



ORIGINAL

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September 9, 2005

**VIA HAND DELIVERY**

Ms. Blanca S. Bayó, Director  
Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
Betty Easley Conference Center  
2540 Shumard Oak Boulevard, Room 110  
Tallahassee, FL 32399-0850

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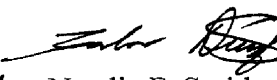
**Re: In re: Petition for approval of numeric conservation goals by Florida Power & Light Company - DOCKET NO. 040029-EG / DOCKET NO. 040660-EG**

Dear Ms. Bayó:

Enclosed for filing in the above-referenced dockets are the original and fifteen (15) copies of Rebuttal Testimonies of Florida Power & Light Company's Witnesses Daniel J. Haywood and Steven R. Sim.

Please indicate receipt of this document by stamping the enclosed extra copy of this letter. Please contact me should you or your Staff have any questions regarding this filing.

Sincerely,

  
for Natalie F. Smith

NFS:ec  
Enclosures  
cc: Parties listed in the attached Certificate of Service

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R. V. N.  
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Sim  
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Haywood  
DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

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Sec 1

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that true and correct copies of the foregoing Rebuttal Testimonies, have been furnished by U.S. Mail this 9<sup>th</sup> day of September, 2005, to the following:

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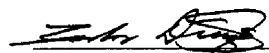
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**BEFORE THE FLORIDA  
PUBLIC SERVICE COMMISSION**

**DOCKET NOS. 040029-EG, 040660-EG  
FLORIDA POWER & LIGHT COMPANY**

**SEPTEMBER 9, 2005**

**REBUTTAL**

**TESTIMONY & EXHIBITS OF:**

**DANIEL J. HAYWOOD**

DOCUMENT NUMBER-DATE

08554 SEP-9 8

FPSC-COMMISSION CLERK

1                                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **FLORIDA POWER & LIGHT COMPANY**

3                                   **REBUTTAL TESTIMONY OF DANIEL J. HAYWOOD**

4                                   **DOCKET NOS. 040029-EG, 040660-EG**

5                                   **SEPTEMBER 9, 2005**

6  
7           **Q.     Please state your name and business address.**

8           A.     My name is Daniel J. Haywood and my business address is: 700 Universe  
9                    Boulevard, Juno Beach, Florida 33408.

10          **Q.     Did you previously file direct testimony in this proceeding?**

11          A.     Yes.

12          **Q.     What is the purpose of your rebuttal testimony?**

13          A.     The purpose of my testimony is to rebut the assertions of witnesses Philip  
14                    Fairey, Jon Klongerbo, Neil Moyer and Dennis Stroer addressing FPL's  
15                    Residential New Construction program (BuildSmart® or the Program). The  
16                    assertions raised in the testimony of Richard Dixon and Kenneth Fonorow  
17                    repeat assertions related to the use of the pressure pan method for duct testing  
18                    raised by Mr. Fairey and Mr. Klongerbo. I address these issues in the rebuttal  
19                    to Mr. Fairey's and Mr. Klongerbo's testimony.

20          **Q.     Please briefly summarize your rebuttal testimony.**

21          A.     Petitioners are confused about or ignore the intent of the BuildSmart®  
22                    Program. As addressed in my Direct Testimony, filed July 15, 2005, the  
23                    Program is designed to increase energy efficiency in the residential new home

1 construction market. It is not a rating tool. The State of Florida has adopted  
2 the Building Energy Rating System (BERS) to rate the energy efficiency of  
3 new homes and FPL fully supports this tool. However, the BuildSmart®  
4 Program does not require a BERS Rating, nor should it. If a customer wants a  
5 BERS Rating, a private rating firm may provide it. Alternatively, FPL may  
6 provide it pursuant to FPL's BERS tariff on file with the Florida Public  
7 Service Commission (PSC or Commission).

8  
9 Additionally, Petitioners have focused considerable discussion on the  
10 appropriate duct testing method for the Program. Once again, this confuses  
11 the intent of the BuildSmart® Program and a BERS Rating. In sum, two  
12 different duct testing protocols have been introduced – duct tester and  
13 pressure pan -- and it is important to distinguish the major differences in the  
14 two.

15  
16 FPL's BuildSmart® Program utilizes the pressure pan technology to locate  
17 duct leakage within air-conditioning ductwork. This is an accurate, cost  
18 efficient method of determining both the location and magnitude of leakage.  
19 The demand and energy impacts for the proposed BuildSmart® program  
20 revisions are based on the utilizing the pressure pan technology.

21

1 Prior to November 2004, the pressure pan technology was an approved  
2 method of testing for duct leakage for a BERS rating. After that date the duct  
3 tester is the only approved method. The BERS rating requires that leakage be  
4 quantified in cubic feet per minute (cfm). In order to quantify cfm leakage,  
5 effective November 2004, the testing protocol has changed to require a duct  
6 tester. This method determines the amount of leakage, but it does not  
7 determine where the leaks are occurring. When FPL performs a BERS rating,  
8 it uses this approved duct testing method.

9  
10 **I. FPL's BUILDSMART® PROGRAM IS COST EFFECTIVE**

11 **Q. Mr. Klongerbo asserts on page 11, lines 19-21, of his testimony that**  
12 **“FPL’s BuildSmart Program was not as cost effective as it could be and**  
13 **overly burdens the ratepayer when FPL applies for and receives cost**  
14 **recovery.” Do you agree?**

15 **A.** No. Mr. Klongerbo’s assertion is unsubstantiated. The program cost data  
16 presented in “Jon Klongerbo Ex. 1”, Table 1, does not match actual  
17 conservation program cost data filed with the PSC and overstates the  
18 Program’s achieved, cost effective cost per home for years 2002-2004.

