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ACCOUNT NO. : 072100000032
REFERENCE : 653089 4336650
AUTHORIZATION : *Patricia Piquit*
COST LIMIT : \$ ~~78.75~~ *43.75*

FILED
00 APR -6 PM 2:20
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

ORDER DATE : April 6, 2000
ORDER TIME : 10:42 AM
ORDER NO. : 653089-005
CUSTOMER NO: 4336650

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CUSTOMER: Ms. Michelle E. Smith
BAKER & MCKENZIE
BAKER & MCKENZIE
19th Floor
1200 Brickell Avenue
Miami, FL 33131

DOMESTIC FILING

NAME: TOTAL GAS & ELECTRIC, INC.

EFFECTIVE DATE:

XX ARTICLES OF INCORPORATION
_____ CERTIFICATE OF LIMITED PARTNERSHIP

G. COULLETTE APR 06 2000

PLEASE RETURN THE FOLLOWING AS PROOF OF FILING:

XX CERTIFIED COPY
_____ PLAIN STAMPED COPY
_____ CERTIFICATE OF GOOD STANDING

CONTACT PERSON: Carina L. Dunlap

EXAMINER'S INITIALS:

RECEIVED
00 APR -6 AM 11:32
DEPARTMENT OF STATE
DIVISION OF CORPORATE REGS
TALLAHASSEE, FLORIDA

ARTICLES OF AMENDMENT
TO
ARTICLES OF INCORPORATION
OF
TOTAL GAS & ELECTRIC, INC.

FILED
00 APR - 9 PM 2:20
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Pursuant to the provisions of Section 607.1006, Florida Statutes, this Florida corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: That the name of the Corporation is Total Gas & Electric, Inc.

SECOND: The Articles of Incorporation was filed with the Department of State on May 3, 1995 under the name Total Energy Inc. The name of the Corporation was changed to Total Gas & Electric, Inc. by Articles of Amendment filed with the Department of State on June 9, 1998.

THIRD: Article V of the Articles of Incorporation presently reads in its entirety:

“The aggregate number of shares which this corporation shall have authority to issue is the total sum of 100 shares, having an individual par value of \$1.00.

Unless otherwise stated in these articles, or in an amendment to these articles, there shall be only one (1) class of stock of this corporation.”

The Corporation wishes to amend its Articles of Incorporation by increasing and changing the aggregate number of shares which the Corporation shall have authority to issue, and to effect a reclassification of the outstanding shares, to Ten Million (10,000,000) shares with a par value of \$.001 per share, divided into two classes, Eight Million (8,000,000) shares of which shall be designated as Common Stock, with a par value of \$.001 and Two Million (2,000,000) shares of which shall be designated as

Preferred Stock, with a par value of \$.001, and by authorizing the Board of Directors to issue from time to time preferred stock in one or more series and with such designations, powers, preferences and rights and the qualifications, limitations or restrictions (which may differ with respect to each series) as the Board of Directors may fix by resolution.

All of the currently authorized One Hundred (100) of shares of Common Stock, with a par value of \$1.00 per share are issued and outstanding. Upon the filing of this Articles of Amendment, the One Hundred (100) issued and outstanding shares of Common Stock will be changed automatically, without further act or action, into Four Hundred Twelve Thousand Five Hundred (412,500) shares of Common Stock, with a par value of \$.001 per share and Twenty-six Thousand Two Hundred Fifty (26,250) shares of Series A Preferred Stock (as hereinafter defined), with a par value of \$.001 per share and Thirty Thousand (30,000) shares of Series B Preferred Stock (as hereinafter defined), with a par value of \$.001 per share at the rate of one (1) old share of Common Stock for each Four Thousand One Hundred Twenty-Five (4,125) new shares of Common Stock, Two Hundred Sixty-Two and One-Half (262.5) shares of Series A Preferred Stock and Three Hundred (300) shares of Series B Preferred Stock.

NOW, THEREFORE, the Articles of Incorporation of the Corporation is hereby amended by deleting existing Article V thereof in its entirety and substituting in lieu of said Article V the following:

ARTICLE V

“(A) Authorized Capital. The total number of shares of all classes which the Corporation is authorized to issue is Ten Million (10,000,000) consisting of Eight Million (8,000,000) shares of Common Stock, par value \$.001 per share (the “Common Stock”) and Two Million (2,000,000) shares of Preferred Stock, par value \$.001 per share (the “Preferred Stock”).

