

August 30, 2018

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: California Independent System Operator Corporation
Filing of EIM Entity Agreement with the Balancing Authority of
Northern California**

Docket No. ER18-____-000

Dear Secretary Bose:

The California Independent System Operator Corporation (“CAISO”) submits for Commission acceptance the EIM Entity Agreement (“Agreement”) between the CAISO and the Balancing Authority of Northern California (“BANC”), a joint powers authority (“JPA”) established pursuant to the laws of the State of California.¹ The Agreement sets forth the legal obligations and operational rules that will govern BANC’s participation in the CAISO’s Energy Imbalance Market (“EIM”). The EIM is the vehicle by which entities outside the CAISO’s balancing authority area participate in the CAISO’s real-time market. Under the Agreement, BANC will comply with the CAISO tariff provisions applicable to EIM entities, with certain exceptions and modifications to account for BANC’s participation by only one of its members, the Sacramento Municipal Utility District (“SMUD”).² SMUD, a publicly owned utility and third-party transmission service provider within the BANC balancing authority area, intends to enable EIM services on its transmission system.³

¹ The CAISO submits the Agreement pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d. The Agreement is designated as Service Agreement No. 4828 under the CAISO tariff.

² In addition to SMUD, BANC’s members include the City of Redding, City of Roseville, City of Shasta Lake, Modesto Irrigation District, and Trinity Public Utilities District. The Western Area Power Administration – Sierra Nevada Region (“WAPA”) operates within the BANC balancing authority area and participates in BANC processes; however, WAPA is not a formal member of BANC. WAPA and BANC’s members other than SMUD are not in a position to participate in the EIM at this time. Therefore, the Agreement solely defines SMUD’s participation in the EIM.

³ Also included in the BANC balancing authority area is the California-Oregon Transmission Project (“COTP”), a 340 mile (between Captain Jack, Oregon and Tracy, California), 500 kilovolt, transmission line, totaling approximately 1600 megawatts (“MW”). The majority of the COTP is owned by the Transmission Agency of Northern California JPA and operated by WAPA. SMUD is a

The CAISO requests that the Commission accept the Agreement effective 61 days after the date of this filing, *i.e.*, October 30, 2018, so the CAISO and BANC can timely complete all necessary actions to enable BANC to commence participation in the EIM on April 3, 2019.

I. Background

The EIM provides other balancing authority areas in the Western Interconnection with the opportunity to participate in the real-time market for imbalance energy that the CAISO operates in its own balancing authority area. PacifiCorp's two balancing authority areas (PacifiCorp East and PacifiCorp West) were the first to join the EIM. The CAISO's market rules allowing that participation went into effect on October 24, 2014, for the first trading day November 1, 2014.

The EIM has continued to develop and attract the interest of a diverse array of participants throughout the Western Interconnection. NV Energy joined on December 1, 2015, Puget Sound Energy Inc. and Arizona Public Service Company began participation on October 1, 2016, Portland General Electric Company followed on October 1, 2017, and the Idaho Power Company joined concurrently with Powerex Corp. on April 4, 2018. The City of Seattle, by and through its City Light Department ("Seattle City Light"), the City of Los Angeles Department of Water and Power ("LADWP"), and the Salt River Project Agricultural Improvement and Power District ("SRP") will commence EIM participation in April 2020.⁴

In October of 2016, BANC informed the CAISO that it was interested in exploring participation in the EIM initially for its member SMUD to make available transmission on the SMUD system. This meant that BANC would be participating in the EIM with less than the whole of its balancing authority area. The CAISO and BANC commenced negotiations to develop a framework under which BANC could participate in the EIM that would account for this structural difference. Because SMUD and WAPA effectively operate as separately metered systems within the BANC balancing authority area—meaning that SMUD and WAPA maintain separate area control errors and BANC maintains a combined SMUD/WAPA area control error with electronic tagging between the subsystems—there would be an existing clear demarcation between the separately metered SMUD and WAPA areas that could be implemented in the EIM. In addition, SMUD and WAPA maintain separate Open Access Transmission Tariffs ("OATTs"), which provide for imbalance energy service to transmission customers within their respective subsystems. This allows SMUD

member of TANC and holds over 500 MW of entitlements on the COTP; however, these entitlements will not be included by SMUD in BANC's Phase 1 EIM implementation.

⁴ EIM participation materials are at <https://www.westerneim.com/Pages/About/default.aspx>.

to amend its OATT for the provision of imbalance energy services to any of its transmission customers consistent with the EIM requirements, without WAPA having to change the manner in which it provides imbalance energy services to its transmission customers under its OATT.

