# RESIDENTIAL TERMS OF SERVICE

**Residential Terms of Service**:
This document explains the terms and conditions that apply to your purchase of electricity from Capital Energy PA, LLC dba Budget Power ("Budget Power" , "we" , "our" , "us"). Your contract with us includes this terms of Service ("TOS"), your enrollment authorization in writing, by telephone or the internet, the Electricity Facts Label (EFL), and the Your Rights as a Customer ("YRAC") disclosure document, as they may be amended from time to time (collectively "contract documents"). The terms "includes" or "including" mean "including without limitation." By accepting electric service from Budget Power, you are entering into a contract with us and you will be bound by the contract documents.

**Contact Information**:
Monday to Friday 8:00am to 5:00pm CST (excluding public holidays)
Local Houston area telephone: 281-760-3125
Toll-free telephone: 1-888-699-0747
Fax: 713-391-8409
Website: www.budgetpowertx.com
Email: care@budgetpowertx.com
Certificated Name: Capital Energy PA LLC
DBA Name: Budget Power
REP Certificate Number: 10293
Address:
Budget Power
1717 St. James Place
Suite # 400, Houston, TX 77056

**Pricing:**

You agree to pay the price indicated in the EFL and all amounts shown on your bill. Some products may require an advanced meter (smart meter) that records your usage more frequently and you will only be eligible for these prices if the appropriate meter and any other necessary equipment are installed at your location. You agree to pay any under/over utilization charges if they apply to your plan. Please see your EFL. You agree to pay all applicable Taxes (see Taxes below) and any fees charged by any governmental entity. The price, non-recurring fees and Taxes will be reflected on your monthly bill as current charges.

**Non-Recurring Fees and Charges**:

You agree to pay non-recurring fees charged by the Transmission and Distribution Service Provider ("TDSP") that are necessary to implement and/or maintain electric service for you. Non-recurring fees by the TDSP may include service connection, disconnection or reconnection fees, meter test fees or special out-of-cycle meter read fees or any other fees assessed by the TDSP. Non-recurring fees will appear as line items on your bill.

In addition to the fees and charges stated in the EFL, we will charge $29 for each payment transaction that is returned unpaid or not processed, including: 1) returned checks, 2) returned electronic fund transfers, and 3) rejected credit card transactions. This charge will be reflected as a NSF fee or returned payment charge on your monthly bill, if applicable. We may also charge a $20 disconnection notice fee each time we issue an electric service disconnection notice (This fee will be assessed regardless of whether your electric service is actually disconnected). In the event that Budget Power processes a reconnection transaction on your account, we may charge a $30 reconnection recovery fee. Such fees/charges are in addition to any disconnect/reconnect fees/charges that may be assessed by your TDSP, and are assessed regardless of whether or not your electric service is actually disconnected by the TDSP.

**Billing, Payment and Payment Arrangements**:

We will provide a monthly bill that will include current charges and the amount due that will be due and payable 16 calendar days from the date shown on the bill, except you agree that we may issue a bill less frequently if we do not receive meter readings or usage information from the TDSP or Electric Reliability Council of Texas ("ERCOT") in time to prepare and send a monthly bill. If you do not pay your bill by the due date, we may charge you a late charge of 5% of the amount for the previous month's past-due electric service. Late payment penalties will not exceed the maximum amount permitted by applicable Law. We may report information about your account to credit bureaus. Late payments, missed payments, or other defaults on your account may be reflected in your credit report and may negatively impact your credit score. If you fail to make timely payments of the amounts due under this contract, we reserve the right to refer the outstanding balance to an attorney or collection agent or use other remedies allowed by law for collection. If we refer your outstanding balance to an attorney or collection agent or used other remedies allowed by law for collection, or if we file a lawsuit, or collect your outstanding balance through probate, bankruptcy, or other judicial proceedings, then you agree to pay reasonable fees and expenses (including attorney fees) that we incur in the collection process. "Law" means any law, statute, regulation, rule, ERCOT protocol, exchange rule, decision, writ, order, decree or judgment or any interpretations by any court, agency or instrumentality that has jurisdiction, including ERCOT. By providing telephone numbers, including wireless and work numbers to Budget Power, you are expressly consenting to being contacted on those numbers for any purpose related to your account, including debt collection by a live person or automated service.

