

ORIGINAL

Matilda Sanders

From: Jim Tait [jimtait@comcast.net]
 Sent: Friday, July 22, 2005 2:42 PM
 To: Filings@psc.state.fl.us
 Subject: Petitioner's responses to FPL discovery
 Attachments: 7-22 C+ Response to FPL's 6-22 Request for Production of Docs.doc; 7-22 C+ RESPONSE TO FPL's 6-22 Interrogatories.doc; 7-22 C+ RESPONSE TO FPL's 6-22 REQUEST FOR ADMISSIONS.doc

Attached is Petitioner's responses to FPL's first request for admissions and second set of interrogatories and second request for documents; all of whom were filed on June 22, 2005.

3 Files:

- 7-22 Response to FPL's 6-22 interrogatories
- 7-22 Response to FPL's 6-22 request for admissions
- 7-22 Response to FPL's 6-22 request for production of documents

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<i>INTERROGATORIES</i>	<i>ADMISSIONS</i>	<i>PODS</i>
DOCUMENT NUMBER-DATE	DOCUMENT NUMBER-DATE	DOCUMENT NUMBER-DATE
07057 JUL 22 05	07058 JUL 22 05	07059 JUL 22 05
FPSC-COMMISSION CLERK	FPSC-COMMISSION CLERK	FPSC-COMMISSION CLERK

7/22/2005

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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

Docket Nos. 040660-EG and 040029-EG Consolidated

Dated: July 22, 2005

COMPLIANCE DATA SERVICES, INC. ("Calcs-Plus") RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S ("FPL") SECOND SET OF INTERROGATORIES (NOS. 35-57)

Compliance Data Services, Inc. ("Calcs-Plus") and its principals, Dennis J. Stroer and Jon F. Klongerbo, file the following responses to FPL's second set of interrogatories dated June 22, 2005.

INTERROGATORIES

35. Describe the circumstances under which "[t]he undersigned attorney was only recently contacted" as referenced in Paragraph A of the January 18 Response, including stating exactly who contacted "the undersigned attorney" and how the Petitioners became aware of "the undersigned attorney."

I was contacted on/about December 17, 2004, by Jon Klongerbo and later had a conference call involving both principals, Dennis Stroer and Jon Klongerbo. Both principals know me from my work at Florida Energy Director during the 1990s and further knew of my work with the national RESNET organization and its executive director, Steve Baden, and with the Florida Energy Futures Report in which I participated as a consultant during 2002-03.

36. Please identify and describe in detail any and all bases underlying the assertion in Paragraph 1 of the January 18 Response that "FPL's program design has never maximized the potential for energy efficiency in residential building practices and has failed to meet the market penetration that many other programs have offered throughout the U.S. and even within the State of Florida.

The answer to this is the one of one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. It has been clear from the documents submitted by FPL over the years, and in support of their program and its proposed modifications, that its achievements compared to the current national standard for an "energy efficient" home, the Energy Star Home® is woefully lacking. It is also clear that its market penetration rate is woefully low even for its modest gains per home; that conclusion may be drawn from their testimony for supporting a modification in their program. The following two tables are in their infancy and need significant more work. In fact, FPL contributions are definitely overstated; but, even overstated, they show a clear failing on the part of the FPL program over the years that certainly will not be cured by their self-serving modifications as proposed. The following two tables were developed from internet sources, as indicated, of data

on the penetration rate of the national standard for an energy efficient home, the federal Energy Star Home®. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

