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July 6, 2000

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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 each of the following:

1. Tampa Electric Company's Motion for Reconsideration.
2. Tampa Electric Company's Motion for Oral Argument.

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

APP _____
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Enclosures

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

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

DOCKET NO. 000061-EI
FILED: July 6, 2000

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**TAMPA ELECTRIC COMPANY'S
MOTION FOR RECONSIDERATION**

Pursuant to Rule 25-22.0376, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "the company") respectfully requests reconsideration of Order No. PSC-00-1171-CFO-EI (the "Order") issued by the Prehearing Officer in the above-mentioned docket on June 27, 2000 and says:

1. Several of the conclusions reached in the Order are based on errors of law or fact, which, if not corrected, will result in significant harm to Tampa Electric's ratepayers.

Specifically, the Order erroneously concludes that:

a) The confidentiality of information supplied by Odyssey Manufacturing Company ("Odyssey") and Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") as the result of Commercial/Industrial Service Rider ("CISR") negotiations or CISR-related requests from the Company or information developed by the company in connection therewith, must be subsequently re-established pursuant to a showing under Section 366.093, Florida Statutes.

b) The language of Tampa Electric's CISR Tariff does not render the entire Contract Service Arrangement ("CSA") with Odyssey and various documents exchanged by the parties in CSA negotiations between Tampa Electric, Odyssey and Allied/CFI confidential;

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c) Documents concerning Odyssey's eligibility for a CISR rate must be disclosed to Allied/CFI, albeit pursuant to a non-disclosure agreement;

d) Allied/CFI's due process rights are violated by excluding Allied/CFI employees directly involved in competitive activities from reviewing confidential information;

e) Salary information of former company employee Patrick Allman is relevant and material to this proceeding; and that

f) The total number of CISR contracts executed by the company is relevant and material to this proceeding and must be disclosed to Allied/CFI, albeit pursuant to a non-disclosure agreement.

2. In compliance with the Order, Tampa Electric intends to file with the Commission on or before July 7, 2000, a revised request for confidential treatment of CISR-related information, along with a list of those responsive documents that Tampa Electric does not have to produce pursuant to the Order, and a list of those documents that are responsive to Allied/CFI Production of Document Request Nos. 6 and 7 and for which confidential treatment is sought. However, Tampa Electric cannot execute a non-disclosure agreement with Allied/CFI until the Commission has ruled on the instant motion for reconsideration since this motion addresses, in part, the appropriate content of the non-disclosure agreement in question.

3. From the outset of this proceeding, Tampa Electric has been forthright and open with the Commission with regard to the circumstances surrounding Allied/CFI's complaint. In steadfastly attempting to protect the continued usefulness of its CISR tariff as a tool for creating significant benefits for its general body of ratepayers, the company has not sought to withhold information from the Commission or its Staff or delay the Commission's deliberations in this

docket. To the contrary, instead of waiting for resolution of the myriad of pending discovery motions, Tampa Electric filed with the Commission all of the information in its possession concerning both the Odyssey and Allied/CFI negotiations, on a confidential basis, well over three months ago. While the Order on page 4 described that data as containing "*irrelevant and duplicative information*," that filing was intended to provide to the Commission and its Staff copies of all data the company could discover at that time, including duplicate copies held by different individuals in the company and attachments to correspondence that may have appeared to be duplicative. The company does not believe this information was irrelevant or duplicative considering the intent.

4. In addition to existing documentation, the company prepared and provided a narrative description of the information contained in those documents as well as a table comparing and explaining the CISR proposals made to Odyssey and Allied/CFI. Early in this proceeding, Tampa Electric proposed that the Commission and Staff review this information, on an in camera basis, for the purpose of making a preliminary determination as to whether any further investigation by the Commission was warranted. The company's only purpose in doing so was to avoid the very same situation in which the parties now find themselves: the waste of this Commission's valuable time and resources on the protracted adjudication of a complaint that is, in the final analysis, utterly without merit. While Tampa Electric does not wish to exacerbate the problem, the company is compelled to make every reasonable effort to prevent the needless evisceration of the CISR process through the unnecessary and harmful disclosure of confidential information to Allied/CFI.

5. The Order states at page 7 that:

Although the CISR tariff identifies certain items as confidential, the confidentiality requirements in Section 366.093, Florida

Statutes, must be met for all documents. The tariff cannot supercede the statute. Similarly, language in the Tariff that certain documents can only be viewed by the Commission does not automatically prevent Allied from discovering such documents. A ruling to prevent discovery must be based on Rule 1.280, Florida Rules of Civil Procedure, and the orders and case law elucidating that rule.