Acceptance by Budget Power of any partial payment from you will not relieve you of your obligation to pay the full amount owed. Public Utility Commission of Texas ("PUCT") rules and guidelines mentioned in this document can be viewed at: http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/Electric.aspx. You agree to receive your bills electronically or online through our website, and agree to receive communications electronically. If you would like to receive your bill by mail, you will need to make that request to Budget Power.

We may calculate a bill based on estimated meter readings absent actual meter readings from the TDSP or ERCOT. Once actual meter readings are received, we will issue a bill or make adjustments on a subsequent bill.

If you agree to purchase other products or services from us or you purchase products or services that are offered by us but provided from third parties ("Third Party Services"), you acknowledge that the bill we provide you may include the charges for those products and services. We will apply all payments you make on your bill first to the amounts you owe us for electric service.

Please call us if you anticipate having difficulty paying your bill by the due date. You may be eligible for payment assistance or a deferred payment plan. A deferred payment plan allows you to pay an outstanding bill in installments that extend over a period of time. Before starting a deferred payment plan, we may require a down payment (no more than 50%) of the amount due. We may also ask you to pay the balance owed on the deferred payment plan in equal amounts over no more than 5 billing cycles. If you establish a deferred payment plan, we may put a switch-hold on your account that will be removed after your deferred balance is paid and processed. If you are disconnected for nonpayment while a switch-hold is in place, a payment will be required to resume service and you may not obtain services from another provider until you pay the total deferred balance. If you establish a deferred payment plan, we will confirm the details of the plan in writing.

Deferred payment plans are also available for customers whose bills become due during an extreme weather emergency as declared by your TDSP; during a state of disaster declared by the governor in the area covered by the declaration, as directed by the PUCT; or to customers who were previously under-billed by $50.00 or more. If the under-billing is $50.00 or more, we will offer a deferred payment plan option for the same length of time as that of the under-billing. A deferred payment plan may not be offered to customers whose underpayment is due to theft of service.

If you are not currently on a deferred, budget billing, or average payment plan, we will make a deferred payment plan available, upon request, for a bill that becomes due in July, August, or September to a residential customer that meets the following requirements: 1) customers designated as critical care residential customers or chronic condition residential customers; or 2) customers who have expressed an inability to pay unless they have been disconnected during the preceding 12 months, have submitted more than two payments during the preceding 12 months that were found to have insufficient funds available, or have received service from us for less than three months and demonstrate a lack of sufficient credit or a satisfactory payment history with their previous electric service provider. You may choose: (a) a deferred payment plan that requires an initial payment no greater than 50% of the amount due and the remainder paid over at least five billing cycles a level or (b) an average payment plan.

**Deposits**:

We do not deny service based on your credit score. However, you may have to provide an initial deposit before receiving electricity service if you cannot demonstrate satisfactory credit. An initial deposit may also be required to continue to receive electricity service, if you have made a late payment on your bill more than once during the last 12 months or your service has been disconnected for non-payment. You may be required to provide an additional deposit to continue to receive electricity service if (1) your average annual electric service bill for the last 12 months is at least twice the amount of the original estimated annual bill, and (2) a notice for disconnection has been issued in the previous 12 months. If a deposit is required, the total amount of your deposit will not exceed an amount equal to the greater of either (1) the sum of the next two months estimated billings, or (2) one-fifth of the estimated annual billing.

If we hold your cash deposit longer than 30 days, your deposit will accrue interest from the day we received it at the interest rate established annually by the PUCT. We will credit any accrued interest on your deposit to your account either on your January bill each year or on your final bill. This PUCT rule can be viewed at http://www.puc.texas.gov/agency/rulesnlaws/subrules/electric/25.478/25.478.pdf .

You may avoid paying a deposit if (1) you submit a credit reference letter from your previous electric service provider confirming your positive payment record for 12 consecutive months during the past two years, (2) you have a satisfactory credit rating through a consumer reporting agency, (3) you are at least 65 years of age and you do not have a delinquent balance with your current electric service provider, (4) you are medically indigent or, (5) you have been a victim of family violence and can provide a certification letter from the Texas Council on Family Violence. Please contact us for additional information if you believe you may be eligible for one of these options. You may send your letters to us by fax at 713-391-8409.

If you establish satisfactory credit with us by making timely payments for 12 consecutive months, then we will apply the deposit plus accrued interest to your account or cancel the guarantee agreement. If you do not establish satisfactory credit with us during the time you receive service from us, then we will apply the deposit plus accrued interest against the outstanding balance on your final bill or transfer the outstanding balance equal to the deposit identified in the guarantee agreement to the guarantor's account for payment in accordance with the guarantee agreement. We will bill you for any remaining balance and the bill will be due upon receipt. We will refund any credit balance to you or transfer the credit balance to your new REP, at your request and with your new REP's consent.