19 **Q. Do you believe Mr. Klongerbo’s suggested alternative to the proposed**  
20 **modified BuildSmart® Program is a more cost-effective alternative?**

1 A. No. Mr. Klongerbo presents Table 2 to his testimony as a benchmark for  
2 comparison of his proposed alternative to FPL's proposed modified  
3 BuildSmart® Program. Yet the data provided in Table 2 is unsubstantiated  
4 and does not detail assumptions that serve as a basis for each cost category.

5

6 First, the "Marketing – Admin" costs are unrealistically low to support and  
7 manage a program in growth mode and to provide for the critical activities  
8 needed to enroll new builders and sustain their participation. The activities  
9 associated with these costs can be extensive and include activities such as  
10 builder/trade and contractor/rater awareness, education, training, promotion,  
11 coordination and general support, as well as increased outreach, marketing  
12 and promotion of the Program to prospective homebuyers. Mr. Klongerbo  
13 apparently disregards these activities although there is no doubt that they are  
14 crucial to developing builder/homebuyer interest and participation in  
15 residential new construction energy efficiency programs.

16

17 Second, the "Q.C." costs are unrealistically low to complete the inspections  
18 required to verify that each home has met BuildSmart® standards. The listed  
19 "Tariff" charge is not associated with energy conservation cost recovery  
20 clause (ECCR) recovery, as implied by the Table's "Net ECCR Cost  
21 Recovery" calculation.

22

1 Finally, the Table also appears to assume that half of the homes will receive a  
2 BERS Rating under FPL's BERS Tariff, which indicates that FPL staff will be  
3 performing these BERS Ratings directly. This assumption contradicts the  
4 proposed modified Program's collaborative approach of working with private  
5 Rater firms when a builder or homebuyer desires to achieve both  
6 BuildSmart® and ENERGY STAR® and/or Florida Green Building Coalition  
7 (FGBC) Green Home certification and therefore requires a BERS Rating.

8  
9 Overall, Mr. Klongerbo's proposed alternate program is flawed and if his  
10 assumptions were adjusted to reflect the key BuildSmart® activity costs  
11 contained in the modified Program filing, his proposal would result in a higher  
12 cost per home than the cost-effective proposed modified Program

13 **Q. Please respond to Mr. Klongerbo's recommendation on page 10, lines 17-**  
14 **20 of his testimony that the cost effectiveness of a program should be**  
15 **measured by whether the cost of the program exceeds what the private**  
16 **market can provide without reimbursement from outside sources."**

17 **A.** For the same reason that it is inappropriate for Mr. Fairey to propose a new  
18 cost-effectiveness test in this proceeding (See Rebuttal Testimony of Dr.  
19 Steven R. Sim), it is inappropriate for Mr. Klongerbo to do so. As a  
20 substantive matter, Mr. Klongerbo's suggestion is unworkable because it  
21 assumes that the private market can solely achieve the benefits achieved and  
22 forecasted through BuildSmart®. This assumption is false and is, in fact,  
23 disproved by Mr. Klongerbo's own data. As identified in "Jon Klongerbo Ex.



1 1", Table 3, the market for BERS Ratings remains low in Florida and the  
2 efforts of the private market have not induced significant participation  
3 throughout the State. Based on the data provided by the Petitioners regarding  
4 the number of Ratings they have completed during the past several years, it  
5 appears that the private market had significantly less success in penetrating  
6 the residential new construction market in FPL's service territory than the  
7 BuildSmart® Program. This insight is significant because the Petitioners  
8 acknowledge that a majority of the new construction market has not yet been  
9 penetrated by BuildSmart®, indicating that they had ample opportunity to  
10 penetrate a large portion of the un-served market through the provision of  
11 their BERS Ratings services. However, adoption of their Rating services has  
12 been extremely low, thus reflecting the inability of private market forces alone  
13 to make a significant impact on energy efficiency in residential new  
14 construction and the apparent weak value proposition that their Rating  
15 services alone currently present to the builder market.

16  
17 Additionally, Mr. Klongerbo's response seems to directly compare the Rater's  
18 cost to provide a BERS Rating with the overall cost of performing all  
19 activities associated with the BuildSmart® Program. The inspection cost  
20 associated with the verification of BuildSmart®-required measures is just one  
21 component of the overall Program costs and the Raters' activities are not  
22 inclusive of all activities encompassed within the proposed modified  
23 BuildSmart® Program.

1       **Q.     Mr. Klongerbo asserts on page 16, lines 3-17, that FPL’s BuildSmart®**  
2       **Program, as designed, will increase electric rates and create a “windfall**  
3       **profit” to FPL to the extent of recovery of the direct and indirect costs of**  
4       **the Program. Do you agree?**

5       A.    No. The proposed, modified Program is cost effective based on Commission-  
6       approved cost effectiveness methodologies. Under these methodologies, the  
7       Program’s benefits must exceed its costs and therefore result in a net benefit  
8       to FPL’s customers. Further, FPL’s recovery of BuildSmart®-related costs are  
9       restricted to prudently-incurred expenses, and are recovered dollar-for-dollar  
10      through the ECCR clause. FPL earns no profit on these costs, which are  
11      reviewed annually by the PSC.

