

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition by Telephone
Company of Central Florida, Inc.
for resolution of items under
dispute in resale agreement with
BellSouth Telecommunications,
Inc.

DOCKET NO. 981052-TP
ORDER NO. PSC-99-0092-PHO-TP
ISSUED: January 15, 1999

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on January 11, 1999, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

VICKI GORDON KAUFMAN, ESQUIRE, McWhirter, Reeves, McGlothlin, Davidson, Decker, Kaufman, Arnold & Steen, P.A., 117 South Gadsden Street, Tallahassee, Florida 32301.

On behalf of Telephone Company of Central Florida, Inc.

MARY KEYER, ESQUIRE and NANCY B. WHITE, ESQUIRE, c/o Nancy Sims, 150 South Monroe Street #400, Tallahassee, Florida 32301.

On behalf of BellSouth Telecommunications, Inc.

JUNE C. MCKINNEY, ESQUIRE, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850

On behalf of the Commission Staff.

PREHEARING ORDER

I. CONDUCT OF PROCEEDINGS

Pursuant to Rule 28-106.211, Florida Administrative Code, this Order is issued to prevent delay and to promote the just, speedy, and inexpensive determination of all aspects of this case.

DOCUMENT NO.

0057699

II. CASE BACKGROUND

On August 20, 1998, Telephone Company of Central Florida, Inc. (TCCF), filed a petition for resolution of items under dispute in the resale agreement with BellSouth Telecommunications, Inc. (BellSouth). The issues raised in the petition have been separated into issues for enforcement of its current interconnection agreement, and issues for arbitration of the renewal of the resale agreement. The issues raised in TCCF's petition are set for an administrative hearing on January 22, 1999.

III. PROCEDURE FOR HANDLING CONFIDENTIAL INFORMATION

A. Any information provided pursuant to a discovery request for which proprietary confidential business information status is requested shall be treated by the Commission and the parties as confidential. The information shall be exempt from Section 119.07(1), Florida Statutes, pending a formal ruling on such request by the Commission, or upon the return of the information to the person providing the information. If no determination of confidentiality has been made and the information has not been used in the proceeding, it shall be returned expeditiously to the person providing the information. If a determination of confidentiality has been made and the information was not entered into the record of the proceeding, it shall be returned to the person providing the information within the time periods set forth in Section 364.183, Florida Statutes.

B. It is the policy of the Florida Public Service Commission that all Commission hearings be open to the public at all times. The Commission also recognizes its obligation pursuant to Section 364.183(3), Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

In the event it becomes necessary to use confidential information during the hearing, the following procedures will be observed:

- 1) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 364.183(3), Florida Statutes, shall notify the Prehearing Officer and all parties of record by the time of the Prehearing Conference, or if not known at that time, no later than seven (7) days prior to the beginning of the hearing.

The notice shall include a procedure to assure that the confidential nature of the information is preserved as required by statute.

- 2) Failure of any party to comply with 1) above shall be grounds to deny the party the opportunity to present evidence which is proprietary confidential business information.
- 3) When confidential information is used in the hearing, parties must have copies for the Commissioners, necessary staff, and the Court Reporter, in envelopes clearly marked with the nature of the contents. Any party wishing to examine the confidential material that is not subject to an order granting confidentiality shall be provided a copy in the same fashion as provided to the Commissioners, subject to execution of any appropriate protective agreement with the owner of the material.
- 4) Counsel and witnesses are cautioned to avoid verbalizing confidential information in such a way that would compromise the confidential information. Therefore, confidential information should be presented by written exhibit when reasonably possible to do so.
- 5) At the conclusion of that portion of the hearing that involves confidential information, all copies of confidential exhibits shall be returned to the proffering party. If a confidential exhibit has been admitted into evidence, the copy provided to the Court Reporter shall be retained in the Division of Records and Reporting's confidential files.

