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June 1, 2004

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Betty Easley Conference Center, Room 110  
Tallahassee, Florida 32399-0850

Re: Docket No. 040086-EI

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") are the original and fifteen copies of Allied/CFI's Response to the Office of Public Counsel's Motion for Determination of the Proper Treatment of Deposition Transcript of Mr. Patrick Allman.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

- CMP \_\_\_\_\_
- COM \_\_\_\_\_
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL \_\_\_\_\_
- OPC KAH/rl
- MMS Enclosures
- RCA \_\_\_\_\_
- SCR \_\_\_\_\_
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- OTH Marguerite

Sincerely,



Kenneth A. Hoffman

**HAND DELIVERY**

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

Allied Universal Corporation and )  
Chemical Formulators, Inc.'s Petition to )  
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. )  
\_\_\_\_\_ )

Docket No. 040086-EI

Filed: June 1, 2004

**ALLIED UNIVERSAL CORPORATION  
AND CHEMICAL FORMULATORS, INC.'S  
RESPONSE TO THE OFFICE OF PUBLIC  
COUNSEL'S MOTION FOR DETERMINATION  
OF THE PROPER TREATMENT OF DEPOSITION  
TRANSCRIPT OF MR. PATRICK ALLMAN**

Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI"), by and through their undersigned counsel, and pursuant to Rule 28-106.204(1), Florida Administrative Code, hereby file this Response to the Motion for Determination of the Proper Treatment of Deposition Transcript of Mr. Patrick Allman ("May 21 Motion") filed by the Office of Public Counsel ("OPC"), and state as follows:

1. OPC's May 21 Motion raises an issue which has remained unresolved in this proceeding since the filing by Allied/CFI of its January 30, 2004 Petition to Vacate Order No. PSC-01-1003-AS-EI Approving, as Modified and Clarified, the Settlement Agreement between Allied/CFI and Tampa Electric Company ("TECO"). Allied/CFI's January 30, 2004 Petition redacted excerpts from: (a) documents provided by Odyssey Manufacturing Company ("Odyssey") to TECO; and (b) a transcript of a deposition of Odyssey's President, Mr. Sidelko, taken on

DOCUMENT NUMBER-DATE

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December 18, 2003 in a pending circuit court proceeding in Miami-Dade County, Florida.<sup>1</sup> This information was redacted, in an abundance of caution, because it identified or related to specific rate information and information related to negotiations between Odyssey and TECO toward a Contract Service Agreement (“CSA”) under TECO’s Commercial Industrial Commercial Service Rider (“CISR”) Tariff. Contemporaneous with the filing of its January 30, 2004 Petition, Allied/CFI filed a Notice of Intent to Request Confidential Classification of the redacted information noting that such information “is clearly or perhaps may be viewed by Tampa Electric Company, to constitute proprietary confidential business information.”<sup>2</sup> Indeed, at the time of the filing of the January 30, 2004 Petition, Allied/CFI was aware that similar information had been treated as confidential in the prior proceeding involving Allied/CFI, TECO and Odyssey in Docket No. 000061-EI.

2. Since the filing of the January 30, 2004 Petition, CSA-specific information, including specific rate information and information related to the Odyssey/TECO CSA negotiations, has been filed in the public record in the above-referenced circuit court case.

3. On September 3, 2002, the circuit court entered a protective order addressing the designation and use of confidential and proprietary information and trade secrets of the parties in the circuit court case. A copy of the September 3, 2002 Protective Order is attached hereto as Exhibit A.

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<sup>1</sup>Allied Universal Corporation and Chemical Formulators, Inc. v. Odyssey Manufacturing Company and Sentry Industries, Inc., Miami-Dade County Circuit Court Case No. 01-27699 CA 25 (Eleventh Judicial Circuit).

<sup>2</sup>See Allied/CFI’s Notice of Intent to Request Specified Confidential Classification filed January 30, 2004 in Docket No. 040086-EI, at ¶2.

4. On April 22, 2004, the circuit court entered an Agreed Order on Defendants' Emergency Motion for Contempt and for Sanctions, a copy of which is attached hereto as Exhibit

B. Under the April 22, 2004 Order:

2. The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service ("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

5. OPC's May 21 Motion emphasizes the obstacles imposed on OPC in this case based on the highly unusual and perhaps unique situation where a party (Allied/CFI) and another entity that has incorrectly assumed it has party status (Odyssey) have requested confidential classification of documents that are without a doubt open, public records on file in the Miami-Dade County Circuit Court case.

6. Section 366.093(1), Florida Statutes, states in pertinent part:

Upon request of the public utility or other person, any records received by the Commission which are shown and found by the Commission to be proprietary confidential business information shall be kept confidential and shall be exempt from s. 119.07(1).

