

119792

There are two amendments filed on January 26, 1959 for the above corporation. The second filed is missing pages on microfilm. The attached is a complete copy of that document.

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**Articles of Amendment
filed January 26, 1959**

A 19792 - mm

FLORIDA PUBLIC UTILITIES
COMPANY

Amend inc cap to 6,000 cum
pref @ \$100., 32,000 "Preference
Stock" @ \$20.00, & 500,000
com @ \$3.00.

FILED IN OFFICE OF SECRETARY
OF STATE, STATE OF FLORIDA,
by MRC, on Jan. 26, 1959

R. A. GRAY
SECRETARY OF STATE

FOLD HERE

FLORIDA PUBLIC UTILITIES COMPANY

West Palm Beach, Florida

January 23, 1959

RECEIVED

JAN 26 9 24 AM '59

SECRETARY OF STATE
TALLAHASSEE, FLORIDA

Hon. R. A. Gray
Secretary of State
Office of the Secretary of State
Tallahassee, Florida

Dear Sir:

Supplementing our letter of January 22, 1959, wherein we advised you that our Company is engaged in the issue and sale of 32,500 shares of Cumulative Preference Stock, we advise that we are required to file amendments to our Charter. In this connection, therefore, we wish to file with you the following documents properly executed:

1. Certificate of Increase of Authorized Capital Stock and Certificate of Amendment of Certificate of Re-Incorporation
2. Certificate of Amendment of Certificate of Re-Incorporation Establishing First Series of Preference Stock

We wish to file one copy of the above documents with you and would appreciate your certifying ten extra copies for our files.

Yours very truly,

E. J. Downey

E. J. Downey
Treasurer

Enclosures

C. TAX	42.50
FILED	5.00
10 R. AGENT FEE	30.00
11 C. COPY	33.00
TOTAL	505.50
H. BANK	505.50
BALANCE DUE	
REFUND	

RECEIVED
JAN 26 9 25 AM '59
SECRETARY OF STATE
TALLAHASSEE, FLORIDA

FLORIDA PUBLIC UTILITIES COMPANY
CERTIFICATE OF INCREASE OF AUTHORIZED CAPITAL STOCK
AND
CERTIFICATE OF AMENDMENT OF CERTIFICATE OF RE-INCORPORATION

FLORIDA PUBLIC UTILITIES COMPANY, a corporation organized and existing under the laws of the State of Florida, hereby certifies:

1. That the Board of Directors of said Corporation, at a meeting duly convened and held on the 6th day of January, 1959, approved and adopted unanimously a resolution setting forth proposed amendments to the Certificate of Re-Incorporation, as amended, of the Corporation, declaring the advisability of such amendments to said Certificate of Re-Incorporation and authorizing the submission thereof at a Special Meeting of the Stockholders of said Corporation for consideration thereof.

2. That thereafter, on January 26, 1959, pursuant to Notice duly given to all the Stockholders entitled to vote thereat, such Special Meeting of the Stockholders of said Corporation was duly held, at which meeting the following resolution approving such proposed amendments to the Corporation's Certificate of Re-Incorporation was proposed for adoption by such Stockholders:

RESOLVED, that the proposal of the Board of Directors of the Corporation that the Certificate of Re-Incorporation of this Corporation, as amended, be amended to increase the number of authorized shares of Common Stock from 300,000 shares of the par value of \$3.00 per share to 500,000 shares of the par value of \$3.00 per share and to authorize and create a new class of capital stock consisting of 32,500 shares of the par value of \$20 per share to be designated as Preference Stock and to make appropriate and related changes in the Certificate of Re-Incorporation, be and the same is hereby approved and adopted and the Certificate of Re-Incorporation of this Corporation, as amended, is hereby amended

(a) By changing the first and second paragraphs of Article 3 of said Certificate of Re-Incorporation, as amended, so that said paragraphs shall be and read as follows:

"3. The maximum number of authorized shares of capital stock of the Corporation is Five Hundred Thirty-Eight Thousand Five Hundred (538,500) divided into Six Thousand (6,000) shares of 4 $\frac{1}{4}$ % Cumulative Preferred Stock (hereinafter called "Preferred Stock") of the par value of One Hundred Dollars (\$100) per share, Thirty-Two Thousand Five Hundred (32,500) shares of Preference Stock of the par value of Twenty Dollars (\$20) per share (hereinafter called "Preference Stock") and Five Hundred Thousand (500,000) shares of Common Stock of the par value of Three Dollars (\$3.00) per share.

