

**Comments of Powerex Corp. on  
Draft Agreement and Request for Proposals for Transferred Frequency Response**

<b>Submitted by</b>	<b>Company</b>	<b>Date Submitted</b>
Mike Benn 604.891.6074	Powerex Corp.	May 9, 2016

Powerex appreciates the opportunity to submit comments on CAISO’s draft agreement and request for proposals (“RFP”) related to the procurement of Transferred Frequency Response (“TFR”). Powerex continues to strongly support CAISO’s decision to proceed with a competitive solicitation process to procure TFR through arrangements involving other balancing authorities (“BA”) in the Western Interconnection.

Powerex’s starting point for its review of the draft materials is its belief that the RFP and the TFR Agreement should, to the greatest extent possible:

- Be consistent with the language and requirements of NERC’s BAL-003-1 standard;
- Contain clear terms that both encourage competitive offers to provide TFR to the CAISO and facilitate CAISO’s ability to evaluate those offers;
- Create a binding obligation on the TFR seller that assures CAISO that the associated BA appropriately and fully satisfies NERC’s TFR-related requirements; and
- Correspondingly reduce—as a legal matter and as a reliability matter—the requirements necessary for CAISO to satisfy NERC’s BAL-003-1 standard.

Powerex believes that the draft agreement and RFP posted by CAISO provide a strong starting points to achieving these goals. Powerex focuses its comments below on four general areas where the language of the draft agreement and the RFP may create some confusion by not fully aligning with the language used in the BAL-003-1 standard. These issues, as well as a handful of more minor drafting issues, are discussed in summary fashion below. For CAISO’s convenience, Powerex has attached redline versions of the draft agreement and RFP that reflect Powerex’s comments and, where appropriate, suggested edits to provide greater clarity to prospective bidders.

**1. Performance Required Under BAL-003-1 R1**

BAL-003-1’s R1 requires each BA to demonstrate that its *median* performance over all NERC-identified events in a compliance year, as reflected in its Frequency Response Measure (“FRM”), is equal to or more negative than its Frequency Response Obligation (“FRO”). R1 does not specify an average level of performance, nor does it require a specific level of performance during any single event. A number of provisions in the draft agreement use informal terms that do not appear to align with that construct, and thus may be confusing to prospective bidders. For instance:

- The definition of BAL-003-1 contained in **Section 1.1** of the agreement refers to “average” frequency response performance, rather than BAL-003-1’s measurement of a BA’s median performance in the compliance year.
- **Section 4.4** requires that a seller of TFR demonstrate to CAISO on an ongoing basis that it has “met” its FRO for “every event for the Contract Term.” But the BAL-003-1 standard does not require that a BA meet its FRO during each event in a compliance year; instead, it compares each BA’s median performance over all identified events during the compliance year to its FRO. It may be useful for CAISO to provide further context on this section, and whether it is intended to create a “heightened” R1 performance standard for contracting parties, or whether it simply describes the type of data CAISO intends to use to evaluate ongoing performance capability during the contract term.

## **2. The TFR Obligation**

The TFR obligation is a compliance obligation, accurately described in Section 4.2 of the agreement. NERC documents specify that TFR does not involve an increase in, or a transfer of, some portion of a BA’s “FRO” – instead it involves addition or subtraction of a fixed frequency response quantity (*i.e.*, the TFR) from both BAs’ FRM, across the board during the compliance year. Several provisions in the draft agreement and RFP may benefit from clarifying edits, because they use informal terms that do not appear to fully reflect the NERC construct.

For example, language in **Section 4.4** and **Section 7** of the agreement do not make it clear that the seller’s TFR obligation is separate from, and not connected to, any demonstration that the seller’s BA “met its FRO.” Under the BAL-003 standard, a BA fulfills its TFR obligation (and thus fully performs under a contract for TFR) by entering the correct Contract Amount as a TFR adjustment on FRS Forms 1 and 2. That TFR adjustment effectively reduces the “providing” BA’s frequency response performance for each event, and the “providing” BA’s own compliance with R1 is evaluated using the remainder. Thus a “providing” BA could fail its own R1 because of its across-the-board TFR adjustment, but this in no way prevents the “receiving” BA (*i.e.*, CAISO) from applying the TFR toward satisfying its own BAL-003-1 requirements. In other words, even if the “providing” BA fails its own R1, it can still fully meet its TFR contractual obligation to the CAISO.

A similar issue arises in **Section 4.6** and **Section 8.4**, both of which do not make it clear that the sale of TFR will not result in an adjustment to the FRO of CAISO and the BA involved in the transaction. In fact, the sale of TFR will instead be reflected when calculating the BAs’ FRMs. This same issue appears to be reflected in some of the language of the RFP as well.

