

Date: February 21, 2024

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

Agenda Item No. 8(J)(1)

From: Daniella Levine Cava
Mayor



Resolution No. R-151-24

Subject: Resolution Approving and Authorizing the Execution of a Performance Guarantee Agreement for the PortMiami Shore Power Project with Florida Power & Light Company and Authorizing the County Mayor or County Mayor's Designee to Negotiate and Execute Amendments with Cruise Lines to Require Use of Shore Power and Payment of Fees and Charges subject to the review and concurrence by the County Attorney Office

Executive Summary

The purpose of this item is to gain authorization by the Board of County Commissioners (Board) to (1) approve and execute the Performance Guarantee Agreement (PGA) for the PortMiami (Port) Shore Power Phase 1 Project; and (2) authorize the Mayor or the Mayor's designee to negotiate and execute amendments with cruise lines to require the use of shore power, including the payment of any fees and charges associated with the use of shore power, that do not currently have an agreement requiring same.

Performance Guarantee Agreement

Under the terms of the PGA, FPL will recover its capital investment for the electrical infrastructure for shore power at PortMiami either through (1) FPL revenues from electric service for shore power paid by the cruise line users over a four-year period or (2) if such anticipated FPL revenues do not cover the full capital investment by FPL, direct payment by the County for the shortfall. The PGA requires the County to post a performance guaranty in the amount of \$17,763,691 as security for the full FPL capital investment estimate. Additionally, per FPL, this PGA is a standard agreement approved by the Florida Public Service Commission and any term deviations are not permitted.

Delegated Authority

The delegated authority requested in this item to negotiate and execute amendments with cruise lines to require the use of shore power, including the payment of any fees and charges associated with the use of shore power, will assist with the County's fulfillment of its revenue guarantee to FPL under the terms of the PGA. This Board has previously approved agreements with NCL (Bahamas), Ltd., d/b/a Norwegian Cruise Line ("NCLB") and Royal Caribbean Cruises, Ltd. ("RCG"), pursuant to Resolution Nos. R-1101-22 (NCLB) and 1104-22 (RCG), that include language requiring those cruise lines to use available shore power facilities at PortMiami and pay any charges and fees associated with such use. A similar amendment is pending before the Board with respect to Carnival Corporation. The authority delegated in this item will allow the County Mayor or County Mayor's designee to enter into agreements with any remaining cruise lines or lessees with preferential berthing rights at PortMiami or leases allowing the use of cruise terminals at PortMiami subject to the review and concurrence by the County Attorney Office.

Recommendation

It is recommended that the Board adopt the accompanying Resolution, which (1) approves and authorizes the execution of the PGA between FPL and the County and to exercise any County rights conferred therein and (2) authorizes the County Mayor or County Mayor's designee to negotiate and execute amendments with cruise lines to require the use of shore power, including the payment of any fees and charges associated with the use of shore power.

Delegation of Authority

In accordance with Section 2-8.3 of the Miami-Dade County Code relating to delegation of Board authority, there are no authorities beyond those specified in the resolution, which includes the authority (1) for the County Mayor or County Mayor's designee to execute the PGA and (2) negotiate and execute agreements with cruise lines requiring the use of shore power facilities and the payment of any fees and charges associated with the use of shore power on substantially the same terms and conditions as those amendments previously approved by this Board and subject to the review and concurrence by the County Attorney Office.

Scope

PortMiami is located within District 5, which is represented by Commissioner Eileen Higgins. The impact of the agenda item is countywide as PortMiami is a regional asset and generates employment for residents throughout Miami-Dade County.

Fiscal Impact/Funding Source

The maximum estimated fiscal impact of the PGA is \$17,941,327.91. This is based on the sum of (i) the FPL required performance guaranty (\$17,763,691.00) coupled with the unlikely event that no electrical service revenues for the use of shore power are collected, plus (ii) the anticipated cost for a surety bond or irrevocable bank letter of credit, rather than depositing the full amount with FPL (approximately \$177,636.91). These funds will come from Commercial Paper or Port Unrestricted Cash.

