



Memorandum



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To: Javier A. Betancourt, Executive Director
Citizens' Independent Transportation Trust

From: Felix Jimenez, Inspector General 

Date: October 26, 2021

Subject: OIG Review of Surtax Expenditures for Tri-Rail Downtown Miami Link;
Ref. IG21-0001-O

In response to a request received from your office last year, the Office of the Inspector General (OIG) initiated a review of the factors contributing to the delay in introducing Tri-Rail revenue service into downtown Miami. While our review is not fully complete, in recognition of the discussion item on this Thursday's Citizens' Independent Transportation Trust (CITT) agenda, the OIG can share some general observations about the issues we have identified to date.

By way of background, in 2015, when the Miami-Dade Board of County Commissioners allocated the County Transportation Surtax funds for this project (R-570-15), as authorized by the CITT, the expected date to begin revenue service was on or before March 31, 2017. We are now four years past the anticipated start date. At present, the OIG is not able to discern from the parties a reasonable target date to expect Tri-Rail to initiate the *Downtown Miami Link* service into the Miami Central Station. We hope to include this key piece of information in our final report.

The \$68.9 million total projected costs for the two additional platforms to accommodate Tri-Rail trains at the Miami Central Station involved a public investment of almost \$43 million. Public dollars were contributed from multiple sources: Southeast Overtown Park West Community Redevelopment Agency (\$17.5 million); Miami-Dade County (\$13.9 million); City of Miami (\$7.167 million); OMNI Community Redevelopment Agency (\$3 million); and the Downtown Development Authority (\$1.267 million). The value of the private sector contribution from the developers of the station, Florida East Coast Industries (FECI) / All Aboard Florida (Brightline), was estimated to be the difference in the total projected cost, approximately \$25 million. Above and beyond the \$68.9 million for the Tri-Rail platforms, the Florida Department of Transportation, in partnership with the South Florida Regional Transportation Authority (SFRTA), invested another \$21.8 million of public funds to pay for the track improvements to connect the Miami Central Tri-Rail platforms to the existing railway corridor.

The County's 2015 resolution approving an Interlocal Agreement with the SFRTA to provide financial support for the Tri-Rail Downtown Miami Service expansion stipulated that reimbursement of the project cost would be based upon invoices submitted by SFRTA, and that the County would "retain 15% of the funding for final payment due once SFRTA has issued a final acceptance of the improvements and revenue operations have begun." Other than this retainage of 15% of the \$13.9 million,¹ there were not financial incentives, penalties or inducements of any kind incorporated in the agreement to spur initiation of revenue operations.

Notably, the Interlocal Agreement unrealistically contemplated that revenue service would begin 12 weeks after the construction completion date (R-570-15). The construction was estimated to be completed by December 31, 2016, with revenue service expected to begin on or before March 31, 2017. What we have learned from this review is that there are threshold regulatory requirements involving systems testing and training that require multiple months, not several weeks, to complete. Unfortunately, these requirements can only be met after SFRTA has met a multitude of conditions in order to operate on the entirety of the corridor, including critical steps such as Final Acceptance of the platforms—and that has not yet happened.

On September 9, 2021, the OIG observed a survey team using specialized equipment to measure the track and platforms at Miami Central Station. This survey was being conducted on behalf of SFRTA to validate proper clearance for the Tri-Rail rolling stock that will be transiting the station. Due to regulatory requirements and tenant conditions, it is not possible for SFRTA to test the facilities with its locomotives and passenger vehicles. The OIG expects to review the survey results soon.

Notwithstanding the passage of time, the OIG has found no evidence that either party has been less than diligent in their efforts to expand the Tri-Rail commuter rail service to downtown Miami. A year ago, the OIG toured the Miami Central station and observed FECI-Brightline had constructed the two special platforms and laid down the rail for use by SFRTA as promised. We have confirmation the Positive Train Control (PTC) infrastructure is now available on the entire length of the eight-plus miles for the Tri-Rail *Downtown Miami Link* service. SFRTA has the compatible PTC equipment for its trains. Our final report will document this progress.

In addition to our ongoing communications with the representatives of FECI / Brightline and the SFRTA, the OIG has spoken with officials from the Federal Railway

¹ The County has retained 5.4% of the allocation to SFRTA (\$748,172.00 of the \$13.9 million), as the retainage deduction was not incorporated into the purchase order / invoicing process being managed by two separate County agencies, the CITT and the Department of Transportation and Public Works. SFRTA, however, has retained \$2.6 million of the \$49 million due to FECI Brightline.

Administration (FRA). The requirements to have PTC technology on commuter corridors and an overall safety plan for operations on the corridor, including training and certification of railway engineers, are matters regulated by the FRA. Prior to the pandemic, Brightline and Tri-Rail were using different PTC technology. Brightline has now invested about \$30 million to have the same PTC technology used by Tri-Rail and most other passenger railways. Even with the compatibility issue resolved, to satisfy the FRA, SFRTA will need to conduct the required training, which involves test runs of SFRTA locomotives on the Downtown Miami Link corridor, a months-long program that has not yet begun.

A complicating factor in this endeavor is the posture of the Florida East Coast Railway (FECR), the freight rail operator and owner of the rail corridors. The CITT Board should be aware that the FECR is no more than an obliged partner as it relates to passenger service on its corridors. When this Downtown Miami Link project was approved by the CITT, both the FECL and FECR were subsidiaries of the same investment group. FECR has since been sold to Grupo Mexico. As a condition of the sale, FECL was given rights to operate commuter passenger service on the FECR corridors. This ownership realignment has created some distance among the parties. When the OIG contacted a senior FECR official in Jacksonville to discuss the completion schedule for the PTC infrastructure on its corridors, the response was oblique and curt, asserting it was not FECR's responsibility and the official was not authorized to do interviews.

FECR, as the owner of the rail corridors, defines the terms of use applicable to the tenant passenger rail operators. As an example, FECR requires passenger rail services to employ Automated Train Control (ATC) systems technology. This is in addition to the PTC technology required by federal regulators. Brightline has met this requirement while SFRTA is still coordinating with the technology provider to satisfy this specific tenant rule. Until SFRTA fully activates the ATC system, no test-run training of its locomotives can be conducted on the corridor. The ATC adaptation is one of many threshold issues that must be resolved before revenue service can begin.

The above topics are just some of the issues being reviewed by the OIG. Other matters involve lease and easement agreements between SFRTA and FECL-Brightline; the environmental rating of Tri-Rail locomotives to comply another requirement in the FECR Rulebook; the proposed training schedule for certification of Tri-Rail locomotive engineers; FECR approval of a service schedule for the Downtown Miami Link; and the resolution of outstanding financial matters.

We are extremely grateful for the continuing cooperation from the representatives of FECL-Brightline and the SFRTA as we gather information for our report on this unique

public-private project. As is our practice, before we release our final report, both parties will have an opportunity to review a draft and provide comments.

We hope this overview of our efforts to date is sufficient and contributes to your upcoming meeting with representatives of FECI-Brightline and SFRTA on October 28, 2021.

Cc: Jimmy Morales, Chief Operating Officer, Office of the Mayor
Eulois Cleckley, Director, Department of Transportation and Public Works