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May 2, 2000

ORIGINAL
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HAND DELIVERY

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

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 the original and fifteen copies of Allied/CFI's Motion to Compel Production of Documents by Tampa Electric Company.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,



John R. Ellis

- AFA _____
- APP _____
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DOCUMENT NUMBER-DATE
05435 MAY-28
FPSC-RECORDS/REPORTING

ORIGINAL

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: May 2, 2000

**ALLIED/CFI'S MOTION TO
COMPEL PRODUCTION OF DOCUMENTS
BY TAMPA ELECTRIC COMPANY**

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), hereinafter collectively referred to as "Allied/CFI," by and through their undersigned counsel, and pursuant to Rules 28-106.206 and 28-106.211, Florida Administrative Code and Rule 1.380(a), Florida Rules of Civil Procedure, move for an Order requiring Tampa Electric Company ("TECO") to produce documents in response to Allied/CFI's First Request for Production of Documents (Nos. 1-18) ("Allied/CFI's request" or "the request"), and state:

1. This proceeding involves Allied/CFI's claim that TECO's actions in offering more favorable Commercial/Industrial Service Rider ("CISR") tariff rates to Allied/CFI's competitor in the liquid bleach manufacturing business, Odyssey Manufacturing Company ("Odyssey"), than the CISR tariff rates offered to Allied/CFI, are in violation of the prohibition against undue discrimination stated in Sections 366.03, 366.06(2), and 366.07, Florida Statutes. Allied/CFI's complaint also alleges that Odyssey did not qualify for rates under TECO's CISR tariff, and asks the Commission to suspend Odyssey's CISR tariff rates.

DOCUMENT NUMBER-DATE

05435 MAY-28

FPSC-RECORDS/REPORTING

2. Rule 28-106.211, Florida Administrative Code, authorizes the Prehearing Officer in this proceeding to issue any orders necessary to effectuate discovery, prevent delay, and promote the just, speedy, and inexpensive determination of all aspects of the case. Rule 28-106.206, Florida Administrative Code and Rule 1.380(a)(2), Florida Rules of Civil Procedure, authorize a discovering party to move for an order compelling inspection if a party in response to a request for inspection submitted under Rule 1.350, Florida Rules of Civil Procedure, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested.

3. Allied/CFI's request was delivered to TECO on February 2, 2000. A copy of the request is attached to this motion as Exhibit A. On February 14, 2000, TECO served its Response, Motion for Protective Order and Objections to Allied/CFI's request ("TECO's response"). A copy of TECO's response is attached to this motion as Exhibit B. TECO's response states objections and refuses to permit inspection as requested with respect to the following subjects of Allied/CFI's request:

- The Contract Service Agreement ("CSA") between TECO and Odyssey (No. 1);
- Documents concerning Odyssey's eligibility for CISR tariff rates (Nos. 2, 3, 6, and 18);
- Internal TECO documents concerning Allied/CFI's CISR tariff negotiations (Nos. 7 and 8);
- Documents reflecting TECO's incremental cost to serve Odyssey's new plant and Allied/CFI's proposed new plant (Nos. 9 and 10);

- Documents reflecting the total number of CSAs and total capacity of megawatts subject to executed CSAs as of two dates: March 1, 1999 and February 1, 2000 (Nos. 14, 15, 16, and 17); and
- The personnel file and documents concerning the termination of employment of the TECO employee who negotiated Odyssey's CISR tariff rate and then went to work for Odyssey, Patrick H. Allman (Nos. 11 and 12).

4. Allied/CFI's request acknowledges that the requested documents contain proprietary, confidential business information entitled to protection against public disclosure pursuant to Section 366.093(2), Florida Statutes, and proposes that production be made to Allied/CFI pursuant to an appropriate protective agreement. Allied/CFI has provided a draft Protective Agreement to counsel for TECO and Odyssey, a copy of which is attached to this motion as Exhibit C.

5. The matter of the disclosure to Allied/CFI of the confidential information sought by Allied/CFI's request was considered by the Commission at its Agenda Conferences on March 28, 2000 and April 18, 2000, and was the subject of a mediation conference with staff (and the parties) on April 5, 2000. In summary, Allied/CFI's position is that disclosure is required if the Commission is to exercise its jurisdiction to adjudicate the issues raised by Allied/CFI's complaint in a manner consistent with Allied/CFI's due process rights under Section 120.57(1), Florida Statutes. The Commission has determined that Allied/CFI must be granted its due process rights under Section 120.57(1), Florida Statutes, in denying TECO's Motion for Protective Order, Request for Approval of Proposed Procedures for a Disposition of this Proceeding Without Disclosing Confidential Information and Summary Disposition.

6. TECO's position has evolved through several formulations in the three months since Allied/CFI's request was served. Initially, TECO refused to even identify or produce a set of copies of the correspondence and documents exchanged between TECO and Allied/CFI in their 1999 CISR tariff rate negotiations (in response to request no. 5). Some two months later, a set of copies of the correspondence and documents exchanged between TECO and Allied/CFI was produced by TECO to Allied/CFI on April 17, 2000. Nonetheless TECO still refuses to even identify the documents it is withholding from production, notwithstanding the requirements of Rule 1.280(b)(5), Florida Rules of Civil Procedure.

7. At the Commission's Agenda Conference on April 18, 2000, TECO made its first proposal to provide any additional confidential information to Allied/CFI concerning TECO's CISR tariff rate negotiations with Allied/CFI and Odyssey. However, TECO's proposed to disclose information only to Allied/CFI's counsel and to a retained consultant, if any, while prohibiting Allied/CFI's counsel from disclosing the information to their client and only witness who prefled direct testimony. This proposal would place Allied/CFI's counsel in an untenable ethical conflict with respect to advising the principals of Allied/CFI concerning the issues raised in this litigation and must be rejected on that ground alone. Moreover, it would impair the due process rights granted by the Legislature and confirmed by the Commission (as discussed above) by withholding substantive information from Allied/CFI's witness.

