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October 18, 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 Tampa Electric Company's Answer in Opposition to Allied/CFI's Motion for Authorization to Disclose Confidential Information Pursuant to 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

APP \_\_\_\_\_ JDB/pp  
CAF \_\_\_\_\_ Enclosures  
CMP \_\_\_\_\_  
COM 3  
CTR \_\_\_\_\_  
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cc: All Parties of Record (w/encls.)

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FPSC-RECORDS/REPORTING

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**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: October 18, 2000

**TAMPA ELECTRIC COMPANY’S ANSWER IN OPPOSITION TO  
ALLIED/CFI’S MOTION FOR AUTHORIZATION TO DISCLOSE  
CONFIDENTIAL INFORMATION PURSUANT TO  
PROTECTIVE AGREEMENT**

Pursuant to Rule 28-106.204, Tampa Electric Company (“Tampa Electric” or “Company”), hereby responds to the motion of Allied Universal Corporation and Chemical Formulators, Inc. (“Allied/CFI”) for authorization to disclose confidential information pursuant to the protective agreement approved by the Commission for use in this proceeding, and says:

**I. Introduction**

1. For the reasons set forth below, Tampa Electric objects to the disclosure of confidential information to Messrs. Namoff and Allen. The Company does not object to the disclosure of confidential information to Mr. Bandklayder pursuant to the non-disclosure agreement approved by the Commission for use in this proceeding.

2. With the establishment of a non-disclosure agreement in this proceeding on August 1, 2000, the path was cleared for Allied/CFI to conduct discovery and prepare

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its rebuttal testimony. However, Allied/CFI squandered that opportunity. They refused to proceed with depositions of Tampa Electric's witnesses, despite the Company's willingness to make those witnesses available. Instead, they waited until two business days prior to the date that their rebuttal testimony was due to petition the Commission for a postponement of the October 31<sup>st</sup> hearing scheduled in this proceeding. On the heels of that motion, Allied/CFI filed the instant motion, the only purpose of which is to further delay this proceeding with procedural matters that have already been addressed by the Commission and new matters that could have been raised months ago.

## **II. Disclosure to Robert M. Namoff**

3. The question of Mr. Namoff's access to confidential information was resolved at the Commission's August 1<sup>st</sup> agenda conference. Nothing has changed that would warrant a different result. However, Allied/CFI now asserts, contrary to its representations to the Commission at the August 1<sup>st</sup> agenda conference, that Mr. Palmer, Allied/CFI's Chief Operating Officer and Mr. Koven, Allied/CFI's Chief Financial Officer, are not competent to review confidential information on behalf of Allied/CFI. The basis for this conclusion is that neither Mr. Palmer nor Mr. Koven participated in the Commercial Industrial Service Rider ("CISR") discussions between Tampa Electric and Allied/CFI and, therefore, cannot "respond to a number of issues raised in documents produced by TECO to Allied/CFI on August 14, 2000."

4. As Tampa Electric has repeatedly pointed out, it makes no sense to allow Mr. Namoff access to the kind of sensitive, proprietary information that might be used to cause significant competitive harm to Odyssey Manufacturing Company ("Odyssey") and

undermine the usefulness of Tampa Electric's CISR tariff as a tool for creating ratepayer benefits.

5. Allied/CFI has advanced no clear reason why Mr. Namoff must be given access to confidential information. There is no clear connection between Mr. Namoff's role as the Allied/CFI's representative in the CISR negotiations conducted with Tampa Electric and his alleged unique ability to decipher confidential information in this proceeding. In addition, Allied/CFI makes no effort in their motion to specify which issues Messers. Palmer and Koven are unable to address. Common sense would suggest that Messers. Palmer and Koven, in their capacity as senior officers of Allied/CFI, should be able, with the help of counsel and outside technical experts, to determine whether or not the CISR treatment afforded Odyssey is unduly discriminatory, in light of the treatment afforded Allied/CFI, through an examination of confidential information. This point was specifically addressed at the Commission's August 1<sup>st</sup> agenda conference in the following exchanges between Commissioner Jaber and counsel for Allied/CFI.

Commissioner Jaber: What I was going to say is that I think the room or place to reach some compromise is that there is agreement with respect to the three individuals other than Mr. Namoff, that an agreement can be reached. With respect to Mr. Namoff, I would suggest that Allied come back to us if they think that Mr. Namoff has to be someone that has to view the documents again.

Mr. Ellis: I'm sorry. I can shortcut that. We do have to have Mr. Namoff. I can't proceed without him. He's my chief witness. The point of saying that there are only two other people I could deal with was to say , and neither one of them meets Mr. Long's additional term in the protective agreement. This is my chief witness. This is the man who negotiated with them. This is the man who can respond to whatever exculpatory evidence they may attempt to come up with, and I don't want to proceed without him.

Commissioner Jaber: You know, Mr. Ellis, you may not have a choice. Where is it that you see a compromise? (tr. 64-65)

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Commissioner Jaber: I understand your point, but your goal is to have the [confidential] information so that you could build your case, and you're going to build your case by filing testimony, and you need this information so that you can either include it in the testimony or reject it as unnecessary. So if that's your goal, what difference does it make who actually reviews it [confidential information] and uses it and files it in testimony?