**Right of Rescission:**

**If you are switching to Budget Power from another REP, you may rescind this TOS within three federal business days, after receiving this TOS, without penalty. PUCT rules permit Budget Power to assume that you will receive this TOS three (3) federal business days after we mail it to you. Please include the following should you choose to rescind:**

**1) Request to rescind contract**
**2) Name, address, phone number**
**3) Account Number or ESID number**

**You may call us to rescind at 281-760-3125 or toll free at 1-888-699-0747, fax us at 713-391-8409, or e-mail us at care@budgetpowertx.com to rescind your TOS.**

**Rewards**:

If you signed up for an electricity plan using a promo code upon which you are eligible to receive a reward, in order to receive and redeem such award, you (i) must be an active customer and in good standing with Budget Power (as determined in our sole discretion) for at least 30 days from the time you signed up for an electricity plan (ii) must not be delinquent in any payments due (iii) must not otherwise be in default under this TOS and (iv) must continue to maintain a valid email address in our account profile. Please allow at least 4-6 weeks for delivery of any reward.

**Contract Term**:

Your contract term is stated in the EFL. Your service with us will begin on the date of your first meter read following your confirmed enrollment with us and will continue for the period stated in the EFL. At the end of your contract term, you may cancel or terminate your contract by switching to a new provider. If you cancel the contract before the end of your contract term, you agree to pay the penalty or fee for early cancellation indicated in the EFL, if any, and you must select another REP to continue to receive electric service. Any Third-Party Services that are included on your bill will automatically terminate when your electric service contract with us is cancelled. If you move from your existing premise during the contract term and provide a forwarding address to us, you will not be responsible for the termination fee stated in the EFL. We may also request that you provide reasonable evidence that you no longer occupy the location covered by the contract. In order to ensure timely processing, you should notify us at least 3 days before the requested termination date. Our obligations will end after the meter read date where we are no longer designated as your REP or when your electric service is disconnected by the TDSP. Your obligations under the contract will end when your account balance is paid in full.

**Disconnection of Your Electric Service**:

WE MAY REQUEST DISCONNECTION OF YOUR ELECTRIC SERVICE IF YOU DO NOT PAY YOUR DEPOSIT OR THE PAST DUE AMOUNT OF YOUR ELECTRIC SERVICE BILL IN FULL BY THE DUE DATE ON THE DISCONNECT NOTICE. We will notify you in writing before we disconnect electric service, as authorized by the PUCT. We may request the immediate disconnection of your electric service without prior notice under specific situations, including the existence of a dangerous condition at your service address or theft of service.

**Customer Care, Alternate Billing and Payment Options**:

If you have any questions, concerns, billing inquiries, or you are interested in applying for the alternatives we offer, please contact us at 281-760-3125 or toll free at 1-888-699-0747.

**Average Billing**:

The Average Billing option helps you manage your electricity budget by allowing you to pay an average amount every month. To calculate the amount that you will pay each month, we add your current bill amount to your previous 11 bill amounts for your service address, if available. We then take the total and divide the amount by 12 or by the total months available for your service address. If you do not have previous bills in your name at the service address or if you do not have 11 monthly bills at the service address, we take the previous usage that is available for the service address and apply your current price to calculate your average monthly payment amount. Finally, we add or subtract 1/12th of any deferred balance that you have accumulated. The deferred balance is any difference between your average monthly payment amount and your actual monthly charges, which can be found on your Budget Power monthly bill. Periodically, but not less than once each year, Budget Power will review your account and calculate a new average bill amount accordingly; any overpayment will be credited to your account or refunded to you, and any underpayment will be collected from you in equal installments over the next reconciliation period. You may opt-out of the Average Billing option at any time by paying your full balance due and providing written notice to Budget Power stating your desire to be removed from the Average Billing option. The Average Billing option does not affect your obligation to pay for all actual usage and other associated charges, taxes and fees, even in the event the contract is canceled or terminated or your electric service is disconnected.

**Antidiscrimination**:

We cannot deny service or require a prepayment or deposit for service based on your race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, level of income, disability, familial status, location in an economically distressed geographic area, or qualification for low income or energy efficiency services. We also cannot use a credit score, a credit history, or utility payment data as the basis for determining the price for electric service for products with a contract term of 12 months or less.

