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February 28, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

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RECORDS AND REPORTING

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI") are:

1. The original and fifteen copies of Allied/CFI's Response to Staff's Proposed Issues; *02654-00*
2. The original and fifteen copies of Allied/CFI's Response in Opposition to Tampa Electric Company's Motion for Protective Order, For Suspension of Procedural Schedule, and For Summary Disposition; *02655-00*
3. The original and fifteen copies of Allied/CFI's Response in Opposition to Tampa Electric Company's Motion for Protective Order Pertaining to Notice of Deposition and Request for Production; and *02656-00*
4. A disk containing copies of the documents.

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 APP _____
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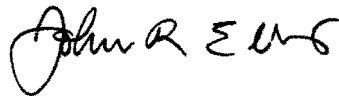
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DOCUMENT NO. DATE
02654-00 2/28/00
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February 28, 2000

Thank you for your assistance with this filing.

Sincerely,

A handwritten signature in black ink, appearing to read "John R. Ellis". The signature is written in a cursive style with a large initial "J" and "E".

John R. Ellis

JRE/rl
Enclosures

Trib.3

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Filed: February 28, 2000

ALLIED/CFI'S RESPONSE TO STAFF'S PROPOSED ISSUES

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, and pursuant to the procedure agreed to by the parties and staff at the Issues Identification Conference held February 22, 2000, hereby submit their response to the Commission Staff's Proposed List of Issues, as revised at the Issues Identification Conference:

- 1) Staff Issue 1: Did Odyssey meet all requirements and preconditions of TECO's CISR tariff when TECO and Odyssey entered into a Contract Service Agreement in October, 1998?

Allied/CFI's Response: Allied/CFI understands that this issue has been revised as follows: Did TECO comply with all requirements, terms and preconditions of TECO's CISR tariff when it entered into a Contract Service Agreement with Odyssey?

Allied/CFI has no objection to Issue 1 as revised at the Issues Identification Conference. Further, Allied/CFI understands that the factual issues raised in Allied/CFI's proposed Issue 1 reflected in Allied/CFI's February 14, 2000 proposed list of issues may be developed within the scope of Staff's Revised Issue 1. Accordingly, Allied/CFI withdraws its proposed Issue 1.

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- 2) Staff Issue 2: Did Allied/CFI meet all requirements and preconditions of TECO's CISR Tariff when TECO offered CISR tariff rates to Allied/CFI on October 18, 1999?

Allied/CFI's Response: Allied/CFI understands that this issue was revised at the Issues Identification Conference to state as follows: Did TECO comply with all requirements, terms and preconditions of TECO's CISR tariff in its negotiations (and offer) of CISR tariff rates to Allied/CFI?

Allied/CFI is unclear as to whether the Staff decided to remove the words concerning TECO's offer of CISR rates to Allied/CFI from this issue. Allied/CFI was advised by letter dated February 25, 2000 from TECO's counsel that TECO's position is that TECO made no offer of electric rates to Allied/CFI pursuant to the CISR tariff. This is an issue of fact which may be developed by TECO through the formal hearing process. Allied/CFI supports Staff Issue 2 as revised (including the language "and offer") and understands that it may develop testimony within the scope of Staff's Revised Issue 2 concerning the facts and circumstances that led to TECO's offer of CISR tariff rates to Allied/CFI on October 18, 1999. With that understanding, Allied/CFI withdraws its proposed Issue 2 reflected in Allied/CFI's proposed list of issues.

- 3) Staff Issue 3: What are the differences, if any, in the rates offered by TECO to Allied/CFI and the rates agreed to between TECO and Odyssey pursuant to TECO's CISR tariff?

Allied/CFI's Response: Allied understands that the wording of this issue was revised at the Issues Identification Conference to be stated as follows: What are the differences, if any, in the rates, terms and conditions offered by TECO to Allied/CFI and the rates, terms and conditions agreed to between TECO and Odyssey pursuant to TECO's CISR tariff?

Allied/CFI supports Staff's revised Issue 3.

- 4) Staff Issue 4: If there is a difference in the rates offered by TECO to Allied/CFI and the rates agreed to between TECO and Odyssey pursuant to TECO's CISR tariff, is the difference justifiable?

Allied/CFI's Response: This issue was not amended at the Issues Identification Conference.

Allied/CFI supports Staff Issue 4.

- 5) Staff Issue 5: Has TECO violated Section 366.03, Florida Statutes, or the requirement of good faith mandated by Order No. PSC-98-1081A-FOF-EI either through its conduct or through the CISR tariff rates offered to Odyssey and to Allied/CFI?

Allied/CFI's Response: Consistent with its position at the Issues Identification Conference and the allegations in its complaint, Allied/CFI requests that Issue 5 be amended as follows: Has TECO violated Sections 366.03, 366.06(2) and/or 366.07, Florida Statutes, or the requirement of good faith mandated by Order No. PSC-98-1081A-FOF-EI, either through its conduct or through the CISR tariff rates offered to Odyssey and to Allied/CFI?

