



**Utility:** Atlanta Gas & Light  
**Summary Billing:** Yes No  
**Method of Payment:** Check ACH Credit Card EFT  
**Estimated Service Date:** September, 2022  
**End Date:** 9/2025 Last day of the 36 billing cycle after Service Date

Notwithstanding the estimated Service Date above, service hereunder will commence on the date the Utility actually switches the Facilities to our service. Each billing cycle is determined by the local Utility.

**PRICE: Fixed Price + Transport** - The Sales Price (per Therm) which is a citygate delivered commodity price shall be \$0.6690. The Sales Price will apply to the total of the usages for each billing cycle for each Facility as adjusted by actual meter readings. In addition, you will pay transportation charges of \$8.50 multiplied by your DDDC (dth) as determined by the Utility. This price is exclusive of Utility Charges and Taxes.

**Estimated Monthly Usage, by Facility (Dth)**

Facilities	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1												
2												
3												
4												
<b>Total</b>												

Provide information for additional Facilities on a separate page.

**Customer Charge:** \$ 0 per meter per bill cycle.  
**Credit Terms (per Service Terms Section 6):** Net 20 days invoice date

(Choose One)

- Approved, No Deposit
- Deposit Required of \$ \_\_\_\_\_ paid on \_\_\_\_\_

**Constellation Notice and Customer Service Information:**

<b>All Notices:</b> Constellation NewEnergy – Gas Division, LLC 4 Houston Center, 1221 Lamar St., Suite 750 Houston, TX 77010 Attn: Contracts Administrator Phone: (800) 785-4373 Facsimile: (800) 785-4374	<b>Customer Service:</b> Constellation NewEnergy – Gas Division, LLC PO Box 4911 Houston, TX 77210-4911 Toll Free: (800) 785-4373 Facsimile: (800) 785-4374 PSC Consumer Affairs Division (404) 656-4501
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date. **By executing this Agreement below, you represent that you are an authorized representative and acknowledge you have received, and agree to, the Terms of Service and the General Terms and Conditions which are part of this Agreement. If this Agreement is altered in any way, except in the blanks provided in this Service Application, it will be rendered void. This Agreement will not be effective until it has been executed by an authorized Constellation representative.**

**CONSTELLATION NEWENERGY – GAS DIVISION, LLC**

**CUSTOMER:**

Effingham County Board

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Name: Wesley Corbitt  
 Title: Chairman  
 Date: 2/3/2022

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## TERMS OF SERVICE

**1. Term.** The Agreement will be effective on and as of the Effective Date and will expire on the End Date identified on the Service Application (“Primary Term”). Service hereunder will commence on the date the Utility switches the Facilities (defined below) to our service (the “Service Date,” with the period between the Service Date and the End Date being the “Service Term”). Approximately 60 days prior to the end of the Service Term (or any Secondary Term), we may notify you in writing regarding our desire to establish a price for a subsequent term. If we notify you, both parties agree to endeavor to mutually agree on a Sales Price and, if applicable, new terms and conditions for a renewal term (such renewal term being a “Secondary Term,” and the combination of the Primary Term and any Secondary Term(s) being the “Term”). If mutual agreement on a new price is not reached and confirmed in writing at least 15 days prior to the end of the Term, the Sales Price as set forth in the Service Application will no longer be effective at the end of the Term (“Pricing Expiration Date”). Gas supplied after the Pricing Expiration Date shall be priced at Constellation’s then current commercial variable rate and shall be subject to these Terms of Service and General Terms and Conditions. Constellation will not be responsible for any delays in the Utility switching process.

**2. Sales and Delivery.** You will purchase from us 100% of the natural gas (“Gas”) requirements of each of the locations identified on the Service Application (each a “Facility”) each month during the Service Term. We will deliver, or cause to be delivered, Gas for your account to the citygate of the applicable Utility (the “Delivery Point”), at which point title to and responsibility for the Gas will pass to you. We will coordinate with the Utility regarding the redelivery of the Gas from the Delivery Point to each Facility. We may, at our cost and for our account, use any interstate transportation capacity or storage released to or for your account by the Utility to transport Gas to your Facilities or to third parties and/or re-release, broker or assign such capacity or storage to third parties. We are a registered competitive Gas supplier in Georgia, and we will perform our obligations under this Agreement in accordance with applicable laws, rules and regulations.

**3. Price.** The price(s) you will pay us for Gas sold hereunder (“Sales Price”) will be as set forth on the Service Application and may include fixed and/or variable components. You will pay us, for each month during the Service Term, an amount equal to the actual Gas usage at the Facility(ies) during such month (adjusted, if necessary, for fuel and shrink) multiplied by the applicable Sales Price(s), along with any other charges or credits relative to your Gas usage as indicated on the Service Application. In addition, you will pay us the Customer Charge indicated on the Service Application, and you will pay directly, or reimburse us if we have paid, all Utility Charges and Taxes.

