

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Allied Universal Corporation and )  
Chemical Formulators, Inc.'s Petition to ) Docket No. 040086-EI  
Vacate Order No. PSC-01-1003-AS-EI )  
Approving, as Modified and Clarified, the )  
Settlement Agreement between Allied )  
Universal Corporation and Chemical )  
Formulators, Inc., and Tampa Electric )  
Company and Request for Additional )  
Relief. )  
\_\_\_\_\_ )

**RESPONSE IN OPPOSITION**  
**TO REQUEST FOR EXTENSION OF TIME**

Odyssey Manufacturing Company ("Odyssey") hereby responds in opposition to "Allied Universal Corporation and Chemical Formulators, Inc.'s Motion for Extension of Time to File Response in Opposition to Motions to Dismiss Filed By Odyssey Manufacturing Company and Tampa Electric Company"<sup>1</sup>

1. Allied/CFI's extraordinary request<sup>2</sup> seeks more than **triple** the response time

<sup>1</sup>Odyssey is unaware of any provision of applicable law providing that a request for extension of time tolls the time period to file a response to its motion. Compare Rule 28-106.111(3), Florida Administrative Code, which expressly provides that an agency may grant an extension of time for filing "an initial pleading" and that such a timely request for extension "shall toll the running of the time period for filing a petition until the request is acted upon." Allied/CFI failed to file a response in opposition to Odyssey's Motion to Dismiss within 7 days of service of that motion, or to obtain a ruling on its request for extension of time. Since Allied/CFI have not filed any response, and the time for doing so has now passed, the Commission should deny Allied/CFI's request. Odyssey is further unaware of any provision of applicable law requiring a party to file a response in opposition to a motion to dismiss, or any other motion. Rule 28-106.204(1), Florida Administrative Code, provides in part: "When time allows, the other parties **may**, within 7 days of service of a written motion, file a response in opposition." (Emphasis provided)

<sup>2</sup>Allied/CFI rejected Odyssey's offer to treat its Motion to Dismiss as having been mailed, which would have resulted in a five-day extension of time.

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provided for under applicable rules, and **exceeds the time within which Odyssey itself was permitted under the Uniform Rules to file its Motion to Dismiss Allied/CFI's Petition.**

2. Rule 28-106.204(5), Florida Administrative Code, provides:

**"Motions for extension of time ... shall state good cause for the request."** (emphasis provided)

3. Allied/CFI have failed to state good cause for their request for extension of time.

Allied/CFI have failed to state **any** cause for their request for extension of time, other than

a) performing a simple arithmetic calculation of the number of pages of the "lengthy" Motions to Dismiss filed by Odyssey and Tampa Electric Company (TECO);

b) citing to the wholly inapplicable Florida Rules of Appellate Procedure;

c) stating that Allied/CFI's response "will also require Allied/CFI to respond to requests for attorneys' fees and sanctions."

4. Allied/CFI overstate their case by ignoring the fact that Odyssey's and TECO's respective Motions to Dismiss overlap and raise many similar issues.

5. The appellate rules are not relevant nor are they persuasive.

6. That Allied/CFI believe they are required or otherwise intend to respond to Odyssey's prayer that the Commission levy sanctions against Allied/CFI for their maintaining this frivolous action and to tax against Allied/CFI Odyssey's costs and fees hardly provides an independent basis to grant an extension of time.

7. Counsel of record for Allied/CFI are two renowned law firms with, on information and belief, extensive resources and staffing.

8. The grounds of Odyssey's Motions to Dismiss were eminently foreseeable and must have been (and surely should have been) anticipated by counsel for Allied/CFI prior to filing their Petition.

9. Under the applicable Uniform Rule, whether or not Odyssey would be "prejudiced or harmed" is not an independent basis for granting or denying the requested extension.

10. Granting Allied/CFI's excessive request will unfairly allow an inordinate period of time within which to respond to Odyssey's Motion and otherwise unduly delay the Commission's deliberations in this docket.

11. In its Motion to Dismiss, Odyssey informed the Commission that it and its counsel believed in good faith that they could not discuss therein the contents of certain Confidential Information addressed by Allied/CFI in their Petition without running the risk of violating a circuit court Protective Order a copy of which was attached to Odyssey's Motion. Accordingly, Odyssey requested leave to amend or supplement its Motion should that Protective Order be modified. In fulfilling his obligation of candor to the Commission, the undersigned counsel hereby further informs the Commission that on Wednesday, February 25, 2004, twelve days after Odyssey's Emergency Motion for Order to Show Cause in the circuit court proceeding was served and the day before such motion was scheduled to be heard, Allied/CFI's and Odyssey's respective counsel began discussions regarding the possibility of an agreed Order which would establish the terms and conditions under which Confidential Information adduced in the circuit court proceeding could be used in the Commission proceeding. The hearing on said motion was duly cancelled and those discussions are ongoing. Whether or not an agreed Order may be successfully negotiated, and the timing of any disposition of same by the Circuit court judge, remain entirely unknown. In the event that such negotiations are successful, the judge renders an agreed Order, the Commission authorizes Odyssey to and Odyssey does amend or supplement the Motion<sup>3</sup> to further refute the claims of Allied/CFI,

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<sup>3</sup>If authorized by the circuit court to use such Confidential Information in the Commission proceeding, Odyssey may instead choose to do so when the parties present their argument to the Commission on the Motions to Dismiss, in a duly circumspect manner.

the Petitioners should be accorded a reasonable opportunity to respond to any supplemental information. This potentiality should not, however, be used as justification to extend the time within which Allied/CFI is permitted to respond to the legal argument provided within Odyssey's Motion to Dismiss, to Odyssey's further detriment.<sup>4</sup>

Dated this 27<sup>th</sup> day of February, 2004.

*Wayne L. Schiefelbein*

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<sup>4</sup>Odyssey initially attempted to address this procedurally awkward situation (which is not of its making) through an Emergency Motion for Abeyance, filed on February 13, 2004, wherein Odyssey explained its position of being unable to fully and effectively move to dismiss Allied/CFI's Petition without running the risk of violating the Protective Order. In as Allied/CFI's counsel declined to agree to abate, and no ruling was made on Odyssey's motion, prior to the time within which Odyssey was **required** under the Uniform Rules to file its Motion to Dismiss, Odyssey adhered to the time frame of the Uniform Rules, filed its Motion to Dismiss and withdrew the Emergency Motion for Abeyance, as it was moot.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Dismiss Petition has been furnished via fax and U.S. Mail to the following on this 27<sup>th</sup> day of February, 2004:

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