(B) The Board of Directors of the Corporation is authorized, subject to any limitations prescribed by law, to provide for the issuance of the shares of Preferred Stock in series, and by filing a certificate pursuant to the applicable law of the State of Florida to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and any qualifications, limitations or restrictions thereof.

(C) Reclassification. Upon the filing of these Articles of Amendment to the Articles of Incorporation by the Department of State of the State of Florida (the “Effective Time”), the One Hundred (100) shares of Common Stock, \$1.00 par value, of the Corporation which are issued and/or outstanding immediately prior to the Effective Time shall be converted, automatically, without further act or action, into Four Hundred Twelve Thousand Five Hundred (412,500) shares of Common Stock, with a par value of \$.001 per share, Twenty-Six Thousand Two Hundred Fifty (26,250) shares of Series A Preferred Stock, with a par value of \$.001 per share and Thirty Thousand (30,000) shares of Series B Preferred Stock, with a par value of \$.001 per share, on the basis and in the manner described below:

(1) Upon the Effective Time, the one hundred (100) issued and outstanding shares of Common Stock, with a par value of \$1.00 per share shall be changed, automatically, without further act or action, into Four Hundred Twelve Thousand Five Hundred (412,500) fully paid and non-assessable shares of Common Stock, with a par value of \$.001 per share, Twenty-Six Thousand Two Hundred Fifty (26,250) fully paid and nonassessable shares of Series A Preferred Stock, with a par value of \$.001 per share and Thirty Thousand (30,000) fully paid and non-assessable Shares of Series B Preferred Stock, with a par value of \$.001 per Share at the rate of one (1) old share of Common Stock for each Four Thousand One Hundred Twenty-Five (4,125) new shares of Common Stock, Two Hundred Sixty-Two and One-Half (262.5) shares of Series A Preferred Stock and Three Hundred (300) Shares of Series B Preferred Stock.

(2) No fractional shares shall be issued in connection with the conversion described in paragraph (1) above. In the event that

any fractional share results from any calculation required by this reclassification, the Corporation's Board of Directors shall round up the number of shares to be issued to the nearest whole share.

(D) The powers, designations, preferences and rights of the initial series of Preferred Stock which series is designated "Series A Preferred Stock", are as follows:

1. Designation and Number. The shares of such series shall be designated "Series A Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting such series shall be 100,000, par value \$.001 per share.

2. Rank. The Series A Preferred Stock shall rank: (i) prior to all of the Corporation's Common Stock, par value \$.001 per share ("Common Stock"), (ii) prior to any class or series of capital stock of the Corporation hereafter created either specifically ranking by its terms junior to the Series A Preferred Stock or not specifically ranking by its terms senior to or on parity with the Series A Preferred Stock (collectively with the Common Stock, "Series A Junior Securities"); (iii) on parity with any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms on parity with the Series A Preferred Stock ("Series A Parity Securities"); and (iv) junior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms senior to the Series A Preferred Stock ("Series A Senior Securities"), in each case, as to payment of dividends or as to distributions of assets upon liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (all such distributions being referred to collectively as "Distributions").

3. Dividends.

(i) The dividend rate of the Series A Preferred Stock shall be computed at a rate of \$9.00 per share per annum from the date of the issuance of the Series A Preferred Stock. Dividends shall be payable in cash out of funds legally available therefor. Dividends shall be payable quarterly on each January 15, April 15, July 15 and October 15 of each year commencing as of April 15, 2000 (each, a "Payment Date"), when and as declared by the Board of Directors. Dividends on shares of Series A Preferred Stock shall be non-cumulative and shall accrue, without interest, from the date of declaration.

(ii) The Board of Directors may declare and pay dividends on the shares of Series A Preferred Stock out of funds legally available therefor (after giving effect to the payment of all requisite dividends on Series A Senior Securities).

(iii) In order to determine the holders of the Series A Preferred Stock entitled to receive dividends, the Corporation shall fix a record date not more than 60 days prior to any Payment Date. If any such Payment Date should fall on a day that is not a Business Day, then the Corporation shall pay the applicable dividend on the next succeeding Business Day. "Business Day" shall mean a day other than a Saturday, Sunday or other day on which the New York Stock Exchange is required by law to close.

