ORIGINAL

RUTLEDGE, ECENIA, PURNELL & HOFFMAN

PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

STEPHEN A. ECENIA
RICHARD M. ELLIS
KENNETH A. HOFFMAN
THOMAS W. KONRAD
MICHAEL G. MAIDA
MARTIN P. McDONNELL
J. STEPHEN MENTON

POST OFFICE BOX 551, 32302-0551
215 SOUTH MONROE STREET, SUITE 420
TALLAHASSEE, FLORIDA 32301-1841

TELEPHONE (850) 681-6788
TELECOPIER (850) 681-6515

R. DAVID PRESCOTT
HAROLD F. X. PURNELL
MARSHA E. RULE
GARY R. RUTLEDGE

GOVERNMENTAL CONSULTANTS
MARGARET A. MENDUNI
M. LANE STEPHENS

January 13, 2004

Ms. Blanca S. Bayo, Director
Commission Clerk and Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

Re: Docket No. 000061-EI

Dear Ms. Bayo:

Enclosed herewith for filing on behalf of Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") are the following documents:

1. Original and fifteen copies of Allied/CFI's Motion to Reopen Docket No. 000061-EI and Vacate Order No. PSC-01-1003-AS-EI Approving, as Modified and Clarified, the Settlement Agreement between Allied Universal Corporation and Chemical Formulators, Inc. and Tampa Electric Company and Request for Additional Relief;

2. Original and fifteen copies of Allied/CFI's Notice of Intent to Request Specified Confidential Classification; and

3. An envelope marked "Confidential" containing copies of the documents considered confidential.

AUS
CAF
CMP
COM
CTR
ECR
GCL
OPC
MMS
SEC 1
OTH

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me. Thank you for your assistance with this filing.

Sincerely,

Kenneth A. Hoffman

KAH/rl
Enclosures
F:\USERS\ROXANNE\Allied\Bayojan13.ltr

ORIGINAL

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: January 13, 2004

ALLIED UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC.'S MOTION TO REOPEN DOCKET NO. 000061-EI AND VACATE ORDER NO. PSC-01-1003-AS-EI APPROVING, AS MODIFIED AND CLARIFIED, THE SETTLEMENT AGREEMENT BETWEEN ALLIED UNIVERSAL CORPORATION AND CHEMICAL FORMULATORS, INC. AND TAMPA ELECTRIC COMPANY AND REQUEST FOR ADDITIONAL RELIEF

Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI"), by and through their undersigned counsel, hereby request the Florida Public Service Commission ("Commission") to reopen Docket No. 000061-EI and enter a final order :

(1) Vacating Order No. PSC-01-1003-AS-EI issued April 24, 2001 approving, as modified and clarified, a Settlement Agreement between Allied/CFI and Tampa Electric Company ("TECO") (the Order Approving Settlement Agreement);

(2) Determining that the Settlement Agreement between Allied/CFI and TECO, approved as modified and clarified in the Order Approving Settlement Agreement, is unenforceable;

(3) Terminating the existing Contract Service Agreement ("CSA") between TECO and Odyssey Manufacturing Company ("Odyssey"); and

(4) Requiring Odyssey to refund to TECO or TECO's general body of ratepayers the difference between the CSA rate currently in effect for Odyssey and the new rate that the Commission approves for TECO's provision of electric service to Odyssey pursuant to this proceeding, for the period of time beginning with the effective date of Odyssey's current CSA and terminating on the date of a new Commission approved rate for Odyssey.

As grounds for this Motion, Allied/CFI states as follows:

PARTIES

1. The names and addresses of the Movants are:

Allied Universal Corporation
3901 NW 115th Avenue
Miami, FL 33178

Chemical Formulators, Inc.
5215 West Tyson Avenue
Tampa, FL 32611-3223

2. All notices, orders, pleadings, discovery and correspondence regarding this Motion should be provided to the following on behalf of Allied/CFI:

Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
P. O. Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

Daniel K. Bandklayder, Esq.
Anania, Bandklayder, Blackwell, Baumgarten, Torricella & Stein
Suite 4300 International Place
100 Southeast Second Street
Miami, Florida 33131
(305) 373-4300 (Telephone)
(305) 373-6914 (Telecopier)

3. The name and address of the remaining parties in Docket No. 000061-EI are :

Odyssey Manufacturing Company
5687 N.W. 36th Avenue
Miami, Florida 33142

Tampa Electric Company
702 North Franklin Street
Tampa, Florida 33602

4. CFI is a corporation organized and existing under the laws of the State of Florida. CFI is engaged in the business of manufacturing and selling sodium hypochlorite ("chlorine bleach"), at its manufacturing facility in Tampa, Florida. CFI distributes and sells chlorine bleach in Florida.

5. Allied is a corporation organized and existing under the laws of the State of Florida. Its principal place of business is Miami, Florida. Allied is engaged in the business of manufacturing and selling chlorine bleach and other chemicals, as well as selling chemicals manufactured by others, throughout the Southeastern United States. Allied is CFI's consultant with respect to the management and operation of CFI's Tampa manufacturing facility pursuant to a consulting agreement. Allied also operates manufacturing facilities in Miami, Florida; Fort Pierce, Florida; Ranger, Georgia; and Brunswick, Georgia.

6. Odyssey is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is in Tampa, Florida. Odyssey is engaged in the business of manufacturing and selling chlorine bleach. Since about April, 2000, Odyssey has manufactured chlorine bleach at a newly-constructed facility in Tampa, Florida.

7. TECO is an electric utility which owns and operates an electric generation, transmission, and distribution system serving a population of over 1 million persons in areas of Hillsborough, Pasco, Pinellas and Polk Counties in the State of Florida. TECO's retail operations are subject to the jurisdiction of the Commission pursuant to Chapter 366, Florida Statutes.

BACKGROUND FACTS

A. THE MANUFACTURE, SALE AND DISTRIBUTION OF CHLORINE BLEACH

8. Chlorine bleach is principally used for four purposes: (1) water and wastewater treatment; (2) swimming pool maintenance; (3) laundry and cleaning; and (4) as a general disinfectant. Chlorine bleach is produced by combining two raw materials, chlorine, usually stored in a super-cooled liquid form, and caustic soda.

9. Chlorine bleach is currently produced by three different manufacturing processes. The oldest and technically simplest process is the "batch process" in which bulk chlorine and bulk caustic soda are combined to produce a batch of bleach. This process does not involve the use of proprietary technology or equipment.

10. A second process, the "Powell process," utilizes proprietary equipment to combine chlorine and caustic soda on a controlled, continuous basis. The Powell process is presently the most widely used process to produce chlorine bleach and is presently used by both Allied/CFI and Sentry.

11. Since 1995, CFI has owned in Tampa, Florida, a chlorine bleach manufacturing plant which utilizes the Powell process.

12. The cost of raw materials - - chlorine and caustic soda - - is the most significant cost of manufacturing chlorine bleach by the batch process and the Powell process. Because the supply

of these raw materials is uncertain and because the prices of these raw materials are subject to frequent and dramatic fluctuations, chlorine bleach manufacturers who use either the batch process or the Powell process cannot obtain from their raw materials suppliers long-term contracts to purchase these raw materials at fixed prices. These chlorine bleach manufacturers are, accordingly, unable to estimate with reasonable certainty their costs to produce chlorine bleach for periods longer than the contractual commitments provided by their raw materials suppliers.

13. The third process used to manufacture chlorine bleach is the "cell process," which involves electrolysis of salt and water to produce chlorine and caustic soda, which are then combined to produce chlorine bleach.

