

CHAPTER 2017-10

No. 191 AN ORDINANCE ESTABLISHING A TAX EXEMPTION AND STABILIZATION PLAN FOR DOMINION ENERGY MANCHESTER STREET, INC.

Approved May 5, 2017

Be it ordained by the City of Providence:

The Providence City Council hereby makes the following legislative findings:

WHEREAS, On January 23, 2017, the City of Providence, (the "City") and Dominion Energy Manchester Street, Inc., ("Dominion"), entered into a "Tax Stabilization Agreement, Amended and Restated" (the "Agreement") regarding taxation to be assessed by the City on certain real and personal property located at Plat 22, Lots 357, 358 and 359 ("the Manchester Street Power Station") during the tax assessment period December 31, 2015 through December 31, 2018; and

WHEREAS, Granting the stabilization requested will continue to inure to the benefit of the City and its residents by reason of the willingness of Dominion to retain or expand its facility in the City of Providence; and

WHEREAS, Granting the stabilization requested will continue to inure to the benefit of the City and its residents by reason of the willingness of Dominion to retain its facility for a manufacturing or commercial purpose, namely the generation and transmission of electricity.

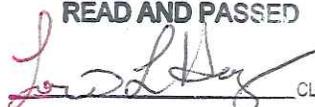
WHEREAS, the Agreement attached as Exhibit 1 is incorporated into this Ordinance.

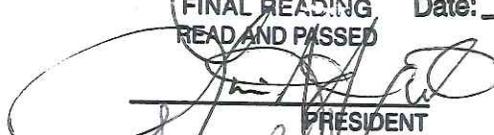
WHEREAS, any changes to this Ordinance, including Exhibit 1, must be approved by the Providence City Council.

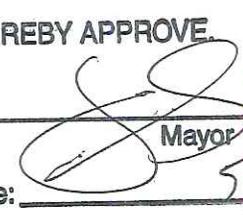
Be it Ordained by the City of Providence:

Section 1. The Agreement attached as Exhibit 1, is hereby ratified by the Providence City Council.

Section 2. This Ordinance shall take effect upon passage.

IN CITY COUNCIL
APR 27 2017
FIRST READING
READ AND PASSED
 CLERK

IN CITY COUNCIL
MAY 04 2017
FINAL READING
READ AND PASSED
 PRESIDENT
 CLERK

I HEREBY APPROVE.


Mayor
Date: 5/5/17

TAX STABILIZATION AGREEMENT
Amended and Restated

This amended and restated Tax Stabilization Agreement ("Agreement") is made by and between the City of Providence, a Rhode Island municipal corporation ("City") and Dominion Energy Manchester Street, Inc. ("Dominion") (collectively, the "Parties").

WITNESSETH:

WHEREAS, Dominion is the owner of certain real and personal property located in the City of Providence at: 4R Allens Avenue, also known as Assessor's Plat 22, Lot 357 and 358 and 30 Allens Avenue, also known as Assessor's Plat 22, Lot 359 (hereinafter, the "Dominion Property" or "Manchester Street Power Station");

WHEREAS, Manchester Street Power Station, located on approximately 12 acres in the City of Providence consists of a three unit natural gas-fired combined-cycle generating units, units 9, 10 and 11 (the "Units"), which produce electricity and steam for industrial use;

WHEREAS, under article 13, section 5 of the Rhode Island Constitution, the General Assembly retains exclusive power over matters relating to municipal taxation. Notwithstanding, and pursuant to Rhode Island General Laws § 44-3-9 as amended, the General Assembly has authorized the City of Providence, acting through its City Council and subject to certain enumerated conditions, to exempt or determine a stabilized amount of taxes to be paid on account of real and personal property for a period not to exceed twenty (20) years;

WHEREAS, the City of Providence, through its City Council, approved a tax stabilization agreement, pursuant to Ordinance No. 337 of Chapter 1992-28, with respect to the Manchester Street Power Station wherein a ten (10) year tax stabilization agreement based on tax assessment dates of December 31, 1992 through and including December 31, 2001 (for tax years 1993-2002 for fiscal years July 1, 1993- June 30-1994 through and including July 1, 2002- June 30, 2003) was granted (hereinafter, the "1992 TSA");

