TAMPA ELECTRIC

August 20, 2004

VIA E-FILING

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

Re: 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; FPSC Docket No. 040086-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket is Motion to Dismiss and Answer of Tampa Electric Company to the Amended Petition of Allied Universal Corporation and Chemical Formulators. Inc. 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

Thank you for your assistance in connection with this matter.

Sincerely,

Harry W. Long, Jr.
Assistant General Counsel - Regulatory

Enclosure

cc: J. D. Beasley
All Parties of Record

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 20, 2004

Motion to Dismiss and Answer of Tampa Electric Company to the Amended Petition of Allied Universal Corporation and Chemical Formulators. Inc. 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

Pursuant to Rule 28-106.204, F.A.C., Order No. PSC-04-0714-PCO-EI and Order No. PSC-04-0795-PCO-EI, Tampa Electric Company ("Tampa Electric") hereby files its *Motion to Dismiss and Answer to the Amended Petition of Allied Universal Corporation and Chemical Formulators. Inc.("Allied") 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,* filed with the Commission on July 2, 2004 (the "Amended Petition"). Allied's Amended Petition represents a direct and blatant violation of the Settlement Agreement adopted by the Commission in Order No. PSC-01-1003-AS-EI (the "Settlement Agreement"). In amending its Petition, Allied has provided no new facts and has raised no new issues that cure or even mitigate the fatal flaws in its original

Petition. Essentially, Allied's request for relief is unchanged and amounts to a demand that Tampa Electric be deprived of the benefits of the above-mentioned settlement even though Tampa Electric has fully performed and Allied has received all of the benefits that it bargained for under the settlement. To add insult to injury, Allied's demand for relief is not premised on an allegation that Tampa Electric has, in some way, failed to fully perform its obligations under the Settlement Agreement. Instead, Allied has attempted to absolve itself of the obligation to abide by the terms of the Settlement Agreement on the basis of alleged fraudulent conduct by Odyssey Manufacturing Company ("Odyssey"), who was not a party to the Settlement Agreement and provided no part of the consideration that induced Allied to enter into the Settlement Agreement. Allied's accusations against Odyssey, whether or not factual, provide no reasonable basis for vacating Order No. PSC-01-1003-AS-EI and declaring the Settlement Agreement approved therein to be unenforceable.

In its Amended Petition, Allied has attempted to divorce itself from its obligations under the Settlement Agreement and, instead, has attempted to recast itself as an innocent Tampa Electric customer injured by what it alleges to be a non cost-effective and discriminatory rate afforded to its competitor, Odyssey. However, Allied was fully aware of the Odyssey CISR rate level and rate design when it entered into the Settlement Agreement and urged the Commission to find the same rate design and rate level reasonable as it pertained to Allied. Furthermore, Allied had no problem with the cost-effectiveness of the Odyssey CISR rate during the period when Allied was entitled to take service under the same rate, pursuant to the Settlement Agreement. Finally, Allied

apparently has no problem with asserting prospective entitlement to this same rate while it also argues that the rate is harmful to the general body of ratepayers. Under these circumstances, Allied's current attempt to challenge the propriety of the Odyssey CISR rate is internally inconsistent and patently disingenuous. Putting aside the fact that Allied's attempt to raise these issues constitutes a blatant and serious violation of the Settlement Agreement, it is clear that Allied's position is unprincipled, illogical and is based on a series of demonstrably incorrect assertions, as discussed in more detail below. In support whereof, Tampa Electric says:

1 Pursuant to Order No. PSC-98-1081-FOF-EI, issued on August 10, 1998, this Commission approved Tampa Electric's Commercial Industrial Service Rider ("CISR") tariff and Pilot Study Implementation Plan. The CISR tariff was intended to allow Tampa Electric to avoid uneconomic bypass of its system. Uneconomic bypass was presumed to occur when a customer left or avoided the company's system to take advantage of a price for electric service elsewhere that was lower than Tampa Electric's normally applicable rate but above the Company's marginal cost to serve the customer in question. The CISR tariff permitted Tampa Electric to negotiate a rate between its marginal cost to serve a particular customer and the rate otherwise applicable to that customer in order to preserve, for its general body of ratepayers, a contribution to fixed costs represented by such "at risk" loads. Negotiated rates within the above-mentioned range were to be based on the cost of electric service alternatives available to the customer outside of Tampa Electric's service territory rather than on Tampa Electric's cost of service. Ratepayer benefits were maximized by Tampa

Electric's negotiating the smallest possible discount from the otherwise applicable rate that would secure the "at risk" load.