IV. POST-HEARING PROCEDURES

Each party shall file a post-hearing statement of issues and positions. A summary of each position of no more than 50 words, set off with asterisks, shall be included in that statement. If a party's position has not changed since the issuance of the prehearing order, the post-hearing statement may simply restate the prehearing position; however, if the prehearing position is longer

than 50 words, it must be reduced to no more than 50 words. If a party fails to file a post-hearing statement, that party shall have waived all issues and may be dismissed from the proceeding.

A party's proposed findings of fact and conclusions of law, if any, statement of issues and positions, and brief, shall together total no more than 40 pages, and shall be filed at the same time.

V. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

All testimony which has been prefiled in this case will be inserted into the record as though read after the witness has taken the stand and affirmed the correctness of the testimony and associated exhibits. All testimony remains subject to appropriate objections. Each witness will have the opportunity to orally summarize his or her testimony at the time he or she takes the stand. Upon insertion of a witness' testimony, exhibits appended thereto may be marked for identification. After all parties and Staff have had the opportunity to object and cross-examine, the exhibit may be moved into the record. All other exhibits may be similarly identified and entered into the record at the appropriate time during the hearing.

Witnesses are reminded that, on cross-examination, responses to questions calling for a simple yes or no answer shall be so answered first, after which the witness may explain his or her answer.

The Commission frequently administers the testimonial oath to more than one witness at a time. Therefore, when a witness takes the stand to testify, the attorney calling the witness is directed to ask the witness to affirm whether he or she has been sworn.

VI. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
Elder (Kip) Ripper, III	TCCF	Complaint 1 Arbitration 2
Kenneth E. Koller	TCCF	Complaint 1
Andrea K. Welch	TCCF	Arbitration 1
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<u>Direct Adverse:</u> TCCF has indicated in its prehearing statement that it may call the following direct adverse witnesses:		
Joe Baker	TCCF	Complaint 1 Arbitration 1, 2
Mike Wilburn	TCCF	Arbitration 1, 2
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<u>Direct</u>		
Jerry D. Hendrix	BellSouth	Complaint 1
Susan Arrington	BellSouth	Arbitration 1, 2
Daonne Caldwell (Rebuttal also)	BellSouth	Arbitration 1
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<u>Rebuttal</u>		
Elder (Kip) Ripper, III	TCCF	Complaint 1 Arbitration 2
Andrea K. Welch	TCCF	Arbitration 1
<hr/>		
<u>Rebuttal</u>		
Susan Arrington	BellSouth	All
Marc Cathey	BellSouth	All
Ron Pate	BellSouth	Arbitration 1

VII. BASIC POSITIONS

TCCF: TCCF is a small reseller of local and long distance services. In May 1996, TCCF, in good faith, entered into a Resale Agreement with BellSouth. Pursuant to that Resale Agreement, BellSouth was required to provision ESSX® service to TCCF for resale.

The first portion of this case involves TCCF's complaint that BellSouth did not fulfill its obligations under the Resale Agreement because it never provisioned ESSX® to TCCF in an appropriate manner. ESSX® was a major component of TCCF's Business Plan. BellSouth's failure to appropriately provision ESSX® resulted in a major loss of customers to TCCF as well as damage to TCCF's business reputation. Further, because of BellSouth's failure to perform under the current Resale Agreement, the Commission must permit TCCF to resell ESSX® under the new Resale Agreement with BellSouth.

The second portion of this case concerns issues which TCCF and BellSouth cannot agree on in the negotiation of a new Resale Agreement. There are three issues in dispute. The first concerns whether ESSX® must be made available for resale under the new Agreement. It is TCCF's position that because BellSouth never provisioned ESSX® as required, it must be included in the new Agreement for both current and new customers--this is the only remedy TCCF has. Alternatively, TCCF would agree to accept MultiServ, but only at the ESSX® price.

