

SUPREME COURT OF THE STATE OF FLORIDA

CASE NO. SC04-2329

ALLIED UNIVERSAL CORPORATION, ET. AL.,

Appellants,

v.

FLORIDA PUBLIC SERVICE COMMISSION,

Appellee.

REPLY BRIEF OF
ALLIED UNIVERSAL CORPORATION AND
CHEMICAL FORMULATORS, INC.

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PREFACE

This Reply Brief responds to the arguments raised in the three separate Answer Briefs filed by Odyssey Manufacturing Company, Inc. (the "Odyssey Brief"), Tampa Electric Company (the "TECO Brief"), and the Florida Public Service Commission (the "Commission Brief").

In this Reply Brief, Appellants will utilize the same abbreviations and citation form set forth on pages vi and vii of their Initial Brief. In addition, terms specifically defined in the Initial Brief will not be redefined herein, but, instead, will be capitalized using the phraseology set forth in the Initial Brief.

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A. STANDARD OF REVIEW

As correctly noted by Odyssey on page 4 of its Brief and by the Commission on page 15 of its Brief, this appeal presents solely issues of law and, accordingly, the standard of review is *de novo*. Appellees' subsequently blur the appropriate standard of review by citing to the more deferential standard found in Verizon Florida, Inc. v. Jaber, 889 So.2d 712, 714 (Fla. 2004); General Telephone Company v. Carter, 115 So.2d 554, 556 (Fla. 1959); Citizens v. Public Service Commission, 448 So.2d 1024, 1026 (Fla. 1984); and United Telephone Company of Florida v. Public Service Commission, 496 So.2d 116 (Fla. 1986). Appellees' efforts to impose a "competent, substantial evidence," a "clearly erroneous" or an "abuse of discretion" standard must fail because there was no evidentiary hearing conducted by the Commission below and there are no Commission interpretations of substantive law at issue.¹ See, Tampa Electric v. Garcia, 767 So.2d 428 (Fla. 2000). The issues on appeal in this case are simply whether the Commission correctly dismissed without an evidentiary hearing Allied's request to vacate approval of the

¹ Gulf Coast Electric Cooperative v. Johnson, 727 So.2d 259 (Fla. 1999), cited by TECO and by the Commission in the conclusion of its Brief, Verizon, General Telephone and Citizens all involved appeals of Commission orders following extensive evidentiary hearings and the focus was on whether there was competent, substantial evidence to support the Commission's extensive findings and conclusions. By contrast, there is no fully developed evidentiary record in this case.

Settlement Agreement and whether the Commission correctly determined that Allied lacked standing to challenge the Commission's approval of the Settlement Agreement. The *de novo* standard is the proper standard of review for these legal questions.

Both TECO and Odyssey quote verbatim from the Commission's Final Order and essentially argue that, by citing to the relevant cases, the Commission has applied the appropriate standard in ruling upon the Motions to Dismiss. However, giving lip service to the case law does not excuse the Commission's venture into weighing and construing the facts and evidence. It is clear that the Commission did not accept all of Allied's allegations as true and did not construe them in a light most favorable to Allied. Instead, the Commission interpreted and evaluated anticipated evidentiary matters in a manner to justify its conclusion. Applying a *de novo* standard of review, the Commission's Final Order dismissing Allied's Amended Petition must be reversed. Allied is entitled to a hearing to prove its claim that the post-settlement circuit court testimony of Mr. Sidelko revealed that Odyssey's CSA is inconsistent with the CISR Order, was obtained by fraud, deceit, surprise, mistake or inadvertence, and that there is a demonstrated public need to review the preferential and potentially illegal rate granted to Odyssey.

Odyssey argues that Allied has not addressed a recitation in the Commission's Order that the law favors

settlements, and that this generalized principle of jurisprudence independently requires affirmance of the Commission's Order of Dismissal. Odyssey Brief, fn.2, p. 2, pp. 5-6. This argument is far-fetched. There is no legal principle to the effect that an appeal is abandoned and an affirmance compelled when a party fails to take issue with the jurisprudential notion that the law favors settlements. Among the allegations in the Amended Petition is the contention that the Settlement Agreement was obtained as a result of fraud and misrepresentation. Surely, Odyssey does not believe that the law favors settlements at any cost, even when obtained by fraud and misrepresentation. In any event, until an evidentiary hearing is conducted, the Commission is not in a position to properly evaluate the allegations raised in the Amended Petition.

