

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-01-2251-CFO-EI
ISSUED: November 16, 2001

ORDER GRANTING IN PART AND DENYING IN PART ALLIED UNIVERSAL CORPORATION'S REQUEST FOR CONFIDENTIALITY OF DOCUMENTS NOS. 07051-01, 07053-01 AND 07055-01

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleged 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) intervened. They are separate companies but have the same president. Allied, Odyssey and Sentry manufacture bleach.

By Order No. PSC-01-1003-AS-EI issued on April 3, 2001, the Commission approved a stipulated settlement agreement that resolved all issues in this docket. Part of the settlement agreement required that an evidentiary record containing specified documents be created. The Settlement Agreement required that all prefiled testimony, all depositions, and all discovery responses provided by Tampa Electric Company would be admitted as evidence in this docket. Because those documents contained information that could potentially be confidential, the parties were required to submit requests for confidential classification of any such information. Consistent with Rule 25-22.006, Florida Administrative Code, all

DOCUMENT NUMBER-DATE

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parties were given the opportunity to respond to or supplement any requests for confidential treatment.

On January 22, 2001, Allied filed rebuttal testimony of four witnesses: (1) Charles F. Phillips, Jr. with exhibits CFP-2 and CFP-3; (2) Robert M. Namoff with exhibits RMN-15 through RMN-19; (3) James W. Palmer; and, (4) Peter DeAngelis with exhibit PD-1. The testimony was filed with a notice of intent to seek confidential classification. On June 5, 2001, Allied filed its Request for Confidential Classification pursuant to Rule 25-22.006, Florida Administrative Code, and Section 366.093, Florida Statutes of the information contained in the documents. The Request was for the rebuttal testimony of all witnesses except Mr. DeAngelis.

Allied asserts that the information in the rebuttal testimony for which confidential classification is requested concerns terms negotiated between TECO and Allied, and between TECO and Odyssey for discounted electric service under TECO's CISR tariff. Allied further asserts that some of these same terms were already granted confidential classification in Order No. PSC-00-1886-CFO-EI.

Allied states that by inadvertence the request for confidentiality was not filed within 21 days of the notice, as required by Rule 25-22.006, Florida Administrative Code. Allied states that some of this information was granted confidentiality in prior orders.

Legal Standard

Florida law presumes that documents submitted to governmental agencies shall be public records. This presumption is based on the concept that government should operate in the "sunshine." 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.

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. Requests for confidential classification are to be filed within 21 days of the notice of intent. Rule 25-22.006(3)(a) provides that failure to file a request with 21 days constitutes a waiver of confidentiality unless good cause is shown for filing the request after the 21 day period.

Analysis and Rulings

Neither TECO nor Odyssey objected to the lack of timeliness of Allied's Request. I find that, despite its lateness, Allied's Request must be substantively reviewed because all parties could be harmed if the Request were denied on procedural grounds. Assuming the documents do contain sensitive terms included in Odyssey's CSA and in TECO's negotiations with Allied, public disclosure of the terms could harm Odyssey and TECO. Furthermore, the requests for confidential classification of the depositions of Allied's witnesses is still under review. Those depositions likely contain the same potentially confidential information as the witnesses' rebuttal testimony. If Allied's Request is denied for lack of timeliness, then the information made public by the denial would also be deemed public in the depositions. For these reasons I find that good cause exists for considering Allied's Request even though it was filed late.

Attachments A and B show the pages and lines Allied considers as confidential information. Upon review of the substance of Allied's Request, I find that the majority of the Request meets the requirements for confidential classification in Section 366.093, Florida Statutes. Allied has control of the information, has treated the information as confidential, and would be harmed if the

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information were made public. Specific rulings on each witnesses' rebuttal testimony follows.

Document No. 07051-01, Rebuttal testimony of Dr. Charles F. Phillips, Jr.

Document No. 07051-01 shall be granted confidential classification except for the first two words at Page 4, line 8 and again at Page 12, line 6. Information on the term of the contract can be found in TECO's quarterly CISR reports. TECO has not requested confidential classification for that information. The information is therefore public information and can not be confidential. The remaining passages of the request meet the criteria of Section 366.093, Florida Statutes, and shall be granted confidential classification.

