

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-00-2537-PCO-EI
ISSUED: December 29, 2000

ORDER GRANTING PETITION FOR LEAVE TO INTERVENE, GRANTING REQUEST
FOR CONFIDENTIAL CLASSIFICATION, OR, ALTERNATIVELY, AMENDED
MOTION FOR PROTECTIVE ORDER, GRANTING IN PART AND DENYING IN PART
MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY, AND GRANTING
MOTION FOR CONTINUANCE AND EXTENSION OF TIME TO FILE REBUTTAL
TESTIMONY

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 October 13, 2000, an emergency status conference was held to dispose of several motions filed in this docket, and to set new time limits on responding to motions and discovery requests. This Order is issued pursuant to the authority granted by Rule 28-106.211, Florida Administrative Code, which provides that the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case.

DOCUMENT NUMBER-DATE

16524 DEC 29 8

FPSC-RECORDS/REPORTING

The motions disposed of at the emergency conference were:

1. Sentry's Petition for Leave to Intervene, filed on September 18, 2000 and amended on September 25, 2000.
2. Odyssey's and Sentry's joint Request for Confidential Classification, or, Alternatively Amended Motion for Protective Order filed on September 18, 2000.
3. TECO's Motion for Leave to File Supplemental Testimony filed on October 3, 2000, and Allied's Response in Opposition filed on October 11, 2000.
4. Allied's Motion for Continuance and Extension of Time to File Rebuttal Testimony, filed on September 28, 2000, and the responses in opposition filed by TECO and Odyssey on October 4, 2000, and October 5, 2000, respectively.

A. Sentry's Petition to Intervene

Sentry's Petition for Leave to Intervene was unopposed and is granted. Sentry and Odyssey have the same president and chief executive officer, although they are two separate companies. Odyssey was formed during the CISR negotiations and is the company that owns the bleach plant now served under the CISR tariff. Because it was Sentry that began negotiations with TECO, some of the confidential information that Allied seeks through discovery is Sentry's proprietary business information. Sentry's substantial interests may be affected in that the Commission will determine whether Sentry's proprietary confidential business information will be disclosed to its competitors and the public. For these reasons, Sentry's Petition for Leave to Intervene is granted.

B. Odyssey's and Sentry's Joint Request for Confidential Classification, or, Alternatively Amended Motion for Protective Order

Initially, this motion was filed by Odyssey alone, however, at the emergency status conference I granted Sentry's oral motion to join with Odyssey in filing this motion.

In their Request for Confidential Classification, or, Alternatively Amended Motion for Protective Order, Sentry and Odyssey ask that portions of Sentry's company profile be found confidential. The pages at issue are 1318-0 and 1319-0 of TECO's March 10, 2000 submittal. Attachment A to this Order shows the lines for which Sentry and Odyssey seek confidentiality and the reasons.

Odyssey asks that Sentry's percentage of profits derived from sales of SAF-T-CLOR, and before tax profit margin be withheld from discovery because knowledge of this information by Allied could impair Sentry's ability to compete in its native market. Odyssey also asks that the identity of Sentry's largest customers, the percentages of Sentry's sales represented by large customers, Sentry's largest municipal bid, and the total number of Sentry's customers be protected from discovery by Allied. Odyssey states that disclosure of the information could enable Sentry's competitors to selectively target marketing and sales efforts at Sentry's customers, thereby threatening Sentry's share of the market. In addition, Odyssey claims that disclosure of the information could allow competitors to alter their pricing based on Odyssey's and Sentry's pricing.

Allied filed an opposing response on September 25, 2000. Allied states that it does not seek disclosure of the information at issue, however, Allied believes that the motion is factually incorrect. Paragraph 11 of the motion states:

The documents for which a protective order is sought were submitted by Sentry, an established bleach manufacturer, to Tampa Electric in support of Odyssey's efforts to obtain an electric rate under Tampa Electric's commercial/industrial service rider...

Allied notes that the documents were submitted before the CISR tariff existed and were in fact submitted to obtain rates under TECO's IS-3 and IST-3 rate schedules. At the emergency status conference Allied stated that the confidentiality language in the CISR tariff could not be the basis for making these documents confidential because they were not submitted under the CISR tariff.

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. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company'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 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.

I find that all the information for which Sentry and Odyssey seek confidential treatment satisfies the standard in Section 366.093. Odyssey and Sentry have demonstrated that they treat the information identified in their motion as confidential and that they would be harmed by disclosure of the information. Therefore, Odyssey's and Sentry's Request for Confidential Classification, or, Alternatively Amended Motion for Protective Order is granted.

C. TECO's Motion for Leave to File Supplemental Testimony

In its Motion for Leave to File Supplemental Testimony, TECO asks to file supplemental direct testimony for William Ashburn, Victoria Westra and David Sweat. TECO states that supplemental testimony is needed to correct an error and to update the testimony.