**4. Utility Documents and Agency.** You will execute whatever documentation the Utility may require in order to recognize us as your supplier or in order to effect your participation in our supply program, and, if you currently have a transportation agreement with the Utility, you will provide us with a copy of that Agreement. You by this Agreement also appoint us as your limited agent so that we may from time to time take the actions that are necessary to provide you with service under this Agreement and any Supply Services, including, without limitation, all rights to inject Gas into and withdraw Gas from your Utility storage and/or volume banking account(s), if applicable and available. You will provide the Utility with whatever evidence of this agency relationship that the Utility requires. This agency is limited as set forth in this paragraph and will not impose on us during the Term any obligations or authority not expressly granted in this paragraph.

**5. Consumption Management.** We will provide the nomination, scheduling and balancing services necessary to serve the full Gas requirements of the Facilities. In order to assist us in performing these obligations, you will (a) notify us (an “Operational Notice”) of any change to the operations at a Facility (such as equipment outages, shift changes and plant closures) that may significantly impact monthly Gas consumption at such Facility; and (b) provide us with Gas meter readings on our reasonable request. If the Utility issues you any consumption management order (such as an operational flow order or an operational matching order), you will fully comply with such order. As long as you (i) provide us Operational Notices and, when requested, accurate meter readings; (ii) fully comply with all Utility consumption management orders; and (iii) otherwise perform your obligations under this Agreement, if the Utility imposes penalties on you or us as result of a Facility’s consumption being outside of the balancing tolerance set by the Utility, we will be responsible for any such penalty. Otherwise, you will be responsible for any such penalty. If you have interruptible distribution service with the Utility, we will have no liability arising from your failure to receive Gas as result of the interruption of such distribution service.

**6. Billing and Payment.** You will receive a monthly invoice for Gas consumed during the prior billing cycle, which will coincide with the Utility’s billing cycle that are based upon when the Utility’s reads your meter(s). You will be responsible for paying us all amounts due under the applicable invoice. Invoices will be based upon actual metered Gas consumption; provided that we reserve the right to estimate consumption if actual consumption data is not available at the time we render our invoice and reconcile estimated and actual consumption on a future invoice. Invoices from us will be due 20 days after the date of the invoice, and late payments or partial payments will accrue a late payment fee equal to the greater of \$10 or 1.5% of the balance due per month, not to exceed the maximum amount allowed by law. If you in good faith dispute any charges under this Agreement, you must provide us with a written explanation of the dispute and pay any undisputed portion such charges by the date they are due. Disputed amounts subsequently determined to be due will be paid with interest accrued at the interest rate set forth above from the original due date until paid. The Parties will discharge mutual payment obligations under this Agreement through netting, such that all amounts owed by each Party to the other Party during a billing cycle under this Agreement will be netted and only the excess amount remaining due shall be paid by the Party who owes it.

**7. Service Requirements.** You will pay any Utility entry or exit fees and subscribe to the applicable Supply Services,

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including, without limitation, those Supply Services indicated on the Service Application, as required by the Utility for you to receive service under this Agreement. During any Secondary Term, you agree to maintain the Utility service class and any Supply Services indicated on the Service Application. You will provide, at your expense, any necessary equipment, meters or related services, such as electric or telephone lines, that are required by applicable law, rule, regulation or tariff for you to receive service under this Agreement.

**8. Credit and Collateral.** We have reviewed and approved your credit prior to entering this Agreement, and any credit terms are reflected on the Service Application. Should we at any time during the term become reasonably concerned about your credit quality (as result of, for instance, late payments or a credit rating agency downgrade or changes in consumption), the we may require, and you will provide to our reasonable satisfaction, additional credit assurance in the form of prepayment, a cash deposit or a letter of credit or a payment guaranty from a credit qualified party (“Performance Assurance”).

**9. Force Majeure.** Except for payment obligations, a Force Majeure event will, upon notice, excuse both parties’ performance during the event. "Force Majeure" means events not reasonably anticipated on the effective date hereof and not within the claiming Party’s control and specifically includes Force Majeure events declared by the Utility or the pipeline(s) we use to deliver Gas; curtailment of Gas by the Utility or curtailment of our firm transportation capacity; and the Utility’s appropriation of Gas.

**10. Definitions.** The following terms have the following definitions: “PSC” means the Public Service Commission of Georgia “Supply Services” means services offered or required by a Utility that are related to the supply of Gas, including, without limitation, standby, banking, balancing, storage, metering and billing services.

