

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-05-0949-PHO-EG

ISSUED: October 5, 2005

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on October 3, 2005, in Tallahassee, Florida, before Commissioner J. Terry Deason, as Prehearing Officer.

APPEARANCES:

WILLIAM J. TAIT, JR., ESQUIRE, 1061 Windwood Way, Tallahassee, Florida 32311

On behalf of Calcs Plus, Inc., Dennis Stroer and Jon Klongerbo

NATALIE F. SMITH, ESQUIRE AND PATRICK M. BRYAN, ESQUIRE, 700 Universe Boulevard, Juno Beach, Florida 33408-0420

On behalf of Florida Power & Light Company.

MARTHA CARTER BROWN, ESQUIRE AND ADRIENNE VINING, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Florida Public Service Commission.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NUMBER-DATE

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II. CASE BACKGROUND

Petitioners Calcs-Plus, Inc., Dennis Stroer and Jon Klongerbo filed a protest to Commission Order No. PSC-04-1046-PAA-EG,¹ which approved FPL's proposed modifications to its BuildSmart program, one of the programs FPL has implemented to meet its Commission approved Demand Side Management (DSM) goals. The petitioners also filed a protest to Commission Order No. PSC-05-0162-PAA-EG,² as it relates to FPL's BuildSmart program and Residential Conservation Service program. By Order No. PSC-05-0720-PCO-EG,³ the Prehearing Officer consolidated the protests for an administrative hearing, which is scheduled for October 10, 2005.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapter 366, Florida Statutes. This hearing will be governed by said Chapter and Chapters 25-17, 25-22, and 28-106, Florida Administrative Code.

IV. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 366.093, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any parties intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

¹ Issued October 26, 2004, in Docket No. 040660-EG, In re: Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company.

² Issued February 9, 2005, in Docket No. 040029-EG, In re: Petition for approval of numeric conservation goals by Florida Power & Light Company.

³ Issued July 5, 2005.

2. In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing. The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.
- b) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- c) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- d) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- e) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Commission Clerk and Administrative Service's confidential files.

V. POST-HEARING PROCEDURES

If no bench decision is made, each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

Pursuant to Rule 28-106.215, Florida Administrative Code, a party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Summaries of testimony shall be limited to five minutes. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Daniel J. Haywood	FPL	1,2,3,4,5,6
Steven R. Sim (presented with rebuttal testimony)	FPL	1,3,4
Dennis Stroer	Calcs Plus, Inc.	1,2,3,4,5,6
Jon Klongerbo	Calcs Plus, Inc.	1,2,3,4,5,6
Philip Fairey	Calcs Plus, Inc.	1,2,3,4,5,6
*Neil Moyer	Calcs Plus, Inc.	1,2,3,4
*Rick Dixon	Calcs Plus, Inc.	1,2,3,4

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
*Ken Fonorow	Calcs Plus, Inc.	1,2,3,4,5,6
<u>Rebuttal</u>		
Steven R. Sim (presented with direct testimony)	FPL	1,3,4
Daniel J. Haywood	FPL	1,2,3,4,5,6

As a result of discussions at the prehearing conference, each witness whose name is preceded by an asterisk (*) has been excused from this hearing if no Commissioner assigned to this case seeks to cross-examine the particular witness. Parties shall be notified by close of business Tuesday, October 4, 2005, whether any of those witnesses shall be required to be present at the hearing. The testimony of excused witnesses will be inserted into the record as though read, and all exhibits submitted with those witnesses' testimony shall be identified as shown in Section X of this Prehearing Order and be admitted into the record.

At the prehearing conference, FPL indicated that it would present the direct and rebuttal testimony of Steven R. Sim at the same time.

VIII. BASIC POSITIONS

FPL: FPL's modified BuildSmart Program, which targets energy efficiency measures in new residential construction, should be approved as part of FPL's Demand-Side Management plan designed to meet FPL's Commission-approved goals for the period 2005-2014. In addition, the Residential Conservation Service Program should be continued as an integral part of FPL's Demand-Side Management Plan.

FPL proposes a number of modifications to BuildSmart to better meet builder requirements and increase Program participation. FPL believes that, with these Program changes, it can continue to offer a cost-effective residential new construction Program that will achieve far greater levels of participation and demand and energy savings. As described in greater detail in the direct testimony of FPL witness Daniel J. Haywood, FPL proposes to:

- Introduce a prescriptive approach that simplifies energy efficiency options and allows production builders to make large volume, discounted purchases that do not trigger housing plan modifications.
- Modify the existing flexible approach to eliminate the Gold, Silver and Bronze levels. Under the revised Program, the prescriptive approach is targeted to achieve an e-Ratio below .9 and under the modified flexible approach, an e-Ratio must be .8 or below.
- Offer only the Basic Service level.

- Eliminate Program participation fees, specifically as these fees currently apply to Bronze and Silver level homes. Gold Homes currently incur no fees.
- Add single-family attached dwellings to the Program.
- Provide builder incentives for qualifying BuildSmart homes that also achieve ENERGY STAR® certification by meeting the requirements of the DOE's and EPA's ENERGY STAR® Program.

As it relates to the Commission's three-prong test for utility conservation programs, the modified BuildSmart Program is directly monitorable and yields measurable results. Program participation and efficiency upgrades will be tracked in a BuildSmart database. FPL will monitor the program's actual results on a continual basis and re-evaluate the forecasted participation levels and the energy and demand impact data, as necessary, over time.

In addition, the modified BuildSmart Program is cost-effective. FPL determined the Program, as redesigned, is cost-effective using the cost-effectiveness methodologies required by Rule 25-17.008, Florida Administrative Code and the planning assumptions from FPL's 2005-2014 planning process. As discussed in greater detail in Dr. Steven R. Sim's direct testimony, these analyses show the following benefit-cost ratios: 1.75 Participant, 1.06 RIM, and 1.10 TRC for the BuildSmart Program.

