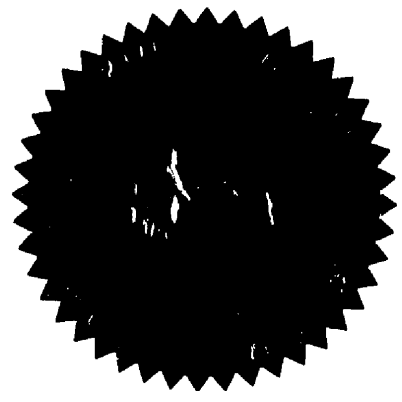


**BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION**

**DOCKET NO. 000061-EI**

**In the Matter of**

**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.**



**ELECTRONIC VERSIONS OF THIS TRANSCRIPT  
ARE A CONVENIENCE COPY ONLY AND ARE NOT  
THE OFFICIAL TRANSCRIPT OF THE HEARING  
AND DO NOT INCLUDE PREFILED TESTIMONY.**

**PROCEEDINGS: AGENDA CONFERENCE  
ITEM NO. 33**

**BEFORE: CHAIRMAN E. LEON JACOBS, JR.  
COMMISSIONER LILA A. JABER  
COMMISSIONER BRAULIO L. BAEZ**

**DATE: Tuesday April 3, 2001**

**TIME: Commenced at 2:25 p.m.  
Concluded at 2:45 p.m.**

**PLACE: Betty Easley Conference Center  
Room 148  
4075 Esplanade Way  
Tallahassee, Florida**

**REPORTED BY: KORETTA E. STANFORD, RPR  
Official FPSC Reporter**

1 **PARTICIPATING:**

2 **MARLENE STERN and BOB ELIAS, FPSC Division of**  
3 **Legal Services.**

4 **ELIZABETH DRAPER, FPSC Division of Safety &**  
5 **Electric Reliability.**

6 **JOHN R. ELLIS and KENNETH HOFFMAN, Rutledge,**  
7 **Eccenia, Purnell & Hoffman, representing Allied Universal**  
8 **Corporation and Chemical Formulators, Inc.**

9 **HARRY LONG and JAMES D. BEASLEY representing**  
10 **Tampa Electric Company.**

11 **WAYNE SCHIEFELBEIN, representing Odyssey**  
12 **Manufacturing Company and Sentry Industries, Inc.**

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**PROCEEDINGS**

**CHAIRMAN JACOBS: Item 33.**

**MR. LONG: Mr. Chairman, Commissioners, good afternoon.**

**CHAIRMAN JACOBS: Why don't we let Staff introduce it.**

**MR. LONG: Okay.**

**CHAIRMAN JACOBS: We have to wait for Staff to get in for this one.**

**MS. STERN: Item 33 is Staff's recommendation to approve a settlement agreement in docket 000061-EI. The parties are here to speak.**

**CHAIRMAN JACOBS: Who wants to do the honors? Mr. Long.**

**MR. LONG: I'll start, Mr. Chairman.**

**Good afternoon. As you know, the parties have been working on this case for over 13 months. The case was first filed back in January of 2000. At the direction of the Commission, the parties have made earnest attempts over the last six months to try to reach agreement. As you know, we attempted mediation back in November, and that did not prove to be fruitful. At the February 19th hearing, the parties once again made an effort to try to settle and at that point were able to achieve a settlement in principle.**

1           **I'm pleased to say that we're before you today**  
2 **to report that Allied and Tampa Electric have reached**  
3 **agreement on all matters at issue in this case, as a**  
4 **result of very focused efforts over the last six weeks.**  
5 **We believe that the agreement benefits all parties and**  
6 **provides significant benefits to our ratepayers.**

7           **As reported, the Staff is recommending that the**  
8 **settlement and the underlying CSA be approved. Let me**  
9 **just take a moment to walk through the basic elements of**  
10 **the settlement. They're essentially the same as those**  
11 **that I described on the record on February 19th.**