WHEREAS, in 2003, the City of Providence, through its City Council amended and extended the benefit of tax stabilization under the 1992 TSA for an additional five (5) years based on a tax assessment dates of December 31, 2002 through and including December 31, 2006 (tax years 2003-2007 for fiscal years July 1, 2003-June 30, 2004 through and including July 1, 2007-June 30, 2008) pursuant to Ordinance No. 650 of Chapter 2003-56, with respect to the Manchester Street Power Station;

WHEREAS, beginning with the taxes assessed as of December 31, 2007 through and including taxes assessed as of December 31, 2014 (for tax years 2008-2015 for fiscal year July 1, 2008-June 30, 2009 through and including July 1, 2015-June 30, 2016) the parties were bound by annual tax payments set in accordance with a Consent Judgment entered into by and between the Parties, and or their predecessors, in Superior Court Case No. PC 2009-2824; PC 2010-3835; and 2010-4307 as consolidated;

WHEREAS, said Consent Judgment resolved ongoing disputes between the Parties, or predecessors to the Parties, regarding the valuation and assessment of property taxes imposed by the City with respect to the Manchester Street Power Station;

WHEREAS, the Parties agree and acknowledge that there is currently great uncertainty and lack of agreement as to the value of property used for the production of electricity and that lack of agreement is not likely to be definitively resolved during the term of this Agreement;

WHEREAS, the Parties desire by this Agreement to establish a mutually acceptable, reasonable and accurate real and personal property tax payment for all of the Dominion Property;

WHEREAS, Dominion has requested that the City stabilize for four (4) years the amount of real and personal property taxes to be paid with respect to the Dominion Property;

WHEREAS, on or about August 29, 2016, the City and Dominion executed a tax stabilization agreement;

WHEREAS, after further discussions and negotiations between the Parties, the Parties agreed to modify the original agreement; and,

WHEREAS, after a public hearing, at least ten days' notice of which has been given in a newspaper having a general circulation in the City of Providence, the City finds and determines that:

- (A) Granting the stabilization requested will continue to inure to the benefit of the City of Providence and its residents by reason of the willingness of Dominion to retain or expand its facility in the City of Providence; and
- (B) Granting the stabilization requested will continue to inure to the benefit of the City of Providence and its residents by reason of the willingness of Dominion to retain its facility for a manufacturing or commercial purpose, namely the generation and transmission of electricity.

NOW THEREFORE, in consideration of the mutual agreements and promises set forth herein and other good and lawful consideration the receipt of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. DEFINITIONS.

“Property Owner” shall mean Dominion Energy Manchester Street, Inc., or any entity with legal or equitable right and/or interest in and/or to the Dominion Property, including any and all successors and assigns.

SECTION 2. TAX STABILIZATION.

Section 2.1. Grant. The City, in accordance with R.I.G.L. § 44-3-9 and the City of Providence Code of Ordinances, does hereby grant a four (4) year tax stabilization in

favor of the Property Owner with respect to all real and personal property located or used at the Dominion Property.

Section 2.2. Term. The tax stabilization term shall be the period commencing on December 31, 2015 through and including December 31, 2018 (tax years 2016- 2019 for fiscal years July 1, 2016-June 30, 2017 through and including July 1, 2019- June 30, 2020).

Section 2.3. Plan. During the tax stabilization term as defined in Section 2.2 above, the City has determined the stabilized amount of real and personal property taxes to be paid by the Property Owner with respect to the Dominion Property, notwithstanding the valuation of the Dominion Property or the then-current rate of tax as follows (hereinafter the “Tax Stabilization Plan”):

Taxes assessed as of December 31	For Tax Year	For Fiscal Year	Annual Tax Payments To City
2015	2016	July 1, 2016-June 30, 2017	\$9,000,000.00
2016	2017	July 1, 2017-June 30, 2018	\$7,760,000.00
2017	2018	July 1, 2018-June 30, 2019	\$7,760,000.00
2018	2019	July 1, 2019-June 30, 2020	\$7,760,000.00

Section 2.4. Payment Deadlines. During the tax stabilization term as defined in Section 2.2 above and in accordance with the Tax Stabilization Plan outlined in Section 2.3 above, stabilized tax payments shall be made in either a lump sum during the first quarter of the applicable tax year or in equal quarterly installments at the discretion of the Property Owner. If the Property Owner elects to make quarterly installments, each quarterly installment shall be due on the same date that quarterly taxes are due for all other taxpayers in the City of Providence.

