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December 1, 2000

HAND DELIVERED

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Complaint of Allied Universal Corporation and Chemical Formulators, Inc.
against Tampa Electric Company; FPSC Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Motion For Clarification Of Order No. PSC-00-1530-PCO-EI. Also enclosed is a diskette containing the above document generated in Word and saved in Rich Text format for use with WordPerfect. A copy of the above-mentioned motion has been served on the parties of record in this proceeding.

Please acknowledge receipt and filing of the above by stamping the duplicate copy of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

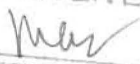
Sincerely,


James D. Beasley

JDB/pp
Enclosures

APP
CAF
CMP
COM
CTR
ECR
LEG
CPC
PAI
RGO
SEC
SER
OTH

cc: All Parties of Record (w/enc.)

RECEIVED & FILED

FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

15404 DEC-18

FPSC-RECORDS/REPORTING

ORIGINAL

In re: Complaint of Allied Universal Corporation)
Chemical Formulators, Inc. against Tampa Electric)
Company.)
_____)

DOCKET NO. 000061-EI
FILED: December 1, 2000

**TAMPA ELECTRIC COMPANY'S
MOTION FOR CLARIFICATION OF ORDER NO. PSC-00-1530-PCO-EI**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "the company") respectfully requests clarification of Order No. PSC-00-1530-PCO-EI (the "August 23rd Order") issued by the Commission in the above-mentioned docket on August 23, 2000, for the limited purpose of clarifying language in the August 23rd Order which appears to be inconsistent with the Commission decision as articulated during the August 1, 2000, agenda conference and says:

1. At the August 1, 2000 Agenda Conference, Tampa Electric sought clarification with regard to the confidentiality of documents and other information created in the course of negotiations under the Company's Commercial Industrial Service Rider ("CISR") Rate Schedule. Order No. PSC-00-1171-CFO-EI (the "June 27th Order"), which was the subject of Tampa Electric's July 6, 2000 Motion for Reconsideration, seemed to suggest that CISR related-information generated in the course of CISR negotiations is not confidential until it is subsequently found to be so, pursuant to a motion filed under Section 366.093, Florida Statutes. The inference to be drawn was that some justification, beyond a demonstration that the information in question was the product of CISR negotiations, had to be offered to satisfy the requirements of Section 366.093. In particular, the June 27th Order stated:

"The CISR Tariff identifies a limited set of documents to be treated confidentially. Furthermore, even those documents that the tariff identifies for confidential treatment must meet the requirements for confidential treatment in Section 366.093, Florida Statutes. ... Although the CISR tariff identifies certain items as confidential, the confidentiality

DOCUMENT NUMBER-DATE

15404 DEC-18

FPSC-RECORDS/REPORTING

requirements in Section 366.093, Florida Statutes, must be met for all documents. The Tariff can not supersede the statute” (June 27th Order, Pages 4- 6).

2. At Page 11 of the June 27th Order, the Commission appeared to take the position that only portions of the Contract Service Agreements (“CSA”) negotiated under the CISR tariff were confidential, despite the clear statement in Tampa Electric’s Commission approved CISR Tariff that CSAs were confidential documents. In relevant part, the June 27th Order stated:

“As noted in the response to interrogatory #1, the Commission granted CSAs confidential status in Order No. PSC-98-0854-CFO-EI, but that order can be distinguished from this one. Order No. PSC-98-0854-CFO-EI was issued in connection with an audit of Gulf Power’s CISR activities conducted by the Commission. Under those circumstances there was no need to determine if parts of the CSA might not be confidential and whether some parts were confidential was never considered. Here, the rights of parties are affected and must be considered” (at Page 11).

