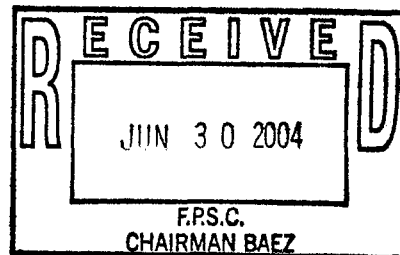
CENTRAL FLORIDA OFFICE
600 S. NORTH LAKE BLVD., SUITE 160
ALTAMONTE SPRINGS, FLORIDA 32701
(407) 830-6331
FAX (407) 830-8522

MARTIN S. FRIEDMAN, P.A.
VALERIE L. LORD

June 30, 2004

VIA TELECOPY AND HAND DELIVERY

The Honorable Braulio L. Baez
Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



Re: Allied Universal Corporation and Chemical Formulators, Inc. v. Tampa
Electric Company; ~~Docket No. 04-086-FL~~
Our File No. 37018.01

Dear Chairman Baez:

We represent Odyssey Manufacturing Company, a party in the above-referenced administrative hearing.

On June 29, 2004, Petitioner, Allied Universal Corporation and Chemical Formulators, Inc., requested deferral of the Commission's consideration of a staff recommendation recommending that Allied's Petition be dismissed with prejudice which was scheduled for consideration by the Commission at the July 6, 2004 Agenda Conference. Allied's stated basis for this request is its intention to file a Motion for Leave to File an Amended Complaint and a proposed Amended Complaint by the end of this week.

Allied's Motion for Leave will essentially request a fourth attempt to properly and lawfully state a cognizable claim in this docket since its initial filing on January 13, 2004. Staff has recommended that the Commission should dismiss Allied's Petition for failure to state a cause of action and has properly determined that the dismissal should be with prejudice because "it is clear on the face of the Petition that amendment will not cure its defects".

The Honorable Braulio L. Baez
June 30, 2004
Page 2

The Commission should decline to defer this five-and- a- half-month-old matter and thus delay its resolution even further. Allied's as-yet-unfiled Motion for Leave to Amend can only request two things: either a chance to amend an unamendable Petition, or a chance to file an entirely new Petition which states new issues based on new facts and which should properly be brought in a new docket.

For these reasons, Odyssey opposes the requested deferral.

Sincerely,



JOHN L. WHARTON
For the Firm

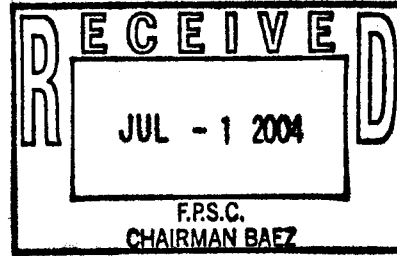
JLW/brm

cc: Commissioner Lila A. Jaber, via hand delivery
Commissioner J. Terry Deason, via hand delivery
Commissioner Charles M. Davidson, via hand delivery
Commissioner Rudolph Bradley, via hand delivery
Manuel Arisso, Aide to Chairman Baez, via hand delivery
JoAnn Chase, Aide to Commissioner Jaber, via hand delivery
Cayce Hinton, Aide to Commissioner Deason, via hand delivery
Katrina Tew, Aide to Commissioner Davidson, via hand delivery
Larry Harris, Aide to Commissioner Bradley, via hand delivery
Richard Melson, General Counsel, via hand delivery
Martha Carter-Brown, Esquire, via hand delivery and telecopy
Stephen Burgess, Esquire, via telecopy
Harry W. Long, Jr., Esquire, via telecopy
Kenneth Hoffman, Esquire, via telecopy

Odyssey\baez



TAMPA ELECTRIC



July 1, 2004

The Honorable Braulio L. Baez
Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Allied Universal Corporation and Chemical Formulators, Inc. v. Tampa Electric Company; Docket No. 040086-EL

Dear Chairman Baez:

In a letter addressed to you on June 29, 2004, counsel for Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") asked that the Commission defer consideration of Staff's June 24, 2004 recommendation that Allied/CFI's Petition in this proceeding be dismissed with prejudice. In support of this request, Allied/CFI contends that the Commission's failure to address contemporaneously certain independent motions filed by the Office of Public Counsel in this proceeding and Allied/CFI's stated intention to file for leave to amend its Petition require that the Commission's planned consideration of the Staff's June 24th recommendation at the July 6th Agenda Conference be deferred indefinitely. For the reasons discussed below, Tampa Electric respectfully submits that Allied/CFI's request is devoid of merit and should be denied.

As you may recall, Allied/CFI 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-EL, issued on April 24, 2001 in Docket No. 000061-EL. On February 19, 2004 both Tampa Electric and Odyssey filed motions to dismiss Allied/CFI's petition. On February 20, 2004, Allied/CFI 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." On March 2, 2004, Commissioner Jaber, as the Prehearing Officer, granted Allied/CFI'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/CFI additional time to consider and prepare its responses.

On March 12, 2004, Allied/CFI 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 and, On June 24, issued its recommendation that Allied/CFI's petition be dismissed, with prejudice.

TAMPA ELECTRIC COMPANY
P. O. BOX 111 TAMPA, FL 33601-01

(813) 228-4111

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OUTSIDE HILLSBOROUGH COUNTY 1 (888) 223-0800

Allied/CFI 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 amend its Petition, it could have and should have done so in March. Instead, Allied/CFI 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.

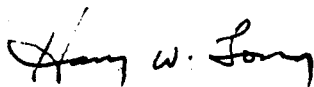
As noted above, the Staff recognized that, under the facts presented in this matter, it would be impossible for Allied/CFI to amend its Petition in a manner that would cure the fatal defects in its pleading. In his June 29th Letter, Mr. Hoffman failed to make even the most modest offer of proof as to what kind of amendment Allied/CFI could offer that would rehabilitate its Petition in light of the Staff's conclusion.

As an afterthought, Allied/CFI suggests that the Commission cannot rule on the Motions to Dismiss without addressing the Office of Public Counsel's ("OPC") April 24, 2004 Motion at the same time. While it is not clear why Allied/CFI feels compelled and empowered to speak for OPC, the asserted insoluble linkage between the OPC motion and Allied/CFI's petition does not exist.

It is clear that OPC did not intend to link its April 24th Motion to Allied/CFI's January 30th Petition in this proceeding. Therefore, the Staff's proposal to address the OPC motion as a separate matter is entirely appropriate and provides no reasonable justification for deferring consideration of the Staff's recommendation to dismiss the Allied/CFI Petition with prejudice.

For the reasons discussed above, Tampa Electric urges the Commission to adhere to its announced intention to consider the Staff's June 24th recommendation in this proceeding at the Commission's July 6th Agenda Conference.

Respectfully submitted,



Harry W. Long, Assistant General Counsel
Tampa Electric Company

HWL/ck

The Honorable Braulio L. Baez

July 1, 2004

Page 3

cc. Commissioner Lila A. Jaber
Commissioner J. Terry Deason
Commissioner Charles M. Davidson
Commissioner Rudolph Bradley
Manual Arisso, Aide to Chairman Baez
JoAnn Chase, Aide to Commissioner Jaber
Cayce Hinton, Aide to Commissioner Deason
Katrina Tew, Aide to Commissioner Davidson
Larry Harris, Aide to Commissioner Bradley
Richard Melson, General Counsel
Martha Carter-Brown, Esquire
Stephen Burgess, Esquire
Kenneth Hoffman, Esquire
John L. Wharton, Esquire

BRAULIO L. BAEZ
CHAIRMAN

STATE OF FLORIDA




CAPITAL CIRCLE OFFICE CENTER
2540 Shumard Oak
Boulevard
Tallahassee, FL 32399-0850
(850) 413-6042

Public Service Commission

MEMORANDUM

RECEIVED-FPSC
01 JUL - 1 PM 4:12
COMMISSION
CLERK

TO: Blanca Bayó, Commission Clerk
FROM: Manuel Arisso, Advisor to Chairman Baez 
RE: ~~Docket No. 040000-EM~~
DATE: July 1, 2004

Chairman Baez received these attached letters in connection with the above referenced docket. He has not seen the correspondence, nor is it *ex parte* communication.

Please place this in the correspondence side of the docket file.

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



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BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 7-2-04

TO: Kenneth, Heffman

FROM: M. Rockand, Division of the Commission Clerk and
Administrative Services

RE: Acknowledgment of Receipt of Confidential Filing

07305-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

040086-EI or (if filed in an undocketed matter) concerning Petition

of Allied/CFI Amended Petition, and

filed on behalf of Allied/CFI. The

document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/04)

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RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

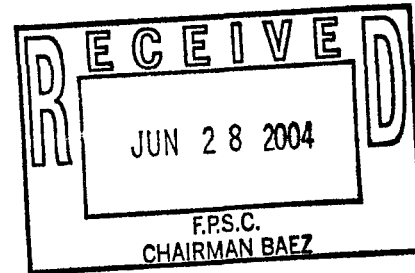
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE

GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

June 29, 2004

VIA TELECOPIER AND HAND DELIVERY

The Honorable Braulio L. Baez
Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850



Re: Allied Universal Corporation and Chemical Formulators, Inc. v. Tampa Electric
Copmany; Docket No. 040086-EI

Dear Chairman Baez:

I represent Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI"), the
Petitioners in the above-referenced docket.

On June 24, 2004, the Staff issued a recommendation in the above-referenced docket
recommending that Allied/CFI's Petition be dismissed with prejudice. The Recommendation is
currently scheduled for consideration by the Commission at the July 6, 2004 Agenda Conference.
The Office of Public Counsel ("OPC") has been granted intervention in the docket. OPC has filed
an independent request with the Commission in this docket asking that the Commission investigate
the Contract Service Agreement between Tampa Electric Company ("TECO") and Odyssey
Manufacturing Company ("Odyssey").¹ The recently issued Staff Recommendation offers no
analysis of OPC's independent request but instead indicates that OPC's independent request should
be considered at a later stage in the proceeding - - a notion that appears inconsistent with Staff's
recommendation that the Allied/CFI Petition be dismissed with prejudice and the docket closed.