Mr. Ellis: I guess it's Bob Namoff's company, and he's the one that negotiated with TECO face to face, and he's the one that should be able to see their documents as to what they were really doing when they were talking with him.

Commissioner Jaber: And if he's the one that personally negotiated with the company, then he can testify as to what he recalls the subject of the negotiations were and the terms of the negotiation; right?

Mr. Ellis: Yes, and he has provided his testimony on those points.

Commissioner Jaber: And you can do whatever depositions you deem appropriate prior to filing [rebuttal] testimony, or anyone else you intend to file testimony for.

Mr. Ellis: I certainly hope to, yes. (tr. 71-72)

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Mr. Ellis: Could I propose a stipulation? I'll propose a stipulation that the signatories on behalf of Allied will be his counsel – that's Mr. Hoffman and myself – our expert consultant, Mr. Phillips, and for the present time, Mr. Palmer and Mr. Koven. I will need to speak with Mr. Namoff, and if it's not going to be acceptable to us to go forward, we'll come back to the Commission.

Mr. Long: We have no problem with that.

Chairman Deason: Very well.

6. Allied/CFI's motion, as it pertains to Mr. Namoff, is nothing more than an effort to resurrect an old issue which was thoroughly discussed at the August 1 agenda conference and resolved with the agreement proposed by Mr. Ellis. Between August 1

and October 13<sup>th</sup> Mr. Ellis certainly had more than ample time to determine if it was acceptable to Mr. Namoff and come back to the Commission, but he chose to do so only now at the 11<sup>th</sup> hour and after his rebuttal testimony was already past due to be filed, with no new justification other than a rehash of his argument from August 1. As such, this motion is a waste of the Commission's time and an abuse of the Commission's process.

### **III. Disclosure to Phillip L. Allen**

7. More than six weeks ago, counsel for Allied/CFI approached Tampa Electric with its proposal to add several new attorneys to the list of Allied/CFI representatives who would execute the non-disclosure agreement approved by the Commission and review confidential information in this proceeding, even though in the August 1<sup>st</sup> transcript Mr. Ellis indicated in his "stipulation" that Mr. Namoff was the only additional individual he might need to review the documents. The additional attorneys identified by Allied/CFI were Daniel Bandklayder, Philip L. Allen and Leonard Sands. At that time, Tampa Electric made it clear that it would certainly not object to the addition of attorneys who were representing Allied/CFI in this proceeding. However, the Company made it clear that it would not countenance any attempt by Allied/CFI to use the discovery process in this proceeding to gather information for other litigation that it might be contemplating in other proceedings or in other venues.

8. After examining the background of the additional counsel proposed by Allied/CFI in Martindale-Hubble, the Company confronted Allied/CFI with the fact that two of the proposed counsel, Messrs. Sands and Allen, appeared to have no relevant expertise that would justify their review of confidential information for purposes of this

proceeding. Mr. Allen's expertise was in the area of antitrust law while Mr. Sands appeared to specialize in federal criminal litigation.

9. In response to questions from Tampa Electric, counsel for Allied/CFI, John Ellis, stated that although the proposed additional counsel were providing "advice and counsel" to Allied/CFI, they were not representing Allied/CFI in this proceeding and did not intend to make an appearance in this docket as counsel of record, although they might consider doing so, if necessary.

10. Tampa Electric made its position with regard to Messrs. Allen and Sands clear to Allied/CFI over six weeks ago. However, Allied/CFI is only now raising this issue with the Commission, again at the 11<sup>th</sup> hour.

11. The issue is not whether Tampa Electric can dictate to Allied/CFI the identity and number of its legal representatives. Obviously, Tampa Electric has neither the ability nor the desire to limit the nature and scope of Allied/CFI's legal representation. However, Allied/CFI cannot be permitted to abuse the Commission's discovery process by using this proceeding as a mechanism for gathering confidential information for use in other contemplated or potential legal proceedings in other forums.

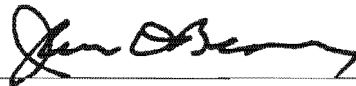
WHEREFORE, Tampa Electric respectfully requests that Allied/CFI's motion for authorization to disclose confidential information, as it pertains to Messrs. Namoff and Allen, be denied.

DATED this 18<sup>th</sup> day of October 2000.

Respectfully Submitted

HARRY W. LONG, JR.  
Assistant General Counsel  
Tampa Electric Company  
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and



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(850) 224-9115

ATTORNEYS FOR TAMPA ELECTRIC COMPANY



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Answer in Opposition to Allied/CFI's Motion for Authorization to Disclose Confidential Information Pursuant to Protective Agreement, filed on behalf of Tampa Electric Company, has been furnished by hand delivery (\*) or U. S. Mail this 18<sup>th</sup> day of October, 2000 to the following:

Mr. Robert V. Elias\*  
Staff Counsel  
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Florida Public Service Commission  
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