

State of Florida



Public Service Commission

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-M-E-M-O-R-A-N-D-U-M-

DATE: December 8, 2005

TO: Director, Division of the Commission Clerk & Administrative Services (Bayó)

FROM: Division of Economic Regulation (Colson, Harlow, Sickel) *MS*
Office of the General Counsel (Brown, Vining) *NCB AEW JRS RE*

RE: Docket No. 040029-EG – Petition for approval of numeric conservation goals by Florida Power & Light Company.

Docket No. 040660-EG – Petition for approval of modifications to BuildSmart Program by Florida Power & Light Company.

AGENDA: 12/20/05 – Regular Agenda – Post Hearing Decision – Participation is Limited to Commissioners and Staff

COMMISSIONERS ASSIGNED: Deason, Bradley, Edgar

PREHEARING OFFICER: Deason

CRITICAL DATES: None

SPECIAL INSTRUCTIONS: None

FILE NAME AND LOCATION: S:\PSC\ECR\WP\040029.RCM.DOC

Case Background

In March 1993, the Commission 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 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

¹ Order No. 921034-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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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 the Commission approved the pilot program, it was expected to end during the first quarter of 1995. FPL requested and the Commission granted an extension in Order No PSC-95-0611-FOF-EG,² allowing FPL to 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 the Commission on June 1, 1995. FPL reported that BuildSmart had preliminarily proven to be cost-effective. On August 25, 1997, the Commission issued Order No. PSC-97-1017-S-EG, approving a permanent BuildSmart program, in Docket No. 951536-EG, In Re: Petition for approval of BuildSmart Program by Florida Power & Light Company.

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, the Commission issued 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, approving the modifications to FPL's BuildSmart program.

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 the Commission's PAA order approving the modified BuildSmart program. On February 9, 2005, the Commission issued Order No. PSC-05-0162-PAA-EG, approving FPL's overall DSM Plan. However, the Commission's order stated 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 the Commission's order approving FPL's DSM Plan. This additional protest focused solely on FPL's modified BuildSmart and Residential Conservation Services programs. On March 21, 2005, the Commission 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, the Commission issued Order No. PSC-05-0720-PCO-EG, which consolidated Docket Nos. 040660-EG and 040029-EG. Calcs-Plus' case was heard before the Commission on October 10, 2005. On November 7, 2005, Calcs-Plus and FPL filed post-hearing briefs.

² Order No. PSC-95-0611-FOF-EG, issued May 19, 1995, in Docket No. 950358-EG, In Re: Petition to extend BuildSmart Offerings through 12/31/95 by Florida Power and Light Company.

Docket Nos. 040029-EG, 040660-EG
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The Commission has jurisdiction over this matter pursuant to Sections 366.80 et. seq., Florida Statutes.

Discussion of Issues

Issue 1: Is the BuildSmart program cost-effective?

Recommendation: Yes. The Modified BuildSmart program is cost-effective for both single-family detached and attached homes. The Commission-approved cost-effectiveness methodologies required by Rule 25-17.008, Florida Administrative Code, show that the modified BuildSmart program's benefit-to-cost ratios are: 1.05, 1.10, and 1.77, for the Ratepayer Impact, Total Resource Cost, and Participants tests, respectively. The proposed modifications should increase the participation of production builders, resulting in increased energy and demand savings, and providing FPL with cost savings on a per home basis due to economies of scale. (Colson, Harlow, Sickel)

Position of the Parties

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

Calcs-Plus: No. The modified BuildSmart program does not meet the Commission's standards for cost-effectiveness. FPL has failed to accurately account for its costs and benefits and further it has specifically:

1. failed to establish that its costs are prudent and reasonable;
2. failed to establish that its projected benefits are real and reasonably projected;
3. placed unreasonable and/or undue burdens on the ratepayer and competing businesses; and
4. given itself (FPL) and selected others unreasonable and/or undue benefits to the detriment of its ratepayers and competing service providers.

