

ORIGINAL

In re: Complaint of Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Sections 366.03, 366.06(2) and 366.07, Florida Statutes, 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

DIRECT TESTIMONY

OF

ROBERT M. NAMOFF

ON BEHALF OF

ALLIED UNIVERSAL CORPORATION

AND

CHEMICAL FORMULATORS, INC.

February 21, 2000

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FPSC-RECORDS/REPORTING

1       **Q.    Please state your name, address and business affiliation.**

2       A.    My name is Robert M. Namoff. I am Chief Executive Officer of Allied  
3            Universal Corporation ("Allied"). My business address is 8350 N.W. 93rd  
4            Street, Miami, Florida 33166-2098.

5       **Q.    On whose behalf are you testifying?**

6       A.    I am testifying on behalf of Allied and its Tampa affiliate, Chemical  
7            Formulators, Inc. ("CFI").

8       **Q.    Please summarize your background and experience.**

9       A.    I have been employed by Allied for thirty-one years. I have worked "from  
10           the ground up" in all phases of Allied's operations, including truck  
11           operations, deliveries, packaging, equipment repairs, sales, marketing,  
12           management of the sales force, accounting, personnel and plant  
13           administration, raw material acquisition, and capital improvements. During  
14           my fifteen years as Chief Executive Officer, Allied has opened five new  
15           plants in three states.

16           I am an active member of the Chlorine Institute, Inc., the national trade  
17           organization of the chlorine industry. I have chaired safety and regulatory  
18           sub-committees in the areas of production, safety, and transportation, and  
19           most recently I chaired the Institute's committee on bar coding for the  
20           chlorine industry. Previously, I have been a member of the Florida Trucking  
21           Association, and the Association of Swimming Pool Industries of Florida, for  
22           which I organized an apprenticeship training program. Additionally, I have

1 taught courses in hazardous material handling for swimming pool operators  
2 for the Dade County Public School Board. I hold a Bachelors of Business  
3 Administration degree in marketing from Florida International University,  
4 awarded in 1974.

5 **Q. What is the purpose of your testimony?**

6 A. The purpose of my testimony is to show that TECO's actions in offering  
7 preferential rates for electric service to Allied/CFI's business competitor,  
8 Odyssey Manufacturing Company ("Odyssey"), compared with the rates for  
9 electric service offered to Allied/CFI under the same TECO  
10 Commercial/Industrial Service Rider ("CISR") tariff, are fundamentally  
11 inconsistent with the legal obligations of a monopoly provider of utility  
12 service and threaten to destroy Allied/CFI's business in Tampa. My  
13 testimony shows that Allied/CFI acted in good faith in promptly providing  
14 all of the information and documentation requested by TECO in order for  
15 Allied/CFI to be eligible for rates under TECO's CISR tariff, only to learn  
16 after almost six months that TECO had no intention of offering the same  
17 CISR tariff rates to Allied/CFI that TECO had offered to Odyssey. I note that  
18 the TECO employee who offered the preferential rates to Odyssey has since  
19 been rewarded by an offer of employment with Odyssey and has been  
20 actively soliciting Allied/CFI's customers on behalf of Odyssey. I conclude  
21 my direct testimony by urging the Commission to find that TECO's actions

1 are inconsistent with the goals of promoting job growth and economic  
2 development in the State of Florida.

3 **Q. Please describe Allied's business operations.**

4 A. Allied is the largest producer/distributor of liquid chlorine bleach, chlorine  
5 gas, and related speciality chemicals and products in the southeastern United  
6 States. Allied was founded in 1954 and is based in Miami, Florida. Allied  
7 currently operates five manufacturing facilities in the southeast, located in  
8 Miami, Ft. Pierce and Tampa, Florida, and Ranger and Brunswick, Georgia.  
9 Allied's two principal products are liquid chlorine bleach and chlorine gas.  
10 Liquid chlorine bleach (sodium hypochlorite) is manufactured by Allied and  
11 is distributed by bulk tankers to Allied's customers, primarily water and  
12 wastewater utility service providers and swimming pool products  
13 wholesalers. Chlorine gas is received by rail cars and is repackaged into steel  
14 cylinders for resale and export.