12      **Q.     Please respond to Mr. Klongerbo’s assertion on page 11, line 22, through**  
13      **page 12, line 2, that “the program as developed and proposed by FPL**  
14      **results in a low percentage paid from program revenue (as opposed to**  
15      **alternative program including ratings paid by customer); relatively low**  
16      **participation rates; high cost per home (more than the cost of either a**  
17      **utility or independent rating).”**

18      A.    The proposed, modified Program eliminates program participation fees and,  
19      therefore, does not have program revenues. Builders, and especially large  
20      volume production builders, voiced their objections to paying per-home  
21      participation fees in addition to the investments they must make to meet  
22      BuildSmart® requirements. These builders believe that the cost increases  
23      associated with the energy efficiency-related home upgrades necessary to

1 participate in BuildSmart® represent the “cost of entry.” In effect,  
2 BuildSmart® Program participation fees act as a deterrent to production  
3 builder participation, which limits the Program’s ability to fully tap this large  
4 market. By tapping this large market, FPL expects to significantly increase  
5 BuildSmart’s® participation rates and achieve scale economies to ensure that  
6 the Program maintains cost effectiveness even with significantly increased  
7 outreach, training, marketing and promotional support – all the key activities  
8 necessary to create a robust residential new construction energy efficiency  
9 market that will benefit all FPL customers as well as the private Ratings  
10 industry.

11 **Q. Please respond to Mr. Klongerbo’s comment on page 13, lines 21-23, that**  
12 **“[i]n 2004, 91% of BuildSmart® costs were borne by the aggregate**  
13 **ratepayer base, whereas 0% of free market, independent operated BERS**  
14 **rating activities were subsidized by the aggregate rate-payer base.”**

15 A. The BuildSmart® Program is proposed as a component of FPL’s Demand  
16 Side Management (DSM) Plan. The BuildSmart® Program is cost effective  
17 based on Commission-approved cost effectiveness methodologies.  
18 Additionally, it is important to note the distinction between the BuildSmart®  
19 Program and private Rating services. The BuildSmart® Program is designed  
20 to prompt the installation of energy efficient measures and to certify that the  
21 required measures have been installed in a new home, thus meeting the  
22 objectives of the Florida Energy Efficiency and Conservation Act (FEECA).  
23 A BERS Rating specifically includes a set of activities - described in detail in

1 Mr. Stroer's, Mr. Klongerbo's, Mr. Fairey's and Mr. Dixon's testimonies –  
2 that are designed to result in a comparative energy efficiency score (HERS  
3 score), as defined in Rule 9B-60.002, Florida Administrative Code, and  
4 provide homeowners with associated documentation. Mr. Stroer's testimony,  
5 page 5 line 19 through page 6 line 4, and Mr. Klongerbo's testimony, page 3  
6 line 20 through page 4, line 10, details some of the differences between  
7 BuildSmart® and the services that Raters provide. The proposed modified  
8 BuildSmart® Program does not require nor directly provide a BERS Rating,  
9 as provided through private Rating firms or alternatively through FPL's BERS  
10 Tariff. When an FPL customer specifically requests a BERS Rating from FPL,  
11 the customer is subject to FPL's BERS Tariff and pays the fees identified  
12 within that Tariff. BuildSmart® in no way precludes a builder or homebuyer  
13 from also seeking a BERS Rating and key BuildSmart® activities –  
14 particularly outreach, training, energy analyses and promotion - are in fact  
15 complementary to the services provided by Raters.

16 **Q. Do you agree with Mr. Klongerbo's statement on page 14, lines 4-7 of his**  
17 **testimony that "[t]he homes rated under the BERS Program are more**  
18 **cost-effective than those under the FPL program subsidized by the ECCR**  
19 **fund, however, there exists no methodology to calculate the DSM savings**  
20 **and effects by the substitution effect of the free-market unsubsidized**  
21 **marketplace"?**

22 A. This is a broad assertion with no data supporting it. Just because a home has a  
23 BERS Rating does not guarantee any level of energy efficiency – it is simply a

1 Rating tool. Further, Mr. Klongerbo's statement is irrelevant to the  
2 Commission's decision on this matter. The relevant matter is whether the  
3 BuildSmart® Program will provide cost-effective benefits to FPL's  
4 customers. The proposed modified BuildSmart® Program is a voluntary  
5 program and does not require a BERS Rating nor does it in any way preclude  
6 builders from pursuing private BERS Rating services exclusive of  
7 BuildSmart®.

8  
9 In regards to free market activities, the economic justification for a builder  
10 choosing a BERS Raters' services is based on the Rating firm effectively  
11 marketing the value of its service and proving to the builder that its value  
12 exceeds the costs of the Rating. In regard to the Gainesville Regional Utilities  
13 (GRU) example cited by Mr. Klongerbo, to my knowledge, GRU does not  
14 have a utility-operated residential new construction ENERGY STAR®  
15 Program. The purported Rating participation levels in the Gainesville area  
16 could be the result of more effective marketing and business practices of the  
17 local Rating firms, possibly in cooperation with GRU, or may result in part  
18 from building permitting incentives and promotion available through the City  
19 of Gainesville's Green Building Program. The cooperative promotion and  
20 support attributed to GRU, which the Petitioners seem to acknowledge as  
21 beneficial to their business in the cited GRU example as well as in Mr.  
22 Stroer's testimony (page 15, lines 5 and 6 "I see many benefits in a  
23 partnership between utilities and private third party energy rating

1 companies.”), is planned at an even greater level within FPL’s proposed  
2 modified Program. The proposed modified Program’s increases support of  
3 ENERGY STAR® and its planned collaboration with private Raters to market  
4 and implement ENERGY STAR® is expected to lead to increased  
5 participation in both programs and increased demand for private Rating  
6 services.

7  
8 **II. FPL’S BUILDSMART® PROGRAM IS MEASURABLE AND**  
9 **MONITORABLE**

10 **Q. Do you agree with Mr. Stroer’s argument on page 19, lines 5-19 that**  
11 **FPL’s Program “constitutes the creation of free ratings in violation of**  
12 **Commission rules, and FPL tariff schedules”?**

13 A. No. The Petitioners do not understand the proposed changes associated with  
14 the modified program and they are inappropriately labeling the BuildSmart®  
15 certification as a BERS Rating. BuildSmart® is designed to meet the  
16 objectives of FEECA by prompting the installation of energy efficient  
17 measures in residential new construction and by verifying that the specific  
18 BuildSmart®-required measures have been installed to BuildSmart®  
19 standards. The builder or homebuyer then receives certification that the home  
20 was constructed to BuildSmart® standards. The proposed modified  
21 BuildSmart® Program is not designed to provide builders or homebuyers with  
22 a confirmed and registered BERS Rating and HERS score value. The HERS  
23 score and the resulting documentation result only from a BERS Rating.