Allied's response opposes the request for Mr. Ashburn and Ms. Westra. Allied claims that Mr. Ashburn's supplemental testimony attempts to revise the rate information provided in TECO's March 10, 2000 filing (Document No. 03142-00) by reinterpreting Allied's estimated peak and off-peak consumption. Allied states that it told TECO that its proposed facility could not be operated according to the peak and off-peak demand provided in Mr. Ashburn's supplemental testimony. Allied claims it is also a belated attempt to introduce a new issue and TECO provides no reasonable explanation for failing to raise the issue sooner.

Allied claims Ms. Westra's supplemental testimony attempts to revise TECO's position on Allied's eligibility for CISR rates. Allied states that TECO gave no reasonable explanation of why the testimony was changed so late in the proceeding, and regards it as another attempt by TECO to retaliate against Allied for filing this law suit.

Allied states it does not oppose Mr. Sweats supplemental testimony because it substitutes actual values for estimated values.

TECO'S motion is granted with respect to Mr. Ashburn's supplemental testimony because it purports to correct an error. Regarding Ms. Westra's testimony, TECO's motion is granted for page 1, line 6 through page 3 line 16 because it reflects on the corrections made in Mr. Ashburn's testimony. The motion is denied with respect to page 3 line 18 through page 4 line 13 because it appears to be argument for a motion to dismiss rather than analysis of new factual information. TECO's motion is granted for Mr. Sweat's testimony because it was unopposed.

D. Allied's Motion for Continuance and Extension of Time to File Rebuttal Testimony

Allied claims that good cause exists to continue the final hearing from October 31, 2000. First, Allied states that TECO did not produce information in response to Allied's discovery requests until August 14, 2000, six months after the requests were made. Allied states the information produced at that time was limited but indicated that two significant new issues existed. Allied states that production is still not completed on its initial discovery requests. Finally, at the emergency conference, Allied stated that it needs additional time to address issues raised by the supplemental testimony. Allied claims that in light of these facts it needs additional time to complete discovery and prepare its rebuttal testimony and exhibits.

TECO claims that Allied now has all the relevant information and requests that the Motion for Continuance be denied because it cannot state a legitimate cause of action. TECO maintains that what Allied identifies as significant, new issues raised by the supplemental testimony are not significant or new. TECO further claims that itself, Odyssey, and the Commission will be prejudiced by protracting this litigation.

In its response to Allied's motion, Odyssey states that it supports the substantive matters raised in TECO's response but elects not to argue formally against Allied's motion.

In light of the above, I find that Allied needs additional time to prepare for the hearing and therefore, grant its Motion for Continuance.

E. Revised Response Times

To expedite this case, the following time frames for discovery and responsive motions shall be followed:

- a) Responses to all discovery requests shall be provided within 10 days of service of the request; and
- b) Responses to all motions shall be made within 5 days of service of the motion.

F. Revised Controlling Dates

The controlling dates in this docket must be revised because the hearing has been rescheduled for February 19, 2001. The following dates shall govern the key activities of this case:

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|---|-------------------|
| 1) Rebuttal testimony and exhibits
(complainant) | January 22, 2001 |
| 2) Prehearing Order | February 12, 2001 |
| 3) Hearing | February 19, 2001 |
| 4) Briefs Due | March 12, 2001 |

Based on the foregoing, it is

ORDERED by Commissioner E. Leon Jacobs, Jr. that Sentry Industry, Inc.'s Petition for Leave to Intervene is granted. It is further

ORDERED that Odyssey Manufacturing Company's and Sentry Industry, Inc.'s joint Requests for Confidential Classification, or Alternatively Amended Motion for Protective Order is granted. It is further

ORDERED that Tampa Electric Company's Motion for Leave to File Supplemental Testimony is granted in part and denied in part as described in the body of this Order. It is further

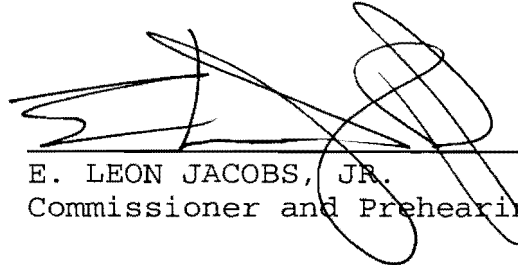
ORDERED that Allied Universal Corporation's and Chemical Formulator, Inc.'s Motion for Continuance and Extension of Time to File Rebuttal Testimony is granted. It is further

ORDERED that the time frames for responses to discovery requests and motions shall be revised as described in the body of this Order. It is further

ORDERED that the controlling dates in this docket shall be revised as described in the body of this order.

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By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 29th Day of December, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

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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) 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

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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.