

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition to determine  
need for Hines Unit 3 in Polk  
County by Florida Power  
Corporation.

DOCKET NO. 020953-EI  
ORDER NO. PSC-02-1650A-PHO-EI  
ISSUED: December 2, 2002

Pursuant to Notice and in accordance with Rule 28-106.209, Florida Administrative Code, a Prehearing Conference was held on November 20, 2002, in Tallahassee, Florida, before Commissioner Braulio L. Baez, as Prehearing Officer.

APPEARANCES:

JAMES A. MCGEE, ESQUIRE, Progress Energy Service Co., LLP,  
P.O. Box 14042, St. Petersburg, FL 33733; GARY L. SASSO,  
ESQUIRE and JILL H. BOWMAN, ESQUIRE, Carlton Fields, P.A.,  
P.O. Box 2861, St. Petersburg, FL 33731-2861; and W. DOUGLAS  
HALL, ESQUIRE, Carlton Fields, P.A., P.O. Drawer 190,  
Tallahassee, FL 32302-0190  
On behalf of Florida Power Corporation.

JON C. MOYLE, JR., ESQUIRE and CATHY M. SELLERS, ESQUIRE,  
Moyle Flanigan Katz Raymond & Sheehan, P.A., 118 North Gadsden  
Street, Tallahassee, Florida 32301  
On behalf of Florida Partnership for Affordable Competitive  
Energy.

LAWRENCE D. HARRIS, ESQUIRE, Public Service Commission, 2540  
Shumard Oak Boulevard, Tallahassee, Florida 32399-0850  
On behalf of the Florida Public Service Commission.

**AMENDED PREHEARING ORDER\***

\*In order to facilitate the proceeding, this Amended Prehearing Order is issued in its entirety to incorporate PACE's positions on the issues, which were filed on December 2, 2002. The only changes to the original Order are the additions of PACE's positions.

DOCUMENT NUMBER-DATE

13117 DEC-28

FPSC-COMMISSION CLERK

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.

II. CASE BACKGROUND

Pursuant to Section 403.519, Florida Statutes, and Rules 25-22.080 and 25-22.081, Florida Administrative Code, on September 4, 2002, Florida Power Corporation (FPC) filed a petition for a determination of need for an electrical power plant to be located in Polk County, Florida. These proceedings are held to determine whether the proposed Hines Unit 3 meets the need for electric system reliability and integrity, the need for adequate electricity at a reasonable cost, whether the proposed plant is the most cost-effective alternative available, whether there are any conservation measures that can mitigate the proposed power plant, and any other matters within the Commission's jurisdiction that it deems relevant, according to the requirements of Section 403.519, Florida Statutes.

III. JURISDICTION

This Commission is vested with jurisdiction over the subject matter by the provisions of Chapters 120, 366, and 403, Florida Statutes. This prehearing conference will be governed by said Chapter and Chapters 25-22 and 28-106, Florida Administrative Code.

IV. 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 366.093, 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 366.093, Florida Statutes, to protect proprietary confidential business information from disclosure outside the proceeding.

1. Any party intending to utilize confidential documents at hearing for which no ruling has been made, must be prepared to present their justifications at hearing, so that a ruling can be made at hearing.

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

- a) Any party wishing to use any proprietary confidential business information, as that term is defined in Section 366.093, 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.
- b) 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.
- c) 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.

- d) 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.
- e) 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 the Commission Clerk and Administrative Services's confidential files.

V. 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.

Pursuant to Rule 28-106.215, Florida Administrative Code, 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.

VI. PREFILED TESTIMONY AND EXHIBITS; WITNESSES

Testimony of all witnesses to be sponsored by the parties has been prefiled. 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. Summaries of testimony shall be limited to five minutes. 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.