8. TECO's next proposal, stated orally to Allied/CFI's counsel on April 27, 2000, is to permit disclosure only to: (1) Allied/CFI's counsel and a retained consultant, if any, and (2) an Allied/CFI representative not involved in marketing, sales, or development of competitive business strategy. Again, TECO's proposal is completely unworkable and unacceptable. Allied/CFI is not

a large company with levels of officers, some of whom are not involved in marketing, sales, and the development of competitive business strategy. Allied/CFI's Chief Executive Officer, Bob Namoff, is Allied/CFI's witness in this proceeding and is the person who negotiated with TECO for CISR tariff rates. Mr. Namoff's direct testimony filed on February 21, 2000 details his negotiations with TECO and substantiates Allied/CFI's claims of undue discrimination and apparent collusion. As stated above, in attempting to deny Allied/CFI's witness access to the requested confidential information, TECO is again attempting to prevent Allied/CFI from exercising its due process rights.

9. TECO's purported justification for its refusal to produce the requested documents to Allied/CFI is to protect Odyssey's trade secrets. TECO's refusal is being maintained in bad faith. Initially, by letter comments filed on April 7 following the mediation, Allied/CFI proposed a procedure whereby all TECO documents concerning its CISR tariff rate negotiations with Odyssey (other than the document filed by TECO on March 10 and identified as "1 page side-by-side reconciliation of CSA rates, terms and conditions TECO negotiated with Odyssey compared to those last discussed with Allied/CFI") would be produced first to Odyssey only, allowing Odyssey to redact any information which it considered to be trade secrets before production would be made to Allied/CFI. Next, Mr. Namoff's comments at the Agenda Conference on April 18 made clear that Allied/CFI has no need for any purported trade secret information concerning Odyssey's operations. Thereafter, following the Agenda Conference on April 18, Odyssey's counsel has advised counsel for Allied/CFI that Odyssey has no objection to disclosure to Mr. Namoff of Odyssey's CSA.

10. TECO's only remaining purported justification for its refusal to permit disclosure to Allied/CFI is that it must act to preserve the integrity of its CISR tariff rate negotiations with respect to future customers who might otherwise refuse to negotiate with TECO out of concern for the

potential disclosure by TECO of their trade secret information to their competitors. TECO's suggestion that Allied/CFI's due process rights must be shortchanged on speculation of enhancing TECO's image in future CISR tariff rate negotiations is, hopefully, the last in the TECO series of "red herring" arguments, changes in position and delays visited on Allied/CFI and the Commission by TECO in this case. First and most fundamentally, Allied/CFI is not seeking trade secret information about Odyssey's operations. This fact could not be clearer, and even Odyssey acknowledges it. Second, the supposedly fearsome precedent of disclosure of non-trade secret information concerning a CISR tariff customer will result only from litigation brought by another qualifying CISR tariff customer alleging undue discrimination and collusion, and there will be no precedent for disclosure in response to claims of a competitor that does not qualify for CISR tariff rates. Third, the matters alleged in Allied/CFI's Complaint concerning TECO's conduct in its CISR tariff rate negotiations with Allied/CFI and Odyssey, made in the first month of the effective date of service under the CISR tariff, are a far more immediate and real threat to TECO's integrity and authority to conduct CISR tariff rate negotiations than is TECO's speculation regarding some future customer's overanxious concern for its trade secrets. Consequently, there is no valid justification for TECO's continued refusal to permit inspection of the requested documents by Allied/CFI's witness, Mr. Namoff, pursuant to the procedure proposed in Allied/CFI's letter comments of April 7.

11. In lieu of production of documents in response to requests nos. 9 and 10 concerning TECO's incremental cost to serve Odyssey's new plant and Allied/CFI's proposed new plant, Allied/CFI proposes that it would enter into a stipulation with TECO that there is no difference in its incremental cost to serve the two customers under similar CSA terms.

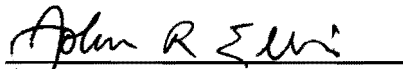
12. In lieu of production of documents in response to requests nos. 14, 15, 16 and 17 concerning the total number of CSAs and total capacity in megawatts subject to executed CSAs as of March 1, 1999 and February 1, 2000, Allied/CFI proposes that it would enter into a stipulation with TECO that TECO was not and is not restricted by the limitations in its CISR tariff (on the number of executed CSAs and total capacity of megawatts available for service under the CISR tariff) from offering to Allied/CFI the same CISR tariff rates as agreed to between TECO and Odyssey.

13. In lieu of identification of documents by a TECO custodian of records in response to Allied/CFI's Notice of Deposition and Request for Production served on February 2, 2000, Allied/CFI has proposed a procedure in its April 7 letter comments whereby only a limited set of redacted documents would need to be identified for potential *in camera* inspection by the Prehearing Officer on a further motion to compel production. A copy of the April 7 comments are attached to this motion as Exhibit D.

14. As to the documents sought by requests nos. 11 and 12, the TECO personnel file and documents concerning the termination of former TECO employee Patrick Allman, Allied/CFI agrees to accept redacted documents deleting the types of information specified in TECO's objection: "social security numbers, home addresses, telephone numbers and similar matter." In response to TECO's objection that requests nos. 11 and 12 are unfounded and that production implicates the privacy rights of persons not aware of the intrusion, Allied/CFI refers TECO to paragraph 19 of its Complaint and pages 12-13 of Mr. Namoff's testimony which provide the foundation for the requests, and notes that Mr. Allman attended the mediation on April 5 and apparently is well aware of these proceedings.

