EXHIBIT E

ORDINANCE NO. 2013-

AN ORDINANCE OF THE CITY OF VERO BEACH, FLORIDA, GRANTING TO FLORIDA POWER & LIGHT COMPANY AN ELECTRIC UTILITY FRANCHISE WITHIN THE CITY OF VERO BEACH; ESTABLISHING TERMS AND CONDITIONS RELATING THERETO; PROVIDING FOR CONFLICT AND SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Vero Beach, Florida ("City") owns and operates an electric utility in Indian River County, Florida, and wishes to exit the electric utility business; and

WHEREAS, Florida Power & Light Company ("FPL") is a public utility and desires to purchase and assume from the City, and the City desires to sell and assign to FPL, certain electric utility assets and certain associated liabilities upon the terms and conditions set forth in that certain Asset Purchase and Sale Agreement, dated as of [_____], 2013, by and between the City, as seller, and FPL, as buyer (the "Purchase Agreement"), as part of the City's exit strategy from the electric utility business; and

WHEREAS, the City Council of the City of Vero Beach ("City Council") and FPL desire for FPL to provide retail electric service to the City's electric utility customers, commencing on the day that FPL purchases from the City such electric utility assets upon the terms and conditions set forth in the Purchase Agreement (the "Closing Date"); and

WHEREAS, in connection with the purchase of such electric utility assets and the assumption of such associated liabilities pursuant to the Purchase Agreement, the

City and FPL have agreed that, on or prior to the Closing Date, the City will adopt a franchise ordinance providing for the payment of fees to the City effective on and after the Effective Date (as hereinafter defined) in exchange for the nonexclusive right and privilege of supplying electricity and other services within the City free of competition from the City, pursuant to certain terms and conditions set forth herein; and

WHEREAS, the City Council finds that the franchise provided for in this Ordinance and the provisions thereof are in the public interest and serve a municipal purpose,

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF VERO BEACH, FLORIDA:

Section 1 – Adoption of "Whereas" Clauses.

The foregoing "Whereas" clauses are hereby ratified as true and correct and incorporated herein as forming the purpose and legislative intent of this Ordinance.

Section 2 – Franchise Granted.

There is hereby granted to FPL, its successors and assigns (hereinafter called the "Grantee"), for the period of 30 years from the Effective Date, the nonexclusive right, privilege and franchise (hereinafter called "Franchise") to construct, operate and maintain in, under, upon, along, over and across the present and future roads, streets, alleys, bridges, easements, rights-of-way and other public places (hereinafter called "public rights-of-way") throughout all of the incorporated areas, as such incorporated areas may be constituted from time to time, of the City and its successors (hereinafter called the "Grantor"), in accordance with the Grantee's customary practice with respect to construction and maintenance, electric light and power facilities, including, without

limitation, conduits, poles, wires, transmission and distribution lines, and all other facilities installed in conjunction with or ancillary to all of the Grantee's operations (herein called "facilities"), for the purpose of supplying electricity and other services to the Grantor and its successors, the inhabitants thereof, any and all other Customers (as defined in the Purchase Agreement) and other persons beyond the city limits of the Grantor.

Section 3 – Grantee Facilities.

The facilities of the Grantee shall be installed, located or relocated so as to not unreasonably interfere with traffic over the public rights-of-way or with reasonable egress from and ingress to abutting property. To avoid conflicts with traffic, the location or relocation of all facilities shall be made as representatives of the Grantor may prescribe in accordance with the Grantor's reasonable rules and regulations with reference to the placing and maintaining in, under, upon, along, over and across said public rights-of-way; provided, however, that such rules or regulations (a) shall not prohibit the exercise of the Grantee's right to use said public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic, (b) shall not unreasonably interfere with the Grantee's ability to furnish reasonably sufficient, adequate and efficient electric service to all of its customers, and (c) shall not require the relocation of any of the Grantee's facilities installed before or after the Effective Date in public rights-of-way unless or until widening or otherwise changing the configuration of the paved portion of any public right-of-way used by motor vehicles causes such installed facilities to unreasonably interfere with motor vehicular traffic. Such rules and regulations shall recognize that above-grade facilities of the Grantee installed after the Effective Date should be installed near the outer boundaries of the public rights-of-way to the extent possible. When any

portion of a public right-of-way is excavated by the Grantee in the location or relocation of any of its facilities, the portion of the public right-of-way so excavated shall within a reasonable time be replaced by the Grantee at its expense and in as good condition as it was at the time of such excavation. The Grantor shall not be liable to the Grantee for any cost or expense in connection with any relocation of the Grantee's facilities required under subsection (c) of this Section, except, however, the Grantee shall be entitled to reimbursement of its costs from others as may be provided by law.