“Taxes” means all taxes, assessments, levies, duties, fees, charges or withholdings of any kind whatsoever and all penalties, fines, additions to tax, or interest thereon, but excluding any taxes on net income.

“Utility” means the entity providing regulated Gas sales and/or distribution service to a Facility pursuant to applicable law, rule, regulation and tariff.

“Utility Charges” means all charges of any type imposed by a Utility, including, without limitation, those charges, surcharges and riders for or related to (i) the distribution of Gas from the Delivery Point to the applicable Facility; (ii) the establishment and maintenance of the Utility’s Gas transportation program; (iii) Supply Services; (iv) public purpose programs; and (v) equipment rental, deposits and special services or arrangements between you and the Utility.

## General Terms and Conditions

**1. Representations and Warranties.** Each Party represents and warrants that (i) there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform under this Agreement; (ii) it is duly organized validly existing and in good standing under the laws of the jurisdiction of its formation; (iii) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation or order; (iv) this Agreement constitutes a legal, valid and binding obligation enforceable in accordance with its terms, subject to any equitable defenses; and (v) there are no bankruptcy, insolvency, receivership or reorganization or other arrangement proceedings pending or being contemplated, or to its knowledge threatened against it. You additionally represent and warrant that this Agreement is for Gas service that is not primarily for personal, family or household purposes.

**2. Indemnity.** You shall indemnify and save us harmless from any and all liability to anyone whomsoever arising from damages, expenses (including reasonable attorney's fees) claims, actions, causes of action and lawsuits, including, but not limited to, death of persons and injury to persons and property, caused by your ownership, installation, removal, use, maintenance or repair of, or act in respect of, any machine, equipment, device, facility, appliance, piping and connections, property or Gas. We shall have no duties regarding the distribution, control, care or utilization of, or protection in the use of, the Gas beyond the Delivery Point, and you hereby assume such duties with respect to such Gas. We further shall not be liable to you for any loss, injury or damages whatsoever resulting from use of your equipment or from the use of Gas delivered by us.

**3. Events of Default.** An "Event of Default" will mean, with respect to a Party (the "Defaulting Party"): (a) the failure by the Defaulting Party to make, when due, any payment required under this Agreement and such failure is not cured within three (3) business days of written notice by the Non-Defaulting Party; (b) any representation or warranty made by the Defaulting Party herein proves to have been false or misleading when made or ceases to remain true during the Term; (c) the failure by the Defaulting Party to perform any obligation (not related to payment) set forth herein (not excused by Force Majeure) and such failure is not cured within fifteen (15) business days of written notice by the Non-Defaulting Party; (d) the Defaulting Party: (i) makes an assignment or any general arrangement for the benefit of creditors; (ii) files a petition or otherwise authorizes the commencement of a proceeding under any bankruptcy or similar law for the protection of creditors, or has such petition filed against it and such petition is not withdrawn or dismissed for 20 business days after such filing; (iii) otherwise becomes bankrupt or insolvent; (iv) is unable to pay its debts as they fall due; or (e) the Defaulting Party fails to provide Performance Assurance when and as required under this Agreement within three (3) business days of written notice by the Non-Defaulting Party.

**4. Remedies.** Upon an Event of Default. If an Event of Default shall have occurred and be continuing with respect to a Defaulting Party, the other Party (the "Non-Defaulting Party") shall, at its sole discretion, have the right to take one or more of the following actions: (a) terminate this Agreement by declaring a date for its

early termination ("Early Termination Date"), and calculate its Termination Payment as set forth below; (b) withhold any payment due to the Defaulting Party under this Agreement; (c) immediately suspend performance and direct the Utility to shut off your Gas service; and (d) exercise any rights and remedies under this Agreement or at law with respect to any Performance Assurance. If the Non-Defaulting Party elects to declare an Early Termination Date, it shall calculate the Termination Payment and notify the Defaulting Party of such amount as soon thereafter as is reasonably practicable.

**5. Termination Payment.** The Termination Payment shall be the net present value of the economic losses ("Losses"), if any, to the Non-Defaulting Party resulting from the termination of this Agreement, determined as of the date of termination. The Non-Defaulting Party will calculate its Losses in a commercially reasonable manner by comparing (i) the value to it of the quantity of Gas to be delivered over the remaining Term at the Sales Price, including, for variable price products, the Sales Price Adder, to (ii) the market value of the same quantity of Gas, including, for variable price products, the components of the Sales Price Adder, at the Delivery Point. The Non-Defaulting Party shall determine the market value for Gas using, among other things, applicable NYMEX futures contracts and bona fide third party offers. Losses shall also include any costs and expenses reasonably incurred by the Non-Defaulting Party in entering into new arrangements to replace this Agreement, including reasonable attorneys' fees. If the Non-Defaulting Party has Losses so calculated, the Defaulting Party shall pay the Non-Defaulting Party the amount of such Losses within five (5) business days of the Non-Defaulting Party's notice thereof. If the Non-Defaulting Party does not have Losses, there will be no Termination Payment owed by either Party. The Non-Defaulting Party shall not be required to enter into a transaction to replace this Agreement in order to calculate its Termination Payment. A Termination Payment cannot be less than zero (0).