Staff Analysis: 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. (TR 47) Homes certified as BuildSmart Homes must achieve demand and energy savings of a specified level beyond the requirements of the Florida Energy Efficiency Code. (TR 48)

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. (TR 47) FPL charges fees to home builders for plan inspection and certification depending on the calculated level of energy performance (e-Ratio) achieved per home.³ Lower fees are charged for homes with higher

³ 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.

energy efficiency, and homes that are at least 30 percent or more energy efficient than the baseline have no fees. (TR 48) 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). (TR 48)

FPL's cumulative participation in the BuildSmart program through 2004 was 6,915 homes, far short of the estimated 15,099 homes. (TR 125, EXH 2) 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. (TR 79-80) 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 significantly penetrate the production housing market. (TR 51-52, 72) FPL has defined the production housing market as single-family detached homes, and single-family attached homes such as town homes and villas. (TR 51-52) 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. (TR 53)

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 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. (TR 52, 72-73)
- **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. (TR 53, 72-73)

FPL has also proposed the following 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. (TR 53, 120-121)
- **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. (TR 53, 73, 82, 84-85)
- **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. (TR 53)
- **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. (TR 53, 73)

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 residential 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. (TR 57) 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. (TR 58)

Staff agrees with FPL that it is reasonable to expect that the proposed modifications will encourage participation by production builders. (TR 56, 73, 121-123) 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. (TR 233, 252) However, staff agrees 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. (TR 85) Staff also agrees with FPL 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. (TR 53, 73) Finally, staff agrees with FPL 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. (TR 53, 56-57) Staff agrees with Witness Haywood 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. (TR 56, 121-123)

FPL included the modified BuildSmart program in its 2005 Demand-Side Management (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. The initial cost-effectiveness screening of DSM options was performed using the three benefit-to-cost ratios in the Commission's 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). This 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. (TR 135-136, 140-141) 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. (TR 137, 141) The cost-effectiveness analysis for the modified BuildSmart program is provided in FPL's Exhibit 7. The analysis resulted in benefit-to-cost ratios of 1.05, 1.10, and 1.77, for the RIM, TRC, and Participant tests, respectively. (TR 139, EXH 7) Staff has reviewed FPL's cost-effectiveness analysis and believes that the assumptions are reasonable. Further, 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. (TR 194) However, 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. (TR 271) Staff agrees with FPL's Witness Sims that the approach Mr. Fairey offered is fundamentally flawed. (TR 148) Witness Sims stated that this 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. (TR 144-145, 149-150) 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. (EXH 22) Staff further agrees 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. (TR 149) Section 366.82, Florida Statutes, requires the Commission to review and approve cost-effective utility conservation programs. The Commission adopted Rule 25-17.008, Florida Administrative Code, and the Cost-Effectiveness Manual, as part of the implementation of this Statute. Any revisions to the Commission's 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 two primary reasons. First, Calcs-Plus believes that eliminating the fees will exert unfair competition on private energy raters. (TR 180-182) Staff believes, however, that the instant docket is not the appropriate venue to discuss any potential competitive impacts of FPL's BuildSmart program on the energy efficiency marketplace. The Commission does 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. (TR 180-182) Staff disagrees with Calcs-Plus 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. FPL adequately demonstrated that the program passes the RIM test. (EXH 7) 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. (TR 149)

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 the Commission's approved methodology, with benefit-to-cost ratios of 1.05, 1.10, and 1.77, for

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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 the Commission's established cost-effectiveness methodology.

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

Recommendation: Yes. FPL currently tracks program participation and efficiency measures through the BuildSmart database. FPL has proposed no changes to this procedure for the modified program. FPL employs 11 certified energy raters in the program, which should provide adequate quality control in the data collection process. Accuracy of the database is reviewed by a third-party consultant. FPL expects to conduct an increased level of evaluation of savings over the next five years. (Colson, Harlow, Sickel)

Position of the Parties

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.

Calcs-Plus: 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.

Staff Analysis: 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. (EXH 22) 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." (EXH 22)

FPL filed the final report on these feasibility studies with the Commission 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. (TR 65-66) Calcs-Plus provided no convincing evidence that FPL's BuildSmart engineering model, or the demand and energy savings predicted by the model, are flawed. (TR 194, 200-201)

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. (TR 65-66, 90-91) 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. (TR 204) At his deposition, Witness Fairey recommended using certified energy raters, including those employed by utilities, to monitor programs and provide quality control. (EXH 22)

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. (TR 199) 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. (TR 91-92, 199)

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." (TR 66, 123) Witness Haywood agreed that these studies would be used to verify the expected demand and energy savings from the modified program. (TR 123)

