

## OPT OUT NOTICE - TERMS AND CONDITIONS

The City of Deer Park pursuant to the aggregation authority conferred upon it by Ballot Issue, which passed by a majority of the vote on November 6, 2012, selected Constellation Energy Services – Natural Gas, LLC (“Seller”) to supply the aggregation and to administer enrollments as described below. **IF YOU DO NOT WISH TO PARTICIPATE, YOU MUST OPT-OUT BY DETACHING AND RETURNING THE OPT OUT CARD ATTACHED TO THE ENROLLMENT NOTICE, POSTMARKED NO LATER THAN NOVEMBER 13, 2015, BY GOING ON-LINE AT [WWW.CONSTELLATION.COM/OH-DEERPARK](http://WWW.CONSTELLATION.COM/OH-DEERPARK), OR BY CALLING OUR TOLL FREE NUMBER (877) 305-3337 BY NOVEMBER 13, 2015.** You, the account holder (also referred to as “Buyer”) for the account referenced on the letter accompanying this Opt Out Notice (the “Account”), and Seller agree to the following terms and conditions (the “Agreement”).

**1. Enrollment:** Enrollment is automatic for those who are eligible, but participation is voluntary. **IF YOU DO NOT WISH TO PARTICIPATE, YOU MUST OPT-OUT BY RETURNING THE OPT OUT CARD ATTACHED TO THE ENROLLMENT NOTICE, POSTMARKED NO LATER THAN NOVEMBER 13, 2015, BY GOING ONLINE AT [WWW.CONSTELLATION.COM/OH-DEERPARK](http://WWW.CONSTELLATION.COM/OH-DEERPARK), OR BY CALLING OUR TOLL FREE NUMBER BY NOVEMBER 13, 2015.**

**Eligibility:** To be eligible for automatic aggregation, Buyer and the Accounts to be served (i) must be located within the jurisdictional boundaries of the City of Deer Park and Duke Energy Ohio (“Utility”), (ii) may not be under contract with another competitive supplier, (iii) may not be a mercantile customer or a PIPP (Percentage of Income Payment Plan program customers) customer, and (iv) must be in good credit standing with the Utility. **Rescission Period:** If this is Buyer’s first enrollment into the City of Deer Park Aggregation Program, upon Buyer’s successful enrollment, the Utility will send Buyer a letter confirming the transfer of service. Buyer may cancel its enrollment without penalty within seven (7) business days of the postmark date of that letter (“Rescission Period”) by contacting the Utility in writing or by telephone as noted in that letter.

**2. Delivery Period:** Service shall begin as soon as the Utility accepts your enrollment. Service shall continue through the November 2016 meter read date. Prior to the end of the initial Delivery Period, Seller shall provide Buyer notice of any changes to the terms and conditions of this Agreement that apply to service during the next Delivery Period. If renewal is indicated in the expiration notice, service will renew at the terms stated in the renewal notice unless Buyer affirmatively terminates the Agreement upon the expiration as provided in the notice. Buyer shall have the opportunity to opt-out of the Aggregation Program at least every two (2) years without penalty.

**3. Supplier’s and Utility’s Role:** Seller agrees to sell to Buyer and deliver to the Utility, and Buyer agrees to purchase from Seller and receive from the Utility, Buyer’s full requirements of natural gas for the accounts listed on the Enrollment Notice (“Accounts”). The Utility will deliver the natural gas to the Accounts and shall invoice and collect Seller’s charges. Seller does not impose credit or deposit requirements. The Utility’s billing and payment procedures shall apply in accordance with the applicable tariff, including but not limited to, the Utility’s right to assess late payment fees and to disconnect gas service for past due charges. The Utility or Seller may terminate your service under this Agreement for non-payment with at least fourteen (14) days written notice. Seller may cause the Utility to correct previous invoices in the event of invoicing errors. Buyer should contact the Utility in the event of a natural gas emergency.

**4. Price:** Initially, the price for the Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate will vary monthly with no price cap. The Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate will be calculated based on a formula including a Delivery Adder as calculated by Seller and the “Market Settlement” price defined below. The Delivery Adder is based upon several factors, including, but not limited to: the monthly market price for transportation to the point of delivery, shrinkage, Btu adjustment and pooling fees. At points during the delivery period, the City of Deer Park City Council and Seller may establish a price cap for the Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate. When that rate is established, Seller will provide Buyer with notice, including the period of time within the Delivery Period during which the rate applies. However, if you contact Seller by calling our toll-free telephone number, (877) 305-3337, you can request the Monthly Variable Rate for the entire Delivery Period. Both rates may change monthly based on current Market prices.

The Locked in Price with Flex Down Opportunity<sup>SM</sup> Rate is calculated based upon the sum of the weighted average “Market” prices when the price cap is locked by the City of Deer Park City Council, plus a Delivery Adder as calculated by Seller for the Delivery Period. Each month, Seller will compare the cap to the then-current weighted average Market price for the remainder of the Delivery Period and may adjust the monthly price to account for a downward or upward pricing trend within the Delivery Period, however *the price with the Locked-In Price with Flex Down Opportunity<sup>SM</sup> Rate will never exceed the cap during the Delivery Period.*

The Monthly Variable Rate is calculated based upon the Market price for the delivery month plus the Delivery Adder. The Monthly Variable Rate has no cap.