15 **Q. How are chlorine and liquid chlorine bleach manufactured?**

16 A. The manufacture of chlorine is accomplished by the electrolysis of common  
17 salt. The manufacture of liquid chlorine bleach is generally accomplished by  
18 two alternative processes: (1) purchasing in bulk and combining liquid  
19 chlorine and caustic soda, using facilities known in the industry as a Powell  
20 blending unit; and (2) a newer technology for electrolyzing salt and water to  
21 produce and combine chlorine and caustic soda, known as a membrane cell  
22 chlor-alkali plant.

1 CFI has manufactured liquid chlorine bleach in Tampa using the Powell  
2 process since 1995. Odyssey is completing construction of a membrane cell  
3 plant in Tampa which is expected to begin operations in April, 2000.

4 **Q. What are the differences in the cost of manufacturing liquid chlorine**  
5 **bleach between the two technologies?**

6 A. Using the Powell process, the most significant variable or incremental cost  
7 is the cost of bulk chlorine and caustic soda. In recent years, prices for bulk  
8 chlorine and caustic soda have risen and fallen in cycles that are primarily  
9 driven by worldwide demand for polyvinyl chloride. In a membrane cell  
10 plant, the most significant variable or incremental costs are: (1) the cost of  
11 salt, which is relatively constant; and (2) the cost of electricity. By far the  
12 most significant is the cost of electricity, which represents approximately  
13 50% of the incremental cost of manufacture at a price between \$.03 and \$.035  
14 per kwh. At a price between \$.04 and \$.045 per kwh, the incremental cost  
15 of manufacture increases by approximately 15-20%.

16 Assuming an investment cost of fifteen million dollars to build a membrane  
17 cell plant on the scale contemplated by Allied/CFI, and based on historical  
18 average prices for bulk chlorine and caustic soda, liquid chlorine bleach can  
19 be manufactured at significantly lower cost using the membrane cell  
20 technology than the Powell process technology if electricity can be obtained  
21 at a price between \$.03 and \$.04 per kwh.

1       **Q.    What is the probable consequence to Allied/CFI if TECO's actions in**  
2       **providing preferential CISR tariff rates to Odyssey are not prohibited?**

3       A.    The difference in the cost of manufacturing liquid chlorine bleach between  
4       the two technologies and the ability of Odyssey to offer long term contracts  
5       not indexed to prices for bulk chlorine and caustic soda make it probable that  
6       during a time of increasing prices for bulk chlorine and caustic soda, the  
7       competitive advantage to Odyssey resulting from TECO's actions will  
8       destroy the economic viability of CFI's existing business.

9       As between two competitors each operating similar membrane cell plants in  
10      the same geographical market, a discrimination in rates for electric service of  
11      \$.01 per kwh would result in a difference of approximately 15-20% in the  
12      cost per ton to manufacture liquid chlorine bleach, again destroying the  
13      economic viability of the business of the competitor discriminated against.

14      **Q.    Would Allied/CFI build a new plant in Tampa if TECO's CISR tariff**  
15      **rates for electric service were non-discriminatory?**

16      A.    Yes. The new membrane cell plant would greatly increase CFI's electric  
17      consumption, would add jobs at CFI, and would reduce potential  
18      environmental hazards involved in the handling of bulk chlorine and caustic  
19      soda.

20      **Q.    Would Allied/CFI build a new plant outside TECO's service territory,**  
21      **if TECO's refusal to offer non-discriminatory CISR tariff rates is not**  
22      **prohibited?**

1 A. Yes, but Allied/CFI will not allow TECO's unlawful actions in this matter to  
2 determine Allied/CFI's choice of where it builds a new membrane cell plant.

