

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

REBUTTAL TESTIMONY

OF

DR. CHARLES F. PHILLIPS, JR.

ON BEHALF OF

ALLIED UNIVERSAL CORPORATION

AND

CHEMICAL FORMULATORS, INC.

January 22, 2001

- 1 **Q. Please state your name and give your business address.**
- 2 A. My name is Charles F. Phillips, Jr. My business address is 414 Morningside
3 Drive, Lexington, Virginia 24450.
- 4 **Q. What is your occupation?**
- 5 A. I am the Robert G. Brown Professor of Economics at Washington and Lee
6 University, where I have been teaching since the fall of 1959. My teaching
7 duties include courses in macro- and micro-economics, industrial
8 organization, economic regulation, and the corporation and society.
- 9 **Q. What is your educational background?**
- 10 A. I received my B.A. in Economics from the University of New Hampshire in
11 1956 and my Ph.D., also in Economics, from Harvard University in 1960.
- 12 **Q. What is your experience in the area of public utility economics?**
- 13 A. In addition to my teaching responsibilities at Washington and Lee University,
14 I have taught at several company-sponsored executive development programs
15 (*e.g.*, American Electric Power System, InterNorth, Inc., Panhandle Eastern
16 Pipe Line Company) and have given papers on various regulatory issues at
17 numerous conferences and symposiums (*e.g.*, American Bar Association,
18 Great Lakes Conference of Public Utilities Commissioners, Public Utilities
19 Reports, Inc.). For many years, I was a faculty member of the "Public Utility
20 Executive Program," held annually at The University of Michigan, and took
21 part in the semi-annual public utility financial seminars sponsored by the
22 Irving Trust Company (now The Bank of New York). My published

1 research in the area of public utility regulation includes *The Economics of*
2 *Regulation* (1965; revised edition, 1969) and *The Regulation of Public*
3 *Utilities* (1984; second edition, 1988; third edition, 1993), nine edited
4 volumes, and over a dozen journal articles. I have done consulting work for
5 over four dozen public utilities, and for oil pipelines, the State of Alaska, the
6 Virginia State Corporation Commission, and the Wisconsin Public Service
7 Commission. I have testified before Federal and state regulatory commissions
8 in over 195 cases, primarily on cost of capital or rate structure issues. I have
9 previously testified before the Florida Public Service Commission on behalf
10 of Tampa Electric Company ("TECO").

11 A more complete description of my background and experience is set
12 forth in Exhibit No. __ (CFP -1), Pages 1-4.

13 **Q. On whose behalf are you testifying in this proceeding?**

14 A. I am testifying as a consultant on behalf of Allied Universal Corporation
15 ("Allied") and its affiliate, Chemical Formulators, Inc. ("CFI").

16 **Q. What is the purpose of your testimony?**

17 A. The purpose of my testimony is: (1) to identify and attribute economic values
18 to the differences in TECO's responses to the requests of Allied/CFI and of
19 Allied/CFI's business competitor, Odyssey Manufacturing Company
20 ("Odyssey"), for rates under TECO's Commercial/Industrial Service Rider
21 ("CISR") tariff; (2) to identify the economic consequences of those
22 differences to Allied/CFI, to Odyssey, and to TECO's ratepayers; and(3) to

1 determine whether Allied/CFI and Odyssey were similarly situated with
2 respect to their requests for CISR tariff rates, within the meaning of TECO's
3 fundamental obligation as a public utility to avoid undue discrimination.

4 **Q. Do you agree with the statement of TECO witness William R. Ashburn**
5 **(at page 3, lines 16-17 of his direct testimony) that TECO's offers to**
6 **Allied/CFI and to Odyssey were not substantially different?**

7 **A.** No. In fact, the two offers were substantially and significantly different.

8 **Q. Please identify the differences in the offers.**

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Q. What are the economic principles that generally are used to determine whether contract or negotiated rates are justified by providing benefits to a utility's ratepayers?