Unsealed documents and deposition transcripts filed in the Miami-Dade County Circuit Court case are public records and cannot "be kept confidential and... exempt from s.119.07(1)." The "toothpaste is out of the tube" and it appears, at this point, to be a futile exercise to continue to seek and/or treat public records in Miami-Dade County Circuit Court as "proprietary confidential business information" exempt from public record inspection in the Florida Public Service Commission in Tallahassee. Moreover, the justification for treating CISR rate and CISR negotiation information as confidential - - the prospect that a potential CISR customer could use this information as leverage

in negotiations with TECO toward a CISR contract - - should no longer exist due to the termination of TECO's CISR tariff program approved under Order No. PSC-98-1081-FOF-EI.

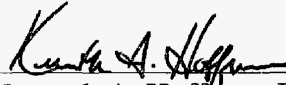
7. For these reasons, Allied/CFI suggests that the Prehearing Officer should respond to OPC's May 21 Motion by determining that the April 19, 2004 transcript of the deposition of Mr. Patrick Allman, a public record in the Miami-Dade County Circuit Court Case, cannot be treated as confidential under Rule 25-22.006, Florida Administrative Code.<sup>3</sup> Allied/CFI further suggests that the Prehearing Officer include in her ruling a general and prospective determination that any future filings by the parties to this docket of any other public records, including unsealed documents and depositions filed in the Dade County Circuit Court case, are not subject to confidential classification under Rule 25-22.006, Florida Administrative Code, and that the Commission shall construe the court's April 22, 2004 Order to apply only to the filing of documents at the Commission which are not already part of a public record.

8. Finally, unless and until such time as the Prehearing Officer enters a ruling as requested in paragraph 7 above, Allied/CFI will continue its commitment to seek confidential treatment of the type of information that was treated as confidential in Docket No. 000061-EI and intends to file a request for confidential classification in connection with Allied/CFI's Notice of Intent filed May 12, 2004.

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<sup>3</sup>The fact that Commission Rule 25-22.006 is referenced in a circuit court order does not, of course, diminish the Commission's power to interpret and apply its own rules.

Respectfully submitted,



Kenneth A. Hoffman, Esq.

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Attorneys for Allied Universal Corporation  
and Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail, this 1<sup>st</sup> day of June, 2004, to the following:

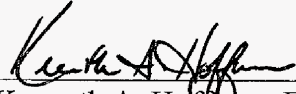
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\_\_\_\_\_  
Kenneth A. Hoffman, Esq.

IN THE CIRCUIT COURT OF THE 11th  
JUDICIAL CIRCUIT IN AND FOR DADE  
COUNTY, FLORIDA

CASE NO. 01-27699 CA 25

ALLIED UNIVERSAL CORPORATION, :  
a Florida Corporation; and CHEMICAL :  
FORMULATORS, INC., a Florida :  
Corporation, :

Plaintiffs, :

vs. :

ODYSSEY MANUFACTURING :  
a Florida Corporation; :  
SENTRY INDUSTRIES, INC., :  
a Florida Corporation, :

Defendants. :

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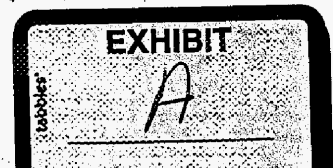
*Agreed (S)*

PROTECTIVE ORDER

THIS CAUSE having come on to be heard upon Defendants', Odyssey Manufacturing Company and Sentry Industries, Inc., Motion for Protective Order, and upon the consent and agreement of Plaintiffs Allied Universal Corporation and Chemical Formulators, Inc., it is hereby ORDERED that the parties to this action, in order to provide protection of confidential and proprietary information and trade secrets of the parties and facilitate the discovery in this action, shall be governed by the following:

1. The following materials shall be deemed confidential (the "Confidential Information"):

A. Any written, recorded or graphic materials or documents, tangible items or any other form of information that a party produces in this case, which a party, in good faith,





believes to contain trade secrets or confidential, sensitive or proprietary commercial information, as provided by Rule of Judicial Administration 2.051(9)(A)(ii);

2. The herein-described Confidential Information shall be designated as such by stamping the word "Confidential" on the document or by any other reasonable method as agreed to by the parties.

