

AUSLEY & McMULLEN

ATTORNEYS AND COUNSELORS AT LAW

227 SOUTH CALHOUN STREET  
P.O. BOX 391 (ZIP 32302)  
TALLAHASSEE, FLORIDA 32301  
(850) 224-9115 FAX (850) 222-7560

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RECORDS AND REPORTING

May 4, 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

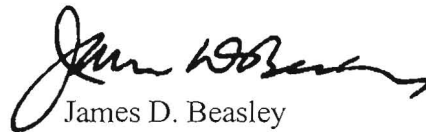
Dear Ms. Bayo:

Enclosed for filing in the above docket are the original and fifteen (15) copies of Tampa Electric Company's Response to Allied/CFI's Motion to Compel Production of Documents.

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

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

- \_\_\_\_ AFA
- \_\_\_\_ APP
- \_\_\_\_ CAF
- \_\_\_\_ CMU
- \_\_\_\_ GTR
- \_\_\_\_ EAG
- \_\_\_\_ LEG
- \_\_\_\_ MAS
- \_\_\_\_ OPC
- \_\_\_\_ RRR
- \_\_\_\_ SEC
- \_\_\_\_ WAW
- \_\_\_\_ OTH

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FPSC-BUREAU OF RECORDS

DOCUMENT NUMBER-DATE

05616 MAY-48

FPSC-RECORDS/REPORTING

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

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

DOCKET NO. 000061-EI  
DATED May 4, 2000

**RESPONSE OF TAMPA ELECTRIC COMPANY TO ALLIED/CFI'S  
MOTION TO COMPEL PRODUCTION OF DOCUMENTS**

Pursuant to Rule 28-106.204, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or the "Company") responds as follows to the Allied/CFI Motion to Compel Production of Documents By Tampa Electric Company which was filed with the Commission in this proceeding on May 2, 2000:

1. The substantive matters at issue in this proceeding are quite straightforward and can be quickly disposed of once the Commission has issued a reasonable protective order. Allied/CFI's most recent motion does nothing more than chronicle Tampa Electric's efforts to break the current discovery logjam, while attempting to characterize these same efforts as evidence of bad faith on Tampa Electric's part. Tampa Electric has repeatedly offered procedural compromises in an attempt to address the legitimate discovery needs of all concerned. Allied/CFI, on the other hand, has remained intransigent in its insistence that Mr. Namoff, who has been consistently at the forefront of both competitive activity with Odyssey and CISR negotiations with Tampa Electric, must be allowed to personally inspect sensitive market information which could be used to the detriment of both Odyssey and Tampa Electric's ratepayers. The time has come for Allied/CFI to cease its incessant procedural whining and demonstrate some genuine flexibility and good faith so that this proceeding can move forward.

DOCUMENT NUMBER-DATE

**05616 MAY-48**

FPSC-RECORDS/REPORTING

2. On May 2, 2000, Tampa Electric filed with the Commission a proposed Protective Agreement and motion for its adoption. This most recent proposal gives Allied/CFI reasonable access to all confidential information while protecting the confidentiality of this information, to the extent possible. Tampa Electric respectfully suggests that the Commission adopt this Agreement. Allied/CFI should designate its representatives for purposes of discovery and the process should advance to a review on the merits as quickly as possible.

**Procedural Background**

3. On February 2, 2000, Allied/CFI served Tampa Electric with a set of interrogatories, a request for production of documents and a notice of deposition coupled with a document request, all related to Tampa Electric's negotiations for a Contract Service Agreement ("CSA") with Odyssey Manufacturing Company ("Odyssey"), a direct competitor of Allied/CFI. Allied/CFI also requested copies of all documents related to Tampa Electric's negotiations with Allied/CFI for a CSA. Tampa Electric's Commercial/Industrial Service Rider ("CISR") tariff, pursuant to which the negotiations in question were conducted, explicitly restricted disclosure of the requested information to only the Commission and its Staff. Therefore, on February 14, 2000, the Company filed timely objections to Allied/CFI's discovery requests and a motion for a protective order. In additions to its objections, Tampa Electric proposed a procedure which would permit the Commission and Staff to test the merits of Allied/CFI's outrageous and irresponsible allegations while enforcing the limitations on public disclosure of commercially sensitive CISR-related information which the Commission had itself approved. Under Tampa Electric's proposal, all of the information in Tampa Electric's possession related to its CISR negotiations with Odyssey and Allied/CFI would be filed with the Commission on a confidential basis. The Commission and Staff could then review this information in camera, along with filed

Allied/CFI testimony and exhibits, and either summarily dismiss the complaint for lack of merit or schedule the matter for hearings. Although Tampa Electric was willing to rely on the impartiality of the Commission and Staff in conducting the proposed review, Allied/CFI immediately rejected this approach.