14. The cell process requires significant electric power to electrolyze salt and water. The most important variable cost of the cell process is the cost of electric power, which accounts for approximately fifty percent (50%) of the cost to manufacture chlorine bleach by the cell process.

15. Because the cell process produces the raw materials for chlorine bleach - - chlorine and caustic soda - - from cheap and readily available raw materials - - salt and water - - manufacturers who use the cell process are immune from the supply uncertainties and the dramatic price fluctuations which manufacturers who use the Powell process confront. This immunity from supply uncertainties and dramatic fluctuations in the price of raw materials enables chlorine bleach manufacturers who use the cell process to eliminate their production costs accurately for periods of years into the future.

B. TECO'S CISR TARIFF

16. On August 10, 1998, the Commission issued Order No. PSC-98-1081-FOF-EI approving a Commercial Industrial Service Rider ("CISR") and Pilot Study Implementation Plan

for TECO (the "CISR Order"). The CISR Tariff authorized TECO to negotiate a discount on base energy and/or base demand charges with commercial/industrial customers who could demonstrate that they had viable alternatives to taking electric service from TECO (so-called "at-risk load"). Under the order approving TECO's CISR Tariff and pursuant to TECO's implementing Tariff Sheet No. 6.710, a commercial/industrial service customer desiring service under the CISR Tariff is required to provide TECO, inter alia:

a. A legal attestation or affidavit stating that, but for the application of the CISR Tariff Rider, the load would not be served by TECO; and

b. Documentation demonstrating that the applicant has a viable lower cost alternative to taking service from TECO.

17. The CISR Order emphasized that the proposed CISR Tariff was approved to authorize TECO to attempt to negotiate discounted rates that would retain or attract the load of the CISR customer "in the interest of the general body of ratepayers" so long as the negotiated discount allowed TECO to recover its incremental costs of service plus a contribution to fixed costs. CISR Order, 98 F.P.S.C. 8:153, 154-155.

18. An applicant that met the eligibility criteria under the CISR Order, as determined by TECO, would then enter into a Contract Service Agreement ("CSA") for a discounted rate. TECO carried the burden of proof that its "decision to enter into a particular CSA was made in the interest of the general body of ratepayers."[1] Should the Commission find that TECO's decision to enter into a particular CSA was not prudent, the revenue difference between the standard rate and the CISR

[1]CISR Order, 98 F.P.S.C. 8:153, 155.

rate could be imputed to TECO.

C. THE TECO/ODYSSEY CONTRACT SERVICE AGREEMENT

19. In the summer of 1998, Odyssey's affiliate, Sentry Industries, Inc. ("Sentry"), pursued negotiations with TECO for the purpose of securing a discounted rate under the CISR Tariff. During the discussions between TECO and Sentry/Odyssey and as required under the CISR Order, Odyssey provided the affidavit of its president, Stephen W. Sidelko, which attested to the purported fact that:

> If Odyssey is unable to obtain a rate of four cents per kilowatt hour or less from Tampa Electric Company, Odyssey will have no alternative but to locate its manufacturing facility in a different electric service area where it can obtain such a rate.

See, Affidavit of Stephen W. Sidelko dated August 5, 1998, and internal memo written by TECO general manager Patrick Allman dated August 6, 1998, attached hereto as Composite Exhibit A. In October 1998, pursuant to the CISR Order, Odyssey and TECO entered into a CSA. Under the TECO/Odyssey CSA, Odyssey was required to pay a base rate of [redacted] per kwh, a rate well below TECO's applicable standard tariffed rate.

20. After securing the [redacted] per kwh discounted CISR rate from TECO, Odyssey built a cell process chlorine bleach manufacturing plant in Tampa that placed Odyssey in direct competition with Allied's existing chlorine bleach manufacturing plant in Tampa which utilizes the Powell process.

21. In late 1998, to effectively compete with Odyssey's new plant, Allied/CFI undertook planning and preparations to construct a proposed chlorine bleach manufacturing facility in Tampa which used the cell process technology. In furtherance of this plan, in early April 1999, Allied/CFI

approached TECO to negotiate a discounted CISR rate for electrical power for its proposed new cell process manufacturing plant in Tampa. Allied/CFI advised TECO's representatives that Allied/CFI required the same rate for electrical power that Odyssey obtained, in order to effectively compete with Odyssey in the Tampa chlorine bleach market.

22. Between May and August of 1999, Allied/CFI submitted to TECO all of the documentation necessary to establish that Allied/CFI met the eligibility requirements for discounted rates under the CISR Tariff.

23. On October 18, 1999, TECO advised Allied/CFI that TECO would consider entering a CSA with Allied/CFI at a rate more than [redacted] higher than that requested by Allied/CFI.

24. The rates and terms that TECO proposed to Allied/CFI were far less favorable than Odyssey's rates and terms. Allied/CFI estimates that the rates and terms proposed by TECO would have required Allied/CFI to pay approximately [redacted] more for electricity than Odyssey would pay over the ten-year term of the CSA. TECO's proposal was also less favorable than terms received by Odyssey with respect to several other items, including, but not limited to, site preparation costs, power management systems, escalation rates, curtailability and off peak/on peak usage rates.

25. On January 20, 2000, Allied/CFI filed a Complaint against TECO with the Commission, asserting, among other things, that TECO's actions in granting preferential rates and terms to Odyssey, while refusing to make the same rates and terms available to Allied/CFI, constituted unlawful rate discrimination in violation of Sections 366.03, 366.06(2) and 366.07, Florida Statutes. Allied/CFI's Complaint was assigned Docket No. 000061-EI.

26. During the formal administrative hearing process before the Commission, Odyssey filed the prefiled direct testimony of Mr. Sidelko who addressed his sworn affidavit submitted to

TECO for the purpose of securing a specific CISR rate of [redacted] per kwh. Mr. Sidelko testified as follows:

> Q. Were you required to furnish a sworn affidavit to TECO?
>
> A. I was, and I did. The affidavit confirmed that our choice of a site for our manufacturing facility was largely dependent upon the electric service rate for that location, because electricity comprises half of Odyssey's variable manufacturing costs. Further, the affidavit provided that if we were unable to obtain a certain rate, Odyssey would have no alternative but to locate its plant in a different electric service area where it could obtain a satisfactory rate.
>
> Q. Did Odyssey and TECO reach an agreement?
>
> A. Yes. On September 4, 1998, Odyssey executed a Contract Service Agreement. We received the Contract as executed by TECO in late September, 1998. I will sponsor the executed contract as Exhibit SWS-1. An easement in the substation site was later conveyed by Odyssey to TECO.
>
> Q. Would Odyssey have agreed to receive service from TECO at a rate higher than that provided under the CISR?
>
> A. No.
>
> Q. Why is that?
>
> A. It would not have made good business sense. Odyssey is a for profit company, and, as its CEO, my job is to ensure that our investors achieve an acceptable return on investment. Further, the condition regarding the electric rate ser forth in our lender's loan commitment would not have been satisfied.

See, pages 19-20, copy of prefiled direct testimony of Stephen W. Sidelko filed June 28, 2000, in Docket No. 000061-EI, attached hereto as Exhibit B.

27. In February 2001, nearly two years after Allied/CFI first sought to obtain a CSA that would enable Allied/CFI to compete with Odyssey in the Tampa chlorine bleach market, TECO and

Allied/CFI entered into a settlement of the Commission action. Allied/CFI justifiably relied on the sworn affidavit and testimony of Mr. Sidelko that Odyssey required a [redacted] per kwh rate, without which Odyssey would have no alternative other than to locate its plant in an area where it could obtain a [redacted] per kwh rate, and that Odyssey's lender required said rate, in making its ultimate decision to settle the Complaint filed by Allied/CFI in Docket No. 000061-EI.

