



# National Energy Raters Association

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020084-EI

January 30, 2002

## COMPLAINT

This complaint is filed by the National Energy Raters Association, a Florida Not for Profit Corporation, for the violation of Section 25-17.003(4)(a), FAC by Florida Power and Light, Florida Power Corporation, and any other utility engaged in the provision of BERS audits without charging the customer the prescribed cost for the audit. Section 25-17.003(4)(a) requires that every public utility charge for a Building Energy Efficiency Rating System (BERS) Audit. Florida Power and Light and Florida Power Corporation have filed tariffs with the Commission wherein they establish the fee that will be charged for Energy Audits. However, in practice, these fees are not charged, which has created a competitive disadvantage for independent energy raters. The Complainant hereby requests that the Commission take all appropriate action to bring to an end the violation of this rule, including remedial and punitive measures.

### I. Summary of Complaint

Florida law governs the provision of energy ratings of residences. The "Florida Energy Gauge Ratings" program encompasses what are commonly referred to as "energy audits" and "Building Energy Efficiency Rating System (BERS) Audits." Florida law and agency rules regulate the fees to be charged for the BERS audit. It has become evident that several of the state's electric utilities are providing these ratings "free of charge" in violation of state law and administrative rules.

The two largest IOUs in the State, by population and area, Florida Power Corporation (FPC) and Florida Power and Light (FP&L) are marketing BERS ratings as a "free" service. As a result, these investor owned utilities (IOUs) have monopolized the provision of energy ratings in Florida. Under Florida law, these services were never meant to be a "free" and utilities that offer these services at no charge are in direct violation of both the statutes and rules governing the Building Energy Rating System (BERS). The resulting impact has been extremely detrimental to the citizens of Florida as well as the natural evolution of a competitive, market-driven industry.

### II. Florida Statutes, Rules and Tariffs Governing the Provision of Energy Ratings

The following exhibits are provided as evidence of the state's intent that Florida Energy Gauge/BERS Ratings be offered as a fee-based service to Florida's energy consumers.

Section 366.82, Florida Statutes, Definition; Goals; Plans; Programs; Energy Audits.  
Section 25-17.003, (3)(a), FAC, Energy Audits. Scope  
Section 25-17.003(4)(a), FAC, Energy Audit Charges

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FPSC-COMMISSION CLERK

Section 553.995, Florida Statutes. Energy Efficiency Ratings for Buildings  
Section 9B-60.005(2)(c), FAC, Training and Certification (reference to cost of ratings)  
Florida Power and Light Building Energy Rating System (BERS) Tariff, Fourth Revised Sheet  
No. 4.040  
Florida Power Corporation Florida Energy Gauge Ratings Tariff, Second Revised Sheet No.  
2.6

### **III. Impact of violations on ratepayers and homeowners**

It appears that the Florida IOU's are subsidizing their various home energy programs utilizing ratepayer funds collected through the energy conservation cost recovery (ECCR) fund authorized by the FPSC. These home energy programs (ACT, BuildSmart) circumvent the law that requires a fee be charged for the Energy Gauge Rating. While the utilities are entitled to recover the cost of PSC approved conservation programs, they are also directed to reduce that recovery by any revenues received. PSC rule clearly directs that the utilities charge for BERS audits. That rule does not provide an exemption for ratings (audits) performed in conjunction with an approved conservation program.

In spite of the offer of a free service, these programs have been largely ineffective in increasing the percentage of homes rated in the State. Their efforts have resulted in a failure to achieve significant energy savings. In the year 2000, utilities have rated and registered only 169 out of the approximately 90,000 homes built in their combined service territories (according to statistics provided by the State's sole provider of registered ratings, the Florida Solar Energy Center - FSEC). This equates to less than  $\frac{1}{4}$  of 1% of new homes rated. On the other hand, one successful independent rater in the Gainesville area with no subsidized ratings program from the local utility has rated 280 homes in an extremely small market in comparison to the major IOUs. Collectively, the investor owned utilities collected \$12,013,736 through ECCR for audits, including the mere 169 BERS audits. The only reported revenue collected for this same time period was \$186 by Florida Power Corporation.

We believe that there is an inherent conflict of interest by IOU's in implementing energy efficiency programs when their revenues and profits are almost completely dependent on selling energy. The net effect of their programs has been the lost opportunity for the customers in their service territories to enjoy lower utility bills, increased comfort and indoor air quality while at the same time enacting a subsidy borne by these ratepayers through their electric bill. These programs can also be considered discriminatory. For example, the ACT(FPC) program excludes homes heated with natural gas, which denies a benefit to a customer who, ironically, is subsidizing the program.

### **IV. Impact of violations on independent certified energy raters**

The provision of free energy ratings has created a virtual monopoly for the utilities in the home energy rating industry. Independent energy raters have been decimated by subsidized, "free" ratings. The costs of establishing an energy rating business are significant. The purchase of necessary diagnostic equipment is approximately \$4000. Certification training exceeds \$820, not including lodging and miscellaneous expenses. The certification license costs \$150 with

annual rater license renewal fees of \$50. Software costs \$79 initially and \$79/year renewal based upon basic requirements. All of these costs are borne by independent raters without any public or private subsidy. There is no way to recoup these costs when independent raters are forced to compete in an environment in which free energy ratings are being marketed by utilities. The potential market for energy ratings considers free BERS audits an entitlement. Independent raters cannot effectively market their services when, inevitably, their potential client will opt for “free” services. Furthermore, the perception of a service that is “free” diminishes and cheapens the value of the service. Potential clients come to believe that energy ratings are an entitlement. Municipal utilities bordering on IOU’s service territories are now expected by builders to also offer “free” energy ratings. It appears that the municipal utilities are moving in that direction.

Ironically, independent raters become unsuspecting marketers of utility programs. Once potential clients request energy ratings, the IOU moves quickly to offer their free service. Without the advance effort by the independent rater, the IOU would have no indication that a customer had an interest in this service. In at least one instance, documented in the attached exhibit, an independent energy rater who cultivated a business relationship with a builder for the provision of energy ratings was deprived of this opportunity once the utility approached the builder with the offer of free ratings. As this example typifies, the independent rater will often provide the upfront education to the potential client and then loses business due to the “free” service offered by the IOU.

As of this date, there are 176 Class 1 raters in Florida. 86 are from the utilities (FPC 50, FP&L 21, Gulf Power 5, Tampa Electric 3, various Coops 7). Of the 80 independent raters (not counting those that are from government agencies) in the State, only eight have registered ratings in 2000.

## **V. Impact of violations on the State Home Energy Raters System (HERS) and Training Provider.**

The Florida Solar Energy Center is responsible for rater training, maintaining all records regarding energy rater information, licensing, software development and sales, and rating registration through a no cost contract from the Department of Community Affairs (DCA). Revenues collected from their various functions are not only used for administrative costs but also for support of the State’s energy rating program. The number of potential candidates to qualify as an energy rater has been decreasing steadily over the last five years. For the last three years, the number of newly trained independent raters has steadily declined, with 128 in 1998, 65 in 1999, and 29 in 2000. The reason for this dramatic decline is clear and simple: There is no reason for anyone to spend money, time and effort to qualify as an energy rater to compete against a subsidized monopoly. All of this is occurring at the same time as an unprecedented building boom.

The declining revenues from training fees, certified rater renewal fees, software sales and rating registration has had a negative impact on the energy rating program administration. The reduction in funding impacts both marketing the need for ratings as well as maintaining quality control of the program.

In addition to offering free ratings, FPC has instituted a policy known as “sampling” which allows a home to be designated as Energy Star without undergoing the BERS audit. Sampling, approved by EPA, but not by DCA or FSEC, undermines the intent and value of the Energy Gauge program. Since builders receive the market advantage of an Energy Star labeled home, they are less likely to incur the cost of a full BERS audit rating. This further dilutes the inventory of homes available for BERS audits by independent raters and undermines the intent of the state’s program.

## **VI. Utility Builder Marketing Efforts**

FPL’s BuildSmart program advertises the availability of a free service to achieve “Gold” level within their program. However, the Gold level can include a BERS audit. The fees that are charged to builders are for services and recognition by FPL beyond the provision of the rating. EPA also promotes the FPL Build Smart program, noting that Gold level offers free ratings. According to the EPA website, FPL is listed as rating homes which requires a certified HERS score which can only be completed by a State certified energy rater performing a BERS audit.

FPC’s ACT program readily advertises the availability of free ratings. Their ACT brochure details the range of services provided to participating builders, including BERS ratings “at no cost to you [the builder].” Additionally, FPC engages in a sampling protocol, not approved by DCA and FSEC. Moreover, FPC discriminates against builders in their service territory who offer natural gas to their customers by precluding them from participation in ACT and with holding audits for “eligible customers” in violation of state law.

## **VII. Florida Public Service Commission’s Responsibility and Potential Remedies**

Among the responsibilities accorded to the Florida Public Service Commission, is the objective to establish regulatory standards and apply them in a fair and consistent manner. This duty extends to the provision of utility audits. It is apparent that utility implementation of their obligations with respect to providing audits, in particular BERS audits, are inconsistent and in violation of regulatory standards. In order to balance the inequities of the past and provide remedial relief, NERA requests that the FPSC consider the following corrective measures.

