

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Sections 366.03, 366.06(2) and 366.07, F.S., 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
ORDER NO. PSC-00-1598-PCO-EI
ISSUED: September 6, 2000

ORDER GRANTING IN PART AND DENYING IN PART
MOTION FOR PROTECTIVE ORDER

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI. On March 28, 2000, Odyssey Manufacturing Company (Odyssey) requested permission to intervene, and that request was granted on April 18, 2000, in Order No. PSC-00-0762-PCO-EI.

On March 10, 2000, TECO submitted a copy of its CISR files on Odyssey and Allied, and requested confidentiality for the entire package. Evaluation of the confidentiality of all 1800+ pages in the submittal is currently underway. On June 15, 2000, Odyssey submitted a Motion for Protective Order covering certain documents in the March 10 submittal. On June 22, 2000, Allied responded, stating it had no objection. On July 18, 2000, Odyssey submitted a Supplement to its Motion clarifying the page numbers of the documents it wanted to be covered by the protective order.

The specific pages and parts of pages included in Odyssey's request are as follows:

1. Page 340-0 (Document 4): entire page; contains information on debt financing obtained by Odyssey for the plant receiving CISR rates.

DOCUMENT NUMBER-DATE

11023 SEP-68

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2. Page 1266-0 (Document 49): that portion of the first full paragraph which identifies the number of employees, annual sales, and gallons delivered by Odyssey's affiliate, Sentry Industries.
3. Pages 1304-0 and 1305-0 (Document 54): both pages in their entirety; contain information on average sales costs and revenue data for Sentry's products.
4. Pages 1306-0 through 1311-0, and 1316-0 and 1317-0 (Document 56): all pages in their entirety; contain information on cost, shipping, inventory and production data for Sentry.
5. Pages 1318-0 through 1320-0 (Document 57): all pages in their entirety; this is a company profile that contains information on sales, production, distribution, process description, financial information, customer base, and projected growth of Sentry.

Rules 25-22.006(6)(a) and (b), Florida Administrative Code, authorize the Commission to grant protective orders in accordance with Rule 1.280, Florida Rules of Civil Procedure. Rule 1.280(c)(7) allows issuance of protective orders to protect trade secrets or other confidential commercial information. In a protective order, the Commission can designate that information not be disclosed or that it be disclosed in a certain way.

When ruling on a motion for protective order involving commercial information, a two part test is used to decide if the information is discoverable. First, the movant (TECO) must demonstrate that the information sought is confidential by virtue of being a trade secret or some other type of confidential commercial information. See Order No. PSC-00-0291-PCO-EU, issued February 11, 2000, in Docket No. 991462-EU; Kavanaugh v. Stump, 592 So. 2d 1231, 1232-3 (Fla. 5th DCA 1992); Inrecon v. The Village Homes at Country Walk, 644 So. 2d 103, 105 (Fla. 3rd DCA 1994); Rare Coin-it v. I.J.E., Inc., 625 So. 2d 1277 (Fla. 3rd DCA 1993). If it is not confidential, then it can not be withheld from discovery on grounds that it is confidential commercial information. If the information is confidential, the burden shifts to the opposing party (Allied) to establish that its need for the information outweighs the countervailing interest in withholding production. See Order No. PSC-00-0291-PCO-EU, issued February 11,

2000, in Docket No. 991462-EU; Inrecon at 105; Rare Coin-it at 1277; Higgs v. Kampgrounds of America, 526 So. 2d 980, 981 (Fla. 3rd DCA 1988); Eastern Cement Corp. V. Dep't of Environmental Protection, 512 So. 2d 264, 265-6 (Fla. 1st DCA 1987).

Odyssey claims it treats the information it seeks to protect as proprietary and confidential business information, pursuant to Section 366.093, Florida Statutes. Odyssey claims that disclosure of the information would adversely impact its ability to compete in its native market, and that the information is not likely to lead to the discovery of evidence admissible at the hearing. Odyssey further claims that its interest in protecting the information outweighs Allied's need for disclosure of the information. Allied asserts no need for the information and does not object to the protective order.

After reviewing the documents, I find that most of the information Odyssey identifies meets the confidentiality criteria of Section 366.093, Florida Statutes. Specifically, the following meet this requirement: pages 340-0, 1304-0 through 1311-0, 1316-0, and 1317-0. Because Allied claims no need for this information, and Odyssey claims its competitive interests would be harmed by production, the harm of production clearly outweighs the harm from withholding the documents. Odyssey's Motion for Protective Order is granted for these documents.

With respect to document 1266-0, Odyssey's Motion is granted except for the number of employees. The number of employees has been disclosed to the public through Sentry's web page. Therefore, the information is not confidential and can not be protected from discovery.

Pages 1318-0, 1319-0 and 1320-0 are a company profile of Sentry Industries. Odyssey did not provide a line by line or field by field justification, as required by Rule 25-22.006(a), Florida Administrative Code, but instead simply stated that discovery of the profile could harm Odyssey. I find that only the monetary values in the company profile warrant the protection Odyssey seeks.

Much of the information on the three page profile is generally available to the public, and therefore does not satisfy the confidentiality requirements. For example, Sentry's annual growth rate and the percentage of sales derived from SAF-T-CHLOR are on its web page. Because it is not confidential, it can not be withheld from discovery. The last paragraph on page 1319-0 quotes

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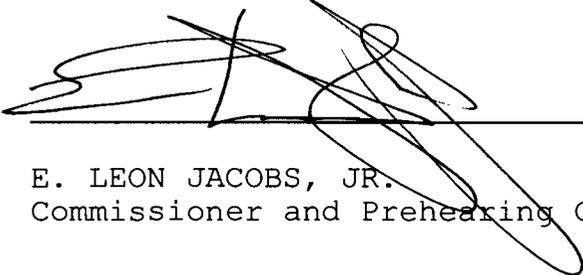
Sentry customers as saying, "Sentry is the nicest company they have ever bought something from." This does not appear to meet the requirements for confidentiality.

Therefore, with respect to the company profile, Odyssey's motion is granted for numbers representing monetary values. Odyssey's Motion is denied for all other information in the company profile. If Odyssey believes additional information in the company profile qualifies for a protective order, Odyssey shall submit a copy of the document with the lines numbered, identify the specific line where the information is found, and provide a specific justification for each request in each line.

Based on the foregoing, it is

ORDERED that Odyssey Manufacturing Company's Motion for Protective Order is granted in part and denied in part as described in the body of the Order. It is further

By ORDER of Commissioner E. Leon Jacobs, Jr. as Prehearing Officer, this 6th Day of September, 2000.



E. LEON JACOBS, JR.
Commissioner and Prehearing Officer

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative

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hearing or judicial review will be granted or result in the relief sought.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code, if issued by a Prehearing Officer; (2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or (3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.