12           **The first element is that all of the prefiled**  
13 **testimony, deposition testimony and exhibits thereto, as**  
14 **well as all of the discovery responses provided by Tampa**  
15 **Electric, would be admitted into evidence in this**  
16 **proceeding.**

17           **The second element of the settlement is that**  
18 **Tampa Electric and Allied have negotiated a CSA, which is**  
19 **substantially the same as the CSA negotiated with Odyssey.**  
20 **This last part of the settlement took us a little bit of**  
21 **extra time, and we appreciate the Commission's patience in**  
22 **giving us the extra time that we needed to work through**  
23 **the issues on the CSA.**

24           **The third element of the settlement is that**  
25 **there would be no further challenge before this Commission**

1 by Allied/CFI with regard to the rates, terms and  
2 conditions for electric service provided by Tampa Electric  
3 to Odyssey.

4 The fourth provision of the settlement is that  
5 the Commission, if it accepts the Staff's recommendation,  
6 would make the following findings of fact in its order,  
7 hopefully, approving the settlement.

8 The first finding of fact would be that both the  
9 existing Odyssey CSA and the proposed Allied/CFI CSA  
10 provide benefits to Tampa Electric's general body of  
11 ratepayers; and therefore, the Commission finds that both  
12 CSAs are in the best interest of ratepayers.

13 The second proposed finding of fact would be  
14 that the Commission finds that Tampa Electric's decision  
15 to enter into the Odyssey CSA and the CSA itself were  
16 prudent within the meaning of order number 98-1081-FOF-EI,  
17 insofar as they provide benefits to Tampa Electric's  
18 general body of ratepayers.

19 CHAIRMAN JACOBS: Now, I had a brief question  
20 about that. We're making that determination as to your  
21 agreement with Odyssey.

22 MR. LONG: That's one finding of fact, that's  
23 correct, Mr. Chairman.

24 CHAIRMAN JACOBS: The simple concern I had is  
25 this docket was open pursuant to Allied's CSA. And I have

1 a bit of hesitancy setting a precedent -- although I'm  
2 okay with it in this docket, I have a bit of hesitancy in  
3 setting a precedent, but we'll go back and rule -- have  
4 prudence findings on a CSA that's already in place, that's  
5 already been approved.

6 MR. LONG: Mr. Chairman, one point I should make  
7 is that one of Allied's contentions in this proceeding was  
8 that Odyssey was ineligible for a CSA and part of the  
9 relief requested by Allied was that Odyssey's CSA be  
10 withdrawn.

11 CHAIRMAN JACOBS: Right.

12 MR. LONG: And, in fact, that CSA was not  
13 presented to the Commission prior to this proceeding for  
14 review with regard to its prudence.

15 CHAIRMAN JACOBS: Okay.

16 MR. LONG: So, given those facts, I think, the  
17 finding is arguably appropriate.

18 CHAIRMAN JACOBS: I can agree.

19 MR. ELIAS: My response was going to be  
20 substantially similar, that the prudence of Odyssey's CSA  
21 was placed at issue in this proceeding, and there's no  
22 question but that it was of an issue that was before the  
23 position.

24 CHAIRMAN JACOBS: Very well.

25 MR. LONG: The third finding of fact would be

1 that the Commission finds that Tampa Electric's decision  
2 to enter into the Allied/CFI CSA and the CSA itself were  
3 prudent within the meaning of order number 98-1081-FOF-EI,  
4 insofar as they provide benefits to Tampa Electric's  
5 general body of ratepayers.

6           The next element of the settlement that we've  
7 reached is that Allied/CFI agrees not to contest the  
8 findings of fact and rulings and determination requested  
9 in Paragraph 4 above, which I just mentioned, and in  
10 Paragraph 7 below, which I'll cover in a moment, provided  
11 that no findings of fact or conclusions of law shall be  
12 made with respect to the allegations of Allied/CFI's  
13 complaint in this proceeding.

