BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for acknowledgement of transfer of Nassau County land and facilities to Nassau County and for cancellation of Certificate Nos. 171-W and 122-S, by Florida Water Services Corporation.	DOCKET NO. 030542-WS
In re: Application by Florida Water Services Corporation for amendment of Certificate Nos. 171-W and 122-S to add territory in Nassau County.	DOCKET NO. 990817-WS ORDER NO. PSC-03-1417-FOF-WS ISSUED: December 16, 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 RECONSIDERATION
AND
ACKNOWLEDGING WITHDRAWAL OF AMENDMENT APPLICATION AND TRANSFER OF NASSAU COUNTY FACILITIES OF FLORIDA WATER SERVICES CORPORATION

BY THE COMMISSION:

BACKGROUND

Florida Water Services Corporation (FWSC or utility) is a Class A utility providing water and wastewater service throughout Florida. Most of its systems are under this Commission's jurisdiction. FWSC serves approximately 2,319 water and 2,142 wastewater customers in Nassau County. The utility's 2002 annual report indicates that the Nassau County system had gross revenue of

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$875,802 and $1,542,449 and net operating income of $92,597 and $249,751 for water and wastewater, respectively.

Pursuant to Order No. 6127, issued May 1, 1974, in Docket Nos. 73684-W and 73685-S, In Re: Application of Amelia Island Utility Company for certificates to operate water and sewer systems in Nassau County, Florida, we granted Certificate Nos. 171-W and 122-S to FWSC to provide water and wastewater service to a portion of Amelia Island. On June 24, 1999, in Docket No. 990817-WS, FWSC applied for an amendment of those certificates to include additional territory in Nassau County. A timely objection to the application was filed on July 21, 1999. Filing dates were suspended to allow the parties time to reach a settlement in that docket.

However, while that docket was pending, Nassau County completed condemnation proceedings on all of FWSC's Nassau County facilities. Therefore, on June 17, 2003, FWSC filed its application for the transfer of the utility's water and wastewater facilities to Nassau County (the County) and for the cancellation of Certificate Nos. 171-W and 122-S. Based on this transfer, FWSC filed a notice of withdrawal of the application for amendment of its certificates on July 3, 2003.

The transfer application states that:

> On March 31, 2003, the Circuit Court of the Fourth Judicial Circuit, in and for Nassau County, Florida, entered a Stipulated Order of Taking and Stipulated Final Judgment in Nassau County v. Florida Water Services Corporation, Nassau County Circuit Court Case No. 03-113-CA, pursuant to the condemnation procedures set forth under Chapter 74, Florida Statutes. As a result of this condemnation proceeding, Nassau County acquired title to Florida Water's land and facilities in Nassau County and is scheduled to commence operations of such facilities on or about August 1, 2003.

On July 15, 2003, the American Beach Property Owners' Association, Inc. (ABPOA) filed a Petition for Leave to Intervene (Petition), which it amended on July 17, 2003. ABPOA is not a current customer of FWSC but is situated within its service

territory. Most of the residents in ABPOA receive their water from wells on their lots and utilize septic tanks, which might be in close proximity to the water source.

On July 22, 2003, FWSC filed its Response in Opposition to American Beach Property Owners' Association, Inc.'s Amended Petition for Leave to Intervene (Response). By Order No. PSC-03-0948-PCO-WS, issued August 21, 2003, in this docket, ABPOA was denied intervention for lack of standing. On August 29, 2003, ABPOA filed a Request for Oral Argument and a Motion for Reconsideration of Order No. PSC-03-0948-PCO-WS.

We have jurisdiction over both the above-noted applications pursuant to Sections 367.045, 367.071, and 367.081, Florida Statutes.

MOTION FOR RECONSIDERATION

At the request of ABPOA, and pursuant to Rule 25-22.058, Florida Administrative Code, we allowed oral argument on ABPOA's Motion for Reconsideration of the Prehearing Officer's Order which denied intervention. In the Order denying intervention, the Prehearing Officer specifically found that the Amended Petition of ABPOA did not "demonstrate a possible injury that is real and immediate and not conjectural" and that the Amended Petition thus failed to satisfy the "first prong" of the standing test in Agrico Chemical Company v. Department of Environmental Regulation, 406 So. 2d 478 (Fla. 2d DCA 1981).

The standard of review for a motion for reconsideration is whether the motion identifies a point of fact or law that the Commission overlooked or failed to consider in rendering its 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. 3d 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).

