

IN THE SUPREME COURT OF FLORIDA

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CLERK, SUPREME COURT

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FLORIDIANS UNITED FOR SAFE)
 ENERGY, INC.)

Appellant,)

v.)

FLORIDA PUBLIC SERVICE)
 COMMISSION, FLORIDA POWER)
 AND LIGHT COMPANY,)

Appellees.)

CASE NO: 66,380
 and
 CASE NO: 66,444

ON APPEAL OF PUBLIC SERVICE COMMISSION
 ORDER NO.: 13948

INITIAL BRIEF OF APPELLANT
 FLORIDIANS UNITED FOR SAFE ENERGY, INC.

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SYMBOLS AND DESIGNATION OF PARTIES

Appellant, Floridians United for Safe Energy, Inc., will be referred to by that name or as "FUSE."

Appellee, Florida Public Service Commission, will be referred to by that name, as "PSC", or the "Commission."

Appellee, Florida Power & Light Company, will be referred to by that name, as "FPL", or as "COMPANY."

Chapter 83-222, Laws of Florida, will be referred to by that cite or as the "act."

The transcript of the prehearing conference held March 12, 1984 is contained in a separate volume, located within Volume I of the record. The transcript of the full hearing held in April, 1984 is also bound in a separate volume, and made part of Volume I of the record. The pages in the record are numbered sequentially and are the same as the original transcript page numbers. All transcript pages will be referred to as: "[Vol. I, T.____]". The appropriate page number will be inserted in the blank space.

Selected Exhibits received at the April, 1984 hearing are contained in a separate volume located within Volume I of the record. The exhibits will be referred to as "[Vol. I, Ex.____]".

The appropriate exhibit number will be inserted in the blank space.

Finally, references to the record of the proceeding below, other than to transcripts or exhibits, are contained in Volumes I, II, III, IV and V of the record. All references to this portion of the record below will be as follows: "[Vol. ___ R. ___]". The appropriate volume and page number of the record below will be inserted into the blank spaces respectively.

STATEMENT OF THE CASE AND OF THE FACTS

This consolidated appeal arises out of the Public Service Commission's Final Order, No. 13948, granting "FPL" a 1985 "subsequent year adjustment" which authorizes the utility to increase its rates and charges by \$120,447,000. [Vol. V, R. 851]. This "PSC" ruling represents an action of a statewide agency relating to the rates of a utility providing electric service. This Court therefore, has jurisdiction pursuant to Article V, Section (3)(b)(2), Fla. Const., Section 350.128 and 366.10, Fla. Stat., and Fla.R.App.P.9.030(a)(1)(B)(ii).

On November 23, 1983 "FPL" filed its Petition seeking an increase in its rates and charges for 1984 and 1985 [Vol. I, R. 4]. The 1984 rate hike request is not a subject of this appeal. It is the 1985 "subsequent year adjustment" request which gives rise to this appellate proceeding.

"FPL's" request for a "subsequent year adjustment" marked the first time this utility, or any utility in Florida, had sought this form of regulatory treatment from the "PSC." Typically, rate relief is granted for one year. However, in order to address the problems of inflation and regulatory lag, utilities historically seek attrition allowances. Simply put, the attrition allowance is a formula which allows for an increase in rates, within the year in question, to compensate for the eroding effect of future inflation. See generally, Citizens of Florida v. Hawkins, 356 So.2d 254, 255-258 (Fla. 1978).

"FPL" chose to seek a "subsequent year adjustment" for 1985 instead of an attrition allowance for several reasons. The

"COMPANY" believed that the "subsequent year adjustment" offered benefits in the form of administrative economy and would more closely match costs and revenues (thereby minimizing regulatory lag) than would the attrition adjustment [Vol. I, R. 4, 16-18].

"FPL's" first ever request for a "subsequent year adjustment" was made possible by newly enacted legislation, Ch. 83-222, Laws of Florida. This act went into effect October 1, 1983, only 54 days prior to "FPL's" filing of its Petition seeking the 1985 "subsequent year adjustment" [Vol. I, R. 4].

This "act", which was short titled "Transmission Line Siting Act", was basically an amendment to Sections 403.52-403.536, Fla. Stat. A newly created portion of the "act" came at Section 13(4) (which for cross reference is Section 403.531(4), Fla. Stat.). This section provided the "PSC" with the authority to establish rules to grant "subsequent year adjustments." This rule-making power was never before legislated in Florida prior to the enactment of Ch. 83-222, Laws of Florida.

