



**Constellation.**

An Exelon Company

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DEAL NO. NGIDX19314175

Transaction Confirmation

This Transaction Confirmation, which constitutes a Nomination Order, is delivered pursuant to and in accordance with a gas supply agreement effective January 01, 2010 ("Gas Supply Agreement"), by and between Constellation NewEnergy - Gas Division, LLC ("Constellation") and Fort Hays State University ("Customer"), and is subject to and made part of the terms and conditions of such Gas Supply Agreement.

Trade Date: October 14, 2014  
Buyer: Fort Hays State University  
Seller: CONSTELLATION NEWENERGY - GAS DIVISION, LLC  
Facility Name: Ft Hays State University PHYS POOL ACCOUNT  
Delivery Period: November 01, 2014 - October 31, 2016 (Inclusive)

Nature of Obligation: Secondary Firm - "Secondary Firm" means deliveries and receipts will be on a best-efforts basis up to Customer's maximum daily quantity and performance may be interrupted without liability to the extent that one or more of the following conditions are present: (i) Force Majeure; (ii) curtailment by the local distribution company owning and/or controlling and maintaining the distribution system required for delivery of gas to the Facility(ies) (the "Utility"); (iii) curtailment of supply by a natural gas supplier; (iv) curtailment of storage by a storage provider; (v) curtailment of transportation by a gas gathering or pipeline company, or Utility (each a "Transporter"), transporting gas for CNEG or Customer downstream or upstream of the Delivery Point(s), including, but not limited to, transportation between secondary firm points; (vi) recall of transportation capacity release by its releaser; or (vii) curtailment of gas production behind a specific meter.

Buyer's estimated nomination range is from 2121 MMBtu to 13450 MMBtu per month.

Usage Variance : The price stated herein is based on the facility's historic and/or estimated monthly usage and metered rate of consumption. Buyer agrees to use reasonable efforts to provide Constellation prompt prior written notice before any significant change in the facility's anticipated usage of natural gas, including changes due to equipment outages, plant or facility shutdowns, or changes in the operating hours of a facility.

Deal Type: Physical INDEX

Contract Quantity (MMBtu): As nominated by Customer 5 business days prior to NYMEX Last Day Settle or, in the event Customer does not provide nomination, as determined by Constellation for each month of flow.

Index Price : To be based on the Index price published in the first issue of "Inside FERC's Gas Market Report" for the reference month applicable to the calculation period, in the section "Prices of Spot Gas Delivered to Pipelines" under the heading "Southern Star Central Gas Pipeline Inc." for "Texas, Oklahoma, Kansas".

Index Adder : Index Price Plus 0.2300/MMBtu  
US\$ Rounded to four decimal places



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*Plus applicable taxes*

*The price referenced herein is not inclusive of fuel.*

**Incremental Pricing** : The price for volumes below, or in excess of the Customer's first of the month nomination, will be calculated as follows:

For volumes above the Customer's first of the month nomination, Constellation shall charge Customer a price based upon the applicable Index as published in Gas Daily's "Daily Price Survey" or the applicable first of the month published index, plus transport, fuel and any charges associated with delivery of gas to the Delivery Point unless such volumes are covered under a separate transaction confirmation.

For volumes below the customer's first of the month nomination, Constellation shall credit Customer a price based upon the applicable index as published in Gas Daily's "Daily Price Survey" or the applicable first of the month published index, plus any charges associated with delivery of gas to the Delivery Point unless such volumes are covered under a separate transaction confirmation.

Notwithstanding the foregoing, if during the month of delivery Customer directs Constellation to purchase or sell volumes of gas, such volumes will be based on the then-current spot market price, as determined by Constellation in its reasonable discretion.

**Alternative Pricing Mechanism** : The above described index pricing may be amended by a mutually agreed to fixed, NYMEX based, price arrangement at any time during the Delivery Period herein. Upon expiration of such a fixed price arrangement before the end of the Delivery Period, the pricing mechanism shall return to the index pricing of the Delivery Period herein.

**NYMEX Trigger Rights** : Customer has the right to trigger the NYMEX price for any month(s) at any time during the Delivery Period, prior to 12:00 p.m. EST/EDT on the final day of NYMEX settlement for each applicable month.