VII. ORDER OF WITNESSES

<u>Witness</u>	<u>Proffered By</u>	<u>Issues #</u>
<u>Direct</u>		
John B. Crisp	FPC	1-6
Daniel J. Roeder	FPC	2-4, 6
James J. Murphy	FPC	2, 6, 7
Pamela R. Murphy	FPC	1, 2, 6, 7
John J. Hunter	FPC	2, 6
W. Bart White	FPC	1, 2, 6

VIII. BASIC POSITIONS

**FPC:** FPC seeks an affirmative determination of need for Hines Unit 3 to enable the Company to meet its obligation to maintain electric system reliability and integrity and to

continue to provide adequate electricity to its ratepayers at a reasonable cost.

Through FPC's planning process, the Company identified Hines 3 as its next-planned generating addition. The Company needs Hines Unit 3 to meet its 20% Reserve Margin planning criterion for the Winter 2005/2006.

Hines Unit 3 will be a state-of-the-art, highly efficient, environmentally benign unit, and it will be built at a site planned and well suited for expansion of FPC's generation system. Because Hines Unit 3 will be located at the Hines Energy Complex, it also benefits from the economies of scale achieved from using the existing facilities for the operation of Hines units 1, 2, and 3, adding to the cost-effectiveness of the plant.

Moreover, the plant is the most cost-effective alternative available to FPC. FPC determined to seek approval to build Hines 3 only after conducting an internal review of supply-side and demand-side options and after soliciting and evaluating competing proposals submitted by interested third-party suppliers. After a thorough analysis of the bids it received in response to its Request for Proposals, FPC concluded that Hines Unit 3 was the most cost-effective supply-side alternative available to FPC to meet its need for power. Following a detailed economic analysis, Hines Unit 3 was found to be over \$92 million (2002 dollars) less expensive than the least cost alternative proposal. The least cost Greenfield Proposal (another combined cycle plant) was found to be more than \$187 million (2002 dollars) more expensive than Hines Unit 3.

The Company has attempted to avoid or defer constructing the unit by considering and pursuing demand-side options reasonably available to it, but the Company has nonetheless concluded that it cannot avoid or defer its need to build the unit.

For all these reasons, as more fully developed in FPC's Need Study (and the Confidential Section of that Study)

and supporting appendices and tables, and its pre-filed testimony and exhibits, FPC respectfully requests that the FPSC grant a favorable determination of need for Hines Unit 3.

**PACE:**

PACE asserts that the choice of Hines 3 by Florida Power Corporation does not meet the statutory criteria set forth in Section 403.519, Florida Statutes. Specifically, FPC does not have a secure source of water for the Hines 3 unit, calling into question the reliability and cost effectiveness of Hines 3. The Hines 3 unit is not guaranteed by the turbine manufacturer to operate within the guidelines set forth by the Florida Reliability Coordinating Council, calling into question its reliability if it does not meet the FRCC guidelines, and its cost effectiveness if FPC commits to operate within FRCC guidelines, but outside of the warranty provided by the turbine manufacturer. FPC has not properly allocated the costs of existing infrastructure at the Hines Energy Complex, in that certain costs common to Hines 1, Hines 2 and Hines 3 are not allocated to Hines 3, calling into question the accuracy of the cost analysis and the cost-effectiveness of the Hines 3 unit. Additionally, FPC appears to have modeled Hines 3 at an unrealistically low heat rate (approx. 6,900 Btu/kwh), as compared to the value reported in its most recent Ten-Year Site Plan (7,306 Btu/kwh). This difference would result in significant cost impacts to FPC customers. If the Commission grants a determination of need for Hines 3, FPC should be held to the terms of its "winning" proposal for all regulatory purposes.

**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.

**IX. ISSUES AND POSITIONS**

**ISSUE 1:** Is there a need for the proposed Hines Unit 3, taking into account the need for electric system reliability and integrity, as this criterion is used in Section 403.519, Florida Statutes?

**POSITIONS**

**FPC:** Yes. Through FPC's planning process, the Company identified Hines 3 as its next-planned generating addition. The Company needs Hines Unit 3 to meet its 20% Reserve Margin planning criterion for the Winter 2005/2006. (Crisp, P. Murphy, White)

**PACE:** There is no present need for the Hines 3 unit, but for a voluntary stipulation entered by FPC to increase its reserve margin from 15% to 20%. A reserve margin of approximately 17% in 2005-06, without the addition of Hines 3, will suffice to ensure system reliability and integrity. Even assuming that FPC needs additional resources, it does not need Hines 3. Options, including shorter term purchased power arrangements, are available to FPC that are cost-effective and that impose less risk to FPC's customers.