WHEREFORE, Allied/CFI requests that the Prehearing Officer grant this motion and issue an Order compelling TECO to produce documents in response to Allied/CFI's first request for production of documents (Nos. 1-18), pursuant to the procedure proposed in Allied/CFI's letter comments filed April 7, 2000, and subject to Allied/CFI's offer to enter into stipulations with TECO as to certain facts in lieu of production in response to requests nos. 14-17.

Respectfully submitted,



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Attorneys for Allied Universal Corporation and
Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Allied/CFT's Motion to Compel Production of Documents by Tampa Electric Company was furnished by hand delivery(*) and/or by facsimile telecopier and mail to the following this 20 day of May, 2000:

L. Lee Willis, Esq.(*)
James D. Beasley, Esq.
Ausley & McMullen
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Tallahassee, Florida 32301

Robert V. Elias, Esq.(*)
Marlene Stern, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850

Patrick K. Wiggins, Esq.(*)
Wayne Schiefelbein, Esq.
P. O. Box 1657
Tallahassee, FL 32302

Harry W. Long, Jr., Esq.
TECO Energy, Inc.
Legal Department
P. O. Box 111
Tampa, FL 33601



JOHN R. ELLIS

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

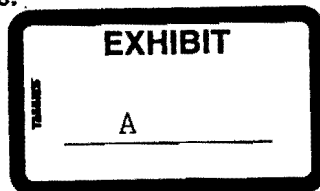
ALLIED UNIVERSAL CORPORATION'S AND CHEMICAL FORMULATORS, INC.'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO TAMPA ELECTRIC COMPANY (NOS. 1- 18)

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), by and through their undersigned counsel, and pursuant to Rule 28-106.206, Florida Administrative Code, and Rule 1.350, Florida Rules of Civil Procedure, hereby serve their First Request for Production of Documents to Tampa Electric Company ("TECO"). The documents listed below shall be made available for inspection and copying at the offices of Allied's and CFI's undersigned counsel at 215 South Monroe Street, Suite 420, Tallahassee, Florida 32301, upon execution of an appropriate non-disclosure agreement to maintain the confidentiality of all confidential information and documentation disclosed in this proceeding.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following words have the meanings indicated:

- (i) "you" or "your" refers to TECO, its agents, employees, servants or representatives.



- (ii) "employee" includes any individual employed by TECO, its operators or owners, or any parent, subsidiary, partnership, or affiliate thereof, and specifically includes TECO's former employee Patrick H. Allman;
- (iii) All references to "Odyssey Manufacturing Company" or "Odyssey" shall be deemed to include its officers, directors, shareholders, employees, agents, representatives, parent and subsidiary and affiliate companies, partners, contractors and suppliers.
- (iv) "document" means any kind of written, typed, or recorded or graphic matter, however produced or reproduced, of any kind or description, whether sent or received, including originals, identical copies, non-identical copies, and drafts, and both sides thereof; and including but not limited to: papers, books; letters; correspondence; telegrams; facsimile transmissions; bulletins; notices; announcements; instructions; charts; manuals; brochures; schedules; cables; telex messages; memoranda; notes; notations; accountants' working papers; transcripts; minutes; agendas; reports and recordings of telephone or other conversations; of interviews, of conferences or of other meetings; affidavits; statements; summaries; opinions; reports; studies; analyses; evaluations; contracts; agreements; journals; statistical records; desk calendars; appointment books; diaries; lists; tabulations; sound recordings; computer print-outs; data processing input and output; computer diskettes; microfilms; all other records kept by electronic, photographic or mechanical means and things similar to any of the foregoing, however denominated by

you; and any other documents as defined in Rule 1.350, Florida Rules of Civil Procedure.

- (v) If any document request herein calls for information or for the production of a document which you deem to be privileged, confidential, or otherwise exempt from disclosure, in whole or in part, each such document which you contend is privileged, confidential or exempt should be: (1) identified by date, author(s), addressee(s), number of pages, and a brief general description of its nature and subject matter; and (2) produced to the fullest extent possible consistent with such claim of privilege, confidential treatment, or exemption from disclosure; and you are specifically requested to state the specific grounds relied upon for each such claim of privilege, confidential treatment, or exemption from disclosure. See, Rule 1.288(b)(5), Florida Rules of Civil Procedure.

DOCUMENT REQUESTS


1. The Contract Service Agreement ("CSA") between TECO and Odyssey Manufacturing Company ("Odyssey").
2. All documents provided by Odyssey to TECO in connection with Odyssey's request for rates under TECO's Commercial/Industrial Service Rider ("CISR") tariff.
3. All documents provided by TECO to Odyssey in connection with Odyssey's request for rates under TECO's CISR tariff.
4. All documents provided by Allied and/or CFI to TECO in connection with Allied's and CFI's request for rates under TECO's CISR tariff.

