



Kenneth M. Rubin, Esq.
 Senior Attorney
 Florida Power & Light Company
 700 Universe Boulevard
 Juno Beach, FL 33408-0420
 (561) 691-2512
 (561) 691-7135 (Facsimile)
 E-mail: ken.rubin@fpl.com

January 9, 2009

-VIA HAND DELIVERY -

Ms. Ann Cole
 Commission Clerk
 Florida Public Service Commission
 2540 Shumard Oak Blvd.
 Tallahassee, FL 32399-0850

RECEIVED-FPSC
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 COMMISSION
 CLERK

**Re: Docket No. 090000
 Review of Customer Property Damage Claims of the Four Major
 Investor-Owned Electric Utilities**

Dear Ms. Cole:

I am enclosing for filing in the above docket the original and seven (7) copies of Florida Power & Light Company's Request for Confidential Classification of Information Provided Pursuant to Review of Customer Property Damage Claims of the Four Major Investor-Owned Electric Utilities, together with a diskette containing the electronic version of same. The enclosed diskette is HD density, the operating system is Windows XP, and the word processing software is Word 2003. Pursuant to Rule 25-22.006, F.A.C., I am also enclosing one highlighted and two redacted copies of the confidential documents that are the subject of this request. The original affidavit of Sheila Broderick is enclosed as Exhibit D.

If there are any questions regarding this transmittal, please contact me at 561-691-2512

Sincerely,

Kenneth M. Rubin

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Enclosures

DOCUMENT NUMBER-DATE

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FPSC-COMMISSION CLERK

**BEFORE THE
FLORIDA PUBLIC SERVICE COMMISSION**

In re: FPSC Report re:) DOCKET NO. 090000
Customer Property Damage Claims)
Of Florida's Four Major Investor-) FILED: January 9, 2009
Owned Electric Utilities)
_____)

**FLORIDA POWER & LIGHT COMPANY'S
REQUEST FOR CONFIDENTIAL CLASSIFICATION OF INFORMATION**

Pursuant to Section 366.093, Florida Statutes, and Rule 25-22.006, Florida Administrative Code, Florida Power & Light Company ("FPL") requests confidential classification of certain information provided to the Florida Public Service Commission ("Commission") Staff ("Staff") in connection with Staff's Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Electric Utilities including Florida Power & Light, and further requests confidential classification of certain information included within the Staff document entitled *Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Electric Utilities* dated December 2008. In support of its Request, FPL states as follows:

1. By letter dated December 19, 2008, Staff provided FPL with a draft copy of its report (the "Report") entitled *Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Electric Utilities*. In that letter Staff indicated its intent to publish the Report as soon as possible after the 21 day filing period which expires on January 9, 2009. Pursuant to Rule 25-22.006(3), Florida Administrative Code, FPL was given 21 days from the date of that letter, or until January 9, 2009, to file a formal request for confidential classification with respect to the Report. This Request is being filed pursuant to Rule 25-22.006(3)(a).

DOCUMENT NUMBER-DATE

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00217 JAN-9 8

FPSC-COMMISSION CLERK

2. The following exhibits are included with and made a part of this request:
 - a. Exhibit A consists of copies of specified pages of the Report (pages i, iii, 9, 10 11, 12 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27,, 76, 77, 78 and 79), on which all information that FPL asserts is entitled to confidential treatment has been highlighted. Composite Exhibit A is submitted separately in a sealed folder marked "CONFIDENTIAL."
 - b. Exhibit B consists of an edited version of Exhibit A on which all information FPL asserts is entitled to confidential treatment has been redacted.
 - c. Exhibit C is a table containing a line-by-line and page-by-page identification of the information for which confidential classification is sought, and, with regard to each document or portions thereof, references to the specific statutory basis or bases for the claim of confidentiality and to the affidavit in support of the requested classification.
 - d. Exhibit D is the affidavit of Sheila Broderick.

3. FPL seeks confidential treatment of the information highlighted in Exhibit A. The highlighted information is proprietary confidential business information within the meaning of Section 366.093(3), Florida Statutes, specifically including but not limited to Section 366.093(3)(e), and is further protected from public disclosure by substantive case law. The information is intended to be and has been treated by FPL as confidential.

4. Pursuant to Section 366.093, Florida Statutes, the information highlighted in Exhibit A is entitled to confidential treatment and is exempt from the disclosure provisions of the public records law. Thus, once the Commission determines that the information in question is proprietary confidential business information, the Commission is not required to engage in any

further analysis or review, such as weighing the harm of disclosure against the public interest in access to the information.

