

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-00-1171-CFO-EI
ISSUED: June 27, 2000

ORDER GRANTING ALLIED UNIVERSAL CORPORATION'S REQUEST FOR CONFIDENTIAL CLASSIFICATION OF DOCUMENT NO. 02395-00; GRANTING IN PART AND DENYING IN PART ALLIED UNIVERSAL CORPORATION'S MOTION TO COMPEL PRODUCTION OF DOCUMENTS; GRANTING AND DENYING IN PART TAMPA ELECTRIC COMPANY'S SUPPLEMENTAL MOTION FOR A PROTECTIVE ORDER AND REQUEST FOR APPROVAL OF PROTECTIVE AGREEMENT; AND, GRANTING IN PART AND DENYING IN PART TAMPA ELECTRIC COMPANY'S MOTIONS FOR PROTECTIVE ORDER

I. Case Background

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI.

Discovery is currently underway. The purpose of this order is to rule on pleadings pertaining to requests for confidentiality under Section 366.093, Florida Statutes, discovery requests, and a non-disclosure agreement among the parties.

There are two pending requests for confidential treatment of documents: 1) TECO's Request for Confidential Classification of Documents related to Commercial/Industrial Service Rider Contract Service Agreement; and, 2) Allied's Request for Confidential Classification of portions of its direct testimony.

Allied served its First Set of Interrogatories, First Request

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for Production of Documents, and a Notice of Deposition with Request for Production on TECO. TECO responded by submitting four Motions for Protective Order, summarized below.

1. TECO filed a Motion for Protective Order, which addressed all forms of discovery, and requested that TECO should not have to produce any CISR related information for discovery.
2. TECO filed a Motion for Protective Order pertaining to the interrogatories. TECO answered most of Allied's interrogatories but specifically objected to four.
3. TECO filed a Motion for Protective Order in which it specifically objected to each of Allied's requests for production of documents.
4. TECO filed a Motion for Protective Order with its response to Allied's Notice of Deposition and Request for Production. TECO agreed to produce a witness for the deposition but stated that it would instruct the witness not to answer any questions pertaining to CSA negotiations or related documents. TECO specifically objected to each of Allied's production requests.

Allied then submitted a Response in Opposition to Motion for Protective Order, which addresses the first three of TECO's Motions listed above. Allied also submitted a Response in Opposition to TECO's Motion for Protective Order Pertaining to Notice of Deposition and Request for Production.

After the above pleadings on confidentiality and discovery were filed, the parties filed motions recognizing that any information which is produced through discovery should be subject to a non-disclosure agreement ensuring that the discovered information is not made available to anyone except the parties. Allied's proposed non-disclosure agreement was filed in its Motion to Compel Production of Documents by Tampa Electric Company. Tampa's proposed non-disclosure agreement was filed in its Supplemental Motion for a Protective Order and Request for Approval of Discovery Agreement. Odyssey submitted its proposal for a non-disclosure agreement in a letter dated May 30, 2000.

The Requests for Confidential Classification are disposed of in Section II of this Order. The framework for analyzing the discovery requests and Motions for Protective Order is in Section

III. The motions on the non-disclosure agreement are disposed of in Section IV. Rulings on Allied's interrogatories are in Section V. Rulings on Allied's Request for Production of Documents and Request for Production (for deposition) are in Section VI. The ruling on the Notice of Deposition is in Section VII.

II. Requests for Confidentiality

A. Allied's Request

Allied requests that portions of the prefiled direct testimony of Mr. Robert M. Namoff (Document No. 02395-00) be deemed confidential under Section 366.093, Florida Statutes. Confidential classification is requested for two types of information.

The first type of information includes price quotes from two companies to design and construct plants for Allied. Allied entered non-disclosure agreements covering the quotes with these companies. Allied asserts that the companies used their own proprietary information to develop the plans and price quotes, so disclosure of the price quotes would harm their competitive interests. Allied asserts that the companies treat this information as confidential.

The second type of information includes information exchanged between TECO and Allied in connection with Allied's request for rates under the CISR tariff. Allied asserts that Allied and TECO treat this information as confidential. TECO required Allied to enter into a blanket confidentiality agreement covering this information as a condition of entering into CISR tariff negotiations. Allied claims that public disclosure of some of the information would harm its competitive interests. Allied points out that some or all of the information may be confidential under the CISR tariff, depending on how the Commission interprets the tariff. Finally, Allied notes that its request for confidentiality under Section 366.093, Florida Statutes, does not conflict with its position that certain types of information should be provided to Allied through discovery even though they may not be available to the public because of confidential classification.

Upon consideration, Allied's Request for Confidential Treatment is granted. The information includes contractual data with vendors and information on Allied's operations and business plans, the disclosure of which would harm Allied's competitive interests. In addition, Allied treats this information as private. The information therefore qualifies as proprietary confidential

business information under Section 366.093, Florida Statutes.

B. TECO's Request

TECO requests confidential classification of the documents listed below.

1. A side-by-side comparison of the rates, terms and conditions that TECO and Odyssey negotiated and those that TECO offered to Allied (Document No. 03142-00).
2. The documentation and correspondence supporting Odyssey's application under the CISR tariff (Document No. 03140-00).
3. The documentation and correspondence supporting Allied's application under the CISR tariff (Document No. 03141-00).
4. A timeline showing the timing of events during Odyssey's negotiation process and during Allied's negotiation process (Document No. 03143-00).

TECO claims that, according to the CISR tariff, all of this information can be reviewed only by the Commission and its staff. For this reason, TECO claims it does not need to submit a redacted set of documents. TECO states that in approving the tariff, the Commission recognized that disclosure of the information would harm TECO, its ratepayers, and the CISR customers. TECO states that Allied and Odyssey insisted on entering binding non-disclosure agreements with TECO before sharing any information with TECO.

TECO argues that the Commission granted confidential classification to Contract Service Agreements (CSAs) developed under Gulf Power's CISR tariff. See Order No. PSC-99-0274-CFO-EI, issued February 11, 1999, in Docket No. 960789-EI. In that case the Commission stated that because public disclosure of CSAs may hurt the competitive interests of potential CISR customers, such customers may chose to leave the utility rather than risk having sensitive information made public. In other words, public disclosure may lead to uneconomic bypass of the utility. TECO argues that this reasoning applies to all the documents in its Request for Confidential Classification.

