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ORIGINAL

May 10, 2000

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

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00 MAY 10 PM 4:51
RECORDS AND REPORTING

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI") are the following documents:

1. Original and fifteen copies of Allied/CFI's Response to Tampa Electric Company's Supplemental Motion for Protective Order; and
2. A disk in Word Perfect 6.0 containing a copy of the document.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the copy to me.

Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

FA	_____
APP	_____
CAF	_____
CMW	_____
CTR	_____
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Enclosures

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DOCUMENT NUMBER-DATE

05811 MAY 10 8

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

In re: Complaint of Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Sections 366.03, 366.06(2) and 366.07, Florida Statutes, 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

Filed: May 10, 2000

**ALLIED/CFI'S RESPONSE TO
TAMPA ELECTRIC COMPANY'S SUPPLEMENTAL
MOTION FOR PROTECTIVE ORDER**

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, and pursuant to Rules 28-106.204, Florida Administrative Code, submit their response to Tampa Electric Company's ("TECO") Supplemental Motion for a Protective Order and Request for Approval of Protective Agreement ("TECO's supplemental motion"), and state:

1. TECO's first motion for a protective order, filed on February 14, 2000 and entitled Motion for Protective Order, Request for Approval of Proposed Procedures for a Disposition of this Proceeding Without Disclosing Confidential Information and Summary Disposition, was denied by the Commission at the Agenda Conference on April 18, 2000. In denying TECO's first motion for a protective order as being violative of Allied/CFI's due process rights, Order No. PSC-00-0908-FOF-EI, issued May 8, 2000, acknowledges Allied/CFI's willingness to enter into a binding non-disclosure agreement with TECO to preserve the confidentiality of information concerning TECO's Commercial/Industrial Service Rider ("CISR") tariff rate negotiations with Odyssey Manufacturing

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Company ("Odyssey").

2. Allied/CFI provided a draft protective agreement to counsel for TECO and Odyssey and to staff on March 28, 2000. A copy of Allied/CFI's draft protective agreement is attached to Allied/CFI's Motion to Compel Production of Documents by TECO ("Allied/CFI's motion to compel") filed on May 2, 2000. TECO's supplemental motion, also filed on May 2, 2000, proposes that disclosure of confidential information in this proceeding to Allied/CFI shall be made pursuant to a protective agreement and provides a draft protective agreement based on Allied/CFI's draft, with certain additional and revised terms and conditions.

3. Allied/CFI first received a copy of TECO's proposed protective agreement on May 3, 2000. Based on TECO's proposed protective agreement, it appears that there are three significant disputed issues which remain to be resolved: (1) whether disclosure must be limited to representatives of Allied/CFI who are not involved in "marketing, manufacturing, sales or business strategy development or implementation;" (2) whether information obtained pursuant to the Agreement will be used solely for the purpose of litigation, as Allied/CFI proposes, or solely for the purpose of litigation "in this proceeding," as TECO proposes; and (3) whether Allied/CFI and Odyssey must "release and hold Tampa Electric harmless with regard to any liability which may result from Tampa Electric's release of confidential information" as a condition to disclosure. None of TECO's three additional and revised proposed terms and conditions are reasonable or justified. Allied/CFI cannot enter into a proposed protective agreement containing any of these terms.

4. TECO's proposal would effectively prohibit disclosure to all of Allied/CFI's officers and management, including Allied/CFI's witness who prefiled direct testimony in this proceeding, Robert M. Namoff. This term of TECO's draft was first proposed to Allied/CFI's counsel orally on

April 27, 2000. As stated in Allied/CFI's motion to compel, Allied and CFI are not large companies with levels of officers and management, some of whom are not involved in marketing, manufacturing, sales, or business strategy. Mr. Namoff is Allied/CFI's witness in this proceeding and is the person who negotiated with TECO for CISR tariff rates. Mr. Namoff's direct testimony filed on February 21, 2000 details his negotiations with TECO and substantiates Allied/CFI's claims of undue discrimination and apparent collusion. In attempting to deny Allied/CFI's witness access to the requested confidential information, TECO continues to attempt to prevent Allied/CFI from exercising its due process rights. TECO's attempt to prohibit disclosure to Allied/CFI's officers and management, and particularly, to Mr. Namoff, cannot be justified based upon the rationale for preserving confidential treatment of information concerning CISR tariff rates previously articulated by the Commission and discussed below.