5. All documents provided by TECO to Allied and/or CFI in connection with Allied's and CFI's request for rates under TECO's CISR tariff.
6. All documents arising from or relating to CISR tariff rate negotiations between TECO and Odyssey.
7. All documents arising from or relating to CISR tariff rate negotiations between TECO and Allied.
8. All documents arising from or relating to CISR tariff rate negotiations between TECO and CFI.
9. All documents reflecting estimates of TECO's incremental cost to provide service under the CISR tariff to Odyssey.
10. All documents reflecting estimates of TECO's incremental cost to provide service under the CISR tariff to Allied and/or CFI.
11. TECO's personnel file for its former employee, Patrick H. Allman.
12. All documents arising from or relating to the resignation or other termination of employment by TECO of Patrick H. Allman.
13. All documents reflecting communications between TECO and Odyssey which concern or discuss Allied's and/or CFI's request for service under TECO's CISR tariff.
14. All documents reflecting the total number of Contract Service Agreements executed by TECO pursuant to its CISR tariff as of March 1, 1999.
15. All documents reflecting the total number of Contract Service Agreements executed by TECO pursuant to its CISR tariff as of February 1, 2000.

16. All documents reflecting the total capacity in megawatts subject to executed Contract Service Agreements pursuant to TECO's CISR tariff as of March 1, 1999.

17. All documents reflecting the total capacity in megawatts subject to executed Contract Service Agreements pursuant to TECO's CISR tariff as of February 1, 2000.

18. All documents reflecting Odyssey's eligibility for CISR tariff rates, including but not limited to, documentation allegedly demonstrating that Odyssey has or had a viable lower cost alternative to taking service from TECO.



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John R. Ellis, Esq.

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(850) 681-6515 (Telecopier)


Attorneys for Allied Universal Corporation and
Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by hand delivery(*) and U. S. Mail to the following this 20 day of February, 2000:

L. Lee Willis, Esq.*
James D. Beasley, Esq.
Ausley & McMullen
227 South Calhoun Street
Tallahassee, Florida 32301

Robert V. Elias, Esq.
Division of Legal Services
Florida Public Service Commission
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Tallahassee, Florida 32388-0850


John R. Ellis

Allied/pro.1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Allied Universal Corporation and
Chemical Formulators, Inc. against Tampa Electric
Company

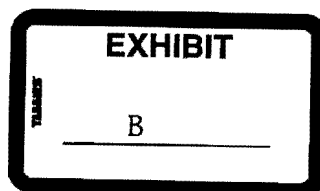
) DOCKET NO. 000061-EI
) FILED: February 14, 2000
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**TAMPA ELECTRIC COMPANY'S RESPONSE, MOTION
FOR PROTECTIVE ORDER AND OBJECTIONS TO
ALLIED UNIVERSAL CORPORATION'S AND CHEMICAL
FORMULATORS, INC.'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO TAMPA ELECTRIC COMPANY (NOS. 1-18)**

Tampa Electric Company ("Tampa Electric" or "the company"), submits the following Response, Motion for Protective Order and Objections to Allied Universal Corporation's ("Allied") and Chemical Formulators, Inc.'s ("CFT") First Request for Production of Documents to Tampa Electric Company Nos. 1-18 and, as grounds therefor, says:

Preliminary Nature of These Objections

The objections stated herein are preliminary in nature and should additional grounds for objections be discovered as Tampa Electric attempts to produce documents in this proceeding, the company reserves the right to supplement or revise or modify its objections. Should Tampa Electric determine that a further protective order is necessary with respect to any of the information requested, Tampa Electric reserves the right to file a motion with the Commission.



GENERAL OBJECTIONS

Tampa Electric makes the following general objections to Allied/CFI's First Request for Production of Documents in this proceeding:

1. Tampa Electric objects to each request insofar as it seeks to impose obligations on Tampa Electric which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

2. Tampa Electric objects to each and every discovery request to the extent such request calls for information which is exempt from discovery by virtue of the attorney/client privilege, work product privilege, or other applicable privilege. Moreover, the use of the terms "reflecting," "arising from or relating to" and "allegedly demonstrating" as used in individual requests would improperly require Tampa Electric in its response to disclose the mental impression and other privileged work product of its attorneys.

3. Tampa Electric objects to each and every discovery request insofar as the request is vague, ambiguous, overly broad, imprecise or utilizes terms that are subject to multiple interpretations but are not properly defined or explained. Tampa Electric objects to the use of the terms "reflecting," "arising from or relating to" and "allegedly demonstrating" on the grounds that the terms are vague and that the use of these terms as used in individual requests renders the individual requests vague, over broad and ambiguous.

4. Tampa Electric objects to each and every discovery request insofar as the request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

5. Tampa Electric objects to each discovery request to the extent that the information requested constitutes “trade secrets” which are privileged pursuant to Section 90.506, Florida Statutes, or which is proprietary confidential business information.

6. Tampa Electric objects to each and every request to the extent it seeks “all” documents in a specified category on grounds that such a requirement is burdensome, excessive, oppressive or excessively expensive. Tampa Electric is a large corporation with employees located in many different locations. In the course of its business, Tampa Electric creates numerous documents that are not subject to Florida Public Service Commission or other governmental records retention requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, not every document can be provided in response to these discovery requests. Tampa Electric will make a good-faith effort to locate responsive documents in files and other locations where they are expected to be found in the ordinary course of business.

Motion for Protective Order

7. Tampa Electric's objections to Allied/CFI's discovery requests are submitted pursuant to the authority contained in Slatnick v. Leadership Housing Systems of Florida, Inc., 368 So. 2d 78 (Fla. 3rd DCA 1979). To the extent that a Motion for Protective Order is required, Tampa Electric's objections are to be construed as a request for a Protective Order.