2. In particular, Order No. PSC-98-1081-FOF-EI provided as follows:

> *"The negotiated discount will apply only to base energy and/or base demand charges. The customer will pay all otherwise applicable adjustment clauses. To ensure that the other ratepayers are not being harmed through the adjustment clauses, TECO proposes to allocate all revenue received from CISR customers first to all applicable cost recovery clauses at the rate which the customer would have been charged in the absence of a CISR. The CISR customer will also pay the otherwise applicable customer charge and an additional $250 customer charge. The additional customer charge is intended to cover incremental CISR customer-related costs....The rate offered may also take the form of a rate guarantee for a specific time period."*

3. The CISR Tariff Pilot Program expired as of December 31, 2003 and Tampa Electric did not request extension or renewal of the program.

4. On January 20, 2000, Allied filed a complaint against Tampa Electric with the Commission in Docket No. 00006-EI asserting that Tampa Electric had negotiated a preferential CISR rate with Allied's competitor, Odyssey, and asserting entitlement, as a matter of law, to precisely the same CISR rates, terms and conditions that Odyssey had obtained as the result of its negotiations with Tampa Electric. In response, Tampa Electric vehemently denied Allied's allegations of favoritism and improper dealings by Tampa Electric in its CISR negotiations with Odyssey. To the contrary, Tampa Electric expressed its intention to demonstrate that its CISR negotiations with both Allied and Odyssey

and the Contract Service Agreements ("CSA") offered to each of them had been fair, reasonable, unbiased and entirely consistent with the provisions of Tampa Electric's CISR Tariff.

5. Given the explicit requirement in the Commission-approved CISR Tariff that all information exchanged in the course of CISR negotiations and any resulting CSAs were to be treated as confidential information, the discovery process associated with Allied's complaint was both protracted and contentious.

6. After many months of multi-party interrogatories, document requests, depositions, objections to discovery and motions to compel, the matter was set for hearings before the Commission on February 19, 2001. On the morning that hearings were to commence, the assigned Commissioners asked the parties to make one, last attempt to settle the matters at issue. In order to facilitate such settlement discussions, the hearings were temporarily suspended. In response, Tampa Electric and Allied engaged in settlement discussions that culminated in the filing of a Settlement Agreement and related settlement documents with the Commission on March 22, 2001.

7. In relevant part, the Settlement Agreement reached between Allied and Tampa Electric contained the following provisions:

> *"WHEREAS, Allied/CFI and TECO desire to resolve their differences and conclude the PSC litigation on terms which do not affect Odyssey's rates, terms and Conditions for electric service from TECO;*

NOW, THEREFORE, Allied/CFI and TECO hereby agree to conclude the PSC litigation on the following terms:

2. Pursuant to its Commercial Industrial Service Rider ("CISR") tariff, TECO and Allied/CFI shall execute a Contract Service Agreement ("CSA") for electric service to a new sodium hypochlorite manufacturing facility to be constructed and operated by Allied/CFI and/or their affiliate(s) in TECO's service territory, upon the same rates, terms and conditions as those contained in the CSA between TECO and Odyssey, provided that the new sodium hypochlorite manufacturing facility must begin commercial operation within 24 months from the date of the PSC order approving this settlement agreement....

3. Allied/CFI shall assert no further challenge, before the PSC, to the rates, terms and conditions for electric service provided by TECO to Odyssey and set forth in the TECO/Odyssey CSA.

4. TECO requests that the PSC make the following findings of fact

- *a. Both the existing Odyssey CSA and the proposed Allied/CSA provide benefits to Tampa Electric's general body of ratepayers and, therefore, the Commission finds that both CSAs are in the best interests of ratepayers.*
- *b. The Commission finds that Tampa Electric's decision to enter into the Odyssey CSA and the CSA itself, were prudent within the meaning of Order No. 98-1081-FOF-EI in so far as they provide benefits to Tampa Electric's general body of ratepayers.*
- *c. The Commission finds that Tampa Electric's decision to enter into the Allied/CFI CSA, and the CSA itself, were prudent within the meaning of Order No. 98-1081-FOF-EI in so far as they provide benefits to Tampa Electric's general body of ratepayers.*

5. Allied/CFI agrees not to contest the findings of fact, rulings and determinations requested in paragraphs 4 and 7 of this Settlement Agreement, provided that no findings of fact or conclusions of law shall be made with respect to the allegations of Allied/CFI's complaint in this proceeding.

6. Allied/CFI's Complaint in the PSC litigation shall be deemed withdrawn, with prejudice, upon: (a) the execution of this Settlement Agreement by TECO and Allied/CFI; and (b) the issuance of an order by the PSC approving this settlement agreement, as proposed.

7. Allied/CFI and TECO request that the PSC include in its order approving this Settlement Agreement the following rulings and determinations:

a. The Commission shall not entertain any further challenge to the existing Odyssey or the proposed Allied/CFI CSA or the rates, terms or conditions contained therein. ...
d. The parties shall abide by the various General Release agreements executed among them.