**STAFF:** No position at this time.

**ISSUE 2:** Is there a need for the proposed Hines Unit 3, taking into account the need for adequate electricity at a reasonable cost, as this criterion is used in Section 403.519, Florida Statutes?

**POSITIONS**

**FPC:** Yes. As stated above, Florida Power needs Hines Unit 3 to meet its 20% Reserve Margin planning criterion for the Winter 2005/2006. Moreover, FPC determined to seek approval to build Hines Unit 3 only after conducting an internal review of supply-side and demand-side options



and after soliciting and evaluating competing proposals submitted by interested third-party suppliers. After a thorough analysis of the bids it received in response to its Request for Proposals, FPC concluded that Hines Unit 3 was the most cost-effective supply-side alternative available to FPC to meet its need for power. (Crisp, Roeder, P. Murphy, White, J. Murphy, and Hunter)

**PACE:** There is no present need for the Hines 3 unit, but for a voluntary stipulation entered by FPC to increase its reserve margin from 15% to 20%. A reserve margin of approximately 17% in 2005-06 without the addition of Hines 3, will suffice to ensure system reliability and integrity. Options, including shorter term purchased power arrangements, are available to FPC that are cost-effective and that impose less risk to FPC's customers.

**STAFF:** No position at this time.

**ISSUE 3:** Has Florida Power Corporation met the requirements of Rule 25-22.082, Florida Administrative Code, "Selection of Generating Capacity"?

**POSITIONS**

**FPC:** Yes. FPC complied with all aspects of the "bid rule." After a thorough analysis of the bids it received in response to its Request for Proposals, FPC concluded that Hines Unit 3 was the most cost-effective supply-side alternative available to FPC to meet its need for power. (Crisp, Roeder)

**PACE:** No. Implicit in this rule is the requirement that a fair, "apples to apples" comparison be performed. FPC, when considering outside proposals, considered factors that were not set forth in its RFP document.

**STAFF:** No position at this time.

**ISSUE 4:** Is the proposed Hines Unit 3 the most cost-effective alternative available, as the criterion is used in Section 403.519?

**POSITIONS**

**FPC:** Yes. The detailed economic analysis found Hines 3 to be over \$ 92 million (2002 dollars) less expensive than the least cost alternative proposal. The least cost Greenfield Proposal (another combined cycle plant) was found to be more than \$187 million (2002 dollars) more expensive than Hines Unit 3. (Crisp, Roeder)

**PACE:** No. Hines 3 costs were not properly calculated and certain Hines Energy Complex costs were not properly ascribed to Hines 3. Uncertainty regarding the availability of sufficient ground water at the Hines Energy Complex may require more expensive methods of providing water or cooling the Hines 3 unit. Further, FPC used an aggressive heat rate in estimating the costs for the Hines 3 unit. Moreover, the most cost-effective alternative is for Hines 3 not be built at this time, as the resulting reserve margin of 17% in 2005-06 is adequate to ensure reliability and is undoubtedly more cost effective than building Hines 3.

**STAFF:** No position at this time.

**ISSUE 5:** Are there any conservation measures taken by or reasonably available to Florida Power Corporation which might mitigate the need for the proposed power plant?

**POSITIONS**

**FPC:** No. The Company has attempted to avoid or defer constructing the unit by considering and pursuing all demand-side options reasonably available to it, but the Company has nonetheless concluded that it cannot avoid or defer its need to build the unit. (Crisp)

**PACE:** No position.

**STAFF:** No position at this time.

**ISSUE 6:** Has Florida Power Corporation adequately ensured the availability of fuel commodity and transportation to serve Hines Unit 3?

