

# CALIFORNIA STATE EMERGENCY PROGRAM CUSTOMER AGREEMENT

*between*

***SAN DIEGO GAS AND ELECTRIC COMPANY***

*and*

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This California State Emergency Program Customer Agreement (“Agreement”) governs the terms and conditions entered into by ***SAN DIEGO GAS AND ELECTRIC COMPANY***, a California corporation (“Utility”), and \_\_\_\_\_, a \_\_\_\_\_ (“Customer”) as of the latest signature date hereof (“Execution Date”). Utility and Customer are sometimes referred to individually as a “Party” and jointly as the “Parties.”

- A. In the Proclamation of a State of Emergency (“Proclamation”) issued on July 30, 2021 by California Governor Gavin Newsom, Utility was directed to establish a program providing incentive payments for load reduction through October 31, 2021, as further described in the Proclamation (the “California State Emergency Program” or “CSEP Program”).<sup>1</sup> The CSEP Program will allow for eligible participants to be compensated for incremental load reduction (energy -- kWh) during a CSEP Event achieved through (i) reduced usage and/or (ii) use of backup generation (“BUG”) to reduce load for a CSEP Event. As set forth in the Proclamation, funding for the CSEP Program and Utility’s associated administrative costs will come from state general funds and not from ratepayers.
- B. Customer wishes to participate in the CSEP Program under the terms and conditions set forth in this Agreement.

## AGREEMENT

In consideration of the agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

### 1. PURCHASE AND SALE OF PRODUCT

During the Term, Customer shall deliver and sell, and Utility shall purchase and receive, the Product, as managed by the Program Administrator. For purposes of this Agreement, the

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<sup>1</sup> <https://www.gov.ca.gov/wp-content/uploads/2021/07/Energy-Emergency-Proc-7-30-21.pdf>

“Product” consists of Customer’s ability to reduce all or a portion of the electrical consumption of the Participating Service Accounts or Service Agreements identified in Appendix A of this Agreement during CSEP Events through (a) reduced usage and/or (b) use of BUG. The collective amount of incremental load reduction Customer commits to delivering during each hour of the CSEP Event Availability Window from all Participating Service Accounts or Service Agreements (the “Customer Commitment”) and the minimum amount of incremental load reduction Customer commits to delivering during each hour of the CSEP Event Availability Window from each Participating Service Account or Service Agreement are identified in Appendix A of this Agreement.

## **2. PROGRAM TERM**

The “Term” of this Agreement will commence on the Execution Date or August 15, 2021, whichever is later, and will conclude concurrently with the termination of the CSEP Program (the “Program Term”). As set forth in the Proclamation, the Program Term will be effective until October 31, 2021; however, it is possible that the Program Term could be extended or earlier terminated by executive order. Customer commits to participate in the CSEP Program under the terms and conditions set forth in this Agreement throughout the Program Term, including any extension thereof.

## **3. PROGRAM ELIGIBILITY REPRESENTATIONS, WARRANTIES AND COVENANTS**

Customer represents, warrants and covenants to Utility as of the Execution Date that:

- (a) Customer is a non-residential customer of Utility’s distribution or transmission system;
- (b) Customer is capable of providing incremental load reduction in response to a day-of dispatch at a level equal to the Customer Commitment from its Participating Service Account(s) or Service Agreement(s) during each hour of the CSEP Event Availability Window; *{Drafting Note: Per Appendix A, Customer Commitment may vary between weekdays and weekends/holidays, but the aggregate commitment must be at least 500 kW on either weekdays or weekends/holidays.}*
- (c) Each Participating Service Account or Service Agreement is capable of providing incremental load reduction in response to day-of dispatch at the level set forth for such Participating Service Account or Service Agreement in Appendix A to this Agreement during each hour of the CSEP Event Availability Window; *{Drafting Note: Per Appendix A, Customer Commitment may vary between weekdays and weekends/holidays, but the minimum commitment per participating service account must be at least 100 kW on either weekdays or weekends/holidays.}*
- (d) Each Participating Service Account or Service Agreement:

- i. is not participating with any other Demand Response Provider (DRP), Aggregator or Scheduling Coordinator (SC) under any other contract for load reduction or capacity services;
  - ii. is not participating in the Emergency Load Reduction Program (ELRP);
  - iii. is not participating under a Power Purchase Agreement for Resource Adequacy Capacity including Co-Generation;
  - iv. is not participating in the Demand Response Auction Mechanism (DRAM) pilot;
  - v. is not participating in the Capacity Bidding Program (CBP);
  - vi. is not participating in the Base Interruptible Program-Aggregation option where the firm service level (FSL) is an aggregated FSL; and
  - vii. is not participating in Utility's Net Energy Metering program and does not take service under a Net Energy Metering rate.
- (e) If Customer or any of its Participating Service Account(s) or Service Agreement(s) intends to use BUG to provide load reduction under this Agreement, Appendix A to this Agreement accurately sets forth (i) the amount of the BUG Customer intends to use during CSEP Events, and, if available, (ii) information on whether the BUG is portable or stationary and the federal emissions tier for each generator.
- (f) Customer is responsible for complying with all applicable terms of the Proclamation, including any applicable reporting requirements.

#### **4. CSEP EVENT HOURS, NOTICES, AND DISPATCH**

- (a) Customer may be directed to reduce load between 3 p.m. – 10 p.m. (Pacific Prevailing Time), 7 days a week during the Program Term ("CSEP Event Availability Window") as set forth in this Agreement.
- (b) If the CAISO issues a day-ahead Alert notice as set forth in CAISO Operating Procedure 4420 (or its successor), Utility or its Program Administrator may direct Customer (a "CSEP Mobilization Notice") to be prepared to reduce load under this Agreement during the CSEP Event Availability Window on the applicable day. Utility or its Program Administrator may also issue a CSEP Mobilization Notice if the CAISO issues a day-ahead Warning notice as set forth in CAISO Operating Procedure 4420 (or its successor) if the Proclamation is revised to provide for a Mobilization Notice and Mobilization Incentive Payment in connection with a day-of Warning notice.
- (c) If the CAISO declares an Emergency (Stage 1, 2, or 3) as set forth in CAISO Operating Procedure 4420 (or its successor), Utility or its Program Administrator may direct Customer in real-time (a "CSEP Dispatch Notice") to reduce load

under this Agreement during the CSEP Event Availability Window (or specified hours within the CSEP Event Availability Window) on the applicable day (a “CSEP Event”). A CSEP Dispatch Notice may be issued even if a CSEP Mobilization Notice was not previously issued for the applicable day.

- (d) CSEP Mobilization Notices and CSEP Dispatch Notices will be delivered utilizing the Customer contact email and SMS text set forth in Appendix A to this Agreement and will be deemed received immediately upon transmission. By signing this Agreement and providing its SMS text number, Customer affirmatively consents to receive CSEP Mobilization Notices and CSEP Dispatch Notices via SMS text at the numbers provided.

## 5. PAYMENT

- (a) In the event a CSEP Mobilization Notice is sent, but no CSEP Dispatch Notice is issued in real time for the applicable day, Customer shall earn a Mobilization Incentive Payment of \$0.75 per kilowatt (kW) per hour indicated in the CSEP Mobilization Notice. The “Mobilization Incentive Payment” shall be calculated as follows:

*$\$0.75/kW-h \times \text{Customer Commitment (in kW)} \times \text{number of hours stipulated in the CSEP Mobilization notice}$*

If both a day-ahead and a day-of CSEP Mobilization Notice have been sent for the same day, the longer of the event durations (i.e., number of hours) stated in the two notices shall be used for calculating the Mobilization Incentive Payment.

- (b) If a CSEP Dispatch Notice is issued in real time, Customer shall earn a CSEP Event Incentive Payment of \$2.00/kWh based upon their verified load reduction for each hour of a CSEP Event. The “CSEP Event Incentive Payment” shall be calculated as follows:

*$\$2/kWh \times \text{Total Verified Load Reduction during a CSEP Event [i.e., 10-Day CSEB} - \text{Actual Energy Usage (in kWh) calculated for each CSEP event hour]}$*

Verified load reduction is based on the difference between the 10-Day Customer Specific Energy Baseline and actual energy usage for each hour during a CSEP event.

- i. “10-Day Customer Specific Energy Baseline (CSEB)” is calculated for each hour using the average energy usage for that hour for the immediate past ten (10) similar days before the CSEP Event day (e.g., 10-in-10 similar day baseline) for each Participating Service Account or Service Agreement.

- a. For a weekday CSEP Event, the 10-Day CSEB will include the immediate past ten (10) weekdays (Monday through Friday) and will exclude weekends (Saturday and/or Sunday), FERC holidays, or days when the customer was subject to a CSEP, BIP, AP-I, or A/C Cycling Program event.
- b. For a weekend CSEP Event, the 10-Day CSEB will include the immediate past four (4) weekend days (Saturday and/or Sunday) and FERC holidays and will exclude weekdays (Monday through Friday) or days when the customer was subject to a CSEP, BIP, AP-I, or A/C Cycling Program event.