**Critical Care and Chronic Condition Customer**:

If you have a person permanently residing in your premise who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life, you may apply for designation as a Critical Care Residential Customer. If you have a person permanently residing in your premise who has been diagnosed by a physician as having a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the condition, you may apply for designation as a Chronic Condition Residential Customer. To be considered for such designation, the PUCT approved form must be submitted by facsimile or other electronic means to the TDSP by a physician. The TDSP will notify you of the final status of your designation as a Critical Care or Chronic Condition Residential Customer, and will notify you when such designation will expire and whether you will receive a renewal notice. The TDSP will also notify us about your status. Designation as a Critical Care or Chronic Condition Residential Customer does not relieve you of your obligation to pay for electric service that you receive from us.

**Power Outages and Emergencies**:

Please call the telephone number for your TDSP, which is listed on your bill if you have an electrical emergency or a power outage.

**Dispute of Complaints**:

If you have any questions, concerns, or complaints, please contact us. In the unlikely event we cannot immediately respond to your question or complaint, we will promptly investigate the matter and report our findings to you. During this time, you will not be required to pay the disputed portion of your bill. If for any reason you are not satisfied with our response, you may contact the PUCT.

**Limitations of Liability**:

YOU AGREE THAT CAUSES AND EVENTS BEYOND OUR CONTROL, INCLUDING ACTS OF GOD, ACTS OF ANY GOVERNMENTAL AUTHORITY, ACCIDENTS, STRIKES, LABOR TROUBLE, AND EVENTS OF FORCE MAJEURE OCCURRING WITH RESPECT TO THE TDSP, ERCOT, OR OTHER THIRD PARTY SYSTEMS OR ASSETS (A FORCE MAJEURE EVENT), MAY RESULT IN INTERRUPTIONS IN SERVICE AND THAT WE WILL NOT BE LIABLE FOR THOSE INTERRUPTIONS. YOU ALSO AGREE THAT WE ARE NOT RESPONSIBLE FOR GENERATING YOUR ELECTRICITY OR FOR TRANSMITTING AND DISTRIBUTING ELECTRICITY TO YOUR SERVICE ADDRESS.

FURTHERMORE, YOU AGREE THAT WE WILL NOT BE LIABLE WITH RESPECT TO ANY THIRD-PARTY SERVICES; THAT OUR LIABILITY NOT EXCUSED BY REASON OF FORCE MAJEURE OR OTHERWISE WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY; AND NEITHER OF US ARE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES. YOU WAIVE ALL OTHER REMEDIES AT LAW OR IN EQUITY. THESE LIMITATIONS APPLY EVEN IF THE DAMAGES RESULT FROM NEGLIGENCE, WHETHER SOLE, JOINT, CONCURRENT, OR ACTIVE OR PASSIVE. THERE ARE NO THIRD PARTY BENEFICIARIES TO THE CONTRACT.

**Representations and Warranties**:

THE ELECTRICITY SOLD UNDER THIS CONTRACT WILL BE SUPPLIED FROM A VARIETY OF GENERATING SOURCES. IF YOU ELECT TO PURCHASE A RENEWABLE ENERGY PRODUCT, WE WILL ENSURE THAT THE APPROPRIATE AMOUNT OF RENEWABLE ENERGY CREDITS (RECs) IS RETIRED TO AUTHENTICATE THE RENEWABLE ENERGY CONTAINED IN THE PRODUCT. THE TDSP OR ERCOT SYSTEM WILL NOT DELIVER ELECTRICITY FROM A SPECIFIC GENERATING SOURCE TO YOUR SERVICE ADDRESS. IF YOU PURCHASE RENEWABLE ENERGY FROM US, YOU ARE PROVIDING FINANCIAL SUPPORT FOR RENEWABLE ENERGY GENERATION SOURCES AND NOT RECEIVING THE PRECISE ENERGY GENERATED FROM THAT SOURCE. WE MAKE NO REPRESENTATIONS OR WARRANTIES OTHER THAN THOSE EXPRESSLY SET FORTH IN THE CONTRACT, AND WE EXPRESSLY DISCLAIM ALL OTHER WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY, CONFORMITY TO MODELS OR SAMPLES AND FITNESS FOR A PARTICULAR PURPOSE.