ABPOA argues that:

> language in the Order indicates that the Prehearing Officer either overlooked or failed to consider that the injuries ABPOA identifies in this proceeding are: (1) not conjectural or fabricated, but are injuries that ABPOA members are actually suffering today; and (2) precisely the same injuries alleged by residents of American Beach in an earlier complaint filed against Florida Water Services Corporation ("Florida Water" or "FWSC") in 2001.

As to the prior complaint in 2001, ABPOA alleges that this Commission did not dismiss those injuries as conjectural or speculative, but "acknowledged the immediacy and reality of the injuries, vigorously investigated the complaint, and assured the residents of American Beach that it would initiate further investigations if the utility failed to provide service within a reasonable time." ABPOA states that the "injuries suffered by residents by American Beach are just as real and just as serious today as they were in 2001." ABPOA concludes that for us to now deny ABPOA standing on the basis that ABPOA's injuries are "conjectural" would deviate "from prior agency practice" and thus violate Section 120.68(7)(e), Florida Statutes, and principles of fundamental fairness.

In its timely Response filed September 5, 2003, FWSC argues that ABPOA's dissatisfaction with this ruling, regurgitation of arguments not accepted by the Prehearing Officer, and last minute proffer of new legal theories provide no basis for reconsideration. FWSC argues that in Order No. PSC-92-0132-FOF-TL, issued March 31, 1992, in Docket No. 900633-TL, Development of Local Exchange Company Cost Methodologies, the Commission specifically said on page 2: "Neither new arguments nor better explanations are appropriate matters for reconsideration."

Also, in its Response, FWSC states:

> ABPOA simply sought to intervene and sought no specific relief, predicating its request for intervention on

> allegations that Florida Water had allegedly discussed the provision of water service to the American Beach residents in late 2000/early 2001, resulting in a letter complaint filed with the Commission on March 26, 2001. ABPOA went on to state in its Amended Petition that on April 18, 2001, the Commission responded to the complaint and that Florida Water stood prepared to investigate the possibility of expanding its service territory to determine the feasibility of providing water service to the American Beach residents. In its Response to ABPOA's Amended Petition, Florida Water noted that it had never provided any form of "service commitment" to the American Beach residents and that the purported "service commitment" claimed by ABPOA based on the correspondence two years ago fell far short of any actual, immediate damage or loss that could potentially be sustained by the ABPOA residents as a result of the application filed by Florida Water in this proceeding.

FWSC also notes that ABPOA took "no action before the Commission concerning these so-called 'service commitments' over the last two years."

With respect to ABPOA's argument that the Order at issue here violates Section 120.68(7)(e), Florida Statutes, FWSC states that this argument should be rejected both because it is a new argument on reconsideration and, because there is no prior agency practice in that "the Commission has never rendered any determination concerning any so-called 'service commitments' on the part of Florida Water to the American Beach residents." In addition, FWSC argues that this transfer proceeding is governed by Section 367.071(4)(a), Florida Statutes. Because a transfer under this type of proceeding must be approved as a matter of right and such approval is basically mandatory and administrative in nature, FWSC argues that "ABPOA's Amended Petition also fails to allege any injury of the type or nature sought to be protected by a proceeding governed by Section 367.071(4)(a), Florida Statutes." Therefore, FWSC argues that ABPOA's Petition fails the second prong of the Agrico test as well. Based on all the above, and noting that FWSC "no longer owns or operates the Nassau County facilities in question," FWSC concludes that "ABPOA's request for reconsideration

of the Prehearing Officer's denial of its Amended Petition should be denied."

As noted above, the purpose of a Motion for Reconsideration is not to reargue the whole case, but to bring to the attention of the decision maker some point of fact or law which was overlooked or failed to be considered in rendering the decision in the first instance. See Diamond Cab, at 891. In this case, we find that ABPOA merely cites passages in its Amended Petition and in its Memorandum in Opposition to Florida Water Services Corporation's Response which were already before the Prehearing Officer. ABPOA argues that those passages demonstrate the injury that is being incurred by the members of ABPOA. It then claims that there is an "indication" that the Prehearing Officer in his Order somehow overlooked or failed to consider those injuries so identified.

We find that the Order denying intervention followed the holding in Village Park Mobile Home Assoc., Inc. v. Dept. of Business Regulation, 506 So. 2d 426 (Fla. 1st DCA 1987). In Village Park, at 433, the First District Court of Appeal states:

> The injury or threat of injury must be both real and immediate, not conjectural, hypothetical or abstract. . . . [A] petitioner can satisfy the injury-in-fact standard set forth in Agrico by demonstrating in his petition either: 1) that he had sustained actual injury in fact at the time of filing his petition; or 2) that he is immediately in danger of sustaining some direct injury as a result of the challenged agency's action.