28. Under the settlement, TECO agreed to enter a CSA with Allied/CFI on essentially the same terms as those given to Odyssey. The Commission approved the Settlement Agreement, as modified and clarified, in the Order Approving Settlement Agreement, a copy of which is attached hereto as Exhibit C.

D. ALLIED/CFI'S CIRCUIT COURT ACTION AGAINST ODYSSEY AND SENTRY

29. On November 19, 2001, Allied and CFI filed a civil action against Odyssey and Sentry in the Circuit Court of the Eleventh Judicial Circuit, In and For Miami-Dade County, Florida, Case No. 01-27699-CA-25. The Amended Complaint states causes of action against Odyssey and/or Sentry for Contract, Combination and Conspiracy in Restraint of Trade (Count I); Attempt to Monopolize the Tampa Chlorine Bleach Market (Count II); Conspiracy to Monopolize (Count III); Intentional Interference with Business Relationships (Count IV) and Unfair Competition (Count V).

30. TECO recently offered Allied/CFI a CISR rate consisting of an initial base rate of [redacted] per mwh for Allied/CFI's proposed cell plant.

31. In the circuit court proceeding, Mr. Sidelko contradicted his sworn affidavit provided to TECO and sworn direct testimony filed with the Commission by stating under oath that:

(a) At the time he submitted his affidavit to TECO, he had not identified a specific

electric rate that was necessary to make Odyssey's proposed plant economically feasible;

(b) It was TECO, not Odyssey, that proposed a [redacted] per kwh electric rate.

(c) The [redacted] per kwh rate included in his affidavit and referred to in his testimony was not important to Mr. Sidelko;

(d) Odyssey could operate its Tampa plant profitably if it had an electric rate of [redacted] per megawatt hour; and

(e) He did not know if Odyssey's Tampa plant would have been feasible had TECO offered Odyssey a CISR rate of [redacted] per megawatt hour, plus taxes.

See, copy of pages 187, 192, 205-06, 245 and 248-50 of deposition of Stephen Sidelko taken in Dade County Circuit Court Case No. 01-27699-CA-25, attached hereto as Exhibit D.

ARGUMENT

32. Florida courts and this Commission have long recognized specific exceptions to the doctrine of administrative finality. Generally speaking, the Commission has inherent authority to modify its prior orders where there is a demonstration by an injured party that the Commission's prior order was predicated on fraud, deceit, surprise, mistake, or inadvertence; where there is a demonstrated public need or interest; or, where there is otherwise a substantial change in circumstances. Russell v. Department of Business and Professional Regulation, 645 So.2d 117, 119 (Fla. 1st DCA 1994); Reedy Creek Utilities v. Florida Public Service Commission, 418 So.2d 249 (Fla. 1982); Richter v. Florida Power Corp., 366 So.2d 798, 800 (Fla. 2nd DCA 1979); Order No. 25668, 98 F.P.S.C. 2:24, 37 (February 3, 1992).

33. The facts as alleged herein demonstrate that TECO was misled by Odyssey in granting Odyssey a CISR rate of [redacted] per kwh; that Mr. Sidelko's sworn affidavit submitted

to TECO and sworn testimony filed in Docket No. 000061-EI falsely portrayed a requirement on the part of Odyssey of a need to secure a [redacted] per kwh rate failing which Odyssey would locate its proposed plant in a service area of another utility where it could secure such a rate; and that a [redacted] per kwh rate was required to make Odyssey's proposed plant financially feasible. Allied/CFI relied on these sworn statements in deciding to enter into the above-referenced Settlement Agreement and dismiss its Complaint in Docket No. 000061-EI.

34. Based on the foregoing, Allied/CFI submits that TECO was falsely or fraudulently induced to enter into a CSA with Odyssey at a rate of [redacted] per kwh and that Allied/CFI was falsely or fraudulently induced to dismiss its Complaint in Docket No. 000061-EI and enter into the Settlement Agreement approved, as modified and clarified, by the Order Approving Settlement Agreement. The Settlement Agreement includes a provision in which Allied/CFI agreed to "assert no further challenge, before the PSC, to the rates, terms and conditions for electric service provided by TECO to Odyssey and set forth in the TECO/Odyssey CSA." Allied/CFI respectfully submits that the false, misleading and/or fraudulent sworn statements of Odyssey's President, Mr. Sidelko, demonstrate and justify a determination by the Commission that TECO, Allied/CFI and the Commission were misled by the false, misleading and/or sworn statements of Odyssey's President, Mr. Sidelko.

35. In addition, the sworn deposition testimony of Mr. Sidelko in the circuit court case contradicting the sworn affidavit provided by Mr. Sidelko to TECO and the sworn prefiled direct testimony filed in Docket No. 000061-EI constitutes a substantial change in circumstances that led to TECO's granting of the [redacted] per kwh CISR rate to Odyssey and Allied/CFI's reliance thereon in dismissing its complaint with the Commission and entering into the Settlement

Agreement. Further, TECO and its general body of ratepayers have been harmed by Odyssey's false, misleading and/or fraudulent sworn statements which resulted in TECO's decision to grant Odyssy a CISR rate of [redacted] per kwh that was not proposed by Odyssey and was not required by Odyssey to insure that Odyssey would not locate its proposed plant in the service area of another utility.

36. Finally, based on the significant discrepancy between the rate TECO offered Allied/CFI, i.e., [redacted] per mwh, and the rate at which TECO provides electricity to Odyssey, i.e., an initial base rate of [redacted] per mwh as of January 1, 2000 (with a [redacted]), Allied/CFI believes that Odyssey's rate is insufficient to cover TECO's incremental cost to serve Odyssey and, therefore, is contrary to the interests of TECO and its ratepayers.

37. The undersigned counsel for Allied/CFI has conferred with counsel for Odyssey and TECO and is authorized to represent that Odyssey and TECO oppose this Motion.

WHEREFORE, based on the foregoing facts and exhibits, Allied/CFI respectfully requests that the Commission reopen Docket 000061-EI and conduct such administrative proceedings as may be necessary and appropriate as determined by the Commission, and enter a Final Order:

(1) Vacating Order No. PSC-01-1003-AS-EI approving, as modified and clarified, the Settlement Agreement between Allied/CFI and TECO;

(2) Determining that the Settlement Agreement between Allied/CFI and TECO, approved as modified and clarified in Order No. PSC-01-1003-AS-EI, is unenforceable;

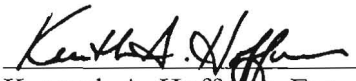
(3) Terminating the existing Contract Service Agreement between TECO and Odyssey;

(4) Requiring Odyssey to refund to TECO or TECO's general body of ratepayers the

difference between the CSA rate currently in effect for Odyssey and the new rate that the Commission approves for TECO's provision of electric service to Odyssey pursuant to this proceeding, for the period of time beginning with the effective date of Odyssey's current CSA and terminating on the date of a new Commission approved rate for Odyssey; and

(5) Granting such further relief as deemed just and appropriate by the Commission.

