

Appendix B.24

ENERGY IMBALANCE MARKET SUB-ENTITY IMPLEMENTATION AGREEMENT

THIS ENERGY IMBALANCE MARKET SUB-ENTITY IMPLEMENTATION

AGREEMENT (“Agreement”) is established this ____ day of _____, _____, and is accepted by and between:

(1) [Full legal name] having its registered and principal executive office at [address] (“Short Legal Name” or “Prospective EIM Sub-Entity”),

and

(2) California Independent System Operator Corporation, 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, (“CAISO”).

[Short Legal Name] and the CAISO each are hereinafter referred to as a “Party,” or collectively as the “Parties.”

RECITALS

- A. **WHEREAS**, [Short Legal Name], has requested to participate in the CAISO’s Real-Time Market as an EIM Sub-Entity.
- B. **WHEREAS**, the Parties acknowledge that the rules and procedures governing participation in the CAISO’s Real-Time Market as an EIM Sub-Entity are set forth in the provisions of the CAISO Tariff as filed with the Federal Energy Regulatory Commission (“FERC”) and that implementation as an EIM Sub-Entity requires corresponding revisions to [Short Legal Name’s] Open Access Transmission Tariff/retail distribution tariff and the execution of associated service agreements;
- C. **WHEREAS**, [Short Legal Name] meets the CAISO Tariff requirements for participation as an EIM Sub-Entity, including any EIM Entity Balancing Authority requirements necessary for the [Short Legal Name] to separately participate in the CAISO’s Real-Time Market.
- D. **WHEREAS**, implementation of participation by [Short Legal Name] in the CAISO’s Real-Time Market as an EIM Sub-Entity requires the CAISO to incur costs to set up its business and software systems on behalf of [Short Legal Name].

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- E. **WHEREAS**, [Short Legal Name] has requested the CAISO to conduct or cause to be performed work to implement [Short Legal Name] as an EIM Sub-Entity into the CAISO systems and [Short Legal Name] will reimburse the CAISO for the actual costs incurred.
- F. **WHEREAS**, the Parties are entering into this Agreement to set forth the terms upon which the CAISO will timely configure its systems to incorporate [Short Legal Name] as an EIM Sub-Entity on or before [date] ("EIM Sub-Entity Implementation Date").

NOW, THEREFORE, in consideration of the mutual covenants contained 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;
 - (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,

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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 CAISO shall conduct or cause to be performed changes to the CAISO business and software systems, in accordance with the CAISO Tariff, to allow [Short Legal Name] to participate in the CAISO Real-Time Market as an EIM Sub-Entity. The scope of the implementation will include, but is not limited to, planning and project management; full network modeling of resources; system integration and testing; metering and settlements; and operations readiness and training. The CAISO shall also provide [Short Legal Name] a project plan of implementation activities, including a schedule by which information and data will be required to be sent to the CAISO; testing to be performed by [Short Legal Name]; and training to meet the EIM Sub-Entity Implementation Date.
- 2.2 Implementation Deposit and Cost Allocation.** Consistent with Section 29.11(g) of the CAISO tariff, [Short Legal Name] will provide a deposit and pay the actual costs of the implementation, including any actual amounts in excess of the initial deposit. The CAISO will provide invoices and refunds on a timely basis. Any difference between the deposit(s) made toward the implementation of [Short Legal Name] and associated administrative costs, and the actual cost of the implementation of [Short Legal Name] shall be paid by or refunded to [Short Legal Name], in accordance with Article V of this Agreement.
- 2.3 Technical Data.** [Short Legal Name] will provide the CAISO technical data to facilitate the implementation in the Real-Time Market as an EIM Sub-Entity and assumptions used for the data, such as system conditions, existing and planned generation, and unit modeling. The CAISO shall not be responsible for any additional costs, including, without limitation, costs of new or additional facilities, system

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upgrades, or schedule changes, that may be incurred by [Short Legal Name] as a result of implementation in the Real-Time Market as an EIM Sub-Entity.

- 2.4 Compliance with CAISO Tariff Requirements for an EIM Sub-Entity.** Prior to the EIM Sub-Entity Implementation Date, [Short Legal Name] will satisfy all requirements of the CAISO Tariff applicable to an EIM Sub-Entity, including: (1) demonstrating that [Short Legal Name] satisfies all qualifications for participation as an EIM Sub-Entity; (2) showing that [Short Legal Name] has been authorized by the EIM Entity for the Balancing Authority Area in which the EIM Sub-Entity is located to participate as an EIM Sub-Entity; (3) entering into an EIM Sub-Entity Agreement with the CAISO governing [Short Legal Name's] participation in the Real-Time Market; and (4) securing representation by an EIM Sub-Entity Scheduling Coordinator.

