

MEMORANDUM

OCTOBER 29, 1997

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FPSC - Records/Reporting

TO: DIVISION OF RECORDS AND REPORTING

FROM: DIVISION OF LEGAL SERVICES (KEATING, ELIAS) *WCK*

RE: DOCKET NO. 961184-EQ - PETITION FOR APPROVAL OF EARLY
TERMINATION AMENDMENT TO NEGOTIATED QUALIFYING FACILITY
CONTRACT WITH ORLANDO COGEN LIMITED, LTD. BY FLORIDA
POWER CORPORATION

PSC-97-1372-PH-EQ

Attached is a PREHEARING ORDER be issued in the above
referenced docket. (Number of pages in order - 18)

WCK/js

Attachment

cc: Division of Electric and Gas (Harlow, Ballinger, Colson,
Draper, Dudley, Tew, Wheeler)
Division of Auditing and Financial Analysis (Maurey, McNulty,
Noriega, Stallcup)

I:961184po.wck

Please issue today (10/29)
& fax to parties ASAP.
Thank you!

faxed - 3/2
mailed - 2

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition for approval of early termination amendment to negotiated qualifying facility contract with Orlando Cogen Limited, Ltd., by Florida Power Corporation.

DOCKET NO. 961184-EQ
ORDER NO. PSC-97-1372-PHO-EQ
ISSUED: October 29, 1997

Pursuant to Notice, a Prehearing Conference was held on Monday, October 20, 1997, in Tallahassee, Florida, before Commissioner Susan F. Clark, as Prehearing Officer.

APPEARANCES:

JAMES A. MCGEE, Esquire, and JEFFERY FROESCHLE, Esquire,
Florida Power Corporation, Post Office Box 14042, St.
Petersburg, Florida 33733
On behalf of Florida Power Corporation.

MATTHEW M. CHILDS, Esquire, Steel Hector & Davis, 215 South
Monroe Street, Suite 601, Tallahassee, Florida 32301
On behalf of Orlando Cogen Limited, Ltd.

JOHN ROGER HOWE, Esquire, Office of Public Counsel, c/o The
Florida Legislature, 111 West Madison Street, Room 812,
Tallahassee, Florida 32399
On behalf of the Citizens of the State of Florida.

WM. COCHRAN KEATING, Esquire, Florida Public Service
Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida
32399-0850
On behalf of the Commission Staff.

PREHEARING ORDER

I. CASE BACKGROUND

On October 1, 1996, Florida Power Corporation (FPC) filed a petition for approval of an early termination amendment to its negotiated contract with Orlando Cogen Limited, Ltd. (OCL), a qualifying facility. By Proposed Agency Action Order No. PSC-97-0086-FOF-EQ, issued January 27, 1997, the Commission denied FPC's petition. On February 17, 1997, FPC timely filed its Petition on Proposed Agency Action. Pursuant to this petition, this matter was set for hearing before the Commission under Sections 120.569 and

DOCUMENT NUMBER-DATE

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FPC-RECORDS/REPORTING

120.57(1), Florida Statutes. The Commission granted intervenor status to OCL and acknowledged the Office of Public Counsel (OPC) as an intervenor. The hearing is scheduled for October 30 and 31, 1997.

II. 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(2), 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.

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 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.
- 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.

Post-hearing procedures

Rule 25-22.056(3), Florida Administrative Code, requires each party to 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. The rule also provides that if a party fails to file a post-hearing statement in conformance with the rule, 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 60 pages, and shall be filed at the same time. The prehearing officer may modify the page limit for good cause

shown. Please see Rule 25-22.056, Florida Administrative Code, for other requirements pertaining to post-hearing filings.

III. 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, subject to appropriate objection, 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.

IV. ORDER OF WITNESSES

<u>Witness</u>	<u>Appearing For</u>	<u>Issue #</u>
<u>Direct</u>		
Lee G. Schuster	FPC	1 - 6
Hugh Larkin, Jr.	OPC	1 - 6
Paul Stallcup	Staff	1

<u>Witness</u>	<u>Appearing For</u>	<u>Issue #</u>
<u>Rebuttal</u>		
Lee G. Schuster	FPC	1

V. BASIC POSITIONS

FPC: Approval of the early termination amendment between OCL and FPC will provide customers over \$470 million in savings, while helping to alleviate the intergenerational inequity that resulted from approval of the original negotiated contract, which shifted substantial costs from current customers to future customers.

