

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Petition for approval of numeric conservation goals by Florida Power & Light Company.

DOCKET NO. 040029-EG

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

DOCKET NO. 040660-EG
ORDER NO. PSC-06-0025-FOF-EG
ISSUED: January 10, 2006

The following Commissioners participated in the disposition of this matter:

RUDOLPH "RUDY" BRADLEY, Chairman
J. TERRY DEASON
LISA POLAK EDGAR

APPEARANCES:

NATALIE F. SMITH, ESQUIRE AND PATRICK M. BRYAN, ESQUIRE, 700 Universe Boulevard, Juno Beach Florida 33408-0420.
On behalf of Florida Power & Light Company.

WILLIAM J. TAIT, JR., ESQUIRE, 1061 Windwood Way, Tallahassee, Florida 32311
On behalf of Calcs-Plus.

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On behalf of the Florida Public Service Commission Staff.

FINAL ORDER APPROVING CONSERVATION PROGRAMS

BY THE COMMISSION:

INTRODUCTION

In March 1993, we approved the New Home Construction Research Project as part of Florida Power & Light Company's (FPL) Conservation Plan.¹ A significant part of the project

¹ Order No. PSC-93-0339-EG, issued March 4, 1993, in Docket No. 921034-EG, In Re: Petition of Florida Power & Light Company for Approval of the New Home Construction Research Project.

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was the creation and offering of the BuildSmart pilot program, which FPL introduced in March 1994. The BuildSmart pilot program was designed to educate builders and customers about energy-efficient building practices and their benefits. Under the program, FPL inspected qualifying new single-family detached homes to verify installations of conservation measures and determined the energy-efficiency of the homes. FPL then awarded Bronze, Silver and Gold Certificates to qualifying homes that exceeded Florida Energy Efficiency Code requirements by more than 10, 20 and 30 percent, respectively. The initial program was offered in Charlotte, Lee, Glades, Hendry, and Collier counties. When we approved the pilot program, it was expected to end during the first quarter of 1995. We granted FPL an extension of the program so that it could incorporate the BuildSmart program into the analysis of its Integrated Resource Planning process through December 31, 1995. FPL completed the BuildSmart Pilot Project and filed a final report with us on June 1, 1995. FPL reported that BuildSmart had preliminarily proven to be cost-effective. On August 25, 1997, we approved a permanent BuildSmart program.²

On June 30, 2004, FPL filed a petition for Approval of Modifications to its BuildSmart program. FPL stated that it was missing the opportunity to significantly penetrate the production housing market. On October 16, 2004, we approved the modifications.³

FPL filed its proposed Demand-Side Management (DSM) Plan on November 11, 2004, in Docket No. 040029-EG, In Re: Petition for Approval of Numeric Conservation Goals by Florida Power & Light Company. FPL included the recently approved modified BuildSmart program in its DSM Plan, prior to the date the PAA order on the modified BuildSmart program became final. On November 15, 2004, Compliance Data Services, Inc., d/b/a Calcs-Plus (Calcs-Plus) filed a timely protest to our PAA order approving the modified BuildSmart program. On February 9, 2005, we issued Order No. PSC-05-0162-PAA-EG, approving FPL's overall DSM Plan. That Order stated, however, that final approval of the modified BuildSmart program as a part of FPL's DSM Plan would be subject to the outcome of the protest of the BuildSmart program filed by Calcs-Plus in Docket No. 040660-EG. On March 2, 2005, Calcs-Plus filed a protest to our order approving FPL's DSM Plan. This additional protest focused solely on FPL's modified BuildSmart and Residential Conservation Services programs. Therefore, on March 21, 2005, we issued Order No. PSC-05-0323-CO-EG, giving final approval to FPL's DSM Plan, with the exception of the modified BuildSmart and Residential Conservation Services programs, pending the outcome of the protests.

On July 5, 2005, we issued Order No. PSC-05-0720-PCO-EG, which consolidated Docket Nos. 040660-EG and 040029-EG. We held a hearing on Calcs-Plus' protests on October 10, 2005. On November 7, 2005, Calcs-Plus and FPL filed post-hearing briefs. As explained in detail below, we approve both programs as consistent with all applicable Commission rules and statutory requirements and appropriate for inclusion in FPL's demand-side management plan. We have jurisdiction over this matter pursuant to Sections 366.80 et. seq., Florida Statutes.

