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May 2, 2000

HAND DELIVERED

ORIGINAL

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 Supplemental Motion for a Protective Order and Request for Approval of Protective Agreement.

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
James D. Beasley

JDB/pp
Enclosures

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

- AFA
- APP
- CAP
- CAN
- CIB
- CAG**
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DOCUMENT NUMBER-DATE

05481 MAY-28

FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

ORIGINAL

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: May 2, 2000

TAMPA ELECTRIC COMPANY'S SUPPLEMENTAL MOTION FOR A PROTECTIVE ORDER AND REQUEST FOR APPROVAL OF PROTECTIVE AGREEMENT

Pursuant to Rule 25-22.006(6), Florida Administrative Code, and Rule 1.280, Florida Rules of Civil Procedure, Tampa Electric Company ("Tampa Electric" or "the Company") hereby supplements its previously filed February 14, 2000, Motion For Protective Order and requests that the Protective Agreement, attached hereto as Exhibit A, be approved and adopted by the Commission for use in this proceeding. As grounds therefor, the Company says:

1. On January 20, 2000, Allied Universal Corporation ("Allied") and Chemical Formulators, Inc. ("CFI") (collectively "Allied/CFI") filed a complaint with this Commission against Tampa Electric. The gravamen of their complaint is that Tampa Electric has unduly discriminated against them by negotiating a more favorable rate for electric service with a competitor of theirs, Odyssey Manufacturing Corporation ("Odyssey"), with whom they consider themselves to be similarly situated.

2. In an attempt to find some factual basis for their complaint, Allied/CFI have filed various pleadings seeking the opportunity to review, among other things, A) the Contract Service

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Agreement (“CSA”) between Tampa Electric and Odyssey; B) any and all documentation supporting the negotiated Commercial / Industrial Service Rider (“CISR”) tariff rates offered by Tampa Electric to Odyssey, including documentation demonstrating that Odyssey met all requirements of the CISR tariff; and C) documentation supporting Tampa Electric’s determination of its incremental cost to serve Odyssey.

3. In several pleadings filed in this proceeding, Tampa Electric has objected to the requests for discovery filed by Allied/CFI. As the Company pointed out in those pleadings, the Tampa Electric CISR tariff, as approved by the Commission, clearly and unambiguously establishes that the information sought by Allied/CFI in this proceeding is confidential and can only be disclosed to the Commission and its Staff. If customers representing at risk load cannot rely on the unequivocal assurance of confidential treatment for their trade secrets and commercially sensitive information as provided for in Tampa Electric’s CISR tariff, then Tampa Electric’s ability to capture the benefits for its ratepayers associated with retaining at-risk load will be eliminated. By the same token, if Tampa Electric is required to publicly disclose the marginal cost analysis which it uses to define the floor rate for CISR negotiations, then its ability to maximize the benefits of at-risk load retention for its remaining ratepayers is, likewise, eliminated. For these very reasons, the Commission affirmed the confidential nature of information collected pursuant to Gulf Power Company’s CISR tariff, which is essentially identical to Tampa Electric’s CISR tariff.¹

4. Tampa Electric is eager to have the Commission review the Allied/CFI complaint on a substantive basis. Although Tampa Electric filed timely objections to Allied/CFI’s discovery requests, the Company concurrently filed with the Commission all of the

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

documentation and analysis underlying Tampa Electric's CISR rate negotiations with both Allied/CFI and Odyssey on a confidential basis. These materials unambiguously establish that Allied/CFI's complaint is without merit. However, before the process can proceed to a review on the merits, Allied/CFI's request for discovery must be addressed.

5. In order to expedite the discovery process, adequately protect information concerning Tampa Electric's negotiations with Odyssey, which the Commission has already deemed to be confidential in nature, and to afford Allied/CFI a reasonable opportunity to review and test the information in question, Tampa Electric urges the Commission to adopt and implement the Protective Agreement attached hereto as Exhibit A.

6. Under the proposed Protective Agreement, Allied/CFI representatives who are not involved in marketing, manufacturing, sales or business strategy development or implementation for Allied or CFI's bleach lines of business would be permitted to review confidential information pursuant to the terms of the Protective Agreement. In addition, Allied/CFI representatives who are given access to confidential information may not represent Allied/CFI or any other existing or potential Tampa Electric customer in negotiations for a CISR rate or a special negotiated rate for a period of three years following issuance of the Protective Agreement. These conditions are designed to keep Odyssey's and Tampa Electric's competitively sensitive information out of the hands of those who, in the course of their normal business activities, might have occasion to inadvertently disclose or make improper use of such information. At the same time, Allied/CFI's opportunity to review confidential information is preserved.

7. The conditions established in the proposed Protective Agreement are reasonable, fair, consistent with other protective agreements used in other Commission proceedings and well

within the Commission's authority to adopt under Rule 1.280 (c), Florida Rules of Civil Procedure which states, in pertinent part:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; ...; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; ...