8. Allied/CFI shall execute the General Release attached as Exhibit "C" hereto...."

8. On April 24, 2001, the Commission issued Order No. Order PSC-01-1003-AS-EI approving the above-quoted Settlement Agreement. After carefully describing each provision of the proposed Settlement Agreement and noting Odyssey's objections to various aspects of the proposed settlement, the Commission approved the Settlement Agreement, with several clarifications and modifications.

9. With regard to paragraph 1 of the Settlement Agreement, the Commission stated at Page 7 of its Order that:

"Paragraph 1 of the Agreement requires that an evidentiary record be created from the prefiled testimony, depositions and the exhibits referenced in each of those documents. The Agreement shall be modified to include all of TECO's discovery responses in the evidentiary record, because those responses are needed to support a finding that Allied and Odyssey's CSA's are prudent.

10. With regard to paragraph 4 of the Settlement Agreement, the Commission stated at Page 8 of its Order that:

"Paragraph 4 of the Settlement Agreement requires this Commission to find that Allied's and Odyssey's CSAs are prudent and provide benefits to the general body of ratepayers. Subparagraph 4(a) appears duplicative in light of subparagraphs (b) and (c). TECO believes that each

subparagraph demonstrates that this Commission has actively supervised TECO's implementation of the CISR tariff. With that clarification, the paragraph is acceptable. With the inclusion in the evidentiary record of all of TECO's discovery responses, there is sufficient information to conclude that both Allied and Odyssey are "at risk" within the meaning of Order No. PSC-98-1081-FOF-EI. Further, based on the RIM analysis provided by TECO, there is sufficient information to conclude that the rates offered to Odyssey and Allied exceed the incremental cost to serve those customers. Accordingly, the requested findings are supported by competent substantial evidence and are approved. (emphasis added)

11. The underscored portion of Order No. Order PSC-01-1003-AS-EI is particularly pertinent to the allegation now emphasized in the Amended Petition that the Odyssey CISR rate is not cost effective and inconsistent with the Commission order approving Tampa Electric's CISR tariff. The Commission made an explicit determination, based on undisputed competent and substantial evidence, that the Odyssey CISR rate would be sufficient to recover all incremental costs, including projected fuel expense which were specifically included in the RIM analysis, for the proposed ten-year term of the CSA. The Commission satisfied itself that the Odyssey CISR rate would be sufficient to cover all applicable cost recovery clause charges that would apply to Odyssey in the absence of a CSA under the CISR tariff. Even if Allied was not barred by the Settlement Agreement from raising this issue, it is clear that the Commission directly reviewed the concerns now raised by Allied and conclusively determined that the Odyssey CISR rate was cost effective and consistent with the requirements of Tampa Electric's CISR tariff and Order No. Order No. PSC-98-1081-FOF-EI. Allied has failed to identify any contemporaneous information about the rates in question that was not known to the Commission at the time of the deliberations that lead to the issuance of Order No. PSC-01-1003-AS-EI.

12. With regard to paragraph 5 of the Settlement Agreement, the Commission stated also at Page 8 of the Order that:

> *" Paragraph 5 seems internally contradictory. The first clause requires Allied to agree not to contest the factual findings contained in paragraph 4 and paragraph 7 (a determination that the Commission will not entertain any further challenge to either CSA). The second clause says Allied is only required to agree to the findings of fact and rulings in the first clause as long as those findings of fact and conclusions of law do not pertain to Allied. Allied explains that it believes the findings and rulings in paragraphs 4 and 7 do not address the allegations of Allied's complaint. We take no position on whether the findings and rulings in paragraphs 4 and 7 address the allegations in Allied's Complaint, but with Allied's clarification we find that the paragraph is acceptable.*

13. Finally, the Commission stated at Page 8 of its Order that:

> *"With respect to subparagraph 7(a), TECO and Allied clarified that the importance of this paragraph is to settle, for all time, the prudence of Allied's and Odyssey's CSA with respect to matters within our jurisdiction. We agree that, based on the findings in this order, this is appropriate. This is consistent with our past decisions concerning prudence and the doctrine of administrative finality.*

4. The above-quoted excerpts from the Settlement Agreement and the Commission Order approving the Settlement Agreement make several conclusions inescapably clear:

   a. Allied's sole inducement to enter into the Settlement Agreement was Tampa Electric's agreement to provide electric service to Allied's proposed new bleach manufacturing facility at the same rates and under the same terms and conditions as those negotiated with Odyssey, provided that Allied's proposed new facility achieved commercial operation within 24 months of the Commission order approving the Settlement Agreement.