3. At the Agenda Conference, Tampa Electric pointed out that its CISR tariff provides, in relevant part that:

“The pricing levels and procedures described within the CSA, as well as any information supplied by the customer through an energy audit or as the 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”

Tampa Electric pointed out that the Commission recognized when approving the CISR that potential CISR customers would be extremely reluctant to give Tampa Electric the kind of sensitive, proprietary information that would be necessary to verify alternative costs and “at risk” status. In order to make the CISR a viable tool for creating ratepayer benefits, the Commission recognized that potential CISR customers had to have confidence that the nature and content of their CISR discussions with Tampa Electric would be kept confidential. Yet, the June 27th Order could have been interpreted as making CISR-related information confidential only after the fact, if at all, based on a document by document or line by line justification under a set of standards already applied by

the Commission. This result would have been at odds with both the letter and spirit of Tampa Electric's Commission approved CISR tariff and the Commissions' prior ruling in the Gulf Power CISR review, and would have served only to make it more difficult for Tampa Electric to capture incremental benefits for its ratepayers.

4. In the transcript of the August 1, 2000 Agenda Conference, Item 26, pages 79 through 84 (Attached as Exhibit A), the Commission clarified that the June 27th Order was not meant to establish a different and subsequent test of the confidentiality of CISR information under Section 366.093, F.S.. Instead, the Commission pointed out that the its approval of Tampa Electric's CISR tariff represented a Section 366.093 determination that the types of information specified in the tariff require confidential treatment

MR. ELIAS: I think we're in the same place we are now. You have to --

COMMISSIONER JACOBS: Do you think we have that luxury?

MR. ELIAS: -- apply the standards provided for in the civil rules and balance the interests of the parties, and at the same time, to the extent the information is in the building, in the possession of this agency, apply the standard in the confidentiality statute to see if it's exempt from disclosure under the public records law.

MR. LONG: But Mr. Chairman, that ignores the point that that language [*of the CISR Tariff*], as I said before, was not adopted in isolation. The Commission made the policy determination. Those words are there because the Commission explicitly discussed the fact that the kind of information that one would need to verify that a customer has alternatives and to verify the cost of those, the price of those alternatives, is the kind of sensitive, proprietary information that no customer in his right mind would release if there was any danger of that information being released publicly. So the policy determination that that kind of information should be kept confidential has already been made by the Commission.

CHAIRMAN DEASON: I agree with that. And if the information you file meets that policy, it will be determined to be confidential if there is a challenge. And what I'm saying is that under the terms of the tariff, the way I view it, if you represent to this Commission that this is valid CISR tariff information which meets that standard, that it would be determined to be confidential. And if there is a challenge, then they would

have to demonstrate that the information you filed does not fall within that definition with the tariff, and it should be disclosed.

MR. LONG: That's our understanding of the statute and the tariff.

5. Tampa Electric respectfully suggests that the August 23rd Order perpetuates the ambiguity of the June 27th Order with regard to the points raised above, despite the clarity of the Commission's verbal ruling at the Agenda Conference. The August 23rd Order states, in relevant part:

"TECO was unsure of the interplay of this tariff provision with; 1) Section 366.093, Florida Statutes, (which addresses the confidentiality of certain information filed with the Commission); and 2) discovery in administrative proceedings pursuant to Rules 1.280, 1.400 and other related provisions of the Florida Rules of Civil Procedure....The answer is that the tariff provision is consistent with Section 366.093, F.S., and does not obviate the need for a finding that the materials are confidential, if and when the materials are filed with the Commission. ...

The types of information which TECO must obtain during a CISR negotiation (i.e., an energy audit, information concerning the customer's existing or new incremental load, and information concerning the customer's alternative energy sources and associated prices) would appear to meet the definition of proprietary business information in Section 366.093, Florida Statutes...

If the information is filed with the Commission and TECO or its customer makes the requisite showing that the information meets the standard of the statute, the information will not be considered a public record and will be exempt from disclosure under the public records statute.... The issue of confidentiality, as it pertains to the CSA and the other documents identified in the CISR tariff, is addressed in item #1 above" (August 23rd Order, Pages 6-7) {Emphasis added}.

6. The Commission's verbal determination clearly and unambiguously established several important points:

- a) As set forth in Tampa Electric's CISR tariff, the CSA is a confidential document;
- b) The pricing levels and procedures described within the CSA, as well as any information supplied by the customer through an energy audit or as the result of negotiations or information requests by the Tampa Electric and any information developed by Tampa Electric in connection therewith, is confidential information;

- c) The test of Section 366.093 is met by a demonstration that the information in question fits into one of the categories specified in b) above; and
- d) Anyone challenging the confidentiality of information that Tampa Electric alleges to be CISR-related must demonstrate that the information does not, in fact, fall into one of the categories specified in b) above.