Respectfully submitted,



Kenneth A. Hoffman, Esq.
J. Stephen Menton, Esq.
Rutledge, Ecenia, Purnell & Hoffman, P.A.
Post Office Box 551
Tallahassee, FL 32302
(850) 681-6788 (Telephone)
(850) 681-6515 (Telecopier)

Daniel K. Bandklayder, Esq.
Anania, Bandklayder, Blackwell, Baumgarten,
Torricella & Stein
Suite 4300 International Place
100 Southeast Second Street
Miami, Florida 33131
(305) 373-4300 (Telephone)
(305) 373-6914 (Telecopier)

Attorneys for Allied Universal Corporation
and Chemical Formulators, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by Hand Delivery(*) or U.S. Mail, this 13th day of January, 2004, to the following:

James D. Beasley, Esquire
Ausley & McMullen
227 South Calhoun Street
Tallahassee, FL 32301

Wayne Schiefelbein, Esquire
Rose, Sundstrom & Bentley
2548 Blairstone Pines Drive
Tallahassee, FL 32301

Marlene Stern, Esquire(*)
Florida Public Service Commission
Division of Legal Services
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Kenneth A. Hoffman, Esq.

allied\petition

AFFIDAVIT OF STEPHEN W. SIDELK

STATE OF FLORIDA)
) ss
COUNTY OF BROWARD)

Before me, the undersigned authority, personally appeared Stephen W. Sidelko, who after being duly sworn, deposes and says:

1. My name is Stephen W. Sidelko, and I am the President and a member of the Board of Directors of Odyssey Manufacturing Co. ("Odyssey").

2. As of July 27, 1998, I have been in the process of determining where to construct Odyssey's chlorine manufacturing facility.

3. Odyssey's choice of a site for its chlorine manufacturing facility is largely dependent upon the electric service rate for the particular location because electricity comprises half of Odyssey's variable manufacturing costs.

4. If Odyssey is unable to obtain a rate of [redacted] cents per kilowatt hour or less from Tampa Electric Company, Odyssey will have no alternative but to locate its manufacturing facility in a different electric service area where it can obtain such a rate.

FURTHER, AFFIANT SAITH NAUGHT.

STATE OF FLORIDA)
) ss
COUNTY OF BROWARD)

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State aforesaid and in the County aforesaid to take oaths, the foregoing instrument was sworn to before me by STEPHEN W. SIDELKO, who is personally known to me or who has produced Fla. Dr. Lic. S342791513270 as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 5th day of August, 1998.

Dorothy P. Cassidy
Notary Public

Dorothy P. Cassidy

My Commission Expires: 3/11/02

DOROTHY P CASSIDY
STATE OF FLORIDA NOTARY PUBLIC
My Comm Exp 3/11/2002
No. CC 719206
[ ] Personally Known [X] Other I.D

EXHIBIT
PHA-25
MR 12/4/00

FTL:344314:1

PLAINTIFF'S EXHIBIT
SS 4

EXHIBIT
Composite
A

Memorandum of Patrick H. Allman
dated August 31, 1998

(Confidential)

BEFORE THE FLORIDA PUBLIC SERVICE COMMISION

In re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company.	DOCKET NO. 000061-EI Filed: June 28, 2000

PREFILED DIRECT TESTIMONY OF STEPHEN W. SIDELKO

Wayne L. Schiefelbein
Wiggins & Villacorta, P.A.
2145 Delta Boulevard (32303)
Suite 200
Post Office Drawer 1657
Tallahassee, Florida 32302
(850) 385-6007 Telephone
(850) 385-6008 Facsimile

Counsel for
Odyssey Manufacturing Company

expended on providing TECO with information to assure that the site was suitable for the utility's use as a substation.

We agreed to a long term contract for electric power, which benefited TECO, and Odyssey as well, since such rate stability would help Odyssey offer price stability. We also agreed to pay a penalty for periods during which our power consumption did not meet a certain minimum threshold.

Q. Were you required to furnish a sworn affidavit to TECO?

A. I was, and I did. The affidavit confirmed that our choice of a site for our manufacturing facility was largely dependent upon the electric service rate for that location, because electricity comprises half of Odyssey's variable manufacturing costs. Further, the affidavit provided that if we were unable to obtain a certain rate, Odyssey would have no alternative but to locate its plant in a different electric service area where it could obtain a satisfactory rate.

Q. Did Odyssey and TECO reach an agreement?

A. Yes. On September 4, 1998, Odyssey executed a Contract Service Agreement. We received the Contract as executed by TECO in late September, 1998. I will sponsor the executed contract as Exhibit SWS-1. An easement in the substation site was later conveyed by Odyssey to TECO.

Q. Would Odyssey have agreed to receive service from TECO at a rate higher than that provided under the CISR?

A. No.

Q. Why is that?

A. It would not have made good business sense. Odyssey is a for profit company, and, as its CEO, my job is to ensure that our investors achieve an acceptable return on investment. Further, the condition regarding the electric rate set forth in our lender's loan commitment would not have been satisfied.

Q. When did you first approach Mr. Allman about employing him?

A. The subject of his potential employment by Odyssey never arose in any communication whatsoever between Mr. Allman and me or any other representative of Odyssey prior to the September 4, 1998 execution of the Contract Service Agreement. We first offered the General Manager position to a former Occidental Chemical employee in the fall of 1998. Our first candidate rejected our offer around Thanksgiving, 1998. Our first contact with Mr. Allman regarding his possible employment was around Christmas, 1998, when I telephoned Mr. Allman and asked if he would be interested in the position of General Manager for Odyssey. He expressed interest, and I made a formal employment offer to him shortly thereafter. It took about two weeks to negotiate a mutually acceptable employment agreement. Mr. Allman then gave three weeks notice to TECO, and his last day of employment with the utility was January 31, 1999.

Q. Did you ever offer any personal reward to Mr. Allman for his efforts during the CISR negotiations?

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: 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.	DOCKET NO. 000061-EI ORDER NO. PSC-01-1003-AS-EI ISSUED: April 24, 2001

The following Commissioners participated in the disposition of this matter:

E. LEON JACOBS, JR., Chairman
LILA A. JABER
BRAULIO L. BAEZ

ORDER APPROVING SETTLEMENT AGREEMENT

BY THE COMMISSION:

On January 20, 2000, Allied Universal Corporation and Chemical Formulators, Inc. (Allied) filed a formal complaint against Tampa Electric Company (TECO). The complaint alleges that: 1) TECO violated Sections 366.03, 366.06(2), and 366.07, Florida Statutes, by offering discriminatory rates under its Commercial/Industrial Service Rider (CISR) tariff; and, 2) TECO breached its obligation of good faith under Order No. PSC-98-1081A-FOF-EI. Odyssey Manufacturing Company (Odyssey) and Sentry Industries (Sentry) are intervenors. They are separate companies but have the same president. Allied, Odyssey and Sentry manufacture bleach.

On March 22, 2001, Allied and TECO filed a Settlement Agreement, which is attached to this Order as Attachment A and is incorporated herein by reference. Odyssey and Sentry are not parties to the Agreement.

The Commission has jurisdiction under Sections 366.04, 366.06, and 366.07, Florida Statutes.

I. Summary of the Settlement Agreement

Each paragraph of the Settlement Agreement is summarized below.

Paragraph 1

All prefiled testimony and deposition testimony shall be moved into evidence to serve as a basis for the Commission's prudence review. The testimony and depositions shall remain subject to previously issued orders on confidential classification. Nothing shall limit or abridge the right of any party to petition the Commission to unseal or declassify the evidence.

Paragraph 2

TECO and Allied shall execute a Contract Service Agreement (CSA) in accordance with TECO's CISR tariff. The rates, terms and conditions of the CSA shall be substantially the same as those in Odyssey's CSA, provided Allied opens a plant within two years of the date the Settlement Agreement is approved by the Commission. The CSA shall include a force majeure clause for which confidentiality, pursuant to Section 366.093, Florida Statutes, will be requested.