**Allocation** : Constellation will allocate the Contract Quantity listed herein among the Customer's separate facilities or meters at a later date.

**Pipeline** : S STAR

**Delivery Point(s)** : MIDWEST ENERGY WAKEENY AND T

**Utility** : MWE

**LDC Account No(s)** : 1015470, 1015479, 1015481, 1015483, 1015497, 1027718, 1771379

Seller's planned billing method for this facility is to bill Buyer based on: Actual Consumption

**Period of Daily Balancing**: Should an operational flow order or period of daily balancing occur, Constellation will attempt to adjust Buyer's daily nomination to match expected usage as determined by Constellation. The incremental increased or decreased volumes associated with the nomination adjustment will be based on then current spot market price, as determined by Constellation in its reasonable discretion.

**Default Service** : Should Constellation continue to deliver to Customer beyond the term of this Transaction Confirmation, said deliveries will be made for successive 12 month terms (each an "Extension Term"), until terminated by either party by giving written notice of termination not less



than 30 Days prior to the expiration of the then-current Extension Term. Each month, the default price (the "Evergreen Price") will equal the applicable published index, plus transportation, fuel and any other charges associated with the delivery of gas to the Delivery Point. Unless otherwise provided by Customer, Constellation will determine Customer's monthly nomination in a commercially reasonable manner based upon Customer's historical usage data.

This Transaction Confirmation documents an agreement previously reached by authorized representatives of the parties. Unless disputed by Customer in writing within two (2) business days of Constellation's execution date, or such other time frame as specified in the Gas Supply Agreement, it is binding and shall be deemed accepted.

Please return via fax to 502-213-9103 or email to [CNEGasConfirmationsKY@Constellation.com](mailto:CNEGasConfirmationsKY@Constellation.com).

Constellation NewEnergy-Gas Division, LLC

*David T. Donat*  
David T. Donat  
Vice President

10/14/2014 9:50:26 AM  
PA-124174  
NGIDX19314175

Fort Hays State University

By: *Keith Dreher*  
Name: Keith Dreher  
Title: Energy Director  
Date: 10-29-14

## SMARTPORTFOLIO PROGRAM (FULL REQUIREMENTS)

This SmartPortfolio Rider ("Rider") is made part of and is subject to the natural gas agreement entered into on January 1, 2010 (the "Master Natural Gas Agreement"), by and between Constellation NewEnergy – Gas Division, LLC ("CNEG") and Fort Hays State University ("Customer"). The Master Natural Gas Agreement and this Rider together are referred to as and constitute the "Master Agreement" between the Parties. The purpose of this Rider is to set forth the specific terms and conditions related to the SmartPortfolio Program whereby CNEG will supply natural gas to Customer's facilities ("Facilities") listed below in the Facility Listing. Capitalized terms used herein but not defined will have the meanings ascribed to them in the Master Natural Gas Agreement. In the event of a conflict between this Rider and the Master Natural Gas Agreement, the terms of this Rider shall govern with respect to the services described herein.

**1. SmartPortfolio Overview.** The SmartPortfolio Program ("SmartPortfolio" or "SmartPortfolio Program") is a complete approach for managing physical natural gas purchases and protecting against price volatility. SmartPortfolio manages spot market gas deliveries and, over time, locks in a fixed price for the elected volumes. The intent of SmartPortfolio is to provide a time diversified physical gas price which utilizes a time-proven, systematic, and algorithmic approach to risk management. The "SmartPortfolio Price" includes the commodity price, basis, transportation, fuel, and CNEG's costs to deliver gas and provide SmartPortfolio Services as described herein. The SmartPortfolio Price does not include any applicable taxes or utility distribution charges.

**2. SmartPortfolio Services.** As part of SmartPortfolio, CNEG will designate an Account Manager to provide the SmartPortfolio Services as described herein. The Account Manager will serve as the Customer's point of contact and manage the relationship between CNEG and the Customer. Customer will be provided a username and password to access CNEG's secured web-based portal. Customer will be able to view online reports identifying volumes for which prices have been fixed through the SmartPortfolio Program over time as well as cumulative purchases since the inception of Customer's participation in the SmartPortfolio Program. Account specific information and reports can be viewed and printed. Examples of account specific reports that may be available include: (a) monthly analysis reports, (b) daily usage histories, and (c) monthly usage and peak day analysis. Market based information can also be viewed and printed from the portal. Examples of market based information may include: (a) Weekly Market Summary, (b) Natural Gas Market Update, (c) Natural Gas Futures Update, and (d) historical NYMEX pricing. Annual energy conferences and periodic webinars will be provided covering the latest information on the energy markets, regulatory and legislative changes, and product and service developments.

