

ORIGINAL

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, 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

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RECORDS AND REPORTING

INTERVENORS' RESPONSE TO ALLIED/CFI'S SECOND MOTION FOR EXTENSIONS OF TIME FOR FILING OF RESPONSES TO MOTION TO STRIKE AND MOTION FOR SUMMARY FINAL ORDER

ODYSSEY MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC.

(collectively referred to as "Intervenors"), by and through undersigned counsel, hereby file this Intervenors' Response to Allied/CFI's Second Motion for Extensions of Time for Filing of Responses to Motion to Strike and Motion for Summary Final Order¹, and in support thereof would state and allege as follows:

1. While it is true that the parties have been engaged in certain discussions about the possibility of settling this case, as of the date of filing this Response the Intervenors are not a party to any settlement to this case and do not consider this case settled. The discussions which took place on the record after the hearing convened on February 19, 2001, contemplated that in the event that

the case was not settled by Friday of that week (February 23, 2001) TECO's Motion to Dismiss would be heard by the panel at the Agenda Conference scheduled for March 13, 2001. When it

¹ This Response does not address that portion of the Motion which requests an extension of time to respond to the Motion to Strike. Intervenors have agreed not to oppose that particular request.

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became apparent that the case would not be settled within that time frame, Intervenors filed and served its Motion for Summary Final Order. Consistent with the spirit and intent of the Chairman's February 19, 2001 directive, Intervenors' Motion should be addressed by this Commission at that same Agenda Conference.

2. Distilled to its essence, the motion of Allied/CFI reveals on its face that the time has passed for any response to the Motion for Summary Final Order. With regard to the Motion for Summary Final Order, Allied's "Motion for an Extension of Time" is, in effect, a response and no further response should be entertained or accepted by this Commission.

3. It is the height of irony for Allied\CFI to claim in their motion that the Motion for Summary Final Order should be "summarily rejected or stricken" because Rule 28-106.204 Fla. Admin. Code, "by its terms does not contemplate or provide for the filing of a motion for summary final order after a final hearing has begun". It is clear from a review of the Rule that one cannot respond to a pending motion merely by attempting to substitute a "request for more time" (filed on the day the response is due and opposed by another party) in place of an actual substantive response. This Commission should not, *ex post facto*, grant additional time to a party to respond to a pending motion when the time for response has long passed.²

4. Allied/CFI is incorrect when it concludes that the Motion for Summary Final Order is subject to being summarily rejected or stricken as untimely. Not only does the rule say nothing

² Intervenors have attempted to cooperate in the settlement process. Intervenors agreed that no response should be due to any pending motions during the week of February 19, 2001, as discussed at the time of hearing. Additionally, Intervenors unilaterally agreed to extend the time in which Allied/CFI would have to respond to the Motion for Summary Final Order from February 28 to March 2, 2001. However, Intervenors refused any further extension based on the fact that settlement discussions were not progressing at the pace the parties had projected at the February 19th hearing, and based upon the fact that the Complainants are represented by large and sophisticated law firms who can assumably turn their attention to more than one task at a time.

of the sort (and, presumably, the drafters would have known how to insert such a limitation if they had so chosen), but Rule 28-106.204(4) expressly provides that any party may move for Summary Final Order *whenever* there is no genuine issue as to any material fact. The American Heritage Dictionary defines the word “whenever” as meaning “at whatever time”. At this moment in time, there is no genuine issue as to any material fact regarding Allied/CFI’s standing. Therefore, any party may move for summary final order on that issue *whenever* they so choose.

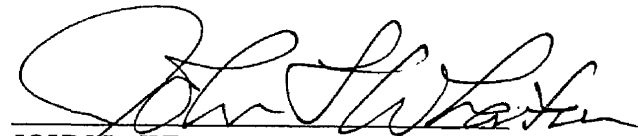
5. Additionally, and in the alternative, Allied/CFI’s “motion” for extension of time is actually a response. It makes an argument, albeit an incorrect and unsubstantiated one, that the Motion for Summary Final Order is untimely. This is not a statement that should be included in a pleading (even one that has been filed too late to be effective) requesting more time to respond to a motion. It is substantive argument and should be taken by this Commission as Allied/CFI’s only allowable response to the Motion for Summary Final Order.

WHEREFORE, and in consideration of the above, Intervenors request the Commission deny Allied/CFI’s motion for extension of time and determine that the time has passed for any further response to the Motion for Summary Final Order.

Dated this 5th day of March, 2001.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Intervenor's Response to Allied/CFI's Second Motion for Extensions of Time for Filing of Responses to Motion to Strike and Motion for Summary Final Order has been furnished by either Hand Delivery (*) or Facsimile and U.S. Mail to the following on this 5th day of March, 2001:

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