

ORIGINAL

Matilda Sanders

From: Jim Tait [jimtait@comcast.net]
Sent: Monday, September 19, 2005 3:55 PM
To: Filings@psc.state.fl.us
Cc: Martha Brown; Adrienne Vining; Natalie_Smith@fpl.com; Patrick_Bryan@fpl.com; Dennis Stroer; Jon Klongerbo
Subject: prehearing statement of Petitioners
Attachments: PSC Docket 04-0029-EG-Petitioner's prehearing statement.doc; PSC Docket 04-0029-EG-Petitioner's prehearing statement.doc

Attached is the Petitioners Prehearing Statement for consolidated dockets 04-0029-EG and 04-0660-EG due today.

File: PSC Docket 04-0029-EG-Petitioner's Prehearing Statement

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BEFORE THE PUBLIC SERVICE COMMISSION

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

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

DOCKET NO. 040660-EG
DOCKET NO. 040029-EG
DATED: SEPTEMBER 19, 2005

PREHEARING STATEMENT OF PETITIONERS,
CALCS PLUS, INC., DENNIS STROER AND JON KLONGERBO

Pursuant to Order No. PSC-05-0535-PCO-EG issued May 16, 2005, Calcs Plus, Inc., Dennis Stroer and Jon Klongerbo ("Petitioners") hereby file their Prehearing Statement.

APPEARANCES

William J. Tait, Jr.
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On behalf of Petitioners

A. WITNESSES	ON BEHALF OF	ISSUES
<u>Direct</u>		
Dennis Stroer	Petitioners	1,2,3,4,5,6
Jon Klongerbo	Petitioners	1,2,3,4,5,6
Philip Fairey	Petitioners	1,2,3,4,5,6
Neil Moyer	Petitioners	1,2,3,4
Rick Dixon	Petitioners	1,2,3,4
Ken Fonorow	Petitioners	1,2,3,4,5,6

B. EXHIBITS

<u>Sponsoring Witness</u>	<u>Description of Exhibit</u>
Dennis Stroer	Exhibit DS-1
Jon Klongerbo	Exhibit JK-1
Philip Fairey	Resume
Neil Moyer	Resume
Rick Dixon	Attachments to pre-filed testimony (2 letters and 1 report)

Petitioners also reserve the right to introduce exhibits for cross-examination, impeachment, or for any other purpose authorized by the applicable Florida Rules of Evidence and rules or orders of this Commission.

C. STATEMENT OF BASIC POSITION

Petitioners assert that the FPL Buildsmart program, as implemented and proposed to be further modified, and the FPL Residential Conservation Service program fail to meet the standards of Florida Law and Commission Rules and Policies.

D. ISSUES

Issue 1: *Is the modified Buildsmart program cost-effective?*

Petitioner's Response: No. The modified Buildsmart program does not meet the Commission's standards for cost-effectiveness. It fails to accurately account for its costs and further fails to establish that its costs are prudent and reasonable; do not place an unreasonable and/or undue burden on the ratepayer and competing businesses; and fail to account for unreasonable and/or undue benefits granted to itself (FPL) and select others to the detriment of the ratepayers and competing service providers.

Issue 2: *Is the modified Buildsmart program directly monitorable and will it yield measurable results?*

Petitioner's Response: No. The Buildsmart program, as implemented and proposed to be

modified, fails to provide measurable results that meet the Commission's standards and fails to be directly monitorable.

The area of utility programs in the new residential construction area under FEECA has traditionally been of special concern to the Commission since the relatively simultaneous enactment of both FEECA and the Florida Energy Efficiency Building Code in the mid-1980s. Initially, the Commission adopted the policy of establishing no goals, and allowing no cost recovery, for residential new construction. This was modified in the mid-1990s, just after the enactment of the Florida Energy Efficiency Rating Act in 1992, at the urging of the Florida Energy Office and Office of Building Codes and Standards, various utilities and environmental/energy efficiency advocacy groups. All groups agreed that the public and utilities could benefit from programs in which the state mandated code minimums would be exceeded **by significant margins** and new technologies and building "best practices" could be introduced into the competitive marketplace. (emphasis provided)

FPL fails to provide adequate monitoring of meeting its performance goals and technical standards and further lacks providing quality assurance and accurate, reliable information to the program participating builder and the ultimate consumer, the homeowner. In so doing, FPL fails to meet standards set forth in Florida Law and, actually, damages the state's program to assure its residents and citizens fair, accurate and verifiable information on the energy efficiency of its residential units.

Issue 3: *Does the modified Buildsmart program advance the policy objectives of FEECA, section 366.080 et seq., Florida Statutes, Commission Rule 25-17.001, Florida Administrative Code, and applicable Commission policies?*

Petitioner's Response: No. The Buildsmart program, as implemented and proposed to be modified, clearly fails to meet the standards imposed by Florida Law and Commission Rules and Policies. As stated in responding to issue 2, the Commission has always articulated special concerns

relating to residential new construction programs under FEECA. The program, as proposed by FPL, clearly fails to address these special concerns and, further, not only directly damages the free, competitive marketplace for providing and assuring energy efficiency and conservation in the building of new residential buildings but also subverts the state's efforts to assure fair, accurate and verifiable information as to the energy usage of such buildings. In fact, the FPL proposed modification directly ignores the mandates of Commission rules and other state laws.

Issue 4: *Should the Commission approve the modified Buildsmart program?*

Petitioner's Response: No. For the above reasons, the Commission should not only disapprove the modified Buildsmart program but should also impose sanctions against FPL for failing to implement the program as previously approved by the Commission in a proper manner.

Issue 5: *Does FPL's Residential Conservation Service Program comply with the requirements of section 366.82(5), Florida Statutes, Rule 25-17.003, Florida Administrative Code, and applicable Commission policies?*

Petitioner's Response: No. The \$4,615,517.00 spent in advertising and promoting itself as a trusted advisor in energy efficiency and conservation matters is not only image enhancing but also an inaccurate statement of true company actions and promotes FPL's program of undercutting competitive providers and subverting the state's attempt to provide fair, accurate and reliable information in the energy marketplace.

Issue 6: *Should the Commission approve FPL's Residential Conservation Service Program?*

Petitioner's Response: Only as modified; see Issue 5 response. The Commission should not only disapprove the expenditure of \$4,615,517 for its advertising campaign but also require FPL to notify all participants of the availability of rating services, including qualified raters listed for the county and/or region in which the home is located, and a Commission approved summary

sheet of the advantages of obtaining a rating when a customer requests an audit or files a customer-generated audit. The Commission should further order FPL to provide it ways and means of developing and providing measurable results and monitoring for the program.

E. STIPULATED ISSUES

None at this time.

F. ALL PENDING MOTIONS OR OTHER MATTERS FPL SEEKS ACTION UPON

None.

G. PENDING REQUESTS OR CLAIMS FOR CONFIDENTIALITY

None.

H. ANY REQUIREMENTS SET FORTH IN THIS ORDER THAT CANNOT BE COMPLIED WITH, AND THE REASONS THEREFOR

There are no requirements set forth in Order No. PSC-05-0535-PCO-EG (Order Establishing Procedure) with which Petitioners cannot comply.

I. OBJECTIONS TO A WITNESS' QUALIFICATIONS AS AN EXPERT

None.

Respectfully submitted this 19th day of September, 2005.

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

I **HEREBY CERTIFY** that a true and correct copy of the foregoing has been furnished electronically and via U.S. Mail this 19th day of September, 2005, to the following:

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