

ORIGINAL

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA  
JOHN R. ELLIS  
KENNETH A. HOFFMAN  
THOMAS W. KONRAD  
MICHAEL G. MAIDA

POST OFFICE BOX 551, 32302-0551  
215 SOUTH MONROE STREET, SUITE 420  
TALLAHASSEE, FLORIDA 32301-1841

J. STEPHEN MENTON  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE

TELEPHONE (850) 681-6788  
TELECOPIER (850) 681-6515

September 28, 2000

RECEIVED-FPSC  
00 SEP 28 PM 4:48  
RECORDS AND REPORTING

**HAND DELIVERY**

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

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed for filing on behalf of Allied/CFI are the original and fifteen copies of Allied/CFI's Motion For Continuance of Final Hearing and Motion For Extension of Time for Filing of Rebuttal Testimony and Exhibits.

Please acknowledge this filing by date-stamping and returning the enclosed copy of this letter.

Thank you for your assistance with this filing.

Sincerely,

  
John R. Ellis

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP JRE/rl  
COM 3 Enclosures  
CTR \_\_\_\_\_  
ECR Preper  
LEG mb.3  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC 1  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER - DATE  
12353 SEP 28 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 28, 2000

ALLIED/CFI'S MOTION FOR CONTINUANCE OF FINAL HEARING AND MOTION FOR EXTENSION OF TIME FOR FILING OF REBUTTAL TESTIMONY AND EXHIBITS

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 Rules 28-106.204 and 28-106.210, Florida Administrative Code, move for continuance of the final hearing date of October 31, 2000, and for an extension of time in which to file rebuttal testimony, and state:

1. Pursuant to Rule 28-106.210, Florida Administrative Code, a hearing may be continued for good cause shown:

The presiding officer may grant a continuance of a hearing for good cause shown. Except in cases of emergency, requests for continuance must be made at least five days prior to the date noticed for the hearing.

2. This proceeding was instituted on January 20, 2000, by the filing of Allied/CFI's Complaint against Tampa Electric Company ("TECO"). Allied/CFI's Complaint alleges TECO's violation of Sections 366.03, 366.06(2), and 366.07, Florida Statutes, with respect to TECO's

DOCUMENT NUMBER-DATE

12353 SEP 28 8

FPSC-RECORDS/REPORTING

responses to the requests of Allied/CFI and of Odyssey Manufacturing ("Odyssey") for discounted rates for electric service under TECO's Commercial Industrial Service Rider ("CISR") tariff.

3. The dates of October 31, 2000 for the final hearing, and of October 2, 2000 for the filing of Allied/CFI's rebuttal testimony and exhibits, were set in the Order Revising Controlling Dates, Order No. PSC-00-1533-PCO-EI, issued August 23, 2000. The Order Revising Controlling dates was issued following the denial at the Agenda Conference on August 2, 2000, of TECO's motion for reconsideration of Order No. PSC-00-1171-CFO-E1, issued June 27, 2000, compelling TECO to produce documents in response to Allied/CFI's initial discovery requests served on February 2, 2000.

4. Prior continuances of the dates scheduled for the final hearing in this case were required solely as a result of TECO's repeated efforts to prevent Allied/CFI from conducting discovery and from litigating this case on the merits, by TECO's filing of a motion for procedures for disposition of the proceeding without a hearing, motions for protective orders, and motions for reconsideration. In contrast, Allied/CFI promptly filed its direct testimony and exhibits on February 21, 2000, one month after filing its Complaint, based on the originally scheduled final hearing date of April 5, 2000; and Allied/CFI has promptly responded to TECO's discovery requests.

5. Good cause exists to grant a continuance of the final hearing date of October 31, 2000, based on the following facts: (1) TECO did not produce any documents in response to Allied/CFI's initial discovery requests for six months, until August 14, 2000; (2) the limited and redacted set of documents ultimately produced by TECO on August 14, 2000, reveal the existence of significant new issues concerning: (a) whether there is any basis for confidential classification of the majority of the documents allegedly involving CISR tariff rate negotiations with Odyssey; (b)

TECO's incremental cost to serve Odyssey; and (c) the actual value of TECO's stated rate for service to Odyssey; (3) Allied/CFI needs additional time to complete discovery and to submit rebuttal testimony and exhibits in preparation for the final hearing, in light of the new and additional issues disclosed by the documents ultimately provided to Allied/CFI by TECO on August 14, 2000; and (4) additional time is needed to conduct the *in camera* inspection required by TECO's filing on August 30, 2000, of lists of Bate stamp numbers of documents responsive to Allied/CFI's document requests Nos. 6, 7 and 8.

