

ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
JOHN R. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
J. STEPHEN MENTON
R. DAVID PRESCOTT
HAROLD F. X. PURNELL
GARY R. RUTLEDGE

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

OF COUNSEL:
CHARLES F. DUDLEY

GOVERNMENTAL CONSULTANTS:
PATRICK R. MALOY
AMY J. YOUNG

February 11, 2000

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

HAND DELIVERY

RECEIVED-FPSC
00 FEB 11 PM 4:49
RECORDS AND REPORTING

Re: Docket No. 000061-EI

Dear Ms. Bayo:

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

- 1. The original and fifteen copies of Allied/CFI's Reply in Support of Petition to Examine and Inspect Confidential Information; and
2. A diskette formatted in Word Perfect 6.

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

Thank you for your assistance with this filing.

Sincerely,

Handwritten signature of John R. Ellis
John R. Ellis

AFA
APP
CAF
CMU
CTR
EAG
LEG
MAS
OPC
OPC
RRR
SEC
WAW
OTH
1 JRE/rl
Enclosures

Trib.3

RECEIVED & FILED
FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE
01876 FEB 11 8
FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 000061-EI

Filed: February 11, 2000

ALLIED/CFI'S REPLY IN SUPPORT OF PETITION TO EXAMINE AND INSPECT CONFIDENTIAL INFORMATION

Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI"), by and through their undersigned counsel, and pursuant to Rule 22.006(7)(a), Florida Administrative Code, submit the following reply to the response of Tampa Electric Company ("TECO") to Allied's and CFI's ("Allied/CFI") petition to examine and inspect confidential information.

1. Rule 25-22.006(7)(a), Florida Administrative Code, expressly applies to any material which the Commission has ruled exempt from Section 119.07(1), Florida Statutes, whether or not that material previously has been submitted to the Commission or is on file with the Commission:

Any person may file a petition to inspect and examine any material which the Commission has ruled exempt from Section 119.07(1), F.S., or which is exempted under Paragraph (3)(d) pending the Commission's ruling or as the result of the filing of a notice of intent to request confidentiality.

The only prerequisite of a petition under subsection (7)(a) is that the Commission must have ruled the material exempt from the public records requirements of Section 119.07(1), Florida Statutes.

In this case, the Commission ruled the following material exempt from Section 119.07(1), Florida

DOCUMENT NUMBER-DATE

01876 FEB 11 8

FPSC-RECORDS/REPORTING

Statutes:¹

- Any Contract Service Agreement ("CSA") entered into pursuant to TECO's CISR tariff;
- The pricing levels and procedures described within a CSA;
- Any information supplied by the customer through an energy audit or as a result of negotiations or information requests by TECO in connection with a CSA; and
- Any information developed by TECO from any information supplied by the customer in connection with a CSA.

The Commission ruled the above-described material exempt from Section 119.07(1), Florida Statutes, by approving TECO's CISR tariff which contains the following terms, at Sheet 6.720, under the heading "Service Agreement":

The CSA shall be considered a confidential document. The pricing levels and procedures described within the CSA, as well as any information supplied by the customer through an energy audit or as a result of negotiations or information requests by the Company and any information developed by the Company in conjunction therewith, shall be made available for review by the Commission and its staff only and such review shall be made under the confidentiality rules of the Commission.

A copy of TECO's CISR tariff is attached to this reply as Exhibit A.

The Commission's ruling on the exemption of the material was made in advance of the existence of the material, and thus necessarily was made without regard to submission or filing of the material with the Commission. TECO's attempt to add a requirement that the material must first

¹See Order No. PSC-98-1081-FOF-EI, issued August 10, 1998, in Docket No. 980706-EI, In re: Petition for approval of Commercial/Industrial Service Rider tariff by Tampa Electric Company.

have been submitted or filed with the Commission finds no support in the express terms of subsection (7)(a) of Rule 25-22.006.

TECO's position essentially ignores the express terms of subsection (7)(a) of the Rule by adding a requirement that does not exist in the rule. TECO also ignores the express terms of its own CISR Tariff and the findings of the Commission unequivocally ruling that specific documents related to CSAs entered into under the CISR Tariff are confidential.

2. Secret agreements by public utilities resulting in undue discrimination in rates provided to similarly situated commercial/industrial customers are indefensible. The prohibition of such agreements, which in the nineteenth and early twentieth centuries permitted certain favored firms to make tremendous profits and forced other unfavored firms out of business, is generally considered to be the driving force behind the movement for regulation of public utilities in the United States. Charles F. Phillips, Jr., The Regulation of Public Utilities, p. 70, (3d Ed. 1993). For example, the chief purpose of the Interstate Commerce Act has been found to be:

... to secure uniformity of treatment to all, to suppress unjust discriminations and unjust preferences, and to prevent special and secret agreements, in respect of rates for interstate transportation....
Kansas City Southern Ry. Co. v. Albers Comm. Co. (1911), 223 U.S. 573, 597.