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 that there are a number of issues that would have to be overcome to draw any type of valid conclusion from the data. (TR 325) For example, individual homes were identified by a code, rather than an address. (TR 209) 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. (TR 207-208) Staff agrees with FPL that many issues would have to be resolved in order to reach a conclusion from Calcs-Plus' exhibit concerning the WCI neighborhood. Staff therefore believes the Calcs-Plus exhibit is insufficient evidence to support a Commission finding that FPL overstated the savings associated

with the existing BuildSmart program and thus is overstating the estimated savings associated with the proposed modifications. (TR 206-213, 325, EXH 20)

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. (TR 238) 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. (TR 271) Staff disagrees with Calcs-Plus 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. (TR 281) 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. (EXH 22)

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. (TR 234) 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. (TR 308, 320-322) Witness Fairey, sponsored by Calcs-Plus, 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. (TR 282) 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. (TR 283) 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. (TR 321, 332) 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. (TR 331-332) 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.

Issue 3: Does the modified BuildSmart program advance the policy objectives of FEECA, Section 366.80 et seq., Florida Statutes, Commission Rule 25-17.001, Florida Administrative Code, and the applicable Commission policies?

Recommendation: Yes. The modified BuildSmart Program will reduce FPL's coincident peak demand and energy usage, and appears to be cost-effective. FPL has modified the program to increase participation by production builders, which should result in cost savings due to economies of scale. (Colson, Harlow, Sickel)

Position of the Parties

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.

Calcs-Plus: 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 Analysis: 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. The Commission implemented 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." (TR 118) FPL provided estimates that the modified BuildSmart program will reduce per customer winter demand by .88 kW, summer demand by .78 kW, and energy by 1,460 kWh. (EXH 5) These estimates are based on FPL's engineering model for the program, as

discussed in Issue 2, and have been updated according to changes in the building code. (TR 65-66, 91-92) Calcs-Plus did not provide any alternative estimates of the expected demand and energy savings from the program. (TR 201, 203)

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. (TR 56, 121-123)

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 in Issue 1, the program is cost-effective. Staff believes that Calcs-Plus' argument that the modified BuildSmart program fails to address the Commission's "special concerns relating to residential new construction programs," and how these programs relate to the Florida Energy Efficiency Code, is dated. The program in its current form was approved by the Commission 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.⁴ FPL's proposed modifications do not affect how the program interacts with the Florida Energy Efficiency Code.

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

Recommendation: Yes. The modified BuildSmart program is cost-effective, directly monitorable, and advances the objectives of FEECA. FPL's request to include the program in its 2005 DSM Plan, and apply the energy and demand savings from the program to its DSM goals should also be approved. FPL should file detailed program standards within 30 days of the issuance of the Commission's order. Staff requests the Commission's permission to administratively approve these standards. (Colson, Harlow, Sickel)

Position of the Parties

FPL: Yes. The modified BuildSmart Program should be approved as part of FPL's DSM Plan. The BuildSmart Program is designed to advance the policy objectives of FEECA and satisfy applicable Commission rules and policies. In addition, the Program is cost-effective, directly monitorable and yields measurable results.

Calcs-Plus: No. For the above reasons, the Commission should not only disapprove the modified BuildSmart program but should also immediately conduct an inquiry into the BuildSmart program and further impose sanctions against FPL for failing to implement the

⁴ This order was made final by the Commission's consummating Order No. PSC-00-2004-CO-EG, issued June 6, 2000.

program as previously approved by the Commission in a proper manner. See the suggested relief proposed by the Petitioners.

Staff Analysis: 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. As discussed in Issue 1, the evidence shows that the modified BuildSmart program is cost-effective. As discussed in Issue 2, the evidence shows that the program is directly monitorable and will yield measurable results. As discussed in Issue 3, 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 program, as well as the proposed modifications, should be denied.⁵ For all the reasons stated above, staff recommends that the Commission approve FPL's petition to modify its BuildSmart program. FPL's request to include the program in its 2005 DSM Plan and apply the energy and demand savings from the program to its DSM goals should also be approved. FPL should file detailed program standards within 30 days of the issuance of the order. Staff recommends that these standards should be approved administratively if the standards conform to the description of the modified BuildSmart program contained in the instant docket.

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?

Recommendation: Yes. FPL is required by Section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code, to offer energy audits to all residential customers. FPL has proposed no changes to the existing Residential Conservation program. FPL's advertising expenditures for the program were reviewed and approved by the Commission in Order No. PSC-04-1178-FOF-EG, issued November 30, 2004. (Colson, Harlow, Sickel)

Position of the Parties

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. FPL has proposed no changes to the existing RCS Program.

