BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Review of Florida Power Corporation's earnings, including effects of proposed acquisition of Florida Power Corporation by Carolina Power & Light.	DOCKET NO. 000824-EI ORDER NO. PSC-03-0850-PCO-EI ISSUED: July 22, 2003

The following Commissioners participated in the disposition of this matter:

LILA A. JABER, Chairman
J. TERRY DEASON
BRAULIO L. BAEZ
RUDOLPH "RUDY" BRADLEY
CHARLES M. DAVIDSON

ORDER DENYING MOTION FOR RECONSIDERATION OF ORDER NO. PSC-03-0687-PCO-EI, GRANTING MOTION IN LIMINE, AND DENYING MOTION FOR DISCOVERY WITHOUT PREJUDICE

BY THE COMMISSION:

BACKGROUND

The Commission opened Docket No. 000824-EI on July 7, 2000, to review the earnings of Florida Power Corporation (FPC), now known as Progress Energy Florida, Inc. (PEFI), and the effects of the acquisition of FPC by Carolina Power & Light Company. A hearing was scheduled to begin on March 20, 2002. On that date, however, the parties filed a Joint Motion To Postpone Scheduled Hearings to afford the parties the opportunity to finalize the terms of a settlement stipulation. The motion was granted by Order No. PSC-02-0411-PCO-EI, issued March 26, 2002, and by Order No. PSC-02-0412-PCO-EI, issued March 26, 2002, we suspended the hearing schedule. On March 27, 2002, FPC filed a Joint Motion for Approval of Stipulation and Settlement and Further Postponement of Hearings and a Stipulation and Settlement. We approved the stipulation and settlement agreement (Settlement) in Order No. PSC-02-0655-AS-EI, issued May 14, 2002. Among other things, the Settlement required PEFI to make refunds to customers if its revenues should exceed certain thresholds during the years 2002, 2003, 2004, or 2005. For

the period ended December 31, 2002, PEFI calculated a refund amount of $4,954,413, excluding interest.

On February 24, 2003, the Office of Public Counsel (OPC), Florida Industrial Power Users Group, Florida Retail Federation, Buddy Hansen/Sugarmill Woods Civic Association (Sugarmill Woods); and Publix Super Markets, Inc. (Movants) filed a Motion To Enforce Settlement Agreement. The Movants contend that PEFI's refund calculation made three adjustments that are inappropriate and not contemplated by the Settlement. On March 7, 2003, PEFI filed both a response in Opposition to the Motion To Enforce Settlement Agreement and a Request for Oral Argument and, in the Alternative, for an Evidentiary Hearing. Attached to PEFI's response was an affidavit from Mr. Javier Portuondo, Manager of Regulatory Services Florida for Progress Energy Service Company, LLC, which discussed matters in support of PEFI's position with regard to the refund.

Staff's recommendation on the Motion to Enforce Settlement Agreement was filed May 8, 2003, for consideration at the May 20, 2003, Agenda Conference. On May 16, 2003, OPC filed a Motion in Limine and Motion to Strike with respect to certain matters raised in PEFI's March 7 response. On that same date, by Order No. PSC-03-0605-PCO-EI, the Florida Attorney General was granted intervenor status in this docket. On May 19, 2003, PEFI filed a Response in Opposition to Motion in Limine and Motion to Strike.

We deferred our decision on the refund issue from the May 20, 2003, Agenda Conference to permit oral argument on the Motion in Limine and Motion to Strike at a June 30, 2003, Special Agenda Conference. We noted that any other pending procedural matters would also be addressed and decided at the June 30 Special Agenda. Our decision on the Motion to Enforce Settlement Agreement was scheduled to be made at a July 9, 2003, Special Agenda Conference.

By Order No. PSC-03-0659-PCO-EI, issued May 29, 2003, PEFI was required to respond to OPC's Second Set of Interrogatories and Third Set of Requests for Production of Documents by June 11, 2003. The Order also requires that the parties confer to reschedule the depositions of five PEFI employees, originally scheduled for June 4, 2003, for a mutually agreeable time between June 11 and June 20, 2003.