The purpose of this letter is to request that the Commission defer consideration of the Staff

¹OPC's Motion for Public Service Commission to Examine the Contract Service
Agreement between TECO and Odyssey filed April 23, 2004.

Page 2
June 29, 2004

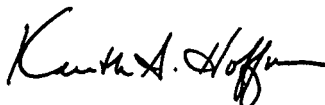
Recommendation. Allied/CFI intends to file a Motion for Leave to file an Amended Complaint and a Proposed Amended Complaint by the end of this week. It is, of course, within Allied/CFI's procedural rights to move to file an Amended Complaint and the parties to this proceeding may wish to file responses to that Motion. In addition, OPC has filed a Motion that raises the issue of whether the Commission should treat certain documents and deposition transcripts as confidential information when such documents are filed as unsealed, public records in related litigation between Allied/CFI and Odyssey in Miami-Dade County Circuit Court.²

It should be readily apparent that OPC and Allied/CFI require a ruling on the issue of whether certain information should be treated as confidential as a prerequisite to a full and open forum at an Agenda Conference on Allied/CFI's proposed Amended Petition and OPC's independent motion requesting the Commission to examine the CSA between TECO and Odyssey.

Accordingly, Allied/CFI requests deferral of the consideration by the Commission of the Staff Recommendation issued on June 24, 2004 in this docket and that Staff issue a revised recommendation addressing:

- (1) OPC's pending motions referenced above; and
- (2) Allied/CFI's anticipated Motion for Leave to File Amended Petition, proposed Amended Petition, and any responses to the Motion for Leave to File Amended Petition.

Respectfully submitted,



Kenneth A. Hoffman

KAH/rl

cc: Commissioner Lila A. Jaber, via hand delivery
Commissioner J. Terry Deason, via hand delivery
Commissioner Charles M. Davidson, via hand delivery
Commissioner Rudolph Bradley, via hand delivery
Manuel Arisso, Aide to Chairman Baez, via hand delivery
JoAnn Chase, Aide to Commissioner Jaber, via hand delivery
Cayce Hinton, Aide to Commissioner Deason, via hand delivery

²OPC's Motion for Determination of the Proper Treatment of Deposition Transcript of Mr. Patrick Allman filed May 21, 2004.

Page 3
June 29, 2004

Katrina Tew, Aide to Commissioner Davidson, via hand delivery
Larry Harris, Aide to Commissioner Bradley, via hand delivery
Dr. Mary Bane, via hand delivery
Richard Melson, General Counsel, via hand delivery
Martha Carter-Brown, Esq., via hand delivery
Stephen Burgess, Esq., via hand delivery
Wayne Schiefelbein, Esq., via hand delivery
Daniel K. Bandklayder, Esq., via U.S. Mail
Harry W. Long, Jr., Esq., via telecopier
James D. Beasley, Esq., via hand delivery

Allied\baez.ltr

STATE OF FLORIDA

COMMISSIONERS:
 BRAULIO L. BAEZ, CHAIRMAN
 J. TERRY DEASON
 LILA A. JABER
 RUDOLPH "RUDY" BRADLEY
 CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
 ADMINISTRATIVE SERVICES
 BLANCA S. BAYÓ
 DIRECTOR
 (850) 413-6770 (CLERK)
 (850) 413-6330 (ADMIN)

Public Service Commission

July 21, 2004

Parties of Record in
 Dockets 040007-EI,
 040086-EI, 040472-EI,
 and 040582-EI

Re: Reporting Requirement for Employees Exercising Regulatory Responsibility

Dear Sir or Madam:

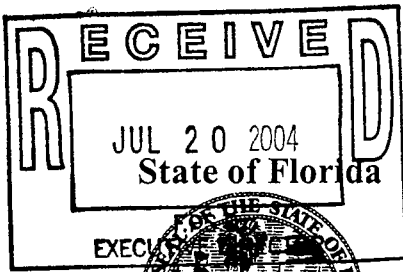
Pursuant to Section 5.02 C.1.b. of the Commission's Administrative Procedures Manual, you are hereby notified that Marlene Stern, Senior Attorney in the Office of General Counsel, has advised the Commission that she was contacted by the Office of Public Counsel regarding her interest in being considered for employment to fill a vacancy in that office.

Sincerely,

Blanca S. Bayó
 Blanca S. Bayó

BSB:kf

cc: Mary A. Bane, Executive Director
 Richard Melson, General Counsel
 David Smith, Attorney Supervisor
 Marlene Stern, Senior Attorney



Blanca, Please process the four "notice of contact" memos as recommended by Mr. Nelson in this memorandum.

MAB
7/20/04

Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-PPSC
AM 9:08
COMMISSION CLERK
ADMINISTRATIVE SERVICES
JUL 21 AM 9:45

DATE: July 20, 2004
TO: Mary Andrews Bane, Executive Director
FROM: Richard D. Melson, General Counsel *RM*
RE: Contacts Regarding Employment

Four attorneys in my office have recently received contacts from the Office of Public Counsel regarding potential employment by that agency. This is my recommendation under Section 5.02(C)(1)(b) regarding changes in work assignments and/or notification to parties in dockets involving OPC to which these lawyers are assigned.

1. Jennifer Brubaker declined to pursue the opportunity with OPC. I therefore recommend no change in work assignments and no notice to parties in any of the dockets to which she is assigned.

2. Felicia Banks is assigned to only one docket to which OPC is a party (Docket No. 030869-TL). That case is now on appeal and Ms. Banks does not have any responsibility for the appeal. I therefore recommend no change in work assignments and no notice to parties to that docket.

3. Marlene Stern is assigned to the four dockets to which OPC is a party. I recommend no change in work assignments, but do recommend that notice of the contact be given to the parties to those four dockets:

OFFICIAL FILE COPY	Docket No. 040007-EI	Environmental Cost Recovery Clause
DIRECTOR _____		
AA _____	Docket No. 040086-EI	Petition by Allied Universal to Vacate Order Approving Settlement Agreement with Tampa Electric Company
ASSIST. DIR _____		
FIS _____		
ADM _____	Docket No. 040472-EI	Petition by Progress Energy Florida for Approval of Recovery Through the ECRC of Costs Associated with Section 316(b) of the Clean Water Act
HR _____		
GS _____		
ITS _____		
RCH <i>Kay</i> _____		
REP <i>o</i> _____		
OTHER _____		
DATE <i>7/21/04</i>		
FROM <i>BSB/ep</i>		

Please handle.

Docket No. 040582-EI

Petition by Florida Power & Light for Approval of Recovery Through the ECRC of Costs Associated with Section 316(b) of the Clean Water Act

I further recommend that the notice simply state that Ms. Stern “has advised the Commission that she was contacted by the Office of Public Counsel regarding her interest in being considered for employment to fill a vacancy in that office.”

4. Adrienne Vining is assigned to three dockets to which OPC is a party. I recommend no change in work assignments, but do recommend that notice of the contact be given to the parties to those three dockets:

Docket No. 000694-WS

Petition by Water Management Services, Inc. for limited proceeding to increase water rates in Franklin County

Docket No. 040001-EI

Fuel and purchased power cost recovery clause with generating performance incentive factor

Docket No. 040007-EI

Environmental Cost Recovery Clause

I further recommend that the notice simply state that Ms. Vining “has advised the Commission that she was contacted by the Office of Public Counsel regarding her interest in being considered for employment to fill a vacancy in that office.”

Please let me know if you would like to discuss these recommendations.

RDM:mee

Marguerite Lockard

PSC-04-0714 - PCO-EI

From: Andrea Cowart
Sent: Tuesday, July 20, 2004 12:38 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

Date and Time: 7/20/2004 12:38:00 PM
Docket Number: 040086-EI
Filename / Path: amend.mcb.doc
Order Type: Signed / Hand Deliver

4 pgs

Order Granting Motion for Leave to File Amended Petition

RECEIVED-PSC
JUL 20 PM 12:43
COMMISSION
CLERK

5/4

MEMORANDUM

July 20, 2004

TO: DIVISION OF THE COMMISSION CLERK AND ADMINISTRATIVE SERVICES

FROM: OFFICE OF THE GENERAL COUNSEL (BROWN) MCB

RE: DOCKET NO. 040086-EI - 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, BY ALLIED UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC.

Attached is an ORDER GRANTING MOTION FOR LEAVE TO FILE AMENDED PETITION, to be issued in the above-referenced docket. (Number of pages in order - 4)

DATE ORDER SENT ELECTRONICALLY TO CCA

7/20/04

MCB/anc
Attachment
I: amend.mcb.doc

Matilda Sanders

0724 - CFO

From: Andrea Cowart
Sent: Monday, July 26, 2004 2:33 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

3

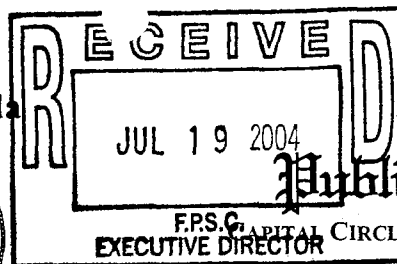
Date and Time: 7/26/2004 2:33:00 PM
Docket Number: 040086-EI
Filename / Path: 040086confidO.mcb.doc

Order on Requests for Confidential Classification

514

DOCUMENT NO
65542-06

State of Florida



Public Service Commission

F.P.S.C. CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 19, 2004
TO: Dr. Mary Bane, Executive Director
Richard D. Melson, General Counsel
David E. Smith, Attorney Supervisor, General Counsel
FROM: Marlene K. Stern, Senior Attorney, General Counsel *MKS*
RE: Contact with the Office of Public Counsel

Section 5.02.C of the Administrative Procedures Manual requires that an employee, who exercises regulatory responsibility, report any contact with a party to a proceeding, when that contact is related to employment by the party. Harold McLean, the Public Counsel, recently contacted me about employment in the Office of Public Counsel. The Office of Public Counsel is a party to the following open dockets to which I am assigned:

1. Docket No. 040007-EI – Environmental Cost Recovery Clause (ECRC);
2. Docket No. 040582-EI – Petition by Florida Power & Light for Approval of Recovery Through the ECRC of Costs Associate With Section 316(b) of the Clean Water Act; and,
3. Docket No. 040472 - Petition by Progress Energy Florida for Approval of Recovery Through the ECRC of Costs Associate With Section 316(b) of the Clean Water Act.

