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IN THE SUPREME COURT OF FLORIDA

FLORIDIANS UNITED FOR SAFE ENERGY, INC., Appellant,	)	
v.	)	CASE NO. 66,380
FLORIDA PUBLIC SERVICE COMMISSION AND FLORIDA POWER & LIGHT COMPANY, Appellees.	)	
METROPOLITAN DADE COUNTY CONSUMER ADVOCATE, WALTER T. DARTLAND, Appellant,	)	
v.	)	CASE NO. 66,444
FLORIDA PUBLIC SERVICE COMMISSION AND FLORIDA POWER & LIGHT COMPANY, Appellees.	)	

ON APPEAL FROM THE
FLORIDA PUBLIC SERVICE COMMISSION

FLORIDA POWER & LIGHT COMPANY'S ANSWER BRIEF

Respectfully submitted,

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STATEMENT OF THE CASE AND OF THE FACTS

Before the Court in this cause are two appeals arising from actions taken by the Florida Public Service Commission ("Commission") in Docket No. 830465-EI relating to the retail rates and charges of Florida Power & Light Company ("FPL" or "Company"). This Court has jurisdiction pursuant to Article V, Section 3(b)(2), Florida Constitution.

On November 23, 1983 FPL petitioned the Commission for permission to increase its rates and charges "pursuant to the provisions of Section 366.06, Florida Statues." R. I, p. 4.[1/] FPL's Petition sought approval of: an increase in rates and charges designed to produce additional revenues of $335,274,000 based upon a 1984 test period, and an increase in rates and charges, designed to produce additional revenues of $120,279,000 based upon a test year of 1985.[2/] R. I, pp. 18-19. As an alternative, if the additional revenues based upon a test year of 1985 were not approved, FPL further requested that the Commission increase FPL's 1984 revenue increase request by applying an alternative attrition

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1/ Throughout this brief, all emphasis has been supplied unless otherwise indicated, and the following symbols will be used to designate record references:

> "R" for Record on Appeal in both cases followed by the appropriate volume and page number for documents other than transcripts or exhibits, as, "R. _, p. _"; "Tr." for transcripts with the appropriate page number following, as, "Tr. _.", since the transcript is being forwarded to the Court as a separate volume; "Ex." for exhibits followed by the identifying number given by the Commission as well as the symbol "Doc." _." where appropriate, and if necessary, a page reference. For instance, a reference to page three of Document 20 of Exhibit 3 would be cited: "Ex. 3, Doc. 20, p. 3."

2/ In its Petition FPL also sought an interim increase in rates during the pendency of the proceeding, but such relief is not at issue in this appeal and will not be referred to further.

allowance based on FPL's historic experience of attrition. Id.3/ Attached to the Petition were the rate schedules for which FPL sought approval, Appendix I comprising the rate schedules based upon the test year of 1984 (R. I, pp. 50-83) and Appendix III comprising the rate schedules based upon the test year of 1985 (R. I, pp. 84-112).

FPL's request for approval of a second set of rates based upon a 1985 test period was addressed at length in FPL's Petition and the accompanying exhibits and testimony. It was clear from the analysis performed in FPL's filing that in the absence of some regulatory tool to account for attrition, either an attrition adjustment based upon historic attrition or an increase based upon forecast 1985 results of operations, FPL would not have an opportunity to earn the fair and reasonable rate of return determined by the Commission. While FPL was filing a rate case in November, 1983 employing a fully projected test period of 1984, it was likely that the Commission would suspend FPL's rate filing4/, so the rates ultimately approved based on the 1984 test period would only be in effect for four or five of the twelve months necessary for FPL to earn its fair and

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3/ FPL's alternative attrition allowance was presented as a request that the Commission increase the rate of return used to establish 1984 rates from 11.06% to 11.99%, 93 basis points. R. I., p. 5. This 93 basis point adjustment to the rate of return was based upon FPL's actual revenue shortfall or deficiency for the period 1977-1982. Ex. 9, Doc. 26. In other words, since the attrition FPL experienced during the period 1977-1982 was typical of the attrition FPL could expect in 1985, for FPL to have an opportunity to earn its fair and reasonable rate of return in 1985, the rate of return used to establish rates in 1984 needed to be increased by 93 basis points. This 93 basis point adjustment would have produced more revenue than the increase based upon the forecast of 1985 operations. See Ex. 9, Docs. 22 and 26.

4/ Pursuant to Section 366.06(3), Florida Statutes (1983), the Commission may suspend rates up to eight months. Given that FPL filed in late November, 1983, it was not unreasonable to expect no permanent rate relief would be granted until late July, 1984. Indeed, that is exactly what occurred.

reasonable rate of return in 1984. R. I, p. 16. More importantly, the rates based upon a 1984 test period would not be reflective of 1985 conditions. Id; Tr. 1508; Ex. 9, Doc. 20. Those rates would not afford FPL an opportunity to earn a fair rate of return in 1985. R. I, p. 17; Tr. 1508. Therefore, FPL requested that the Commission, "establish a rate base, cost of capital, net operating income and revenue requirements for 1985," so that, "new base rates and charges designed to recover the established 1985 revenue requirements" could be "phased-in" effective January 1, 1985. R. I, p. 16. FPL specifically noted in its Petition and supporting testimony that this "phasing-in" would more closely match revenues and costs than would the application of the more traditional attrition allowance to the 1984 test period results. R. I, p. 16; Tr. 1397A.

A number of parties sought and were granted intervention, including the Office of Public Counsel on behalf of the Citizens of the State of Florida. Order No. 12751. Among the other parties were the Consumer Advocate of Metropolitan Dade County ("MDCCA") and Floridians United For Safe Energy, Inc. ("FUSE").

By Order No. 12919 (R. I, p. 124) the Commission suspended the rate schedules filed by FPL. It stated:

> Pursuant to the authority granted in Section 366.06(3), Florida Statutes, the tariffs filed on November 23, 1983 to produce additional annual revenue of $335,274,000 in 1984 and $120,279,000 in 1985 are suspended and the matter is set for hearing. We find this action to be necessary because the Company's request requires us to resolve a variety of complex issues, including whether... this is an appropriate case in which to grant a two step increase. In fairness both to the Company and the Company's rate payers, we must hold hearings on these and other issues arising from the Company's request.