In this case, the Prehearing Officer concluded that on the facts presented to him, ABPOA "failed to demonstrate a possible injury that is real and immediate and not conjectural." See Order No. PSC-03-0948-PCO-WS, page 3.

ABPOA states in its Amended Petition, at Paragraph 14, page 5, that as a result of the transfer of FWSC's water facilities to Nassau County, it is "questionable" whether the commitments of FWSC will be honored. This statement itself is conjectural. Moreover, ABPOA has not received water service from FWSC, and it is unknown whether ABPOA will pursue connecting to the system and pay the costs necessary for obtaining such service. The Prehearing Officer

properly considered all the facts presented and properly concluded that any injury based on this proceeding was conjectural.

In conclusion, the injury complained of by ABPOA is conjectural and not real or immediate. Therefore, ABPOA has failed to demonstrate a mistake of fact or law as to the Prehearing Officer's determination that ABPOA has failed the first prong of the Agrico test for standing. Therefore, ABPOA's Motion for Reconsideration is denied.

WITHDRAWAL OF AMENDMENT APPLICATION

As stated above, in Docket No. 990817-WS, FWSC applied for an amendment to Water Certificate No. 171-W and Wastewater Certificate No. 122-S in Nassau County, Florida, pursuant to Rule 25-30.036(3), Florida Administrative Code. The purpose of the amendment was to provide water and wastewater service to a proposed development on Crane Island.

However, FWSC has now filed its Application for Acknowledgment of Transfer of its Nassau County land and facilities to Nassau County and cancellation of Certificates Nos. 171-W and 122-S, which application was assigned Docket No. 030542-WS. In that application, FWSC noted that Nassau County had assumed ownership of FWSC's utility assets in Nassau County pursuant to the Stipulated Final Judgment and Stipulated Order of Taking entered in the Circuit Court, Fourth Judicial Circuit, in and for Nassau County, Circuit Court Case No. 03-113-CA, issued March 31, 2003.

Based on this taking, FWSC states that the amendment application is now moot. Therefore, on July 3, 2003, the utility filed its Notice of Withdrawal of Application. We agree that any further action on the amendment application is moot, and hereby acknowledge FWSC's withdrawal of its application for amendment of Certificates Nos. 171-W and 122-S.

TRANSFER OF FACILITIES TO NASSAU COUNTY

FWSC filed its application to transfer its Nassau County facilities to the County pursuant to Section 367.071, Florida Statutes, and Rule 25-30.037(4), Florida Administrative Code. Included with the application are copies of the Stipulated Order of

Taking and Stipulated Final Judgment in Nassau County v. Florida Water Services Corporation pursuant to the condemnation procedures set forth under Chapter 74, Florida Statutes. As a result of the condemnation proceeding, Nassau County acquired title to FWSC's land and facilities as of March 31, 2003, the date the documents were issued by the Circuit Court of the Fourth Judicial Circuit. Therefore, March 31, 2003, is the effective date of the acquisition.

Rule 25-30.037(4), Florida Administrative Code, governs the transfer of facilities to a governmental authority. The application is in compliance with that rule and has no deficiencies.

The application contains a statement that the County obtained FWSC's most recent income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction pursuant to Rule 25-30.037(4)(e), Florida Administrative Code. A statement that the customer deposits will be transferred to the County for the benefit of the customers as required by Rule 25-30.037(4)(g), Florida Administrative Code, was also included in the application. Additionally, pursuant to the requirements of Rule 25-30.037(4)(h), Florida Administrative Code, a statement was included that FWSC has no outstanding regulatory assessment fees (RAFs) and no fines or refunds are owed. The utility has filed its 2002 annual report and paid its 2002 RAFs and there are no outstanding penalties and interest. For the period of January 1, 2003 through March 31, 2003, FWSC has agreed to file its RAF returns and RAF payments for the Nassau County facilities within 20 days after the date the Order is issued approving the transfer.

Pursuant to that agreement, RAFs for the period January 1, 2003, through March 31, 2003, shall be submitted within 20 days after the issuance of this Order. Based on all the above, we hereby acknowledge that the transfer of FWSC's Nassau County facilities occurred pursuant to the Stipulated Order of Taking and Stipulated Final Judgment issued on March 31, 2003. Certificate Nos. 171-W and 122-S shall be cancelled administratively at the conclusion of all pending cases for the Nassau County facilities.