6. The documents ultimately disclosed by TECO on August 14, 2000 reflect that Odyssey's initial request to TECO for rates for electric service was made in February and March, 1998, and was for interruptible service under TECO's rate schedules IS-3 and IST-3. TECO's petition for approval of its CISR tariff was filed on June 2, 1998, and the CISR tariff was approved in Order No. PSC-98-1081-FOF-EI issued on August 10, 1998. The only confidentiality agreement between TECO and Odyssey is dated March 14, 1998. Thus, it appears that there may be no proper basis for confidential classification of the majority of the documents created and exchanged by and between TECO and Odyssey.

7. At the outset of the prehearing conference held in this proceeding on July 6, 2000, the concern was expressed that the confidential nature of evidence and issues in this proceeding should not result in a closed hearing, and that cross examination of witnesses concerning confidential information should be conducted by deposition in advance of the final hearing. In the interests of efficiency and fairness in permitting Allied/CFI to present evidence and information at the final hearing concerning these matters, additional time is needed to resolve the issue of the confidentiality of many of the documents created and exchanged by and between TECO and Odyssey in 1998.

8. Order No. PSC-00-1171-CFO-EI, issued June 27, 2000, granted in part and denied in part Allied/CFI's motion to compel production of documents, and deferred ruling on Allied/CFI's motion to compel as to document requests 6, 7 and 8, regarding documents generated by TECO concerning its CISR tariff rate negotiations with Odyssey and with Allied/CFI. The Order denied Allied/CFI's motion to compel production of documents in response to document request number 9, calling for all documents reflecting estimates of TECO's incremental cost to provide service to Odyssey. However, the limited and redacted set of documents ultimately disclosed to Allied/CFI on August 14, 2000, reflect that contrary to Allied/CFI's assumption, there is significant difference in TECO's incremental cost to serve Odyssey compared to TECO's incremental cost to serve Allied/CFI. Additional information concerning this issue is likely to be contained in documents identified only by Bate-stamp numbers in TECO's August 30, 2000 filing of lists of documents responsive to Allied/CFI's document requests 6, 7 and 8. Additional time is needed to conduct the *in camera* inspection of the documents responsive to requests 6, 7 and 8, and to conduct discovery concerning TECO's incremental cost to serve Odyssey.

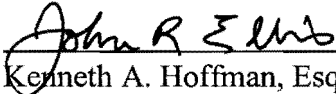
9. The Contract Service Agreement between TECO and Odyssey contains, at paragraph 2.7, an apparently unprecedented guarantee concerning the terms and conditions of the ostensibly interruptible service provided to Odyssey. However, TECO's side-by-side comparison of the rates offered for electric service to Odyssey and to Allied/CFI (Document number 03142-00, filed on March 10, 2000) reflects that no value whatsoever has been assigned to this guarantee. Additional time is needed to conduct discovery concerning the value of the terms and conditions stated in paragraph 2.7 of the Contract Service Agreement.

10. Allied/CFI maintains that no party will be prejudiced by a continuance of the hearing, and that a continuance is necessary to permit the issues raised in this proceeding to be determined on the merits.

11. Counsel for Allied/CFI has conferred with counsel for TECO and Odyssey, and represents that: (1) TECO initially stated its non-opposition to the motion, then reversed its position and stated its opposition to the motion for continuance, then later stated its opposition to the motion for an extension as well; and that (2) Odyssey does not oppose the motion.

WHEREFORE, Allied/CFI respectfully requests that the Prehearing Officer enter an Order granting this motion for continuance and rescheduling the dates for final hearing and for filing of rebuttal testimony and exhibits.

Respectfully submitted,



Kenneth A. Hoffman, Esq.

John R. Ellis, Esq.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

P. O. Box 551

Tallahassee, FL 32302

(850) 681-6788 (Telephone)

(850) 681-6515 (Telecopier)

Attorneys for Allied Universal Corporation and  
Chemical Formulators, Inc.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Motion for Continuance of Final Hearing and Motion for Extension of Time for Filing of Rebuttal Testimony and Exhibits was furnished by facsimile and U. S. Mail or by hand delivery (\*), to the following this 28<sup>th</sup> day of September, 2000:

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

Scott J. Fuerst, Esq.  
Ruden, McClosky, et al.  
200 East Broward Blvd.  
Ft. Lauderdale, FL 33301

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

  
John R. Ellis

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

Allied/continuance

Patrick K. Wiggins, Esq.  
Wiggins & Villacorta  
P. O. Box 1657  
Tallahassee, FL 32302

Wayne L. Schiefelbein, Esq.  
P. O. Box 15856  
Tallahassee, FL 32317-5856