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October 13, 2000

**HAND DELIVERY**

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RECORDS AND REPORTING

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

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed for filing on behalf of Allied/CFI are the original and fifteen copies of Allied/CFI's Motion for Authorization to Disclose Confidential Information Pursuant to Protective Agreement.

Please acknowledge this filing by date-stamping and returning the enclosed copy of this letter.

Thank you for your assistance with this filing.

Sincerely,

*for J. S. Menton*  
John R. Ellis

- APP \_\_\_\_\_
- CAF \_\_\_\_\_
- CMP \_\_\_\_\_
- COM 3 JRE/rl
- CTR \_\_\_\_\_
- ECR \_\_\_\_\_ Enclosures
- LEG 2 cc: All Counsel
- OPC \_\_\_\_\_ Trib.3
- PAI \_\_\_\_\_
- RGO \_\_\_\_\_
- SEC 1
- SER \_\_\_\_\_
- OTH \_\_\_\_\_

RECEIVED & FILED  
*[Signature]*  
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

13067 OCT 13 8

FPSC-RECORDS/REPORTING

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

Filed: October 13, 2000

ALLIED/CFI'S MOTION FOR AUTHORIZATION TO DISCLOSE CONFIDENTIAL INFORMATION PURSUANT TO PROTECTIVE AGREEMENT

Allied Universal Corporation ("Allied") and its affiliate, Chemical Formulators, Inc. ("CFI"), hereinafter referred to collectively as "Allied/CFI," by and through their undersigned counsel, and pursuant to Rule 28-106.204, Florida Administrative Code, move for authorization to disclose confidential information pursuant to the Protective Agreement to Allied/CFI's principal witness, Robert M. Namoff, and to two additional attorneys for Allied/CFI, Daniel K. Bandklayder and Phillip L. Allen, and state:

- 1. Order No. PSC-00-1171-CFO-EI, issued June 27, 2000 ("Discovery Order"), directed Allied/CFI, Tampa Electric Company ("TECO"), and Odyssey Manufacturing Company ("Odyssey") to enter into a non-disclosure agreement that prohibits any party from revealing confidential information exchanged in this proceeding to anyone other than representatives of the companies that sign the non-disclosure agreement. The Discovery Order summarizes the disputed issues between the parties concerning proposed terms for the non-disclosure agreement, at pages 10-14 of the Discovery Order. A copy of the Protective Agreement entered into by Allied/CFI, TECO

DOCUMENT NUMBER-DATE

13067 OCT 13 8

FPSC-RECORDS/REPORTING

and Odyssey is attached to this Motion as Exhibit "A."

2. Order No. PSC-00-1530-PCO-EI, issued August 23, 2000 ("Order Denying Motions for Reconsideration"), approved a stipulation between Allied/CFI, TECO and Odyssey reached at the August 1, 2000 Agenda Conference, concerning the representatives of Allied/CFI who are authorized to review confidential information disclosed pursuant to the Protective Agreement. As stipulated and as stated in the Order Denying Motions for Reconsideration, two of the authorized representatives of Allied/CFI are its attorneys in this proceeding, John R. Ellis and Kenneth A. Hoffman.

4. Allied/CFI is requesting authorization for two additional attorneys, Daniel K. Bandklayder and Phillip L. Allen, to review confidential information disclosed pursuant to the Protective Agreement. Both Mr. Bandklayder and Mr. Allen are members in good standing of the Florida Bar who have been providing advice and counsel to Allied/CFI in this proceeding since its inception. Mr. Bandklayder has served as counsel for Allied for several years, and Mr. Allen has been retained by Allied/CFI since the inception of this proceeding. Both Mr. Bandklayder and Mr. Allen have reviewed the Protective Agreement, and each is willing to execute the Non-disclosure Agreement which is Exhibit A to the Protective Agreement and to abide by its terms.

5. Neither TECO nor Odyssey is limited with respect to the number of or qualifications of their attorneys who are authorized to review confidential information, by simply having read and signed the Protective Agreement and the Non-disclosure Agreement. For example, attorney Scott A. Fuerst, who advised Odyssey's affiliate, Sentry Industries, Inc. ("Sentry"), with respect to Odyssey's April, 1998 application for service under TECO's IS-3 and IST-3 rate schedules, Scott A. Fuerst, became the third attorney for Odyssey authorized to review confidential information when

he signed the Non-disclosure Agreement on August 30, 2000, in addition to Odyssey's counsel of record in this proceeding, Patrick K. Wiggins and Wayne L. Schiefelbein.