The distinguishing characteristics, including preferences or restrictions as regards dividends, voting powers or restrictions and qualifications of voting powers, and rights of redemption, of the different classes of capital stock, and the powers to divide and issue in designated series authorized but unissued Preference Stock, are as follows:"

(b) By adding at the end of the division designated as "Division A—The Preferred Stock" in said Article 3 a new paragraph 6 which shall be and read as follows:

"6. To the extent that the provisions of this Division A relate to the rights of the Common Stock, such rights shall be subject in all respects to the provisions of Division A-1 of this Article 3, without, however, in any way limiting or otherwise affecting the rights or preferences of the Preferred Stock."

(c) By adding immediately after said division designated as "Division A—The Preferred Stock", as amended hereby, a new and additional division designated as "DIVISION A-1—THE PREFERENCE STOCK" which shall be and read as follows:

"DIVISION A-1—THE PREFERENCE STOCK

For the purposes of this Division A-1 the following definitions shall apply:

The term "Preference Stock" shall mean all or any shares of any series of Preference Stock.

The term "Parity Stock" shall mean stock of any class other than the Preference Stock with respect to which dividends or amounts payable upon any liquidation, dissolution or winding up of the Corporation shall be payable on a parity with and in proportion to the respective amounts payable in respect of the Preference Stock, notwithstanding that such Parity Stock may have dividend rates, redemption prices, amounts payable thereon upon liquidation, dissolution or winding up and other terms and provisions varying from those of the Preference Stock.

The term "Junior Stock" shall mean the Common Stock and stock of any other class ranking junior to the Preference Stock in respect of dividends or amounts payable upon any liquidation, dissolution or winding up of the Corporation.

The term "accrued dividends" shall mean, in respect of each share of the Preference Stock of any series, that amount which shall be equal to simple interest upon the par value of such share at an annual rate equal to the percentage that the annual dividend rate fixed for such series is of such par value, and no more, from and including the date upon which dividends on such share became cumulative and (i) up to but not including the date fixed for payment in liquidation or for redemption, or (ii) up to and including the last day of any period for which such accrued dividends are to be determined, less the aggregate amount of all dividends theretofore paid or declared and set apart for payment thereon. Computation of accrued dividends in respect of any portion of a quarterly dividend period shall be by the 30 day month or 360 day year methods of computing interest.

The term "consolidated gross income available for payment of interest charges" shall mean the total consolidated operating revenues and other income of the Corporation and its consolidated subsidiaries, less all proper deductions for operating expenses, taxes (including income, excess profits and other taxes based on or measured by income or undistributed earnings or income), and other appropriate items, including provision for maintenance, and provision for retirements, depreciation and obsolescence (but in no event less than the minimum provisions required by the terms of any indenture or agreement securing any outstanding indebtedness of the Corporation), but excluding any charges on account of interest on indebtedness outstanding and any credits or charges for amortization of debt premium, discount and expense, all to be determined in accordance with sound accounting practice. In determining such "consolidated gross income available for payment of interest charges", no deduction or adjustment shall be made for or in respect of (1) profits or losses from sales of property carried in plant or investment accounts of the Corporation, or from the reacquisition of any securities of the Corporation, or taxes on or in respect of such profits, (2) charges for the elimination or amortization of utility plant adjustment or acquisition accounts or other intangibles or (3) charges for amortization or retirement of the book value of any part of the Corporation's gas manufacturing property or gas storage property which shall have become no longer used or useful by reason of the conversion of the Corporation's gas operations to the use of natural gas. All questions as to whether any subsidiary shall be consolidated shall be determined conclusively by a certificate signed by independent certified public accountants (who may be those regularly employed by the Corporation to audit its books).

The term "consolidated net income available for dividends" shall mean the "consolidated gross income available for payment of interest charges", as defined and determined above, less the sum of charges for interest on indebtedness and less charges or plus credits for amortization of debt premium, discount and expense, all to be determined in accordance with sound accounting practice.

In determining "consolidated net income available for dividends" no deduction shall be made for or in respect of (1) expenses in connection with the issuance, redemption or retirement of any securities issued by the Corporation including any amount paid in excess of the principal amount or par or stated value of securities redeemed or retired, or, in the event such redemption or retirement is effected with the proceeds of the sale of other securities of the Corporation, interest or dividends on the securities redeemed or retired from the date on which the funds required for such redemption or retirement are deposited in trust for such purpose to date of redemption or retirement, (2) profits or losses from the sales of property carried in plant or investment accounts of the Corporation, or from the reacquisition of any securities of the Corporation, or taxes on or in respect of such profits, (3) charges for the elimination or amortization of utility plant adjustment accounts or other intangibles, (4) charges for amortization or retirement of the book value of any part of the Corporation's gas manufacturing property or gas storage property which shall have become no longer used or useful by reason of the conversion of the Corporation's gas operations to the use of natural gas, or (5) any earned surplus adjustment (including tax adjustments) applicable to any period prior to January 1, 1958.

