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COMMISSION  
CLERK

April 1, 2005

**HAND DELIVERY**

Ms. Blanca S. Bayo, Director  
Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: Docket No. 040086-EI - 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

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 Motion to Clarify Order No. PSC-05-0343-CFO-EI.

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

CTR \_\_\_\_\_

ECR \_\_\_\_\_

GCL Brown, Stern

OPC \_\_\_\_\_

MMS \_\_\_\_\_ KAH/tls

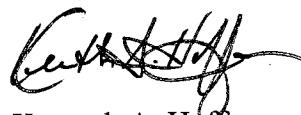
RCA \_\_\_\_\_ Enclosures

SCR \_\_\_\_\_

SEC 1

OTH Marguerite

Sincerely,



Kenneth A. Hoffman

RECEIVED & FILED

Demenasco  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

03243 APR-1 05

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: April 1, 2005

**ALLIED UNIVERSAL CORPORATION AND  
CHEMICAL FORMULATORS, INC.'S MOTION TO  
CLARIFY ORDER NO. PSC-05-0343-CFO-EI**

Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI"), by and through its undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, hereby files this Motion to Clarify Commission Order No. PSC-05-0343-CFO-EI, issued March 29, 2005 by the Prehearing Officer granting confidential classification for Document Nos. 01404-04, 05528-04, and 07305-04. This Motion seeks to clarify certain portions of Order No. PSC-05-0343-CFO-EI and thereby clarify the record in this docket.

1. On July 23, 2004, Allied/CFI filed its Request for Confidential Classification for portions of its Amended Petition on grounds that the Amended Petition contained information that may have been viewed by Tampa Electric Company ("TECO") or Odyssey Manufacturing Company ("Odyssey") to constitute proprietary confidential business information. Such information was redacted from the Amended Petition that was filed with the Commission Clerk and served on the parties. The unredacted pages of the Amended Petition containing the potential proprietary confidential business information were filed under a separate cover with the Commission Clerk and designated as Document No. 07305-04.

DOCUMENT NUMBER-DATE

03243 APR-1 5

FPSC-COMMISSION CLERK

2. In an abundance of caution, and because it was unclear whether TECO and/or Odyssey would consider certain information to be confidential and proprietary, Allied/CFI included in the redacted portions of its Amended Petition passages discussing Odyssey's exemption from payment of fuel charges and other adjustment clause costs. This information, however, has been made public record by the parties and the Commission, and thus is no longer subject to confidential classification.<sup>1</sup> (See, TECO's Motion to Dismiss Allied/CFI's Amended Petition at 8, Allied/CFI's Response to TECO and Odyssey's Motions to Dismiss at 7, 8, 9, 15, 19, 26, and 28, the Commission Staff Recommendation, filed September 23, 2004 at 4, 7, and 10, and the Commission Order Dismissing Allied/CFI's Petition to Vacate at 3, 6, and 10).

3. Accordingly, through this Motion, Allied/CFI respectfully requests that the Prehearing Officer issue an Order clarifying that the redacted passages of Allied/CFI's Amended Petition that refer to Odyssey's exemption from payment of fuel charges and other adjustment clause costs are public record and therefore not included in his ruling granting confidential classification to portions of Allied/CFI's Amended Petition. Attached hereto as Appendix "A" are the pages of Allied/CFI's Amended Petition that contain the specific passages that are the subject of this Motion, with the specific passages within brackets and double-underlined.

4. Pursuant to Rule 28-106.204(3), Florida Administrative Code, counsel for Allied/CFI has conferred with the parties to determine whether either Odyssey or TECO object to Allied/CFI's Motion. Allied/CFI is authorized to represent that TECO takes no position on this Motion. Counsel

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<sup>1</sup> In addition, the information contained in the redacted passages described in this Motion is not the type of properly classified confidential information described by the Prehearing Officer in his Order and does not fall in the category of proprietary confidential business information under the provisions of Section 366.093, Florida Statutes.

for Odyssey, upon being provided an advance copy of the Motion, advised Allied/CFI that due to other time constraints and obligations, he would be unable to advise Allied/CFI on Odyssey's position at this time. Counsel for Odyssey advised Allied/CFI that Odyssey will continue to review the Motion and may file a response within the time prescribed by rule.

WHEREFORE, in consideration of the above, Allied/CFI respectfully requests that the Prehearing Officer issue an Order clarifying that the passages contained in Allied/CFI's Amended Petition as described in this Motion and identified in Appendix "A" attached hereto are not included in his ruling granting confidential classification to portions of Allied/CFI's Amended Petition.