**POSITIONS**

**FPC:** Yes. Hines 3 will have the ability to obtain natural gas from two interstate gas pipelines, and will also be constructed so that distillate oil can be used as back-up fuel. (P. Murphy, J. Murphy)

**PACE:** No. Ensuring the availability of fuel transportation and fuel is best done through firm contracts, which FPC does not have in place for Hines 3. FPC itself has stated that it should not contract with bidders who do not have firm gas transportation contracts; FPC should be held to its own standard regarding fuel transportation.

**STAFF:** No position at this time.

**ISSUE 7:** Based on the resolution of the foregoing issues, should the Commission grant Florida Power Corporation's petition to determine the need for the proposed Hines Unit 3?

**POSITIONS**

**FPC:** Yes. For the foregoing reasons, as more fully developed in the testimony and exhibits filed by FPC in this proceeding, the Commission should grant FPC's petition for a determination of need for the proposed Hines Unit 3. (Crisp, Roeder, J. Murphy, P. Murphy, White, Hunter)

**PACE:** No.

**STAFF:** No position at this time.

**ISSUE 8: Should this docket be closed?**

**POSITIONS**

**FPC:** Yes, following the issuance of an affirmative determination of need for Hines Unit 3.

**PACE:** Yes.

**STAFF:** No position at this time.

**X. EXHIBIT LIST**

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
<u>Direct</u>			
John B. Crisp	FPC	JBC-1	FPC's Need Study for Hines 3 (with attachments), a composite exhibit
John B. Crisp	FPC	JBC-2	Forecast of Winter Demand and Reserves With and Without Hines 3
John B. Crisp	FPC	JBC-3	Florida Power System Typical Load Duration Curve (2005-2006)
John B. Crisp	FPC	JBC-4	Levelized Busbar Cost Curves
Daniel J. Roeder	FPC	DRJ-1	Results of Detailed Economic Analysis
Daniel J. Roeder	FPC	DRJ-2	RFP Evaluation Process
Daniel J. Roeder	FPC	DRJ-3	Summary of Proposals
Daniel J. Roeder	FPC	DRJ-4	Threshold Requirements
Daniel J. Roeder	FPC	DRJ-5	Results of Threshold Screening

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Daniel J. Roeder	FPC	DRJ-6	Results of Economic Screening
Daniel J. Roeder	FPC	DRJ-7	Results of Optimization Analysis
Daniel J. Roeder	FPC	DRJ-8	Minimum Evaluation Requirements
Daniel J. Roeder	FPC	DRJ-9	Technical Criteria
Daniel J. Roeder	FPC	DRJ-10	Final Results of Technical Evaluation
John J. Murphy	FPC	JJM-1	Hines Energy Complex Map
John J. Murphy	FPC	JJM-2	Site Arrangement - Overall Plan
John J. Murphy	FPC	JJM-3	Site Arrangement - Power Block Area
John J. Murphy	FPC	JJM-4	Typical Combined-Cycle Schematic
John J. Murphy	FPC	JJM-5	Installed Cost Estimate for Hines 3
John J. Murphy	FPC	JJM-6	Project Schedule for Hines 3
Pamela R. Murphy	FPC	PRM-1	Natural Gas Forecast Compared to Other Industry Forecasts
Pamela R. Murphy	FPC	PRM-2	Base, High and Low Case Natural Gas Forecasts
Pamela R. Murphy	FPC	PRM-3	Fuel Price Forecast for Hines
Pamela R. Murphy	FPC	PRM-4	Gas Transportation Options

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

XI. PROPOSED STIPULATIONS

None.

XII. PENDING MOTIONS

None.

XIII. PENDING CONFIDENTIALITY MATTERS

None.

XIV. OTHER MATTERS

None.

XV. RULINGS

1. Opening statements, if any, shall not exceed ten minutes per party.

2. The Florida Partnership for Affordable Competitive Energy's Amended Petition for Intervention, filed November 15, 2002, is granted. I note that, pursuant to Rule 25-22.039, Florida Administrative Code, Intervenors take the case as they find it. Therefore, this intervention is granted subject to the limitation that PACE shall not expand the scope of the issues as established in section IX, above. The timelines established by Order No. PSC-02- FOF-EI shall not be modified, except as set forth in ruling 4, below. PACE shall not be allowed to file testimony or present witnesses at the final hearing.