The term "consolidated net income available for dividends on Junior Stock" shall mean "consolidated net income available for dividends", as defined above, less all accrued dividends on outstanding Preference Stock and Parity Stock and on any class of stock ranking as to dividends prior to such Preference Stock or Parity Stock.

The term "equity stock" shall mean any stock, dividends on which are not restricted to a specific and stated rate, or the holders of which are not limited upon liquidation, dissolution or winding up to a specified or stated sum per share (exclusive of dividends).

The term "voting stock" shall mean any stock having the power at all times and without limitation (other than upon default entitling a senior class of stock to vote) to vote for the election of at least a majority of the Board of Directors.

The term "Common Stock Equity" shall mean the aggregate of the par value of, or stated capital represented by, outstanding Common Stock, plus earned surplus and capital surplus and plus premiums on all capital stock.

The term "Total Capitalization" shall mean the aggregate of (i) the Common Stock Equity, (ii) the principal amount of all indebtedness of the Corporation maturing more than twelve (12) months after the date of issue or assumption thereof, and (iii) the par value of or stated capital represented by any outstanding stock of the Corporation other than Common Stock.

The term "sound accounting practice" shall mean recognized principles of accounting practice customarily followed in the public utilities field, subject to any applicable rules, regulations or orders of the Florida Railroad and Public Utilities Commission of Florida or other public regulatory authority having jurisdiction over the accounts of the Corporation, provided that the Corporation may, at the time, contest or controvert in good faith the validity or applicability to the Corporation of any such rule, regulation or order.

1. *Issue in Series.* The shares of Preference Stock may be divided and issued from time to time in one or more series, as hereinafter provided in this Division. Each such series shall be designated so as to distinguish the shares thereof from the shares of all other series, but all shares of Preference Stock irrespective of series shall be of equal rank and all shares of any particular series shall be identical except as to the date or dates from which dividends thereon shall be cumulative as provided in Paragraph 2. The authorized but unissued shares of Preference Stock may be divided by number from time to time into and issued in designated series, and such shares of series of Preference Stock so designated shall provide for dividends at such rates, on such conditions and payable at such times, and shall be subject to redemption

at such price or prices and such time or times, as shall be provided herein, or in any amendment to this Certificate of Re-Incorporation, or in the resolution or resolutions providing for the issuance of such shares adopted by the Board of Directors. Any amendment to this Certificate of Re-Incorporation or resolution or resolutions of the Board of Directors of this Corporation establishing a series and fixing the terms thereof shall (a) designate the series to which such Preference Stock shall belong, (b) fix the dividend rate therefor, (c) fix the amounts which the holders of the Preference Stock of such series shall be entitled to be paid in the event of a voluntary or involuntary liquidation, dissolution or winding up of the corporation, (d) state whether or not such series shall be redeemable and at what times and under what conditions and the amount or amounts payable thereon in the event of redemption; and may, to the extent not inconsistent with the provisions of this Division, or applicable provisions of law (i) limit the number of shares of such series which may be issued, (ii) provide for a sinking fund for the purchase or redemption, or a purchase fund for the purchase, of shares of such series and the terms and provisions governing the operation of any such fund, (iii) impose conditions or restrictions upon the creation of indebtedness of the Corporation or upon the issue of additional Preference Stock or other capital stock ranking equally therewith or prior thereto as to dividends or distribution of assets on liquidation, dissolution or winding up, (iv) impose conditions or restrictions upon the payment of dividends upon, or the making of other distributions to, or the acquisition of, Junior Stock, (v) grant to the holders of the Preference Stock of such series the right to convert such stock into shares of any class of Junior Stock, and (vi) grant such other special rights to, or impose other conditions or restrictions upon, the holders of shares of such series as the Board of Directors may determine. The term "fixed for such series" and similar terms shall mean those stated and expressed in this Division or in any amendment to this Certificate of Re-Incorporation or in a resolution or resolutions adopted by the Board of Directors providing for the issue of Preference Stock of the series referred to.