3 **Q. When did Allied/CFI decide to build a membrane cell plant?**

4 A. In December 1998, I began researching and investigating the question of  
5 whether Allied should build a membrane cell plant. In March 1999, I  
6 contacted the leading company in the field of engineering and construction  
7 of membrane cell plants, Kvaerner Chemetics ("Chemetics"). I learned that  
8 Chemetics had a contract with Odyssey which contained a term purportedly  
9 prohibiting Chemetics from constructing a membrane cell plant within 150  
10 miles of Tampa. Beginning in April 1999, I contacted two other companies  
11 in the field of engineering and constructing membrane cell plants. By July  
12 1999, I had obtained a proposal from Chemetics to construct a membrane cell  
13 plant at Allied's facilities in Brunswick, Georgia, and I had obtained  
14 proposals from the other companies for construction either at Tampa or  
15 Brunswick. Copies of Chemetics' commercial proposal for the Brunswick  
16 plant reflecting a quote of [REDACTED] and a cover letter from one of the  
17 other companies, Noram, reflecting a quote of [REDACTED], are attached to  
18 my testimony as Confidential Exhibits \_\_\_ (RMN-1) and \_\_\_ (RMN-2),  
19 respectively.

20 **Q. Did Allied/CFI request non-discriminatory CISR tariff rates from**  
21 **TECO for service to Allied/CFI's proposed new plant in Tampa?**

1       A.    Yes.  On May 3, 1999, I called TECO and asked to speak to someone  
2           responsible for new projects, and was directed to Mr. Larry Rodriguez.  In  
3           our first conversation I told Mr. Rodriguez that Allied/CFI was considering  
4           building a new sodium hypochlorite manufacturing plant similar to one being  
5           built by Odyssey in Tampa, and that we needed the same rates for electric  
6           service to the new plant that TECO had offered to Odyssey in order to build  
7           the new plant in Tampa.  Mr. Rodriguez indicated that he was somewhat  
8           familiar with the Odyssey plant.  I explained to Mr. Rodriguez that  
9           Allied/CFI had been in the Tampa market for four years and that we had a  
10          significant market share, and consequently that we would be using more  
11          electric power sooner than Odyssey once our new plant was in operation.  I  
12          told Mr. Rodriguez that we already had vendors quoting on the project and  
13          that we needed to get moving as soon as possible.

14       **Q.    When did you first meet with any representatives of TECO to obtain**  
15       **rates for service to the proposed new plant?**

16       A.    On May 28, 1999, I met with Larry Rodriguez and Bill Ashburn at TECO's  
17          offices in Tampa.  Their business cards state that their job titles are Account  
18          Manager and Manager-Pricing, Electric Regulatory Affairs.  We spent hours  
19          discussing the business of manufacturing liquid chlorine bleach, because I  
20          wanted to make sure that they understood the importance of obtaining  
21          acceptable rates for electric service to our decision on investment in the new  
22          plant.  I had already approached Georgia Power about rates for service if

1 Allied/CFI were to locate the new plant in Brunswick, and I gave Mr.  
2 Rodriguez and Mr. Ashburn a copy of Georgia Power's letters dated May 19,  
3 1999 and May 25, 1999, expressing their interest in the project and offering  
4 a rate of ██████████ per kwh. Mr. Rodriguez and Mr. Ashburn assured me  
5 at the meeting that TECO could be competitive with Georgia Power. Copies  
6 of Georgia Power's letters dated May 19, 1999 and May 25, 1999, and my  
7 letter to Mr. Ashburn dated June 2, 1999 reiterating that the cost factor is  
8 extremely competitive between states, are attached to my testimony as  
9 Confidential Exhibits \_\_\_\_ (RMN-3), \_\_\_\_ (RMN-4), and \_\_\_\_ (RMN-5),  
10 respectively.

11 **Q. What information did TECO ask Allied/CFI to provide in support of the**  
12 **requested rates?**

13 A. Larry Rodriguez faxed a document to me on June 15, 1999, entitled  
14 "Customer Information Required to Evaluate Feasibility of CISR  
15 Application," containing a list of eight questions. Copies of the list of  
16 questions, and of my letter dated June 21, 1999 providing answers to each of  
17 the questions, are attached to my testimony as Confidential Exhibits \_\_\_\_  
18 (RMN-6) and \_\_\_\_ (RMN-7), respectively. My letter of June 21 reiterates  
19 that because the cost of electric power is 50% of the variable cost of  
20 manufacture using the new technology, it is imperative that the rates for  
21 electric service be achieved before the project can go forward.