With this understanding, the CAISO and BANC negotiated and entered into an EIM Implementation Agreement, which the Commission accepted effective June 1, 2017, as requested by the parties (“EIM Implementation Agreement”).⁵ The EIM Implementation Agreement details the contractual terms, including the scope of work and the agreed-upon fee, under which the CAISO would take the steps necessary to enable BANC’s participation in the EIM consistent with the identified key milestones and associated payment provisions. Notably, the EIM Implementation Agreement accounts for BANC’s implementation fee based upon SMUD’s participation only. Participation by other BANC members is reserved for later phases, with the associated costs to be recovered if and when the other BANC members begin participating in the EIM. This Agreement implements this prior understanding and accounts for SMUD separately from the other BANC members, while also considering the legal and regulatory issues unique to SMUD as a publicly owned utility under Section 201(f) of the Federal Power Act.

II. BANC EIM Entity Agreement

The Agreement provides for BANC’s participation in the EIM with operation of the EIM occurring only on the SMUD system. The following discussion explains the specific differences between the Agreement and the *pro forma* EIM Entity Agreement contained in Appendix B.17 to the CAISO tariff.⁶

The recitals to the Agreement set forth the nature of the EIM, the Parties, and the relationship among BANC, SMUD, WAPA, and the other BANC members. The recitals also describe the purpose of the Agreement.

Article I adopts the definitions in the CAISO tariff for the Agreement and sets forth rules of interpretation and conventions applicable to the Agreement. Several definitions are included to account for EIM participation by only SMUD within the BANC balancing authority area. Specifically, the defined terms Balancing Authority Area, EIM Entity Balancing Authority Area, EIM External

⁵ Commission Letter Order, Docket No. ER17-1300-000 (May 18, 2017). The CAISO worked collectively with each the four publicly owned utilities that constitute the upcoming four EIM entities (Seattle City Light, LADWP, SRP, and BANC) to reach an understanding on common terms that address their unique legal and regulatory considerations. The Agreement reflects these discussions.

⁶ Attachment B hereto contains a document showing the differences between the Agreement and the *pro forma* EIM Entity Agreement in red-line format, which is provided for informational purposes only.

Interties, EIM Internal Interties, EIM Transmission Service Information, and EIM Transmission Service Provider clarify this point. In addition, matters specifically addressed by a provision of the Agreement govern notwithstanding any inconsistent provisions of the CAISO tariff. This ensures that changes associated with BANC's participation in the EIM are accommodated.

Article II includes changes to reflect that BANC is a balancing authority and not a transmission service provider. As such, BANC does not have an OATT. It will be the SMUD transmission system that enables operation of the EIM within a portion of the BANC balancing authority area. Finally, BANC is an exempt entity as described in section 201(f) of the FPA,⁷ and the CAISO acknowledges this status in the Agreement.

Article III includes a provision to clarify that, because BANC (the EIM Entity) is an exempt entity, termination of the Agreement will occur on date of the EIM Entity's notice of termination, regardless of any action or inaction by the Commission with respect to any application by the CAISO to terminate the Agreement.

Article VIII sets forth the provisions for liability and indemnification. These provisions reflect the standards for liability and indemnification included in the Transmission Control Agreement—the agreement by which participating transmission owners turn over operational control of their transmission systems to the CAISO for use by CAISO market participants. BANC considers the Agreement's requirement to make available transmission on the SMUD system more analogous to the requirements of the Transmission Control Agreement in this respect than a typical market participation arrangement. The CAISO agrees that insofar as the Agreement enables the operation of the EIM within a balancing authority area it can be analogized in some ways to the Transmission Control Agreement. The liability and indemnification provisions in the Transmission Control Agreement protect the CAISO under a full participation framework, and including the same provisions in the Agreement will likewise protect the CAISO with respect to EIM participation by BANC.⁸

Articles IV through VII and Articles IX and X are standard CAISO contract terms on the applicability of the CAISO tariff, responsibility for costs, dispute resolution, representations and warranties, uncontrollable forces, and miscellaneous terms. These terms are unchanged from the *pro forma* EIM Entity Agreement with one exception—the provisions of Section 10.5 includes language to address state law considerations unique to publicly owned utilities that is modeled on language previously accepted by the Commission for other Regional

⁷ 16 U.S.C. § 824(f).

⁸ See Transmission Control Agreement, Section 22 (establishing the liability of the parties, available at: <http://www.caiso.com/Documents/TransmissionControlAgreement.pdf>).

Transmission Organizations/Independent System Operators.⁹ These provisions establish procedures for the parties to resolve potential conflicts between a state law or regulation applicable to BANC and BANC's obligations under the Agreement.

