

Appendix B.25

EIM SUB-ENTITY AGREEMENT

THIS ENERGY IMBALANCE MARKET SUB-ENTITY AGREEMENT (“AGREEMENT”) is established this ____ day of _____, _____, and is accepted by and between:

- (1) **[Full legal name]** (“EIM Sub-Entity”), having its registered and principal executive office at [address],
and
- (2) **California Independent System Operator Corporation** (“CAISO”), a California nonprofit public benefit corporation having a principal executive office located at such place in the State of California as the CAISO Governing Board may from time to time designate.

The EIM Sub-Entity and the CAISO are hereinafter referred to as the “Parties.”

Whereas:

- A.** The EIM Sub-Entity is an electric utility located in an EIM Entity Balancing Authority Area that has been authorized by the EIM Entity for the Balancing Authority Area in which it is located to participate in the CAISO’s Real-Time Market as an EIM Sub-Entity.
- B.** The CAISO operates the Real-Time Market pursuant to the CAISO Tariff.
- C.** The Parties are entering into this Agreement to enable the EIM Sub-Entity to participate in the CAISO’s Real-Time Market.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, **THE PARTIES AGREE** as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

- 1.1 Master Definitions Supplement.** All terms and expressions used in this Agreement shall have the same meaning as those contained in the Master Definitions Supplement to the CAISO Tariff.
- 1.2 Rules of Interpretation.** The following rules of interpretation and conventions shall apply to this Agreement:
 - (a) if there is any inconsistency between this Agreement and the CAISO Tariff, the CAISO Tariff will prevail to the extent of the inconsistency;

California Independent System Operator Corporation
Fifth Replacement Electronic Tariff

- (b) the singular shall include the plural and vice versa;
- (c) the masculine shall include the feminine and neutral and vice versa;
- (d) “includes” or “including” shall mean “including without limitation”;
- (e) references to a Section, Article or Schedule shall mean a Section, Article or a Schedule of this Agreement, as the case may be, unless the context otherwise requires;
- (f) a reference to a given agreement or instrument shall be a reference to that agreement or instrument as modified, amended, supplemented or restated through the date as of which such reference is made;
- (g) unless the context otherwise requires, references to any law shall be deemed references to such law as it may be amended, replaced or restated from time to time;
- (h) unless the context otherwise requires, any reference to a “person” includes any individual, partnership, firm, company, corporation, joint venture, trust, association, organization or other entity, in each case whether or not having separate legal personality;
- (i) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
- (j) any reference to a day, week, month or year is to a calendar day, week, month or year;
- (k) unless the context requires otherwise, “or” is used in the conjunctive sense; and
- (l) the captions and headings in this Agreement are inserted solely to facilitate reference and shall have no bearing upon the interpretation of any of the terms and conditions of this Agreement.

ARTICLE II

RESPONSIBILITIES OF EIM SUB-ENTITY AND CAISO

- 2.1 Scope of Responsibilities.** The Parties are individually responsible for compliance with the Reliability Standards established by the Western Electricity Coordinating Council (“WECC”) and the North American Electric Reliability Corporation (“NERC”), and in accordance with their respective tariffs on file with the Federal Energy Regulatory Commission (“FERC”), if applicable. Nothing in this Agreement is intended to change, supersede, or alter either Party’s obligations to abide by NERC and WECC Reliability Standards or to provide open and non-discriminatory transmission access in accordance with the terms of their respective FERC tariffs, if applicable.
- 2.2 Tariff Provisions.** The CAISO shall provide open access to the Real-Time Market in accordance with the terms of the CAISO Tariff. The EIM Sub-Entity shall have in

effect provisions in its OATT to enable operation of the Real-Time Market in accordance with the CAISO Tariff, if applicable.

- 2.3 EIM Sub-Entity Scheduling Coordinator.** The EIM Sub-Entity shall be represented by an EIM Sub-Entity Scheduling Coordinator, which may be the EIM Sub-Entity or another entity certified by the CAISO to perform the functions of an EIM Sub-Entity Scheduling Coordinator.
- 2.4 EIM Transmission Service and Resource Information.** The EIM Sub-Entity may, if authorized by the EIM Entity for the Balancing Authority Area in which the EIM Sub-Entity is located, provide information to the CAISO for Energy Imbalance Market purposes regarding the network topology of its facilities within the EIM Entity Balancing Authority Area, non-participating resources, and loads in accordance with the CAISO Tariff and the Business Practice Manual for the Energy Imbalance Market. The EIM Sub-Entity will be responsible for the accuracy and completeness of this information.
- 2.5 EIM Transmission Availability.** The EIM Sub-Entity shall make available for use in the Real-Time Market transmission capacity on its system that is not otherwise encumbered, reserved, scheduled, or being used by its transmission customers or by others. The EIM Sub-Entity shall provide the CAISO with real time information regarding the availability of transmission capacity for use in the Energy Imbalance Market as authorized by the EIM Entity for the Balancing Authority Area in which the EIM Sub-Entity is located and provided in the CAISO Tariff and Business Practice Manual for the Energy Imbalance Market.