B. STANDING

Appellees' convoluted arguments that Allied lacks standing to pursue an action to vacate approval of the Settlement Agreement are rebutted by the fundamental principle that Allied, as a party to the prior Commission proceeding and the Settlement Agreement, is a proper party to ask the Commission to vacate its approval of the Settlement.

The Commission's entry of an order approving the stipulated Settlement Agreement implicitly confirms that

the Commission had jurisdiction over the matters raised in Allied's original petition. There is nothing in §§ 120.569 or 120.57, F.S., or in the First DCA's decision in Agrico Chemical Co. v. Department of Environmental Regulation, 406 So.2d 478 (Fla. 2d DCA 1981) that negates the self-evident proposition that a party to a prior proceeding and the resulting settlement agreement has standing to raise allegations of changed circumstances, fraud, misrepresentation or other appropriate legal grounds for overturning the regulatory of that agreement.²

The extensive attempts by the Commission and Odyssey to characterize and downplay Allied's economic and competitive harm is a make-weight argument that mischaracterizes the scope and intent of the Agrico test as applied to economic interests. Economic and competitive

² Quite frankly, the extensive discussion in the Commission's Final Order and in the briefs in this appeal regarding Agrico are superfluous. Allied has addressed the Agrico test in its Initial Brief because Agrico was specifically referred to in the Commission's Final Order. However, it is important to recognize the origin of the Agrico test. The Agrico test was intended to provide a framework for determining who could be a "party" to an administrative proceeding under § 120.52(12)(b), Fla. Stat. Significantly, § 120.52(12)(a) defines a "party" to include specifically named persons whose substantial interests are being determined in the proceeding. Allied was a "party" to the original Commission proceeding which challenged the Odyssey CSA that granted Odyssey a substantial discount below TECO's standard tariff rate. (V. 3, R. 542). Allied qualifies as a "party" to a proceeding to vacate the approval of the Settlement Agreement without resort to the Agrico test because its substantial interests, as embodied in the Settlement Agreement, are unavoidably at issue.

harm can be a basis for standing under appropriate circumstances. See, e.g., Fla. Medical Assoc. v. Dept. of Prof. Reg., 426 So.2d 1112 (1st DCA 1983); Florida Medical Center v. Dept. of Health and Rehab. Services, 484 So.2d 1292 (1st DCA 1986); Florida Optometric Association v. Dept. of Professional Regulation, 567 So.2d 928 (1st DCA 1990); and Boca Raton Mausoleum v. Dept. of Banking, 511 So.2d 1060 (1st DCA 1987). The key is whether the interests sought to be protected are within the "zone of interest" of the applicable statutory scheme. Here, the statutory scheme clearly provides that the rates charged by a regulated utility should be fair and non-discriminatory. Accordingly, Allied's allegations regarding the impacts of the discriminatory rates on its competitive business position are within the "zone of interest" protected by the applicable statutes and, therefore, the allegations are sufficient under Agrico.

Appellees fail to note that CFI has a plant in Tampa and is a customer of TECO who suffers a direct injury as a result of Odyssey's exemption from having to pay the same fuel adjustment costs that all other customers are obligated to pay. Odyssey's contention that Allied suffered no "special injury apart from the injuries suffered by any member of the general public", Odyssey Brief, p. 9, is simply incorrect. The general public is not directly harmed by a preferential rate granted to Odyssey. However, the other ratepayers of TECO, including

CFI, who are required to subsidize the special rate, do suffer a special injury different than the general public.

Finally, Odyssey's efforts to distinguish the Commission's grant of standing to OPC, Odyssey Brief, pp. 12-13, fails to recognize that § 350.0611, F.S. grants standing to OPC on behalf of the customers of a utility. CFI is a customer of TECO and has standing to object to the unfair, preferential rate granted to Odyssey.

C. ODYSSEY'S STATEMENTS MADE TO SECURE A CSA WITH A FAVORABLE RATE ARE RELEVANT

The Amended Petition alleges that the deposition testimony of Mr. Sidelko in the post-settlement civil court action constitutes new evidence, not available at the time of the Settlement Agreement, which reveals that the Odyssey CSA does not comport with the CISR Order. Allied has also alleged that the apparent compliance of Odyssey's CSA with the CISR Order was a key factor in its determination to sign a settlement agreement with a temporal condition on its ability to receive a rate identical to Odyssey. TECO argues that, because Odyssey is not a party to the Settlement Agreement, the statements of Odyssey's CEO are irrelevant even if the statements are misleading and even if they reveal the affidavit submitted to obtain the CSA was false. See, e.g., TECO Brief, pp. 23-25.³ What TECO and Odyssey fail to acknowledge, however, is that Odyssey