1       **Q.     Mr. Stroer asserts on page 16, lines 15-17 that FPL’s Program “fails to**  
2       **conform to existing state standards for information provided on the**  
3       **energy efficiency performance of a residential building.” Do you agree?**

4       A.    No. Under the proposed, modified Program, BuildSmart® will identify that  
5       the participating home is built to a standard beyond the Florida Energy  
6       Efficiency Code’s minimum requirements. However, BuildSmart® will not  
7       provide a BERS Rating or provide customers with a HERS score specifically  
8       identifying the home’s Rated efficiency level. If a builder or homebuyer  
9       desires a HERS score and the associated HERS documentation, BuildSmart®  
10       will advise them of BERS Ratings services available through private Rating  
11       firms or, alternatively, available under FPL’s BERS Tariff. When a builder  
12       agrees to participate in both BuildSmart® and ENERGY STAR®,  
13       BuildSmart® will provide builder incentives and BuildSmart’s® activities  
14       will be complimentary to the services provided by private Ratings firm,  
15       thereby serving as an enabler to the private Ratings market.

16       **Q.     Do you agree with Mr. Fairey’s assertion on page 7, lines 19-20 that**  
17       **“[t]he best currently available means of cost-effectively assessing energy**  
18       **savings in homes is the Florida Building Energy Rating System” (BERS)?**

19       A.    No. First, his assertion is unsubstantiated. Also, Mr. Fairey appears to  
20       misunderstand the objectives of measuring and monitoring in the context of  
21       utility energy conservation programs. The objective of monitoring is to  
22       determine, after the fact, how the home performed relative to the initial energy

1 and demand impact estimates. A BERS Rating would not substitute for the  
2 activities FPL performs as part of its measurement and monitoring plan, which  
3 includes analyzing and modeling impacts, monitoring the number of  
4 participants, the program approach and the specific measures utilized by  
5 participants; the electric energy and peak demand savings achieved and the  
6 costs of implementing the program. Program participation and efficiency  
7 upgrades will be tracked in a BuildSmart® database. FPL will monitor the  
8 program's actual results on a continual basis and re-evaluate the forecasted  
9 participation levels and the energy and demand impact data, as necessary,  
10 over time. BuildSmart's® measurement and monitoring plan, as further  
11 described in my Direct Testimony, is appropriate for this purpose.

12 **Q. Do you see problems with Mr. Fairey's suggestion on page 13, lines 15-18**  
13 **of his testimony that "[t]he Commission could require that all residential**  
14 **energy savings for utility programs that are subject to energy**  
15 **conservation cost recovery be verified through registered Class 2**  
16 **(inspected in the field) or Class 1 (inspected and tested in the field)**  
17 **confirmed Building Energy Rating System performance ratings?**

18 A. Yes. If Mr. Fairey's suggestion is intended for all residential utility energy  
19 savings programs, then this requirement would place an unnecessary cost  
20 burden on other programs that are not targeted to new home construction.  
21 Alternatively, if Mr. Fairey's suggestion is only for new home construction  
22 programs, there still exists the issue that BERS is a voluntary standard and is  
23 not mandated for all new homes. The proposed modified BuildSmart®



1 Program's inspection activities are not designed to provide a formal BERS  
2 Rating for a home but rather are designed to efficiently and effectively verify  
3 that the required BuildSmart® measures, designed to meet FEECA objectives,  
4 have been installed in the home so that the home may receive BuildSmart®  
5 certification. Completing a BERS Rating requires a more complex set of  
6 activities that go beyond the activities required to certify a BuildSmart® home  
7 and - if required for every participating BuildSmart® home - would therefore  
8 result in additional program and/or participant costs. Consumers who see  
9 value in receiving a confirmed BERS Rating for their home currently have the  
10 voluntary option of paying for a BERS Rating from private Rating firms or  
11 through FPL's BERS Tariff. However, consumers who do not desire a formal  
12 BERS Rating should not be mandated to obtain one – this requirement would  
13 in fact conflict with the voluntary aspect of the BERS system. This additional  
14 expense, when not desired by the homebuyer or builder, will act as an  
15 impediment to encouraging builders to install energy efficient measures that  
16 cost effectively meet the objectives of FEECA.

17 **Q. Mr. Stroer seems to suggest on page 9, lines 18-20, of his testimony that**  
18 **FPL has a “financial interest in the home being rated.” Do you agree?**

19 A. No. FPL does not have a financial interest in homes being rated. As required  
20 by Rule 25-17.003(4), Florida Administrative Code, charges for BERS audits  
21 reflect the Company's actual cost of performing such audits.

1       **Q.     Please respond to Mr. Fairey’s assertion on page 5, lines 18-21, that the**  
2       **“most effective way” to measure and monitor residential building energy**  
3       **efficiencies is through trained and certified third-party inspections and**  
4       **testing.**

5       A.     As purported in Mr. Stroer’s testimony (page 16, lines 5-6), most certified  
6       Raters work for utilities. Therefore, based on Mr. Fairey’s assertion,  
7       BuildSmart® employees, who are trained and certified to perform Ratings,  
8       would be a viable choice for performing BuildSmart® inspections. Further,  
9       FPL has a robust plan for monitoring and evaluating all of its DSM programs,  
10      which is handled by an outside consultant.