The second arbitration issue relates to BellSouth's demand that TCCF compensate it for the development of OSS systems and/or that BellSouth be permitted to greatly inflate its processing charges through the inclusion of an OSS rate chart in the new Agreement. However BellSouth characterizes the proposed increase in processing charges, they are discriminatory and violative of the Telecommunications Act of 1996. If such charges are couched as OSS "development" charges, it is TCCF's position that it is BellSouth's responsibility to develop systems to comply with the Act, just as TCCF must expend money to purchase software and make other adjustments in its business practices. To the extent, BellSouth tries to justify the charges as additional processing fees, it

is TCCF's view that this is an arbitrary attempt to increase resellers' costs (and thus decrease the wholesale discount ordered by this Commission) and should not be permitted. This is especially the case given the fact that BellSouth does not have OSS in place which is adequate to appropriately process resellers' orders at parity with the way BellSouth processes orders from its retail customers.

BELLSOUTH:

Complaint Issue

BellSouth complied with its May 28, 1996, Agreement with TCCF to provide ESSX® Service, which became a grandfathered service May 30, 1996. The Agreement specifically precludes the resale of grandfathered services. Moreover, TCCF settled all claims against BellSouth prior to March 14, 1997, and accepted another adjustment in October 1997. No Commission action is required.

Arbitration Issue

BellSouth is entitled to recover its costs of providing Operational Support Systems for ALECs' use. The charges and rates should be based on BellSouth's cost studies for electronic interface and manual processing of ALECs' orders. The parties should negotiate appropriate language. ESSX® Service is a grandfathered service unavailable for resale.

STAFF:

Staff's positions are preliminary and based on materials filed by the parties and on discovery. The preliminary positions are offered to assist the parties in preparing for the hearing. Staff's final positions will be based upon all the evidence in the record and may differ from the preliminary positions.

VIII. ISSUES AND POSITIONS

Complaint

ISSUE 1: Has BellSouth provided TCCF with ESSX® service in compliance with the parties' resale agreement for periods of time not covered by settlements and adjustments made regarding ESSX®? If not, what action, if any, should the Commission take?

POSITIONS

TCCF: No. The Telecommunications Act of 1996 requires services to be made available for resale on a nondiscriminatory basis. BellSouth has failed to follow this provision of the Act. Though TCCF has continually tried to work with the changing BellSouth personnel so that ESSX® could be properly provisioned, BellSouth has never been able to adequately provide the service. BellSouth's actions have resulted in TCCF customers being disconnected, some for more than a week. It has resulted in TCCF being required to provide refunds to dissatisfied customers, has resulted in many customers returning to BellSouth, and has damaged TCCF's reputation in the marketplace. Finally, BellSouth's actions have thwarted the purpose of the Act--to bring competition to the local market.

BELLSOUTH:

The May 28, 1996, Resale Agreement between BellSouth and TCCF provided for the resale of "tariffed local exchange, including Centrex type services, available under Section A12 of the Florida tariff." (Exhibit JDH-1, p. 2) The Agreement further specified that "[n]otwithstanding the foregoing, the following are not available for purchase: Grandfathered services . . ." (Exhibit JDH-1, p. 2.) ESSX® Service, a Centrex type service, was obsoleted May 30, 1996, thereby becoming a grandfathered service at that time. (Exhibit JDH-2, p. 1.) Pursuant to the plain language of the parties' Resale Agreement and BellSouth's tariff, ESSX® Service was not, and should not have been, available to TCCF for resale to new customers after May 29, 1996.

Nevertheless, BellSouth's account team for TCCF continued to work diligently with TCCF to attempt to provision the

non-standard arrangement requested by TCCF. This arrangement was not the standard ESSX® Service provided for in BellSouth's tariff. Due to the non-standard nature of this arrangement, the parties incurred difficulties in provisioning it. As a result of these difficulties, BellSouth made adjustments for TCCF and TCCF entered into a confidential full release and settlement agreement in which it settled all its claims against BellSouth through March 14, 1997. In October, 1997, BellSouth made yet another adjustment for TCCF for further problems incurred in provisioning the non-standard arrangement requested by TCCF.

Based on the foregoing, BellSouth provided TCCF with ESSX® Service in compliance with the parties' Resale Agreement and the Commission should take no action with respect to the Complaint issue.

STAFF: None pending discovery.