4. On March 10, 2000, Tampa Electric filed with the Commission, on a confidential basis, all of the documentation related to its CISR negotiations with Allied/CFI and Odyssey. In addition, Tampa Electric provided a side-by-side comparison of the offers made to Odyssey and Allied/CFI. To the extent that the two offers differed, Tampa Electric provided detailed explanation and justification for each such difference. This information conclusively establishes that Odyssey and Allied/CFI are not similarly situated and are not, therefore, entitled to the same rate under an undue discrimination theory.

5. On April 17, 2000, Tampa Electric provided Allied/CFI with copies of all CISR-related correspondence and documents provided by Allied and CFI to Tampa Electric during negotiations. Even though these documents were generated by Allied/CFI and were, presumably, already in their possession, Allied/CFI nonetheless insisted that Tampa Electric provide another set of these documents.

6. At the April 18, 2000, Commission agenda conference, Tampa Electric offered yet another proposal for resolving the pending discovery dispute. The Company offered to make confidential information available to Allied/CFI's legal representatives and outside consultants pursuant to a protective agreement that would prohibit disclosure of confidential information to Allied/CFI officers, managers and employees as a group. Under this approach, Allied/CFI's attorneys and outside technical consultants could review confidential information and conduct any further discovery that might have been necessary with regard to such information.

Allied/CFI , once again, rejected a reasonable compromise out of hand, offering only an ersatz assertion that the proposal would create an “ethical conflict” for Allied/CFI’s legal representatives.

7. On April 27, 2000, counsel for Tampa Electric presented a further compromise to counsel for Allied/CFI. In light of the concerns expressed by Allied/CFI during the April 18 agenda conference, Tampa Electric proposed to relent in its insistence that Allied/CFI officers and employees be bared, as a group, from reviewing confidential information. Instead the Company proposed that Allied/CFI could select as a representative, for purposes of discovery, anyone, including Allied/CFI officers and employees, who was not involved in the competitive aspects of Allied/CFI’s business. Predictably, counsel for Allied/CFI rejected another reasonable settlement proposal, this time, on the ground that any proposal that denied Mr. Namoff complete, personal access to confidential information was categorically unacceptable to Allied/CFI.

**Tampa Electric Current Proposed Compromise**

8. Enough is enough. The proposed Protective Agreement that Tampa Electric filed with the Commission on May 2, 2000, is fair and reasonable. It gives Allied/CFI representatives full access to confidential information, thereby addressing Allied/CFI’s due process concerns. Allied/CFI employees who are not engaged in competitive activities can have access to the confidential information, thereby addressing Allied/CFI’s amorphous “ethical conflict” concerns. There is no reason why Mr. Namoff must personally inspect confidential information. To the contrary, there are several compelling reasons why he should not be allowed such access.

9. With knowledge of Odyssey’s electric power costs and financial structure, Allied/CFI’s ability to undercut Odyssey in the marketplace would be greatly enhanced. Mr. Namoff is clearly at the forefront of Allied/CFI’s competitive business activities. He is certainly

in a position to use confidential information improperly. While Tampa Electric does not question Mr. Namoff's integrity, there is simply no reason to give him access to highly sensitive commercial information that he might use inadvertently to Odyssey's disadvantage. By the same token, Allied/CFI may have occasion to conduct further CISR negotiations at some point in the future. Given that possibility, it makes no sense to give Mr. Namoff, Allied/CFI's chief negotiator, access to Tampa Electric's floor price (marginal cost) calculations. To do so would completely undermine Tampa Electric's ability to make the best deal possible for its ratepayers.

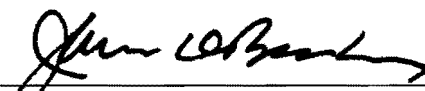
WHEREFORE, Tampa Electric respectfully requests that Allied/CFI's Motion to Compel be denied. Allied/CFI's motion is an unnecessary exercise in polemics that serves no legitimate purpose. Instead, Tampa Electric respectfully requests that its proposed Protective Agreement be adopted and implemented as quickly as possible.

DATED this 4<sup>th</sup> 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



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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 Response to Allied/CFI's Motion to Compel Production of Documents, filed on behalf of Tampa Electric Company, has been furnished by hand delivery(\*) or U. S. Mail this 4<sup>th</sup> 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

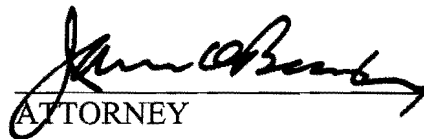
Allied Universal Corporation  
8350 N.W. 93rd Street  
Miami, FL 32166-2026

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