b. Odyssey was not a party to the settlement and offered Allied no inducement to enter into the Settlement Agreement.

c. Allied's obligation to abide by the terms of the Settlement Agreement was not contingent upon or tied in any way to the veracity of any representations made by Odyssey.

d. Tampa Electric's inducement to enter into the Settlement Agreement was Allied's agreement to acquiesce in the Commission's determination that both the Allied and Odyssey CSAs were prudent, Allied's agreement not to initiate or pursue any future litigation before the Commission concerning either the Allied or Odyssey CSAs, and Allied's execution of a formal Release insulating Tampa Electric from any and all claims that Allied might otherwise assert against Tampa Electric in connection with the matters raised in Allied's complaint.

e. The Commission, in reviewing the prudence of Tampa Electric's dealings with Allied and Odyssey under the CISR tariff, concluded that the record contained ample evidence to support a finding that Tampa Electric had acted in a prudent manner.

f. In approving the Settlement Agreement, the Commission confirmed that the essence of the agreement between Allied and Tampa Electric was that Allied would not initiate or pursue and the Commission would not entertain any future challenge by Allied to the Odyssey CSA or Tampa Electric's CISR negotiations with Odyssey.

15. In keeping with both the letter and the spirit of the Settlement Agreement, Tampa Electric worked diligently with Allied to assist Allied in finding a suitable location for its proposed new bleach manufacturing facility in Tampa Electric's service territory. However, despite this effort and through no fault of Tampa Electric's, Allied did not commence commercial operation or even begin construction of its proposed new bleach manufacturing facility within the 24 month period specified in the Settlement Agreement. Accordingly, Tampa Electric notified Allied that, pursuant to the terms of the Settlement agreement, the rates, terms and conditions negotiated with Odyssey several years earlier would no longer be available to Allied.

16. In its Amended Petition, Allied now asks the Commission to ignore all of the circumstances described above and declare the Settlement "unenforceable" based on the allegation that Odyssey's president, Mr. Stephen W. Sidelko, provided deposition responses in Allied's civil litigation against Odyssey that directly contradict statements made by Mr. Sidelko in an affidavit provided to Tampa Electric as part of Tampa Electric's CISR negotiations with Odyssey. In a pathetic effort to find some nexus between its Settlement Agreement with Tampa Electric and the alleged contradictory statement attributed to Mr. Sidelko, Allied asserts at page 10 of its Amended Petition that it "justifiably relied" on the representations made in Mr. Sidelko's CISR affidavit in making its decision to enter into the Settlement Agreement. Allied then asserts that because Tampa Electric was fraudulently induced to enter into a CSA with Odyssey and Allied was

fraudulently induced to enter into the Settlement agreement with Tampa Electric and the Commission was fraudulently induced to approve the Settlement Agreement, the Commission should vacate its order approving the Settlement Agreement and the Agreement should be declared unenforceable. In an attempt to prop up this ersatz logic with some semblance of legal authority, Allied cites several cases that stand for the proposition that the Commission can and should modify its prior final orders "where there is a demonstration by an injury party that the Commission's prior order was predicated on fraud, deceit, surprise, mistake, or inadvertence, where there is a demonstrated need or public interest; or where there is otherwise a substantial change in circumstances." However, Allied has failed to identify any "injury", " fraud", "demonstrated need or public interest" or any relevant "substantial change in circumstances" sufficient to overcome the doctrine of administrative finality. As discussed below, Allied has attempted to apply legal precedents to series of faulty assumptions and misrepresented "facts".

17. Allied's assertion of entitlement to relief is based on its assertion that Odyssey, through Mr. Sidelko, has perjured itself as the result of conflicting statements in Odyssey's CISR affidavit and deposition testimony offered by Mr. Sidelko in Allied's civil litigation against Odyssey. Tampa Electric is not a party to Allied's civil litigation against Odyssey and, therefore, has no first-hand knowledge of the record in that proceeding. However, the sketchy information provided by Allied in its Amended Petition is contradictory, on its face, as to the question of whether

or not Mr. Sidelko has, in fact, made contradictory statements. At page 14 of its Amended Petition, Allied provides redacted excerpts from Mr. Sidelko's deposition in the civil proceeding that Allied argues seem to suggest the CISR rate specified in Odyssey's CISR affidavit was "not important" to Mr. Sidelko as an inducement to enter into a CSA with Tampa Electric. However, in footnote 5 on that same page of its Amended Petition, Allied acknowledges that Mr. Sidelko corrected the deposition excerpt cited by Allied in an errata sheet dated January 23, 2004, to say "that obtaining the CISR tariff rate was what was important to him..." Given this errata sheet, it is far from clear that Mr. Sidelko has committed perjury or even that he has made inconsistent statements. In any event, this dispute should be left to be resolved in the civil litigation where it belongs.

