



## Residential Retail Electric Service Contract Terms and Conditions – Fixed Rate

**\*\*Pre-expiration Customer Support Guarantee is included\*\***

**\*\*Price Match Guarantee is included\*\***

(See Sections 3 and 8 below)

**General:** These Terms and Conditions, together with the Enrollment Form, are Customer’s agreement (“Agreement”) for electric Generation Service with Capital Energy LLC d.b.a. Capital.Energy. Please keep a copy of this Agreement for Customer’s records. Capital.Energy is certified by the Public Utilities Commission of Ohio (“PUCO”) to offer and supply Generation Service in Ohio. As a Competitive Retail Electric Service provider, Capital.Energy will supply the electric Generation Service to Customer’s EDU, based on Customer’s usage. Customer’s EDU then distributes the electricity to Customer. Customer’s Distribution Service will remain with Customer’s current EDU, which is regulated by the PUCO.

**Contact Information:** Capital.Energy, P.O. Box 1498, Westerville, Ohio 43086, [www.Capital.Energy](http://www.Capital.Energy), 855-322-7448 or 614-540-2422, 9:00 a.m. to 5:00 p.m.

### Definitions:

- “Competitive Retail Electric Service” or “CRES” provider means, as defined by Chapter 4901:1-21 of the Ohio Administrative Code, an entity that sells electric energy to retail customers in Ohio.
- “Distribution Service” means the physical delivery of electricity to customers by the EDU.
- “EDU” means the electric distribution utility, as referenced in your Enrollment Form.
- “Generation-Related Charges” means those charges or costs associated with the production, procurement, and supply of electricity.
- “Generation Service” means the production of electricity.
- “Residential Customer” means, as defined by Chapter 4901:1-21 of the Ohio Administrative Code, a customer of competitive retail electric service for residential purposes.
- “RTO” means a regional transmission organization such as PJM Interconnection LLC. An RTO operates a regional transmission grid. For example, PJM operates the transmission grid in Ohio.
- “Transmission Service” means the moving of high-voltage electricity from a generation facility to the distribution lines of an EDU.

### Terms and Conditions of Service:

**1. Eligibility:** Residential Customer accounts that are on EDU’s residential rate codes and are not enrolled in energy assistance or the Percentage of Income Plan Program (“PIPP”) or a credit arrearage program administered by the EDU are eligible for this offer from Capital.Energy. If Customer becomes approved for energy assistance or the PIPP, or the EDU’s arrearage crediting program while taking service under the Agreement, Customer must advise Capital.Energy and the EDU in writing in order to be switched to the EDU’s standard service offer after the next meter read date. All electric service offers are subject to credit approval and shall not become a final offer until Capital.Energy has approved the creditworthiness of Customer. Customer agrees that Capital.Energy may check Customer’s credit with consumer credit reporting agencies and determine if Customer’s credit standing is satisfactory before accepting Customer’s enrollment. Capital.Energy reserves the right to refuse enrollment to any Residential Customer with an outstanding, unpaid electric bill. Capital.Energy will not require payment of any balance due another CRES provider as a condition of establishing credit or for providing service under this Agreement. However, Capital.Energy may establish Customer’s creditworthiness by credit check, a reasonable and nondiscriminatory cash deposit, a guarantor, or other legally accepted practices. If Capital.Energy accepts a deposit, the deposit will not exceed 130% of the estimated monthly charge for service under this Agreement for the ensuing one year. If Capital.Energy requires a guarantor, it will require that the guarantor meets creditworthiness criteria and will require the guarantor to sign a written guarantor agreement.

**2. Rescission:** Once Customer has been enrolled to receive electric Generation Service from Capital.Energy, Customer will receive a confirmation notice from Customer’s EDU. Customer has the right to rescind Customer’s enrollment without penalty within seven calendar days following the postmark date of the confirmation letter by contacting Customer’s EDU and following the instructions in the confirmation notice. Customer’s right to rescind only applies when Customer initially switches to Capital.Energy, not upon any renewal of this Agreement. If Customer chooses to rescind Customer’s enrollment within the seven-day rescission period, where applicable, Capital.Energy will return any deposit Customer paid in order to obtain service under this Agreement.

