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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

January 20, 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

Re: Docket No. 000061-EI
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 and Petition to Examine and Inspect Confidential Information and Request for Expedited Relief

Dear Ms. Bayo:

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

1. Original and fifteen copies of Allied and CFI's Complaint, Petition to Examine and Inspect Confidential Information and Request for Expedited Relief; and

2. A disk in Word Perfect 6.0 containing a copy of the Complaint, Petition to Examine and Inspect Confidential Information and Request for Expedited Relief.

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,

Kenneth A. Hoffman

KAH/rl

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: January 20, 2000

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

and

PETITION TO EXAMINE AND INSPECT CONFIDENTIAL INFORMATION

and

REQUEST FOR EXPEDITED RELIEF

Allied Universal Corporation ("Allied") and its affiliate, Chemical Formulators, Inc. ("CFI"), by and through their undersigned counsel, and pursuant to Sections 366.03, 366.06 (2) and 366.07, Florida Statutes, and Rule 25-22.036, Florida Administrative Code, file this complaint against Tampa Electric Company ("TECO") for : (1) TECO's violation of the prohibitions stated in the above-cited statutes against giving undue or unreasonable preference or advantage to any person and against subjecting any person to any undue or unreasonable prejudice or disadvantage through unjust, unreasonable, excessive, or unjustly discriminatory or preferential rates, with respect to rates offered by TECO under TECO's Commercial/Industrial Service Rider ("CISR") tariff to Allied/CFI and rates offered by TECO under the CISR tariff and accepted by Allied's and CFI's business competitor, Odyssey Manufacturing Company ("Odyssey"); and (2) TECO's breach of its obligation of good faith under Order No. PSC-98-1081A-FOF-EI in the exercise of its discretion in offering the CISR tariff to any customer who complies with the conditions of the tariff. Allied and CFI also petition the Commission pursuant to Rule 25-22.006(7)(a), Florida Administrative Code, to grant Allied and CFI the opportunity to inspect and examine the confidential Contract Service Agreement between TECO and Odyssey entered into pursuant to TECO's CISR tariff and documentation supporting the CISR tariff rates offered by TECO to Odyssey. Allied and CFI request expedited relief in connection with both their complaint and their petition to examine and inspect confidential information.

As grounds for relief, Allied and CFI state as follows:

I. COMPLAINT

PARTIES AND JURISDICTION

1. The names and addresses of the Complainants are:

Allied Universal Corporation
8350 N. W. 93rd Street
Miami, Florida 32166-2026

Chemical Formulators, Inc.
5215 West Tyson Avenue
Tampa, Florida 33611-3223

2. All notices, orders, pleadings, discovery and correspondence regarding this Complaint should be provided to the following on behalf of Allied and CFI:

Kenneth A. Hoffman, Esq.
John R. Ellis, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, Florida 32302-0551
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

3. The name and address of the Respondent to this Complaint is:

Tampa Electric Company
702 N. Franklin Street
Tampa, Florida 33602

4. TECO is an electric utility which owns and operates an electric generation, transmission, and distribution system serving a population of over one million persons in areas of Hillsborough, Pasco, Pinellas, and Polk Counties in the State of Florida. TECO's retail operations are subject to the jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes.

5. Allied is the largest producer and distributor of liquid chlorine bleach, chlorine gas, and related specialty chemicals and products in the southeastern United States. In Florida, Allied operates manufacturing facilities in Miami and Fort Pierce, and in Tampa where Allied's affiliate CFI receives service under TECO's GSD tariff.

6. Allied/CFI have requested rates under TECO's CISR tariff for Allied/CFI's proposed new chlorine and liquid chlorine bleach manufacturing facilities to be constructed and operated by Allied at CFI's existing plant in Tampa, Florida. The subject of this Complaint is the discrimination in rates between: (a) the CISR tariff rates offered by TECO on October 18, 1999, after several months of delay, for Allied/CFI's proposed new manufacturing facilities in Tampa; and (b) the CISR tariff rates which Allied and CFI are informed and believe were agreed to between TECO and Allied/CFI's business competitor, Odyssey, in October, 1998, for Odyssey's new chlorine and liquid chlorine bleach manufacturing plant currently under construction in Tampa.

7. Pursuant to Section 366.03, Florida Statutes, TECO is prohibited from making or giving any undue or unreasonable preference or advantage to any person, and from subjecting any

person to any undue or unreasonable prejudice or disadvantage in any respect.

8. Pursuant to Section 366.06(2), Florida Statutes, the Commission is authorized to determine just and reasonable rates if it finds, upon request, that the rates demanded by TECO for the provision of electric service to Allied/CFI are unjust, unreasonable, unjustly discriminatory, in violation of law, or yield excessive compensation.