2. *Dividends.* Out of the assets of the Corporation legally available for dividends, the holders of each series of the Preference Stock shall be entitled to receive, but only when and as declared by the Board of Directors and then subject to the provisions of Paragraph 1 of Division A of this Article 3, preferential dividends at the rate per annum fixed for such series and no more. Dividends declared shall be payable quarterly on January 1, April 1, July 1, and October 1, in each year to stockholders of record on a date not more than 30 days prior to any such payment date, as may be determined by the Board of Directors of the Corporation. Dividends on the shares of Preference Stock of any series initially issued shall commence to accrue and be cumulative from and including the date fixed for such series at the time of the initial establishment or designation thereof and on any additional shares of the same series from and including the first day of the quarterly dividend period in which such additional shares shall be issued.

Each share of Preference Stock shall rank on a parity with each other share of Preference Stock, irrespective of series, with respect to preferential dividends at the respective rates fixed for such series and no dividends shall be paid or declared and set apart for payment, on the Preference Stock of any series, unless at the same time a dividend in like proportion, ratably, to the accrued dividends on the Preference Stock of each other series outstanding shall be paid or declared and set apart for payment on each other series of Preference Stock then outstanding. No dividends shall be declared or paid upon or set apart for the shares of any class of Junior Stock, nor any sums applied to the purchase, redemption or other retirement of any class of Junior Stock, unless full dividends on all shares of all series of Preference Stock outstanding for all past quarterly dividend periods shall have been paid or declared and set apart and the full dividend for the then current quarterly dividend period shall have been or concurrently shall be paid or declared and set apart or if the Corporation shall be in default of the sinking fund obligation provided for any series of Preference Stock. The amount of any deficiency for past dividend periods may be paid or declared and set apart at any time without reference to any quarterly dividend payment date. Unpaid accrued dividends on Preference Stock shall not bear interest.

3. *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, the holders of each series of Preference Stock shall be entitled to receive, subject to the provisions of Paragraph 2 of Division A of this Article 3, for each share thereof, the par value thereof, plus, in case such liquidation, dissolution or winding up shall have been voluntary, an amount per share equal to the difference between the par value thereof and the then applicable optional redemption price fixed for such series together in each case with accrued dividends, before any distribution of the assets shall be made to the holders of shares of any class of Junior Stock; but the holders of Preference Stock of such series shall be entitled to no further participation in such distribution. In the event that the assets of the Corporation available for distribution to holders of Preference Stock shall not be sufficient to make the payment herein required to be made in full, such assets shall be distributed to the holders of the shares of the respective series of Preference Stock ratably in proportion to the full distributive amounts payable on each share thereof. A consolidation or merger of the Corporation or sale, conveyance, exchange or transfer (for cash, shares of stock, securities or other consideration) of all or substantially all of the property or assets of the Corporation shall not be deemed a dissolution, liquidation or winding up of the Corporation within the meaning of this Paragraph.

4. *Redemption and Repurchase Provisions* (A) Preference Stock of any series shall be subject to redemption at the election of the Corporation, expressed by action of the Board of Directors, at any time and from time to time, in whole or in part, at the applicable redemption prices fixed for such series, plus accrued dividends, in such amount, at such place and by such method, which, if in part, shall be by lot, as shall from time to time be determined by the Board of Directors. Notice of any proposed redemption of Preference Stock shall be given by the Corporation by mailing a copy of such notice, at least thirty (30) days but not more than ninety (90) days prior to the date fixed for such redemption, to the holders of record of the shares of such series of Preference Stock to be redeemed at their respective addresses then appearing on the books of the Corporation. On or after the date specified in such notice, each holder of shares called for redemption as aforesaid, shall be entitled to receive therefor the redemption price thereof, upon presentation and surrender at the place designated in such notice of the certificates for such shares of Preference Stock held by him, bearing all necessary stock transfer tax stamps thereto affixed and cancelled, and (if required by the Corporation) properly endorsed in blank for transfer or accompanied by proper instruments of assignment or transfer in blank. On and after the date fixed for redemption, if notice is given as aforesaid, and unless default is made by the Corporation in providing moneys for payment of the redemption price, all dividends on the shares called for redemption shall cease to accrue; and on and after such redemption date, unless default be made as aforesaid, or on and after the date of earlier deposit by the Corporation with a bank or trust company doing business in the Borough of Manhattan, City and State of New York, and having a capital and surplus of at least \$1,000,000, in trust for the benefit of the holders of the shares of the Preference Stock so called for redemption, of all funds necessary for redemption as aforesaid (provided in the latter case that there shall have been mailed as aforesaid to holders of record of shares to be redeemed, a notice of the redemption thereof or that the Corporation shall have executed and delivered to the Transfer Agent for the Preference Stock or to the bank or trust company with which such deposit is made an instrument irrevocably authorizing it to mail such notice at the Corporation's expense) all rights of the holders of the shares called for redemption as stockholders of the Corporation, except only the right to receive the redemption price, shall cease and determine. Any funds so deposited which shall remain unclaimed by the holders of such Preference Stock at the end of six (6) years after the redemption date, together with any interest thereon which shall have been allowed by the bank or trust company with which such deposit shall have been made, shall be paid by it to the Corporation, and thereafter such holders shall look only to the Corporation therefor. Shares of Preference Stock redeemed as aforesaid shall be cancelled and shall not be reissued, but the aggregate number of shares so redeemed shall have the status of authorized but unissued Preference Stock.