OCL: The Commission should approve the early termination amendment to the negotiated qualifying facility contract with Orlando Cogen Limited, L.P. by Florida Power Corporation. Electric utilities are, by Commission rule and policy, required to negotiate with qualifying facilities for the purchase of firm electrical energy and capacity to meet the utilities' need for capacity and energy and to make such purchases at prices that are cost effective. Commission Rule 25-17.082, et. seq., Fla. Admin. Code, not only encourages negotiated contracts with qualifying facilities but also sets forth the standards for approval by the Commission of modifications to such contracts, Commission Rule 25-17.0836, Fla. Admin. Code. Florida Power Corporation has presented evaluations comparing the modification to the existing contract and to its avoided cost and demonstrated the cost effectiveness of the modification. The alternative evaluations to be offered by the Office of Public Counsel and the Commission Staff appear to be inconsistent with the Commission's rules and would produce arbitrary and capricious results.

OPC: The petition in this docket is an attempt by FPC to have its customers pay higher rates under traditional regulation so that the company will be in a better competitive position in the unregulated future. FPC

believes its cost of electricity from purchased power agreements will be above market prices in a competitive environment. Buying out the OCL contract (as well as others) will improve FPC's ability to compete. If FPC were to fund the buyout, FPC would receive the future benefit of enhanced competitiveness in a market where retail customers have choices.

FPC, however, would rather use its customers' money to reach this end. This leads to the paradoxical argument offered by FPC. Focusing on one source of high-cost electricity allows FPC to ignore other resources which would be below market price under competition. Even under this unrealistically narrow scenario, the company can only show customer "benefits" (using FPC's definition of the term) in the form of questionable future savings which will purportedly flow to customers 17 to 26 years from now. But if customers can choose their electric company in the future, they will pay the market price (to FPC or some other provider) regardless of any amounts paid, or not paid, to FPC under regulation. Thus, if retail rates are expected to be deregulated, customers cannot receive any benefits from funding the buyout. If retail rates are to remain regulated, there is no reason for a buyout in the first place. Since the OCL costs are borne solely by FPC's customers, FPC cannot be harmed from denial of its petition, but the customers will suffer immediate harm if forced to pay higher rates today to put FPC in a better competitive position tomorrow.

Even if the premise of FPC's case is accepted, the company's analysis fails to demonstrate a realistic expectation of benefits for any identifiable customers. Current customers who leave FPC's system over the next 22 years cannot recoup anything. FPC is not guaranteeing any benefits even for persons (if there are any) who are customers today and will remain on FPC's system through 2023. The likelihood of any benefits being received by anyone other than FPC, itself, under the company's proposal is extremely remote and entirely speculative.

If FPC's net-present-value analysis is meaningful at all, it shows that the company should be indifferent to funding the buyout (a much lower, net-of-tax cost for the company) as long as FPC is permitted to recover an equal

amount, in net-present-value terms, in the future based on its own projections. It is certainly more likely that FPC will still be selling electricity in Florida 26 years from now than it is that a significant number of current customers will still be buying their electricity from the company. Although the OCL contract amendment is contingent upon Commission approval of the amendment, it is not contingent upon Commission acceptance of FPC's proposed method of cost recovery.

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.

VI. ISSUES AND POSITIONS

Issue 1: Are the economic risks associated with projected ratepayer savings resulting from the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd., reasonable?

Positions

FPC: Yes. FPC has performed balanced sensitivity studies to evaluate the risk of this buyout. These studies have all shown that the ratepayer benefits from this buyout. It is important that sensitivity studies be performed in a balanced manner, i.e., if studies are performed using a high fuel forecast then studies should also be performed using a low fuel forecast. A balanced approach will provide a complete evaluation from which a sound decision should be based.

OCL: Yes. Moreover, the analysis performed by FPC is consistent with Commission rules.

OPC: No.

Staff: Staff witness Stallcup believes that the proposed buy out contains a significant degree of risk which could financially harm ratepayers if the buy out is approved.

Witness Stallcup believes, however, that this risk should be balanced against other factors that are beyond the scope of his testimony.

Issue 2: Are the intergenerational inequities among Florida Power Corporation's ratepayers, if any, associated with the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd., reasonable?

Positions

FPC: The Commission has never attempted to objectively define intergenerational fairness. Moreover, to FPC's knowledge, the Commission has never rejected a proposal that provides positive net present value savings over the appropriate planning horizon because of intergenerational considerations. Instead, the Commission has approved projects for cost recovery that range from "front-end loading" significant costs on current customers under traditional revenue requirements ratemaking to "back-end loading" a disproportionate share of costs on future customers through value of deferral ratemaking, so long as the projects provided positive net present value savings.

There is no intergenerational inequity associated with the early termination amendment. To the contrary, the amendment helps correct the intergenerational inequity that resulted from approval of the original negotiated contract, which shifted significant costs from current customers to future customers. Even with the costs of the contract buyout, customers will pay less through 2001 (when the buyout costs have been completely recovered) than if the avoided unit had been built.