5. TECO's original justification for refusing to disclose confidential information to Allied/CFI was the alleged need to preserve the trade secrets of Allied/CFI's competitor, Odyssey. However, TECO's refusal to permit disclosure based on this justification has been completely undermined by three subsequent events: (1) Allied/CFI's April 7, 2000 letter proposal that TECO may first produce all confidential information concerning its CISR tariff rate negotiations with Odyssey (other than the document filed by TECO on March 10 and identified as "1 page side-by-side reconciliation of CSA rates, terms and conditions TECO negotiated with Odyssey compared to those last discussed with Allied/CFI") to Odyssey alone, allowing Odyssey to redact any information it considers to be trade secrets prior to disclosure to Allied/CFI; (2) Odyssey's non-objection to disclosure to Allied/CFI generally (stated at the April 18 Agenda Conference) and to Mr. Namoff specifically (as noted in Allied/CFI's motion to compel) of the terms and conditions of the

TECO/Odyssey Contract Service Agreement ("CSA"); and (3) the Commission's denial of TECO's first motion for protective order.¹ See Order No. PSC-00-0908-FOF-EI.

6. In the latest of TECO's ever-evolving positions concerning disclosure of confidential information, TECO now suggests as a justification for nondisclosure that Allied/CFI's representatives would use the confidential information for the allegedly improper purpose of attempting to renegotiate CISR tariff rates with TECO. Therefore, TECO suggests that the Allied/CFI representatives who are given access to confidential information must not be allowed to represent Allied/CFI or any other existing or potential TECO customer in negotiations for a CISR rate or a special negotiated rate for a period of three years.

7. TECO's new argument for nondisclosure finds no support in the terms of Order No. PSC-00-0908-FOF-EI denying TECO's first motion for protective order, and is inconsistent with the policy underlying CISR tariffs. The Order recognizes that the reason for requiring confidentiality of information concerning CISR tariff rates is to enhance the utility's flexibility to retain or attract at-risk load by providing assurances to future CISR tariff customers of the security of their confidential information disclosed to the utility. The policy underlying CISR tariffs is that utilities should be given the flexibility to negotiate discounted rates for electric service to eligible commercial/industrial customers who may bypass the utility's system to the detriment of the utility's captive residential ratepayers. TECO's latest position flies in the face of the purpose for even authorizing a CISR tariff offering and harms the interests of TECO's captive residential ratepayers

¹TECO's supplemental motion and TECO's response to Allied/CFI's motion to compel fail to address both: (1) Allied/CFI's proposal for Odyssey's prior review of certain confidential information before disclosure is made to Allied/CFI; and (2) Odyssey's non-objection to disclosure to Allied/CFI and to Mr. Namoff.

by decreeing that TECO will slam its door on Allied/CFI for the next three years (an arbitrary time frame announced by TECO) and let its residential ratepayers bear the risk or costs of losing Allied/CFI to a bypass threat if the confidential information is disclosed to certain Allied/CFI representatives in this proceeding. TECO's latest position exposes its claim that it only wishes to protect its ratepayers as a sham - - TECO would prefer to "punish" Allied/CFI for challenging TECO's conduct of its CISR tariff negotiations. Nevertheless, in order to expedite discovery, and assure its due process rights, Allied/CFI would agree to TECO's proposed term prohibiting Allied/CFI's representatives from representing any potential TECO customer in negotiations for a CISR tariff rate, for a period to be determined by the Commission.

8. Paragraph 3 of Allied/CFI's proposed protective agreement offers to limit the use of any information obtained by Allied/CFI pursuant to the agreement to litigation. TECO's proposed protective agreement at paragraph 3 revises this term to limit use to litigation "in this proceeding." TECO's revision suggests that Allied/CFI must waive any claims they have or may have which are beyond the jurisdiction of the Commission, as a precondition to the disclosure of confidential information to Allied/CFI. Of course, the Commission is not a court of general jurisdiction, as acknowledged in the comments of commissioners and staff at the April 18, 2000 Agenda Conference. TECO is attempting to extract a waiver of Allied/CFI's substantive rights as the price of Allied/CFI's exercise of its due process rights in this proceeding. TECO's overreaching attempt to bargain for limitation of its liability in the context of a protective agreement must be rejected.