TECO's submittal is roughly 1,850 pages, and TECO requested confidential classification for the entire package. However,

information that clearly does not meet confidentiality requirements of Chapter 366, is clearly irrelevant to the case, and is duplicative (e.g., vendors' brochures, numerous copies of the tariff sheets, newspaper articles) is interspersed with information that clearly is confidential. I understand that TECO thought that all documents associated with the CISR process were confidential but that does not excuse TECO from submitting irrelevant and duplicative information.

I do not accept TECO's argument that the CISR tariff requires confidentiality for all the documents in its Request for Confidential Classification. The CISR tariff identifies a limited set of documents to be treated confidentially. Furthermore, even those documents that the tariff identifies for confidential treatment must meet the requirements for confidential treatment in Section 366.093, Florida Statutes. Similarly, items not listed in the tariff may qualify for confidential classification under Section 366.093, Florida Statutes.

I defer ruling on TECO's request because it is clearly too broad. If TECO wants to pursue a ruling on confidentiality, it shall revise its request to include a list of the pages or lines that deserve confidential classification, along with justifications, as required by Section 366.093, Florida Statutes. The revised request shall be submitted within seven business days of the issuance of this order. TECO also has the option of not pursuing confidential classification.

III. Framework for Analysis of the Discovery Requests and Motions for Protective Order

As mentioned in the Case Background, Allied served three discovery requests on TECO: 1) First Set of Interrogatories; 2) First Request for Production of Documents; and, 3) Notice of Deposition and Request for Production. The Request for Production of Documents and the Request for Production (for deposition) contain nearly identical questions except that the former asks for actual documents, and the latter asks for a list of those documents.

TECO answered all but four of the interrogatories and submitted four Motions for Protective Order. The motions set forth TECO's arguments as to why TECO should not have to answer the remaining interrogatories, and why TECO should not have to respond to any of the other forms of discovery. Allied filed two Responses in Opposition to TECO's motions which set forth Allied's arguments

as to why TECO should provide all the requested information. TECO's arguments and Allied's responses are summarized below.

A. TECO's Position

The arguments in each of TECO's Motions for Protective Order are similar and are summarized collectively here.

First, TECO argues Allied's requests are overbroad and burdensome. Second, TECO argues that it should not produce any information to Allied because the intent of the CISR tariff is that all documents associated with the tariff be made available for review by the Commission and its staff only. Third, TECO argues that disclosure to Allied of CSAs and related documents will harm the competitive interests of Odyssey and will impair TECO's ability to negotiate future CSAs. TECO claims these factors would lead to uneconomic bypass or rate convergence, either of which ultimately harms the ratepayers. TECO notes that the Commission granted confidential classification under Section 366.093, Florida Statutes, to CSAs and related documents in the Gulf Power CISR docket for these reasons. See e.g. Order NO. PSC-99-0274-CFO-EI, issued February 11, 1999, in Docket No. 960789-EI.

With respect to the rates, terms and conditions of Odyssey's CSA, TECO argues that production could lead to an increase in unqualified applicants for CISR rates. With respect to discovery requests pertaining to a specific employee, TECO argues that they are inappropriate, unlikely to lead to discovery of admissible evidence, and overbroad.

TECO objects to producing a witness for deposition for the reasons stated above. Furthermore, TECO invokes Rule 1.310(c), Florida Rules of Civil Procedure, which provides that a party may instruct a deponent not to answer when necessary to preserve a privilege or enforce a limitation on evidence directed by the Court. TECO claims the CISR tariff grants TECO a privilege because it directs that CSA information not be disclosed to anyone other than the Commission and its staff.

Finally, TECO emphasizes that although Allied is willing to sign a non-disclosure agreement for all information produced through discovery, this affords Odyssey no protection. Odyssey and Allied are competitors, and Odyssey is harmed if Allied obtains the information.

B. Allied's Position

Allied's Motion in Opposition to TECO's Motion for Protective Order, For Suspension of Procedural Schedule, and for Summary Disposition, and Allied's Response in Opposition to TECO's Motion for Protective Order Pertaining to Notice of Deposition and Request for Production contain the same arguments, and are summarized collectively.

Allied contends that the Commission requires confidential treatment of CSA related information to protect the utility's ability to negotiate with future customers who might otherwise be deterred if the information were not kept confidential. Allied claims this rationale is not applicable in this case because: 1) TECO is no longer at risk of losing Odyssey; and, 2) the circumstances surrounding TECO's negotiations with Odyssey suggest there has been undue discrimination and collusion.

Allied claims that TECO's conduct under the CISR tariff warrants suspension of the tariff unless adequate safeguards against undue discrimination can be adopted. Allied argues that if TECO is not required to produce the information, then the CISR tariff allows TECO to enter secret agreements favoring one customer over another. Finally, Allied argues that if the information is produced, the harm to TECO will be speculative; however, if the information is not produced, the harm to Allied will be real.

C. Decision - Discovery Requests and Motions for Protective Orders

Rule 1.280, Florida Rules of Civil Procedure, is applicable in this case. See Section 366.093(2), Florida Statutes, and Rules 28-106.206 and 25-22.006(6)(a), Florida Administrative Code. Rules 25-22.006(6)(a) and (b), Florida Administrative Code, allow the Commission to grant protective orders in accordance with Rule 1.280, Florida Rules of Civil Procedure. Rule 1.280(c)(7) allows issuance of protective orders to protect trade secrets or other confidential commercial information. In a protective order, the Commission can designate that information not be disclosed or that it be disclosed in a certain way.