**3. Basic Service Price:** During the Term of this Agreement, Customer agrees to pay Capital.Energy the fixed price per kilowatt-hour (“kWh”) set forth on Customer’s Enrollment Form for the combination of Generation Service and Generation-Related Charges. Capital.Energy reserves the right to re-price the Agreement if

Customer's enrollment is not processed and completed with the Anticipated Start Month set forth on the Enrollment Form. If Capital.Energy reprices the Agreement, it will notify Customer in writing of the new price and Customer shall accept or reject the new price within five days of the notice. If Customer accepts or does nothing, the Agreement shall remain in effect under the new price. If Customer rejects the re-pricing, the Agreement shall be terminated without cost or penalty to Customer. Customer is solely responsible for the cost of installing and maintaining all metering at its service location(s), and shall bear all costs for any additional metering or equipment required by its EDU or requested by the Customer. If you are a first time customer and Capital.Energy offers a lower fixed price on the same product offered in the same EDU service territory on [www.energychoice.ohio.gov](http://www.energychoice.ohio.gov) for residential customers within ten days following Customer's execution of this Agreement, Customer can obtain that new lower fixed price for this Agreement by contacting Capital.Energy at 855-322-7448 or 614-540-2422 within ten days after the Customer's execution of this Agreement, and Capital.Energy will adjust to the new lower price and bill Customer accordingly. Under this Agreement, Capital.Energy does not offer an adjustment to the fixed price per kWh or provide credits to Customer for net-metering if the Customer has on-site generation facilities (e.g., solar panels) and Customer directs that electricity into the EDU's distribution and transmission systems. In addition to Capital.Energy's charges, Customer will be charged by Customer's EDU for Distribution Service, Transmission Service and various other wires and utility charges. Capital.Energy shall pay all taxes and all other costs associated with the electricity delivered prior to the delivery point (the EDU's distribution interconnection point(s) at which point(s) Capital.Energy tenders power to the EDU for distribution to Customer's meter(s), and Customer shall pay all taxes assessed against Customer at or after Capital.Energy's delivery of the retail electric energy to the relevant delivery point.

**4. Length of Agreement:** If Customer is a new customer of Capital.Energy, Customer's service from Capital.Energy under the initial Term of this Agreement will commence with the next available meter reading following the seven-day rescission period (where applicable and unless otherwise noted in the Enrollment Form), the acceptance of the enrollment request by Capital.Energy (at its discretion and consistent with Paragraph 9 below), and the processing of the enrollment by Customer's EDU. Customer's service will continue for the Term set forth on Customer's Enrollment Form, unless otherwise terminated or renewed, and end on the meter read for the last month of service. If Customer elects to continue with Capital.Energy under a new offer at the expiration of this Agreement, the price of that new offer will commence with the expiration of this Agreement. However if Capital.Energy does not have sufficient time to process the change to the new offer, Customer will be charged at Capital.Energy's then-applicable variable rate until processing can be completed (typically a one-month period), after which time the price of the new offer will apply.

**5. Billing, Refund of Deposits, and Release of Guarantors:** Customer will continue to receive a single monthly bill from Customer's EDU that will contain both Customer's EDU and Capital.Energy charges. The amount of electricity usage will continue to be measured or estimated by the EDU. Customer agrees to pay the bills in accordance with the EDU's billing and payment terms. There is no right to set-offs, counterclaims or other deductions. Capital.Energy reserves the right to unilaterally modify this billing format/pricing in the event the EDU is unable or unwilling to provide consolidated billing in this format or changes the calculation of the Price to Compare. Capital.Energy does offer budget billing, please use the contact information provided for more information. If Customer does not pay Customer's bill by the due date or if Customer fails to meet any agreed-upon payment arrangements, Capital.Energy may cancel this Agreement after giving Customer a minimum of 14 days advance written notice. Upon cancellation, Customer will be returned to Customer's EDU as a customer. Customer will remain responsible to pay Capital.Energy for any electricity used before this Agreement is cancelled, as well as any late payment charges. Further, Customer's failure to pay EDU charges may result in Customer's electric service being disconnected in accordance with the EDU's tariff and PUCO rules. No interest will accrue to Customer on any deposit. Capital.Energy will review each account holding a deposit or guarantor agreement every 12 months and promptly will refund the deposit or release the guarantor if all of the following have occurred: (a) Customer paid Customer's bills for service under this Agreement for 12 consecutive months without having services terminated for nonpayment; (b) Customer has not had more than two occasions in the preceding 12 months on which Customer's bills for service under this Agreement were not paid by the due date; and (c) Customer is not delinquent in the payment of Customer's bills for service under this Agreement at the time of the review. Capital.Energy will notify the guarantor within 30 days of its determination to release the guarantor from further responsibility for the account. Capital.Energy may apply some or all of Customer's deposit to any unpaid bill.

