

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Allied
Universal Corporation and
Chemical Formulators, Inc.
Against Tampa Electric Company
for violation of Sections
366.03, 366.06(2) and 366.07,
F.S., with respect to rates
offered under
commercial/industrial service
rider tariff; petition to
examine and inspect confidential
information; and request for
expedited relief.

DOCKET NO.000061-EI
ORDER NO. PSC-00-1896-CFO-EI
ISSUED: October 17, 2000

ORDER GRANTING IN PART AND DENYING IN PART REQUEST FOR
CONFIDENTIAL TREATMENT OF DOCUMENT NO. 08670-00 (CROSS-REFERENCE
DOCUMENT NO. 07883-00)

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI. On March 28, 2000, Odyssey Manufacturing Company (Odyssey) requested permission to intervene, and that request was granted on April 18, 2000, in Order No. PSC-00-0762-PCO-EI.

On July 18, 2000, Odyssey filed, pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes, a Request for Confidential Classification of Contract Service Arrangement and Portions of Prefiled Direct Testimony of Stephen W. Sidelko. The Contract Service Agreement is an exhibit attached to the prefiled testimony, Document No. 08670-00 (cross-reference Document No. 07883-00).

The specific portions of the prefiled testimony for which Odyssey requests confidential classification are as follows:

- (1) Page 18, lines 18 through 22 and Page 19, lines 1 through 7

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

- (2) Page 19, lines 9 through 15
- (3) Page 19, lines 20 and 21
- (4) Exhibit SWS-1, the entire Contract Service Arrangement (CSA)

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the movant's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

Section 366.093, Florida Statutes, defines "proprietary confidential business information" as:

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Odyssey asserts that the CSA and certain CSA related information is entitled to confidential protection. In support thereof Odyssey states that the CISR tariff states that this information shall be made available to the Commission and its staff only. Odyssey further asserts that it treats the above referenced information as sensitive proprietary business information. Odyssey claims that public disclosure of the above-referenced information would harm Odyssey, and TECO and its general body of ratepayers. In addition, Odyssey entered into a binding non-disclosure agreement with TECO before sharing any information with TECO during its CISR negotiations.

I find that the following pages and lines meet the confidentiality criteria of Section 366.093, Florida Statutes:

- (1) Page 18, lines 18 through 22 and Page 19, lines 1 through 7; and,
- (2) Page 19, lines 20 and 21.

These excerpts contain specific information regarding concessions made by Odyssey for the purpose of obtaining a CISR rate from TECO. Public disclosure of this information would harm Odyssey and TECO's ability to negotiate future CSA's. Pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, the confidentiality granted to this material expires in eighteen months, unless a renewed request for confidentiality is filed.

Confidential classification for Page 19, lines 9 through 15 must be denied. These lines describe, in general terms, the contents of Odyssey's affidavit and the significance of electric costs in its manufacturing process. The CISR tariff requires a customer to provide an affidavit attesting that, but for the application of the CISR rate, the customer would not be served by TECO. Lines 12 through 15 indicate that Odyssey's affidavit attested that Odyssey needed a favorable rate to stay in Tampa, which would indicate that Odyssey complied with this requirement of the tariff. Odyssey will not be harmed by disclosure of this part of the testimony. Furthermore, Mr. Sidelko describes, on page 15, how his decision to locate the new bleach plant depended largely on the electric rate he could obtain. Specifically, on Page 15, lines 20 and 21, Mr. Sidelko stated that "if we could not obtain an acceptable rate, we would have to build the plant elsewhere." Odyssey did not request confidentiality of this information which has exactly the same import as the information it seeks to make confidential. Note, however, that, the affidavit itself may be confidential while a general description of its contents may not be.

Lines 11 and 12 on Page 19 address the cost of electricity as a percentage of Odyssey's manufacturing costs. This information is public knowledge and is not owned or controlled by Odyssey. At the August 1, 2000, Agenda Conference Allied stated that power is 50 percent of the cost of manufacturing bleach using the same kind of bleach plant that Odyssey built. The energy requirements of various bleach manufacturing processes appear to be common knowledge within the industry. Based on the above reasoning,

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Odyssey's request for confidentiality of lines 9 through 15 on Page 19 is denied.

With respect to Odyssey's request for confidentiality of the CSA, I approve Odyssey's request with the exception of Exhibit A and Exhibit B of the CSA. Exhibit A is a legal description of property and Exhibit B contains Commission-approved tariff sheets. This information is clearly public and therefore can not be confidential. Public disclosure of tariff sheets and the legal description of property will not harm Odyssey's competitive interests. However, the remaining portions of the CSA (Pages 1 through 4, Exhibit C, and Exhibit D) shall remain confidential. Odyssey treats this information as private and could be harmed by its disclosure to the public. The information therefore qualifies as proprietary confidential business information under Section 366.093, Florida Statutes.

Based on the foregoing, it is therefore

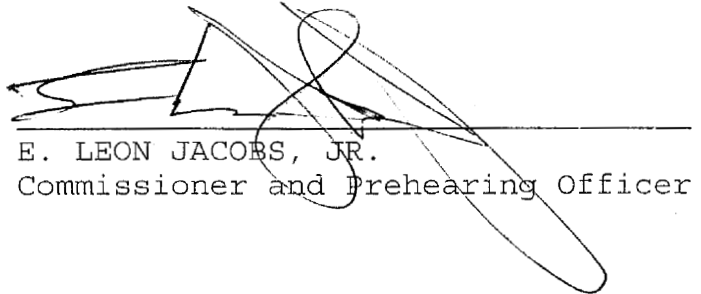
ORDERED by E. Leon Jacobs, Jr., as Prehearing Officer, that the request by Odyssey Manufacturing Company for confidential treatment of information in Document No. 08670-00 (cross-reference Document No. 07883-00) is granted. It is further

ORDERED that pursuant to Section 366.093(4), Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire eighteen (18) months from the date of the issuance of this Order, unless of a renewed request for confidentiality is filed in accordance with Section 366.093(4), Florida Statutes. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

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By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 17th day of October, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

MKS/jb

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2)

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reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.