6. At no time during the protracted negotiations and proceedings leading to the approval of the Protective Agreement did either TECO or Odyssey express any concern regarding review of confidential information by attorneys for Allied/CFI. Neither TECO nor Odyssey have articulated any reason why disclosure to attorneys for Allied/CFI should be limited. TECO's prior asserted justifications for limitation of disclosure were to protect Odyssey's trade secrets, and to prevent a chilling effect on TECO's ability to negotiate for at-risk load. As stated in the Discovery Order, TECO's concern regarding Odyssey's trade secrets was addressed by Allied/CFI's offer to allow Odyssey to redact confidential information in advance of disclosure to Allied/CFI. The Discovery Order appropriately gave priority to Allied/CFI's due process rights over TECO's speculative concern regarding its future negotiating ability. However, neither concern is affected in any way by limitations on review by additional attorneys for Allied/CFI.

7. Pursuant to the stipulation reached at the Agenda Conference on August 1, Allied/CFI has attempted to proceed in good faith in the review of confidential information and preparation of rebuttal testimony without disclosure of confidential information to Allied/CFI's Chief Executive Officer and principal witness in this proceeding, Robert M. Namoff. However, the two Allied/CFI officers and employees who currently are authorized to review confidential information, Allied's Chief Operating Officer, Jim Palmer, and its Chief Financial Officer, Michael Koven, did not participate in most of the meetings and discussions between TECO and Allied/CFI in question. Neither Mr. Palmer nor Mr. Koven can respond to a number of issues raised in the documents produced by TECO to Allied/CFI on August 14, 2000, for the reason that Mr. Namoff was the sole

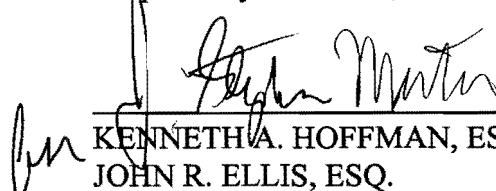
representative of Allied/CFI who conducted the majority of Allied/CFI's dealings with TECO.

9. There is no justification for limitation of disclosure of confidential information to Mr. Namoff on the basis that his duties include marketing and development of business strategy, because Mr. Palmer's and Mr. Koven's duties encompass these subjects as well. There is no reason for the continued refusal to permit disclosure to Mr. Namoff other than the transparent attempt to limit Allied/CFI's ability to litigate the case on the merits by limiting the number of knowledgeable witnesses who can assist in the preparation of the case.

8. Pursuant to Rule 28-106.204(3), undersigned counsel for Allied/CFI represents that he has conferred with counsel for TECO and Odyssey concerning the subjects of this motion, and is authorized to represent that TECO and Odyssey oppose the motion.

WHEREFORE, Allied/CFI respectfully requests the issuance of an order authorizing the disclosure of confidential information pursuant to the Protective Agreement to Allied/CFI's Chief Executive Officer and principal witness, Robert M. Namoff, and to its attorneys, Daniel K. Bankdlayder and Phillip A. Allen.

Respectfully submitted,



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KENNETH A. HOFFMAN, ESQ.

JOHN R. ELLIS, ESQ.

Rutledge, Ecenia, Underwood, 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/CFT's Motion for Authorization was furnished by hand delivery(\*) and/or U. S. Mail to the following this 13<sup>th</sup> day of October, 2000:

Robert V. Elias, Esq.(\*)  
Marlene Stern, Esq.  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Room 370  
Tallahassee, Florida 32399-0850

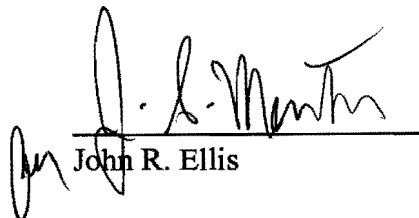
Lee L. Willis, Esq.(\*)  
James D. Beasley, Esq.  
Ausley & McMullen  
227 South Calhoun Street  
Tallahassee, Florida 32301

Harry W. Long, Jr., Esq.  
TECO Energy, Inc.  
Legal Department  
P. O. Box 111  
Tampa, FL 33601

Patrick K. Wiggins, Esq.  
Wiggins & Villacorta  
P. O. Box 1657  
Tallahassee, FL 32302

Wayne L. Schiefelbein, Esq.  
P. O. Box 15856  
Tallahassee, FL 32317-5856

Scott J. Fuerst, Esq.  
Ruden, McClosky, et al.  
200 East Broward Blvd.  
Ft. Lauderdale, FL 33301

  
John R. Ellis

Allied/authorization

**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. )  
\_\_\_\_\_ )

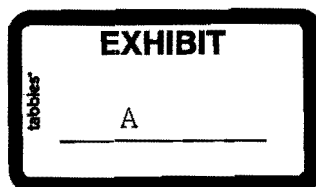
Docket No. 000061-EI

**PROTECTIVE AGREEMENT**

This agreement 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 ("TECO"); and Intervenor, Odyssey Manufacturing Company ("Odyssey"), by and through their undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code.

