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January 31, 2001

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RECORDS AND
REPORTING

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Complaint of Allied Universal Corporation and Chemical Formulators, Inc.
against Tampa Electric Company; FPSC Docket No. 000061-EI

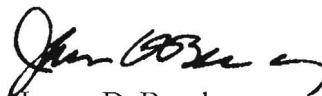
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Answer in Opposition to Allied/CFI's Motion for Reconsideration.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

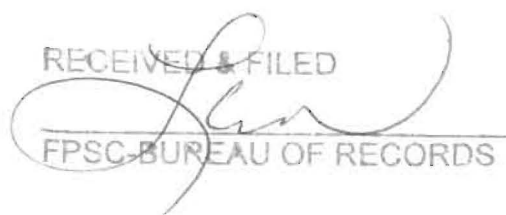
Sincerely,


James D. Beasley

JDB/pp
Enclosures

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cc: Robert V. Elias (w/diskette)
All Parties of Record (w/enc.)

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DOCUMENT NUMBER-DATE

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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: January 31, 2001

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

Pursuant to Rule 25-22.0376, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "Company"), hereby responds to the motion of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") for reconsideration of Order No. PSC-01-0231-PCO-EI, issued on January 24, 2001 (the "January 24th Order"), and says:

1. The procedural matter at issue is quite simple. Allied/CFI has seized every possible opportunity in this proceeding to allege that it has been harmed by Tampa Electric. The Company believes this claim to be a complete fabrication. In the January 24th Order, the Prehearing Officer has required Allied/CFI to respond to certain of Tampa Electric's discovery requests that are calculated to test the basis for Allied/CFI's claim of harm. Allied/CFI now asks that the January 24th Order be reconsidered on three alternative grounds: 1) that the Prehearing Officer has misperceived the nature of the harm claimed by Allied/CFI; 2) that the required disclosure is too broad and that insufficient time has been allowed for a response; and 3) that the January 24th Order gives

Tampa Electric a “jump start” on conducting discovery that may be relevant to future litigation that Allied/CFI is contemplating. As discussed below, none of Allied/CFI’s assertions constitutes a credible basis for modification of the January 24th Order.

2. As this Commission has noted on many occasions, the standard of review for a motion for reconsideration is whether the motion identifies some point of fact or law that was overlooked or not considered by the decision maker in rendering its decision. The mere fact that a party disagrees with the order is not a valid basis for reconsideration.¹ This standard of review has been consistently applied in this case and many others by the Commission in the context of reviewing a Prehearing Officer’s decision with regard to a motion to compel production of documents and other procedural matters.² Allied/CFI has not even come close to meeting this standard in its Motion for Reconsideration

3. Although somewhat convoluted, Allied/CFI’s first alleged error of law or fact appears to be that: 1) the Prehearing Officer misperceived the nature of the harm claimed by Allied/CFI; 2) Tampa Electric has admitted causing the harm asserted by Allied/CFI; and, therefore, 3) no discovery is required since the alleged harm has been admitted. Such ersatz logic cannot withstand even the most gentle scrutiny.

4. Allied/CFI now claims that the harm that it has suffered is the “economic disadvantage to Allied/CFI’s ability to compete with Odyssey if Allied/CFI’s plant had been built, not the harm to Allied/CFI resulting from the fact that Allied/CFI’s plant has not been built”. This assertion is absurd on its face and, in any event, irrelevant. It is difficult, if not impossible, to understand how harm flowing from circumstances that do

¹ See Order No. PSC-00-0911-FOF-EI, issued May 8, 2000 in Docket No. 000001-EI

² See Order No. PSC-00-0619-PCO-EU, issued March 31, 2000 in Docket No. 991462-EU.

not exist and may never exist can be the basis for a claim for relief. Allied/CFI's further assertion that Tampa Electric has admitted the existence of this harm is both factually incorrect and logically flawed. The key point, however, is that these odd assertions do not identify any mistake of law or fact in the Prehearing Officer's January 24th Order.

5. Allied/CFI's second alleged error of law or fact is equally ridiculous. Allied/CFI complains that the January 24th Order gave it only two days to provide the requires discovery responses on the eve of the depositions of its four witnesses. However, any burden resulting from the January 24th Order is directly attributable to Allied/CFI's failure to conduct a timely search for responsive documents. Tampa Electric's discovery requests were served on Allied/CFI in September of last year. Although Allied/CFI objected to certain of the Company's discovery requests, it apparently made no effort to identify responsive materials until the January 24th Order had been issued. In fact, Allied/CFI did not bother to produce any of the documents that were responsive to the discovery requests that it did not object to until last week. If Allied/CFI had conducted a search of its files three months ago, as it should have, it would have no problem meeting the deadline for response set forth in the January 24th Order.

6. Allied/CFI's attempt to limit discovery after the fact with its assertion that it only competes with Odyssey with regard to the sale of one product is self serving, at best. Tampa Electric should be given the opportunity to test that assertion through reasonable discovery. The January 24th Order provides that opportunity. Again, Allied/CFI has identified no mistake of law or fact.

7. Finally, Allied/CFI's allegation about Tampa Electric getting a "jump start" on discovery on the issue of damages and, possibly, the opportunity to depose Allied/CFI's witnesses for more than a total of 6 hours each does not identify any mistake of law or fact. Tampa Electric's discovery requests are geared toward testing Allied/CFI's repeated allegations that it has been harmed by Tampa Electric's actions. Contrary to Allied/CFI's claims, those discovery requests have nothing to do with any monetary damages that may be the subject of some future litigation in a different forum.

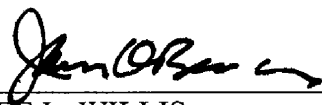
WHEREFORE, Tampa Electric respectfully requests that Allied/CFI's motion for reconsideration of the January 24th Order be denied.

DATED this 31st day of January 2001.

Respectfully Submitted

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and



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ATTORNEYS FOR Tampa Electric Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer in Opposition, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 31st day of January 2001 to the following:

Mr. Robert V. Elias*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

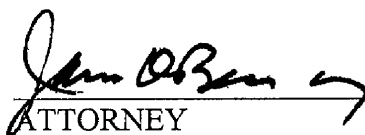
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