Section 4 – Indemnification.

The Grantor shall in no way be liable or responsible for any accident or damage that may occur in the construction, operation or maintenance by the Grantee of its facilities hereunder, and the acceptance of this Ordinance shall be deemed an agreement on the part of the Grantee to indemnify the Grantor and hold it harmless against any and all liability, loss, cost, damage or expense which may accrue to the Grantor by reason of the negligence, default or misconduct of the Grantee in the construction, operation or maintenance of its facilities hereunder.

Section 5 – Regulation of Rates.

All rates and rules and regulations established by the Grantee from time to time shall be subject to such regulation as may be provided by law.

Section 6(a) – Consideration.

As a consideration for this Franchise, the Grantee shall pay to the Grantor, commencing 90 days after the Effective Date, and each month thereafter for the remainder of the term of this Franchise (and for two months thereafter due to the lag between collection and payment by Grantee), an amount which 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 Grantor against the Grantee's property, business or operations and those of its subsidiaries during the Grantee's monthly billing period ending 60 days prior to each such payment will equal six percent (6%) of the Grantee'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 incorporated areas of the Grantor for the monthly billing period ending 60 days prior to each such payment, and in no event shall payment for the rights and privileges granted herein exceed six percent (6%) of such revenues for any monthly billing period of the Grantee (such monthly amount, as calculated pursuant to this paragraph, the "Monthly Payment.")

The Grantor understands and agrees that such revenues as described in the preceding paragraph are limited to the precise revenues described therein, and that such revenues do not include, by way of example and not limitation: (a) revenues from the sale of electrical energy for Public Street and Highway Lighting (service for lighting public ways and areas); (b) revenues from Other Sales to Public Authorities (service with eligibility restricted to governmental entities); (c) revenues from Sales to Railroads and Railways (service supplied for propulsion of electric transit vehicles); (d) revenues from Sales for Resale (service to other utilities for resale purposes); (e) franchise fees; (f) Late Payment Charges; (g) Field Collection Charges; (h) other service charges.

Section 6(b) – Monthly Payment Offset by Grantee.

The Grantee shall have the right to offset, on a dollar for dollar basis, any portion of any Monthly Payment(s) to be made under this Section 6 against any amount

payable by the Grantor under any provision of the Purchase Agreement (including, without limitation, under Article VIII of the Purchase Agreement) that has not been paid when due to the Grantee or any of the other Buyer Indemnitees (as defined in the Purchase Agreement) or payable by the Grantor to the Grantee under any of the Ancillary Agreements (as defined in the Purchase Agreement) (such amounts payable by the Grantor, collectively, the "Grantor Payment Obligations"). Grantee shall not be entitled to offset against any of the Monthly Payments that are due from the Grantee within twelve (12) months after the date notice is given to Grantor of such offset. In addition to any offset of a Grantor Payment Obligation, Grantee shall be entitled to offset against such Monthly Payment or later Monthly Payments hereunder the amount of any accrued and unpaid interest on any Grantor Payment Obligation payable by Grantor as described in Section 8.3 of the Purchase Agreement.

Section 6(c) – Franchise Adjustment.

If during the term of this Franchise the Grantee enters into a franchise with any other municipality located in Indian River County, Brevard County, or St. Lucie County, where the number of Grantee's active electrical customers is equal to or less than the number of Grantee's active electrical customers within the incorporated areas of Grantor, the terms of which provide for the payment of franchise fees by the Grantee at a rate greater than 6% of the Grantee's residential, commercial, and industrial revenues under the same terms and conditions as specified in Section 6(a) hereof, the Grantee, upon written request of the Grantor, shall negotiate and enter into a new franchise with the Grantor in which the percentage to be used in calculating monthly payments under Section 6(a) utilizing the same terms and conditions as set forth in Section 6(a) hereof

shall be that greater rate provided for such other municipality within Indian River County, Brevard County, or St. Lucie County; provided, however, that if the franchise with such other municipality contains additional benefits given to Grantee in exchange for the increased franchise rate, which such additional benefits are not contained in this Franchise, such new franchise shall include those additional benefits to the Grantee.

Section 7 – Additional Consideration.