Respectfully submitted,



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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 hand delivery and U.S. Mail(\*) this 1<sup>st</sup> day of April, 2005, to the following:

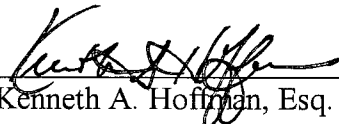
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\_\_\_\_\_  
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**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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. )  
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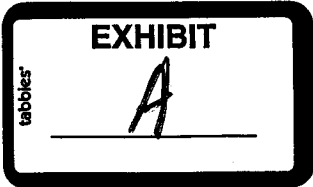
Docket No. 040086-EI

Filed: July 2, 2004

**ALLIED UNIVERSAL CORPORATION AND  
CHEMICAL FORMULATORS, INC.'S AMENDED  
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**

Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI"), by and through their undersigned counsel, hereby file this Amended Petition requesting the Florida Public Service Commission ("Commission") to enter a final order :

- (1) Vacating Order No. PSC-01-1003-AS-EI issued April 24, 2001 approving, as modified and clarified, a Settlement Agreement between Allied/CFI and Tampa Electric Company ("TECO") (the Order Approving Settlement Agreement);
- (2) Determining that the Settlement Agreement between Allied/CFI and TECO, approved as modified and clarified in the Order Approving Settlement Agreement, is unenforceable;
- (3) Terminating, or alternatively, modifying, the existing Contract Service Agreement ("CSA") between TECO and Odyssey Manufacturing Company ("Odyssey");



(4) Requiring Odyssey to refund to TECO for the benefit of TECO's general body of ratepayers the difference between the CSA rate currently in effect for Odyssey and the new rate that the Commission approves for TECO's provision of electric service to Odyssey pursuant to this proceeding, plus fuel charges and other adjustment clause charges, for the period of time beginning with the effective date of Odyssey's current CSA and terminating on the date of a new Commission approved rate for Odyssey; or, alternatively, requiring TECO to provide electricity to Allied/CFI upon the same rates, terms and conditions as Odyssey, pursuant to the "force majeure" provision of the TECO/Allied/CFI Settlement Agreement and Contract Service Agreement.

(5) Allied/CFI further requests that the Commission examine the TECO/Odyssey CSA to determine whether it comports with the requirements of the filed tariff and/or Order No. PSC-98-1081-FOF-EI and whether the agreement serves the interests of the TECO's aggregate customer base. The examination should include, without limitation, determinations as to: (a) whether Odyssey met the criteria for a CISR rate; (b) whether the CISR Order and the TECO/Odyssey CSA authorized TECO to enter into a discount rate contract that excludes billing by TECO and payment by the CISR rate customer of fuel and other adjustment clause charges; (c) whether the TECO/Odyssey CSA violates Commission policy and practice and/or TECO's tariffs requiring every TECO ratepayer to pay all fuel and other applicable adjustment charges; (d) whether the TECO/Odyssey CSA rate allows TECO to recover its incremental costs plus a contribution towards TECO's fixed costs and is otherwise in the best interests of the general body of ratepayers; and (e) whether Odyssey's CISR rate requires TECO's other ratepayers to subsidize the cost of providing service to Odyssey.

In support of this Amended Petition, Allied/CFI states as follows:

24, 2003.

34. After TECO terminated Allied/CFI's CSA, Allied reapplied for a CISR rate. On November 25, 2003, TECO offered Allied another CSA, but with a significantly higher rate of [REDACTED]. The significant increase over the rate TECO previously extended to Allied/CFI and Odyssey (an initial rate of [REDACTED] per mwh, [REDACTED]) was due, inter alia, to increases in TECO's costs.

35. Upon information and belief, if the lowest rate at which TECO can serve Allied/CFI is [REDACTED] then it is readily apparent that the rate that TECO is charging Odyssey is insufficient to cover TECO's incremental costs and provide a contribution to TECO's fixed costs, [particularly since Odyssey's CSA effectively exempts Odyssey from payment of fuel charges and other adjustment clause charges.]<sup>4</sup>

**D. ALLIED/CFI'S CIRCUIT COURT ACTION AGAINST ODYSSEY AND SENTRY**

36. On November 19, 2001, Allied and CFI filed a civil action against Odyssey and Sentry in the Circuit Court of the Eleventh Judicial Circuit, In and For Miami-Dade County, Florida, Case No. 01-27699-CA-25. The Amended Complaint states causes of action against Odyssey and/or Sentry for Contract, Combination and Conspiracy in Restraint of Trade (Count I); Attempt to Monopolize the Tampa Chlorine Bleach Market (Count II); Conspiracy to Monopolize (Count III); Intentional Interference with Business Relationships (Count IV) and Unfair Competition (Count V).

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<sup>4</sup>TECO recovers fuel and certain other costs through Commission approved adjustment clauses. Specifically, such costs are recovered through the fuel cost recovery clause (fuel, purchased power and generation performance incentive factor), capacity cost recovery clause, environment cost recovery clause and energy conservation cost recovery clause.