Objections to Specific Requests

8. Tampa Electric objects to Document Request No. 1. The Contract Service Agreement (“CSA”) between Tampa Electric and Odyssey Manufacturing Company (“Odyssey”) contains highly proprietary and confidential information the public disclosure of which would harm both the utility, its general body of ratepayers and Odyssey, the party to the

CSA. The confidentiality of the CSA is confirmed in Tampa Electric's Commission approved CISR tariff which states the follows:

The CSA shall be considered a confidential document. The pricing levels and procedures described within the CSA, as well as any information supplied by the customer through the energy audit or as a result of negotiations or information requests by the Company and information developed by the Company in connection therewith, shall be made available for review by the Commission and its Staff only and such review shall be made under the confidentiality rules of the Commission. (emphasis supplied)

9. This Commission has determined that CSAs are proprietary confidential documents on a number of occasions since the advent of CISR tariffs as a means to enable electric utilities to attract or retain at risk commercial/industrial customers for the benefit of the general body of ratepayers. For example, in a recent order¹ involving a confidentiality classification request by Gulf Power pertaining to negotiated CSA provisions the Commission observed:

. . . Upon review, it appears that the information for which Gulf seeks confidential classification is proprietary, confidential business information which, if disclosed, would tend to harm the competitive interests of Gulf and the entity with which it has negotiated a CSA contract. It appears as if the public disclosure of this information may prevent Gulf from successfully negotiating CSAs with customers. This information is regarded as sensitive and confidential by the CISR customer because public disclosure of this information would impact the customer's ability to compete in its "native market." In the event such information is made public, it appears as if future potential CIS rider customers could avoid the risk of public disclosure of their confidential information by refusing to negotiate with Gulf. This may lead to uneconomic bypass of Gulf's facilities. Therefore, this information is entitled to confidential classification under Section 366.093(3), Florida Statutes. In accord with Section 366.093(4), Florida Statutes, this information shall be granted confidential classification for a period of 18 months from the date of the issuance of this Order.

¹ Order No. PSC-99-0274-CFO-EI, issued February 11, 1999 in Docket No. 960789-EI

10. The above adverse effects cannot be avoided by having the business competitor of a CISR customer enter into a non-disclosure agreement because once the competitor reviews this competitive information the harm is done, whether or not the business competitor of the CISR customer agrees not to disclose the information to third parties. It is the business competitor itself who competes with the CISR customer – not any third party to whom the business competitor might be willing to agree not to disclose the information. The business competitor cannot learn proprietary confidential business information about one of its competitors for use in litigation, then erase its knowledge of, or “forget,” that information once the litigation is concluded. While Tampa Electric is willing to allow the Commission, should it so desire, to review, on a confidential basis, any Contract Service Agreement the company may enter into, such information clearly should not be disclosed to a business competitor of a CISR customer. Clearly, Allied/CFI should not under any circumstances have access to the CSA negotiated between Tampa Electric and Allied/CFI’s acknowledged competitor, Odyssey.

11. Tampa Electric objects to Document Request No. 2 on the same grounds as stated with respect to Document Request No. 1. The documents provided by Odyssey to Tampa Electric are entitled to the same protections against public disclosure as the CSA that resulted from the negotiations. It is particularly important that such documents not be provided to Allied/CFI who profess to be Odyssey’s business competitor.

12. Tampa Electric objects to Document Request No. 3 on the same grounds as it objects to Document Request No. 1. The documents described in Request No. 3 directly bear on the CISR negotiations between Tampa Electric and Odyssey. Disclosure of these items to Allied/CFI or to the public generally would bring about the same harms to Tampa Electric, its customers and Odyssey as are described in Tampa Electric’s objections to Request for

Production No. 1. The production of such documents would cause additional harm to Tampa Electric and its general body of ratepayers by disclosing negotiated rates, and other terms and conditions Tampa Electric might be asked to agree to in future CSA negotiations. Such disclosure could only reduce the benefit to Tampa Electric's general body of ratepayers in future CSA negotiations.

13. Tampa Electric objects to Document Request No. 4 on the same ground as it objects to Document Request No. 1 and No. 2. In addition, Allied and/or CFI should have file copies of all documents they provided to Tampa Electric.

14. Tampa Electric objects to Document Request No. 5 on the same ground as asserted in response to Document Requests Nos. 1 and 3.

15. Tampa Electric objects to Document Request No. 6 on the same ground as asserted in its objection to Document Request No. 1.

16. Tampa Electric objects to Document Request No. 7 on the same ground as stated in Tampa Electric's objection to Document Request No. 1.²

17. Tampa Electric objects to Document Request No. 8 on the same grounds as stated in Tampa Electric's objection to Document Request No. 1.

18. Tampa Electric objects to Document Request No. 9 on the same grounds as stated in response to Document Request No. 1.

19. Tampa Electric objects to Document Request No. 10 on the same grounds as stated in Tampa Electric's objection to Document Request No. 1.

² Note: Requests Nos. 7 and 8 refer to negotiations by Tampa Electric with Allied and CFI. Tampa Electric did not engage in separate negotiations with the two entities and has always considered them to be one in the same.

20. Tampa Electric objects to Document Request No. 11 on the ground that it is an unfounded fishing expedition seeking confidential employee records. The wholesale disclosure of personnel files containing confidential information regarding employees is inappropriate. Production of those documents implicates privacy rights of persons not aware of the intrusion. Personnel files contain a wide array of non-party employees' information, including confidential and sensitive information about the employees, such as social security numbers, home addresses, telephone numbers and similar matter. This request is overbroad. CAC - Ramsay Health Plans, Inc. v. Johnson, 641 So. 2d 434 (Fla. 3rd DCA 1994).

21. Tampa Electric objects to Document Request No. 12 on the same grounds as stated in Tampa Electric's objection to Document Request No. 11.

22. Document Request No. 13 seeks all documents reflecting communications between Tampa Electric and Odyssey which concern or discuss Allied's and/or CFI's request for service under TECO's CISR tariff. Subject to the foregoing general objections, Tampa Electric will produce documents responsive to this request.

