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September 6, 2000

HAND DELIVERED

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RECORDS AND REPORTING

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-style matter are the original and fifteen (15) copies of Tampa Electric Company's Motion for Reconsideration.

Please acknowledge receipt and filing of the above by stamping the duplicate cope of this letter and returning same to this writer.

Thank you for your assistance in connection with this matter.

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Sincerely,

*[Signature]*  
James D. Beasley

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- SER \_\_\_\_\_
- OTH \_\_\_\_\_

John V. Ellis  
Wayne Schiefelbein  
Marlene K. Stern

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

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: September 6, 2000

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

Pursuant to Rule 25-22.060, Florida Administrative Code, Tampa Electric Company ("Tampa Electric" or "the company") respectfully requests reconsideration of Order No. PSC-00-1530-PCO-EI (the "August 23<sup>rd</sup> Order") issued by the Commission in the above-mentioned docket on August 23, 2000, for the limited purpose of clarifying language in the August 23<sup>rd</sup> Order which appears to be inconsistent with the Commission decision as articulated during the August 1, 2000, Agenda Conference (the "Agenda Conference") and says:

1. Tampa Electric is an investor-owned electric utility subject to the Commission's jurisdiction pursuant to Chapter 366, Florida Statutes. Tampa Electric serves retail customers in Hillsborough and portions of Polk, Pinellas and Pasco Counties in Florida. The company's principal offices are located at 702 North Franklin Street, Tampa, Florida 33602.
2. The persons to whom all notices and other documents should be sent in connection with this docket are:

Angela Llewellyn  
Administrator, Regulatory Coord  
Tampa Electric Company  
Post Office Box 111  
Tampa, FL 33601  
(813) 228-1752  
(813) 228-1770 (fax)

Harry W. Long  
Chief Counsel  
TECO Energy, Inc.  
Post Office Box 111  
Tampa, FL 33601  
(813) 228-1702

Lee L. Willis  
James D. Beasley  
Ausley & McMullen  
Post Office Box 391  
Tallahassee, FL 32302  
(850) 224-9115  
(850) 222-7952 (fax)

3. At the August 1, 2000 Agenda Conference, Tampa Electric sought clarification with regard to the confidentiality of documents and other information created in the course of negotiations under the Company's Commercial Industrial Service Rider ("CISR") Rate Schedule. Order No. PSC-00-1171-CFO-EI (the "June 27<sup>th</sup> Order"), which was the subject of Tampa Electric's July 6, 2000 Motion for Reconsideration, seemed to suggest that CISR-related information generated in the course of CISR negotiations is not confidential until it is subsequently found to be so, pursuant to a motion filed under Section 366.093, Florida Statutes. The inference to be drawn was that some justification, beyond a demonstration that the information in question was the product of CISR negotiations, had to be offered to satisfy the requirements of Section 366.093. In particular, the June 27<sup>th</sup> Order stated:

"The CISR Tariff identifies a limited set of documents to be treated confidentially. Furthermore, even those documents that the tariff identifies for confidential treatment must meet the requirements for confidential treatment in Section 366.093, Florida Statutes. ...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 can not supersede the statute.” (Pages 4- 6).

4. At Page 11 of the June 27<sup>th</sup> Order, the Commission appeared to take the position that only portions of the Contract Service Agreements (“CSA”) negotiated under the CISR tariff were confidential, despite the clear statement in Tampa Electric’s Commission-approved CISR Tariff that CSAs were confidential documents. In relevant part, the June 27<sup>th</sup> Order stated:

“As noted in the response to interrogatory #1, the Commission granted CSAs confidential status in Order No. PSC-98-0854-CFO-EI, but 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 and whether some parts were confidential was never considered. Here, the rights of parties are affected and must be considered.” (Page 11).

5. At the Commission’s August 1, 2000 Agenda Conference, Tampa Electric pointed out that its CISR tariff provides, in relevant part, 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.”

