

ORIGINAL

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Complaint of Allied Universal Corporation and)	DOCKET NO. 000061-EI
Chemical Formulators, Inc. against Tampa Electric)	FILED: February 14, 2000
Company)	
_____)	

**TAMPA ELECTRIC COMPANY’S MOTION
FOR PROTECTIVE ORDER, REQUEST FOR APPROVAL
OF PROPOSED PROCEDURES FOR A DISPOSITION OF THIS
PROCEEDING WITHOUT DISCLOSING CONFIDENTIAL
INFORMATION AND SUMMARY DISPOSITION**

Tampa Electric Company (“Tampa Electric” or “the company”) moves the Commission for: 1) entry of a protective order, 2) suspension of the procedural schedule, pending a confidential review by the Commission and Staff of certain confidential information which will demonstrate that Tampa Electric has, at all times, acted in a proper manner with regard to the matters raised in the instant complaint, and 3) summary disposition of this complaint in Tampa Electric’s favor on the basis of the above-mentioned in camera review. Tampa Electric is prepared to demonstrate the Complainant’s allegations of undue discrimination and improper conduct are utterly false. Holding the procedural schedule in abeyance pending the proposed confidential review will allow the Commission the opportunity to consider the merits of the instant complaint, save valuable Commission time and resources and afford the Commission the opportunity to preserve the confidentiality of information pertaining to a confidential commercial/industrial service rider (“CISR”) Contract Service Agreement (“CSA”), a proposed CSA, negotiations relating thereto, and other details that are considered confidential information under Tampa Electric’s Commission approved CISR tariff and, as grounds therefor, says:

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Background

1. This proceeding was commenced on January 20, 2000 by the filing of a complaint, a request to examine confidential information and a request for expedited relief, on behalf of Allied Universal Corporation (“Allied”) and Chemical Formulators, Inc. (“CFI”) against Tampa Electric. The complaint essentially alleges that one of Allied/CFI’s competitors was able to obtain favorable treatment through a negotiated CSA, and that Allied/CFI was not afforded similar treatment, to its detriment. The complaint includes many harsh and unsupported allegations. In its answer to Allied/CFI’s complaint, Tampa Electric categorically denies the various allegations of wrongdoing that Allied/CFI have alleged or insinuated.

2. The petition to review and inspect confidential information that accompanied Allied/CFI’s complaint seeks access to the confidential CSA negotiated under the CISR tariff by and between Tampa Electric and Odyssey. On February 4, 2000 Tampa Electric filed a response to that petition, explaining in detail the confidential nature of the CSA and why Allied/CFI, who professes to be a direct business competitor of Odyssey, clearly should not be afforded access to the Odyssey/Tampa Electric CSA – a document that Allied/CFI’s own pleadings acknowledge is confidential.

3. Allied/CFI’s complaint was promptly followed by three waves of discovery, filed on February 2, 2000, seeking extensive information regarding Tampa Electric’s negotiation of a CSA with Odyssey and Tampa Electric’s attempted negotiation of a CSA with Allied/CFI. This discovery is in the form of interrogatories, requests for production of documents and notice of deposition coupled with a document request for the same type of confidential information sought in the Allied/CFI requests for production.

4. Allied/CFI's aggressive discovery efforts were soon followed by their filing, on February 7, 2000, of a motion for expedited responses to discovery requests.

5. Tampa Electric is preparing and will file timely responses to these various discovery requests and to Allied/CFI's motion for expedited responses.

6. This proceeding has been assigned an extremely expedited schedule with all testimony by all parties to be filed by March 20, 2000 with the matter proceeding to hearing on April 5, 2000. In light of all of the foregoing, Tampa Electric felt the need to file this motion and request in an effort:

(a) To ensure at the outset, that confidential proprietary CSA related data is not disclosed to Allied/CFI or to anyone else but the Commission and its Staff; and

(b) To propose a procedure to enable the Commission and its Staff to satisfy themselves that Tampa Electric at all times has acted in a timely, fair and proper manner in administering its CISR tariff and in its dealings with Odyssey and Allied/CFI.

Motion for Protective Order

7. In advance of filing its responses to the various discovery requests propounded by Allied and CFI, Tampa Electric move the Commission for entry of a protective order as provided for in Rule 25-22.006(6), Florida Administrative Code. That rule provides in pertinent part that upon a showing by a utility or other person and a finding by the Commission that the material is entitled to protection, the Commission shall enter a protective order limiting discovery in the manner provided for in Rule 1.280, Florida Rules of Civil Procedure. The rule further states that the protective order shall specify how the confidential information is to be handled during the course of the proceeding and prescribe measures for protecting the information from disclosure outside the proceeding.