OCL: Yes. Moreover, OCL is not aware of there being a defined standard by this Commission for intergenerational fairness.

OPC: There are intergenerational inequities, and they are not reasonable. The issue of intergenerational fairness is subsumed within statutory requirements. For example, the issue of prudence of costs implicitly considers the

question: Prudent to whom, and when? Section 366.041(1) requires the Commission to consider "the cost of providing such service and the value of such service to the public." This also implicates issues of whether the value of service might be different to similar groups of customers at different times. Section 366.06(1) requires the Commission to "consider the cost of providing service to the class, as well as the rate history, value of service, and experience of the public utility; the consumption and load characteristics of the various classes of customers, and public acceptance of rate structures." Inquiry into public acceptance of rates necessarily implicates considerations of intergenerational inequities.

Staff: No position at this time.

Issue 3: Will the proposed buyout of the OCL contract provide net benefits sooner than 22 years into the future.

Positions

FPC: This statement represents one means of quantifying the intergenerational issue. It is a function of the definition of net benefits as well as the assumptions used in the cost/benefit analysis of the buyout. A number of cost benefit analyses have been created by FPC and Staff, each of which have an associated point when net benefits are achieved. FPC believes that this issue is subsumed by Issue #2 regarding intergenerational inequities and its position on this issue is as stated in FPC's position on Issue #2.

OCL: Yes.

OPC: No.

Staff: No. The year in which net benefits, defined as the cumulative present value of the savings exceeding the cumulative present value of the costs, occurs is dependent on the assumptions made in the net present value calculation. Florida Power Corporation's most current calculation does not project net benefits prior to the year 2019. In addition, under the current

structure of the buyout, there are no savings prior to the year 2014.

Issue 4: Should the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd., be approved for cost recovery pursuant to 25-17.0836, Florida Administrative Code?

Positions

FPC: Yes. The Amendment provides for the early termination of the power purchase agreement with OCL in 2013 instead of 2023, and will produce net savings for Florida Power's customers of \$470 million in cumulative payments or net present value savings of \$32.5 million.

OCL: Yes.

OPC: No.

Staff: No position at this time.

Issue 5: If approved, how should Florida Power Corporation recover the expenses associated with the Amendment to the Negotiated Contract between Florida Power Corporation and Orlando Cogen Limited, Ltd.?

Positions

FPC: The recovery of the buyout cost should be apportioned between the CCR and the fuel clause according to the established policy which preserves, as closely as possible, the ratio of cost recovery between the CCR and fuel clause that existed before the transaction. Such an allocation will result in approximately 77% of the buyout cost being recovered through the CCR and the remaining 23% of the buyout cost being recovered through the fuel clause.

OCL: No position at this time.

OPC: FPC should not be permitted to recover the buyout costs from its customers.

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Staff: No position at this time.

Issue 6: Should this docket be closed?

Positions

FPC: Yes.

OCL: No.

OPC: Yes.

Staff: Yes.

VII. EXHIBIT LIST

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
Schuster	FPC	<u> </u> (LGS - 1)	December 26, 1996, Staff Recommendation
		<u> </u> (LGS - 2)	FPC's Solicitation for Reverse Auction Bids
		<u> </u> (LGS - 3)	Excerpt from FPC's 1996 Ten-Year Site Plan, Supplemental Filing
		<u> </u> (LGS - 4)	Staff Sensitivity Analysis Cases
		<u> </u> (LGS - 5)	FPC's Response to Staff Questions dated November 22, 1996
		<u> </u> (LGS - 6)	FPC's Response to Staff Questions dated November 26, 1996
		<u> </u> (LGS - 8)	Corrected Calculation of Risk Adjusted Discount Rates

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(LGS - 9)</u>	Corrected Summary of Risk Analyses on Proposed OCL Contract Buyout
		<u>(LGS - 10)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout - Corrected DRI Base Case
		<u>(LGS - 11)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout - Corrected DRI Pessimistic Case
		<u>(LGS - 12)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout - Corrected DRI Optimistic Case
		<u>(LGS - 13)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout - Using Risk Adjusted Discount Rates and FPC Assumptions
		<u>(LGS - 14)</u>	Cost of Fossil-Fuel Receipts at Steam-Electric Plants
		<u>(LGS - 15)</u>	Quantity and Cost of Fossil-Fuel Receipts at Steam-Electric Utility Plants

