

VOTE SHEET

April 18, 2006

**Docket No. 050891-EI** – Complaint of Kmart Corporation against Florida Power & Light Company and motion to compel FPL to continue electric service and to cease and desist demands for deposit pending final decision regarding complaint.

**Issue 1:** Should Kmart’s motion for an order compelling FPL to continue electric service and to cease demands for an additional deposit, or Kmart’s renewal of its motion for an order to compel, be granted?

**Recommendation:** No. FPL has complied with the requirements of Rule 25-22.032, Florida Administrative Code. The Commission need not rule on Kmart’s requests as they are moot.

**APPROVED**

**Issue 2:** Should FPL’s motion to dismiss Kmart’s complaint be granted?

**Recommendation:** No. Kmart’s complaint states a sufficient factual basis to survive a motion to dismiss, and FPL’s motion should accordingly be denied.

**APPROVED**

**COMMISSIONERS ASSIGNED:** All Commissioners

COMMISSIONERS’ SIGNATURES

MAJORITY

DISSENTING

*Katrina A. Lewis*  
*J. Edgar*  
*J. Terry Weaver*  
*Mark S. [Signature]*

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REMARKS/DISSENTING COMMENTS:

DOCUMENT NUMBER-DATE

03408 APR 18 06

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**Issue 3:** What is the appropriate disposition of Kmart's complaint against FPL?

**Recommendation:** Kmart's complaint against FPL should be denied on its merits. FPL has complied with the requirements of Rule 25-6.097, Florida Administrative Code. Accordingly, within 30 days of the date of the order, Kmart should pay an additional deposit in the amount of \$299,320 in order to receive continuous service from FPL.

**APPROVED**

**Issue 4:** Should this docket be closed?

**Recommendation:** If no person whose substantial interests are affected by the proposed agency action files a protest within 21 days of the issuance of the order, this docket should be closed upon the issuance of a consummating order.

**APPROVED**