7. It is vitally important that the clarity achieved at the Agenda Conference on these points not be lost. As Chairman Deason pointed out:

Commissioner Deason: And that is another concern, is that I'm sure that there are customers who avail themselves of this, and by definition, provide benefits to the general body of ratepayers, who are comforted by the fact that this information is being provided under a confidential basis. And I would not want to undermine that confidence that currently exists within the tariff. (tr.82)

Allied/CFI has indicated that it will object to this motion. Odyssey has indicated that it will support this motion.


WHEREFORE, Tampa Electric respectfully requests that the August 23rd Order be reviewed by the full Commission and clarified as set forth above.

DATED this 1st day of December 2000.

Respectfully Submitted

HARRY W. LONG, JR.
Assistant General Counsel
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(813) 228-4111

and



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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Clarification, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 1st day of December 2000 to the following:

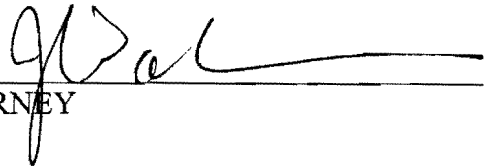
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P. O. Drawer 1657
Tallahassee, FL 32302



ATTORNEY

BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000061-EI - Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of sections 366.03, 366.06(2), and 366.07, F.S., with respect to rates offered under commercial/industrial service rider tariff; petition to examine and inspect confidential information; and request for expedited relief.

BEFORE: CHAIRMAN J. TERRY DEASON
COMMISSIONER E. LEON JACOBS, JR.
COMMISSIONER LILA A. JABER

PROCEEDINGS: AGENDA CONFERENCE

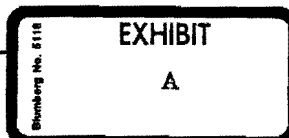
ITEM NUMBER: 26**

DATE: Tuesday, August 1, 2000

PLACE: 4075 Esplanade Way, Room 148
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS
100 SALEM COURT
TALLAHASSEE, FLORIDA 32301
(850)878-2221



1 back to the Commission. But for now, I proposed
2 a stipulation that there will be at most six,
3 and for the present time, five signatories,
4 Mr. Hoffman and myself, Dr. Phillips,
5 Mr. Palmer, and Mr. Koven. I propose that
6 stipulation to TECO and Odyssey.

7 MR. LONG: We have no problem with that.

8 CHAIRMAN DEASON: Very well.

9 MR. LONG: Mr. Chairman, I would like to
10 ask for clarification on one of the earlier
11 points that I raised. In terms of the
12 significance of the language in the tariff, that
13 clearly indicates that the CSA and the materials
14 that are generated through the CISR negotiations
15 are confidential.

16 I think that it's important, because the
17 company and, in this case, Odyssey and others,
18 have relied on that language, which is not
19 ambiguous. And I think it's important to
20 clarify that when those documents are
21 subsequently identified in a proceeding like
22 this as being CISR documents or as being a CSA,
23 that those documents are entitled to
24 confidential treatment.

25 If the Commission wants to change its view

1 on that prospectively, that might be a matter to
2 be handled in another proceeding, and perhaps
3 more generically, since it involves more than
4 just Tampa Electric. But for our purposes here,
5 I think it's vital that the Commission provide
6 that clarification.

7 CHAIRMAN DEASON: I think that the tariff
8 speaks for itself. Okay? And I'm going to give
9 you my point of view on it, and then Mr. Elias
10 can tell me where I'm wrong. The tariff speaks
11 for itself. The information is confidential.
12 It is filed under such. It is presumed to be
13 confidential. But there are certain due process
14 rights. There are certain statutory provisions,
15 and if a party believes that information is not
16 confidential and does not meet the statutory
17 standards, I presume that they are free to
18 pursue that and that that information will be
19 reviewed, but would be held confidential during
20 that review process.

