



NATURAL GAS AGREEMENT – BudgetAssist

By submitting a signed delegation form, I have chosen Constellation New Energy – Gas Division, LLC (“Constellation”) to supply natural gas to my natural gas account (“Account”), subject to the eligibility requirements of my local utility, Black Hills Distribution, LLC (“Utility”), and acceptance by Constellation, and authorize Constellation to enroll my Account. This Natural Gas Agreement (“Agreement”) sets forth the general terms and conditions regarding my participation in Constellation’s Budget Assist pricing program.

1. Constellation Services and Utility Services. This Agreement and any renewal notice from Constellation (if applicable) reflect my entire agreement with Constellation and supersede any oral or written statements made in connection with this Agreement or my natural gas supply. The Utility will continue to deliver gas to me, read my meter, and provide emergency and other services it has provided in the past.

2. Term and Renewal. Constellation will begin supplying my natural gas when the Utility switches my account to Constellation. This Agreement will continue for either twelve (12) or twenty-four (24) months (“Initial Term”) starting with your first billing month. This Agreement will automatically renew for additional twelve (12) month terms (each a “Renewal Term”) unless I select a different supplier before the Utility’s annual selection deadline. Constellation will set the Budget Assist amount that will apply for each Renewal Term.

3. Budget Assist Amount. My monthly Budget Assist amount will be the amount confirmed to me at the time I subscribed to Constellation’s Budget Assist program. My monthly Budget Assist amount will include the following charges, as defined in the applicable Utility tariff: Supplier Commodity Charge, Customer Charge, Distribution Charge, and Tax and Franchise Fee. In addition to the Budget Assist amount, I may be responsible for paying any other service fees, late fees or other fees assessed by the Utility that are unrelated to the Budget Assist program. My Budget Assist monthly payment amount will not change due to weather conditions or natural gas market prices. **However, I understand that my Budget Assist monthly payment amount may change if there is a material change in my natural gas usage that is not weather related.** This includes, but is not limited to, events such as expansion of a heated space, addition of new gas burning equipment or the discontinuing of alternate heat sources. I agree to provide Constellation prior written notice of such material changes. If, upon the occurrence of such an event, Constellation changes my Budget Assist payment, Constellation will provide me written notice of such change.

4. Termination. I may terminate this Budget Assist Agreement at any time by calling Constellation at (877) 274-5710 or by sending an email to NEChoice@constellation.com and I will pay an early termination fee of \$75. Upon termination of this Agreement, Constellation will continue to supply my natural gas at Constellation’s applicable default market index rate for the remainder of the current term. If my state’s public service commission or the Utility ends or changes the program under which I buy gas in a manner that physically prevents or legally prohibits Constellation from performing under the terms of this Agreement, Constellation may terminate this Agreement on fifteen (15) days written notice.

5. Events of Default. I will be in default under this Agreement if I (a) fail to comply with the Utility’s payment terms, (b) move during the term of this Agreement (ii), or (c) fail to notify Constellation of any material change in my natural gas usage. If one of these events occurs, Constellation may terminate this Agreement and I will be responsible for a \$75.00 early termination fee.

6. Billing and Payment. I will be invoiced by the Utility monthly for all charges applicable to my natural gas usage, including the rates set forth herein, applicable taxes, and all applicable Utility customer charges and franchise fees.

7. Questions and Disputes. For questions about this Agreement I will call Constellation’s Customer Care at 1-877-274-5710, M-F 8A.M. to 5P.M. CST, or send a letter to: Constellation New Energy – Gas Division, LLC, 2348 SW Topeka Blvd., Suite 203, Topeka KS 66611, or send an email to NEChoice@constellation.com. Constellation will refer all issues to a representative who in good faith will use reasonable efforts to reach a mutually satisfactory solution.

8. Emergency. IF I SMELL GAS I SHOULD IMMEDIATELY CALL BLACK HILLS DISTRIBUTION, LLC AT 1-800-563-0012.

9. Delivery Point. Constellation will deliver natural gas to a point of interconnection between the Utility distribution system and a third party pipeline supplying natural gas to the Utility (the “Delivery Point”). Title and risk of loss related to natural gas transfer to me at the Delivery Point.

10. Warranties. I ACKNOWLEDGE AND AGREE THAT NO WARRANTY, DUTY, OR REMEDY, WHETHER EXPRESSED, IMPLIED, OR STATUTORY, IS GIVEN OR INTENDED TO ARISE OUT OF THIS AGREEMENT EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, AND CONSTELLATION SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

11. Limitation of Liability and Jury Trial Waiver. I agree that neither Constellation nor any of its affiliates or subcontractors (the “Constellation Parties”) shall be liable for any damages or claims for matters within the control of the Utility, which include maintenance of pipelines, service interruptions, loss or termination of service, meter readings or injury to persons or damage to property caused by the delivery or supply of natural gas. The Constellation Parties will not be responsible for any failure to commence or terminate natural gas supply service on the date specified herein due to any failure or delay in enrolling me with the Utility. Constellation’s liability shall be limited to direct actual damages only, which will not exceed the amount of my single largest monthly invoice during the preceding twelve (12) months. In no event shall the Constellation Parties be liable for any punitive, incidental, consequential, exemplary, indirect or other damages whether based on contract, warranty, tort, negligence, strict liability or otherwise, or for lost profits arising from any breach or nonperformance of this Contract. BOTH I AND CONSTELLATION AGREE IRREVOCABLY AND UNCONDITIONALLY TO WAIVE ANY RIGHT TO A TRIAL BY JURY OR TO INITIATE OR BECOME A PARTY TO ANY CLASS ACTION CLAIMS IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS CONTRACT.

12. Force Majeure. If something happens that is beyond my or Constellation’s reasonable control that prevents one of us from performing our obligations under this Contract, then I or Constellation, as applicable, will be relieved from performance until the situation is resolved. Examples of such events include: acts of God, fire, flood, hurricane, war, terrorism; declaration of emergency by a governmental entity or the Utility; curtailment, disruption or interruption of natural gas distribution or supply; regulatory, administrative, or legislative action; and actions taken by third parties not under our control, such as the Utility.

13. Confidentiality. Consistent with applicable regulatory requirements, Constellation will hold in confidence all information obtained from me or the Utility related to the provision of services under this Agreement and which concern my energy characteristics and use patterns, except that Constellation may disclose such information to its affiliates and such affiliates’ employees, agents, advisors, and independent contractors.

14. Changes in law or market structure. If a change in or implementation of law, rule, regulation, ordinance, statute, judicial decision, administrative order, Utility tariffs, pipeline tariffs or the like causes Constellation’s costs under this Agreement to increase, Constellation will have the right to pass such increased costs on to me. The changes described in this Section may change any or all the charges described in this Agreement.

15. Miscellaneous. Constellation may assign this contract to another supplier authorized by the Utility provided that Constellation gives me written notice of such assignment, and the assignee assumes all of Constellation’s responsibilities and duties under this contract. I may not assign this Agreement without Constellation’s prior written consent. Any required notice shall be deemed to have been made if mailed to my last known mailing address in Constellation’s records for the account. I also consent to Constellation providing any future notifications to me via electronic mail. This Contract is subject to any future legislation, orders, rules, regulations, or the Utility tariff or policy changes. The laws of the state of where the service is being provided shall govern the interpretation and performance of this Agreement.