8. When contacted with regard to the Protective Agreement proposed herein, Counsel for Allied/CFI declined to review the text of the proposed agreement and rejected the proposal, out of hand, on the ground that Allied/CFI's witness in this proceeding, Mr. Namoff, probably would not be permitted to personally review confidential information under the proposed Protective Agreement. Tampa Electric respectfully suggests that there is absolutely no reason why Mr. Namoff must be permitted to view commercially sensitive information which could be used to the detriment of Allied/CFI's competitors and Tampa Electric's ratepayers. The Complainants in this proceeding are corporate entities, not individuals. The interests being represented by counsel for Allied/CFI are corporate interests, not individual interests. To take the position that Allied/CFI's corporate interests can be represented by only one person, Mr. Namoff, is patently unreasonable. Tampa Electric is not suggesting that Counsel for Allied/CFI should be prohibited from disclosing confidential information to his client. Instead, we are suggesting that disclosure should be limited to Allied/CFI employees, managers, executives and representatives who are not in a position to make commercial use of the information at issue.

Allied/CFI's need to view confidential information must be weighed against the competitive harm that would result from misuse or public disclosure of the information at issue. Tampa Electric respectfully suggests that the Protective Agreement proposed herein strikes a reasonable balance between these competing interests.


WHEREFORE, Tampa Electric requests that the Prehearing Officer issue an order in this proceeding adopting the Protective Agreement attached hereto as Exhibit A for purposes of discovery in this proceeding.

DATED this 2nd day of May 2000.

Respectfully submitted,

HARRY W. LONG, JR
Chief Counsel
TECO Energy, Inc.
Post Office Box 111
Tampa, FL 33601
(813) 228-4111

and



LEE L. WILLIS
JAMES D. BEASLEY
Ausley & McMullen
Post Office Box 391
Tallahassee, FL 32302
(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Motion for Protective Order and Request for Approval of Proposed Procedures for a Disposition of this Proceeding without Disclosing Confidential Information, filed on behalf of Tampa Electric Company, has been furnished by hand delivery(*) or U. S. Mail this 2nd day of May 2000 to the following:

Mr. Robert V. Elias*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850


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

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

Ms. Marlene K. Stern*
Staff Counsel
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Mr. Patrick K. Wiggins
Mr. Wayne L. Schiefelbein
Wiggins & Villacorta, P.A.
P. O. Drawer 1657
Tallahassee, FL 32302

Mr. Kenneth Hoffman
Mr. John Ellis
Rutledge Law Firm
Post Office Box 551
Tallahassee, FL 32302



ATTORNEY

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

PROTECTIVE AGREEMENT

This agreement (“Agreement”) is entered into by and between Petitioners, Allied Universal Corporation (“Allied”), and Allied’s affiliate, Chemical Formulators, Inc. (“CFI”), collectively referred to hereinafter as “Allied/CFI”; Respondent, Tampa Electric Company (“Tampa Electric”); and Intervenor, Odyssey Manufacturing Company (“Odyssey”), by and through their undersigned counsel, and pursuant to Rule 25-22.006, Florida Administrative Code.

WHEREAS, Allied/CFI has propounded discovery requests to Tampa Electric in this proceeding seeking certain information regarding Tampa Electric’s negotiations with Odyssey for electric service under Tampa Electric’s Commercial / Industrial Service Rider (“CISR”) tariff (hereafter referred to as “Confidential Information”); and

WHEREAS, in response to Allied/CFI’s discovery requests, Tampa Electric has objected to the production of Confidential Information on the grounds that such information is confidential, competitively sensitive and can be released only to the

Commission and its Staff under the express terms of Tampa Electric's Commission approved CISR tariff; and

WHEREAS, Allied/CFI has expressed a need for reasonable access to the Confidential Information in order to resolve their Complaint in this proceeding in an expeditious manner; and

WHEREAS, Tampa Electric shares Allied/CFI's desire to resolve this matter expeditiously and is, therefore, willing to produce Confidential Information, in a manner that does not unduly risk public disclosure of such information, subject to prior Commission approval of this Agreement; and

WHEREAS, the persons subscribing to this Agreement as representatives of Allied/CFI agree to accept such Confidential Information subject to the conditions of this Agreement,

NOW, THEREFORE, it is agreed as follows:

1. Disclosure of the Confidential Information to Allied/CFI shall be limited to representatives of Allied/CFI who have executed the non-disclosure agreement described in paragraph 2 below and who have no direct involvement or indirect involvement in a supervisory, management, executive, advisory or representative role, in marketing, sales, production or business strategy development or implementation for either Allied or CFI. Allied/CFI representatives who sign the non-disclosure agreement shall not represent Allied/CFI or any other existing or potential Tampa Electric customer in any negotiations with Tampa Electric for either a Contract Service Agreement ("CSA") under Tampa Electric's Commercial / Industrial Service Rider Tariff ("CISR") or for a negotiated rate for electric service during the period commencing with the

execution of this Agreement and ending three years thereafter. In addition, Allied/CFI representatives who sign the non-disclosure agreement shall not participate directly or indirectly in such negotiations.