Although not requested by Allied, confidentiality shall be granted to the numerical value shown at Page 4, line 1. Allied's failure to request confidentiality of this value was probably an oversight because Allied requested confidentiality for the same numerical value at Page 4, line 3. The numerical value satisfies the criteria of Section 366.093, Florida Statutes.

Document No. 07053-01, Rebuttal testimony of Robert M. Namoff

Document No. 07053-01 is granted confidential classification as requested by Allied. The information for which confidentiality was requested meets the criteria of Section 366.093, Florida Statutes.

Document No. 07055-01, Rebuttal testimony of James W. Palmer

Document No. 07055-01 is granted confidential classification as requested by Allied. The information for which confidentiality was requested meets the criteria of Section 366.093, Florida Statutes.

Based on the foregoing, it is

ORDERED by Chairman E. Leon Jacobs, Jr. as Prehearing Officer that Allied Universal Corporation's Request for Confidential Classification for Document No. 07051-01 is granted in part and

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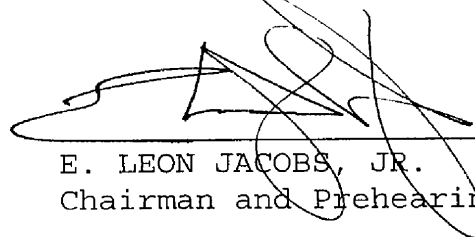
denied in part as described in the body of this Order. It is further

ORDERED that Allied Universal Corporation's Request for Confidential Classification for Documents Nos. 07053-01 and 07055-01 is granted. It is further

ORDERED that pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, any confidentiality granted to the material specified herein shall expire eighteen months from the date of the issuance of this Order in the absence of a renewed request for confidentiality pursuant to Section 366.093, Florida Statutes. It is further

ORDERED that this Order will be the only notification by the Commission to the parties concerning the expiration of the confidentiality time period.

By ORDER of Chairman E. Leon Jacobs, Jr. as Prehearing Officer, this 16th day of November, 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 the 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.

ATTACHMENT A
Allied's Request for Confidential Classification

Page	Line(s)	Description
1.		REBUTTAL TESTIMONY OF CHARLES F. PHILLIPS, JR
3	9	numeric value
3	10	numeric value
3	11-13	text after "contained"
3	15	numeric value
3	15-16	text between "was" and "while"
3	17-18	text after "was"
4	3	numeric value
4	4-6	text after "annually at"
4	7	numeric value
4	8-9	numeric value
4	14	text before citation
4	17	numeric value
4	20	numeric value
6	20	numeric value
7	6-13	all text
7	15-17	text after "in valuing the"
12	6	numeric value
12	7	numeric value

**ATTACHMENT A
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REQUEST FOR CONFIDENTIAL CLASSIFICATION
OF ALLIED/CFI REBUTTAL TESTIMONY**

Page	Line(s)	Description
2. REBUTTAL TESTIMONY OF ROBERT M. NAMOFF		
2	20	numeric value
4	1	numeric value
4	7	numeric value
4	15	numeric value
4	17	numeric value
4	19	numeric value
4	20	numeric value
4	21	test after "essentially"
5	14-17	test after ("CSA")
6	1	numeric value
6	22	text after "of"
7	1-2	text preceding "per MWH"
8	9	numeric value
3. REBUTTAL TESTIMONY OF JAMES W. PALMER		
2	1	numeric value
3	17	numeric value

ATTACHMENT B
Allied's Request for Confidential Classification
(Exhibits)

Exhibit	Page(s)
CFP-2	1096-O
CFP-3	1752a-A
RMN-15	23-O
RMN-16	139-O to 142-O 154-O to 165-O
RMN-17	836-O to 837-O 26-O to 27-O 351-O to 356-O 829-O to 830-O 39-O to 41-O 798-O 266-O to 271-O 789-O to 790-O 792-O 787-O to 788-O 782-O to 784-O 776-O
RMN-18	8-O
RMN-19	11-O to 14-O 29-O to 32-O 315-O and 317-O to 318-O