III. Participation by Other Publicly Owned Utilities

BANC will be the first publicly owned utility to participate in the EIM and the next three scheduled EIM participants are also publicly owned utilities. Because each has certain factual distinctions driven by system needs and requirements, location, and legal form, the provisions of other publicly owned utility participation agreements may differ. This Agreement is the result of negotiations between BANC and the CAISO and, although the other publicly owned utilities may have been consulted during such negotiations, no third party shall be deemed to have approved, accepted, agreed or consented to any provision of this Agreement.

IV. Effective Date

The CAISO requests that this Agreement be made effective 61 days after the date of this filing, *i.e.*, October 30, 2018. BANC's participation in the EIM is targeted to commence on April 3, 2019, and the CAISO and BANC must engage in activities that support a certification of readiness at least 30 days prior to that implementation date.¹⁰ Making the Agreement effective October 30, 2018 will allow the parties to certify their readiness in a timely manner.

V. Service

The CAISO has served copies of this filing upon BANC, the California Public Utilities Commission, the California Energy Commission, and all parties with scheduling coordinator agreements under the CAISO tariff. In addition, the CAISO has posted the filing on the CAISO website.

⁹ See section 39.1 of the Southwest Power Pool ("SPP") OATT and sections 12.D.1-12.E of the Midcontinent Independent System Operator Corporation tariff. The language in the Agreement is modeled primarily on the language in the SPP OATT.

¹⁰ See sections 29.2(b)(6)-(7) of the CAISO tariff.

VI. Contents of Filing

In addition to this transmittal letter, this filing includes the following attachments:

- | | |
|--------------|--|
| Attachment A | The fully executed Agreement; and |
| Attachment B | A document showing the differences between the Agreement and the <i>pro forma</i> EIM Entity Agreement in red-line format. |

VII. Correspondence

Pursuant to Rule 203(b) of the Commission's Rules of Practice and Procedure,¹¹ the CAISO requests that all correspondence, pleadings, and other communications concerning this filing be served upon the following:

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¹¹ 18 C.F.R. § 385.203(b).

VIII. Conclusion

The CAISO requests that the Commission accept the Agreement effective October 30, 2018. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,

By: /s/ John C. Anders

Roger E. Collanton
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*Attorneys for the California Independent
System Operator Corporation*

Attachment A – Fully Executed Agreement
EIM Agreement with the
Balancing Authority of Northern California and the
California Independent System Operator Corporation

**CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

AND

Balancing Authority of Northern California

**EIM
ENTITY AGREEMENT**

EIM ENTITY AGREEMENT

THIS ENERGY IMBALANCE MARKET ENTITY AGREEMENT (“AGREEMENT”) is established this 28th day of August, 2018, and is accepted by and between:

(1) **The Balancing Authority of Northern California**, a joint powers authority (“JPA”) established pursuant to the laws of the State of California (“EIM Entity”),

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 Entity and the CAISO are hereinafter referred to as the “Parties.”

Whereas:

- A. The Parties named above operate Balancing Authority Areas.
- B. The EIM Entity is a JPA that, among other things, provides Balancing Authority services to its members in accordance with an operating agreement, whose certain members and other entities within the Balancing Authority Area may in turn provide transmission service to their customers pursuant to open access transmission tariffs (“OATT”), including balancing Energy services.
- C. The CAISO operates the Real-Time Market pursuant to the CAISO Tariff.
- D. The Sacramento Municipal Utility District (“SMUD”) is a BANC Member and third party transmission service provider within the BANC Balancing Authority Area that intends to enable Energy Imbalance Market services on its transmission system.
- E. Other BANC Members and the Western Area Power Administration – Sierra Nevada Region (“WAPA”), whose facilities are located within the BANC Balancing Authority Area, are not in a position to participate in the Energy Imbalance Market at this time and, therefore, the Parties intend this Agreement to solely define SMUD’s participation in the Energy Imbalance Market.

- F.** The EIM Entity understands that SMUD's participation must, at this time, be accounted for separately from WAPA and the other BANC Members within the EIM Entity Balancing Authority Area.
- G.** The Parties are entering into this Agreement to enable the EIM Entity to participate in the CAISO's Real-Time Market and to facilitate the provision of Energy Imbalance Market services within the EIM Entity Balancing Authority Area, including Real-Time transfers of Energy among the CAISO Balancing Authority Area and other EIM Entity Balancing Authority Areas.

