

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-04-0232-PCO-EI
ISSUED: March 2, 2004

ORDER GRANTING MOTION FOR EXTENSION OF TIME

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, which approved a settlement agreement between Allied and Tampa Electric Company (TECO). The named parties to the petition – TECO and Odyssey Manufacturing Company (Odyssey) – both timely filed motions to dismiss the petition on February 19, 2004, pursuant to Uniform Rule 28-106.204, Florida Administrative Code.¹ On February 20, 2004, Allied filed a motion for extension of time to respond to the two motions to dismiss.² Allied asked permission to respond to the motions by March 12, 2004, which amounts to two weeks in addition to the seven days provided by Rule 28-106.204. Allied asserts that it requires the additional time to respond adequately to the motions to dismiss because of the length of the motions. Allied suggests that three weeks to respond to the motions is reasonably comparable to the amount of time permitted to file a responsive brief in an appellate case. Allied also asserts that the other parties to this proceeding will not be harmed by the extension of time.

In its motion Allied represented that TECO and Odyssey object to this much of an extension of time, and both parties also filed written objections to Allied's motion. Odyssey and TECO complain that Allied has asked for considerably more time than that allowed for a response to a motion under Rule 28-106.204 without sufficient reason. They assert that Allied's reasons consist only of an insupportable comparison to appellate procedure and a claim that the motions to dismiss are voluminous. They argue that Allied could reasonably have anticipated the arguments they would raise in their motions to dismiss. Odyssey also asserts that whether or not a party would be harmed if the extension were granted is not an independent basis for granting the extension. TECO also argues that granting the extension would encourage frivolous filings like Allied's and undermine the Commission's expressed support for settlements.

¹ Odyssey also filed a motion for attorney's fees and sanctions on February 23, 2004, and Allied has requested an extension of time to respond to that motion also. A ruling on that request for extension of time is pending.

² Allied's motion complies with subsection (5) of Rule 28-106.204, Florida Administrative Code, which provides that motions for extension of time shall be filed prior to the expiration of the deadline sought to be extended.

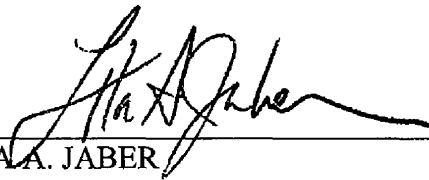
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I will grant Allied's motion for an extension of time to respond to the motions to dismiss until March 12, 2004. I believe that such an extension is reasonable in light of the fact that two separate motions to dismiss were filed, and they are lengthy, broad motions. Considering the substantive importance of the motions to dismiss, the Commission will benefit in its deliberations from thorough responses to them. No schedule has yet been established in the case, and no party's due process will be denied. Whether or not harm is an independent basis to grant an extension of time to respond to a motion under Rule 28-106.204, it is a fundamental balancing consideration applied in many aspects of Commission proceedings. While I have granted Allied's motion, I urge the parties to engage in informal discussions to resolve this case, and not to become further polarized and distracted by excessive ancillary motion practice.

By ORDER of Commissioner Lila A. Jaber, as Prehearing Officer, this 2nd day of March _____, 2004.._____.



LILA A. JABER
Commissioner and Prehearing Officer

(S E A L)

MCB

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-

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22.0376, 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 Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.