Arbitration

ISSUE 1: Should BellSouth be permitted to recover from TCCF its non-recurring and recurring costs of providing OSS for use by ALECs?

- A. If so, how should the charges for such use be determined?
- B. What language and rates regarding OSS should be included?

POSITIONS

TCCF: No. BellSouth has attempted to include language in the new Resale Agreement which would require TCCF to pay BellSouth for the development of OSS systems. It has also attempted to include an "OSS chart" setting out fees for OSS services. It is TCCF's position that it is BellSouth's responsibility under the Act to provide OSS at parity with what it provides itself. As the Commission has said, each party should bear its own costs. Further, requiring resellers to pay for the development of these system would turn the Act on its head. It should also be remembered that resellers have

their own development costs. BellSouth's attempt to inflate the fees charged for processing orders is nothing more than an arbitrary and discriminatory attempt to reduce the wholesale discount ordered by this Commission and should not be permitted. In addition, the Commission should not place the burden on small carriers of trying to analyze BellSouth's cost studies.

- A. As noted above, no such fees should be permitted. But if such fees are permitted, the Commission must determine, prior to permitting any such fees, that BellSouth is providing OSS to resellers that is equal to that BellSouth uses when processing retail orders. BellSouth should be required to substantiate all costs, explain the formula used to recover such costs, explain how the costs will be apportioned among ALECs, explain any future anticipated costs and identify OSS which will result from such expenditures.
- B. Language should be included requiring BellSouth to provide OSS to resellers that is at parity with the OSS BellSouth personnel use to process retail orders. The Commission should institute a monitoring process to ensure that this is accomplished. No additional processing fees or "development" fees should be permitted.

BELLSOUTH:

BellSouth should be permitted to recover from TCCF its nonrecurring and recurring costs of providing Operational Support Systems (OSS) for use by ALECs. Section 251(c)(3) of the Telecommunications Act of 1996 ("the Act") requires BellSouth to develop non-discriminatory electronic interfaces for access to BellSouth's OSS in order to remove barriers to competition. BellSouth has complied with the Act and should be entitled to recover its OSS costs, both manual and electronic. The appropriate rates should be a mechanized order charge of \$6.78 per Local Service Request (LSR), and a manual order charge of \$20.08 per LSR, based on BellSouth's cost studies filed in this docket. The appropriate language to be included in the parties' new Resale Agreement should be negotiated by the parties and not dictated by the Commission.

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Based on the foregoing, the Commission should find that BellSouth is permitted to recover its OSS costs from TCCF, that the charges should be based on BellSouth's cost studies, that the appropriate rates are \$6.78 per LSR for mechanized orders and \$20.08 per LSR for manual orders, and that the parties should negotiate the appropriate language for inclusion in their new Resale Agreement based on the Commission's order in this docket.

STAFF: Staff has no position pending the hearing.

ISSUE 2: Should ESSX® service be made available for resale in the new resale agreement?

POSITIONS

TCCF: Yes. BellSouth has failed to live up to its current Agreement regarding ESSX® resale. The only way this situation can be remedied is to include ESSX® for resale in the new Agreement. It should be available to new customers and current customers for at least 18 months. Alternatively, TCCF would be willing to accept MultiServ from BellSouth at the ESSX® price.

BELLSOUTH: No. ESSX® service is a grandfathered service and, as such, is not and should not be available for resale in the new resale agreement.

STAFF: Staff has no position pending the hearing.