As a further consideration, during the term of this Franchise or any extension thereof, the Grantor agrees: (a) not to engage in the distribution and/or sale, in competition with the Grantee, of electric capacity and/or electric energy to any ultimate consumer of electric utility service (herein called a "retail customer") or to any electrical distribution system established solely to serve any retail customer formerly served by the Grantee, (b) not to participate in any proceeding or contractual arrangement, the purpose or terms of which would be to obligate the Grantee to transmit and/or distribute, electric capacity and/or electric energy from any third party(ies) to any other retail customer's facility(ies), and (c) not to seek to have the Grantee transmit and/or distribute electric capacity and/or electric energy generated by or on behalf of the Grantor at one location to the Grantor's facility(ies) at any other location(s). Nothing specified herein shall prohibit the Grantor from engaging with other utilities or persons in wholesale transactions which are subject to the provisions of the Federal Power Act.

Nothing herein shall prohibit the Grantor, if permitted by law, (i) from purchasing electric capacity and/or electric energy from any other person, or (ii) from seeking to have the Grantee transmit and/or distribute to any facility(ies) of the Grantor electric capacity and/or electric energy purchased by the Grantor from any other person; provided,

however, that before the Grantor elects to purchase electric capacity and/or electric energy from any other person, the Grantor shall notify the Grantee. Such notice shall include a summary of the specific rates, terms and conditions which have been offered by the other person and identify the Grantor's facilities to be served under the offer. The Grantee shall thereafter have 90 days to evaluate the offer and, if the Grantee offers rates, terms and conditions which are equal to or better than those offered by the other person, the Grantor shall be obligated to continue to purchase from the Grantee electric capacity and/or electric energy to serve the previously-identified facilities of the Grantor for a term no shorter than that offered by the other person. If the Grantee does not agree to rates, terms and conditions which are equal to or better than the other person's offer, then Grantor may proceed with the other person's offered sale and purchase arrangement and all of the terms and conditions of this Franchise shall remain in effect.

Section 8 – Other Franchise Grants by Grantor.

If the Grantor grants a right, privilege or franchise to any other person or otherwise enables any other such person to construct, operate or maintain electric light and power facilities within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve or compete on terms and conditions which the Grantee determines are more favorable than the terms and conditions contained herein, the Grantee may at any time thereafter terminate this Franchise if such terms and conditions are not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 150 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of such terms and conditions that it considers more favorable. The Grantor shall

then have 150 days in which to correct or otherwise remedy the terms and conditions complained of by the Grantee. If the Grantee determines that such terms or conditions are not remedied by the Grantor within said time period, the Grantee may terminate this Franchise by delivering written notice to the Grantor's City Manager and termination shall be effective on the date of delivery of such notice.

Section 9 – Service by Other Provider.

If as a direct or indirect consequence of any legislative, regulatory or other action by the United States of America or the State of Florida (or any department, agency, authority, instrumentality or political subdivision of either of them) any person is permitted to provide electric service within the incorporated areas of the Grantor to a customer then being served by the Grantee, or to any new applicant for electric service within any part of the incorporated areas of the Grantor in which the Grantee may lawfully serve, and the Grantee reasonably determines that its obligations hereunder, or otherwise resulting from this Franchise in respect to rates and service, place it at a competitive disadvantage with respect to such other person, the Grantee may, at any time after the taking of such action, terminate this Franchise if such competitive disadvantage is not remedied within the time period provided hereafter. The Grantee shall give the Grantor at least 150 days advance written notice of its intent to terminate. Such notice shall, without prejudice to any of the rights reserved for the Grantee herein, advise the Grantor of the consequences of such action which resulted in the competitive disadvantage. The Grantor shall then have 150 days in which to correct or otherwise remedy the competitive disadvantage. If such competitive disadvantage is not remedied by the Grantor within said time period, the Grantee may terminate this Franchise by delivering written notice to the Grantor's City

Manager and termination shall take effect on the date of delivery of such notice. Nothing contained herein shall be construed as constraining Grantor's rights to legally challenge Grantee's reasonable determination of competitive disadvantage leading to termination under this section.

Section 10 – Default by Grantee.

Failure on the part of the Grantee to comply in any substantial respect with any of the provisions of this Franchise shall be grounds for forfeiture, but no such forfeiture shall take effect if the reasonableness or propriety thereof is protested by the Grantee until there is final determination (after the expiration or exhaustion of all rights of appeal) by a court of competent jurisdiction that the Grantee has failed to comply in a substantial respect with any of the provisions of this Franchise, and the Grantee shall have six months after such final determination to make good the default before a forfeiture shall result with the right of the Grantor at its discretion to grant such additional time to the Grantee for compliance as necessities in the case require. Such final determination by a court of competent jurisdiction, including any final appellate determination or ruling, shall allow Grantor to proceed with its choice of remedies, provided, however, that the Grantor may, in its discretion, grant such additional time to the Grantee for compliance as the Grantor determines are in the best interests of Grantor and Grantor's citizens. Non-substantial or non-material defaults or failures by the Grantee shall be remediable pursuant to any available legal remedies.