9. Pursuant to Section 366.07, Florida Statutes, the Commission is authorized to find, upon complaint, that the rates charged or proposed to be charged by TECO are unjust, unreasonable, unjustly discriminatory or preferential, and to fix and determine the just, fair, and reasonable rates and contracts to be furnished in the future. The Commission is authorized to order modifications to contracts between a utility and customers of the utility, where the rates contained in the contracts are unjust, unreasonable, unjustly discriminatory, or preferential to ratepayers. United Telephone Co. of Florida v. Public Service Comm'n., 496 So.2d 116, 119 (Fla. 1986).

10. Pursuant to Order No. PSC-98-1081A-FOF-EI, issued August 27, 1998, in Docket No. 980706-EI, In re: Petition for approval of Commercial/Industrial Service Rider tariff by Tampa Electric Company, TECO is under an obligation of good faith in the exercise of its discretion in offering the CISR tariff to any customer who complies with the conditions of the tariff.

STATEMENT OF FACTS

11. The manufacture of chlorine, liquid chlorine bleach (sodium hypochlorite) and caustic soda is a highly competitive industry in which local, regional, and national companies compete on the basis of price, service, and quality. Chlorine ranks among the top ten by volume of all chemicals produced in the world, and the annual volume of production of chlorine in North America is approximately twelve million tons. Chlorine, liquid chlorine bleach and caustic soda are widely used

in numerous industries and products, including drinking water purification and wastewater treatment.

12. The manufacture of chlorine is accomplished by the electrolysis of common salt. The manufacture of liquid chlorine bleach is generally accomplished by two alternative processes: (1) purchasing in bulk and combining liquid chlorine and caustic soda; or (2) a newer technology for electrolyzing salt and water to produce and combine chlorine and caustic soda. By far the most important variable cost in the manufacture of chlorine and liquid chlorine bleach with the newer technology is the cost of electricity. The cost of electricity directly affects the profitability and the economic viability of a manufacturer of chlorine and liquid chlorine bleach in a competitive market such as Florida.[1]

13. Allied's affiliate CFI currently manufactures liquid chlorine bleach in Tampa using purchased chlorine and caustic soda. Allied proposes to build new manufacturing facilities at CFI's plant in Tampa to utilize the newer technology to manufacture chlorine and liquid chlorine bleach. Allied's and CFI's competitor, Odyssey, is building a plant in Tampa which will utilize the newer technology to manufacture chlorine and liquid chlorine bleach and which will begin operations by May, 2000. The variability in the costs of purchased chlorine and caustic soda, in comparison with the lower costs of manufacturing chlorine and liquid chlorine bleach using the newer technology, have the potential to destroy the economic viability of CFI's existing business in Tampa.

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[1]The cost of electricity represents approximately fifty percent of the variable cost of manufacture using the newer technology. An increase of even one cent per kilowatt hour, from three to four cents, typically would result in a twenty percent increase in the cost of manufacture of a ton of liquid chlorine bleach or chlorine gas, resulting in a cost difference of $85 per ton versus $108 per ton. Thus, even a one cent differential in the cost of electricity would make it impossible for Allied/CFI to compete with Odyssey.

14. Allied's proposed new manufacturing facilities would greatly increase CFI's electric consumption, would add jobs at CFI's plant, and would reduce potential environmental hazards involved in the handling of bulk chlorine and caustic soda. Allied's and CFI's capital investment in their proposed new manufacturing facilities will be in a sum in excess of fifteen million dollars over a term of three years. Allied and CFI have obtained proposals for both the financing and the construction of their proposed new manufacturing facilities.

15. Allied's best alternative site for its proposed new manufacturing facilities is its existing liquid chlorine bleach manufacturing plant in Brunswick, Georgia, rather than its Miami or Fort Pierce plants. Allied has obtained a proposal to serve the potential expanded load at Brunswick from Georgia Power Company, which has offered discounted rates. Allied would prefer to locate its new manufacturing facilities in Tampa, but cannot be expected to do so at a significant competitive disadvantage to itself in the cost of electricity provided to its competitor, Odyssey.

16. A utility's rates are an essential element of the business environment of commercial/industrial customers such as Allied, who make investments in plant and equipment based in part on the availability of competitive rates for utility service. The Commission has recognized economic development and job growth in Florida as a policy objective in approving CISR tariffs for TECO and Gulf Power Company and similar tariffs for several municipal utilities, giving utilities the option to offer flexible pricing arrangements in lieu of standard tariff service in response to increasing competitive pressures.[2] Two essential features of CISR tariffs are: (1) the

[2]In re: Generic Investigation into load retention and load building rates for investor-owned electric utilities, Order No. PSC-96-1459-FOF-EI, issued December 2, 1996, in Docket No. 960950-EI, 96 FPSC 12:58, 59.

