

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: August 20th, 2004

**NOTICE OF INTENT TO REQUEST
CONFIDENTIAL CLASSIFICATION**

Odyssey Manufacturing Company ("Odyssey"), by and through undersigned counsel and pursuant to Rule 25-22.006(3)(a), Florida Administrative Code, files this Notice of Intent to Request Confidential Classification and states as follows:

1. Odyssey seeks confidential classification of nine (9) references to its initial CISR rate on pages 39, 40 and 41 of its Motion to Dismiss Amended Petition of Allied Universal Corporation and Chemical Formulators, Inc. (Motion to Dismiss). The first, on the last line of page 39, refers to the rate as included in an affidavit of Steve Sidelko, Odyssey's President. The remaining eight references quote from or otherwise refer to Mr. Sidelko's testimony at an uncompleted December 18, 2003, deposition in a pending civil action brought by Allied Universal Corporation et al, v. Odyssey Manufacturing Company, et al, Case No. 01-27699 CA25 in the Circuit Court of the 11th Judicial Circuit in and for Miami Dade County, Florida.

2. The rate as identified in said affidavit has previously been accorded confidential classification by the Commission, in Docket No. 000061-EI. E.g. Order No. PSC-01-2253-CFO-EI (November 16, 2001) at page 31.

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PSC-COMMISSION CLERK

3. With reference to the said deposition, on April 22, 2004, Circuit Judge Michael B. Chavies signed an Agreed Order on Defendants' Emergency Motion for Contempt and for Sanctions in said civil action which provides in part that:

The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service Commission ("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

4. Odyssey filed said deposition transcript in the instant docket in its entirety on April 22, 2004, together with a Notice of Intent to Request Confidential Classification. Portions of said transcript, (including the eight portions referenced in but redacted from discussion or quotation in the Motion to Dismiss) were specifically the subject of a Request for Confidential Classification as filed by Odyssey on May 13, 2004.

5. Concurrently with the instant Notice, Odyssey is filing an original and one (1) copy of the unredacted pages 39, 40 and 41 of its Motion to Dismiss, in an envelope marked "Confidential" with the confidential portions highlighted on the copy. Odyssey has also filed fifteen (15) edited copies of said pages within the Motion to Dismiss also filed concurrently herewith, with the confidential information therein redacted.

6. The information for which confidential classification will be requested is intended to be and is treated by Odyssey as private and has not been publicly disclosed by Odyssey.

7. However, it is the undersigned counsel's understanding that counsel for Allied/CFI in the civil action filed the unredacted deposition transcript of Mr. Sidelko in the docket file of that circuit court action on January 21, 2004. Said matter is the subject of a pending Motion to Seal Documents in Court File, a copy of which is attached hereto. The Commission is fully apprised of this controversy. See for example Order No. PSC-04-0724-CFO-EI (July 20, 2004) and the attached

transcript of deliberations at the July 20, 2004 agenda conference. In said July 27, 2004 Order, the Prehearing Officer directed *inter alia* that the deposition transcript of Mr. Sidelko has been and will continue to be treated as confidential pursuant to Section 366.093, Florida Statutes, and Commission Rule 25-22.006, Florida Administrative Code, pending a definitive Commission ruling at the appropriate time.

8. The original of this Notice is being filed in the Division of Records and Reporting and a copy is being served on all counsel of record.

Respectfully submitted this 20th day of August, 2004.



WAYNE L. SCHIEFELBEIN,
Of Counsel
JOHN L. WHARTON, ESQ.
ROSE, SUNDSTROM & BENTLEY LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
(850) 656-4029 (Fax)
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Intent to Request Confidential Classification has been furnished via Hand Delivery* and/or U.S. Mail to the following on this 20th day of August, 2004:

Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P.O. Box 551
Tallahassee, FL 32302

Daniel K. Bandklayder, Esq.
Anania, Bandklayder, Blackwell,
Baumgarten, Torricella & Stein
100 S.E. 2nd Avenue, Suite 4300
Miami, FL 33131

James D. Beasley, Esq.
Ausley & McMullen
227 South Calhoun Street
P.O. Box 391
Tallahassee, FL 32302

Harry W. Long, Jr., Esq.
Tampa Electric Company
702 N. Franklin St., 6th Floor
Tampa, FL 33602

*Martha C. Brown, Esq.
Marlene K. Stern, Esq.
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Harold McLean, Esq.
Office of Public Counsel
c/o The Florida Legislature
111 West Madison Street
Room 812
Tallahassee, Florida 32399-1400


John L. Wharton, Esq.

(2) if, and only if, said statements are determined to “contradict” one another, whether any such “contradictions” are material to Allied and CFI’s requests for relief; and

(3) if, and only if, said statements are determined to be both contradictory and material, whether such determinations support the Commission’s granting any of the relief Allied and CFI has demanded.

The Commission must answer all three of these questions with a resounding, “No.”

In their Amended Petition, Allied and CFI have concluded that there exist “contradictions”

between:

- Mr. Sidelko’s August 1998 affidavit and/or his June 2000 prefiled, direct testimony in Docket No. 000061-EI (collectively, Mr Sidelko’s “Prior Statements”) (neither of which are, nor have they been alleged to be, inconsistent with one another); and
- misleadingly selected and attached excerpts from the transcript of a deposition given in December 2003 by Mr. Sidelko in a pending civil proceeding (Mr. Sidelko’s “Recent Deposition”).

With regard to their Amended Petition, it is noteworthy that Allied and CFI never cite to any specific differences between the Recent Deposition and Mr. Sidelko’s Prior Statements. Allied and CFI simply imply that there are mysterious (and, apparently, unspeakable) contradictions between these things that somehow rise to the level of “fraud” or “a change of circumstances” sufficient to warrant the Commission’s vacating Order No. PSC-01-1003-AS-EI. However, Allied’s and CFI’s unfounded and unsupported conclusions that phantom contradictions exist are clearly insufficient to warrant any relief, of any variety, in any light.

- a. *Whether Odyssey Would Have Built Its Plant In Tampa at a Higher Rate than \$[REDACTED] per mwh.*

Allied’s and CFI’s first misguided conclusion regarding Mr. Sidelko’s statements is that, in his Recent Deposition, he “contradicted” his affidavit wherein he stated the necessary rate for Odyssey to build its Tampa plant was [REDACTED] cents per kwh. However, any reasonable interpretation

of Mr. Sidelko's deposition shows that, at the time he signed the affidavit, he believed only three rates to be available to him--(1) \$36 per mwh for interruptible electric service; (2) \$█ per mwh under a CISR tariff; or (3) a residential rate between \$70 and \$80 per mwh--and that he could not commence to build his plant with interruptible service (as there was a waiting list) or at the residential rate. This is amply shown even by reference only to those handpicked sections of the Recent Deposition (taken nearly six years after the affidavit was signed) attached to the Amended Petition:

Q. You don't recall what number was in the affidavit, if any?

A. The number was not important to me. I was signing that I need -- conceptually that I needed the CISR tariff offer and not the rate that people pay in their houses and not the interruptible rate because there was a waiting list.

(Exhibit "B" to Amended Petition at p.205, lines 8-15.)

Then, when asked the same question an hour later:

A. This document came from TECO. The language was suggested to me by TECO. Since I didn't know how to apply for CISR and didn't know the workings of the regulated utility industry, I used the language they suggested, and what I was signing in my mind is what I just told you an hour ago, that if I didn't get the CISR, I would not build my plant in TECO's territory. And the language they suggested included their proposed rate of \$█.

(Exhibit "B" to Amended Petition at p.248, line 22 through p.249, line 6.)

And when asked, once again:

A. I told you what I assumed. I assumed I had three choices; \$36 for interruptible power, \$█ for a CISR rate or seven or eight cents, whatever people pay in their houses, so unless I got this one [the CISR rate], I wouldn't build.

Q. Well, but--

A. The CISR and the \$█ were tied together.

(Exhibit "B" to Amended Petition at p.249, line 19 through p.250, line 1.)

And when asked, yet again:

Q Why was █ cents per kilowatt hour the threshold that you referred to in your affidavit?

MR. SMITH: Object to the form. Argumentative, asked and answered.

A: TECO put it in there because that was the rate they were going to offer me if the CISR was approved, and being an individual trying to start a company that had a lot of complicated work to do, I had no reason not to trust them filing, doing the paper work to file for the CISR. I did whatever they told me. This paper came, and I signed it. I read it and I believed it and I signed it, and in my mind the \$█ was the CISR. If I got the CISR, it would be \$█. If I didn't get the CISR, I wasn't going to build the plant. It's not contradictory in my mind.

(Exhibit "B" to Amended Petition at p.251, lines 4-21.)

Thus, any claim that Mr. Sidelko's testimony is "contradictory" to his affidavit in this regard is plainly unfounded.

b. Economic Feasibility.

The next misguided conclusion regarding Mr. Sidelko's statements that is proffered by Allied and CFI in their improper and frivolous Amended Petition is that Mr. Sidelko, "contradicted the sworn affidavit he furnished to TECO and his direct testimony filed with the Commission^[27]..." with respect to economic feasibility.

However, an inspection of Mr. Sidelko's Prior Statements demonstrates this conclusion to be baseless and irrelevant:

²⁷ Allied and CFI have materially omitted from their Amended Petition any mention of the nearly three-hour deposition of Mr. Sidelko by Allied and CFI taken in December 2000 in Docket No. 000061 at which Allied and CFI were afforded a full opportunity to question Mr. Sidelko under oath on the substance of both his affidavit and his unsworn, prefiled direct testimony.

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ALLIED UNIVERSAL CORPORATION, : Case No. 01-27699 CA25
a Florida corporation, and CHEMICAL :
FORMULATORS, INC., a Florida :
corporation, :
Plaintiffs, :

v.