23. Tampa Electric objects to Document Request No. 14 on the same ground as stated in Tampa Electric's objection to Document Request No. 1. Additionally, disclosing the total number of CSAs executed by Tampa Electric at any given point in time would reveal the extent to which Tampa Electric has been willing to enter such agreements and thereby cause others to seek such agreements who might not otherwise claim to be at risk customers.

24. Tampa Electric objects to Document Request No. 15 on the same ground as asserted in its objection to Document Request No. 14.

25. Tampa Electric objects to Document Request No. 16 for the same ground stated in Tampa Electric's objection to Document Request No. 1. In addition, public disclosure of the

total capacity and megawatts would have the same adverse impact as disclosure of the number of contracts sought in Document Request No. 14.

26. Tampa Electric objects to Document Request No. 17 on the same ground as asserted in its objection to Document Request No. 16.


27. Tampa Electric objects to Document Request No. 18 on the same grounds as asserted in Document Request No. 1.

DATED this 14th day of February, 2000.

Respectfully submitted,

HARRY W. LONG, JR.
Chief Counsel
TECO Energy, Inc.
Post Office Box 111
Tampa, Florida 33601
(813) 228-4111

and



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & Macmillan
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response, Motion for Protective Order and Objections to Allied/CFI's First Request for Production of Documents Nos. 1-18, filed on behalf of Tampa Electric Company, has been furnished by hand delivery(*) or U. S. Mail this 14th day of February, 2000 to the following:

Robert V. Elias*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Allied Universal Corporation
8350 N. W. 93rd Street
Miami, FL 32166-2026

Chemical Formulators, Inc
5215 West Tyson Avenue
Tampa, FL 33611-3223

Ms. Marlene K. Stern*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Kenneth Hoffman
Mr. John Ellis
Rutledge Law Firm
Post Office Box 551
Tallahassee, FL 32302



ATTORNEY

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cfi.doc

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.)
_____)

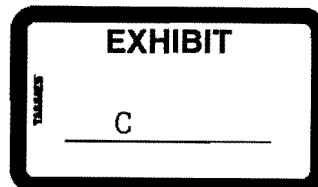
Docket No. 000061-EI

PROTECTIVE AGREEMENT

This agreement is entered into by and between Petitioners, Allied Universal Corporation ("Allied"), and Allied's affiliate Chemical Formulators, Inc. ("CFI"), collectively referred to hereinafter as "Allied/CFI"; Respondent, Tampa Electric Company ("TECO"); and Intervenor, Odyssey Manufacturing Company ("Odyssey"), by and through their undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code.

WHEREAS, in response to Allied/CFI's discovery requests in this proceeding, TECO will produce certain information including documents, answers to interrogatories, and deposition testimony, which TECO deems to be proprietary confidential business information; and

WHEREAS, in order to provide Allied/CFI and Odyssey reasonable access to certain proprietary confidential business information requested without unduly risking public disclosure of the proprietary information it contains, TECO has agreed to provide certain requested information to Allied/CFI and Odyssey to expedite discovery in preparation for the hearing; and



WHEREAS, the persons subscribing to this agreement as representatives of Allied/CFI and Odyssey agree to accept such information subject to the conditions of this agreement,

NOW THEREFORE it is agreed as follows:

1. Disclosure of the requested information to Allied/CFI and to Odyssey shall be limited to representatives of Allied/CFI and Odyssey who have executed the non-disclosure agreement described in paragraph 2 below.

2. The requested information shall not be disclosed to any person who has not signed the non-disclosure agreement on the form which is attached hereto as Exhibit "A" and incorporated herein. The non-disclosure agreement (Exhibit "A") requires the person to whom disclosure is made to read a copy of this Protective Agreement and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The non-disclosure agreement shall contain the signatory's full name, business address and telephone number, and the name of the party with whom the signatory is associated. The person executing the non-disclosure agreement shall further certify that he or she is authorized by Allied/CFI and Odyssey to execute the non-disclosure agreement. The signed non-disclosure agreement shall be delivered to counsel for TECO prior to the disclosure of the information to the signatory.

3. Use of any information obtained by Allied/CFI and Odyssey pursuant to this Protective Agreement will be made solely for the purpose of litigation and for no other purpose.

4. All copies of documents containing the requested information which are provided to Allied/CFI shall be deemed to be held in trust pursuant to this Protective Agreement and shall be returned to TECO upon the conclusion of litigation involving the matters alleged in this proceeding.

5. Those persons who become representatives of Allied/CFI and Odyssey pursuant to this Protective Agreement further agree that:

a. They will treat all information obtained pursuant to the Protective Agreement as confidential;

b. No employees or agents of Allied/CFI and Odyssey other than themselves will review the documents and other information obtained pursuant to this Protective Agreement;

c. They will not publicly disclose any information obtained pursuant to this Protective Agreement; and

d. Disclosure to any regulatory or judicial authority of any information obtained pursuant to this agreement shall be accompanied by an appropriate request for confidential classification and treatment of the information.

6. Allied/CFI and Odyssey agree that only representatives who have executed the non-disclosure agreement referred to in paragraph 2 above may review or have access to information obtained pursuant to this Protective Agreement.