On May 29, 2003, PEFI filed a Motion for Protective Order to Limit the Scope of Discovery. On May 30, 2003, PEFI filed a Motion for Protective Order Against the Taking of Depositions of Gary Roberts and H. William Habermeyer, Jr. On June 4, 2003, a joint response to both PEFI Motions was filed by OPC and the Florida Attorney General. By Order No. PSC-03-0687-PCO-EI, issued June 9, 2003, the Prehearing Officer granted PEFI's Motion for Protective Order to Limit the Scope of Discovery. Specifically, the Order provided that the discovery sought by OPC shall be limited in scope to investigating whether a prohibited communication may have taken place, as of November 26, 2002, which is 90 days prior to the filing of the Motion to Enforce Settlement Agreement. The Motion for Protective Order Against the Taking of Depositions was granted with respect to the deposition of Mr. Roberts, and denied with respect to the deposition of Mr. Habermeyer.

On June 13, 2003, PEFI filed a notice of withdrawal of Javier Portuondo's affidavit that was attached to its response to the Motion to Enforce Settlement Agreement.

On June 16, 2003, OPC and the Florida Attorney General filed a Joint Motion for Reconsideration of Order No. PSC-03-0687-PCO-EI. On June 19, 2003, PEFI filed a response in opposition to the joint motion for reconsideration of Order No. PSC-03-0689-PCO-EI. Our staff filed a recommendation on the Motion for Reconsideration and PEFI's response on June 23, 2003, for our consideration at the June 30, 2003, Special Agenda Conference.

On June 26, 2003, the Attorney General filed a Motion for Discovery and Motion for Oral Argument as to all matters pending before the Commission at the June 30, 2003, Special Agenda Conference.

On June 27, 2003, counsel for Sugarmill Woods filed a Motion for the Commission to "refile 'real' staff recommendation" and for the recusal of Commissioners Bradley and Davidson. On June 30, 2003, by Orders No. PSC-03-0771-PCO-EI and PSC-03-0772-PCO-EI, Commissioners Davidson and Bradley respectively denied Sugarmill's motion and declined to recuse themselves from Docket No. 000824-EI. Sugarmill Wood's Motion also requested that the remaining three Commissioners reconsider Orders No. PSC-03-0771-PCO-EI and PSC-03-0772-PCO-EI. However, at the June 30, 2003, Special Agenda Conference, counsel for Sugarmill Woods withdrew both the request

to refile the real staff recommendation and the request that the remaining three Commissioners reconsider Orders No. PSC-03-0771-PCO-EI and PSC-03-0772-PCO-EI.

This Order addresses the Joint Motion for Reconsideration of Order No. PSC-03-0657-PCO-EI, Motion for Oral Argument, the Motion to Strike and PEFI's Notice of Withdrawal, the Motion in Limine, and the Motion for Discovery. We are vested with jurisdiction over this matter pursuant to Sections 350.01(5), 366.04, 366.05, and 366.06, Florida Statutes.

MOTION FOR ORAL ARGUMENT

On June 26, 2003, the Attorney General filed a Motion for Oral Argument as to all matters pending before the Commission at the June 30, 2003, Special Agenda Conference. At the June 30, 2003, Special Agenda Conference, we voted to permit oral argument by the parties.

MOTION FOR RECONSIDERATION

Movants' Position

The Movants state that they are aware of our practice of limiting review of Prehearing Officers' orders to a clear mistake of law or fact. However, they argue that the disputes here are not garden variety discovery disputes, and that important questions have arisen about the fundamental fairness of the process leading to the filing of the May 8, 2003, staff recommendation, including the influence PEFI may have had on that process. The Movants contend that recently developed facts raise questions as to whether there was a technical violation of law by PEFI, as well as the fundamental fairness of the process used to develop recommendations and decide cases. Although the Movants believe their Motion for Reconsideration meets the traditional standard applied by the Commission for reconsideration, they believe that the "unique importance of resolving issues concerning the fundamental fairness of processes used at the Commission warrants a *de novo* review of the Prehearing Officer's order."