ENERGY STAR FIGURES FOR FLORIDA FROM EPA WEBSITE

	Bldrs rpting E* homes	Bldrs with no homes rpted	HOMES total program	HOMES last 12 mo.	% last 12	2003 New Starts*	% E*
FLORIDA	48	34	6244	2496	39.97%	156,852	1.59%
FPL*	5	n/a	312	52	16.67%	74,240	0.07%
GRU	11	n/a	621	173	27.86%	1,536	11.26%
PEF	19	n/a	4152	1737	41.84%	21,959	7.91%
OTHER	13	n/a	1159	534	46.07%	59,117	0.90%
OTHER STATES							
	Bldrs rpting E* homes	Bldrs with no homes rpted	HOMES total program	HOMES last 12 mo.	% last 12	2003 New Starts*	% E*
CALIFORNIA	101	71	40186	24281	60.42%	139,870	17.36%
TEXAS	150	124	75044	41636	55.48%	134,197	31.03%
OHIO	31	18	11110	6236	56.13%	42,703	14.60%
NEVADA	32	24	33018	16919	51.24%	33,090	51.13%
WISCONSIN	230	114	4058	2112	52.05%	28,744	7.35%
NEW YORK	197	130	3200	1763	55.09%	24,196	7.29%
NEW JERSEY	56	38	7740	4210	54.39%	22,163	19.00%
MASS	55	33	2251	1049	46.60%	13,037	8.05%
INDIANA	33	17	7375	3011	40.83%	12,601	23.89%
VERMONT	25	8	1114	356	31.96%	2,430	14.65%
RHODE ISL	9	8	536	201	37.50%	1,948	10.32%

*State new starts are taken from BCAP table;
allocation within Florida is using factor derived from reported residential customers by utility (PSC)

2004 ENERGY STAR Qualified Homes Sorted by Market Penetration			
ENERGY STAR Qualified Homes and Housing Permits 01/01/2004 through 12/31/2004			
State	Total ENERGY STAR Qualified Homes in 2004	2004 Housing Permit Starts (Total)	Market Penetration
Alaska	1,379	3,185	43.30%
Nevada	13,900	44,411	31.30%
Texas	39,514	179,030	22.07%
Iowa	3,239	15,667	20.67%

Vermont	604	3,491	17.30%
New Jersey	6,096	36,033	16.92%
Hawaii	1,494	8,938	16.72%
Arizona	11,394	87,646	13.00%
Louisiana	2,437	20,719	11.76%
Rhode Island	290	2,493	11.63%
California	23,291	207,944	11.20%
Ohio	5,278	49,627	10.64%
Oregon	2,602	28,000	9.29%
Massachusetts	1,549	21,219	7.30%
Indiana	2,424	39,130	6.19%
Connecticut	703	11,672	6.02%
Delaware	432	7,947	5.44%
Wisconsin	2,025	37,797	5.36%
New Hampshire	335	8,446	3.97%
Colorado	1,614	45,585	3.54%
Oklahoma	557	16,186	3.44%
Maryland	849	28,384	2.99%
New York	1,568	54,963	2.85%
Idaho	458	16,997	2.69%
Kentucky	405	22,705	1.78%
Utah	352	23,728	1.48%
Minnesota	555	40,834	1.36%
New Mexico	157	12,684	1.24%
Maine	103	8,383	1.23%
Pennsylvania	510	46,814	1.09%
Washington	480	49,247	0.97%
Florida	2,193	250,887	0.87%
Illinois	502	60,277	0.83%
Michigan	334	52,800	0.63%
North Carolina	484	91,808	0.53%
Nebraska	39	10,199	0.38%
Georgia	208	105,889	0.20%
Virginia	98	62,437	0.16%
Montana	6	3,936	0.15%
South Carolina	54	42,530	0.13%
Kansas	14	12,098	0.12%
Tennessee	47	44,551	0.11%
South Dakota	4	5,891	0.07%
Wyoming	2	3,304	0.06%
Mississippi	7	13,572	0.05%
North Dakota	1	3,787	0.03%
Missouri	7	29,637	0.02%
West Virginia	1	5,070	0.02%
Arkansas	0	15,239	0.00%
Alabama	0	28,458	0.00%
Dist. of Columbia	0	1,936	0.00%
United States	130,595	2,024,211	6.45%

37. Please identify and describe in detail any and all bases for any assertion that FPL's modifications to its BuildSmart Program are not intended to increase the market penetration of the Program, including stating with specificity each and every way in which you believe the Program will not increase market penetration.

