

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-01-0420-PCO-EI
ISSUED: February 21, 2001

ORDER GRANTING ATTORNEY-CLIENT PRIVILEGE TO DOCUMENT NO. 01386-01

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. Odyssey Manufacturing Company (Odyssey) and Sentry Industries (Sentry) are intervenors. They are separate companies but have the same president. Allied, Odyssey and Sentry manufacture bleach.

On January 30, 2001, Allied submitted certain confidential information (Document No. 01386-01; Bates stamped pages 0000350-0000440), responsive to TECO's discovery requests, to the Commission. The information was accompanied by a Notice of Intent to Request Confidential Classification. Both attorney-client and work product privileges were claimed for those documents. Allied did not explain why the documents were privileged, and it was not apparent from reviewing the documents if they were privileged. Consequently, Allied was given the option to supply sufficient justification. See Order No. PSC-01-0351-PCO-EI, issued on February 7, 2001, in this docket.

On February 9, 2001, Allied amended its notice and provided additional information on the documents. Attached to the amended

DOCUMENT NUMBER-DATE

02366 FEB 21 01

FPSC-RECORDS/REPORTING

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notice is a rather detailed list of the documents for which the privileges were asserted.

While it is clear that many of the documents were transmitted to Allied from Allied's lawyer after this docket was opened, it is not clear if the lawyer was providing advice on business matters or legal matters. When a lawyer is hired to provide business advice, as opposed to legal advice, the attorney-client privilege does not apply. See Skorman v. Hovnanian of Florida, 282 So. 2d 1376, 1378 (Fla. 4th DCA 1980) (citing Pollock v. U.S., 202 F. 2d 281 (5th Cir. 1954); Oleander v. U.S., 210 F. 2d 795 (9th Cir. 1954)). When a lawyer is hired to provide legal advice, and in the course of doing so, provides advice on related non-legal matters, communications on the non-legal matters have been deemed privileged. See Skorman at 1378.

Here it is unclear if the purpose of the communications was to further Allied's business interests or legal interests. However, we can ascertain that the communications were made after Allied's Complaint was filed, and that the attorney involved represents Allied in this proceeding. In light of these facts, even if the communications were business related, they appear to have been made in the course of this proceeding and are related to this proceeding. For these reasons, I find that the attorney-client privilege applies to the documents in question.

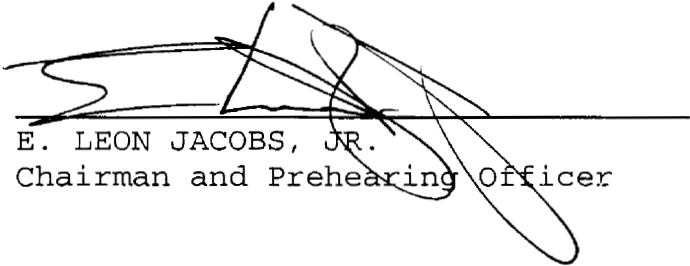
Having found that the documents satisfy the requirements for attorney-client privilege, there is no need to determine if they are also protected by the work product doctrine.

Based on the foregoing, it is

ORDERED by E. Leon Jacobs, Jr., as Prehearing Officer and Chairman that Allied Universal Corporation and Chemical Formulators, Inc., Request for Confidential Classification of Document No. 01386-01 (Bates stamped pages 0000350-0000440) is granted.

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By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 21st day of February, 2001.



E. LEON JACOBS, JR.
Chairman and Prehearing Officer

(S E A L)

MKS

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 reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060,

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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.