ODYSSEY MANUFACTURING :
COMPANY, a Delaware Corporation, and :
SENTRY INDUSTRIES, INC., a Florida :
corporation, :
Defendants. :

MOTION TO SEAL DOCUMENTS IN COURT FILE

Defendants, ODYSSEY MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC. (“Defendants”), by and through undersigned counsel, hereby move to seal certain deposition transcripts contained within the Court file, and in support thereof state:

1. On September 3, 2002, the Court entered an Agreed Protective Order (“Order”), a copy of which is attached hereto as Exhibit “A.”
2. Pursuant to the Order, all transcripts of depositions containing confidential, proprietary business information concerning the parties was to remain confidential and was precluded from being filed without following a specific procedure.
3. Specifically, ¶ 1(A) defines the term “confidential information” very broadly to include any material produced by a party that the party believes in good faith to contain “trade secrets or confidential, sensitive or proprietary commercial information....”

4. Paragraph 3(E) of the Order then expressly prohibits any party from disclosing confidential information “used in any deposition testimony” except after following the procedure delineated in the Order. Critically, ¶ 3(E) goes on to state the following with regard to deposition transcripts containing confidential information:

In the event a party wishes to file a document, transcript, or thing containing Confidential Information described in this Order with the Court for any purpose, the party shall first serve the opposing party with the document, transcript, or thing containing the alleged Confidential Information. After service, the parties agree to consult with each other to discuss whether the document, transcript or thing actually contains Confidential Information as described herein. If the parties agree that the document, transcript or thing does not include Confidential Information, the document, transcript, or thing may be filed with the Court. If any of the parties believe that the material served contains Confidential Information, then any of the parties, prior to any filing of the document, transcript, or thing involved, shall apply to the Court pursuant to Rule of Judicial Administration 2.051 for a determination of whether the Confidential Information are confidential as described herein, and the document, transcript or thing involved shall be filed only in a form as specified pursuant to the resulting Court Order.

5. On April 22, 2004, the Court entered an Agreed Order on Defendants’ Emergency Motion for Contempt and For Sanctions, a copy of which is attached hereto as Exhibit “B.” That Agreed Order permitted the parties to file transcripts from depositions in this matter with the Florida Public Service Commission, but only and subject to “their seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.”

6. Plaintiffs, in direct violation of the Order, filed several deposition transcripts with the Court in opposition to Defendants’ Motions for Summary Judgment. Specifically, Plaintiffs filed (i) deposition transcript of Stephen Sidelko on January 21, 2004; and, (ii) deposition transcript of Patrick Allman on April 27, 2004.

7. Mr. Sidelko is a principal of Defendants and Mr. Allman is an employee of Odyssey. Their deposition transcripts contain confidential, proprietary business information about Odyssey's and Sentry's business operations.

8. Plaintiffs were obligated, prior to filing the above listed transcripts, to comply with the procedural requirements of the Order by serving the transcript on Defendants, consulting with them regarding which portions should remain confidential and then taking appropriate measures to protect the confidential portions of those transcripts prior to filing. Plaintiffs failed to do so.

9. Odyssey will be greatly prejudiced if the Court does not protect Odyssey's and Sentry's business interests by sealing the transcripts referenced above in the court file.

10. Odyssey and Sentry have already been harmed by Plaintiffs' conduct. Public Counsel has relied upon Plaintiffs' improper filing of the transcripts in this matter as a basis to file those transcripts with the Florida Public Service Commission without seeking confidential classification.

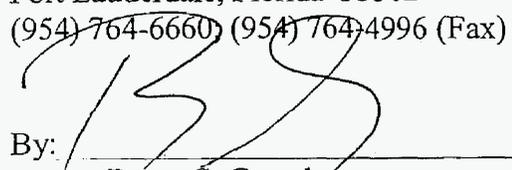
WHEREFORE, Defendants, ODYSSEY MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC. request that the Court enter an Order instructing the Clerk to seal the transcripts in the Court file referenced above, and for such other and further relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was furnished by prepaid U.S. Mail to: Lawrence D. Silverman, Esq., AKERMAN, SENTERFITT & EIDSON, P.A., SunTrust International Center, 28th Floor, One Southeast Third Avenue, Miami, Florida 33 131-1704; Daniel K. Bandklayder, Esq., ANANIA, BANDKLAYDER, BLACKWELL BAUMGARTEN & TORRICELLA, 4300 Nations Bank Tower, 100 Southeast Second Street, Miami, Florida 33131; Kenneth A. Hoffman, Esq., RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, FL 32302 and to Wayne Schiefelbein, Esq., ROSE, SUNDSTROM & BENTLEY, LLP, 2548 Blairstone Pines Drive, Tallahassee, FL 32301, this 13th day of July, 2004.

Respectfully submitted,

RUDEN, McCLOSKEY, SMITH
SCHUSTER & RUSSELL, P.A.
Attorneys for Defendants
Post Office Box 1900
Fort Lauderdale, Florida 33302
(954) 764-6660 (954) 764-4996 (Fax)

By: 

Bryan S. Greenberg
Florida Bar No. 968315

IN THE CIRCUIT COURT OF THE 11th
JUDICIAL CIRCUIT IN AND FOR DADE
COUNTY, FLORIDA

CASE NO. 01-27699 CA 25

ALLIED UNIVERSAL CORPORATION,
a Florida Corporation; and CHEMICAL
FORMULATORS, INC., a Florida
Corporation,

Plaintiffs,

vs.

ODYSSEY MANUFACTURING
COMPANY, a Delaware Corporation;
and SENTRY INDUSTRIES, INC.,
a Florida Corporation,

Defendants.

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B.S.G.

Agreed (ss)

PROTECTIVE ORDER

THIS CAUSE having come on to be heard upon Defendants', Odyssey Manufacturing Company and Sentry Industries, Inc., Motion for Protective Order, and upon the consent and agreement of Plaintiffs Allied Universal Corporation and Chemical Formulators, Inc., it is hereby ORDERED that the parties to this action, in order to provide protection of confidential and proprietary information and trade secrets of the parties and facilitate the discovery in this action, shall be governed by the following:

1. The following materials shall be deemed confidential (the "Confidential Information"):

A. Any written, recorded or graphic materials or documents, tangible items or any other form of information that a party produces in this case, which a party, in good faith,

believes to contain trade secrets or confidential, sensitive or proprietary commercial information, as provided by Rule of Judicial Administration 2.051(9)(A)(ii);

2. The herein-described Confidential Information shall be designated as such by stamping the word "Confidential" on the document or by any other reasonable method as agreed to by the parties.

3. That Confidential Information shall not:

A. Be disclosed, disseminated, published or made public to anyone but the parties and attorneys of record in this case, their personnel, agents and staff of counsel, expert witnesses, lay witnesses, court reporters and deponents, as is necessary for the conduct of the case. Attorneys of record and the parties hereto shall see that each person to whom this information is disclosed has read this agreement, and signs an affidavit in the form attached hereto as Exhibit "A" agreeing to be bound thereby;

B. Be used for any purpose whatsoever, except for pretrial preparation and trial of this action;

C. Be used in any manner in connection with any other action or proceeding, except in accordance with the terms hereof;

D. Be copied, duplicated or reproduced in whole or in part for any purpose whatsoever, except for pretrial preparation and trial of this action, without the prior written consent of counsel for party designating the subject Confidential Information as confidential or prior Order of this Court upon notice;

E. Be made any part of the public record of this case, whether in evidence or otherwise, except as provided herein, although this agreement does not prohibit its use as evidence in the trial of this case. If Confidential Information are used in any deposition

testimony, or interrogatory answer, or other discovery response, or as evidence, or is quoted or disclosed in any affidavit, brief, deposition, transcript or other paper filed in this action, such materials and papers shall be filed only as provided by this Order or such further order as may be entered by the Court. In the event a party wishes to file a document, transcript, or thing containing Confidential Information described in this Order with the Court for any purpose, the party shall first serve the opposing party with the document, transcript, or thing containing the alleged Confidential Information. After service, the parties agree to consult with each other to discuss whether the document, transcript or thing actually contains Confidential Information as described herein. If the parties agree that the document, transcript or thing does not include Confidential Information, the document, transcript, or thing may be filed with the Court. If any of the parties believe that the material served contains Confidential Information, then any of the parties, prior to any filing of the document, transcript, or thing involved, shall apply to the Court pursuant to Rule of Judicial Administration 2.051 for a determination of whether the Confidential Information are confidential as described herein, and the document, transcript or thing involved shall be filed only in a form as specified pursuant to the resulting Court Order; or;

F. Be analyzed, summarized, or contained in any report, summary or analysis, unless such report, summary or analysis or any document containing any such designated information or documentation is considered and treated as Confidential Information subject to this Stipulation and to the protection of the Order of this Court entered pursuant hereto.

4. The attorneys of record and the parties hereto shall be responsible for the actions of their personnel and staff and expert witnesses in the event the provisions of this Order are violated.

5. Any party may dispute a designation of confidentiality and bring before the Court a request for the Court to determine whether or not confidentiality should or should not apply to particular discovery.

6. Where confidentiality is disputed, the discovery shall be deemed confidential pending the ruling of the Court on the dispute.

7. All Confidential Information furnished to a party pursuant to disclosure or discovery in this action shall be returned to the designating party at the conclusion of this litigation, including any and all copies of such document or documents which in whole or in part contain any such Confidential Information;

8. Any and all documents which contain summaries, reports or analyses of the Confidential Information shall be returned to the designating party at the conclusion of this matter, and any copy of any such summary, report, or analysis retained shall be redacted to exclude all reference, discussion, or analysis of such designated documents or information.

9. Nothing in this Order shall prevent any party from seeking modification of this Order with either written consent of both parties or Court order.