Docket No. 040007-EI is the docket for the annual hearing in the Environmental Cost Recovery Clause. The other two dockets are PAA dockets pertaining to the ECRC.

If you need additional information on this contact with the Public Counsel, or the dockets listed above, please let me know.

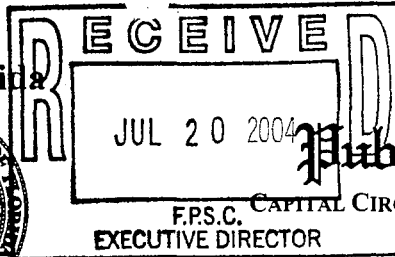
Blanca:

Please notify parties to any dockets on which Ms. Stern is assigned.

Mary A. Bane, Executive Director

See note on memo from Rick Melson

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 20, 2004
TO: Mary Andrews Bane, Executive Director
Richard D. Melson, General Counsel
FROM: Adrienne E. Vining, Senior Attorney, General Counsel *AEV*
RE: Report of Receipt of Contact Regarding Employment as Outlined in APM Sections 5.02(C)(1)(a) and (b)

Pursuant to Sections 5.02(C)(1)(a) and (b) of the Administrative Procedures Manual, I am reporting that I was contacted by Harold McLean regarding an attorney position with the Office of Public Counsel. I have not declined to be considered for the position.

State of Florida



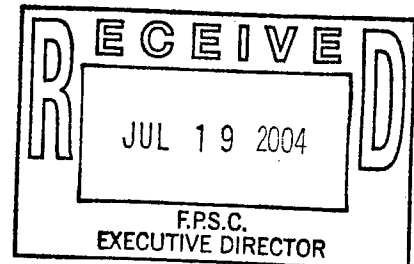
Public Service Commission

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TALLAHASSEE, FLORIDA 32399-0850

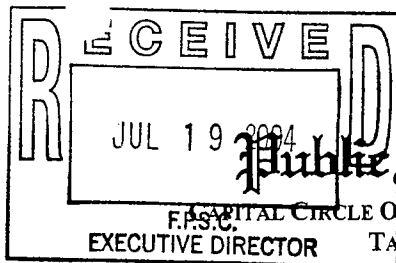
-M-E-M-O-R-A-N-D-U-M-

DATE: July 19, 2004
TO: Mary Andrews Bane, Executive Director
Richard D. Melson, General Counsel
FROM: Jennifer S. Brubaker, Senior Attorney, General Counsel *JSB*
RE: Notification pursuant to APM 5.02-8(1)(a)

In compliance with the requirements of APM 5.02-8(1)(a), this serves to notify you that I was informed by Harold McLean, Public Counsel for the State of Florida, of an employment opportunity that would soon be available in the Office of the Public Counsel. I have declined to pursue the opportunity.



State of Florida



Public Service Commission

F.P.S.C. CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: July 19, 2004
TO: Richard D. Melson, General Counsel
Mary Andrews Bane, Executive Director ✓
FROM: Felicia R. Banks, Senior Attorney, General Counsel FRB
RE: Contacts Regarding Possible Employment

This notice is being provided pursuant to Section 5.02C of the Commission's Administrative Procedures Manual.

On Tuesday, July 13, 2004, Harold McLean contacted me by phone regarding possible employment opportunities with the Office of Public Counsel (OPC). Discussions regarding employment with OPC are ongoing.

Cc: Beth Keating, Attorney Supervisor, General Counsel

Marguerite Lockard

PSC-04-0795-PCO-EI

From: Andrea Cowart
Sent: Friday, August 13, 2004 11:39 AM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

Date and Time: 8/13/2004 11:38:00 AM
Docket Number: 040086-EI
Filename / Path: 040086extension.mcb.doc
Order Type: Signed / Hand Deliver

Order Granting Extension of Time

2 pop

RECEIVED PSC
04 AUG 13 PM 12:39
COMMISSION
CLERK

5/4

MEMORANDUM

August 13, 2004

TO: MARY ANNE HELTON, ATTORNEY SUPERVISOR, ECR SECTION

FROM: MARTHA BROWN, SENIOR ATTORNEY *MB*

RE: DOCKET NO. 040086-EI - 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, BY ALLIED UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC.

Attached is an ORDER GRANTING EXTENSION OF TIME, which is ready for your review and approval to be issued.

DATE ORDER SENT ELECTRONICALLY TO CCA *8-13-04*.

MCB/anc
Attachment
I: 040086extension.mcb.doc

Kay Flynn

040086-EI

To: Martha Brown
Subject: RE: TECO filing?

Thanks.

I'm going to print and place this e-mail in the docket file just in the event someone else wonders where TECO's formal request might be.

-----Original Message-----

From: Martha Brown
Sent: Tuesday, August 17, 2004 8:51 AM
To: Kay Flynn
Subject: RE: TECO filing?

No, Kay it was an oral request. No document was filed.

-----Original Message-----

From: Kay Flynn
Sent: Tuesday, August 17, 2004 8:50 AM
To: Martha Brown
Subject: TECO filing?

Martha, good morning.....we issued an order granting TECO's request for extension of time in 040086 on 8/13. However, we don't have TECO's request in the docket file. Do you have it?

Kay

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

ACKNOWLEDGMENT

DATE: 8.20.04

TO: John Wharton

FROM: Thermy, Division of the Commission Clerk and
Administrative Services

RE: Acknowledgment of Receipt of Confidential Filing

09129-04

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket No.

040086-E1 or (if filed in an undocketed matter) concerning _____

references to initial CISR, and

filed on behalf of Odyssey/Wharton. The

document will be maintained in locked storage.

Any questions regarding this matter should be directed to Kay Flynn at (850) 413-6770.

PSC/CCA019-C (Rev 01/04)

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PSC Website: <http://www.floridapsc.com>

Internet E-mail: contact@psc.state.fl.us

CCA Official Filing

8/25/2004 2:56 PM*****

Matilda Sanders*1

Matilda Sanders

0834 - PCO

From: Andrea Cowart
Sent: Wednesday, August 25, 2004 2:54 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

2

Date and Time: 8/25/2004 2:53:00 PM
Docket Number: 040086-EI
Filename / Path: 040086extensionoftime2.mcb.doc
Order Type: Signed / Hand Deliver

RECEIVED-FPSC
04 AUG 26 AM 11:14
COMMISSION
CLERK

Order Granting Motion for Extension of Time

5/4

CCA Official Filing

11/8/2004 3:21 PM*****

Matilda Sanders*1

Matilda Sanders

1115-FOF

From: Andrea Cowart
Sent: Monday, November 08, 2004 3:20 PM
To: CCA - Orders / Notices; Martha Brown
Subject: Order / Notice Submitted

16

Date and Time: 11/8/2004 3:19:00 PM
Docket Number: 040086-EI
Filename / Path: 040086Dismiss order.mcb.doc

Order Dismissing Petition to Vacate

5/4



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: November 8, 2004

TO: Blanca S. Bayó, Director, Division of the Commission Clerk and Administrative Services

FROM: Jane Faurot, Chief, Office of Hearing Reporter Services, Division of the Commission Clerk and Administrative Services

RE: DOCKET NO. 040086-EI, AGENDA HELD 10/19/04.

RE: 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, BY ALLIED UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC.

DOCUMENT No: 11578-04, 10/26/04

The transcript for the above proceedings has been completed and is forwarded for placement in the docket file, including attachments.

Please note that Staff distribution of this transcript was made to:

LEGAL, ECR

Acknowledged BY:

A handwritten signature in black ink, appearing to be "JF".

JF/rlm

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
LILA A. JABER
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON



CAPITAL CIRCLE OFFICE CENTER
2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FL 32399-0850

Public Service Commission

December 9, 2004

Thomas D. Hall, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: 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, by Allied Universal Corporation and Chemical Formulators, Inc. (Docket No. 040086-EI)

Dear Mr. Hall:

Enclosed is a certified copy of a Notice of Administrative Appeal, filed in this office on December 9, 2004, on behalf of Allied Universal Corporation and Chemical Formulators, Inc. Also enclosed is a copy of Order No. PSC-04-1115-FOF-EI, the order on appeal.

It is our understanding that the index of record is due to be served on the parties to this proceeding on or before January 28, 2005.

Sincerely,

A handwritten signature in cursive script that reads "Kay Flynn".

Kay Flynn, Chief
Bureau of Records

KF/mhl
Enclosure

cc: · Kenneth A. Hoffman, Esquire
· J. Stephen Menton, Esquire
· Arthur J. England, Jr., Esquire
· Daniel K. Bandklayder, Esquire
James D. Beasley, Esquire
David Smith, Office of the General Counsel

Wayne Schiefelbein, Esquire
John L. Wharton, Esquire
Harold McLean, Public Counsel

ORIGINAL

RECEIVED-FPSC

04 DEC -9 PM 12: 09

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

COMMISSION
CLERK

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: December 9, 2004

**ALLIED UNIVERSAL CORPORATION AND CHEMICAL
FORMULATORS, INC.'S NOTICE OF ADMINISTRATIVE APPEAL**

NOTICE IS GIVEN that Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI"), appeal to the Florida Supreme Court the Order of the Florida Public Service Commission rendered November 9, 2004 in the above-referenced docket. The Order dismissed with prejudice the Amended Petition filed by Allied/CFI: (1) to vacate Order No. PSC-01-1003-AS-EI approving, as modified and clarified, the settlement agreement between Allied/CFI and Tampa Electric Company addressing electric service rates; and (2) requesting additional relief. A true and correct copy of said Order is attached hereto.

Respectfully submitted this 9th day of December 2004.

