BEFORE THE FLORIDA PUBLIC SERVICE COMMISION

In re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company.	DOCKET NO. 000061-E1 Filed: June 28, 2000

ORIGINAL

PREFILED DIRECT TESTIMONY OF STEPHEN W. SIDELKO

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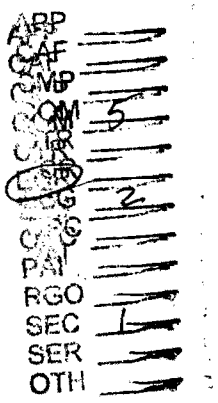

Q. Please state your name, occupation, and business address.

A. My name is Stephen W. Sidelko. I am the President and Chief Executive Officer of Sentry Industries, Inc. My business address is 5687 N.W. 36th Avenue, Miami, Florida 33142. I also serve as the President and CEO of Odyssey Manufacturing Company (Odyssey).

Q. Please describe your educational background.

A. I was awarded a Bachelor of Science degree in Chemical Engineering in 1973 from Rensselaer Polytechnic Institute, in Troy, New York. In 1974, I received a Masters degree in Business Administration from Rensselaer Polytechnic Institute.

Q. Please summarize your professional experience.

A. I was employed by Procter & Gamble from 1974 to 1980 on various engineering and product development assignments. My work was primarily in the area of soaps and detergents for the Latin American market. From 1980 to early 1984, I served as General Manager of the Kare Kemical Division of Eagle Discount Stores (Eagle), in Opalocka, Florida. In such capacity, I was responsible for the sale of bulk sodium hypochlorite to the local swimming pool industry, as well as packaged household chemicals to Eagle stores, K-Mart, Home Depot and Albertson's, In 1984, I founded U.S. Chlorine, Inc.. In 1993, that company changed its name to Sentry Industries, Inc. (Sentry). Sentry's principal business is the manufacture and distribution of bulk sodium hypochlorite. In 1998, I founded Odyssey. Odyssey's principal business is the

manufacture and distribution of bulk sodium hypochlorite. Sentry is a Florida corporation. Odyssey is a Delaware corporation. Both are closely held corporations; the sources and extent of their capitalization, and their production costs, sales, revenue and income are considered and treated as proprietary confidential business information.

Q. Have you ever testified before this Commission?

A. No, this is my first time.

Q. What is the purpose of your testimony?

A. The purpose of my testimony is to provide the Commission information that may be of use to it in addressing Allied/CFI's complaint against TECO.

Q. What is your understanding of Allied/CFI's complaint?

A. First of all I am by training a chemical engineer and a business professional, not an attorney. So I want to emphasize that my understanding of Allied's complaint is not that of a lawyer. Based on my reading of the Complaint and on the testimony of Mr. Namoff, Allied makes several charges. Some of the charges seem to be against TECO for discriminating against Allied/CFI by not giving it the same deal negotiated with us. Other charges seem to be against us. Specifically, in the Complaint and in the Testimony of Mr. Namoff, Allied appears to be charging us and TECO with unethical behavior in the process by which we negotiated a contract service arrangement under the Commercial/Industrial Service Rider (CISR). Allied also seems to allege

that we are competing with them in some way that is unethical. But looking at Allied's charges as an engineer and business professional, I have to ask myself "what does Allied really want?" And from that perspective, its complaint is easy to understand: I believe it wants to take away the rate we negotiated in good faith, learn as much about our position in the market as possible, and subject us to the administrative burden of defending ourselves against its unfounded charges.

Q. What is your response to Allied's charges that TECO is discriminating against them and in favor of Odyssey in its negotiations with Allied under the CISR?

A. I have no way of knowing whether that is true or not. Moreover, I cannot tell from Allied's allegations whether it contends that we received a sweetheart deal or whether they were being forced to take a bad deal, or both. But I would like to make four basic points in response. And on these points I want to be absolutely clear.

- First, there was nothing exceptional about the process by which we arrived at the contract service arrangement with TECO. We conducted ourselves ethically and in good faith at all times, and I believe that TECO did as well.
- Second, we were able to negotiate with TECO a good deal, but not a great one. In fact, in our planning of the project our anticipated electric energy rate was at times more favorable than we actually obtained.

