

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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, F.S., 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  
ORDER NO. PSC-01-0351-PCO-EI  
ISSUED: February 7, 2001

ORDER REQUIRING SUPPORT FOR CLAIM OF ATTORNEY-CLIENT PRIVILEGE  
AND WORK PRODUCT PRIVILEGE

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI. Odyssey Manufacturing Company (Odyssey) and Sentry Industries (Sentry) are intervenors. They are separate companies but have the same president. Allied, Odyssey and Sentry manufacture bleach.

On January 30, 2001, Allied submitted certain confidential information (Bates stamped pages 0000350-0000440), responsive to TECO's discovery requests, to the Commission. The information was accompanied by a Notice of Intent to Request Confidential Classification, in which attorney-client privilege and work product privilege was claimed for those documents.

Rule 1.280(b)(5), Florida Rules of Civil Procedure, require that when a party responds to a discovery request with a claim of privilege, the party shall describe the nature of the documents in a way that will enable other parties to assess the applicability of the privilege. When a party claims an attorney-client privilege or

DOCUMENT NUMBER-DATE

01730 FEB-7

FPSC-RECORDS/REPORTING

ORDER NO. PSC-01-0351-PCO-EI  
DOCKET NO. 000061-EI  
PAGE 2

work product privilege, that party carries the burden of proof to demonstrate that the documents meet the criteria for these privileges. See Southern Bell Telephone and Telegraph Co. v. J. Terry Deason, et al., 632 So. 2d 1377 (Fla. 1994).

Allied's notice does not describe the nature of the documents and does not explain why they should be privileged. Releasing privileged documents could cause irreparable harm to Allied. It is therefore appropriate to allow Allied to amend its notice to explain why the documents satisfy the criteria for the privileges asserted. Allied shall file an amendment to its notice by the close of business on February 9, 2001, if it wants the documents protected. I note that both TECO and Odyssey have been afforded the opportunity to amend confidentiality requests to satisfy the rule requirements in order to avoid production of sensitive information. Any motion for reconsideration of this Order must be filed by the close of business on February 8, 2001. Any response in opposition shall be filed by the close of business on February 12, 2001.

To inform TECO and Odyssey of the nature of the documents in question, a general description is provided below.

Hand written notes	0000350
List of businesses	0000351
Photographs	0000352-356
Correspondence between Mr. Bandklayder and Mr. Namoff dated April 1, 1999	0000357-373
Computer print-out from tax collection office	0000374-376
Correspondence between Mr. Bandklayder and Mr. Namoff dated April 15, 1999	0000377-380
Correspondence between Mr. Bandklayder and Mr. Namoff dated April 15, 1999	0000381-416

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ORDER NO. PSC-01-0341-PCO-EI  
DOCKET NO. 000061-EI  
PAGE 3

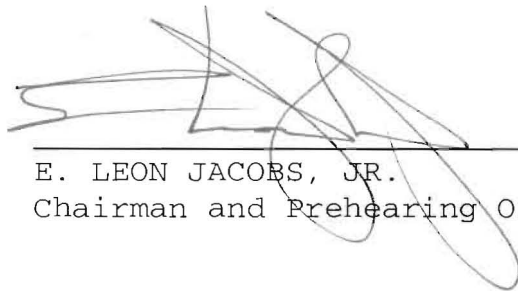
Correspondence between Mr. 0000417-440  
Bandklayder and Mr. Namoff  
dated April 29, 1999

Based on the foregoing, it is

ORDERED by E. Leon Jacobs, Jr., as Prehearing Officer and Chairman that Allied Universal Corporation and Chemical Formulators, Inc., shall file justification of its claims of attorney-client privilege and work product privilege with this Commission by the close of business on February 8, 2001. If such justification is not filed, the documents shall be provided pursuant to the discovery requests.

ORDERED that any motion for reconsideration of this Order must be filed by the close of business on February 8, 2001, and any response in opposition shall be filed by the close of business on February 12, 2001.

By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 7th day of February, 2001.



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E. LEON JACOBS, JR.  
Chairman and Prehearing Officer

( S E A L )

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as

ORDER NO. PSC-01-0351-PCO-EI  
DOCKET NO. 000061-EI  
PAGE 4

well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.