37. In the circuit court proceeding, Mr. Sidelko contradicted the sworn affidavit he furnished to TECO and his direct testimony filed with the Commission by stating under oath in a deposition that:

(a) Odyssey would have built its plant in Tampa and taken service from TECO even if TECO had offered Odyssey a rate higher than [REDACTED] per mwh ([REDACTED] per kilowatt hour);

(b) At the time Sidelko submitted his affidavit to TECO, he had not identified a specific electric rate that was necessary to make Odyssey's proposed plant economically feasible;

(c) It was TECO, not Odyssey, that proposed a [REDACTED] per kwh electric rate;

(d) The [REDACTED] per kwh rate specified in his affidavit and in his Commission testimony was not important to Mr. Sidelko;<sup>5</sup> and

(e) Odyssey could operate its Tampa plant profitably even if it had an electric rate of [REDACTED] per megawatt hour.

See, copy of pages 187, 192, 205-06, 245, 248-50 and 252 of deposition of Stephen Sidelko taken in Dade County Circuit Court Case No. 01-27699-CA-25, attached hereto as Exhibit D.

38. Recent depositions of former TECO employee Patrick Allman (depositions taken November 25, 2003 and April 19, 2004) and current TECO employees Robert Jennings (deposition taken May 11, 2004) and William Ashburn (deposition taken May 12, 2004) in the circuit court case confirm that:

a. TECO has interpreted and applied [Odyssey's [REDACTED] under the TECO/Odyssey

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<sup>5</sup>Mr. Sidelko subsequently attempted to recant his deposition testimony by filing an Errata Sheet dated January 23, 2004, where he states that obtaining the CISR tariff rate was what was important to him and the CISR rate offered by TECO was [REDACTED]. See Errata Sheet for Mr. Sidelko's deposition attached hereto as Exhibit E.

CSA in a manner that exempts Odyssey from paying fuel charges and other adjustment clause charges that are traditionally and consistently passed through separately to and recovered from TECO ratepayers];

b. [Odyssey does not pay fuel charges under the TECO/Odyssey CSA], a fact that is not reflected in the TECO/Odyssey CSA and, upon information and belief, was not considered by this Commission when it approved Odyssey's CSA and the TECO/Allied/CFI Settlement Agreement;

c. Odyssey is the only customer of TECO [whose electric rate and electric bill are not affected by increases in TECO's fuel costs];

d. TECO's cost of fuel has increased over the period of 2001 through December 31, 2003;

e. TECO has not performed an analysis to [determine whether Odyssey's CISR rate currently covers TECO's increased cost of fuel and other costs];

f. Extension of the TECO/Allied CSA was not cost effective for TECO because TECO would not be able to recover its variable and fixed costs due to increased fuel and other costs;

g. TECO had an obligation to negotiate as high a rate as possible yet still secure the customer load and be a benefit to ratepayers;

h. TECO breached this obligation by summarily offering a CISR rate to Odyssey that mirrored the rate requested by Sidelko;

i. TECO entered into the CSA with Odyssey because it believed the Odyssey deal would serve as a prototype that would enable TECO to avoid scrutiny by this Commission and the Office of Public Counsel of similar, but far more significant contracts that TECO was attempting to negotiate with [REDACTED] and a [REDACTED] and

TECO's opposition to an examination of the CSA, and potential upward adjustments to Odyssey's electric rate, is inexplicable and defies logic.

45. In addition, Florida courts and this Commission have long recognized specific exceptions to the doctrine of administrative finality. Generally speaking, the Commission has inherent authority to modify its prior orders where there is a demonstration by an injured party that the Commission's prior order was predicated on fraud, deceit, surprise, mistake, or inadvertence; where there is a demonstrated public need or interest; or, where there is otherwise a substantial change in circumstances. Russell v. Department of Business and Professional Regulation, 645 So.2d 117, 119 (Fla. 1<sup>st</sup> DCA 1994); Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982); Richter v. Florida Power Corp., 366 So.2d 798, 800 (Fla. 2<sup>nd</sup> DCA 1979); Order No. 25668, 98 F.P.S.C. 2:24, 37 (February 3, 1992).<sup>7</sup>

**G. DISPUTED ISSUES OF MATERIAL FACT AND LAW**

46. Subject to discovery in this proceeding, known material issues of disputed fact and law in this proceeding include, but are not limited to:

- a. Whether TECO has applied so as to exempt Odyssey from payment of Odyssey's CISR rate [fuel charges and other adjustment clause costs].
- b. Whether Odyssey has paid and continues to pay [fuel charges and other adjustment clause costs under the TECO/Odyssey CSA].
- c. Whether the TECO/Odyssey CSA exempts Odyssey from [payment of fuel charges

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<sup>7</sup> As a practical matter, to the extent that Petitioners' claims relate to TECO's post-settlement interpretation/application of Odyssey's CSA in a manner that exempts Odyssey from payment of increased fuel charges, the doctrine of administrative finality is inapplicable, as the Commission has not previously considered this issue.

and other adjustment clause costs.