Finally, the modified BuildSmart Program is designed to advance the policy objectives of the Florida Energy Efficiency and Conservation Act ("FEECA") and satisfy applicable Commission rules. BuildSmart promotes the construction of energy-efficient homes that cost-effectively reduce FPL's coincident peak load and customer energy consumption. FPL will accomplish the Program objectives by conducting outreach efforts to builders and homebuyers, and promoting the benefits of installing highly energy efficient measures in new homes. Employing energy performance calculation tools, FPL will review house plans and provide recommendations to improve energy performance under the Florida Energy Efficiency Code. FPL will also perform post-construction inspections to validate the installation of planned energy efficient measures in new homes. Qualifying homes that pass inspection will be certified by FPL as BuildSmart homes. Additionally, FPL will provide builder incentives for qualifying BuildSmart homes that also achieve ENERGY STAR® certification by meeting the requirements of the DOE's and EPA's ENERGY STAR® Program. These efforts are expected to significantly increase the energy efficiency of the new home construction market.

FPL will file Program Standards for BuildSmart. The FPL BuildSmart Program Standards will detail all applicable measures and Program requirements. The Program Standards will be subject to periodic review and may change over time based on factors including, but not limited to, technological advances, operational

needs, program results, application assumptions, state energy code revisions or energy performance evaluation tool improvements.

The Commission should approve the BuildSmart Program as part of FPL's DSM Plan for 2005-2014. In addition, the RCS Program should be approved as consistent with Rule 25-17.003, Florida Administrative Code, which requires FPL to offer residential energy audits.

CALCS: 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.

STAFF: Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions stated herein.

IX. ISSUES AND POSITIONS

ISSUE 1: **Is the BuildSmart program cost-effective?**

POSITIONS

FPL: Yes. Applying the cost-effectiveness methodologies required by Rule 25-17.008, Florida Administrative Code, and the planning assumptions from FPL's 2005-2014 planning process, the benefit-to-cost ratios are greater than one. Therefore, the modified BuildSmart Program is cost-effective. (Sim, Haywood)

CALCS: 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.

STAFF: No Position at this time.

ISSUE 2: Is the modified BuildSmart program directly monitorable and will it yield measurable results?

POSITIONS

FPL: Yes. Program participation and efficiency upgrades will be tracked in a BuildSmart database. FPL will monitor the Program's actual results on a continual basis and re-evaluate the forecasted participation levels and the energy and demand impact data, as necessary, over time. (Haywood)

CALCS: 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.

STAFF: No Position at this time.

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?

POSITIONS

FPL: Yes. The modified BuildSmart Program is designed to promote the construction of energy-efficient homes that cost-effectively reduce FPL's coincident peak load and customer energy consumption. (Haywood, Sim)

CALCS: 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.

STAFF: No Position at this time.

ISSUE 4: Should the Commission approve the modified BuildSmart program?

POSITIONS

FPL: Yes. The modified BuildSmart Program should be approved as part of FPL's DSM Plan designed to meet FPL's Commission-approved goals for the period 2005-2014. The BuildSmart Program is designed to advance the policy objectives of FEECA and satisfy applicable Commission rules and policies. In addition, the Program is directly monitorable and yields measurable results. Finally, the Program is cost-effective. (Haywood, Sim)

CALCS: 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.

STAFF: No Position at this time.

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?

POSITIONS

FPL: Yes. FPL offers its residential energy audits through the RCS Program in accordance with section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code. (Haywood)

CALCS: 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.

STAFF: No Position at this time.

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

POSITIONS

FPL: Yes. The RCS Program has been an integral component of FPL's DSM efforts since the 1980s, and the Commission should allow FPL to continue this Program. (Haywood)

CALCS: 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.

STAFF: No Position at this time.

ISSUE 7: Should this docket be closed?

POSITIONS

FPL: Yes.

CALCS: No position at this time.

STAFF: No position at this time.

X. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
			<u>Direct</u>
Daniel J. Haywood	FPL	<u>DJH-1</u>	Table 1: Homebuyer and Homebuilder Key Needs
		<u>DJH-2</u>	Table 2: Summary Comparison of Program Components and Features
Daniel J. Haywood		<u>DJH-3</u>	Table 3: Projected Demand and Energy Savings
		<u>DJH-4</u>	Table 4: Projected Participation (RCS Program)
Steven R. Sim	FPL	<u>SRS-1</u>	Cost-Effectiveness Analysis of FPL's Residential New Construction DSM Option (BuildSmart)
Dennis Stroer	Calcs Plus, Inc.	<u>DS-1</u>	
Jon Klongerbo	Calcs Plus, Inc.	<u>JK-1</u>	
Philip Fairey	Calcs Plus, Inc.	<u></u>	Resume
Neil Moyer	Calcs Plus, Inc.	<u>NM-1</u>	Resume
Rick Dixon	Calcs Plus, Inc.	<u></u>	Attachments to pre-filed testimony (2 letters and 1 report)

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

XI. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

XII. PENDING MOTIONS

There are no pending motions at this time.

XIII. PENDING CONFIDENTIALITY MATTERS

There are no pending confidentiality matters at this time.


XIV. RULINGS

Opening statements, if any, shall not exceed five minutes per party.

It is therefore,

ORDERED by Commissioner J. Terry Deason, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner J. Terry Deason, as Prehearing Officer, this 5th day of October, 2005.


J. TERRY DEASON
Commissioner and Prehearing Officer

(S E A L)

MCB

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

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

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: (1) reconsideration within 10 days pursuant to Rule 25-22.0376, Florida Administrative Code; or (2) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.