² Order No. PSC-97-1017-S-EG, in Docket No. 951536-EG, In Re: Petition for approval of BuildSmart Program by Florida Power & Light Company.

³ Order No. PSC-04-1946-PAA-EG, in Docket No. 040660-EG, In Re: Petition of Florida Power & Light Company for Approval of Modifications to its BuildSmart program.

DECISION

The BuildSmart Program

According to FPL, the objective of BuildSmart is to promote the construction of energy-efficient homes that cost-effectively reduce FPL's peak load and customers' energy consumption. Currently, BuildSmart is targeted to the residential, new construction, single-family, detached dwelling market. Homes certified as BuildSmart Homes must achieve demand and energy savings of a specified level beyond the requirements of the Florida Energy Efficiency Code.

Under the BuildSmart program, FPL performs plan reviews and conducts home inspections during the construction process and provides certification of completed homes that successfully meet FPL's BuildSmart program standards. FPL charges fees to home builders for plan inspection and certification depending on the calculated level of energy performance (e-Ratio) achieved per home.⁴ Lower fees are charged for homes with higher energy efficiency, and homes that are at least 30 percent or more energy efficient than the baseline have no fees. FPL certifies three different levels of BuildSmart homes: Bronze, Silver, and Gold. Bronze, Silver, and Gold homes achieve e-ratios 10, 20, and 30 percent more efficient than a baseline home under the Florida Energy Efficiency Code, respectively. FPL has three different BuildSmart service offerings: 1) Premium Service, which includes the initial, mid-point, and final inspections (fees are \$300 for Bronze, \$200 for Silver, and \$125 for Gold); 2) Basic Service, which includes the initial and final inspections only (fees are \$175 for Bronze, \$125 for Silver and \$0 for Gold); and, 3) Permit only, which provides the e-ratio calculations only (fees are \$125 for permit only with no certificate).

FPL's cumulative participation in the BuildSmart program through 2004 was 6,915 homes, far short of the estimated 15,099 homes. In response to this shortfall, FPL performed a situational analysis of the market for new homes and how the BuildSmart program meets the needs of homebuilders and buyers. According to FPL's analysis, the present BuildSmart program has had the most success among custom builders and homebuyers. While FPL believes that the per-home energy efficiency gains among such custom builders and homebuyers are significant under the existing program, FPL stated that it is missing the opportunity to penetrate the production housing market. FPL has defined the production housing market as single-family detached homes, and single-family attached homes such as town homes and villas. FPL's Witness Haywood stated that the situational analysis was used to develop FPL's proposed modifications to the BuildSmart program, and address the low participation by production builders.

⁴ The Florida Energy Efficiency Code requires that newly constructed homes achieve a passing score, represented as an e-ratio of 1 or less. E-ratio scores below 1 reflect improvements in the home's energy performance beyond the Code's minimum requirements.

The Modifications to the BuildSmart Program

According to FPL, the proposed modifications to the BuildSmart program were developed to optimize the program's features and specifications to meet the critical needs of builders, both custom and production, while enhancing features valued by homebuyers. The modified program offers two certification tracks: a prescriptive measure approach and a flexible measure approach.

- **Prescriptive approach:** This approach is intended to simplify energy efficiency options and allows production builders to make large volume, discounted purchases that do not trigger plan modifications. The "Prescriptive" approach will include measures related to heating, ventilation and air conditioning (HVAC), ductwork, and insulation. Under this approach, to receive BuildSmart certification, a home must include specific prescriptive energy measures targeted to achieve an energy efficiency rating at least 10 percent better than the rating required by the Florida Energy Efficiency Code. Certification under the federal Environmental Protection Agency's ENERGY STAR program is not available under the prescriptive approach.
- **Flexible approach:** FPL proposes to modify the existing flexible measure approach by eliminating the Gold, Silver, and Bronze certification levels. To obtain BuildSmart certification under this flexible approach, a home must achieve an energy efficiency rating at least 20 percent better than the rating required by the Florida Energy Efficiency Code, using any combination of measures permitted by energy rating tools.

