

VOTE SHEET

DECEMBER 16, 1997

RE: DOCKET NO. 971313-EU - Petition by IMC-Agrico Company for declaratory statement confirming non-jurisdictional nature of planned self-generation.

Issue 1: Should Tampa Electric, FPC, PREC and FPL's petitions for leave to intervene be granted?

Recommendation: Yes, in part. Tampa Electric, FPC and PREC's petitions for leave to intervene should be granted. FPL's petition for leave to intervene should be denied, but its petition to participate amicus curiae should be granted. IMCA-Agrico's Motion to Strike and FPL's Motion to Dismiss should be denied.

**APPROVED**

Issue 2(A): Should the Commission grant a 120.57(1) hearing appropriate to disputed facts as requested by Tampa Electric?

Recommendation: No. The hearing should be held pursuant to Section 120.57(2), Fla. Stat., as appropriate to facts not in dispute.

**MODIFIED** *set for 120.57(1) hearing*

COMMISSIONERS ASSIGNED: Full Commission

COMMISSIONERS' SIGNATURES

MAJORITY

DISSENTING

*[Handwritten signatures of majority commissioners]*

*[Handwritten signatures of dissenting commissioners]*

REMARKS/DISSENTING COMMENTS: *Commissioners Kiesling and Garcia dissented on discussion #2*

DOCUMENT NUMBER-DATE

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(Continued from previous page)

Issue 2(B): What issues in IMCA's petition remain to be decided in a hearing?

Recommendation: The hearing should consider whether the petition contains facts sufficient to establish that IMCA's lease of capacity is true self-generation rather than a prohibited retail sale.

*No vote*

Issue 2(C): If the Commission denies the petitions to intervene, should interested persons be permitted to address the Commission at the agenda conference?

Recommendation: Yes. Interested persons should be allowed to address the Commission.

*RAE 1/29/98 note: Correction made based on review of audiotaped discussion of this item.*

~~APPROVED~~

*No vote.*

Issue 3: Should this docket remain open?

Recommendation: Yes. If the petitioners waive the 90-day time limit in current Section 120.565, F.S. the matter should be set for hearing. Alternatively, if the petitioners do not waive the 90-day time limit, the petition should be denied solely to meet the procedural requirements of current Section 120.565, F.S., rather than as an adjudication on the merits. The denial should therefore be without prejudice to refile the petition.

**APPROVED**

*The company waived the 90-day clock with a request for expedited treatment.*