3. That Confidential Information shall not:

A. Be disclosed, disseminated, published or made public to anyone but the parties and attorneys of record in this case, their personnel, agents and staff of counsel, expert witnesses, lay witnesses, court reporters and deponents, as is necessary for the conduct of the case. Attorneys of record and the parties hereto shall see that each person to whom this information is disclosed has read this agreement, and signs an affidavit in the form attached hereto as Exhibit "A" agreeing to be bound thereby;

B. Be used for any purpose whatsoever, except for pretrial preparation and trial of this action;

C. Be used in any manner in connection with any other action or proceeding, except in accordance with the terms hereof;

D. Be copied, duplicated or reproduced in whole or in part for any purpose whatsoever, except for pretrial preparation and trial of this action, without the prior written consent of counsel for party designating the subject Confidential Information as confidential or prior Order of this Court upon notice;

E. Be made any part of the public record of this case, whether in evidence or otherwise, except as provided herein, although this agreement does not prohibit its use as evidence in the trial of this case. If Confidential Information are used in any deposition

testimony, or interrogatory answer, or other discovery response, or as evidence, or is quoted or disclosed in any affidavit, brief, deposition, transcript or other paper filed in this action, such materials and papers shall be filed only as provided by this Order or such further order as may be entered by the Court. In the event a party wishes to file a document, transcript, or thing containing Confidential Information described in this Order with the Court for any purpose, the party shall first serve the opposing party with the document, transcript, or thing containing the alleged Confidential Information. After service, the parties agree to consult with each other to discuss whether the document, transcript or thing actually contains Confidential Information as described herein. If the parties agree that the document, transcript or thing does not include Confidential Information, the document, transcript, or thing may be filed with the Court. If any of the parties believe that the material served contains Confidential Information, then any of the parties, prior to any filing of the document, transcript, or thing involved, shall apply to the Court pursuant to Rule of Judicial Administration 2.051 for a determination of whether the Confidential Information are confidential as described herein, and the document, transcript or thing involved shall be filed only in a form as specified pursuant to the resulting Court Order; or;

F. Be analyzed, summarized, or contained in any report, summary or analysis, unless such report, summary or analysis or any document containing any such designated information or documentation is considered and treated as Confidential Information subject to this Stipulation and to the protection of the Order of this Court entered pursuant hereto.

4. The attorneys of record and the parties hereto shall be responsible for the actions of their personnel and staff and expert witnesses in the event the provisions of this Order are violated.

5. Any party may dispute a designation of confidentiality and bring before the Court a request for the Court to determine whether or not confidentiality should or should not apply to particular discovery.

6. Where confidentiality is disputed, the discovery shall be deemed confidential pending the ruling of the Court on the dispute.

7. All Confidential Information furnished to a party pursuant to disclosure or discovery in this action shall be returned to the designating party at the conclusion of this litigation, including any and all copies of such document or documents which in whole or in part contain any such Confidential Information;

8. Any and all documents which contain summaries, reports or analyses of the Confidential Information shall be returned to the designating party at the conclusion of this matter, and any copy of any such summary, report, or analysis retained shall be redacted to exclude all reference, discussion, or analysis of such designated documents or information.

9. Nothing in this Order shall prevent any party from seeking modification of this Order with either written consent of both parties or Court order.

10. It is further and specifically stipulated and agreed by the parties that the Court enter the Order submitted herewith adopting and incorporating the terms of this Confidentiality Agreement and Protective Order and that the Court may use its contempt powers or any other sanctions to enforce the terms of this Agreement and the Order entered pursuant hereto upon the request of any party.

Copies furnished to:  
Glen N. Smith, Esq.  
Bryan S. Greenberg, Esq.  
Lawrence D. Silverman, Esq.  
Daniel K. Bandklayder, Esq.  
Kenneth A. Hoffman, Esq.

\_\_\_\_\_, 2002.

**DONE AND ORDERED** in Chambers at Miami-Dade County, Florida, this \_\_\_\_ day of

SEP 03 2002

Honorable Philip Bloom  
Circuit Court Judge

*Philip Bloom*

received  
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IN THE CIRCUIT COURT OF THE 11TH  
JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

ALLIED UNIVERSAL CORPORATION, :  
a Florida corporation, :

Case No.01-27699 CA25

and :

CHEMICAL FORMULATORS, INC. :  
a Florida corporation, :

Plaintiffs, :

v. :

ODYSSEY MANUFACTURING :  
COMPANY, a Delaware Corporation, and :  
SENTRY INDUSTRIES, INC., a Florida :  
corporation, :

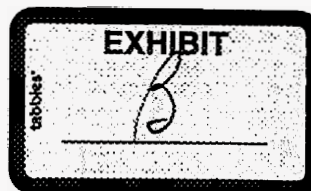
Defendants.

**AGREED ORDER ON DEFENDANTS' EMERGENCY  
MOTION FOR CONTEMPT AND FOR SANCTIONS**

THIS CAUSE having come on to be heard on Defendants, ODYSSEY  
MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC.'S, Emergency Motion for  
Contempt and for Sanctions, and the parties having agreed to the entry of this Order and the  
Court otherwise being fully advised in the premises, it is hereby

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The Court's Protective Order dated September 3, 2002 remains in full force and effect.
2. The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service Commission



("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida, this \_\_\_\_\_ day of March, 2004.

CIRCUIT COURT JUDGE

Conformed Copy  
APR 22 2004  
Michael B. Chavies  
Circuit Court Judge

Copies Furnished:

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