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(LGS - 16)</u>	Cost Breakdown for Typical Combined Cycle Power Plant - 250 Megawatt Capacity Plant
		<u>(LGS - 17)</u>	Calculation of Risk Adjusted Discount Rates
		<u>(LGS - 18)</u>	Summary of Risk Analyses On Proposed OCL Contract Buyout - Example of Reasonable Application of Risky Cash Outflow Methodology
		<u>(LGS - 19)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout (DRI Base Case Assumptions) - Example of Reasonable Application of Risky Cash Outflow Methodology
		<u>(LGS - 20)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout (DRI Pessimistic Case Assumptions) - Example of Reasonable Application of Risky Cash Outflow Methodology

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(LGS - 21)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout (DRI Optimistic Case Assumptions) - Example of Reasonable Application of Risky Cash Outflow Methodology
		<u>(LGS - 22)</u>	Florida Power Corporation Savings to FPC Customers Due to OCL Contract Buyout (Using Risk Adjusted Discount Rates and FPC Assumptions) - Example of Reasonable Application of Risky Cash Outflow Methodology
		<u>(LGS - 23)</u>	Excerpt from <i>Essentials of Managerial Finance</i> concerning Risk-Adjusted Discount Rates
Larkin	OPC	<u>(-)</u>	Appendix I to Mr. Larkin's testimony: Qualifications of Hugh Larkin, Jr.
		<u>(HL - 1)</u>	Net Present Value Summary
Stallcup	Staff	<u>(PWS - 1)</u>	Comparison of 26-year Natural Gas Forecasts
		<u>(PWS - 2)</u>	DRI August 1997 25 Year Gas and Coal Price Forecasts

<u>Witness</u>	<u>Proffered By</u>	<u>I.D. No.</u>	<u>Description</u>
		<u>(PWS - 3)</u>	DRI August 1997 Public Utilities Structures Price Index 25 Year Growth Rates
		<u>(PWS - 4)</u>	Risk Adjusted Discount Rates - OCL Contract Buyout
		<u>(PWS - 5)</u>	Summary of Risk Analyses on Proposed OCL Contract Buyout

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

VIII. PROPOSED STIPULATIONS

There are no proposed stipulations at this time.

IX. PENDING MOTIONS

There are no pending motions at this time.

X. RULINGS

1. FPC's Motion for Informal Prehearing Schedule is moot.
2. Staff's Request for Protective Order as to Florida Power Corporation's First Set of Interrogatories Propounded to Staff was granted.
3. Staff's Motion for Protective Order as to Orlando Cogen Limited, Ltd.'s Notice of Taking Deposition Duces Tecum of Kenneth Dudley was granted. Staff's Motion for Protective Order as to Orlando Cogen Limited, Ltd.'s Notice of Taking Deposition Duces Tecum of Paul Stallcup was granted to the extent that information beyond the scope of Mr. Stallcup's prefiled testimony is sought.

4. OCL's Motion to Present Live Testimony with respect to OCL's Response to Order No. PSC-97-1009-PCO-EQ/Direct Testimony and Exhibits is denied. OCL may not present the live testimony of Commission Staff members Paul Stallcup and Kenneth Dudley as adverse witnesses at hearing.

On October 24, 1997, OCL filed its Proffer of Testimony Concerning Proposed Agency Action Order and Alternate Staff Recommendation. The proffered testimony addresses the following issues, which are not approved as issues in this hearing:

Issue: Whether the "sensitivities" performed in support of the Alternative Staff Recommendation are correct; are inconsistent with planning assumptions and methodologies or are appropriate.

Issue: Whether all assumptions from FPC's 1996 Ten Year Site Plan that were used to perform "sensitivities" by Staff in support of the Alternative Staff Recommendation were found to be suitable for planning purposes at the 12/2/96 Internal Affairs Conference whether each of the "sensitivities" developed by the Staff in support of the Alternative Recommendation are reasonable correctly performed and developed and demonstrate the impact of short-term changes in fuel price projections.

Issue: Whether the assumptions used in performing the "sensitivities" in support of the Alternative Recommendation are appropriate and appropriately characterized in the Alternative Staff Recommendation.

Issue: Whether the "scenarios of higher fuel prices and higher rates of inflation [are] consistent with historical events over recent history" and whether these scenarios "represent reasonable scenarios for the future" are correct assertions and whether inconsistent with the planning approach approved by the Commission.

5. OPC's Motion for Order Declaring Provision of Proposed Agency Action Order is Deemed Stipulated, or in the Alternative,

Motion to Strike Portion of Protest of Proposed Agency Action Order is denied.

6. FPC's Motion for Leave to File Supplemental Rebuttal Testimony is granted.
7. Parties are permitted ten minutes each for opening statements.

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 29th day of October, 1997.



SUSAN F. CLARK, Commissioner
and Prehearing Officer

(S E A L)

WCK

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.

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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.