When ruling on a motion for protective order involving commercial information, a two part test is used to decide if the information is discoverable. First, the movant (TECO) must demonstrate that the information sought is confidential by virtue of being a trade secret or some other type of confidential commercial information. See Order No. PSC-00-0291-PCO-EU, issued February 11, 2000, in Docket No. 991462-EU; Kavanaugh v. Stump, 592

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So. 2d 1231, 1232-3 (Fla. 5th DCA 1992); Inrecon v. The Village Homes at Country Walk, 644 So. 2d 103, 105 (Fla. 3rd DCA 1994); Rare Coin-it v. I.J.E., Inc., 625 So. 2d 1277 (Fla. 3rd DCA 1993). If it is not confidential, then it can not be withheld from discovery on grounds that it is confidential commercial information. If the information is confidential, the burden shifts to the opposing party (Allied) to establish that its need for the information outweighs the countervailing interest in withholding production. See Order No. PSC-00-0291-PCO-EU, issued February 11, 2000, in Docket No. 991462-EU; Inrecon at 105; Rare Coin-it at 1277; Higgs v. Kampgrounds of America, 526 So. 2d 980, 981 (Fla. 3rd DCA 1988); Eastern Cement Corp. V. Dep't of Environmental Protection, 512 So. 2d 264, 265-6 (Fla. 1st DCA 1987).

Broad discretion is granted in balancing the competing interests of the parties and a wide variety of factors can be considered. See Fortune Personnel Agency of Ft. Lauderdale, Inc. v. Sun Tech Inc. of South Florida, 423 So. 2d 545, 547 (Fla. 4th DCA 1982); Inrecon at 105. Of particular relevance to this case would be such things as the impact of disclosure on TECO's and Odyssey's businesses, and whether Allied can obtain a fair trial without disclosure. See id.

Although the CISR tariff identifies certain items as confidential, the confidentiality requirements in Section 366.093, Florida Statutes, must be met for all documents. The tariff can not supersede the statute. Similarly, language in the tariff that certain documents can only be reviewed by the Commission does not automatically prevent Allied from discovering such documents. A ruling to prevent discovery of a document must be based on Rule 1.280, Florida Rules of Civil Procedure, and the orders and case law elucidating that rule. For these reasons, TECO can not claim a privilege under the tariff.

As TECO points out, the Commission granted certain CISR related information confidential classification under Gulf Power's CISR tariff. That information included earnings surveillance reports and information submitted in response to a Commission audit. See Order Granting Confidential Classification for Portions of Gulf Power Company's Earnings Surveillance Report, Supplemental 2, for March 1999 (Document No. 06170-9), issued on August 23, 1999, in Docket No. 960789-EI; Order Granting Confidential Classification to Portions of Gulf Power Company's Response and Amended Response to Staff's Commercial Industrial Service Rider Audit Report (Document Nos. 01785-98, 01786-98, 02445-98 and 03760-98), issued June 26, 1998, in Docket No. 960789-EI. In these orders

the Commission stated that disclosure of information deemed confidential could adversely affect the competitive interests of CISR customers and the utility, and lead to uneconomic bypass and price convergence.

In light of the Gulf Power orders and the current litigation between TECO and Allied, a ruling on the discovery issues must consider several types of harm that could result from disclosure of CISR related information to Allied. Two categories of harm can be delineated, direct and indirect. With respect to direct harm, production of information pertaining to Odyssey's business plans and operations could directly harm Odyssey's ability to compete in its native market. In addition, disclosure TECO's negotiating floor could directly harm TECO's ability to achieve the most favorable rates, terms and conditions under the CISR tariff.

These direct harms to Odyssey and TECO could have indirect and adverse industry-wide repercussions. First, if Odyssey's competitive interests are directly harmed, the risks of entering a CSA appear greater to potential customers, giving potential customers a reason to opt for bypass over CISR rates. In other words, direct harm to Odyssey may have a chilling effect on industries in TECO's service area. The chilling effect could cause TECO to lose customers or fail to attract new customers and the ratepayers might ultimately suffer.

Second, impairment of TECO's ability to negotiate the most favorable rates terms and conditions could lead to price convergence and/or lower revenues. Price convergence and lower revenues have the potential to cause increased rates to the general body of rate payers.

A third type of indirect harm may result from disclosure of general CISR-related information. General CISR-related information is information that is not customer specific and the release of which will not directly harm TECO or a customer. An example of this general type of information is the number of CSAs executed under the CISR tariff. The release of CISR information that causes no direct harm to any particular entity may still influence some potential CISR customers by making them more reluctant to enter a CSA than if secrecy of all information was a certainty. In other words, a customer may weigh disclosure of even general information as a risk of entering a CSA.

Rulings on Allied's First Set of Interrogatories to TECO are in Section V, below. TECO specifically objected to four of the interrogatories, so only those four interrogatories are addressed.

The authority to require TECO to provide a list when it does not have to produce discovery is found in Rule 1.280(b)(5), Florida Rules of Civil Procedure. This rule requires that a party withholding discovery under a claim that the information is subject to protection must describe the withheld documents in a way that enables the opposing party to assess the applicability of the protection. An appropriate description is a list of each withheld document that includes items such as the date, sender, recipients, and subject matter. See In re: Investigation of utility rates of Aloha Utilities, Inc. In Pasco County, 99 FPSC 10:78. The requirement of this list comports with the rule and disposes of Allied's Request for Production (for deposition). The ruling on the Notice of Deposition is in Section VII of this order.

Finally, TECO and Allied shall enter into a non-disclosure agreement that prohibits either party from revealing confidential information exchanged in this proceeding to anyone other than representatives of the companies who sign the non-disclosure agreement.

IV. Non-disclosure Agreement

TECO, Allied and Odyssey each provided a draft non-disclosure agreement. In its Supplemental Motion for a Protective Agreement and Request for Approval of Protective Agreement, TECO provides a non-disclosure agreement that includes the following provision:

Disclosure of Confidential Information to Allied/CFI shall be limited to representatives of Allied/CFI ... who have no direct involvement or indirect involvement in a supervisory, management, executive, advisory or representative role in marketing, sales, production or business strategy development or implementation for either Allied or CFI. Allied/CFI representatives who sign the non-disclosure agreement shall not represent Allied/CFI or any other existing or potential Tampa Electric customer in any negotiations with Tampa Electric for either a Contract Service Agreement ("CSA") under Tampa Electric's Commercial/Industrial Service Rider Tariff ("CISR") or for a negotiated rate for electric service during the period commencing with the execution of this Agreement and ending three years thereafter. In addition, Allied/CFI representatives who sign the non-disclosure agreement shall not participate directly or indirectly in such negotiations.