Section 2.5. Obligation of Property Owner to Make Payment. During the tax stabilization term as defined in Section 2.2 above and in accordance with the Tax Stabilization Plan outlined in Section 2.3 above, stabilized tax payments shall be an obligation of the Property Owner.

Section 2.6. Non-Receipt of Stabilized Tax Bill. Failure by the City to send or failure by the Property Owner to receive a stabilized tax bill does not excuse the nonpayment of the stabilized tax nor affect its validity or any action or proceeding for the collection of the tax in accordance with this Agreement or otherwise.

Section 2.7. Recording of Agreement, Running with Land. Upon the execution of this Agreement and after ratification of this Agreement by City Council by **Ordinance**, the Property Owner shall cause both this Agreement and City Council **Ordinance** to be recorded at its expense in the City’s official public land evidence records within ten (10) days of **Ordinance**. This recording shall be construed to provide a complete additional alternative method under contract law for the securitization of payments due and owing

under this Agreement and shall be regarded as supplemental and in addition to the powers conferred by other state and local laws.

Section 2.8. Termination, Partial Shutdown.

- (a) If Dominion shuts down or abandons the use of the Dominion Property as a generating station, then this Agreement shall be of no further force and effect and the City may, after such shutdown or abandonment, assess taxes on the Dominion Property under then applicable laws and ordinances.
- (b) If one (1) or more of the three (3) Units are shut down during the term of this Agreement, the Parties agree that the payments due under this Agreement shall be reduced by: two million dollars (\$2,000,000) for each year one Unit is shut down; four million dollars (\$4,000,000) for each year two Units are shut down; and, six million dollars (\$6,000,000) for each year all three Units are shut down. Section 2.3 will be amended to reflect this decreased tax obligation such that the amount shall be credited in equal parts to the remaining annual tax payments paid over the remaining life of the term in Section 2.2 above for each Unit shut down, and paid in accordance with Section 2.4 above. For purposes of this Section 2.8(b) of this Agreement, the term "shut down" shall mean that a Unit is not operated for twelve (12) or more consecutive months as reported to ISO-New England. In the interest of cooperation, Dominion agrees to voluntarily provide the City with advance written notice of any planned shutdown of any Unit. This voluntary notice provision shall not apply to any unplanned shut downs that arise from unforeseen circumstances.

Section 2.9. Nameplate Capacity Changes. Subject to the provisions contained in Sections 2.8 and 3.7 of this Agreement, the Parties agree that the payments pursuant to this Agreement shall not be increased or decreased unless the overall nameplate capacity increases or decreases, as the case may be, by more than ten percent (10%) of the existing nameplate capacity at the time of such increase or decrease. For purposes of this Section 2.9 of this Agreement, "nameplate capacity" shall mean 468MW, which is the ISO-NE capacity supply obligation.

SECTION 3. COLLIER PARK AND FURTHER ASSURANCES

The parties acknowledge and agree that part of the consideration for the amount of "Annual Tax Payments To City" as outlined in the chart contained within Section 2.3 above are contingent upon the Parties' agreements relative to Collier Park as follows:

Section 3.1. Collier Park. Dominion and the City will use good faith efforts to enter into a mutually acceptable agreement whereby Dominion will grant an easement or other form of agreement mutually acceptable to the Parties granting rights in Collier Park to the City of Providence which would allow for the use of Collier Park by the City, or its assigns, tenants or designees for any lawful purpose which does not interfere with Dominion's current and future operations and obligations with respect to the Dominion Property (the