IX. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Elder (Kip) Ripper, III	TCCF	_____	Letter Confirming
		(ENR-1)	ESSX® Availability
		_____	Letter Confirming
		(ENR-2)	TCCF's Ability to Order as Many ESSX® Lines as it Wanted
		_____	Price Confirmation
		(ENR-3)	
		_____	TCCF's Business Plan
		(ENR-4)	
		_____	BellSouth Acceptance of TCCF's Formal Service Request for 201 Line ESSX® Agreements for 73 months
		(ENR-5)	
_____	Charlotte R. Webb Letter Describing Network		
(ENR-6)			
_____	Examples of Problems TCCF Experienced		
(ENR-7)			
_____	Non-ESSX® Comparison		
(ENR-8)			
_____	Examples of Delays Experienced as Recently as November 11, 1998		
(ENR-9)			
_____	Differences in ESSX® versus MultiServ Plus		
(ENR-10)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Kenneth E. Koller	TCCF	_____	Installation
		(KEK-1)	Schedule of ESSX® Systems
		_____	Correspondence
		(KEK-2)	Regarding Customer Loss
		_____	Notice and Agenda
		(KEK-3)	of Provisioning Meeting
		_____	New Installation
		(KEK-4)	Schedule of Remaining ESSX® Systems
		_____	Communications
		(KEK-5)	Regarding Implementation of ESSX®-M Service
_____	Problems Associated		
(KEK-6)	With Special Features		
_____	Correspondence		
(KEK-7)	Regarding Move of IFB Accounts to ESSX® Service Magnolia DMS100, Magnolia 1 AESS and Pinehills 5 ESS		
_____	Memorandum		
(KEK-8)	Regarding 5ESS Central Office Long Distance Problem		
_____	Facsimiles		
(KEK-9)	Regarding Moving Accounts		
_____	Correspondence		
(KEK-10)	Regarding BellSouth Ordering Guidelines		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Kenneth E. Koller	TCCF	_____	Correspondence
		(KEK-11)	Regarding Continuing Problems and Further Customer Loss by Central
		_____	Correspondence
		(KEK-12)	Regarding Update of 64 Remaining Orders Sent to BellSouth
		_____	Communications
		(KEK-13)	Regarding the Additional Orders and the Next Group of Customers to be Moved into ESSX® Service
_____	Correspondence		
(KEK-14)	Regarding Change in BellSouth Team Members		
_____	Memo Regarding		
(KEK-15)	Special Assemblies for ISDN and CAMA Trunk ANI Information Processing		
_____	Facsimile		
(KEK-16)	Reconfirming Joe Baker's Commitment that the Interconnection Services Team Would Initiate the Paperwork		

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Kenneth E. Koller	TCCF	_____	Correspondence from BellSouth
		(KEK-23)	Indicating that a Response to the BFR Must Be received by October 15
		_____	Letter from BellSouth Regarding an ESSX® Workshop and Resulting New Schedule for Implementation of the T1 Capabilities for Each Central Office
		(KEK-24)	
		_____	BFR Drafted on October 23rd for the DIN/DOR Feature Capability
		(KEK-25)	
_____	Facsimile Confirming What Services Central had Requested		
(KEK-26)			
_____	Letter to Joe Baker Requesting an Answer to the Letter Sent on April 29th		
(KEK-27)			
_____	Facsimile Indicating that the DIN/DOR Feature had Not Been Completed and a Due Date of May 20, 1998 was Currently the Scheduled Completion Date		
(KEK-28)			

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Andrea K. Welch	TCCF	<u>(AKW-1)</u>	Existing Agreement Between BellSouth and TCCF
		<u>(AKW-2)</u>	"Proposed" Agreement Marked Version: February 3, 1998
		<u>(AKW-3)</u>	Items for Discussions During Renegotiations
		<u>(AKW-4)</u>	OSS Rate Chart
		<u>(AKW-5)</u>	Chart Identifying the Current Fees Which TCCF Pays to BellSouth
		<u>(AKW-6)</u>	"Revised" OSS Chart
		<u>(AKW-7)</u>	September 24, 1998 Fax With Language Regarding OSS Issue Which Would Be Acceptable to TCCF, with the Exclusion of the OSS Chart
		<u>(AKW-8)</u>	September 29, 1998 Response from BellSouth to the Above Language and Proposed Alternate Language
		<u>(AKW-9)</u>	Response to BellSouth's Above-Referenced Communication
		<u>(AKW-10)</u>	Ms. Keyer's Response Dated October 7, 1998