Paragraph 3

Allied shall assert no further challenge against Odyssey's CSA before the Commission.

Paragraph 4

Order No. PSC-98-1081-FOF-EI, issued August 10, 1998 in Docket No. 980706-EI, allows TECO to request a prudence review of its CSA from the Commission. In light of this provision, TECO requests that the Commission make the following findings of fact:

A. Odyssey's CSA and Allied's CSA provide benefits to TECO's ratepayers and therefore both CSAs are in the best interests of ratepayers.

B. TECO's decision to enter a CSA with Odyssey and the CSA itself are prudent, within the meaning of Order No. PSC-98-1081-FOF-EI, in so far as they provide benefits to the ratepayers.

C. TECO's decision to enter a CSA with Allied and the CSA itself are prudent, within the meaning of Order No. PSC-98-1081-FOF-EI, in so far as they provide benefits to the ratepayers.

Paragraph 5

Allied agrees not to contest the findings of fact requested in ¶4, above, and the rulings requested in ¶7, below, provided that no findings of fact or conclusions of law shall be made with respect to the allegations of Allied's Complaint.

Paragraph 6

Allied's Complaint shall be deemed withdrawn, with prejudice, upon execution of the Settlement Agreement and issuance of an order approving the Agreement by the Commission.

Paragraph 7

The following rulings shall be included in the Commission's order approving the Settlement Agreement:

A. The Commission shall not entertain any further challenge to Odyssey's existing CSA and Allied's proposed CSA.

B. In light of the findings that both CSAs are prudent, TECO shall not have to report the

potential effect of the two CSAs on revenues in its monthly surveillance reports.

C. The order approving the Settlement will have no precedential value.

D. The parties shall abide by the General Release Agreements executed among them.

Paragraph 8

Allied shall execute the General Release Agreement attached to the Settlement. Except as provided in ¶3, above, the Settlement Agreement shall not impair any claims that Allied may have against Odyssey and Sentry.

Paragraph 9

In any subsequent litigation against Odyssey or Sentry, Allied will attempt to avoid imposing unduly burdensome discovery requests on TECO.

Paragraph 10

TECO will not disclose the force majeure provision of the Settlement to Odyssey or Sentry unless the Commission authorizes or Allied approves of such disclosure.

Paragraph 11

The Settlement Agreement, and the attachments (Allied's CSA, the force majeure provision, and the General Release Agreements) constitute the entire Settlement Agreement and may only be modified in writing.

General Release

The General Release states that, as an inducement to TECO, Allied releases TECO from any claims, liabilities, promises, damages, attorney's fees, debts (and a long list of similar items), related to the CISR tariff, and TECO's dealings with Odyssey, Sentry and Allied. The

release also covers all as yet unforeseen liabilities. The release applies for all time up until the date it is signed.

II. Intervenors' Comments

Odyssey and Sentry filed comments on the Settlement Agreement on March 20, 2001. The Intervenors note that they were excluded from the settlement negotiations, and have not been permitted to see the CSA or force majeure provision. Their comments on the Settlement Agreement are provided below.

Paragraph 2

This paragraph states that Allied's CSA will be "substantially identical" to Odyssey's. The phrase "substantially identical" is imprecise and therefore inappropriate. The Intervenors state that the Commission should not have to determine what the phrase means.

Paragraph 5

The Intervenors note that this paragraph provides that Allied agrees not to contest certain findings of fact, rulings and determinations, "provided that no findings of fact or conclusions of law shall be made with respect to the allegations of Allied/CFI's Complaint in this proceeding." The Intervenors maintain that more precision as to what allegations are being referred to is needed for this paragraph to have any coherence.

Paragraph 7(b)

The Intervenors object to the requirement that the Settlement Agreement shall have no precedential value. They argue that this requirement cannot be reconciled with the provisions requiring substantive findings of fact, conclusions of law and other assurances intended to bind the parties and the Commission. The Intervenors claim that ¶7(b) "is an effort to accord some sort of second-rate status to a Commission order in this case, which would not be fairly applied to other comparable

Commission orders." Given the possibility of litigation related to this docket in courts, the Intervenors believe that ¶7(b) will complicate litigation because judges will not know what significance to assign to the order.

Paragraph 10

The Intervenors object to the nondisclosure of the force majeure clause. They state that they suspect the clause may deviate substantially in scope from the traditional type of force majeure clause. The Intervenors state that they object to providing greater protection to Allied's CSA than that which was provided to Odyssey's CSA.

The Intervenors state that if the Commission determines that the force majeure clause should not be disclosed to them, then they will oppose the provisions listed below.

A. Paragraph 1 - The provision that an evidentiary record be created is objectionable because denies Intervenors the right to cross-examine witnesses and to object on other relevant grounds.

B. Subparagraphs 4(a) and (c) - These subparagraphs allow for findings of fact favorable to Allied's CSA.

C. Subparagraph 7(a) - This subparagraph attempts to foreclose further challenges to Allied's CSA.

Between the filing of these comments and the April 3, 2001, Agenda Conference, the Intervenors were able to see redacted copies of Allied's CSA and the force majeure provision. At the Agenda Conference, the Intervenors had additional comments, some of which related to these documents.

First, the Intervenors claim that the Settlement Agreement forecloses their ability to challenge Allied's CSA. The Intervenors claim that such foreclosure denies them a point of entry. They note, however, that if they were to challenge the CSA,

it would only be to those portions which they have not yet been able to see.

Second, with respect to creation of the evidentiary record, the Intervenors object to admission into the record of "scandalous, irrelevant, and defamatory allegations" against Odyssey made by Mr. Namoff and Mr. Palmer in their depositions.

III. Decision

In accordance with discussions at the Agenda Conference and meetings with the parties prior to the Agenda Conference, our approval of the Settlement Agreement is contingent on acceptance by the parties of the clarifications and modifications discussed below. TECO and Allied agreed to accept these clarifications and modifications. Odyssey objected but agreed to accept them.

Paragraph 1 of the Agreement requires that an evidentiary record be created from the prefiled testimony, depositions and the exhibits referenced in each of those documents. The Agreement shall be modified to include all of TECO's discovery responses in the evidentiary record, because those responses are needed to support a finding that Allied's and Odyssey's CSA's are prudent. Paragraph 11 of the Settlement Agreement requires that all modifications to the Agreement be in writing, however, Allied and TECO waived the writing requirement with respect to the inclusion of all of TECO's discovery responses in the evidentiary record.

Also, with respect to the evidentiary record, TECO, Allied and the Intervenors shall each submit requests for confidential clarification of the information in the evidentiary record which each party seeks to protect. This includes deposition transcripts. The requests shall be filed within 21 days of April 3, 2001, the date of our vote on the Settlement Agreement. Consistent with Rule 25-22.006, Florida Administrative Code, all parties will have an opportunity to respond to or supplement any request for confidential treatment.

Finally, the parties shall have the opportunity to file motions to strike information in the evidentiary record that they believe violates the rules of evidence.

