

**Kay Flynn**

**From:** jimtait@comcast.net  
**Sent:** Wednesday, March 02, 2005 1:40 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Adrienne Vining; Martha Brown; Natalie\_Smith@fpl.com  
**Subject:** Protest of PSC 05-0162-PAA-EG in Docket # 04-0029  
**Attachments:** Protest of PSC Order 05-0162 (PAA approval of FPL goals and programs.doc

**ORIGINAL**

Attached.  
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

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In re: Petition for approval of ) Docket No. 040029-EG  
numeric conservation goals by ) Order No. PSC-05-0162-PAA-EG  
Florida Power & Light Company )  
 ) Issued: February 9, 2005

**PROTEST OF PROPOSED APPROVAL OF FLORIDA POWER and LIGHT  
COMPANY'S ("FPL") DEMAND-SIDE MANAGEMENT ("DSM") PLAN,  
INCLUDING APPROVAL FOR COST RECOVERY**

COMES NOW Petitioners, Compliance Data Services, Inc. (d/b/a Calcs-Plus),  
Dennis J. Stroer and Jon F. Klengerbo, through their undersigned attorney, and petitions  
the Florida Public Service Commission ("PSC") for a formal proceeding, pursuant to  
Rule 25-22.029, Florida Administrative Code ("F.A.C."), and in support state:

1. Pursuant to Rule 28-106.201, F.A.C., Petitioner offers the following:
  - A. The agencies affected are the Florida Public Service Commission under docket 04-0029; the Executive Office of the Governor, a mandatory party pursuant to §366.82, Florida Statutes ("F.S."); the Office of Public Counsel, pursuant to §350.0611, F.S.; the Department of Community Affairs, pursuant to §553.990-553.998, F.S., inclusive; and the Florida Energy Office in the Department of Environmental Protection, pursuant to §377.703, F.S., among others.
  - B. The parties for the protest are:
    1. Compliance Data Services, Inc. (d/b/a Calcs-Plus), a Florida Corporation with its main office at 417-F Commercial Court, Venice FL 34292 and its east coast office at 1351 Park Avenue, Titusville, FL 32780, and a Florida Power & Light ("FPL") ratepayer under FPL commercial account # 95840-66410;

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2. Dennis J. Stroer, an individual and President of Calcs-Plus, residing at 230 Dartmouth Road, Venice, FL 34293, and a FPL ratepayer under FPL residential account # 03459-46495; and
3. Jon F. Klongerbo, an individual and Florida East Coast Director of Calcs-Plus, residing at 1351 Park Avenue, Titusville, FL 32780, and a FPL ratepayer under residential account # 84452-34043.
4. Their substantial interests will be affected by the Public Service Commission approving several of FPL's residential DSM programs, including cost recovery, that will potentially increase their rates and costs of residing and doing business in the state; and that will also grant undue and/or unreasonable preferences and/or advantages to certain persons contrary to §366.03, F.S.; and that will subject the Petitioners to undue and/or unreasonable prejudice or disadvantage in their chosen business and profession also contrary to §366.03, F.S. The subsidization of FPL's ventures into an unregulated area of service provision in competition with other competitive providers, through their predatory program design, creates an unwarranted advantage and a consequence not allowable under the existing law. Different program designs, such as the rebates for equipment, demonstrate that the chosen method by FPL is not only a violation of the "regulatory compact" under which it operates but also not necessary. The Petitioners' substantial interests will also be affected by the Public Service Commission approving FPL's DSM programs,

including cost recovery, that they believe are in violation of intent and spirit of Florida Law, especially the provisions of §366.80-366.85, F.S., the “Florida Energy Efficiency & Conservation Act;” §377.073 relating to federal and state energy conservation programs; §553.990-553-998, the “Florida Building Energy-Efficiency Rating Act;” among others. The State of Florida has long been a leader in the development and implementation of “flexible, performance-based codes” and in assuring their citizens of quality in information relating to the energy usage in their existing or new residences. Not only has the Legislature enacted laws, but the executive has faithfully tried to implement those laws and, both have supported the development of a “world-class” center to support these activities at the Florida Solar Energy Center.

- C. Petitioners received notice of Proposed Agency Action (“PAA”) Order No. PSC-05-0162-PAA-EG shortly after it was issued February 9, 2005, by checking the PSC website and various dockets involving DSM programs.
- D. Petitioners observed that the PAA provided a “caveat” recognizing the Petitioners’ protest of another PAA issued in Docket # 04-0660 relating to one of the FPL’s residential DSM measures. However, the caveat provides that this PAA will become “self-executing” if a hearing, for whatever reason, is not held under the other Docket. The Petitioners believe that the issues raised under the other docket may be better presented in the context provided by this docket and believe that a formal

proceeding involving at least the two residential DSM programs specifically mentioned herein, if not others as determined by the PSC, is required.

E. To the best of the Petitioners' current knowledge:

1. They dispute the method of calculating the cost-benefit of the residential program denominated as "Build Smart;" the inter-relationship, or lack thereof, of that program with the proposed "Residential Conservation Service Program," and its cost recovery, the lack of coordination with other state and federal programs which would result in significant economies and greater market penetration, and the impact of the programs on the utility, as designed; and
2. They believe and assert facts that will show that persons within the utility's service areas will be unduly and/or unreasonably advantaged and/or subjected to undue and/or unreasonable prejudice or disadvantage and that residential ratepayers are being unduly charged for expenses of programs that fail, as proposed, to meet the purpose and intent of the relevant Florida statutes and agency rules; and
3. FPL's proposed program unnecessarily provides advantage to certain persons and greatly damages non-monopolistic public and private sector efforts to provide competitive services in the area of energy efficient residences and also discourages energy efficient fuel choices between competing suppliers of services in violation of the purpose and intent of chapter 366, F.S.

- F. Petitioners are entitled to relief pursuant to Chapter 366, FS, in particular §366.03, and the “Florida Energy Efficiency and Conservation Act,” §366.80-366.85, FS, inclusive; PSC Rule Sections 25-17.003, F.A.C. relating to energy audits and charges; Sections 553.990-533.998, FS, inclusive, the “Florida Building Energy-Efficiency Rating Act,” DCA Rule 9B-60.005, F.A.C., relating to energy ratings and costs; and by enforcing conformance to FPL Tariff Schedule for BERS, Fifth Revised Sheet No. 4.040.
- G. The Petitioners urge the Commission to reject FPL’s proposed residential DSM programs denominated “Residential Conservation Service” and “BuildSmart” and require FPL to submit a new program design that would enhance energy efficiency, the use of other state and federal programs and the use of building energy rating systems without unduly and unreasonable prejudicing its ratepayers and competing businesses within its territory. Petitioners also suggest that the existing programs to encourage energy efficient residences by both state and federal energy agencies should be recognized and their best products should be incorporated into the final program plan.

**WHEREFORE**, for the above and foregoing reasons, and to provide Petitioners their day in court to prove their claims and to establish better program designs for FPL’s residential DSM programs, the Petitioners respectfully request their request for a formal proceeding be granted and discovery to proceed.

Submitted this 2<sup>nd</sup> day of March, 2005.

s/ William J. Tait, Jr.  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the foregoing Notice of Appearance was served by electronic mail (\*) and U.S. Mail this 2<sup>nd</sup> day of March, 2005, to the following:

Adrienne Vining\*  
Martha Carter Brown\*  
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Florida Public Service Commission  
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Natalie F. Smith, Esquire\*  
Florida Power & Light Company  
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Office of Planning and Budget  
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s/ William J. Tait, Jr.  
William J. Tait, Jr.