- Third, I assume but do not know that TECO considers our contract a good deal, but not a great one. And,
- Fourth, with respect to Allied's deal with TECO, we do not care whether compared to us they get the same deal, a comparable deal, a better deal or a worse deal. It simply is not any of Odyssey's business. Our business is manufacturing and marketing the purest, competitively-priced sodium hypochlorite in our market area.

Q. Allied's complaint emphasizes that you are competing with it in the sodium hypochlorite market. What would the Commission need to know about the sodium hypochlorite market in order to evaluate Allied's charges?

A. Assuming that the Commission wishes to consider some of the characteristics of the sodium hypochlorite market, it would be useful for it to be aware of some basic facts about this remarkable compound. Sodium hypochlorite is the active ingredient found in household bleach. It is an extraordinary chemical compound that is ubiquitous in our lives as a safe but potent disinfectant and whitener. In fact, its presence is so common place and its use so widespread that we tend to take it for granted.

Q. What are some of the uses of sodium hypochlorite?

A. Around the home it is used as a laundry whitener, stain remover and hard surface disinfectant. It is also used to maintain sanitary swimming pools

both through daily applications and periodic shocking. In industrial and commercial applications, it is used in disinfecting drinking water, treating wastewater, reducing sewage odors, pressure cleaning mold and mildew for painting, treating commercial swimming pools, sanitizing restaurant kitchens and other food preparation areas, disinfecting hospital equipment, bleaching pulp, and killing citrus canker, to name just a few. Basically, wherever there is need to kill bacteria, viruses and fungi you will find potential applications for sodium hypochlorite.

Q. What products does sodium hypochlorite compete with in the market as a disinfectant and whitener?

A. There are basically two: chlorine and hydrogen peroxide. Chlorine gas is even more ubiquitous than sodium hypochlorite. It has countless applications. It's difficult to think of a manufactured or processed product in which chlorine played no part in the process. As a highly toxic gas, chlorine is also a powerful disinfectant. Nevertheless, from a market perspective, sodium hypochloride is well positioned as a desirable substitute for chlorine gas.

Q. Why is that?

A. Because chlorine gas is so dangerous. No one denies the usefulness of chlorine in promoting the public's health. Chlorine gas is a very effective disinfectant for water and wastewater. When municipal water treatment started in the late 1800's, typhoid and cholera, which had been common to the point of epidemic proportions, all but disappeared. Moreover, chlorine

is inexpensive. However, chlorine is also very dangerous. In the event of a leak in a cylinder or a valve, everyone within a mile has to be evacuated immediately. It's worth remembering that chlorine gas was the first gas used by the Germans in its chemical warfare against the Allies in World War I.

Q. But aren't there protocols to ensure safe use of chlorine?

A. Of course. Even so, every few years someone in Florida dies from chlorine gas inhalation. In any event, government regulations for the storage, transportation and use of chlorine gas are becoming increasingly stringent.

Q. Please explain the difference between chlorine, chlorine gas and sodium hypochlorite.

A. Certainly. Chlorine is one of the elements in the Periodic Table. At room temperature and pressure it is a green poisonous gas. Chlorine is very reactive and occurs in nature only as derivatives. The most common derivative is sea salt, sodium chloride.

Chlorine is an important building block for the chemical industry. PVC - polyvinyl chloride contains about 60% by weight chlorine. Like salt and PVC, sodium hypochlorite is a chlorine derivative. The chemical symbol is NaOCl. The swimming pool industry sometimes incorrectly refers to sodium hypochlorite as "chlorine" or "liquid chlorine." When I refer to chlorine or chlorine gas, I mean elemental chlorine, the poison.

Sodium hypochlorite looks like Clorox and is transported in 5,000 gallon tank trailers that look like gas tankers or milk trucks.

Chlorine can only be transported in special 90-ton railroad cars. Regional distribution centers like those owned by Allied/CFI buy 90-ton railroad cars and repackage the chlorine into 2,000 pound steel cylinders called "tons" for delivery to water plants.

