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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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| In re: Complaint by 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 |



**ODYSSEY MANUFACTURING COMPANY'S**
**RESPONSE TO ALLIED'S/CFI'S MOTION FOR RECONSIDERATION**

ODYSSEY MANUFACTURING COMPANY ("Odyssey"), by and through undersigned counsel, hereby files this Response to Allied's/CFI's ("Complainants") Motion for Reconsideration, and in support thereof would state and allege as follows:

1. Complainants' Motion is not a proper Motion For Reconsideration. It does nothing more than re-argue those matters already considered by Order No. PSC-01-0231-PCO-EI and requests that the Commission revisit the clearly intended consequences of that Order.

2. Complainants state at paragraph 6 of their Motion that it is "undisputed" that the interrogatories and request for production at issue call for information which is extremely sensitive trade secret information which has not been disclosed publicly. As set forth at length in Odyssey's Motions for Reconsideration and Clarification filed at noon on January 29, 2001, and incorporated in this Response by this reference, Odyssey does dispute Complainants' assertion that the interrogatories and request for production at issue in the Order require responsive information which is trade secret or otherwise proprietary confidential business information.

3. Complainants devote a substantial amount of their Motion to the attempt to create a distinction between a burden on them to prove "the fact of harm" as opposed to the "extent of that harm", the latter of which the Complainants maintain is not relevant to this proceeding. (See, e.g., paragraph 14 of Complainants' Motion). It is disingenuous for Complainants to claim that the "extent of harm" is irrelevant and that questions intended to uncover information about such harm can not be reasonably calculated to lead to the discovery of admissible evidence, when the Complainants themselves have devoted such energy to placing allegations of extreme harm before the Commission. As Complainants point out in paragraph 10 of their Motion, they sponsor an expert witness in this case who is testifying that TECO's alleged actions somehow exercise authority or power "over the success or failure of two business competitors", and that this is one of the reasons for the very existence of economic regulation of public utilities. Such testimony, in and of itself, suggests that the "extent" of harm to Complainants is an issue which they intend to address in the record in this proceeding. Additionally, Complainants' Complaint and their prefiled testimony are replete with allegations regarding how their businesses will be somehow "destroyed" by an unlevel playing field created by an allegedly preferential rate. At a minimum, discovery intended to address the "extent of harm" to the Complainants is not only relevant as to their standing and so that this Commission can determine whether such "harm" is material or immaterial, but it is also directly relevant in that it goes to the heart of Odyssey's and TECO's ability to refute the numerous statements about the substantiality of the harm which Complainants themselves have chosen to insert in the record.

4. Then there is Complainants' curious allegation in paragraph 14 of the Motion, that Odyssey has "admitted" the "fact of harm" to the Complainants. As support, Complainants' first cite

page 22 of Mr. Sidelko's deposition. Mr. Sidelko in fact testified that there was "no way to know" whether certain characteristics of the Contract Service Arrangement with TECO would win Odyssey market share, but that he believed that such characteristics would result in future manufacturers of sodium hypochlorite and competing products in Florida building plants using the "new" membrane cell technology. As further support for the proposition that Odyssey has somehow admitted the fact of harm, Complainants cite portions of pages 72 through 75 of Mr. Sidelko's deposition transcript which, after careful reading, actually indicate his belief that there "will be a shift" in the marketplace from chlorine gas as a disinfectant to other alternative disinfectants which are safer, including sodium hypochlorite, but that the market for both chlorine gas and the safer sodium hypochlorite will grow. (In desperation, Complainants also cite Mr. Namoff's rebuttal exhibit 19, which is an internal memo prepared by then TECO employee Patrick Allman, wherein Mr. Allman held forth on what type of plants he appeared to believe would fare well in the coming decade, as evidence of TECO's admission of "the fact of harm." Notwithstanding Complainants' absurd attempt to characterize this memorandum as a "smoking gun" of malfeasance, it certainly does not support any admission by Odyssey of harm to Complainants. Odyssey respectfully submits that Complainants' evident interest in having their "turf" protected from incursions by technological innovation and other rigors of the marketplace should not be confused with the elements of standing they must prove up at hearing and regarding which discovery should be allowed to proceed.

5. The allegation on behalf of the Plaintiff which permeates paragraphs 15-18 of their Motion, to the effect that TECO's hidden agenda in propounding this discovery is to prepare its defense to an, as yet, unfiled civil suit, reveals more about the motivation and intent of the Complainants than it does about either TECO or Odyssey. Odyssey submits that TECO's discovery

requests address only matters which are reasonably calculated to lead to discovery of admissible evidence in this proceeding. TECO's motivation is, presumably, to uncover that information because of its relevancy in this proceeding. Odyssey's only motivation is and has been to engage in discovery on these issues in order to refute the Complainants' allegations and positions. The lengthy discussion of an as yet unfiled civil suit, and particularly the Complainants' reference in page 15 of their Motion to the possibility of the Complainants initiating an action against TECO, raises the specter that in fact Complainants' participation in this proceeding is designed as the prelude to such a civil action. Odyssey views Complainants' inference, that either TECO or Odyssey are engaging in discovery as a prelude to civil action, as specious. The motivation of TECO and Odyssey is to refute overwrought and unsubstantiated allegations which the Complainants have made in an action which Complainants have initiated before this Commission. TECO and Odyssey have engaged in discovery in this case such that these allegations may be fully litigated at the final hearing on February 19, 2001.

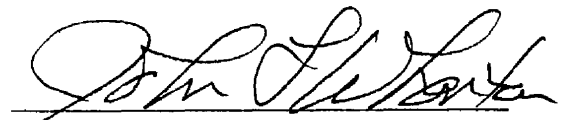
6. Complainants request for "reconsideration" of the time frames in the Order is equally without merit. Any suggestion that since the Order "contains no discussion of these issues of scope and timing," the Prehearing Officer must not have been fully aware of the scope and timing which would result from his Order, is fanciful. Clearly, the Prehearing Officer was able to fully appreciate the scope and timing of the Order.

7. The Commission should take a dim view of the Complainants' representation, in paragraph 19 of their Motion, that they intend to selectively obey the Order. In particular, limiting production (of documents which the Order directed to be produced) to those related to "the four

counties ... in which TECO provides electric service" not only violates the Order but also limits the information to be produced in an entirely arbitrary and unfair manner.

WHEREFORE, and in consideration of the above, Odyssey respectfully requests that Allied's/CFI's Motion for Reconsideration be denied.

Dated this 30th day of January, 2001.



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And

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Response to Allied's/CFI's Motion for Reconsideration has been furnished by Facsimile and U.S. Mail(*), or by Hand Delivery(**) to the following on this 30th day of January, 2001:

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