

FLORIDA PUBLIC SERVICE COMMISSION

Item 4

VOTE SHEET

FILED JUL 07, 2016  
DOCUMENT NO. 04321-16  
FPSC - COMMISSION CLERK

July 7, 2016

**Docket No. 160049-EU** – Petition for modification of territorial order based on changed legal circumstances emanating from Article VIII, Section 2(c) of the Florida Constitution, by the Town of Indian River Shores.

**Issue 1:** Should the Commission grant the City of Vero Beach’s Motion to Intervene and Florida Power & Light Company’s Petition to Intervene?

**Recommendation:** No. The Commission should deny Vero Beach’s Motion to Intervene and FPL’s Petition to Intervene because intervention is premature and unnecessary at this time.

**DEFERRED** *to September 13, 2016 Commission Conference.*

**Issue 2:** Should the Commission grant Vero Beach’s Motion to Dismiss the Petition for failure to meet the pleading requirements of Rule 28-106.201, F.A.C.?

**Recommendation:** No. The Commission should deny the Motion to Dismiss the Petition for failing to meet pleading requirements because the Petition is in substantial compliance with Rule 28-106.201, F.A.C.

COMMISSIONERS ASSIGNED: All Commissioners

COMMISSIONERS’ SIGNATURES

MAJORITY

DISSENTING

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**REMARKS/DISSENTING COMMENTS:**

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**Issue 3:** Should the Commission grant Indian River Shores' Motion to Strike?

**Recommendation:** No. The Commission should deny Indian River Shores' Motion to Strike.

**Issue 4:** Should the City of Vero Beach's Motion to Dismiss Indian River Shores' Petition for lack of standing be granted?

**Recommendation:** The Commission should grant in part and deny in part Vero Beach's Motion to Dismiss for lack of standing. The Commission should grant the Motion to Dismiss on the grounds that Indian River Shores does not have standing to request modification of the Territorial Orders based on allegations of injury from abuses of monopoly powers and excessive rates. The Commission should also grant the Motion to Dismiss on the grounds that Indian River Shores does not have standing to represent Vero Beach's electric customers who reside in Indian River Shores. Dismissal on these grounds should be with prejudice because it conclusively appears from the face of the Petition that these defects in standing cannot be cured. The Commission should deny the Motion to Dismiss on the grounds that Indian River Shores has standing as a municipality to request modification of the Territorial Orders based on changed legal circumstances emanating from Article VIII, Section 2(c), Florida Constitution.

**Issue 5:** Should the Commission grant Indian River Shores' Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution?

**Recommendation:** No. The Commission should deny on the merits Indian River Shores' Petition for Modification of Territorial Order Based on Changed Legal Circumstances Emanating from Article VIII, Section 2(c) of the Florida Constitution because: (1) it fails to demonstrate that modification of the Territorial Orders is necessary in the public interest due to changed circumstances not present in the proceedings which led to the Territorial Orders; and (2) it fails to show that modification would not be detrimental to the public interest.

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**Issue 6:** Should this docket be closed?

**Recommendation:** If the Commission approves staff's recommendation, and if no person whose substantial interests are affected by the proposed agency action in Issue 5 files a protest within 21 days of the issuance of the Order, this docket should be closed upon the issuance of a consummating order.