11      **Q.     Do you agree with Mr. Klongerbo’s assertion on page 8, line 15, that the**  
12      **prescriptive approach proposed by FPL provides no benefit because**  
13      **there are “[n]o provisions for quality control by a 3rd party entity”?**

14      A.     No. Homes participating in the BuildSmart® Prescriptive approach will be  
15      subject to BuildSmart® inspections necessary to validate that required  
16      BuildSmart® measures have been installed. Additionally, the Prescriptive  
17      approach will provide significant benefits. The Prescriptive approach is  
18      designed specifically to address production builders’ needs for simple and  
19      consistent participation requirements. By designing a Program approach to  
20      serve this substantial market, FPL expects significantly increased, cost-  
21      effective participation that will provide benefits to all FPL customers and will  
22      further meet the objectives of FEECA. Mr. Klongerbo’s assertion appears to

1 be based on the economic benefit that a private Rating firm would achieve if  
2 such a firm were paid to provide Ratings for all BuildSmart®-certified homes.  
3 Although the proposed, modified Program is designed to encourage increased  
4 demand for Rating services through increased promotion of ENERGY  
5 STAR®, the Program is specifically designed to cost effectively meet the  
6 objectives of FEECA and is not solely focused on creating a business  
7 opportunity for private Rating firms.

8 **Q. Mr. Stroer asserts on page 17, lines 17-19 that one of the criteria to**  
9 **evaluate the energy efficiency programs at issue should be “whether the**  
10 **program maximizes the use of other reasonably available resources, both**  
11 **within and without FPL, and thereby minimizes its impact on the**  
12 **ratepayer for cost recovery.” Do you agree with his suggestion?**

13 **A.** No. It has no basis in FEECA or the Commission’s rules and is an  
14 inappropriate question because it does not provide any objective definition or  
15 criteria for what might be deemed a “reasonably available resource.” The  
16 Petitioners have presented no data demonstrating that the use of resources  
17 outside of FPL would minimize the cost of the BuildSmart® Program.

18 **Q. Mr. Klongerbo’s recommends on page 9, lines 16-21, that “[a] third-**  
19 **party, respected entity should have the authority to randomly select**  
20 **homes for on-site re-inspection and re-testing of homes for adherence to**  
21 **standards. This party should also have the authority to investigate**  
22 **consumer complaints. In the event of non-compliance to standards of the**

1           **program, they should have the authority to administer administrative**  
2           **sanctions to reflect the severity of the non-compliance.” Are there**  
3           **problems with his recommendations?**

4           A.    Yes. FPL is ultimately responsible for ensuring that BuildSmart® fulfills the  
5           Program requirements and goals approved by the Commission. Additionally,  
6           FPL is responsible for ensuring that the Program is measured and monitored  
7           per the Commission-approved Plan. It is not, and should not be, the  
8           responsibility of Rater entities to investigate and sanction FPL DSM-related  
9           customer complaints.

10          **Q.    Mr. Fairey states on page 13, lines 4-8 that, “[o]ther than meeting the**  
11          **Florida Building Energy Rating System requirements for training and**  
12          **certification of Raters and review by the Energy Gauge Office of Ratings**  
13          **that are submitted for registration, I am not aware of any additional**  
14          **internal FPL quality control procedures or provisions within their**  
15          **BuildSmart program.” Please describe the quality control procedures**  
16          **and provisions within the BuildSmart® Program.**

17          A.    Every BuildSmart® home is inspected by trained BuildSmart®  
18          representatives, many of whom are state-certified Raters. Upon identification  
19          of a deficiency in any program-related measure, BuildSmart® representatives  
20          notify the builder of the deficiency and will not certify the home as  
21          BuildSmart® until the identified deficiency is corrected and re-inspected to  
22          verify its passing status. Program participation, efficiency upgrades and

1 inspection results are tracked in a BuildSmart® database. FPL monitors the  
2 Program's actual results on a continual basis and re-evaluates the forecasted  
3 participation levels and the energy and demand impact data, as necessary,  
4 over time.

5 **Q. Is FPL's methodology for duct testing inappropriate for BuildSmart®, as**  
6 **suggested by Mr. Fairey and Mr. Moyer?**

7 A. No. The Pressure Pan Method used for the BuildSmart® Program is  
8 appropriate for meeting BuildSmart® air-conditioning duct standards and for  
9 identifying accurate demand and energy impacts associated with the ductwork  
10 requirement. After evaluation of multiple duct testing methods, FPL's energy  
11 and demand impacts were derived based on the duct testing method currently  
12 in use by the Program. The duct testing protocol using the pressure pan  
13 screening method, as was taught by the Florida Solar Energy Center and  
14 described as a threshold test in Mr. Fairey's testimony, was selected due to its  
15 ability to efficiently and cost effectively identify duct leaks for repair, an  
16 important requirement in maintaining overall program cost effectiveness.  
17 Because reported impacts are based on this method, it is currently the  
18 appropriate method for determining whether a home complies with  
19 BuildSmart® standards and for calculating demand and energy impacts  
20 associated with this measure.

1       **Q.     Please respond to Mr. Klongerbo’s assertion on page 6, lines 15-16 that**  
2       **“[p]ressure pan testing is not a recognized protocol for duct testing for a**  
3       **HERS Rating or a BERS Class 1 Rating.”**

4       A.     Mr. Klongerbo is correct that pressure pan testing is not a recognized protocol  
5       for a BERS Class 1 Rating as of November 2004. Prior to November 2004,  
6       the pressure pan test was a recognized protocol and, in fact, was taught as part  
7       of the BERS training conducted by the Florida Solar Energy Center.