A. To provide economic benefits to a utility's ratepayers, contract or negotiated tariffs must, "at a minimum, recover all variable and customer-specific fixed costs over the life of the contract. Revenue in excess of direct fixed and variable costs will contribute to the utility's common costs which otherwise would be shared by other ratepayers and shareholders." [Edwin A Rosenberg et al., *Contract Pricing of Electric and Telephone Service: Current Practice and Policy* (Columbus, Ohio: National Regulatory Research Institute, 1992), p. 28.]

Q. **Do you agree with Mr. Ashburn's statement (at page 4, lines 17-19 of his direct testimony) that the electric service retained or attracted by the**

1 CISR tariff rate must provide benefits to the general body of ratepayers
2 and must be determined by TECO to have been truly "at risk"?

3 A. Yes. Those are the two major conditions discussed in the Commission's
4 Order approving the CISR tariff. Order No. PSC-98-1081-FOF-EI, provides:
5 "TECO will conduct specific analyses for each CISR customer to calculate
6 the net benefits to the general body of ratepayers....As long as the revenues
7 exceed the costs, the general body of ratepayers will benefit." The Order
8 further provides: "Customers must make a written request to TECO for
9 service under the CISR and must provide ... documentation demonstrating
10 that the applicant has a viable lower cost alternative to taking service from
11 TECO."

12 Q. **Did Odyssey meet the second requirement by demonstrating that it had**
13 **a viable lower cost alternative to taking service from TECO?**

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Q. Do contract or negotiated tariffs, such as TECO's CISR tariff, raise questions of undue discrimination?

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A. Yes, such tariffs always raise such questions, which is why they have been used sparingly. Whenever one or more companies are removed from a general rate category and special rates are negotiated, the potential for discrimination arises. Many commissions, in approving similar tariffs, have acknowledged that fact. The issue was of concern to Commissioners Clark and Garcia in Docket No. 951161-EI. [See In re Petition for approval of proposed optional Commercial/Industrial Service Rider by Gulf Power Company, March 7, 1996, pp. 89-96.] However, the tariffs have been found by these commissions to be "in the public interest" since they promote specific economic and/or social objectives (*i.e.*, prevent loss of load, promote economic development).

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Q. Does this complete your rebuttal testimony?

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A. Yes, it does.

Allied/CFI
Docket No. 000061-EI
Prefiled Rebuttal Testimony of Dr. Charles F. Phillips, Jr.
Exhibit __ (CFP-1)

QUALIFICATIONS

Charles F. Phillips, Jr.
Robert G. Brown Professor
of Economics
Washington and Lee University
Lexington, Virginia 24450

Educational Background

B.A., University of New Hampshire (Economics/Political Science), 1956
Ph.D., Harvard University (Economics), 1960

Books and Articles Pertaining to Public Utility Regulation

Author of two books -- *The Economics of Regulation: Theory and Practice in the Transportation and Public Utility Industries* (Richard D. Irwin, Inc., 1965; revised edition, 1969), and *The Regulation of Public Utilities: Theory and Practice* (Public Utilities Reports, Inc., 1984; second edition, 1988; third edition, 1993); editor of six volumes -- *Competition and Monopoly in the Domestic Telecommunications Industry* (Washington and Lee University, 1974), *Telecommunications, Regulation, and Public Choice* (Washington and Lee University, 1975), *Competition and Regulation - Some Economic Concepts* (Washington and Lee University, 1976), *Expanding Economic Concepts of Regulation in Health, Postal and Telecommunications Services* (Washington and Lee University, 1977), *Regulation, Competition and Deregulation - An Economic Grab Bag* (Washington and Lee University, 1979), and *Regulation and the Future Economic Environment - Air to Ground* (Washington and Lee University, 1980); editor (with others) of three volumes -- *Airline Deregulation: Lessons for Public Policy Formation* (Institute for Study for Regulation, 1983), *Boundaries Between Competition and Economic Regulation* (Institute for Study of Regulation, 1984), and *Regulatory Reform: The State of the Regulatory Arts; Emerging Concepts and Procedures* (Institute for Study of Regulation, 1984); and author or co-author of over a dozen articles on regulatory issues appearing in legal and business journals (e.g., *Alabama Law Review*, *Bell Telephone Magazine*, *Public Utilities Fortnightly*, *Washington and Lee Law Review*) and in edited volumes (e.g., *A Critique of Administrative Regulation of Public Utilities*, 1972; *Current Issues in Public-Utility Economics*, 1983). Contributor of two articles on "Public Utilities" (in 1967 and 1970) to *The Encyclopaedia Britannica* and one article on "Public Utility" (in 1990) to *The World Book Encyclopedia*.