Respectfully submitted,

Arthur J. England, Jr., Esq.
Florida Bar No. 022730
Greenberg Traurig, P.A.
1221 Brickell Avenue
Miami, FL 33131
(305) 579-0500 (Telephone)
(305) 579-0717 (Telecopier)

A TRUE COPY
ATTEST Kay Lynn
Chief Bureau of Records

DOCUMENT NUMBER-DAT

13020 DEC-9 3

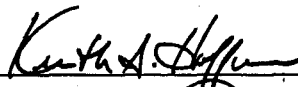
FPSC COMMISSION CLERK

-- and --

Kenneth A. Hoffman, Esq.
Florida Bar No. 0307718
J. Stephen Menton, Esq.
Florida Bar No. 331191
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

-- and --

Daniel K. Bandklayder, Esq.
Florida Bar No. 286265
Anania, Bandklayder, Blackwell, Baumgarten,
Torricella & Stein
Suite 4300 International Place
100 Southeast Second Street
Miami, Florida 33131
(305) 373-4900 (Telephone)
(305) 373-6914 (Telecopier)

By: 
KENNETH A. HOFFMAN

Attorneys for Allied Universal Corporation
and Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail, this 9th day of December, 2004, to the following:

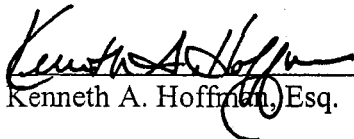
James D. Beasley, Esquire
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301

Wayne Schiefelbein, Esquire
John L. Wharton, Esquire.
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Martha Carter-Brown, Esquire
Marlene Stern, Esquire
Florida Public Service Commission
Office of the General Counsel
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Harry W. Long, Jr., Esquire
Assistant General Counsel
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601

Harold McLean, Public Counsel
Office of Public Counsel
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400


Kenneth A. Hoffmann, Esq.

BEFORE THE PUBLIC SERVICE COMMISSION

In re: 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, by Allied Universal Corporation and Chemical Formulators, Inc.

DOCKET NO. 040086-EI
ORDER NO. PSC-04-1115-FOF-EI
ISSUED: November 9, 2004

The following Commissioners participated in the disposition of this matter:

BRAULIO L. BAEZ, Chairman
J. TERRY DEASON
RUDOLPH RUDY BRADLEY
CHARLES M. DAVIDSON

BY THE COMMISSION:

ORDER DISMISSING PETITION TO VACATE

BACKGROUND

On January 30, 2004, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a petition to vacate Commission Order No. PSC-01-1003-AS-EI (settlement order), which approved a comprehensive settlement agreement between Allied and Tampa Electric Company (TECO).¹ The settlement agreement resolved Allied's complaint against TECO for allegedly providing preferential rates under TECO's Commercial Industrial Service Rider (CISR) tariff to Odyssey Manufacturing Company (Odyssey). Odyssey is Allied's competitor in the manufacture of chlorine bleach. The agreement and the settlement order approving it provided a CISR contract to Allied on terms comparable to the CISR contract that TECO had executed with Odyssey, with the condition that Allied would build a new bleach plant within two years of approval of the settlement agreement. The settlement and the settlement order also resolved all aspects of the complaint before the Commission, determined the prudence of TECO's CISR contracts for electric service with both Odyssey and Allied, and precluded Allied and TECO from further litigation of the subject matter before the Commission. The settlement did not, however, preclude Allied from litigating an appropriate claim in an appropriate judicial forum against Odyssey, and thereafter, on November 19, 2001, Allied filed suit against Odyssey

¹ Order No. PSC-01-1003-AS-EI, issued April 24, 2001, in Docket No 000061-EI, In re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Section 366.03, 366.06(2), and 366.07, F.S. with respect to rates offered under commercial/industrial service rider tariff; amended petition to examine and inspect confidential information; and request for expedited relief.

ORDER NO. PSC-04-1115-FOF-EI
DOCKET NO. 040086-EI
PAGE 2

in circuit court in Miami for state antitrust violations and other allegations of interference with business relationships.²

In December of 2003, Allied conducted several depositions of Odyssey's representatives for its circuit court case, including Odyssey's president, Mr. Sidelko, and one of its employees, Mr. Allman, a former TECO employee. The depositions contain statements that Allied alleges contradict statements that Mr. Sidelko made in 1998 in an affidavit to TECO as part of the application for the CISR rate, and in prefiled testimony before the Commission in the earlier complaint docket in June, 2000. On the basis of these alleged contradictory statements, Allied filed a petition to vacate in which it asked us to: vacate its settlement order; declare the settlement agreement between Allied and TECO unenforceable; terminate the existing CISR contract between Odyssey and TECO; require Odyssey to refund to TECO or its ratepayers the difference between the rate Odyssey currently pays TECO under the CISR contract and a new rate that the Commission would establish in this proceeding; and provide that Allied receive service from TECO at the same rate established for Odyssey.

On February 19, 2004, both Odyssey and TECO filed motions to dismiss Allied's petition, and Odyssey requested oral argument on the motions. On February 23, 2004, Odyssey also filed a motion for attorney's fees and sanctions against Allied. Allied responded to the TECO and Odyssey motions on March 12, 2004. On March 1, 2004, the Office of Public Counsel (OPC) intervened in the case, and on April 23, 2004, OPC filed a Motion for Public Service Commission to examine the contract between TECO and Odyssey. TECO and Odyssey objected to OPC's motion. We deferred consideration of the motions to dismiss from our July 6, 2004, Agenda Conference pending review of Allied's July 2, 2004, Motion for Leave to File Amended petition, which the Prehearing Officer granted by Order No PSC-04-0714-PCO-EI, issued July 20, 2004. TECO and Odyssey filed motions to dismiss the amended petition on August 20, 2004, and Odyssey filed another motion for attorney's fees and request for oral argument. Allied filed its response to the motions to dismiss on September 10, 2004, and we considered them at our October 19, 2004, Agenda Conference. We denied oral argument on the motions, finding that we were well-informed of the issues in the case and the parties' positions, and we dismissed Allied's amended petition to vacate our settlement order. We found that Allied had failed to state a cause of action upon which we could grant the relief requested. The reasons for our decision to dismiss the petition are explained in detail below. We deferred consideration of Odyssey's motions for attorney's fees and sanctions until our decision to dismiss the petition to vacate becomes final. We have jurisdiction over this matter pursuant to sections 366.04, 366.05, and 366.07, Florida Statutes, and pursuant to our inherent authority to enforce and review our own orders.

² Case No. 01-27699-CA-25, in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida. The case is still in progress.

ORDER NO. PSC-04-1115-FOF-EI
DOCKET NO. 040086-EI
PAGE 3

DECISION

This case implicates important Commission policies that encourage settlements and protect the finality and effectiveness of Commission orders. After careful review of the allegations in the amended petition and the arguments of the parties, we find that Allied's allegations do not support vacation of a final Commission order and voidance of the underlying settlement agreement the order approved. Allied has not alleged a cause of action upon which the Commission can grant the relief requested.

Allied's Amended petition

In its amended petition Allied states that it competes with Odyssey in the manufacture and sale of chlorine bleach in the Tampa Bay area. In 2000, Odyssey constructed a new manufacturing facility in Tampa that uses electrolysis of salt and water to produce chlorine and caustic soda, which are then combined to produce chlorine bleach. Allied is involved in several bleach manufacturing facilities in Florida, including a facility of its affiliate CSI in Tampa, which uses a process called the Powell process to manufacture chlorine bleach. The cost of raw materials is the most significant manufacturing cost in the Allied facility's Powell process, while the cost of electricity is the most significant manufacturing cost in the Odyssey facility's electrolysis (cell) process.

In the summer of 1998, before beginning construction of its new plant, Odyssey negotiated a contract for electric service with TECO under TECO's CISR tariff, which the Commission had approved in Order No. PSC-98-1081-EI (CISR Order).³ The CISR Order permitted TECO to negotiate a rate for electric service with potential customers that would be lower than its regularly tariffed rates, providing the customer could demonstrate that if it did not receive the lower rate from TECO it would leave TECO's service territory and locate its operations elsewhere. If the customer demonstrated by legal attestation or affidavit that but for the special rate TECO would not serve the customer's load, and provided documentation that the customer had a viable lower cost alternative to taking service from TECO, the CISR tariff permitted TECO to negotiate a contract service agreement (CSA) with the customer. The CSA could offer electric service at a rate no lower than TECO's incremental cost to serve the load, plus a contribution to fixed costs. The negotiated discount rate would only apply to base energy and demand charges, and the customer would pay all otherwise applicable adjustment charges. According to Allied, the CISR Order did not authorize TECO to negotiate a discounted rate guarantee for variable fuel charges and other adjustment clause costs. The CISR Order also provided that TECO would carry the burden of proof that the CSA was negotiated in the interest of TECO's general body of ratepayers. TECO was to conduct specific analyses of each CISR customer to calculate the net benefits to TECO's general body of ratepayers on a cumulative net

³ Order No. PSC-98-1081-FOF-EI, issued August 10, 1998, in Docket No. 980706-EI, In re: Amended petition for approval of Commercial/Industrial Service Rider Tariff by Tampa Electric Company. Order No. PSC-98-1081 approved the tariff as an experimental tariff for 4 years. It expired Jan 1, 2004.

ORDER NO. PSC-04-1115-FOF-EI
DOCKET NO. 040086-EI
PAGE 4

present value basis over the life of the contract, and as long as the revenues exceeded the costs the ratepayers would benefit.

According to Allied, Odyssey's president, Stephen Sidelko, provided an affidavit to TECO which stated that if Odyssey were unable to obtain a specific rate from TECO, Odyssey will have no alternative but to locate its manufacturing facility in a different service area where it can obtain such a rate. (quoted in Allied Amended petition, pps.8-9) Mr. Sidelko attached this affidavit to his prefiled testimony in Allied's original complaint against TECO, where he again asserted that if Odyssey were unable to obtain a certain rate from TECO, Odyssey would have no alternative but to locate its plant in a different service area where it could obtain a satisfactory rate. In its amended petition in this docket, Allied quoted the testimony of Mr. Sidelko as follows:

Q. Were you required to furnish a sworn affidavit to TECO?

A. I was, and I did. The affidavit confirmed that our choice of a site for our manufacturing facility was largely dependent upon the electric service rate for that location, because electricity comprises half of Odyssey's variable manufacturing costs. Further, the affidavit provided that if we were unable to obtain a certain rate, Odyssey would have no alternative but to locate its plant in a different service area where it could obtain a satisfactory rate.