**3. Volumetric Participation.** CNEG shall be the exclusive natural gas supplier to the identified Facilities during the term of this Rider. The SmartPortfolio Price will apply to all volumes delivered to Customer by CNEG. Forecasted monthly volumes ("Monthly Volumes") are listed below for each Facility in the Facility Listing.

**4. Purchasing Strategy.** SmartPortfolio manages both commodity and basis, which are two main components of physical gas pricing. Each component will be managed in accordance with the following purchasing strategies:

- a. **Commodity.** SmartPortfolio leverages time to diversify physical gas commodity price risk and will fix a commodity price for volumes up to the amount of the Volatility Protection Percentage selected below based on the number of months remaining in the term and Customer's Monthly Volumes ("SmartPortfolio Commodity Price Risk Management Purchasing Strategy"). For example, if at the beginning of the Initial Term there are twenty (20) months remaining before a specific delivery month, approximately 1/20 (5.0%) of Customer's Monthly Volumes in Volatility Protection for that delivery month will be fixed each month prior to the delivery month.

Customer's SmartPortfolio "Volatility Protection Percentage" is indicated below. The Volatility Protection Percentage is the percentage of commodity volumes purchased pursuant to the SmartPortfolio Commodity Price Risk Management Purchasing Strategy. The higher the percentage, the greater the volatility protection. For example, if Customer chooses 75% Volatility Protection, 75% of the Monthly Volumes will have the price fixed in advance of the month of flow pursuant to the SmartPortfolio Commodity Price Risk Management Purchasing Strategy and the remaining 25% will be priced at then-current market prices during the month of delivery.

0%	25%	50%	75%	100%	Custom %
X					

- b. **Basis.** SmartPortfolio leverages time diversification principles for physical basis requirements by purchasing for forward flow periods using a modified dollar cost averaging methodology whereby SmartPortfolio purchases forward basis during summer months (April through October) but purchases forward basis for all forward flow months (January through December) for a two (2) year forward window. SmartPortfolio does not purchase forward physical gas basis during winter (November through March). SmartPortfolio further diversifies physical gas basis requirements by locking approximately 50% of Customer's Monthly Volumes and floating 50% to be priced at then-current market price ("SmartPortfolio Basis Price Risk Management Purchasing Strategy"); provided, however, CNEG may modify this methodology as needed due to market liquidity constraints.

**5. Service Fee.** In consideration of CNEG agreeing to enter into this Rider with Customer under the SmartPortfolio Program, the Customer agrees to pay a service fee of thirty dollars (\$30.00) per month ("Service Charge") for CNEG to effectuate, administer, and oversee the SmartPortfolio Program. The Service Charge will be billed monthly on the CNEG invoice and assessed during each month this Rider is in place.

**6. Term of Obligation.** The initial term of this Rider will commence on February 1, 2017 ("Term Start Date") and shall be for a period of twenty-four (24) months ("Initial Term"). Customer acknowledges that any termination of the Master Natural Gas Agreement shall not be effective while this Rider is in effect, unless due to an Event of Default. Following the Initial Term, this Rider will automatically renew for additional twelve (12) month periods (each a "Renewal Term") with the same program elections (e.g., Volumetric Participation and Volatility Protection) unless either party provides the other with written notice of its intent to terminate twelve (12) months prior to the end of the Initial Term or any Renewal Term. For each Renewal Term, CNEG may change the Monthly Volumes based on Customer's actual usage.