1       **Q. Did TECO ask Allied/CFI to provide any additional information in**  
2       **support of the requested rates?**

3       A. Yes. By letter dated July 15, 1999, I sent Mr. Rodriguez a copy of Noram's  
4       proposal for construction of the new plant at Tampa or in Georgia. My letter  
5       of July 15 reiterates again that the cost of electric power is 50% of the cost  
6       of production and therefore is critical to our decision on location of the new  
7       plant, and asks for TECO's proposal by the first week of August. A copy of  
8       my July 15 letter is attached to my testimony as Confidential Exhibit \_\_\_\_  
9       (RMN-8).

10       **Q. Did TECO again ask Allied/CFI to provide additional information in**  
11       **support of the requested rates?**

12       A. Yes. On August 11, 1999, Mr. Rodriguez faxed a draft of a document  
13       entitled "Allied Universal Corporation CISR Information," which he asked  
14       me to revise and return to him on Allied letterhead. Among the facts stated  
15       in Mr. Rodriguez's draft are the following:

16                       With the cost of electricity being nearly 40% of the cost  
17                       to produce bleach with the "new" technology, some rate  
18                       relief is absolutely necessary for the placement of the  
19                       plant at the Tampa site. With just a penny difference  
20                       between a Georgia Power rate of █████ cents/kwh and a  
21                       Tampa Electric rate of █████ cents/kwh, the product cost in  
22                       Tampa would be approximately █████ higher than

1 in Brunswick, which is nearly [REDACTED]

2 [REDACTED] This is clearly not a good investment.

3 I revised Mr. Rodriguez's draft by substituting 50% for 40% in the above-  
4 quoted paragraph, in addition to other revisions, and returned the information  
5 to him the same day by a letter on Allied letterhead dated August 11, 1999.  
6 Copies of Mr. Rodriguez's draft and my August 11 letter in response are  
7 attached to my testimony as Confidential Exhibits \_\_\_\_ (RMN-9) and (RMN-  
8 10), respectively.

9 **Q. Did TECO again ask Allied/CFI to provide additional information in**  
10 **support of the requested rates?**

11 A. Yes. By a letter dated August 19, 1999, I provided answers to Mr.  
12 Rodriguez's two subsequent questions concerning: (1) the number of jobs  
13 that would be affected by building the new plant in Tampa ( the answer is  
14 that 12 to 15 jobs will be added); and (2) how competition from Odyssey  
15 could affect Allied ( the answer is that Odyssey's plant is designed to expand  
16 to a size enabling them to target Allied/CFI's market). My letter also  
17 contains the following statement:

18 You may wish to include information to your people that  
19 we were locked out of the tariff that was previously  
20 closed down for Odessey (sic). This created an unfair  
21 competitive advantage by my competitor ....

1 The above-quoted statement references the representation made to me by Mr.  
2 Rodriguez, in response to my repeated requests for rates that did not  
3 discriminate between Allied/CFI and Odyssey, that it was unfortunate that  
4 Allied/CFI had not asked TECO for the rates sooner because by the time we  
5 had approached TECO, the tariff rates given to Odyssey were "closed down"  
6 and consequently that Allied/CFI was "locked out" of obtaining electric  
7 service from TECO at rates equal to Odyssey's. A copy of my August 19  
8 letter is attached to my testimony as Confidential Exhibit \_\_\_\_ (RMN-11).

9 **Q. Did TECO again ask Allied/CFI to provide any additional information**  
10 **or documentation in support of the requested rates?**

11 A. Yes. Mr. Rodriguez asked for an affidavit and told me what the affidavit  
12 should say. On August 25, 1999, I caused to be prepared and signed an  
13 affidavit as directed by Mr. Rodriguez. A copy of the affidavit is attached to  
14 my testimony as Confidential Exhibit \_\_\_\_ (RMN-12).

15 **Q. When did TECO finally extend an offer to Allied/CFI for rates under**  
16 **TECO's CISR tariff?**

17 A. In October, 1999. In contrast, Georgia Power extended its offered rate of  
18 [REDACTED] per kwh in a matter of days.

