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February 12, 2001

**By Hand Delivery**

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

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RECORDS AND REPORTING

Re: Docket No.000061-EI


Dear Ms. Bayo:

Enclosed for filing on behalf of Allied/CFI is the original and fifteen copies of Allied/CFI's Revised Prehearing Statement.

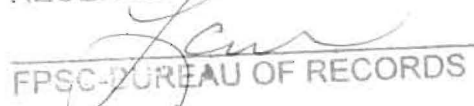
Please acknowledge this filing by date stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

  
John R. Ellis

APP          JRE/vp  
CAF          Enclosures  
CMP           
COM 3 cc: Parties of Record  
CTR           
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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: February 12, 2001

ALLIED/CFI'S REVISED PREHEARING STATEMENT

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, submit the following Revised Prehearing Statement pursuant to Rule 28-106.209, Florida Administrative Code.

**A. Appearances**

John R. Ellis, Esq.  
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Philip A. Allen, III, Esq.  
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80 Southwest Eighth Street, Suite 3100  
Miami, FL 33130

DOCUMENT NUMBER-DATE  
02003 FEB 12 5  
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**B. Witnesses**

<u>Witness</u>	<u>Direct and/or Rebuttal</u>	<u>Issues</u>
Robert M. Namoff	Direct and Rebuttal	1, 2, 3, 4, 5
Peter DeAngelis	Rebuttal	1
James W. Palmer	Rebuttal	2,3,4,5
Charles F. Phillips, Jr.	Rebuttal	1,2,3,4,5

Allied/CFI reserves the right to introduce the deposition testimony of all persons

who have given deposition testimony in this proceeding.

**C. Exhibits**

<u>Witness</u>	<u>I.D. No.</u>	<u>Description</u>
Robert M. Namoff	_____ RMN-1	July 30, 1999 Kvaerner Chemetics proposal to Allied
Robert M. Namoff	_____ RMN-2	July 12, 1999 NORAM proposal to Allied
Robert M. Namoff	_____ RMN-3	May 19, 1999 Georgia Power letter to Allied re: Power Requirements
Robert M. Namoff	_____ RMN-4	May 25, 1999 Georgia Power pricing offer to Allied
Robert M. Namoff	_____ RMN-5	June 2, 1999 letter from Namoff to Ashburn
Robert M. Namoff	_____ RMN-6	June 15, 1999 memo from Rodriguez to Namoff
Robert M. Namoff	_____ RMN-7	June 21, 1999 letter from Namoff to Rodriguez
Robert M. Namoff	_____ RMN-8	July 15, 1999 letter from Namoff to Rodriguez

Robert M. Namoff	_____	August 11, 1999 memo from Namoff to Rodriguez
	RMN-9	
Robert M. Namoff	_____	August 11, 1999 letter from Namoff to Rodriguez
	RMN-10	
Robert M. Namoff	_____	August 19, 1999 letter from Namoff to Rodriguez
	RMN-11	
Robert M. Namoff	_____	August 25, 1999 Affidavit of Robert Namoff
	RMN-12	
Robert M. Namoff	_____	October 18, 1999 letter from Rodriguez to Namoff
	RMN-13	
Robert M. Namoff	_____	November 6, 1999 letter from Allman to Davis Supply
	RMN-14	
Robert M. Namoff	_____	March 12, 1998 Allman memo re: Initial Customer Meeting
	RMN-15	
Robert M. Namoff	_____	September 4, 1998 Contract Service Agreement between TECO and Odyssey
	RMN-16	
Robert M. Namoff	_____	Letters and memos from Patrick Allman to Steve Sidelko dated March 14, 1998; March 24, 1998; April 3, 1998; April 17, 1998; May 11, 1998; May 14, 1998; June 4, 1998; June 4, 1998; June 9, 1998; June 11, 1998; and June 20, 1998.
	RMN-17	
Robert M. Namoff	_____	Allman memos entitled Bleach Plant Executive Summary-Update as of 6/7/98; Update as of (date illegible).
	RMN-18	
Robert M. Namoff	_____	March 27, 1998 memo from P.H. Allman to Project Team re: Potential New Industrial Customer-Bleach Plant.
	RMN-19	
Robert M. Namoff	_____	Robert M. Namoff files re: planning of Allied/CFI's proposed new plant.
	RMN-20	

Peter DeAngelis	_____	Resume of Peter DeAngelis
	PD-1	
Charles F. Phillips, Jr.	_____	Qualifications of Charles F. Phillips, Jr.
	CFP-1	
Charles F. Phillips, Jr.	_____	May 6, 1999 memo from Laura Rector to P.D. Gates re: CISR/RIM Analysis Information Needs
	CFP-2	
Charles F. Phillips, Jr.	_____	Handwritten notes of Lawrence R. Rodriguez re: Discrimination
	CFP-3	

All exhibits used in cross-examination of witnesses by deposition will be filed with the original transcripts of the depositions and will be identified therein. Allied/CFI reserves the right to utilize additional exhibits for cross-examination at the hearing.