**7. Guarantee Period and Rider Modification.** Customer may request modification of the Volatility Protection or Initial Term and/or withdrawal from SmartPortfolio within thirty (30) days following Customer's signature date below (the "Guarantee Period") without an early termination payment. However, any actual amendments to this Rider will be made in accordance with the Master Natural Gas Agreement and will require mutual agreement and signature of both Parties. CNEG will process the written request and will notify Customer of its acceptance or rejection of Customer's request within seven (7) calendar days from CNEG's receipt of the request. Any Rider modification requests after the Guarantee Period including, but not limited to, changes to Volatility Protection, or Initial Term and/or withdrawal from SmartPortfolio may result in an early termination payment with regard to any volumes for which prices have



been fixed through the SmartPortfolio Program. Customer acknowledges that, even if Customer terminates during the Guarantee Period when no early termination payment will apply, Customer will remain responsible for payment for any natural gas delivered to Customer prior to termination.

**8. Level of Service and Delivery Point.** All gas delivered pursuant to this Rider shall be Firm and shall be delivered to the applicable Facility's Utility citygate. However, to the extent that Customer owned transportation capacity is used to deliver natural gas to the Customer, the Delivery Point shall be the receipt point of such capacity.

**9. Acknowledgment of SmartPortfolio Purchasing Strategy.** Customer acknowledges and agrees to the SmartPortfolio purchasing strategies and processes set forth in this Rider. No guarantees are made or implied that a specific price will be achieved. The Purchasing Strategy is subject to modification by CNEG at any time, for any reason ("**New Purchasing Strategy**"). Should CNEG issue a New Purchasing Strategy, CNEG shall send Customer written notice and details of the New Purchasing Strategy and Customer will have the option of declining to participate in the New Purchasing Strategy, but may only exercise such option by providing timely written notice of its non-participation to CNEG. If Customer's notice of non-participation in the New Purchasing Strategy is not received by CNEG within twenty (20) calendar days of the date of the New Purchasing Strategy notice, then Customer shall be deemed to have accepted such New Purchasing Strategy and will be subject to the methodologies contained therein.

**10. Transporter Restrictions.** Both parties agree that operational flow orders or other usage or operating instructions (each an "OFO") from a pipeline or utility may require one or both parties to buy or sell gas quantities in the then-current market conditions, which may be appreciably higher or lower than what the SmartPortfolio price would have been absent the OFO. During OFOs, CNEG may (but is not required to) increase or decrease nominations, as appropriate, to avoid penalties.

***This SmartPortfolio Rider shall not be binding or enforceable against CNEG unless and until signed by an authorized representative of CNEG.*** This Rider may be executed by in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

(SIGNATURES FOLLOW FACILITY LISTING)

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

## FACILITY LISTING

Annual Volume - 83,568 Dth

Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1015470			1015470	RG-121137
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
434	402	323	180	82	23	18	15	27	55	245	444	2,248
Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1015479			1015479	RG-121138
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
63	66	53	85	40	11	13	15	31	63	74	63	577
Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1015481			1015481	RG-121139
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
88	213	144	172	89	6	22	73	149	146	148	98	1,348
Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1015483			1015483	RG-121140
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
192	194	143	87	48	20	18	24	33	43	125	201	1,128
Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1015497			1015497	RG-121141
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
188	172	146	105	13	5	5	11	13	50	156	193	1,057
Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1027718			1027718	RG-121142
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
11,809	11,049	9,092	6,343	3,501	2,227	2,137	2,354	2,806	3,623	8,477	12,362	75,780
Facility Location(s)							Utility	Utility Account Number			Meter Number	CNEG Customer ID
600 PARK ST, HAYS, KS							MWE	1771379			1771379	RG-121143
Jan.	Feb.	March	April	May	June	July	Aug.	Sep.	Oct.	Nov.	Dec.	Facility Total
160	138	73	17	9	9	9	8	8	793	43	163	1,430

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS DOCUMENT THROUGH THEIR DULY AUTHORIZED REPRESENTATIVES.

**CNEG**

Sign and Print Name: David T Donat <sup>AK</sup> <sub>GB</sub> David T. Donat

Print Title: V.P. Retail Operations

**CUSTOMER**

Sign and Print Name: Michael W. Barnett

Print Title: VP Administration & Finance

Approved as to Form  
Fort Hays State University  
General Counsel

11/26/17



CONTRACTUAL PROVISIONS ATTACHMENT

**Important:** This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the 26th day of January, 2017.

1. **Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
2. **Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
3. **Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
4. **Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
5. **Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.  
  
Contractor agrees to comply with all applicable state and federal anti-discrimination laws.  
  
The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.
6. **Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
7. **Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
8. **Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
9. **Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
10. **Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
11. **Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
12. **The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.