(iv) The Corporation shall not for any quarterly period: (A) pay or declare and set apart for payment any dividends or Distributions on the Corporation's Series A Junior Securities, other than dividends payable in the form of additional shares of the same Series A Junior Security as that on which such dividend is declared, or (B) redeem, purchase, or otherwise acquire any shares of Series A Junior Securities or any right, warrant or option to acquire any Series A Junior Securities, unless full dividends (whether or not declared or due) have been, or contemporaneously are, paid or declared and set apart for such payment on the Series A Preferred Stock for such quarterly period.

(v) No full dividends shall be paid or declared and set apart for payments on any class or series of Series A Parity Securities for any quarterly period unless dividends have been, or contemporaneously are, paid or declared and set apart for such payment on the Series A Preferred Stock for such quarterly period. No full dividends shall be paid or declared and set apart for payment on the Series A Preferred Stock for any period unless dividends have been, or contemporaneously are, paid or declared and set apart for payment on the Series A Parity Securities, for such quarterly period. When dividends are not paid in full upon the Series A Preferred Stock and the Series A Parity Securities, all dividends paid or declared and set apart for payment upon shares of Series A Preferred Stock and the Series A Parity Securities shall be paid or declared and set apart for payment pro rata, so that the amount of dividends paid or declared and set apart for payment per share on the Series A Preferred Stock and the Series A Parity Securities shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series A Preferred Stock and the Series A Parity Securities bear to each other (without taking into account the dividends so paid and those so declared and set apart for payment).

(vi) No dividends shall be declared or paid or set apart for payment on the Series A Preferred Stock for any quarterly period unless at the time of such declaration or setting apart for payment, cumulative dividends have been or simultaneously are declared paid (or declared and a sum sufficient for the payment thereof set apart for such payment) on any then outstanding Series A Senior Securities.

4. Voting Rights

(i) Except as may otherwise be provided herein or required by law, the holders of the shares of Series A Preferred Stock ("Series A Holders") shall not be entitled to any vote in respect of such shares.

(ii) So long as any shares of Series A Preferred Stock shall be outstanding and unless the consent or approval of a greater number of shares shall then be required by law, without first obtaining the consent or approval of the holders of at least a majority of the shares of Series A Preferred Stock at the time outstanding, given in person or by proxy either in writing or at a meeting at which the holders of such shares shall be entitled to vote separately as a class, the Corporation shall not amend, alter or repeal any of the provisions of the Articles of Incorporation of the Corporation so as to affect adversely any of the preferences, rights, powers or privileges of the Series A Preferred Stock or the Series A Holders.

(iii) On all matters on which the Series A Preferred Stock is entitled to vote by law, the Series A Holders shall be entitled to one vote per share of Series A Preferred Stock, voting separately as a single class, and the presence, in person or by proxy, of Series A Holders owning a majority of the outstanding shares of the Series A Preferred Stock shall constitute a quorum.

5. Liquidation Price. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the amount that shall be paid to a Series A Holder of each share of Series A Preferred Stock shall be \$100.00 and an additional sum equal to all accrued and unpaid dividends on a share of Series A Preferred Stock (the "Series A Liquidation Price"), and no more. Upon any liquidation, dissolution or winding-up of the Corporation, the Series A Holders will be entitled to be paid, after payment or provision for payment of the debts and other liabilities of the Corporation and after payment or provision for payment is made upon any Series A Senior Securities, but before any Distribution or payment is made upon any Series A Junior Securities, an amount in cash equal to the aggregate Series A Liquidation Price of all shares outstanding, and the Series A Holders will not be entitled to any further payment. If, upon any such liquidation, dissolution or winding-up of the Corporation, the Corporation's assets to be distributed among the Series A Holders and the holders of Series A Parity Securities (the "Series A Parity Holders") are insufficient to permit payment in full to such Series A Holders and the Series A Parity Holders of the aggregate amount which they are entitled to be paid, then the available assets to be distributed will be distributed ratably among such Series A Holders and Series A Parity Holders based upon the aggregate Series A Liquidation Price of the Series A Preferred Stock and the aggregate liquidation preference of any Series A Parity Securities held by each such holder and Series A Parity

Holder, respectively. The Corporation will mail written notice of such liquidation, dissolution or winding-up, not less than 30 days prior to the payment date stated therein, to each Series A Holder of record. Neither the consolidation or merger of the Corporation into or with any other corporation or any other person, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation will be deemed to be a liquidation, dissolution or winding-up of the Corporation within the meaning of paragraphs 2 and 5.