An opinion in an early case finding an electric utility to have unlawfully discriminated in the rates it provided to competing printing companies observed:

The evil results of departures by utility companies from this salutary rule of public policy are common knowledge and have received full judicial recognition. That public service companies can, through illegal discrimination, often affect and even control competitive business conditions among their customers, to the extent of enriching one and ruining the other, has been too frequently demonstrated.
Homestead Co. v. DesMoines Electric Co. (8th Cir. 1918), 248 Fed.

439, 447 (concurring and dissenting opinion of Stone, J.)

Florida's Supreme Court has acknowledged this fundamental principle prohibiting undue discrimination by public utilities:

But public service corporations cannot give to particular customers special favors to the detriment of others. They must treat all customers alike.

Bromer v. Florida Power & Light Co., 45 So.2d 658, 660 (Fla. 1950).

In Section 366.03, Florida Statutes, the Legislature has provided that:

No public utility shall make or give any undue or unreasonable preference or advantage to any person or locality, or subject the same to any undue or unreasonable prejudice or advantage in any respect.

Accordingly, Sections 366.06(2) and 366.07, Florida Statutes, authorize the Commission to find, upon complaint, that the rates demanded by any public utility for public utility service are unjust, unreasonable, unjustly discriminatory or preferential, and to determine the fair and reasonable rates to be provided in the future.

Allied/CFI's complaint alleges both Allied/CFI's eligibility for rates under TECO's CISR tariff and, on information and belief, the ineligibility of Allied/CFI's business competitor, Odyssey Manufacturing Company ("Odyssey"), for rates under TECO's CISR tariff. The complaint alleges that TECO entered into a CSA with Odyssey at rates significantly more favorable than the CISR tariff rates offered by TECO to Allied/CFI, and that TECO's discrimination against Allied/CFI and in favor of Odyssey with respect to the offered CISR tariff rates is not justified based on TECO's incremental costs to serve Allied/CFI and Odyssey. The complaint further alleges events occurring subsequent to the negotiations between TECO and Odyssey which strongly suggest that Odyssey's favorable CISR tariff rates may be a product of collusion. Resolution of these allegations cannot be

accomplished in the secrecy which TECO seeks to maintain.

TECO's response cites a Commission order involving Gulf Power Company's CISR tariff (as did Allied/CFI's petition) for the proposition that disclosure of the confidential material to Allied/CFI would harm TECO and its ratepayers because future potential CISR customers may decide to avoid their risk of public disclosure of the confidential information by refusing to negotiate with TECO, leading to uneconomic bypass of TECO's facilities. TECO's contention that "the harm is done" once Allied and CFI are permitted to inspect and examine the confidential material must be rejected in view of the far greater harm which would result from the public perception that undue discrimination in rates offered by TECO pursuant to secret agreements could not be challenged before the Commission.

3. TECO's response states that TECO is willing to allow the Commission to review the confidential material. TECO neglects to mention that it is required to submit the confidential material for Commission review under the above-quoted terms of its CISR tariff. While Allied and CFI encourage the Commission and staff to obtain the confidential material as soon as possible, and to obtain and compare the information concerning the CISR tariff rates offered to Odyssey with the rates to Allied/CFI on October 18, 1999, the continuing damages caused to Allied/CFI by TECO's undue discrimination require disclosure of the material to Allied/CFI to obtain redress.

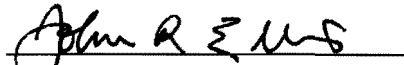
WHEREFORE, Allied/CFI request that TECO be ordered to produce for inspection and examination by Allied/CFI and their counsel, subject to an appropriate protective order, the following documents and information:

- (1) the contract service agreement between TECO and Odyssey;
- (2) all documentation in TECO's possession or under its control demonstrating that

Odyssey met all requirements of TECO's CISR tariff; and

(3) all documentation in TECO's possession or under its control concerning TECO's determination of its incremental costs to serve Odyssey and Allied/CFI under its CISR tariff.

Respectfully submitted,

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

Kenneth A. Hoffman, Esq.

John R. Ellis, Esq.

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

P. O. Box 551

Tallahassee, FL 32302

(850) 681-6788 (Telephone)

(850) 681-6515 (Telecopier)


Attorneys for Allied Universal Corporation and
Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Reply in Support of Petition to Examine and Inspect Confidential Information was furnished by hand delivery(*) and U. S. Mail to the following this 11th day of February, 2000:

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

Robert V. Elias, Esq.
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32388-0850


John R. Ellis

Allied/response.1

Commercial / Industrial Service Rider**SCHEDULE: CISR**

AVAILABLE: Entire Service Area. Available, at the Company's option, to non-residential customers currently taking firm service or qualified to take firm service under the Company's Tariff Schedules GSD, GSDD, GSDD, GSDD or GSDD. Customers desiring to take service under this rider must make a written request for service. Such request shall be subject to the Company's approval with the Company under no obligation to grant service under this rider. Service under this rider may not begin before January 1, 2000. Resale not permitted.