6. On the basis of the above-quoted conclusion, Tampa Electric has been required to go through all of the CISR-related information for which it seeks confidential treatment and justify, by document or line by line, why such information should be given confidential treatment. Putting aside the question of the circumstances under which non-public CISR-related information should be made available to third parties under a properly crafted non-disclosure agreement, this requirement ignores the fact that the Commission has already determined that the information in question is confidential. It is not the company's position that its tariff supercedes the statute. Instead, Tampa Electric maintains that the Commission's approval of its CISR tariff represented a Section 366.093 determination that the types of information specified in the tariff require confidential treatment. To conclude otherwise would render the tariff language, on which both Odyssey and Tampa Electric reasonably relied, meaningless.

7. In relevant part, Tampa Electric's CISR tariff provides 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.

8. This language leaves little to the imagination. 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 not be disclosed to anyone other than the Commission and Staff. Obviously, material that is already in the public domain, such as clean copies of published articles, filed tariffs or widely distributed commercial brochures, are not entitled to confidential treatment. However, the Order is not directed exclusively at such information. In its Order approving Tampa Electric’s CISR tariff and in an Order confirming the confidentiality of information relating to a Gulf Power CSA, Order No. PSC-98-0854-CFO-GI, the Commission evidenced no intention to make non-public, CISR-related information conditionally confidential or potentially confidential. Yet, the Order would have this effect by 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 is at odds with both the letter and spirit of Tampa Electric's Commission approved CISR tariff and the Commission’s prior ruling in the Gulf Power CISR review, and serves only to make it more difficult for Tampa Electric to capture incremental benefits for its ratepayers.

9. At page 13, the Order concludes that:

The date of the CSA is not confidential under Section 366.093, Florida Statutes. Because it is not confidential, it can not be protected from discovery on grounds that it is confidential commercial information....Although the Commission granted CSAs confidential status in Order No. PSC-98-0854-CFO-EI, 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. Here, we have a request for discovery of a very specific part of the CSA by a party outside of the Commission. The circumstances and question to be decided in this

case therefore differ from the circumstances and decision made in the Gulf Power case.

10. The question of whether the CSA, in its entirety, is a confidential document and the question of whether portions of the CSA are discoverable pursuant to a properly crafted non-disclosure agreement are very different. In relevant part, Tampa Electric's Commission approved CISR tariff states: "*The CSA shall be considered a confidential document.*" To the extent that it purports to render parts of the CSA non-confidential, the Order is directly at odds with the above referenced prior Commission precedents. Tampa Electric respectfully suggests that the attempt to distinguish the Commission's clear determination in Order No. PSC-98-0854-CFO-EI is unreasonable. The Commission's determination that CSAs are confidential documents in that order was neither conditional nor ambiguous. Even if one were to regard the basis for the distinction proposed in the Order to be reasonable, no one in this docket has alleged that the CSA is not a confidential document. To the extent that the Order purports to render portions of the CSA between Tampa Electric and Odyssey non-confidential, the Order should be reversed.

11. At pages 17 and 18 of the Order, Tampa Electric is directed to make available to Allied/CFI, under a non-disclosure agreement, documents that bear on Odyssey's eligibility for a CISR rate. Tampa Electric respectfully maintains that this portion of the order is erroneous in that it requires Tampa Electric to disclose confidential information to Allied/CFI that is, by definition, irrelevant to Allied/CFI's complaint in this docket. The question of whether or not Tampa Electric has complied with its tariff obligations in the conduct of CISR negotiations with Odyssey and Allied/CFI is a matter for determination by the Commission, not Allied/CFI. Allied/CFI has no general private right of enforcement of Tampa Electric's tariffs. The only cognizable claim that Allied/CFI could have in this proceeding is that it was the subject of undue discrimination by Tampa Electric. Since Tampa Electric found both Odyssey and Allied/CFI to

be eligible for a CISR rate, the question of whether or not Odyssey was eligible for a CISR rate can have no bearing on the issue of whether or not Allied/CFI has been the subject of undue discrimination. Whatever else it might try to claim, Allied/CFI cannot sensibly claim that it was the subject of undue discrimination with regard to eligibility for a CISR rate. It is entirely appropriate for the Commission and the staff to review Tampa Electric's determination of Odyssey's eligibility for a CISR rate but Allied/CFI has no role to play in that inquiry. Therefore, Allied/CFI has no legitimate interest in the review of that information that would justify disclosure, even pursuant to an appropriately drafted non-disclosure agreement. The harm to Odyssey of such needless disclosure is obvious. Allied/CFI is a direct competitor of Odyssey. Armed with detailed information with regard to Odyssey's business alternatives, Allied/CFI would be perfectly positioned to undermine Odyssey's business position.