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Andrea K. Welch	TCCF	(AKW-11)	Implementation and Recurring Costs Associated With the Reseller's Implementation of EDI
		(AKW-12)	Estimate of the Processing Fees Which BellSouth Would Have Charged TCCF for the Months of May 1998 and October 1998 If the OSS Language and Chart Proposed by BellSouth had Been Part of the TCCF Agreement During Those Months
Susan Arrington	BellSouth	(SMA-1)	Proposed Operational Support Systems (OSS) Rates
		(SMA-2)	Section of General Subscriber Service Tariff A112
		(SMA-3)	OSS Language Proposal (September 29, 1998)
		(SMA-4)	Letter Regarding Open Issues (July 10, 1998)
Daonne Caldwell	BellSouth	(DDC-1)	OSS Electronic Interface and Manual Processing Cost Studies
	BellSouth	(DDC-2)	Work Papers for BellSouth Cost Studies

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Marc Cathey	BellSouth	_____	Clarification Documents
		(MBC-1)	
Jerry D. Hendrix	BellSouth	_____	Correspondence (April 17, 1998, and May 19, 1998)
		(MBC-2)	
Ron Pate	BellSouth	_____	Parties' Resale Agreement (May 28, 1996)
		(JDH-1)	
Ron Pate	BellSouth	_____	Sections of General Subscriber Service Tariff A112
		(JDH-2)	
Ron Pate	BellSouth	_____	ALEC Process for Ordering MultiServ®
		(RMP-1)	
Ron Pate	BellSouth	_____	BellSouth Process for Ordering MultiServ®
		(RMP-2)	

Parties and Staff reserve the right to identify additional exhibits for the purpose of cross-examination.

X. PROPOSED STIPULATIONS

The parties stipulate that in light of the ruling granting BellSouth's Motion to Strike, certain portions of BellSouth witness Susan Arrington's testimony will be stricken. Specifically, Ms. Arrington's rebuttal testimony p. 6, lines 6-25, p. 7, and p. 8, lines 1-24, and Exhibits SMA-5 and SMA-6 are stricken.

XI. RULINGS

1. TCCF's proposed issue regarding inclusion of penalties for missed service intervals in the arbitrated agreement is denied on two grounds. First, it is clear from the discussion at the prehearing conference that the parties never negotiated inclusion of a penalty provision in their renewed interconnection agreement. Second, the Commission has held in previous arbitrations that issues regarding liquidated damages or penalties exceed the scope of issues the Commission should

arbitrate under the provisions of 47 U.S.C. § 251 and 252, the Telecommunications Act of 1996 (the Act). Therefore, such an issue is not appropriate for arbitration.

2. BellSouth's motion to strike certain portions of the testimony of TCCF witness Andrea K. Welch is granted. Specifically, it is held that Ms. Welch's direct testimony page 21, lines 2-22 through page 25 line 9 and any exhibits which address this issue, Exhibits AKW-13 and AKW-14 and any rebuttal, that mentions service order intervals related to penalties are stricken.
3. TCCF's motion to compel the depositions of Mr. Joe Baker and Mr. Mike Wilburn is granted since each witness may provide testimony within the scope of discovery.

It is therefore,

ORDERED by Commissioner Susan F. Clark, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission.

By ORDER of Commissioner Susan F. Clark, as Prehearing Officer, this 15th day of January, 1999.



SUSAN F. CLARK
Commissioner and Prehearing Officer

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by this order, which is preliminary, procedural or intermediate in nature, may request: 1) reconsideration within 10 days pursuant to Rule 25-22.038(2), Florida Administrative Code, if issued by a Prehearing Officer; 2) reconsideration within 15 days pursuant to Rule 25-22.060, Florida Administrative Code, if issued by the Commission; or 3) judicial review by the Florida Supreme Court, in the case of an electric, gas or telephone utility, or the First District Court of Appeal, in the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of Records and Reporting, in the form prescribed by Rule 25-22.060, Florida Administrative Code. Judicial review of a preliminary, procedural or intermediate ruling or order is available if review of the final action will not provide an adequate remedy. Such review may be requested from the appropriate court, as described above, pursuant to Rule 9.100, Florida Rules of Appellate Procedure.