19 **Q. What was TECO's offer?**

20 A. TECO offered [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

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[REDACTED]

Including state and local taxes and fees, as listed by TECO in their offer dated October 18, 1999, the effective rate for the first year is [REDACTED] per kwh. Interestingly, I had told Mr. Rodriguez in almost all of our conversations concerning rates that Chemetics had advised us that it made no sense to build the plant at a rate approaching \$.05 per kwh; and I had provided to TECO, at Mr. Rodriguez's request, detailed financial projections reflecting our estimated rates of return at several different rates for electric service between \$.032 and \$.05 per kwh.

A copy of TECO's written offer, dated October 18, 1999, is attached to my testimony as Confidential Exhibit \_\_\_ (RMN-13).

**Q. Has anything else caused you to question whether TECO responded in good faith to Allied/CFI's request for rates for the new plant?**

**A.** Yes. I have heard from industry sources that the TECO employee who offered the preferential rates to Odyssey for Odyssey's Tampa plant, Patrick Allman, was rewarded by Odyssey with a job providing him with a guaranteed annual salary in excess of \$100,000; and that Mr. Allman has had little success in his employment with Odyssey and has been transferred between three different job titles in approximately one year, but that Odyssey guaranteed him a job for a period of years because "they owe him." I am

1 aware that Mr. Allman has solicited Allied's customers on behalf of Odyssey  
2 because one such customer, Davis Supply, Inc. of New Port Richey, gave me  
3 a copy of a letter from Mr. Allman soliciting Davis Supply's business. A  
4 copy of that letter, dated November 6, 1999, is attached to my testimony as  
5 Exhibit \_\_\_ (RMN-14).

6 **Q. Should the Commission be concerned with the effects of TECO's CISR**  
7 **tariff on non-electric markets?**

8 A. Yes. TECO's actions violate fundamental principles governing monopoly  
9 providers of utility service. It is incomprehensible that secret agreements  
10 providing preferential rates for utility service, which have the effect of  
11 favoring one commercial/industrial customer over its similarly situated  
12 competitors and threaten to destroy the economic viability of the business of  
13 the competitors discriminated against, could be advanced by a regulated  
14 utility and a state utility commission as being consistent with the goals of  
15 promoting job growth and economic development in the State of Florida.

16 **Q. Do you have any concluding comments?**

17 A. Yes. It is my understanding that Gulf Power Company and TECO are the  
18 only investor-owned electric utilities authorized by the Commission to enter  
19 into Contract Service Agreements pursuant to a CISR tariff. That tells me  
20 two things. First, Allied/CFI would not be facing the loss of an existing  
21 manufacturing facility and a significant amount of business (present and  
22 future) due to unduly discriminatory electric rates if our facility was located

1 in territory served by Florida Power and Light Company or Florida Power  
2 Corporation. Despite what I understood to be a consistent set of statutes and  
3 rules for electric utility regulation in Florida, the result now is that the  
4 geographic location of a customer within the territory of a utility authorized  
5 to offer CISR tariff rates can and will result in unduly preferential and  
6 discriminatory and anti-competitive electric rates. Secondly, but for the  
7 authorization from the Commission to enter into Contract Service  
8 Agreements under the CISR tariff, this situation would have never arisen.  
9 Allied/CFI and Odyssey would have been subject to the same tariff rates and  
10 offerings made available by TECO and on file with the Commission.  
11 Instead, TECO has utilized its new found discretion to negotiate electric rates  
12 to: (a) effectively drive Allied/CFI out of business in Tampa and require  
13 Allied/CFI to close down its existing facility in Tampa with the loss of  
14 investment associated with such closing; (b) cause the loss of existing and  
15 new jobs; and (c) undercut the benefits of competition that would come had  
16 TECO allowed Allied/CFI and Odyssey to compete on equal footing. The  
17 result is particularly egregious where, as here, an employee of the regulated  
18 utility, TECO, negotiated a preferential rate for our competitor, then became  
19 employed by our competitor, and has since sought to use the preferential rates  
20 to solicit our existing customers. Ironically, rather than using the CISR tariff  
21 to retain a large commercial/industrial customer such as Allied/CFI, TECO's

1 actions, if not halted and reversed by the Commission, will result in the loss  
2 of Allied/CFI's business in Tampa.