(B) The Corporation may also from time to time purchase shares of Preference Stock of any series for any sinking or purchase fund and otherwise at not exceeding the applicable redemption prices thereof at the time in effect and accrued dividends thereon to the date of purchase, plus customary brokerage commissions. Shares of Preference Stock of any series so purchased not used to satisfy sinking or purchase fund obligations may in the discretion of the Board of Directors be reissued or otherwise disposed of from time to time to the extent permitted by law.

(C) If and so long as there are dividends in arrears on any shares of Preference Stock of any series or a default exists in any sinking or purchase fund obligation provided for the benefit of any series of Preference Stock, the Corporation shall not redeem any shares of Preference Stock unless in connection therewith all the outstanding Preference Stock of all series is redeemed or purchase any shares of any series of Preference Stock unless an offer to purchase on a comparable basis is made to the holders of all the Preference Stock then outstanding.

5. *Restrictions on Corporate Action.* (A) So long as any Preference Stock is outstanding, the Corporation shall not, without the consent (given in writing without a meeting or by vote in person or by proxy at a meeting called for the purpose) of the holders of at least two-thirds of the aggregate number of shares of all series of Preference Stock (treated as one class) then outstanding—

(i) Amend, change or repeal any of the express terms of the Preference Stock outstanding in any manner prejudicial to the holders thereof, except that, if such amendment, change or repeal is prejudicial to the holders of less than all series of Preference Stock, the consent of only the holders of two-thirds of the total number of shares of the series thereof so affected shall be required, or

(ii) Issue shares of Preference Stock or Parity Stock in excess of 32,500 shares unless, after giving effect to the issue of such additional shares,

(a) the consolidated net income available for dividends for any period of twelve (12) consecutive calendar months within the fifteen (15) calendar months immediately preceding the calendar month within which such additional shares of stock are to be issued, shall have been at least two (2) times the aggregate annual dividend requirements upon the entire amount to be outstanding, of Preference Stock and Parity Stock and of any stocks of the Corporation of any class ranking as to dividends prior to the Preference Stock or Parity Stock,

(b) the consolidated gross income available for payment of interest charges for any period of twelve (12) consecutive calendar months within the fifteen (15) calendar months immediately preceding the calendar month within which such additional shares of stock are to be issued, shall have been at least one and one-half (1½) times the sum of (1) the aggregate annual interest charges on all indebtedness of the Corporation then outstanding, and (2) the aggregate annual dividend requirements upon the entire amount to be outstanding of Preference Stock and Parity Stock and of any stocks of the Corporation of any class ranking as to dividends prior to the Preference Stock or Parity Stock, and

(c) the aggregate of the capital of the Corporation applicable to all Junior Stock, plus the capital surplus and earned surplus of the Corporation and plus premiums on capital stock of the Corporation of any class, shall be not less than the aggregate payable upon involuntary liquidation, dissolution or winding up of the Corporation to the holders of the entire amount of Preference Stock and Parity Stock then to be outstanding.

In the foregoing computations, there shall be excluded (a) all indebtedness and all shares of Preference Stock and Parity Stock to be retired in connection with the issue of such additional shares, and (b) all interest charges on all indebtedness and dividend requirements on

all shares of stock to be retired in connection with the issue of such additional shares. The net earnings of any property which has been acquired by the Corporation during or after the period for which income is computed, or of any property which is to be acquired in connection with the issuance of any such additional shares, if capable of being separately determined or estimated, may be included on a pro forma basis in the foregoing computations; and if within or after the period for which income is computed any substantial portion of the properties of the Corporation shall have been disposed of, the net earnings of such property, if capable of being separately determined or estimated, shall be excluded in the foregoing computations.