This appeal centers upon the constitutionality of Ch. 83-222, Laws of Florida and the "PSC's" authority to have granted "FPL" its 1985 "subsequent year adjustment" pursuant to that "act." The appellate issue arises out of "PSC" Docket No. 830465-EI which was created when "FPL" filed its Petition for an Increase in its Rates and Charges [Vol. 1, R. 4].

On January 17, 1984 "FUSE", a consumer group operating as a not for profit corporation, petitioned to intervene in the rate case [Vol. I, R. 122]. The "PSC" granted "FUSE" intervenor status in its January 25, 1985 Order No. 12933 [Vol. I, R. 131],

thereby making "FUSE" a party below. The "PSC" staff, "FPL", and several other intervenors were also parties in the rate case below.

The rate case proceeded pursuant to law and unfolded in typical fashion. "FUSE" filed, along with most of the other parties, a Prehearing Statement [Vol. I, R. 132]. The "PSC" collated all of the parties' prehearing positions and issued its Prehearing Order No. 13176 on April 6, 1984 [Vol. 1, R. 141]. The Prehearing Order outlined some 130 issues to be decided at the soon to be held hearing.

The full hearing was held on April 9-13, 16 and 18-20, 1984 in Tallahassee. "FUSE", "PSC" staff, "FPL" and some other intervenors were present. At the immediate commencement of the hearing and before opening statements, the "PSC" entertained motions. At that point "FUSE" made an ore tenus motion to dismiss the "subsequent year adjustment." The basis for the motion was that "FPL's" "subsequent year adjustment" request was made pursuant to an unconstitutional law, Ch. 83-222, Laws of Florida. That "act", "FUSE" argued, violated the one subject rule of Article III, Section 6, Fla. Const. [Vol. I, T. 11-12].

"PSC" Commissioner Cresse spoke first to the "FUSE" motion. He indicated why the motion should be denied. He ruled that "FUSE's" issue was one for the Supreme Court to decide.

"The question of whether or not this law is constitutional is a question which the courts of this state should rule upon and not this Commission. If FUSE believes that to be true, then our feeling is that they need to undertake that in the Supreme Court or whatever the appropriate body is." [Vol. I, T. 13, lines 3-8].

At that point no other party commented on or objected to "FUSE's" motion. Neither the "PSC" staff nor "FPL" challenged either the motion or its underlying assumption that "FPL's" 1985 "subsequent year adjustment" request was brought pursuant to Ch. 83-222, Laws of Florida. [Vol. I, T. 14 at line 9]. The PSC Commissioners unanimously voted to deny "FUSE's" motion to dismiss the subsequent year adjustment. [Vol. I, T. 13, lines 18-21].

The hearing proceeded with "FUSE" moving on the fifth day to rest its case, which for all purposes meant the close of "FUSE's" case. The "PSC" staff and "FPL" agreed to "FUSE's" motion. Before "FUSE" closed its case, it renewed its motion to dismiss the 1985 "subsequent year adjustment" request on constitutional grounds. Again, the "PSC" denied "FUSE's" motion to dismiss. However, the "PSC" did grant "FUSE's" motion to rest its case. [Vol. I, T. 1394].

Before rendering its final order on the 1985 "subsequent year adjustment", the "PSC" allowed all parties to submit a final brief. These briefs serve almost as the trial equivalent of a closing argument. In the introduction to its final brief, "FUSE" once again raised its motion to dismiss the "subsequent year adjustment." [Vol. II, R. 242, 244].

The "PSC" also authorized the parties to file late exhibits. These exhibits usually arise out of "PSC's" need for information which was not provided during the hearing. "FPL" filed a late filed exhibit 9-B, which was later revised. [Vol. IV, R. 538 and Vol. V, R. 759]. This exhibit 9-B is basically a suggestion

by "FPL" on what "subsequent year adjustment" rules should be enacted by the "PSC" under Ch. 83-222, Laws of Florida. This exhibit proposes a system by which the "PSC" could monitor "FPL's" financial indicators to ascertain if the company is earning an unapproved rate of return.

After considering all of the substantial competent evidence in the proceeding below, the "PSC" issued its Order No. 13537 authorizing certain increases. [V. II, R. 263]. In the Order the "PSC" concluded as a matter of law that it had the statutory authority to approve and consider for rate making purposes a "subsequent year test period." [Vol. II, R. 235]. The statutory authority the "PSC" is referring to is the new "act", Ch. 83-222, Laws of Florida.

