

**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

PROFESSIONAL ASSOCIATION  
ATTORNEYS AND COUNSELORS AT LAW

**ORIGINAL**

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 MENTION  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE

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

October 11, 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

**HAND DELIVERY**

RECEIVED-FPSC  
00 OCT 11 PM 12:21  
RECORDS AND REPORTING

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed for filing on behalf of Allied/CFI are the following documents:

1. Original and fifteen copies of Allied/CFI's Response in Opposition to Tampa Electric Company's Motion for Leave to File Supplemental Testimony; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

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 \_\_\_\_\_  
COM 3 \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
LEG 2 \_\_\_\_\_  
OPC \_\_\_\_\_ JRE/rl  
PAI \_\_\_\_\_ Enclosures  
RGO \_\_\_\_\_ cc: All Counsel  
SEC 1 \_\_\_\_\_ Trib.3  
SER \_\_\_\_\_  
OTH \_\_\_\_\_

RECEIVED & FILED  
  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE  
12947 OCT 11 8  
FPSC-RECORDS/REPORTING

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 000061-EI

Filed: October 11, 2000

RECEIVED-FPSC 00 OCT 11 PM 12:21 RECEIVEDS AND REPORTING

ALLIE/CFI'S RESPONSE IN OPPOSITION TO TAMPA ELECTRIC COMPANY'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL TESTIMONY

Allied Universal Corporation ("Allied") and its affiliate, Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, submit the following response in opposition to the motion of Tampa Electric Company ("TECO") for leave to file supplemental direct testimony of William R. Ashburn and Victoria L. Westra, and state:

1. TECO's motion requests leave to file supplemental direct testimony of three witnesses: William R. Ashburn, Victoria L. Westra, and C. David Sweat. Mr. Ashburn's proposed supplemental testimony primarily attempts to revise the rate information stated in the document filed by TECO on March 10, 2000, as Document No. 03142-00, by reinterpreting Allied/CFI's estimated peak and off-peak consumption. Ms. Westra's proposed supplemental testimony attempts to revise TECO's position concerning Allied/CFI's eligibility for rates under TECO's Commercial Industrial Service Rider ("CISR") tariff. Mr. Sweat's proposed supplemental testimony substitutes the actual selling price and resulting property tax information concerning TECO's interests in certain real

DOCUMENT NUMBER-DATE

12947 OCT 11 8

FPSC-RECORDS/REPORTING

property, in place of the estimated selling price and resulting property tax information used in his direct testimony filed on June 28, 2000.

2. The direct testimony of Mr. Ashburn, Ms. Westra and Mr. Sweat was filed on June 28, 2000, pursuant to Order No. PSC-00-0908-FOF-EI, issued May 8, 2000, and the First Revised Case Assignment and Scheduling Record served on May 10, 2000. Order No. PSC-00-0908-FOF-EI denied TECO's request for approval of proposed procedures for summary disposition, and provided in part:

After the discovery phase of this docket ends, the scheduled hearing will be held. All parties will be allowed to present evidence and to cross-examine witnesses.

3. At the time TECO filed the direct testimony of Mr. Ashburn, Ms. Westra and Mr. Sweat, TECO was the only party which knew the rates it had offered: (1) in response to the March, 1998 request of Sentry Industries, Inc. ("Sentry") and its affiliate, Odyssey Manufacturing Company ("Odyssey"), for discounted rates under TECO's IS-3 or IST-3 tariffs; and (2) in response to Allied/CFI's May, 1999 request for the same rates under TECO's Commercial/Industrial Service Rider ("CISR") tariff that TECO had offered to Odyssey under the CISR tariff. Allied/CFI had no access to the comparative rate information until after the August 1, 2000 Agenda Conference, and after TECO's production of documents on August 14, 2000, in response to Allied/CFI's discovery requests served on February 2, 2000.

4. In its motion filed on February 14, 2000 requesting approval of procedures for summary disposition of this proceeding without the disclosure to Allied/CFI of information concerning the rates it had offered to Odyssey, TECO proposed that:

Tampa Electric would present to the Commission and its Staff, on a confidential basis, comparable packages of information and sworn affidavits reflecting all of the relevant negotiations between Tampa Electric and Odyssey, on the one hand, and between Tampa Electric and Allied/CFI on the other. This information would include details sufficient to allow the Commission to make a side-by-side analysis of the terms and conditions ultimately presented to Odyssey on the one hand and to Allied/CFI on the other.