5. The highlighted information identified on Exhibit A consists of information describing in detail the processes utilized by FPL in the overall assessment, evaluation and resolution or denial of property damage claims asserted by FPL customers against FPL. This includes (among other items) a matrix indicating whether or not a claim would be paid based upon specifically listed “damage cause(s)” (Appendix A), and a flow chart that essentially serves as the FPL process map or “manual” for the handling of “public claims” (Appendix B). Additionally, those portions of the Report for which confidential treatment is requested further address specific elements of the claims handling process utilized by FPL, along with the number and nature of claims processed by FPL. FPL’s request for confidential treatment of the matters identified on Exhibit A are supported by the affidavit provided as Exhibit D.

6. FPL welcomes the opportunity to receive, evaluate and resolve all legitimate and appropriate property damage claims asserted by its customers, and this Request should not be viewed as an attempt to hinder or impede that process in any way. However, the information for which confidential treatment is requested (i.e., the claims handling process and the criteria used to determine whether a claim should be paid and if so, to what extent) could clearly serve as a roadmap for anyone choosing to submit and attempt to receive payment on unsupported and/or unsupportable claims. Further, although this information is included in the context of customer property damage claims that average \$676 (see page 11 of the Report), absent confidential treatment, anyone who chooses to pursue any claims against FPL, including claims involving significant property damage, personal injuries, and wrongful death damages, would have unfettered access to FPL’s claims handling processes, including the listed damage causes for

which FPL agrees to pay claims in the property damage context. The public disclosure of this type of information would likely mitigate and potentially eliminate FPL's ability to effectively assert otherwise valid and legally supported liability defenses in various contexts including but certainly not limited to the property damage claim arena. This disclosure of the FPL claims roadmap would therefore cause harm to the ratepayers and FPL's business operations by fostering and encouraging claims and lawsuits against FPL and mitigating or eliminating FPL's ability to assert appropriate defenses, thereby resulting in increased exposure and increased payment of otherwise defensible claims.

7. In short, FPL asserts that the information describing its claims handling process, and perhaps most significantly the disclosure of specific causes of damage that routinely lead to the payment of claims, is and should be protected as proprietary confidential business information including "information relating to competitive interests, the disclosure of which would impair the competitive business" of FPL as described in Section 366.093(3)(e), Florida Statutes. Additionally, Florida case law supports FPL's position on this point. Reference to cases addressing the attempted discovery of the type of information for which confidential treatment is sought reveals that a party litigating against an insurer may not obtain that insurer's documents relating to its claims handling practices and procedures absent a determination of insurance coverage and allegations of bad faith by the insurer. The Courts have ruled that absent the enumerated circumstances, an order requiring production of the documents relating to claims handling practices and procedures may cause material injury and departs from the essential requirements of the law. See for example *Government Employees Insurance Company v. Rodriguez*, 960 So. 2d 794 (Fla. 3rd DCA 2007) and *Old Republic National Title Insurance Company v. HomeAmerican Credit, Inc*, 844 So. 2d 818 (Fla. 5th DCA 2003).

8. Finally, on this point FPL relies upon the longstanding principle that a party's work in investigating, adjusting, and resolving or denying a claim that could potentially result in litigation constitutes the type of work product that is generally protected from disclosure under the applicable Florida law. See for example *Nevin v. Palm Beach County School Board*, 958 So. 2nd 1003 (Fla. 4th DCA 2007) and *Federal Express Corporation v. Cantway*, 778 So. 2d 1052 (Fla. 4th DCA 2001). As such, confidential treatment of this type of information is warranted.

9. Upon a finding by the Commission that the information highlighted in Exhibit A and referenced in Exhibit C is proprietary confidential business information protected by the statute and case law, the information should not be declassified for a period of at least eighteen (18) months and should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business. *See* § 366.093(4), Fla. Stat.

WHEREFORE, for the foregoing reasons, Florida Power & Light Company respectfully requests that this Request for Confidential Classification be granted.

Respectfully submitted,

Kenneth M. Rubin
Senior Attorney
Florida Power & Light Company
700 Universe Blvd.
Juno Beach, Florida 33408-0420
Telephone: 561-691-2512
Fax: 561-691-7135

By: 

Kenneth M. Rubin
Fla. Bar No. 349038

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STATE OF FLORIDA



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ANN COLE
COMMISSION CLERK
(850) 413-6770

Public Service Commission

ACKNOWLEDGEMENT

DATE: January 9, 2009

TO: Kenneth Rubin, Florida Power & Light Company

FROM: Ruth Nettles, Office of Commission Clerk

RE: Acknowledgement of Receipt of Confidential Filing

This will acknowledge receipt of a CONFIDENTIAL DOCUMENT filed in Docket Number 090000 or, if filed in an undocketed matter, concerning information provided pursuant to Review of Customer Property Damage Claims of the Four Major IOUs, and filed on behalf of Florida Power & Light Company. The document will be maintained in locked storage.

If you have any questions regarding this document, please contact Marguerite Lockard, Deputy Clerk, at (850) 413-6770.

DOCUMENT NUMBER - DATE
00218 JAN -98
FPSC-COMMISSION CLERK

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Internet E-mail: contact@psc.state.fl.us