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. Certainly, FPL hopes and could possibly achieve greater market penetration by lowering their performance objectives and giving away their services free!! The problem is not solely market penetration but success in achieving residential energy efficiency. In order to accomplish this, the performance objectives per home should recognize the national standard that is being achieved in far greater numbers throughout the rest of the country and even in other parts of Florida where utility programs are tailored to support the marketplace and recognize the leveraged assistance of the national labeling program, the Energy Star Home®. In fact, a greater penetration rate into the marketplace of the BuildSmart program as proposed could definitely lead to lower energy efficiency in residential new construction in their territory than would otherwise be available from existing market forces. Simply compare the penetration rate for the national standard energy efficient home in the Gainesville region where the local municipal utility provided early coalition support but refused to enter into competitive services and instead encouraged the development of an "energy efficient business sector" in the private marketplace. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

38. Identify and describe in detail any and all bases underlying the assertion in Paragraph 1 of the January 18 Response that "[t]heir attempt to cure their past program failures and low rate of market penetration falls far short of the most cost beneficial program possible," including stating any and all "failures" of the "past program."

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. Briefly, the past program has failed to produce any significant number of new energy efficient homes in relation to the national standard, an Energy Star Home®, and has significantly impeded the development of a free, competitive market to encourage and deliver energy efficient homes in its territory. See the responses given to Interrogatories 10, 12, 19, 37, 43, and others relating to the same or similar issue.

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

39. Please identify and describe in detail any and all bases for the assertion in Paragraph 1 of the January 18 Response that FPL's proposed revised BuildSmart program is in "violation of F.S. Section 366.03."

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. The BuildSmart program, as modified, will clearly grant benefits to participating builders and their customers. These benefits

will accrue to those participants, and ultimately to the utility, through the offering of “free,” or in the past “reduced cost,” services that are available in the competitive market and that have a significant impact on improving the value of the utility to its shareholders. The direct costs of providing these benefits to the participants and the shareholders are born by all the ratepayers through a compulsory charge. In addition, the program as designed fails to cost effectively reduce this burden through appropriate means of utilizing existing market forces and service providers; thereby, creating an even greater undue benefit to its participants and shareholders and unreasonably benefits its beneficiaries—the participants and the utility itself while imposing unreasonable costs on its captive residential ratepayer. See also the responses given to Interrogatories 23, 37 and 43 among others.

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

40. Please identify and describe in detail any and all bases for the assertion in Paragraph 1 of the January 18 Response that FPL’s proposed revised BuildSmart program is in “violation of ... the intent and purposes of F.S. Sections 366.80-366.85.”

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See, the responses given particularly to Interrogatories 23, 37 and 43 among others provided throughout the first two set of interrogatories made. The Petitioners believe that the sum total of the facts, as developed and presented in this protest, will clearly show that both the intent and purposes of FEECA have not been met.

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

41. Please identify and describe in detail any and all bases for the assertion in Paragraph 1 of the January 18 Response that FPL’s program design “does not try to incorporate positive private and public sector efforts.”

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See response to Interrogatory # 39, among others. It is clear that the program, as designed and further as proposed to be modified, does not fully incorporate the efforts behind the Energy Star Homes® program by USEPA and USDOE; lessons learned and objectives set for the USDOE Build America® program; efforts made by the DCA in establishing a uniform system for measuring energy efficiency of [residential] buildings; and has impeded the full development of a cadre of independent raters certified by the State of Florida. See also response to Interrogatory # 42.

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

42. In light of the “flexible” component of the proposed revised BuildSmart Program, which allows builders to choose any energy efficient measure recognized by the State-approved energy analysis software, EnergyGauge, including alternative energy sources, please identify and describe in detail any and all bases for the assertion in Paragraph 1 of the January 18 Response that the proposed revised BuildSmart Program “leaves out technology choices that would gain greater efficiency.”

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. We believe the facts of the matter, when all discovery and testimony is completed, will clearly demonstrate this result when the proposed modifications to the BuildSmart program to allow a reduced energy efficiency objective for its prescriptive program and FPL plans to “penetrate” the production builder market with that program offering are truly evaluated. FPL’s proposed modifications do not provide any market forces to overcome the traditional inertia in the market. It is probably at variance from other market forces (over which FPL has little control) that are now emerging to support the use of the “performance based methodology” adopted by the Florida Energy Efficiency Building Code in 1985!