14           And as clarified in our discussions with the  
15 Staff, Allied/CFI takes the position that the findings of  
16 fact that I just read in Paragraph 4 and those that are  
17 covered in 7, do not pertain to its allegations in this  
18 proceeding.

19           The next provision of the settlement is that  
20 Allied/CFI's complaint before the Commission shall be  
21 deemed withdrawn with prejudice upon the execution of the  
22 settlement agreement by TECO and Allied, which has already  
23 occurred and the issuance of an order by this Commission  
24 approving the settlement agreement as proposed.

25           Finally, the parties request that the Commission

1 include in its order approving the settlement the  
2 following rulings and determinations: First, that the  
3 Commission will not entertain any further challenge to the  
4 existing Odyssey or the proposed Allied/CFI CSA or the  
5 rates, terms and conditions contained therein.

6           The second proposed ruling is that in light of  
7 the above findings that both CSAs are prudent and in the  
8 best interest of ratepayers, Tampa Electric shall be  
9 relieved of any further obligation to report on its  
10 surveillance report the potential impact on revenues of  
11 these two CSAs. And in the Commission order accepting  
12 Tampa Electric's CISR tariff, this conclusion was to  
13 follow upon a finding of prudence with regard to CSAs  
14 executed under the CISR tariff.

15           The next part of the ruling would be that the  
16 Commission order approving the settlement shall have no  
17 precedential value. And again, in discussions with Staff,  
18 we have clarified this point to specify that the  
19 settlement itself will have no precedential value which  
20 is, I think, the usual treatment of settlements before the  
21 Commission. Allied/CFI has, in fact, executed a general  
22 release agreement, a copy of which has been attached to  
23 the settlement, which has been filed with the Commission.

24           And, I guess, the final element of any substance  
25 is that Tampa Electric has agreed not to disclose to



1 **Odyssey or Sentry, absent Commission authorization,**  
2 **certain provisions contained in the proposed Allied CSA,**  
3 **in particular with regard to force majeure.**

4 **Commissioners, we've also filed on a**  
5 **confidential basis the proposed Allied CSA itself. We**  
6 **took the extra time to try to iron out all of the**  
7 **potential issues so that there would be nothing remaining**  
8 **and we could face the future with a fresh page.**

9 **We appreciate all of your time and effort in**  
10 **this case and we appreciate all of the efforts of the**  
11 **Staff and we, respectfully, request that you act favorably**  
12 **with regard to the Staff's recommendation.**

13 **CHAIRMAN JACOBS: Very well. No comments?**  
14 **Mr. Ellis.**

15 **MR. ELLIS: Thank you, Chairman Jacobs.**

16 **On behalf of Allied/CFI, John Ellis and Kenneth**  
17 **Hoffman of the Tallahassee law firm of Rutledge, Eccenia,**  
18 **Purnell & Hoffman, on behalf of Allied/CFI I'd like to**  
19 **take this opportunity to thank the Commission and Staff**  
20 **for having been able to come to this forum to litigate our**  
21 **claim, that as between two qualifying CISR tariff**  
22 **applicants who are business competitors of each other,**  
23 **that offers of rates, terms and conditions for electric**  
24 **service should not discriminate in favor of one business**  
25 **competitor against the other.**

1           **This case presented challenging issues of first**  
2 **impression involving confidentiality of negotiations**  
3 **conducted pursuant to Tampa Electric's CISR tariff, and**  
4 **you and your Staff were willing to and did devote as much**  
5 **time and energy as was needed to resolve those issues.**  
6 **Again, on behalf of Allied and CFI, we thank you for the**  
7 **opportunity to have been able to litigate these issues to**  
8 **a resolution that's acceptable to us and to Tampa**  
9 **Electric.**