8. Rule 1.280(c), Florida Rules of Civil Procedure, referred to in the above referenced Commission rule, governs protective orders. This rule gives the Commission latitude to require that discovery not be had or that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters. The rule also provides for the Commission entering an order that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.

9. As Tampa Electric will show in its responses, objections and motions for protective order addressing the individual discovery requests propounded by Allied/CFI, all of the CSA related information Allied/CFI has requested is clearly entitled to confidential protection. Tampa Electric's own Commission approved CISR tariff states that this information shall be made available for review by the Commission and its Staff only. In approving such tariff provision, the Commission no doubt recognized that public disclosure of CSA related information can only do harm to the utility, its customers and the participating CISR customer or customers. This is particularly true in the instant case where we have one industrial customer from what it describes as a fiercely competitive industry seeking to obtain what it also claims to be highly sensitive business information pertaining to its own competitor. Indeed, both Allied/CFI and Odyssey insisted upon having binding nondisclosure agreements with Tampa Electric before sharing any information with Tampa Electric in CSA negotiations.

10. Based on these considerations and the concerns expressed in Tampa Electric's February 4, 2000 response to Allied/CFI's petition to examine and inspect confidential information, Tampa Electric urges the Commission to rule, under Rule 1.280(c), Florida Rules of Civil Procedure, that discovery of confidential CSA related information sought by Allied/CFI not be had and that such confidential information not be disclosed in this proceeding and that such

information be disclosed only in a designated way, i.e., through the Commission's and its Staff's own confidential review of such information.

**Request for Approval of Proposed
Procedures and Motion for Summary Disposition of this Proceeding**

11. Tampa Electric proposes the following as a means to enable the Commission and its Staff to review the type of information that is the subject of Allied/CFI's discovery requests on a confidential basis, without disclosing the information to Allied/CFI:

Tampa Electric would present to the Commission and its Staff, on a confidential basis, comparable packages of information and sworn affidavits reflecting all of the relevant negotiations between Tampa Electric and Odyssey, on the one hand, and between Tampa Electric and Allied/CFI on the other. This information would include details sufficient to allow the Commission to make a side-by-side analysis of the terms and conditions ultimately presented to Odyssey on the one hand and to Allied/CFI on the other. Tampa Electric makes this offer without conceding that there exists any requirement that all CSAs be identical, given Tampa Electric's obligation under its CISR tariff to negotiate the best deal possible for its general body of ratepayers, leaving as little ratepayer money on the table as is necessary to attract or retain at risk customers.

Tampa Electric would also present to the Commission and its Staff on a confidential basis a time line enabling the Commission and its Staff to compare the duration of the negotiation process with Odyssey and with Allied/CFI.

Tampa Electric would propose that this confidential review by the Commission and its Staff take place on an expedited basis, with the filing of all testimony and discovery in this proceeding held in abeyance and the hearing scheduled for April 5, 2000 continued pending the Commission's review of the information thus provided. Tampa

Electric proposes to file the above-mentioned information and affidavits with the Commission on March 3, 2000. At the conclusion of such review process, the Commission could either grant Tampa Electric's Motion for Summary Disposition or deny the Company's motion and reschedule the filing of testimony and a hearing.

12. Tampa Electric offers the foregoing process as a means of resolving the dilemma over satisfying the Commission and its Staff that Tampa Electric has acted in a fair and reasonable manner without disclosing confidential CSA related information.

WHEREFORE, Tampa electric urges the Commission to suspend the procedural schedule in this proceeding; enter a protective order providing that discovery not be had regarding any of the confidential CSA related information identified in Allied/CFI's various discovery requests to date or any that may be forthcoming; approve the procedures outlined herein in an effort to achieve a prompt disposition of this proceeding in a manner that does not compromise the confidentiality of CSA related information; and grant Tampa Electric's motion for summary disposition in its favor.

DATED this 14th day of February 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 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 14th day of February 2000 to the following:

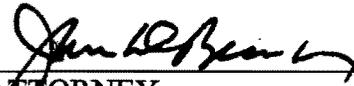
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of proposed proceuresmotion for in camera review.doc