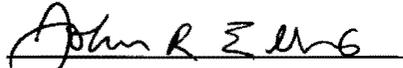
9. Paragraph 6 of TECO's proposed protective agreement represents another attempt by TECO to insulate itself from further liability by demanding that both Allied/CFI and Odyssey release and hold TECO harmless from "any liability which may result from Tampa Electric's release of

Confidential Information pursuant to this Agreement." This term of TECO's proposal must be rejected for the same reasons that TECO's attempt to limit its liability in paragraph 3 of TECO's proposal must be rejected. The Commission's rules and procedures for handling of proprietary confidential business information are not to be used by parties as a vehicle to bargain for limitations of liability from substantive claims.

10. Allied/CFI proposes that initial disclosure of confidential information concerning TECO's CISR tariff rate negotiations with Odyssey (except as noted above) be made to Odyssey alone, allowing Odyssey to redact information it believes to be trade secrets before disclosure of such information is made to Allied/CFI. The March 28, 2000 draft of Allied/CFI's proposed protective agreement included Odyssey as a signatory and provided for disclosure of confidential information to Odyssey's counsel and designated representatives. Inexplicably, TECO's draft protective agreement does not provide for disclosure of confidential information to Odyssey (although paragraph 6 would require Odyssey to release and hold TECO harmless from liability for disclosure). Attached to this Response as Exhibit A is a revised draft of Allied/CFI's proposed protective agreement, generally adopting TECO's revisions but specifically providing for disclosure of confidential information to Odyssey and deleting the three additional and revised terms from TECO's proposal as discussed above.

WHEREFORE, for the foregoing reasons, Allied/CFI requests that TECO's Supplemental Motion for Protective Order be denied, and that the Prehearing Officer issue an order in this proceeding adopting the Protective Agreement attached hereto as Exhibit A.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John R. Ellis", written over a horizontal line.

~~Kenneth A. Hoffman, Esq.~~

John R. Ellis, Esq.

Rutledge, Ecenia, Purnell & Hoffman, P.A.

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Attorneys for Allied Universal Corporation and
Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

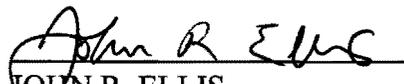
I HEREBY CERTIFY that a copy of the foregoing Allied/CFI's Motion to Compel Production of Documents by Tampa Electric Company was furnished by hand delivery(*) and/or by facsimile telecopier and mail to the following this 10th day of May, 2000:

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TECO Energy, Inc.
Legal Department
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Tampa, FL 33601


JOHN R. ELLIS

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Allied Universal)
Corporation and Chemical Formulators,)
Inc. against Tampa Electric Company)
for violation of Sections 366.03,)
366.06(2) and 366.07, Florida Statutes,)
with respect to rates offered under)
Commercial/Industrial Service Rider tariff;)
petition to examine and inspect confidential)
information; and request for expedited)
relief.)
_____)

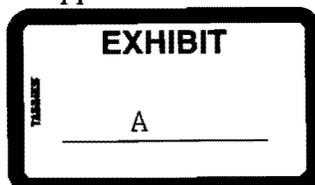
Docket No. 000061-EI

PROTECTIVE AGREEMENT

This agreement ("Agreement") is entered into by and between Petitioners, Allied Universal Corporation ("Allied"), and Allied's affiliate Chemical Formulators, Inc. ("CFI"), collectively referred to hereinafter as "Allied/CFI"; Respondent, Tampa Electric Company ("Tampa Electric"); and Intervenor, Odyssey Manufacturing Company ("Odyssey"), by and through their undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code.

WHEREAS, Allied/CFI has propounded discovery requests to Tampa Electric in this proceeding seeking certain information regarding Tampa Electric's negotiations with Odyssey for electric service under Tampa Electric's Commercial/Industrial Service Rider ("CISR") tariff (hereinafter referred to as "Confidential Information"); and

WHEREAS, in response to Allied/CFI's discovery requests, Tampa Electric has objected to the production of Confidential Information on the grounds that such information is confidential, competitively sensitive and can be released only to the Commission and its Staff under the express terms of Tampa Electric's Commission approved CISR tariff; and



WHEREAS, Allied/CFI has expressed a need for reasonable access to the Confidential Information in order to resolve their Complaint in this proceeding in an expeditious manner; and

WHEREAS, Tampa Electric shares Allied/CFI's desire to resolve this matter expeditiously and is, therefore, willing to produce Confidential Information, in a manner that does not unduly risk public disclosure of such information, subject to prior Commission approval of this Agreement; and