10. It is further and specifically stipulated and agreed by the parties that the Court enter the Order submitted herewith adopting and incorporating the terms of this Confidentiality Agreement and Protective Order and that the Court may use its contempt powers or any other sanctions to enforce the terms of this Agreement and the Order entered pursuant hereto upon the request of any party.

SEP 03 2002

DONE AND ORDERED in Chambers at Miami-Dade County, Florida, this ____ day of

_____, 2002.



Honorable Philip Bloom
Circuit Court Judge

Copies furnished to:
Glenn N. Smith, Esq.
Bryan S. Greenberg, Esq.
Lawrence D. Silverman, Esq.
Daniel K. Bandklayder, Esq.
Kenneth A. Hoffman, Esq.

... A ... 5

3. I will return to Plaintiffs' counsel all protected documents, materials and transcripts in my possession, if any, in the case of *Allied Universal Corporation and Chemical Formulators, Inc. v. Odyssey Manufacturing Company and Sentry Industries, Inc.*, Case No. 01-27699 CA 25, In the Circuit Court of the 11th Judicial Circuit, In and for Miami-Dade County, Florida.

4. I have retained no notes, summaries, documents or drawings nor any information or data taken from the aforesaid protected documents and materials.

FURTHER AFFIANT SAYETH NAUGHT.

Subscribed and sworn to before

me on this ____ day of ____

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

ALLIED UNIVERSAL CORPORATION, :
a Florida corporation, :

Case No.01-27699 CA25

and :

CHEMICAL FORMULATORS, INC. :
a Florida corporation, :

Plaintiffs, :

v. :

ODYSSEY MANUFACTURING :
COMPANY, a Delaware Corporation, and :
SENTRY INDUSTRIES, INC., a Florida :
corporation, :

Defendants.

**AGREED ORDER ON DEFENDANTS' EMERGENCY
MOTION FOR CONTEMPT AND FOR SANCTIONS**

THIS CAUSE having come on to be heard on Defendants, ODYSSEY
MANUFACTURING COMPANY and SENTRY INDUSTRIES, INC.'S, Emergency Motion for
Contempt and for Sanctions, and the parties having agreed to the entry of this Order and the
Court otherwise being fully advised in the premises, it is hereby

CONSIDERED, ORDERED AND ADJUDGED as follows:

1. The Court's Protective Order dated September 3, 2002 remains in full force and effect.
2. The parties are hereby permitted to file any and all documents and deposition transcripts obtained during the captioned matter with the Florida Public Service Commission

("PSC"), Docket No. 040086-EI, subject to said party seeking confidential classification thereof pursuant to Rule 25-22.006, F.A.C.

DONE AND ORDERED in Chambers in Miami-Dade County, Florida, this ____ day of March, 2004.

Conformed Copy

APR 22 2004

Michael B. Chavies
CIRCUIT COURT JUDGE
Circuit Court Judge

Copies Furnished:

Glenn N. Smith, RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A., P.O. Box 1900, Fort Lauderdale, Florida 33302

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Daniel K. Bandklayder, Esq., ANANIA, BANDKLAYDER, BLACKWELL BAUMGARTEN & TORRICELLA, 4300 Nations Bank Tower, 100 Southeast Second Street, Miami, Florida 33131

Kenneth A. Hoffman, Esq., RUTLEDGE, ECENIA, PURNELL & HOFFMAN, P.A., 215 South Monroe Street, Suite 420, P.O. Box 551, Tallahassee, Florida 32302

Wayne L. Schiefelbein, Esq., ROSE, SUNDSTROM & BENTLEY, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301

COPY

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 040086-EI - 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, by Allied
Universal Corporation and Chemical Formulators,
Inc.

BEFORE: CHAIRMAN BRAULIO L. BAEZ
COMMISSIONER J. TERRY DEASON
COMMISSIONER LILA A. JABER
COMMISSIONER RUDOLPH "RUDY" BRADLEY
COMMISSIONER CHARLES M. DAVIDSON

PROCEEDINGS: AGENDA CONFERENCE

ITEM NUMBER: 4A

DATE: Tuesday, July 20, 2004

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

TRANSCRIBED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS, INC.
2894-A REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221

PARTICIPANTS:

DANIEL BANDKLAYDER, Anania, Bandklayder, Blackwell, Baumgarten, Torricella & Stein, on behalf of Allied Universal Corporation and Chemical Formulators, Inc.

KENNETH HOFFMAN, Rutledge, Ecenia, Purnell & Hoffman, on behalf of Allied Universal Corporation and Chemical Formulators, Inc.

HARRY LONG, Tampa Electric Company.

HAROLD McLEAN, Office of Public Counsel, on behalf of the Citizens of the State of Florida.

WAYNE SCHIEFELBEIN, Rose, Sundstrom & Bentley, on behalf of Odyssey Manufacturing Company.

MARTHA BROWN, FPSC Staff.

STAFF RECOMMENDATION

ISSUE 1: Should the Commission deny the requests for confidential classification of the highlighted portions of Document Nos. 01404-04, 04796-04 and 05528-04?

RECOMMENDATION: Yes. The information contained in these documents has been disclosed without seal in the court record of the Allied-Odyssey lawsuit in the Miami-Dade Circuit Court, and thus does not meet the criteria for confidential treatment found in Section 366.093(3), Florida Statutes, or Commission Rule 25-22.006(4)(2), Florida Administrative Code.

ISSUE 2: Should this docket be closed?

RECOMMENDATION: No. This docket should remain open.

PROCEEDINGS

1
2 CHAIRMAN BAEZ: Commissioners, we are on Item
3 4A.

4 Good morning, Ms. Brown.

5 MS. BROWN: Good morning, Commissioners.

6 CHAIRMAN BAEZ: You want to tee this up for
7 us?

8 MS. BROWN: Item 4A is staff's recommendation
9 regarding requests for confidential treatment of
10 documents filed in Docket No. 040086. That's
11 Allied's petition to vacate the Commission's order
12 approving a settlement agreement between Allied and
13 TECO.

14 We have recommended that you deny the requests
15 because the documents, which are two depositions
16 taken in Allied's Miami-Dade Circuit Court case
17 against Odyssey, have been publicly disclosed in the
18 court record.

19 Section 366.083 and the Commission's
20 confidentiality rules do not exempt documents
21 containing proprietary information that have already
22 been disclosed from the public records law, but
23 staff has suggested other ways to address the matter
24 if the Commission does not want to approve staff's
25 recommendation.

1 The parties are here to address the Commission.

2 CHAIRMAN BAEZ: Thank you. And I'm having --
3 Mr. Hoffman, is it your motion, or is it Mr. Long's
4 motion?

5 MR. HOFFMAN: Mr. Chairman, the staff
6 recommendation addresses itself to notices of intent
7 and the request for confidential classification that
8 actually Allied filed.

9 CHAIRMAN BAEZ: Okay.

10 COMMISSIONER DAVIDSON: Commissioner, if I may,
11 I just have a question.

12 CHAIRMAN BAEZ: Go ahead, Commissioner.

13 COMMISSIONER DAVIDSON: Staff, you've stated
14 that the only documents at issue are already
15 publicly available in Circuit Court actions.

16 MS. BROWN: That's correct. The documents at
17 issue are the deposition of Mr. Sidelko of Odyssey
18 and of Mr. Allman at Odyssey. Both Allied and
19 Odyssey have requested confidential treatment for
20 the Sidelko deposition, and Allied has requested
21 confidential treatment for the Allman deposition and
22 related use of that confidential information in
23 Allied's petition.

24 COMMISSIONER DAVIDSON: Chairman, I guess we'll
25 hear positions on that, but it just seems to be an

1 odd request that if documents are already in a
2 public record somewhere that we're even being
3 approached with a motion for confidentiality, but I
4 guess that's up to the parties to address.

5 CHAIRMAN BAEZ: Commissioner Davidson, if I can
6 give you the benefit of the long history that this
7 case has, I think this is placed on the Commission's
8 -- for the entire Commission's consideration at the
9 request of the Prehearing Officer, and I'm inclined
10 to, you know, let's treat it that way.

11 I share your questions, and I'm hoping the
12 answer to your question will become evident to us as
13 a result of the presentations that we're going to
14 hear, because I'm curious as to why this winds up
15 before us yet again.

16 If I got the order wrong, Mr. Hoffman, please
17 tell me.

18 COMMISSIONER JABER: Just wanted to share the
19 wealth, just in case --

20 CHAIRMAN BAEZ: Yes, share the pain; right.
21 Misery loves company.

22 Mr. Hoffman, go ahead.

23 MR. HOFFMAN: Thank you, Mr. Chairman. My name
24 is Ken Hoffman. With me to my right is Dan
25 Bandklayder. We are here this morning on behalf of

1 Allied and CFI.

2 Chairman, as you point out, we've got some
3 history here.

4 Commissioner Davidson, I would like to give
5 maybe a two-minute history background on this whole
6 issue, without getting into the merits of the case,
7 and sort of help explain how we got to a very sort
8 of unusual situation.

9 To begin with, Commissioners, in August of
10 1998, the Commission approved a petition that Tampa
11 Electric Company had filed for approval of a
12 commercial/industrial service rider tariff, what's
13 known as a CISR tariff. Under that program and
14 under that tariff, the CISR tariff, TECO is
15 authorized to negotiate a discount on base energy
16 charges, base demand charges, or both, with
17 commercial or industrial customers who could show
18 that they had viable alternatives to taking service
19 from TECO. So, in other words, if a customer could
20 show that it met the criteria under the order and
21 under TECO's tariff to be considered at risk, TECO
22 was authorized to negotiate discounts off of base
23 rates. This program took effect in January of 2000
24 and terminated at the end of 2003.

