

Matilda Sanders

From: jimtait@comcast.net
Sent: Thursday, December 30, 2004 3:01 PM
To: Filings@psc.state.fl.us
Subject: Motion to amend 040660-EG

ORIGINAL

Attached is my motion to amend original protest complaint in Docket # 04-0660-EG.

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket No. 040660-EG

Filed: December 29, 2004

**MOTION TO AMEND AND CLARIFY PETITIONERS' PROTEST
COMPLAINT FILED NOVEMBER 15, 2004**

COMES NOW Petitioners, Compliance Data Services, Inc. (d/b/a Calcs-Plus),
Dennis J. Stoer and Jon F. Klongerbo, through their undersigned attorney, and ask leave
to amend their original protest complaint filed on November 15, 2004, and in support
state:

1. The undersigned attorney was only recently contacted; filed his notice of appearance on December 24, 2004; and immediately reviewed the case and its documents.
2. The original protest was filed on November 15, 2004, by the Petitioners without the aid of counsel and, inadvertently and unknowingly, failed to clearly state their status as parties and also failed to clearly comply with Rule 28-106.201, Florida Administrative Code ("F.A.C.").
3. Pursuant to Rule 28-106.201 (4), F.A.C., Petitioner offers the following amendments to its Protest as filed on November 15, 2004:
 - A. The agencies affected are the Florida Public Service Commission under docket 04-0660; the Executive Office of the Governor, a mandatory party pursuant to §366.82, Florida Statutes ("F.S."); the Office of Public Counsel, pursuant to §350.0611, F.S.; the Department of Community Affairs, pursuant to §553.990-553.998, F.S., inclusive; and the Florida

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Energy Office in the Department of Environmental Protection, pursuant to §377.703, F.S., among others.

B. The true parties for the protest are:

1. Compliance Data Services, Inc. (d/b/a Calcs-Plus), a Florida Corporation with its main office at 417-F Commerical Court, Venice FL 34292 and its east coast office at 1351 Park Avenue, Titusville, FL 32780, and a Florida Power & Light (“FPL”) ratepayer under FPL commercial account # 95840-66410;
2. Dennis J. Stoer, an individual and President of Calcs-Plus, residing at 230 Dartmouth Road, Venice, FL 34293, and a FPL ratepayer under FPL residential account # 03459-46495; and
3. Jon F. Klongerbo, an individual and Florida East Coast Director of Calcs-Plus, residing at 1351 Park Avenue, Titusville, FL 32780, and a FPL ratepayer under residential account # 84452-34043.
4. Their substantial interests will be affected by the Public Service Commission approving a program design that will potentially increase their rates and costs of residing and doing business in the state; and that will also grant undue and/or unreasonable preferences and/or advantages to certain persons contrary to §366.03, F.S.; and that will subject the Petitioners to undue and/or unreasonable prejudice or disadvantage in their chosen business and profession also contrary to §366.03, F.S.;

- C. Petitioners received notice of Proposed Agency Action Order No. PSC-04-1046-PAA-EG when it was issued October 26, 2004.
- D. To the best of the Petitioners' current knowledge:
1. They dispute the method of calculating the cost-benefit of the program and the impact of the program on the utility, as designed; and
 2. They believe and assert facts that will show that persons within the utility's service areas will be unduly and/or unreasonably advantaged and/or subjected to undue and/or unreasonable prejudice or disadvantage.
- E. FPL's proposed program unnecessarily provides advantage to certain persons and greatly damages non-monopolistic public and private sector efforts to provide competitive services in the area of energy efficient residences and also discourages energy efficient fuel choices between competing suppliers of services in violation of the purpose and intent of chapter 366, F.S.
- F. Petitioners are entitled to relief pursuant to Chapter 366, FS, in particular §366.03, and the "Florida Energy Efficiency and Conservation Act," §366.80-366.85, FS, inclusive; PSC Rule Sections 25-17.003, F.A.C. relating to energy audits and charges; Sections 553.990-533.998, FS, inclusive, the "Florida Building Energy-Efficiency Rating Act;" DCA Rule 9B-60.005, F.A.C., relating to energy ratings and costs; and by enforcing conformance to FPL Tariff Schedule for BERS, Fourth Revised Sheet No. 4.040.

G. The Petitioners urge the Commission to reject FPL's proposed modification to its BuildSmart program and require FPL to submit a new program design that would enhance energy efficiency and the use of building energy rating systems without unduly and unreasonable prejudicing its ratepayers and competing businesses within its territory. Petitioners also suggest that the existing programs to encourage energy efficient residences by both state and federal energy agencies should be recognized and their best products should be incorporated into the final program plan.

WHEREFORE, for the above and foregoing reasons, and to provide Petitioners their day in court to prove their claims and to establish better program designs for new construction programs, the Petitioners respectfully request their motion to amend be granted and allow discovery to proceed.

Submitted this 29th day of December, 2004.

s/ William J. Tait, Jr.
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing Notice of Appearance was served by electronic mail (*) and U.S. Mail this 24th day of December, 2004, to the following:

Martha Carter Brown*
Office of General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

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Natalie F. Smith, Esquire
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Executive Office of the Governor
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General Government Unit
The Capitol, Room 1502
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Department of Environmental Protection
Florida Energy Office
3900 Commonwealth Blvd, M.S. 19
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s/William James Tait, Jr.
William James Tait, Jr.