

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Allied Universal Corporation and)	DOCKET NO. 000061-EI
Chemical Formulators, Inc. against Tampa Electric)	FILED: February 14, 2000
Company)	
_____)	

**TAMPA ELECTRIC COMPANY’S RESPONSE, MOTION
FOR PROTECTIVE ORDER AND OBJECTIONS TO
ALLIED UNIVERSAL CORPORATION’S AND CHEMICAL
FORMULATORS, INC.’S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS TO TAMPA ELECTRIC COMPANY (NOS. 1-18)**

Tampa Electric Company (“Tampa Electric” or “the company”), submits the following Response, Motion for Protective Order and Objections to Allied Universal Corporation’s (“Allied”) and Chemical Formulators, Inc.’s (“CFI”) First Request for Production of Documents to Tampa Electric Company Nos. 1-18 and, as grounds therefor, says:

Preliminary Nature of These Objections

The objections stated herein are preliminary in nature and should additional grounds for objections be discovered as Tampa Electric attempts to produce documents in this proceeding, the company reserves the right to supplement or revise or modify its objections. Should Tampa Electric determine that a further protective order is necessary with respect to any of the information requested, Tampa Electric reserves the right to file a motion with the Commission.

DOCUMENT NUMBER-DATE
01938 FEB 14 8
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GENERAL OBJECTIONS

Tampa Electric makes the following general objections to Allied/CFI's First Request for Production of Documents in this proceeding:

1. Tampa Electric objects to each request insofar as it seeks to impose obligations on Tampa Electric which exceed the requirements of the Florida Rules of Civil Procedure or Florida law.

2. Tampa Electric objects to each and every discovery request to the extent such request calls for information which is exempt from discovery by virtue of the attorney/client privilege, work product privilege, or other applicable privilege. Moreover, the use of the terms "reflecting," "arising from or relating to" and "allegedly demonstrating" as used in individual requests would improperly require Tampa Electric in its response to disclose the mental impression and other privileged work product of its attorneys.

3. Tampa Electric objects to each and every discovery request insofar as the request is vague, ambiguous, overly broad, imprecise or utilizes terms that are subject to multiple interpretations but are not properly defined or explained. Tampa Electric objects to the use of the terms "reflecting," "arising from or relating to" and "allegedly demonstrating" on the grounds that the terms are vague and that the use of these terms as used in individual requests renders the individual requests vague, over broad and ambiguous.

4. Tampa Electric objects to each and every discovery request insofar as the request is not reasonably calculated to lead to the discovery of admissible evidence and is not relevant to the subject matter of this proceeding.

5. Tampa Electric objects to each discovery request to the extent that the information requested constitutes “trade secrets” which are privileged pursuant to Section 90.506, Florida Statutes, or which is proprietary confidential business information.

6. Tampa Electric objects to each and every request to the extent it seeks “all” documents in a specified category on grounds that such a requirement is burdensome, excessive, oppressive or excessively expensive. Tampa Electric is a large corporation with employees located in many different locations. In the course of its business, Tampa Electric creates numerous documents that are not subject to Florida Public Service Commission or other governmental records retention requirements. These documents are kept in numerous locations and are frequently moved from site to site as employees change jobs or as the business is reorganized. Therefore, not every document can be provided in response to these discovery requests. Tampa Electric will make a good-faith effort to locate responsive documents in files and other locations where they are expected to be found in the ordinary course of business.

Motion for Protective Order

7. Tampa Electric's objections to Allied/CFI's discovery requests are submitted pursuant to the authority contained in Slatnick v. Leadership Housing Systems of Florida, Inc., 368 So. 2d 78 (Fla. 3rd DCA 1979). To the extent that a Motion for Protective Order is required, Tampa Electric's objections are to be construed as a request for a Protective Order.

Objections to Specific Requests

8. Tampa Electric objects to Document Request No. 1. The Contract Service Agreement (“CSA”) between Tampa Electric and Odyssey Manufacturing Company (“Odyssey”) contains highly proprietary and confidential information the public disclosure of which would harm both the utility, its general body of ratepayers and Odyssey, the party to the

CSA. The confidentiality of the CSA is confirmed in Tampa Electric's Commission approved CISR tariff which states the follows:

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 the energy audit or as a result of negotiations or information requests by the Company and 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. (emphasis supplied)

9. This Commission has determined that CSAs are proprietary confidential documents on a number of occasions since the advent of CISR tariffs as a means to enable electric utilities to attract or retain at risk commercial/industrial customers for the benefit of the general body of ratepayers. For example, in a recent order¹ involving a confidentiality classification request by Gulf Power pertaining to negotiated CSA provisions the Commission observed:

... Upon review, it appears that the information for which Gulf seeks confidential classification is proprietary, confidential business information which, if disclosed, would tend to harm the competitive interests of Gulf and the entity with which it has negotiated a CSA contract. It appears as if the public disclosure of this information may prevent Gulf from successfully negotiating CSAs with customers. This information is regarded as sensitive and confidential by the CISR customer because public disclosure of this information would impact the customer's ability to compete in its "native market." In the event such information is made public, it appears as if future potential CIS rider customers could avoid the risk of public disclosure of their confidential information by refusing to negotiate with Gulf. This may lead to uneconomic bypass of Gulf's facilities. Therefore, this information is entitled to confidential classification under Section 366.093(3), Florida Statutes. In accord with Section 366.093(4), Florida Statutes, this information shall be granted confidential classification for a period of 18 months from the date of the issuance of this Order.