This provision has three components: 1) it restricts the types of employees who may sign the agreement and therefore review information; 2) it prevents anyone who signed the agreement from negotiating CISR/special rates with TECO on behalf of Allied for three years; and, 3) it prevents anyone who signed the agreement from negotiating CISR/special rates with TECO on behalf of any other TECO customer for a period of three years. The first restriction would prevent Robert Namoff, Allied's Chief Executive Officer and its witness from seeing the information.

TECO's most immediate concern is to ensure that Odyssey is not harmed by the disclosure of information to Allied. TECO contends that potential CISR customers must have absolute assurance that their commercially sensitive information will be protected, or else TECO's ability to capture and retain at-risk load will be eliminated. TECO explains that losing this load would ultimately harm the ratepayers.

Through previous negotiations with Allied, TECO understood that Allied wanted Robert Namoff to have access to the information. TECO maintains that there is no reason for Mr. Namoff to have such access. First, as mentioned above, TECO asserts that granting him access would harm Allied's competitors and the ratepayers. Second, TECO points out that the interests represented in this case are corporate, not individual. TECO contends it is unreasonable to for Allied to claim that its corporate interests can be represented by only one person.

Allied's proposed agreement, provided in its Motion to Compel Production of Documents by Tampa Electric Company, is similar to TECO's except Allied's proposal does not include the above cited provision. Instead, Allied's operative language requires that information obtained through discovery can only be disclosed to representatives of each party who have signed the non-disclosure agreement and that parties to the agreement must certify that they are authorized to sign the non-disclosure agreement. TECO's draft agreement contains a provision similar to this:

Allied objects to the provision, cited above, from TECO's draft agreement. First, Allied explains that it 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." Furthermore, under TECO's proposal, Allied's witness and Chief Executive Officer, Robert Namoff, would not have access to any CISR information. Allied claims that to deny Mr. Namoff access to the information violates due process.

Second, Allied contends that it does not want sensitive commercial information on Odyssey's operations and finances. To prove this, Allied reiterates an earlier proposal made by letter to the parties and the Commission. Under that proposal TECO would return copies of Odyssey's CISR-related information to Odyssey, Odyssey would redact any information it deemed commercially sensitive, and those redacted documents would be provided to Allied.

Third, Allied contends that TECO overestimates the harm that will result to TECO and the ratepayers if information is made available to Allied's employees without restriction. Allied argues that TECO will not be required to release sensitive information on Odyssey because Allied does not want it, so there is no need to restrict employees' access to the information. Furthermore, TECO need not fear the precedent set by disclosure of non-trade secret information because it will only apply in the narrow circumstance when one qualifying CISR customer sues another. Finally, Allied asserts that allegations of undue discrimination against TECO threaten the integrity of the CISR tariff more than disclosure of CISR-related information in this proceeding.

Odyssey's proposal is very similar to TECO's and includes a provision much like that cited above. Odyssey states that such provisions are routinely agreed to in Commission proceedings.

Non-disclosure agreements between telecommunications companies frequently include some version of the restrictive provision proposed by TECO and Odyssey, however, such a provision has never been ordered by the Commission. The Commission often orders the parties in a case to enter a non-disclosure agreement requiring that information obtained through discovery can only be disclosed to representatives of each party who have signed the non-disclosure agreement. The Commission rarely specifies any specific terms for such a condition.

The three draft agreements provided by the parties are very similar except that TECO's and Odyssey's include the restrictions cited above and Allied's does not. Aside from this provision, the agreements require that information obtained through discovery can only be disclosed to representatives of each party who have signed the non-disclosure agreement and that parties to the agreement must certify that they are authorized to sign the non-disclosure agreement.

Given Allied's claim that it is a small company that does not

have a separate staff to serve separate functions, the part of TECO's proposal that limits the types of employees who can see the information cannot be approved. It appears that Allied's ability to represent its corporate interests would be compromised by such a requirement. Therefore, I find that TECO's limitation on representatives of Allied who can see the information is unreasonable. TECO's Supplemental Motion for Protective Order is denied to the extent it limits disclosure of confidential information to Allied employees "who have no direct involvement or indirect involvement in a supervisory, management, executive, advisory or representative role in marketing, sales, production or business strategy development or implementation for either Allied or CFI."

TECO's provision also prevents any Allied employee, who reviews confidential information exchanged in this docket, from negotiating CISR or special electric rates with TECO on behalf of Allied. If, after this proceeding ends, Allied is in a position to renegotiate CISR rates with TECO, the Allied employee(s) who negotiate the rates could not negotiate effectively if they have no knowledge of the information exchanged in this proceeding. Therefore, I find that TECO's limitation on who can negotiate CISR/special rates with TECO for Allied is unreasonable. TECO's Supplemental Motion for Protective Order is denied to the extent it limits Allied representatives, who sign the non-disclosure agreement, from representing Allied in any negotiations with Tampa Electric for CISR/special rates for electric service for a period of three years.

TECO proposes to prohibit any Allied representative, who reviews confidential information exchanged in this docket, from representing any existing or potential customer in negotiations with TECO for CISR/special electric rates for three years. I find that such a provision protects TECO's interests without encroaching unduly on Allied's interests. TECO's Supplemental Motion for Protective Order is granted to the extent it limits Allied representatives, who review confidential information exchanged in this docket, from representing other existing or potential customers in negotiations with TECO for CISR/special electric rates for three years. Because all three parties must enter a non-disclosure agreement, I find that Odyssey's negotiating abilities be limited in the same way as Allied's.

Given that TECO's provision was the primary source of contention between the parties and that this order rules on that provision, the parties should be able to agree on the content of a

protective agreement. Pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, TECO, Allied and Odyssey shall execute a non-disclosure agreement. The non-disclosure agreement must, at a minimum, prohibit the parties from revealing the confidential information exchanged in this proceeding to any person or entity who is not a signatory to the non-disclosure agreement, and require that signatories to the non-disclosure agreement certify they are authorized by TECO, Allied, or Odyssey to sign the non-disclosure agreement.