**6. Other Termination / Shut off notice.** (a) We may also terminate this Agreement on fifteen (15) days written notice if changes to the current laws, decisions, tariffs, rules, regulations or procedures of your Utility, our transporter(s) or supplier(s) adversely affect our ability to provide service hereunder. In such case, we will calculate our Termination Payment and if we have Losses, you will pay us that amount. We may also terminate this Agreement if an assumption which forms the basis of this contract (including as an example your historical consumption data provided by either you or the utility) is either inaccurate or changes materially. (b) If Constellation elects to terminate this Agreement for any reason, whether or not contained in this Section 6, we shall provide you with no less than three (3) days written notice of shut off. Our notice of termination shall also serve as notice of shut off.

**7. Warranty Disclaimer.** We warrant that the Gas meets your Utility's quality standards and that title to such Gas is free from liens and adverse claims. **WE EXPRESSLY DISCLAIM ANY OTHER WARRANTY OR REPRESENTATION, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING THOSE WITH RESPECT TO CONFORMITY OF THE GAS TO MODELS OR SAMPLES, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**

**8. Limitation of Liability. LIABILITY IS LIMITED TO**

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**DIRECT ACTUAL DAMAGES (WHICH WILL INCLUDE ANY TERMINATION PAYMENT) AS THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE EXPRESSLY WAIVED, REGARDLESS OF CAUSE. NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR ANY OTHER BUSINESS INTERRUPTION DAMAGES, IN TORT, CONTRACT OR OTHERWISE.**

**9. Confidentiality.** Neither Party will disclose the contents of this Agreement to any third party except to its employees, officers, directors, financial advisors, attorneys and service providers, except to perform their obligations or comply with any applicable law, order, or regulation.

**10. Assignment.** Neither Party will assign, or transfer their ownership interest in, this Agreement without the other Party's prior written consent, which shall not be unreasonably withheld or delayed; provided that we may, without your consent, assign this Agreement or any of our rights or obligations hereunder to (i) an affiliate; (ii) any entity succeeding to all or substantially all of our assets; or (iii) another Gas supplier which is willing and capable of assuming our obligations hereunder. Assignments or transfers in violation of this provision will be void.

**11. Dispute Resolution.** If you have a question or dispute under this Agreement, contact our customer service department at the number listed on the Service Application. We will promptly work with you to resolve the question or dispute. Disputes which cannot be resolved will be submitted to binding self-administered arbitration by a single arbitrator under the then current CPR Institute for Dispute Resolution Rules for Non-Administered Arbitration of Business Disputes, with proceedings subject to the Federal Arbitration Act. Any damages awarded must be consistent with the limitations set forth in this Agreement. EACH PARTY UNDERSTANDS AND AGREES THAT IT WILL NOT BE ABLE TO BRING AN ACTION IN A COURT OF LAW CONCERNING ANY DISPUTE THAT MAY ARISE UNDER THIS AGREEMENT OTHER THAN TO COMPEL ARBITRATION OR ENFORCE AN ARBITRATION AWARD. You may contact the PSC Consumer Affairs Division at the number set forth on the Service Application.

**12. Governing Law.** This Agreement will be governed and interpreted under the laws of the State of Georgia, without giving effect to its conflicts of laws rules.

**13. Notices.** Notices will be provided by hand delivery, facsimile (followed by overnight mail) or overnight mail at the addresses set forth on the Service Application. Notices will be deemed to be received when sent.

**14. Miscellaneous.** This Agreement is the entire agreement between the Parties relative to the subject matter hereof, and this Agreement supersedes and replaces any prior agreements and understandings. Amendments to this Agreement are not enforceable unless in writing and executed by both Parties. No waiver or consent, express or implied, of any default will operate as a waiver or consent of any other default. Any provision of this Agreement that is rendered unlawful will not otherwise affect the lawful obligations that arise hereunder. This Agreement may be executed in several counterparts, including by facsimile, all of which constitute one and the same Agreement. In providing services under this Agreement, we will be acting as an independent contractor and not as your partner or fiduciary.