Notwithstanding the foregoing, if a CSEP Dispatch Notice is issued in real time, for a Customer who is dual participating in the BIP, when the BIP event overlaps with a CSEP event, the CSEP Event Incentive Payment shall be based upon Customer's actual load reduction that is below the Customer's Firm Service Level (FSL) for the duration of the overlapping event period.

- (c) In no event will Customer receive a Mobilization Incentive Payment and a CSEP Event Incentive Payment for the same day, even if the hours indicated in the CSEP Mobilization Notice and CSEP Dispatch Notice differ (e.g., CSEP Mobilization Notice states Customer should be prepared for event from 4-9pm, but CSEP Dispatch Notice indicated event period 6-9pm; the Customer will only receive a CSEP incentive for the real-time CSEP Event).
- (d) Customer shall not be compensated for any electric export that may occur during periods for which a CSEP Dispatch Notice has been issued.
- (e) Customer may include Participating Service Account(s) or Service Agreement(s) in this Agreement if they are currently enrolled in the Critical Peak Pricing (CPP) or Peak Day Pricing (PDP) rate, Real Time Pricing (RTP) rate, Base Interruptible Program (BIP), SCE's Agricultural Pumping Interruptible Program (AP-I), or the Utility's Air Conditioning (A/C) Cycling Program. If Participating Service Account(s) or Service Agreement(s) are dual enrolled in either BIP, AP-I, or A/C Cycling Program, compensation under this Agreement shall be limited to:
  - i. Load reduction delivered during CSEP Events and outside of BIP, AP-I, or A/C Cycling Program event hours; and/or
  - ii. Load reduction that is incremental to the Participating Service Account or Service Agreement's BIP Firm Service Level during the overlapping BIP event and the hours specified in a CSEP Dispatch Notice.
  - iii. In no event shall any Participating Service Account or Service Agreement be compensated for the same load reductions during coincident BIP, AP-I, or A/C Cycling Program event hours.

- (f) Utility or Program Administrator shall calculate the aggregate Mobilization Incentive Payments and CSEP Event Incentive Payments due to Customer at the conclusion of the Program Term. Subject to the next sentence, Utility shall pay such amount to Customer sixty (60) days after the Participating Service Account(s) or Service Agreement(s) billed after October 31, 2021 after such calculations have been completed, but in any event no later than 60 days after the end of the Program Term. Notwithstanding the foregoing, Customer acknowledges, understands and agrees that the Mobilization Incentive Payments and CSEP Event Incentive Payments will be funded by the State of California, and such funding may be subject to the prior review and approval by the California Department of Finance or other Governmental Entities within the State of California.

## **6. PUBLIC DISCLOSURE**

Customer further acknowledges, understands and agrees that its enrollment and participation in the CSEP Program, the terms and conditions outlined in this Agreement and stipulated by the Parties, information about the Participating Service Account(s), and other information regarding Customer's performance under this Agreement will be used by the Utility and Program Administrator to facilitate the CSEP Program and may be subject to the requirements of the California Public Records Act (Government Code 6250 et seq.) and to public disclosure thereunder. Customer acknowledges, understands and agrees that:

- (a) information provided by Customer to Utility or Program Administrator under this Agreement, and other information regarding the CSEP Program and Customer's participation therein, may be disclosed by Utility or Program Administrator to any federal, state, local, municipal government and to any governmental, regulatory, or administrative agency (each, a "Governmental Entity" and collectively the "Governmental Entities");
- (b) the Governmental Entities may be subject to the requirements of the California Public Records Act (Government Code 6250 et seq.) and the Ralph M. Brown Act (California Government Code 54950 et seq.) and to public disclosure thereunder.
- (c) its enrollment and participation in the CSEP Program, the terms and conditions outlined in this Agreement and stipulated by the Parties, and information regarding Customer's performance under this Agreement are not confidential and may be publicly disclosed (under the California Public Records Act or otherwise); and
- (d) Neither Utility nor the Program Administrator shall have any liability whatsoever to Customer in the event of any unauthorized use or disclosure by any Governmental Entity.