Tampa Electric also pointed out that the Commission recognized, when it first approved the CISR tariff language, 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 assurance that the nature and content of their CISR discussions with Tampa Electric would be kept confidential. Yet, the June 27<sup>th</sup> Order could have been interpreted as saying CISR-related information would only be found to be confidential, if at all, after the fact and based on a newly developed document by document or line by line written justification. Such a result would have been 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. Furthermore, result would have served only to make it more difficult for Tampa Electric to capture incremental benefits for its ratepayers through CISR negotiations.

6. In the transcripts from the Commission Agenda Conference, Item 26, pages 79 through 84 (Attached as Exhibit A), the Commission clarified that the

language of the June 27th Order was not meant to establish a different and subsequent test of the confidentiality of CISR information under Section 366.093, F.S. On the contrary, the Commission pointed out that its approval of Tampa Electric's CISR tariff at the time it was first put into effect represented a Section 366.093 determination that the types of information specified in the CISR tariff do require confidential treatment:

MR. ELIAS: I think we're in the same place we are now. You have to –

COMMISSIONER JACOBS: Do you think we have that luxury?

MR. ELIAS: -- apply the standards provided for in the civil rules and balance the interests of the parties, and at the same time, to the extent the information is in the building, in the possession of this agency, apply the standard in the confidentiality statute to see if it's exempt from disclosure under the public records law.

MR. LONG: But Mr. Chairman, that ignores the point that that language [*of the CISR Tariff*], as I said before, was not adopted in isolation. The Commission made the policy determination. Those words are there because the Commission explicitly discussed the fact that the kind of information that one would need to verify that a customer

has alternatives and to verify the cost of those, the price of those alternatives, is the kind of sensitive, proprietary information that no customer in his right mind would release if there was any danger of that information being released publicly. So the policy determination that that kind of information should be kept confidential has already been made by the Commission.

CHAIRMAN DEASON: I agree with that. And if the information you file meets that policy, it will be determined to be confidential if there is a challenge. And what I'm saying is that under the terms of the tariff, the way I view it, if you represent to this Commission that this is valid CISR tariff information which meets that standard, that it would be determined to be confidential. And if there is a challenge, then they would have to demonstrate that the information you filed does not fall within that definition with the tariff, and it should be disclosed.

MR. LONG: That's our understanding of the statute and the tariff.

7. Tampa Electric respectfully suggests that the August 23<sup>rd</sup> Order perpetuates the ambiguity of the June 27<sup>th</sup> Order with regard to the points raised above,

despite the clarity of the Commission's verbal ruling at the Agenda Conference. The August 23<sup>rd</sup> Order states, in relevant part:

"TECO was unsure of the interplay of this tariff provision with; 1) Section 366.093, Florida Statutes, (which addresses the confidentiality of certain information filed with the Commission); and 2) discovery in administrative proceedings pursuant to Rules 1.280, 1.400 and other related provisions of the Florida Rules of Civil Procedure....The answer is that the tariff provision is consistent with Section 366.093, F.S., and does not obviate the need for a finding that the materials are confidential, if and when the materials are filed with the Commission. ...

The types of information which TECO must obtain during a CISR negotiation (i.e., an energy audit, information concerning the customer's existing or new incremental load, and information concerning the customer's alternative energy sources and associated prices) would appear to meet the definition of proprietary business information in Section 366.093, Florida Statutes...

If the information is filed with the Commission and TECO or its customer makes the requisite showing that the information meets the standard of the statute, the information will not be considered a public record and will be

exempt from disclosure under the public records statute....

The issue of confidentiality, as it pertains to the CSA and the other documents identified in the CISR tariff, is addresses in item #1 above.” (Pages 6-7) {Emphasis added}.

8. The Commission’s verbal determination at the August 1, 2000 Agenda Conference clearly and unambiguously established several important points:
  - a) As set forth in Tampa Electric’s CISR tariff, the CSA is a confidential document;
  - b) 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 Tampa Electric and any information developed by Tampa Electric in connection therewith, is confidential information;
  - c) The test of Section 366.093 is met by a demonstration that any documents or information in question fits into one of the categories specified in b) above; and
  - d) Anyone challenging the confidentiality of information that Tampa Electric alleges to be CISR-related must demonstrate that the information does not, in fact, fall into one of the categories specified in b) above.