Q. How do chlorine and sodium hypochloride compare in their potency as disinfectants?

A. Chlorine is measured in pounds. Sodium hypochlorite is distributed as a solution. Each pound of chlorine provides the disinfection potential of one gallon of 12.50 percent sodium hypochlorite solution. Of course, one doesn't purchase just one pound of chlorine. As a stable liquid, sodium hypochlorite solution can be more easily and safely distributed in smaller amounts.

Q. If sodium hypochlorite is a viable substitute for chlorine gas, why does it not have more market penetration where it competes with chlorine gas?

A. Historically, all water and wastewater treatment plants used chlorine gas. When the "empty" cylinders were returned, the chlorine gas residue was vacuumed into a scrubber tank of caustic soda, where it was absorbed. After the cylinder was thoroughly empty, it was tested and refitted with new valves, refilled, and shipped. By the end of the day, the vat of caustic soda had turned into sodium hypochlorite. The quality control for this operation was terrible. It wasn't until the 1960's, with the introduction of

the Powell continuous process, that sodium hypochlorite could be made in large quantities with consistently high quality. As recently as ten (10) years ago, water treatment plants had no real reason to change from chlorine to sodium hypochlorite. Chlorine was viewed as "the product." Sodium hypochlorite was an expensive alternative. Water treatment managers were suspicious of the quality of the byproduct hyprochlorite and concerned that besides being more expensive than chlorine for disinfection, sodium hypochlorite prices tended to cycle to a greater extent. Today, however, because of strict environmental regulation, high insurance and civil lawsuits, the water treatment industry is clamoring for a suitable alternative to chlorine gas.

Q. Why does Odyssey believe it's sodium hypochlorite will not only win market share from other producers of the product but from chlorine gas as well?

A. Because of quality and price. We are producing a 12.50 percent sodium hypochlorite we call "Ultra-Chlor." ("Ultra-Chlor" is a registered trademark). The level of purity of Ultra-Chlor is unprecedented in a hypochlorite product for bulk truckload delivery. Even better, Ultra-Chlor can be produced at a lower unit cost than other methods of production. The product is certified by the National Sanitation Foundation for use in drinking water and approved by E.P.A. for sale and use as a disinfectant.

Q. How is sodium hypochlorite manufactured?

A. Sodium hypochlorite is made from chlorine, caustic soda and water. The basic formula for commercial sodium hypochlorite is 8 parts water, 1 part caustic soda, 1 part chlorine.

Sodium hypochlorite manufacturers are like regional Coca-Cola bottlers that buy "Coke syrup" and add CO_2 and water near the point of sale.

There are two principal ways to manufacture sodium hypochlorite. First, there is the "Continuous Process." The machine used is also called a "Powell Bleach Plant." Product quality and safety are far superior with this continuous process. Powell also sells a titanium filter to further improve product quality.

Second, there is the "Batch Process." A batch process requires only a scrubber tank where chlorine is injected directly into a large vat of caustic soda. The required investment is much less than that necessary for a continuous process machine. Unfortunately, so are product quality and safety. Companies that repackage chlorine gas into ton cylinders must have a batch scrubber tank to purge the returned cylinders. If additional sodium hypochlorite is required after refilling all of the tons, chlorine can be added directly from the rail car.

Q. How does Odyssey manufacture Ultra-Chlor?

A. Odyssey uses a unique process. We produce 12.50 percent "Ultra-Chlor" sodium hypochlorite from electricity and salt. Odyssey therefore doesn't buy rail cars of chlorine and doesn't have the regulatory

headaches of storing them. Odyssey makes chlorine and caustic in an electrochemical cell. The output from the cell is the input to the Powell continuous bleach plant. At any given time, there are only a few pounds of chlorine on the site.

There are three commercially available electrochemical cell technologies. 1) Diaphragm cell, 2) Mercury cell, 3) Membrane cell. The smallest diaphragm cell was too large for our requirement. The mercury cell leaves a residue. Our only choice was membrane cell technology. The salt is dissolved into brine and the brine is fed into the electrochemical cell (which looks like a very large battery).