³ Similarly, Odyssey contends that Allied could not reasonably have relied upon the statements of a non-party to the Settlement Agreement. Odyssey Brief, p. 18.

was a party to the underlying Commission proceeding and it was Odyssey's CSA, obtained at least in part based upon the affidavit of Mr. Sidelko, that was the subject of the underlying proceeding.⁴ The inaccuracy of the Affidavit used to obtain the CSA Order as alleged in the Amended Petition legitimately places into question the validity of Odyssey's CSA.⁵ For purposes of the Motion to Dismiss, the Commission was required to accept Allied's allegation that Allied would not have signed the Settlement Agreement and would not have participated in the stipulated submittal to the Commission if the subsequent, contradictory statements of Mr. Sidelko were available and the questions as to the compliance of Odyssey's CSA with the CISR Order were known.

The Amended Petition essentially seeks to reopen the original Commission proceeding initiated by Allied based on this new evidence and the discovery that Odyssey has, contrary to the CISR Order, been exempted from fuel and other adjustment charges that all other TECO customers must pay. Even though these allegations must be accepted as true for purposes of a motion to dismiss, Appellees repeatedly challenge the underpinnings of the allegations in an effort to circumvent the requirements for *de novo*

⁴ TECO's extensive discussion of Columbus Hotel Corp. v. Hotel Management Company, 156 So.2d 893 (Fla. 1934), is unavailing because, in the present case, Odyssey was an active party in the original Commission proceeding that involved a challenge to Odyssey's CSA.

⁵ There can be no dispute that the Sidelko affidavit was part of the information presented to secure the Odyssey CSA. See TECO Brief, p. 25.

review of the Commission's Order dismissing the Amended Petition.

It is important to recognize that the Settlement Agreement was not presented to the Commission for approval in the context of an adversarial proceeding where contrary arguments were presented by both sides to the issue. Instead, the Settlement Agreement was jointly presented to the Commission for approval. Thus, unlike Austin Tupler Trucking v. Hawkins, 377 So.2d 679 (Fla. 1979), the present proceeding does not involve a motion to relitigate matters that were specifically litigated and resolved during prior evidentiary proceedings. Instead, Allied seeks the Commission to reopen the evaluation of Odyssey's CSA based upon the subsequent statements of Odyssey's CEO and the discovery that Odyssey is not paying fuel and other adjustment charges required of all other TECO ratepayers. Those issues were not specifically addressed or litigated in the prior Commission proceeding.

Appellees ignore the Commission's ongoing responsibility to oversee the implementation of contracts entered into by a regulated utility that are subject to Commission approval. Indeed, the Commission has specifically found in the past that the doctrine of administrative finality will not preclude further consideration of a prior approved contract when the Commission's approval "was induced through perjury, fraud, collusion, deceit, mistake, inadvertence or intentional withholding of key informa-

tion." In re: Implementation of Rules 25-17.080 - 25-17.091, F.A.C. Regarding Cogeneration and Small Power Plant Production, Order No. 25668, 92 FPSC 2:24,28, February 3, 1992.

D. APPELLEES IMPROPERLY ARGUE DISPUTED FACTUAL ISSUES TO SUPPORT THE COMMISSION'S FINAL ORDER

Appellees set forth a number of contentions as to what Allied was entitled to rely upon in deciding to enter into the Settlement Agreement. Appellees also speculate that Odyssey's CSA would have been approved by the Commission even if the information contained in Mr. Sidelko's recent statements was known. At this stage of the proceedings, however, the issue is not whether Odyssey was eligible under the CISR Order. Instead, the issue is whether Allied settled its challenge to Odyssey's CSA and agreed to place the matter before the Commission for approval without opposition in reliance upon the apparent validity of Odyssey's CSA which has now been called into question by Mr. Sidelko's circuit court testimony and the revelation that Odyssey is not paying fuel and other adjustment charges. It was error for the Commission to deny Allied an evidentiary hearing to present testimony on these matters.

TECO attempts to salvage Mr. Sidelko's deposition testimony in the circuit court action by pointing to the errata sheet, which was prepared by Mr. Sidelko after the deposition was transcribed and the inconsistencies with his prior affidavit were apparent. TECO Brief, pp. 22-23.