- d. Whether TECO's failure to bill and Odyssey's failure to pay fuel charges and other adjustment clause charges violate applicable TECO tariffs and/or Commission orders.
- e. Whether the CISR Order authorizes TECO to grant a discount off of any rate or charge other than base demand and/or base energy charges.
- f. Whether the TECO/Odyssey CISR rate negotiations and the TECO/Odyssey CSA should be treated as confidential in view of the termination of TECO's CISR Tariff program.
- g. Whether TECO's cost of fuel and other fixed or variable costs to provide electric service to Odyssey have increased from the inception of the TECO/Odyssey CSA through the present time.
- h. Whether TECO is recovering all of its incremental costs of service under the TECO/Odyssey CSA, plus a contribution to its fixed costs, as required by the CISR Order.
- i. Whether TECO breached its obligation to negotiate as high a rate as possible under its tariffed rate pursuant to the purpose and intent of the CISR Order.
- j. Whether TECO arbitrarily and capriciously refused to extend its CSA with Allied/CFI.
- k. Whether Odyssey met the CISR Tariff/Order criteria and was eligible for a CISR rate.
- l. Whether Odyssey improperly procured the CSA and settlement of Docket No. 000061-EI by falsely representing that: (a) Odyssey would not build its Tampa plant and take service from TECO unless TECO offered Odyssey a rate of [REDACTED] per mwh; and (b) Odyssey had viable offers for service elsewhere at that rate.

m. Whether the terms of Odyssey's CSA as implemented by TECO post-settlement, violate this Commission's Order No. PSC-98-1081-FOF-EI and/or adversely affect the general body of ratepayers;

n. Whether Odyssey's specific rate under the TECO/Odyssey CSA complies with the CISR Order.

o. Whether TECO's conduct as alleged herein violates Section 366.03 and/or 366.06(2), Florida Statutes, including whether TECO's refusal to extend the TECO/Allied CSA violates Sections 366.03 and/or 366.06(2), Florida Statutes.

p. Whether the facts as alleged herein constitute fraud, deceit, surprise, mistake or inadvertence that resulted in the Order Approving Settlement Agreement.

q. Whether there is a demonstrated public need and/or interest or a substantial change in circumstances supporting the relief sought by Allied/CFI through this Amended Petition.

r. Whether Allied, CFI and/or TECO's general body of ratepayers are harmed by the TECO/Odyssey CSA.

s. Whether the general public at large is harmed by the TECO/Odyssey CSA as a result of reduced competition in the liquid chlorine bleach manufacturing industry.

t. Whether the Commission may order Odyssey to refund to TECO's general body of ratepayers the difference between TECO's standard tariffed rate and Odyssey's CISR rate [plus applicable fuel and other adjustment clause charges] from the inception of the TECO/Odyssey CSA through the date of a final order in this proceeding.

u. Whether, and the extent to which, Odyssey's electric rate must be adjusted to avoid a forced subsidy upon other TECO ratepayers, while still enabling TECO to recover its costs in

granting the relief sought by Allied/CFI in this Amended Petition, to wit:

a. That TECO's post-settlement implementation/interpretation of Odyssey's CISR rate [essentially exempts Odyssey from paying fuel charges and other adjustment clause charges], and that Odyssey has not paid such charges under the TECO/Odyssey CSA, in violation of the CISR Order.

b. That TECO's fuel costs have substantially increased over the last few years and that TECO has not conducted an analysis to determine whether it is recovering its incremental costs to provide service to Odyssey under the TECO/Odyssey CSA, as well as whether Odyssey's CISR rate provides a contribution to fixed costs as required by the CISR Order.

c. That TECO breached its obligations under the CISR Order to negotiate as high a rate as possible to TECO's tariffed rate to the detriment of TECO's general body of ratepayers.

d. That Odyssey deliberately failed and refused to timely release Chemetics from the illegal 10 year, 150 mile restrictive covenant, thus preventing Allied/CFI from meeting the 24 month requirement under the TECO/Allied CSA.

e. That TECO arbitrarily and capriciously refused to extend the TECO/Allied CSA, in violation of Allied's statutory right under Sections 366.03 and 366.06(2), Florida Statutes, to an electric service rate that is not unduly prejudicial and disadvantageous and unjustly discriminatory to Allied.

52. Finally, based on the significant discrepancy between the CISR rate TECO offered Allied/CFI on November 25, 2003, i.e., [REDACTED] per mwh, [REDACTED] and the rate at which TECO provides electricity to Odyssey, i.e., an initial base rate of [REDACTED] per mwh as of January 1, 2000-[REDACTED], together with TECO's