25 Now, in January of 2000, Allied, my client and

1 Mr. Bandklayder's client, filed a complaint with the
2 Commission against TECO claiming undue
3 discrimination because TECO had given Odyssey -- and
4 Odyssey is Allied's competitor in the liquid
5 chlorine bleach business -- a specific CISR
6 discounted rate that TECO refused to give to Allied.
7 So we filed that complaint.

8 That case ultimately settled, with TECO
9 agreeing to give Allied essentially the same rate,
10 subject to certain conditions that were set forth in
11 the settlement agreement. The Commission approved
12 that settlement agreement with some modifications by
13 an order that the Commission issued in April of
14 2001.

15 After that, Allied brought a civil action
16 against Odyssey, not TECO, against Odyssey, in
17 Miami-Dade County Circuit Court, and that case
18 remains pending. In the Circuit Court case, there
19 have been a number of depositions taken. There has
20 been substantial discovery. Based on new evidence
21 that was gained through these depositions, Allied
22 came back to this Commission in January of this year
23 with a petition. In this docket, Allied is now
24 asking the Commission to vacate the order approving
25 the settlement agreement, to terminate the

1 TECO/Odyssey CISR contract, or under our amended
2 petition, which is a proposed amended petition at
3 this point, to at least require TECO to reinstitute
4 the same CISR rate that it had given Allied.

5 Our petition that we filed in this docket and
6 our proposed amended petition is essentially --
7 there's a lot in there, but it's essentially
8 bottomed on our contention that TECO is not
9 recovering its incremental costs and a contribution
10 to fixed costs, using current costs, under its
11 negotiated contract with Odyssey. And if that turns
12 out to be true, that would be in violation of the
13 Commission's CISR order authority that it granted to
14 TECO.

15 That's basically the procedural background for
16 the case.

17 Commissioner Davidson, we have been grappling
18 with the issue of how to deal with confidential
19 information since we initially filed our petition on
20 January 30th of this year. TECO and Odyssey are
21 both aware that what we've tried to do is to protect
22 information regarding contract negotiations and
23 contract rates and terms in our filings with the
24 Commission pending a decision as to whether this
25 type of information should in fact be held to be

1 confidential. We've done that not because we
2 necessarily think it should be confidential, but we
3 were aware from the point of our initial filing that
4 both TECO and Odyssey viewed that information to be
5 confidential.

6 So this is a very unusual situation where you
7 have one party, Allied, attempting to protect
8 information on the basis that another party, or both
9 parties I think in this case, view that information
10 to be confidential. As the staff points out in its
11 recommendation, after Allied filed its January 30
12 petition, deposition transcripts, unsealed, that
13 were not designated as confidential by Odyssey, were
14 filed by Allied in the Circuit Court case, so
15 they're public records.

16 Allied supports the primary thrust of the staff
17 recommendation, which is that these deposition
18 transcripts should not be treated as confidential.
19 And the reasons for our position are essentially
20 laid out in the staff recommendation, and there are
21 essentially two. One is that the deposition
22 transcripts of Mr. Sidelko and Mr. Allman are public
23 records in the Circuit Court case. Their public
24 status cannot, to our knowledge, be reversed to
25 confidential status, although we understand, and

1 it's in the staff recommendation, that Odyssey has
2 essentially asked the Circuit Court judge to make
3 that type of finding. I don't know how he can do
4 that, but that's going to be up to the Circuit Court
5 judge. We don't know of any basis under the
6 Commission's confidentiality rules to grant
7 confidential status for documents that are public
8 records in a Miami-Dade Circuit Court file.

9 COMMISSIONER JABER: Mr. Hoffman, on that note,
10 that is precisely one of the questions I had, and
11 this forum lends itself to an opportunity to have
12 this dialogue. Our statute says that information
13 which is owned and controlled by the person or
14 company and is intended to be and treated by the
15 company as private and confidential will be afforded
16 confidentiality treatment here unless -- and then it
17 goes on to say the caveat is that that person cannot
18 disclose the information unless it's disclosed
19 pursuant to a statute, an order of the court, or
20 private agreement.

21 And my question to all of you as we go down the
22 line, was the document made -- both documents in
23 this case made public and filed with the court
24 pursuant to a statute, an order of the court, or a
25 private agreement? None of your pleadings address

1 that point.

2 MR. HOFFMAN: Yes, ma'am. I think the answer
3 to that question -- and Mr. Bandklayder is here to
4 help me with issues like this, because that's really
5 more of a Circuit Court question. But I think the
6 answer to that question is that there was a
7 protective order issued by the Circuit Court in
8 September of 2002, and it laid out a process for
9 designating confidential documents. And in this
10 case, the two deposition transcripts that are at
11 issue in the recommendation were not designated as
12 confidential by Odyssey, so Allied later filed those
13 deposition transcripts in the Circuit Court file.

14 Allied's position has been and remains that
15 Allied did nothing to violate that protective order
16 in filing deposition transcripts that were not
17 designated as confidential.

18 Mr. Chairman, the other reason why we believe
19 at this point that these deposition transcripts
20 should not be treated as confidential is really from
21 a broader perspective, and it's discussed in the
22 staff recommendation, and that is that the
23 confidentiality of CISR rate contracts and CISR rate
24 negotiation information under TECO's CISR tariff,
25 the reasons for that should really no longer apply

1 because the program is over. There could be no
2 concern that publication of Odyssey's contract terms
3 or Odyssey's negotiations with TECO could influence
4 other negotiations for potential CISR contracts
5 because the program is over.

6 So as staff points out, there would be no
7 prejudice or harm to TECO or to TECO's ratepayers
8 for the Commission to rule that the TECO/Odyssey
9 CISR rate negotiation and contract terms, rates, and
10 conditions should no longer be afforded confidential
11 status.

12 Frankly, I think the same is true of Odyssey,
13 since so far as Odyssey's interests are concerned,
14 Allied is already well aware of the rates, terms,
15 and conditions of the TECO/Odyssey CISR contract.

16 So we think that the staff has pinpointed the
17 two main reasons why this information at this point
18 should not be afforded confidential status, and we
19 support the staff recommendation.

20 That concludes my presentation, Chairman. I'll
21 be happy to answer any questions.

22 CHAIRMAN BAEZ: Any questions for Mr. Hoffman
23 at this point?

24 COMMISSIONER BRADLEY: I guess maybe I missed
25 the answer to Commissioner Jaber's question. It

1 seemed to me that the question went to the process
2 or procedure under the law that allows for
3 confidential information to become nonconfidential.
4 And, Mr. Hoffman, I didn't -- maybe that will come
5 out from some of the other witnesses' testimony.

6 CHAIRMAN BAEZ: Mr. Hoffman, if you want to
7 clarify your --

8 MR. HOFFMAN: Let me try again, Commissioner
9 Bradley. I apologize.

10 I think the question that Commissioner Jaber
11 essentially raised was, is this information required
12 to be disclosed pursuant to statute or court order.
13 And there's a potential issue there, because there
14 has been, in effect, a protective agreement, a
15 protective order issued by the Circuit Court judge
16 back in September of 2002. **And under that**
17 protective order, there is a process under which
18 confidential deposition transcripts or confidential
19 documents are to be protected and not filed
20 unsealed.

21 Our position is that when Allied filed the
22 deposition transcripts of Mr. Sidelko and
23 Mr. Allman, we did that in compliance with, but not
24 because we were required by, but in compliance with
25 that protective order, because those deposition

1 transcripts were not designated, earmarked, stamped
2 confidential by Odyssey. Now, remember, the Circuit
3 Court case is a case where Allied has sued Odyssey,
4 not TECO. So our position, once this issue is again
5 put up before the Circuit Court judge, because I
6 think Odyssey has filed such a motion to do that, is
7 that we are in complete compliance with the Circuit
8 Court's order.

9 And I would point out as well, Commissioner
10 Bradley, that Allied is not the only party in that
11 case that has filed unredacted information that was
12 at one point viewed to be confidential in the first
13 PSC case. Odyssey in November of 2003 filed the
14 unredacted prefiled direct testimony of a TECO
15 employee, Mr. Rodriguez, as well as deposition
16 excerpts, unredacted, of Mr. Rodriguez. So Allied
17 is not the only party that has made this type of
18 filing.

19 MR. BANDKLAYDER: If I could elaborate on that
20 a bit, I've been very active in representing Allied
21 and CFI in the Circuit Court case down in Dade
22 County. Maybe the specific answer to your question,
23 Commissioner Jaber, as to why were the depositions
24 filed in the court, the answer simply is, they were
25 filed in opposition to summary judgment motions that

1 were filed by Odyssey. Odyssey filed motions for
2 summary judgment that they supported with
3 affidavits, with the testimony of Mr. Rodriguez from
4 the earlier PSC proceeding, and deposition testimony
5 of some of the principals of Allied and CFI.

6 Under Rule 1.510 of the Florida Rules of Civil
7 Procedure, we were obligated to file any opposing
8 testimony in the form of affidavits or depositions
9 in a certain amount of time prior to the hearing.
10 We did so. We filed the affidavits of Allman and --
11 I'm sorry. We filed the depositions of Allman and
12 the depositions of Sidelko. We did it under Rule
13 1.510 in opposition to those summary judgment
14 motions. And as Mr. Hoffman points out, we did
15 that, we believe, in accordance with the court's
16 confidentiality order, which said in paragraph 2,
17 "Confidential information shall be designated as
18 such by stamping the word 'confidential' on the
19 document or by any other reasonable method as agreed
20 to by the parties."

21 The depositions we're talking about, there are
22 four of them, two of Mr. Sidelko and two of
23 Mr. Allman. Three out of the four were taken last
24 year, in October, November, and December of 2003.
25 One of them, the last deposition of Mr. Allman, was

1 taken in April of this year. In all of that time,
2 Odyssey never designated any of these deposition
3 transcripts as confidential as contemplated by the
4 order that I just read to you.

