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January 14, 2009

-VIA HAND DELIVERY -

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

RECEIVED-FPSC  
09 JAN 14 PM 4:24  
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 Amended 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. Additionally, a copy of the amended affidavit of Sheila Broderick is enclosed for filing as Amended Exhibit D. I will follow up with a subsequent letter in the next day or 2 asking you to substitute the original affidavit (which has been signed today in Palm Beach County) in place of this copy.

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

Sincerely,

Kenneth M. Rubin

- COM \_\_\_\_\_
- ECR \_\_\_\_\_
- GCL 1 ± Diskette
- OPC \_\_\_\_\_
- SCP \_\_\_\_\_
- BSC \_\_\_\_\_
- SGA \_\_\_\_\_ Enclosures
- ADM \_\_\_\_\_
- CLK 1

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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 14, 2009
Owned Electric Utilities	)	
_____	)	

**FLORIDA POWER & LIGHT COMPANY'S AMENDED  
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 expired 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. FPL filed its formal Request for Confidential Classification on January 9, 2009, said request having been filed pursuant to Rule 25-

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FPSC-COMMISSION CLERK

22.006(3)(a). However, FPL now files this its Amended Request which supersedes the prior Request and which significantly reduces the scope and extent of the information for which FPL seeks confidential classification and treatment.

2. The following exhibits are included with and made a part of this request:

a. Amended Exhibit A consists of copies of specified pages of the Report (pages 18, 19, 20, 22, 27, 76, 77, 78 and 79), on which all information that FPL asserts is entitled to confidential treatment has been highlighted. Amended Exhibit A is submitted separately in a sealed folder marked "CONFIDENTIAL."

b. Amended Exhibit B consists of an edited version of Amended Exhibit A on which all information FPL asserts is entitled to confidential treatment has been redacted.

c. Amended 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. Amended Exhibit D is the Amended Affidavit of Sheila Broderick.

3. FPL seeks confidential treatment of the information highlighted in Amended 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 Amended 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 Amended 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. FPL’s request for confidential treatment of the matters identified on Amended Exhibit A are supported by the affidavit provided as Amended 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. 3<sup>rd</sup> DCA 2007) and *Old Republic National Title Insurance Company v. HomeAmerican Credit, Inc*, 844 So. 2d 818 (Fla. 5<sup>th</sup> 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. 2<sup>nd</sup> 1003 (Fla. 4<sup>th</sup> DCA 2007) and *Federal Express Corporation v. Cantway*, 778 So. 2d 1052 (Fla. 4<sup>th</sup> 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 Amended Exhibit A and referenced in Amended 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 Amended 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

**AMENDED  
EXHIBIT C**

**COMPANY:** Florida Power & Light Company  
**TITLE:** List of Confidential Workpapers  
**AUDIT:** Florida Public Service Commission Review of Customer Property Damage Claims of Florida's Four Major Investor Owned Electric Utilities

**Docket No:** 090000  
**AUDIT CONTROL NO:**

Workpaper Page No.	Description	No. of Pages	Conf Y/N	Line No./Col No.	Florida Statute 366.093(3) Subsection	Affiant
18	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	y	Line Nos. 15, 16, 18, 20	Proprietary Confidential Business Information (e)	Shelia Broderick
19	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Chart "A" Line Nos. 4, 5, 9	Proprietary Confidential Business Information (e)	Shelia Broderick
20	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Chart "A" Line No. 23, 24	Proprietary Confidential Business Information (e)	Shelia Broderick
22	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Line Nos. 3, 5, 6	Proprietary Confidential Business Information (e)	Shelia Broderick
27	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Line Nos. 29, 30	Proprietary Confidential Business Information (e)	Shelia Broderick
76	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Chart "A" Columns C, D, E Lines 7-18	Proprietary Confidential Business Information (e)	Shelia Broderick

<b>Workpaper Page No.</b>	<b>Description</b>	<b>No. of Pages</b>	<b>Conf Y/N</b>	<b>Line No./Col No.</b>	<b>Florida Statute 366.093(3) Subsection</b>	<b>Affiant</b>
77	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Chart "A" Columns C, D, E Lines 3-16	Proprietary Confidential Business Information (e)	Shelia Broderick
78	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Chart "A" Columns C, D, E Lines 3-17	Proprietary Confidential Business Information (e)	Shelia Broderick
79	Review of Customer Property Damage Claims of Florida's Four Major Investor-Owned Utilities	1	Y	Chart "A"	Proprietary Confidential Business Information (e)	Shelia Broderick



AMENDED EXHIBIT D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

FPSC Report re: ) DOCKET NO. 090000
Customer Property Damage Claims )
Of Florida's Four Major Investor- )
Owned Electric Utilities )

AMENDED AFFIDAVIT OF SHEILA BRODERICK

STATE OF FLORIDA )
COUNTY OF PALM BEACH )

BEFORE ME, the undersigned authority, personally appeared Sheila Broderick who, being first duly sworn, deposes and says:

1. My name is Sheila Broderick. I am currently employed by Florida Power & Light Company ("FPL") as Claims Manager. I have personal knowledge of the matters stated in this affidavit.

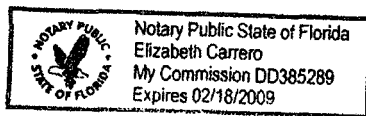
2. With respect to Amended Exhibit C, I have reviewed the documents and information for which I am listed as Affiant that are included in Amended Exhibit A to FPL's Amended Request for Confidential Classification of materials provided pursuant to the FPSC's Review of Florida's Four Major Investor-Owned Electric Utilities Customer Property Damage Claims. The documents or materials that I have reviewed are or contain, in whole or in part, FPL's proprietary confidential business information, information relating to competitive interests, and information otherwise protected from disclosure by Florida law, the disclosure of which would impair the competitive business of the provider of the information. To the best of my knowledge, FPL has maintained the confidentiality of these documents and materials.

3. Consistent with the provisions of the Florida Administrative Code, such materials should remain confidential for a period of not less than 18 months. In addition, they should be returned to FPL as soon as the information is no longer necessary for the Commission to conduct its business so that FPL can continue to maintain the confidentiality of these documents.

4. Affiant says nothing further.

Handwritten signature of Sheila Broderick
Sheila Broderick

SWORN TO AND SUBSCRIBED before me this 14th day of January 2009, by Sheila Broderick, who is personally known to me or who produced (type of identification) as identification and who did take an oath.



Handwritten signature of Elizabeth Carrero
Notary Public, State of Florida

STATE OF FLORIDA

COMMISSIONERS:  
MATTHEW M. CARTER II, CHAIRMAN  
LISA POLAK EDGAR  
KATRINA J. MCMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP



OFFICE OF COMMISSION CLERK  
ANN COLE  
COMMISSION CLERK  
(850) 413-6770

# Public Service Commission

## ACKNOWLEDGEMENT

DATE: January 14, 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 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  
00381 JAN 14 09  
FPSC-COMMISSION CLERK

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Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)