8  
9       FPL’s BuildSmart® Program is designed to provide certification that cost-  
10      effective energy efficiency measures have been installed in a home and meet  
11      BuildSmart® standards. The Program is not designed to provide a HERS  
12      Rating or a BERS Class 1 Rating and, therefore, is not mandated to use the  
13      duct testing protocol specified for a BERS Rating. As noted in the previous  
14      response, the pressure pan method is currently the appropriate method for  
15      diagnosing duct leakage for repair in BuildSmart® homes, and for quantifying  
16      and reporting BuildSmart® impacts.

17      **Q.     Do you agree with Mr. Klongerbo’s assertion on page 8, lines 12-14, that**  
18      **the “[p]rescriptive program involves use of the Pressure Pan testing**  
19      **methodology which would result in an artificially low result for leakage”?**

20      A.     No. Although leakage results will differ depending on the testing method  
21      used, within the context of BuildSmart® Program requirements, the main  
22      issues are whether Program reported impacts are accurate based upon the

1 testing method used and whether the testing method is sufficient for meeting  
2 program objectives of cost effectively identifying duct leaks for repair.  
3 Because the BuildSmart® Program impacts were developed based upon the  
4 pressure pan method, the leakage results provided by that method provide  
5 accurate demand and energy impacts associated with the cost effective  
6 identification of duct system leaks. It is important to note that the duct testing  
7 issues raised by Mr. Klongerbo, Mr. Fairey and Mr. Moyer are applicable to  
8 processes defined for the more complex BERS Rating and used to generate a  
9 HERS score. The proposed modified BuildSmart® Program does not provide  
10 a BERS Rating or a HERS score.

11 **Q. Mr. Stroer asserts on page 5, lines 9-15, that the duct testing method he**  
12 **utilizes uncovers much more duct leakage than FPL's method. Please**  
13 **respond.**

14 A. Based upon the data provided by Mr. Stroer, it is difficult to substantiate his  
15 assertion. It is unclear whether this data was validated by an independent party  
16 or whether the data is solely based on Mr. Stroer's own testing results.  
17 However, there are a number of possible reasons why data may vary:

- 18 • The Petitioner and Respondent utilize different testing methods, each  
19 method suitable for their own specific need but which will result in  
20 different data values. As mentioned above, BuildSmart's® protocols  
21 are designed to provide the most cost effective identification of duct  
22 system leaks to meet BuildSmart® Program standards, not necessarily  
23 to ensure a completely leak free duct system.

- 1                   • The tests may have been performed on different dates and/or at  
2                   different times and may have been affected by changing field  
3                   conditions caused by worker disruption or homeowner actions.
- 4                   • Basic home data, such as square footage, may be wrong in the  
5                   petitioner's file, leading to inaccurate results.
- 6                   • At the time Mr. Stroer performed his test, homes listed in his file may  
7                   have failed BuildSmart® inspection and ductwork not yet been  
8                   repaired nor the home received final BuildSmart® certification.

9           **Q. Mr. Stroer suggests on page 6, line 9 through page 7, line 2, that homes in**  
10           **a designated “BuildSmart Gold Community” failed the Program’s**  
11           **“Technical Specifications of Eligibility.” Is this true?**

12           A. No. Mr. Stroer is incorrect in identifying the noted community as a  
13           “BuildSmart Gold Community.” In fact, less than 1% of these homes were  
14           actually certified as Gold homes under the existing BuildSmart® Program.  
15           Most of the homes within this community achieve Bronze or Silver  
16           classification under the existing Program. These homes are each inspected and  
17           upon identification of deficiencies, using FPL inspection and testing  
18           protocols, they would not be issued a BuildSmart® certificate until such  
19           deficiency is corrected.

20           **Q. Does FPL refuse to share the Energy Gauge file with private raters, as**  
21           **alleged by Mr. Stroer on page 9, lines 9-14?**



1 A. It is FPL's policy not to share this customer-specific data unless it has  
2 permission to do so.

3

4 **III. FPL'S BUILDSMART® PROGRAM OTHERWISE COMPLIES WITH**  
5 **SECTION 366.82(3), FLORIDA STATUTES, AND APPLICABLE**  
6 **COMMISSION RULES AND POLICIES**  
7

8 **Q. Regarding the BuildSmart® Program, Mr. Stroer states on page 10, lines**  
9 **3-10, that “[i]t has been clear from the documents submitted by FPL over**  
10 **the years, in support of their program and its proposed modifications,**  
11 **that its achievements compared to the current national standard for an**  
12 **‘energy efficient’ home, the ENERGY STAR HOME® is woefully**  
13 **lacking. It is also clear that its market penetration rate is woefully low**  
14 **even for its modest gains per home; that conclusion may be drawn from**  
15 **their testimony for supporting a modification in their program as well as**  
16 **from a review of various data that we provided them in our response to**  
17 **their discovery requests.” Do you agree with Mr. Stroer’s assertions?**

18 A. No. The Program design is targeted at prompting the installation of energy  
19 efficient measures that address FEECA objectives, while also minimizing the  
20 likelihood of builders or homebuyers comprising overall home performance.  
21 The BuildSmart® Program is not designed to exclusively certify ENERGY  
22 STAR® homes; ENERGY STAR®-certified homes are just a component of  
23 the overall BuildSmart® participation. However, the proposed, modified  
24 Program increases support for the ENERGY STAR® program and expects to

1 achieve a significant increase in homes certified both BuildSmart® and  
2 ENERGY STAR®. Also, Mr. Stroer's assertions are irrelevant. His assertions  
3 reflect past Program results. These results are based on the current Program's  
4 appeal to the custom, low volume home market. The proposed modified  
5 Program is designed to further penetrate the residential new construction  
6 market and achieve energy performance gains across the entire builder  
7 market, with emphasis on the production builder market. The modified  
8 Program is designed to permit builders previously unwilling to participate,  
9 especially production builders, to participate at levels practical to their unique  
10 target market, construction and budget needs. The modified program is  
11 designed to continually work with builders to educate them and encourage  
12 them to implement additional upgrades and measures that will lead to  
13 increasing levels of efficiency.