The "PSC", in the body of Order No. 13537, specifically discusses the "subsequent year adjustment." In granting "FPL" \$114.9 million (which would later be adjusted upward to \$121.4 million), the "PSC" ordered that a workshop be held in a separate docket to "acquire the input necessary to our establishing a rule-making docket on subsequent year adjustments." [See Vol. II, R. 319]. The establishment of this rule-making docket is authorized directly by the new act, Ch. 83-222, Laws of Florida, where in Section 13(4) it is provided that the "PSC" "may adopt rules for the determination of ... incremental adjustments for subsequent periods." The "PSC" went on to hold the rule-making workshop on August 10, 1984 and discussed the new "act", referred to as Section 366.076, Fla. Stat. in its agenda outline.

The "PSC" followed through on its commitment under the new "act" to make rules to implement the "subsequent year

adjustment." After the workshops were held, the "PSC" issued another Order, No. 13820, entitled "Order Requiring Data for Subsequent Year Adjustment," on October 30, 1984. This Order recognized that workshops were held for the purpose of identifying specific criteria and procedures to be used in implementing the "subsequent year adjustment." Based on staff recommendations, the "PSC" ordered "FPL" to file specific additional data and further ordered that a timetable be set up for implementing the "subsequent year adjustment." [Vol. III, R. 505].

"FPL" was not satisfied with certain aspects of "PSC" "final" Order No. 13537 [Vol. II, R. 263]. As a result, "FPL" filed a Petition for Reconsideration on August 9, 1984, primarily disputing the amount of the 1984 and 1985 rate hikes. None of the issues raised in "FPL's" Petition for Reconsideration addressed the "PSC's" authority to implement the "subsequent year adjustment." [Vol. II, R. 347].

The "PSC" heard oral arguments on the Petition for Reconsideration and thereafter issued Order No. 13948. [Vol V, R. 851]. It is this Order, No. 13948, which is the "final order" in the proceeding below which gives rise to the instant appeal. In Order No. 13948, entitled "Granting in Part and Denying in Part Petitions for Reconsideration," the "PSC" on December 28, 1984 raised "FPL's" 1985 "subsequent year adjustment" increase from \$114,984,000 to \$120,447,000. [Vol. V, R. 857]. This new Order, No. 13948, did not in any way change that portion of previous Order, No. 13537, which implemented the

"subsequent year adjustment" rule-making process. [Vol. V, R. 857]. Minor amendments were made to final Order, No. 13948, after "FUSE's" Notice of Appeal was filed, in "PSC" Order Nos. 13948-A and 14005. [V. V, R. 865, 866].

SUMMARY OF ARGUMENT

"FPL" sought a rate increase for both 1984 and 1985 in the same proceeding below. "FPL's" two-year rate petition was the first such request sought by any utility regulated by the "PSC." It was made possible by Ch. 83-222, Laws of Florida, which took effect on October 1, 1983. This effective date was only 54 days prior to "FPL" filing its Petition for the rate increase in the administrative proceeding below.

Ch. 83-222, Laws of Florida, is short-titled the "Electrical Transmission Siting Act." The official title of the "act" is replete within references to electrical transmission lines. The "act" clearly deals in all but one of its twenty-three sections with the siting of electrical transmission lines. The one section that concerns a subject other than electrical transmission lines is numbered 13(4) or Section 403.531(4), Fla. Stat.

Section 13(4) expands the jurisdiction of the "PSC" by giving the Commission two broad powers. First, the "PSC" may conduct limited proceedings on any matter within its jurisdiction. Basically, the "Commission" is authorized to conduct limited administrative proceedings, as opposed to full hearings, on any matter over which it has jurisdiction. Secondly, the new "act" expanded the subject matter jurisdiction of the "PSC" by authorizing the "Commission" to adopt rules to grant "subsequent year adjustments." Simply put, the "PSC" is no longer restricted

to authorizing rate hikes one year at a time. Ch. 83-222, Laws of Florida, provided the "PSC" with the authority to give subsequent rate hikes for a second year (or any subsequent period).

Pursuant to the new "act", the "Commission" gave "FPL" a 1985 "subsequent year adjustment" of \$120,447,000 in addition to the 1984 rate request. The 1985 and 1984 rate hikes were both decided in the same proceeding below. It is the 1985 "subsequent year adjustment", granted to "FPL" by the "PSC", which is the subject of the instant appeal.