Q. Did Odyssey and TECO reach an agreement?

A. Yes. On September 4, 1998, Odyssey executed a Contract Service Agreement. We received the Contract as executed by TECO in late September, 1998. I will sponsor the executed contract as Exhibit SWS-1. An easement in the substation site was later conveyed by Odyssey to TECO.

Q. Would Odyssey have agreed to receive service from TECO at a rate higher than that provided under the CISR?

A. No.

Q. Why is that?

A. It would not have made good business sense. Odyssey is a for profit company, and, as its CEO, my job is to ensure that our investors achieve an acceptable return on investment. Further, the condition regarding the electric rate set forth in our lender's loan commitment would not have been satisfied.

(Allied amended petition, p. 11.) Allied alleges that in order to compete with Odyssey's new plant, Allied planned to construct a new facility in Tampa that also used electrolysis technology to produce chlorine bleach, and by August of 1999 it also requested a CSA from TECO.

ORDER NO. PSC-04-1115-FOF-EI
DOCKET NO. 040086-EI
PAGE 5

According to Allied, the rates and conditions TECO first offered Allied, however, were higher and less favorable than the rates in the CSA with Odyssey, and Allied filed its original complaint alleging discriminatory treatment at the Commission in January of 2000. In February of 2001, Allied and TECO entered into the settlement agreement which is the subject of this docket. Allied alleges that it justifiably relied on the sworn affidavit and testimony of Mr. Sidelko that Odyssey required a certain rate for service from TECO without which Odyssey would have no alternative other than to locate its plant in another area, and that Odyssey's lender required that Odyssey receive that rate. The settlement agreement was approved by the Commission in April of 2001.

According to Allied, the settlement agreement offered Allied a CSA under TECO's CISR tariff that was essentially the same as the CSA with Odyssey, but required Allied to begin commercial operations at its new bleach plant within two years of the Commission's Settlement Order.⁴ Allied asserts that Odyssey prevented Allied from meeting the two year deadline, because Odyssey refused to release the only builder qualified to construct cell process chlorine bleach plants in the United States from an illegal restrictive covenant that precluded the builder from constructing a plant within 150 miles of Odyssey's plant for a period of ten years. Allied notified TECO that this circumstance constituted a force majeure event under the TECO/Allied CSA and requested an extension of time to build its new plant. Allied alleges that TECO arbitrarily and capriciously denied Allied's request and terminated Allied's CSA.

By November 19, 2001, Allied had filed suit against Odyssey in circuit court in Miami. Allied alleges that Mr. Sidelko contradicted his sworn affidavit and testimony before the Commission by statements he made in a deposition given in the circuit court case two years later, on December 18, 2003. Allied claims that Mr. Sidelko contradicted his Commission testimony by stating that:

- (a) At the time he submitted his affidavit to TECO, he had not identified a specific electric rate that was necessary to make Odyssey's proposed plant economically feasible;
- (b) It was TECO, not Odyssey, that proposed the per kwh electric rate;

⁴ The settlement agreement and the Commission's Settlement order approving it, are referenced, incorporated and attached to Allied's amended petition, as are portions of the deposition of Mr. Sidelko to be discussed below. Odyssey has provided the entire deposition of Mr. Sidelko. The Commission may consider those documents and the facts they contain, in their entirety and for all purposes, in evaluating the legal sufficiency of Allied's amended petition. Rule 1.130, Fla. Rules of Civil Procedure; Harry Pepper & Associates v. Lasseter, 247 So. 2d 736 (Fla. 3d DCA 1971).

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(c) The per kwh rate included in his affidavit and referred to in his testimony was not important to Mr. Sidelko,⁵

(d) Odyssey could operate its Tampa plant profitably if it had an electric rate of [confidential number higher than the rate in Mr. Sidelko s affidavit] per megawatt hour.

Allied attached portions of Mr. Sidelko s deposition to its amended petition in this docket to support its allegations of inconsistency. According to Allied, the statements from Mr. Sidelko and recent depositions taken in the Miami-Dade Circuit Court case⁶ show that Allied relied on false statements to reach its settlement agreement with TECO, that TECO was misled by Odyssey in entering into the CSA with Odyssey, and the Commission s Order approving the settlement agreement and the prudence of the Odyssey and Allied CSAs was predicated on fraud, deceit, surprise, mistake or inadvertence. Allied contends that the alleged contradiction in Mr. Sidelko s testimony and deposition and the information contained in the other depositions constitutes a substantial change in circumstances that would warrant Commission action to vacate its Order in the public interest pursuant to the long-recognized exception to the doctrine of administrative finality articulated in Peoples Gas v. Mason, 187 So. 2d 335 (Fla. 1966).

In its amended petition Allied also contends that because of Odyssey s allegedly false statements, the significant difference between the base rate TECO has recently offered Allied to serve its proposed new plant and the Odyssey CSA rate, and the recent new information gathered in the circuit court case, Allied believes that Odyssey s rate is insufficient to cover TECO s incremental costs, Odyssey s CSA is not consistent with the Commission s CISR Order, and thus TECO s ratepayers have been harmed.

Allied alleges that its substantial interests as a TECO ratepayer are affected by TECO s actions, because Allied is adversely affected by the revenue shortfall created by Odyssey s discount contract. Allied states that it would not have entered into the Settlement agreement had it known that Odyssey s CSA forced a subsidy on Allied and other ratepayers. Allied also asserts that as a competitor/ratepayer it has standing to challenge TECO s post-settlement interpretation of Odyssey s CSA that essentially exempts Odyssey from payment of fuel charges, an issue which this Commission has not previously considered, and which directly and substantially affects Allied and other ratepayers. Allied claims that its interests as a direct competitor of Odyssey are affected in this proceeding, because it has a statutory right to electric service that is not unduly discriminatory pursuant to sections 366.03 and 366.06(2), Florida

⁵ Allied mentions that Mr. Sidelko changed this statement in the errata sheet to his deposition, asserting instead that the per kwh rate was important to Odyssey.

⁶ Allied refers to the depositions of former TECO employee Patrick Allman and current TECO employees Robert Jennings and William Ashburn taken in the Circuit Court case. Allied has filed the depositions of Mr. Allman under confidential cover in this docket. Allied has not filed the other depositions in this docket.

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Statutes. Finally Allied claims that its interests as party to the Settlement Agreement entitle it to bring this action under Peoples Gas.

Odyssey s Motion to Dismiss

Contending that Allied s amended petition is based on the flawed premise that the alleged inconsistent statements of Mr. Sidelko support the relief Allied has requested, Odyssey urges dismissal of Allied s amended petition with prejudice. Odyssey argues that Allied lacks standing to initiate this proceeding, because Allied has not alleged any harm to itself for which the Commission could grant relief. Odyssey also argues that the doctrine of administrative finality and the law of settlements preclude Commission action on the amended petition. Odyssey claims that Allied s amended petition is an improper attempt to use a Commission proceeding to gain an economic advantage over its competitor, and to bolster Allied s circuit court case.

With respect to standing, Odyssey argues that Allied s substantial interests are not affected, as required by Agrico Chemical Co. v. Dept. of Environmental Regulation, 406 So. 2d 478, 482 (Fla. 2d DCA 1981), where the Court said:

[B]efore one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect. The first aspect of the test deals with the degree of injury. The second deals with the nature of the injury.

Odyssey claims that even if one assumes the allegations in the amended petition to be true, and views them in a light most favorable to Allied, Allied has failed to allege a legally cognizable injury of sufficient immediacy to support an administrative proceeding in this case. Odyssey also claims that Allied s failure to cite any statute or rule that requires the Commission to grant Allied relief precludes any analysis of the type of injury required by Agrico. Further, Odyssey argues that Allied lacks standing to request, and the Commission lacks jurisdiction to impose, any of the relief against Odyssey outlined in its amended petition, including the request to vacate Odyssey s CSA with TECO, and the request to order Odyssey to refund to TECO monies Odyssey saved under its CSA.

With respect to the doctrine of administrative finality, Odyssey argues that the Commission s settlement order, issued almost three years before this amended petition was filed, cannot be revisited absent sufficient demonstration of substantially changed circumstances that would warrant modification in the public interest. Odyssey contends that in its amended petition Allied asserts the conclusion that circumstances have changed substantially, but Allied does not provide factual allegations material to that conclusion. Odyssey also contends that the issues ostensibly raised by Allied s current amended petition concerning the appropriateness and prudence of the TECO/Odyssey CSA were fully resolved in the prior proceeding pursuant to the

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settlement agreement and the settlement order approving it. Odyssey claims that Allied is attempting to relitigate Docket No. 000061-EI in spite of the fact that Allied agreed to, and the Commission approved, a dismissal with prejudice three years ago. Odyssey argues that the doctrine of administrative finality would preclude the Commission's reconsideration of those issues. Finally, Odyssey argues that Allied's Amended petition, which Odyssey claims is based entirely on the alleged fraudulent statements of Mr. Sidelko, amounts to a claim of intrinsic fraud, which according to Rule 1.540(b), Fla. R. Civ. P. must be raised within a year of the determination based on the alleged fraud.

With respect to the law of settlement agreements, Odyssey contends that the public policy of the state of Florida, as articulated in numerous court decisions, encourages and supports settlement agreements. Odyssey contends that the settlement agreement approved by the Commission specifically precluded further Commission litigation on the prudence of Odyssey's and Allied's CSAs with TECO, and Odyssey also contends that the general release incorporated in the settlement agreement precluded any further litigation against TECO regarding the CSAs or TECO's CISR tariff. Odyssey urges the Commission to honor public policy supporting settlement agreements by declining to reopen the Allied/TECO litigation.

Odyssey argues that even if the factual allegations of Allied's amended petition are taken as true, on their face they do not prove facts contradictory to those upon which the Commission based its initial decision to approve the prudence of the CSAs and the terms of the parties' settlement. According to Odyssey those allegations do not provide any legally cognizable basis to provide relief. Odyssey also argues that on their face the statements by Mr. Sidelko are not contradictory and are not material to Allied's demands for relief. According to Odyssey, Mr. Sidelko's affidavit and testimony filed in the earlier Commission case addressed whether Odyssey would construct its plant in TECO's service territory if it did not receive the identified CISR rate from TECO. Mr. Sidelko's deposition statements addressed the economic feasibility of Odyssey's plant at a particular rate for electric service, and at a different point in time than the time the affidavit was executed. In any event, according to Odyssey, those allegations and the new allegations included in Allied's amended petition regarding TECO's current fuel costs do not support a finding of changed circumstances that would require the Commission to vacate its order approving the Allied/TECO settlement agreement.