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

43. Please identify and describe in detail any and all bases for the assertion in Paragraph 2 of the January 18 Response that “[t]he modifications proposed by FPL may be designed to allow FPL greater penetration in the production housing market and increase its penetration into the custom market; but, at the cost of continuing to destroy any possibility of the emerging free market for energy efficiency services, particularly in the delivery of assessment and inspection services, and runs counter to the state policy articulated by both F.S. Chapters 366 (particularly F.S. § 366.03 and § 366.81).”

The response also cited Chapter 553, F.S. (particularly F.S. § 553.991). The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See also our response to interrogatory # 37 above.

Briefly, the sum total of the testimony of the Petitioners will provide the bases necessary to reach this determination. As outlined in the protests, and the preliminary pleadings, as well as the answers to various other questions as part of these first two sets of interrogatories and document requests, FPL’s program, as it currently exists and even more under the proposed modifications, have caused predatory pricing (“low cost” or now proposed “totally free” services paid for by the ratepayer not the corporation and beneficiary) that has, and will continue, to block the development of a competitive energy efficiency service market sector that can be met by raters (whether independent small Florida businesses, government program employees or utility employees) paid from sources other than compulsory charges to a captive ratepayer.

Florida Power and Light Company has been informed of this problem, and has been

aware of its existence, since at least January 30, 2002, or even earlier (see Commission Docket # 020084-EI; particularly the letter of November 7, 2001, from Joyal Construction).

The following experiences recounted by one of the protest principals, Dennis J. Stroer, may provide the best response to this interrogatory. Obviously, this will ultimately be prepared as part of the initial testimony of the Petitioner but for the purposes of this interrogatory can provide some real life details to support the allegations made in Protest Petition and the Petitioner's Response to FPL's Motion to Dismiss.

In 1995 the Florida Solar Energy Center offered a week-long course to train people to be Class 1 Energy Raters. The cost of the course was about \$2,500.00. One of the attractions of the course was that this would be a new upcoming enterprise for people. There were a lot of people trained during 1995 & 1996. After the training I invested in the equipment necessary to do the ratings at a cost of about \$4,500.00.

I subsequently joined an association of other Energy Raters and tried to expand this area of my business. In 1998, I was offered a small sub division in our area to do the ratings on by a "production builder." After I did two homes in the sub-division, Florida Power & Light went to the developer and sold him the "FREE" Build Smart Program. Needless to say the FREE service was preferred over my company service that had a cost attached.

Three years later (2001), we were offered a contract from Trifecta Construction Solutions to do the energy ratings required for the Florida Green Building Certification process at WCI Venice Golf and River Club. This project was very close to our home base and our desire to practice the techniques we were trained in was a very good draw for our company. We took this contract at a discounted price because not only did we want to use our training and equipment but the certifying agent (builder's representative) was to acquire the files we needed to register our ratings from Florida Power & Light which lessened our overhead for the project.

We received from FPL a group of basic home calculations for the WCI subdivision, there were homes in the subdivision that were not included in the basic plans. We ended up doing many of these homes although FPL had also done them for their Build Smart Program. This is double work and costs not only us, but also FPL (or their ratepayer) &, ultimately, the consumer who becomes an FPL ratepayer.

The main thrust of our business is Energy Code Calculations and the average cost of these calculations runs between \$85 - \$125. We have done approximately 3000 since January 2002 and could have done an additional 3000 if we were not displaced in the market by FPL's "free or discounted" services to builders who participated in their BuildSmart program even though some of their homes may not have qualified for BuildSmart medallion certification and were not charged any program costs. In addition, we have performed over 200 ratings during the same period and could have done an additional 400 ratings if the BuildSmart program had not been in existence. The conclusions drawn from the experience of independent raters in the Gainesville region would suggest that these estimates are very conservative. The losses to my business from this location alone since January 2002 can be estimated at more than \$400,000.

