

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  
MARTIN P. McDONNELL

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

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

J. STEPHEN MENTON  
R. DAVID PRESCOTT  
HAROLD F. X. PURNELL  
GARY R. RUTLEDGE  
GOVERNMENTAL CONSULTANTS  
MARGARET A. MENDUNI  
M. LANE STEPHENS

February 7, 2001

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, FL 32399-0850

RECEIVED-FPSC  
01 FEB - 7 AM 10: 52  
RECORDS AND REPORTING

Re: Docket No.000061-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") are the original and fifteen copies of Allied/CFI's Motion for Protective Order as to Deposition of Robert M. Namoff.

Please acknowledge receipt of these documents by date stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

RECEIVED & FILED

14  
FPSC-BUREAU OF RECORDS

Sincerely,



John R. Ellis

APP \_\_\_\_\_  
CAF \_\_\_\_\_  
CMP \_\_\_\_\_ JRE/vp  
COM 3 Enclosures  
CTR \_\_\_\_\_ cc: Parties of Record  
ECR \_\_\_\_\_  
LEG 1  
OPC \_\_\_\_\_  
PAI \_\_\_\_\_  
RGO \_\_\_\_\_  
SEC 1  
SER \_\_\_\_\_  
OTH Kg

DOCUMENT NUMBER-DATE

01721 FEB-7a

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: February 6, 2001

**ALLIED/CFI'S MOTION FOR PROTECTIVE ORDER  
AS TO DEPOSITION OF ROBERT M. NAMOFF**

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 28-106.211, Florida Administrative Code, move for a protective order with respect to the deposition of Robert M. Namoff, and state:

1. The deposition of Allied's Chief Executive Officer, Mr. Robert M. Namoff, will be taken on Wednesday, February 7, 2001 beginning at 11:00 a.m., at the Florida Public Service Commission.

2. Two Allied/CFI witnesses recently gave deposition testimony in this case: Mr. Peter DeAngelis gave deposition testimony on February 1, 2001; and Mr. James W. Palmer, Chief Operating Officer of Allied/CFI, gave deposition testimony on February 1 and 2, 2001.

3. As a result of the protracted length of the depositions of Mr. DeAngelis and Mr. Palmer by counsel for Tampa Electric Company ("TECO") and counsel for Odyssey Manufacturing Company ("Odyssey"), and based upon comments made by TECO's counsel at

DOCUMENT NUMBER-DATE

01721 FEB-7 2001

FPSC-RECORDS/REPORTING

the agenda conference on February 6, 2001, concerning his intention to conduct the deposition of Mr. Namoff over a period of days, Allied/CFI requests a protective order limiting the time in which Mr. Namoff's deposition may be conducted to a period of six hours, concluding at 6:00 p.m. on Wednesday, February 7, 2001.

4. Pursuant to Rule 28-106.211, Florida Administrative Code, the presiding officer before whom a case is pending may issue any orders necessary to effectuate discovery, to prevent delay, and to promote the just, speedy, and inexpensive determination of all aspects of the case.

5. Pursuant to Rule 28-106.206, Florida Administrative Code, parties may obtain discovery through the means and in the manner provided in Rules 1.280 through 1.400, Florida Rules of Civil Procedure.

6. Rule 1.280(c), Florida Rules of Civil Procedure, provides in part as follows:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense that justice requires, including one or more of the following:  
. . . (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; . . . (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court. . . .

7. Rule 1.310(d), Florida Rules of Civil Procedure, provides in part as follows:

At any time during the taking of the deposition, on motion of any party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass or oppress the deponent or party. . . the court in which the action is pending. . . may order the officer conducting the examination to cease forthwith from taking the deposition or

may limit the scope and manner of the taking of the deposition under Rule 1.280(c).

8. The conduct of the depositions of Mr. DeAngelis and Mr. Palmer raise serious concerns about two matters: (1) protracted questioning into irrelevant subjects with the result that the depositions of these witnesses have required several hours, and in Mr. Palmer's case required testimony to be taken over parts of two days; and (2) inquiry into proprietary confidential business information and trade secrets of Allied/CFI which have been ordered to be disclosed to TECO and withheld from disclosure to Odyssey, in Order No. PSC-01-0231-PCO-EI issued January 24, 2001 in this proceeding.

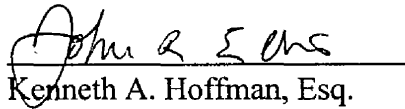
9. By agreement of counsel for the parties and Commission staff, a procedure was agreed to for both Mr. DeAngelis' and Mr. Palmer's depositions in which inquiry by TECO's counsel into certain proprietary confidential business information and trade secrets of Allied/CFI, which have been ordered to be disclosed to TECO but not to Odyssey, could be conducted outside the presence of Odyssey's counsel and representatives (subject to Odyssey's objection) and could be reported in a separate transcript of each deposition.

10. With respect to the deposition of Mr. Namoff, it is anticipated that there will be many subjects of inquiry by counsel for both TECO and Odyssey into matters which have been ordered to be disclosed to TECO but withheld from disclosure to Odyssey, which will require a procedure similar to that described above.

WHEREFORE, Allied/CFI requests that the prehearing officer issue an order: (1) limiting the time in which the deposition of Mr. Namoff may be conducted, to six hours on February 7, 2001, with the deposition to be terminated at 6:00 p.m. on February 7; and (2)

directing the parties to continue with their previously agreed procedure for questioning and reporting of testimony of Mr. Namoff by counsel for TECO, concerning certain proprietary confidential business information and trade secrets of Allied/CFI previously ordered to be disclosed to TECO only, to be conducted outside the presence of counsel for Odyssey and Odyssey's representatives subject to Odyssey's objection to that procedure.

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

Daniel K. Bandklayder, Esq.

Anania, Bandklayder, Blackwell,

Baumgarten & Torricella

Bank of America Tower, Suite 4300

100 Southeast Second Street

Miami, FL 33131-2144

(305) 373-4900 (Telephone)

(305) 373-6914 (Telecopier)

Philip A. Allen, III, Esq.

Lucio, Bronstein, Garbett, Stiphany & Allen,  
P.A.

80 S.W. 8<sup>th</sup> St., Suite 3100

Miami, FL 33131

(305) 579-0012 (Telephone)

(305) 579-4722 (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 Response in Opposition to Odyssey's Motion for Reconsideration was furnished by U. S. Mail or by hand delivery(\*) to the following this 7th day of February 2001:

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

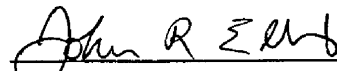
Lee L. Willis, Esq. (\*)  
James D. Beasley, Esq.  
Ausley & McMullen  
227 South Calhoun Street  
Tallahassee, Florida 32301

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

F:\USERS\ROXANNE\Allied\protective.mot.wpd