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 unless modified below.
- (a) **Balancing Authority Area** as used in Section 29 of the CAISO Tariff shall mean the EIM Entity Balancing Authority Area as defined in this Agreement, unless the reference is to a Balancing Authority Area other than the Balancing Authority Area operated by the EIM Entity.
- (b) **BANC Member** means a party to the BANC Joint Powers Agreement as that agreement may be modified from time to time.
- (c) **EIM Entity Balancing Authority Area**, as used in its concatenated form in the CAISO Tariff or this Agreement, shall include only the SMUD transmission system that is located within the Balancing Authority Area of the EIM Entity and is represented by E-Tags, an area control error calculation, and revenue quality metering separate from the WAPA transmission system, which is also located within the Balancing Authority Area of the EIM Entity.
- (d) **EIM External Interties** as defined in the CAISO Tariff shall include the interties between the EIM Entity Balancing Authority Area and the WAPA transmission system located within the Balancing Authority Area of the EIM Entity.
- (e) **EIM Internal Interties** as defined in the CAISO Tariff shall include the interties between the EIM Entity Balancing Authority Area and the CAISO Balancing Authority Area or other EIM Entity Balancing Authority Areas.

- (f) **EIM Transmission Service Information** as defined in the CAISO Tariff shall include the transmission system information associated with the EIM Entity Balancing Authority Area.
- (g) **EIM Transmission Service Provider** as defined in the CAISO Tariff shall include the transmission system within the EIM Entity Balancing Authority Area.

1.2 Rules of Interpretation. The following rules of interpretation and conventions shall apply to this Agreement:

- (a) if and to the extent a matter is specifically addressed by a provision of this Agreement, the provision of this Agreement shall govern notwithstanding any inconsistent provisions of the CAISO Tariff;
- (b) if and to the extent this Agreement provides that a matter shall be determined in accordance with the applicable provisions of the CAISO Tariff, the applicable provisions of the CAISO Tariff shall govern;
- (c) the singular shall include the plural and vice versa;
- (d) the masculine shall include the feminine and neutral and vice versa;
- (e) “includes” or “including” shall mean “including without limitation”;
- (f) 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;
- (g) 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;
- (h) 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;
- (i) 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;
- (j) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;

- (k) any reference to a day, week, month or year is to a calendar day, week, month or year;
- (l) unless the context requires otherwise, “or” is used in the conjunctive sense; and
- (m) 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 ENTITY AND CAISO

- 2.1 Scope of Responsibilities.** The Parties are individually responsible for the reliable operation of their Balancing Authority Areas consistent with the Reliability Standards established by the Western Electricity Coordinating Council (“WECC”) and the North American Electric Reliability Corporation (“NERC”). Nothing in this Agreement is intended to change, supersede, or alter either Party's obligations to abide by NERC and WECC Reliability Standards.
- 2.2 Tariff Provisions.** The CAISO shall provide open access to the Real-Time Market in accordance with the terms of the CAISO Tariff.
- 2.3 EIM Entity Scheduling Coordinator.** The EIM Entity shall be represented by an EIM Entity Scheduling Coordinator to implement the provisions of this Agreement, which may be the EIM Entity or another entity certified by the CAISO to perform the functions of an EIM Entity Scheduling Coordinator.
- 2.4 EIM Transmission Service and Resource Information.** The EIM Entity shall provide information to the CAISO for Energy Imbalance Market purposes regarding the network topology of its 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 Entity will use reasonable efforts to provide accurate and complete information described in this section to the CAISO.
- 2.5 EIM Transmission Availability.** The EIM Entity shall make available for use in the Real-Time Market transmission capacity on within the EIM Entity Balancing Authority Area that is not otherwise encumbered, reserved, scheduled, or being used by SMUD, its transmission customers or by others and shall make arrangements with third party transmission service providers within the EIM Entity Balancing Authority Area that intend to enable Energy Imbalance Market services on their transmission systems to provide such transmission capacity on their systems for use in the Real-Time Market. The

EIM Entity shall provide the CAISO with real time information regarding the availability of transmission capacity for use in the Energy Imbalance Market as provided in the CAISO Tariff and Business Practice Manual for the Energy Imbalance Market.

- 2.6 EIM Entity Corrective Actions.** The EIM Entity may take corrective action to address an issue with Energy Imbalance Market implementation or operation consistent with Section 29 of the CAISO Tariff.
- 2.7 EIM Entity Non-Jurisdictional Status.** The CAISO acknowledges that the EIM Entity is an exempt entity as described in section 201(f) of the Federal Power Act, 16 U.S.C. 824(f) and this Agreement does not extend the Federal Energy Regulatory Commission's (FERC) jurisdiction over the EIM Entity, as that jurisdiction may or may not exist beyond the terms of the Agreement.