**6. Penalties, Fees, and Exceptions:** Customer's EDU may charge Customer switching fees. If Customer does not pay the full amount owed Capital.Energy by the due date on each bill, Capital.Energy may charge 1.5% of the outstanding amount per month, or the maximum legally allowable interest rate, whichever is lower, until such payment is received by Capital.Energy. Capital.Energy reserves the right to require adequate assurances from Customer in the form of prepayment or another form of credit support in the event Customer has failed to make payments in accordance with the terms herein. Customers requiring financial assurance will be required to post that assurance within three business days of notice.

**7. Cancellation/Termination:** If this Agreement is not rescinded during the rescission period, where applicable, Customer's enrollment will be sent to Customer's EDU. Thereafter, Customer may terminate this Agreement, without penalty, if Customer moves out of the EDU service area or into an area where Capital Energy charges a different price, by providing Capital Energy with a 30-day notice of such move, whether written or verbal. A transfer of service from one customer location to another within the EDU service area does not prompt a refund of any deposit given or the release of a guarantor, but does entitle Capital Energy to charge a different price upon consent from Customer. Any failure to pay Customer's bill shall be deemed a breach of this Agreement permitting Capital Energy to terminate this Agreement upon 14 days advance written notice. Customer will remain responsible to pay Capital Energy for any electricity used before this Agreement is terminated, as well as any late payment charges. In the event of a breach by one party, the other party may in its sole discretion terminate this Agreement upon written notice to the defaulting party as soon as such termination is permitted consistent with applicable Ohio laws, rules, orders, and tariffs. There will be a charge for the termination or breach of this Agreement for any reason, except for those non-penalty reasons expressly provided herein and for any termination under paragraph 12 below. The parties acknowledge and agree that any payment by Customer under this paragraph 7 constitutes a reasonable approximation of harm or loss to Capital Energy and is not a penalty or punitive in any respect. The fee will be equal to the number of months remaining in the Term multiplied by ten dollars (\$10.00). Should Customer cancel service with Capital Energy and return to the standard service offer with Customer's EDU, Customer may or may not be served under the same rates, terms, and conditions that apply to other EDU customers. Should Customer cancel service with Capital Energy or this Agreement is terminated, Capital Energy will apply any deposit to the final bill. Capital Energy will promptly refund any remaining deposit. For any remaining overdue balances, Capital Energy may pursue collection actions against Customer and any guarantor in an appropriate court.

**8. Pre-Expiration Customer Support Guarantee and Contract Expiration/Automatic Renewal:** Before the Term expires, Capital Energy will attempt to contact Customer more than once via email, telephone call and/or letter to notify Customer of the impending expiration, to offer to discuss with Customer available service options, and to offer to assist Customer with taking the next service step subject to the terms of this Agreement. **If Capital Energy does not attempt to contact Customer before the Term expires, this Agreement will renew on a month-to-month basis at the existing fixed price.** If Capital Energy notifies Customer of the impending expiration and offers to discuss available service options but Customer takes no action, and if Capital Energy does not notify Customer in writing of the non-renewal of this Agreement upon expiration of the Term, this Agreement will automatically renew on a month-to-month basis at a variable, index-based price per kWh, based on the actual price in the day-ahead market at PJM Interconnection LLC plus a retail margin adder. The variable, index-based price will include Generation charges and Generation-Related charges, but will not include charges for Transmission or Distribution Service and other EDU charges, fees and taxes. No cancellation fee shall apply during the renewal period. Customer may terminate this Agreement during any renewal period and Customer will be returned to the EDU. Any such termination will be effective upon the Customer's start date with the EDU. At any time after the Term, Customer may contact Capital Energy to request to sign up for one of Capital Energy's available products. Customer is responsible for arranging Customer's electric supply upon expiration of the Agreement.