1. Demand that the utilities repay the cost of each audit offered for free to be deposited into a trust fund for audits for low-income ratepayers to be administered by the National Energy Ratings Foundation (NERF)
2. The PSC will not approve any conservation program which involves the provision of energy ratings without stipulating that the state mandated fees will be charged accordingly, and borne by the customer, or builder, but not the general body of ratepayers.

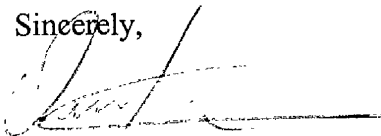
3. Direct the utilities to allow independent raters to sign up eligible builders for PSC approved utility builder programs and not interfere in the provision of energy ratings to a builder by the independent rater.
4. Direct the utilities to enter into an agreement with NERF for the provision of services by independent energy raters for conducting audits for eligible customers.
5. Prohibit utilities from recommending specific measures for adoption in the course of a utility conducted audit.
6. Assure that there is no cross subsidization of utility services that result from utility conducted audits.
7. Require that utilities disclose the actual cost of a BERS audit in any promotional materials, which are disseminated to their customers.
8. Create a marketing and education program, to be funded by utility contributions (which may be recovered through ECCR), for the purpose of encouraging customers to obtain a BERS audit.

## **IX. Conclusion**

This complaint is filed out of regard for fairness and the ability to advance the State's energy conservation efforts. Independent Raters respect the State Statues and abide by the State's technical and administrative authorities. Those authorities are the Department of Community Affairs and Florida Solar Energy Center and the procedures and rules that they promulgate. Unfortunately, IOU's apparently believe that they have been accorded a special status, sanctioned by the FPSC through the approval of their energy conservation programs, which allows them to circumvent state law.

It is time for the FPSC to right a serious wrong. We, in the strongest of terms, request that you take this complaint under consideration in all due haste. The disposition of this complaint will have serious ramifications throughout the state and national rating industry. The respect and integrity of the State's energy conservation efforts rest on the outcome of this complaint.

Sincerely,

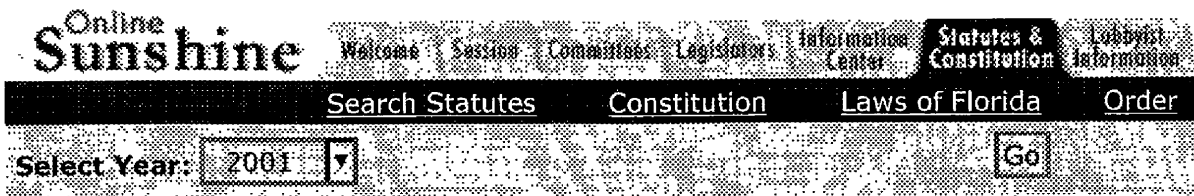


Dennis J. Stroer  
NERA President

### Table of Exhibits

- A. Section 366.82, Florida Statutes
- B. Section 25-17.003(3)(a) and (4)(a), Florida Administrative Code
- C. 553.995, Florida Statutes
- D. Section 9B-60.005(2)(c), Florida Administrative Code
- E. FPL BERS Tariff
- F. FPC BERS Tariff
- G. Joyal Construction Letter regarding American Property Consultants and Stan DiBello
- H. Utility Builder Marketing Information

Exhibit A. Section 366.82, Florida Statutes



## The 2001 Florida Statutes

**Title XXVII**                      **Chapter 366**                      **View Entire Chapter**  
Railroads And Other Regulated Utilities                      Public Utilities

### **366.82 Definition; goals; plans; programs; annual reports; energy audits.--**

(1) For the purposes of ss. 366.80-366.85 and 403.519, "utility" means any person or entity of whatever form which provides electricity or natural gas at retail to the public, specifically including municipalities or instrumentalities thereof and cooperatives organized under the Rural Electric Cooperative Law and specifically excluding any municipality or instrumentality thereof, any cooperative organized under the Rural Electric Cooperative Law, or any other person or entity providing natural gas at retail to the public whose annual sales volume is less than 100 million therms or any municipality or instrumentality thereof and any cooperative organized under the Rural Electric Cooperative Law providing electricity at retail to the public whose annual sales as of July 1, 1993, to end-use customers is less than 2,000 gigawatt hours.

(2) The commission shall adopt appropriate goals for increasing the efficiency of energy consumption and increasing the development of cogeneration, specifically including goals designed to increase the conservation of expensive resources, such as petroleum fuels, to reduce and control the growth rates of electric consumption, and to reduce the growth rates of weather-sensitive peak demand. The Executive Office of the Governor shall be a party in the proceedings to adopt goals. The commission may change the goals for reasonable cause. The time period to review the goals, however, shall not exceed 5 years. After the programs and plans to meet those goals are completed, the commission shall determine what further goals, programs, or plans are warranted and, if so, shall adopt them.

(3) Following adoption of goals pursuant to subsection (2), the commission shall require each utility to develop plans and programs to meet the overall goals within its service area. If any plan or program includes loans, collection of loans, or similar banking functions by a utility and the plan is approved by the commission, the utility shall perform such functions, notwithstanding any other provision of the law. The commission may pledge up to \$5 million of the Florida Public Service Regulatory Trust Fund to guarantee such loans. However, no utility shall be required to loan its funds for the purpose of purchasing or otherwise acquiring conservation measures or devices, but nothing herein shall prohibit or impair the administration or implementation of a utility plan as submitted by a utility and approved by the commission under this subsection. If the commission disapproves a plan, it shall specify the reasons for disapproval, and the utility whose plan is disapproved shall resubmit its modified plan within 30 days. Prior approval by the commission shall be required to modify or discontinue a plan, or part thereof, which has been approved. 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. Utility programs may include variations in rate design, load control, cogeneration, residential energy conservation subsidy, or any other measure within the jurisdiction of the commission which the commission finds likely to be effective; this provision shall not be construed to preclude these measures in any plan or program.

(4) The commission shall require periodic reports from each utility and shall provide the Legislature and the Governor with an annual report by March 1 of the goals it has adopted and its progress toward meeting those goals. The commission shall also consider the performance of each utility pursuant to ss. 366.80-366.85 and 403.519 when establishing rates for those utilities over which the commission has ratesetting authority.

\* (5) The commission shall require each utility to offer, or to contract to offer, energy audits to its residential customers. This requirement need not be uniform, but may be based on such factors as level of usage, geographic location, or any other reasonable criterion, so long as all eligible customers are notified. The commission may extend this requirement to some or all commercial customers. The commission shall set the charge for audits by rule, not to exceed the actual cost, and may describe by rule the general form and content of an audit. In the event one utility contracts with another utility to perform audits for it, the utility for which the audits are performed shall pay the contracting utility the reasonable cost of performing the audits. Each utility over which the commission has ratesetting authority shall estimate its costs and revenues for audits, conservation programs, and implementation of its plan for the immediately following 6-month period. Reasonable and prudent unreimbursed costs projected to be incurred, or any portion of such costs, may be added to the rates which would otherwise be charged by a utility upon approval by the commission, provided that the commission shall not allow the recovery of the cost of any company image-enhancing advertising or of any advertising not directly related to an approved conservation program. Following each 6-month period, each utility shall report the actual results for that period to the commission, and the difference, if any, between actual and projected results shall be taken into account in succeeding periods. The state plan as submitted for consideration under the National Energy Conservation Policy Act shall not be in conflict with any state law or regulation.

(6)(a) Notwithstanding the provisions of s. 377.703, the commission shall be the responsible state agency for performing, coordinating, implementing, or administering the functions of the state plan submitted for consideration under the National Energy Conservation Policy Act and any acts amendatory thereof or supplemental thereto and for performing, coordinating, implementing, or administering the functions of any future federal program delegated to the state which relates to consumption, utilization, or conservation of electricity or natural gas; and the commission shall have exclusive responsibility for preparing all reports, information, analyses, recommendations, and materials related to consumption, utilization, or conservation of electrical energy which are required or authorized by s. 377.703.

(b) The Executive Office of the Governor shall be a party in the proceedings to adopt goals and shall file with the commission comments on the proposed goals including, but not limited to:

1. An evaluation of utility load forecasts, including an assessment of alternative supply and demand side resource options.
2. An analysis of various policy options which can be implemented to achieve a least-cost strategy.

(7) The commission shall establish all minimum requirements for energy auditors used by each utility. The commission is authorized to contract with any public agency or other person to provide any training, testing, evaluation, or other step necessary to fulfill the provisions of this subsection.

**History.**--s. 5, ch. 80-65; s. 2, ch. 81-131; s. 2, ch. 81-318; ss. 5, 15, ch. 82-25; ss. 15, 20, 22, ch. 89-292; s. 4, ch. 91-429; s. 81, ch. 96-321.

Exhibit B. Section 25-17.003(3)(a) and (4)(a), Florida Administrative Code

annual benefits =  $B_{npv} \times \{d/[1-(1+d)^{-n}]\}$

where

$B_{npv}$  = cumulative present value of the net benefits over the life of the program  
for measures installed during the reporting period  
d = discount rate (utility's after tax cost of capital)  
n = life of the program.

Specific Authority: 366.05(1), 366.82(1)-(4), F.S.

Law Implemented: 366.82(1)-(4), F.S.

History: New 5/10/93.

#### 25-17.003 Energy Audits.

(1) Purpose. This rule specifies the minimum requirements for performing energy audits by every utility that falls under the definition of "utility" in Section 366.82(1), Florida Statutes.