Extremely high amperage DC current breaks the salt molecule into chlorine and caustic soda. We use our chlorine and caustic soda along with deionized water from our process to make our registered trademark "Ultra-Chlor" product.

Q. How does Odyssey's manufacturing process affect the viability of the production of sodium hypochlorite as a substitute for chlorine gas?

A. There are four reasons that come to mind as to why, for example, water treatment customers would view Odyssey as a viable long term option.

Our economics are good. Large chlor-alkali plants in Louisiana or Niagara Falls can produce chlorine and caustic cheaper than we can. After factoring in investment costs and freight, we have an advantage in our market.

Our quality is outstanding. The membrane caustic and deionized water are so pure that filtration is not required.

Since we do not store chlorine, we have almost no regulatory burden. Many water plants were concerned that if they switched to sodium hypochlorite, the sodium hypochlorite company could later be forced out of business because of new regulations for chlorine gas rail cars.

Finally, we can offer our customers fixed pricing for longer term contracts. Since we do not purchase caustic soda and chlorine, our pricing to our customers is not directly related to current market conditions.

Q. Is future pricing of sodium hypochlorite important to customers?

A. Yes, future pricing is very important. As I already noted, price instability has impeded market penetration of industrial sodium hypochlorite. Many pilot studies and a few full-scale conversions by customers are underway for very expensive and complicated machinery for on-site generation, UV radiation or reverse osmosis. I believe these machines are attractive only because they lock in the disinfection costs. A typical water treatment plant would consider investing $1 million in on-site machinery to be able to produce its own sodium hypochlorite for about the same price available in today's market. Obviously, if a manufacturer and distributor itself could provide sodium hypochlorite to these customers at a comparable price

under a long-term contract, these customers could avoid such substantial capital outlays.

Q. What is the status of Odyssey's plant in Tampa?

A. Our plant went into operation on March 27, 2000.

Q. Are Odyssey and Sentry head-to-head competitors with Allied?

A. Yes, although the competition is somewhat akin to David versus Goliath. In this case, however, its Goliath who is throwing the stones. Odyssey produces one product - sodium hypochlorite - for distribution in Central Florida. Its potential customers either use sodium hypochlorite or they use chlorine gas. Allied sells sodium hypochlorite, chlorine, and a full line of about 100 other chemical products in the Southeastern United States.

Allied and Sentry have been competitors for a long time. Sentry installed a continuous process machine in Miami in 1984 and was able to successfully market improved product quality and service to Allied's customers. For years, Allied countered with a strategy of minimizing expenses and undercutting our pricing. To this date, Allied has not invested in Powell continuous process machines for their plants in Miami and Fort Pierce, i.e., the market in which Allied competes directly with Sentry. When Allied built its plant in Tampa four years ago, it installed a Powell continuous process machine, a filter, and a barge terminal. Receiving caustic by barge saves about half the freight and gave Allied a significant cost advantage. It appears that Allied's plan was to make good quality sodium hypochlorite and still undercut the market price. Please

keep in mind that the technology to build an Odyssey-style plant was available to Allied in 1995. The Powell technology has been sold since the 1960s, and membrane cell technology has been available since the 1970s. Allied, however, chose not to construct an Odyssey-style plant.

Q. Do you have an opinion why Allied did not construct an Odyssey-style plant?

A. I believe there are three plausible explanations. First, Allied conceivably was uninformed about the technology. Second, Allied did not have the capital available to invest. Third, Allied did not want to invest such capital. I believe that the only reason Allied claims an interest in building such a plant now is that Odyssey has built such a plant.

Q. Do you believe Allied has any intention of building such a plant in the Tampa area?

A. No, I don't.

Q. Why not?

A. There are several reasons. First, the majority of Allied's sales and profits in this market are from chlorine gas; to construct another Odyssey-style sodium hypochlorite plant would undercut that product line.

Second, such significant investment would be inconsistent with Allied's historical frugality on plant investment.

Third, Allied manufactures and distributes about one hundred products through six branches or divisions: I do not believe it can justify

an investment on this scale to improve the competitive position of one product at one location.