5 We filed Mr. Sidelko's depositions back in
6 January, three months after they were taken. There
7 was never a word of complaint about it from
8 Odyssey. In fact, it wasn't until last week, seven,
9 eight -- well, ten months after some of these
10 depositions were taken, seven months after the
11 Sidelko depositions were filed, two months after the
12 Allman depositions were filed, that for the first
13 time Odyssey filed a motion to seal these things in
14 the Circuit Court.

15 COMMISSIONER JABER: Mr. Chairman, I know we're
16 beyond my question now.

17 MR. BANDKLAYDER: All right. I hope that
18 answers your question.

19 CHAIRMAN BAEZ: Thank you, Mr. Bandklayder.
20 Mr. Schiefelbein.

21 MR. SCHIEFELBEIN: Thank you, Commissioners.
22 Wayne Schiefelbein, of counsel, Rose, Sundstrom &
23 Bentley here in Tallahassee, appearing on behalf of
24 Odyssey Manufacturing Company.

25 Your time is very valuable, and I'm going to

1 try to limit my remarks, although the rampant
2 misrepresentations that have just been given to you
3 by both Mr. Hoffman and Mr. Bandklayder, I've simply
4 lost count. I will instead simply explain to you
5 all that we have filed a motion to seal documents in
6 the court file in Circuit Court, and that pending
7 resolution of that motion to seal, we believe that
8 the Commission should maintain the status quo. We
9 believe that that will lead to no delay and no
10 prejudice to any party. We believe that any
11 information, proprietary or not, in this proceeding
12 can be made available to all parties and all
13 participants via a protective agreement or other
14 mandate of this Commission until the Circuit Court
15 acts.

16 COMMISSIONER JABER: Mr. Schiefelbein, how do
17 you maintain status quo? Let me -- again, something
18 you all haven't covered, but for the benefit of the
19 Commissioners, it's my understanding that this
20 Commission, whether it was through a formal order or
21 just acknowledging the protective order, found
22 certain documents confidential. At some point,
23 right or wrong, those documents got filed in court.
24 It's my understanding from staff briefings that
25 Public Counsel obtained those documents easily

1 through the court.

2 So what is -- a couple of Commissioners have
3 used this in the past, that the toothpaste is out of
4 the tube. I mean, how do you maintain status quo
5 when that happens?

6 MR. SCHIEFELBEIN: I do not wish to unduly draw
7 the ire of Public Counsel and my good friend,
8 Mr. McLean. However, at the risk of doing so --

9 COMMISSIONER JABER: Well, I'm going ask him,
10 SO --

11 MR. SCHIEFELBEIN: Well, I will suggest to you
12 all that Public Counsel filed a pleading in this
13 case on a day prior discussing the contents and the
14 events of a deposition of Patrick Allman in this
15 case, on which day there was no transcript. It did
16 not exist, and that information could only have come
17 from the lips of Mr. Hoffman or Mr. Bandklayder.

18 COMMISSIONER JABER: Let me ask the question
19 again. Right or wrong, the documents were filed,
20 and they became a public record in Circuit Court.
21 We know that because Public Counsel easily obtained
22 a copy. I don't care how Public Counsel knew about
23 them. Public Counsel obtained a copy. Doesn't that
24 indicate that these documents are now public
25 records?

1 The only reason I'm asking the question about
2 the statute, if those documents became a public
3 record through some statutory provision that had to
4 be followed or an order of the court, perhaps we can
5 maintain status quo. But absent those two things, I
6 don't understand how we maintain status quo, and I
7 need to you address that specifically.

8 MR. SCHIEFELBEIN: I apologize for my inability
9 to satisfy your requirements here. I will say that
10 I do believe when the fact that these records may
11 arguably be a part of the public record because of a
12 party's malfeasance and because of a party's
13 absolute actions in derogation of a protective order
14 and an agreed order entered but three days prior to
15 their latest violation of that order by Judge
16 Chavies, that the appropriate course of conduct for
17 this Commission is to stay its hand and allow Judge
18 Chavies in Circuit Court to respond to our motion to
19 seal. I'm sorry. That's the best I can do.

20 COMMISSIONER JABER: So what does that mean?
21 You would ask us not to rule on this until -- what
22 is it --

23 MR. SCHIEFELBEIN: That is correct, yes, ma'am.

24 COMMISSIONER JABER: What is your request?

25 MR. SCHIEFELBEIN: We would ask that the

1 Commission not rule on the pending request for
2 confidentiality until Judge Chavies has had an
3 opportunity to rule on our motion to seal documents
4 in the court file.

5 COMMISSIONER JABER: Do you have any idea when
6 that hearing might be or when a ruling might come?

7 MR. SCHIEFELBEIN: Unfortunately, ma'am, I do
8 not. I have had a discussion with my co-counsel
9 down in Miami or Fort Lauderdale about that earlier
10 this morning. We have attempted to secure dates,
11 both on motion calendar and otherwise, to date
12 unsuccessfully. In candor to the tribunal, which I
13 think I owe you, I think that that would not likely
14 happen earlier than late August or sometime in
15 September. We do not have any sort of a firm
16 hearing date at this point in time. We are
17 attempting to get one.

18 COMMISSIONER JABER: And in the meantime, is
19 there some sort of temporary seal or temporary
20 confidential treatment afforded to the documents?

21 MR. SCHIEFELBEIN: I am not aware of any formal
22 seal that has been entered, no, ma'am, other than
23 the existing protective order issued in September of
24 2002 and the agreed order amending that and allowing
25 for the use of confidential documents developed in

1 the Circuit Court proceeding in this proceeding of
2 April of 2004. I believe that those two orders
3 would control, and I believe that Allied/CFI and
4 their counsel are in derogation of those orders.

5 CHAIRMAN BAEZ: Commissioner Davidson, you had
6 a question?

7 COMMISSIONER DAVIDSON: Thank you, Chairman.

8 When were the deposition transcripts addressed
9 by Mr. Hoffman filed in Circuit Court?

10 MR. SCHIEFELBEIN: I can answer that, sir.
11 Thank you. First of all, Mr. Hoffman, I'm sure
12 inadvertently, misspoke when he indicated that the
13 deposition transcript of Mr. Sidelko was filed after
14 the January 30th filing of his petition. As a
15 matter of fact, Mr. Sidelko's deposition --

16 COMMISSIONER DAVIDSON: Just give me the dates,
17 please.

18 MR. SCHIEFELBEIN: Yes, sir. Mr. Sidelko's
19 deposition transcript was filed I believe on January
20 22nd at the same time as Mr. Bandklayder was seeking
21 a continuance of the Circuit Court proceeding.
22 Mr. Allman's deposition transcripts were filed, I
23 believe, give or take a day, on April 27th, four
24 days after Judge Chavies entered an agreed order
25 that I believe would have restricted them from doing

1 so.

2 COMMISSIONER DAVIDSON: When did Odyssey seek
3 in Circuit Court to have the Sidelko deposition
4 treated as confidential, what date specifically?

5 MR. SCHIEFELBEIN: I'm not sure I understand
6 that question. Do you mean the date on which we
7 filed the motion to seal documents that I'm
8 referring to?

9 COMMISSIONER DAVIDSON: Yes, or whatever you
10 did to seek confidential treatment of Sidelko in
11 Circuit Court. What was the date of that?

12 MR. SCHIEFELBEIN: It was July 13th, sir.

13 COMMISSIONER DAVIDSON: And for Allman, the
14 same, July --

15 MR. SCHIEFELBEIN: The same date, yes, sir.
16 And if I may very briefly point out to you that when
17 the Allman deposition transcript was filed,
18 purportedly in response to a motion for summary
19 judgment by Allied/CFI, although the content of that
20 deposition and the summary judgment order are rather
21 unrelated, co-counsel for Allied/CFI neglected to
22 provide a copy of that filing and that deposition
23 transcript to me as co-counsel for Odyssey and
24 Sentry, its sister company. I did not become aware
25 of it until later in time.

1 COMMISSIONER DAVIDSON: Thank you.

2 MR. SCHIEFELBEIN: Thank you.

3 CHAIRMAN BAEZ: Commissioner Deason.

4 COMMISSIONER DEASON: Yes. I guess my question
5 goes to the practicality of all this and what does
6 it mean. What is the harm if we just continue to
7 provide confidential treatment of the information
8 until we get a definitive ruling from the Circuit
9 Court? What is at stake? Does it have -- and if
10 someone desires that information, can't they just go
11 to the Circuit Court and get it, since apparently
12 it's public there for the time being? What's the
13 harm, and what's at stake?

14 MS. BROWN: I don't think there -- if you are
15 asking whether the Commission could delay ruling on
16 these requests for confidentiality and delay a
17 decision on whether they should not be treated
18 confidential, I don't think there is harm, because
19 the parties and the Commission and the staff can
20 have access to that information here in our
21 proceeding pursuant to a proprietary agreement.
22 Does that answer your question?

23 COMMISSIONER DEASON: Yes, it does, but I guess
24 I'm missing something. Why is it so important then
25 for this Commission to make a decision on this at

1 this time?

2 MS. BROWN: Well, I think the reasoning for it
3 is that OPC has filed --

4 COMMISSIONER DEASON: Let me rephrase it. Why
5 -- and maybe I should direct it to the parties. Why
6 are you here? Why don't you just wait for the
7 Circuit Court to make a decision, and then we'll
8 make our decision? Why are you here arguing this in
9 front of us today?

10 MR. HOFFMAN: Well, Commissioner, I'm here
11 because the staff issued a recommendation, and we
12 need to address this.