FPL will recover its full estimated capital investment under the terms of the PGA. The County is required to reimburse FPL any shortfall amount between FPL's estimated capital expenditures and actual shore power revenues after 4 years of shore power service. Since FPL estimated the revenue for shore power to be approximately \$25,000,000 over a four-year period based on preliminary FY23/24 berthing schedules with anticipated shore power allocation amongst five berths paid for by the cruise lines, a shortfall is not anticipated leaving a net fiscal impact at the cost of the Letter of Credit. However, if FPL's revenue falls short of \$17,763,691.00, FPL will draw the funds from the guaranty and the Port will reimburse the issuer of the Letter of Credit.

The delegation of authority to the County Mayor or County Mayor's designee to negotiate and execute amendments with cruise lines to require the use of shore power, including the payment of any fees and charges associated with the use of shore power, will have a positive fiscal impact on the County, as revenues derived from cruise lines' use of shore power will reduce the County's exposure under the PGA on a dollar-for-dollar basis. In addition, such amendments will allow the County to recover fees imposed for the operation and

maintenance of shore power equipment, which will be imposed through the Board-approved fee schedule set forth in PortMiami Tariff No. 010.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the PGA are Becky Hope, Assistant Director, Planning, Environment & Resiliency, and Elizabeth Ogden, Assistant Director, Capital Development.

Background

On February 17, 2021, the County, FPL, and PortMiami's leading cruise ship companies signed a joint statement agreeing to work together on the most effective way to bring shore power to PortMiami. Shore power enables vessels to turn off their diesel generators and connect to the local electric power grid while berthed at PortMiami.

The world's largest cruise lines and PortMiami's long-term partners (Carnival Corporation, Royal Caribbean Group, Norwegian Cruise Line Holdings, MSC Cruises, and Virgin Voyages) have further upgraded or committed to have certain Miami vessels shore power ready. Through separate Board approval (Resolution No. R-1039-21), the Port is constructing the shore power systems and will have shore power available in Spring 2024 (following the commissioning of the shore power systems and the commissioning of the vessels configured for shore power), on a shared basis, at 4 cruise terminals (Cruise Terminals A, B, F, and V), and at the fifth cruise terminal in Fall 2024 when the MSC Shared Terminal (Cruise Terminal AA) is completed. Upon final completion of the full Phase 1 project, PortMiami will be the first major cruise port on the U.S. eastern seaboard with shore power availability at 5 cruise terminals (on a shared basis) supporting large, ocean-going vessels.

As part of FPL's commitment to bring power to the port for this initiative, FPL required and was previously provided a \$400,000 County deposit (approved by the Board via Resolution R-1039-21) to conduct electrical duct bank inspections from the Overtown Substation to Cruise Terminal F and preliminary engineering designs. FPL's estimated cost to bring electrical service to the port for shore power at 5 cruise terminals is \$17,942,218.00, including the \$178,527.00 Contribution in Aid of Construction (CIAC) already paid by the County. This leaves a balance of \$17,763,691.00 to be guaranteed under the PGA. Since the power demand for shore power at PortMiami requires an expansion of FPL's present electric system and FPL is uncertain that it will recover its capital investment for this expansion within 4 years, FPL requires the County to guarantee its return on investment through a performance guaranty that may be secured either by a cash deposit, surety bond, or irrevocable bank letter of credit, which is a standard requirement by FPL. If FPL's anticipated shore power revenue is less than the performance guaranty amount—tied to FPL's estimated construction costs—the County will be required to pay FPL the difference, which will be drawn from the County's guarantee, consistent with other FPL PGA agreements.

In connection with PortMiami's shore power program, this Board has approved several amendments to preferential berthing rights agreements with cruise lines, which amendments were designed to require cruise lines to utilize shore power when berthing shore-power enabled vessels at berths with shore power capability and to pay the actual cost of electricity

consumed by the vessels plus fees associated with the operation and maintenance of the shore power systems. This item authorizes the County Mayor or County Mayor's designee to negotiate and execute amendments to agreements with any remaining cruise lines with preferential berthing rights agreements or tenants of cruise terminals on substantially the same terms and conditions as those amendments previously approved by this Board subject to review and concurrence of the County Attorney's Office.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: February 21, 2024

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(J)(1)

Please note any items checked.

- ☐ "3-Day Rule" for committees applicable if raised
- ☐ 6 weeks required between first reading and public hearing
- ☐ 4 weeks notification to municipal officials required prior to public hearing
- ☐ Decreases revenues or increases expenditures without balancing budget
- ☐ Budget required
- ☐ Statement of fiscal impact required
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☐ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ to approve
- ☐ Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(J)(1)
2-21-24

RESOLUTION NO. R-151-24

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE PERFORMANCE GUARANTEE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND FLORIDA POWER & LIGHT FOR NEW ELECTRICAL SERVICE AT PORTMIAMI RELATED TO SHORE POWER WITH A FISCAL IMPACT TO THE COUNTY OF UP TO APPROXIMATELY \$17,941,327.91 AND TO EXERCISE ANY RIGHTS CONTAINED IN THE PERFORMANCE GUARANTEE AGREEMENT; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AND EXECUTE AMENDMENTS TO PREFERENTIAL BERTHING RIGHTS AGREEMENTS OR LEASE AGREEMENTS FOR THE USE OF SHORE POWER AND PAYMENT OF SHORE POWER RELATED COSTS SUBJECT TO THE REVIEW AND CONCURRENCE OF THE COUNTY ATTORNEY'S OFFICE

WHEREAS, this Board desires to accomplish the objectives set forth in the accompanying memorandum, a copy of which is incorporated herein,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Adopts and approves the foregoing recital as true and correct.

Section 2. Approves and authorizes the County Mayor or County Mayor's designee to execute the Performance Guarantee Agreement by and between Miami-Dade County and Florida Power & Light for new electrical services related to shore power at PortMiami, in substantially the form attached, and with a fiscal impact to the County of up to approximately \$17,941,327.91 and to exercise all rights contained in the agreement, including rights of termination.

Section 3. Authorizes the County Mayor or County Mayor's designee to negotiate and execute amendments to agreements with any remaining cruise lines with preferential berthing

rights agreements or tenants of cruise terminals for the use and payment of shore-power related costs on substantially the same terms and conditions as those amendments previously approved by this Board, subject to the review and concurrence of the County Attorney's Office.

The foregoing resolution was offered by Commissioner **Marleine Bastien**, who moved its adoption. The motion was seconded by Commissioner **Juan Carlos Bermudez** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	absent
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	absent	Eileen Higgins	absent
Kionne L. McGhee	absent	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 21st day of February, 2024. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

JUAN FERNANDEZ-BARQUIN, CLERK

By: **Basia Pruna**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

MAG

Miguel A. Gonzalez

PERFORMANCE GUARANTY AGREEMENT

This Performance Guaranty Agreement ("Agreement"), made this _____ day of _____ 20_____, is by and between Miami-Dade County (hereinafter "Applicant") and FLORIDA POWER & LIGHT COMPANY, a corporation organized and existing under the laws of the State of Florida, (hereinafter the "Company").