[Similarly, it is estimated that in Brevard County alone, 300 homes/year were not rated for any program by Calcs-Plus because of FPL's predatory tactics. In addition, Calcs-Plus lost approximately 300 code calculations services/year for permitting would have been provided to clients in FPL's Brevard service territory. The resulting loss in this separate location can be conservatively estimated at more than \$150,000.]

I see many benefits in a partnership between utilities and private third party energy rating companies. Many projects in our area are also trying to meet the federal Energy Star Home® & Florida Green Building Certification® standards as well as FPL Build Smart Program parameters. Green Building Certification costs a builder a fee of \$500 (+ or -) for the FGBC certification and this does not cover the costs of energy upgrades often necessary to comply with both FGBC Green and Build Smart.

We have kept our costs to the Certifying Agent low by requiring the agent to provide us with the EnergyGauge® files on the residences and because all the projects we are involved in are in our general work area. The information needed for FGBC and Energy Star Home certifying and for Build Smart participation are for the most part identical. This information is collected in the same manner and the software used for certifying, code compliance purposes and ratings is the State of Florida required standard, EnergyGauge®.

On many projects FPL's current (discounted) fee and the Certifying agent are both being paid for by the builder. FPL states that their administrative cost per participating home, including many services similar to providing an official rating, in the BuildSmart program is \$400.00 (see, Initial Testimony of Daniel J. Haywood filed 7/15/05 on page 19, line 14). The true cost for our company to do a Class 1 Energy Rating on a residence of approximately 2000 sq ft ranges between \$300 – 350.

Over the course of the last decade, it is very obvious that this fledgling rating industry has become dominated by the Power Companies using the advantages that cost recovery the FEECA gave them. The majority of active raters on the certified list now maintained by the State are from utilities. The majority of the work being done in the rating field is now being done by them. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

44. Please identify and describe in detail any and all bases for the assertion in Paragraph 2 of the January 18 Response that “[t]he Commission should not take action to approve a program design that avoids existing state standards and clearly uses the ‘monopoly’ power granted by the state to fund a program to the detriment of an emerging ‘free and fair’ competitive marketplace,” including stating with specificity each and every way in which the “program design” “avoids existing state standards.”

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See our response to Interrogatories # 37 and 43, among others. Briefly, we believe the existing, and proposed modified, program design fails to conform to the existing state standards for information

provided on the energy efficiency performance of a residential building. In so doing, it fails to adequately address the performance as built of a BuildSmart home and lacks quality control and monitoring built into the state certification process. It further fails to provide adequate monitoring and measurement of results in a verifiable manner. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

45. Please identify and describe in detail each and every basis for the assertion in Paragraph 3 of the January 18 Response that “the program, as currently proposed by FPL, is flawed and will result in less energy efficiency and conservation than alternative designs; will unduly and unreasonably grant preferences and/or advantages to certain persons; and, further, will subject the Petitioners to undue and/or unreasonable prejudice or disadvantage in their chosen residential lifestyle, business and profession.”

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See our responses to interrogatories 37 and 43 et seq. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

46. Please identify each and every one of the “flaws” in the “FPL program design and the PSC staff analysis” referenced in Paragraph 4 of the January 18 Response.

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. Briefly, the responses to date to the first forty five interrogatories have provided a number of “flaws” identified by the Petitioners in their search for facts. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

47. Please identify each and every one of the “errors” referred to in Paragraph 4 of the January 18 Response.

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See the response to interrogatory 46 and others. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

48. Please identify each and every one of the “PSC standards” referred to in Paragraph 4 of the January 18 Response.

The Petitioners believe that the Commission should evaluate these conservation programs on the following criteria(standards for program review):

- *whether the program advances the policy objectives of Rule 25-17.001, Florida Administrative Code, and Sections 366.80 through 366.85, Florida Statutes, also known as the “Florida Energy Efficiency and Conservation Act” (FEECA);*

- *whether the program complies with the requirements of chapter 366, Florida Statutes, Rule Chapter 25-17, Florida Administrative Code, and applicable Commission policies;*
- *whether the program sets forth reasonable performance objectives, is directly monitorable and yields measurable results;*
- *whether the program is cost-effective and does not impose unreasonable costs on the ratepayer; and*
- *whether the program maximizes the use of other reasonably available resources, both within and without FPL, and minimizes its impact on the ratepayer for cost recovery.*

Upon completion of its discovery and initial testimony, the Petitioner may also have more refined criteria that it believes should apply.