13 COMMISSIONER JABER: No, Mr. Hoffman. No, no,
14 no, no. You're here --

15 MR. HOFFMAN: You're not going to --

16 COMMISSIONER JABER: That's right. You have to
17 call a spade a spade, and all of you are here
18 because there was the issue of confidentiality
19 brought to the staff, who brought me a draft order.
20 This is a case of first impression, and that's why
21 you're here. But it was y'all's corrective --
22 y'all, you heard that? Y'all's corrective action.

23 MR. HOFFMAN: Well, I was about to get to that,
24 Commissioner Jaber.

25 COMMISSIONER JABER: Thank you.

1 MR. HOFFMAN: Commissioner Deason, Commissioner
2 Jaber is correct in the sense that we have been the
3 ones who filed the petition and who have been
4 grappling with how to treat confidential
5 information. And again, it's not our confidential
6 information. It's TECO and Odyssey's. And our
7 sense has been that the parties and the staff to
8 this case want to keep this case moving, and we have
9 filed a motion to amend our petition, and there's
10 going to be a ruling at some point on that.

11 But speaking only for Allied, I think I felt
12 that it was appropriate to get a ruling on this so
13 that we could foster at some point in this process a
14 full debate on our petition, or if the motion is
15 granted, on our amended petition, because I have
16 been through, and Mr. Long and Mr. Schiefelbein and
17 the Commissioners have been through Commission
18 proceedings where you have certain levels of
19 information redacted. And, you know, there's some
20 tiptoeing involved. And we felt that because, you
21 know, the horse is out of the barn, the toothpaste
22 is out of the tube, because this stuff was out
23 there, that now was as good a time as any to get
24 this information unredacted, put in the Commission
25 files on a totally unredacted basis, and get this

1 case moving up or down.

2 COMMISSIONER DEASON: Does it help your
3 position in the Circuit Court to go to the Circuit
4 Court and say the Public Service Commission has made
5 the documents public; therefore, Mr. Judge, you
6 don't have to rule on the request to -- I'm sorry.
7 Mr. Schiefelbein, what did you file with the court?

8 MR. SCHIEFELBEIN: Yes, sir. It's a motion to
9 seal documents.

10 COMMISSIONER DEASON: Motion to seal. I mean,
11 are you using this -- are you using this Commission
12 to get leverage in the Circuit Court?

13 MR. BANDKLAYDER: No, no, Commissioner.

14 COMMISSIONER DEASON: Well, it certainly
15 appears that way to me. Explain to me why that's
16 not the case.

17 MR. BANDKLAYDER: Well, it's sort of -- you're
18 asking the negative. I don't see how a ruling from
19 this Commission one way or the other is going to
20 affect the proceeding in the Circuit Court. I mean,
21 the circuit judge is free to consider everything in
22 unredacted form. Candidly, I don't know what's
23 going to happen when the case --

24 COMMISSIONER DEASON: You're going to make the
25 same argument in Circuit Court you're making here.

1 You're saying the Circuit Court -- it has been filed
2 and it's public; therefore, keep it public. So it's
3 just a question of which forum you're arguing in at
4 what time and who makes a decision before whom, it
5 seems to me.

6 MR. BANDKLAYDER: Well, as you've all picked up
7 on, these transcripts have been filed for seven
8 months as open public record in the Circuit Court,
9 so we don't gain any further advantage by having
10 them opened up now in the Public Service Commission.
11 They're already opened.

12 CHAIRMAN BAEZ: Here's what I'm struggling
13 with, and I'm going to seize on something that
14 Commissioner Jaber said, as suggested by
15 Mr. Schiefelbein, maintaining the status quo. And
16 this is a suggestion that is starting to sound
17 pretty attractive at this point to me. But I don't
18 know that there is a status quo. I mean, certainly
19 the statement and representation has been made that
20 the depositions have been -- the documents have been
21 on file with the Circuit Court as public records,
22 unredacted, for seven months.

23 But it seems to me -- and this is my question
24 to you, Mr. Bandklayder. In your opinion, is the
25 issue of the status quo in question now? Forget for

1 the moment the time that it has been filed publicly,
2 because, yes, the toothpaste is out of the tube.
3 Whether a Circuit Court can put it back I don't
4 know. I'm interested to see them try it. But do
5 you agree that at least the status quo, quote,
6 unquote, is in question?

7 MR. BANDKLAYDER: I'm not sure I fully
8 understand.

9 CHAIRMAN BAEZ: Well, we can say that they've
10 been filed as public records, but whether they
11 should have, whether they should be at the Circuit
12 Court, that's still a matter to be answered by the
13 Circuit Court.

14 MR. BANDKLAYDER: Sure.

15 CHAIRMAN BAEZ: So if that's still in question,
16 if that's still subject to discussion or subject to
17 determination finally, how can we accept the
18 argument that, "Well, they've been filed as a public
19 record," as our basis for saying, "It's okay. The
20 cat is out of the bag and we can go ahead and treat
21 them as public here as well," if that's still
22 subject to determination?

23 And again, I want you to ignore the
24 practicality of it. Truthfully, I have trouble
25 seeing how we undo this, how anybody undoes it. But

1 in an academic fashion, because it seems to me
2 that's what we're doing here, so --

3 MR. BANDKLAYDER: Well, I guess in a
4 hypothetical or an academic realm, yes, you're
5 correct that if you do nothing or simply maintain
6 the status quo until the Circuit Court rules on
7 their recent motion to seal, to some extent you
8 preserve the status quo.

9 CHAIRMAN BAEZ: And a question to regulatory
10 counsel. Is there anything with that scenario that
11 impedes the ability of the parties or the staff, or
12 even Public Counsel if they're involved, at this
13 point, on the PSC side? I don't know, but is anyone
14 impeded from, as you suggested, Mr. Hoffman, the
15 docket moving forward, the case progressing at the
16 Commission?

17 MR. HOFFMAN: I think it could be, Chairman.
18 I'm not --

19 CHAIRMAN BAEZ: And why is that?

20 MR. HOFFMAN: Because we're going to have a lot
21 of redacted information in the public file that -- I
22 mean, I've talked with counsel for Odyssey and
23 counsel for TECO, and we all understand that that
24 has been a concern for them and an impediment for
25 them in filing responses to our pleadings. On the

1 other hand, without making any concessions as to how
2 these documents should be treated, confidential or
3 not, it's their information. We can share it with
4 them, and perhaps that will help move the process
5 along.

6 CHAIRMAN BAEZ: So is that a no? I guess is
7 there any -- my question was, is there any
8 impediment to the case and the docket moving along,
9 however hobbled by redactions and the like it may
10 be, but is there any --

11 MR. HOFFMAN: I don't think so, so long as we
12 -- because I think the impediment -- there's really
13 I guess two impediments that I can think of,
14 Chairman. One is the impediment that has been faced
15 by TECO and Odyssey in responding to our pleadings,
16 because they have not -- because part of them has
17 been redacted, and I think that that can be
18 overcome.

19 The other is the one I mentioned before, which
20 is, at some point, if things sort of follow the
21 course they've taken, there is going to be argument
22 before the Commission on perhaps a motion to
23 dismiss. You know, I can't say for sure what will
24 happen. And with respect to that particular debate,
25 it would seem to be best facilitated by a full and

1 open debate and not with the parties having to
2 tiptoe through redacted information publicly, even
3 though we all at the table know it.

4 CHAIRMAN BAEZ: And so will we.

5 MR. HOFFMAN: Right.

6 CHAIRMAN BAEZ: Somehow.

7 MR. HOFFMAN: Right.

8 CHAIRMAN BAEZ: You know, more convenient, less
9 convenient, so will anyone who needs to know it.

10 MR. HOFFMAN: Right.

11 CHAIRMAN BAEZ: Is that fair?

12 MR. HOFFMAN: Yes.

13 CHAIRMAN BAEZ: Because, Commissioners, I'll
14 tell you, although I appreciate the practicality of
15 it -- and again, I see that as a big hurdle, but in
16 someone else's room. How you get over the fact that
17 they have been filed as public records I don't know,
18 but truthfully, I don't care. That's not our -- I
19 don't see it as our decision or determination to
20 make. And going back to the whole status quo
21 argument, I don't think it's our decision to set
22 it. I don't think there is a status quo, frankly,
23 at least it hasn't been determined for me enough to
24 use that as a basis for granting some public record
25 status at the Commission, at least not at this

1 point.

2 COMMISSIONER JABER: Mr. Chairman, if I could
3 -- something Commissioner Deason said, in all
4 fairness, perhaps now Allied can use this as somehow
5 leverage if we went forward and made a decision, but
6 in all fairness, that wasn't the posture they were
7 in weeks ago when they sought a ruling here. I
8 would point out that Odyssey didn't file the motion
9 to seal until three days before this recommendation
10 was filed. And the argument cuts both ways. Once
11 the decision was put in front of the Commission to
12 make, then we've got a motion to seal.

13 I'm not saying that was intentional or not, but
14 the fact is, right or wrong, those documents were
15 filed in April, I think you answered Commissioner
16 Davidson's question. The motion to seal didn't come
17 until July 13th. I'm not passing judgment on
18 whether that was the right course of action, but in
19 all fairness, those are the facts.

20 And, Mr. Chairman, I would like to hear from
21 Mr. McLean at the right time, and then I don't know
22 if Mr. Long had a presentation he wanted to make.

23 CHAIRMAN BAEZ: And I was going to get to that,
24 but I know that Commissioner Bradley has a question.
25 Go ahead, Commissioner.

1 COMMISSIONER BRADLEY: Right. And I don't have
2 so much a question as I do a statement. What I see
3 right now is a quandary that someone has that's
4 related to, in my opinion, a violation of an order
5 that this august body issued. And I'll tell you
6 what I'm interested in. And I can see very clearly
7 what has happened in terms of the dynamics that have
8 developed as a result of someone for some reason in
9 another venue making information that we had deemed
10 to be confidential nonconfidential.