Paragraph 4 of the Settlement Agreement requires this Commission to find that Allied's and Odyssey's CSAs are prudent and provide benefits to the general body of ratepayers. Subparagraph 4(a) appears duplicative in light of subparagraphs (b) and (c). TECO believes that each subparagraph demonstrates that this Commission has actively supervised TECO's implementation of the CISR tariff. With that clarification, the paragraph is acceptable. With the inclusion in the evidentiary record of all of TECO's discovery responses, there is sufficient information to conclude that both Odyssey and Allied are "at risk" within the meaning of Order No. PSC-98-1081-FOF-EI, issued August 10, 1998, in Docket No. 980706-EI. Further, based on the RIM analyses provided by TECO, there is sufficient information to conclude that the rates offered to Odyssey and Allied exceed the incremental cost to serve those customers. Accordingly, the requested findings are supported by competent substantial evidence and are approved. Further, the parties agree that the correct order number in the first line of paragraph 4 is PSC-98-1081-FOF-EI.

Paragraph 5 seems internally contradictory. The first clause requires Allied to agree not to contest the factual findings contained in paragraph 4 and paragraph 7 (a determination that the Commission will not entertain any further challenge to either CSA). The second clause says Allied is only required to agree to the findings of fact and rulings listed in the first clause as long as those findings of fact and conclusions of law do not pertain to Allied. Allied explains that it believes the findings and rulings in paragraphs 4 and 7 do not address the allegations of Allied's Complaint. We take no position on whether the findings and rulings in paragraphs 4 and 7 address the allegations in Allied's Complaint, but with Allied's clarification we find that the paragraph is acceptable.

With respect to subparagraph 7(a), TECO and Allied clarified that the importance of this paragraph is to settle, for all time, the prudence of Allied's and Odyssey's CSAs with respect to matters within our jurisdiction. We agree that, based on the findings in this Order, this is appropriate. This is consistent with our past decisions concerning prudence and the doctrine of administrative finality. This does not foreclose any other party from asserting any right it may have concerning the CISR tariff.

With respect to subparagraph 7(b), the provision is consistent with previous Commission actions and is acceptable. We recently accepted a similar provision for Gulf Power Company's two executed CSAs pursuant to its CISR tariff. We found that Gulf adequately demonstrated that its two CSAs were prudent, and it is therefore no longer necessary for Gulf to report the revenue shortfall for the existing CSAs in the monthly surveillance reports. See Order No. PSC-01-0390-TRF-EI, issued February 15, 2001. We reference this Order only to illustrate that we made a similar determination with respect to reporting the revenue shortfall for Gulf's CSAs. TECO is still required to provide the revenue shortfall associated with any subsequently executed CSAs until such time as they have been subject to a prudence review by the Commission.

Subparagraph 7(c) deals with the precedential value of the Settlement Agreement. The parties state that under this subparagraph, the Settlement Agreement itself, not the Order approving the Settlement Agreement, has no precedential value. With this clarification, we find the Settlement Agreement to be acceptable.

Subparagraph 7(d) concerns the General Release provision of the Settlement Agreement. The parties agree that we can only enforce the General Release to the extent that a party brings claims before the Commission which the Commission determines are within the Commission's jurisdiction. With this clarification, we find the Settlement Agreement to be acceptable.

In paragraph 10, TECO promises to Allied that it will not disclose the force majeure provision to Odyssey or Sentry unless Allied approves disclosure or we approve disclosure. Since the filing of the Settlement Agreement, Allied provided a redacted copy of the force majeure provision to the Intervenors.

Because the force majeure provision is part of the Settlement Agreement, it was filed with our Division of Records and Reporting but with a Notice of Intent to Seek Confidential Classification. As required by Rule 25-22.006, Florida Administrative Code, TECO must file a Request for Confidential Classification that explains how the force majeure provisions meets the criteria in Section 366.093, Florida Statutes. Further, the parties recognize that confidential treatment is only available after the requisite

showing pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code.

Paragraph 11 requires that any modifications to the Settlement Agreement be written. With respect to the addition of TECO's discovery responses to the evidentiary record and the correction to the Order Number referenced in Paragraph 4, the parties waive the requirement of Paragraph 11 that all modifications to the Settlement Agreement must be in writing. With this modification, we find the Settlement Agreement is acceptable.

The Intervenors argue that the Settlement Agreement prevents them from ever challenging Allied's CSA. The Intervenors have consistently argued that Allied has no standing to challenge Odyssey's CSA. If this is true, then based on their own legal arguments, Odyssey has no standing to challenge Allied's CSA. Our findings in this Order that the Odyssey and Allied CSAs are prudent are consistent with those typically made in a prudence review. Moreover, the finding that Allied's CSA is prudent does not affect Odyssey's substantial interests.

The Settlement Agreement appears to be a reasonable resolution of the issues raised in Allied's Complaint. Further, the findings of prudence with respect to these CSAs are supported by the record evidence in this proceeding. For these reasons, and consistent with the discussion in this Order, we find that the Settlement Agreement should be approved.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Settlement Agreement between Tampa Electric Company and Allied Universal Corporation and Chemical Formulators, Inc. is approved as modified and clarified in the body of this Order. It is further

ORDERED that all prefiled testimony and exhibits filed in this docket, all depositions and associated exhibits taken in this docket, and all discovery responses provided by Tampa Electric Company shall be admitted as evidence. It is further

ORDERED that any Requests for Confidential Classification of material in the evidentiary record created in this Order shall be filed no later than April 24, 2001. It is further

ORDERED that this docket shall remain open.

By ORDER of the Florida Public Service Commission this 24th day of April, 2001.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

MKS

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee,

Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water and/or wastewater utility by filing a notice of appeal with the Director, Division of Records and reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

ATTACHMENT A

SETTLEMENT AGREEMENT

This agreement is made between Allied Universal Corporation, a Florida corporation ("Allied"), Chemical Formulators, Inc., a Florida corporation ("CFI"), (hereinafter jointly referred to as "Allied/CFI"), and Tampa Electric Company ("TECO"), a Florida public utility corporation, effective March 2, 2001.

WHEREAS, Allied/CFI and TECO are parties to that certain matter pending before the Florida Public Service Commission ("PSC"), styled "In Re: Complaint by Allied Universal Corporation and Chemical Formulators, Inc. against Tampa Electric Company, etc.," Docket No. 000061-EI ("the PSC Litigation"); and

WHEREAS, as part of the relief it has sought in the PSC litigation, Allied/CFI has requested that the PSC suspend the rates for electric service provided by TECO to Allied/CFI's business competitor, Odyssey Manufacturing Company ("Odyssey"); and

WHEREAS, Odyssey and its affiliate, Sentry Industries, Inc. ("Sentry"), have intervened in the PSC litigation to request that the PSC

uphold or otherwise approve Odyssey's rates, terms and conditions for electric service from TECO; and

WHEREAS, Allied/CFI and TECO desire to resolve their differences and conclude the PSC litigation on terms which do not affect Odyssey's rates, terms and conditions for electric service from TECO;

NOW, THEREFORE, Allied/CFI and TECO hereby agree to conclude the PSC litigation on the following terms:

1. All prefiled testimony, deposition testimony, and exhibits thereto, which have been filed in the PSC litigation to date, shall be moved into evidence in this docket and shall remain subject to orders previously issued concerning confidential classification of information in the PSC litigation. This evidence shall be permanently retained as a part of the record in Docket No. 000061-EI, to serve, among other things, as a record basis for the PSC's prudence review in this docket. Nothing herein shall limit or abridge the right of any party to petition the Commission to unseal or declassify portions of this evidence.