TECO's Motion to Dismiss

TECO's motion centers upon the settlement agreement between Allied and TECO that was approved by the Commission in the earlier case. According to TECO, the settlement agreement resolved all outstanding claims by Allied against it for discriminatory treatment related to TECO's CISR tariff, and dismissed the case with prejudice. TECO also relies on the General Release that Allied signed relieving TECO of any further liability for any matter arising out of the TECO/Odyssey CSA. TECO claims that Allied's amended petition attempts to reopen the issues resolved by the agreement in direct violation of its terms, thereby depriving TECO of the benefits of the agreement, even though TECO has fully performed under the agreement and

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even though Allied makes no material allegation of wrong-doing on TECO's part. According to TECO, Allied has provided no new facts and raised no new issues that would cure the flaws in its original petition to vacate. TECO argues that the factual allegations that purportedly support Allied's request to vacate the Commission's settlement order and rescind the settlement are based on claims of alleged misstatements by Odyssey, who was not a party to the settlement agreement and provided no part of the consideration for Allied's agreement to settle its case against TECO. TECO argues that Allied's accusations against Odyssey, whether true or not, are immaterial to the settlement reached between Allied and TECO and cannot form the basis for vacating the settlement order and declaring the underlying agreement it approved unenforceable.

Further, TECO suggests that Allied's amended petition is internally inconsistent because it asserts continued entitlement to the Odyssey CSA rate from TECO while claiming that the rate is harmful to TECO's general body of ratepayers.

Citing the settlement agreement, the settlement order approving it, and the General Release, which are attached to Allied's amended petition, TECO shows that Allied and TECO executed a CSA for electric service to Allied's proposed new bleach plant under the same rates, terms, and conditions provided to Odyssey, but with the additional condition that Allied would construct its new plant within two years of approval of the settlement agreement:

WHEREAS, Allied/CFI and TECO desire to resolve their differences and conclude the PSC litigation on terms which do not affect Odyssey's rates terms and conditions for electric service from TECO;

NOW, THEREFORE, Allied/CFI and TECO hereby agree to conclude the PSC litigation on the following terms. . . .

* * *

2. 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 CSA between TECO and Odyssey, provided that the new sodium hypochlorite manufacturing facility must begin commercial operation within 24 months from the date of the PSC order approving this settlement agreement

TECO also shows that Allied agreed to forego any further challenge to the TECO/Odyssey CSA:

3. Allied/CFI shall assert no further challenge, before the PSC, to the rates, terms and conditions for electric service provided by TECO to Odyssey and set forth in the TECO/Odyssey CSA. . . .

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* * *

6. Allied/CFI's Complaint in the PSC litigation shall be deemed withdrawn, with prejudice, upon: (a) the execution of this Settlement Agreement by TECO and Allied/CFI; and (b) the issuance of an order by the PSC approving this settlement agreement, as proposed.

7. Allied/CFI and TECO request that the PSC include in its order approving this settlement agreement the following rulings and determinations:

a. The Commission shall not entertain any further challenge to the existing Odyssey or the proposed Allied/CFI CSA or the rates, terms or conditions contained therein. . . .

TECO also refers to those portions of the Commission's settlement order that approved the prudence of both Odyssey's and Allied's CSAs; specifically found that the rates offered to Odyssey and Allied exceeded TECO's incremental cost to serve them and; approved the agreement not to entertain any further challenge to the prudence of the CSAs.

The Commission made an explicit determination, based on undisputed competent and substantial evidence that the Odyssey CISR rate would be sufficient to recover all incremental costs, including projected fuel expenses which were specifically included in the RIM analysis, for the proposed ten-year term of the CSA. . . . Allied has failed to identify any contemporaneous information about the rates in question that was not known to the Commission at the time of the deliberation that led to the issuance of Order No. PSC-01-1003-AS-EI.

(TECO Motion to Dismiss Amended Petition pps. 7-8)

TECO argues that the allegations in Allied's amended petition fail to demonstrate on their face that Mr. Sidelko made inconsistent statements in his Commission testimony and in his deposition in the circuit court proceeding. Even if that assertion is accepted, however, TECO argues, the statements are immaterial, and Allied's amended petition does not establish that Allied was in any way injured by reliance upon those statements. According to TECO:

Under the Settlement Agreement, Allied bargained for and received the opportunity to enjoy the same rates, terms and conditions for electric service that had been negotiated with Odyssey, provided that Allied commenced commercial operation at its new bleach manufacturing facility within 24 months of the Commission order approving the Settlement Agreement. Regardless of what rate Odyssey might have been willing to accept, Allied was given the opportunity to receive the same rate that Odyssey did in fact accept.

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(TECO Motion to Dismiss, pps. 13-14.) TECO contends that Allied has alleged no facts that would support a finding that TECO's CSA was imprudent or that the Commission was in any way mistaken in approving the settlement agreement between TECO and Allied. According to TECO, Allied's allegations about the veracity of Mr. Sidelko's affidavit are immaterial to the question of whether Allied should be required to abide by the written terms of its settlement agreement with TECO. TECO asserts that the doctrine of administrative finality requires dismissal of Allied's amended petition with prejudice.

Allied's Response

Allied contends that both motions have provided ample argument on the legal and factual substance of Allied's amended petition and why the Commission should not vacate its settlement order, but both have failed to address the controlling standard by which the Commission must review the amended petition; that is, whether the facts alleged within the four corners of the amended petition, considered true for purposes of the motions to dismiss, state a cause of action upon which relief can be granted. Allied argues that its petition alleges facts that state a cause of action under well-established exceptions to the doctrine of administrative finality, demonstrate Allied's standing to assert its claims and support the relief requested.

In response to TECO's and Odyssey's argument that the terms of the settlement agreement, the order approving it and the general release preclude further litigation on the CSAs, Allied states that this argument misses the point of its amended petition. Allied states that it does not contest that the settlement agreement and the settlement order say what they say. Allied argues that the point of its amended petition is that Odyssey made false statements in the Commission's earlier proceeding, and Allied as well as TECO and the Commission -- justifiably relied on those false statements in executing or approving the settlement agreement. Reasserting the allegations it made in its amended petition, Allied claims that these allegations are sufficient to invoke the exception to the doctrine of administrative finality, which provides that the Commission can modify its orders where material changed circumstances, including fraud, mistake, or misrepresentation, require the modification in the public interest. Allied also asserts that the new information in its amended petition regarding TECO's administration of the Odyssey CSA, specifically its treatment of energy and fuel costs and other recovery clause charges, amounts to material changed circumstances requiring vacation of the Commission's settlement order. In response to Odyssey's argument that in fact the doctrine of administrative finality supports dismissal of Allied's Petition, and too much time has elapsed to invoke the exception to the doctrine, Allied argues that there is no time limit beyond which the Commission is precluded from modifying its order where the public interest requires it, and the factual allegations of its amended petition, taken as true, support modification.

In response to Odyssey's argument that Allied does not have standing to proceed with its amended petition, Allied contends that because it was a party to the original agreement and a party to the settlement agreement approved by the Commission it has standing in this case. Citing Peoples Gas, 187 So. 2d 339, Allied argues that a party to an agreement approved by the

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Commission may file a petition with the Commission to vacate or modify a prior approval of that agreement, and the law regarding standing to request a hearing under Florida's Administrative Procedures Act, Chapter 120, Florida Statutes, is not controlling. Further, Allied claims that it has standing as a customer of TECO and a competitor of Odyssey to file this Petition, which, it claims, raises the issues of competitive harm to Allied and financial harm perpetrated on TECO's general body of ratepayers.

Analysis

A motion to dismiss raises as a question of law the sufficiency of the facts alleged in a petition to state a cause of action. The standard to be applied in disposing of a motion to dismiss is whether, with all factual allegations in the amended petition taken as true and construed in the light most favorable to the amended petitioner, the amended petition states a cause of action upon which relief may be granted. Varnes v. Dawkins, 624 So. 2d 349, 350 (Fla. 1st DCA 1993). In determining the sufficiency of the amended petition the Commission should confine its consideration to the amended petition and documents incorporated therein, and the grounds asserted in the motions to dismiss. See, Flye v. Jeffords, 106 So. 2d 229 (Fla. 1st DCA 1958), overruled on other grounds, 153 So.2d 759, 765 (Fla. 1st DCA 1963), and Rule 1.130, Florida Rules of Civil Procedure. Further, the law provides that where there is an inconsistency between the allegations of material fact in the amended petition and the specific facts revealed by the incorporated exhibits and they have the effect of neutralizing each other, a motion to dismiss should be granted. Schweitzer v. Seaman, 383 So. 2d 1175 (Fla. 4th DCA 1980). See also, Harry Pepper & Assoc., Inc. v. Lasseter, 247 So. 2d 736 (Fla. 3d DCA 1971), cert. den., 252 So.2d 797 (Fla. 1971) and Padgett v. First Federal Savings and Loan Association of Santa Rosa County, 378 So. 2d 58 (Fla. 1st DCA 1979).

Upon review of all the pleadings and the documents referenced in Allied's amended petition, we find that the facts Allied has alleged in the amended 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 the relief requested. Further, we believe that another amended petition would not cure the fundamental defects of the case. The facts contained in Allied's amended petition and described in detail above - specifically the statements by Mr. Sidelko that form the basis of the amended petition - are not contradictory on their face, and are insufficient to support a finding of fraud or misrepresentation, even if taken as true and viewed in a light most favorable to Allied. They do not address the same subject. The subject of Mr. Sidelko's statements contained in his affidavit and testimony was whether Odyssey would construct its plant in TECO's service territory if it did not receive the particular rate identified. The subject of Mr. Sidelko's statements in his deposition was the economic feasibility of the plant. Mr. Sidelko's statements are not mutually exclusive, and on their face do not appear to be inconsistent or misleading.