49. Please identify and describe in detail any and all bases for the assertion in Paragraph 8 of the January 18 Response that FPL's BuildSmart Program is a "monopolistic attempt to destroy the competitive marketplace for energy efficient services."

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See our response to Interrogatories # 37 and 43.

FPL's practices have resulted in a vacuum of educational and marketing efforts provided by the professionals in the private sector. The caliber of services and professional competency cannot overcome the subsidized free services that FPL has been able to utilize to stifle the private sector, even though the results of the program has been less than stellar. In fact, if the private sector was compensated only the administrative costs of \$400/home as quoted by FPL staff during testimony, market penetration of energy-efficient homes would exponentially increase due to financial incentives to market, educate and service accounts.

*Briefly, the sum total of the testimony of the Petitioners will provide the bases necessary to reach that determination. As outlined in the protests, and the preliminary pleadings, as well as the answers to various other questions as part of these first two sets of interrogatories and document requests, FPL's program, as it currently exists and even more under the proposed modifications, have caused predatory pricing ("low cost" or now proposed "totally free" services paid for by the ratepayer not the corporation and beneficiary) that has, and will continue, to block the development of a competitive energy efficiency service market sector that can be met by raters (either independent, small businesses, government programs or utility employees) **paid from sources other than compulsory charges to a captive ratepayer.***

Florida Power and Light Company has been informed of this problem, and has been aware of its existence, since at least January 30, 2002, or even earlier (see Commission Docket # 020084-EI; particularly the letter of November 7, 2001, from Joyal Construction). Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

50. Please provide specific citations to any and all FPSC decisions or reported cases where the interpretation of section 366.03 F.S. discussed in Paragraph 9 of the January 18 Response has been discussed and/or accepted by the FPSC or any Florida Court or regulatory body.

The answer to this is one of the legal issues underlying the protest, is being researched and will rely upon the facts as found through discovery and testimony. Upon completion of its discovery and initial testimony, the Petitioner will identify analogous cases and relevant interpretations of the law as necessary to prove its case.

51. Please provide specific citations to any and all decisions of the FPSC, Florida Courts, or regulatory bodies supporting the assertion in Paragraph 11 of the January 18 Response that the “FPSC should take cognizance of the DCA statutory mandate to develop a program to assure the development of a ‘statewide uniform system for rating the energy efficiency of buildings.’”

The answer to this is one of the legal issues underlying the protest, is being researched and will rely upon the facts as found through discovery and testimony. Upon completion of its discovery and initial testimony, the Petitioner will identify analogous cases and relevant interpretations of the law as necessary to prove its case. Clearly, the Commission should recognize and support state laws that deal with any issue that the Commission has before it. For example, if the Commission discovers a suggestion that a crime has been committed in connection with one of its investigations or a case before it, the Commission is bound to report it to the proper authorities. Equally so, if the Commission observes that taking an action one way would be against the public interest, whether a crime or not, and taking an different action would create a result consistent with the public interest, the Commission is bound to reject the improper action and approve the proper action.

52. Please quote the specific language in the Florida Statutes that supports the assertion in Paragraph 14 of the January 18 Response that “[t]he Commission has jurisdiction over the subject matter of the Protest.”

The answer to this is one of the legal issues underlying the protest, is being researched and will rely upon the facts as found through discovery and testimony. Upon completion of its discovery and initial testimony, the Petitioner will clearly address any concerns the Commission has over its jurisdiction.

53. Please identify and describe in detail any and all bases for the assertion in Paragraph 16 of the January 18 Response that “the substance of the FPL program constitutes the creation of free ratings in violation of Commission rules, and FPL tariff schedules,” including providing citations to the Commission rules and FPL tariff schedules allegedly violated.

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. FPL’s pricing structure includes

a tariff for BERS rating services (schedule 4, I believe) as required by Florida Administrative Code Chapter 25-17.003(4a) which states:

“(4) Energy Audit Charges: (a) Every public utility shall charge an eligible customer for a BERS Audit. The amount of this charge, which shall reflect actual cost, shall first be filed with the Commission as part of the utility’s tariff.”