Fourth, interest rates are now higher than they were two years ago when Odyssey launched its plan in earnest.

In any event, I believe there are two cities in the United States where it would not make sense for Allied to construct an Odyssey-style plant: Tampa, and Delaware City, Delaware. Those are the locations of the two Odyssey-style plants that are operational in the country today. I believe that in those two areas, a second plant could prevent the first plant from making a profit, but would never turn a profit itself.

Q. Why then do you believe Allied has filed its complaint in this proceeding?

A. Based on the competitive economics mentioned above, I believe Allied's true motivation is to attempt to strip Odyssey of its negotiated rate with TECO, to gain access to Odyssey's confidential business information, and to subject us to the costs of defending ourselves against its charges.

Q. Do you believe that Allied's primary motive is to eliminate any unjust discrimination that may exist between Odyssey's rates and that offered to Allied?

A. No. I believe that Allied would not be satisfied unless it deprives Odyssey of its negotiated rate.

Q. When did you first seriously consider the construction of a sodium hypochlorite plant by Odyssey in Florida?

A. I conceived of the project in Miami in 1995. I preferred a Miami location given our existing Sentry operations and South Florida customers. FP&L quoted us an unattractive rate of over $60 per MWh in 1996 and showed no interest in our project. I was under the misapprehension that FP&L was the only major electric utility in the state! In 1997, I retained a consultant with experience in the chlor-alkali business to investigate other possibilities, including various potential locations outside of the State of Florida.

Q. What did this consultant advise you?

A. This consultant advised us that a rate of $36 per MWh exclusive of applicable taxes for interruptible service might be available from TECO. We would have liked to have had this arrangement, but unfortunately there was a waiting list for interruptible power from TECO. Nevertheless, we understood that one or more phosphate companies were getting ready to close, so we might rise to the top of the waiting list.

Q. Did this occur?

A. No, and this created a problem. Waiting to be served under an existing tariff is the not the same thing as being served. We needed to obtain a commitment with respect to the cost of energy so that we could proceed with capitalization of the project. If we could not obtain an acceptable rate, we would have to build the plant elsewhere. Because of this, we also entered into discussions with TECO about taking service under the Commercial/Industrial Service Rider (CISR). At the time I remained

hopeful that ultimately we could to take service under the interruptible rate, which was better than what we were able to achieve in negotiation. In fact, I mentioned this to TECO at one point and was informed that TECO closed or discontinued that class of service, eliminating that option.

Q. Let's be clear about the interruptible rate: would you have taken that service had it been offered to Odyssey?

A. Yes.

Q. Would you still accept TECO's interruptible rate were it offered to you at this time?

A. Yes.

Q. Who conducted the negotiations on behalf of Odyssey for an electric rate from TECO?

A. I did. I was assisted in that regard by representatives of some of the key vendors who would be assisting Odyssey in the possible construction of the plant.

Q. Who was your primary contact at Tampa Electric Company during those negotiations?

A. Patrick H. Allman. He was the Account Manager with TECO's Marketing Department for our account. It was my understanding that Mr. Allman was the go-between or liaison between Odyssey and various other departments or representatives within TECO.

Q. Were you previously acquainted with Mr. Allman?

A. No.

Q. When did these negotiations begin?

A. I believe they began in March, 1998.

Q. What type of information did Odyssey provide to TECO during the CISR negotiations?

A. I provided extensive financial and technical information about the proposed plant to Mr. Allman. This included detailed site plans and other plant information, and information regarding project funding. I also provided an extensively documented business plan to help show we were a viable company with a good future. I was surprised by the sheer volume of information that they deemed necessary, but I supplied all of the information they requested.

Q. Did you provide what you considered to be proprietary confidential business information to TECO?

A. Yes, we provided extensive proprietary confidential business information during those negotiations.

Q. Weren't you concerned about releasing such proprietary information to them?

A. Extremely concerned. However, we were assured by Mr. Allman that under the CISR provision of TECO's tariff, as approved by the Florida Public Service Commission, such information would be handled on a strictly confidential basis and would **never** be released to anyone outside of that company, except, if required, to the Commission and its staff.