FPL has also proposed the following additional modifications to the program:

- **Eliminate premium and permit only service levels:** As currently designed, the BuildSmart program has three service levels: basic, premium, and permit only. FPL stated that the service levels other than basic service have received very little interest and do not warrant continued inclusion in the program. Therefore, FPL is proposing to offer only the basic service level.
- **Eliminate program participation fees:** The current program requires participation fees, with lower fees being charged to homes with higher levels of efficiency. FPL stated that a major impediment to builder participation has been the fees associated with participation in the BuildSmart program. According to FPL, in-market experience indicates that the builder is FPL's "keystone" customer, that is, the builders are central to the process of marketing BuildSmart, and they have the greatest impact on the success or failure of the program. As stated above, the service levels other than basic service have received very little interest and do not warrant continued inclusion in the program. FPL stated that most of the current custom homes that participated in the existing program achieved at least 20 percent gains in efficiency, which indicates fees of \$125 for Silver certification and no fee for Gold certification at a basic service level. Large volume production builders that are necessary for the program to achieve economies of scale are not willing to pay per home participation fees. FPL believes that eliminating the basic service fees will not only

increase the number of BuildSmart homes built by production builders, but will also have a positive effect on the number of custom built homes that participate in the program.

- **Include single-family attached dwellings:** FPL stated that single-family attached dwellings can be cost-effectively included in the program, depending on their configuration. According to FPL, production builders frequently develop entire communities that include a mix of single-family detached and single-family attached dwellings. Both types of dwellings can be built using the same prescriptive approach. These builders believe that both types of dwellings must be certified as BuildSmart to avoid homebuyers' perception that the attached dwellings are inferior.
- **Provide Builder Incentives:** FPL plans to provide builder incentives, such as cooperative advertising incentives, of up to \$50 per home for qualifying BuildSmart homes that also achieve certification under the federal Environmental Protection Agency's ENERGY STAR program.

The modified BuildSmart program will be available to all new, residential single-family homes, whether detached or attached, in FPL's service territory, whether built by a production builder or an owner builder. The new house must have whole-house electric air-conditioning to qualify. To be eligible for BuildSmart certification, builders must comply with all national, state, and local codes and ordinances. FPL reserves the right to perform a series of inspections on each BuildSmart home to verify that energy-efficiency upgrades are incorporated as submitted. For each inspected home, FPL will verify that all energy measures specified have been installed and determine whether any changes were made to the home that will affect the energy performance level of the home.

We agree with FPL that it is reasonable to expect that the proposed modifications will encourage participation by production builders. Calcs-Plus' Witness Klongerbo testified that he is puzzled by FPL's belief that the elimination of such a "miniscule charge for testing and verification when home prices are at an all time high" will have a significant impact on participation, but we agree with FPL's Witness Haywood that production builders view total costs on a neighborhood basis, which could be significant, rather than focusing on a per home fee. We also agree that the introduction of a prescriptive approach could encourage participation by production builders by allowing them to take advantage of volume discounts for the required energy efficiency measures. Furthermore, we agree that adding single-family attached homes to the program should encourage participation by production builders. It is reasonable to assume that builders of neighborhoods with both single-family detached and attached homes would be more likely to participate if all homes could be certified as BuildSmart homes. Finally, we agree that increased participation in the program will allow FPL to take advantage of economies of scale in the energy analysis and inspection components of the program.