Experience as an Economic Consultant and Lecturer in the Public Utility Area

Economic consulting work for over four dozen public utilities, including the American Telephone and Telegraph Company, Baltimore Gas and Electric Company, Florida Power Corporation, Greenwich Water Company, The Montana Power Company, New Jersey Bell Telephone Company, Northwestern Public Service Company, Roanoke Gas Company, Sierra Pacific Power Company, South Carolina Electric and Gas Company, Texas Eastern Transmission Corporation, Virginia Electric and Power Company, and Williams Pipe Line Company, and for several law firms, including Cravath, Swaine & Moore; Debevoise & Liberman; and Kirkland & Ellis. All of this consulting work has involved some aspect of public utility regulation, including rate of return, rate structure, general regulatory principles, and antitrust issues. Also have done consulting work for the State of Alaska on rate base determination for the Trans Alaska Pipeline System, for Williams Pipe Line Company on methodology for regulating oil pipelines, for the Maritime Intervenors in *Re Florida Gas Transmission Company* on fair market value in a gas pipeline conversion proceeding, and for the Virginia State Corporation Commission and the Wisconsin Public Service Commission on electric utility rate design.

For twenty-two years (1970-1992), served as a faculty member of the "Public Utility Executive Program," held annually at The University of Michigan. For five years (1977-1981), served as a faculty member of the "Executive M.S. Degree Program in Advanced Management," developed for the American Telephone and Telegraph Company by Pace University. For two years (1970-1971), served as a faculty member of the "Executive Program for the Gas Industry" at The University of Colorado. Over the past years, have taught and/or continue to teach at several company-sponsored executive development programs, including those sponsored by the American Electric Power System, Arizona Public Service Company, Babcock & Wilcox Company, Central Illinois Light Company, General Telephone Company of California, InterNorth, Inc., Panhandle Eastern Pipe Line Company, and Westinghouse Electric Corporation.

For sixteen years (1974-1987), gave papers on cost of capital concepts at the Irving Trust Company's semi-annual "Public Utility Financial Seminar." For six years (1976-1981), gave papers on cost of capital concepts at Kidder, Peabody & Company's semi-annual "Utility Corporate Finance Seminar." Papers have been given on various regulatory problems at several other seminars, including those sponsored by the American Bar Association (Section of Public Utility Law), American Natural Resources Company, Arthur Young & Company, the Center for Administrative Justice, the Great Lakes Conference of Public Utilities Commissioners, the Institute of Public Utilities, the Institute for Study of Regulation, Kidder, Peabody & Company, the National Association of Regulatory Utility Commissioners, the National Rural Electric Cooperative Association, New Mexico State University, Planmetrics, Inc., and Public Utilities Reports, Inc.

Served as a consultant to the Commonwealth of Virginia's Electricity Costs Commission (see *Final Report of the Electricity Costs Commission*, 1975) and to the Edison Electric Institute's Committee on Economic Growth, Pricing and Energy Use (see *Economic Growth in the Future*, McGraw-Hill Book Company, 1976).