##### ~~(2)~~ Definitions.

~~(a)~~ "Building Energy-Efficiency Rating System (BERS) Audit" means an energy analysis of a residence performed in compliance with Section 553.995, Florida Statutes, and Rules 9B-60.004(3) and (4) and 9B-60.005, Florida Administrative Code.

(b) "Computer-Assisted Audit" means an energy analysis of a residence in which a qualified auditor performs a comprehensive on-site evaluation of the residence in accordance with subsection (6) and paragraphs (7)(c) and (7)(d), and, if applicable, provides installation arrangements and inspections pursuant to this rule.

(c) "Commercial Audit" means an energy analysis of a commercial building and its associated energy systems to determine its energy efficiency and to identify for the customer those measures that may improve its energy efficiency.

(d) "Conservation Measures" refers to replacing, upgrading, or installing equipment which reduces energy usage or peak demand contribution, such as the:

1. Installation of clock thermostat;
2. Replacement of furnace or boiler;
3. Replacement of resistance heat with heat pump or natural gas furnace;
4. Replacement of central air conditioning system;
5. Installation of duct or pipe insulation;
6. Sealing leaks in pipes and ducts;
7. Caulking of windows or doors;
8. Weatherstripping of windows or doors;
9. Installation of heat-reflective, heat-gain retardant, and heat-absorbing window or door materials;
10. Insertion of plastic window panels;
11. Installation of storm or thermal windows;
12. Installation of wall insulation;
13. Installation of ceiling insulation;
14. Installation of floor insulation;
15. Plugging leaks in attic, basement, and fireplace;
16. Installation of waste heat recovery water heating system;
17. Installation of heat pump or natural gas water heater;
18. Installation of solar water heating system;
19. Installation of water heater insulation;
20. Installation of water flow restrictors in showers and faucets;
21. Installation of solar swimming pool heating system; and
22. Installation of load management devices, where load management rates are offered.

(e) "Conservation Practices" refers to actions performed by a customer which

reduce energy usage or peak demand contribution, such as:

1. Furnace efficiency maintenance and adjustments;
2. Cooling system efficiency maintenance and adjustments;
3. Nighttime temperature setback;
4. Reduction of thermostat setting in winter;
5. Increase of thermostat setting in summer;
6. Reduction of hot water temperature;
7. Reduction of energy use when residence is unoccupied; and
8. Efficient use of shading.

(f) "Eligible Customer" means the owner or occupant of a residence that receives a bill for service from a utility.

(g) "Industrial Audit" means an energy analysis of an industrial facility and its associated energy systems to determine its energy efficiency and to identify for the customer those measures that may improve its energy efficiency.

(h) "Mail-in Audit" means an energy analysis of a residence or building in which the utility supplies to the eligible customer a data collection form which is completed by the customer, and, upon receipt of the completed form, the utility analyzes the data and submits to the customer the results of its evaluation.

(i) "Walk-Through Audit" means an energy analysis of a residence in which a qualified auditor walks through the residence making extensive observations as to the physical structure and components, performs simplified heat gain and heat loss computations, and advises the customer of feasible energy conservation practices and measures.

(3) Scope.

(a) All utilities are required to offer eligible residential customers BERS Audits which comply with subsections (12), (13), and (14) below.

(b) All utilities are required to offer eligible residential customers Computer-Assisted and Walk-Through Audits which comply with subsections (4) through (14) below. Prior to conducting Computer-Assisted and Walk-Through Audits, procedures for conducting these audits must be approved by the Commission.

(c) Any utility may offer Mail-In Audits to eligible customers. Every utility that performs Mail-In Audits shall comply with subsections (13) and (14) below.

(d) Any utility may offer a Commercial or Industrial Audit to commercial and industrial customers. Every utility that performs Commercial or Industrial Audits shall comply with subsections (13) and (14) below.

~~\*(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.

(b) Every utility may charge an eligible customer for a Computer-Assisted Audit. The amount of this charge, which shall not exceed \$15, shall first be filed with the Commission as part of the utility's tariff.

(c) Every utility may charge an eligible customer for a Walk-Through Audit. The amount of this charge, which shall not exceed \$5, shall first be filed with the Commission as part of the utility's tariff.

(d) Every utility may charge an eligible customer for a Commercial or Industrial Audit. The amount of this charge shall not exceed the actual cost of providing the audit.

(5) Minimum Auditor Qualifications.

(a) Every utility shall certify that each of its residential energy auditors meets the minimum qualifications in paragraph (5)(b). The certification, along with a list of auditors performing energy audits, shall be filed annually with the Director, Division of Electric and Gas, by September 30 of each year.

(b) To be qualified to perform energy audits, a person must:

1. Have been trained in a program meeting the curriculum requirements of paragraph (5)(c); and
  2. Have demonstrated a proficiency in the areas listed in paragraph (5)(c) through a written test or practical demonstration.
- (c) At a minimum, the curriculum to be followed in training auditors shall include instruction in the following areas:
1. The three types of heat transfer and the effects of temperature and humidity on heat transfer;
  2. General mathematics, including powers of ten, decimals and fractions, simple equations, heat loss and heat gain computations utilizing British Thermal Units (BTUs), and pay back calculations;
  3. Utility billing procedures, meter reading, and identification of weather sensitive consumption relationships based on a customer's billing history;
  4. Residential construction terminology and components;
  5. The operation of heating and cooling systems used in residential buildings; and
  6. The application of energy conservation practices and measures including the advantages and disadvantages of each.
- (6) Pre-audit performance criteria for Computer-Assisted Audits.
- (a) Every utility shall adopt procedures to assure that estimates of energy cost savings and costs for conservation measures are based on:
1. Typical and recent local prices for materials and installation;
  2. Typical local climate data for the audited residence; and
  3. Typical local price of electricity.
- (b) At least twice annually, each utility shall update the data collected pursuant to paragraph (6)(a).
- (7) Performance of the audit.
- (a) Upon arrival at a residence, the auditor shall provide proper identification and confirm the customer's understanding of the scope and cost of the audit.
1. The auditor shall discontinue or decline to perform the audit if the customer, at any time, objects to its performance.
  2. The auditor may discontinue or decline to perform the audit if the auditor determines that continuation of the audit may be dangerous.
- (b) The auditor shall determine and explain to the customer which conservation practices are applicable and recommend that the customer apply them prior to or in conjunction with adopting any conservation measure.
- (c) For Computer-Assisted Audits, to determine the appropriate conservation measures, the auditor shall gather and record the following information where applicable:
1. Exterior opaque wall area, including present level of wall insulation;
  2. Type and condition of exterior window and door areas;
  3. Ceiling area, including present level of attic insulation;
  4. Floor area, including present level of floor insulation, if any;
  5. Water heater size, age, and type;
  6. Air conditioning system type, size, age, fuel type, and duct condition;
  7. Heating system type, size, age, and fuel type; and
  8. Other items as appropriate.
- (d) For Computer-Assisted Audits, using the data gathered pursuant to paragraph (7)(c), the auditor shall provide the customer with a result sheet showing:
1. An estimate of the potential energy and cost savings of each

applicable conservation measure;

2. An estimate of the total installation cost for each applicable conservation measure, both by the customer and by a contractor;
3. An estimate of the expected payback time for the customer's cost of purchasing and installing each applicable conservation measure, calculated using the anticipated percentage change in energy costs;
4. An example calculation which clearly indicates that total energy cost savings from the installation of more than one conservation measure could be different from the sum of energy cost savings of each individually installed conservation measure; and
5. An explanation of the availability of energy conservation and load management programs.

(8) Energy Audit Disclosures and Disclaimers.

(a) Each Computer-Assisted Audit result sheet shall include the following or similar statement: "The procedures used to make these installation cost and energy savings estimates are consistent with Commission rules and good engineering practices. However, the actual installation costs you incur and energy savings you realize from installing these measures may be different from the estimates contained in this audit report. Although the estimates are based on measurements of your house, they are also based on assumptions which may not be entirely correct for your household due to differing energy use patterns."

(b) The auditor shall provide the eligible customer with a written statement of any interest, direct or indirect, which the auditor or the utility has in the sale or installation of any energy conservation measure.

(c) Upon customer request, the auditor shall disclose the results of any prior audit of the customer's residence if such records are still available.

(d) The results of the energy audit shall contain the following or a similar disclaimer: "The utility does not warrant or guarantee the audit findings or recommendations, nor is the utility liable as a result of the audit for the acts or omissions of any person who implements or attempts to implement those conservation measures recommended by the auditor."

(9) Installation Arrangements.

(a) A utility may offer installation arrangement services such as providing a list of suppliers and installers of conservation measures.

(b) If a utility provides these services, the availability of the services shall be noted on the written results of the energy audit.

(c) When arranging installation services pursuant to this rule, a utility shall not:

1. Discriminate among eligible customers, suppliers, or contractors; or
2. Arrange for installation of any measure which is not included in the utility's most recent Demand Side Management Plan approved by the Commission.

(10) Post-Audit Inspection.

(a) To ensure quality control, the utility performing the audit shall ensure that its recommended installations conform to quality standards.

(b) The utility performing the audit shall be responsible for performing post-audit inspections of 10 percent of each type of energy conservation measure installed as a result of the utility's recommendation.

(c) The utility shall reinspect a residence if a violation of materials or installation standards is found.

(11) Program announcement.

(a) Each utility shall send a program announcement to all eligible customers at least every six months.

(b) The program announcement shall describe the BERS, Computer-Assisted, and Walk-Through Audits, offer them to all eligible customers, and advise eligible

customers of any fee charged for the audits.