\* \* \*

Tampa Electric proposes to file the above-mentioned information and affidavits with the Commission on March 3, 2000.

5. On March 10, 2000, TECO filed Document No. 03142-00, identified as: "1-page side-by-side reconciliation of CSA rates, terms and conditions TECO negotiated with Odyssey compared with those last discussed with Allied/CFI." The document was filed with a request for confidential classification and was not produced to Allied/CFI.

6. At the Agenda Conference on April 18, 2000, at which the Commission considered TECO's motion requesting proposed procedures for a summary disposition of this proceeding, counsel for TECO made the following proposal concerning disclosure to Allied/CFI of the information contained in Document No. 03142-00:

If the issue here is whether or not there is undue discrimination, it seems to me that under a protective order, the Commission and counsel for Allied ought to be able to look at what was offered in both cases, identify the differences, understand the basis for those differences, and then on that basis either agree that there's no problem or make whatever arguments are appropriate.

Transcript of April 18, 2000 Agenda Conference re: Item 9, at p. 22-23.

However, TECO's proposal conditioned disclosure of the information to Allied/CFI's counsel on nondisclosure to Allied/CFI, and for that reason was unacceptable to Allied/CFI and its counsel.

7. 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 by TECO, among other matters. The Order required TECO to produce certain documents including Document No. 03142-00 to Allied/CFI.

8. On June 28, 2000, TECO filed the Direct Testimony of William R. Ashburn, Lawrence W. Rodriguez, C. David Sweat, and Victoria L. Westra. Document No. 03142-00 was filed as Exhibit 2 to the Direct Testimony of Mr. Ashburn, and Mr. Ashburn was identified as the author of the document. However, Allied/CFI received only redacted copies of the direct testimony of the four TECO witnesses, and the information contained in Document No. 03142-00 was not disclosed to Allied/CFI.

9. The rate information contained in Document No. 03142-00: (1) had been requested by Allied/CFI in its Complaint and Petition to Examine and Inspect Confidential Information filed on January 20, 2000, and in Allied/CFI's first request for production of documents by TECO served on February 2, 2000; (2) had been proposed by TECO on February 14, 2000 to be sufficient to allow the Commission to summarily dismiss Allied/CFI's complaint; (3) had been filed by TECO on March 10, 2000, without disclosure to Allied/CFI; (4) had been ordered on June 27, 2000 to be disclosed by TECO to Allied/CFI; (5) had been filed again by TECO on June 28, 2000 as Exhibit 2 to the Direct Testimony of William R. Ashburn, without disclosure to Allied/CFI; and (6) had not been disclosed to Allied/CFI as of the Agenda Conference on August 1, 2000, at which time TECO made the following representation to the Commission concerning the information contained in Document No. 03142-00:

I've given each of you and the Staff an envelope containing one of the documents that we filed with the Commission back in March. This document is also essentially the same as the exhibit to the testimony of Mr. William Ashburn that we filed with the Commission in this case.

\* \* \*

That one sheet of paper before you is where this case will end up when the dust settles. This is where we will end up. And on line 19 of that document, that is the bottom line that we'll get to after all the time and effort that has been made.

Transcript of August 1, 2000 Agenda Conference re: Item No. 26, at p. 4-5 and 7.

10. Notwithstanding TECO's repeated representations concerning the veracity and finality of the rate information contained in Document No. 03142-00, and notwithstanding TECO's sole possession of that information from the inception of this action on January 20, 2000, until August 1, 2000, TECO's motion for leave to file supplemental direct testimony now proposes to revise the rate information stated in Document No. 03142-00 based on its reinterpretation of Allied/CFI's estimated peak and off-peak consumption. TECO's attempted reinterpretation comes 28 days before the date scheduled for the final hearing in this proceeding, and is not based on any information which was not in TECO's possession as of October 18, 1999, when TECO proposed the rates to Allied/CFI which are reflected in Document No. 03142-00.