TECO's suggestion that the errata sheet conclusively absolves the inconsistency between the transcribed deposition testimony and the prior affidavit submitted in support of the Odyssey CSA is simply wishful thinking. Of course, it is inappropriate to accept TECO's explanation for these factual inconsistencies in resolving a motion to dismiss. See, Varnes v. Dawkins, 624 So.2d 349, 350 (Fla. 1st DCA 1993).

TECO claims in its Brief that the Commission, in approving the Settlement Agreement, reviewed and considered some of the concerns raised in the Amended Petition, particularly with respect to Odyssey's exemption from the payment of fuel and other adjustment charges. TECO Brief, pp. 21-22. Interestingly, the Commission has not specifically adopted this position. TECO's argument is an alternate version of the facts that is not supported in the record and not properly considered in ruling on a motion to dismiss. The Commission approval does not specifically reflect approval of Odyssey's exemption from paying fuel and other adjustment charges. Indeed, such a result would be a violation of the CISR Order which limits any CISR discount rate to base demand and base energy charges.

It should also be noted that the Commission's Final Order and the arguments advanced in the Appellees' Briefs contain extensive conclusions and assumptions regarding Allied's purported lack of an "injury in fact," the supposed insufficiency of such injury and the nature and

type of the alleged injury. These assumptions and conclusions are not properly resolved at the stage of a motion to dismiss when the facts must be construed in the light most favorable to Petitioner. See, Varnes, supra.

E. ALLIED HAS ALLEGED ADEQUATE GROUNDS TO VACATE THE SETTLEMENT AGREEMENT

Allied has alleged, and the Commission was required to accept as true for purposes of ruling on the Motions to Dismiss, that Odyssey has not been required to pay fuel adjustment charges and, consequently, Odyssey's CSA is not in compliance with the CISR Order. The Amended Petition asserts that Odyssey's exemption from fuel charge payments was not evident at the time of the Settlement Agreement and that Odyssey is the only TECO customer ever to receive such an exception from fuel charge adjustments. Allied has further alleged that such favorable treatment constitutes a per se violation of § 366.03, Fla. Stat. Accepting these allegations as true (as the Commission was required to do in ruling on the Motions to Dismiss), Odyssey's failure to pay fuel and other adjustment charges constitutes a breach of TECO's obligation under the CISR Order to the detriment of TECO's ratepayers, including CFI, and confirms that TECO has failed to negotiate with Odyssey a rate as close as possible to TECO's tariffed rate. Customers of a regulated

public utility such as TECO have the right to raise such issues whenever the facts become known and the resolution of a prior complaint based on incomplete information should not preclude a review based on new evidence. Rather than commencing proceedings to investigate these serious charges based on newly revealed facts, the Commission instead permitted TECO to hide behind the prior Settlement Agreement and dismissed Allied's Amended Petition without hearing. A common refrain of the Appellees' Answer Briefs is that Allied should not be pursuing this action because it got everything it was asking for. See, e.g., TECO Brief, pp. 32-33; Odyssey Brief, p.18. However, Allied did not get what it was seeking. It does not have a bleach plant in the Tampa Bay area operating with a favorable electric rate and it will not be able to build and operate such a plant unless it is able to secure the same favorable electric rate as its competitor, Odyssey.

As alleged in the Amended Petition, Allied tried to take advantage of the two-year window provided by the Settlement Agreement but was thwarted by Odyssey's refusal to release the plant manufacturer from an invalid noncompete agreement. The evidence revealed during the ensuing circuit court action prompted Allied to request the Commission to reconsider the entire arrangement because it

became apparent that Odyssey was continuing to enjoy a favorable and possibly unlawful electrical rate that was being subsidized by other TECO customers while Allied is being permanently denied the opportunity to obtain the same favorable rate granted to its competitor by a regulated public utility.⁶ None of the Appellees provide a valid public policy reason why Allied should be limited to a two-year window to build a plant in order to secure the same favorable rate from a regulated utility that Odyssey continues to receive today.