6. Conversion. In the event of (i) any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation or (ii) the occurrence of a "Redemption Event" as that term is defined in that certain Stockholders' Agreement of the Corporation, dated as of April 6, 2000 (the "Stockholders' Agreement"), all of the issued and outstanding shares of Series A Preferred Stock shall, upon the written request of the holders of a majority of the issued and outstanding shares of Series A Preferred Stock, be converted into such number of shares of Common Stock as will be entitled to total liquidating distributions equal to \$2,625,000 plus the amount of all accrued but unpaid dividends on the Series A Preferred Stock.

7. Reservation of Common Stock. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of its shares of Common Stock, and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Corporation shall take such action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose."

(E) The Powers, designations, preferences and rights of the next series of Preferred Stock which series is designated "Series B Preferred Stock", are as follows:

1. Designation and Number. The shares of such series shall be designated "Series B Preferred Stock" (the "Series B Preferred Stock") and the number of shares constituting such series shall be 100,000, par value \$.001 per share.

2. Rank. The Series B Preferred Stock shall rank: (i) prior and senior to all of the Corporation's Series A Preferred Stock and all of the Corporation's Common Stock, par value \$.001 per share ("Common Stock"), (ii) prior and senior to any class or series of capital stock of the Corporation hereafter created either specifically ranking by its terms

junior to the Series B Preferred Stock or not specifically ranking by its terms senior to or on parity with the Series B Preferred Stock (collectively with the Common Stock, "Series B Junior Securities"); (iii) on parity with any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms on parity with the Series B Preferred Stock ("Series B Parity Securities"); and (iv) junior to any class or series of capital stock of the Corporation hereafter created specifically ranking by its terms senior to the Series B Preferred Stock ("Series B Senior Securities"), in each case, as to payment of dividends or as to distributions of assets upon liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (all such distributions being referred to collectively as "Distributions").

3. Dividends.

(i) The dividend rate of the Series B Preferred Stock shall be computed at a rate of \$1.667 per share per annum from the date of the issuance of the Series B Preferred Stock. Dividends shall be payable in cash out of funds legally available therefor. Dividends shall be payable quarterly on each January 15, April 15, July 15 and October 15 of each year commencing as of April 15, 2000 (each, a "Payment Date"), when and as declared by the Board of Directors. Dividends on shares of Series B Preferred Stock shall be non-cumulative and shall accrue, without interest, from the date of declaration.

(ii) The Board of Directors may declare and pay dividends on the shares of Series B Preferred Stock out of funds legally available therefor (after giving effect to the payment of all requisite dividends on Senior Securities).

(iii) In order to determine the holders of the Series B Preferred Stock entitled to receive dividends, the Corporation shall fix a record date not more than 60 days prior to any Payment Date. If any such Payment Date should fall on a day that is not a Business Day, then the Corporation shall pay the applicable dividend on the next succeeding Business Day. "Business Day" shall mean a day other than a Saturday, Sunday or other day on which the New York Stock Exchange is required by law to close.

(iv) The Corporation shall not for any quarterly period: (A) pay or declare and set apart for payment any dividends or Distributions on the Corporation's Series B Junior Securities, other than dividends payable in the form of additional shares of the same Series B Junior Security as that on which such dividend is declared, or (B) redeem, purchase, or otherwise acquire any shares of Series B Junior Securities or any right, warrant or option to acquire any Series B Junior Securities, unless full dividends (whether or not declared or due) have been, or contemporaneously are,

paid or declared and set apart for such payment on the Series B Preferred Stock for such quarterly period.

(v) No full dividends shall be paid or declared and set apart for payments on any class or series of Series B Parity Securities for any quarterly period unless dividends have been, or contemporaneously are, paid or declared and set apart for such payment on the Series B Preferred Stock for such quarterly period. No full dividends shall be paid or declared and set apart for payment on the Series B Preferred Stock for any period unless dividends have been, or contemporaneously are, paid or declared and set apart for payment on the Series B Parity Securities, for such quarterly period. When dividends are not paid in full upon the Series B Preferred Stock and the Series B Parity Securities, all dividends paid or declared and set apart for payment upon shares of Series B Preferred Stock and the Series B Parity Securities shall be paid or declared and set apart for payment pro rata, so that the amount of dividends paid or declared and set apart for payment per share on the Series B Preferred Stock and the Series B Parity Securities shall in all cases bear to each other the same ratio that accrued and unpaid dividends per share on the shares of Series B Preferred Stock and the Series B Parity Securities bear to each other (without taking into account the dividends so paid and those so declared and set apart for payment).