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 the EIM 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 Entity written notice of the default, unless the default is excused by reason of Uncontrollable Forces in accordance with Article IX of this Agreement. 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 EIM Entity. In the event that the EIM Entity no longer wishes to enable Energy Imbalance Market services within its Balancing Authority Area 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. The CAISO shall file a timely notice of termination with FERC after the termination date provided in the EIM Entity notice. Termination will be effective upon acceptance of the notice of termination by FERC; provided, however, that the EIM Entity's rights and obligations under this Agreement will terminate as of the termination date provided in the EIM Entity's notice of termination, regardless of any action or inaction by FERC with respect to any application by the CAISO to terminate this Agreement.

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 Entity's participation in the Energy Imbalance Market as of the effective date of such notice, provided that EIM 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 as interpreted in accordance with sections 1.2(a) and 1.2(b) of this Agreement. The EIM Entity shall abide by, and shall perform, all of the obligations of EIM Entities under the CAISO Tariff.

ARTICLE V

COSTS

5.1 Operating and Maintenance Costs. The EIM 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 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 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 Entity prior to the effective date of this Agreement, including any arrangement with third party Balancing Authorities.

ARTICLE VIII

LIABILITY

- 8.1 Liability for Damages.** Except as provided for in Section 13.3.14 of the CAISO Tariff and subject to Section 8.3, neither Party to this Agreement, nor any of its directors, officers, employees, consultants or agents nor any of its directors, officers, employees, consultants or agents, shall be liable to any other Party for any losses, damages (including consequential, incidental, punitive, special or indirect damages), claims, liability, costs, or expenses (including legal expenses) arising from the performance or non-performance of its obligations under this Agreement except to the extent that its grossly negligent performance of this Agreement (including intentional breach) results directly in physical damage to property owned, operated by, or under the operational control of any of the other Parties or in the death or injury of any person.
- 8.2 Exclusion of Certain Types of Loss.** Neither Party shall be liable to the other Party under any circumstances whatsoever for any punitive damages or consequential or indirect financial loss (including but not limited to loss of profit, loss of earnings or revenue, loss of use, loss of contract, or loss of goodwill) resulting from physical damage to property for which a Party may be liable under Section 8.1.
- 8.3 Indemnity.** The EIM Entity shall indemnify the CAISO and hold it harmless against all losses, damages, claims, liability, costs, or expenses (including legal expenses) arising from third party claims due to any acts or omissions of the EIM Entity, except to the extent that they result from intentional

wrongdoing or gross negligence on the part of the CAISO or of its officers, directors, or employees. The CAISO shall give written notice of any third party claims against which it is entitled to be indemnified under this Section to the EIM Entity concerned promptly after becoming aware of them. The EIM Entity who has acknowledged its obligation to provide a full indemnity shall be entitled to control any litigation in relation to such third party claims (including settlement and other negotiations) and the CAISO shall, subject to its right to be indemnified against any resulting costs, cooperate fully with the EIM Entity in defense of such claims.

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 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 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 FERC.

10.5 Consistency with State Laws and Regulations. The participation under this Agreement by the EIM Entity, which is not a public utility under the Federal Power Act, is subject in all respects to the laws and regulations of the state of its creation and to rate schedules adopted by its governing body under state law. FERC has exclusive jurisdiction to interpret this Agreement, and how it applies to the EIM Entity. However, in the event that the governing body of the EIM Entity, subject to state court review, determines that a conflict exists between the applicable state law, regulations, or rate schedules and the provisions of this Agreement as interpreted by FERC, such state law, regulations, or rate schedules shall, effective upon the CAISO's filing with FERC as described below, govern with respect to the application of this Agreement to the EIM Entity. Should the governing body of the EIM Entity determine that such a conflict exists, the EIM Entity must submit in writing to the CAISO documents notifying the CAISO of the governing body's determination of such a conflict and explaining both the conflict (including what state laws, regulations or rate schedules, and what provisions of this Agreement, are at issue) and what actions the governing board is taking in response to that determination. The CAISO will review the documents submitted by the EIM Entity and, if it determines that any modification to this Agreement that would become effective under this provision will not impair the efficiency of Energy Imbalance Market and will not make the EIM Entity's continued participation in Energy Imbalance Market unduly discriminatory or preferential, the CAISO will file the documents provided by the EIM Entity with the Commission. If the CAISO cannot make such a determination, then the CAISO will terminate this Agreement in accordance with Section 3.2.1 and the modification to this Agreement described in the documents will not take effect.

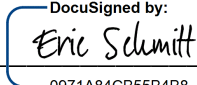
The EIM Entity shall notify the CAISO as soon as practicable after it identifies a potential conflict that it expects to ask its governing body to determine pursuant to this provision, and negotiate in good faith with the CAISO to modify this Agreement in a way that avoids the conflict.

- 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.
- 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 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.

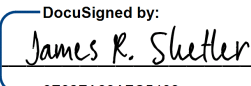


IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed on behalf of each by and through their authorized representatives as of the date hereinabove written.

California Independent System Operator Corporation

By:  _____
Name: DocuSigned by:
0971A84CB55B4B8...
Eric Schmitt _____
Title: VP, Operations _____
Date: 8/27/2018 _____

Balancing Authority of Northern California

By:  _____
Name: DocuSigned by:
6F62FA89A7C5403...
James R. Shetler _____
Title: General Manager _____
Date: 8/28/2018 _____

SCHEDULE 1

NOTICES
[Section 10.2]

EIM Entity

Name of Primary

Representative:	James R. Shetler
Title:	General Manager
Company:	Balancing Authority of Northern California
Address:	P.O. Box 15830 MS D109
City/State/Zip Code:	Sacramento, CA 95852-1830
Email Address:	jimshetler@thebanc.org
Phone:	(916)870-3774
Fax No:	

Name of Alternative

Representative:	C. Anthony Braun
Title:	General Counsel
Company:	Braun Blasing Smith Wynne, P.C.
Address:	915 L Street, Suite 1480
City/State/Zip Code:	Sacramento, CA 95814
Email Address:	braun@braunlegal.com
Phone:	(916)326-5812
Fax No:	(916)330-4337



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

Attachment B – Marked Agreement for Informational Purposes
EIM Agreement with the
Balancing Authority of Northern California and the
California Independent System Operator Corporation

**CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION**

AND

Balancing Authority of Northern California

**EIM
ENTITY AGREEMENT**

EIM ENTITY AGREEMENT

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

- (1) **The Balancing Authority of Northern California**, a joint powers authority (“JPA”) established pursuant to the laws of the State of California (“EIM Entity”),

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 Entity and the CAISO are hereinafter referred to as the “Parties.”

Whereas:

- A. The Parties named above operate Balancing Authority Areas.
- B. The EIM Entity is a JPA that, among other things, provides transmission service Balancing Authority services to its members in accordance with an operating agreement, whose certain members and other entities within the Balancing Authority Area may in turn provide transmission service to their customers pursuant to open access transmission tariffs (“OATT”), including balancing Energy services.
- C. The CAISO operates the Real-Time Market pursuant to the CAISO Tariff.
- D. The Sacramento Municipal Utility District (“SMUD”) is a BANC Member and third party transmission service providers within the EIM Entity BANC Balancing Authority Area that intendintends to enable Energy Imbalance Market services on theirits transmission systems.
- E. Other BANC Members and the Western Area Power Administration – Sierra Nevada Region (“WAPA”), whose facilities are located within the BANC Balancing Authority Area, are not in a position to participate in the Energy Imbalance Market at this time and, therefore, the Parties intend this Agreement to solely define SMUD’s participation in the Energy Imbalance Market.
- F. The EIM Entity understands that SMUD’s participation must, at this time, be accounted for separately from WAPA and the other BANC Members within the EIM Entity Balancing Authority Area.

G. The Parties are entering into this Agreement to enable the EIM Entity to participate in the CAISO's Real-Time Market and to ~~provide~~ facilitate the provision of Energy Imbalance Market services within the EIM Entity Balancing Authority Area, including Real-Time transfers of Energy among the CAISO Balancing Authority Area and other EIM Entity Balancing Authority Areas.

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 unless modified below.

(a) **Balancing Authority Area** as used in Section 29 of the CAISO Tariff shall mean the EIM Entity Balancing Authority Area as defined in this Agreement, unless the reference is to a Balancing Authority Area other than the Balancing Authority Area operated by the EIM Entity.

(b) **BANC Member** means a party to the BANC Joint Powers Agreement as that agreement may be modified from time to time.

(c) **EIM Entity Balancing Authority Area**, as used in its concatenated form in the CAISO Tariff or this Agreement, shall include only the SMUD transmission system that is located within the Balancing Authority Area of the EIM Entity and is represented by E-Tags, an area control error calculation, and revenue quality metering separate from the WAPA transmission system, which is also located within the Balancing Authority Area of the EIM Entity.

(d) **EIM External Interties** as defined in the CAISO Tariff shall include the interties between the EIM Entity Balancing Authority Area and the WAPA transmission system located within the Balancing Authority Area of the EIM Entity.

(e) **EIM Internal Interties** as defined in the CAISO Tariff shall include the interties between the EIM Entity Balancing Authority Area and the CAISO Balancing Authority Area or other EIM Entity Balancing Authority Areas.

