

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-01-1442-CFO-EI
ISSUED: July 5, 2001

ORDER GRANTING IN PART AND DENYING IN PART CONFIDENTIAL CLASSIFICATION OF DOCUMENT NOS. 10648-00, 13580-00, 14033-00, 15002-00, 00217-01, 00628-01, 03551-01, 03681-01 AND EXHIBIT B IN DOCUMENT NO 03681-01

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 April 3, 2001, the case was settled.

The Settlement Agreement provided, among other things, that all prefiled testimony and exhibits filed in this docket, all depositions and associated exhibits taken in this docket, and all discovery responses provided by Tampa Electric Company would be admitted as evidence. Because those documents contained information that could potentially be confidential, the parties were required to submit requests for confidential classification of any such information.

DOCUMENT NUMBER-DATE

08246 JUL-5

REGULATORY REPORTING

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This order addresses the confidentiality of TECO's discovery responses. Specifically, TECO requests confidentiality for Documents Nos. 10648-00, 13580-00, 14033-00, 15002-00, 00217-01, 03551-01 and 03681-01. In addition, this order addresses Allied's request for confidentiality of Exhibit B of Document No. 03681-01.

Florida law presumes that documents submitted to governmental agencies shall be public records. The only exceptions to this presumption are the specific statutory exemptions provided in the law and exemptions granted by governmental agencies pursuant to the specific terms of a statutory provision. This presumption is based on the concept that government should operate in the "sunshine." Rule 25-22.006(4)(c), Florida Administrative Code, provides that it is the Company's burden to demonstrate that the documents fall into a statutory exemption or that the information is proprietary confidential business information, the disclosure of which will cause the Company or its ratepayers harm.

TECO requests confidential classification of certain documents filed in Docket No. 000061-EI. To be granted confidential classification, the documents must meet the criteria for "proprietary confidential business information" in Section 366.093, Florida Statutes. Those criteria are provided below.

[I]nformation, regardless of form or characteristics, which is owned or controlled by the person or company, is intended to be and is treated by the person or company as private in that the disclosure of the information would cause harm to the ratepayers or the person's or company's business operations, and has not been disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or private agreement that provides that the information will not be released to the public.

Each for confidential classification is addressed separately below.

I. Document No. 10648-00 - Responses to Allied/CFI's request for production of documents, Nos. 1-5 and 9-18, and revised answers to Allied/CFI's Interrogatories, Nos. 4, 5, 10, and 11.

TECO asserts that Document No. 10648-00 contains confidential proprietary business information the public disclosure of which would be harmful to TECO and its general body of ratepayers. TECO provided the pages which it claims to be confidential on yellow paper which is marked confidential.

All pages in Document No. 10648-00 are copies of pages that can be found in Document No. 03140-00. Document No. 03140-00 contains all documents relevant to TECO's CISR negotiations with Odyssey. The Commission found that these pages qualify as confidential information in Order No. PSC-00-1886-CFO-EI, issued October 16, 2000. Therefore, consistent with Order No. PSC-00-1886-CFO-EI, Document No. 10648-00 shall be granted confidential classification.

II. Document No. 13580-00 - Responses to Allied/CFI's request for production of documents, Nos. 6, 7, and 8.

TECO asserts that its responses to Allied's POD Nos. 6 and 7 contain confidential proprietary business information. TECO provided the pages which it claims to be confidential on yellow paper which is marked confidential.

Most of the pages provided by TECO in response to Allied's POD No. 6 are copies of pages contained in Document No. 03140-00, which was granted confidentiality in Order No. PSC-00-1886-CFO-EI. Likewise, most of the pages in TECO's response to Allied's POD No. 7 are copies of pages contained in Document No. 03141-00, which was also granted confidentiality in Order No. PSC-00-1886-CFO-EI. Consistent with Order No. PSC-00-1886-CFO-EI, Document No. 13580-00 shall be granted confidential classification, except for the pages listed in the tables below. A description of each document and the justification for denying confidentiality are provided in the tables.

POD No. 6:

Page	Description and Justification
Page 1 of 325 through Page 6 of 325	Pages list title, date, number of pages, and Bates stamp of documents that are responsive to Allied's POD No. 6. A list of documents does not qualify as confidential information. In addition, a similar list, which is available to the public, can be found in Order No. PSC-00-1171-CFO-EI, Attachment A.
Page 44 of 325 and Page 45 of 325	Memorandum dated September 10, 1998. These pages were denied confidential classification in Order No. PSC-00-1886-CFO-EI (page 4).

POD No. 7:

Page	Description and Justification
Page 1 of 124 and Page 2 of 124	Pages list title, date, number of pages, and Bates stamp of documents that are responsive to Allied's POD No. 7. A list of documents does not qualify as confidential information. In addition, a similar list, available to the public, can be found in Order No. PSC-00-1171-CFO-EI, Attachment A.

III. Document No. 14033-00 - Answer to Allied/CFI's 2nd set of interrogatories, Nos. 12-20

TECO contends that Document No. 14033-00, Responses to Allied's Second Set of Interrogatories (Nos. 12-20), contains confidential proprietary business information that, consistent with prior orders in this proceeding, must be protected against public disclosure. TECO provided the pages which it claims to be confidential on yellow paper which is marked confidential.

TECO's request for confidential classification for Interrogatory No. 12, Page 1 of 1, and Allied's questions in Interrogatory Nos. 15, 16, and 17 shall be denied. All other pages in Document No. 14033-00 meet the confidentiality criteria of 366.093, Florida Statutes, and shall be granted confidentiality.