The "Market" price is a current price for the relevant month's natural gas futures contract that is traded on the New York Mercantile Exchange ("NYMEX") on the day the price is determined. The "Market Settlement" price is the Market price at settlement for the relevant month as determined by NYMEX.

The Price includes all gas supply costs to the Utility and some pass-through charges from the Utility to the burnertip, including, but not limited to, btu factor and shrinkage. If the pass-through charges from the Utility increase, or if new charges are approved by a governmental agency with jurisdiction and passed through, or if existing tariff charges are administered differently and the pass-through charges from the Utility increase, the Price will increase accordingly. There are no recurring or nonrecurring supplier charges that are billed in addition to the Price. A switching fee may apply under the terms of the Utility's tariff. **Seller shall not charge You separately for any switching fees.** The Price does not include Taxes (as defined below) or Utility distribution charges. If (a) third party intermediary is involved in this transaction, (b) the Broker Fee has been included in the price, and (c) such rules require the Broker Fee to be disclosed, then the Broker Fee shall be that identified below (subject to the terms of any agreement between Seller and the third party intermediary).

**Broker Fee (if applicable):**       Broker Fee is \$0.00X per CCF       Broker Fee is a percentage of Seller's contract margin

5. **Taxes:** Buyer is responsible for all state and local sales, use, revenue, gross receipts, commercial activity, excise and/or ad valorem tax (collectively, "Taxes") and shall reimburse Seller if Seller is required to remit such Taxes in connection with this Agreement. Tax exempt customers wishing to participate are requested to please send their most recent tax exempt certificate on or before NOVEMBER 13, 2015 to: Constellation Energy Services – Natural Gas, LLC, 1716 Lawrence Drive, De Pere, WI 54115 or fax to (920) 272-4244. Be sure to note The City of Deer Park Aggregation Program and your utility account number on the certificate. Constellation Energy Services – Natural Gas, LLC will not charge sales tax starting with the date the certificate is received.

6. **Customer Information:** Seller will not request a deposit or investigate your credit history to establish service. The Buyer's social security number, account number(s), or any customer information will not be released by Seller without Buyer's express written consent except in accordance with rules 4901:1-28-04 and 4901:1-29-09 of the Ohio Administrative Code. Upon request of Buyer, Seller will provide up to 24 months of Buyer's payment history without charge.

7. **Termination; Remedies:** (a) This Agreement will automatically terminate or Buyer may terminate the Agreement without penalty if (i) the requested service location is not served by the Utility or (ii) Buyer, or the applicable Account being served, moves outside the Utility service area or to an area not served by Seller. (b) This Agreement will terminate upon written notice, but without penalty to Buyer if, (i) competitive retail natural gas service is no longer available due to a change in regulation, tariff, or law, or (ii) Seller defaults, which includes, an unexcused failure to deliver natural gas under the terms of this Agreement. (c) An "Early Termination" shall occur if this Agreement is terminated (i) by Buyer to select a different price or rate plan after the Rescission Period but prior to the end of the Delivery Period, or for any other reason other than those listed in (a)-(b) above or (ii) by Seller due to Buyer's default, which includes a failure to pay or an unexcused failure to receive natural gas under the terms of this Agreement. In the event of an Early Termination, Seller will not charge a termination fee. If Buyer returns to the Utility after the Rescission Period, Buyer may not be served on the same rates, terms and conditions that apply to the Utility's Standard Service Offer.

8. **Limitations:** ALL NATURAL GAS SOLD HEREUNDER IS PROVIDED "AS IS", AND SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT, WHETHER IN AGREEMENT, IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR PUNITIVE DAMAGES.

9. **Force Majeure:** Except for Buyer's obligation to pay Seller timely, neither Party shall be liable to the other for failure to perform an obligation if such failure was caused by any event beyond the reasonable control of the non-performing party, that could not be remedied by the exercise of due diligence and that was not reasonably foreseeable, including without limitation, acts of God, interruption of utility service, terrorist acts or wars, force majeure events of the Utility. Seller may return Buyer to Utility service upon notification of a Force Majeure event preventing performance.

10. **Questions, Complaints and Concerns:** Buyer may contact Seller (i) by calling 24 hours per day, 7 days per week at (877) 305-3337, by visiting [www.constellation.com/OH-DEERPARK](http://www.constellation.com/OH-DEERPARK); or (ii) by writing us at 355 E. Campus View Blvd., Suite 150, Columbus OH 43235. Seller will attempt to resolve all customer complaints in a timely manner and will respond to all complaints within 3 business days of receipt. If Buyer's complaint is not resolved after Buyer has called Seller, or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio (PUCO) for assistance at (800) 686-7826 (toll-free) from eight a.m. to five p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contract the PUCO via 7-1-1 (Ohio relay service). The Ohio Consumers' Counsel (OCC) represents residential utility customers in matters before the PUCO. The OCC can be contacted at (877) 742-5622 (toll free) from eight a.m. to five p.m. weekdays, or at <http://www.occ.ohio.gov/>.

11. **Miscellaneous:** This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio. Subject to regulatory approvals and notice from Seller, Seller may assign this Agreement without Buyer's consent. Buyer may assign this Agreement only with Seller's consent. This Agreement constitutes the entire agreement between the Parties, superseding all verbal and written understandings.