The new "act" clearly contains more than one subject. The title of the "act", and twenty-two of its sections, focus solely upon electrical transmission line siting. However, Section 13(4) deals with the separate and totally unrelated subject of "PSC" limited proceedings on any matter within its jurisdiction and the "PSC's" authority to grant "subsequent year adjustments."

Because the "act" contains a plurality of subjects, it violates the "one-subject rule" contained in Article III, §6 of the Florida Constitution. Since the "act" is constitutionally defective, it is inoperative. The "PSC" therefore lacked the authority to grant "FPL" a 1985 "subsequent year" rate hike pursuant to the new law. That portion of "PSC" Order No. 13948 authorizing the 1985 rate hike is void and an immediate refund of all monies collected thereunder should be ordered by the "Commission."

ARGUMENT

- I. Ch. 83-222, LAWS OF FLORIDA, VIOLATES ARTICLE III, §6 OF THE FLORIDA CONSTITUTION BECAUSE IT DOES NOT EMBRACE BUT ONE SUBJECT AND MATTERS PROPERLY CONNECTED THEREWITH, AND THEREFORE THE PUBLIC SERVICE COMMISSION LACKS THE AUTHORITY TO GRANT FLORIDA POWER AND LIGHT COMPANY A \$120,447,000 1985 "SUBSEQUENT YEAR ADJUSTMENT."

By now it is clear that the "PSC" has granted "FPL" a 1985 "subsequent year adjustment" rate increase. The amount of that "adjustment" is not challenged. The evidence supporting the "PSC's" decision is not under attack. In fact, not one evidentiary question is raised herein. The issue is whether the "PSC" had the authority to grant the 1985 "subsequent year adjustment", pursuant to Ch. 83-222, Laws of Florida, in the first place. The new law is clearly unconstitutional. Since the "act" is unconstitutional, it is then inoperative. The "PSC" therefore cannot operate pursuant to it.

With the singular issue being so narrow, the "record below" does not need to be exhaustively reviewed. The point raised on appeal is actually a legal one which requires this Court to focus more upon the actions of the Florida Legislature than those of the "PSC." Ultimately, a careful and maticulous review of Ch. 83-222, Laws of Florida, will be the vehicle by which this Court adjudicates the issue on appeal.

A two step analysis is required to properly analyze the question on appeal. First, a discussion of the case law interpreting Article III, §6, Fla. Const., must take place. The "one subject rule" contained in that part of the Florida

Constitution is the touchstone by which this appeal stands or falls. Secondly, Article III, §6 Fla. Const. (and the related case law) should be directly applied to the law in question, Ch. 83-222, Laws of Florida. What this two step process will reveal is that the "act" is constitutionally defective.

Article III, §6 of the Florida Constitution requires that every law embrace but one subject and matters properly connected therewith. This provision has been examined in numerous cases. A brief summary of this case law reveals that the court has carved out a clear interpretation of this constitutional provision.

There are two basic purposes of this section of the Constitution. The first purpose of Article III, §6 is to require that the title of an act give fair and reasonable notice to legislators and the public of the nature of the provisions in the act. This prevents any fraud upon the legislators and the public. Rouleau v. Avrach, 233 So.2d 1 (Fla. 1970); King Kole, Inc. v. Bryant, 178 So.2d 2 (Fla. 1965), cert. denied 383 U.S. 958; State v. Florida State Turnpike Authority, 80 So.2d 337 (Fla. 1955); Smith v. Chase, 109 So. 94 (Fla. 1926). The title should express the one subject of the "act." Secondly, the act itself must contain but one subject and matters properly connected thereto. The purpose of the prohibition of a plurality of subjects is to prevent a single enactment from acting as a "cloak" for dissimilar legislation having no necessary or appropriate connection with the subject matter. State v. Lee, 356 So.2d 276 (Fla. 1978). The purpose of the constitutional

provision is to avoid misleading any reader of the title of the "act", by including unconnected provisions in the body.

The legislature, though, is granted wide latitude in the formation and enactment of its laws. Griffin v. State, 396 So.2d 152 (Fla. 1981); State ex.rel. Terry v. Vestel, 88 So. 477 (Fla. 1921). Only in cases where a clear violation of Article III, §6 is shown will a law be struck down for embracing more than one subject. Town of Monticello v. Finlayson, 23 So.2d 843 (Fla. 1945); State ex.rel. Oglesby v. Hand, 119 So. 375 (Fla. 1928). Furthermore, the subject of the law (as expressed in the title) may be as broad as the legislature chooses provided the matters included in the law have a natural and logical connection. Chenoweth v. Kemp, 396 So.2d 1122 (Fla. 1981); State v. Lee, supra; Smith v. Chase, supra.