2. Confidential Information shall not be disclosed to any person who has not signed the non-disclosure agreement on the form that is attached hereto as Exhibit A and incorporated herein. The non-disclosure agreement ("Exhibit A") requires the person to whom disclosure is made to read a copy of this Agreement and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The non-disclosure agreement shall contain the signatory's full name, business address and telephone number, the name of the party with whom the signatory is associated and a brief statement describing the signatory's business responsibilities during the immediately preceding 12 months in sufficient detail to permit Tampa Electric to confirm that the signatory meets the requirements of Paragraph 1 above. The person executing the non-disclosure agreement shall further certify that he or she is authorized by Allied/CFI to execute the non-disclosure agreement. The signed non-disclosure agreement shall be delivered to counsel for Tampa Electric for approval, which shall not be unreasonably withheld or delayed, prior to the disclosure of the information to the signatory.

3. Use of any information obtained by Allied/CFI pursuant to this Agreement will be made solely for the purpose of litigation in this proceeding and for no other purpose.

4. All documents, including both originals and all copies, containing the Confidential Information that are provided to Allied/CFI or subsequently created by

Allied/CFI shall be deemed to be held in trust pursuant to this Agreement and shall be returned to Tampa Electric upon the conclusion of litigation involving the matters alleged in this proceeding. No copies or notes of materials provided pursuant to this Agreement may be made except copies or notes to be used by signatories to the non-disclosure agreement. Each such person shall maintain a log, recording the number of copies made of all confidential information, and the persons to whom such copies have been provided. Any note memorializing or recording confidential information shall, immediately upon creation, become subject to all provisions of this Agreement.

5. Those persons who become representatives of Allied/CFI pursuant to this Agreement further agree that:

- a. They will treat all information obtained pursuant to the Agreement as confidential;
- b. No employees or agents of Allied/CFI other than themselves will review or have access to the documents and other information obtained pursuant to this Agreement;
- c. They will not publicly disclose any information obtained pursuant to this Agreement; and
- d. Disclosure to any regulatory or judicial authority of any information obtained pursuant to this Agreement shall be accompanied by an appropriate request for confidential classification and treatment of the information.

6. The parties agree that only representatives who have executed the non-disclosure agreement referred to in paragraph 2 above may review or have access to

information obtained pursuant to this Agreement. Allied/CFI and Odyssey hereby agree to release and hold Tampa Electric harmless with regard to any liability which may result from Tampa Electric's release of Confidential Information pursuant to this Agreement or as the result of public disclosure of Confidential Information by representatives who have executed the non-disclosure agreement.

7. If Allied/CFI wishes to use Confidential Information, in the course of this proceeding, in testimony filed by Allied/CFI or in direct or cross-examination of any witness, in rebuttal, or in a proffer of evidence, then Allied/CFI shall follow the procedures for the use of confidential information set forth in the February 23, 2000, Order Establishing Procedure issued in this proceeding.

8. Each of the parties to this Agreement shall act in good faith to carry out the purposes of this agreement and neither of them will do anything to deprive the other parties of the benefit of this Agreement. In case of any disagreement between the parties to this Agreement on the meaning or application of this agreement or over whether either party has complied with it, the parties shall submit the matter, initially, to the Commission for its determination. Nothing in this Agreement shall constitute a waiver by either party of any right which any party may have to protect trade secrets or proprietary confidential business information contained in the information obtained pursuant to this Agreement by appealing any decision of the Commission or by instituting an original proceeding in any court of competent jurisdiction. In the event that the Commission shall rule that any of the information obtained pursuant to this Agreement should be removed from the restrictions imposed by this agreement, no party shall disclose any such information in the public record for ten (10) business days unless

authorized by the providing party to do so. The provisions of this paragraph are entered to enable a party to seek a stay or other relief from an order removing the restrictions of this Agreement from material claimed by any other party be trade secrets or proprietary confidential business information.

9. This Agreement shall be binding on the parties to this Agreement from the date of its execution. Each executed copy of this Agreement shall be deemed an original.

IN WITNESS WHEREOF, the parties hereby execute this Agreement.

Allied Universal Corporation
Chemical Formulators, Inc.

Tampa Electric Company

By: _____

By: _____

Odyssey Manufacturing Company

By: _____

EXHIBIT "A"

NON-DISCLOSURE AGREEMENT

The undersigned hereby certifies: (1) that he/she is authorized to execute this non-disclosure agreement on behalf of the party indicated below; and (2) that prior to the disclosure to him/her of certain information and documents belonging to, or in the possession of, or made available through the offices of Tampa Electric Company which are considered by Tampa Electric Company, or the owner of such information or documents, to be a trade secret, or otherwise of a privileged or confidential nature, he/she has read the Protective Agreement between Allied Universal Corporation and Chemical Formulators, Inc., Tampa Electric Company and Odyssey Manufacturing Company in Docket No. 000061-EI, attached to this non-disclosure agreement, and he/she agrees to be bound by the terms of the Protective Agreement.

Executed this ____ day of _____, 2000.

REPRESENTATIVE OF:

By: _____

Name: _____

Address: _____

Employer: _____

Telephone: _____

Description of Business Responsibilities During Immediately Preceding Twelve Months:

