



# Town of Cutler Bay

Town Hall  
10720 Caribbean Blvd  
Cutler Bay, FL 33189

## Legislation Details (With Text)

**File #:** Item # 2018-191      **Version:** 1      **Name:**

**Type:** Ordinance      **Status:** Passed

**File created:** 9/20/2018      **In control:** Town Council

**On agenda:** 10/17/2018      **Final action:** 10/17/2018

**Title:** AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING THERETO; PROVIDING FOR MONTHLY PAYMENT OF A FRANCHISE FEE TO THE TOWN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Manager Memo-2nd Reading-Granting FPL Franchise Fee Agreement, 2. Manager Memo-2nd Reading-Attach A-Cutler Bay Franchise Fee Comp Chart, 3. Manager Memo-2nd Reading-Attachment B-Advertisement, 4. Ordinance-2nd Reading-Granting FPL Franchise Agreement, 5. Manager Memo-1st Reading-Granting FPL Franchise Fee Agreement, 6. Manager Memo-Attach A-Cutler Bay Franchise Fee Comparison Chart, 7. Ordinance-1st Reading-Granting FPL Franchise Agreement

Date	Ver.	Action By	Action	Result
10/17/2018	1	Town Council	adopted as amended	Pass
9/26/2018	1	Town Council	approved on first reading	Pass

## MEMORANDUM

**To:** Honorable Mayor and Town Council

**From:** Rafael G. Casals, ICMA-CM, CFM, Town Manager

**Date:** October 17, 2018

**Re:** Granting Florida Power & Light (FPL) a Non-Exclusive Electric Franchise Fee Agreement for the Town.

**(Changes between First and Second Reading Highlighted)**

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### REQUEST

**AN ORDINANCE OF THE TOWN OF CUTLER BAY, FLORIDA GRANTING TO FLORIDA POWER & LIGHT COMPANY, ITS SUCCESSORS AND ASSIGNS, A NON-EXCLUSIVE ELECTRIC FRANCHISE, IMPOSING PROVISIONS AND CONDITIONS RELATING**

**THERE TO; PROVIDING FOR MONTHLY PAYMENT OF A FRANCHISE FEE TO THE TOWN; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**BACKGROUND AND ANALYSIS**

Florida Power and Light (FPL) is a public utility that provides electric service to the Town of Cutler Bay and its citizens. Currently, there is a franchise agreement in effect between Miami-Dade County ("County") and FPL, the terms of which are set forth in County Ordinance 89-81, passed and adopted on July 25, 1989, which grants a thirty (30) year non-exclusive electric franchise to FPL to utilize public rights of way throughout the unincorporated and incorporated areas of the County, in return for FPL paying the County certain franchise fees, among other things as expressly provided in that franchise agreement. On November 15, 2007, pursuant to Resolution No. 07-34, the Town entered into an Interlocal Agreement with the County for payment to the Town of that portion of the franchise fees remitted by FPL to the County for rights to utilize public rights of way located within the Town.

FPL and the Town desire to enter into a new franchise agreement providing for the payment of fees to the Town in exchange for the nonexclusive right and privilege of supplying electricity and other services within the Town free of competition from the Town, pursuant

to certain terms and conditions. Section 4.3 of the Town Charter provides that where the Town Council grants, renews or extends a franchise, an Ordinance must be adopted.

As a consideration for this proposed franchise, FPL shall pay to the Town, commencing [ninety \(90\)](#) days after the effective date hereof, and each month thereafter for the remainder of the term of this franchise agreement, an amount which, when added to the amount of all licenses, excises, fees, charges and other impositions of any kind whatsoever (except ad valorem property taxes and non-ad valorem tax assessments on property) levied or imposed by the Town against FPL's property, business or operations and those of its electric service subsidiaries during FPL's monthly billing period ending sixty (60) days prior to each such payment, will equal six (6.0%) percent of FPL's billed revenues (less actual write-offs) from the sale of electrical energy to residential, commercial and industrial customers (as such customers are defined by FPL's tariff) within the Town's boundaries for the monthly billing period ending sixty (60) days prior to each such payment. In no event shall payments for the rights and privileges granted herein exceed 6.0 percent of such revenues for any monthly billing period of FPL (except as [expressly](#) provided in this new franchise agreement).

The Town may, at its expense, upon reasonable notice and within ninety (90) days after each anniversary date of this franchise agreement, examine FPL's records relating to the calculation of the franchise payment for the year preceding such anniversary date. Such examination shall be during normal business hours at FPL's office where such records are maintained. The Town's examination of the records of FPL in accordance with this franchise agreement shall be subject to the confidentiality provisions of the franchise agreement and shall not be conducted by any third party employed or retained by the Town whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

The Town currently receives its FPL franchise fee payment, via Miami Dade County (the “County”) in August of each year. The amount received in August 2018 was approximately \$1,159,978. Pursuant to the franchise fee agreement between Miami-Dade County and FPL, which governs the Town’s payment pursuant to the Town’s Interlocal Agreement with the County, a multi-tiered calculation is performed to determine the amount of franchise fees FPL is required to pay. Among other things, this calculation essentially allows FPL to deduct from its franchise fee payments the amount it pays in property taxes. For example, as a result of FPL’s Turkey Point plant expansion in 2013, the amount of FPL’s property taxes increased significantly and, as a result, the increased property taxes paid reduced the amount of franchise fees FPL remitted in 2014. For that year the Town budgeted \$1,350,000 but only received approximately \$991,000, a shortfall in excess of \$350,000 (this reduction of franchise fee payments impacted all participating Miami Dade County municipalities, not just our Town).

Since it is difficult, if not impossible, for the Town to project FPL’s property tax payment changes and their impact on franchise fee revenues to be received, the Town has since taken a more conservative approach when budgeting such revenues. For the recently adopted FY 2018-19 budget, the Town budgeted \$1,050,000, slightly less than, but in line with, the actual amount received in August 2018 noted above. The terms of this new franchise agreement will remove the uncertainty of the impact of FPL’s payment of property taxes in any given year on the franchise fee revenues to be remitted.

Based on the 2017 FPL data used to calculate the franchise fee payment made to the Town in August 2018 (see above), had this new franchise fee agreement been in place it is projected that the franchise fee revenue for the Town would have been approximately \$2,247,402, which would have resulted in additional franchise fee revenue to the Town of approximately \$1,087,400 (a positive financial impact for the Town).

## **RECOMMENDATION**

Town Staff is recommending the approval of the attached Ordinance entering into a Franchise Fee Agreement with Florida Power & Light.

## **ATTACHMENTS**

- Attachment “A” - Cutler Bay Franchise Fee Comparison Chart
- Attachment “B” - Advertisement Miami Herald (Sunday, October 7, 2018)