Subsequent to the suspension of FPL's rates and after the parties had filed

prehearing statements,5/ the Commission issued the Prehearing Order in Docket No. 830465-EI, Order No. 13176. R. I, p. 141. The Prehearing Order shows that the Commission and several parties identified issues and took positions in regard to both test periods, 1984 and 1985. Id. All the elements essential to determining FPL's revenue requirements were identified for both test years: rate base, Issue 1; net operating income, Issue 49; cost of capital and appropriate capital structure, Issue 79; revenue expansion factors, Issue 83; and jurisdictional separation factors, Issues 86 and 87. Id. Issues 84 and 85 addressed FPL's revenue requirements; for ease of reference these two issues and the positions taken by all the parties who took positions are shown below:

84. What are the appropriate annual operating revenue increases for 1984 and 1985?

Positions:

FPL: 1984 - $335,274,000; 1985 - $120,279,000; Total -$455,553,000. (J.L. Howard, H.P. Williams, Jr.)
Staff: 1984 - $101,934,000; 1985 - $123,034,000; Total -$224,968,000

PC: No increase for 1984 or 1985.

85. Should the Commission grant the Company's request for a 1985 step increase? If so, how should the step increase be implemented?

Positions:

FPL: Yes, in the amount of $120,279,000 effective January 1, 1985. The Company will provide a suggested procedure for the implementation. However, if the Commission does not grant the proposed subsequent year adjustment, then an attrition allowance of 93 basis points should be added to the 1984 rate of return that is granted. (J.L. Howard) (SEE EXHIBIT 9B)

5/ While untimely (Prehearing Conference Tr. 12, 13, 22, 29, 30), both the MDCCA and FUSE filed prehearing statements; neither statement raised any issue challenging the Commission's authority to consider two sets of rates in the same proceeding to address the effects of attrition.

Staff: Yes. The step increase should be based on a full test year, as the Company has proposed.

PC: If the Commission grants the 1985 step increase, there should be some mechanism for any of the parties to petition for the reopening of the case, before the step increase is actually implemented.

FIPUG and Eastern: Agree with PC. Additionally, there should be some provision for the parties to receive periodic filings by the Company as to whether the major assumptions were accurate.

Despite not having taken a position on Issue 85, at the beginning of the hearing counsel for FUSE moved to dismiss FPL's "subsequent test year adjustment" on the ground that FPL's 1985 revenue increase request was premised on Section 366.076, Florida Statutes (1983) and that the act adopting Section 366.076 contravened Article III, Section 6, Florida Constitution. Tr. 11-12. The Commission denied FUSE's motion. Tr. 13. Midway through the hearing, FUSE renewed its motion to dismiss. Tr. 1894. The Commission maintained its position on the earlier motion. Id.

At the hearing FPL presented a complete case supporting both sets of requested rate schedules. For instance, minimum filing requirements (MFRs) were filed for 1985 as well as for 1984. Ex. 1. (The Commission had previously approved these filed MFRs. Order No. 12703, R. I, p.2.) Mr. Homer P. Williams, FPL's Comptroller and accounting witness, presented calculations of rate base and net operating income for both years. Ex. 10, Doc. 1-22. The 1985 results of operations upon which the 1985 rate schedules were based were prepared in the same manner as the forecast of the 1984 results of operations. Tr. 1508. Separate cost of service studies were prepared for each period, and rates reflecting the cost of service analyses were designed and proposed. Ex. 15, Doc. 13-49. While several parties questioned the amount of the required 1985 revenue requirements, at no point in the proceeding did any party maintain that no

increase in rates was necessary to reflect 1985 operating results. In short, everything necessary to make an independent determination of FPL's 1985 revenue requirements was before the Commission.

In addition to the complete documentation and development of FPL's revenue requirements for 1985, FPL also presented the testimony of three witnesses in support of its request for approval of two sets of rates. Mr. John J. Hudiburg, the President and Chief Executive Officer of FPL explained how the "phase-in approach" being advanced was similar to the Commission's prompt recognition of St. Lucie Unit No. 2 revenue requirements in a prior Docket and that it would yield the same results of maximizing the efficiency of the ratemaking process and remedying attrition "without the expensive and time consuming alternative of filing another rate case." Tr. 51.

Mr. J. L. Howard also addressed FPL's request for an additional rate increase in 1985. He noted that such an increase would be essential for FPL to have an opportunity to earn its required rate of return in 1985 since the rates based upon 1984 economic and operating conditions would not reflect conditions expected in 1985. Tr. 1508. He pointed out that FPL's approach provided the most accurate estimate of the relationship among revenues, expenses, investment and capital and was therefore superior to more traditional attrition adjustments used by the Commission. Tr. 1509. Other rationales for the approach offered by Mr. Howard were, (1) more efficient use of resources by parties involved in the regulatory process, (2) a reduction in regulatory lag, and (3) allowing customers to anticipate and budget for changes in rates. Tr. 1509-11. Finally, Mr. Howard testified that if the Commission elected not to approve separate rate schedules for 1985, an alternative attrition adjustment based upon an historic quantification of attrition should be used in determining FPL's 1984

revenue requirements. Tr. 1512.

FPL's other witness testifying regarding the step increase approach was Mr. Hugh A. Gower, a partner in Arthur Andersen & Co. Mr. Gower testified in support of the use of projected test periods generally (Tr. 1394-97) and FPL's specific attempt in this case to address attrition:

> In this filing, the Company has proposed to address this problem by petitioning, and supplying supporting data, for two sets of rates. The proposal requests rates that would initially become effective January 1, 1984, and which are based upon forecasted 1984 data. Subsequently, the second set of rates, based upon forecasted 1985 data, would become effective January 1, 1985, and remain in effect through the end of that year, or until the Commission makes a new revenue requirement determination.
>
> The methodology requested by the Company is sound from a ratemaking standpoint in that it properly matches the revenues to be granted with the period in which the cost and investment base used to derive those revenues are incurred. By delaying the implementation of the second step of the rate increase until January 1, 1985, the ratepayer is not penalized on the front end by having to pay rates before costs are incurred. In addition, the adoption of new rates effective January 1, 1985 would negate the need for another base rate filing in the near future, which the 1985 forecast data indicates would otherwise be required. In my opinion, the methodology requested by the Company is sound, balances the interests of the ratepayer and the investor, permits scrutiny by the Commission prior to the step rate implementation and is a cost effective methodology with which to address an obvious problem. This methodology, if properly implemented at the beginning of each year, negates the need for some other form of attrition allowance, yet provides the same benefits that would be derived from the use of an allowance calculated on some other basis.

Tr. 1397-97A.

Based upon its assessment of the evidence, the Commission issued Order No. 13537 on July 24, 1984 authorizing FPL to increase its rates and charges effective July 20, 1984 by $81,464,000. R. II, p. 336. In addition, the

Commission "initially approved" a 1985 revenue increase of $114,984,000 effective January 1, 1985, subject to possible future modification if it were demonstrated that "...alleged changed assumptions are sufficiently material to place the Company's earnings outside the range of reasonableness." R. II, p. 320. In making these determinations, the Commission concluded:

> This Commission has the legal authority to approve and use a projected test period for ratemaking purposes. Additionally, the Commission has statutory authority to approve and consider for ratemaking purposes a "subsequent year" test period. Calendar year 1984 is an appropriate base test period and calendar year 1985 is an appropriate "subsequent year" test period for this proceeding.

R. II, p. 335.

In response to a Petition for Reconsideration filed by FPL, on December 28, 1984 the Commission subsequently modified FPL's 1985 rate increase from $114,984,000 to $120,447,000 and ordered FPL to submit revised rate schedules to generate such additional gross revenues in 1985. Order No. 13948, R. V, p. 857.

While FPL's Petition for Reconsideration was under consideration, the Commission ordered FPL to file on November 1, 1984 certain data for review. Order No. 13820, R. III, p. 505. That data was an update of the major assumptions underlying the original determination of FPL's 1985 revenue requirements, and its purpose was to test the validity of the original, tentative 1985 rate increase. On November 1, 1984 FPL filed the information required (R. IV, pp. 538-738); and on November 7, 1984 FPL updated this information by reflecting the impact of the Commission's action at its October 31, 1984 Agenda Conference where it considered the Petitions for Reconsideration of Order No. 13537. R. V, pp. 759-812.

On November 1, 1984 the Commission issued an Order On Procedure regarding further proceedings on FPL's 1985 rate increase. Order No. 13825, R. III, p. 537. The procedural schedule set November 16, 1984 as the last day for a party to request a hearing and set a tentative hearing schedule in the event it was determined a hearing was necessary. FPL had previously indicated in its filings of November 1 and 7 that the information provided showed the authorized 1985 rate increase would allow it to earn within its authorized rate of return range for 1985, so it requested no further hearings. No other party requested a hearing.6/ At the Agenda Conference on November 20, 1984, the parties still participating in the proceeding stipulated that FPL would earn within its fair and reasonable rate of return during 1985 if the 1985 revenue increase became effective as scheduled. Order No. 14005; R. V, p. 867. FPL further stipulated that after 1985 actual results became available, if necessary, it would refund certain retail Operating Revenues in excess of the level of revenue necessary to have an opportunity to earn within its authorized rate of return on equity range. Id. Based upon its review of FPL's filings, the stipulation of the parties and its Staff's recommendation, the Commission determined that no further hearing on the matter was required "and that the 1985 revenue increase previously approved

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6/ Perhaps it should be noted that neither the MDCCA or FUSE requested a hearing. In fact, they did not participate in the docket subsequent to Order No. 13537 issued in July, 1984. In that order the Commission noted in regard to the MDCCA:

> The Consumer Advocate of Metropolitan Dade County is a [sic] charged with the responsibility of representing the "public interest" of the Citizens of Dade County. Although he was granted intervenor status, the Dade Consumer Advocate did not appear at the hearings in this case.

for FPL (as modified on reconsideration) should become effective on January 1, 1985." Id. In the order reflecting its decision at the November 20, 1984 Agenda Conference, the Commission ordered FPL "to submit revised rate schedules consistent herewith designed to generate $120,447,000 in additional gross revenues annually in 1985" and provided that such revised rate schedules were to be reflected upon billings rendered for meter readings taken on or after January 31, 1985. Id.

Pursuant to Order No. 14005, FPL began charging its approved rates for 1985 on meter readings taken on or after January 31, 1985. Prior to collection of the new rates, FUSE and the MDCCA filed their Notices of Appeal. In response to the Notice of Appeal filed by the MDCCA, FPL moved the Commission to vacate the stay, if any, occasioned by the MDCCA's appeal, and in conjunction with its motion filed a corporate undertaking. On January 23, 1985, the Commission issued Order No. 14026 holding that the MDCCA was not a "public officer in an official capacity" within the meaning of Fla. R. App. P. 9.310(2)(b), so its appeal did not automatically stay the effect of Order No. 13948. Nonetheless, the Commission "accepted" FPL's corporate undertaking, so FPL is collecting its 1985 revenue increase subject to refund. Order No. 14026.

In their appeals both Appellants maintain that the Commission acted pursuant to Section 366.076, Florida Statutes (1983) in granting FPL's 1985 revenue increase and that Chapter 83-222, Laws of Florida, the act adopting Section 366.076, violates Article III, Section 6 of the Florida Constitution. They then conclude that since the act adopting Section 366.076, Florida Statutes (1983) is unconstitutional, the Commission acted beyond its authority in granting FPL a 1985 revenue increase. The MDCCA also challenges the Commission's "inherent" authority to employ two test periods or a projected test period in

establishing rates.

As will be shown in greater detail herein, FPL maintains that the Court need not reach the constitutional question posed by the Appellants since it is clear that the Commission had statutory authority independent of Section 366.076, Florida Statutes (1983) to allow FPL a 1985 revenue increase. FPL also maintains that even if the constitutional question is considered, Chapter 83-222, Laws of Florida, adopting Section 366.076, Florida Statutes (1983) falls within the permissible scope of activity under Article III, Section 6 of the Florida Constitution.

ARGUMENT

The Commission has the statutory responsibility to determine fair and reasonable rates for utilities. The necessary conclusion to support FPL's 1985 increase in rates above that based upon the 1984 test period (whether granted in the form of an increase reflecting forecast 1985 operating results or alternatively in the form of a separate historically based attrition allowance) is that the rates based upon 1984 would be inadequate in 1985. Stated differently, there had to be a conclusion that absent additional rate relief FPL would not have an opportunity to earn a fair and reasonable rate of return in 1985. The Commission, based upon the comprehensive evidence presented, reached these conclusions by quantifying the amount of revenue, in addition to that based upon the 1984 operating results, necessary to afford FPL an opportunity to earn a fair and reasonable rate of return. This factual determination has not been challenged.

Despite the compelling evidence unquestionably showing a need for a further revenue increase and the inequitable results that would occur if the increase were negated, the MDCCA argues that the Commission's ratemaking authority is so restricted and the method it must use to quantify rate adjustments is so formulaic that it lacks the authority to set fair and reasonable rates. The arguments by the MDCCA are simply wrong.

The prior observations by this Court in Gulf Power Co. v. Bevis, 289 So.2d 401 (Fla. 1974), a case relied upon (but misapplied) by the MDCCA demonstrates the fallacy in the MDCCA's arguments. There, in commenting upon the Commission's failure to look beyond the basic test year operating results, the Court stated:

> The law is a tool of justice, not a goddess to be worshipped. When the Commission later took the position that test-period adjustments must recognize only those

> changes which take place precisely within ninety days after the end of the test year, it lost sight of this basic objective of the "tool" it was using as a "test period" to arrive at a fair, "typical" result. For it is a correct result which is the goal of the determination and not merely the means or formula used in arriving at the answer.

289 So.2d at 404. (Emphasis by this Court).

I
IT IS UNNECESSARY FOR THE COURT TO DETERMINE THE CONSTITUTIONALITY OF CHAPTER 83-222, LAWS OF FLORIDA

Both Appellants in this matter argue that the Commission, in granting FPL its 1985 revenue increase, acted pursuant to statutory authority which had been unconstitutionally conferred. Specifically, they argue that Chapter 83-222, Laws of Florida, the act creating Section 366.076, Florida Statutes (1983), violates Article III, Section 6 of the Florida Constitution.

Putting aside for the moment the Appellants' complete failure to establish that the Commission acted pursuant to Section 366.076, Florida Statutes (1983) in approving rates and charges for FPL effective in 1985 (See Section V herein), it should be noted that the Appellants seek to have this Court address the constitutionality of a statute when the question of the Commission's authority to grant the increase in question may be decided upon other grounds. Since it can be clearly shown that the award of a 1985 revenue increase to FPL was within the Commission's authority regardless of the existence of Section 366.076, Florida Statutes (1983) (See Sections II, III and IV herein), it is unnecessary for there to be any consideration of the constitutionality of Chapter 83-222, Laws of Florida.

It is a settled principle of constitutional law that courts should not pass upon the constitutionality of a statute if the case may be effectively decided on

other grounds. Singletary v. State, 322 So.2d 551 (Fla. 1975); Williston Highlands Development Corp. v. Hogue, 277 So.2d 260 (Fla. 1973); Economy Cash & Carry Cleaners v. Cleaning, Drying & Pressing Board, 128 Fla. 408, 174 So. 829 (1937). This Court has stated it will not determine the alleged invalidity of a statute where a matter may be decided on other grounds, and it has also held that where a case may be decided on non-constitutional grounds, "it would be both unnecessary and improper to consider the constitutional question." Peoples v. State, 287 So.2d 63, 66 (Fla. 1973). Accord, State ex rel Russo v. Parker, 57 Fla. 170, 49 So. 124 (1909). Indeed, this is such a fundamental principle that several cases speak of a court having a duty not to pass on the constitutionality of a statute when a case may be addressed on any other ground. State v. Bruno, 104 So.2d 588 (Fla. 1958); State ex rel Wolyn v. Apalachicola Northern R. Co., 81 Fla. 383, 87 So. 909 (1921).

As is discussed in detail in the next three arguments, prior to the effective date of Chapter 83-222, Laws of Florida, the Commission had authority under the ratemaking powers afforded it by Chapter 366, Florida Statutes to allow FPL its 1985 revenue increase. Since the Commission's authority to grant the increase in question can be resolved by a review of statutes and the cases construing them, it is unnecessary, and therefore improper, to decide the constitutionality of Chapter 83-222, Laws of Florida.

II
INDEPENDENT OF SECTION 366.076, FLORIDA STATUTES (1983), THE COMMISSION HAS AUTHORITY TO RECEIVE A UTILITY'S RATE FILING, SUSPEND RATES, CONDUCT A HEARING AND ISSUE AN ORDER GRANTING A RATE INCREASE.

In making its rate filing, FPL, as stated in its Petition (R. I, p. 4), acted

pursuant to Section 366.06, Florida Statutes (1983). This Section provides in pertinent part:

> All applications for changes in rates shall be made to the commission in writing under rules and regulations prescribed, and the commission shall have the authority to determine and fix fair, just, and reasonable rates that may be requested, demanded, charged or collected by any public utility for its service.

In this instance, FPL sought to change its rates and charges effective January 1, 1984 and effective January 1, 1985; therefore, it filed the required application, the sufficiency of which is uncontested, and invoked the Commission's authority to determine and fix fair, just and reasonable rates.

Having had its authority to determine rates properly invoked, the Commission proceeded to act consistently with Section 366.06, Florida Statutes (1983) by suspending the rates filed (Order No. 12919, R. I, p. 124), giving notice to the public and the Company, conducting a public hearing and then determining the just and reasonable rates "to be thereafter charged." While a suspension of rates is not required, it is allowed under Section 366.06, Florida Statutes (1983), and the Commission's actions in this regard and subsequent thereto were entirely consistent with the governing statute.

The Commission's responsibility to determine just and reasonable rates under Sections 366.06 and 366.07, Florida Statutes (1983) should not be overlooked. When the Commission, after public hearing, finds that the rates or charges proposed, demanded, charged or collected by a public utility are unjust, unreasonable or insufficient, the Commission has the duty to determine, and by order fix, fair and reasonable rates and charges to be imposed, observed or followed in the future. Sections 366.06(2), 366.07, Florida Statutes (1983). It is uncontested in the matter before the Court that the evidence taken in the public

hearings showed (1) that the rates FPL was collecting at the time of its filing were not fair and reasonable given the economic and operating conditions FPL faced in 1984, and (2) that the rates approved on the basis of the 1984 test period would not be fair and reasonable given the economic and operating conditions FPL would face in 1985. Therefore, consistent with its authority and responsibility, the Commission determined, and by order fixed, fair and reasonable rates for the future. Given the record before it, evidence which the Appellants do not contest, the Commission was required under Sections 366.06(2), 366.07, Florida Statutes (1983) to approve a further increase for FPL in 1985.

The Appellants' repeated, unsupported assertions regarding the novelty of FPL's step increase approach and how such a procedure was never possible before the enactment of Section 366.076, Florida Statutes (1983) ignore the obvious.7/

7/ In addition to ignoring that FPL's rate request and the Commission's disposition of that request comport with the procedures set forth in Section 366.06, Florida Statutes (1983), the Appellants also ignore that the Commission has previously had occasion to employ a step increase procedure in regard to FPL. In Docket No. 820097-EU, a docket in which both Appellants were parties, FPL sought, and the Commission granted, a two step revenue increase. In that case FPL sought an increase in its permanent rates and charges based upon a projected test year and sought a subsequent increase to recover the increased revenue requirements resulting from bringing a nuclear unit on line. 82 F.P.S.C. 12:205, 257-59 (Order No. 11437). Based on a 1982 test period, the Commission granted FPL a $100,805,000 revenue increase effective December 23, 1982. Id. Almost eight months later, the Commission allowed FPL to increase its rates further by $237,816,000. 83 F.P.S.C. 8:122 (Order No. 12348). This second step increase in the same docket used a projected test period of July 1, 1983 through June 30, 1984 to develop the revenue requirements for St. Lucie Unit No. 2. Id. No party appealed either decision in the docket.

Appellants' inaccurate assertions about the unique nature of the phase-in approach in this case should be recognized as a ploy to bootstrap its wholly unsupported assertion that the Commission acted pursuant to Section 366.076, Florida Statutes (1983) in granting FPL a 1985 revenue increase. As the previous paragraph shows, there is nothing novel about the Commisson making multiple rate changes in the same proceeding. It is not reasonable to deduce that the

There is no explicit or implicit restriction in the statutes defining the Commission's ratemaking authority prohibiting a utility from filing more than one set of rates in its application or requesting a phased-in increase in revenues. Nor would such a restriction be appropriate. "The matter of 'rates, fares or charges' affects the very life blood of a utility or common carrier." Ex parte Alabama Textile Manufacturers Association, 283 Ala. 228, 215 So.2d 444, 446 (1968). More importantly, there are no restrictions in Chapter 366, Florida Statutes upon the Commission approving multiple changes in rates in one proceeding. The only requirements are that a written application be filed, and if the requested rate schedules are suspended, a public hearing be conducted, and thereafter, the Commission is to fix fair and reasonable rates for the future. In regard to FPL's request for a 1985 revenue increase, each of these requirements was met.

III
THE COMMISSION'S CHOICE OF A PROJECTED TEST PERIOD TO DETERMINE FPL'S REVENUE REQUIREMENTS IS A PROPER EXERCISE OF THE COMMISSION'S BROAD DISCRETION IN ESTABLISHING RATES.

The MDCCA, in addition to attacking Chapter 83-222, Laws of Florida, seemingly argues that the Commission exceeded its authority by employing a projected test period in developing FPL's 1985 revenue requirements. (MDCCA Brief 8-11.) In making this argument principal reliance is placed on general case law to the effect that the Commission is a creature of statute which may

(Footnote Continued)
Commission acted pursuant to Section 366.076, Florida Statutes (1983) in this case; such a conclusion should only be drawn upon a clear expression by the Commission, and there is no such statement in the record.

exercise only such powers as conferred by statute and on a prior decision of this Court addressing the concept of a test period, Gulf Power Co. v. Bevis, 289 So.2d 401 (Fla. 1974) ("Bevis I"). A brief review of this Court's decisions addressing the Commission's ratemaking authority and the use of a test period is helpful, for it shows that the MDCCA's assertions regarding the Commission's ratemaking authority are clearly erroneous and that his reliance on the Bevis I case is misplaced.

While it is true that the Commission is a creature of statute with only such powers and duties as are either expressly implied or conferred by statute, it should be remembered that the Commission has been given express authority to determine fair and reasonable rates for electric utilities. Sections 366.05(1), 366.06, 366.07, Florida Statutes (1983). Consequently, the Commission "has considerable discretion and latitude in the rate-fixing process." Gulf Power Co. v. Bevis, 296 So.2d 482, 487 (Fla. 1974) ("Bevis II"). In construing Section 366.06(2), Florida Statutes and a similar statute regarding the Commission's ratemaking authority over telephone companies, this Court concluded that, "these statutes repose considerable discretion in the Commission in the rate-making process." City of Miami v. Florida Public Service Commission, 208 So.2d 249, 253 (Fla. 1968). Similarly, in regard to the regulatory powers conferred upon the Commission by Section 366.05, Florida Statutes, one of which is the power to determine fair and reasonable rates, this Court has held these powers are "necessarily broad and comprehensive." Storey v. Mayo, 217 So.2d 304, 307 (Fla. 1968).

This Court's prior decisions discussing the "test period concept" evidence the wide latitude given the Commission in setting rates. Initially, it should be observed that the use of a test period in setting rates was a tool first employed

by the Commission in the absence of any mention of test periods in the statutes addressing the Commission's ratemaking authority. 8/ Thus, the Commission's use of a test period is an exercise of its discretion which has long been recognized as being within the Commission's statutory authority to determine fair and reasonable rates.

The only instance in which this Court has intervened in the Commission's application of the test period concept in setting rates was in the Bevis I case. In that case the Commission rigidly applied the test period approach by failing to adjust an historic test period for known changes occuring beyond ninety days after the period. This Court, emphasizing that rates are fixed for the future rather than for the past, held that the blind application of such a time limitation was grossly arbitrary and completely ignored the basic reason for test period adjustments. 289 So.2d at 404-05.

The MDCCA appropriately cites the Bevis I case in addressing the test period concept. What is overlooked by the MDCCA is that in Bevis I this Court was concerned not that the Commission went beyond the basic test year in gathering facts to set rates, but that the Commission did not go beyond the test year. A portion of the quote from Bevis I set out at page 9 of the MDCCA brief makes apparent this distinction as well as the fact that MDCCA's reliance upon Bevis I is misplaced:

8/ The first instance when a test period was ever mentioned in Chapter 366, Florida Statutes was upon the adoption of Section 366.071, Florida Statutes in 1980. See Ch. 80-35, Laws of Fla. Of course, that statute only addresses interim rates, not permanent rates such as those at issue in this case. At any rate, it is clear from this Court's earlier decisions discussing the Commission's use of the test period concept that the Commission began employing test periods in setting rates without any specific mention of this regulatory tool in the governing statutes.

> A ratemaking body such as Florida's PSC cannot ignore an existing fact that admittedly will affect the future rates, such as the corporate tax here.

289 So.2d at 404. Instead of relying on the Court's quotation from the Commission's discussion of an historic test period, the focus should be on the Court's discussion of the purpose of a test period. The Court explained that a test period is "a sample or typical example, to determine a future course." Id. It is a "tool" used to arrive at a fair, "typical" result. Id. It is used, "because it is unwieldly and cumbersome to try to apply a total and unending time." Id. at 405. The Court went on to quote with approval the following discussion of the purpose of a test period:

> The propriety or impropriety of a test year depends upon how well it accomplishes the objective of determining a fair rate of return in the future. It must reasonably represent expected future operations.... Letourneau v. Citizens Utilities Company, 128 Vt. 129, 259 A.2d 21, 24 (1969).

Id. (Emphasis added by this Court.) While all the observations regarding the purpose and use of a test period are equally applicable to the projected test periods more commonly employed today, the MDCCA ignores the import of the decision and tries to argue that the discussion of an historic or "pre-fixed earlier" period leads to the conclusion that the Commission cannot employ a projected test period to set rates.

The fallacy of the conclusion derived by the MDCCA from his strained interpretation of the Bevis I case is also easily demonstrated by referring to a more recent decision of this Court addressing the propriety of the Commission's use of projected test periods in setting a utility's rates. This Court has held:

> Nothing in the decisions of this Court or any legislative act prohibits the use of a projected test year by the Commission in setting a utility's rates. We agree with the Commission that it may allow the use of a projected test

> year as an accounting mechanism to minimize regulatory lag. The projected test period established by the Commission is a ratemaking tool which allows the Commission to determine, as accurately as possible, rates which would be just and reasonable to the customer and properly compensatory to the utility.