11 And what I would -- what I'm interested in is
12 an outcome that clearly indicates to every party
13 that comes before this body that when we say that
14 information is confidential, it is confidential.
15 Otherwise, we have individuals using slipperiness or
16 instances of forgetfulness to get around what we
17 have deemed to be confidential. And I just don't
18 want this -- our rulings to be made a mockery of by
19 either forgetfulness or slipperiness or whatever
20 happens within another venue and confidential
21 information here, information that has been deemed
22 confidential by this body then becomes public
23 information within another venue, which kicks in the
24 language of the statute that if it's public in one
25 venue, then there's a problem of confidentiality

1 here.

2 Commissioner Jaber used the toothpaste being
3 out of the tube. I guess I'll use the analogy of
4 what comes first, the chicken or the egg. We deemed
5 it confidential. Now it's nonconfidential, and
6 there's a dispute that has occurred. And I'm -- and
7 I don't know how we resolve this issue, but I just
8 want to clearly emphasize that I take it very
9 seriously when this body issues a confidentiality
10 order. These arguments just don't resonate with me,
11 because we clearly have issued a confidentiality
12 order.

13 Now, other things, as I said earlier, have
14 arisen as a result, and as result, issues have been
15 put on the table by OPC that are related to the
16 dynamics of the agreement that the parties initially
17 got involved in. And in my opinion, this is
18 becoming somewhat very, very complicated.

19 I'm just wondering if maybe we shouldn't defer
20 this issue, defer making a decision on this issue
21 and deal with the issue of the settlement agreement
22 and let this be a fallout issue that probably will
23 get addressed by the court, where confidentiality is
24 also an issue. Are you all following what I'm
25 trying to get at?

1 CHAIRMAN BAEZ: Absolutely. I'm interested in
2 your suggestion. I think when the time comes and we
3 let the rest of the parties speak, I would love to
4 hear from you again.

5 COMMISSIONER BRADLEY: Okay.

6 CHAIRMAN BAEZ: Because I think that might be a
7 proper suggestion.

8 Commissioner Davidson.

9 COMMISSIONER DAVIDSON: Yes. I have the same
10 question for staff, counsel for Allied, and then for
11 Mr. McLean, if you can come on up and answer this
12 question, or Public Counsel, whoever, if you have
13 someone else handling it.

14 The question is, is the filing of the
15 depositions in Circuit Court a violation of an order
16 of this Commission, yes or no, and explain. Staff
17 first.

18 MS. BROWN: Yes, Commissioner, I believe it
19 is. Well, no. I changed my mind. I'm sorry.

20 CHAIRMAN BAEZ: Enough said.

21 MS. BROWN: I don't really think that it is.

22 COMMISSIONER DAVIDSON: Why?

23 MS. BROWN: There is an order in existence that
24 is active and effective at the moment from the
25 previous docket that held confidential certain

1 documents that were filed in our Commission file for
2 the Commission to make its decision on them, whether
3 to approve the settlement agreement or not and
4 whether to determine if the CISR contracts were
5 prudent, the ones that TECO entered into with
6 Odyssey and then with Allied.

7 An order has recently -- was issued a year ago
8 in April to continue the confidential treatment of
9 the information in the documents filed with us, but
10 they are not the depositions. The information is
11 the same, but the documents are not the same. So
12 with that distinction in mind, I don't think, even
13 though Allied was party to the request to continue
14 confidentiality on this information in the dockets,
15 in our case, I don't think there was a real
16 violation of that order to file different documents
17 that had the same information.

18 COMMISSIONER DAVIDSON: Mr. Hoffman?

19 MR. HOFFMAN: Commissioner Davidson, I don't
20 disagree with that. I guess, you know, having
21 thought about it here since you've asked it, I guess
22 the first thing that struck me was what Ms. Brown
23 mentioned, which was that these deposition
24 transcripts that were filed in the Circuit Court
25 case were not filed as part of that first PSC case

1 and were not -- so they were obviously not deemed
2 confidential.

3 But then there would be another issue I think
4 that we would have to sort of think through, which
5 is that when a document is determined to be
6 confidential here at the Commission, does that --
7 what is the impact? Is there any superseding effect
8 when the Circuit Court in a separate case issues its
9 own order and guidelines and procedures for
10 earmarking and possibly filing confidential
11 information? And I just don't know offhand what the
12 answer to that would be.

13 COMMISSIONER DAVIDSON: Hold on a second. I've
14 got a follow-up for Odyssey and for Allied on this,
15 and then I want to get back to the basic question.
16 The alleged confidential information that was
17 included or addressed in the depositions, at the
18 time the depositions were taken, were assertions
19 made that that information was confidential and
20 subject to proprietary treatment in the Circuit
21 Court?

22 MR. BANDKLAYDER: I can address that,
23 Commissioner Davidson. The manner in which they
24 were addressed prospectively was the agreed order
25 that we have been talking about from 2002, and that

1 order left it up to the parties on an ad hoc basis,
2 as things came up during the course of discovery, to
3 affirmatively say we believe in good faith that this
4 piece of information is confidential, and therefore,
5 there's a whole mechanism --

6 COMMISSIONER DAVIDSON: Was that done with
7 these depositions?

8 MR. BANDKLAYDER: No, it was not done with
9 regard to these depositions.

10 COMMISSIONER DAVIDSON: Odyssey?

11 MR. SCHIEFELBEIN: We would strongly disagree
12 wholeheartedly.

13 COMMISSIONER DAVIDSON: Well, just tell me how
14 in a nutshell.

15 MR. SCHIEFELBEIN: I'm sorry. What is the
16 question? It is the --

17 COMMISSIONER DAVIDSON: Well, you just strongly
18 disagreed, so what are you disagreeing with?

19 MR. SCHIEFELBEIN: I'm strongly disagreeing
20 with Mr. Bandklayder's assertion there. I think the
21 question of what procedures should have been
22 followed to continue to protect information that had
23 already been adequately protected throughout the
24 Circuit Court proceeding and in the PSC proceeding I
25 think is a legitimate issue. I believe we acted

1 properly in both proceedings to protect that same
2 information, and that's going to be something that
3 Judge Chavies should determine.

4 COMMISSIONER DAVIDSON: And back to the initial
5 question. Mr. McLean, did the filing of these
6 depositions in Circuit Court in Public Counsel's
7 opinion constitute a violation of this Commission's
8 order, yes, no, and if yes or no, why?

9 MR. McLEAN: Commissioner, I want to opt for a
10 third answer. I honestly don't know. It seems to
11 me it calls for a legal conclusion that would call
12 for some research before I could render my opinion.
13 I do not know. We were not parties to any of the
14 activities that got the deposition into the Circuit
15 Court file. I don't know about any of that. I do
16 know that we got the deposition directly from the
17 court file. I wrote a check to the clerk,
18 figuratively speaking. I approved the check that
19 was written to the clerk. It came to us in the
20 mail. So I'm sorry. I don't think I can help with
21 that.

22 COMMISSIONER DAVIDSON: And Odyssey, for this.

23 MR. SCHIEFELBEIN: For which, sir?

24 COMMISSIONER DAVIDSON: I take it your answer
25 is yes for the final question, did disclosure of the

1 depositions -- did putting the depositions in the
2 court file in the Circuit Court case constitute a
3 violation of a Commission order?

4 MR. SCHIEFELBEIN: I'm not certain of that,
5 sir.

6 COMMISSIONER DAVIDSON: All right. Fair
7 enough.

8 CHAIRMAN BAEZ: Commissioner Bradley, you have
9 a question?

10 COMMISSIONER BRADLEY: Yes, I have a question
11 for staff. The information that's in dispute within
12 the Circuit Court, was that information a part of
13 the order that was issued by this body?

14 MS. BROWN: Yes, Commissioner. It's
15 confidential, proprietary information regarding the
16 CISR contracts that were determined to be prudent by
17 this Commission when it approved the settlement
18 agreement. It's the same information. It's
19 information regarding rates and contract
20 negotiations.

21 COMMISSIONER BRADLEY: And I just want to make
22 sure I understand you clearly. This isn't new
23 information. This is -- I mean, this isn't
24 additional information. This is same identical
25 information that was deemed by this body to be

1 confidential?

2 MS. BROWN: Yes. I haven't looked at every
3 single item that has been designated confidential,
4 but it is rate and negotiation information, so it is
5 the same information.

6 CHAIRMAN BAEZ: Commissioner Deason, you had a
7 question?

8 COMMISSIONER DEASON: Yes. Maybe we can -- I
9 just have a comment, and I would look for further
10 comment from fellow Commissioners, and maybe we can
11 try to resolve this matter one way or another, but I
12 would --

13 CHAIRMAN BAEZ: I would love to do that, but I
14 hate to be accused of shutting out everyone at the
15 table.

16 COMMISSIONER DEASON: Oh, I'm sorry.

17 CHAIRMAN BAEZ: And I don't think that Mr. Long
18 -- Mr. Long, if you have any comments, but I didn't
19 want to leave you out of this as well.

20 MR. LONG: Mr. Chairman, I think this is a
21 matter primarily between Allied and Odyssey. As far
22 as I know, our toothpaste is still in the tube. But
23 our concern is moving this forward as quickly as
24 possible, and we're perfectly content reviewing the
25 information pursuant to a nondisclosure agreement.

1 And at least to date, Allied has not been willing to
2 agree to such an agreement, but we're happy to go
3 forward in whatever way would move this along
4 quickly.

5 CHAIRMAN BAEZ: Thank you, Mr. Long.

6 Commissioner Deason, go ahead.

7 COMMISSIONER DEASON: Well, let me just say
8 that my first reaction to this entire matter was the
9 same as I just heard Commissioner Davidson express
10 earlier, and that is, if information is public, we
11 no longer have an obligation, according to our
12 statute, to keep it confidential. But then the
13 further you delve into this, you see that there are
14 some extenuating circumstances, and how those
15 extenuating circumstances weigh into everything at
16 this point is fairly murky to me.