(c) A gas utility and an electric utility servicing the same geographical area are encouraged to jointly issue a single Program Announcement.

(12) For every customer requesting either a BERS, Computer-Assisted, or Walk-Through Audit, every utility shall:

(a) Advise the customer as to the scope and cost of the audit;

(b) Schedule the audit within 15 days of an eligible customer's request, as well as provide the name, title, and phone number of the auditor; and

(c) Perform the audit within 21 days of scheduling it, unless the eligible customer requests a later date.

(13) Program Record Keeping.

(a) For every audit performed, every utility shall keep for 3 years from the audit performance a record that consists of the customer's energy use for 12 months prior and 12 months after the date of the audit. The record shall list the amount of electricity or natural gas purchased for every month of both 12 month periods.

(b) Every electric utility shall record the amount collected pursuant to Rule 25-17.003(4) in subaccounts within Account 456. Every gas utility shall record the amount collected pursuant to Rule 25-17.003(4) in subaccounts within Account 495.

(14) Contracts for Performing Audits. Any utility may contract with another entity to perform the audits required by this rule.

**Specific Authority:** 366.05(1), 350.127(2), F.S.

**Law Implemented:** 350.115, 366.04(2)(a), 366.04(2)(f), 366.82(5)&(7), F.S.

**History:** New 12/2/80, formerly 25-17.03, Amended 12/30/82, 11/24/86, 5/10/93, 7/14/96.

#### 25-17.004 Goals for Natural Gas Utilities.

**Specific Authority:** 366.05(1), 366.82(1)-(4), F.S.

**Law Implemented:** 366.82(1)-(4), F.S.

**History:** New 12/2/80, Amended 12/30/82, formerly 25-17.04, Repealed 4/2/90.

#### 25-17.005 Evaluation of Electric Utility Conservation Efforts.

**Specific Authority:** 366.05(1), 366.82(1)-(4), F.S.

**Law Implemented:** 366.82(1)-(4), F.S.

**History:** New 12/2/80, formerly 25-17.05, Amended 12/30/82, 6/19/84, 9/14/88, Repealed 5/10/93.

#### 25-17.006 Electric Utility System Conservation End Use Data

(1) **PURPOSE:** The purpose of this rule is to provide for the periodic submission of certain conservation information and other related information to the Commission. Applications of this rule include:

(a) Gathering information to review and revise conservation goals pursuant to Rule 25-17.0021, F.A.C.;

(b) Gathering information to estimate the potential kilowatt hour (KWH) and kilowatt demand (KW) savings achievable through various conservation measures and conservation technologies; and

(c) Gathering information to enable the Commission to analyze conservation alternatives to mitigate the need to construct new power plants in Florida.

(2) **APPLICABILITY:** This rule shall apply to all electric utilities that fall under the definition of "utility" in Section 366.82(1), Florida Statutes.

(3) **SURVEY YEAR:** In order to accomplish the purpose of this rule, starting with calendar year 1998 and every four years thereafter, 1,350 residential customer accounts throughout Florida shall be surveyed to collect information on appliance stock, housing characteristics, household demographic characteristics, and twelve months of kilowatt hour billing history.

Exhibit C. 553.995, Florida Statutes

Select Year: 2001

[Go](#)The 2001 Florida Statutes**Title XXXIII**Regulation Of Trade, Commerce,  
Investments, And Solicitations**Chapter 553**Building Construction  
Standards**View Entire  
Chapter****553.995 Energy-efficiency ratings for buildings.--**

(1) The energy-efficiency rating system shall at a minimum:

(a) Provide a uniform rating scale of the efficiency of buildings based on annual energy usage.

(b) Take into account local climate conditions, construction practices, and building use.

(c) Be compatible with standard federal rating systems and state building codes and standards, where applicable, and shall satisfy the requirements of s. 553.9085 with respect to residential buildings and s. 255.256 with respect to state buildings.

(2) The energy-efficiency rating system adopted by the department shall provide a means of analyzing and comparing the relative energy efficiency of buildings upon the sale of new or existing residential, public, or commercial buildings.

(3) The department shall establish a voluntary working group of persons interested in the energy-efficiency rating system or energy efficiency, including, but not limited to, such persons as electrical engineers, mechanical engineers, architects, public utilities, and builders. The interest group shall advise the department in the development of the energy-efficiency rating system and shall assist the department in the implementation of the rating system by coordinating educational programs for designers, builders, businesses, and other interested persons to assist compliance and to facilitate incorporation of the rating system into existing practices.

(4) The department shall develop a training and certification program to certify raters. In addition to the department, ratings may be conducted by any local government or private entity, provided that the appropriate persons have completed the necessary training and have been certified by the department. The Department of Management Services shall rate state-owned or state-leased buildings, provided that the appropriate persons have completed the necessary training and have been certified by the Department of Community Affairs. A state agency which has building construction regulation authority may rate its own buildings and those it is responsible for, if the appropriate persons have completed the necessary training and have been certified by the Department of Community Affairs. The Department of Community Affairs may charge a fee not to exceed the costs for the training and certification of raters. The department shall by rule set the appropriate charges for raters to charge for energy ratings, not to exceed the actual costs.

**History.**--s. 12, ch. 93-249.

Exhibit D. Section 9B-60.005(2)(c), Florida Administrative Code

## CHAPTER 9B-60 FLORIDA BUILDING ENERGY RATING SYSTEM

9B-60.001	Purpose and Intent. (Repealed)
9B-60.002	Definitions.
9B-60.003	Department Activities.
9B-60.004	Florida Building Energy Rating System, Adopted.
9B-60.005	Training and Certification Program.
9B-60.007	Florida Building Energy Rating System, Existing Public Buildings.
9B-60.008	Guidelines for Uniformity, Adopted.

### 9B-60.002 Definitions.

For the purpose of this chapter, the following words, unless the context does not permit such meaning, shall have the meanings indicated:

- (1) Confirmed rating – energy rating performed on an actual building with data gathered from an on-site inspection of the physical building, not just data from plans or construction documents.
- (2) Department – the Department of Community Affairs.
- (3) Exempt Building – all buildings as defined by Section 553.902(1)(a), (b), (c), and (d), F.S.
- (4) Improvement analysis – written calculation of the cost-effectiveness of various options to improve the energy efficiency of a building, including an explicit report on the assumed financing rate and lives of the measures used in the calculation and consideration of interactions between energy-saving measures.
- (5) Mixed Occupancies – buildings consisting of more than one type of occupancy.
- (6) New Residential Building – new residential occupancy buildings, including new residential occupancy dwellings in mixed occupancy buildings, permitted for construction after July 1, 1994.
- (7) New Public Building – a new building comfort-conditioned for occupancy that is owned or leased by the state, a state agency, or a governmental subdivision including, but not limited to, a city, county, or school district, permitted for construction after July 1, 1994.
- (8) Rating System – a uniform scale of the efficiency of buildings based on annual energy usage and costs with consideration of local climate conditions, construction practices and building use.
- (9) Rater – a person trained and certified by the Department to apply the Rating System to Florida buildings.
- (10) Contract for Sale – an agreement in writing made by an owner of real property for the sale of that real property to a buyer.
- (11) Contract to Build – an agreement in writing made by a builder with the owner or purchaser of real property for the construction of a building on that real property.
- (12) New Commercial Building – new commercial occupancy buildings, including new commercial buildings in mixed occupancy buildings, permitted for construction after the effective date of this rule.
- (13) Existing Commercial Building – a completed commercial occupancy building, including existing commercial buildings in mixed occupancy buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued.
- (14) Existing Residential Building – a completed residential occupancy building, including residential occupancy dwellings in mixed occupancy buildings for which a certificate of occupancy, or equivalent approval for occupancy, has been issued.
- (15) Energy Audit – a site inventory and descriptive record of features impacting the energy use in a building. This includes, but is not limited to: all building component descriptions (locations, areas, orientations, construction attributes and energy transfer characteristics); all energy using equipment and appliance descriptions (use, make, model, capacity, efficiency and fuel type); and all energy features.
- (16) Performance Test – site measurement of the energy performance of a building energy feature or an energy using device conducted in accordance with pre-defined testing and measurement protocols and analysis and computation methods. Such protocols and methods may be defined by national consensus standards like those of the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE) and the American Society for Test and Measurement (ASTM), or as modified or defined and adopted by the Department.
- (17) Rating Class for Residential Buildings – the category of an energy rating, based on the source of the input data which are used by the Florida Building Energy Rating System to compute the energy and cost estimates of the energy rating, and consisting of the following three Classes:
  - (a) Class 1 Rating – an energy rating, conducted in accordance with Rule 9B-60, F.A.C., using site energy audit and performance test data as the sources for the input data on which the rating is based.
  - (b) Class 2 Rating – an energy rating, conducted in accordance with Rule 9B-60, F.A.C., using site energy audit data as the source for the input data on which the rating is based.
  - (c) Class 3 Rating – a projected energy rating, reserved for new buildings and clearly labeled as “projected rating based on plans” that is conducted in accordance with Rule 9B-60, F.A.C., using plans and construction documents as the sources for the input data on which the rating is based.
- (18) Registered Rating – a Florida Building Energy Rating for a specifically located building that has been compiled by a certified Florida Rater of any Class, has been found to be complete and accurate, and has been recorded with the Department.

(19) Projected Rating – A rating of any Class performed prior to the construction of a new building or prior to implementation of energy-efficiency improvements to an existing building.