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 (if applicable) 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) [Short Legal Name] 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 [Short Legal Name] 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 [Short Legal Name] 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 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 [Short Legal Name]. In the event that [Short Legal Name] no longer wishes to participate in the CAISO's Real-Time Market as an EIM Sub-Entity pursuant to the CAISO Tariff, it may terminate this Agreement on giving the CAISO not less than (30) 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 thirty (30) days after the CAISO's receipt of [Short Legal Name]'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. With the exception of the implementation costs, the CAISO shall not levy an exit fee or other charge associated with CAISO systems, procedures, or other changes required by the termination of [Short Legal Name]'s participation in the Energy Imbalance Market as of the effective date of such notice, provided that [Short Legal Name] obligations incurred under this Agreement 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 and all other provisions of the CAISO Tariff applicable to an EIM Sub-Entity, which shall be deemed to be incorporated herein. [Short Legal Name] shall abide by, and shall perform, all of the obligations of EIM Sub-Entities under the CAISO Tariff.

ARTICLE V

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COSTS AND ACCOUNTING

- 5.1 Costs.** The CAISO shall maintain records and accounts of all costs incurred in performing the implementation of the EIM Sub-Entity in sufficient detail to allow verification of all costs incurred, including associated overheads.
- 5.2 Settlement of Deposit(s).** The deposit provided in accordance with Section 2.2 of this Agreement shall be applied to the prudent costs of the CAISO in implementing [Short Legal Name] as an EIM Sub-Entity in the Real-Time Market. If the actual costs of the implementation of [Short Legal Name] are greater than the initial deposit provided by [Short Legal Name], the CAISO will invoice [Short Legal Name] for an additional deposit amount to cover expenses. Payment of invoices shall be due no later than thirty (30 days) after the date of receipt. Any invoice payment past due will accrue interest, per annum, calculated in accordance with 5 C.F.R. 1315.10.

At the end of the implementation, the CAISO will provide a report that details deposit(s) received, actual costs incurred, and applicable interest earnings (on deposit balance) for each implementation project. Interest will be calculated at the end of the implementation project, from the time the deposit(s) was received until the implementation is completed. The calculation will be based on the average earning of the bank account, in which the deposit is held, on the remaining amount of the deposit. Any unused deposit remaining after the implementation is completed plus interest on the remaining deposit will be returned to [Short Legal Name] within ninety (90) calendar days after the implementation is completed; the CAISO and [Short Legal Name] approve the completion; and all required documents for the refund are received by the CAISO. All refunds will be processed following the CAISO's generally accepted accounting practices. Any deadline for CAISO action will be tolled to the extent [Short Legal Name] has not provided the CAISO with the appropriate documents to facilitate an eligible refund.

In the event this agreement is terminated by either party or both parties after [Short Legal Name]'s implementation has begun then the CAISO will make every attempt to halt work and related costs on the implementation as soon as practical and begin the refund process for any payments provided by [Short Legal Name] in excess of costs incurred by the CAISO, if applicable.

- 5.3 Audit.** [Short Legal Name] shall have the right, upon reasonable notice, within a reasonable time at the CAISO's offices and at its own expense, to audit the CAISO's records as necessary and as appropriate in order to verify costs incurred by the CAISO. Any audit requested by [Short Legal Name] shall be completed, and written notice of any audit dispute provided to the CAISO representative, within one hundred eighty (180) calendar days following receipt by [Short Legal Name] of the CAISO's notification of the final costs of the implementation of [Short Legal Name].

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 [Short Legal Name] 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.** [Short Legal Name] 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 [Short Legal Name] prior to the effective date of this Agreement, including any arrangement with the EIM Entity for the Balancing Authority Area in which [Short Legal Name] 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 [Short Legal Name] 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 [Short Legal Name] 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 [Short Legal Name] 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

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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, 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.

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- 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 Federal Power Act (“FPA”) and pursuant to FERC’s rules and regulations promulgated thereunder, and [Short Legal Name] 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.

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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 PROSPECTIVE EIM SUB-ENTITY]

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1

NOTICES

[Section 10.2]

[Short Legal Name]

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: _____

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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