3 **Q. What relief do you seek from the Commission?**

4 A. As stated in our complaint, Allied/CFI asks the Commission to remedy this  
5 situation by suspending the CISR tariff rates reflected in the Contract Service  
6 Agreement between TECO and Odyssey and ultimately ordering TECO to  
7 offer Allied/CFI and Odyssey the same electric rates pursuant to the CISR  
8 tariff.

9 **Q. Does this conclude your direct testimony?**

10 A. Yes.

Allied/CFI  
Docket No. 000061-EI  
Prefiled Direct Testimony of Robert M. Namoff  
Exhibit \_\_ (RMN-14)



**ODYSSEY**  
MANUFACTURING CO



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MANUFACTURERS OF **ULTRA CHLOR**

November 6, 1999

Mr. James H. Davis  
Davis Supply, Inc.  
P.O. Box 1528  
New Port Richey, FL 34652

*12/7/99*  
*Bob*  
*Hess in the*  
*Sales Dept.*  
*J*  
*Please etc*

Dear Jim,

I enjoyed speaking with you earlier this week with respect to your company's position in the marketplace as a supplier of water treatment chemicals. As we discussed, Odyssey Manufacturing is a new venture that will manufacture bulk sodium hypochlorite utilizing a Kvaerner Chemetics chlor-alkali plant integrated with a Powell Continuous Bleach Plant. We intend to focus primarily on municipal and private water and wastewater treatment and expect our Tampa manufacturing facility to be operational in the first part of the year 2000. As you know, the business was created primarily to take advantage of the many Customers who are switching from chlorine gas to sodium hypochlorite and needed a competitively priced, reliable, high quality supply of sodium hypochlorite.

*NOT TRUE.*

As the only chlor-alkali manufacturing facility in Florida, we can offer a unique combination of high quality combined with a very competitive cost structure. We make our raw materials (chlorine and caustic) on-site out of a highly purified salt and demineralized water utilizing a membrane cell electrolysis process. Not only does this process result in a high quality bleach but also makes our product cost very competitive as we do not have to pay out of state third parties to make the raw materials for us and have them shipped down by railcar.

As we discussed, Odyssey will combine great service with the best quality bleach in Florida. Our Ultra Chlor sodium hypochlorite will be a high strength product (12.5 Trade Percent Available Chlorine) with superior ratio control and without all the impurities that most bleach contains. What this means to you and your Customers is:

- Low or zero metal contaminants resulting in significantly slower Product degradation leading to overall cost savings due to reduced sodium hypochlorite consumption
- Lower Maintenance Costs caused by pluggages and wear because of impurities in the bleach
- Improved Drinking Water Quality and Effluent Runoff Water Quality
- Superior control of excess alkalinity of Product resulting in less overall chemical additional requirements and more stable chemical feed rates
- Less oxygen formation during storage and handling (e.g., which form bubbles in tank and lines) resulting in reduced downtime and more accurate Cl feed rates

- Lower levels of sodium chlorate formation resulting in reduced public health concerns
- Lower levels of sodium bromate resulting in reduced public health concerns
- Lower suspended solids resulting in improved water quality and less feeder maintenance
- Minimal insoluble buildup on the inside of pipes and feeders resulting in better operations of the Customer's system

We would be very interested in partnering with you to supply the sodium hypochlorite needs of your customers. We will deliver quality and service! I would like to invite you on a tour of our manufacturing facility in Tampa to better demonstrate this commitment. Please call me at (813) 335-3444 if I can provide any more information on either my company, our product or the marketplace. Additionally, please call us if you have any sodium hypochlorite needs over the next few months before our manufacturing facility actually starts up. I have enclosed some product brochures for your perusal. Thank you for your consideration and I look forward to hearing back from you.

Sincerely,



Patrick H. Allman  
General Manager