One case, giving the benefit of the doubt to the legislature, put it this way:

"The constitutional provision [Article III, §6] cited forbids the Legislature to embrace in one act two or more unconnected subjects, but provisions on one subject and matters germane therewith may be embraced in the same act." (emphasis added).

McSween v. State Livestock Sanitary Board, 122 So.2d 239 (Fla. 1929). See also, State v. Hand, supra, which holds that provisions of an act which are germane to the subject and "properly connected" therewith are acceptable and will not violate the prohibition of Art. III, §6.

The problem becomes defining what is "germane", "naturally", "properly" and "logically" connected with the subject of the

"act" as found in the title. One case, often cited, addressed this very question. The Court in Smith v. Chase, supra, reasoned:

"Provisions that are necessary incidents 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 matter properly connected with the subject of the act; but where such provisions constitute a broad or essentially different subject that is not properly connected with the stated subject of the act, such provisions violate [Art. III, §6] of the Constitution, and are inoperative."

Id., at pg. 97.

To apply the State v. Lee, Chenoweth, McSween, and Smith, supra, "tests" to Ch. 83-222, Laws of Florida, requires a step-by-step analysis of the "act." The one subject of the "act" must first be determined. Then each section of the "act" must be critiqued to ascertain whether these sections are "naturally and logically connected" to the one subject or "germane therewith." One must also analyze whether the sections of the "act" are "necessary incidents" to the one subject and/or "promote the object or purpose of the legislation" in question.

The title of the "act" is lengthy. It is described in 38 lines. Regardless of how one reviews the title, it deals with the siting of electrical transmission lines. In fact, the words "transmission line(s)" appear six times in the title. The short title, outlined in Section 1 of the "act", is "Transmission Line Siting Act." Another clue to the rather obvious subject of the

"act" is the fact that the title constantly refers to Chapter 403, Fla. Stat., for all the "act's" statutory numbering. Section 403.521 et.seq. has exclusively dealt with electrical transmission lines in the past.

A section by section analysis further verifies that the one "main" subject of the "act" is transmission line siting. Every one of the total (twenty-three) sections deals with electrical transmission line siting. Section 2 outlines the legislative intent of "act" as being the establishment of a centralized and coordinated permitting process for the location of transmission line corridors and the construction and maintenance of electrical transmission lines. All the other sections focus upon different aspects of the electrical transmission line siting process. A basic reading of the "act" leads to but one conclusion: the one subject of the "act", which is expressed in its title, is the siting of electrical transmission lines. (The entire "act" itself, along with a narrative summary, appears in the Appendix).

The "act" however does contain another new subject. Spliced in the middle of this nineteen page statutory law is one subsection numbered 13(4), which interjects two completely new subjects. The one subsection, composed of only eighteen sentences, is so profoundly unrelated to electrical transmission line siting that it appears to have been misplaced.

Section 13(4) is so acutely offensive to Article III, §6, Fla. Const. that all one is required to do to prove it is to present the section verbatim. First, however, the "old" legislation, prior to the enactment of Ch. 83-222, Florida Laws, should be advanced so as to provide a focal point.

The previous reading of this Section was:

This part shall in no way affect the rate-making powers of the commission (PSC) under Chapter 366 or the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the Commission.

This well-connected previous piece of legislation was subverted to introduce a completely new, unconnected, and different subject. It now reads:

403.531(4) This part shall not in any way affect the rate-making powers of the commission under chapter 366 ~~or~~ except that section 366.076, Florida Statutes, is created to read:

366.076 Limited proceedings.--Upon petition or by its own motion, the commission may conduct limited proceedings to consider, and act upon, any matter within its jurisdiction, including any matter the resolution of which requires a public utility to adjust its rates consistent with the provisions of this chapter. The Commission shall determine the issues to be considered during such a proceeding and may grant or deny any request to expand the scope of the proceeding to include other matters. Also, the commission may adopt rules for the determination of rates in full revenue requirement proceedings which provide for adjustments of rates based on revenues and costs during the period new rates are to be in effect and provide for incremental adjustments in rates for subsequent periods. This part may also not in any way affect the right of any local government to charge appropriate fees or require that construction be in compliance with the National Electrical Safety Code, as prescribed by the Commission.