Q. Would you have provided the information to TECO absent such assurances?

A. Absolutely not. As indicated previously, Odyssey and Sentry are closely held corporations operating in a highly competitive market. Knowledge of our proprietary information by competitors would interfere with our ability to compete in our native market, as it would allow competitors to, for example, engage in a price war to drive Odyssey's fledgling operations out of business. Assurances of the strictest confidentiality as outlined above were therefore included in the Contract that we eventually executed with TECO.

Q. What concessions were required by TECO during the negotiations?

A. I don't really consider us as having made concessions. I viewed them as incentives to motivate Mr. Allman, Mr. Allman's bosses, and their bosses, to offer me a CISR rate that I could use to justify the project to my investors and lenders. I believe I needed the rate more than they needed the customer.

Q. What were those incentives?

A. [redacted]

[redacted]

Q. Were you required to furnish a sworn affidavit to TECO?

A. I was, and I did. The affidavit confirmed that [redacted]

[redacted]

Q. Did Odyssey and TECO reach an agreement?

A. Yes. On September 4, 1998, Odyssey executed a Contract Service Agreement. We received the Contract as executed by TECO in late September, 1998. I will sponsor the executed contract as Exhibit SWS-1.

[redacted]

Q. Would Odyssey have agreed to receive service from TECO at a rate higher than that provided under the CISR?

A. No.

A. No.

Q. Why is that?

A. It would not have made good business sense. Odyssey is a for profit company, and, as its CEO, my job is to ensure that our investors achieve an acceptable return on investment. Further, the condition regarding the electric rate set forth in our lender's loan commitment would not have been satisfied.

Q. When did you first approach Mr. Allman about employing him?

A. The subject of his potential employment by Odyssey never arose in any communication whatsoever between Mr. Allman and me or any other representative of Odyssey prior to the September 4, 1998 execution of the Contract Service Agreement. We first offered the General Manager position to a former Occidental Chemical employee in the fall of 1998. Our first candidate rejected our offer around Thanksgiving, 1998. Our first contact with Mr. Allman regarding his possible employment was around Christmas, 1998, when I telephoned Mr. Allman and asked if he would be interested in the position of General Manager for Odyssey. He expressed interest, and I made a formal employment offer to him shortly thereafter. It took about two weeks to negotiate a mutually acceptable employment agreement. Mr. Allman then gave three weeks notice to TECO, and his last day of ernployrnent with the utility was January 31, 1999.

Q. Did you ever offer any personal reward to Mr. Allman for his efforts during the CISR negotiations?

A. Absolutely not. Further, Mr. Allman was always very professional in his dealings with us.

Q. Since his employment began with Odyssey, has Mr. Allman solicited existing customers of Allied/CFI?

A. Yes. In approximately April, 1999, Odyssey began sales and marketing efforts and contacted various sodium hypochlorite users to promote its new product. Over the past year or so, our efforts have included dozens of Allied's customers. I should mention that Allied has solicited our customers as well.

Q. Mr. Sidelko, in the case of Odyssey, has the rate negotiated under the CISR promoted economic development?

A. I believe so. The impact so far has been small but very positive. Odyssey employs twenty-five (25) full-time people at the seven (7) acre site in the Tampa East Industrial Park. We rent trucks and buy fuel, and generally increase the level of local economic activity. Our local taxes each year are roughly $250,000. Over the next few years, we anticipate having to double our production. If we do so, our electricity bill would double, and our workforce would essentially double. If there is another Odyssey plant in the future, we now anticipate that our headquarters would be in Tampa. Procter & Gamble started the same way. The commercial aspect should not be completely disregarded. To some extent, we are also providing a service to the many Florida municipalities who are interested in purchasing our product.

None of this would have been possible without the electricity rate negotiated under the CISR.

Q. Does that conclude your prefiled direct testimony?

A. Yes, thank you.

Exhibit SWS - 1

Contract Service Arrangement

(Redacted in its entirety)

Please see Notice of Intent to Resquest Confidential Classification