Allied has requested the Commission to halt the unfair and preferential treatment granted to Allied's competitor by a regulated public utility and, if necessary, to vacate its prior approval of the Odyssey CSA because that contract does not comply with the CISR Order and/or TECO's obligations to its general body of ratepayers. The Commission abandons its duty as a regulator by arguing that ". . . any alleged irregularities in payment of fuel costs are properly addressed in the Commission's ongoing, annual fuel proceedings." Commission Brief, p. 43. The Commission's annual fuel proceedings are not a forum to

⁶ It was only during litigation over the noncompete agreement that the testimony of Mr. Sidelko revealed the statements in the prior affidavit he submitted in order to obtain the CSA were not accurate and that Odyssey's CSA was being implemented in a manner inconsistent with the CSA Order.

address issues related to the validity of Odyssey's CSA. This Court should require the Commission to conduct an evidentiary proceeding to address the serious, substantive allegations regarding Odyssey's CSA.

F. THE PUBLIC INTEREST IS SERVED BY INVESTIGATING THE CLAIMS RAISED IN THE AMENDED PETITION

The Commission's statement that "this case turns on a motion to dismiss which implicates fixed principles of law more so than public policy," Commission Brief, p. 41, is indicative of the Commission's continuing abdication of its responsibility for insuring that TECO's rates are not unfair, prejudicial or discriminatory. A full and complete investigation as to whether Odyssey has secured an unfair, preferential rate that has been denied to its business competitor and that requires subsidization by other TECO ratepayers is clearly in the public interest. Moreover, the public interest is harmed by the Commission's indefinite postponement of an investigation into Odyssey's illegal exemption from the payment of fuel charges and the resulting postponement of Allied's ability to compete with Odyssey in the Tampa cell process chlorine bleach market.

The Commission erroneously contends that it is barred from vacating its order approving the Settlement Agreement because too much time has elapsed since its issuance. Commission Brief, p. 40. However, the record is clear that Allied acted promptly after the circuit court testimony of

Mr. Sidelko revealed the inaccuracy of the affidavit used to secure the Odyssey CSA. The time limit in Rule 1.540, Fla.R.Civ.P. is not applicable to the Commission. In Sunshine Utilities v. Public Service Commission, 577 So.2d 663 (Fla. 1st DCA 1991), the Court recognized the Commission's inherent authority to modify its orders and affirmed a Commission Order modifying a 1984 order following an inquiry that began in 1988. The Sunshine Utilities decision also affirmed the recognized exception to the doctrine of administrative finality where there is a demonstrated public interest.

Odyssey's contention that "the order sought to be vacated had become final and passed out of the PSC control, Odyssey Brief, p. 16, ignores the Commission's ongoing responsibility to insure TECO's rates are non-prejudicial and non-discriminatory and that TECO's other customers do not bear the brunt of the favored treatment accorded to Odyssey. Any TECO customer, including CFI, has the right to expect that it is not subsidizing other customers and that TECO, as a regulated utility, is not engaged in unfair, discriminatory pricing. Appellees have cited no public interest in preserving the favorable rate granted to Odyssey by TECO.

Contrary to the Commission's argument on pages 41-42 of its Brief, McCaw Communications of Florida, Inc. v. Clark, 679 So.2d 1177 (Fla. 1996) is relevant to the issues in the present case. McCaw recognizes that the doctrine of

administrative finality should not be rigidly applied with respect to issues that are part of the Commission's continuing jurisdiction. In the present case, the Commission has an ongoing responsibility to insure that TECO's rates are not unfair, discriminatory or prejudicial.

Appellees' complaints about the passage of time since the Commission's approval of the Settlement Agreement might be more persuasive if any of Appellees had modified their activities in reliance upon the Settlement. While Appellees repeatedly assert the importance of finality in administrative proceedings, they have not alleged nor is there any basis for concluding that any of the Appellees have changed their position in reliance upon the Commission's approval of the Settlement Agreement. Instead, their insistence upon the doctrine of administrative finality is geared toward avoiding any further investigation or analysis of the favorable and possibly illegal Odyssey CSA. It is perhaps understandable that Odyssey would so vigorously oppose any investigation or evidentiary proceeding regarding the extremely favorable rate that it has been enjoying for several years.⁷ It is disappointing that the Commission is not concerned that Odyssey has secured a preferential rate to the apparent detriment of TECO's other customers and that the TECO

⁷ Indeed, Mr. Sidelko's testimony in the civil court action indicates that Odyssey could easily pay higher electric rates without damaging its business prospects.

employee involved in negotiating that arrangement has now gone to work for Odyssey.