## **7. REPORTING**

Upon request by Utility, the Program Administrator or any Governmental Entity, Customer shall promptly provide or otherwise make available any and all books, records, documentation, data, or other information or materials reasonably necessary for Utility, the Program Administrator, or such Governmental Entity to verify any Mobilization Incentive Payments or CSEP Event Incentive Payments paid or payable to Customer or Customer's compliance with its representations, warranties, covenants or obligations under this Agreement or its participation in the CSEP Program.

## **8. REPRESENTATIONS AND WARRANTIES**

On the Execution Date, each Party represents and warrants to the other Party that:

- (a) It is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (b) It has or will timely acquire all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;
- (c) 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, order or the like applicable to it;
- (d) This Agreement constitutes its legally valid and binding obligation, enforceable against it in accordance with its terms;
- (e) It is not bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or become bankrupt;
- (f) There is not pending or, to its knowledge, threatened against it, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;
- (g) It (i) is acting for its own account, (ii) has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, (iii) is not relying upon the advice or recommendations of the other Party in so doing, and (iv) is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions, and risks of this Agreement; and
- (h) It has entered into this Agreement in connection with the conduct of its business and it has the capability or ability to make available or take delivery of, as applicable, the Product under this Agreement in accordance with the terms of this Agreement.

## 9. DEFAULT AND TERMINATION

If any representation or warranty made by a Party ("Defaulting Party") is false or misleading in any material respect when made or when deemed made or repeated if the representation or warranty is continuing in nature, the other Party ("Non-Defaulting Party") may designate by notice to the Defaulting Party, which shall be effective five (5) days after such notice is given, a date for the early termination of this Agreement. Nothing in this Agreement shall limit or diminish any other rights or remedies a Non-Defaulting Party may have at law or equity.

## 10. MODIFICATION BY GOVERNMENTAL ENTITY

The Parties acknowledge and agree that the CSEP Program or this Agreement shall be subject to changes, modifications, termination or extension by order or directive of the California Governor or any other Governmental Entity. Such Governor or Governmental Entity may from time to time issue an order, proclamation, or directive relating to or affecting any aspect of the CSEP Program or this Agreement, in which case Utility shall have the right to change, modify, terminate or extend this Agreement in any manner to be consistent with such order, proclamation or directive.

## 11. MISCELLANEOUS

### (a) General.

- (i) This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.
- (ii) The term "including," when used in this Agreement, shall be by way of example only and shall not be considered in any way to be in limitation.
- (iii) The headings used herein are for convenience and reference purposes only.
- (iv) Each Party agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.
- (v) Words having well-known technical or industry meanings have these meanings unless otherwise specifically defined in this Agreement.
- (vi) Whenever this Agreement specifically refers to any law, tariff, government department or agency, the Parties hereby agree that the reference also refers to any successor to such law, tariff or organization.
- (vii) Nothing in this Agreement relieves either Party from, or modifies, any obligation or requirement that exists in any law, tariff, rule, or regulation.



(b) Governing Law and Venue.

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

(c) Amendment.

Except as set forth in Section 11 above, this Agreement can only be amended by a writing signed by both Parties.

(d) Assignment.

Neither Party shall assign this Agreement or its rights hereunder, as the case may be, without the prior written consent of the other Party, which consent may not be unreasonably withheld.

(e) Successors and Assigns.

This Agreement shall be binding upon and inure to the benefit of, the Parties and their respective successors and assigns. This Agreement is not intended to confer any rights or remedies upon any other persons other than the Parties.

(f) Waiver.

None of the provisions of this Agreement shall be considered waived by either Party unless the Party against whom such waiver is claimed gives the waiver in writing. The failure of either Party to insist in any one instance upon strict performance of any the provisions of this Agreement or to take advantage of any of its rights hereunder shall not be construed as a waiver of any such provisions or the relinquishments of such rights for the future but the same shall continue and remain in full force and effect. Waiver by either Party of any default of the other Party shall not be deemed a waiver of any other default.

(g) No Agency.

Except as otherwise provided explicitly herein, in performing their respective obligations under this Agreement, neither Party is acting, or is authorized to act, as the other Party's agent.

(h) No Third-Party Beneficiaries.

This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound by this Agreement).

(i) Entire Agreement.

This Agreement, when fully executed, constitutes the entire agreement by and between the Parties as to the subject matter hereof, and supersedes all prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof. Each Party represents that, in entering into this Agreement, it has not relied upon any promise, inducement, representation, warranty, agreement or other statement not set forth in this Agreement.

(j) Severability.