WHEREAS, the persons subscribing to this Agreement as representatives of Allied/CFI and Odyssey agree to accept such information subject to the conditions of this Agreement,

NOW THEREFORE it is agreed as follows:

1. Disclosure of the requested information to Allied/CFI and to Odyssey shall be limited to representatives of Allied/CFI and Odyssey who have executed the non-disclosure agreement described in paragraph 2 below. Allied/CFI representatives who sign the non-disclosure agreement shall not represent Allied/CFI or any other existing or potential Tampa Electric customer in any negotiations with Tampa Electric for either a Contract Service Agreement ("CSA") under Tampa Electric's Commercial/Industrial Service Rider Tariff ("CISR") or for a negotiated rate for electric service during the period commencing with the execution of this Agreement and ending on _____ . In addition, Allied/CFI representatives who sign the non-disclosure agreement shall not participate directly or indirectly in such negotiations.

2. Confidential Information shall not be disclosed to any person who has not signed the non-disclosure agreement on the form which is attached hereto as Exhibit A and incorporated herein. The non-disclosure agreement ("Exhibit A") requires the person to whom disclosure is made to read a copy of this Agreement and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The non-disclosure agreement shall contain the signatory's full

name, business address and telephone number, and the name of the party with whom the signatory is associated. The person executing the non-disclosure agreement shall further certify that he or she is authorized by Allied/CFI or Odyssey to execute the non-disclosure agreement. The signed non-disclosure agreement shall be delivered to counsel for Tampa Electric prior to the disclosure of the information to the signatory.

3. Use of any information obtained by Allied/CFI and Odyssey pursuant to this Agreement will be made solely for the purpose of litigation and for no other purpose.

4. All documents containing Confidential Information, including both originals and all copies, which are provided to Allied/CFI and/or Odyssey or subsequently created by Allied/CFI and/or Odyssey shall be deemed to be held in trust pursuant to this Agreement and shall be returned to Tampa Electric upon the conclusion of litigation involving the matters alleged in this proceeding.

5. Those persons who become representatives of Allied/CFI and Odyssey pursuant to this Protective Agreement further agree that:

- a. They will treat all information obtained pursuant to this Agreement as confidential;
- b. No employees or agents of Allied/CFI and Odyssey other than themselves will review the documents and other information obtained pursuant to this Agreement;
- c. They will not publicly disclose any information obtained pursuant to this Agreement; and

d. Disclosure to any regulatory or judicial authority of any information obtained pursuant to this Agreement shall be accompanied by an appropriate request for confidential classification and treatment of the information.

6. The parties agree that only representatives who have executed the non-disclosure agreement referred to in paragraph 2 above may review or have access to information obtained pursuant to this Agreement.

7. If any party wishes to use Confidential Information in the course of this proceeding, in testimony filed by that party or in direct or cross-examination of any witness, in rebuttal, or in a proffer of evidence, then the proponent of such evidence shall follow the procedures for use of confidential information set forth in the February 23, 2000 Order Establishing Procedure issued in this proceeding.

8. Each of the parties to this Agreement shall act in good faith to carry out the purposes of this Agreement and neither of them will do anything to deprive the other parties of the benefit of this Agreement. In case of any disagreement between the parties to this Agreement on the meaning or application of this Agreement or over whether each party has complied with it, the parties shall submit the matter, initially, to the Commission for its determination. Nothing in this Agreement shall constitute a waiver by either party of any right which any party may have to protect trade secrets or proprietary confidential business information contained in the information obtained pursuant to this Agreement by appealing any decision of the Commission or by instituting an original proceeding in any court of competent jurisdiction; nor shall any party's participation in this Agreement be construed as an admission that any information obtained pursuant to this Agreement in fact contains trade secrets or proprietary confidential business information. In the event that the

Commission shall rule that any of the information obtained pursuant to this Agreement should be removed from the restrictions imposed by this Agreement, no party shall disclose any such information in the public record for ten (10) business days unless authorized by the providing party to do so. The provisions of this paragraph are entered to enable a party to seek a stay or other relief from an order removing the restrictions of this Agreement from material claimed by any other party be trade secrets or proprietary confidential business information.

9. This agreement shall be binding on the parties to this Agreement from the date of its execution. Each executed copy of this Agreement shall be deemed an original.

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