"Transfer"), subject to the provisions contained in Section 3.5 below. Collier Park is a portion of the Dominion Property particularly described in Exhibit A attached hereto. The Transfer is expressly subject to any required approvals of any other parties, including, without limitation, the Rhode Island Energy Facilities Siting Board, the Army Corps of Engineers, the Rhode Island Coastal Resources Management Council, the Rhode Island Department of Environmental Management and any other party which has authority with respect to the Dominion Property (the "Approvals"). The Parties agree that the existing boat ramp at Collier Park shall remain available for public access and use. The Parties agree to equally share the costs and expenses to prepare any required plans, surveys, applications and requests for the Approvals, and the preparation of all documents to complete the Transfer, including, without limitation, all engineering and legal fees. The aforementioned costs and expenses shall not include the cost to develop or redevelop Collier Park. The Parties agree to work in good faith to prepare an agreed upon list of strategies, tasks and undertakings to obtain the Approvals for the Transfer with a mutually agreed upon budget. If the Parties cannot agree on a budget, efforts to obtain the Approvals shall not proceed and Section 3 of this Agreement shall be of no further force and effect. The Parties shall consult before the commencement of each task and either agree to proceed with the task or terminate efforts to obtain the Approvals. Dominion will advance the funds necessary for the tasks and undertakings in accordance with the agreed upon budget. Dominion will receive a credit against Dominion's next quarterly tax payment for the City's share of the costs and expenses for the Approvals.

Section 3.2. The Transfer from Dominion to the City as contemplated in Section 3.1 above, is expressly conditioned on Dominion obtaining a mutually acceptable agreement from the City **and ratified by the City Council**, for the purposes of maintaining, repairing, accessing, and/or utilizing any of Dominion's property currently located at Collier Park or as may be required by any third party with authority regarding the Dominion Property as provided in Section 3.1 above. For purposes of clarity, the Transfer is not contingent on any redevelopment of Collier Park by the City.

Section 3.3. The Parties agree that until the Transfer is completed, Dominion shall remain solely liable and responsible for Collier Park in all respects.

Section 3.4. The Parties agree that if and when the Transfer is completed:

3.4.1 Dominion shall indemnify and hold harmless the City, its agents, officers, servants, and employees, from any and all claims, demands, suits, and compromise, including attorneys' fees, for damage to property and damage to persons which are the direct result from the use by Dominion of Collier Park pursuant to any and all agreements contemplated in Section 3.2 and any and all Dominion right, title, or interest in Collier Park.

3.4.2 The City shall indemnify and hold harmless Dominion, its agents, officers, servants, and employees, from any and all claims, demands, suits, and compromise, including attorneys' fees, for damage to property and damage to persons which may result from the use by the City or its assigns, tenants

or designees of Collier Park pursuant to any and all agreements or other right, title, or interest in Collier Park.

3.4.3 Each party shall promptly repair, at its own cost, all damage to Collier Park occasioned by its use of Collier Park.

Section 3.5. In light of Dominion's ongoing good relationship with its neighbor, Sprague Operating Resources, LLC ("Sprague"), the Parties agree that if and when the Transfer is completed, the City shall make reasonably good faith efforts to utilize, develop, lease, operate and/or transfer Collier Park in a cooperative manner with Sprague and maintain said good working relationship with Sprague as a neighbor. The City agrees not to use or develop its interest in Collier Park as an oil or fuel depot or to directly compete with Sprague's business operations.

Section 3.6. The Parties agree that if and when the Transfer is completed, Dominion shall not be responsible or liable for any cost or activities associated with the City utilizing, developing, transferring, leasing and/or relocating any businesses to Collier Park.

Section 3.7. In the event that after good faith efforts of the Parties the Transfer is not completed by April 1, 2019, or such later date as the Parties agree, the Parties agree that the remaining terms of this Agreement shall remain in full force and effect with the exception that Dominion's tax obligation shall increase by a total of Three Hundred Thousand Dollars (\$300,000). Section 2.3 will be amended to reflect this increased tax obligation such that the \$300,000 shall be payable in equal parts in addition to the remaining annual tax payments paid over the remaining life of the term in Section 2.2 above and paid in accordance with Section 2.4 above. Notwithstanding the preceding sentence in this Section 3.7, if, after good faith efforts of the Parties, the Approvals described in Section 3.1 above are obtained and Dominion is ready, willing, and able to complete the Transfer, as defined and in accordance with Section 3.1 above, to the City during the term of this Agreement, Dominion's tax obligation shall not increase by said Three Hundred Thousand Dollars (\$300,000) but shall remain the same as provided in Section 2.3 above and paid in accordance with Section 2.4 above.

SECTION 4. TRANSFER OF THE PROPERTY.