The first part of Section 13(4) deals with the right of the "PSC" to conduct limited proceedings on any matter within its

jurisdiction, (emphasis added). This means the "PSC" can conduct limited proceedings on any issue regarding all utilities (emphasis added). There are no limits advanced here. The "PSC" may hold hearings on "FPL" salaries, oil backout, or the leasing of "FPL" company automobiles. Even more importantly, the "PSC" may conduct limited proceedings into water and gas utility issues, as well as telephone service questions.

However, Section 13(4) is somewhat unclear as to what exactly is the "PSC's" jurisdiction. The new section refers to any matter within the "PSC's" jurisdiction. The "act" would, therefore, apply to all "PSC" regulated electrical, gas, water and telephone utilities. It does appear that the "act" defines the "PSC's" "limited rate proceeding" jurisdiction to provisions within "this chapter." (This applies only to rate cases). Yet, the "act" does not define which chapter it is referring to. Chapter 403 is the logical choice since it contains the section itself. But, Chapter 403 never enunciates the "PSC's" jurisdiction. Chapter 366 does define the "PSC's" electric and gas jurisdiction, but is not incorporated by reference into the body of Section 13(4).

What connection does this unlimited Section have with electrical transmission lines? This is a new subject -- the limited proceeding power of the "PSC." There is no natural and logical connection between "PSC" limited proceedings on gas issues, on the one hand, and electrical transmission line siting on the other. There is nothing in this Section which relates to any of the other twenty-two sections. One need not ponder for

any length of time to realize that this Section does not necessarily "effectuate" the "act" or "promote its purpose."

The "second half" of this Section gave the "PSC" the authority to grant "FPL" its 1985 "subsequent year adjustment." Beginning with the word "also" this Section authorizes the "PSC" to adopt rules which provide for the adjustment of rates for subsequent periods. Quite simply, this means the "PSC" can, in a one year rate increase case, actually give a rate increase for a subsequent year(s). This was never possible before the "passing" of this "act."

As a result of Section 13(4), "FPL" is receiving a \$120,447,000 rate increase in 1985. One wonders how a law, whose topic is electrical transmission line siting, could possibly bestow such great power upon the "PSC." The answer is simple. The "act" could not do this without containing a plurality of subjects.

Every other section concerns transmission line siting, which is the "main" subject of the law. How is a "subsequent year adjustment" "naturally and logically" connected to the siting of electrical transmission lines? Granting a telephone or gas utility the right to a subsequent year rate increase cannot be "germane" to the title of this "act." The purpose of the legislation, the establishment of a centralized permitting process for the location, construction and the maintenance of electrical transmission lines, is in no way promoted by having the "PSC" grant Southern Bell Telephone a "subsequent year adjustment." It is hardly necessary to "effectuate" the "act" by

granting these enormous new powers to the "PSC." A person, with a creative mind, could perhaps propose an illogical connection between Section 13(4) and the subject of the "act." However, for one to create a remote relationship between Section 13(4) and the "act" would be a futile attempt to stretch the Court's imagination beyond all normal limits.

The drafters even went so far as to create a new statute, Section 366.076, Fla. Stat., in the body of a separate statute, Section 403.531(4). Law book editors separated the offensive Section 13(4) out of Ch. 403 and into Ch. 366. In this way the average user of our State's law books would not even connect Section 13(4) to its true statutory scheme, Chapter 403.

The checks and balances of our Constitutional scheme were designed to prevent the continued existence of this constitutionally defective legislation. The case law and the Constitution must be applied by the Court to the "act." When the Court performs the necessary and requisite judicial test it shall come to but one inescapable conclusion -- the act is unconstitutional.

CONCLUSION

Ch. 83-222, Laws of Florida should have but one subject --the siting of electrical transmission lines. The subject is easily ascertained from a reading of the "act's" title. However, by granting enormous new powers to the "PSC" in Section 13(4), the "act" contains a plurality of subjects. The two additional subjects are: "PSC" limited rate-making on any matter within its jurisdiction; and, "PSC" authority to grant "subsequent year adjustments" to all regulated utilities. This "act" therefore, violates the one subject provision of Article III, §6, Fla. Const. As it now exists the law is defective and subsequently inoperative. If the law is inoperative, then the "PSC" lacked the authority and subject matter jurisdiction to grant "FPL" a "subsequent year adjustment" for 1985 in the proceeding below.

Respectfully submitted,

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