18. Even if one were to accept Allied's unsubstantiated assertion that Mr. Sidelko has made inconsistent statements, the next leap of logic that Allied asks the Commission to make is patently unreasonable. Allied would have the Commission believe that it has been "injured" by merit of its "justifiable reliance" on the statements made in Odyssey's CISR affidavit and was induced thereby to enter into the Settlement Agreement with Tampa Electric and agree to the dismissal of its complaint with prejudice. The relief requested by Allied in its original complaint was to be given the same rates, terms and conditions for electric service that had been extended to Odyssey. Under the Settlement agreement, Allied bargained for and received the opportunity to enjoy the same rates, terms and conditions for electric service that had been negotiated with

Odyssey, provided that Allied commenced commercial operation at its new bleach manufacturing facility within 24 months of the Commission order approving the Settlement Agreement. Regardless of what rate Odyssey might have been willing to accept, Allied was given the opportunity to receive the same rate that Odyssey did, in fact, accept. Therefore, it is difficult, if not impossible, to understand the nature of the "injury" Allied claims to have sustained as the result of Odyssey's alleged fraud or the sense in which Allied "justifiably relied" on Allied's CISR affidavit. Odyssey was not a party to the Settlement Agreement nor did Odyssey provide any of the consideration that induced Allied to enter into the Settlement Agreement. Therefore, the accuracy of Odyssey's CISR affidavit is completely irrelevant to the question of whether Allied should be required to abide by the terms of the Settlement Agreement that it urged this Commission to approve.

19. Next, Allied suggests that that the Commission must vacate its Order approving the Settlement Agreement and that the Settlement Agreement itself must be declared unenforceable since Tampa Electric was fraudulently induced to enter into a CSA with Odyssey and the Commission was fraudulently induced to approve the Settlement Agreement. Both contentions are devoid of merit and evidence a profound misunderstanding of the record compiled in Docket No.000061-EI and the nature of the Commission's approval of the Settlement Agreement.

20. Allied's assertions to the contrary notwithstanding, as the record indicates, Tampa Electric decision to enter into a CSA with Odyssey was the result of a multitude of information of which Odyssey's CISR affidavit was only one piece. Information with regard to the requirements imposed by Odyssey's lenders, the rates available from other potential suppliers of electric service and the benefits projected as the result of attracting the incremental load represented by Odyssey's new facility were all taken into account by Tampa Electric. As noted in the above-mentioned excerpts from the Commission's order approving the settlement, all of this information was contained in the data request responses provided by Tampa Electric and included in the record to substantiate the prudence of Tampa Electric's actions. Although Tampa Electric takes very seriously the requirement that statements given under oath be factually correct, in this instance the issue is not the veracity of Mr. Sidelko's CISR affidavit. Instead, the question is whether the Commission's conclusion that Tampa Electric acted reasonably and prudently in offering Odyssey a CISR rate should be vacated. Regardless of the accuracy of Odyssey's CISR affidavit, Allied has alleged no facts that would support a contention that Tampa Electric's extension of a CSA to Odyssey was imprudent or that the Commission committed an error of fact or law in concluding that Tampa Electric's CSA with Odyssey was imprudent and not in the best interests of ratepayers. Absent such a showing, there is no legitimate basis for the Commission to vacate or even reconsider its prior order.

21. In a last ditch effort to find any plausible justification for its breach of the Settlement Agreement, Allied alleges, enigmatically, at page 24 of its Amended Petition, that "TECO arbitrarily and capriciously refused to extend the TECO/Allied CSA", in violation of Allied's statutory right to a non-discriminatory rate. This allegation is circular and ridiculous on its face.

22. On November 27, 2001, six months after Commission approval of the Settlement Agreement, Allied advised Tampa Electric that Kvaerner Chemetics, its preferred contractor, would not be available to construct Allied's proposed new bleach facility, as the result of a contractual agreement between Kvaerner and Odyssey. Allied cited the unavailability of Kvaerner as a force majeure event under the Settlement Agreement, entitling Allied to an extension of the two year eligibility period.

23. By letter dated December 20, 2001, Tampa Electric advised Allied that the circumstances described by Allied's November 21st letter did not constitute a force majeure event under the Settlement Agreement. Far from being "arbitrary and capricious" in refusing to extend the two-year eligibility period, Tampa Electric explained its position fully and concisely. First, Tampa Electric pointed out that Allied was fully aware, at the time it entered into the Settlement Agreement, of the contractual constraints faced by Kvaerner with regard to the construction of new sodium hypochlorite manufacturing facilities in the Tampa Area. Furthermore, through the deposition of Mr. Stephen Sidelco on December

1, 2000, Allied had actual notice of the value that Odyssey placed on its non-compete covenant with Kvaerner. Under these circumstances, it would have been unreasonable to view this pre-existing circumstance as a force majeure event. It would be equally unreasonable for Allied to now assert that it entered into the Settlement agreement based on the unarticulated assumption that the non-compete provision would never be enforced.