TECO attempts to impose an artificial timeline for challenging the approval of the Settlement Agreement by attempting to characterize Allied's allegations as "intrinsic in nature." TECO Brief, pp. 26-31. Once again, this effort ignores the Commission's continuing obligation to insure that the rates charged by a regulated utility are fair, non-discriminatory and non-prejudicial. TECO has provided no authority to support a distinction between intrinsic and extrinsic fraud in the context of an administrative proceeding before a regulatory agency. This argument was not presented to the Commission below and is not included in the Commission's Final Order. Appellees' efforts to equate the doctrine of administrative finality with the principles that govern finality of judgments and in particular, Rule 1.540, Fla.R.Civ.P. are an unsupported, gratuitous extension of the judicial decisions. TECO provides no explanation as to how its advocacy of applying the doctrine of extrinsic fraud can be reconciled with the myriad of administrative cases recognizing exceptions to the doctrine of administrative finality.

The Commission misses the point with its contention that ". . . the CISR Order does not require TECO to seek a prudence finding for its CSA." Commission Brief, p. 18. Allied seeks a hearing to establish that Odyssey's contract

did not comply with the requirements of the CISR Order which, if established at hearing, would effectively resolve or moot the issue of prudence. In other words, Allied is not simply seeking the Commission to revisit its determination that the Odyssey CSA was prudent. Rather, due to the change in circumstances and the revelation of Odyssey's misleading statements in securing the CSA and the improper exemption of Odyssey from fuel adjustment charges, Allied seeks a Commission determination that Odyssey's CSA does not comply with the CISR Order and should not be in effect because it grants an unfair, discriminatory rate to Odyssey which is being subsidized by TECO's other ratepayers. This determination was originally requested in the initial proceeding. However, because of the representations made by Mr. Sidelko, representations that have been recanted by his subsequent testimony, Allied negotiated the Settlement Agreement based on its reasonable belief at the time that the Odyssey CSA complied with all of the requirements of the CISR Order.

At page 10 of its Brief, Odyssey includes extensive discussion of the issues properly considered in the review of a CSA under the CISR Order. However, at this point, the prudence and specific review criteria under the CISR Order are not at issue. Those issues can and should be briefed

and argued following an evidentiary proceeding. Unfortunately, the Commission's Final Order denied such a hearing and thereby allowed Odyssey and TECO to avoid addressing what should be the superseding issue of whether the statutory mandate for non-prejudicial, non-discriminatory rates is being met.

G. THE COMMISSION'S JURISDICTION IS NOT DIVESTED BY THE RELEASE EXECUTED BY ALLIED

Despite Odyssey's vociferous effort to take refuge behind the Release Agreement, Odyssey Brief, p. 13, 19-23, the Commission's jurisdiction and authority is not determined by an agreement of a regulated utility with a customer or potential customer. See, H. Miller and Sons, Inc. v. Hawkins, 373 So.2d 913, 914 (Fla. 1979). Odyssey's claim that Allied has waived its standing to challenge the Settlement Agreement and General Release would effectively allow the Release to eliminate the recognized exceptions to the doctrine of administrative finality for subsequently discovered fraud and changed circumstances and would excuse the Commission from its statutory responsibility to insure that the rates charged by a regulated public utility are not unjustly discriminatory or preferential. Appellees' extensive arguments regarding the specific language in the release and the Settlement Agreement obscures the Commission's fundamental role to ensure that a regulated public entity is not charging unfair, discriminatory rates.

See, §§ 366.03, 366.06(2) and 366.07, Fla. Stat. (1999). None of the Appellee provide any substantive discussion of those statutory provisions or the Commission's role in enforcing them.

H. CONCLUSION

Allied's Amended Petition alleges facts sufficient to state grounds for exceptions to the doctrine of administrative finality. Allied's Amended Petition requests the Commission to conduct an evidentiary hearing and reevaluate whether Odyssey's CSA is fair and in compliance with the CISR Order. That request is based upon new revelations and subsequent inconsistent statements by Mr. Sidelko whose affidavit was used to obtain the Odyssey CSA. While Odyssey and TECO would have the Commission abdicate any responsibility for enforcing the state statutes against rate discrimination, the Commission is responsible for protecting other ratepayers from subsidizing preferential rates granted to particular customers by a regulated utility. The Court should reverse the Commission's Order dismissing the Amended Petition and remand the case for evidentiary proceedings before an impartial fact-finder that has not prejudged the evidence.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Initial Brief of Allied Universal Corporation and Chemical Formulators, Inc. was furnished by U. S. Mail this 21st day of June, 2005, to the following:

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CERTIFICATE OF COMPLIANCE

In compliance with the Court's Administrative Order dated July 13, 1998, the font size used in this Brief is Courier New, size 12.