This rider will be closed to further subscription by eligible customers when one of the three conditions has occurred: (1) The total capacity subject to executed Contract Service Arrangements ("CSAs") reaches 300 megawatts of connected load; (2) The Company has executed twenty-five (25) CSAs with eligible customers under this rider, or (3) Forty-eight months has passed from the initial effective date. The period defined by these conditions is the pilot study period. This limitation on subscription can be removed by the Commission at any time upon good cause having been shown by the Company based on data and experience gained during the pilot study period.

Tampa Electric is not authorized by the Florida Public Service Commission to offer a CSA under this rate schedule in order to shift existing load currently being served by a Florida electric utility pursuant to a tariff rate schedule on file with the Florida Public Service Commission away from that utility to Tampa Electric.

APPLICABLE: Service provided under this optional rider shall be applicable to all, or a portion of the customer's existing or projected electric service requirements which the customer and the Company have determined, but for the application of this rider, would not be served by the Company and which otherwise qualifies for such service under the terms and conditions set forth herein ("Applicable Load"). Two categories of Applicable Load shall be recognized: Retained Load (existing load at an existing location) and New Load (all other Applicable Load).

Applicable Load must qualify for and be served behind a single meter and must exceed a minimum level of demand determined from the following provisions:

Continued to Sheet No. 6.710

ISSUED BY: J. B. Ramil, President

DATE EFFECTIVE:

JAN 1 2000



Continued from Sheet No. 6.700

Retained Load: For Customers whose highest metered demand in the past 12 months was less than 10,000 KW, the minimum Qualifying Load would be the greater of 500 KW or 20% of the highest metered demand in the past 12 months; or

For Customers whose highest metered demand in the past 12 months was greater than or equal to 10,000 KW, the minimum Qualifying Load would be 2,000 KW.

New Load: 1,000 KW of installed, connected demand.

Any customer receiving service under this Rider must provide the following documentation, the sufficiency of which shall be determined by the Company:

1. Legal attestation by the customer (through an affidavit signed by an authorized representative of the customer) to the effect that, but for the application of this rider to the New or Retained Load, such load would not be served by the Company;
2. Such documentation as the Company may request demonstrating to the Company's satisfaction that there is a viable lower cost alternative (excluding alternatives in which the Company has an ownership or operating interest) to the customer's taking electric service from the Company; and
3. In the case of existing customer, an agreement to provide the Company with a recent energy audit of the customer's physical facility (the customer may have the audit performed by the Company at no expense to the customer) which provides sufficient detail to provide reliable cost and benefit information on energy efficiency improvements which could be made to reduce the customer's cost of energy in addition to any discounted pricing provided under this rider.

CHARACTER OF SERVICE: This optional rider is offered in conjunction with the rates, terms and conditions of the tariff under which the customer takes service and affects the total bill only to the extent that negotiated rates, terms and conditions differ from the rates, terms and conditions of the otherwise applicable rate schedules as provided for under this rider.

Continued to Sheet No. 6.720

ISSUED BY: J. B. Ramil, President

DATE EFFECTIVE:

JAN 1 2000

Continued from Sheet No. 6.710

MONTHLY CHARGES: Unless specifically noted in this rider or within the CSA, the charges assessed for service shall be those found within the otherwise applicable rate schedules.

Additional Customer Charges:

\$250.00

Demand/Energy Charges:

The negotiable charges under this rider may include the Demand and/or Energy Charges as set forth in the otherwise applicable tariff schedule. The specific charges, or procedure for calculating the charges, under this rider shall be set forth in the negotiated CSA and shall recover all incremental costs the Company incurs in serving the customer plus a contribution to the Company's fixed costs.

Provisions and/or Conditions Associated with Monthly Charges:

Any negotiated provisions and/or conditions associated with the Monthly Charges shall be set forth in the CSA and may be applied during all or a portion of the term of the CSA. These negotiated provisions and/or conditions may include, but are not limited to, a guarantee by the Company to maintain the level of either the Demand and/or Energy charges negotiated under this rider for a specified period, such period not to exceed the term of the CSA.

SERVICE AGREEMENT: Each customer shall enter into a sole supplier CSA with the Company to purchase the customer's entire requirements for electric service at the service locations set forth in the CSA. For purposes of the CSA "the requirements for electric service" may exclude certain electric service requirements served by the customer's own generation as of the date shown on the CSA. The CSA shall be considered a confidential document. The pricing levels and procedures described within the CSA, as well as any information supplied by the customer through an energy audit or as a result of negotiations or information requests by the Company and any information developed by the Company in connection therewith, shall be made available for review by the Commission and its staff only and such review shall be made under the confidentiality rules of the Commission.

Continued from Sheet No. 6.710

ISSUED BY: J. B. Ramil, President

DATE EFFECTIVE:

JAN 1 2000

Continued from Sheet No. 6.720

The service agreement, its terms and conditions, and the applicability of this rider to any particular customer or specific load shall be subject to the regulations and orders of the Commission.

ISSUED BY: J. B. Ramil, President

DATE EFFECTIVE:

JAN 1 2000