Experience as a Witness before Regulatory Commissions

Testimony has been submitted -- on one or more occasions -- before the Federal Communications Commission (for American Information Technologies Corporation), the Federal Energy Regulatory Commission (for the State of Alaska, El Paso Electric Company, Louisiana Power & Light Company, the Maritime Intervenors in *Re Florida Gas Transmission Company*, Mid Louisiana Gas Company, The Montana Power Company, Panhandle Eastern Pipe Line Company, Public Service Company of New Hampshire, Transwestern Pipeline Company, Trunkline Gas Company, and Williams Pipe Line Company), the former-Federal Power Commission (for Consumers Power Company, Panhandle Eastern Pipe Line Company, South Carolina Electric and Gas Company, and Virginia Electric and Power Company), the Securities and Exchange Commission (for The New York Stock Exchange), the Council for the City of New Orleans (for Louisiana Power & Light Company, and New Orleans Public Service), the District of Columbia and thirty state commissions: Connecticut (for The Ansonia Derby Water Company, Connecticut-American Water Company, and Greenwich Water Company); Delaware (for The Diamond State Telephone Company); District of Columbia (for The Chesapeake and Potomac Telephone Company, District of Columbia Natural Gas, and Washington Gas Light Company); Florida (for Central Telephone Company, Southeastern Telephone Company, and Tampa Electric Company); Illinois (for Commonwealth Edison Company, Consumers Illinois Water Company, Illinois-American Water Company, Illinois Bell Telephone Company, Illinois Power Company, Intra State Telephone Company, and Northern Illinois Water Corporation); Indiana (for Indiana-American Water Company, and Indiana Bell Telephone Company); Iowa (for Iowa-American Water Company, and Iowa Power and Light Company, and Iowa Southern Utilities Company); Kansas (for Kansas City Power & Light Company, and Kansas Gas & Electric Company); Kentucky (for Alumax Aluminum Corporation, Commonwealth Aluminum Corporation, Kentucky-American Water Company, and Louisville Gas & Electric Company); Louisiana (for Gulf States Utilities Company, Louisiana Power & Light Company, and New Orleans Public Service); Maine (for Consumers Maine Water Company, and Public Service Company of New Hampshire); Maryland (for Baltimore Gas and Electric Company, Maryland-American Water Company, and Washington Gas Light Company); Michigan (for Consumers Power Company); Minnesota (for Northern States Power Company); Missouri (for Missouri-American Water Company, and Missouri Power and Light Company); Montana (for The Montana Power Company); Nevada (for Central Telephone Company); New Hampshire (for Consumers New Hampshire Water Company, Hampton Water Works Company, and

Public Service Company of New Hampshire); New Jersey (for New Jersey Bell Telephone Company, and Public Service Electric and Gas Company); New Mexico (for New Mexico-American Water Company); North Carolina (for Central Telephone Company, Lee Telephone Company, Lexington Telephone Company, and Virginia Electric and Power Company); Ohio (for Ohio-American Water Company, and Columbus and Southern Ohio Electric Company); Oklahoma (for Oklahoma Natural Gas Company); Pennsylvania (for The Bell Telephone Company of Pennsylvania, and Borough of Media Water Works); South Carolina (for South Carolina Electric and Gas Company); South Dakota (for Northwestern Public Service Company); Tennessee (for Tennessee-American Water Company); Texas (for El Paso Electric Company); Virginia (for Appalachian Power Company, The Chesapeake and Potomac Telephone Company of Virginia, Commonwealth Gas Services, Inc., Lynchburg Gas Company, Roanoke Gas Company, Shenandoah Telephone Company, Southwestern Virginia Gas Company, Tennessee-Virginia Energy Corporation, Virginia-American Water Company, Virginia Electric and Power Company, and Virginia Natural Gas, Inc.); West Virginia (for Huntington Water Corporation, Virginia Electric and Power Company, and West Virginia Water Company); and Wisconsin (for Wisconsin Bell, Inc., Wisconsin Gas Company, and the Staff of the Wisconsin Public Service Commission). Most of this testimony involved rate of return, rate structure, or general regulatory principles.

Professional Organizations and Honor Societies

Member of the American Economic Association (and of its Transportation and Public Utilities Group), the Southern Economic Association, the Atlantic Economic Society (member of the Board of Editors of *The Atlantic Economic Journal*, 1973-1993), Phi Beta Kappa, Beta Gamma Sigma, and Omicron Delta Kappa. Member of the Executive Committee, Chairman of the Awards Committee, and President (1976-1977, 1978-1979, 1996-1997) of Omicron Delta Epsilon (the international honor society in economics); member and President (1977-1978) of the Virginia Association of Economists; President (1979-1987) of the Institute for Study of Regulation; Fellow of the Council on Economic Regulation (1988-1991); and member of the Board of Directors, The National Regulatory Research Institute (1992-1995).