



Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: March 28, 2001
TO: All Parties of Record in Docket No. 000061-EI
FROM: Robert V. Elias, Chief of Electric & Gas, Division of Legal Services
Elisabeth J. Draper, Regulatory Analyst, Division of Economic Regulation
RE: Proposed Settlement Agreement

RVE
EJD

VIA FACSIMILE

Pursuant to our conference call of March 27, 2001, the following is a summary of the clarifications/changes/corrections discussed yesterday afternoon:

Paragraph 1. Allied has agreed to provide at least portions of the force majeure clause to Odyssey. This could eliminate Odyssey's objection to the lack of an opportunity for cross-examination.

All parties have agreed that in addition to the pre-filed testimony, exhibits and deposition transcripts, all discovery responses will be made part of the record. This will address staff's concerns about the sufficiency of the information to support the findings of prudence with respect to these two Contract Service Agreements (CSA).

All documents made part of the record are subject to the requirements of Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. To the extent that there has not been a request for specified confidential treatment for a particular document, it is incumbent on the party seeking to protect that document to make a request in compliance with Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code. With respect to the deposition transcripts, each party will file a request for confidential classification, to the extent it deems appropriate, for the appropriate portions of the deposition transcripts of its witnesses. Any request for confidential treatment shall be filed within 21 days of the Commission's vote to approve the Settlement Agreement. All parties will, consistent with the provisions of Rule 25-22.006, Florida Administrative Code, have an opportunity to respond to or supplement any request for confidential treatment.

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Paragraph 4. Tampa Electric Company believes that each subparagraph affords some protection from anti-trust liability. Staff takes no position on that question, but with that information, the paragraph is acceptable to staff. With the inclusion in the record of this proceeding of all the discovery responses, staff believes that there is sufficient information to conclude that both Odyssey and Allied were/are "at risk" within the meaning of Order No. PSC-98-1081-FOF-EI, issued August 10, 1998, in Docket No. 980706-EI. Further, based on the RIM analyses provided by Tampa Electric Company, staff believes there is sufficient information to conclude that the rates

offered to Odyssey and Allied exceed the incremental cost to serve those customers. Accordingly, staff recommends that the requested findings are supported by competent substantial evidence and should be approved. Further, the parties agree that the correct order number is the first line of paragraph 4 is PSC-98-1081-FOF-EI.

Paragraph 5. Allied indicates that it believes the Findings in Paragraphs 4 and 7 do not address the allegations of Allied's Complaint. Staff takes no position on that question, but with that information, this paragraph is acceptable to staff.

Paragraph 7. a. The parties clarified that the importance of this paragraph is to settle, for all time, the prudence of these two CSA's. Staff agrees that, based on the findings in paragraph 4, this is appropriate. This is consistent with past Commission decisions concerning prudence and the doctrine of administrative finality. This does not foreclose any other party from asserting any right they may have concerning the CISR tariff.

b. Staff's reference in the recommendation to Order No. PSC-01-0390-TRF-EI is only for the purpose of illustrating that the Commission has made a similar determination with respect to reporting the revenue shortfall for Gulf's CSA's and for no other reason.

c. The parties clarified that what has no precedential value is the settlement agreement.

d. The parties clarified that they understand and agree with the concern expressed by staff in its recommendation. The Commission can only enforce any General Release to the extent that a party brings claims before the Commission which the Commission determines are within the Commission's jurisdiction.

Paragraph 10. As stated previously, Allied has agreed to disclose portions of the force majeure clause to Odyssey. Further, the parties recognize that confidential treatment is only available after the requisite showing pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

To the extent that any of the foregoing constitutes a modification of the settlement agreement, the parties waive the requirement of paragraph 11 that requires the signature of the parties.

With the foregoing clarifications/changes/corrections, staff will recommend that the settlement agreement be approved.

RVE:csc
xc: Division of Records and Reporting

Status	Date	Time	Size	To/From
Sent	Mar/28/01	4:07PM	3 pgs	John Ellis
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