Southern Bell Telephone & Telegraph Co. v. Florida Public Service Commission, 443 So.2d 92, 97 (Fla. 1983). 9/

When this Court's decisions regarding the Commission's use of test periods are properly considered, they evidence the considerable discretion afforded the Commission in setting rates. The MDCCA would ignore the latitude given the Commission in establishing rates, disregard this Court's recent decision in the Southern Bell case and argue instead that the Bevis I case requires the Commission to use an historic test period adjusted for known changes. The Bevis I case does hold that if an historic period is to be used, it must be adjusted for known changes; it does not hold that the Commission must use an historic period or that such a test period is preferable to a projected test period. It must be concluded in light of the Southern Bell case that the Commission's choice to use a projected test period to determine FPL's 1985 revenue requirements is not only within the Commission's descretion, but also the better method to establish rates.

The Commission has been given broad discretion in the exercise of its exclusive and comprehensive ratemaking authority for public utilities. Bevis II;

9/ FPL recognizes that this case construed the Commission's authority in setting rates for telephone companies; however, the operative language of the statute in Chapter 364, Florida Statutes construed by the Court in the Southern Bell case is virtually identical to the language in Section 366.06, Florida Statutes (1983). The logic used to construe the Commission's authority to set "just, reasonable and compensatory rates" for telephone companies under Chapter 364, Florida Statutes is equally applicable in construing the Commission's authority to set "fair and reasonable rates" for electric utilities.

City of Miami. In exercising that authority, it must be remembered that ratemaking is prospective; rates are set for the future, not for the past. Bevis I. At issue here is whether the Commission may employ 1985 as a test year for setting FPL's future rates. The governing standard is not found in a statute. The test was articulated by this Court years ago: does the period "reasonably represent expected future operations?" Bevis I, 289 So.2d at 405. The Commission found that "the test periods reasonably represent expected operations during the periods the approved rates will be in effect." Order No. 13537, R. II, p. 270. FPL respectfully submits that in light of the evidence of record and the Commission's undisputed finding, there was no abuse of the Commission's broad rate setting authority in approving FPL's 1985 test period.

IV
FPL'S PROPOSAL TO ADDRESS ATTRITION IS CONSISTENT WITH THIS COURT'S PRIOR DECISIONS REGARDING ATTRITION.

Another example of the Commission's broad ratemaking authority is this Court's recognition that the Commission may, and should, employ attrition allowances when the Commission concludes that the utility will not otherwise have an opportunity to earn a fair and reasonable rate of return. There never has been within the statutory provisions setting forth the Commission's authority to establish utilities' rates a specific reference to attrition allowances. Nonetheless, this Court has held that an attrition allowance is an "appropriate tool" for use by the Commission. Citizens of Florida v. Hawkins, 356 So.2d 254, 258 (Fla. 1978).

The Court's decision in Hawkins is instructive in this case. In this case as in Hawkins, there is a well founded "concern for the erosive effect of attrition

on the company's ability to earn its fair rate of return." 356 So.2d at 258. In Hawkins this court held that the problem of attrition was better addressed through the use of a separate attrition allowance than through the use of a year end rate base. In short, the Court instructed the Commission to use the more accurate ratemaking tool to address attrition. In the case presently before the Court, the Commission was once again presented with two options to address attrition. Based on the evidence that rates based on 1984 operations would be inadequate in 1985 (Tr. 1508), the Commission could choose either (1) FPL's "phased-in" approach of approving a new set of rates based on 1985 operations, or (2) an alternative attrition allowance based on FPL's historically experienced attrition. Just as this Court did in Hawkins, in this case the Commission chose the more accurate or better tool to remedy the attrition FPL would otherwise experience.10/ The Commission's implementation of the 1985 step increase approach is entirely consistent with this Court's decision in the Hawkins case.

Another prior decision of this Court addressing the Commission's ratemaking discretion and its use of an adjustment to combat attrition also supports the Commission's adoption of FPL's "phased-in" rate setting approach. In the Southern Bell case the Commission not only used a projected test period, but also employed an attrition allowance. This Court affirmed the Commission's

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10/ The testimony in the record shows that FPL's proposal to file an entirely different set of rate schedules for 1985 independently supported by its own test period analysis is superior to the alternative attrition allowance based on prior experience. Tr. 1397-97A, 1508-09. It more properly matches the rates to be charged with the costs to be incurred during the period the rates are to be in effect. Tr. 1397-A. One particularly important improvement of the phase-in approach over the more traditional type of an attrition allowance is that, "by delaying the implementation of the second step of the rate increase until January 1, 1985, the ratepayer is not penalized on the front end by having to pay rates before costs are incurred." Id. - 23 -

use of both ratemaking tools.

The same matters which were at issue in the Southern Bell case are at issue in this case. In the decision which led to the Southern Bell case, the Commission not only used a projected test period, but also attempted to remedy attrition which would otherwise preclude the utility from having an opportunity to earn its fair rate of return. This Court affirmed both actions. In this case it was also clear that even with the use of a projected 1984 test period, attrition would foreclose FPL from earning its fair rate of return in 1985. Thus, the Commission acted to address the attrition with a separate allowance. The fact that the attrition allowance in this case may have been calculated differently from the attrition allowance affirmed in the Southern Bell case is of little import, except that it is demonstrably fairer and more accurate than an historically calculated attrition allowance.

FPL respectfully submits that the Southern Bell case is controlling. The Commission's approval of FPL's subsequent year adjustment is a permissible exercise of discretion it is accorded under Chapter 366, Florida Statutes, regardless of the existence of Section 366.076. The Commission acted responsibly in addressing the uncontroverted fact that FPL would otherwise experience attrition which would preclude it from having an opportunity to earn its fair and reasonable rate of return.

V

THE ESSENTIAL PREMISE UNDERLYING THE APPELLANT'S CONSTITUTIONAL CHALLENGE, THAT THE COMMISSION ACTED PURSUANT TO SECTION 366.076, FLORIDA STATUTES (1983), IS UNSUPPORTED BY THE RECORD.

Before addressing the appropriate standards for review when considering

the constitutionality of a legislative enactment and the particular act challenged by the Appellants, it is important to address briefly whether there is any basis to conclude that the Commission acted pursuant to Section 366.076, Florida Statutes (1983) in authorizing FPL's 1985 revenue increase. Such a review demonstrates that the basic premise underlying the Appellant's appeals is erroneous. There is no reasonable basis upon which to conclude that the Commission acted pursuant to or relied upon Section 366.076, Florida Statutes (1983).

At no time in the proceeding did FPL invoke Section 366.076, Florida Statutes (1983). The operative pleading which initiated FPL's request for rate changes in both 1984 and 1985 specifically stated that the relief being requested was "pursuant to the provisions of Section 366.06, Florida Statutes...." R. I, p. 4.