(B) So long as any Preference Stock is outstanding, the Corporation shall not, without the consent (given in writing without a meeting or by vote in person or by proxy at a meeting called for the purpose) of the holders of a majority of the aggregate number of shares of all series of Preference Stock (treated as one class) then outstanding—

(i) Create, authorize or increase the authorized amount of any shares of any class of stock ranking as to dividends or assets prior to the Preference Stock or of any obligation or security convertible into stock ranking as to dividends or assets prior to the Preference Stock, or

(ii) Issue, assume or create unsecured securities (notes, debentures or other securities representing unsecured indebtedness other than indebtedness maturing in one year or less from the date of its creation) for any purpose, except to refund outstanding unsecured securities, theretofore issued or assumed, if thereby the aggregate principal amount of such unsecured securities, other than indebtedness maturing in one year or less from the date of its creation, would exceed ten percent (10%) of the sum of (1) the total principal amount of all bonds or other securities representing secured indebtedness of the Corporation then to be outstanding, and (2) the capital represented by capital stock (including premiums on capital stock) of the Corporation and the earned and capital surplus of the Corporation; provided, however, that any unsecured securities theretofore issued under any authorization of stockholders given pursuant hereto (and any securities to refund the same) shall not be considered in determining the amount of other unsecured securities which may be issued or assumed within the aforesaid ten percent (10%) limitation; or

(iii) Merge or consolidate with or into any other corporation or corporations unless such merger or consolidation, or the issuance and assumption of all securities to be issued or assumed in connection with any such merger or consolidation, shall have been ordered, approved or permitted by a regulatory authority of the United States of America or of the State of Florida having jurisdiction in the premises, provided that the provisions of this clause (iii) shall not apply to a purchase or other acquisition by the Corporation of franchises or assets of another corporation in any manner which does not involve a merger or consolidation; or

(iv) Sell, lease or otherwise dispose of all or substantially all of its property.

No consent of the holders of the shares of any series of Preference Stock in respect of action hereinabove set forth in subparagraphs (A) or (B) shall be required, if provision is made for the redemption of all shares of such series of Preference Stock at the time outstanding, or provision is made that the proposed action shall not be effective unless provision is made for the purchase, redemption or retirement of all shares of such series of Preference Stock at the time outstanding.

6. *Voting Rights.* The holders of Preference Stock shall not be entitled to vote except:

(a) as provided under Paragraph 5 above;

(b) as may from time to time be required by the laws of Florida; and

(c) Whenever and as often as dividends payable on any series of Preference Stock outstanding shall be in arrears in an amount equivalent to or exceeding six (6) quarterly divi-

dends, whether or not consecutive, or if the Corporation shall be in default on any sinking or purchase fund obligation provided for any series of Preference Stock outstanding, the holders of the Preference Stock shall have (1) the right, voting separately as a class, to elect one director (who, if the holders of the Preferred Stock are then entitled to elect a majority of the Board of Directors, shall be one of the remaining directors) and (2) the right, voting with the holders of the Common Stock, to vote (one vote per share) on all other matters. Such right to elect one director may be exercised at any annual meeting and at any special meeting of stockholders called for the purpose of electing directors and the right to vote on all other matters may be exercised at any annual or special meeting, until such time as all arrears in dividends on the Preference Stock and the current dividend thereon shall have been paid or declared and set apart for payment; and any sinking or purchase fund default shall have been paid or declared and set apart for payment and any sinking or purchase fund default shall have been remedied, whereupon all voting rights given by this clause (c) shall be divested from the Preference Stock (subject, however, to being at any time or from time to time similarly revived and divested).

So long as holders of the Preference Stock shall have the right to elect a director under the terms of the foregoing clause (c), the holders of the Common Stock voting separately as a class shall, subject to the voting rights of any other class or classes of stock of the Corporation, be entitled to elect the remaining directors.

Whenever, under the provisions of the foregoing clause (c) the right of holders of the Preference Stock, if any, to elect a director shall accrue or shall terminate, the Board of Directors shall, within ten (10) days after delivery to the Corporation at its principal office of a request or requests to such effect signed by the holders of at least five percent (5%) of the outstanding shares of any class of stock entitled to vote, call a special meeting in accordance with the By-laws of the Corporation of the holders of the class or classes of stock of the Corporation entitled to vote, to be held within forty (40) days from the delivery of such request, for the purpose of electing a full Board of Directors to serve until the next annual meeting and until their respective successors shall be elected and shall qualify; provided, however, that if the annual meeting of stockholders for the election of directors is to be held within sixty (60) days after the delivery of such request, the Board of Directors need not act thereon. If, at any special meeting called as aforesaid or at any annual meeting of stockholders after accrual or termination of the right of holders of the Preference Stock to elect a director as in the foregoing clause (c) provided, any director shall not be reelected, his term of office shall end upon the election and qualification of his successor, notwithstanding that the term for which such director was originally elected shall not at the time have expired.