See also response to FPL’s first set of interrogatories; particularly numbers 6, 7, and 8. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

54. Please identify and describe in detail any and all bases for any assertion that the objective of FPL’s BuildSmart Program should be to “promote a full, free and fair marketplace for residential energy efficiency services,” including providing statutory and rule citations where such an objective is articulated for FPL.

The answer to this is one of the legal issues underlying the protest, is being researched and will rely upon the facts as found through discovery and testimony. Upon completion of its discovery and initial testimony, the Petitioner will identify analogous cases and relevant interpretations of the law as necessary to prove its case. Clearly, under the state law providing for the development of energy efficiency and conservation programs, as well as the state comprehensive plan contained in Chapter xx, F.S., it is the public purpose of the state to promote a full, free and fair marketplace for any services that are not under the regulatory compact as specified in chapter 366, F.S., or other provision of state law.

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

55. Please identify and describe in detail each and every way in which FPL “fails to provide a cost beneficial program meeting the Commission’s rules” as alleged in Paragraph 18 of the January 18 Response.

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. Generally, the response given to interrogatories in the first set, particularly numbers 10, 12 & 13, initiate the response to this question.

Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

56. Please identify and describe in detail any and all bases for the assertion in Paragraph 18 of the January 18 Response that the proposed revised BuildSmart Program will “fail to provide the market penetration” envisioned by FPL.

See answer to interrogatory number 37 above. As stated, the revisions may result in FPL

gaining the market penetration they envision but at the cost of greater energy efficiency for residences in their territory. One of the issues identified in the protest is the consequences of greater market dominance by the FPL program as well as the consequences of the program as designed. Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

57. Please identify and describe in detail each and every way in which FPL's proposed revised BuildSmart Program allegedly will "destroy any opportunity to establish a competitive service market that can be met by independent raters" as alleged in Paragraph 18 of the January 18 Response.

The answer to this is one of the purposes of the protest, is a key material fact in dispute and will be the subject of much testimony following discovery. See our response to Interrogatories # 37 and 43.

*Briefly, the sum total of the testimony of the Petitioners will provide the bases necessary to reach that determination. As outlined in the protests, and the preliminary pleadings, as well as the answers to various other questions as part of these first two sets of interrogatories and document requests, FPL's program, as it currently exists and even more under the proposed modifications, have caused predatory pricing ("low cost" or now proposed "totally free" services paid for by the ratepayer not the corporation and beneficiary) that has, and will continue, to block the development of a competitive energy efficiency service market sector that can be met by raters (either independent, small businesses, government programs or utility employees) **paid from sources other than compulsory charges to a captive ratepayer.***

Florida Power and Light Company has been informed of this problem, and has been aware of its existence, since at least January 30, 2002, or even earlier (see Commission Docket # 020084-EI; particularly the letter of November 7, 2001, from Joyal Construction). Upon completion of its discovery and initial testimony, the Petitioner may also have additional bases and examples to provide.

I HEREBY CERTIFY that I am an authorized representative of Compliance Data Services, Inc. ("Calcs-Plus") and its principals, Dennis J. Stroer and Jon F. Klengerbo, and that the answers to these Interrogatories are true and correct to the best of my knowledge.

William J. Tait, Jr.
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CERTIFICATE OF SERVICE

The undersigned certifies that a true copy of the foregoing COMPLIANCE DATA SERVICES, INC. ("Calcs-Plus") RESPONSES TO FLORIDA POWER & LIGHT COMPANY'S ("FPL") FIRST SET OF INTERROGATORIES (NOS. 1-34) was served by electronic mail (*) and U.S. Mail this 22nd day of July, 2005, to Florida Power & Light Company with a courtesy copy to the Office of General Counsel at the Florida Public Service Commission as follows:

Martha Carter Brown*
Adrienne Vining*
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

R. Wade Litchfield, Esquire
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\s\William J. Tait, Jr.
William J. Tait, Jr.