Cost-effectiveness

FPL included the modified BuildSmart program in its 2005 DSM plan to meet FPL's Commission-approved conservation goals for the 2005 through 2014 time frame. As a part of its analysis for its 2005 DSM Plan, FPL performed two cost-effectiveness analyses of each

proposed DSM program. FPL performed the initial cost-effectiveness screening of DSM options using the three benefit-to-cost ratios in our approved cost-effectiveness methodology, the Ratepayer Impact (RIM), Total Resource Cost (TRC), and Participants tests, and an appropriate avoided generating unit (i.e., new combined-cycle unit capacity). The screening allowed FPL to determine optimal incentive payments and achievable market potential levels for each DSM measure that was shown to be potentially cost-effective in the cost-effectiveness screening. All DSM programs, including the redesigned BuildSmart program, that emerged from this process were shown to be cost-effective twice; once on an individual basis, and again when combined into the DSM portfolio that comprised FPL's DSM goals. The cost-effectiveness analysis for the modified BuildSmart program resulted in benefit-to-cost ratios of 1.05, 1.10, and 1.77, for the RIM, TRC, and Participant tests, respectively. Our review of FPL's cost-effectiveness analysis indicates to us that the assumptions are reasonable, and since FPL's benefit-to-cost ratios are greater than one, the modified BuildSmart program appears to successfully pass the Commission-approved cost-effectiveness tests.

Calcs-Plus did not provide an alternative cost-effectiveness analysis of the modified BuildSmart program using the Commission-approved methodology, but Calcs-Plus appeared to offer an alternative cost-effectiveness methodology. Witness Philip Fairey, sponsored by Calcs-Plus, stated that the simplest means of determining the cost-effectiveness of an entity's efforts to enhance energy efficiency would be the cost of achieving the increased energy efficiency divided by the amount of energy saved. In other words, dollars expended per kWh avoided. We agree with FPL's Witness Sims, who argued that the approach Mr. Fairey offered is fundamentally flawed. Witness Sims explained that Mr. Fairey's approach considers only the costs of DSM programs, with no recognition of the benefits of DSM, in particular, the potential benefits driven by the kW reduction attribute of DSM programs. Witness Fairey's approach excludes DSM's greatest potential benefit, the avoidance or deferral of new generation, transmission, and distribution facilities that would otherwise be needed. Also, Witness Fairey's proposed approach would give no weight to a DSM program's capability to reduce a utility's demand during Summer and Winter peak hours. At deposition, Witness Fairey stated that he was not familiar with the Commission-approved criteria for cost-effectiveness for DSM programs as set out in Rule 25-17.008, Florida Administrative Code. Witness Fairey also stated that he was offering a methodology based on a layman's perspective, and that he was not suggesting that the Commission adopt a new criteria for cost-effectiveness. We also agree with Witness Sims that this docket is not the appropriate forum to raise generic questions regarding how to evaluate the cost-effectiveness of DSM programs. Section 366.82, Florida Statutes, requires this Commission to review and approve cost-effective utility conservation programs. We adopted Rule 25-17.008, Florida Administrative Code, and the Cost-Effectiveness Manual, as part of the implementation of that Statute. Any revisions to our established methodology would be more appropriately addressed in a rule-making or other generic proceeding in which all affected parties would have the opportunity to participate.

Calcs-Plus expressed concerns about the elimination of participation fees for BuildSmart for two primary reasons. First, Calcs-Plus believes that eliminating the fees will exert unfair competition on private energy raters, but this docket is not the appropriate venue to discuss the potential competitive impacts of FPL's BuildSmart program on the energy efficiency

marketplace. We do not have the authority to consider or control the potential competitive impacts of utility-sponsored DSM programs on independent energy raters. Second, Calcs-Plus stated that the elimination of the program participation fees will further burden FPL's ratepayers, as the costs of the program are recovered through an add-on to customers' bills. Calcs-Plus asserts that the elimination of participation fees and the recovery of the program's costs through the Energy Conservation Cost Recovery clause harms FPL's ratepayers. We disagree with that assessment. FPL adequately demonstrated that the program passes the RIM test. The RIM test ensures that all ratepayers benefit, not just the program's participants. Cost-effective DSM programs benefit non-participating ratepayers due to the deferral of generation capacity and transmission and distribution facilities, as well as the potential fuel savings.