10           **I'd also like to take this opportunity to**  
11 **briefly address the objection that I understand that the**  
12 **intervenors, Odyssey and Sentry, make to this settlement.**  
13 **As I understand it, Odyssey's objection is that they**  
14 **cannot agree or disagree with one term of the Contract**  
15 **Service Agreement between Tampa Electric and Allied, which**  
16 **is Exhibit A to the settlement agreement, because they**  
17 **have not been permitted to see all of that term, and that**  
18 **term is the force majeure clause.**

19           **I would make three points in response to that**  
20 **objection. The first is to quote from part of the**  
21 **prefiled direct testimony of Odyssey's and Sentry's**  
22 **President and Chief Executive Officer, Mr. Sidelko, Page 4**  
23 **of his testimony filed in June in this proceeding,**  
24 **Mr. Sidelko said, "With respect to Allied's deal with**  
25 **TECO, we do not care whether, compared to us, they get the**

1 same deal, a comparable deal, a better deal, or a worse  
2 deal. It is simply not any of Odyssey's business." And  
3 Mr. Sidelko affirmed that that was Odyssey's and Sentry's  
4 position in his testimony in December in this case.

5 The second point is that the force majeure  
6 clause is unique to Allied's Contract Service Agreement,  
7 because Allied, alone, is under an obligation to complete  
8 construction of its plant within 24 months and, therefore,  
9 has need of a force majeure clause.

10 And the third point I would make is that at the  
11 hearing on February 19th, Odyssey requested the  
12 opportunity to be advised of as much of the force majeure  
13 clause as could confirm that the escalation terms of both  
14 Contract Service Agreements would become effective in  
15 Allied's Contract Service Agreement, notwithstanding any  
16 declaration of an issue of force majeure. And that  
17 appears as Pages 52 and 53 of the transcript of the  
18 proceedings on February 19th. Allied has provided  
19 confirmation of that fact to Odyssey.

20 Having made those comments, I will conclude by  
21 saying that we support Staff's recommendation that the  
22 settlement be approved. Thank you.

23 CHAIRMAN JACOBS: Mr. Schiefelbein.

24 MR. SCHIEFELBEIN: Good afternoon,  
25 Commissioners. Very unusual for me to have to play the

1 fly in the ointment here before you, but I'll try to  
2 fulfill that unfamiliar role today. I'm sure that you're  
3 all aware that Odyssey and Sentry are not parties to this  
4 settlement agreement and so when Mr. Long repeatedly  
5 indicated the parties have agreed, the parties support,  
6 the parties do this and that, that he certainly was not  
7 referring to us. I'm sure he meant the parties to the  
8 settlement agreement.

9           **And we filed -- in the six weeks it's been since**  
10 **the last attempt at a hearing prior to receiving the**  
11 **actual settlement agreement and the CSA, we were asked to**  
12 **and we did file comments on March 20th with the**  
13 **Commission, four pages of comments, which I won't put you**  
14 **all through today, except to draw your attention to them.**

15           **I think, they were fairly prescient, as far as**  
16 **indicating what we thought was going to be filed, what we**  
17 **thought we were going to be permitted to see and not see,**  
18 **and that states our problems at some length.**

19           **COMMISSIONER JABER: Mr. Schiefelbein, clarify**  
20 **for me now what you have not been able to see.**

21           **MR. SCHIEFELBEIN: Well, essentially, setting**  
22 **aside one moment, we have not been provided with a copy of**  
23 **Exhibit B to the contract which, I think, is a nonissue.**  
24 **I'm almost inclined to take on faith representations made**  
25 **to me that those are a passel of tariff sheets and related**

1 items, but to quote Commissioner Gunter, I guess, in God  
2 we trust, in all others we audit, and we would like to be  
3 provided with that Exhibit B. And it's my understanding  
4 that neither Mr. Long or Mr. Ellis really have an  
5 objection to that. It's just perhaps an oversight, and we  
6 would expect to see that.