2. Pursuant to its Commercial Industrial Service Rider ("CISR") tariff, TECO and Allied/CFI shall execute a Contract Service Agreement ("CSA") for electric service to a new sodium hypochlorite manufacturing facility to be constructed and operated by Allied/CFI and/or their affiliate(s) in TECO's service territory, upon the same rates, terms and conditions as those contained in the existing CSA between TECO and Odyssey, provided that the new sodium hypochlorite manufacturing facility must begin commercial operations within 24 months from the date of the PSC's order approving this settlement agreement. The TECO-Allied/CFI CSA shall be in a form substantially identical to the CSA attached hereto as Exhibit "A", and shall include the force majeure clause attached to this settlement agreement as Exhibit "B".

3. Allied/CFI shall assert no further challenge, before the PSC, to the rates, terms and conditions for electric service provided by

TECO to Odyssey and set forth in the TECO/Odyssey CSA.

4. Order No. PSC-98-1181-FOF-EI, issued August 10, 1998 in Docket No. 980706-EI, approving TECO's CISR tariff, provides in part that: (1) TECO may request a prudence review subsequent to signing a CSA; (2) TECO will have the burden of proof that the company's decision to enter into a particular CSA was made in the interest of the general body of ratepayers; and (3) if the Commission finds that a particular CSA was not a prudent decision, then the revenue difference between the standard rate and the CISR rate could be inputed to TECO. Accordingly, TECO requests that the PSC make the following findings of fact:

   a. Both the existing Odyssey CSA and the proposed Allied/CFI CSA provide benefits to Tampa Electric's general body of ratepayers and, therefore, the Commission finds that both CSAs are in the best interests of ratepayers.

   b. The Commission finds that Tampa Electric's decision to

enter into the Odyssey CSA, and the CSA itself, were prudent within the meaning of Order No. 98-1081-FOF-EI in so far as they provide benefits to Tampa Electrics general body of ratepayers.

c. The Commission finds that Tampa Electric's decision to enter into the Allied/CFI CSA, and the CSA itself, were prudent within the meaning of Order No. 98-1081-FOF-EI in so far as they provide benefits to Tampa Electric's general body of ratepayers.

5. Allied/CFI agrees not to contest the findings of fact, rulings and determinations requested in paragraphs 4 and 7 of this Settlement Agreement, provided that no findings of fact or conclusions of law shall be made with respect to the allegations of Allied/CFI's Complaint in this proceeding.

6. Allied/CFI's Complaint in the PSC litigation shall be deemed withdrawn, with prejudice, upon: (a) the execution of this settlement agreement by TECO and Allied/CFI; and (b) the

issuance of an order by the PSC approving this settlement agreement, as proposed.

7. Allied/CFI and TECO request that the PSC include in its order approving this Settlement Agreement the following rulings and determinations:

   a. The Commission shall not entertain any further challenge to the existing Odyssey or the proposed Allied/CFI CSA or the rates, terms or conditions contained therein.

   b. In light of the above findings that both CSAs are prudent and in the best interests of ratepayers, Tampa Electric shall be relieved of any further obligation to report on its surveillance report the potential impact on revenues of these two CSAs.

   c. The Commission order approving the settlement proposed herein shall have no precedential value.

   d. The parties shall abide by the various General Release agreements executed among them.

8. Allied/CFI shall execute the General Release attached as Exhibit

"C" hereto. Except as stated in paragraph 3 above, this Settlement Agreement shall not in any way waive, release, discharge, limit or impair any claims that Allied/CFI may have against Odyssey and Sentry, as provided in the General Release.

9. In any subsequent litigation against Odyssey, Sentry, and related parties, Allied/CFI will make good faith efforts to avoid imposing unduly burdensome discovery requests on Tampa Electric and its related parties as set forth in the General Release which is Exhibit "C" hereto, without unreasonably restricting the ability of Allied/CFI's counsel to conduct appropriate discovery necessarily involving Tampa Electric and its related parties in such litigation.

10. Tampa Electric has agreed not to disclose to Odyssey or Sentry, absent Commission authorization or Allied/CFI's express written approval, the force majeure provision attached hereto as Exhibit "B" in light of Allied/CFI's position that this provision constitutes confidential, proprietary business information. To the

extent it may be deemed necessary to file Exhibit "B" with the PSC in connection with the PSC's approval of this settlement agreement, it shall be filed under seal and protected against disclosure to Odyssey, Sentry and others.

11. This settlement agreement and the exhibits hereto constitute the entire agreement between the parties and may not be modified except by a writing, signed by all parties.

AGREED TO AND ACCEPTED this _____ day of _____, 2001.

TAMPA ELECTRIC COMPANY

By: _____

Title: VP Customer Services & MKT

ALLIED UNIVERSAL CORPORATION

By: _____

Title: CEO

CHEMICAL FORMULATORS, INC.

By: _____

Title: CEO

Revised 03/01/01

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EXHIBIT "A"

Contract Service Agreement

(Separately filed on a confidential basis with a Notice of Intent to Seek Confidential Classification)

Exhibit "B"

Force Majeure Clause

(Separately filed on a confidential basis with a Notice of Intent to Seek Confidential Classification)

GENERAL RELEASE

KNOW ALL PERSONS BY THESE PRESENTS:

That, as of March 2, 2001, Allied Universal Corporation and Chemical Formulators, Inc. ("Allied/CFI") and Tampa Electric Company ("Tampa Electric"), for good and valuable considerations the receipt and adequacy of which is hereby acknowledged, including the mutual covenants and agreements the parties hereto have made in effecting the settlement of their disputes in Allied/CFI's complaint proceeding in Docket No. 000061-EI before the Florida Public Service Commission, AGREE AS FOLLOWS:

As a material inducement to Tampa Electric to enter into this Settlement Agreement and General Release, Allied/CFI and their respective officers, directors, employees, affiliates, subsidiaries, general or limited partners, successors, predecessors, assigns, agents, representatives, and attorneys hereby irrevocably and unconditionally release, acquit and forever discharge Tampa Electric and each of Tampa Electric's predecessors, successors, assigns, agents, officers, directors, employees, representatives, attorneys, divisions, subsidiaries, affiliates, parent company, general and limited partners (and agents, officers, directors, employees, representatives and attorneys of such divisions, subsidiaries, affiliates, parent company and general and limited partners) and all persons acting by, through, under or in concert with them or any of them [*except*: Odyssey Manufacturing Company ("Odyssey"), Sentry Industries, Inc. ("Sentry"), and each of Odyssey's and Sentry's predecessors, successors, assigns, agents, officers, directors, employees, representatives, attorneys, divisions, subsidiaries, affiliates, parent company, general and limited partners, including but not limited to Stephen W. Sidelko and Patrick H. Allman], from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of

action, suits, rights, demands, costs, losses, debts and expenses (including attorneys' fees and costs actually incurred) of any nature whatsoever for, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the date of this agreement from or in any manner related to Tampa Electric's Commercial Industrial Service Rider (CISR) Tariff, Tampa Electric's dealings with Odyssey Manufacturing Company, Sentry Industries, Allied Universal, Chemical Formulators or their respective officers, directors, agents, employees, affiliates, subdivisions, successors or assigns, which Allied/CFI or any of its officers, directors, employees, affiliates, subsidiaries, general or limited partners, successors, predecessors, assigns, agents, representatives, and attorneys have, own or hold, or which at any time heretofore had, owned or held, or claimed to have had, owned or held, whether known or unknown, vested or contingent.

This release extends and applies to, and also covers and includes, all unknown, unforeseen, unanticipated and unsuspected injuries, damages, loss and liability, and the consequences thereof, as well as those now disclosed and known to exist. The provisions of any state, federal, local or territorial law or statute providing in substance that releases shall not extend to claims, demands, injuries or damages which are unknown or unsuspected to exist at the time, to the person executing such release, are hereby expressly waived.