*Specific Authority 553.992 FS. Law Implemented 553.992, 553.995 FS. History—New 7-1-94, Amended 1-11-95, 12-27-98.*

**9B-60.003 Department Activities.**

(1) The Department may interpret and clarify various aspects of the Florida Building Energy Rating System (BERS).

(2) Within three (3) years of the date of adoption of the rating system, and at least triennially thereafter in conjunction with the triennial review of the Florida Energy Efficiency Code For Building Construction (the Code), the Department shall review the energy rating system program criteria and the calculation tools used in common by both the BERS and the Code that are adopted herein to determine the need for revision or modification. The residential rating system methodology is based on Method A of Chapter 6 of the Code, while the commercial rating system methodology is based on Method A of Chapter 4 of the Code. At a minimum, the Department shall update the rating system by adopting modifications to the current editions of the Code and the national Home Energy Rating System (HERS) Guidelines. Copies of the Code and the HERS Guidelines are available from the Florida Department of Community Affairs, Building Codes and Standards Office, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850) 487-1824.

(3) Any person may submit recommendations for proposed revisions or modifications to the rating system to the Department for consideration. Such proposed revisions and modifications shall be submitted in writing on Department of Community Affairs' Form #300, incorporated herein by reference, effective July 1, 1994. Copies of this form are available by writing to the Department of Community Affairs, Building Energy Rating System Program, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Such proposals shall include the date of submittal, an identification of the submitter, identification of the section of the rating system to be revised, the new proposed language, a justification or reason for the change, and anticipated financial impacts of the change. The Department shall conduct a public hearing(s) in accordance with the requirements of Chapter 120, F.S.

(4) The Department shall develop, maintain and make available, at no cost to the prospective purchaser, a Building Energy Rating System disclosure information brochure to be provided to the prospective purchaser.

*Specific Authority 553.992, 553.998 FS. Law Implemented 553.992, 553.996 FS. History—New 7-1-94, Amended 12-27-98.*

**9B-60.004 Florida Building Energy Rating System, Adopted.**

(1) Rules provided herein shall apply to new and existing residential buildings including single-family, multifamily, buildings of mixed occupancy, manufactured residential buildings; new and existing commercial buildings including buildings of mixed occupancy and manufactured commercial buildings; and to new and existing public buildings including state buildings, except those specifically exempted herein.

(2) The energy rating for new residential buildings (Class 3) shall be determined using only the Florida Residential Building Energy Rating System software (Energy Gauge/ResFREE, Version 2) developed and maintained by the Department which produces the Florida Building Energy Rating Guide forms: Form #11A-97 for the North climate zone, Form #11B-97 for the Central climate zone, and Form #11C-97 for the South climate. The rating system software (Energy Gauge/ResFree, Version 2) that produces these forms is hereby incorporated by reference. A Class 3 rating shall be clearly labeled as a "projected rating based on plans."

(3) The energy rating for existing residential buildings shall be determined using the Florida Residential Building Energy Rating System software (EnergyGauge/ResFREE, Version 2) which produces the Florida Building Energy Rating Guide forms listed in Rule 9B-60.004(2), F.A.C. The Florida Residential Building Energy Rating System software (EnergyGauge/ResFREE, Version 2) is hereby incorporated by reference.

(4) Prior to contracting for construction of a new public building, an energy rating shall be conducted in accordance with Rule 9B-60.004(5), F.A.C. The public body proposing to contract for construction of such building shall consider the energy efficiency rating for that new public building, notwithstanding the provisions of Section 255.254, F.S.

(5) The energy rating for new public and new commercial buildings shall be determined using only the Florida Commercial Building Energy Rating System software (EnergyGauge/ComFREE 97, Version 2.2) developed and maintained by the Department which produces the Florida Building Energy Rating Guide forms: Form #12A-97 for the North climate zone, Form #12B-97 for the Central climate zone and Form #12C-97 for the South climate zone. The Florida Commercial Building Energy Rating System software (EnergyGauge/ComFREE 97, Version 2.2) is hereby incorporated by reference. Public buildings owned or leased by state agencies and units of local government that are governed by Section 255.254, F.S., may utilize this rating system as one of the annual energy usage and cost by methods approved by those agencies.

(6) The energy rating for existing commercial buildings shall be determined using only the Florida Commercial Building Energy Rating software (EnergyGauge/ComFREE 97, Version 2.2) developed and maintained by the Department which produces the Florida Commercial Building Energy Rating Guide forms listed in Rule 9B-60.004(5), F.A.C. The Florida Commercial Building Energy Rating System software (EnergyGauge/ComFREE 97, Version 2.2) is hereby incorporated by reference.

(7) A copy of each of the above referenced rating systems has been filed with this rule with the Secretary of State. The rating systems are also available for reference and inspection at the Department of Community Affairs, Division of Housing and Community Development, 2555 Shumard Oak Boulevard, Tallahassee, Florida.

**9B-60.005 Training and Certification Program.**

**(1) General Provisions.**

(a) Beginning with the implementation date of this rule, no person may provide a rating for buildings in Florida unless such a person has been certified as provided by this part. To perform a rating for any building as required by this rule, the person performing the rating must be certified by the Department of Community Affairs.

(b) Certification will be valid for one (1) year following the date of issuance. No rating activity shall be conducted after the expiration of the term of certification. A duplicate certificate may be obtained by written request to the Department.

(c) An application for annual certification renewal shall be submitted on Form 500B-98, herein incorporated by reference, with a renewal fee of \$50. In addition to the annual renewal fee, a certified residential rater must, over a three year period, have completed twelve credit hours of continuing education in courses accepted by the Department for certification renewal. Acceptable courses shall, in general, be those dealing with energy use in buildings and building systems (including heating, ventilating and air conditioning), building design or construction, codes and financing or selling buildings.

**(2) The following qualifications, at a minimum, are required for certification as a rater:**

(a) The individual shall submit an application on the Department of Community Affairs Form #500A-98, herein incorporated by reference, and pay the appropriate application fee of \$150.00. The form is available by writing to the Department of Community Affairs, Energy Rating System Program, 2555 Shumard Oak Blvd, Tallahassee, Florida 32399-2100.

(b) Individuals applying for certification as raters for new residential (Class 3), public and commercial buildings shall attend a training program provided by the Department or its designee and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully rate buildings by passing Department tests specific to the type of building rated for certification. Individuals may also qualify for Class 3 certification without attending the Class 3 training program by passing a Class 3 challenge test. Individuals applying for certification as Class 2 raters for residential buildings, in addition to the above certification requirements, shall attend a Class 2 training program provided by the Department and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully perform residential energy audits to rate existing residential buildings by passing a Department test specific to Class 2 certification. Individuals may also qualify for Class 2 certification without attending the Class 2 training program by passing a Class 2 challenge test. Individuals applying for certification as Class 1 raters for residential buildings shall demonstrate having the same stated requirements as Class 2 raters, shall attend a Class 1 training program provided by the Department and shall demonstrate achievement of a level of knowledge and proficiency so as to successfully perform residential performance tests by passing a Department test specific to Class 1 certification. Individuals may also qualify for Class 1 certification without attending the Class 1 training program by passing a Class 1 challenge test. In addition, a Class 1 rater candidate must complete five Class 1 ratings under the supervision of a certified Class 1 rater in order to obtain a Class 1 certification. Individuals applying for certification as raters of existing commercial buildings, in addition to the requirements stated above for new commercial buildings, shall demonstrate certification as an energy auditor from a recognized commercial energy auditing program or have at least one year of experience performing a minimum of fifteen commercial energy audits.

(c) The rates for providing building ratings shall be as follows: for Class 3 new residential building ratings, \$25.00 above those charges for providing Energy Code compliance calculations, or no more than the actual cost of conducting the rating, whichever is greater; for Class 2 residential building ratings, \$75.00 above those charges for providing the energy audit, or no more than the actual cost of conducting the rating, whichever is greater; for Class 1 residential building ratings, \$125.00 above those charges for providing the energy audit and performance tests, or no more than the actual cost of conducting the rating, whichever is greater; for new public and new commercial buildings which must comply with the Energy Code, \$50.00 above those charges for providing Energy Code compliance calculations, or no more than the actual cost of conducting the rating, whichever is greater; for those new public buildings which are exempt from Energy Code compliance, \$200.00 may be charged, or no more than the actual cost of conducting the rating whichever is greater; and for existing commercial buildings, \$100.00 above those charges for performing the energy audit, or no more than the actual cost of conducting the rating, whichever is greater.

(d) No certification shall be approved unless the applicant demonstrates to the Department that the following conditions are met: the applicant has not been found to be in violation of part XI, Chapter 553, F.S., or this Rule chapter; the applicant has filed an accurate and complete application with the application fee describing compliance with the relevant certification requirements; the applicant is capable of performing the activities for which he/she is seeking certification; the applicant has not shown a lack of ability or intention to comply with part XI, Chapter 553, F.S., or this Rule chapter, or has not been unable or unwilling to conduct Energy Code compliance related activities forthrightly and honestly with his/her clients. Decertification shall be in accordance with procedures for revoking licenses of Chapter 120, F.S.