TECO's response to Interrogatory No. 12, page 1 of 1, contains general information about dates, locations, and attendees of meetings between TECO and Odyssey. The release of this information will not cause harm to TECO or Odyssey. TECO's request is therefore denied for this page.

TECO's responses to Allied's interrogatories on the remaining pages in Document No. 14033-00 contain specific information regarding TECO's CISR negotiations with Allied and Odyssey. The release of this information would cause competitive harm to Allied and Odyssey, and reduce TECO's ability to use the CISR tariff as a tool to benefit ratepayers. This information therefore satisfies the statutory test set forth in Section 366.093, Florida Statutes, and shall be granted confidential classification.

However, the questions submitted in Interrogatory Nos. 15, 16, and 17 are identical to interrogatory questions sent by staff to TECO. See Staff's First Set of Interrogatories to TECO, Nos. 4, 5, and 6. These interrogatory questions are therefore public and not confidential.

IV. Document No. 15002-00 - Answers to staff's 1st set of interrogatories, Nos. 1-7.

TECO requests confidentiality for its response to Interrogatory No. 1, page 2 of 3 and page 3 of 3. These pages are copies of pages contained in Document No. 03143-00. Document No. 03143-00 consists of a 2-page time line comparison reflecting amounts of time TECO negotiated with Odyssey and Allied. Second, TECO requests confidentiality for its response to Interrogatory No. 3, pages 2 and 3 of 3. These pages are copies of pages contained in Document Nos. 03140-00 and 03141-00 and show incremental cost calculations. TECO provided the pages which it claims to be confidential on yellow paper which is marked confidential.

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The Commission granted confidentiality for Documents Nos. 03140, 03141, and 03143 in Order No. PSC-00-1886-CFO-EI. Consistent with Order No. PSC-00-1886-CFO-EI, Document No. 15002-00 shall be granted confidential classification.

V. Document No. 00217-01 - Remaining responses to Allied/CFI's request for production of documents, Nos. 6 and 7.

TECO provided the pages which it claims to be confidential on yellow paper which is marked confidential. Document No. 00217-01 contains copies of pages from Document No. 03140-00. These pages were granted confidentiality in Order No. PSC-00-1886-CFO-EI. Consistent with Order No. PSC-00-1886-CFO-EI, Document No. 00217-01 shall be granted confidential classification.

VI. Document No. 00628-01 - Answers to staff's 2nd request for production of documents, Nos. 9-10.

This document contains TECO's revised runs of the Rate Impact Analysis (RIM) model used to generate the incremental cost to serve Allied and Odyssey. TECO asserts that pursuant to the Commission's determination in Order No. PSC-00-1171-CFO-EI the RIM analysis is entitled to protection from public disclosure pursuant to Section 366.093, Florida Statutes.

The original RIM analysis for Allied can be found in Document No. 03141-00, Bates stamp pages 1686-A through 1696-A. The original RIM analysis for Odyssey can be found in Document No. 03140-00, Bates stamp pages 359-0 through 371-0. The RIM analyses in Document No. 00628-01 are the same as the original RIM analyses performed by TECO except that some inputs were modified.

TECO's original RIM analyses were found to be confidential in Order No. PSC-00-1171-CFO-EI. See pages 25-26. Accordingly, staff recommends that Document No. 00628-01 be granted confidential classification.

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VII. Document No. 03551-01 (fax version) and 03681-01 (original version) - Contract Service Agreement for the provision of service under the CISR between Tampa Electric and Allied Universal Corporation.

TECO requested confidentiality for the CSA and Exhibits A, C, and D of the CSA. Allied requested confidentiality for Exhibit B of the CSA which contains the Force Majeure clause. The Force Majeure language is also contained in Section 4 of the CSA and thus also subject to TECO's request for confidential classification.

TECO asserts that public disclosure of the CSA would adversely affect TECO's ability to negotiate CSAs in the future. TECO's CSA with Odyssey was granted confidentiality in Order No. PSC-00-1886-CFO-EI because disclosure would cause competitive harm to Odyssey and adversely affect TECO's ability to use the CISR tariff to create ratepayer benefits. For the same reasons, TECO's CSA with Allied qualifies as proprietary business information and shall be granted confidentiality.

Allied contends that the Force Majeure clause filed as Exhibit B to the CSA has been treated as confidential by Allied and TECO and has not been publicly disclosed. The Force Majeure clause is an integral part of the CSA and therefore is entitled to confidential classification.

Based on the foregoing, it is

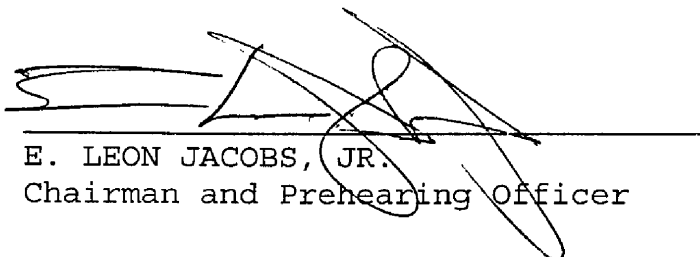
ORDERED by Chairman E. Leon Jacobs, Jr. as Prehearing Officer, that Documents Nos. 10648-00, 15002-00, 00628-01, 03551-01 and 03681-01 are granted confidential classification. It is further

ORDERED that Document No. 13580-00 is granted confidential classification except for pages 1 through 6 of 325, and 44 and 45 of 325. It is further

ORDERED that Document No. 14033-00 is granted confidential classification except for page 1 of 1 of Interrogatory No. 12, and the interrogatory questions for Interrogatories No. 15, 16 and 17.

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By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 5th day of July, 2001.



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 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

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Commission Clerk and Administrative Services, 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.