14 **Q. Do you agree with Mr. Fairey's assertion on page 11, lines 16-19, that**  
15 **“the [BuildSmart®] Program design is effectively rewarding the lower**  
16 **10% savings level of the ‘Prescriptive’ approach by not providing any**  
17 **significant incentive to reach the greater 20% savings required as a**  
18 **minimum by the ‘Flexible’ approach”?**

19 **A.** No. A basic flaw in Mr. Fairey's assertion relates to his lack of understanding  
20 of the builder market and builder-perceived incentives. Builders see value in  
21 the differentiation and competitive positioning provided through the  
22 BuildSmart® or BuildSmart® plus ENERGY STAR® or FGBC certification,  
23 and their primary demand, before or in addition to cash incentives, relates to

1 all the additional outreach, training, marketing and promotional services  
2 provided through BuildSmart®. The value they perceive from these efforts is  
3 a strong motivator for their participation and the distinction provided by  
4 participating at the BuildSmart® plus ENERGY STAR® and/or FGBC level  
5 provides motivation for achieving this level, if the builder can practically do  
6 so.

7 **Q. Does the proposed modified Program encourage builders to incorporate**  
8 **energy efficient measures in homes?**

9 A. Yes. The proposed modified Program is designed to recognize the critical  
10 role that the builder plays in the "customer chain" by developing program  
11 approaches more aligned with the needs of custom and production builder  
12 markets. FPL will initially work with builders to identify the program  
13 approach that best suits them. Builders willing to pursue the higher levels of  
14 efficiency will be recognized for achieving both BuildSmart® and ENERGY  
15 STAR® and/or FGBC certification - the incentive being added differentiation  
16 and subsequent promotion for achieving this level of efficiency - and, via the  
17 HERS score provided through Rater services, homebuyers associated with  
18 these builders will receive explicit information and detailed reports regarding  
19 a home's energy efficiency score, which serves as a further incentive for the  
20 builder to participate. Builders unwilling to achieve the highest level of  
21 efficiencies, due to target market and/or construction budget issues, yet still  
22 willing to implement upgraded measures that provide cost effective benefits to  
23 FPL customers will receive recognition of BuildSmart® certification only.

1 Providing both a Prescriptive approach and a Flexible approach ensures that  
2 FPL is not leaving cost effective DSM "on the table."

3  
4 FPL expects the Prescriptive approach to initially appeal to production  
5 builders previously unwilling to participate due to perceived complexity and  
6 cost of a flexible approach and FPL expects, at least initially, a substantial  
7 number of new production builder homes to participate via the Prescriptive  
8 approach. As BuildSmart® develops strong relationships with production  
9 builders and develops recognition as the builder's energy expert, the Program  
10 will continually encourage these builders to progressively increase the energy  
11 efficient measures included in their homes as a means to strengthen their  
12 competitive position and differentiation within the residential new  
13 construction market.

14 **Q. Do you believe the question of whether Mr. Klongerbo or Mr. Stroer have**  
15 **lost business due to FPL's BuildSmart® Program is relevant to the**  
16 **Commission's consideration of the proposed Program modifications?**

17 A. No. FPL submits that Calcs-Plus' competitive economic interests in this  
18 Docket are not of the kind the Commission is charged to protect. In addition,  
19 the example of lost business that is cited in Mr. Klongerbo's testimony (page  
20 3, line 8), Accessible Structures Inc., is a business that, to my knowledge,  
21 never participated in the BuildSmart® Program. Therefore, it is difficult to  
22 understand how Calcs Plus can claim lost business due to BuildSmart®. To  
23 the contrary, one of Calcs Plus' most apparent Ratings business successes is

1 the WCI Communities' project in Venice, referenced in Mr. Stroer's  
2 testimony (page 14, line 3). This builder is one of BuildSmart's® most active  
3 participants and sees the strong value proposition that results from achieving  
4 both BuildSmart® and Green Building certification. This example actually  
5 illustrates the potential that the proposed, modified Program presents for  
6 increasing demand for Ratings and for achieving a win-win-win collaborative  
7 approach that benefits builders, private Raters and FPL's customers through  
8 increased incorporation of cost effective, energy efficient measures in new  
9 homes.

10 **Q. Mr. Klongerbo asserts on page 17, lines 7-18, that FPL's BuildSmart®**  
11 **Program grants "undue and/or unreasonable preferences and or**  
12 **advantages to certain persons contrary to § 366.03, F.S." Do you agree**  
13 **with his analysis?**

14 A. I am not an attorney and do not profess to testify as to whether a statute has  
15 been violated. However, I can respond to Mr. Klongerbo's analysis. Clearly,  
16 Mr. Klongerbo's analysis is flawed. Both Mr. Stroer and Mr. Klongerbo point  
17 out in their testimony that there is a distinction between the services they  
18 provide – BERS Ratings - and the basic BuildSmart® certification. Therefore,  
19 it is difficult to understand why Mr. Klongerbo perceives BuildSmart® to be a  
20 competitor as opposed to being an ally in promoting energy efficiency within  
21 the residential new construction market. Mr. Stroer's own testimony states  
22 that he believes there are benefits in partnering with a utility. Also, because

1 the Program is cost effective based on Commission-approved methodologies,  
2 all FPL customers benefit from this Program.