The record supports the conclusion that the modifications to the BuildSmart program will accomplish the program's objective of encouraging the design and construction of energy efficient homes that cost-effectively reduce FPL's coincident peak load and customers' energy consumption. It is reasonable to expect that the modifications will increase the participation of production builders, resulting in increased energy and demand savings, and economies of scale. FPL provided adequate evidence that the modified BuildSmart program is cost-effective under our approved methodology, with benefit-to-cost ratios of 1.05, 1.10, and 1.77, for the RIM, TRC, and Participant tests, respectively. Calcs-Plus' arguments, which appear to be based primarily on competitive concerns, are not compelling. Calcs-Plus did not provide evidence that FPL's proposed modifications were not cost-effective under our established cost-effectiveness methodology.

Monitoring and Measuring the Effects of the BuildSmart Program

FPL initially studied the feasibility of a new home construction program in the mid-1990s. Witness Fairey, the Deputy Director of the Florida Solar Energy Center, stated in his deposition that the Florida Solar Energy Center, which administers Florida's Building and Energy Rating system, was involved in the studies in the 1990s that led to the BuildSmart program. Witness Fairey stated that the studies indicated that a new home program could be beneficial in creating energy savings. According to Witness Fairey, "It was clear from the results that the great majority of homes were being built right at minimum code standards. And so if you have some program that moves those homes 10, 20 percent better than that, then it's going to help, from our perspective."

FPL filed the final report on these feasibility studies with us on June 1, 1995. The report included the results of FPL's end-use monitoring and engineering evaluation study, and a detailed pilot program market analysis. The studies were used to develop an engineering model for the BuildSmart program, which is used in estimating potential demand and energy savings. FPL also performed a smaller metered study in 1999 to verify the expected demand and energy savings predicted by the BuildSmart engineering model. FPL has revised the model over time to account for changes in the Florida Energy Efficiency Code and in the EnergyGuage software. Calcs-Plus provided no convincing evidence that FPL's BuildSmart engineering model, or the demand and energy savings predicted by the model, are flawed.

According to Witness Haywood, FPL will track program participation and the efficiency measures implemented under the modified BuildSmart program in a database. The BuildSmart database is currently maintained as a part of the existing program, and FPL has proposed no changes to this procedure. Data is collected by FPL's BuildSmart representatives in the field. Calcs-Plus' Witness Stroer acknowledged that FPL has 11 certified energy raters currently working in the BuildSmart program. At his deposition, Witness Fairey recommended using certified energy raters, including those employed by utilities, to monitor programs and provide quality control.

Accuracy of the BuildSmart database, along with program objectives, goals, administration and implementation, are reviewed periodically by a third-party consultant. Calcs-Plus' Witness Stroer acknowledged that he is aware of the role of the third-party consultant. Witness Haywood stated that the general protocol would be for the consultants to report any data anomalies to the BuildSmart program manager. FPL's consultants also review building code changes to determine how these changes would affect expected participation, and demand and energy savings. FPL then adjusts its BuildSmart engineering model, and the resulting expected program savings, accordingly.

FPL expects to conduct an increased level of evaluation of the modified BuildSmart program's savings over the next five years. Witness Haywood stated: "This may include all three techniques of engineering modeling, billing analysis and possibly a new metered end-use study." Witness Haywood agreed that these studies would be used to verify the expected demand and energy savings from the modified program.

Calcs-Plus questioned whether the demand and energy savings predicted by FPL will materialize. As evidence, Calcs-Plus provided Exhibit 20, which displays the results of its Florida Building Energy Rating System (BERS) ratings for the WCI neighborhood. Calcs-Plus believes that the BERS ratings performed by Calcs-Plus on approximately 30 percent of the homes in this BuildSmart certified neighborhood cast doubt on the savings from FPL's current BuildSmart program. According to Calcs-Plus' Witness Stroer, Exhibit 20 was intended to show that a number of the homes seemed to fail the BuildSmart criteria, and some homes seemed to fail even the Florida Energy Code's minimum standard, when retested by Calcs-Plus. This data was reviewed by FPL's witness Haywood. Witness Haywood stated that there are a number of issues that would have to be overcome to draw any type of valid conclusion from the data. For example, individual homes were identified by a code, rather than an address, and therefore, it is impossible to determine if the home had passed its final BuildSmart inspection prior to the Calcs-Plus test. Also, FPL and Calcs-Plus used different duct-testing methodologies, which can be expected to give differing results. We agree that there are unresolved questions about the Calcs-Plus exhibit that would have to be resolved before we could reach a conclusion about the WCI neighborhood based on Calcs-Plus' exhibit. The exhibit is insufficient evidence to support a finding by us that FPL overstated the savings associated with the existing BuildSmart program and thus is overstating the estimated savings associated with the proposed modifications.