¹ Order No. PSC-99-0274-CFO-EI, issued February 11, 1999 in Docket No. 960789-EI

10. The above adverse effects cannot be avoided by having the business competitor of a CISR customer enter into a non-disclosure agreement because once the competitor reviews this competitive information the harm is done, whether or not the business competitor of the CISR customer agrees not to disclose the information to third parties. It is the business competitor itself who competes with the CISR customer – not any third party to whom the business competitor might be willing to agree not to disclose the information. The business competitor cannot learn proprietary confidential business information about one of its competitors for use in litigation, then erase its knowledge of, or “forget,” that information once the litigation is concluded. While Tampa Electric is willing to allow the Commission, should it so desire, to review, on a confidential basis, any Contract Service Agreement the company may enter into, such information clearly should not be disclosed to a business competitor of a CISR customer. Clearly, Allied/CFI should not under any circumstances have access to the CSA negotiated between Tampa Electric and Allied/CFI’s acknowledged competitor, Odyssey.

11. Tampa Electric objects to Document Request No. 2 on the same grounds as stated with respect to Document Request No. 1. The documents provided by Odyssey to Tampa Electric are entitled to the same protections against public disclosure as the CSA that resulted from the negotiations. It is particularly important that such documents not be provided to Allied/CFI who profess to be Odyssey’s business competitor.

12. Tampa Electric objects to Document Request No. 3 on the same grounds as it objects to Document Request No. 1. The documents described in Request No. 3 directly bear on the CISR negotiations between Tampa Electric and Odyssey. Disclosure of these items to Allied/CFI or to the public generally would bring about the same harms to Tampa Electric, its customers and Odyssey as are described in Tampa Electric’s objections to Request for

Production No. 1. The production of such documents would cause additional harm to Tampa Electric and its general body of ratepayers by disclosing negotiated rates, and other terms and conditions Tampa Electric might be asked to agree to in future CSA negotiations. Such disclosure could only reduce the benefit to Tampa Electric's general body of ratepayers in future CSA negotiations.

13. Tampa Electric objects to Document Request No. 4 on the same ground as it objects to Document Request No. 1 and No. 2. In addition, Allied and/or CFI should have file copies of all documents they provided to Tampa Electric.

14. Tampa Electric objects to Document Request No. 5 on the same ground as asserted in response to Document Requests Nos. 1 and 3.

15. Tampa Electric objects to Document Request No. 6 on the same ground as asserted in its objection to Document Request No. 1.

16. Tampa Electric objects to Document Request No. 7 on the same ground as stated in Tampa Electric's objection to Document Request No. 1.²

17. Tampa Electric objects to Document Request No. 8 on the same grounds as stated in Tampa Electric's objection to Document Request No. 1.

18. Tampa Electric objects to Document Request No. 9 on the same grounds as stated in response to Document Request No. 1.

19. Tampa Electric objects to Document Request No. 10 on the same grounds as stated in Tampa Electric's objection to Document Request No. 1.

² Note: Requests Nos. 7 and 8 refer to negotiations by Tampa Electric with Allied and CFI. Tampa Electric did not engage in separate negotiations with the two entities and has always considered them to be one in the same.

20. Tampa Electric objects to Document Request No. 11 on the ground that it is an unfounded fishing expedition seeking confidential employee records. The wholesale disclosure of personnel files containing confidential information regarding employees is inappropriate. Production of those documents implicates privacy rights of persons not aware of the intrusion. Personnel files contain a wide array of non-party employees' information, including confidential and sensitive information about the employees, such as social security numbers, home addresses, telephone numbers and similar matter. This request is overbroad. CAC - Ramsay Health Plans, Inc. v. Johnson, 641 So. 2d 434 (Fla. 3rd DCA 1994).

21. Tampa Electric objects to Document Request No. 12 on the same grounds as stated in Tampa Electric's objection to Document Request No. 11.

22. Document Request No. 13 seeks all documents reflecting communications between Tampa Electric and Odyssey which concern or discuss Allied's and/or CFI's request for service under TECO's CISR tariff. Subject to the foregoing general objections, Tampa Electric will produce documents responsive to this request.

23. Tampa Electric objects to Document Request No. 14 on the same ground as stated in Tampa Electric's objection to Document Request No. 1. Additionally, disclosing the total number of CSAs executed by Tampa Electric at any given point in time would reveal the extent to which Tampa Electric has been willing to enter such agreements and thereby cause others to seek such agreements who might not otherwise claim to be at risk customers.

24. Tampa Electric objects to Document Request No. 15 on the same ground as asserted in its objection to Document Request No. 14.

25. Tampa Electric objects to Document Request No. 16 for the same ground stated in Tampa Electric's objection to Document Request No. 1. In addition, public disclosure of the

total capacity and megawatts would have the same adverse impact as disclosure of the number of contracts sought in Document Request No. 14.

26. Tampa Electric objects to Document Request No. 17 on the same ground as asserted in its objection to Document Request No. 16.

27. Tampa Electric objects to Document Request No. 18 on the same grounds as asserted in Document Request No. 1.

DATED this 14th day of February, 2000.

Respectfully submitted,

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ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Response, Motion for Protective Order and Objections to Allied/CFI's First Request for Production of Documents Nos. 1-18, filed on behalf of Tampa Electric Company, has been furnished by hand delivery(*) or U. S. Mail this 14th day of February, 2000 to the following:

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