12. In defining the terms of the non-disclosure agreement that Tampa Electric has been directed to execute with Allied/CFI in this proceeding, the Order states at pages 11-12 as follows:

Given Allied's claim that it is a small company that does not have separate staff to serve separate functions, the part of TECO's proposal that limits the types of employees who can see the {confidential} information cannot be approved. It appears that Allied's ability to represent its corporate interests would be compromised by such a requirement. Therefore I find that TECO's limitation on representatives of Allied who could see the information is unreasonable. TECO's Supplemental Motion for Protective Order is denied to the extent that it limits disclosure of confidential information to Allied employees 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....TECO's provision also prevents any Allied employee, who reviews confidential information exchanged in this docket from negotiating CISR or special electric rates with TECO on behalf of Allied. If, after this proceeding ends, Allied is in a position to renegotiate CISR rates

with TECO, the Allied employee(s) who negotiate the rates could not negotiate effectively if they have no knowledge of the information exchanged in this proceeding. Therefore, I find that TECO's limitation on who can negotiate CISR/special rates with TECO for Allied is unreasonable.

13. This portion of the Order is based on an uncritical acceptance of Allied/CFI's unsupported assertion that Allied's President, Mr. Robert Namoff, is the only person within the Allied and CFI corporate entities that can effectively work with Counsel in reviewing confidential information. This assertion is patently unreasonable on its face and is utterly without evidentiary support. At page 11 of the Order, it is recognized that

Non-disclosure agreements between telecommunications companies [in proceedings before this Commission] frequently include some version of the restrictive provision proposed by TECO and Odyssey.

14. These provisions are designed to allow reasonable access to sensitive market information while minimizing the potential for harm resulting from even limited disclosure to competitors. Precisely the same need exists in this proceeding. Tampa Electric is 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. Indeed, the provision should be approved for the very reason given in the Order for its rejection. Allied employees who have access to confidential Tampa Electric and Odyssey information in this proceeding should not be able to participate in future CISR negotiations, precisely because they have had access to such information. Such knowledge would give those employees a marked advantage in any future CISR negotiations with Tampa Electric, to the detriment of Tampa Electric's ratepayers. The Order rejects the use in this proceeding of a restrictive provision that is commonly used in

practice before this Commission with no reasonable evidentiary basis for doing so. Tampa Electric respectfully submits that this portion of the Order should be reversed for the reasons stated.

15. At page 14 of the Order, Tampa Electric is directed to disclose to Allied/CFI Mr. Allman's rates of pay during his term of employment with Tampa Electric, pursuant to a non-disclosure agreement. The Order correctly points out that the proper scope of a discovery request for information from personnel files must be narrow enough to safeguard the privacy of employees but broad enough to ensure access to necessary information. However, Tampa Electric respectfully maintains that the rule has been misapplied in the Order. Mr. Allman's rates of compensation while he was employed by the company have absolutely nothing to do with the question of whether or not Allied/CFI has been subjected to undue discrimination by Tampa Electric and does not constitute "necessary information." If Allied/CFI and Odyssey are not similarly situated, then Allied has no cognizable claim of entitlement to the same CISR rate negotiated between Odyssey and the company. Mr. Allman's level of compensation while employed by the company is not relevant or material. Tampa Electric respectfully maintains that this portion of the Order should be reconsidered and reversed for the reasons stated.

16. At page 14 of the Order, Tampa Electric is directed to disclose to Allied/CFI the total number of CSAs executed by Tampa Electric as of March 1, 1999 and February 1, 2000 on the ground that this information is not confidential. In fact, the explanation of its relevance in the Order demonstrates why the information is, in fact, entitled to confidential treatment. At page 15 of the Order it is observed that Allied/CFI "might wish to attempt to obtain information on other CSAs to aid in its assessment of discrimination." The prospect of this kind of exposure is precisely the kind of consideration that would drive away potential CISR customers. The

prospect of being subjected to a potentially endless series of groundless fishing expeditions centered on its most sensitive proprietary information is certain to discourage even the most interested potential CISR customer. More fundamentally, the relevance of such information is questionable, at best. Unless one assumes, incorrectly, that each CISR customer is entitled to the same rate, then the terms of other CISR arrangements would be irrelevant. This information is not relevant, it has no probative value, and it is commercially sensitive. For these reasons, Tampa Electric respectfully maintains that this portion of the Order should be reconsidered and reversed.


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

DATED this 6th day of July 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 Motion for Reconsideration, filed on behalf of Tampa Electric Company, has been furnished by U. S. Mail or hand delivery (*) on this 6th day of July 2000 to the following:

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