3. Pursuant to Rule 28-106.211, Florida Administrative Code, I have broad discretion to issue any orders necessary to effectuate discovery, to prevent delay, and to promote a just determination of all aspects of the case. In the exercise of this discretion, I am allowing PACE limited discovery, as set forth in ruling 4, below.

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4. Discovery shall be strictly matched to the issues established in section IX, above. Taking into account the short time period remaining until the final hearing, the following schedule shall govern PACE's discovery:

- a. Interrogatories and Production of Documents shall be limited to those filed October 31, 2002.
- b. FPC shall have until Friday, November 22, 2002 to file all objections to this requested discovery.
- c. A ruling on any contested discovery issues shall be issued by Monday, November 25, 2002.
- d. FPC shall have until Wednesday, November 27, 2002, to produce all discovery ordered.
- e. PACE shall be allowed to take the deposition of Daniel J. Roeder, which shall be scheduled on or before Wednesday, November 27, 2002. No more than two hours shall be allowed for the deposition, which may be conducted by telephone.

5. PACE shall file its position statements on the issues set forth in section IX no later than 12:00 p.m. Monday, December 2, 2002.

6. Pursuant to Rule 28-106.211, in order to prevent delay and promote the just, speedy and inexpensive determination of this case, any Motion for Reconsideration of this Order must be filed by 12:00 p.m. on Tuesday, November 26, 2002.

Based on the foregoing, it is

ORDERED by Commissioner Braulio L. Baez, as Prehearing Officer, that this Prehearing Order shall govern the conduct of these proceedings as set forth above unless modified by the Commission. It is further

ORDERED that opening statements, if any, shall not exceed ten minutes per party. It is further

ORDERED that the Florida Partnership for Affordable Competitive Energy's Amended Petition for Intervention, filed November 15, 2002, is granted. This intervention is granted subject to the limitation that PACE shall not expand the scope of

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the issues as established in section IX, above. The timelines established by Order No. PSC-02-FOF-EI shall not be modified, except as specifically ordered. PACE shall not be allowed to file testimony or present witnesses at the final hearing. It is further

ORDERED that pursuant to Rule 28-106.211, Florida Administrative Code, to effectuate discovery, prevent delay, and promote a just determination of all aspects of the case, PACE is granted limited discovery, as specifically set forth in this Order. PACE's discovery shall be strictly matched to the issues established in section IX, above. It is further

ORDERED that taking into account the short time period remaining until the final hearing, the following schedule shall govern PACE's discovery:

- a. Interrogatories and Production of Documents shall be limited to those filed October 31, 2002.
- b. FPC shall have until Friday, November 22, 2002 to file all objections to this requested discovery.
- c. A ruling on any contested discovery issues shall be issued by Monday, November 25, 2002.
- d. FPC shall have until Wednesday, November 27, 2002, to produce all discovery ordered.
- e. PACE shall be allowed to take the deposition of Daniel J. Roeder, which shall be scheduled on or before Wednesday, November 27, 2002. No more than two hours shall be allowed for the deposition, which may be conducted by telephone.

It is further

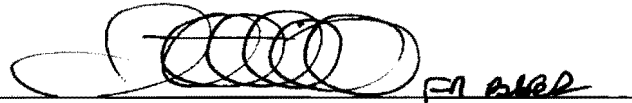
ORDERED that PACE shall file its position statements on the issues set forth in section IX no later than 12:00 p.m. Monday, December 2, 2002. It is further

ORDERED that any Motion for Reconsideration of this Order must be filed by 12:00 p.m. on Tuesday, November 26, 2002.



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By ORDER of Commissioner Braulio L. Baez, as Prehearing Officer, this 2nd day of December, 2002.



BRAULIO L. BAEZ  
Commissioner and Prehearing Officer

( S E A L )

LDH

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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.

Mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing.

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 25-22.0376, 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

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the case of a water or wastewater utility. A motion for reconsideration shall be filed with the Director, Division of the Commission Clerk and Administrative Services, 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.