V. INTERROGATORIES

1. **State the date or dates that the Contract Service Agreement ("CSA") between TECO and Odyssey was executed by TECO and Odyssey.**

The date of the CSA is not confidential under Section 366.093, Florida Statutes. Because it is not confidential, it can not be protected from discovery on grounds that it is confidential commercial information. Therefore, TECO shall respond to the interrogatory.

Although the Commission granted CSAs confidential status in Order No. PSC-98-0854-CFO-EI, that order can be distinguished from this one. Order No. PSC-98-0854-CFO-EI was issued in connection with an audit of Gulf Power's CISR activities conducted by the Commission. Under those circumstances there was no need to determine if parts of the CSA might not be confidential. Here, we have a request for discovery of a very specific part of the CSA by a party outside the Commission. The circumstances and question to be decided in this case therefore differ from the circumstances and decision made in the Gulf Power case.

I find that discovery of the date(s) will not affect Odyssey's ability to compete in its native market. It is possible that discovery of this information may have a generalized chilling effect on other potential customers, leading to economic bypass. However, Allied alleges that one way in which TECO discriminated against Allied was by processing Odyssey's application much more quickly than Allied's. Withholding the date(s) from Allied could adversely affect its ability to litigate the issue. I find that any harm caused to TECO by discovery of this information would be minor, indirect, and not certain to

occur. The harm caused to Allied by withholding the information would be direct and is more likely to occur. Therefore, the harm to Allied from withholding production outweighs the harm to TECO from production.

2. **With respect to TECO's former employee, Patrick H. Allman, state the dates of Mr. Allman's employment with TECO, his job titles, job duties, rates of pay, and reasons for termination. [TECO objects only to providing the rates of pay.]**

This information is not confidential under Section 366.093, Florida Statutes. However, the Commission may restrict discovery of this information by authority granted in Rule 1.280(c), Florida Rules of Civil Procedure. A restriction on discovery is not required and TECO shall respond to the interrogatory including the rates of pay. The alleged actions of the named employee are only relevant to Allied's claim of undue discrimination. A party to litigation is entitled to sufficient employment information to establish a claim. See CAC-Ramsay Health Plans, Inc. V. Cary J. Johnson, 641 So. 2d 434, 435-6 (Fla. 3d DCA 1994). The scope of a discovery request for information from personnel files must be narrow enough to safeguard the privacy of employees but broad enough to ensure access to necessary information. See id. Allied seeks specific and limited information on a single employee. Furthermore, the information is relevant to the claim of undue discrimination. Under these circumstances, I find that the privacy rights of the employee are adequately protected. I also find that the harm to Allied of withholding the information outweighs the harm to the employee from disclosure of the information.

3. **State the total number of Contract Service Agreements executed by TECO pursuant to its CISR tariff as of: (a) March 1, 1999; and (b) February 1, 2000.**

This information is not confidential under Section 366.093, Florida Statutes. TECO shall respond to the interrogatory. TECO claims that two types of harm may potentially result from production: 1) it may promote economic bypass; and, 2) it may encourage unqualified customers to seek CSAs.

Production of this information will not directly harm the competitive interests of any customer or TECO. The potential for bypass arises from the generalized chilling effect that may occur, and if it does occur it will be minor. With respect to unqualified applicants, early in the process new applicants must show they have new load and an offer for lower-cost electricity from another utility. TECO can ascertain if these criteria are met with a minimal amount of labor and deny applications at an early stage. Thus, the harm to TECO from more applicants is minor.

Withholding production may interfere with Allied's ability to litigate its case. Knowing the number of CSA's may affect Allied's decisions on how much discovery is needed and from whom. Allied may wish to attempt to obtain information on other CSAs to aid in its assessment of discrimination. Allied can not do this if it doesn't know how many CSAs there are. I find that the harm to Allied of withholding the information outweighs the harm to TECO from disclosure.

4. **State the total capacity in megawatts subject to executed Contract Service Agreements pursuant to TECO's CISR tariff as of: (a) March 1, 1999; and (b) February 1, 2000.**

This information is confidential under Section 366.093, Florida Statutes. TECO shall not be required to respond to this request.

TECO claims the size of Odyssey's plant could be derived from this information. Production of the information could therefore harm Odyssey's competitive interests because it would reveal operational information to Odyssey's competitor. Releasing the information to Allied under a non-disclosure agreement would mitigate the harm only to the extent that other bleach manufacturers would not have access to the information.

Release of information that is likely to place a CISR customer at a competitive disadvantage creates the greatest potential for substantial harm to the customer, and therefore the greatest potential for economic bypass. Withholding production of the information will not affect Allied's ability to litigate is not likely to be harmed if it does not get this information. Allied has

certainly not alleged that this information is necessary to litigate the case. Therefore, I find that the harm to TECO and Odyssey from production outweighs the harm to Allied from withholding production.

VI. REQUEST FOR PRODUCTION OF DOCUMENTS AND REQUEST FOR PRODUCTION (FOR DEPOSITION)

1. **The Contract Service Agreement ("CSA") between TECO and Odyssey Manufacturing Company ("Odyssey").**

TECO shall respond to this request, but TECO shall not be required to provide the following information: 1) the numerical values in paragraph 4 of the body of the contract; and 2) Portions of Exhibit C to the CSA, as follows - paragraph 2.4, the numerical unit of measure in paragraph 2.5, and the numerical units of measure referring to Odyssey's plant in paragraph 2.6. The information in these paragraphs is confidential under Section 366.093, Florida Statutes.

As noted in the response to interrogatory #1, the Commission granted CSAs confidential status in Order No. PSC-98-0854-CFO-EI, but that order can be distinguished from this one. Order No. PSC-98-0854-CFO-EI was issued in connection with an audit of Gulf Power's CISR activities conducted by the Commission. Under those circumstances there was no need to determine if parts of the CSA might not be confidential and whether some parts were confidential was never considered. Here the rights of parties are affected and therefore must be considered.