7           There are certainly some redactions in Allied's  
8 CSA that we don't challenge that we think accord to them  
9 or attempt to accord to them comparable confidential  
10 protection as that afforded to Odyssey's CSA. But the two  
11 items that have caught my attention are the guaranteed  
12 consumption paragraph where, in our agreement, there is  
13 perhaps two lines with a couple of small redactions. In  
14 theirs, there's approximately an 8-line redaction.

15           I've discussed this with the parties, the other  
16 parties, and they have given me assurances that that is  
17 merely the statements of a formula to determine what the  
18 guaranteed consumption would be, given the fact that we're  
19 not dealing with any existing or, specifically, planned  
20 facilities. That may well be the case. We may, in fact,  
21 not have a problem with that formula. We may, in fact,  
22 have a problem with that formula in that it would give  
23 some sort of an undue advantage to Allied. We're in the  
24 dark.

25           I think, more importantly is the force majeure

1 **clause. As I indicated at the February 19th proceeding,**  
2 **and in light of my experience in the gas area, I have**  
3 **learned that force majeure can be defined to mean**  
4 **anything. And there is approximately three quarters of**  
5 **the page total of the force majeure clause that has been**  
6 **redacted that we have not been able to see, and there is**  
7 **no telling what might have been loaded into that, what**  
8 **sort of excuses that may play out this -- the**  
9 **effectiveness of the rate and so forth that may come into**  
10 **effect. So, we need to see the force majeure clause. We**  
11 **need to go through some orderly process.**

12 **Now, all of which, I think, can be played out in**  
13 **the arena of it's incumbent upon these other parties to**  
14 **file a formal request for confidential classification.**  
15 **And under your rules, we have an opportunity to file a**  
16 **response to that and take our best shot at why we ought to**  
17 **be able to see it in response to their arguments and why**  
18 **we shouldn't. But the fly, the real fly in the ointment,**  
19 **the problem here is that if you vote to approve the**  
20 **settlement agreement as it is, we may find out a month or**  
21 **two from now that there's something injurious to us in**  
22 **those redacted portions of the agreement, but the**  
23 **settlement agreement, as written today, says that we are**  
24 **forever foreclosed from challenging Allied's CSA.**

25 **And I would like to very calmly suggest to you**

1 all that you cannot foreclose our rights without giving us  
2 a point of entry, without giving us an opportunity to  
3 either see those redacted portions or an opportunity to  
4 litigate out whether we should be able to see them. And  
5 if we are able to see them then, if necessary, to mount  
6 the challenge to Allied's CSA. So that, in a nutshell, is  
7 the problem we have today.

8           There are other misgivings that I hope to  
9 briefly cover at the tail end of my comments, and I'd like  
10 to offer a possible solution, and that would be that any  
11 – that it be recognized by the Commission that any  
12 challenge – if any challenge is ever offered by Odyssey,  
13 that it would be limited to those portions of the CSA that  
14 we have not been permitted to see.

15           And, I think, you can enter a decision today  
16 that would give everyone what they want with carving out  
17 that small exception. And that's the indulgence that we  
18 ask, but we do – if you're not inclined to accept that  
19 sort of an offer, we would just like to go on record as  
20 saying you cannot foreclose our rights to challenge that  
21 which we have not been permitted to see and that which  
22 we've been granted absolutely no due process.

23           I think, the only other point that need be made  
24 today is in reference to paragraph number one of the  
25 settlement agreement itself, which indicates that all

1 prefiled testimony, deposition testimony, and exhibits  
2 thereto which have been filed in the case shall be moved  
3 into evidence. I'm paraphrasing loosely. We would like  
4 to very calmly state our objection to the admission into  
5 evidence of scandalous, irrelevant, and defamatory  
6 allegations made by primarily Mr. Namoff and also  
7 secondarily by Mr. Palmer, in Mr. Namoff's prefiled  
8 testimony and in Mr. Namoff's and Mr. Palmer's  
9 depositions.