**9. Customer Consent and Information Release:** By choosing to accept this offer from Capital Energy, Customer understands and agrees to the terms and conditions of this Agreement with Capital Energy. Customer authorizes Capital Energy to obtain information from the EDU that includes but is not limited to billing history, payment history, historical and future electricity usage, meter readings, and characteristics of electricity service. Capital Energy reserves the sole right to check Customer's credit with consumer credit reporting agencies and determine if Customer's credit standing is satisfactory before accepting Customer's enrollment request. This Agreement shall be considered executed by Capital Energy following acceptance of Customer's enrollment request by Capital Energy, the end of the seven-day rescission period, where applicable, and the subsequent processing of the enrollment by Customer's EDU.

**10. Dispute Resolution:** Capital Energy is committed to customer satisfaction. Contact Capital Energy with any questions concerning the terms of service by phone at 855-322-7448, M-F 9:00 a.m. to 5:00 p.m., or in writing at P.O. Box 1498, Westerville, Ohio 43086. Our web address is [www.Capital.Energy](http://www.Capital.Energy). If your complaint is not resolved after you have called your electric supplier and/or your electric utility, or for general utility information, residential and business customers may contact the Public Utilities Commission of Ohio (PUCO) for assistance at 1-800-686-7826 (toll-free) or TTY at 1-800-686-1570 (toll-free) from 8:00 a.m. to 5:00 p.m. weekdays, or at <http://www.puco.ohio.gov>. Hearing or speech impaired customers may contact 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 1-877-742-5622 (toll-free) from 8:00 a.m. to 5:00 p.m. weekdays, or at

<http://www.pickocc.org>.

**11. Miscellaneous:**

- Customer has the right to request from Capital Energy, twice within a 12-month period, up to 24 months of payment history, without charge. Capital Energy will not release Customer's Social Security number and/or account number(s) without Customer's written consent, except for Capital Energy's own credit evaluation, Capital Energy's own collections and reporting, participating in programs funded by the universal service fund pursuant to Section 4928.54 of the Revised Code, or assigning Customer's Agreement to another CRES provider.
- Capital Energy's environmental disclosure statement is available for viewing on our website - [www.Capital.Energy](http://www.Capital.Energy). Capital Energy will also provide the information upon request.
- Capital Energy may assign its rights, without Customer consent, to another, including any successor, subsidiary or affiliate, in accordance with the rules and regulations of the PUCO.
- In the event of an assignment of the Agreement by Customer or a change in the EDU account number resulting in the supply of retail energy being temporarily provided by the EDU while the Agreement remains in effect and the new electric account is being established by the EDU, Capital Energy may impose a fee based on the formula set forth in paragraph 7 above as applied to the period during which retail energy is provided temporarily by the EDU, which the parties agree is a reasonable approximation of the harm or loss to Capital Energy for the retail energy being temporarily provided by the EDU. The parties agree to work together to ensure that service under the Agreement resumes as quickly as reasonably possible.
- Capital Energy assumes no responsibility or liability for the following items that are the responsibility of the EDU: operation and maintenance of the EDU's electrical system, any interruption of service, termination of service, and deterioration of the EDU's service. In the event of a power outage, Customer should contact Customer's EDU.
- Customer is responsible for providing Capital Energy with accurate account information. If said information is incorrect, Capital Energy reserves the right to terminate the Agreement.
- Capital Energy reserves the right to return Customer to the EDU if Customer's rate code is changed and the account is no longer eligible for this program. Customer authorizes, but does not obligate, Capital Energy to exercise Customer's governmental aggregation opt-out rights.
- If a third party has acted on behalf of the owner of the service location(s) and the third party did not have authority to execute and bind the service location(s) to the Agreement, Capital Energy may assert any and all legal claims and pursue remedies against the third party for its actions.
- Unless otherwise permitted in this Agreement, all notices required under this Agreement from Customer shall be in writing and shall be delivered to Capital Energy electronically via facsimile (614-918-6420), via email ([Info@Capital.Energy](mailto:Info@Capital.Energy)), or by certified mail return receipt requested (P.O. Box 1498, Westerville, Ohio 43086).