WHEREAS, in response to Allied/CFI's discovery requests in this proceeding, TECO will produce certain information including documents, answers to interrogatories, and deposition testimony, which TECO deems to be proprietary confidential business information; and

WHEREAS, in order to provide Allied/CFI and Odyssey reasonable access to certain proprietary confidential business information requested without unduly risking public disclosure of the proprietary information it contains, TECO has agreed to provide certain requested information to Allied/CFI and Odyssey to expedite discovery in preparation for the hearing; 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.

2. The requested 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 Protective 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 and Odyssey to execute the non-disclosure agreement. The signed non-disclosure agreement shall be delivered to counsel for TECO prior to the disclosure of the information to the signatory.

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

4. All copies of documents containing the requested information which are provided to Allied/CFI shall be deemed to be held in trust pursuant to this Protective Agreement and shall be returned to TECO 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 the Protective 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 Protective Agreement;

c. They will not publicly disclose any information obtained pursuant to this Protective 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. Allied/CFI and Odyssey 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 Protective Agreement.

7. If Allied/CFI and Odyssey desire to use, in the course of this proceeding, any information obtained pursuant to this Protective Agreement, in testimony filed by Allied/CFI or Odyssey or in direct or cross-examination of any witness, in rebuttal, or in a proffer of evidence, the proponent of such evidence shall notify TECO at least one (1) business day in advance of the proposed use and will meet with representatives of TECO for the purpose of attempting in good faith to establish a procedure that will accommodate the needs of Allied/CFI and Odyssey for obtaining evidence without risking public disclosure of the proprietary and confidential information contained in the information obtained pursuant to this Protective Agreement. If TECO, Allied/CFI and

Odyssey are unable to reach agreement on a means of preventing public disclosure of the proprietary information, then TECO, Allied/CFI and Odyssey will submit the issues to the Commission for resolution before any party attempts to make use of the information.

9. Each of the parties to this Protective 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 Protective Agreement on the meaning or application of this agreement or over whether either party has complied with it, the parties shall submit the matter, initially, to the Commission for its determination. Nothing in this Protective 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 Protective 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 Protective 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 Protective 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 Protective Agreement from material claimed by any other party be trade secrets or proprietary confidential business information.

10. In the event a party wishes to utilize any information obtained pursuant to this

Protective Agreement in this proceeding, but because of delays resulting from hearings before the Commission or courts of competent jurisdiction regarding confidential status, is not free to use the information prior to the determination of the hearing, upon final resolution of the matter by the Commission or courts in favor of the party wishing to utilize the information such information shall be submitted to the Commission in the form of a late-filed exhibit and, subject to the Commission's rules concerning comments on late-filed exhibits, shall be incorporated into the record of the hearings as if it had been presented at the hearing.

11. 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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Kenneth A. Hoffman, Esq.  
John R. Ellis, Esq.  
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Company

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James D. Beasley, Esq.  
Ausley & McMullen  
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Tallahassee, Florida 32301  
(850) 224-9115 (Telephone)  
(850) 222-7560 (Telecopier)

Attorneys for TAMPA ELECTRIC  
COMPANY

Exhibit "A"  
Non-disclosure Agreement

The undersigned hereby certifies: (1) that he/she is authorized to execute this non-disclosure agreement on behalf of the party indicated below; and (2) that prior to the disclosure to him/her of certain information and documents belonging to, or in the possession of, or made available through the offices of Tampa Electric Company which are considered by Tampa Electric Company, or the owner of such information or documents, to be a trade secret, or otherwise of a privileged or confidential nature, he/she has read the Protective Agreement between Allied Universal Corporation and Chemical Formulators, Inc., Tampa Electric Company and Odyssey Manufacturing Company in Docket No. 000061-EI, attached to this non-disclosure agreement, and he/she agrees to be bound by the terms of the Protective Agreement.

Executed this \_\_\_ day of \_\_\_\_\_, 2000.

REPRESENTATIVE OF:

By: \_\_\_\_\_

Name:

ALLIED UNIVERSAL CORPORATION \_\_\_

Address:

CHEMICAL FORMULATORS, INC. \_\_\_

TAMPA ELECTRIC COMPANY \_\_\_

Telephone:

ODYSSEY MANUFACTURING COMPANY \_\_\_