TECO claims that allowing discovery of any part of CSA will lead to uneconomic bypass. TECO also claims that the CSA includes confidential information about Odyssey's operations and discovery of this information will harm Odyssey's ability to compete in its native market. The competitive harm to Odyssey that could be caused by production of the information is the type that would most deter potential customers from using the CISR tariff. It is therefore the type of harm most likely to cause uneconomic bypass.

However, the CSA contains much information, which if released, would not cause competitive harm to Odyssey. The rest of the CSA, including the rate offered to Odyssey, is discoverable. The rate is confidential under Section 366.093, Florida Statutes. The production of the rate could promote uneconomic bypass by harming Odyssey's competitive interests and by creating a chilling effect. Allied explains in its pleadings that the cost of electricity is the most significant variable cost of the bleach production technique both companies intend to use. Production of the rate would therefore reveal information on Odyssey's competitive status in the market.

Knowledge of the rate is probably necessary for Allied to prove a claim of undue discrimination. Assuming the rate is necessary to prove the claim, a fair hearing can not be had if the rate cannot be produced. The ability to obtain a fair hearing offsets, to some degree, the chilling effect caused by production. It provides potential CISR customers assurance that if they have a legitimate claim for undue discrimination, they have recourse to a meaningful hearing. I find that, in this case, the rate is discoverable because the harm to Allied from secrecy outweighs the harm to TECO and Odyssey from production.

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.

TECO shall respond to this request. I construe this as a request for documents that Odyssey sent to TECO pertaining to Odyssey's eligibility for rates under the tariff. Specifically, these documents include: 1) the affidavit stating that without the application of the CISR tariff, the eligible load would not be served by TECO; 2) documentation of a viable lower cost alternative; 3) in the case of an existing customer, an agreement to provide TECO with an energy audit; and, 4) any other documents TECO requested Odyssey to submit to demonstrate Odyssey qualified. Upon consideration, I find that all documents that fall into one of these four categories are discoverable.

To the extent that the documents to be produced include confidential commercial information on Odyssey,

this information must be redacted before production to Allied. Confidential commercial information consists of all aspects of plant size and design, the amount of electricity consumed, any information on the financial status of Odyssey, and any information from which Allied could readily deduce such proprietary information. Allied states it does not want this information, so Allied will not be harmed by redacting it.

If production is withheld, Allied will likely experience direct harm because its ability to prove its case is likely to be impaired. In addition, withholding such information could result in bypass by potential CISR customers hesitant to surrender procedural rights.

Production will cause no direct harm to Odyssey because information relevant to its competitive status will be redacted. TECO may suffer some indirect, adverse effects from production in that potential CISR customers sensitive to release of any CISR information may opt for bypass over a CISR rate.

I find that the harm from production is outweighed by the harm from lack of production.

I also note that the requested information pertains to TECO's compliance with the CISR tariff. TECO's compliance is for the Commission to evaluate, and it will be treated as an issue at the hearing.

3. All documents provided by TECO to Odyssey in connection with Odyssey's request for rates under TECO's CISR tariff.

TECO shall respond to this request but shall not be required to provide certain information. I construe this as a request for documents that TECO sent to Odyssey pertaining to Odyssey's eligibility for CISR rates. These documents are discoverable for the reasons stated under request #2. The parts of documents that are not discoverable contain confidential commercial information on Odyssey.

Confidential commercial information on Odyssey consists of all aspects of plant size and design, the amount of electricity consumed, any information on the financial status of Odyssey, and any information from

which Allied could readily deduce such proprietary information. Allied states it does not want this information so Allied will not be harmed by redacting it.

Because it is difficult to determine which documents satisfy this request and which documents "arise out of negotiations," as requested in other items, the documents that are responsive to this request are listed in the Column A of the table below. Any documents which are responsive but not discoverable are listed in Column B of the table below. The reasoning behind these determinations is provided in Attachment A. The documents listed in the table were identified from TECO's March 10, 2000, submittal. If TECO believes additional documents are responsive, it shall notify the Commission and a decision on production will be made at that time.

A Responsive Documents	B Parts of Responsive Documents That Are Not Discoverable
a. 26-0 and 27-0	
b. 39-0 through 42-0	1. 40-0, line 2 through the end of the first paragraph on 40-0 2. 42-0
c. 49-0	
d. 189-0 through 192-0	
e. 193-0 and 194-0	

A Responsive Documents	B Parts of Responsive Documents That Are Not Discoverable
f. 195-0 through 215-0	<ol style="list-style-type: none"><li data-bbox="906 510 1295 737">1. Numerical units of measure in the paragraph titled "Guaranteed Consumption" on 196-0<li data-bbox="906 779 1295 1005">2. Numerical units of measure in the paragraph titled "Exclusivity Provision" on 198-0<li data-bbox="906 1047 1295 1413">3. Numerical units of measure in the paragraphs titled "Maximum Service Amount", "Guaranteed Consumption", and "Type of Service" on 211a-0

<p style="text-align: center;">A Responsive Documents</p>	<p style="text-align: center;">B Parts of Responsive Documents That Are Not Discoverable</p>
<p>g. 238-0 through 271-0</p>	<p>1. Numerical units of measure in the paragraph titled "Guaranteed Consumption" on 242-0</p> <p>2. Numerical units of measure in the paragraphs titled "Guaranteed Consumption" and "Type of Service" on 259-0</p> <p>3. Entire first paragraph on 263-0</p> <p>4. 265-0</p>
<p>h. 782-0 through 786-0</p>	<p>1. 785-0 and 786-0</p>
<p>i. 787-0 and 788-0</p>	
<p>j. 789-0 through 791-0</p>	<p>1. 791-0</p>
<p>k. 351-0 through 356-0</p>	
<p>l. 798-0</p>	

A Responsive Documents	B Parts of Responsive Documents That Are Not Discoverable
m. 821-0 through 824-0	1. 821-0 through 824-0
n. 829-0 through 833-0	1. Numerical units of measure in the last paragraph on 829-0 2. Entire first paragraph on 830-0 3. 831-0 through 833-0
o. 834-0 and 835-0	
p. 836-0 through 839-0	1. Any numerical reference to the size of Odyssey's plant on 836-0 and 837-0 2. 838-0 and 839-0

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.

Moot. TECO produced these documents.

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.

Moot. TECO produced these documents.