9. It is vitally important that the clarity achieved at the Agenda Conference on these points not be lost in the ordering language. As Chairman Deason pointed out:

COMMISSIONER DEASON: And that is another concern, is that I'm sure that there are customers who avail themselves of this, and by definition, provide benefits to the general body of ratepayers, who are comforted by the fact that this information is being provided under a confidential basis. And I would not want to undermine that confidence that currently exists within the tariff. (tr.82)

WHEREFORE, Tampa Electric respectfully requests that the August 23<sup>rd</sup> Order be reviewed by the full Commission and clarified as set forth in Section 8 above.

Respectfully Submitted

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

and

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

ATTORNEYS FOR TAMPA ELECTRIC COMPANY

BEFORE THE  
FLORIDA PUBLIC SERVICE COMMISSION

IN RE: DOCKET NO. 000061-EI - Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company for violation of Sections 366.03, 366.06(2), and 366.07, F.S., with respect to rates offered under commercial/industrial service rider tariff; petition to examine and inspect confidential information; and request for expedited relief.

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BEFORE: CHAIRMAN J. TERRY DEASON  
COMMISSIONER E. LEON JACOBS, JR.  
COMMISSIONER LILA A. JABER

PROCEEDINGS: AGENDA CONFERENCE

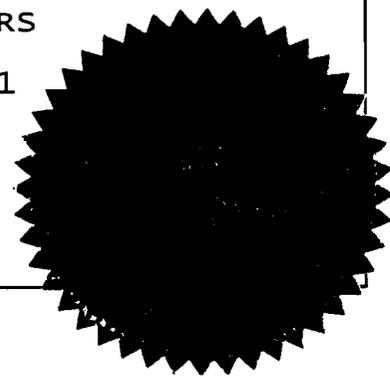
ITEM NUMBER: 26\*\*

DATE: Tuesday, August 1, 2000

PLACE: 4075 Esplanade Way, Room 148  
Tallahassee, Florida

REPORTED BY: MARY ALLEN NEEL  
Registered Professional Reporter

ACCURATE STENOGRAPHY REPORTERS  
100 SALEM COURT  
TALLAHASSEE, FLORIDA 32301  
(850)878-2221



1 back to the Commission. But for now, I proposed  
2 a stipulation that there will be at most six,  
3 and for the present time, five signatories,  
4 Mr. Hoffman and myself, Dr. Phillips,  
5 Mr. Palmer, and Mr. Koven. I propose that  
6 stipulation to TECO and Odyssey.

7 MR. LONG: We have no problem with that.

8 CHAIRMAN DEASON: Very well.

9 MR. LONG: Mr. Chairman, I would like to  
10 ask for clarification on one of the earlier  
11 points that I raised. In terms of the  
12 significance of the language in the tariff, that  
13 clearly indicates that the CSA and the materials  
14 that are generated through the CISR negotiations  
15 are confidential.

16 I think that it's important, because the  
17 company and, in this case, Odyssey and others,  
18 have relied on that language, which is not  
19 ambiguous. And I think it's important to  
20 clarify that when those documents are  
21 subsequently identified in a proceeding like  
22 this as being CISR documents or as being a CSA,  
23 that those documents are entitled to  
24 confidential treatment.

25 If the Commission wants to change its view

1 on that prospectively, that might be a matter to  
2 be handled in another proceeding, and perhaps  
3 more generically, since it involves more than  
4 just Tampa Electric. But for our purposes here,  
5 I think it's vital that the Commission provide  
6 that clarification.

7 CHAIRMAN DEASON: I think that the tariff  
8 speaks for itself. Okay? And I'm going to give  
9 you my point of view on it, and then Mr. Elias  
10 can tell me where I'm wrong. The tariff speaks  
11 for itself. The information is confidential.  
12 It is filed under such. It is presumed to be  
13 confidential. But there are certain due process  
14 rights. There are certain statutory provisions,  
15 and if a party believes that information is not  
16 confidential and does not meet the statutory  
17 standards, I presume that they are free to  
18 pursue that and that that information will be  
19 reviewed, but would be held confidential during  
20 that review process.