10 My client's reputation, certainly there's been a  
11 major concerted attempt to damage it. We think those  
12 statements are actionable, since they are irrelevant to  
13 any finding or decision being made by the Commission in  
14 this case, and we object to their admission into the  
15 record. And that would be my initial comments.

16 Thank you very much.

17 CHAIRMAN JACOBS: Thank you. Staff?

18 MS. STERN: I think, the comments that we made  
19 in our recommendation stand. I don't have anything to add  
20 to them at this time.

21 CHAIRMAN JACOBS: Okay.

22 COMMISSIONER JABER: How do you address, though,  
23 Mr. Schiefelbein's concern that if we accept the  
24 settlement agreement, he's precluded from ever challenging  
25 the CISR tariff?



1           **MR. ELIAS:** Well, as a starting point, I would  
2 note that one of the issues that's been identified in this  
3 proceeding is Allied's standing to challenge Odyssey's CSA  
4 and Odyssey is the party that raised that issue, and  
5 Odyssey has also moved to dismiss Allied's complaint and  
6 the question of whether or not they now are being denied  
7 some substantive due process right to challenge that  
8 Allied's CSA appears to be at odds with some of the  
9 previous positions that they've taken in this case with  
10 respect to the right of the third party to challenge in an  
11 agreement between a utility and an eligible customer.

12           **COMMISSIONER JABER:** Okay. That notwithstanding  
13 that they might have had a different argument earlier in  
14 the case, legally, if we accept the settlement agreement  
15 are we forever precluding their challenging this tariff?

16           **MR. ELIAS:** We are making decisions here that  
17 are no different from any other Commission determination  
18 of prudence. We are saying --

19           **COMMISSIONER JABER:** You're making a decision  
20 here that will affect Odyssey's substantial interest?

21           **MR. ELIAS:** I don't believe so.

22           **COMMISSIONER JABER:** Okay.

23           **MR. ELIAS:** But we are making decisions about  
24 the prudence of these two agreements, and that is no  
25 different than what we do in every other prudence

1 determination. And we're satisfied that based on the  
2 information that will be part of the record that we have a  
3 basis to find that these two customers were at risk within  
4 the meaning of the tariff and that the rates that are  
5 being offered or charged exceed the incremental cost to  
6 serve those customers.

7 CHAIRMAN JACOBS: Any other questions,  
8 Commissioners?

9 COMMISSIONER JABER: Did you not know about  
10 Odyssey's objections? Is that it?

11 MR. ELIAS: With respect to the testimony, I  
12 think, they're referenced in on page --

13 COMMISSIONER JABER: And also the  
14 confidentiality, not being able to look at a couple of the  
15 confidential documents.

16 MR. ELIAS: Well, we were aware of them.  
17 Someplace in this recommendation it says that they're  
18 going to get to see at least part of them, and that may  
19 assuage their concerns, so this was a work in process, and  
20 we didn't --

21 COMMISSIONER JABER: Okay. The only reason I  
22 asked, Mr. Elias, is that I'm prepared to make a motion,  
23 but I think our order needs to reflect exactly what we  
24 just asked you, that we are not taking action that's  
25 unlike other prudency reviews, but also that their

1 **substantial interests are not affected.**

2 **In that regard, I can move Staff's**  
3 **recommendation to accept the settlement agreement. And I**  
4 **guess, we need to create an evidentiary record and move**  
5 **all of the prefiled testimony and exhibits into the**  
6 **record, the transcripts of all depositions taken in this**  
7 **proceeding, and all discovery responses provided by TECO**  
8 **in this proceeding.**

9 **Staff has given me a cheat sheet here of the**  
10 **witnesses. And rather than list all of the witnesses, I**  
11 **think, it's sufficient to say that the testimony of all**  
12 **witnesses listed on Page 6 of the prehearing order in this**  
13 **docket, their testimony should be moved into the record.**