By limiting discovery only to documents and matters occurring since November 22, 2003, the Movants contend that the Prehearing Officer precluded a full inquiry into claims made by PEFI extrinsic to the agreement. As long as PEFI claims that we should consider

matters not contained in the Settlement, the Movants contend that the Commission must allow full discovery related to those claims, including an inspection of their internal documents related to the agreement.

With respect to the allegations of whether an *ex parte* communication may have taken place, the Movants note that Section 350.042, Florida Statutes, requires that no individual shall discuss *ex parte* with a Commissioner the merits of any issue that he or she knows will be filed with the Commission within 90 days. The Movants contend that the matter of refunds for the years 2002 through 2005 has been pending since we approved the Settlement, and that even if we closed this docket after approving the Settlement, the matter of the refund still remained. The Movants contend that the Prehearing Officer's ruling implies that it would be proper for PEFI to engage in *ex parte* communications with Commissioners between May 14, 2002 (the date of the order approving the Settlement) and November 26, 2002, concerning the amount of refund owed for 2002. This reading of the *ex parte* statute does not make sense in this case, particularly since PEFI began advocating its position to parties and staff by no later than July of 2002.

With regard to granting the protective order with respect to the deposition of Mr. Roberts, the Movants note that Mr. Roberts works with Paul Lewis, who in turn is the person "who boasted to staff that two Commissioners were favorably disposed toward Progress Energy's position on the amount of refund due customers." Order No. PSC-03-0687-PCO-EI states that the "better course of obtaining information about Mr. Lewis' statements is by deposing Mr. Lewis himself." However, the Movants contend that they would thereby have to take everything said by Mr. Lewis at face value, and would be "denied the opportunity to investigate his credibility or check with others for inconsistencies about his statements." The Movants contend that the credibility of statements by a witness is always an issue, and that they see no basis for the Prehearing Officer's order precluding such inquiries.

In conclusion, the Movants contend that it is as much in our interest as it is the parties' interest to resolve the refund issue and the issue of any alleged *ex parte* communication, and that these matters can not be resolved if we "tie [their] hands behind [their] backs during the investigation."

PEFI's Position

In its response, PEFI states that the Movants have asked that the full Commission reconsider and overturn Order No. PSC-03-0687-PCO-EI, which limited the scope of the Movants' discovery to the question the Movants themselves initially raised, namely, whether there have been any improper *ex parte* communications concerning the resolution of the pending Motion to Enforce Settlement Agreement. In seeking reconsideration, PEFI believes that the Movants have raised nothing new and have not met their burden on reconsideration to demonstrate that the Prehearing Officer overlooked some critical legal or factual point. To the contrary, PEFI contends that the Joint Motion for Reconsideration simply reiterates arguments already considered and appropriately rejected by the Prehearing Officer. Moreover, PEFI contends that the Prehearing Officer's Order correctly applied the established law and principles governing the proper scope of discovery, and that the limitations imposed on discovery were carefully calculated to permit the Movants to proceed with the inquiry permitted by our deferral of the pending Motion to Enforce Settlement Agreement at the May 20, 2003, Agenda Conference.

PEFI also disagrees with the Movants' assertion that we should review Order No. PSC-03-0687-PCO-EI on a *de novo* basis, in view of the Movants' concerns about the fairness of the process associated with the issuance of our staff's recommendation in this docket regarding the refund issue. However, PEFI contends that the Movants fail to cite any legal authority for their position. PEFI cites to several prior Commission orders, which PEFI believes in fact demonstrate that we have repeatedly declined to review rulings of our prehearing officers *de novo*, even when presented with purely legal or jurisdictional challenges for which we have ultimate institutional responsibility.