(e) Recertification is required within six months of the effective date of major revisions to the Florida Energy Efficiency Code for Building Construction or at least every three years from the rater's last date of certification. For recertification, the applicant shall attend training on changes impacting the rating system provided by the Department of Community Affairs and demonstrate achievement of a level of knowledge and proficiency so as to successfully rate buildings by passing a Department test applicable to the buildings being rated. The fee for recertification shall be the annual certification renewal fee. Class 1 residential raters shall be required to satisfactorily perform and complete one Class 1 rating, accompanied and evaluated by another randomly chosen Class 1

rater, as a requirement for recertification and to comply with the HERS Guidelines requirement for periodic peer review and reevaluation of raters. Class 1 raters shall also be required to serve as a Class 1 peer evaluator at least once within three years before being recertified. These regulations in no way exempt any person from other state and local occupational licensure requirements.

(3) Reporting Requirements. Certified raters shall submit all ratings to the Department in electronic format, either via electronic mail (e-Mail) or on 3 1/3" diskette.

(4) The Florida Building Energy Rating report provided to the client shall include a completed copy of the Florida Building Energy Rating Guide (Form #11-97 or Form #12-97) containing the following:

(a) The certified rater's signature, typed or printed name and certification number;

(b) The date that the rating was completed; and

(c) The statement: "This notice is provided to you by an individual certified by the Florida Department of Community Affairs to perform a building energy rating evaluation. Any questions, comments, or complaints regarding the person or agency performing this service may be directed to the Florida Department of Community Affairs, Building Energy Rating System Program, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100, (850) 487-1824."

*Specific Authority 553.992 FS. Law Implemented 553.995(4) FS. History—New 7-1-94, Amended 10-3-94, 1-11-95, 12-27-98.*

#### **9B-60.007 Florida Building Energy Rating System, Existing Public Buildings.**

(1) The provisions of this rule are adopted to implement the Florida Building Energy Efficiency Rating Act of 1993, part XI, Chapter 553, Florida Statutes, by providing a state-wide uniform energy rating system for rating existing buildings proposed for acquisition for public use through lease or purchase and for existing public buildings undergoing renovation. The term existing public building, as used herein, shall have the same meaning as new public buildings in Rule 9B-60.002, F.A.C., except construction of such buildings shall have been permitted before this rule shall have taken effect.

(2) Prior to contracting for renovation or acquisition of an existing public building, an energy rating shall be conducted in accordance with the criteria in Rule 9B-60.007(3), F.A.C. The public body proposing to contract for renovation or acquisition of such building shall consider the energy efficiency rating for that existing public building when comparing contract options, notwithstanding the provisions of Section 255.254, F.S. As used herein, building means any structure that encloses a space used for sheltering any occupancy and separated from other buildings by a fire wall, and renovation means a building undergoing alteration where the cost of the alteration exceeds 30 percent of the assessed value of the structure.

(3) The energy rating for existing public buildings shall be determined using the Florida Commercial Building Energy Rating System software (Energy Gauge/ComFREE 97, Version 2.2) in accordance with Rule 9B-60.004, F.A.C. Public buildings owned or leased by state agencies and units of local government governed by Section 255.254, F.S., may utilize this rating system as one of the annual energy usage and cost methods approved by those agencies.

(4) The cost of providing building ratings for existing public buildings shall be no more than \$100.00 above those charges for the energy audit plus the Energy Code compliance calculations or the actual cost, whichever is less.

*Specific Authority 553.992 FS. Law Implemented 553.993, 553.994, 553.995, 553.991, 553.997, 553.998 FS. History—New 7-21-94, Amended 12-27-98.*

#### **9B-60.008 Guidelines for Uniformity, Adopted.**

The 1996 Guidelines for Uniformity, Voluntary Procedures for Home Energy Ratings, Version 2.0, prepared by the Home Energy Rating Systems (HERS) Council and the Florida Addendum to the National HERS Council Guidelines, December 1998, are adopted and incorporated by reference as the rule of this Department.

*Specific Authority 553.992 FS. Law Implemented 553.995(1)(c) FS. History—New 12-27-98.*

Exhibit E. FPL BERS Tariff

FLORIDA POWER &amp; LIGHT COMPANY

Fourth Revised Sheet No. 4.040  
Cancels Third Revised Sheet No. 4.040**BUILDING ENERGY RATING SYSTEM (BERS)****RATE SCHEDULE: BERS****AVAILABLE:**

Available to FPL Residential Customers with single family homes, excluding mobile (manufactured) homes.

**APPLICATION:**

For existing homes, upon request, a State Certified Rater will perform an on-site energy inspection and provide a BERS Certificate using the Florida Energy Code Whole Building Performance Method A.

For new homes, upon request, a State Certified Rater will provide a BERS Certificate using the Florida Energy Code Whole Building Performance Method A.

**DEFINITIONS:**

**Existing home:** A completed residential occupancy building for which a certificate of occupancy or equivalent approval for occupancy has been issued.

**FLORIDA ENERGY CODE WHOLE BUILDING PERFORMANCE METHOD A:** This method allows the consumer to compare the energy efficiency of their home with a "baseline" house of the same size and in the same region of the State.

**A/C DUCT PERFORMANCE TEST:** A process that tests the integrity of the A/C system and the air ducts system.

**Types of BERS rating available:**

- Class 1 - An energy rating utilizing the Florida Energy Code Whole Building Performance Method A using data obtained in an on-site energy inspection. An A/C Duct Performance Test will also be done.
- Class 2 - An energy rating utilizing the Florida Energy Code Whole Building Performance Method A using data obtained in an on-site energy inspection.
- Class 3 - An energy rating utilizing the Florida Energy Code Whole Building Performance Method A using site plans and construction documents. This class is applicable for new homes only.

(Continued on Sheet No. 4.041)

Issued by: P.J. Evanson, President  
Effective: **Jul 14 1997**

(Continued From Sheet No. 4.040)

Schedule of fees:

The following fees are for a home of less than or equal to 2000 sq. ft. under air.

	<u>New Home</u>	<u>Existing Home</u>
Class 1 - (includes A/C Duct Test for one airhandler) Note: For homes greater than 2000 sq.ft., add \$0.08 per square foot.  For more than one air-handler add \$15 per additional air handler.	\$230	\$230
Class 2 -  Note: For homes greater than 2000 sq.ft. add \$0.08 per square foot above 2000 sq.ft.	\$175	\$175
Class 3 -  Note: For homes greater than 2000 sq.ft. add \$0.03 per square foot above 2000 sq.ft.	\$75	Not Applicable

In addition to the charges above, a registration service fee will be added as set by the State of Florida Department of Community Affairs approved Registration Agency.

Terms of Payment:

The fee shall be payable as follows:

Existing homes - upon request or prior to the on-site energy inspection.

New homes - upon request or on the delivery of the construction plans and documents.

Issued by: P.J. Evanson, President

Effective: 14 1997

Exhibit F. FPC BERS Tariff



**Florida Energy Gauge Ratings  
Energy Gauge**

**Availability:**

Available throughout the entire territory served by the Company.

**Applicable:**

To residential customers with single family homes (mobile, manufactured homes excluded). Upon request a state certified rater will perform an on-site energy inspection on an existing home and provide a rating certificate. New homes with completed Florida Energy Code Whole Building Performance Method A requires a review of code calculations to be eligible for a rating certificate.

**Schedule of Fees:**

Rating	* New Home	* New Home (With Energy Code Compliance Form Provided)	* Existing Home
Class I On-Site	\$195	N/A	\$195
Class II On-Site	\$145	N/A	\$145
Class III From Plans	\$110	\$35	N/A

\* Includes electronic registration fees charged by the State of Florida.

**Definitions:**

Existing home: is a completed residential occupancy building for which a certificate of occupancy or equivalent approval for occupancy, has been issued.

Florida Energy Code Whole Building Performance Method A: Required by the State listing building components, dimensions and system efficiencies

**Energy Gauge Ratings are Categorized in Three Classes:**

Class I: Energy rating requiring an on-site energy audit with specialized performance testing for air infiltration and duct leakage. Class I ratings have the highest level of confidence.

Class II: Energy rating requiring an on-site energy audit. Class II ratings have a good level of confidence.

Class III: Energy rating reserved for new buildings only and uses construction plans to generate data for ratings. Class III ratings have a fair level of confidence.

**Terms of Payment:**

The fee shall be payable at the time the rating is completed and delivered.

Exhibit G. Joyal Construction Letter regarding American Property Consultants and Stan  
DiBello

November 7, 2001

Re: American Property Consultants  
143 E. Piedmont Ave.  
Port Orange, FL 32119

To Whom It May Concern:

This letter is in reference to the relationship between Joyal Construction and American Property Consultants, especially Stan DiBello.

Joyal Construction was the 1<sup>st</sup> construction company in Brevard County to embrace the U.S. EPA "Energy Star" program as it was being implemented by the Florida Solar Energy Center in late 1996. FSEC initially did the ratings and the testings for the homes that we were constructing to Energy Star standards. We had a good learning curve with FSEC during those early months when we were learning what it takes to make a home an "Energy Star" home and we appreciated the fact that the ratings and testings were done at no cost to the builder at that phase of the program. But, as with any government program, the funding was eventually reduced and FSEC moved on to other energy related programs. It was at that time in late 1998 that Joyal Construction connected with American Property Consultants as one of the companies recommended by FSEC as qualified to be doing energy evaluations.

Stan DiBello was our main contact with APC during the time that we worked with them. He was always very helpful with constructing the packages that would achieve the E-Star ratings. In addition, Stan was very thorough during his testing and many times was able to bring items to our attention that he had seen in an attic during his tests. These were such items as inadequate or even missing insulation or areas that were not sealed as well as they should have been. These items might not have been spotted during normal sight inspections and he was dogged in checking that our sub-contractors were consistent in sealing such areas as ceiling registers and duct work. All in all, we had a very good working relationship with Stan.