Section 11 – Default by Grantor.

Failure on the part of the Grantor to comply in substantial respect with any of the provisions of this Ordinance, including, but not limited to: (a) denying the Grantee use of

public rights-of-way for reasons other than unreasonable interference with motor vehicular traffic; (b) imposing conditions for use of public rights-of-way contrary to Florida law or the terms and conditions of this Franchise; (c) unreasonable delay in issuing the Grantee a use permit, if any, to construct its facilities in public rights-of-way, shall constitute breach of this Franchise and entitle the Grantee to withhold all or part of the payments provided for in Section 6 hereof until such time as a use permit is issued or a court of competent jurisdiction has reached a final determination in the matter. The Grantor recognizes and agrees that nothing in this Ordinance constitutes or shall be deemed to constitute a waiver of the Grantee's delegated sovereign right of condemnation and that the Grantee, in its sole discretion, may exercise such right.

Section 12 – Grantor Annexation of Additional Territory.

Upon the Grantor's annexation of any property and appropriate written notice to Grantee, the portion of Grantee's electrical system located within such annexed territory, and in, under, over, and upon the streets, alleys, rights-of-way, or public grounds of such annexed territory, shall be subject to all the terms of this Franchise within ninety (90) days of the Grantee's receiving written notice by U.S. certified mail return receipt requested of such annexation from the Grantor, which notice shall include the legal description(s) of the property annexed and the addresses of the individual properties within the annexed property to the extent that information is available to the Grantor.

Section 13 – Grantee Records; Grantor Audit.

The Grantor may, upon reasonable notice and within 90 days after each anniversary date of this Franchise, at the Grantor's expense, examine the records of the Grantee relating to the calculation of the franchise payment for the year preceding such

anniversary date. Such examination shall be during normal business hours at the Grantee's office where such records are maintained. Records not prepared by the Grantee in the ordinary course of business may be provided at the Grantor's expense and as the Grantor and the Grantee may agree in writing. Information identifying the Grantee's customers by name or their electric consumption shall not be taken from the Grantee's premises. Such audit shall be impartial and all audit findings, whether they decrease or increase payment to the Grantor, shall be reported to the Grantee. The Grantor's right to examine the records of the Grantee in accordance with this Section shall not be conducted by any third party employed by the Grantor whose fee, in whole or part, for conducting such audit is contingent on findings of the audit.

Section 14 – Severability.

If any of the provisions of Sections 2, 3, 4, 6, 7, 8, 9, 10, 11, or 12 are found or adjudged to be invalid, void or of no effect by a court of competent jurisdiction, this Ordinance shall be null and void and of no force and effect. If any other section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, said holding in no way shall affect the validity of the remaining portions of this Ordinance.

Section 15 – "Person" Defined.

As used herein "person" means an individual, a partnership, a corporation, a business trust, a joint stock company, a trust, an incorporated association, a joint venture, a governmental authority or any other entity of whatever nature.

Section 16 – Conflict.

In the event any provision of this Ordinance conflicts or is inconsistent with any provision of the Code of the City or any other Ordinance or resolution of the City, the provisions of this Ordinance shall apply and supersede on the subject matter of this Ordinance.

Section 17 – Codification.

This Ordinance, being of limited scope and applicability, shall not be codified in the Code of the City of Vero Beach.

Section 18 – Effective Date.

As a condition precedent to the taking effect of this Ordinance, the Grantee shall file its acceptance hereof with the Grantor's Clerk within 30 days of adoption of this Ordinance. The "Effective Date" of this Ordinance shall be the Closing Date, a condition of which shall be the filing with the Grantor's City Clerk of acceptance of this Ordinance by the Grantee on or before the Closing Date.

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This Ordinance was read for the first time on the ___ day of _____ 2013, and was advertised on the ____ day of _____ 2013 for a public hearing to be held on the ____ day of _____ 2013, at the conclusion of which hearing it was moved for adoption by Councilmember _____,
seconded by Councilmember _____, and adopted by the following vote of the City Council:

Mayor A. Craig Fletcher _____
Vice Mayor Tracy M. Carroll _____
Councilmember Pilar E. Turner _____
Councilmember Jay Kramer _____

Councilmember Richard G. Winger

ATTEST:

CITY OF VERO BEACH, FLORIDA

~~Tammy P. Vock~~

Print Name:

City Clerk

~~A. Craig Fletcher~~Print Name:

Mayor

(CITY SEAL)

Approved as to form and legal sufficiency:

Approved as conforming to municipal policy:

~~Wayne R. Coment~~

Print name:

City Attorney

~~James R. O'Connor~~Print name:

City Manager

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