17 I'm not persuaded that simply because
18 information was filed in the Circuit Court by an
19 adverse party to the owner of the information and
20 that that is now subject, regardless of the timing
21 -- and I agree, Commissioner Jaber, the timing is
22 suspect. But nevertheless, there is a request or a
23 motion to have the Circuit Court seal the
24 information. And I agree, Mr. Chairman, how the
25 Circuit Court does that I don't know, but that's

1 their problem, not ours.

2 And given the fact that staff has indicated
3 that we can go forward with the matters that are
4 before us, even though it may be a little more
5 difficult than if the information were part of the
6 public domain, I kind of lean towards trying to keep
7 the status quo in existence to the extent that there
8 is a status quo.

9 But then on the other hand, it raises the
10 question -- and staff kind of touches upon that when
11 they discuss the fact that the CISR tariff no longer
12 applies. And then it raises in my mind a question,
13 regardless of what has happened or is yet to happen
14 in the Circuit Court, does this information still
15 belong in our possession, and according to our
16 standards, should it be confidential or not? And
17 that's kind of on a going-forward basis, and have we
18 addressed that question?

19 MS. BROWN: Yes, I think it should be kept
20 confidential here pursuant to the order that was
21 issued extending confidential treatment.

22 COMMISSIONER DEASON: And when does that order
23 expire?

24 MS. BROWN: That order expires in three more
25 months.

1 COMMISSIONER DEASON: So according to our own
2 order, the information should be confidential here
3 for three -- if we just ignore what's happening in
4 the Circuit Court?

5 MS. BROWN: Yes. And then the parties would
6 have the opportunity to request that confidential
7 treatment be extended for another 18 months, but the
8 Commission would then have the chance to review it
9 and see whether it needed to be confidential.

10 COMMISSIONER DEASON: And the matter that is
11 currently before the Commission, what is the
12 schedule for that? And I know that there's some
13 speculation as to whether there's going to be
14 motions to dismiss and that sort of thing, but do we
15 have any type of anticipated schedule?

16 MS. BROWN: We don't have any anticipated
17 hearing schedule yet. We're waiting to -- the
18 Prehearing Officer is going to rule shortly on
19 whether or not Allied's motion to amend its petition
20 should be granted, probably within the next day.

21 COMMISSIONER DEASON: And it's conceivable
22 that, in fact, maybe even likely that before this
23 matter -- if it does go to hearing, it will be more
24 than three months from now before it goes to
25 hearing.

1 MS. BROWN: Yes.

2 MR. McLEAN: Mr. Chairman, Harold McLean,
3 Public Counsel. I heard Ms. Brown say that it will
4 be treated as confidential here. I'm going to take
5 that, unless instructed otherwise, that it will be
6 confidential in our office as well. What may have
7 given rise to this agenda item is our motion for
8 direction from you Commissioners as to whether this
9 is confidential or not. So given what Ms. Brown
10 just said, and I believe the gist of it is that
11 there's a protective order now covering this data,
12 we will also treat it as confidential according to
13 that order. Is that a correct understanding, or --

14 CHAIRMAN BAEZ: Ms. Brown, my answer would be
15 yes. And we do appreciate Public Counsel's
16 cooperation in that.

17 MS. BROWN: Yes. Thank you, Mr. McLean.

18 MR. McLEAN: And we will be responding to a
19 Commission order on that point, the Commission order
20 that is already in existence, as I take it.

21 CHAIRMAN BAEZ: Which will be governing our
22 proceedings.

23 MS. BROWN: I'm confused. The order that
24 exists now --

25 CHAIRMAN BAEZ: And here's -- but I think

1 Mr. McLean's question raises an even finer point,
2 and this is going to go to something, a suggestion
3 that Commissioner Bradley made, because I'm trying
4 to get it clear in my mind as well. How would one
5 proceed with this information absent an affirmative
6 ruling on confidentiality?

7 MS. BROWN: Well, the information has been
8 filed pursuant to a request for confidential
9 treatment, so it's being protected at this moment.

10 CHAIRMAN BAEZ: It is being protected pending a
11 ruling by --

12 MS. BROWN: Pending a decision, a specific
13 ruling. So I would think that the Office of Public
14 Counsel should treat it that way.

15 CHAIRMAN BAEZ: Should treat it that way as
16 well. So we have Mr. McLean's question answered, I
17 hope.

18 MR. McLEAN: It is, sir. My issue is, I've got
19 some of Mr. Long's toothpaste over in my office, and
20 if somebody wants it, what do I do. And I can
21 resist an effort for somebody to get it pursuant to
22 an order of the Commissioners, but not just because
23 I don't want to give it to them.

24 CHAIRMAN BAEZ: Excellent. And, Commissioners,
25 here's -- I don't know how we proceed from this, but

1 I've heard a lot of it. The dynamics of these
2 arguments are such that I'm having trouble basing a
3 decision that lets what would normally have been
4 confidential information here become or continue to
5 be public based on a determination of a court that
6 hasn't made a determination yet. So to me, we're
7 building it on a house of cards.

8 Functionally speaking or mechanically speaking,
9 I don't think that we need to make a decision, make
10 a ruling on this, which I guess goes back to
11 Commissioner Bradley's suggestion that we can defer
12 a determination on it until the proper moment. If
13 it turns out that we're moving faster than, then
14 maybe we've got to jump off that bridge when we get
15 to it, but I don't see that we need to make a
16 definitive determination now. And that to me is
17 preserving the status quo that we've got at this
18 point. It will let -- it seems that everybody is
19 going to get the information and use the information
20 that they need so that our docket can move forward.
21 I'm just not comfortable --

22 COMMISSIONER JABER: That's one option. I
23 guess the other option that was discussed on the
24 periphery is to recognize the outstanding order that
25 has three more months left. But I don't -- not that

1 I have a preference one way or the other, but it is
2 an option.

3 CHAIRMAN BAEZ: I'm open to discussion or
4 suggestions on that as to what the most legally
5 efficient way would be to treat that, although
6 because of the -- would you anticipate at the end of
7 three months another extension being filed for? I
8 mean --

9 MS. BROWN: I'm seeing heads nodding down that
10 way. I'm not sure. But let me also mention --

11 CHAIRMAN BAEZ: Well, I don't think we're going
12 to be complete in three months on either side of the
13 bar, so --

14 MS. BROWN: I would bet that the other parties,
15 Odyssey and TECO, will file motions to dismiss if
16 Mr. Hoffman's motion to amend his petition is
17 granted. And there is the chance that the
18 Commission would decide to dismiss the case, and at
19 that point, the information can go back to the
20 owners of the information. So I don't know whether
21 you --

22 COMMISSIONER JABER: Okay. I have a motion.
23 My motion would be to not issue a ruling today.
24 That's not the same as a deferral, I don't think.
25 It would just be to hold these requests outstanding.

1 And before I make this part of the motion,
2 Mr. McLean, can we go ahead and incorporate in
3 today's ruling a finding that your motion is moot?

4 MR. McLEAN: Yes, ma'am.

5 COMMISSIONER JABER: Recognizing what you've
6 heard?

7 MR. McLEAN: Yes, ma'am. Thank you.

8 COMMISSIONER JABER: Go ahead, Commissioner
9 Bradley.

10 COMMISSIONER BRADLEY: Just to make sure that
11 I understand, which means that our order of
12 confidentiality remains in effect, which means that
13 Mr. McLean will treat all of his information as
14 being confidential until otherwise advised.

15 MR. McLEAN: Yes, sir.

16 COMMISSIONER BRADLEY: Okay. I'm fine. Okay.
17 Go ahead.

18 COMMISSIONER JABER: No, that's a great
19 question.

20 COMMISSIONER DEASON: And let me -- Mr. McLean,
21 and you're satisfied with that result, or it gives
22 you the comfort you're looking for? **Is that**
23 correct?

24 MR. McLEAN: Yes, sir. I can envision some
25 difficult situations ahead, depending on how much

1 interest there is in getting the thing out of my
2 office, but we can cross those bridges when we come
3 to them. As far as I'm concerned, I want to handle
4 the information consistent with the pleasure of the
5 Commission here with respect to confidentiality.

6 If the Circuit Court speaks to the issue, I may
7 have to do something different, but, of course,
8 we'll cross that bridge when we come to it. I don't
9 think there's a great deal of interest in the
10 information, to tell you the truth. But it
11 accomplishes the purpose of our motion. **Your**
12 ruling, your proposed ruling here today will set us
13 at ease to the extent a ruling on our motion would
14 have anyway. So thanks.

15 CHAIRMAN BAEZ: And with that, we have a
16 motion.

17 COMMISSIONER JABER: Right.

18 COMMISSIONER BRADLEY: Second.

19 CHAIRMAN BAEZ: And a second. All those in
20 favor say aye.

21 (Simultaneous affirmative responses.)

22 CHAIRMAN BAEZ: **Show it passed unanimously.**
23 Thank you, gentlemen.

24 MR. HOFFMAN: Thank you, Commissioners.

25 CHAIRMAN BAEZ: I dare say, not to beat a

1 metaphor to death, but I think we've kept our
2 toothpaste in our own tube for now.

3 COMMISSIONER JABER: I think so. I think so.

4 MR. SCHIEFELBEIN: Thank you, Commissioners.

5 CHAIRMAN BAEZ: Thank you all.

6 (Conclusion of consideration of Item 4A.)
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COUNTY OF LEON:

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I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor relative or employee of such attorney or counsel, or financially interested in the foregoing matter.

DATED THIS 29th day of July, 2004.


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