OPENING OF GAIN ON SALE DOCKET

Pursuant to the stipulated final judgment issued by the Fourth Judicial Circuit Court on March 31, 2003, FWSC shall have and recover the total sum of $17,200,000 from Nassau County as full compensation for the taking of the water and wastewater property. That sum appears to exceed the rate base values that we have approved for those facilities. In Order No. PSC-96-1320-FOF-WS, issued October 30, 1996, in Docket No. 950495-WS, In Re: Application for rate increase and increase in service availability charges in Southern States Utilities, Inc. for Orange-Osceola Utilities, Inc. in Osceola County, and in Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Duval, Highlands, Lake, Lee, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, St. Johns, St. Lucie, Volusia, and Washington Counties, the most recent rate proceeding for FWSC, the approved rate base value for the combined water and wastewater facilities in Nassau County was $2,997,154 for the projected test year ending December 31, 1996. Restoring used and useful adjustments, the aggregate rate base balance was $4,316,469. In its 2002 Annual Report, FWSC reported a combined rate base of $1,759,627 for its Nassau County systems. As the taking occurred in 2003, an updated rate base calculation will be needed to determine the gain, if any, due to the sale of these facilities. Initial review indicates that FWSC will record a gain on this transaction.

By letter to our staff dated August 29, 2003, the attorney for FWSC discussed the gain on sale issue and whether it was even appropriate to raise the issue in this docket, where the facilities were transferred pursuant to an involuntary condemnation. In that letter, FWSC cites our decision concerning gain on sale in Order No. PSC-93-0423-FOF-WS, issued March 22, 1993, in Docket No. 920199-WS, In Re: Application for rate increase in Brevard, Charlotte/Lee, Citrus, Clay, Duval, Highlands, Lake, Marion, Martin, Nassau, Orange, Osceola, Pasco, Putnam, Seminole, Volusia, and Washington Counties by Southern States Utilities, Inc.; Collier County by Marco Shores Utilities (Deltona); Hernando County by Spring Hill Utilities (Deltona); and Volusia County by Deltona Lakes Utilities (Deltona) (SSU Order). In the SSU Order, FWSC argues that we concluded that there should be no sharing in the gain arising from the condemnation of water and wastewater systems previously operated by FWSC. Because that decision concerning gain

on sale was affirmed by the First District Court of Appeal in Citrus County v. Southern States Utilities, Inc., 656 So. 2d 1307 (Fla. 1st DCA 1995), FWSC argues that we are bound by the "Citrus County precedent."

Moreover, FWSC argues that "the Citrus County appellate court decision is consistent with" Order No. PSC-93-1821-FOF-WS, issued December 22, 1993, in Docket No. 930373-WS, In Re: Application for amendment of Certificate No. 247-S by North Fort Myers Utility, Inc., and cancellation of Certificate No. 240-S issued to Lake Arrowhead Village, Inc., in Lee County, and Docket No. 930379-SU, In Re: Application for a limited proceeding concerning the rates and charges for customers of Lake Arrowhead Village, Inc., in Lee County, by North Fort Myers Utility (North Fort Myers Order). In the North Fort Myers Order, FWSC points to the paragraph where we stated as follows:

> [C]ustomers of utilities do not have any proprietary claim to utility assets. Although customers pay a return on utility investment through rates for service, they do not have any ownership rights to the assets, whether contributed or paid for by utility investment.

Finally, in regards to the condemnation proceeding, FWSC argues that the Circuit Court confirmed the amount the utility was entitled to receive for its assets, and that the Commission should not "interfere with the judicially sanctioned value of the utility's assets." FWSC concludes that it would amount to "an unconstitutional taking and deprivation of the shareholder's rights for the Commission to order a sharing of the gain."

We find that FWSC has misinterpreted each of the above-noted Orders and court decision. In the SSU Order, this Commission, in addressing whether a sharing of the gain on sale was appropriate, specifically said, "Since SSU's remaining customers never subsidized the investment in the SAS [St. Augustine Shores] system, they are no more entitled to share in the gain from that sale than they would be required to absorb a loss from it." Therefore, our determination that a sharing of the gain on sale was not appropriate was limited to the specific facts of that case and was not a "blanket" legal determination that a gain on sale would never

be appropriate. The Citrus County case merely confirmed this factual interpretation.