14 **The associated exhibits that are listed on Pages**  
15 **13 and 16 of the prehearing order should be moved into the**  
16 **record. The transcripts of all of the depositions of all**  
17 **of those same witnesses should be made part of the record.**  
18 **TECO's discovery responses that include interrogatories**  
19 **and requests for PODs propounded by both Staff and Allied**  
20 **should be made part of the record.**

21 **That would be my motion.**

22 **MR. SCHIEFELBEIN: May I be heard, briefly?**

23 **CHAIRMAN JACOBS: Mr. Schiefelbein?**

24 **MR. SCHIEFELBEIN: May the record reflect that**  
25 **that is subject to our objections, as stated earlier**

1 today, on the basis of relevance; and also, we would also  
2 want to interpose an additional objection as stated in our  
3 pending motion to strike which deals with, among other  
4 things, the hearsay nature of the allegations or the  
5 support for allegations of improper conduct by my client.  
6 And we would like to, specifically, interpose those as  
7 well as stated there.

8 CHAIRMAN JACOBS: Can we do this: Can we leave  
9 an opportunity for that testimony to be amended before the  
10 record is actually closed? What I'm thinking is can they  
11 sit down and figure out if they can amend Mr. Namoff's  
12 testimony to alleviate those concerns and then file the  
13 amended testimony?

14 COMMISSIONER JABER: Or just not admit portions  
15 of the testimony pursuant to an agreement by the parties?  
16 Is that what you're saying?

17 CHAIRMAN JACOBS: Yes. Would that be a  
18 worthwhile exercise? I guess, it's really to you, Mr.  
19 Ellis, because it's your witness. I think, your witness  
20 is the testimony that they probably have a concern about.  
21 And what we want to explore is whether or not, if we go  
22 ahead and rule today on creating the record but give you  
23 guys an opportunity to sit down and figure out whether or  
24 not you can amend Mr. Namoff's testimony to address their  
25 concerns and then let the record reflect that.

1           **MR. ELLIS: We'd certainly be willing to discuss**  
2 **that with counsel for Odyssey and report back to the**  
3 **Commission on that limited subset of the testimony.**

4           **MR. SCHIEFELBEIN: Just so I'm clear, we also**  
5 **object to the introduction of -- within the depositions --**  
6 **of Mr. Namoff and Mr. Palmer their recitation of the bad**  
7 **acts and the support for the bad acts which are**  
8 **confidential rumor. And so, we would be looking to block**  
9 **the admission of those portions of the depositions that**  
10 **get into those areas, again, both on the grounds of**  
11 **relevance and hearsay. The pages of the prefiled**  
12 **testimony are specified in our pending motion to strike.**  
13 **I do not believe we've made a comparable effort prior to**  
14 **today to identify that which is in the depositions, which**  
15 **are now apparently coming in, in mass.**

16           **CHAIRMAN JACOBS: Let me ask this. Did you file**  
17 **a response to the motion to strike?**

18           **MR. ELLIS: We did.**

19           **CHAIRMAN JACOBS: Would you retain your**  
20 **positions in that motion?**

21           **MR. ELLIS: Yes. We believe our opposition was**  
22 **well taken, but I think the issue now is he may want to**  
23 **add some subjects to what he listed in his motion to**  
24 **strike, and I think the response to that is we'll talk and**  
25 **see if we can work it out, and if we can't, we'll come**

1 back.

2 CHAIRMAN JACOBS: Well, what I thought I heard  
3 is essentially the same as your motion to strike, what  
4 you're objecting to.

5 MR. SCHIEFELBEIN: The bases are the same. The  
6 difference is that we've been very specific in our motion  
7 to strike as far as the prefiled testimony.

8 CHAIRMAN JACOBS: Okay.

9 MR. SCHIEFELBEIN: It does not address the  
10 depositions.

11 CHAIRMAN JACOBS: Okay. Here's what --

12 MR. SCHIEFELBEIN: I'm sorry.

13 CHAIRMAN JACOBS: Here's what, I think, we can  
14 proceed to do. What we're talking about sounds like a  
15 possible stipulation on your motion to strike that could  
16 be entertained for purposes of the record. And we'll  
17 allow you guys to sit down and come up with a stipulation  
18 to the motion. Is that a proper route to take?

