

REQUEST FOR CHANGE TO AGENDA CONFERENCE  
HAND DELIVER

RECEIVED - FPSC

Date of Request: 9/27/2004 Date of Agenda Conference: 10/5/2004 Item No. 5  
SEP 29 PM 12:07

Docket No.: 040086-EI Brief Title: Amended Petition to Vacate Settlement Order

Requested by:  Staff  Other Allied - Ken Hoffman  
(Name) COMMISSION CLERK

Please attach a copy of the written documentation filed (IF OTHER)

STAFF's Recommendation to Executive Suite (IF OTHER)  Approve Request  Deny Request

ACTION REQUESTED [see APM 2.11]

- Defer Item to Agenda Scheduled Date: 10/19/2004
- Change Order of Item or Take Up at Time Certain
- Withdraw Item (not expected to return to Agenda)
- Late Filed Recommendation (must be filed no later than 3:00 p.m. on the date approved for late filing) **A copy of the front page of the recommendation must be provided to CCA by 12 noon on the regular filing date for use as a place-holder during agenda preparation.**
- Add Item to Published Agenda [see Section 120.525(2), F.S.] – Issue an ADDENDUM and give Legal NOTICE
- Add Emergency Item to Published Agenda [see Section 120.525 (3), F.S.] – Issue an ADDENDUM and Give Fair NOTICE

Concise explanation, justification or comments (attach additional sheet if necessary):

By memo dated September 27, 2004, Ken Hoffman, attorney for Allied, the petitioner in this docket, requested that the Commission defer its consideration of the recommendation on motions to dismiss until the October 19 agenda. Mr. Hoffman stated that he has a two hour motion hearing scheduled in a case in Baker County for October 5. The motion hearing was rescheduled from September 7, due to Hurricane Charley.

TECO and Odyssey, the other parties to the case, object to the deferral. They claim that Allied has requested deferrals and extensions of time several times before, and they state that Allied was aware of the CASR schedule for October 5 when the Baker County hearing was rescheduled.

Staff has recommended that oral argument be granted and believes that deferral is necessary to allow all counsel to fully participate. **Staff does not believe that any party will be harmed by granting the request.**

Signature (Technical Staff): EA

Initials (Division Director or Designee): TG

Signature (Legal Staff): MCP

Initials (General Counsel or Designee): ROETR

EXECUTIVE DIRECTOR:

Recommendation to the Chairman's Office

Initials: MAB

Comments:

Approve Request  Deny Request

Date: 9/29/04

CMP \_\_\_\_\_  
 COM \_\_\_\_\_  
 ECR \_\_\_\_\_  
 GCL \_\_\_\_\_  
 OPC \_\_\_\_\_  
 MMS \_\_\_\_\_  
 RCA \_\_\_\_\_  
 SCR \_\_\_\_\_

CHAIRMAN'S OFFICE:

Initials: [Signature]

Approve Request  Deny Request

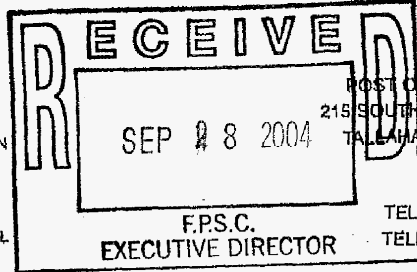
Date: 9/29/04

SEC 1  
 OTH Bayo  
Thompson  
Wang

Executive Suite will send the original to the Division of Commission Clerk & Administrative Services and return copy to the requesting staff after the Chairman's Office takes action on this request. Requesting staff should distribute copies to the Division Directors (OPR & OCR) and Attorney assigned to the docket.

DOCUMENT NUMBER DATE

10491 SEP 29 04

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MARGARET A. MENDUNI  
M. LANE STEPHENS

September 27, 2004

Martha Carter-Brown, Esquire  
Florida Public Service Commission  
Division of Legal Services  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

VIA TELECOPIER AND U.S. MAIL

RE: Docket No. 040086-EI  
Allied/CFI's Request for Deferral of Item No. 5 scheduled for October 5, 2004  
Agenda Conference

Dear Ms. Brown:

Our firm represents Allied Universal Corporation and Chemical Formulators, Inc., the Petitioners in the above-referenced docket. On September 23, 2004, the Staff issued a recommendation recommending that Allied/CFI's Amended Petition be dismissed with prejudice. The recommendation is scheduled for consideration by the Commission at the October 5, 2004 agenda conference.

As you may be aware from the copy I provided you of my memorandum dated September 27, 2004 to counsel for the parties in this docket, I have a two hour hearing scheduled for October 5, 2004 beginning at 10:00 a.m. in a circuit court proceeding pending in Baker County, Florida. That hearing is on pending motions that had previously been scheduled for hearing on September 7, 2004 but were rescheduled due to Hurricane Charley.

I am respectfully requesting a deferral of consideration of the staff recommendation to the October 19, 2004 agenda conference. Based on an objection raised by Odyssey to a previous deferral request, I am mindful of Odyssey's concern that the Commission's consideration of the staff recommendation take place before the trial in the circuit court case. The circuit court trial is scheduled to begin on November 7, 2004. Accordingly, the concern previously expressed by Odyssey should not be an issue if a deferral were granted to the October 19, 2004 agenda conference.

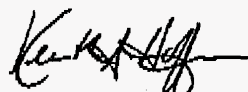
**RUTLEDGE, ECENIA, PURNELL & HOFFMAN**

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September 27, 2004

The above information was communicated to counsel for the parties by my memorandum dated September 27, 2004. Counsel for Odyssey and counsel for TECO have both advised that they object to the request for deferral. The Public Counsel does not object to the request.

Thank you for your consideration of this request.

Sincerely,



Kenneth A. Hoffman

KAH/knb

cc: Dr. Mary Bane, Executive Director (via telecopier)  
Harry W. Long, Esq. (via telecopier)  
Wayne Schiefelbein, Esq. (via telecopier)  
Harold McLean, Public Counsel (via telecopier)  
Dan Bandklayder, Esq. (via telecopier)

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Date: September 27, 2004 From: Kenneth A. Hoffman, Esq.

PLEASE DELIVER THE FOLLOWING PAGE(S) TO:

Telecopier Number: (413-6057)

ATTENTION:

Name: Dr. Mary Bane

Company: \_\_\_\_\_

ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

COMMENTS:

WE ARE TRANSMITTING 3 PAGES INCLUDING THIS COVER SHEET.

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THIS FAX WAS SENT BY: Kimberly Boyd