Calcs-Plus' Witness Klongerbo takes the position that to ensure accuracy, the energy efficiency of BuildSmart homes should be measured using the national Home Energy Rating System (HERS) methodology. Witness Fairey also stated that the best available means of

assessing the relative energy efficiency of a residential unit in Florida is the BERS methodology. We do not agree that FPL should use the HERS or BERS methodologies to test the energy performance of BuildSmart homes. The BuildSmart program is designed to provide certification that cost-effective energy efficiency measures have been installed in a home and meet BuildSmart standards. The program is not designed to provide a HERS Rating or BERS Class 1 Rating. Witness Fairey stated that under current laws, there is no requirement for FPL to use the HERS or BERS rating in the BuildSmart program. Further, Witness Fairey stated that the Energy Performance Index (EPI) home rating system, used by FPL in BuildSmart, has been shown to adequately predict the energy usage in homes on a portfolio basis.

Calcs-Plus also questioned the accuracy of FPL's energy savings estimates because FPL uses the pressure pan duct testing methodology in its BuildSmart program, rather than the duct pressurization methodology currently used in BERS ratings. Calcs-Plus' Witness Klongerbo stated that as of November 2004, FPL's duct testing methodology (pressure pan testing) is not a recognized protocol for duct testing for HERS Rating or BERS Class 1 Rating. According to FPL, the BuildSmart program is designed to provide certification that cost-effective energy efficiency measures have been installed in a home and meet BuildSmart standards. The program is not designed to provide a HERS Rating or BERS Class 1 Rating and, therefore, it is not mandated that FPL use the duct testing protocol specified for a BERS Rating. FPL believes that the pressure pan methodology is currently the appropriate method for diagnosing duct leakage for repair in BuildSmart homes, and for quantifying and reporting BuildSmart impacts. Calcs-Plus Witness Fairey acknowledged that while the pressure pan test is no longer an accepted test protocol for quantifying duct leakage for a BERS/HERS rating, it is still an accepted and valid diagnostic tool for identifying the likely location of major duct leakage. Witness Fairey also acknowledged that the pressure pan test is still used in numerous programs related to building energy efficiency throughout the country for the purposes of identifying duct leaks. The record supports FPL's assertion that the pressure pan methodology is appropriate for use in the BuildSmart program. The program is not a rating system, and duct testing is one of many requirements in the program. Further, the evidence shows that the use of the duct pressurization methodology to determine the percentage of leakage would require an additional methodology, such as the pressure pan methodology, to find and fix the duct leaks. This would add costs to the program with little proven benefit.

The record supports the conclusion that FPL's modified BuildSmart program is monitorable and will yield measurable results. FPL's engineering model for the program was developed based on extensive end-use studies performed with the aid of the Florida Solar Energy Center, and FPL currently tracks program participation and efficiency measures through the BuildSmart database. FPL's 11 certified energy raters should provide adequate quality control, including in the data collection process. Accuracy of the BuildSmart database and the engineering model assumptions are reviewed by a third-party consultant. FPL has proposed no changes to this procedure. FPL expects to conduct an increased level of evaluation of savings over the next five years. Further, FPL's use of the EPI rating system and pressure pan duct testing methodology are appropriate.

The Modified BuildSmart Program, FEECA, and Commission Rules and Policies

Section 366.80-85, Florida Statutes, or the Florida Energy Efficiency and Conservation Act (FEECA), requires the reduction in the growth rates of electric consumption and of weather-sensitive peak demand to the extent cost-effective. We implemented the requirements of FEECA in Rules 25-17.001 through 25-17.015, Florida Administrative Code.