determination of load that is "at risk" of by-passing a utility's system; and (2) the establishment of rates based on the incremental cost to serve the customer.[3]

17. The Commission approved TECO's proposed CISR tariff in 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 ("CISR Order"). The CISR Order authorizes TECO to offer discounted rates for new or existing commercial/industrial customers who can show that they have viable alternatives to taking electric service from TECO; that is, for at-risk load. The rates which TECO is authorized to offer are to be based on TECO's incremental costs to serve the customer, plus a contribution to fixed costs. Incremental costs are defined as: "... the additional costs TECO incurs to serve the CISR load."[4] The rationale for offering discounted rates to at-risk load, using a price floor based on TECO's incremental costs, is clearly expressed in the CISR Order: "As long as the revenue exceeds the costs, the general body of ratepayers will benefit."[5]

18. The Commission has always recognized the potential for undue discrimination in the negotiation of rates pursuant to CISR tariffs, beginning with the first docket in which the Commission considered a proposed CISR tariff: In Re: Petition for approval of proposed optional Commercial/Industrial Service Rider by Gulf Power Company, Docket No. 951161-EI ("Gulf I"). In Gulf I, in Order No. PSC-96-0325-PHO-EI, issued March 6, 1996, the following issues were

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[3]Ibid., at 59.

[4] CISR Order, 98 FPSC 8:153,155.

[5]Ibid., at 156.

among those stated for hearing:

Issue 2: (Legal issue) Is Gulf's proposal consistent with the Commission's obligation to prevent undue discrimination within the meaning of Chapter (sic) 366.03, Florida Statutes?

Issue 3: Is it appropriate for Gulf to influence the non-electric marketplace by charging one business less than another for the same class of service?

Issue 4: What procedure should the Commission follow in evaluating complaints of discriminatory rate setting under Gulf's proposed CISR and what remedy should be available if the complaint is found to be justified?[6]

The positions advocated by the Florida Industrial Power Users Group ("FIPUG") in response to these issues were as follows:

Issue 2: There should be no undue discrimination if the Rider is available to any customer meeting the criteria.

Issue 3: Gulf should not be allowed to discriminate between customers which meet the criteria of applicability.

Issue 4: Complaints should be evaluated on a case-by-case basis.[7]

Staff's response to Issue 3 warned in stronger terms of the potential for undue discrimination in rates offered under Gulf's proposed CISR tariff, as follows:

Issue 3: No. Offering similarly situated customers different

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[6]96 FPSC 3:26, 32-33. The Commission rejected the proposed CISR tariff as vague and insufficient, and expressly declined to address the issues of undue discrimination and the effect on the non-electric marketplace of CISR tariff rates, in Order No. PSC-96-0845-FOF-EI, issued July 2, 1996. 96 FPSC 7:43.

[7]96 FPSC 3:26, 32-34.

> rates results in rate discrimination. Section 366.03, Florida Statutes, requires that rates be just, reasonable, and not unduly discriminatory. Section 366.03 also states that no public utility shall give preference or advantage to any person of locality. Gulf proposes to offer selective customers rates that are based on something other than cost of service. Thus, two similarly situated competitors could pay different prices for electric service, and the non-electric marketplace could be affected by such a result.[8]

The Commission apparently adopted FIPUG's position, at least with respect to Issue 2, in Order No. PSC-96-1219-FOF-EI, issued September 24, 1996, in In re: Petition for authority to implement proposed commercial/industrial service rider on pilot/experimental basis by Gulf Power Company, Docket No. 960789-EI ("Gulf II"): "...we find that the Implementation Plan and tariff are equally applicable for each potential CISR customer."[9]

19. Allied and CFI have complied with all requirements for obtaining CISR tariff rates based on TECO's incremental costs to serve Allied/CFI's proposed new facilities. However, Allied and CFI are informed and believe that Odyssey did not comply with all requirements for obtaining CISR tariff rates from TECO; that the CISR tariff rates offered by TECO to Odyssey in October, 1998 are significantly lower than the CISR tariff rates offered by TECO to Allied/CFI on October

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[8]Ibid., at 33. Staff's position in response to Issue 4 expressed the concern that if the Commission were to imply to potential CISR tariff customers that the utility might be compelled to offer CISR tariff rates upon a showing of similar circumstances, then potential customers would be encouraged to bluff as to claims of alternatives. However, in this case Allied/CFI's request is for CISR tariff rates which would only become effective upon the expenditure by Allied/CFI of a sum in excess of fifteen million dollars.

[9]96 FPSC 9:597, 598. The CISR Order notes that TECO's CISR tariff is based on the CISR tariff approved in Gulf II; see, CISR Order, 98 FPSC 8:153, 156.