24. Second, while Tampa Electric pointed out that it understood that Allied preferred to hire Kvaerner, there were other contractors who could construct its proposed bleach plant. This fact is borne out by Allied's original selection of NORAM Engineering And Constructors Ltd. to design and build its proposed facility[1]. The unavailability of a preferred contractor, when other contractors are available, does not amount to the kind of commercial impossibility that reasonably could be construed as a force majeure event. Under the circumstances described above, Tampa Electric had no obligation to extend the Settlement Agreement. A copy of the correspondence exchanged between Tampa Electric and Allied in this issue is attached hereto as Exhibit 1.

25. Allied's Amended Petition is precisely the kind of frivolous and needlessly litigious pleading that the Settlement Agreement explicitly bars. Now that Allied has extracted the full benefit of the Settlement it is asking the Commission to declare the Settlement Agreement unenforceable, thereby depriving Tampa

[1] See confidential documents identified as bates stamp # 1621 – 1622A and 1548A produced in Docket No. 000061-EI.

Electric of the benefits that Tampa Electric bargained for. Allied's extraordinary request for relief is based on unsubstantiated allegations of misconduct directed at a party who opposed the Settlement Agreement and whose misconduct, even if substantiated, would be irrelevant to the settlement reached between Allied and Tampa Electric. Both as a matter of law and as a matter of basic fairness, Allied's Amended Petition should be summarily dismissed.

WHEREFORE, Tampa Electric respectfully requests that Allied's Amended Petition in this Docket be dismissed with prejudice and that no relief be granted to Allied.

DATED this 20th day of August, 2004.

Respectfully Submitted,

HARRY W. LONG JR.
Assistant General Counsel – Regulatory
Tampa Electric Company
P.O. Box 111
Tampa, Florida 33601
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And
LEE L. WILLIS
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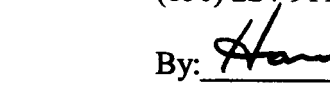
By: 

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion, filed on behalf of Tampa Electric Company, has been furnished by e-mail on this 20th day of August 2004 to the following:

Ms. Martha Carter Brown
Ms. Marlene Stern
Division of Legal Services
Florida Public Service Commission
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Tallahassee, FL 32399-0850

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Mr. J. Stephen Menton
Rutledge Law Firm
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Tallahassee, FL 32302-0551

ATTORNEY

EXHIBIT NO 1

NSF

WORLD CLASS SERVICE
ALLIED UNIVERSAL CORPORATION
ESTABLISHED 1954

NACD Responsible Distribution Process
Quality • Responsibility • Stewardship

November 27, 2001

Mr. Rob Jennings
Tampa Electric Company
702 North Franklin Street
Tampa, FL 33602

RE: Allied Universal Corporation/TECO Contract Service Arrangement

Dear Rob:

Pursuant to Paragraph 4 of the "Contract Service Arrangement For The Provision Of Service Under The Commercial/Industrial Service Rider" ("the Agreement") between Allied Universal Corporation ("Allied") and TECO, this letter will serve as formal notice of an event of force majeure obstructing or delaying Allied's ability to commence, prosecute or complete the work necessary to comply with the specified period for Allied's commencement of commercial operations.

The event of force majeure arises from the inability of Kvaerner Chemetics to construct Allied's proposed new sodium hypochlorite manufacturing facility. It is Allied's understanding that Kvaerner Chemetics' inability to construct the plant was procured by Odyssey Manufacturing Co. and/or Sentry Industries, Inc., through a contractual agreement that purports to preclude Kvaerner Chemetics from constructing a cell process plant within 150 miles of Odyssey's existing plant. Allied believes that the Odyssey/Sentry/Chemetics agreement is an illegal contract in restraint of trade, and Allied is pursuing, with all possible dispatch, all available remedies.

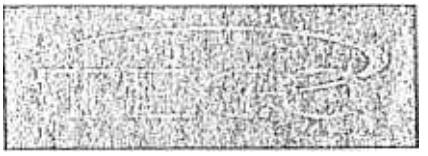
Very truly yours,

ALLIED UNIVERSAL CORPORATION

R. M. Namoff
C E O

/cg

)7-8715 • FAX: (305)



TAMPA LEC RIC

December 20, 2001

Mr. Robert Namoff
Allied Universal Corporation
8350 93rd St NW
Miami, Fl 33166-2098

Re: Allied Universal Corporation/TECO Contract Service Agreement

Dear Bob

Thank you for your letter of November 27, 2001 in which you describe what you consider to be a force majeure event under our Contract Service Arrangement For The Provision Of Service Under The Commercial/Industrial Service Rider (the "Agreement"). After careful review of your letter and consultation with legal counsel, Tampa Electric has concluded that the circumstances that you describe not amount to a force majeure event that would extend the period within which Allied Universal must commence commercial operation of its new sodium hypochlorite manufacturing facility pursuant to the Agreement.