According to FPL's Witness Haywood, "BuildSmart is designed to meet the objectives of FEECA. It is designed to reduce weather-sensitive peak demand and reduce customer energy consumption." FPL provided estimates that the modified BuildSmart program will reduce per customer winter demand by .88 kW, summer demand by .78 kW, and annual energy consumption by 1,460 kWh. These estimates are based on FPL's engineering model for the program, and have been updated according to changes in the building code. Calcs-Plus did not provide any alternative estimates of the expected demand and energy savings from the program.

FPL has modified the program primarily to increase participation by production builders, which should result in cost savings on a per home basis. Witness Haywood stated that an increase in the participation of production builders will lead to economies of scale in the energy analysis and inspection components of the program.

Calcs-Plus has not shown that the modified program fails to meet the requirements of FEECA and the Commission's rules. FPL's estimated demand and energy savings are reasonable. Further, as discussed above, the program is cost-effective. Calcs-Plus' argument that the modified BuildSmart program fails to address our "special concerns relating to residential new construction programs," and how these programs relate to the Florida Energy Efficiency Code, is out of date. We approved the program in its current form on May 8, 2000.⁵ FPL's proposed modifications do not affect how the program interacts with the Florida Energy Efficiency Code.

Upon review of the record evidence and the applicable rules and statutes, we find that the BuildSmart program and the proposed modifications comply with all regulatory requirements. In light of the findings explained above and our analysis of the evidence, we approve the modified BuildSmart program. The record demonstrates that the modifications to the BuildSmart program will accomplish the program's objective of encouraging the design and construction of energy efficient homes that cost-effectively reduce FPL's coincident peak load and customer energy consumption. The proposed modifications should encourage participation by production builders, leading to increased energy and demand savings. The evidence shows that the modified BuildSmart program is cost-effective, the evidence shows that the program is directly monitorable and will yield measurable results, and the evidence shows that the program will advance the policy objectives of FEECA and Rule 25-17.001, Florida Administrative Code. Calcs-Plus provided insufficient evidence to support its contention that the existing BuildSmart

⁵ Order No. PSC-00-0915-PAA-EG, in Docket No. 991788-EG, In Re: Approval of Demand-Side Management Plan of Florida Power & Light Company. This order was made final by the Commission's consummating Order No. PSC-00-2004-CO-EG, issued June 6, 2000.

program, as well as the proposed modifications, should be denied.⁶ FPL may include the program in its 2005 DSM Plan and apply the energy and demand savings from the program to its DSM goals. FPL shall file detailed program standards within 30 days of the issuance of this Order. Our staff shall approve the standards administratively if they conform to the description of the modified BuildSmart program provided in this docket.

The Residential Conservation Service Program

FPL's Residential Conservation Service program (RCS) is an existing energy audit program, which was implemented by FPL in the 1980s. The program includes a walk-through energy audit, a computer-generated audit, and a customer-assisted energy audit. FPL also uses the program as a way to introduce its customers to FPL's other conservation programs. FPL's energy auditors provide eligible customers with Watt-Saver certificates, or incentive payments, to reduce the up-front cost of implementing energy efficiency measures. We last approved the RCS program in its current form in Order No. PCS-00-0915-PAA-EG, issued May 8, 2000, in Docket No. 991788-EG, In Re: Approval of Demand-Side Management Plan of Florida Power & Light Company.⁷ As required by our order, the procedures for the program were subsequently administratively approved by Commission staff.

FPL included the RCS audit program in its 2005 DSM Plan. FPL proposed no changes to the existing program. FPL did not provide a cost-effectiveness analysis of its RCS program in its 2005 DSM Plan filing. This is appropriate because the potential demand and energy savings from the program are not counted toward FPL's DSM goals. FPL projects that 75,000 to 100,000 residential customers will participate in the program per year.