19, 1999; and that there is no justification based on TECO's incremental cost to serve Allied/CFI compared to TECO's incremental cost to serve Odyssey which would support TECO's discrimination in rates against Allied/CFI and the preference and advantage in rates given by TECO in favor of Odyssey. In Allied's first meeting with TECO to request rates under the CISR tariff in March, 1999, Allied was told by TECO that the rates offered by TECO to Odyssey "were no longer available." Subsequently, TECO's offer of CISR tariff rates to Allied was not made for seven months; Allied has learned that the TECO employee who negotiated the CISR tariff rates for Odyssey has been offered and has accepted employment with Odyssey; and the TECO employee who negotiated the CISR tariff rates for Odyssey has been actively soliciting existing Allied customers for Odyssey. These circumstances strongly suggest that TECO's undue discrimination may have been deliberately intended, by one or more of the participants in the CISR tariff rate negotiations between TECO and Odyssey, to affect the non-electric marketplace as warned of by the Commission staff.

II. PETITION TO EXAMINE AND INSPECT CONFIDENTIAL INFORMATION

20. Pursuant to Rule 25-22.006(7)(a), Florida Administrative Code, Allied and CFI demand to examine and inspect the Contract Service Agreement entered into between TECO and Odyssey, and any and all documentation supporting the CISR tariff rates offered by TECO to Odyssey including documentation demonstrating that Odyssey met all requirements and preconditions of the CISR tariff and documentation supporting TECO's determination of its incremental cost to serve Odyssey. Allied and CFI will enter into an appropriate nondisclosure agreement to maintain the confidentiality of all such information and documentation disclosed in this

proceeding. In granting confidential classification pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, to information concerning Contract Service Agreements entered into pursuant to Gulf Power Company's similar CISR tariff, the rationale for confidential treatment expressed by the Commission has been to protect the utility's ability to negotiate favorable terms and conditions with future customers who may otherwise be deterred from disclosing confidential information to the utility, and thus to avoid uneconomic bypass of the utility's facilities.[10] This rationale no longer applies with respect to the Contract Service Agreement between TECO and Odyssey because: (a) TECO is no longer at risk of bypass by Odyssey; and (b) the unique circumstances of the CISR tariff rate negotiations between TECO and Odyssey and between TECO and Allied/CFI and subsequent conduct by the mutual employee of TECO and Odyssey, strongly suggest that the undue discrimination in rates is a product of collusion. To the extent that there remains any need for continued confidential classification of the Contract Service Agreement between TECO and Odyssey, any need for continued confidential classification is outweighed by the need for full disclosure of the circumstances surrounding the undue discrimination in CISR tariff rates offered by TECO as between Allied/CFI and Odyssey.

III. REQUEST FOR EXPEDITED RELIEF

21. The time required for construction of Allied/CFI's proposed new chlorine and liquid chlorine bleach manufacturing facilities is estimated to be eighteen months to two years, while Allied/CFI's competitor Odyssey's plant is expected to begin operations by May, 2000. To date, Allied/CFI have been delayed since at least March, 1999 by TECO's refusal to offer CISR tariff rates

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[10] See, e.g., Gulf II, 99 FPSC 8:300, 301.

based on TECO's incremental costs to serve Allied/CFI's proposed new manufacturing facilities. Allied and CFI request that the Commission provide expedited relief in order to mitigate the continuing damages to Allied and CFI caused by TECO's undue discrimination and breach of its obligation of good faith in connection with the rates offered by TECO to Allied/CFI under the CISR tariff.

REQUEST FOR RELIEF

WHEREFORE, Allied and CFI request that the Commission:

(1) order TECO to disclose the Contract Service Agreement between TECO and Odyssey and all documentation supporting the CISR tariff rates offered by TECO to Odyssey including documentation demonstrating that Odyssey met all requirements and preconditions of the CISR tariff and documentation supporting TECO's determination of its incremental cost to serve Odyssey;

(2) determine that TECO has given an undue and unreasonable preference and advantage to Odyssey, and has subjected Allied and CFI to an undue and unreasonable prejudice and disadvantage, with respect to the CISR tariff rates offered by TECO to Odyssey and to Allied/CFI;

(3) determine that TECO has breached its obligation of good faith in the exercise of its discretion in offering the CISR tariff to any customer who complies with the conditions of the tariff;

(4) order TECO to offer Allied/CFI the same CISR tariff rates offered by TECO to Odyssey;

(5) suspend the CISR tariff rates offered by TECO to Odyssey until such time as

TECO's undue discrimination against Allied and CFI has been sufficiently remedied or mitigated; and

(6) grant such further relief as the Commission deems appropriate.

Respectfully submitted,

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)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was furnished by U. S. Mail to the following this 20th day of January, 2000:

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

Kenneth A. Hoffman, Esq.

Allied/Complaint