WITNESSETH:

Whereas, in connection with the property located at portwide PortMiami with a business address of 1015 N America Way, Suite 200 in Miami, Florida (the "Premises"), Applicant has requested that Company install electric infrastructure in order to provide electric service to the Premises;

Whereas, Applicant's estimate of the electric power needs of the Premises will require an expansion of Company's present electric system and, due to their nature, location, voltage, or other characteristics, the requested facilities are not likely to be required by other customers within five years following the requested date for the proposed system expansion;

Whereas, because of the uncertainty that Company will fully recover its investment in such infrastructure expansion should the Customer's projected load not materialize and the need to avoid placing the burden for those costs on Company's other customers; and

Whereas, Applicant is willing to provide assurance that Company will recover its investment in the expansion of Company's electric system based on Applicant's projections in the event that sufficient revenue from service to the Premises is not realized;

Now, therefore, in recognition of the foregoing premises and in consideration of the covenants and promises set forth herein below, Company and Applicant do hereby agree as follows:

ARTICLE I - DEFINITIONS

1.1 "Base Revenue" is the portion of electric revenue received by Company during the Performance Guaranty Period for electric service to the Premises consisting only of applicable base demand charges, base non-fuel energy charges, and facilities rental charges, if applicable. Base Revenue excludes, without limitation, capacity payment, customer, conservation, environmental, and fuel charges, franchise fees, and taxes.

1.2 "Performance Guaranty Period" is the period of time commencing with the day on which the requested level of service is installed and available to Customer, as determined by Company, ("In-Service Date"), and ending on the fourth anniversary of the In-Service Date ("ExpirationDate").

ARTICLE II - PERFORMANCE GUARANTY AMOUNT

2.1 The amount of the Performance Guaranty is the total cost of facilities to be installed to serve the Premises, as estimated by Company, less the amount of Contribution In Aid of Construction paid, if any, by the Applicant pursuant to Company's General Rules and Regulations for Electric Service.

(Continued on Sheet No. 9.947)

(Continued from Sheet No. 9.946)

= \$17,942,218.00 Estimated total cost of facilities to be installed to serve the Premises
- \$ 178,527.00 Contribution In Aid of Construction (CIAC) paid by Applicant
= \$17,763,691.00 Performance Guaranty

The Applicant shall provide the above-specified Performance Guaranty to Company prior to Company installing the facilities to ensure that the Base Revenue justifies Company's investment.

2.2 This Agreement does not apply in lieu of CIAC. Nothing in this Agreement shall be construed as prohibiting Company from collecting from Applicant a CIAC for underground service, where otherwise applicable.

2.3 The facilities to be installed to serve the Premises, together with their estimated costs, are shown on Exhibit A of this Agreement.

ARTICLE III - PAYMENT AND REFUND

3.1 At Applicant's option, the Performance Guaranty may be posted with Company in cash, or may be secured either by a surety bond or irrevocable bank letter of credit in a form acceptable to Company. At the end of Performance Guaranty Period, or upon termination of service by Applicant, whichever is earlier, if the Base Revenue is less than the Performance Guaranty, Applicant shall pay to Company the Performance Guaranty, less the amount of Base Revenue.

3.2 If, during the Performance Guaranty Period, Base Revenue equals or exceeds the Performance Guaranty and Applicant secured the Performance Guaranty through a surety bond, or irrevocable letter of credit, such bond or letter of credit shall be released or cancelled, or the amount secured by such instrument shall be reduced by the amount of the Performance Guaranty, as applicable.

3.3 If the Applicant elects to post the Performance Guaranty in cash, the Company agrees on a monthly basis to reduce the Performance Guaranty cash balance by the amount of the previous month's Base Revenue charges and credit the same amount to Applicant's previous monthly electric service billing, until such time the Performance Guaranty cash balance is depleted.

3.4 In the event that Company's construction of facilities shown on Exhibit A commences but is not completed due to a change in Applicant's plans or other circumstances related to the Premises that are not within Company's control, or if twelve months following the effective date of this Agreement Company has been unable to complete the requested installation and provide an In-Service Date due to changes or delays in Applicant's schedule or plans, Company shall be immediately entitled to an amount of the Performance Guaranty equal to Company's construction expenditures incurred in connection with this Agreement. Thereafter, Company may elect to terminate this Agreement and the balance, if any, of the Performance Guaranty will be refunded if Applicant posted a cash Performance Guaranty.