Calcs-Plus appears to have two primary areas of concern regarding FPL's RCS program. First, Calcs-Plus claims that \$4,615,517 of FPL's advertising expenditures should not be recovered. In its position statement and post-hearing brief Calcs-Plus asserted that FPL's advertising is "not only image enhancing but also an inaccurate statement of true company actions." Second, Calcs-Plus believes that FPL's RCS program, and the associated advertising, exert unfair competition in the energy efficiency marketplace. In its post-hearing filing, Calcs-Plus requested relief in the form of an investigation into the procedures of FPL's RCS program, and the disallowance of \$4,615,517 in advertising expenditures for the program. FPL's expenditures for its conservation programs are reviewed in the Commission's ongoing energy conservation cost recovery proceedings. Advertising expenditures for the RCS program were approved in Order No. PSC-04-1178-FOF-EG, issued November 30, 2004, in Docket No. 040002-EG. The \$4,615,517 in advertising expenses cited by Calcs-Plus represents FPL's estimated advertising expenses for RCS in 2005, and the true-up on these expenses from 2004. We do not agree that recovery of these advertising expenditures should be disallowed. Calcs-Plus did not raise this issue in the appropriate venue when we reviewed and approved the

⁶ In its post hearing brief, Calcs-Plus proposed a long list of penalties to be imposed upon FPL for alleged wrongdoing. None of the proposals, or competent evidence to support them, were submitted in the record of the proceeding.

⁷ This order was made final by consummating Order No. PSC-00-2004-CO-EG, issued on June 6, 2000.

expenses in Docket No. 040002-EG. Further, Calcs-Plus provided minimal testimony on FPL's RCS program and its advertising and provided no specific examples of advertisements that it considered to be solely "image enhancing." Nor is this docket the appropriate venue to discuss potential competitive impacts of FPL's RCS program on the energy efficiency marketplace, including energy efficiency raters. As we explained above in our discussion of the BuildSmart program, we do not have jurisdiction to address the potential competitive impacts of utility-sponsored DSM programs on independent energy raters. Finally, FPL is required by statute and rule to offer energy audits to all residential customers.

The Residential Conservation Service Program, FEECA, and Commission Rules and Policies

Utilities subject to FEECA are required to offer residential energy audits pursuant to section 366.82(5), Florida Statutes, which states: "The commission shall require each utility to offer, or to contract to offer, energy audits to its residential customers." We implemented section 366.82(5), Florida Statutes, in Rule 25-17.003, Florida Administrative Code. The rule requires each utility to offer eligible residential customers computer-assisted and walk-through audits, and requires the approval of audit procedures prior to implementation.

Our review of the record and the applicable statutes and rules leads us to the conclusion that FPL's RCS program complies with section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code, which require FPL to offer residential audits. The RCS program in its proposed form was previously approved as a part of FPL's 2000 DSM Plan. Calcs-Plus provided no evidence to support its contention that the recovery of FPL's previously-approved advertising expenses should be disallowed, or that the Commission should launch an investigation into the RCS program. Therefore, we approve FPL's Residential Conservation Service program.

Calcs-Plus' request in its post-hearing brief that we require FPL to "notify all participants of the availability of rating services" appears to be based on competitive interests and beyond the scope of our jurisdiction. We will not impose that requirement on FPL. Also, FPL is currently meeting its approved DSM goals. Requiring FPL to substantially alter the RCS program conflicts with our mandate in FEECA. Section 366.82(3), Florida Statutes, provides:

If any utility has not implemented its programs and is not substantially in compliance with the provisions of its approved plan at any time, the Commission shall adopt programs required for that utility to achieve the overall goals.

Requiring changes to an existing program when a utility is meeting its DSM goals exceeds our authority.

We find that it is appropriate to include the RCS program in FPL's 2005 DSM Plan. FPL shall file detailed program standards with the Commission within 30 days of the issuance of this Order. Our staff shall approve the standards administratively if they conform to the description of the RCS program contained in this docket.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Florida Power & Light Company's modifications to its BuildSmart conservation program and Florida Power & Light Company's existing Residential Conservation Service program are approved for inclusion in its 2005 Demand Side Management Plan. It is further

ORDERED that Florida Power & Light Company shall file detailed program standards within 30 days of the issuance of this Order. It is further

ORDERED that our staff shall approve the detailed program standards if they conform to the program descriptions included in these dockets. It is further

ORDERED that these dockets shall be closed when the time for filing a notice of appeal has expired.

By ORDER of the Florida Public Service Commission this 10th day of January, 2006.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records

(SEAL)

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.

Any party adversely affected by the Commission's final action in this matter may request:

- 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.