**12. Warranty and Force Majeure:** THE WARRANTIES SET FORTH IN THIS PARAGRAPH ARE EXCLUSIVE AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. Capital Energy will make commercially reasonable efforts to provide Customer's electric Generation Service, but does not guarantee a continuous supply of electricity. Certain causes and events are out of the reasonable control of Capital Energy and may result in interruptions in service. Each party, with respect to itself, hereby represents and warrants to the other party as follows: (a) if a broker has been involved in this transaction, the price per kWh set forth on Customer's Enrollment Form accounts for any fee paid by Capital Energy to the broker under this Agreement; (b) if a third party has acted on behalf of the owner of the service location(s), the third party has the authority to execute and bind the service location(s) for the length of this Agreement; and (c) the service location(s) to be provided the retail electric energy are not contractually bound by another agreement for retail energy that would overlap with this Agreement. Neither Customer nor Capital Energy shall be considered to be in default in the performance of any of the obligations hereunder if failure of performance is due to a Force Majeure. For purposes of this Agreement, "Force Majeure" shall mean any cause beyond reasonable control of the party affected, despite exercising due diligence. In the event that the Agreement is terminated, Customer will be returned to Customer's EDU's standard service offer and no early termination fee will be assessed. As an alternative to terminating this Agreement due to a Force Majeure event, Capital Energy may elect to adjust the Basic Service Price under paragraph 3 above to account for the Force Majeure event. In the event of any such adjustment, Capital Energy will provide Customer with notice

of the adjustment. If Customer does not affirmatively consent to the adjustment within seven days after receiving notice of the adjustment, Capital Energy may terminate this Agreement at no penalty to Customer.

**13. Remedies:** Unless otherwise expressly provided herein, any liability under this Agreement will be limited to direct, actual damages as the sole and exclusive remedy, and all other remedies or damages at law or in equity are waived. Neither party will be liable to the other party or its affiliates for consequential, incidental, punitive, exemplary, or indirect damages, including lost profits or other business interruption damages, whether in tort or contract, under any indemnity provisions or otherwise in connection with this Agreement. The limitations imposed on remedies and damage measurement will be without regard to cause, including negligence of any parties, whether sole, joint, concurrent, active or passive, provided no such limitation shall apply to damages resulting from the willful misconduct of any party.

**14. Indemnification:** Customer assumes full responsibility for power furnished to Customer at the delivery point(s) and on Customer's side of the delivery point(s), and agrees to and shall indemnify, defend, and hold harmless Capital Energy and its personnel from and against all claims, losses, expenses, damages, demands, judgments, causes of action and suits of any kind, including claims for personal injury, death, or damages to property occurring at the delivery point(s) or on Customer's side of the delivery point(s) and upon the premises, arising out of or related to the electricity and/or Customer's performance under the Agreement.

**15. Choice of Law:** This Agreement shall be construed and enforced in accordance with the laws of the State of Ohio without giving effect to any conflicts of law principles that otherwise might be applicable. Any legal action involving this Agreement shall be brought only in a court of the State of Ohio sitting in Delaware County, Ohio or the United States District Court sitting in Franklin County, Ohio or if appropriate, the Public Utilities Commission of Ohio. CUSTOMER WAIVES ANY RIGHT TO A JURY TRIAL BEFORE ANY COURT HAVING JURISDICTION OVER ANY DISPUTE OVER THIS AGREEMENT.

**16. Forward Contract:** Customer agrees that this contract is a "forward contract" within the meaning of the U.S. Bankruptcy Code, as amended, and that Capital Energy is a "forward contract merchant" within the meaning of the U.S. Bankruptcy Code, as amended.

**17. Severability:** The various provisions of this Agreement are severable. Any provision or section of this Agreement declared or rendered void, unlawful, or otherwise unenforceable by a court of competent jurisdiction or regulatory agency with jurisdiction over the parties, or deemed similarly void, unlawful, or unenforceable because of a statutory, regulatory, or administrative change, shall not otherwise affect the lawful obligations that arise under this Agreement.

**18. Waiver:** No waiver by either party of any right, or waiver of any default of the other in the performance of any of the provisions of this Agreement, will operate or be construed as a waiver of any future right or default, whether of a like or of a different nature.