6. All documents arising from or relating to CISR tariff rate negotiations between TECO and Odyssey.

Deferred. I construe this to mean documents generated from negotiations which occurred between the date that Odyssey first approached TECO for a CISR rate and the date the CSA was executed. Documents responsive to requests # 2 and 3 are not responsive to this request. TECO shall identify the pages of its March 10, 2000, submittal that are responsive to this request. I will review those documents *in camera* to determine if they must be produced.

7. All documents arising from or relating to CISR tariff rate negotiations between TECO and Allied.

Deferred. I construe this to mean documents generated from negotiations which occurred between the date that Allied first approached TECO for a CISR rate and the date negotiations ceased. Documents responsive to requests # 4 and 5 are not responsive to this request. TECO shall identify the pages of its March 10, 2000, submittal that are responsive to this request. I will review those documents *in camera* to determine if they must be produced.

8. All documents arising from or relating to CISR tariff rate negotiations between TECO and CFI.

Addressed in request 7. TECO treated Allied and CFI as a single applicant. It did not negotiate separately with the entities.

9. All documents reflecting estimates of TECO's incremental cost to provide service under the CISR tariff to Odyssey.

This information is confidential under Section 366.093, Florida Statutes. TECO shall not be required to respond to this request. TECO used the Rate Impact Measure (RIM) to calculate incremental costs and net benefits to the general body of ratepayers. While the RIM methodology is not confidential, the application of the methodology to a specific customer requires input of customer specific data, such as coincident peak demand, load shape, load factor, and annual energy consumption. Thus, operational information on Odyssey is integral to the incremental cost analysis. Discovery of this information by Allied would harm Odyssey's ability to compete in its native market and the non-disclosure agreement would not mitigate the harm appreciably.

In addition, production of the incremental cost analysis will harm TECO because it will disclose TECO's negotiating floor. This would adversely affect TECO's ability to negotiate the most favorable rates, terms and conditions with future CISR customers, which could ultimately harm the ratepayers. This harm could be mitigated to some extent by a non-disclosure agreement between Allied and TECO.

Allowing the information to be protected harms Allied because Allied will not be able to determine whether Odyssey has a rate below the incremental cost to serve. Two factors mitigate this harm. First, TECO has no rational incentive to charge below incremental cost to serve. Second, TECO's compliance with the CISR tariff will be an issue for the Commission to evaluate at the hearing. If the Commission determines that TECO met the requirements of the tariff and its obligation of good faith, then lack of production will not harm Allied's case. If the Commission determines that TECO violated its obligations, then the Commission will take appropriate action, which would not harm Allied.

I find that the harm to TECO and Odyssey from production outweighs the harm to Allied from lack of production and therefore these documents are not

discoverable.

10. All documents reflecting estimates of TECO's incremental cost to provide service under the CISR tariff to Allied and/or CFI.

This information is confidential under Section 366.093, Florida Statutes. TECO shall not be required to respond to this request. As discussed in request #9, production of the information would reveal TECO's negotiating floor, which could ultimately harm the rate payers. Allied will be harmed by lack of production because it will not be able to determine the difference between the rate offered to Allied and the incremental cost to serve Allied. Allied will also not be able to determine if the difference between Odyssey's rate and incremental cost to serve Odyssey is more or less than that for Allied. These harms to Allied will be mitigated in that the Commission will assess TECO's compliance with the tariff as an issue at the hearing. If the Commission determines that TECO met the requirements of the tariff and its obligation of good faith, then lack of production will not harm Allied's case. If the Commission determines that TECO violated its obligations, then the Commission will take appropriate action, which would not harm Allied.

I find that the harm to TECO and Odyssey from production outweighs the harm to Allied from lack of production and therefore these documents are not discoverable.

11. TECO's personnel file for its former employee, Patrick H. Allman.

Allied asked for specific and limited information on this employee in interrogatory #2. That information was discoverable because it was clear from that interrogatory that the information requested would be relevant to the claim of undue discrimination. However, asking for the entire personnel file is overbroad. See CAC-Ramsay Health Plans, Inc. V. Cary J. Johnson, 641 So. 2d 434 (Fla. 3d DCA 1994). The file could contain personal information entirely unrelated to Allied's case.

12. All documents arising from or relating to the resignation or

other termination of employment by TECO of Patrick H. Allman.

TECO shall respond to this request for the reasons stated in my response to interrogatory #2.

- 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.**

Moot. TECO will produce this information.

- 14. All documents reflecting the total number of Contract Service Agreements executed by TECO pursuant to its CISR tariff as of March 1, 1999.**

TECO shall not be required to respond to this request because it is overbroad. TECO is required to produce the total number of CSA's entered by March 1, 1999, under the interrogatories. The need for all documents that reflect the total number of CSAs is unclear. Likewise, that harm to Allied from withholding discovery is unclear.

- 15. All documents reflecting the total number of Contract Service Agreements executed by TECO pursuant to its CISR tariff as of February 1, 2000.**

TECO shall not be required to respond to this request for the reasons stated in my response to request #14.

- 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.**

TECO shall not be required to respond to this request for the reasons stated in my response to interrogatory #4.

- 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.**

TECO shall not be required to respond to this request for the reasons stated in my response to interrogatory #4.

- 18. All documents reflecting Odyssey's eligibility for CISR tariff**

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rates, including but not limited to, documentation allegedly demonstrating that Odyssey has or had a viable lower cost alternative to taking service from TECO.

TECO shall respond to this request for the reasons stated in my response to request #2.

VII. NOTICE OF DEPOSITION

Allied can depose TECO witnesses and ask questions regarding the documents that are discoverable. Depositions shall be closed to the public and transcripts shall be sealed.