If, during any interval between annual meetings of stockholders for the election of directors while holders of the Preference Stock shall be entitled to elect a director pursuant to the foregoing clause (c), a vacancy in such a directorship shall occur, the remaining directors by majority vote may fill such vacancy. Any director elected pursuant to such clause (c) or the preceding sentence may be removed from office for cause by vote of the holders of a majority of the shares of the Preference Stock. A special meeting of holders of Preference Stock may be called by a majority vote of the Board of Directors or by the President for the purpose of removing a director in accordance with the provisions of the preceding sentence, and shall be called to be held within forty (40) days after there shall have been delivered to the Corporation at its principal office a request or requests to such effect signed by holders of at least five percent (5%) of the outstanding shares of Preference Stock entitled to vote with respect to the removal of any such director.

The holders of a majority of the shares of Preference Stock entitled under this Paragraph to vote for the election or removal of a Director, present in person or represented by proxy at a meeting called for the purpose of voting on any such action, shall constitute a quorum for such purpose without regard to the presence or absence at the meeting of the holders of any other class of stock not entitled to vote in respect thereto. A lesser interest from time to time

may adjourn any meeting for such purpose and the same shall be held as adjourned without further notice. When a quorum is present, the vote of the holders of a majority of the shares of such quorum shall govern each such election, removal or filling of a vacancy in respect of which such class is entitled to vote.

Holders of Preference Stock shall not be entitled to receive notice of any meeting of holders of any class of stock at which they are not entitled to vote.

Each holder of Preference Stock, as to all matters in respect of which such stock has voting power, is entitled to one vote for each share of stock standing in his name.

7. *Restrictions on Dividends.* So long as any shares of the Preference Stock shall be outstanding, the Corporation shall not declare or pay any dividends on any shares of Junior Stock (other than dividends payable in shares of Junior Stock) or make any other distribution on any shares of Junior Stock, or make any expenditures for the purchase, redemption or other retirement for a consideration of shares of Junior Stock (other than in exchange for, or from the proceeds of any sale hereafter made of, other shares of Junior Stock), if the aggregate amount of all such dividends, distributions and expenditures after December 31, 1957 would exceed the aggregate amount of the Corporation's net income available for dividends on Junior Stock accumulated after December 31, 1957 plus \$175,000."

(d) By changing the division in said Article 3 designated as "Division B—The Common Stock", so that said division shall be and read as follows:

"DIVISION B—THE COMMON STOCK

1. *Dividends.* Out of any assets of the corporation available for dividends remaining after full cumulative dividends upon the Preferred Stock and Preference Stock then outstanding shall have been paid, or declared and a sum sufficient for the payment thereof set apart, for all past quarterly dividend periods, and after or concurrently with making payment of or provision for full dividends on the Preferred Stock and Preference Stock then outstanding for the current quarterly dividend period, then, and not otherwise, dividends may be paid upon the Common Stock to the exclusion of the Preferred Stock and Preference Stock; provided, however, that so long as any shares of the Preferred Stock shall be outstanding the corporation shall not declare or pay any dividends or make any other distribution to the holders of any shares of its capital stock of any class ranking junior to the Preferred Stock (other than a dividend payable in capital stock ranking junior to the Preferred Stock), or purchase or acquire or otherwise retire for a consideration (otherwise than from the proceeds of new financing through the issuance and sale of any shares of any class of stock of the corporation ranking junior to the Preferred Stock) any shares of its capital stock of any class ranking junior to the Preferred Stock (a) if the aggregate amount so paid, distributed and/or applied after January 1, 1946 would exceed the aggregate of the net income of the corporation available for dividends on its capital stock ranking junior to the Preferred Stock accumulated after January 1, 1946, or (b) if the sum of the amount of capital represented by such capital stock ranking junior to the Preferred Stock and of the surplus accounts of the corporation are at the time below, or will as a result of such dividend or other distribution or such purchase, acquisition or other retirement of stock be reduced more than \$50,000 below, the aggregate amount payable upon involuntary dissolution to the holders of Preferred Stock and of any class of stock ranking on a parity with or prior to the Preferred Stock at the time issued and outstanding. Net income of the corporation for the purpose of the preceding sentence shall mean gross earnings of the corporation less all proper deductions for operating expenses, taxes, interest charges and other appropriate items, including provision for maintenance and for retirement or depreciation determined in accordance with such system of accounts as may be prescribed by governmental authorities having jurisdiction in the premises or in absence thereof in accordance with sound accounting practice; provided, however, that in determining the net income of the corporation for the purposes of this Paragraph 1 no deduction or adjustment shall be made for or in respect of