11. The effects of estimated peak and off-peak consumption on the rates offered to Allied/CFI was discussed with Allied/CFI in September, 1999 by TECO representative and witness Larry Rodriguez, as is alluded to Mr. Ashburn's proposed supplemental direct testimony at page 5. Mr. Rodriguez was advised at that time that Allied/CFI could not run its proposed new membrane cell plant in the manner stated in Mr. Ashburn's proposed supplemental direct testimony. Mr. Rodriguez's subsequent letter dated October 18, 1999, stating TECO's proposed rates for service to

Allied/CFI, reflects the assumptions concerning Allied/CFI's peak and off-peak consumption that were agreed to between the parties. Consequently, Mr. Ashburn's proposed supplemental testimony attempting to revise the rate information stated in Document No. 03142-00 is a belated attempt to introduce a new issue in this proceeding without any reasonable explanation of why the issue could not have been raised sooner, and must be rejected.

12. Similarly, the proposed supplemental direct testimony of Victoria Westra is another attempt by TECO to reinterpret evidence which has been in its possession throughout this proceeding, without any reasonable explanation of why TECO could not have raised the issue sooner. It is also another attempt by TECO to retaliate against Allied/CFI for filing this proceeding, and is inconsistent with the stated goals and purpose of the CISR tariff which requires (at Original Sheet No. 6.710):

"Legal attestation by 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....

Ms. Westra's proposed supplemental testimony attempts to revise and reinterpret the above-quoted term to require not only that the New Load would not be served by TECO, but also that it would be served by another supplier within a fixed period of time. TECO's belated attempt to revise its interpretation of its CISR tariff in this fashion and for this purpose must be rejected, and TECO's motion with respect to Ms. Westra's testimony should be denied.

13. Attached to this response as Exhibit A is a copy of a letter dated September 29, 2000 stating Allied/CFI's response, pursuant to Rule 28-106.204(3), Florida Administrative Code, to TECO's motion for leave to file supplemental direct testimony. As stated in the letter, Allied/CFI opposes the motion to the extent that the proposed supplemental direct testimony is submitted for


any purpose other than the correction of errors in the direct testimony filed on June 28, 2000.

14. The proposed supplemental direct testimony of TECO witness David Sweat corrects errors in his testimony filed on June 28, 2000, substituting the actual for the estimated sale price of certain real property, and substituting related property tax information. Allied/CFI does not oppose TECO's motion with respect to Mr. Sweat's testimony.

15. In contrast, the proposed supplemental direct testimony of TECO witnesses William Ashburn and Victoria Westra is a belated attempt to reinterpret existing evidence, to revise and restate TECO's positions on issues, and to introduce new issues into this proceeding. Allied/CFI opposes TECO's motion with respect to Mr. Ashburn's and Ms. Westra's testimony.

WHEREFORE, Allied/CFI requests that TECO's motion for leave to file supplemental testimony be denied with respect to the proposed supplemental testimony of William Ashburn and Victoria Westra, and be granted with respect to the proposed supplemental testimony of David Sweat.

Respectfully submitted,



\_\_\_\_\_  
KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

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

P. O. Box 551

Tallahassee, FL 32302

(850) 681-6788 (telephone)

(850) 681-6515 (telecopier)



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Response in Opposition to Tampa Electric Company's Motion for Leave to File Supplemental Testimony was furnished by hand delivery(\*) and/or U. S. Mail to the following this 11<sup>th</sup> day of October, 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


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

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

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

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

  
\_\_\_\_\_  
John R. Ellis

**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) 681-8515

September 29, 2000

**By telecopier**

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

Re: Docket No. 000061-EI

Dear Harry:

This letter responds to your request for Allied's statement of position concerning whether a motion by TECO for leave to file supplemental direct testimony of William Ashburn, Victoria Westra and David Sweat would be opposed. Based on your representation that the purpose of the supplemental testimony is to correct errors in testimony filed by TECO on June 28, 2000, Allied does not oppose the motion provided that Allied is given a reasonable opportunity to conduct discovery and to file rebuttal testimony concerning the subjects of TECO's proposed supplemental direct testimony. Allied opposes TECO's motion to the extent that the proposed supplemental direct testimony is submitted for any purpose other than the correction of errors in the testimony filed on June 28, 2000.

If you have any questions concerning Allied's position, please do not hesitate to call me.

Sincerely,



John R. Ellis

JRE/rl