Allied/CFI alleges in its Complaint that TECO's actions violate Sections 366.03, 366.06(2) and 366.07, Florida Statutes. Sections 366.06(2) and 366.07 authorize the Commission to find, upon request made or complaint, that the rates proposed, demanded or charged by a public utility are unjust, unreasonable, unjustly discriminatory or preferential, yield excessive compensation or are otherwise in violation of law. The proposed exclusion of TECO's alleged violations of these two statutes in Staff Issue 5 is tantamount to striking or dismissing paragraphs 8 and 9 of Allied/CFI's Complaint. The Commission clearly has the legal authority to grant the relief requested by Allied/CFI pursuant to these two statutes. TECO has not moved to dismiss Allied/CFI's causes of action under Sections 366.06(2) and 366.07, Florida Statutes. The Commission must allow Allied/CFI the opportunity to present evidence in support of its allegations that TECO has violated

these statutes. The Commission should then render its determinations whether TECO has violated these statutes.

- 6) Staff Issue 6: Based on the resolution of Issues 1-5, what actions should the PSC take with respect to Odyssey, Allied/CFI and TECO?

Allied/CFI's Response: This issue was not amended at the Issues Identification Conference.

Allied/CFI supports Staff Issue 6. Allied/CFI understands that its proposed Issues 8 and 9 fall within the scope of Staff Issue 6. Based on that understanding, Allied/CFI withdraws its proposed Issues 8 and 9.

7) Allied/CFI submits the following additional comments concerning TECO's proposed issues and Allied/CFI's proposed Issues 5(b) and (c), 10 and 11:

(a) Consistent with its position at the Issues Identification Conference, Allied/CFI objects to TECO's proposed Issues 1 and 2. TECO inappropriately attempts to merge all factual and legal issues in this case into two issues which are incomplete and inconsistent with the allegations of the Complaint. The issues in this case must be framed by Allied/CFI's Complaint. TECO's proposed issues would inappropriately merge all factual issues and findings of the Commission into one legal issue for Odyssey and one legal issue for Allied/CFI. In addition, TECO's proposed issues inappropriately sever TECO's conduct with respect to Allied/CFI and Odyssey, the result of which would be to ignore the gravamen of the Complaint. The allegations of the Complaint and Staff's issues properly focus on the differences in the rates TECO offered to Allied/CFI and provided to Odyssey, the facts and circumstances underlying TECO's granting of a significantly favorable rate to Allied/CFI's competitor, whether the difference in rates was justified, and whether the difference in rates for similarly situated competitors violates Sections 366.03, 366.06(2) and 366.07, Florida

Statutes. TECO's proposed issues would have the Commission address TECO's conduct with each competitor (Allied/CFI and Odyssey) separately and in a vacuum, an approach inconsistent with the allegations of the Complaint. Moreover, TECO's proposed legal issues for each competitor are incomplete as each fails to include each of the violations of law alleged in the Complaint.

(b) Allied/CFI believes that the issues raised in its proposed Issues 5(b) and (c) may be addressed within the scope of Staff Issue 4. In other words, in determining whether any difference in rates is justifiable, Allied/CFI understands that it may attempt to demonstrate that TECO has given an undue preference and advantage to Odyssey, that TECO has subjected Allied/CFI to undue and unreasonable prejudice and disadvantage, and that TECO's undue discrimination was a product of collusion deliberately intended to effect the non-electric marketplace. These allegations are found within the four corners of the Complaint and would be properly admissible evidence within the scope of Staff Issue 4.

(c) With respect to Allied/CFI's proposed Issue 10, Allied/CFI maintains that it would be appropriate for the Commission to consider whether TECO's actions in offering disparate electric service rates under its CISR tariff to similarly situated customers and competitors in the same industry are consistent with the goals of promoting job growth and economic development in the State of Florida. The CISR tariff is an experimental pilot program and is only in its formative stages. Allied/CFI maintains that the Commission should identify and recognize the impacts that a CISR tariff can have on industry development, job retention and job growth in Florida. While the difference in rates offered to Allied/CFI and provided to Odyssey are relatively insignificant from the standpoint of the impact on TECO's remaining ratepayers, that difference is enormous when its impact is to effectively eliminate the economic viability of a large industrial customer and the current

and future employment opportunities provided by that customer. Allied/CFI believes that these are relevant issues for the Commission to consider within the framework of this docket and, therefore, requests that its proposed Issues 10 and 11 be included for consideration by the Commission.

Respectfully submitted,



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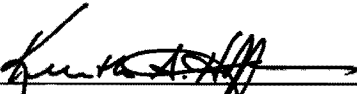
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Response to Staff's Proposed Issues was furnished by U. S. Mail to the following this 28th day of February, 2000:

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Allied/issues.response