Joyal Construction's decision to change away from APC for our Energy Star ratings and testing was strictly a matter of economics. Florida Power and Light Company began to push it's Build Smart program and also to offer Energy Star.

ratings and testing. The rating and testing was and is done at no cost as long as the home meets the Energy Star criteria or a reduced cost even if it is not fully up to Energy Star standards. The work that we had done with FSEC and APC early in the program allowed us to submit most packages for rating with the elements already in place that would qualify the homes for Energy Star. As you can understand, the savings that we were able to recognize by reducing or eliminating the rating and testing costs have allowed us to offer a better product to our customers at a more competitive price.

Joyal Construction would be very interested in working with APC on our Energy Star homes if either FPL began to charge more for the ratings and testing or if APC were somehow able to offer these services at a rate comparable to FPL.

Should there be additional questions that you had regarding this matter, please feel free to contact me at the Joyal Construction office.

Sincerely,

A handwritten signature in black ink that reads "Tad G. Jackson". The signature is fluid and cursive, with the first name "Tad" and last name "Jackson" clearly legible.

Tad G. Jackson  
Project Coordinator

## Exhibit H. Utility Builder Marketing Information


[Home Page](#)
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Monday, September

[For Your Home](#)  
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[Billing/Payment](#)  
[Products/Services](#)  
[Rebates/Incentives](#)  
[Power Quality](#)  
[BuildSmart™](#)  
[Contractors/Partners](#)  
[Storm Center](#)  
[Safety](#)  
[Our Environment](#)  
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[Learning Center](#)  
[About Us](#)  
[Investor](#)  
[Family of Sites](#)

## Information for Builders

[How does BuildSmart™ help builders?](#) | 
 [What are BuildSmart's certification requirements?](#) | 
 [Qualifying improvements and additional costs](#) | 
 [When does FPL inspect BuildSmart homes?](#) | 
 [What are FPL's inspection fees?](#) | 
 [What are additional benefits of BuildSmart?](#)

### How does BuildSmart™ help builders?

In the increasingly competitive new residential construction market, homeowners are

- aware of the different building features offered by competing builders and
- demand the very most out of their investment.

FPL's BuildSmart program provides contractors a competitive advantage by helping them build

- a superior product with
- special emphasis on energy efficiency.

### What are BuildSmart's certification requirements?

To receive BuildSmart certification, homes must be more energy efficient than the minimum rating of 100 required by the State of Florida Energy Performance Index (EPI).

BuildSmart certification levels, required EPI ratings and estimated cost savings to consumers are shown in the table below.

BuildSmart Certification Level	EPI rating	Monthly energy savings (*see note below)
Gold	70 or below	30%
Silver	80-71	20%
Bronze	90-81	10%

**\*Note:** Estimated savings on cooling, heating and water heating energy cost compared to a home with a standard EPI rating of 100.

### Qualifying improvements and additional costs

The cost of building a qualifying BuildSmart home depends on the energy efficiency level required by the builder and/or buyer. Equipment planned for new homes may already qualify for the BuildSmart program.

The table below shows the relationship between different types of qualifying improvements and their additional costs.



# *The* **ACT** *program* *from* **Florida Power** *Corporation.*

## **THE POWER TO BUILD YOUR BUSINESS.**

From foundation to roof, your houses say a lot about what kind of builder you are. Visible quality is important. But often it's what can't be seen that makes a difference to many homebuyers.

Well-constructed air conditioning duct systems, high insulation ratings, indoor air quality and energy efficiency are becoming increasingly important to new homebuyers.

To provide you with a viable means to offer value-added energy efficient homes and to help our customers conserve natural resources, Florida Power Corporation's Energy Solutions™ offers the ACT Program for residential new construction.

It's a comprehensive cooperative effort that provides incentives to builders who promote energy efficient standards. It also presents an excellent opportunity to distinguish your residential product from others in the market.

Depending on your level of participation, you can measurably improve the energy efficiency of your homes by constructing tightly-sealed duct systems, using high-rated attic insulation and

installing high-efficiency heat pumps. You can also achieve the U.S. Environmental Protection Agency's ENERGY STAR rating, nationally recognized as a symbol of superior energy efficiency. And you'll receive cash incentives directly from Florida Power for installing qualifying heat pumps, heat recovery units or heat pump water heaters.

In addition, Florida Power offers you promotional materials at no cost, including a program campaign for your use with prospective homebuyers, as well as the support of Florida Power's ACT Program consumer advertising and promotional campaign, targeting prospective buyers of new homes.

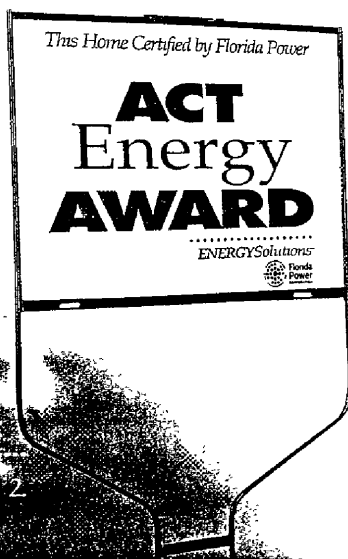
As an ACT Builder, you've got a story to tell, and a great partner in Florida Power to tell it.

Attract more homebuyers. Sell homes faster. ACT makes a positive impact on your bottom line, in homebuyer's minds, and on the environment.

You'll find it pays to get with the ACT program. After all, you're not just building houses, you're building your business.



*A sign of quality,  
ACT builds  
homebuyer  
confidence and  
boosts a builder's  
marketing power*



## **BUILD RESPECT, TRUST AND A REPUTATION FOR QUALITY.**

The ACT program is an excellent marketing tool. And the less energy your homes use, the more marketing power you have

Not only are you able to offer a value-added product, you also have the resources to spread the word.

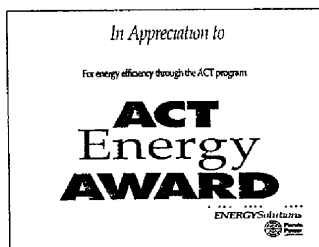
Florida Power supplies you with everything you need to promote your participation in ACT, including program literature, yard signage, and the support of Florida Power's ACT Program advertising and promotional campaign — at *no cost* to you!

We also include your company's name in the *ACT Participating Contractor List* on Florida Power's website ([www.fpc.com](http://www.fpc.com)).

More and more, homebuyers are looking for the ACT sign. They see it as a symbol of quality construction, environmental responsibility and value.

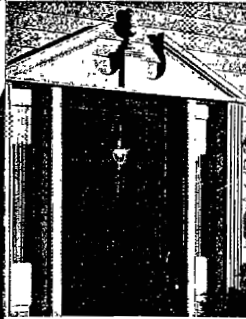
And that's good news if you're one of the select group of builders displaying ACT signs.

This premium message translates directly to your homes, and ultimately can lead to quicker sales and higher margins.



By participating in Florida Power's ACT program you're building on the homebuyers' respect for Florida Power's energy-efficiency standards and trust in their expertise. That respect and trust extends to the builders who construct ACT-rated homes.

Build your reputation of quality, value-added residential construction — get with the ACT!



## GET WITH THE ACT

It's easy! Simply call your local Florida Power office to speak with a member of the ACT New Construction Team.

They'll provide you with information regarding program participation and benefits including the free marketing support program Florida Power provides for the promotion of your ACT-rated homes.

A Florida Power representative from the ACT Team will provide testing for your new homes. There are three levels of ACT certification. Our representative will determine which of the three levels apply and offer suggestions on how to increase your homes' energy efficiency and the corresponding ACT rebates.

## ACT

If you construct duct systems with fiber embedded mastics, you can qualify for ACT

## ACT<sup>Plus</sup>

In addition to ACT's duct specifications, install a high efficiency heat pump with an 11.5 SEER and 7.0 HSPF, plus either Manual D duct construction or R-30 attic insulation, and receive \$100 cash incentive

And there's more: Add a heat recovery unit to the above and add an additional \$100 incentive, a heat pump water heater will yield a \$200 incentive and an even higher efficiency heat pump with a 12.5 SEER and 7.5 HSPF is good for a \$300 cash incentive. Your Florida Power ACT representative has complete details.

## ACT<sup>Premium</sup>

The ultimate showcase of residential energy efficiency is Florida Power's ACT Premium ENERGY STAR, exceeding the CABO Model Energy Code by 30%.



By participating, you'll receive the appropriate cash incentives outlined in the ACT Plus category, along with additional benefits via the Environmental Protection Agency's ENERGY STAR Program. Ask your Florida Power ACT representative for current benefits.

## ACT NOW!

Come on, get with the ACT and enjoy the many benefits available to you! Call your Florida Power ACT representative for complete program details today.



## **WITH ACT, HIGHER CUSTOMER SATISFACTION IS BUILT RIGHT IN.**

The bottom line in homebuilding is customer satisfaction. As an ACT builder, you not only satisfy the program's energy-efficiency standards, you satisfy your customers!

And the word's out among new homebuyers: ACT homes provide a greater degree of interior comfort at lower operational costs than




comparably-sized non-ACT homes. Owners of ACT-rated homes report *significantly* reduced monthly electric bills as well as worry-free operation of their heating and cooling systems.