(f) **EIM Transmission Service Information** as defined in the CAISO Tariff shall include the transmission system information associated with the EIM Entity Balancing Authority Area.

(g) EIM Transmission Service Provider as defined in the CAISO Tariff shall include the transmission system within the EIM Entity Balancing Authority Area.

1.2 Rules of Interpretation. The following rules of interpretation and conventions shall apply to this Agreement:

- (a) ~~if there and to the extent a matter is any inconsistency between specifically addressed by a provision of this Agreement, and the provision shall govern notwithstanding any inconsistent provisions of the CAISO Tariff, the CAISO Tariff will prevail to the extent of the inconsistency;~~
- (b) ~~if and to the extent this Agreement provides that a matter shall be determined in accordance with the applicable provisions of the CAISO Tariff, the applicable provisions of the CAISO Tariff shall govern;~~
- (cb) the singular shall include the plural and vice versa;
- (de) the masculine shall include the feminine and neutral and vice versa;
- (ed) “includes” or “including” shall mean “including without limitation”;
- (fe) 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;
- (gf) 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;
- (hg) 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;
- (ih) 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;
- (ij) unless the context otherwise requires, any reference to a Party includes a reference to its permitted successors and assigns;
- (kj) 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
- (m) 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 ENTITY AND CAISO

- 2.1 Scope of Responsibilities.** The Parties are individually responsible for the ~~efficient use and~~ reliable operation of their Balancing Authority Areas consistent 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”).~~ 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.~~
- 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 Entity shall have in effect provisions in its OATT to enable operation of the Real-Time Market in its Balancing Authority Area in accordance with the CAISO Tariff.~~
- 2.3 EIM Entity Scheduling Coordinator.** The EIM Entity shall be represented by an EIM Entity Scheduling Coordinator to implement the provisions of this Agreement, which may be the EIM Entity or another entity certified by the CAISO to perform the functions of an EIM Entity Scheduling Coordinator.
- 2.4 EIM Transmission Service and Resource Information.** The EIM Entity shall provide information to the CAISO for Energy Imbalance Market purposes regarding the network topology of its 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 Entity ~~is responsible for the accuracy will use reasonable efforts to provide accurate and completeness of this complete~~ information described in this section to the CAISO.
- 2.5 EIM Transmission Availability.** The EIM Entity shall make available for use in the Real-Time Market transmission capacity on ~~its system within the EIM Entity~~ Balancing Authority Area that is not otherwise encumbered, reserved, scheduled, or being used by SMUD, its transmission customers or by others and shall make arrangements with third party transmission service providers within ~~its~~ the EIM

Entity Balancing Authority Area that intend to enable Energy Imbalance Market services on their transmission systems to provide such transmission capacity on their systems for use in the Real-Time Market. The EIM Entity shall provide the CAISO with real time information regarding the availability of transmission capacity for use in the Energy Imbalance Market as provided in the CAISO Tariff and Business Practice Manual for the Energy Imbalance Market.

2.6 EIM Entity Corrective Actions. The EIM Entity may take corrective action, ~~subject to the provision of its OATT,~~ to address an issue with Energy Imbalance Market implementation or operation consistent with Section 29 of the CAISO Tariff.

2.7 EIM Entity Non-Jurisdictional Status. The CAISO acknowledges that the EIM Entity is an exempt entity as described in section 201(f) of the Federal Power Act, 16 U.S.C. 824(f) and this Agreement does not extend the Federal Energy Regulatory Commission's (FERC) jurisdiction over the EIM Entity, as that jurisdiction may or may not exist beyond the terms of the Agreement.

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 the EIM 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 Entity written notice of the default, unless the default is excused by reason of Uncontrollable Forces in accordance with Article IX of this Agreement. 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 EIM Entity. In the event that the EIM Entity no longer wishes to enable Energy Imbalance Market services within its Balancing Authority Area 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. The CAISO shall file a timely notice of termination with FERC after the termination date provided in the EIM Entity notice. Termination will be effective upon acceptance of the notice of termination by FERC; provided, however, that the EIM Entity's rights and obligations under this Agreement will terminate as of the termination date provided in the EIM Entity's notice of termination, regardless of any action or inaction by FERC with respect to any application by the CAISO to terminate this Agreement. 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 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 Entity's participation in the Energy Imbalance Market as of the effective date of such notice, provided that EIM 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 as interpreted in accordance with sections 1.2(a) and 1.2(b) of this Agreement. The EIM Entity shall abide by, and shall perform, all of the obligations of EIM Entities under the CAISO Tariff.