19 And then, I think, I did the prehearing on this,  
20 I can defer ruling on that motion to give you a chance to  
21 come to some kind of stipulation on that motion. If you  
22 do come to stipulation, then will we have to come back to  
23 let the record reflect that?

24 MS. STERN: If we create the record today and  
25 then end up striking something from it, I think, we'd have

1 to have another decision, another vote.

2 CHAIRMAN JACOBS: Is that right?

3 MR. ELIAS: Yes. We can do what's been outlined  
4 here. We can approve the settlement agreement subject to  
5 that narrow area of pending discussion.

6 CHAIRMAN JACOBS: Okay. Everybody understand  
7 the process for that? Okay.

8 COMMISSIONER BAEZ: Second.

9 CHAIRMAN JACOBS: It's been moved and seconded.  
10 All in favor – that takes care of all the discussion on  
11 that, subject to your objections? Now, here's the thing,  
12 the motion was not only to approve the settlement but also  
13 to create the record.

14 MR. ELIAS: And that's subject to --

15 CHAIRMAN JACOBS: Subject to the objections.

16 MR. ELIAS: Yes, or the resolution of those.

17 CHAIRMAN JACOBS: Okay, great. So, it's been  
18 moved and seconded. All in favor say aye.

19 Aye.

20 COMMISSIONER JABER: Aye.

21 COMMISSIONER BAEZ: Aye.

22 CHAIRMAN JACOBS: Opposed? Show that it is  
23 approved with the condition as stated.

24 Well, I want to, first of all, thank all parties  
25 to this proceeding. It's been quite an adventure, one I

1 hope not to repeat. And let me also thank Staff. They  
2 put in some bootcamp time on this; Ms. Stern, Ms. Draper  
3 and Mr. Elias, thank ya'll.

4 MS. STERN: Can I just add one clarification on  
5 Item 33. At this point, we had an Issue 2, should the  
6 docket be closed or should the docket not be closed.

7 COMMISSIONER JABER: That was not on my cheat  
8 sheet.

9 MS. STERN: I know, I'm sorry.

10 COMMISSIONER JABER: Move to leave the docket  
11 open.

12 MS. STERN: I think, we need to leave the docket  
13 open. Issue 2 said if we approve the settlement  
14 agreement, close the docket. But under these  
15 circumstances, we need to leave the docket open.

16 COMMISSIONER JABER: So moved.

17 COMMISSIONER BAEZ: Second.

18 CHAIRMAN JACOBS: Moved and seconded. Issue 2  
19 is denied, subject to the discussion that we just had.

20 MS. STERN: Okay.

21 (Item concluded at 2:45 p.m.)

22 -----

23

24

25



1 STATE OF FLORIDA)

2 : CERTIFICATE OF REPORTER

3 COUNTY OF LEON )

4

5 I, KORETTA E. STANFORD, RPR, Official Commission  
6 Reporter, do hereby certify that Agenda Conference was  
7 held regarding Item 33 in docket number 000061-EI before  
the Public Service Commission at the time and place herein  
stated.

8 It is further certified that I stenographically reported  
9 the said proceedings; that the same has been transcribed  
under my direct supervision and that this transcript,  
10 consisting of 24 pages, constitutes a true transcription  
of my notes of said proceedings.

11 I FURTHER CERTIFY that I am not a relative, employee,  
12 attorney or counsel of any of the parties, nor am I a  
relative or employee of any of the parties' attorneys or  
13 counsel connected with the action, nor am I financially  
interested in the action.

14

DATED this 10th day of April, 2001.

15

16

  
KORETTA E. STANFORD, RPR  
Official Commission Reporter  
(850) 413-6734

17

18

19

20

21

22

23

24

25