More importantly, although the Commission issued numerous orders in this proceeding, there is not a single reference in any of the orders to Section 366.076, Florida Statutes, even though there are a number of references to the 1985 revenue increase. It would be curious for a Commission purportedly implementing a new statute which supposedly greatly expanded its authority to fail to mention the statute in any of its orders. Perhaps this "glaring omission" is best explained by the Commission itself when it stated it was suspending both sets of FPL's rate schedules and setting the matter for hearing, "pursuant to the authority granted in Section 366.06(3), Florida Statutes." Order No. 12919; R. I, p. 124.

The Appellants conveniently ignore these straightforward expressions which clearly show neither the Company nor the Commission was relying upon

Section 366.076, Florida Statutes (1983).11/ They resort instead to various circumstantial or deductive arguments to attempt to tie the 1985 revenue increase to Section 366.076, Florida Statutes (1983). These unjustified speculations should not be relied upon in the face of clear statements by both the Company and the Commission to the contrary and a course of conduct consistent with Section 366.06, Florida Statutes (1983).

VI
CHAPTER 83-222, LAWS OF FLORIDA, THE ACT ADOPTING SECTION 366.076, FLORIDA STATUTES (1983), DOES NOT CONTRAVENE ARTICLE III, SECTION 6 OF THE FLORIDA CONSTITUTION.

A. The Standard Of Review.

In this case the Court has been called upon to determine the constitutionality of a statute. If the Court reaches that question, several precepts previously recognized by this Court should be applied.

Legislative enactments are presumptively valid. State v. McDonald, 357 So.2d 405 (Fla. 1978); State ex rel Shevin v. Metz Construction Co., 285 So.2d 598 (Fla. 1973). Consequently, the burden of proof is upon the person assailing the statute to show that it fails to meet a constitutional standard. Ison v. Zimmerman, 372 So.2d 431 (Fla. 1979). The constitutional infirmity must be shown "beyond reasonable doubt." State ex rel Flink v. Canova, 94 So.2d 181, 184 (Fla. 1957). Should any doubt exist that an act is in violation of any

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11/ To his credit, the MDCCA does admit that "the Commission did not refer expressly to a recent enactment, Section 366.076, Florida statutes [sic]..." in its initial order authorizing the rate changes. MDCCA Brief 3. However, having made this damaging admission, the MDCCA goes on to argue the unconstitutionality of Chapter 83-222, Laws of Florida creating Section 366.076, Florida Statutes (1983).

constitutional provision, the presumption is in favor of constitutionality. Id. Therefore, an act will be struck down only where there is a plain case of violating or ignoring a constitutional requirement. King Kole, Inc. v. Bryant, 178 So.2d 2 (Fla. 1965); Farabee v. Board of Trustees, Lee County Law Library, 254 So.2d 1 (Fla. 1971). Courts have the judicial obligation to sustain legislative enactments when possible. North Port Bank v. State Department of Revenue, 313 So.2d 683 (Fla. 1975).

All of these principles are applicable to the case at bar. State ex rel Shevin v. Metz Construction Co..

B. The Constitutional Provision At Issue.

Article III, Section 6, Florida Constitution provides in pertinent part:

> Every law shall embrace one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.

This provision contains two constitutional restrictions applicable to every legislative enactment. First, each law must address only one subject. Second, the subject of the act must be expressed briefly in its title.

In most instances when, as in this case, it is alleged that an act offends both restrictions, courts consider first the adequacy of the title and then whether the act embraces more than one subject. That is the approach taken in this brief.

C. The Title To Chapter 83-222, Laws of Florida Fairly Gives Notice As Would Reasonably Lead To Inquiry Into The Contents Of The Act.

On a number of occasions this Court has addressed the purpose of the constitutional requirement regarding the title of a legislative enactment and has

expressed various means of testing whether the title meets the requirement. The purpose of the requirement, "is to provide notice to all concerned of the general nature and substance of the act." Bunnell v. State, 453 So.2d 808, 809 (Fla. 1984); Kirkland v. Phillips, 106 So.2d 909, 914 (Fla. 1958). "Its object is to avoid surprise or fraud by fairly apprising the Legislature and the public of the subject of the legislation being enacted." King Kole, Inc., 178 So.2d at 4. The title should be "sufficiently broad to connect it with the general subject matter of the enactment." State v. McDonald, 357 So.2d at 407. It "should reasonably and fairly give notice of what one may expect to find in the body of the enactment." Smith v. City of St. Petersburg, 302 So.2d 756, 758 (Fla. 1974). A title is sufficient "if it fairly gives such notice as will reasonably lead to inquiry into the body" of the act. King Kole, Inc., 178 So.2d at 4. In this regard, it has been said that "the title does not require a detailed explanation of every provision." State v. McDonald, 357 So.2d at 407. The title does not have to be an index to the contents. It is not necessary for the title to delineate in detail the substance of the statute. King Kole, Inc.; Kirkland v. Phillips.

The title to Chapter 83-222, Laws of Florida, the act creating Section 366.076, Florida Statutes (1983), states that it is an act "relating to the siting of electrical transmission lines" and proceeds to identify each of the amendments made to the existing law. Included in the title's index of amendments is the reference "creating s. 366.076, Florida Statutes; authorizing limited regulatory proceedings, also authorizing rulemaking authority." In this instance the Legislature chose "to delineate in detail the substance of the act" even though such detail was not required. King Kole, Inc., 178 So.2d at 4. This additional effort to inform the reader of the title of the contents of the act is permissible:

> This court is also committed to the doctrine that

> amplification of the title to an act, so as to expressly mention matters germane thereto and properly connected therewith, does not nullify the title....

Colonial Inv. Co. v. Nolan, 100 Fla. 349, 131 So. 178, 179 (Fla. 1930).

The title to Chapter 83-222, Laws of Florida satisfies the constitutional requirement of the subject of an act being briefly expressed in its title. The title expressly states that it pertains to transmission lines and to regulatory proceedings and rule making within Chapter 366, Florida Statutes. This provides notice to legislators and the public alike of the general nature and substance of the act. A person reading this title would have reason to inquire into the body of act to discern how the regulatory proceedings of Chapter 366, Florida Statutes, which clearly include ratemaking, are affected. In fact, the title more than satisfies the title requirement of Article III, Section 6, Florida Constitution since it provides more detail than is required. The title to Chapter 83-222 cannot be said to have perpetrated surprise or fraud on the Legislature or public, for through the indexing of the statute's contents, it fairly and reasonably summarizes the provision of the act which creates Section 366.076, Florida Statutes (1983). Simply stated, the title of Chapter 83-222, Laws of Florida provides adequate notice and is not constitutionally infirm.