7. If Allied/CFI and Odyssey desire to use, in the course of this proceeding, any information obtained pursuant to this Protective Agreement, in testimony filed by Allied/CFI or Odyssey or in direct or cross-examination of any witness, in rebuttal, or in a proffer of evidence, the proponent of such evidence shall notify TECO at least one (1) business day in advance of the proposed use and will meet with representatives of TECO for the purpose of attempting in good faith to establish a procedure that will accommodate the needs of Allied/CFI and Odyssey for obtaining evidence without risking public disclosure of the proprietary and confidential information contained in the information obtained pursuant to this Protective Agreement. If TECO, Allied/CFI and

Odyssey are unable to reach agreement on a means of preventing public disclosure of the proprietary information, then TECO, Allied/CFI and Odyssey will submit the issues to the Commission for resolution before any party attempts to make use of the information.

9. Each of the parties to this Protective Agreement shall act in good faith to carry out the purposes of this agreement and neither of them will do anything to deprive the other parties of the benefit of this agreement. In case of any disagreement between the parties to this Protective Agreement on the meaning or application of this agreement or over whether either party has complied with it, the parties shall submit the matter, initially, to the Commission for its determination. Nothing in this Protective Agreement shall constitute a waiver by either party of any right which any party may have to protect trade secrets or proprietary confidential business information contained in the information obtained pursuant to this Protective Agreement by appealing any decision of the Commission or by instituting an original proceeding in any court of competent jurisdiction; nor shall any party's participation in this Protective Agreement be construed as an admission that any information obtained pursuant to this agreement in fact contains trade secrets or proprietary confidential business information. In the event that the Commission shall rule that any of the information obtained pursuant to this Protective Agreement should be removed from the restrictions imposed by this agreement, no party shall disclose any such information in the public record for ten (10) business days unless authorized by the providing party to do so. The provisions of this paragraph are entered to enable a party to seek a stay or other relief from an order removing the restrictions of this Protective Agreement from material claimed by any other party be trade secrets or proprietary confidential business information.

10. In the event a party wishes to utilize any information obtained pursuant to this

Protective Agreement in this proceeding, but because of delays resulting from hearings before the Commission or courts of competent jurisdiction regarding confidential status, is not free to use the information prior to the determination of the hearing, upon final resolution of the matter by the Commission or courts in favor of the party wishing to utilize the information such information shall be submitted to the Commission in the form of a late-filed exhibit and, subject to the Commission's rules concerning comments on late-filed exhibits, shall be incorporated into the record of the hearings as if it had been presented at the hearing.

11. This agreement shall be binding on the parties to this agreement from the date of its execution. Each executed copy of this agreement shall be deemed an original.

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
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(850) 222-7560 (Telecopier)

Attorneys for TAMPA ELECTRIC
COMPANY

Exhibit "A"
Non-disclosure Agreement

The undersigned hereby certifies: (1) that he/she is authorized to execute this non-disclosure agreement on behalf of the party indicated below; and (2) that prior to the disclosure to him/her of certain information and documents belonging to, or in the possession of, or made available through the offices of Tampa Electric Company which are considered by Tampa Electric Company, or the owner of such information or documents, to be a trade secret, or otherwise of a privileged or confidential nature, he/she has read the Protective Agreement between Allied Universal Corporation and Chemical Formulators, Inc., Tampa Electric Company and Odyssey Manufacturing Company in Docket No. 000061-EI, attached to this non-disclosure agreement, and he/she agrees to be bound by the terms of the Protective Agreement.

Executed this ___ day of _____, 2000.

REPRESENTATIVE OF:

By: _____

ALLIED UNIVERSAL CORPORATION ___

Name:

Address:

CHEMICAL FORMULATORS, INC. ___

TAMPA ELECTRIC COMPANY ___

Telephone:

ODYSSEY MANUFACTURING COMPANY ___

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

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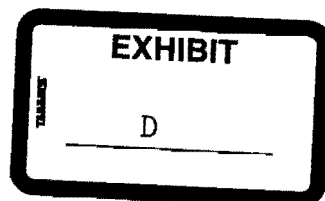
April 7, 2000

Robert V. Elias, Esq.
Marlene Stern, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, FL 32399-0850

Re: Allied/CFI v. TECO
Docket No. 000061-EI

Dear Bob and Marlene:

In our conference call yesterday afternoon following the mediation on April 5, you invited the filing of written comments by the parties on the issues of the propriety of and procedures for the disclosure to Allied/CFI of confidential information concerning TECO's CISR tariff rates. Allied/CFI's position on these issues has been stated in several previous filings in this docket, including: Allied/CFI's complaint and petition to examine and inspect confidential information; Allied/CFI's motion for expedited responses to discovery requests; Allied/CFI's reply in support of its petition to examine and inspection confidential information; Allied/CFI's response to staff's proposed issues; Allied/CFI's response in opposition to TECO's motion for protective order, for suspension of procedural schedule, and for summary disposition; and Allied/CFI's request for confidential classification with respect to the direct testimony of Robert M. Namoff. Staff's recommendation filed on March 16, 2000, in response to TECO's request for proposed procedures, summarizes Allied/CFI's position on these issues. Allied/CFI incorporates these previous statements of its position as though fully set forth herein as well as its comments made at the Agenda Conference on March 28, 2000. Allied/CFI also provides the following additional comments.



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1. The Commission's Standard Procedures for Handling of Confidential Information are Sufficient to Prevent Disclosure to Non-Parties.

Rule 25-22.006, Florida Administrative Code, and the Order Establishing Procedure and Responding to Complainant's Motion for Expedited Responses to Discovery Requests, Order No. PSC-00-0392-PCO-EI issued February 23, 2000, provide sufficient procedures to secure the confidentiality of information concerning TECO's CISR tariff rates as to non-parties to this proceeding. Allied/CFI has offered to enter into a protective agreement to facilitate the handling of confidential information produced in response to discovery requests and in the filing of testimony and examination of witnesses, and Allied/CFI has provided a draft Protective Agreement to counsel for TECO and Odyssey accordingly. There has been no showing by TECO or Odyssey that disclosure to Allied/CFI of confidential CISR tariff information would lead to disclosure of such information to non-parties to this proceeding.