(a) expenses in connection with the redemption or retirement of any securities issued by the corporation, including any amount paid in excess of the principal amount or par or stated value of securities redeemed or retired and, in the event that such redemption or retirement is effected with the proceeds of sale of other securities of the corporation, interest or dividends on the securities redeemed or retired from the date on which the funds required for such redemption or retirement are deposited in trust for such purpose to the date of redemption or retirement, (b) profits or losses from sales of public utility property or other capital assets, or taxes on or in respect of any such profits or (c) amortization or elimination of utility plant adjustment accounts or other intangibles.

2. *Distribution of Assets.* In the event of any liquidation, dissolution or winding up of the corporation, or any reduction or decrease of its capital stock resulting in a distribution of assets to its Common Stockholders other than by way of dividends out of the net profits or out of surplus of the corporation, after there shall have been paid to or set aside for the holders of the Preferred Stock and of the Preference Stock the full preferential amounts to which they are respectively entitled under the provisions of this Article 3, the holders of the Common Stock shall be entitled to receive, pro rata, all of the remaining assets of the corporation available for distribution to its stockholders. The Board of Directors by vote of a majority of the members thereof, may distribute in kind to the holders of the Common Stock such remaining assets of the corporation or may sell, transfer or otherwise dispose of all or any of the remaining property and assets of the corporation to any other corporation and receive payment therefor wholly or partly in cash and/or in stock and/or in obligations of such corporation and may sell all or any part of the consideration received therefor and distribute the balance thereof in kind to the holders of the Common Stock.

3. *Voting Rights.* Subject to the voting rights expressly conferred upon the Preferred Stock and Preference Stock by this Article 3, holders of the Common Stock shall exclusively possess full voting power for the election of directors and for all other purposes."

and (e) by changing the heading "DIVISION C—PROVISIONS APPLICABLE TO BOTH CLASSES OF STOCK" in said Article 3 so that said heading shall be and read as follows:

"DIVISION C—PROVISIONS APPLICABLE TO ALL CLASSES OF STOCK"

3. That at said Special Meeting of the Stockholders, a vote of the holders of the Common Stock of record entitled to vote was taken for and against the aforesaid resolutions and the amendments to the Corporation's Certificate of Re-Incorporation therein contained and, upon the canvassing of the vote, it appeared that the holders of _____ shares of said Common Stock (being the holders of more than a majority of the issued and outstanding shares of said Common Stock) had duly voted in favor of the approval and adoption of the aforesaid resolution and amendments to the Corporation's Certificate of Re-Incorporation therein contained, and that the holders of _____ shares of said Common Stock voted against the adoption of the aforesaid resolution and amendments.

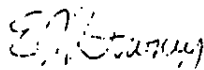
IN WITNESS WHEREOF, said Florida Public Utilities Company does hereby make this certificate under its corporate seal and the hand of its Vice President and the hand of its Assistant Secretary and said Vice President and said Assistant Secretary have hereunto set their hands and caused the corporate seal of the Corporation to be hereunto affixed this 26th day of January, 1939.

FLORIDA PUBLIC UTILITIES COMPANY



Vice President

ATTEST:



Assistant Secretary

STATE OF FLORIDA { ss:
COUNTY OF PALM BEACH }

I, *Betty J. Davis*, a Notary Public in and for the State and County aforesaid, hereby certify that *J.R. Roberts* and *E.J. Bourcy*, personally known to me and known to me to be the Vice President and Assistant Secretary, respectively, of Florida Public Utilities Company, a corporation organized and existing under the laws of the State of Florida and who as such officers executed the foregoing Certificate of Amendment of the Certificate of Re-Incorporation of said Corporation, this day personally appeared before me and acknowledged before me that they executed said certificate in the name of and for and on behalf of said Corporation freely and voluntarily and for the uses and purposes therein expressed, and with full authority from the Directors and Stockholders of the Corporation so to do.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this *26th* day of January, 1959

Betty J. Davis
Notary Public

Notary Public, State of Florida at large
My commission expires Sept. 8, 1959
Bonded by American Surety Co. of N. Y.