The basis for Tampa Electric's position is twofold. First, Allied Universal was fully aware, at the time that it entered into the Agreement, of the contractual constraints faced by Kvaerner Chemetics with regard to the construction of new sodium hypochlorite manufacturing facilities in the Tampa area. Under these circumstances, it would be unreasonable, in our opinion, to view this pre-existing circumstance as a force majeure event that suspends Allied Universal's obligation to perform. Second, while we understand that Kvaerner Chemetics is the company that Allied Universal would prefer to hire, there are clearly other companies who could construct the proposed sodium hypochlorite manufacturing facility on the site that Allied Universal ultimately selects. The unavailability of a preferred contractor, when other able contractors are available, does not amount to the kind of commercial impossibility that reasonably could be construed as a force majeure event under the Agreement.

Tampa Electric values its business relationship with Allied Universal and I will continue to do everything reasonably possible to assist you in bringing your proposed new sodium hypochlorite manufacturing facility into commercial operation within the terms of the Agreement.

Sincerely,

Robert L. Jennings
Account Manager
Tampa Electric Company

Cc: Greg McAuley-TEC
Vicky Westra-TEC
Harry Long-TEC
Bill Ashburn-TEC

ANANIA, BANDKLAYDER, BLACKWELL
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HEATHER M. MACKENDREE
ANA M. RIVERO-ALEXANDER
DOUGLAS H. STEIN
ROBERTO A. TORRICELLA, JR.

February 6, 2002

VIA FEDERAL EXPRESS
Robert Jennings
Account Manager
Tampa Electric Company
P.O. Box 111
Tampa, FL 33601-0111

Re Allied Universal Corp./Teco CSA

Dear Mr. Jennings:

Our firm represents Allied Universal Corp. ("Allied") We acknowledge receipt of your December 20, 2001 letter to Mr. Namoff.

The force majeure provision in the Allied/Teco agreement speaks for itself, and it would serve no useful purpose for us to debate, at this point, whether Odyssey Mfg. Co.'s latest attempt to block Allied's new plant falls within its purview. Suffice to say, Allied did not know, and could not reasonably have anticipated, that Odyssey would attempt to enforce a patently illegal contractual provision that purports to preclude Chemetics from constructing any further bleach plants within a 150 mile radius for ten years.

Chemetics is not just a "preferred contractor." It is the *only* contractor that has successfully constructed a similarly sized plant of this type in the United States. Clearly Teco cannot reasonably expect Allied to invest millions of dollars in reliance upon a contractor that has never successfully constructed a similar plant in this country.

Allied is outraged over this turn of events and already has filed suit against Odyssey to have the restrictive covenant declared null and void as an illegal contract in restraint of trade. A copy of the Complaint is enclosed. Allied is moving forward expeditiously with the lawsuit, but in view of the delays inherent in any litigation, it is becoming increasingly

unlikely that the matter can be resolved in time to complete construction of the facility within the original 24 month time frame.

Allied has moved forward diligently with its plans for a new bleach manufacturing facility. Indeed, I understand that, among other things, Mr. Namoff has met with you in Tampa on several occasions and, as a result, Allied and Teco have identified suitable sites for the new facility. Allied remains committed to constructing the facility as quickly as practicable under the circumstances, and trusts that Teco will continue to work with Allied, in a spirit of cooperation, toward this goal and a continued long-term relationship that will benefit Allied, Teco and the many municipalities and others that depend upon Allied's bleach to provide safe drinking water and waste water treatment.

It is imperative that Teco immediately confirm that Allied will receive the agreed upon electric rate pursuant to the force majeure provision of the Contract Service Agreement.

Very truly yours,

Daniel K. Bandklayder

DKB:jg
Enclosures

KATZ, KUTTER, ALDERMAN, BRYANT & YON
PROFESSIONAL ASSOCIATION

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Reply to: Tallahassee Office

March 12, 2002

Mr. Daniel K. Bandklayder
Anania, Bandklayder, Blackwell,
Baumgarten & Torricella
Bank of America Tower Suite 4300
100 Southeast Second Street
Miami, Florida 33131-2144

Re: Contract Service Agreement between Allied Universal Corporation ("Allied") and Tampa Electric Company ("TECO).