Even if they are considered inconsistent or misleading, however, the inconsistency is not material to any issue the Commission considered when it approved the Allied/TECO settlement

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and the prudence of the CSAs. As Allied states in its amended petition, the issues of relevance to the Commission in approving the prudence of the CSAs were: 1) whether the industrial customer asserted that it would not build its plant in TECO's service territory unless it received a discounted rate for service; 2) whether the customer showed that it had a viable offer for service elsewhere at that rate; and, 3) whether the identified rate covered TECO's incremental costs plus a contribution to fixed costs. The economic feasibility of the Odyssey plant was not relevant to any determination made in the Commission's settlement order; nor was TECO's future administration of the contract. If TECO is not implementing the Odyssey CSA appropriately, the remedy for that would be a review of TECO's actions in the fuel clause, not a revocation of the Commission's initial determination of the prudence of the CSA itself. We do not believe that an alleged inconsistency regarding the plant's economic feasibility or an alleged inappropriate implementation of the CSA would not affect the validity of the settlement order, or the Commission's initial determination that the CSA complied with the CISR Order and was prudent. Thus, it would be insufficient to support a determination that a substantial change in circumstances has occurred that would require vacation of the settlement order.

Also, the alleged inconsistency does not support the finding that Allied has suffered an injury in fact as a result of the inconsistent statements. As Odyssey explains in detail in its motion to dismiss, the law of standing to participate in a formal administrative proceeding under Florida's APA requires that a participant show a substantial interest that would entitle it to relief. In order to show such an interest, the participant must demonstrate that it will suffer an actual injury of sufficient immediacy which the proceeding was designed to protect. Agrico Chemical Co., supra. Allied has not alleged facts in its amended petition to show either that it has suffered an actual and immediate injury, or that the injury is of the kind this proceeding is designed to protect.⁷ If Allied did rely on Mr. Sidelko's statements, Allied has not alleged facts to show that it did so to its detriment. The facts alleged in the amended petition and in incorporated documents show that Allied received essentially the same rates, terms and conditions in its CSA that Odyssey received. It is true that Allied was recently offered a higher rate for service from TECO than offered in the CSA, but that is because Allied's settlement agreement with TECO contained the condition precedent that Allied would receive the same CISR rates as Odyssey if it constructed a new electrolysis technology bleach plant within 2 years of approval of the settlement and the CSA. Allied has not constructed the plant and thus has not complied with the settlement. If Allied's failure to comply with the agreement was caused by Odyssey's agreement with a bleach plant builder, Allied's complaint is cognizable in the ongoing Miami-Dade circuit court case for interference with business opportunity, not in a proceeding before this Commission to overturn a settlement agreement between Allied and TECO to which Odyssey was not a signatory. The written terms of the settlement agreement, which is the subject of

⁷ We disagree with Allied's assertion that Peoples Gas provides the controlling measure of standing in this case. A party is not automatically entitled to standing to request modification of an approved agreement because it was a party to the original agreement. Florida's APA, enacted in 1972, and the case law interpreting it, govern standing in all administrative proceedings. A party to an agreement does not acquire a superior right to an administrative hearing simply by being a party to an agreement. A party must still show a substantial interest in the new proceeding pursuant to the requirements of Agrico in order to proceed.

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Allied's amended petition, set out the consideration provided and the entire agreement between the parties to dismiss Allied's case with prejudice before the Commission. They control TECO's and Allied's obligations in this dispute. The representations of a non-party to the settlement do not appear anywhere in the document as a basis upon which the settlement agreement was reached.

Conclusion

Allied has not alleged sufficient facts in its amended petition to support the relief it has requested. As mentioned above, Allied's allegations of contradictory statements by Odyssey do not support vacation of a Commission order approving Allied's written settlement agreement with TECO. Allied's complaint against Odyssey is cognizable in circuit court. Further, Allied has not alleged any actions by TECO that would warrant vacation of the Commission's settlement order. Allied's allegation that TECO arbitrarily and capriciously refused to invoke the force majeure clause of the settlement agreement would support a claim to enforce the terms of the agreement, not to void it. Similarly, Allied's claim that TECO is not properly administering its CSA with Odyssey does not support vacation of the TECO/Allied settlement agreement itself.

Allied has not alleged sufficient material facts to show misrepresentation, detrimental reliance, harm, or any significant changed circumstances that would warrant vacation of a Commission order in abrogation of the doctrine of administrative finality or the Commission's longstanding commitment to the support and encouragement of negotiated settlements. See Peoples Gas v. Mason, supra.; Order No. PSC-98-1620-FOF-EQ, issued December 4, 1998, in Docket No. 980283-EQ (doctrine of administrative finality precluded readjudication of declaratory statement issues); Utilities Commission of New Smyrna Beach v. Florida Public Service Commission, 469 So. 2d 731 (legal system favors settlement of disputes by mutual agreement between contending parties); and, Order No. 22094, issued October 26, 1989, in Docket No. 881518-SU (Commission has longstanding policy to encourage settlement agreements). Allied's amended petition fails to state a cause of action upon which the Commission can grant the relief requested. Pursuant to Rule 28-106.201, Florida Administrative Code, it is clear on the face of the amended petition that amendment will not cure its defects, and therefore we dismiss the amended petition with prejudice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the 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, by Allied Universal Corporation and Chemical Formulators, Inc. is dismissed. It is further

ORDERED that this docket shall remain open pending consideration of the outstanding motions for attorneys fees and sanctions.

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By ORDER of the Florida Public Service Commission this 9th day of November, 2004.

/s/ Blanca S. Bay

BLANCA S. BAY , Director
Division of the Commission Clerk
and Administrative Services

This is a facsimile copy. Go to the Commission's Web site,
<http://www.floridapsc.com> or fax a request to 1-850-413-
7118, for a copy of the order with signature.

(SEAL)

MCB

DISSENT: Commissioner Deason dissented from the Commission's decision to deny oral argument on this matter at the October 19, 2004, Agenda Conference.

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District

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Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

MEMORANDUM

DECEMBER 9, 2004

RECEIVED-FPSC
04 DEC 10 PM 4:35
COMMISSION
CLERK

TO: ~~KAY FLYNN/CCA~~
HONG WANG/CCA
MARY DISKERUD/GCL-APP
WANDA TERRELL/GCL-APP

FROM: DAVID E. SMITH, ATTORNEY SUPERVISOR, OFFICE OF
THE GENERAL COUNSEL *DESJA*

RE: ALLIED UNIVERSAL CORPORATION AND CHEMICAL
FORMULATORS, INC. v. FLORIDA PUBLIC SERVICE COMMISSION,
FLORIDA SUPREME COURT, FPSC DOCKET NO. 040086-EI

Please note that the above appeal has been assigned to Marlene Stern. The Notice of Administrative Appeal was filed on December 9, 2004. The case schedule is as follows:

<u>Date</u>	<u>Item</u>
<u>From day of filing:</u>	
<u>01/14/05</u>	Draft of Index of Record from CCA to Appeals Attorney.
<u>01/28/05</u>	Index of Record served on Parties.
<u>02/07/05</u>	Copy of Record to Appeals.
<u>02/17/05</u>	Appellant's Initial Brief Due.
<u>03/04/05</u>	Draft Commission Answer Brief Due.
<u>03/09/05</u>	Commission's Answer Brief Due.
<u>03/29/05</u>	Appellant's Reply Brief Due.

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

January 25, 2005

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302

**Re: Supreme Court Case No. SC04-2329 - Allied Universal Corporation, etc., et al.
vs. Braulio L. Baez, Chairman, et al. (Docket No. 040086-EI)**

Dear Mr. Hoffman:

Enclosed is the index to the above-referenced docket on appeal. Please look the index over and let me know if you have any questions concerning the contents of the record.

The record will be filed with the Court on or before March 29, 2005.

Sincerely,

A handwritten signature in cursive script that reads "Kay Flynn".

Kay Flynn, Chief
Bureau of Records

KF:mhl

cc: J. Stephen Menton, Esquire
Arthur J. England, Jr., Esquire
Daniel K. Bandklayder, Esquire
James D. Beasley, Esquire
Harry W. Long, Jr., Esquire
Wayne Schiefelbein, Esquire
John L. Wharton, Esquire
Harold McLean, Public Counsel
David Smith, Office of the General Counsel
Marlene K. Stern, Office of the General Counsel

I N D E X

Allied Universal Corporation, etc., et al.

vs.

Braulio L. Baez, Chairman, et al.

FPSC Docket No. 040086-EI

Supreme Court Case No. SC04-2329

VOLUME 1

Progress Docket 1

Allied Universal Corporation and Chemical Formulators, Inc.’s (“Allied/CFI”) petition to vacate Order No. PSC-01-1003-AS-EI approving, as modified and clarified, the settlement agreement between Allied/CFI and Tampa Electric Company (“TECO”) and request for additional relief, filed January 30, 2004 7

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Amended certificate of service for Odyssey's amended response to OPC's motion for determination of proper treatment of deposition transcript of Mr. Patrick Allman, filed June 14, 2004 504

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Supreme Court of Florida acknowledgment of new case, Case No. SC04-2329, filed December 22, 2004 987

Supreme Court of Florida acknowledgment of new case (amended), Case No. SC04-2329, filed December 28, 2004 994

Certificate of Director, Division of the Commission Clerk and Administrative Services 996

**DOCUMENTS SUBMITTED IN SEALED ENVELOPE
MARKED “CONFIDENTIAL”**

Portions of petition and exhibits, on behalf of Allied/CFI (See Confidential DN 07305-04), filed January 30, 2004 (**Confidential DN 01404-04**)

Deposition of Stephen Sidelko dated December 18, 2003, Errata Sheet, as filed with 11th Circuit Court in and for Miami-Dade County, Case No. 01-27699 CA 25, on behalf of Odyssey, filed April 22, 2004 (**Confidential DN 04796-04**)

Page Nos. 10 and 17 of April 19, 2004 deposition of Patrick Allman, as filed with
11th Circuit Court for Dade County (Case No. 01-27669 CA 25), on behalf of Allied/CFI,
filed May 12, 2004 (**Confidential DN 05528-04**)

Portions of amended petition, on behalf of Allied/CFI (See Confidential DN 01404-04),
filed July 2, 2004 (**Confidential DN 07305-04**)

References to initial CISR rate on page Nos. 39, 40 and 41 of motion to dismiss amended
petition of Allied/CFI, on behalf of Odyssey, filed August 20, 2004
(**Confidential DN 09129-04**)

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(850) 224-9115 FAX (850) 222-7560

MEMORANDUM

TO: FPSC Clerk's Office
FROM: Pat Pottle
RE: Fax Number for Lee L. Willis and James D. Beasley
DATE: February 21, 2005

981444
020233
030944
031033
040033
040086
041103
041143
041300
041375
041376
041408
050001
050002
050007
050058

I would like to request that you change, in all instances, the fax number for Lee L. Willis and James D. Beasley from 222-7560 to 222-7952.