As to the North Fort Myers Order, the language quoted by FWSC was merely addressing whether there should be a refund to the customers of the former utility, Lake Arrowhead Village, Inc. (LAVI). As to consideration of the gain on sale, this Commission said:

> We first examined whether any gain on sale should be passed on to the customers. The costs to dismantle the plant would range from $20,000 to $50,000, depending on the public health and other sanitary requirements for the intended use of the land where the treatment and disposal facilities are located. Therefore, even if the few lots which might be created by clearing the former plant site were sold, a significant portion of the gain would be greatly offset by the cost of clearing the site and preparing the lots for sale.

Therefore, we again, on a factual basis, determined that a gain on sale adjustment was not appropriate.

Finally, we do not agree that a review of the appropriate disposition of any gain on sale would constitute an interference "with the judicially sanctioned value of the utility's assets," or an "unconstitutional taking and deprivation of the shareholders' property rights" as alleged by FWSC. We are merely carrying out our jurisdictional duty to "fix rates which are just, reasonable, compensatory, and not unfairly discriminatory" to the remaining customers of FWSC, as required by Section 367.081(2)(a)1., Florida Statutes.

Before FWSC's Nassau County facilities were taken by Nassau County, those facilities were subject to our jurisdiction. Their service rates were established in FWSC's 1995 rate proceedings in Docket No. 950495-WS. According to FWSC's 2002 annual report the Nassau County systems had net operating income of $92,597 and $249,751 for water and wastewater, respectively. Whether the Nassau County systems were subsidized by other systems outside Nassau County needs to be determined.

Further study to examine sharing considerations for the Nassau County gain on sale is needed to permit timely examination of this topic. Therefore, a docket to examine whether FWSC's sale of its Nassau County facilities involves a gain that should be shared with FWSC's remaining customers shall be opened. This is consistent with our prior decisions noted in the following Orders: Order No. PSC-98-0688-FOF-WS, issued May 19, 1998, in Docket No. 971667-WS, In Re: Application for approval of transfer of facilities of Florida Water Services Corporation to Orange County and cancellation of Certificate Nos. 84-W and 73-S in Orange County; Order No. PSC-99-2171-FOF-WU, issued November 8, 1999, in Docket No. 981589-WU, In re: Application for approval of transfer of a portion of the facilities operated under Certificate No. 40-W in Orange County from Utilities, Inc. of Florida to the City of Maitland; and Order No. PSC-99-2373-FOF-WS, issued December 6, 1999, in Docket No. 991288-WS, In re: Application for transfer of a portion of Certificates Nos. 278-W and 225-S in Seminole County from Utilities, Inc. of Florida to the City of Altamonte Springs. In each of the above three Orders, this Commission acknowledged the transfer to the respective governmental authority and opened another docket to evaluate the gain on sale.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that in regards to the application of Florida Water Services Corporation for the acknowledgement of the transfer of its Nassau County facilities to Nassau County, we hereby acknowledge, as set forth in the body of this Order, that such transfer occurred effective March 31, 2003. It is further

ORDERED that Florida Water Services Corporation shall submit regulatory assessment fees for January 1 through March 31, 2003, within 20 days after the issuance of this Order. It is further

ORDERED that Certificates Nos. 171-W and 122-S shall be cancelled administratively at the conclusion of all pending cases for the Nassau County facilities. It is further

ORDERED that the Motion for Reconsideration of a portion of Order No. PSC-03-0948-PCO-WS denying the request for intervention

filed by the American Beach Property Owners Association is denied as set forth in the body of this Order. It is further

ORDERED that Florida Water Services Corporation's notice of withdrawal of its amendment application is acknowledged. It is further

ORDERED that a gain on sale docket shall be opened as set forth in the body of this Order. It is further

ORDERED that Docket No. 990817-WS shall be closed. It is further

ORDERED that Docket No. 030542-WS shall remain open until the conclusion of any pending dockets concerning the Nassau County facilities, and until Certificates Nos. 171-W and 122-S are cancelled administratively.

By ORDER of the Florida Public Service Commission this 16th Day of December, 2003.

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

By: Kay Flynn
Kay Flynn, Chief
Bureau of Records and Hearing Services

(S E A L)

RRJ

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.

Except for the opening of the gain on sale docket, the Commission's actions in this docket are final agency action. Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of the Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, 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 and/or wastewater utility by filing a notice of appeal with the Director, Division of the Commission Clerk and Administrative Services 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.

In regards to the opening of the gain on sale docket, 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 opening of the gain on sale docket, 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.