ARTICLE III

TERM AND TERMINATION

- 3.1 Effective Date.** This Agreement shall be effective as of the later of the date it is executed by the Parties or the date it is accepted for filing and made effective by FERC and shall remain in full force and effect until terminated pursuant to Section 3.2 of this Agreement.
- 3.2 Termination**
- 3.2.1 Termination by CAISO.** The CAISO may terminate this Agreement by giving written notice of termination pursuant to Section 29.1(d) of the CAISO Tariff or in the event that (i) the EIM Sub-Entity commits any material default under this Agreement or Section 29 of the CAISO Tariff that, if capable of being remedied, is not remedied within thirty (30) days after the CAISO has given the EIM Sub-Entity written notice of the default, unless the default is excused by reason of Uncontrollable Forces in accordance with Article IX of this Agreement, or (ii) the EIM Entity for the Balancing Authority Area in which the EIM Sub-Entity is located terminates participation in the EIM. With respect to any notice of termination given pursuant to this Section, the CAISO must file a timely notice of termination with FERC or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the CAISO with FERC will be considered timely if (1) the filing of the notice of termination is made after the preconditions for termination have been met, and the CAISO files the notice of termination within sixty (60) days

California Independent System Operator Corporation
Fifth Replacement Electronic Tariff

after issuance of the notice of default; or (2) the CAISO files the notice of termination in accordance with the requirements of FERC Order No. 2001. This Agreement shall terminate upon acceptance by FERC of such a notice of termination or thirty (30) days after the date of the CAISO's notice of default, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

3.2.2 Termination by EIM Sub-Entity. In the event that the EIM Sub-Entity no longer wishes to separately account for its non-participating resources and loads pursuant to the CAISO Tariff, it may terminate this Agreement on giving the CAISO not less than one-hundred and eighty (180) days written notice. With respect to any notice of termination given pursuant to this Section, the CAISO must file a timely notice of termination with FERC or must otherwise comply with the requirements of FERC Order No. 2001 and related FERC orders. The filing of the notice of termination by the CAISO with FERC will be considered timely if (1) the request to file a notice of termination is made after the preconditions for termination have been met, and the CAISO files the notice of termination within thirty (30) days of receipt of such request; or (2) the CAISO files the notice of termination in accordance with the requirements of FERC Order No. 2001. This Agreement shall terminate upon acceptance by FERC of such a notice of termination or upon the next production date of the Full-Network Model release following the one-hundred and eighty (180) days after the CAISO's receipt of the EIM Sub-Entity's notice of termination, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders.

3.3 No Termination Charge. The CAISO shall not levy an exit fee or other charge associated with CAISO systems, procedures, or other changes required by the termination of the EIM Sub-Entity's participation in the Energy Imbalance Market as of the effective date of such notice, provided that EIM Sub-Entity obligations incurred under this Agreement prior to the effective date of such notice shall survive termination until satisfied.

ARTICLE IV

CAISO TARIFF

4.1 Agreement Subject to CAISO Tariff. This Agreement shall be subject to Section 29 of the CAISO Tariff, which shall be deemed to be incorporated herein. The EIM Sub-Entity shall abide by, and shall perform, all of the obligations of EIM Sub-Entities under the CAISO Tariff.

ARTICLE V

COSTS

- 5.1 Operating and Maintenance Costs.** The EIM Sub-Entity shall be responsible for all its costs incurred in connection with meeting its obligations under this Agreement.

ARTICLE VI

DISPUTE RESOLUTION

- 6.1 Dispute Resolution.** The Parties shall make reasonable efforts to settle all disputes arising out of or in connection with this Agreement. In the event any dispute is not settled, the Parties shall adhere to the CAISO ADR Procedures set forth in Section 13 of the CAISO Tariff, which is incorporated by reference, except that any reference in Section 13 of the CAISO Tariff to Market Participants shall be read as a reference to the EIM Sub-Entity and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

- 7.1 Representation and Warranties.** Each Party represents and warrants that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental actions, to the extent authorized by law.
- 7.2 Necessary Approvals.** The EIM Sub-Entity represents that all necessary rights, leases, approvals, permits, licenses, easements, access to operate in compliance with this Agreement have been or will be obtained by the EIM Sub-Entity prior to the effective date of this Agreement, including any arrangement with the EIM Entity for the Balancing Authority Area in which the EIM Sub-Entity is located and any third party Balancing Authorities.

ARTICLE VIII

LIABILITY

- 8.1 Liability.** The provisions of Section 14 of the CAISO Tariff will apply to liability arising under this Agreement, except that all references in Section 14 of the CAISO Tariff to Market Participants shall be read as references to the EIM Sub-Entity and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE IX

UNCONTROLLABLE FORCES

- 9.1 Uncontrollable Forces Tariff Provisions.** Section 14.1 of the CAISO Tariff shall be incorporated by reference into this Agreement except that all references in Section 14.1 of the CAISO Tariff to Market Participants shall be read as a reference to the EIM Sub-Entity and references to the CAISO Tariff shall be read as references to this Agreement.