Thank you for your assistance.

Done
02/23/05
dk
KMP

State of Florida



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: March 28, 2005
TO: Tim Devlin, Director, Division of Economic Regulation JDJ for TD
FROM: Kay Flynn, Chief of Records, Division of the Commission Clerk and Administrative Services
RE: Docket No. 040086-EI - 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, by Allied Universal Corporation and Chemical Formulators, Inc.

Permission is requested to copy the following confidential documents from this docket, in order to include them with the record that is being prepared for filing in the Florida Supreme Court, Case No. SC04-2329. The documents are:

DN 01404-04 - Portions of petition and exhibits, on behalf of Allied/CFI (See Confidential DN 07305-04), filed January 30, 2004.

DN 04796-04 - Deposition of Stephen Sidelko dated December 18, 2003, Errata Sheet, as filed with 11th Circuit Court in and for Miami-Dade County, Case No. 01-27699 CA 25, on behalf of Odyssey, filed April 22, 2004.

DN 05528-04 - Page Nos. 10 and 17 of April 19, 2004 deposition of Patrick Allman, as filed with 11th Circuit Court for Dade County (Case No. 01-27669 CA 25), on behalf of Allied/CFI, filed May 12, 2004.

DN 07305-04 - Portions of amended petition, on behalf of Allied/CFI (See Confidential DN 01404-04), filed July 2, 2004.

DN 09129-04 - References to initial CISR rate on page Nos. 39, 40 and 41 of motion to dismiss amended petition of Allied/CFI, on behalf of Odyssey, filed August 20, 2004.

These documents will be provided to the Court in a sealed envelope, marked "CONFIDENTIAL," and the parties will be advised by letter that they must ask the Court for continued treatment of the documents as confidential.

cc: Blanca S. Bayó
Marlene Stern

ck+ file

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

March 29, 2005

Thomas D. Hall, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Supreme Court Case No. SC04-2329 - Allied Universal Corporation, etc., et al vs. Braulio L. Baez, Chairman, et al. (Docket No. 040086-EI)

Dear Mr. Hall:

The record in the above-referenced case, consisting of five bound volumes and one sealed envelope stamped "confidential", is forwarded for filing in the Court. A copy of the index is enclosed for your use. Please initial and date the copy of this letter to indicate receipt. *Parties are advised by copy of this letter that, in order to maintain confidentiality of their clients' documents while at the Court, they must request confidential treatment by the Court.*

Do not hesitate to call me at 413-6744 if you have any questions concerning the contents of this record.

Sincerely,

Kay Flynn, Chief of Records

kf:mhl

Enclosure

cc: Kenneth Hoffman, Esquire
J. Stephen Menton, Esquire
Arthur J. England, Jr., Esquire
Daniel K. Bandklayder, Esquire
James D. Beasley, Esquire
Harry W. Long, Jr., Esquire

David Smith, Office of the General Counsel
Marlene K. Stern, Office of the General Counsel
Harold McLean, Public Counsel
Wayne Schiefelbein, Esquire
John L. Wharton, Esquire

I N D E X

Allied Universal Corporation, etc., et al.

vs.

Braulio L. Baez, Chairman, et al.

FPSC Docket No. 040086-EI

Supreme Court Case No. SC04-2329

VOLUME 1

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Certificate of Director, Division of the Commission Clerk and Administrative Services . . . 1,004

**DOCUMENTS SUBMITTED IN SEALED ENVELOPE
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(**Confidential DN 09129-04**)

0471R

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR



DIVISION OF THE COMMISSION CLERK &
ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

Public Service Commission

March 29, 2005

Kenneth Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, Florida 32302-0551

**Re: Supreme Court Case No. SC04-2329 - Allied Universal Corporation, etc., et al.
vs. Braulio L. Baez, Chairman, et al. (Docket No. 040086-EI)**

Dear Mr. Hoffman:

I have enclosed an invoice reflecting charges for preparation of the above-referenced record. Please forward a check in the amount indicated, made payable to the Florida Public Service Commission, at your earliest convenience.

Do not hesitate to call if you have any questions concerning this matter.

Sincerely,

A handwritten signature in cursive script that reads "Kay Flynn".

Kay Flynn, Chief
Bureau of Records

KF:mhl
Enclosure

FLORIDA PUBLIC SERVICE COMMISSION

2540 Shumard Oak Blvd. ♦ Tallahassee, Florida 32399-0850

9948



Date: 3/29/05

To: Kenneth Hoffman, Esquire
 Rutledge, Ecenia, Purnell
 & Hoffman, P.A.
 Post Office Box 551
 Tallahassee, Florida 32302-0551

Date Paid _____

Amount Paid _____

Check # _____

Check Cash

PSC Signature _____

This number must appear on
 all checks or correspondence
 regarding this invoice.

Please make checks payable to: FLORIDA PUBLIC SERVICE COMMISSION

QUANTITY	DESCRIPTION	PRICE	AMOUNT
1,202 pages	Copying and preparation of Docket 040086-EI on appeal to Supreme Court, Case No. SC04-2329	@.05¢ per page	\$60.10
1	Certificate of Director		4.00

PSC/CCA 008-C Rev. 10/01

TOTAL \$64.10

STATE OF FLORIDA

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON
LISA POLAK EDGAR



DIVISION OF THE COMMISSION CLERK & ADMINISTRATIVE SERVICES
BLANCA S. BAYÓ
DIRECTOR
(850) 413-6770 (CLERK)
(850) 413-6330 (ADMIN)

RECEIVED PSC
MAR 30 AM 9:20

COMMISSION CLERK

RECEIVED
THOMAS D. HALL

MAR 29 2005

CLERK, SUPREME COURT
BY

Public Service Commission

March 29, 2005

Thomas D. Hall, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301

Re: Supreme Court Case No. SC04-2329 - Allied Universal Corporation, etc., et al vs. Braulio L. Baez, Chairman, et al. (Docket No. 040086-EI)

Dear Mr. Hall:

The record in the above-referenced case, consisting of five bound volumes and one sealed envelope stamped "confidential", is forwarded for filing in the Court. A copy of the index is enclosed for your use. Please initial and date the copy of this letter to indicate receipt. *Parties are advised by copy of this letter that, in order to maintain confidentiality of their clients' documents while at the Court, they must request confidential treatment by the Court.*

Do not hesitate to call me at 413-6744 if you have any questions concerning the contents of this record.

Sincerely,

Kay Flynn, Chief of Records

kf:mhl

Enclosure

cc: Kenneth Hoffman, Esquire
J. Stephen Menton, Esquire
Arthur J. England, Jr., Esquire
Daniel K. Bandklayder, Esquire
James D. Beasley, Esquire
Harry W. Long, Jr., Esquire

David Smith, Office of the General Counsel
Marlene K. Stern, Office of the General Counsel
Harold McLean, Public Counsel
Wayne Schiefelbein, Esquire
John L. Wharton, Esquire

Received by _____ Date _____

AUSLEY & MCMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET
P.O. BOX 391 (ZIP 32302)
TALLAHASSEE, FLORIDA 32301
(350) 224-9118 FAX (850) 222-7560

224-9115

MEMORANDUM

040086-EI

TO: FPSC Clerk's Office

FROM: Pat Pottle

RE: Change of Address for Mailings going to Tampa Electric Company

DATE: May 9, 2005

I would like to request that you change, in all instances, all information sent to Tampa Electric Company from the FPSC. All information should be sent to:

Angela L. Llewellyn
Supervisor, Regulatory Affairs
Tampa Electric Company
Post Office Box 111
Tampa, FL 33601-0111

EI 806

Thank you for your assistance.

RECEIVED-FPSC
MAY -9 PM 12:36
COMMISSION
CLERK

5-9-05

mail already reflects this addr for a long time
Cp to CCA/Pera for dchts

Spoke w Ms. Pottle, advised we have this addr. She is to check to see what was being mailed & from whom and advise

All open docket have the above address. Forwarding to CCL for updating their list. 05/10/05
Vmf

Docket Index Listing

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Public Service Commission

March 20, 2006

Wayne L. Schiefelbein, Esquire
Rose Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

Re: Return of Confidential Documents to the Source, Docket No. 040086-EI

Dear Mr. Schiefelbein:

Commission staff have advised that confidential Document Nos. 04796-04 and 09129-04, filed on behalf of Odyssey Manufacturing Company, can be returned to the source. The documents are enclosed, along with a second copy of confidential Document No. 04796-04.

Please do not hesitate to contact me if you have any questions concerning return of this material.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Flynn".

Kay Flynn
Chief of Records

KF:mhl
Enclosure

cc: Martha C. Brown, Office of the General Counsel

RECEIVED

A handwritten signature in black ink, appearing to read "Kay Flynn".

DATE

3/23/06

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Public Service Commission

March 20, 2006

Kenneth A. Hoffman, Esquire
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office box 551
Tallahassee, Florida 32302

Re: Return of Confidential Documents to the Source, Docket No. 040086-EI

Dear Mr. Hoffman:

Commission staff have advised that confidential Document Nos. 01404-04, 05528-04, and 07305-04, filed on behalf of Allied Universal Corporation and Chemical Formulators, Inc., can be returned to the source. The documents are enclosed.

Please do not hesitate to contact me if you have any questions concerning return of this material.

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Flynn".

Kay Flynn
Chief of Records

KF:mhl
Enclosure

cc: Martha C. Brown, Office of the General Counsel

RECEIVED

A handwritten signature in black ink, appearing to read "C. Burgett".

DATE

3/27/06

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