ARTICLE IV – TERM OF AGREEMENT

The term of this Agreement shall commence on the date first above written and end on the Expiration Date, or on the date Base Revenue equals the Performance Guaranty, whichever is earlier, unless terminated earlier pursuant to Section 3.04.

(Continued on Sheet No. 9.948)

(Continued from Sheet No. 9.947)

ARTICLE V – FINAL SETTLEMENT

Upon the termination or expiration of this Agreement, any portion of the Performance Guaranty not previously refunded or otherwise eligible for refund under the terms of this Agreement shall be retained by Company, and any remaining balance of the Performance Guaranty that is subject to a letter of credit or surety bond shall become immediately due and payable.

ARTICLE VI - TITLE AND OWNERSHIP

Title to and complete ownership and control over the above-referenced expansion shall at all times remain with Company and Company shall have the right to use the same for the purpose of serving other customers.

ARTICLE VII – ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, or representations, whether written or oral, between Company and Applicant, made with respect to the matters herein contained, and when duly executed constitutes the entire agreement between the parties hereto.

ARTICLE VIII - HEIRS, SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the respective heirs, legal representatives, successors and assigns of the parties hereto, but Applicant shall not assign this Agreement without first having obtained the written consent of Company, such consent not to be unreasonably withheld.

ARTICLE IX – SUBJECT TO FPSC RULES

This Agreement is subject to the Rules and Orders of the FPSC and to Company's Electric Tariff, including, but not limited to the General Rules and Regulations for Electric Service (collectively "Regulations"), as such Regulations are now written, or as they may be hereafter revised, amended or supplemented. In the event of any conflict between the terms of this Agreement and the Regulations, the provisions of said Regulations shall control, as they are now written, or as they may be hereafter revised, amended or supplemented, and, at Company's request, Customer agrees to conform this Agreement to such provisions, or enter into a new Agreement reflecting such provisions. This Agreement shall not be used in lieu of applicable requirements set forth in the Regulations pertaining to contributions in aid of construction, advances or deposits.

In Witness Whereof, Applicant and Company hereby have caused this Agreement to be executed in triplicate by their duly authorized representatives to be effective as of the day and year first written above.

Charges and Terms Accepted by:

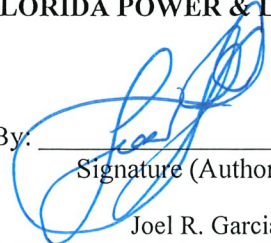
Applicant (Print/Type Name of Organization)

By: _____
Signature (Authorized Representative)

(Print or Type Name)

Title: _____

FLORIDA POWER & LIGHT COMPANY

By:  _____
Signature (Authorized Representative)

Joel R. Garcia

(Print or Type Name)

Title: _____ Manager Engineering, Distribution

Exhibit A- NTS

Purpose of this exhibit is to detail the approximate location of facilities installed to support Shore Power at Port Miami. Shore power service consists of 3 separate service point to support Terminals F, V, A, B and MSC as denoted below. Each service consists of a parallel run of dedicated Feeder conductor from a substation to a vault or padmount equipment where PortMiami connects with FPL via a metered connection.

The estimated cost is based on calculated cost prior to construction

Project Description

Install electric infrastructure to provide electric service to three shore power meterse

Project Name:

Shore Power at PortMiami

		Item Cost
(1) GARAGE G (TERMINAL F/V)		
Materials		\$4,699,202.00
Labor, Vehicle, Engineering, Overhead, Misc		\$3,722,767.00
Subtotal		\$8,421,969.00
(2) TAXI LOT (TERMINAL A/B)		
Materials		\$3,321,897.00
Labor, Vehicle, Engineering, Overhead, Misc		\$1,037,069.00
Subtotal		\$4,358,966.00
(3) MSC (TERMINAL MSC)		
Materials		\$3,943,767.00
Labor, Vehicle, Engineering, Overhead, Misc		\$1,217,516.00
Subtotal		\$5,161,283.00
TOTAL COST OF JOB		\$17,942,218.00