ARTICLE X

MISCELLANEOUS

- 10.1 Assignments.** Either Party may assign or transfer any or all of its rights or obligations under this Agreement with the other Party's prior written consent in accordance with Section 22.2 of the CAISO Tariff and no Party may assign or transfer any or all of its rights or obligations under this Agreement without such consent. Such consent shall not be unreasonably withheld. Any such transfer or assignment shall be conditioned upon the successor in interest accepting the rights or obligations under this Agreement as if said successor in interest were an original Party to this Agreement.
- 10.2 Notices.** Any notice, demand or request which may be given to or made upon either Party regarding this Agreement shall be made in accordance with Section 22.4 of the CAISO Tariff, provided that all references in Section 22.4 of the CAISO Tariff to Market Participants shall be read as a reference to the EIM Sub-Entity and references to the CAISO Tariff shall be read as references to this Agreement, and unless otherwise stated or agreed shall be made to the representative of the other Party indicated in Schedule 1. A Party must update the information in Schedule 1 of this Agreement as information changes. Such changes shall not constitute an amendment to this Agreement.
- 10.3 Waivers.** Any waiver at any time by either Party of its rights with respect to any default under this Agreement, or with respect to any other matter arising in connection with this Agreement, shall not constitute or be deemed a waiver with respect to any subsequent default or other matter arising in connection with this Agreement. Any delay, short of the statutory period of limitations, in asserting or enforcing any right under this Agreement shall not constitute or be deemed a waiver of such right.
- 10.4 Governing Law and Forum.** This Agreement shall be deemed to be a contract made under, and for all purposes shall be governed by and construed in accordance with, the laws of the State of California, except its conflict of law provisions. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement to which the CAISO ADR Procedures do not apply shall be brought in any of the following forums, as appropriate: any court of the State of California, any federal court of the United States of America located in the State of California, or, where subject to its jurisdiction, before the Federal Energy Regulatory Commission.
- 10.5 Consistency with Federal Laws and Regulations.** This Agreement shall incorporate by reference Section 22.9 of the CAISO Tariff as if the references to the CAISO Tariff were referring to this Agreement.
- 10.6 Merger.** This Agreement constitutes the complete and final agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, whether written or oral, with respect to such subject matter.
- 10.7 Severability.** If any term, covenant, or condition of this Agreement or the application or effect of any such term, covenant, or condition is held invalid as to any person,

California Independent System Operator Corporation
Fifth Replacement Electronic Tariff

entity, or circumstance, or is determined to be unjust, unreasonable, unlawful, imprudent, or otherwise not in the public interest by any court or government agency of competent jurisdiction, then such term, covenant, or condition shall remain in force and effect to the maximum extent permitted by law, and all other terms, covenants, and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect and the Parties shall be relieved of their obligations only to the extent necessary to eliminate such regulatory or other determination unless a court or governmental agency of competent jurisdiction holds that such provisions are not separable from all other provisions of this Agreement.

- 10.8 Amendments.** This Agreement and the Schedules attached hereto may be amended from time to time by the mutual agreement of the Parties in writing. Amendments that require FERC approval shall not take effect until FERC has accepted such amendments for filing and made them effective. Nothing contained herein shall be construed as affecting in any way the right of the CAISO to unilaterally make application to FERC for a change in the rates, terms and conditions of this Agreement under Section 205 of the FPA and pursuant to FERC's rules and regulations promulgated thereunder, and the EIM Sub-Entity shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the FPA and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this Agreement shall limit the rights of the Parties or of FERC under Sections 205 or 206 of the FPA and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.
- 10.9 Counterparts.** This Agreement may be executed in one or more counterparts at different times, each of which shall be regarded as an original and all of which, taken together, shall constitute one and the same Agreement.

California Independent System Operator Corporation
Fifth Replacement Electronic Tariff

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By: _____

Name: _____

Title: _____

Date: _____

[NAME OF EIM SUB-ENTITY]

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1

NOTICES
[Section 10.2]

EIM Sub-Entity

Name of Primary

Representative:

Title:

Company:

Address:

City/State/Zip Code:

Email Address:

Phone:

Fax No:

Name of Alternative

Representative:

Title:

Company:

Address:

City/State/Zip Code:

Email Address:

Phone:

Fax No:

CAISO

Name of Primary Representative: Regulatory Contracts
Title: N/A
Address: 250 Outcropping Way
City/State/Zip Code: Folsom, CA 95630
Email address: RegulatoryContracts@caiso.com
Phone: (916) 351-4400
Fax: (916) 608-5063

Name of Alternative Representative: Christopher J. Sibley
Title: Manager, Regulatory Contracts
Address: 250 Outcropping Way
City/State/Zip Code: Folsom, CA 95630
Email address: csibley@caiso.com
Phone: (916) 608-7030
Fax: (916) 608-5063