(vi) No dividends shall be declared or paid or set apart for payment on the Series B Preferred Stock for any quarterly period unless at the time of such declaration or setting apart for payment, full cumulative dividends have been or simultaneously are declared paid (or declared and a sum sufficient for the payment thereof set apart for such payment) on any then outstanding Series B Senior Securities.

4. Voting Rights

(i) Except as may otherwise be provided herein or required by law, the holders of the shares of Series B Preferred Stock ("Series B Holders") shall not be entitled to any vote in respect of such shares.

(ii) So long as any shares of Series B Preferred Stock shall be outstanding and unless the consent or approval of a greater number of shares shall then be required by law, without first obtaining the consent or approval of the holders of at least a majority of the shares of Series B Preferred Stock at the time outstanding, given in person or by proxy either in writing or at a meeting at which the holders of such shares shall be entitled to vote separately as a class, the Corporation shall not amend, alter or repeal any of the provisions of the Articles of Incorporation of the Corporation so as to affect materially and adversely any of the preferences, rights, powers or privileges of the Series B Preferred Stock or the Series B Holders.

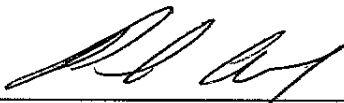
(iii) On all matters on which the Series B Preferred Stock is entitled to vote by law, the Series B Holders shall be entitled to one vote per share of Series B Preferred Stock, voting separately as a single class, and the presence, in person or by proxy, of the Series B Holders owning a majority of the outstanding shares of the Series B Preferred Stock shall constitute a quorum.

5. Liquidation Price. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the amount that shall be paid to a Series B Holder of each share of Series B Preferred Stock shall be \$100.00 and an additional sum equal to all accrued and unpaid dividends on a share of Series B Preferred Stock (the "Series B Liquidation Price"), and no more. Upon any liquidation, dissolution or winding-up of the Corporation, the Series B Holders will be entitled to be paid, after payment or provision for payment of the debts and other liabilities of the Corporation and after payment or provision for payment is made upon any Series B Senior Securities, but before any Distribution or payment is made Series B Junior Securities, an amount in cash equal to the aggregate Series B Liquidation Price of all shares outstanding, and the Series B Holders will not be entitled to any further payment. If, upon any such liquidation, dissolution or winding-up of the Corporation, the Corporation's assets to be distributed among the Series B Holders and the holders of Series B Parity Securities (the "Series B Parity Holders") are insufficient to permit payment in full to such Series B Holders and the Series B Parity Holders of the aggregate amount which they are entitled to be paid, then the available assets to be distributed will be distributed ratably among such Series B Holders and Series B Parity Holders based upon the aggregate Series B Liquidation Price of the Series B Preferred Stock and the aggregate liquidation preference of any Series B Parity Securities held by each such holder and Series B Parity Holder, respectively. The Corporation will mail written notice of such liquidation, dissolution or winding-up, not less than 30 days prior to the payment date stated therein, to each Series B Holder of record. Neither the consolidation or merger of the Corporation into or with any other corporation or any other person, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation will be deemed to be a liquidation, dissolution or winding-up of the Corporation within the meaning of paragraphs 2 and 5.

FOURTH: The foregoing amendment to the Articles of Incorporation of the Corporation were duly authorized by unanimous written consent of the Board of Directors of the Corporation and by the unanimous written consent of the shareholders of the Corporation on April 5, 2000.

IN WITNESS WHEREOF, Total Gas & Electric, Inc. has caused these Articles of Amendment to be signed by PHILIP BARATZ its President and MICHAEL STEIN its Assistant Secretary as of the 5th day of ~~March~~ April 2000 and does hereby confirm the contents hereof to be true under the penalties of perjury.

TOTAL GAS & ELECTRIC, INC.

By 
PHILIP BARATZ, President

By 
MICHAEL STEIN, Assistant Secretary