ARTICLE V

COSTS

- 5.1 Operating and Maintenance Costs.** The EIM 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 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 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 Entity prior to the effective date of this Agreement, including any arrangement with third party Balancing Authorities.

ARTICLE VIII

LIABILITY

- 8.1 Liability for Damages.** Except as provided for in Section 13.3.14 of the CAISO Tariff and subject to Section 8.3, neither Party to this Agreement, nor any of its directors, officers, employees, consultants or agents nor any of its directors, officers, employees, consultants or agents, shall be liable to any other Party for any losses, damages (including consequential, incidental, punitive, special or indirect damages), claims, liability, costs, or expenses (including legal expenses) arising from the performance or non-performance of its obligations under this

Agreement except to the extent that its grossly negligent performance of this Agreement (including intentional breach) results directly in physical damage to property owned, operated by, or under the operational control of any of the other Parties or in the death or injury of any person. 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 Entity and references to the CAISO Tariff shall be read as references to this Agreement.

8.2 Exclusion of Certain Types of Loss. Neither Party shall be liable to the other Party under any circumstances whatsoever for any punitive damages or consequential or indirect financial loss (including but not limited to loss of profit, loss of earnings or revenue, loss of use, loss of contract, or loss of goodwill) resulting from physical damage to property for which a Party may be liable under Section 8.1.

8.3 Indemnity. The EIM Entity shall indemnify the CAISO and hold it harmless against all losses, damages, claims, liability, costs, or expenses (including legal expenses) arising from third party claims due to any acts or omissions of the EIM Entity, except to the extent that they result from intentional wrongdoing or gross negligence on the part of the CAISO or of its officers, directors, or employees. The CAISO shall give written notice of any third party claims against which it is entitled to be indemnified under this Section to the EIM Entity concerned promptly after becoming aware of them. The EIM Entity who has acknowledged its obligation to provide a full indemnity shall be entitled to control any litigation in relation to such third party claims (including settlement and other negotiations) and the CAISO shall, subject to its right to be indemnified against any resulting costs, cooperate fully with the EIM Entity in defense of such claims.

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 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 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 FERC.
- 10.5 Consistency with ~~Federal State~~ Laws and Regulations.** The participation under this Agreement by the EIM Entity, which is not a public utility under the Federal Power Act, is subject in all respects to the laws and regulations of the state of its creation and to rate and schedules adopted by its governing body under state law. FERC has exclusive jurisdiction to interpret this Agreement, and how it applies to the EIM Entity. However, in the event that the governing body of the EIM Entity, subject to state court review, determines that a conflict exists between the applicable state law, regulations, or rate schedules and the provisions of this Agreement as interpreted by FERC, such state law, regulations, or rate schedules shall, effective upon the CAISO's filing with FERC as described below, govern with respect to the application of this Agreement to the EIM Entity. Should the governing body of the EIM Entity determine that such a conflict exists,

the EIM Entity must submit in writing to the CAISO documents notifying the CAISO of the governing body's determination of such conflict and explaining both the conflict (including what state laws, regulations or rate schedules, and what provisions of this Agreement, are at issue) and what actions the govern board is taking in response to that determination. The CAISO will review the documents submitted by the EIM Entity and, if it determines that any modification to this Agreement that would become effective under this provision will not impair the efficiency of Energy Imbalance Market unduly discriminatory or preferential, the CAISO will file the documents provided by the EIM Entity with the Commission. If the CAISO cannot make such a determination, then the CAISO will terminate this Agreement in accordance with Section 3.2.1 and modification to this Agreement described in the documents will not take effect. 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.

The EIM Entity shall notify the CAISO as soon as practicable after it identifies a potential conflict that it expects to ask its governing body to determine pursuant to this provision, and negotiate in good faith with the CAISO to modify this Agreement in a way that avoids the conflict.

- 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.
- 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 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.

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: _____

Balancing Authority of Northern California

By: _____

Name: _____

Title: _____

Date: _____

SCHEDULE 1

NOTICES

[Section 10.2]

EIM Entity

Name of Primary

Representative: James R. Shetler
Title: General Manager
Company: Balancing Authority of Northern California
Address: P.O. Box 15830 MS D109
City/State/Zip Code: Sacramento, CA 95852-1830
Email Address: jimshetler@thebanc.org
Phone: (916) 870-3774
Fax No:

Name of Alternative

Representative: C. Anthony Braun
Title: General Counsel
Company: Braun Blasing Smith Wynne, P.C.
Address: 915 L Street, Suite 1480
City/State/Zip Code: Sacramento, CA 95814
Email Address: braun@braunlegal.com
Phone: (916) 326-5812
Fax No: (916) 330-4337

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