Dear Mr. Bandklayder:

I represent TECO and my client has asked that I review your letter to Mr. Robert Jennings dated February 6, 2002. In that letter you expressed your opinion that Allied is relieved of its obligation to comply with a provision in the Contract Service Agreement ("Agreement") with TECO. The obligation at issue is the 24-month time period within which Allied is to commence commercial operations if it is to receive the electric rate contained in the Agreement. You refer to the force majeure provision of the Agreement as the basis for that suspension.

The force majeure event that Allied relies on is the unavailability of Kvaerner Chemetics ("Chemetics"), a construction company that Allied planned to use to construct its facility. The reason given for elevating the unavailability of a particular construction company to a force majeure event is Allied's belief that only Chemetics is capable of constructing the Allied facility.

You explain that Allied did not know and could not reasonably have anticipated that Odyssey Manufacturing Company ("Odyssey") would enforce a non-compete covenant that prohibits Chemetics from constructing Allied's facility within the 24-month time period. The result that Allied seeks is confirmation from TECO that Allied will continue to receive the agreed upon rate if the 24-month period is not met.

I have reviewed the Agreement and the record leading to the Agreement and several essential points are clear. First, Odyssey's business practices were discussed in the deposition of Mr. Stephen W. Sidelko[1] taken on behalf of Allied on December 1, 2000. You appeared at the deposition as well as counsel for Allied. Although TECO was not involved with and does not comment on the legality of the non-compete agreement, Mr. Sidelko plainly explained the role its covenant with Chemetics played in the contract to build its facility.

This direct knowledge of the worth Odyssey placed on its non-compete covenant with Chemetics should have indicated to Allied that a serious obstacle in fulfilling its obligations under the Agreement would exist if Allied wished to contract only with Chemetics to build the facility. Even though Allied had all of this information, it signed the settlement agreement and the Contract Service Agreement and participated as the Florida Public Service Commission summarized and then approved the settlement agreement. All of these documents prominently display the provision containing the 24-month restriction.

Surrounded by these facts it is unreasonable for Allied to now say that it signed the Agreement assuming that the non-compete covenant was never to be enforced and, therefore, enforcement constitutes a force majeure event. I don't believe that law or equity will support that position.

Under these facts, TECO will not agree that the force majeure clause has suspended Allied's obligations under the Agreement. Unless another occurrence makes the force majeure clause executory, TECO expects Allied to comply with the Agreement.

Sincerely,

Bill L. Bryant Jr.

BLB/deg

Cc: Mr. Robert Jennings

[1] Mr. Sidelko is Vice-President and Secretary of Odyssey.

TECO
TAMPA ELECTRIC

April 10, 2003

Mr. James W. Palmer
Allied Universal Corporation
3901 N.W. 115th Avenue.
Miami, FL 33178

Re: Allied Universal/Tampa Electric Contract Service Agreement

Dear Mr. Palmer:

Pursuant to Paragraph 3 of the "Contract Service Arrangement For The Provision Of Service Under The Commercial/Industrial Service Rider" (the "Agreement") between Allied Universal Corporation ("Allied") and Tampa Electric Company, this letter will serve as formal notice of termination of the Agreement. Such termination shall be effective as of April 24, 2003.

Paragraph 3 of the Agreement requires Allied to commence commercial operation at its proposed new sodium hypochlorite manufacturing facility within 24 months following the effective date of the Florida Public Service Commission ("FPSC") Order approving the settlement reached in Docket No. 000061-EI, except to the extent that this period is extended by the occurrence of a legitimate Force Majeurre event pursuant to Paragraph 4 of the Agreement. As you know, the FPSC Order in question was issued and made effective as of April 24, 2001 and Allied has yet to start construction of its proposed new plant.

Tampa Electric is cognizant of Allied's assertion of the occurrence of a Force Majeure event pursuant to Paragraph 4 of the Agreement. However, for the reasons set forth in my December 20, 2001 letter to Mr. Robert Namoff, Tampa Electric does not believe that the circumstances advanced by Allied in support of this assertion amount to a Force Majeure event within the meaning of the Agreement. For ease of reference, a copy of my December 20th letter to Mr. Namoff is attached. Therefore, Tampa Electric does not recognize any extension of the 24-month period specified under Paragraph 3 of the Agreement.

Tampa Electric values its business relationship with Allied and will do everything reasonably possible to assist Allied in bringing its proposed new manufacturing facility into commercial operation. However, in light of the termination of the Agreement, new rates, terms and conditions must be negotiated for your proposed facility. I suggest that we begin discussions as soon as possible in order to avoid any delay to your proposed project. In the meantime, I will continue to assist Allied in its search for an appropriate site for its proposed facility.

Regards,

Robert L. Jennings

Robert L. Jennings