21 Is there a problem with that, Mr. Elias?

22 MR. ELIAS: No, with the understanding that
23 when it's filed here, which these -- and
24 understand that these contracts and the
25 supporting information is not filed as a matter

1 of course with us. We only get them when
2 there's a dispute. And when there's a dispute
3 or when they are filed here, at that point,
4 section 366.093, which deals with the standard
5 for approval of confidential documents and
6 exemptions from the public records law, comes
7 into play.

8 CHAIRMAN DEASON: And I believe that it is
9 incumbent upon TECO or any other utility which
10 has a CISR tariff to identify that they are
11 filing pursuant -- if there's a dispute, that
12 they are filing it as confidential pursuant to
13 the provisions within tariff, and then if
14 there's any challenge to that, it would have to
15 go through the normal process of determining
16 whether it in fact is confidential.

17 I understand what Mr. Long wants. He does
18 not want the obligation of having to go through
19 and identify every little piece of information
20 on an up-front basis that it should be presumed
21 confidential pursuant to the terms of the
22 tariff.

23 MR. LONG: That's right. And that's the
24 basis, Mr. Chairman, on which a customer would
25 show us the information in the first place.

1 CHAIRMAN DEASON: And that is another
2 concern, is that I'm sure that there are
3 customers who avail themselves of this, and by
4 definition, provide benefits to the general body
5 of ratepayers, who are comforted by the fact
6 that this information is being provided under a
7 confidential basis. And I would not want to
8 undermined that confidence that currently exists
9 within the tariff.

10 COMMISSIONER JABER: So --

11 COMMISSIONER JACOBS: Do we have that
12 luxury, though? If somebody challenges that
13 tariff under the statute, where are we then?

14 MR. ELIAS: I think we're in the same place
15 we are now. You have to --

16 COMMISSIONER JACOBS: Do you think we have
17 that luxury?

18 MR. ELIAS: -- apply the standards provided
19 for in the civil rules and balance the interests
20 of the parties, and at the same time, to the
21 extent the information is in the building, in
22 the possession of this agency, apply the
23 standard in the confidentiality statute to see
24 if it's exempt from disclosure under the public
25 records law.

1 MR. LONG: But Mr. Chairman, that ignores
2 the point that that language, as I said before,
3 was not adopted in isolation. The Commission
4 made the policy determination. Those words are
5 there because the Commission explicitly
6 discussed the fact that the kind of information
7 that one would need to verify that a customer
8 has alternatives and to verify the cost of
9 those, the price of those alternatives, is the
10 kind of sensitive, proprietary information that
11 no customer in his right mind would release if
12 there was any danger of that information being
13 released publicly. So the policy determination
14 that that kind of information should be kept
15 confidential has already been made by the
16 Commission.

17 CHAIRMAN DEASON: I agree with that. And
18 if the information you file meets that policy,
19 it will be determined to be confidential if
20 there is a challenge. And what I'm saying is
21 that under the terms of the tariff, the way I
22 view it, if you represent to this Commission
23 that this is valid CISR tariff information which
24 meets that standard, that it would be determined
25 to be confidential. And if there is a

1 challenge, then they would have to demonstrate
2 that the information you filed does not fall
3 within that definition with the tariff, and it
4 should be disclosed.

5 MR. LONG: That's our understanding of the
6 statute and the tariff.

7 COMMISSIONER JABER: Staff, I want to
8 acknowledge the stipulation and move Staff's
9 recommendation that the motion for
10 reconsideration be denied. Is that what you
11 need me to say?

12 MR. ELIAS: Yes.

13 CHAIRMAN DEASON: And can we also offer the
14 clarification that we just discussed here
15 concerning Mr. Long's concern about the
16 confidentiality provision within the tariff?

17 MR. ELIAS: I believe so.

18 CHAIRMAN DEASON: Very well.

19 COMMISSIONER JACOBS: Second.

20 CHAIRMAN DEASON: It's moved and seconded.

21 All in favor say "aye."

22 COMMISSIONER JABER: Aye.

23 COMMISSIONER JACOBS: Aye.

24 CHAIRMAN DEASON: Aye. Show then that
25 motion carries unanimously, and that then