If any term, section, provision or other part of this Agreement, or the application of any term, section, provision or other part of this Agreement, is held to be invalid, illegal or void by a court or regulatory agency of proper jurisdiction, all other terms, sections, provisions or other parts of this Agreement shall not be affected thereby but shall remain in force and effect unless a court or regulatory agency holds that the provisions are not separable from all other provisions of this Agreement.

(k) Multiple Originals.

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal effect of any of the signatures thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

(l) Mobile Sierra.

Notwithstanding any provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to the FERC pursuant to the provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

(m) Performance Under this Agreement.

Each Party and its representatives shall maintain records and supporting documentation relating to this Agreement, and the performance of the Parties hereunder in accordance with, and for the applicable time periods required by, all Applicable Laws.

## 12. DEFINITIONS

“A/C Cycling Program” means Utility’s Air Conditioning Cycling Program.

“Agreement” has the meaning set forth in the Preamble.

“Aggregate Commitment” has the meaning set forth in Section 1.

“AP-I” means SCE’s Agricultural Pumping Interruptible Program.

“BIP” means Utility’s Base Interruptible Program.

“BUG” means back-up generation.

“California State Emergency Program” or “CSEP Program” has the meaning set forth in Recital A.

“CAISO” means the California Independent System Operator Corporation.

“CSEB” has meaning set forth in Section 5(b)(i).

“CSEP Dispatch Notice” has the meaning set forth in Section 4(c).

“CSEP Event” has the meaning set forth in Section 4(c).

“CSEP Event Availability Window” has the meaning set forth in Section 4(a).

“CSEP Event Incentive Payment” has the meaning set forth in Section 5(b).

“CSEP Mobilization Notice” has the meaning set forth in Section 4(b).

“Customer” has the meaning set forth in the Preamble.

“Customer Commitment” has the meaning set forth in Section 1.

“Defaulting Party” has the meaning set forth in Section 8.

“Execution Date” has the meaning set forth in the Preamble.

“Firm Service Level” has the meaning set forth in the documentation for Utility’s Base Interruptible Program.

“Governmental Entity” or “Governmental Entities” has the meaning set forth in Section 6(a).

“Mobilization Incentive Payment” has the meaning set forth in Section 5(a).

“Non-Defaulting Party” has the meaning set forth in Section 8.

“Party” or “Parties” has the meaning set forth in the Preamble.

“Proclamation” has the meaning set forth in Recital A.

“Product” has the meaning set forth in Section 1.

“Program Administrator” means a person or entity engaged or designated by Utility to perform certain functions under this Agreement, including dispatch and settlement.

“Program Term” has the meaning set forth in Section 2.

“Term” has the meaning set forth in Section 2.

“Utility” has the meaning set forth in the Preamble.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Execution Date.

**SAN DIEGO GAS AND ELECTRIC  
COMPANY**

\_\_\_\_\_

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

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

**APPENDIX A - CUSTOMER AND ACCOUNT INFORMATION**

Customer must complete the following information for all participating Service Accounts/Service Agreements:

**Customer Account Number:** \_\_\_\_\_

**Customer Name:** \_\_\_\_\_

**Table 1: Customer Account Information and Commitments**

Service Account/ Service Agreement Number	Street Address	City	Zip	Customer Commitment Weekdays (in kW)	Customer Commitment Weekends/ Holidays (in kW)
<b>Total Customer Commitment for CSEP Events (in kW)<sup>[1]</sup></b>					

*{[1] Customer Commitment may vary between weekdays and weekends/holidays, but the aggregate commitment must be at least 500 kW on either weekdays or weekends/holidays, and the minimum commitment per participating service account must be at least 100 kW on either weekdays or weekends/holidays}*

**Time (in minutes) Customer needs to respond to CSEP Dispatch Notice with advance notice:** \_\_\_\_\_

**Time (in minutes) Customer needs to respond to CSEP Dispatch Notice with no advance notice:** \_\_\_\_\_

**Customer Contact Information (to be used to receive CSEP Event Notifications)**

Up to 5 email addresses may be provided:	Up to 5 text/SMS numbers may be provided:
1.	1.
2.	2.
3.	3.
4.	4.
5.	5.

Customer must complete Utility reporting requirements stipulated in Section 3(e):

**TABLE 2 - CUSTOMER BUG DATA**

Street Address	Zip	Nameplate Capacity of portable BUGS (in kW)	Nameplate Capacity of stationary BUGS (in kW)	Federal emissions tier for each generator(s)
<b>Total Nameplate Capacity of BUGS (in kW)<sup>[1]</sup></b>				

*{must include data for each BUG located at each street address listed in Table 1 above}*