

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-00-0584-PCO-EI
ISSUED: March 23, 2000

ORDER SUSPENDING PROCEDURAL SCHEDULE, CONTINUING HEARING, AND DENYING EMERGENCY MOTION TO ENFORCE ORDER NO. PSC-00-0392-PCO-EI AND COMPEL DEPOSITIONS

BY THE COMMISSION:

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.

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a complaint against the Tampa Electric Company (TECO). The complaint alleges that: 1) TECO discriminated against Allied by failing to offer Allied the same rate offered to a competitor under TECO's Commercial Industrial Service Rider (CISR) Tariff; 2) TECO did not properly adhere to the CISR process in its arrangements with Allied's competitor; and 3) a TECO employee colluded with the competitor of Allied in setting rates.

Allied requested that the docket be expedited to minimize damages from the alleged discriminatory treatment. Accordingly, a hearing was scheduled for April 5, 2000. The Order Establishing

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Procedure, Order No. PSC-00-0392-PCO-EI, was issued on February 23, 2000.

Since the opening of this docket, Allied has attempted to discover information pertaining to TECO's CISR negotiations and contract service agreement (CSA) with Odyssey Manufacturing Company, a competitor of Allied. TECO has steadfastly objected, claiming the information is confidential.

On February 2, 2000, Allied served interrogatories, production requests, and a notice of deposition on TECO. On February 7, Allied filed a Motion for Expedited Discovery.

On February 14, 2000, TECO filed its Answer and a Motion for Protective Order, Request for Approval of Proposed Procedures for a Disposition of This Proceeding Without Disclosing Confidential Information, and Summary Disposition. In that filing TECO proposed the following procedure: 1) TECO would submit to the Commission, comparable packages of information on its CISR negotiations with Allied, and its CISR negotiations with Allied's competitor, Odyssey; 2) the Commission would review the information, without disclosing it to Allied, and hold the procedural schedule in abeyance pending the outcome of the review; and, 3) based on its review, the Commission would either grant TECO's Motion for Summary Disposition, thereby resolving the case, or deny the motion and allow normal hearing procedures to resume.

In the Order Establishing Procedure I required that responses to discovery requests be made within 20 days of the request, that TECO respond to Allied's first round of discovery within five days of the issuance of the order, and that Allied be allowed to depose TECO witnesses within five days of issuance of the order.

On March 1, 2000, Allied filed an Emergency Motion to Enforce Order No. PSC-00-0392-PCO-EI and Compel Depositions. TECO responded to the Emergency Motion on March 3, 2000.

This order suspends the procedural schedule, continues the hearing, and disposes of Allied's Emergency Motion to Enforce Order No. PSC-00-0392-PCO-EI and Compel Depositions.

Suspension of Procedural Schedule and Continuance of Hearing

TECO's Request for Approval of Proposed Procedures for a Disposition of This Proceeding Without Disclosing Confidential Information, and Summary Disposition, will be presented to the

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Commission at the March 28, 2000, agenda conference. If TECO's Request is granted, the schedule in the Order Establishing Procedure and issues raised in various Motions will become moot. Furthermore, it is not practical for the parties to prepare for an April 5, 2000, hearing when TECO's Request may be granted on March 28, 2000. For these reasons, the procedural schedule set out in the Order Establishing Procedure is hereby suspended and the hearing is continued until the Commission has addressed TECO's proposal for alternative procedures. Action on the other pending motions in this docket will be held in abeyance pending the Commission's decision on March 28, 2000.

Emergency Motion

On March 1, 2000, Allied filed its Emergency Motion to Enforce Order No. PSC-00-0392-PCO-EI and Compel Deposition. TECO responded on March 2, 2000, in its Response in Opposition to Allied's Emergency Motion Regarding Discovery.

The Order Establishing Procedure, issued on February 23, 2000, allows the parties to begin discovery within five days of the order's issuance. Allied requested that TECO produce representatives for deposition who could testify to TECO's CISR negotiations with Allied. Allied offered to enter a nondisclosure agreement with TECO. TECO objected to producing the witnesses, claiming the information was confidential under the CISR tariff and could only be disclosed to the Commission. Allied then submitted its emergency motion.

Allied stated that the Order Establishing Procedure set a March 6 deadline for submittal of its direct testimony and it needed to conduct the depositions to develop its testimony. Allied also claimed that TECO's refusal to produce the witnesses violated the Order Establishing Procedure, which allowed depositions to begin on February 28, 2000. Allied offered to enter a nondisclosure agreement for the deposition. Finally, Allied requested that I issue an order compelling the TECO witnesses to be produced on March 3 in Tallahassee.

TECO claims, in its response to the emergency motion, that its failure to produce the witnesses would not violate the Order Establishing Procedure because the order states that TECO's motions for protective orders were pending and not addressed in the Order Establishing Procedure. TECO stated that the CISR negotiations were confidential pursuant to the CISR tariff, which was approved by the Commission. TECO maintains that a nondisclosure agreement

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between TECO and Allied does not protect against all the harm that may occur if information on the CISR negotiations is revealed to Allied. Specifically, Odyssey will be harmed if Allied is allowed to obtain financial and cost information on which Odyssey's rate under the CISR was based.

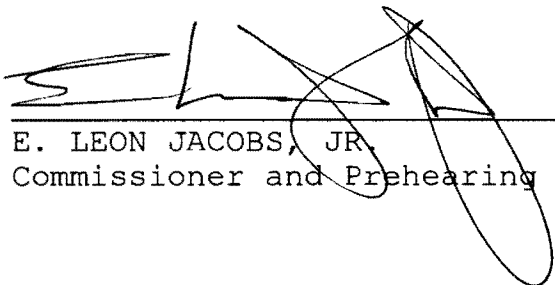
The March 6, 2000, deadline for submittal of Allied's direct testimony which was set forth in the Order Establishing Procedure created the emergency behind Allied's emergency motion. Suspension of the schedule eliminates the emergency. Therefore, Allied's Emergency Motion to Enforce Order No. PSC-00-0392-PCO-EI is denied.

Therefore, it is

ORDERED by Commissioner E. Leon Jacobs that the schedule established in Order No. PSC-00-0392-PCO-EI is hereby suspended and the hearing set for April 5, 2000, is continued pending a decision by the Commission on the Request for Approval of Proposed Procedures for a Disposition of This Proceeding Without Disclosing Confidential Information, and Summary Disposition, filed by the Tampa Electric Company. It is further

ORDERED that the Emergency Motion to Enforce Order No. PSC-00-0392-PCO-EI and Compel Depositions, submitted by Allied Universal Corporation and Chemical Formulators, Inc., is hereby denied.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 23rd Day of March, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

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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 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.