Decision to Deny Motion for Reconsideration

As a preliminary matter, the Movants argue that the correct standard of review in this type of motion for reconsideration is not whether the Prehearing Officer made a clear mistake of fact or law, but is instead some variant of *de novo* review by the entire Commission. However, this is not the standard in granting

reconsideration. Were the Movants' argument to be accepted, any party, for any reason, could seek reconsideration to the full Commission of any decision a Prehearing Officer made, rendering the Prehearing Officer's Order superfluous at best. In fact, both PEFI and the Movants cite to Order No. PSC-02-1754-FOF-EI, issued December 12, 2002, in Docket No. 020953-EI, in which we rejected a *de novo* standard for reconsideration of a Prehearing Officer's decision to grant intervention, and denied reconsideration on the basis that the Prehearing Officer had already considered and rejected the arguments on reconsideration. The Movants, however, fail to justify why a *de novo* standard would be appropriate to apply in this instance, other than to say that the disputes here are not garden variety discovery disputes, that important questions have arisen about the fundamental fairness of staff's May 8, 2003, recommendation, and what influence, if any, PEFI may have had on the recommendation process. We are unpersuaded by this argument.

We have consistently held that the standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that was overlooked or that the Prehearing Officer failed to consider in rendering his Order. See Diamond Cab Co. v. King, 146 So. 2d 889 (Fla. 1962); and Pingree v. Quaintance, 394 So. 2d 161 (Fla. 1st DCA 1981). In a motion for reconsideration, it is not appropriate to reargue matters that have already been considered. Sherwood v. State, 111 So. 2d 96 (Fla. 3rd DCA 1959); citing State ex. rel. Jaytex Realty Co. v. Green, 105 So. 2d 817 (Fla. 1st DCA 1958). A motion for reconsideration should not be granted "based upon an arbitrary feeling that a mistake may have been made, but should be based upon specific factual matters set forth in the record and susceptible to review." Stewart Bonded Warehouse, Inc. v. Bevis, 294 So. 2d 315, 317 (Fla. 1974).

We find that the Joint Motion for Reconsideration does not meet this standard. The Movants have not demonstrated any point of fact or law which the Prehearing Officer overlooked or failed to consider in reaching his decision to grant the Motion for Protective Order to Limit the Scope of Discovery, and granting in part and denying in part the Motion for Protective Order Against the Taking of Depositions of Messrs. Roberts and Habermeyer. Further, it has not been demonstrated that, had additional facts been considered, the decision clearly would have been different.

The Prehearing Officer had the facts and law before him, and Order PSC-03-0687-EI was a reasonable exercise of the Prehearing officer's discretion. No error of fact or law has been demonstrated, and the purpose of reconsideration is not reargument or disagreement with the Prehearing Officer's interpretation or application of the law to the facts. The Joint Motion for Reconsideration of Order No. PSC-03-0687-PCO-EI is therefore denied. Our decision herein is consistent with prior Commission decisions. See Order No. PSC-02-1754-FOF-EI, issued December 12, 2002, in Docket No. 020953-EI; and Order No. PSC-01-0029-FOF-EI, issued January 5, 2001, in Docket No. 001064-EI.

MOTION TO STRIKE

On June 13, 2003, PEFI filed a Notice of Withdrawal of Affidavit and Suggestion of Mootness. We found it unnecessary to rule on the Motion to Strike, because PEFI's withdrawal of Mr. Portuondo's affidavit renders the Motion to Strike moot.

MOTION IN LIMINE

Movants' Position

The Movants' Motion to Enforce Settlement Agreement urges the application of the parole evidence rule, which holds that the terms of a contract speak for themselves; that absent an ambiguity in the terms, they may not be explained by extrinsic evidence or by reference to any other matter. In other words, the Movants believe that the refund should be calculated based only upon the information contained in the Settlement. The Movants contend that PEFI's March 7, 2003, Response in Opposition to the Motion To Enforce Settlement Agreement can not rely on matters lying outside of the Settlement in order to change its obligations or to make adjustments to the provisions contained in the Settlement.

The Motion in Limine and Motion to Strike request that we enter an order prohibiting PEFI from commenting on or arguing at the July 9, 2003, Special Agenda Conference, any facts or matters not explicitly set forth in the Settlement or Order No. PSC-02-0655-AS-EI. Since we have not conducted an evidentiary hearing, the Movants contend that there is no evidence other than the Settlement itself and the Order approving the Settlement. We should therefore prohibit PEFI from commenting on or arguing at the

Agenda Conference any facts or matters not explicitly set forth in the Agreement or the Order.