3 **Q. Do you believe that Mr. Klongerbo’s assertion on page 5, lines 18-19 that**  
4 **“[t]here are areas in the State where energy-efficiency programs thrive**  
5 **with a participation fee or charges for services” is relevant or appropriate**  
6 **for the Commission’s consideration of whether FPL’s Program will have**  
7 **greater penetration if participation fees for builders are eliminated?**

8 A. No. Mr. Klongerbo’s assertion is unsubstantiated. Notwithstanding this issue,  
9 FPL did not infer that the fee is a barrier – rather, builders directly told FPL  
10 that the BuildSmart® participation fee is a barrier to participation. This point  
11 is further evidenced by the fact that even though Mr. Klongerbo claims that a  
12 miniscule charge - such as the current cost associated with BuildSmart®  
13 participation or the cost of a BERS Rating - should not be an inhibitor,  
14 production builders have apparently been reluctant to participate in  
15 BuildSmart® or BERS Ratings services to date. So it is apparent that builders  
16 do scrutinize all extra expenses that impact the construction budget.  
17 Furthermore, Mr. Stroer's response on page 9, lines 11-14, provides solid  
18 reasoning for the elimination of the BuildSmart® participation fees. With the  
19 BuildSmart® participation fee eliminated, the builder only has to pay the  
20 BERS Rating fees for homes certified both BuildSmart® and FGBC and/or  
21 ENERGY STAR®, and the builder could then use the money previously  
22 incurred in paying BuildSmart® participation fees to invest in additional  
23 energy efficient measure upgrades. The Rater would also benefit by having an

1 additional partner – BuildSmart® – providing key activities that will result in  
2 sustained builder participation.

3 **Q. Please respond to Mr. Klongerbo’s comment that eliminating**  
4 **BuildSmart® participation fees and providing incentives to builders**  
5 **seeking ENERGY STAR® certification “is contradictory to the reason**  
6 **for eliminating participation fees to increase market penetration.” (Page**  
7 **7, lines 5-7).**

8 A. Again, Mr. Klongerbo’s assertion reflects a lack of understanding of the  
9 proposed, modified Program. Mr. Klongerbo does not understand this  
10 component of the Program. The participation fees relate to the BuildSmart®  
11 certification. A BERS Rating is required by ENERGY STAR® and by FGBC,  
12 not by BuildSmart®. With the current Program design, a builder’s cost to  
13 participate in BuildSmart® and ENERGY STAR® or FGBC includes 1) cost  
14 of measure upgrades, 2) BuildSmart® fees (when Silver or Bronze level) and  
15 3) Rater’s fees (for BERS Rating). Eliminating the BuildSmart® fee actually  
16 will allow the builder to budget for additional energy efficiency measures  
17 using the savings resulting from not incurring the BuildSmart® participation  
18 fee. Also, under the proposed, modified Program, builders will receive  
19 enhanced promotional support from FPL.

20 **Q. Do you agree with Mr. Klongerbo’s suggestion on page 8, lines 1-5, that**  
21 **the proposed modifications to BuildSmart® creates confusion because**

1           **there is “no distinction” between the Flexible and Prescriptive**  
2           **approaches?**

3           A.    No. Again, Mr. Klongerbo’s assertion reflects a misunderstanding of the  
4           proposed, modified Program. The current system of “levels” did not prove  
5           effective because it created homebuyer confusion. The proposed redesigned  
6           Program is designed to recognize the critical role that the builder plays in the  
7           “customer chain” by developing program approaches aligned with the needs  
8           of custom and production builder markets – each program approach suited to  
9           key builder markets. FPL will initially work with each builder to identify the  
10          program approach that best suits them. Through BuildSmart®, homebuyers  
11          will gain assurance and certification that their homes include measures that  
12          meet FPL BuildSmart® standards and exceed minimal code requirements.  
13          Additionally, builders participating in both BuildSmart® and ENERGY  
14          STAR® will receive recognition of participation at this level and through the  
15          collaborative effort of the builder, FPL and the builder’s Rater, will receive a  
16          HERS score and report detailing their home’s specific energy efficiency level.

17          **Q.    Mr. Klongerbo asserts on page 15, lines 3-23, that the ENERGY STAR®**  
18          **program “should be integrated into any Florida program encouraging**  
19          **energy efficient building practices.” Do you agree?**

20          A.    Yes. In fact, FPL’s proposed modified BuildSmart® Program will enhance the  
21          Program’s support of ENERGY STAR® through increased outreach and  
22          builder incentives. As ENERGY STAR® participation criteria is modified,



1 BuildSmart® representatives will educate local builders on these changes and  
2 provide recommendations for how builders may achieve ENERGY STAR®  
3 certification under revised criteria. All of these activities will further facilitate  
4 builders' involvement in ENERGY STAR®. Additionally, builder incentives,  
5 such as cooperative advertising incentives of up to \$50 per home, will be  
6 available to builders for qualifying BuildSmart® homes that also achieve  
7 certification through the ENERGY STAR® program. Finally, eliminating  
8 BuildSmart® participation fees and providing incentives to builders further  
9 strengthens BuildSmart's® ability to partner with private Raters, thereby  
10 creating a complement of services to those builders seeking ENERGY  
11 STAR® certification, and creating a collaborative approach that strengthens  
12 both BuildSmart's® and the Raters' value proposition to these builders.

13 **Q. Do you have any comments on Table 4 to Mr. Klongerbo's testimony?**

14 A. Yes. Mr. Klongerbo's Table 4 appears to detail BuildSmart® Program  
15 statistics associated with the current Program design and BERS Program  
16 statistics. It is not apparent how these statistics are relevant to the proposed,  
17 modified Program as FPL seeks to eliminate the Gold, Silver and Bronze  
18 levels and given that the proposed modified FPL BuildSmart® Program does  
19 not provide BERS Ratings.

20 **Q. Does this conclude your rebuttal testimony?**

21 A. Yes.