⁵ In its posthearing 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.

Calcs-Plus: 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. Further, the failure of FPL to provide performance measures and monitoring for a program costing in excess of \$12 million annually should be investigated by the Commission.

Staff Analysis: 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." The Commission implemented Section 366.82(5), Florida Statutes, in Rule 25-17.003, Florida Administrative Code. (TR 74) 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.

FPL's Residential Conservation Service program (RCS) is an existing energy audit program, which was implemented by FPL in the 1980s. (TR 67, 74) The program includes a walk-through energy audit, a computer-generated audit, and a customer-assisted energy audit. (TR 67) 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. (TR 68-69) The RCS program in its current form was last approved by the Commission 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.⁶ As required by the Commission's order, the procedures for the program were subsequently administratively approved by the Commission's staff.

FPL included the RCS audit program in its 2005 DSM Plan. FPL proposed no changes to the existing program. (TR 74) FPL did not provide a cost-effectiveness analysis of its RCS program in its 2005 DSM Plan filing. Staff agrees with FPL that this is appropriate because the potential demand and energy savings from this program are not counted toward FPL's DSM goals. (TR 70-71, 124) FPL projects that 75,000 to 100,000 residential customers will participate in the program per year. (EXH 6)

The petitioners appear 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. According to the petitioners' position statement, FPL's advertising is "not only image enhancing but also an inaccurate statement of true company actions." Second, the petitioners believe that FPL's RCS program, and the associated advertising, exert unfair competition in the energy efficiency marketplace. The petitioners have 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.

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

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 most recently 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. Staff disagrees with Calcs-Plus that the recovery of these advertising expenditures should be disallowed. Calcs-Plus did not raise this issue in the appropriate venue when these expenses were reviewed and approved by the Commission 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."

Staff also believes that the instant docket is not the appropriate venue to discuss any potential competitive impacts of FPL's RCS program on the energy efficiency marketplace, including energy efficiency raters. As discussed in Issue 1, the Commission does not have jurisdiction regarding the potential competitive impacts of utility-sponsored DSM programs on independent energy raters. Further, FPL is required by statute and rule to offer energy audits to all residential customers.

In conclusion, staff believes 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 by the Commission 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.

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

Recommendation: Yes. FPL's Residential Conservation Service Program complies with Section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code. It is appropriate to include the program in FPL's 2005 DSM Plan. FPL should file program standards with the Commission for administrative approval within 30 days of the issuance of the order. (Colson, Harlow, Sickel)

Position of the Parties

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 the existing program.

Calcs-Plus: 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 Analysis: The RCS program was last approved by the Commission by 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. According to the Commission's order, the procedures for the program were subsequently administratively approved by the Commission's staff. FPL has requested no modifications to the program as a part of its 2005 DSM Plan. As discussed in Issue 5, staff believes that FPL's RCS program complies with Section 366.82(5), Florida Statutes, and Rule 25-17.003, Florida Administrative Code.

Calcs-Plus' request for the Commission to require FPL to "notify all participants of the availability of rating services" appears to be based on competitive interests, and should be denied. The Commission does not have jurisdiction over the competitive interests in the energy services market. In addition, FPL is currently meeting its DSM goals. (EXH 2) Therefore, staff believes that ordering FPL to substantially alter the RCS program goes against the intent of Section 366.82(3), Florida Statutes. Pursuant to Section 366.82(3), Florida Statutes, "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."

For the reasons discussed above and in Issue 5, staff believes FPL's RCS program should be approved. It is appropriate to include the program in FPL's 2005 DSM Plan. FPL should file detailed program standards with the Commission within 30 days of the issuance of the order. Staff recommends that the standards for the program should be approved administratively if the standards conform to the description of the RCS program contained in the instant docket. Calcs-Plus' request for relief should be denied.

Issue 7: Should this docket be closed?

Recommendation: The docket should be closed after the time for filing an appeal has run. (Brown, Vining)

Position of the Parties

FPL: Yes.

Docket Nos. 040029-EG, 040660-EG

Date: December 8, 2005

Calcs-Plus: No. The Commission should conduct a full inquiry into the BuildSmart database and review the advertising needs and expenditures of the Residential Conservation Service and require the establishment of a Residential Conservation Services program with measurable results and effective monitoring.

Staff Analysis: The docket should be closed 32 days after issuance of the order, to allow the time for filing an appeal to run.