Section 4.1. Transfer Generally. Stabilized tax payments shall be an obligation of the Property Owner during the tax stabilization term as defined in Section 2.2 above and in accordance with the Tax Stabilization Plan outlined in Section 2.3 above, without regard to any transfer of the Dominion Property. Additionally, in accordance with Section 2.7 above, the burdens and benefits of this Agreement will run with the land, and as for payment of taxes shall run in favor of the City regardless of any transfer of ownership. If all or a portion of the Dominion Property is transferred prior to or during the term of this Agreement, the provision of this Agreement shall run with the land and benefit the transferee, or their successors or assigns, who shall be bound by the provisions of the Agreement if the transferee operates the Dominion Property in a manner that is reasonably similar to Dominion's current use as a generation station.

SECTION 5. DEFAULT.

The following events shall constitute an event of default hereunder:

- (A) Failure of the Property Owner to pay any amount due under or with respect to the tax stabilization in accordance with Section 2 above; or
- (B) Failure of the Property Owner to comply with any other obligation or promise contained within any section or subsection of this Agreement.

SECTION 6. NOTICE AND CURE.

Section 6.1. Notice and Cure Period. The City shall provide written notice to the Property Owner before exercising any of its rights and remedies under Section 7 below. The Property Owner shall have thirty (30) days to cure any alleged default under this Agreement, provided, however, that if the curing of such default cannot be accomplished with due diligence within thirty (30) days, then the Property Owner shall request an additional reasonable period of time from the City to cure such default as may be necessary provided that the Property Owner shall have commenced to cure such default within said period, such cure shall have been diligently pursued by the Property Owner and the City does not reasonably deem the taxes jeopardized by such further delay, all as determined by the City in its sole discretion, however, additional time shall not be unreasonably withheld.

Section 6.2. Agreed Upon Address for Purposes of Written Notice. All notices, requests, consents, approvals, and any other communication which may be or are required to be served or given (including changes of address for purposes of notice) shall be in writing and shall be sent registered or certified mail and addressed to the following parties set forth below:

If to: City of Providence
City Solicitor's Office
444 Westminster Street.
Providence, RI 02903
*Accompanied by 7 copies

City Council
Office of the City Clerk
25 Dorrance St.
Providence, RI 02903
*Accompanied by 16 copies

If to: Dominion Energy Manchester Street, Inc.
Dominion Energy Manchester Street, Inc.
c/o Dominion Corporate Tax Department
PO Box 27026
Richmond VA 23261

With a copy to: Edward D. Pare, Jr., Esq.
Brown Rudnick LLP
10 Memorial Boulevard
Providence, RI 02903

SECTION 7. RIGHTS AND REMEDIES.

Section 7.1. Retroactive Revocation of Tax Stabilization. (a) In the event of a default under this Agreement which remains uncured after the notice and cure period set forth in Section 6 above, the Property Owner shall pay to the City an amount equal to the difference between the stabilized tax payments made under this Agreement and the amount of Dominion Property taxes that would have been due and owing during the tax stabilization term as defined in Section 2.2 above, but for this Agreement. The entire retroactive tax obligation will become due and owing on the same date that the next quarterly taxes are due for all other taxpayers in the City.

(b) Should any dispute arise pursuant to Section 7.1(a) based on the amount of Dominion Property taxes that would have been due and owing during the tax stabilization term as defined in Section 2.2 above, but for this Agreement (each, a "Dispute"), the Parties shall cooperate in good faith to resolve any such Dispute within a reasonable period of time (not to exceed 15 business days, unless otherwise agreed by the Parties). If the Parties are unable to agree to a resolution during such time period, then any Party may submit the controversy or claim to non-binding mediation. Such mediation shall be conducted by a qualified mediator with appropriate experience that is acceptable to both Parties. The Parties agree to participate in the non-binding mediation and to negotiate a resolution to the controversy or claim in good faith for a period of 15 business days (unless otherwise agreed to by the Parties). If a Dispute cannot be resolved by mutual agreement or non-binding mediation, during the aforesaid time periods, either Party may commence legal action, whether sounding in contract, tort, or otherwise, arising out of, connected with, related to or incidental to the Dispute. All negotiations pursuant to this Section 7.1(b) will be confidential and, therefore, treated as compromise and settlement negotiations for purposes of all similar rules and codes of evidence.