2. Disclosure to Allied/CFI Will Not Harm the Viability of CISR Tariffs.

There is a simple and obvious reconciliation of the apparent conflict between: (1) the rights of commercial/industrial customers such as Allied/CFI to not be subjected to undue discrimination as a result of CISR tariff rate negotiations, and to due process in the litigation of their claims of undue discrimination; and (2) TECO's and its ratepayers' interests in preserving the economic benefits of the CISR tariff in attracting and retaining at-risk load, by preserving the confidentiality of information exchanged in CISR tariff rate negotiations. Simply, the lowest CISR tariff rates offered to one qualifying commercial/industrial customer in a particular industry - such as liquid bleach manufacturing, or shoe manufacturing, or semiconductor manufacturing, or any other industry in which Florida seeks to promote job growth and economic development - must be offered to other customers who compete in the same industry and who qualify for CISR tariff rates. As to other customers who compete with a CISR tariff customer, only applicants who qualify for CISR tariff rates may obtain such rates.

The obvious result of this requirement would be the elimination of the potential for litigation over rates between qualifying CISR tariff applicants who are competitors in the same industry, by the elimination of the potential for discrimination.

There is no risk that disclosure of CISR tariff rate information to Allied/CFI in this proceeding will lead to price convergence in TECO's future CISR tariff rate negotiations with customers in different industries. However, price convergence between similarly situated customers who qualify for rates under the same tariff is not only not a "harm" with respect to tariffs generally, or a threat to the viability of CISR tariffs specifically, it is exactly and only what is required under the laws prohibiting undue discrimination.

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April 7, 2000

3. Disclosure of CISR Tariff Information to Allied/CFI Is Required if the Commission Is to Exercise Its Jurisdiction to Adjudicate Allied/CFI's Complaint of Undue Discrimination Consistent with the Requirements of Chapter 120, Florida Statutes.

Allied/CFI's complaint alleges the violation by TECO of the prohibition against undue discrimination stated in Sections 366.03, 366.06(2), and 366.07, Florida Statutes, as a result of the disparity between the CISR tariff rates agreed to between TECO and Odyssey in October 1998, and the CISR tariff rates offered by TECO to Allied/CFI on October 18, 1999. Under Section 120.57(1), Florida Statutes, Allied/CFI must be given an opportunity to present evidence and argument on all issues involved in this proceeding, and to conduct cross-examination of TECO's and Odyssey's witnesses and to submit rebuttal evidence in response to evidence submitted by TECO and Odyssey.

On March 10, 2000, pursuant to a request for confidential classification, TECO filed Document No. 031432-00, identified as a 1-page side-by-side reconciliation of CSA rates, terms, and conditions TECO negotiated with Odyssey compared to those last discussed with Allied/CFI. If there is any disparity between those rates, terms, and conditions, then this document must be disclosed to Allied/CFI without further delay. There can be no resolution of Allied/CFI's claims for undue discrimination consistent with Allied/CFI's rights to due process under Section 120.57(1), Florida Statutes, without disclosure of this document.

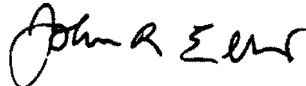
Allied/CFI does not dispute Odyssey's claim that certain information provided by Odyssey to TECO is trade secret information entitled to protection against disclosure, and Allied/CFI does not seek disclosure of such trade secret information. However, if Odyssey is suggesting that disclosure of the information concerning rates, terms and conditions contained in Document No. 03142-00 somehow constitutes trade secret information, then it is apparent that Odyssey is attempting to delay proceedings in this docket in order to continue to exploit its competitive advantage in the marketplace which it obtained as a result of the CISR tariff rate negotiations in question.

If there is a disparity between the rates, terms, and conditions TECO offered to Odyssey and to Allied/CFI reflected in Document No. 03142-00, then TECO should be ordered to: (1) produce to Allied/CFI copies of the documents filed as Document No. 03141-00 on March 10, 2000, identified as 1 notebook, Bates-stamped 1547-A through 1910-A, containing all document relevant to CISR CSA negotiations between TECO and Allied/CFI; (2) produce to Odyssey copies of the documents filed as Document No. 03140-00 on March 10, 2000, identified as 2 notebooks, Bates-stamped 7-0 through 357-0 and 358-0 through 523-0, and 2 pouches of additional documents, Bates-stamped 524-0 through 1545-0, comprising all documents relevant to CISR Contract Service Agreement negotiations between TECO and Odyssey; and (3) provide answers without objections to Allied/CFI's first set of interrogatories served on February 2, 2000, and to Staff's First Set of

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Interrogatories served on February 17, 2000. Within seven days thereafter, Allied/CFI and Odyssey should exchange: (1) designations of documents produced to them by TECO which are contended to contain trade secret information; and (2) copies of documents produced to them by TECO as to which no claim of trade secret information is asserted, and redacted copies of documents insofar as information asserted to be trade secret information may be readily redacted. Thereafter, an *in camera* inspection before the Prehearing Officer may be requested by any party to challenge a claim of trade secret information. The scheduled prehearing conference and final hearing dates should stand, and new dates for filing of testimony should be scheduled.

Sincerely,



John R. Ellis

JRE/tl

cc: James D. Beasley, Esq.
Harry W. Long, Jr., Esq.
Wayne L. Schiefelbein, Esq.
Patrick K. Wiggins, Esq.
Division of Records and Reporting