21 Is there a problem with that, Mr. Elias?

22 MR. ELIAS: No, with the understanding that  
23 when it's filed here, which these -- and  
24 understand that these contracts and the  
25 supporting information is not filed as a matter

1 of course with us. We only get them when  
2 there's a dispute. And when there's a dispute  
3 or when they are filed here, at that point,  
4 section 366.093, which deals with the standard  
5 for approval of confidential documents and  
6 exemptions from the public records law, comes  
7 into play.

8 CHAIRMAN DEASON: And I believe that it is  
9 incumbent upon TECO or any other utility which  
10 has a CISR tariff to identify that they are  
11 filing pursuant -- if there's a dispute, that  
12 they are filing it as confidential pursuant to  
13 the provisions within tariff, and then if  
14 there's any challenge to that, it would have to  
15 go through the normal process of determining  
16 whether it in fact is confidential.

17 I understand what Mr. Long wants. He does  
18 not want the obligation of having to go through  
19 and identify every little piece of information  
20 on an up-front basis that it should be presumed  
21 confidential pursuant to the terms of the  
22 tariff.

23 MR. LONG: That's right. And that's the  
24 basis, Mr. Chairman, on which a customer would  
25 show us the information in the first place.

1           CHAIRMAN DEASON: And that is another  
2 concern, is that I'm sure that there are  
3 customers who avail themselves of this, and by  
4 definition, provide benefits to the general body  
5 of ratepayers, who are comforted by the fact  
6 that this information is being provided under a  
7 confidential basis. And I would not want to  
8 undermined that confidence that currently exists  
9 within the tariff.

10           COMMISSIONER JABER: So --

11           COMMISSIONER JACOBS: Do we have that  
12 luxury, though? If somebody challenges that  
13 tariff under the statute, where are we then?

14           MR. ELIAS: I think we're in the same place  
15 we are now. You have to --

16           COMMISSIONER JACOBS: Do you think we have  
17 that luxury?

18           MR. ELIAS: -- apply the standards provided  
19 for in the civil rules and balance the interests  
20 of the parties, and at the same time, to the  
21 extent the information is in the building, in  
22 the possession of this agency, apply the  
23 standard in the confidentiality statute to see  
24 if it's exempt from disclosure under the public  
25 records law.

1           MR. LONG: But Mr. Chairman, that ignores  
2 the point that that language, as I said before,  
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6 discussed the fact that the kind of information  
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16 Commission.

17           CHAIRMAN DEASON: I agree with that. And  
18 if the information you file meets that policy,  
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21 that under the terms of the tariff, the way I  
22 view it, if you represent to this Commission  
23 that this is valid CISR tariff information which  
24 meets that standard, that it would be determined  
25 to be confidential. And if there is a

1 challenge, then they would have to demonstrate  
2 that the information you filed does not fall  
3 within that definition with the tariff, and it  
4 should be disclosed.

5 MR. LONG: That's our understanding of the  
6 statute and the tariff.

7 COMMISSIONER JABER: Staff, I want to  
8 acknowledge the stipulation and move staff's  
9 recommendation that the motion for  
10 reconsideration be denied. Is that what you  
11 need me to say?

12 MR. ELIAS: Yes.

13 CHAIRMAN DEASON: And can we also offer the  
14 clarification that we just discussed here  
15 concerning Mr. Long's concern about the  
16 confidentiality provision within the tariff?

17 MR. ELIAS: I believe so.

18 CHAIRMAN DEASON: Very well.

19 COMMISSIONER JACOBS: Second.

20 CHAIRMAN DEASON: It's moved and seconded.

21 All in favor say "aye."

22 COMMISSIONER JABER: Aye.

23 COMMISSIONER JACOBS: Aye.

24 CHAIRMAN DEASON: Aye. Show then that  
25 motion carries unanimously, and that then