Section 7.2. Collection of Taxes. At any time during the tax stabilization term as defined in Section 2.2 of this Agreement, the City of Providence may pursue any and all rights and remedies arising under any state or local law, including but not limited to Chapters 7-9 of Title 44, and/or arising under this Agreement to collect stabilized taxes due and owing in accordance with the Tax Stabilization Plan outlined in Section 2.3 above, Section 2.8(b) above, Section 3.7 above and/or to collect retroactive taxes pursuant to Section 7.1 above.

Section 7.3. City's Lien Remedies and Rights. Nothing herein contained shall restrict or limit the City's rights and/or remedies with respect to its first priority lien for taxes as provided under Title 44 of the Rhode Island General Laws. Rather, this Agreement shall be construed to provide a complete additional alternative method under contract law for the collection of taxes, and shall be regarded as supplemental and in addition to the powers conferred by other state and local laws.

Section 7.4. Property Owner's Rights. It is understood by the Parties that the payments made hereunder are to be considered as tax payments. During the tax stabilization term as defined in Section 2.2, the Property Owner agrees to waive and forgo any and all of its rights and privileges under Title 44 of the Rhode Island General Laws with respect to this Agreement. Notwithstanding Section 7.2 and the preceding sentence of this Section 7.4, the Property Owner shall be entitled to the rights and privileges of a taxpayer in the City of Providence in the event the City assesses, levies, or otherwise seeks collection of taxes in amounts different than those amounts provided for in Section 2.3 of this Agreement, except for those adjustments in tax amounts provided for in Sections 2.8(b) and 3.7 of the Agreement. Notwithstanding anything to the contrary herein, nothing herein shall be construed to limit the right of the Property Owner to pursue its rights and remedies under the terms of this Agreement.

Section 7.5. Waiver. Failure or delay on the part of the City to exercise any rights or remedies, powers or privileges at any time under this Agreement or under any state or local law shall not constitute a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, remedy, power of privilege thereunder.

Section 7.6. Joint and Several Liability. In the event of default under this Agreement, Dominion agrees to remain jointly and severally liable with any and all Property Owners.

SECTION 8. MISCELLANEOUS TERMS.

Section 8.1. Severability. The sections of this Agreement are severable, and if any of its sections or subsections shall be held unenforceable by any court of competent jurisdiction, the decision of the court shall not affect or impair any of the remaining sections or subsections.

Section 8.2. Applicable Law. This Agreement shall be construed under the laws of the State of Rhode Island, the City of Providence Home Rule Charter, and the City of Providence Code of Ordinances, as amended.

Section 8.3. Modifications Amendments and/or Extensions. This Agreement shall not be modified, amended, extended or altered in any way by oral representations made before or after the execution and ratification of this Agreement by the Providence City Council. Any and all modifications, amendments, extensions or alterations must be in writing duly executed by all parties and ratified by the Providence City Council.

Section 8.4. Entire Agreement. This Agreement and all attachments, addenda, and/or exhibits attached hereto shall represent the entire agreement between City and the Property Owner and may not be amended or modified except as expressed in this document.

Section 8.5. Effective Date. This Agreement shall only take effect upon ratification by the Providence City Council by Ordinance and the date of such ratification shall be referred to herein as the "Effective Date."

IN WITNESS WHEREOF, Dominion and the City have executed this Agreement.

<p style="text-align: center;">DOMINION ENERGY MANCHESTER STREET, INC.</p>	<p style="text-align: center;">CITY OF PROVIDENCE</p>
<p>By: _____ Authorized Signature</p> <p>Print Name: <u>James E. Eck</u></p> <p>Title: <u>VP Business Development and Merchant Operations</u></p> <p>Address: <u>Dominion Resources</u> <u>120 Tredegar Street</u> <u>Richmond, VA 23219</u></p> <p>Date: _____</p>	<p>By: _____ Authorized Signature</p> <p>Print Name: <u>Jorge O. Elorza</u></p> <p>Title: <u>Mayor of Providence</u></p> <p>Address: <u>City Hall</u> <u>25 Dorrance Street</u> <u>Providence, RI 02903</u></p> <p>Date: _____</p> <p>Approved as to form and correctness: _____ Jeffrey Dana, City Solicitor</p>