**Taxes**:

You will be responsible and guarantee us for any and all Taxes. "Taxes" means all federal, state and local taxes, fees, governmental charges, and assessments presently or hereafter imposed on you as purchaser of electricity, on us as seller of electricity, or on electricity sales transactions, including gross receipts taxes, municipal administrative fees, and generation, utility, TDSP, regulatory, BTU or electricity taxes and assessments.

**Provisions that Survive**:

Obligations regarding indemnity, payment of Taxes, limitations of liability, and waivers will survive the termination of the contract indefinitely.

**Unenforceability**:

If either party or its activities under the contract become subject to any Law enacted during the contract term that renders the contract unenforceable or illegal, then either you or Budget Power may terminate the contract without the consent of, and upon 30 days' notice to, the other, and without any obligation, payment or otherwise (other than payment obligations for electricity previously supplied to you).

**Governing Law**:

YOUR CONTRACT WITH Budget Power IS GOVERNED BY THE LAWS OF THE STATE OF TEXAS. THE TEXAS UNIFORM COMMERCIAL CODE APPLIES TO THE TERMS OF SERVICE AND ELECTRICITY IS DEEMED A "GOOD". The Uniform Commercial Code can be viewed at the following website: http://www.statutes.legis.state.tx.us/?link=BC

**Assignment**:

You may not assign your contract with us, in whole or in part, or any of your rights or obligations under the contract without our prior written consent. Budget Power may, without your consent, (i) assign, sell or pledge this agreement or its accounts, revenues, or proceeds as part of any financing or other financial arrangements, or (ii) assign this agreement to an affiliate of Budget Power or to any other person or entity succeeding to all or a substantial portion of the assets of Budget Power.

**Waiver**:

If either you or Budget Power waives any one or more defaults by the other in the performance of any of the provisions of the contract, then such waiver will not be construed as a waiver of any other default or defaults whether of a like kind or of a different nature.

**PRODUCT TYPE SECTION**:

Budget Power may offer the product types identified in this section. Only the specific section for your product type will apply to your contract. Your EFL contains your specific product type and term information. Your EFL is available for your reference at the product detail page of the plan you choose.

**Fixed Rate Products (Term):**

**Changes to Contract Provisions**

We can make changes to the provisions of the contract at any time during the contract term with appropriate notice except for changes to your price other than stated in this section or the length of your contract term. We will notify you of any material change to the contract in writing at least 14 days before any change to the contract will be applied to your bill or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you. Your price during the contract term is only subject to change to reflect changes in the TDSP charges, changes to the ERCOT Texas Regional Entity administrative fees charged to load or changes resulting from federal, state or local laws that impose new or modified fees, charges or costs on REPs, including Budget Power, that are beyond the control of REPs. Your price during the contract term will not change to reflect changes in ancillary service charges unless the PUCT expressly designates a specific type of ancillary service product as incurring charges beyond the REP's control for a customer's existing contract.

**Contract Expiration Notice**

Three contract expiration notices will be sent to you by mail or by email if you have chosen to receive electronic communications. The final of the three notices will be sent at least 15 days before the end of the initial contract term specified in your EFL if the initial contract term is for four months or less. The final notice will be sent at least 30 days before the end of the initial contract term if the initial contract term is for more than four months. If you do not take action to ensure that you continue to receive service upon the expiration of your contract, you will continue to be served by us automatically under a month-to-month default renewal product that you may cancel at any time without a fee. Service under the default renewal product will continue until you switch to another provider, select another Budget Power electric service plan, or we terminate or disconnect your electric service.

**Variable Products (Month to Month):**

**Changes to Contract Provisions**

We can make changes to the provisions of the contract at any time with appropriate notice except for changes to the length of your contract term. We will notify you of any material change to the contract in writing at least 14 days before any change to the contract will be applied to your bill or take effect. If you do not cancel the contract before the effective date of the change, the change will become effective on the date stated in the notice. Notice is not required for a change that is beneficial to you. Your price will vary according to a method determined by Budget Power as set forth in your EFL.

**Default Renewal Product (Month-to-Month):**

The Default Renewal Product rate for electricity will be a variable rate that may be higher or lower each month and will be set in Budget Power's sole discretion. Budget Power typically considers several factors when setting the variable rate for this Default Renewal Product that include but are not limited to market volatility or uncertainty and anticipated customer usage. No single factor will determine the rate. Information on how to access the historical pricing for this variable rate will be included in the EFL for the default renewal product that is provided prior to your contract expiration.