**D. Basic Position**

TECO discriminated in favor of Odyssey and against Allied/CFI in its responses to Allied/CFI's and Odyssey's requests for CISR tariff rates. The CISR tariff authorizing TECO to negotiate contracts with qualifying applicants does not supersede the terms of Sections 366.03, 366.06(2) and 366.07, Florida Statutes, prohibiting a utility from giving any undue or unreasonable preference or advantage to any person and from subjecting any person to any undue or unreasonable prejudice or disadvantage with respect to rates, terms and conditions for electric service. TECO's conduct was in violation of those statutes and was in violation of its obligation of good faith under Order No. PSC-98-1081A-FOF-EI in exercising its discretion in offering CISR tariff rates to applicants who comply with the conditions of the tariff.

Odyssey's 1998 request for CISR tariff rates did not comply with the conditions of Order No.

PSC-98-1081-FOF-EI and the conditions of the CISR tariff requiring an applicant to demonstrate the existence of a viable lower cost alternative to taking electric service from TECO. The Commission should suspend Odyssey's rates pending investigation and determination of appropriate rates for the provision of electric service by TECO to Odyssey.

Allied/CFI is entitled to an offer of CISR tariff rates, terms and conditions that, at a minimum, does not discriminate against it and in favor of Odyssey.

TECO's and Odyssey's conduct has caused damages to Allied/CFI which may be recovered in a court of law. Because the Commission has primary jurisdiction to determine the appropriate rates for the utility service at issue but has no jurisdiction to determine or award damages, the only claims presented by Allied/CFI for determination in this proceeding are those stated in the following five issues.

**E. Issues and Positions**

ISSUE 1: Has TECO acted in violation of its CISR tariff, Commission Order No. PSC-98-1081A-FOF-EI or relevant sections of the Florida Statutes in its response to Odyssey's request for CISR tariff rates?

Allied/CFI: Yes. Odyssey's request did not comply with the requirements of Order No. PSC-98-1181-FOF-EI and the CISR tariff providing that an applicant must demonstrate the existence of a viable lower cost alternative to taking electric service from TECO and must provide documentation of that alternative. TECO committed to the rate requested by Odyssey within the first 24 hours after that request was made, on March 12, 1998, four months before TECO filed for approval of the CISR tariff on June 4, 1998. Odyssey never demonstrated any viable lower cost alternative to taking electric service from TECO and never provided any documentation of any such alternative

ISSUE 2: Has TECO acted in violation of its CISR tariff, Commission Order No. PSC-98-1081A-FOF-EI or relevant sections of the Florida Statutes in its response to Allied/CFI's request for CISR tariff rates?

Allied/CFI: Yes. TECO was advised by Allied/CFI from the outset of their dealings that Allied/CFI was seeking the same terms for electric service to Allied/CFI's proposed new liquid chlorine bleach manufacturing facility that TECO had offered for service to Odyssey's new liquid chlorine bleach manufacturing facility. TECO's conduct in misrepresenting its willingness and ability to offer non-discriminatory terms to Allied/CFI, in delaying any offer to Allied/CFI for six months, and in ultimately offering only discriminatory rates, terms and conditions to Allied/CFI, was in violation of the tariff, the Order, and Sections 366.03, 366.06(2), and 366.07, Florida Statutes.

ISSUE 3: Do the differences, if any, between the rates, terms and conditions stated in TECO's letter of October 18, 1999 to Allied/CFI and those agreed to between TECO and Odyssey constitute a violation of TECO's CISR tariff, Commission Order No. PSC-98-1081A-FOF-EI or relevant sections of the Florida Statutes in its response to Odyssey's request for CISR tariff rates?

Allied/CFI: Yes. The differences are substantial and significant with respect to the initial rates, the annual escalation terms, and the provision of interruptible service between the two offers, in addition to other cost items. Fundamentally, TECO worked to attract Odyssey's business and to reject Allied/CFI's business.

ISSUE 4: Based on the resolution of Issues 1-3, what actions, if any, should the PSC take with respect to Odyssey, Allied/CFI and TECO?

Allied/CFI: The Commission should: (1) suspend the rates agreed to between TECO and Odyssey, pending investigation and determination of the appropriate rates for TECO's provision of electric service to Odyssey; and (2) order TECO to offer CISR tariff rates, terms and conditions for service to Allied/CFI which are appropriate to the service requested by Allied/CFI and which, at a minimum, do not discriminate in favor of Odyssey and against Allied/CFI.

Issue 5. Does Allied/CFI have standing to maintain its complaint in this proceeding?

Allied/CFI: Yes. The prohibitions stated in Sections 366.03, 366.06(2) and 366.07, Florida Statutes, against granting undue or unreasonable preference in favor of any person and against subjecting any person to undue or unreasonable prejudice and disadvantage with respect to rates for electric service, are intended to protect businesses against discrimination by monopoly providers of utility service in favor of their business competitors.

**F. Stipulations**

None at this time.

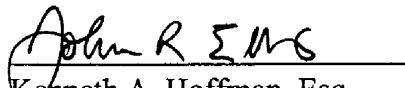
**G. Pending Motions**

Allied/CFI will be filing a motion for protective order with respect to the documents produced to TECO in response to Request No. 3 of TECO's First Request for Production of Documents (Nos. 1-12).

**H. Other Matters**

None at this time.

Respectfully submitted,



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Chemical Formulators, Inc.



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Revised Prehearing Statement was furnished by facsimile telecopier to the following this 12<sup>th</sup> day of February, 2001:

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