The Motion also notes that Attorney General Charles J. Crist, who was granted intervention in this docket by Order No. PSC-03-0605-PCO-EI, issued May 16, 2003, agrees with and supports the position of the Movants.

PEFI's Position

PEFI states that the Movants base their Motion in Limine on the same grounds as their Motion to Enforce Settlement Agreement, namely, that the Settlement clearly and unambiguously calls for a greater refund than the one PEFI has provided. PEFI believes that we can not grant the requested relief without deciding the merits of the underlying dispute, because one of the issues we will consider on the merits of the underlying dispute is whether the Settlement is ambiguous. This means that we can not grant the Motion in Limine without disposing of the underlying controversy, namely, whether or not the Settlement is ambiguous. PEFI argues that it demonstrated at length in its response in Opposition to the Motion to Enforce Settlement Agreement that parole evidence can and should be considered whenever a contract is ambiguous and calls for interpretation. See, e.g., Miller v. Kase, 789 So. 2d 1095, 1097-98 (4th DCA 2001) ("in the absence of clear and unambiguous language, the court must engage in judicial interpretation" and may accept parol evidence); Berry v. Teves, 752 So. 2d 112, 114 (2nd DCA 2000) (when a contract is ambiguous, "parole evidence is admissible to determine the parties intent"). Further, PEFI contends that motions in limine can not be used in lieu of motions for summary judgment to force a determination of the merits of a dispute. Buy-Low Save Centers, Inc. v. Glinert, 547 So. 2d 1283 (Fla. 4th DCA 1989) ("use of a motion in limine is improper when it is used to do more than merely exclude irrelevant or improperly prejudicial evidence"); Brock v. G.D. Searle & Cow, 530 So. 2d 428, 431 (Fla. 1st DCA 1988) ("trial courts should not allow motions in limine to be used as unnoticed motions for partial summary judgment or motions to dismiss").

On these grounds, PEFI requests that we deny the Motion in Limine. As mentioned above, PEFI has withdrawn the affidavit of Javier Portuondo that was the subject of the Motion to Strike.

Decision Granting the Motion in Limine

The purpose of a motion in limine is to exclude irrelevant and immaterial matters or to exclude evidence when its probative value is outweighed by the danger of unfair prejudice. Devoe v. Western Auto Supply Co., 537 So. 2d 188 (Fla. 2d DCA 1989), cited in Order No. PSC-98-1089-PCO-WS, issued August 11, 1998, in Docket No. 970657-WS.[1] A motion in limine is designed to prevent the introduction of evidence, the mere mention of which at trial would be prejudicial. Dailey v. Multicon Development, Inc., 417 So. 2d 1106 (Fla. 4th DCA 1982). A motion in limine

> . . . seeks a protective order prohibiting the opposing party, counsel, and witnesses from offering offending evidence at trial, or even mentioning it at trial, without first having its admissibility determined outside the presence of the jury. The motion affords an opportunity to the court to rule on the admissibility of evidence in advance, and prevents encumbering the record with immaterial or prejudicial matter . . ..

55 Fla Jur 2d, Trial § 71 (2003).

A trial court has discretion in determining whether to rule on a motion in limine prior to trial or to rule on the admissibility of the evidence when it is actually offered. Order No. PSC-98-1089-PCO-WS, citing Erhardt, Florida Evidence, § 15 (2d ed. 1984).

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[1] The Commission has addressed motions in limine under various circumstances in several prior cases. See, e.g., Order No. PSC-02-1282-PCO-EI, issued September 19, 2002, in Docket 020262-EI (testimony of witnesses at hearing was excluded as prejudicial and inconvenient to other parties, when prefiled testimony for those witnesses had not been filed); Order No. PSC-02-0876-PCO-TP, issued June 28, 2002, in Docket No. 020129-TP (denied motion in limine to strike legal arguments made in prefiled testimony, reasoning that the Commission has the discretion of allowing such testimony to be presented and simply giving it the weight that it is due in its deliberations); Order No. PSC-00-1549-PCO-WS, issued August 25, 2000, in Docket No. 990080-WS (motion in limine granted to the extent that the issues in dispute in the motion were those raised in the protest).

