

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company.

DOCKET NO. 040660-EG  
ORDER NO. PSC-05-0536-PCO-EG  
ISSUED: May 16, 2005

ORDER GRANTING MOTION TO AMEND AND CLARIFY PROTEST

On November 15, 2004, Compliance Data Services, Inc., d/b/a Calcs-Plus (Calcs-Plus) filed a timely protest to Commission Order No. PSC-04-1046-PAA-EG, which approved modifications to Florida Power & Light Company's (FPL) BuildSmart Program, part of FPL's demand-side management plan. In response, on December 3, 2004, FPL filed a motion to dismiss the protest, pointing out what it considered to be several deficiencies in the Calcs-Plus protest. Thereafter, on December 20, 2004, before the Commission had the opportunity to address FPL's motion to dismiss, Calcs-Plus' recently hired attorney filed a Motion to Amend and Clarify petitioner's Protest Complaint. The motion to amend modified the company's protest and status as a commercial ratepayer, and proposed to add the president and director of the company as parties to the complaint in their capacity as individual ratepayers of FPL. On January 11, 2005, FPL filed a Response in Opposition to Compliance Data Services, Inc.'s Motion to Amend and Clarify Petitioners' Protest Complaint, or in the Alternative, Motion to Dismiss, to which the petitioners responded on January 18, 2005. Shortly before the Commission was scheduled to address Calcs-Plus' motion to amend and its amended protest petition, FPL withdrew its motion to dismiss. The case has now been scheduled for an administrative hearing on October 10, 2005.

Since the Commission did not address the motion to amend because FPL withdrew its opposition and its motion to dismiss, this Order will address the motion in order to clarify the procedural record of the case. Florida law and this Commission's policies allow pleadings to be freely amended so that disputes may be decided on their merits, as long as the privilege to amend has not been abused<sup>1</sup>, which it has not been in this case. Accordingly, Calcs-Plus' motion is granted.

Based on the foregoing, it is

ORDERED that the Calcs-Plus Motion to Amend and Clarify Protest is granted.

<sup>1</sup> See, Adams v. Knabb Turpentine Co., 435 So. 2d 944, 946 (Fla. 1<sup>st</sup> DCA 1983); Order No. PSC-03-0721-PCO-TP, issued June 17, 2003, in Docket No. 030349-TP, In re: Complaint by Supra Telecommunications and Information Systems, Inc. against BellSouth Telecommunications, Inc.; Order No. PSC-03-1305-PCO-TP, issued November 14, 2003, in Docket No. 034746-TP, In re: Complaint of Cargill Crop Nutrition, Inc. f/k/a Cargill Fertilizer. against Verizon Florida, Inc.

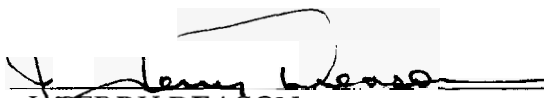
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By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 16th day of  
May \_\_\_\_\_, 2005.

  
J. TERRY DEASON  
Commissioner and Prehearing Officer

( S E A L )

MCB

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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, 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 or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.