Based on the foregoing, it is

ORDERED that Allied Universal Corp.'s Request for Confidential Classification is granted. It is further

ORDERED that the decision on Tampa Electric Company's Request for Confidential Classification is deferred until it submits an accurate list of confidential documents as described in Section II of this order. If the list is not submitted within seven days of the issuance date of this order, the submittal shall not be deemed confidential. It is further

ORDERED that Tampa Electric Company's Motion for Protective Order objecting to all forms of discovery is granted in part and denied in part as described in Sections III through VII of this order. It is further

ORDERED that Tampa Electric Company's Motion for Protective Order and Objections to Allied's First Set of Interrogatories to Tampa Electric Company is granted in part and denied in part as described in Parts III and V of this order. It is further

ORDERED that Tampa Electric Company's Motion for Protective Order and Objections to Allied's First Request for Production of Documents to Tampa Electric Company is granted in part and denied in part as described in Parts III and VI of this order. It is further

ORDERED that Tampa Electric Company's Objections and Motion for Protective Order Pertaining to Allied Universal Corporation's Notice of Deposition and Request for Production is granted in part

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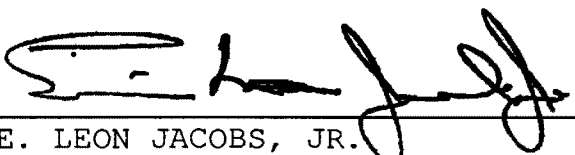
and denied in part as described in Parts III, VI and VII of this order. It is further

ORDERED that for each item in Allied's First Request for Production of Documents, for which TECO does not have to produce responsive documents, TECO shall produce a list of documents that would be responsive. The list shall be organized chronologically and include date, author, addressee, number of pages, type of document (e.g. letter or memo), and a descriptive title for each entry. It is further

ORDERED that Tampa Electric Company, Allied Universal Corporation, and Odyssey Manufacturing Company shall enter into a non-disclosure agreement which, at a minimum, prohibits the parties from revealing the confidential information exchanged in this proceeding to any person or entity who is not a signatory to the non-disclosure agreement, requires that signatories to the non-disclosure agreement certify that they are authorized by TECO, Allied, or Odyssey to sign the non-disclosure agreement, and prohibits any Allied or Odyssey representative who signs the agreement from negotiating a contract Service Agreement or other special rates with TECO on behalf of any existing or potential customer, other than Allied or Odyssey, for a period of three years after execution of the non-disclosure agreement. It is further

ORDERED that Tampa Electric Company's Supplemental Motion for Protective Agreement and Request for Approval of Protective Agreement, and Allied Universal Corporation's Motion to Compel Production of Documents by Tampa Electric Company are granted in part and denied in part as described in Section IV of this Order.

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 27th Day of June, 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.

ATTACHMENT A

a. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated March 24, 1998, Bates stamped 26-0 and 27-0. TECO shall respond to this request.

b. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated May 14, 1998, Bates stamped 39-0 through 42-0. TECO shall respond to this request but shall not be required to provide the information listed below:

1. Certain information as shown on page 40-0, beginning on line 2, until the end of the first paragraph on page 40-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

2. Page 42-0 in its entirety. This page contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

c. Letter dated from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated August 13, 1998, Bates stamped 49-0, regarding energy audit. TECO shall respond to this request.

d. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated September 4, 1998, Bates stamped 189-0 through 192-0. TECO shall respond to this request.

e. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated September 3, 1998, Bates stamped 193-0 and 194-0. TECO shall respond to this request.

f. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated August 10, 1998, Bates stamped 195-0 through 215-0. TECO shall respond to this request but shall not be required to provide the information listed below:

1. Numerical units of measure in paragraph titled Guaranteed

Consumption on page 196-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

2. Numerical units of measure in paragraph titled Exclusivity Provision on page 198-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

3. Numerical units of measure in paragraphs titled Maximum Service Amount, Guaranteed Consumption, and Type of Service on page 211a-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

g. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated August 3, 1998, Economic Development Proposal for New Manufacturing Facility, Bates stamped 238-0 through 271-0. TECO shall respond to this request but shall not be required to provide the information listed below:

1. Numerical units of measure in paragraph titled Guaranteed Consumption on page 242-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

2. Numerical units of measure in paragraphs titled Guaranteed Consumption and Type of Service on page 259-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to

compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

3. Entire first paragraph on page 263-0. This paragraph contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

4. Page 265-0. This page contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

h. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated June 11, 1998, Substation Issues, Bates stamped 782-0 through 786-0. TECO shall respond to this request but shall not be required to provide pages 785-0 and 786-0. These two pages contain operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

i. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated June 9, 1998, Miscellaneous Site Issues, Bates stamped 787-0 - 788-0. TECO shall respond to this request.

j. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated June 4, 1998, Substation Issues, 789-0 - 791-0. TECO shall respond to this request but shall not be required to provide page 791-0. This page contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

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k. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated April 3, 1998, Waiting List for the Interruptible Rate, Bates stamped 351-0 through 356-0. TECO shall respond to this request.

l. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated May 11, 1998, Waiting List for the Interruptible Rate, Bates stamped 798 - 0. TECO shall respond to this request.

m. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated May 4, 1998, Electrical Design Issues for Sentry Industries, Bates stamped 821-0 through 824-0.

TECO shall not be required to respond to this request. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

n. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated April 17, 1998, Proposed Electric Service, Bates stamped 829-0 through 833-0. TECO shall respond to this request but shall not be required to provide the information listed below:

1. Numerical units of measure in last paragraph on page 829-0. This information contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

2. Entire first paragraph on page 830-0. This paragraph contains operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

3. Pages 831-0 through 833-0. These pages contain operational

characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

o. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated March 24, 1998, Bates stamped 834-0 and 835-0. TECO shall respond to this request.

p. Letter from P. Allman, TECO, to Stephen Sidelko, President, Sentry Industries, dated March 14, 1998, Sample Customer Bill Calculation, Bates stamped 836-0 through 839-0. TECO shall respond to this request but shall not be required to provide the information listed below:

1. Any numerical reference to the size of Odyssey's plant on pages 836-0 and 837-0. Such references contain operational characteristics of Odyssey. The disclosure of this information could adversely affect Odyssey's ability to compete in its native market. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.

2. Pages 838-0 and 839-0. These pages contain bill calculations. The disclosure of this information could adversely affect Odyssey. The information is not necessary for Allied to litigate its case. Therefore, I find that the harm to Odyssey from production outweighs the harm to Allied from withholding production.