Correspondingly, sales of ACT homes continue to enjoy a progressively upward trend. And that's good news for your business.

# ACT

## ENERGYSAVER

*Florida Power's ACT program can put money in your pocket and help put sales on your ledger. Build your homes to meet these specifications, and here is what you will receive:*

Program Level	Measures	Benefits
	Home must have an all-electric heat pump and a centrally ducted system. Duct system constructed with mastic and fabglass.	<ul style="list-style-type: none"> <li>• Marketing support</li> <li>• Promotional and educational material</li> <li>• Technical support for your trade allies</li> </ul>
	ACT measures and High Efficiency Heat Pump with Manual D duct design or R-30 attic insulation	All of the above, plus:
	With at least 11.5 SEER and 7.0 HSPF	\$100
	With at least 12.5 SEER and 7.5 HSPF	\$300
	— <i>and/or</i> —	
	ACT measures and High Efficiency Heat Pump at least 11.5 SEER and 7.0 HSPF)	
	with Heat Recovery Unit	\$100
	with Heat Pump Water Heater	\$200
	ACT and ACT Plus measures, exceeding the Model Energy Code by at least 30%.	All of the above, plus Energy Star benefits. Florida Power will match up to \$50 in co-op advertising per FPC metered account.

*Contact your Florida Power representative today to sign up!*

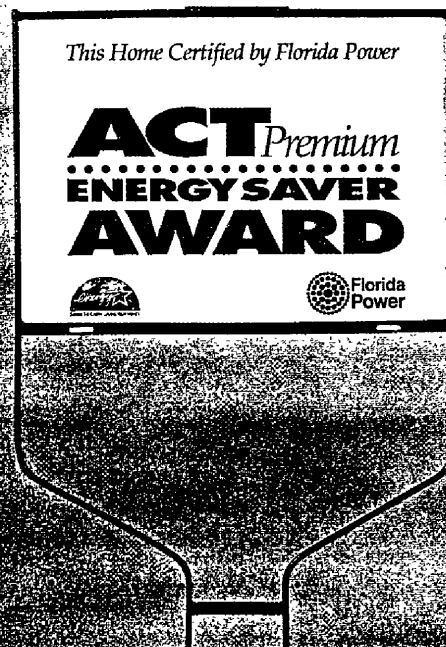
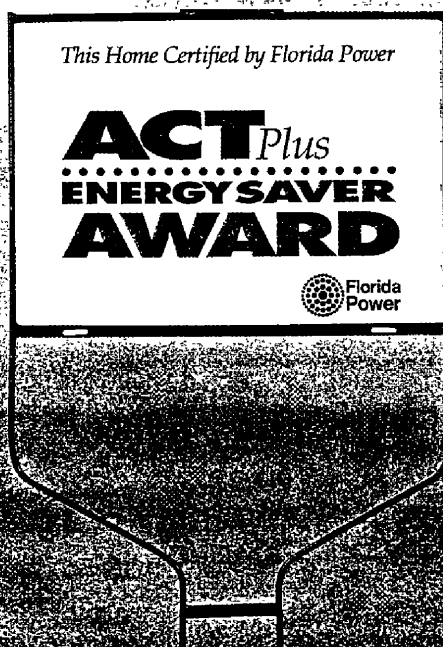
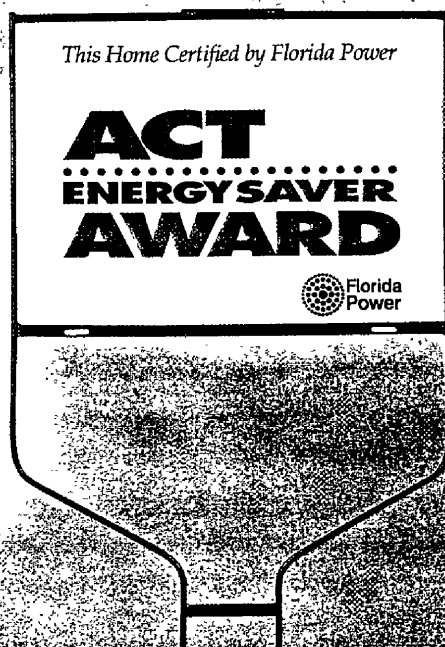
[www.fpc.com/flpower](http://www.fpc.com/flpower)

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# Building Energy-Efficient Homes Can Really Pay Off...



*In More Ways Than One!*

Qualifying Improvements	Additional Costs
<ul style="list-style-type: none"> <li>• High efficiency air conditioners and</li> <li>• window treatments</li> </ul>	None
Ceiling fans	Small
Other design and building factors, including <ul style="list-style-type: none"> <li>• home lot orientation</li> <li>• reducing window area and</li> <li>• installing               <ul style="list-style-type: none"> <li>◦ heat recovery units on water heaters and</li> <li>◦ programmable thermostats on air conditioning systems</li> </ul> </li> </ul>	Varies, depending on improvement

### When does FPL inspect BuildSmart homes?

At specific times during the construction process, FPL inspects homes seeking BuildSmart certification. BuildSmart representatives are certified by the State of Florida to

- perform inspections and
- calculate EPI ratings required for all new homes in Florida.

FPL inspection services include

- conducting EPI tests and
- reviewing
  - site plans
  - window installations
  - thermal barriers
  - air conditioners (including A/C tests) and
  - other equipment.

### What are FPL's inspection fees?

Inspection fees are based on the level of service a builder requests. FPL fees for different service options are listed in the table below.

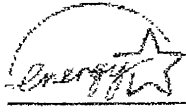
Inspection Level	Premium Service	Basic Service
What package includes	Includes everything in Basic Service package plus an additional midpoint inspection	Includes initial review, consulting, final inspection and marketing assistance
<b>BuildSmart Level</b>		
Gold	\$125	Free
Silver	\$200	\$75
Bronze	\$300	\$175

### What are additional benefits of BuildSmart?

Participating in the BuildSmart program offers builders a number of other benefits. These additional benefits are listed in the table below.

Benefit	Description
Program flexibility	BuildSmart offers a set of program upgrades to fit <ul style="list-style-type: none"><li>• your preferences or</li><li>• customer requests.</li></ul>
Inspections and certifications	<ul style="list-style-type: none"><li>• State-accredited FPL inspections ensuring accurate<ul style="list-style-type: none"><li>◦ efficiency ratings and</li><li>◦ certifications.</li></ul></li><li>• Certification by FPL as a quality builder of energy efficient homes.</li></ul>
Recognition for energy efficient construction	An association with BuildSmart builders who have won numerous awards for energy efficiency.
Exposure	BuildSmart is exposed via FPL marketing communications to <ul style="list-style-type: none"><li>• consumers and</li><li>• thousands of individuals/organizations involved in<ul style="list-style-type: none"><li>◦ building</li><li>◦ real estate</li><li>◦ lending and</li><li>◦ other fields.</li></ul></li></ul>
Marketing materials	<ul style="list-style-type: none"><li>• The award winning BuildSmart Resource Kit for customers.</li><li>• Builder Recognition Kits, including<ul style="list-style-type: none"><li>◦ sales center handouts</li><li>◦ certificates and</li><li>◦ special home identifiers.</li></ul></li></ul>

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United States  
Environmental Protection  
Agency

**ENERGY STAR**  
Building Line 1-800-451-0010

Put your home to the test | Benchmark your building's energy performance  
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## Resources

[Return to the Map](#)

In many states, utilities play a key role in supporting ENERGY STAR labeled homes programs in their service area. Some utilities provide technical assistance, marketing support, home performance verification, and/or financial incentives. The following is a list of ENERGY STAR utility partners in this state and basic information about their energy efficiency programs. Information is believed to be current as of March 15, 2001. Please contact the utility companies directly for more detailed information on their ENERGY STAR affiliated programs.

Company Name	Metro/Service Area	Phone Number	Homes Sponsored 2001
<u>Energy Services of Pensacola (ESP)</u>	Pensacola, FL	(850) 436-5050	0
<i>Program Information:</i> Comfort Plus Program			
<u>Florida Power Corporation - Headquarters</u>	FL	(407) 621-8729	677
	Central Florida	(800) 621-6745	
	Lake Wales	(800) 868-5471	
	North Region	(800) 846-9852	
	Suncoast Region	(800) 700-8744	
<i>Program Information:</i> ACT Program / Energy Star Description: Three tier program (ACT, Plus, Premium). -Premium equals Energy Star, -Free ratings, -Co-op advertising money for builders (\$50 per house), -Efficiency rebates to build (max \$350), -Site signs, -Home file for each Energy Star owner.			
<u>Florida Power &amp; Light Corporation</u>	Daytona, Ft. Myers, Naples, Palm Beach, Miami, Sarasota	(305) 552-3832	103
<i>Program Information:</i> BuildSmart Program / Energy Star (800) 342-5375 Description: Three tier program, -Free ratings for gold level only. (Gold level is Energy Star)			
<u>Gainesville Regional Utilities</u>	Gainesville	(352) 334-3400	0
<i>Program Information:</i> Energy Star Labeled Homes Description: -Marketing Support, -Technical Support.			
<u>Gulf Power Corporation</u>	Pensacola	(850) 444-6529	0
<i>Program Information:</i> GoodCents Program / Energy Star Description: -Site signs, -Model home signage, -Rating: for \$250 per home.			
<u>Orlando Utilities Commission</u>	Orlando	(407) 423-9100	0