Signed, sealed and delivered
in the presence of:

ALLIED UNIVERSAL CORPORATION

and

CHEMICAL FORMULATORS, INC.

By: _____

Robert M. Namoff

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO.: 01-27699 CA 25

ALLIED UNIVERSAL CORPORATION, a Florida Corporation; and CHEMICAL FORMULATORS, INC., a Florida Corporation,

Plaintiffs,

vs.

ODYSSEY MANUFACTURING COMPANY, a Delaware Corporation; and SENTRY INDUSTRIES, INC., a Florida Corporation,

Defendants.
----------/

100 S.E. Second Street
Miami, Florida
Thursday, December 18, 2003
10:00 a.m. - 3:50 p.m.

DEPOSITION OF STEPHEN SIDELKO

Taken on behalf of the Plaintiff, Allied, before JAMIE TAYLOR, Registered Professional Reporter and Notary Public for the State of Florida at Large, pursuant to a Notice of Taking Deposition filed in the above cause.

time when you told Pat Allman you needed to have a rate of about [redacted] in order for the plant to be feasible?

A No.

Q That never happened?

A No.

Q What about 4 cents per kilowatt hour or 40 cents? Am I mixing up decimal points here?

A No. The answer is still no.

Q [redacted] translates to what, [redacted]?

A [redacted], that is correct.

Q The initial rate, base rate that Odyssey got under its contract with TECO was just that, wasn't it?

A Yes.

Q [redacted]?

A That is correct.

Q Would this plant have been feasible if TECO had provided Odyssey an initial base rate of [redacted] -- I should say [redacted]?

A I don't know.

A That the particular lot where we were for the particular year when we were going to start up, and I don't know whether it was because of the [redacted]

Q And is that ultimately what happened, that Odyssey did not have to pay [redacted]?

A That's exactly what happened, and the rate -- I recall that Allman offered me $40. I don't recall going to him and saying if I don't get [redacted] I'm going to quit, but I'm not saying it didn't happen. I'm saying that's my recollection of something that took place five or six years ago now.

Q Is it your recollection then that the [redacted] number came from him rather than from you?

A That's my recollection.

Q Well, what number did you feel you needed in terms of an electric rate prospectively in order to make the plant economically feasible?

A I don't think we had a specific number in mind.

Q Why then did you include the [redacted] number in your business plan back at that time?

build it.

Q Well, I mean --

A I don't know that [redacted] was in that document. I don't believe that it was. If you have a copy, I'd be happy to look at it.

Q We'll probably do that before the end of the day.

You don't recall what number was in the affidavit, if any?

A The number was not important to me. I was signing that I need -- conceptually that I needed the CISR tariff offer and not the rate that people pay in their houses and not the interruptible rate because there was a waiting list.

Q Well, how did you know when you signed the affidavit what rate you needed?

A I don't understand the question.

Q You say that you signed an affidavit saying that you needed the CISR rate to build the plant. What rate were you referring to in terms of numbers?

A I had in my mind [redacted] That was the number that Allman had come up with from the first time he discussed the CISR rate with me. He said

the CISR rate will be higher than the interruptible rate. Approximately [redacted] It was his number.

Q When you signed the affidavit, the number that you had in mind in signing that affidavit was [redacted] right?

A That's what I had been told.

Q How did you know that [redacted] would make the plant feasible if you had never done any calculations?

A You asked if I -- we had done calculations at [redacted]

Q I thought earlier, ten minutes ago, you told me that you had not done any calculations.

A I saw calculations at [redacted] and [redacted] I believe that you asked me for other numbers higher than [redacted].

Q Who did those calculations?

A DeAngelis.

Q And they were at [redacted] and [redacted]

A [redacted]

Q And [redacted]. Let me make sure I have that right on record. The calculations were done at [redacted] and [redacted] is that right?

A Those are calculations that I recall seeing.

half percent on or about March 27 of '03?

A I believe so.

Q So the rate now is [redacted] right?

A Sounds correct.

Q [redacted] megawatt hours? I don't know the exact number, but you probably do. Do you?

A I don't know the exact number.

Q All right. Well, if that plant had to operate today with an electric rate of [redacted] could it do so profitably?

MR. SMITH: Let's take a break.

(Thereupon, a recess was taken.)

THE WITNESS: Ask the question again.

Q (BY MR. BANDKLAYDER) Could Odyssey operate profitably if today it had an electric rate of [redacted] per megawatt hour?

A Yes.

Q How do you determine that?

(Thereupon, there was a discussion off the record.)

THE WITNESS: We're presently paying [redacted]. The increase to [redacted] that you asked me to hypothesize over would increase the cost per gallon by a little over a penny.

A But my point was I'm using it today in December of 2003 and Allied's offer wasn't until July of 2006, June of 2006, 18 months from today.

Q So if you're saying that the difference in the electric rate means between $250,000 and $350,000 in increased cost for 25 million gallons, then the increase in costs for 50 million gallons

would be $500,000 to $700,000 per year, right?

A I don't know.

Q It would be double?

A Well, I don't know. There are too many assumptions to say that. Odyssey cannot produce that amount, and Allied had better cells, and if Allied were to buy the cells today, they would be much better. So too many complications for me to even answer that question.

Q If the cells that are now available are so much better than the ones that were available when Odyssey was initially built, why doesn't Odyssey use those new cells in its expansion?

A You can't mix the kind of cell. All the cells have to be the same.

Q Well, if Odyssey can operate profitably at $51.80 per megawatt, then what was the basis of your saying that if it couldn't obtain [redacted] per megawatt, it would have no alternative but to locate its manufacturing facility elsewhere when you signed your affidavit?

A This document came from TECO. The language was suggested to me by TECO. Since I didn't know how to apply for CISR and didn't know the workings of the regulated utility industry, I

used the language they suggested, and what I was signing in my mind is what I just told you an hour ago, that if I didn't get the CISR, I would not build my plant in TECO's territory. And the language they suggested included their proposed rate of [redacted]

Q Well, you swore in this affidavit that the things you said were true, didn't you?

A Yes.

Q Was it true that without a [redacted] -- strike that.

Is it true that absent a [redacted] rate you would have had no alternative but to locate the plant somewhere other than Tampa where it could obtain a [redacted]

A I told you what I assumed. I assumed I had three choices; [redacted] so unless I got this one, I wouldn't build.

Q Well, but --

25 A The CISR and the [redacted] were tied

1 together.
2 Q Well, what was tied together was the
3 [redacted] and Odyssey's new plant because you say if you
4 can't get -- in your affidavit, you say if you
5 can't get the [redacted] per kilowatt hour rate from
6 Tampa, you will build this somewhere else where you
7 can get that rate, so my question is why was that
8 rate of four cents so important to you if you're
9 telling us today that [redacted] per megawatt hour
10 would still enable you to be profitable?
11 MR. SMITH: Argumentative, asked and
12 answered. Has your testimony changed?
13 THE WITNESS: No.
14 MR. BANDKLAYDER: Has what testimony
15 changed, from the affidavit? Clearly it has.
16 MR. SMITH: Has your testimony changed
17 you previously gave him on this issue?
18 THE WITNESS: No.
19 Q (BY MR. BANDKLAYDER) Well, your sworn
20 testimony in your affidavit is clearly different
21 than what you're telling me today, isn't it?
22 A Not in my mind.
23 Q Well, I mean in the affidavit you say
24 if Odyssey can't obtain [redacted] per kilowatt
25 hour, it will have no alternative but to locate its