D. Chapter 83-222, Laws of Florida Embraces Only One Subject And Matters Properly Connected.

Once the adequacy of the title of an act has been established, the Court must determine whether the provisions of the act embrace more than one subject. In State v. Lee, 356 So.2d 276, 282 (Fla. 1976) this Court explained the reason behind the constitution's single subject rule:

> The purpose of the constitutional prohibition against a plurality of subjects in a single legislative act is to

> prevent a single enactment from becoming a 'cloak' for dissimilar legislation having no necessary or appropriate connection with the subject matter. E.g., Colonial Inv. Co. v. Nolan, 100 Fla. 1349, 131 So. 178 (Fla. 1930).

There is no litmus test allowing mechanical application to assess whether a legislative enactment addresses more than one subject or includes subjects that are improperly connected. Traditionally, the Florida courts require that all matters included in the law have a "cogent relationship" (Bunnell v. State, 453 So.2d at 809), that there exists a "natural and logical connection" among the provisions (Board of Public Instruction of Broward County v. Doran, 224 So.2d 693, 699 (Fla. 1969)), or that the provisions be "necessary incidents to, or that tend to make effective or promote, the object and purpose of the legislation...." Smith v. Chase, 91 Fla. 1044, 109 So. 94, 97 (Fla. 1926). Although the case law does not expressly provide, courts must decide whether a statute violates the single subject rule on a case by case basis.

This Court explained in State v. Lee, that "wide latitude must be accorded the legislature in the enactment of laws, and this Court will strike down a statute only where there is a plain violation of the constitutional requirements that each enactment be limited to a single subject." 356 So.2d at 282. Moreover, the one subject rule articulated in Article III, Section 6, Florida Constitution is not as stringent as the similar provision regarding constitutional amendments in Article XI, Section 3, Florida Constitution. Fine v. Firestone, 448 So.2d 984 (Fla. 1984). Indeed, the less stringent or more liberal standard articulated in Fine v. Firestone as applicable under the one subject provision of Article III, Section 6, is seemingly reflected in this Court's disposition of prior cases where it has been alleged that statutes contain more than one subject.

With these observations in mind, turn to the act in question. The Appellants argue that Section 13(4) of Chapter 83-222, Laws of Florida, the provision creating Section 366.076, Florida Statutes (1983), introduces a second subject into Chapter 83-222. The argument is that the authority conferred upon the Commission in Section 13(4) of Chapter 83-222 is not "naturally and logically" connected to the siting of electrical transmission lines. Despite these contentions, a review of Chapter 83-222 in its entirety shows that Section 13(4) of the act is germane to and effectuates the siting of electrical transmission lines.

An integral part of the transmission siting process is the determination by the Commission of the need for an electrical transmission line. See Section 19, Chapter 83-222, Laws of Florida; Section 403.507, Florida Statutes (1983). In making its determination of whether there is a need for an electrical transmission line, the Commission is to conduct a hearing. Id. Section 13(4) of Chapter 83-222 authorizes the Commission to conduct limited proceedings. This provision may be employed in conducting the hearing for the determination of the need for the line. In short, pursuant to Section 13(4) of Chapter 83-222, Laws of Florida the Commission may conduct a limited proceeding to make the need determination required by Section 19 of Chapter 83-222, Laws of Florida. It must be concluded that Section 13(4), Chapter 83-222, Laws of Florida, which creates Section 366.076(1), Florida Statutes (1983), facilitates the subject of the act.

The creation of Section 366.076(2), Florida Statutes also helps effectuate the purposes of Chapter 83-222, Laws of Florida and the transmission line siting act it amends by providing greater flexibility in the ratemaking authority of the Commission and thus allowing the Commission to respond more readily to the

financial burdens imposed on utilities by the transmission line siting process. Section 4 of Chapter 83-222 requires applicants for transmission line siting authority to pay an application fee of $750 per mile of proposed transmission line corridor, with a minimum fee of $20,000 per application. There is also a substantial burden created by the need to prepare for and participate in the administrative hearings and other procedures involved in processing a siting application. Finally, the results of the siting process may impose very large additional construction expenses on utilities receiving siting approval if that approval requires compliance with burdensome conditions. A utility affected by these various types of added expenses has no recourse but to seek rate relief from the Commission, and the provisions of Chapter 83-222 creating Section 366.076 could help the Commission to be responsive to such requests. Thus, the provision of Chapter 83-222, Laws of Florida creating Section 366.076(2), Florida Statutes is a necessary element of the act to ensure that those affected by the act have the means to comply with the statutory requirements.

Provisions necessary to provide the funds for effectuating a legislative enactment bear sufficient connection to the statute's subject matter. In Smith v.Chase, 109 So. at 97, this Court held "[p]rovisions that are necessary or incident to, or that tend to make effective or to promote, the object and the purpose of the legislation that is included in the subject expressed in the title of the act, may be regarded as a matter properly connected with the subject of the act." Similarly, in Farabee v. Board of Trustees, Lee County Law Library, the court held a statute constitutional against an Article III, Section 6 challenge that the title failed to provide proper notice for the funding mechanism of a county law library. The Court enunciated the prevailing rule stating:

> Where one general subject . . . is expressed in the title of

> an act, the means and instrumentalities for effecting such subject need not be stated in the title and may be regarded as matters properly connected with the subject which may be properly embraced in the act.

254 So.2d at 4. Likewise, the amendment to Chapter 366 found within Ch. 83-222, Laws of Florida is a "means and instrumentality" for effecting compliance with the "Transmission Line Siting Act."

As the foregoing analysis has shown, the logical connection the Appellants allege to be missing between Section 13(4) of Chapter 83-222, Laws of Florida and the remainder of the act is readily apparent. The portion of Chapter 83-222 creating Section 366.076, Florida Statutes provides the means and instrumentalities of effectuating the subject of the act. The act in question is not constitutionally infirm.

CONCLUSION

By means of an artificial constitutional challenge, the Appellants seek to invalidate an essential revenue increase granted to FPL after a thorough and exhaustive proceeding lasting over a year. In making this challenge the Appellants admit that the Commission's action was proper based on the evidence presented.

This Court need not, and indeed should not, reach the constitutional question raised by the Appellants. The Commission had, and exercised, statutory authority independent of Section 366.076, Florida Statutes (1983) to allow FPL a 1985 revenue increase. The Commission properly exercised its ratemaking authority under Section 366.06, Florida Statutes (1983), and its choice of a test period to judge the reasonableness of FPL's requested rate change for 1985 was clearly a matter within the broad discretion the Commission exercises in establishing utility rates.

There is no reasonable basis in the record from which to conclude that the Commission acted pursuant to Section 366.076, Florida Statutes (1983) in authorizing FPL's change in rates and charges. However, even if such a showing had been made, the act adopting Section 366.076 does not violate the restrictions in Article III, Section 6, Florida Constitution. The Commission's orders are due to be affirmed.

Respectfully submitted,

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