While it is true that motions in limine are appropriate in certain circumstances in administrative proceedings, it is important to ensure that they are used to enforce the correct evidentiary standards. Administrative proceedings are not subject to the same strict evidentiary standards used in trial courts. Section 120.569(2)(g), Florida Statutes, states that in administrative hearings to determine the substantial interests of the parties:

> Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, but all other evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs shall be admissible, whether or not such evidence would be admissible in the courts of Florida. Any part of the evidence may be received in written form, and all testimony of parties and witnesses shall be made under oath.

This evidentiary standard is fully consistent with our longstanding practice of including evidence for consideration in our decision-making, rather than excluding it. Also, the concern that improperly allowed evidence will prejudice a trial jury does not necessarily apply to administrative matters heard before us in light of our technical expertise in those matters. We have the judgment to weigh the evidence presented, and accord it the weight that it is due, if any. See Order No. PSC-02-0876-PCO-TP, supra.

Furthermore, consideration of the facts and circumstances surrounding the negotiation and approval of this settlement agreement is consistent with sound contract law principles. In interpreting the language of this settlement it is appropriate to consider the parties' intent when they executed the agreement, as well as their actions at the time of execution and thereafter.

It is axiomatic that the primary task in interpreting a contract is determining the intent of the parties in entering into the agreement. Florida East Coast Railway Co. v. CSX Transportation, Inc., 43 F.3d 1125 (7th Cir. 1994). The determination of the parties' intent need not occur in a vacuum. Even if the language of the contract does not appear ambiguous on its face, "it cannot be properly understood if it is read without attention to the circumstances under which it was written." Id. at 1128. As the Florida Supreme Court noted in St. Lucie County Bank

& Trust Co. v. Aylin, 114 So. 438 (Fla. 1927), it is the duty of the court,

> as near as may be, to place itself in the situation of the parties, and from a consideration of the surrounding circumstances, the occasion, and apparent object of the parties, to determine the meaning and intent of the language employed.

See also, Triple E Development Co. v. Floridagold Citrus Company, 51 So. 2d 435 (Fla. 1951).

With that being said, we find it appropriate to consider what information this Commission utilized in deciding whether or not to approve the Settlement which was proposed by the parties to this matter. In making that decision, we relied upon the Settlement itself, and the discussion between this Commission, the parties and our staff, which took place at the April 23, 2002, Agenda Conference, when we voted to approve the Settlement subject to certain clarifications. In light of these circumstances, we find it is reasonable and appropriate to grant the Motion in Limine, specifically allowing for our consideration of the Settlement, Order No. PSC-02-0655-AS-EI, and the transcript from the April 23, 2002, Agenda Conference.

MOTION FOR DISCOVERY

In light of our decision herein to limit our review at the July 9, 2003, Special Agenda Conference to the Settlement, Order No. PSC-02-0655-AS-EI, and the transcript from the April 23, 2002, Agenda Conference, we find that the Attorney General's motion for discovery is moot at this juncture. The Motion for Discovery is accordingly denied without prejudice.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Joint Motion for Reconsideration of Order No. PSC-03-0687-PCO-EI is denied. It is further

ORDERED that the Motion in Limine is granted, specifically allowing for our consideration at the July 9, 2003, Special Agenda Conference, of the Settlement, Order No. PSC-02-0655-AS-EI, and the transcript from the April 23, 2002, Agenda Conference.

ORDERED that the Motion for Discovery is denied without prejudice. It is further

ORDERED that this docket shall remain open pending final disposition.

By ORDER of the Florida Public Service Commission this 22nd Day of July, 2003.

BLANCA S. BAYÓ, Director
Division of the Commission Clerk
and Administrative Services

(S E A L)

JSB

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 the Commission's final action in this matter denying the motion for reconsideration may request 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 by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the remainder of 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; or (2) 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 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.