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September 13, 2000

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

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RECORDS AND REPORTING

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") are the original and fifteen copies of Allied/CFI's Response in Opposition to Tampa Electric Company's Second Motion for Reconsideration.

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

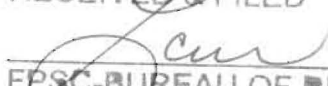
Thank you for your assistance with this filing.

Sincerely,



John R. Ellis

APP \_\_\_\_\_  
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11447 SEP 13 8

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint of Allied Universal )  
Corporation and Chemical Formulators, )  
Inc. against Tampa Electric Company )  
for violation of Sections 366.03, )  
366.06(2) and 366.07, Florida Statutes, )  
with respect to rates offered under )  
Commercial/Industrial Service Rider tariff; )  
petition to examine and inspect confidential )  
information; and request for expedited )  
relief. )  
\_\_\_\_\_ )

Docket No. 000061-EI

Filed: September 13, 2000

**ALLIED/CFI'S RESPONSE IN OPPOSITION  
TO TAMPA ELECTRIC COMPANY'S SECOND  
MOTION FOR RECONSIDERATION**

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, and pursuant to Rule 25-22.0376, Florida Administrative Code, submit their response in opposition to the motion for reconsideration filed by Tampa Electric Company ("TECO") as to Order No. PSC-00-1530-PCO-EI, issued on August 23, 2000 ("the Order Denying Motions for Reconsideration"), and state:

1. On July 6, 2000, TECO filed its first motion for reconsideration of six matters decided in Order No. PSC-00-1171-CFO-EI, issued on June 27, 2000 ("the Prehearing Officer's Order"). The Prehearing Officer's Order granted in part and denied in part Allied/CFI's motion to compel production of documents by TECO and TECO's supplemental motion for protective order and request for approval of Protective Agreement, among other matters. TECO's first motion for reconsideration simply reargued TECO's positions on the six matters, and made no attempt to identify any point of fact or law that was overlooked in the original order.

2. TECO's second motion for reconsideration revises and continues to reargue TECO's

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position on two of the six matters, concerning the scope of the privilege afforded by the confidentiality term of TECO's Commercial/Industrial Service Rider ("CISR") tariff with respect to two sets of circumstances: (1) TECO's filing of over 1,800 pages of documents with a blanket request for confidential classification on March 10, 2000, in this proceeding; and (2) TECO's obligation to respond to Allied/CFI's discovery requests under the Florida Rules of Civil Procedure. TECO's second motion for reconsideration now contends that the Commission should find that the privilege created by the confidentiality term of TECO's CISR tariff requires that:

Anyone challenging the confidentiality of information that Tampa Electric alleges to be CISR-related must demonstrate that the information does not, in fact, fall into one of the categories specified in [the confidentiality term of the CISR tariff].<sup>1</sup>

3. There is no issue in this proceeding involving the scope of the privilege with respect to CISR tariff negotiations generally. Pursuant to Order No. PSC-98-1081-FOF-EI, issued on August 10, 1998 in Docket No. 980706-EI, approving TECO's CISR tariff, the only documents and information routinely filed with the Commission concerning TECO's CISR tariff customers or applicants are TECO's monthly and quarterly reports stating its calculation of the difference between the revenues it would have received under the otherwise applicable tariff rate and the CISR tariff rate. Discovery of those documents is not an issue in this proceeding.

4. As a practical matter, there is no further issue in this proceeding concerning the scope of the privilege with respect to non-routine filings of documents by TECO involving CISR tariff customers or applicants. Both the Prehearing Officer's Order and the Order Denying Motions for Reconsideration make clear that the confidentiality term of the CISR tariff does not authorize

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<sup>1</sup>See TECO's second motion for reconsideration, at page 8, paragraph 8(d).

confidential classification for public documents such as the copies of tariff sheets filed by TECO on March 10, 2000, and TECO does not contend otherwise in its second motion for reconsideration. The issue arose only because TECO moved for dismissal of this proceeding based on documents filed with the Commission but not disclosed to Allied/CFI, and this issue is unlikely to arise again following the Commission's denial of TECO's motion for dismissal in Order No. PSC-00-0908-FOF-EI, issued on May 8, 2000, in this proceeding.

5. The remaining issue raised by TECO's second motion for reconsideration concerns the scope of the privilege afforded by the confidentiality term of the CISR tariff in response to a litigant's discovery requests. TECO's position, that "anyone challenging the confidentiality of information that Tampa Electric alleges to be CISR-related must demonstrate that the information does not, in fact, fall into one of the categories specified in [the confidentiality term of the CISR tariff]," must be rejected for five reasons:

- (1) It is a logical impossibility, because anyone challenging the confidentiality of information claimed by TECO to be CISR-related cannot, in fact, demonstrate anything about the information without seeing it or without any identification of it;
- (2) It contradicts the terms of Section 366.093(2), Florida Statutes, which provides that discovery in any proceeding before the Commission shall be in the manner provided for in Rule 1.280 of the Florida Rules of Civil Procedure, and Department of Professional Regulation v. Spiva, 478 So.2d 382 (1<sup>st</sup> DCA 1985), such holds that documents exempt from disclosure under the Public Records Act, Chapter 119, Florida Statutes, are not thereby privileged and excluded from discovery in an administrative proceeding;
- (3) It has been considered and rejected by the Commission twice already in this proceeding, and neither of TECO's motions for reconsideration has identified any point of fact or law that

was overlooked in the Prehearing Officer's Order or in the Order Denying Motions for Reconsideration concerning this issue;

- (4) The filing of a second motion for reconsideration is expressly prohibited by the following terms of Rule 25-22.0376(1), Florida Administrative Code: "The Commission shall not entertain a motion for reconsideration of an order disposing of a motion for reconsideration"; and
- (5) It is based on misrepresentations of fact by TECO concerning the nature and origin of much of the information and documentation in question, as stated below.

6. This proceeding concerns TECO's responses to the requests for electric service made by two competing manufacturers of liquid chlorine bleach and related products, Odyssey Manufacturing Company ("Odyssey") and Allied/CFI, in 1998 and 1999, respectively. Throughout this proceeding TECO has repeatedly represented to the Commission that: (1) the documents and information sought by Allied/CFI concerning Odyssey's request for discounted rates and TECO's response to Odyssey's request, were created in the course of negotiations with Odyssey under the CISR tariff;<sup>2</sup> and (2) that information concerning Odyssey's alternative costs and "at risk" status was the kind of sensitive and proprietary information that prospective CISR tariff customers would not exchange with TECO if such information was discoverable in litigation.<sup>3</sup> In fact, the documents and

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<sup>2</sup>See, e.g., TECO's second motion for reconsideration, at page two, paragraph three: "... Tampa Electric sought clarification with regard to the confidentiality of documents and information created in the course of negotiations under the Company's Commercial/Industrial Service Rider ("CISR") Rate Schedule (sic)."

<sup>3</sup>See the comments of TECO's counsel at page 83 of the transcript of the proceedings at the August 1, 2000 Agenda Conference on TECO's first motion for reconsideration:

Those words [in the confidentiality term of the CISR tariff] are there because the Commission explicitly discussed the fact that the

information ultimately disclosed by TECO to Allied/CFI on August 14, 2000, show to the contrary that: (1) the CISR tariff was not even in existence when Odyssey's affiliate, Sentry Industries ("Sentry") first approached TECO in February and March of 1998 with a request for service under TECO's rate schedule IS-3 or IST-3, and the only confidentiality agreement between TECO and Odyssey or Sentry was provided by TECO to Sentry on March 14, 1998, three months before TECO filed its "Petition for approval of Commercial/Industrial Service Rider tariff by Tampa Electric Company" on June 2, 1998;<sup>4</sup> and (2) the only documentation in TECO's possession concerning Odyssey's alleged alternative costs consists of tariff sheets from four other public utilities which were supplied by TECO, not by Odyssey or Sentry.<sup>5</sup>

7. Original Sheet No. 6.710 of TECO's CISR tariff provides, in relevant part:

Any customer receiving service under this Rider must provide the following documentation, the sufficiency of which shall be determined by the Company:

1. Legal attestation by the customer (through an affidavit signed by an authorized representative of the customer) to the effect that, but for the application of this rider to the New or Retained Load, such load would not be served by the Company;

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kind of information that one would need to verify that a customer has alternatives and to verify the cost of those, the price of those alternatives, is the kind of sensitive, proprietary information that no customer in his right mind would release if there was any danger of that information being released publicly.

<sup>4</sup>See pages 89-90 of 278 produced by TECO in response to Allied/CFI's First Request for Production of Documents, No. 3, Bate Nos. 836-0 and 837-0.

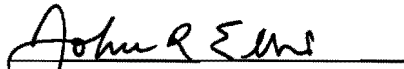
<sup>5</sup>See pages 1 and 13-31 of 31 produced by TECO in response to Allied/CFI's First Request for Production of Documents, No. 18, Bate Nos. 2017-0 to 2035-0; and pages 1-15 of 15 produced by TECO in response to Allied/CFI's First Request for Production of Documents, No. 2, Bate Nos. 43-0, 350-0 to 356-0, 36-0, 781-0, and 880-0 to 883-0.

2. Such documentation as the Company may request demonstrating to the Company's satisfaction that there is a viable lower cost alternative (excluding alternatives in which the Company has an ownership or operating interest) to the customer's taking electric service from the Company ....

TECO's response to Allied/CFI's First Request for Production of Documents, Nos. 2 and 18, shows that Odyssey provided nothing but the conclusory Affidavit of Stephen W. Sidelko concerning any alleged alternative costs and Odyssey's "at risk" status. Accordingly, the Commission should suspend Odyssey's CISR tariff rates forthwith.

WHEREFORE, for the foregoing reasons, Allied/CFI requests that TECO's second motion for reconsideration be denied.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Response in Opposition to Tampa Electric Company's Second Motion for Reconsideration was furnished by U. S. Mail to the following this 13<sup>th</sup> day of September, 2000:

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