## **3. The Submission Of FRS Forms 1 And 2 Is The Manner In Which A Seller Satisfies Its End Of The Bargain**

TFR is an adjustment made to FRS Forms 1 and 2. For the upcoming compliance year, these forms will not be submitted until March 2018. The performance obligation CAISO is contracting to obtain (the TFR obligation) thus does not occur during the 12-month compliance year. It may

be useful to revisit and perhaps revise several provisions of the agreement to reflect the timing of the submission of FRS Forms 1 and 2. For example, [Section 2.1](#) of the agreement provides that the agreement will terminate at the end of the compliance year (*i.e.*, November 30, 2017). As a practical matter, this would mean that the agreement would terminate three months prior to the March 2018 date when CAISO expects TFR sellers to fulfill their NERC reporting obligations.

#### **4. Fixed, Full-Year TFR Commitment**

NERC specifies that any TFR adjustments applied in FRS Forms 1 and 2 by a BA must be applied for the entirety of the compliance year. Specifically, BAL-003-1 requires that any adjustments that a BA makes in calculating its Single Event Frequency Response Data (“SEFRD”), including TFR, must be made “for all events” in the compliance year. CAISO’s proposed termination provisions in particular may be misaligned with this full-year requirement. It does not appear that a TFR “partial performance” is possible on FRS Forms 1 and 2, and thus it is unclear what “performance” a seller can offer if a termination of the agreement occurs mid-year.

For example, the reference to CAISO’s “partial/pro rata” payment to the TFR seller if either party terminates in [Sections 2.2.2 and 2.2.3](#) appears to reflect an underlying assumption that a seller has satisfied its TFR compliance obligation to the CAISO in the “effective months of the agreement” prior to termination. This is not the case, as Powerex understands NERC’s instructions; in the event of a mid-year termination, the original seller will provide nothing to the CAISO at all, as its FRS Forms 1 and 2 will be submitted after termination, and hence will reflect 0 TFR for the compliance year. As a result, a “replacement” arrangement, negotiated in middle of a compliance year, would need to cover the entire compliance year, with the new seller engaging in a full year’s reporting of TFR on its FRS Forms 1 and 2. Revisions to this section may provide further clarity for all parties, if CAISO agrees that any replacement seller would be required to record a TFR adjustment for the CAISO’s benefit for the full contract term.

CAISO’s costs of replacement by third-party contract will thus always reflect a full-term replacement. As currently drafted, under [Section 2.2.3](#), a TFR seller who terminates mid-term will not make CAISO whole—the seller is only required to partially reimburse the CAISO (that is, to cover CAISO’s costs only in the remaining months of the term).

#### **5. Miscellaneous Drafting Issues**

In addition to the issues outlined above, Powerex wishes to highlight a number of minor issues that it identified when reviewing the draft agreement:

- CAISO is referenced in the preamble of the agreement and in [Section 5.1](#) as a “transferee BA.” However, in a number of locations, that term is used exclusively for CAISO’s counterparty, the seller of the TFR. Perhaps CAISO could be considered the “transferor BA.”
- The [recitals](#) of the agreement state that WECC will determine the FRO for each BA. However, BAL-003-1 appears to contemplate that this task will be performed by NERC.

- There appears to be some inconsistency between the scope of the indemnity provision set out in **Section 9.2** of the agreement and the limitation on liability contained in **Section 7.2** of the agreement. Additional edits would provide prospective buyers with greater clarity.
- There are a number of references to contract provisions and statutes that may contain typos or other inconsistencies. For instance, **Section 7.2** references Section 11.6 of the agreement, which does not appear to exist. Section 7.2 also refers to the Contract Disputes Act, which does not appear to be generally applicable.

As a final matter, Powerex notes that the current drafts do not reflect CAISO's understanding, as recounted in its filing of related TFR tariff provisions at FERC, that in certain circumstances the contracting parties may not be the actual balancing authorities. Powerex expects that any modifications required to the TFR Agreement to address such circumstances would be addressed in individual RFP responses to the CAISO.

**ATTACHMENT 1**  
**REVISED TFR AGREEMENT**

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**CALIFORNIA INDEPENDENT SYSTEM  
OPERATOR CORPORATION**

**AND**

**[TRANSFEREE BALANCING AUTHORITY]**

**TRANSFERRED FREQUENCY  
RESPONSE AGREEMENT**

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**THIS TRANSFERRED FREQUENCY RESPONSE AGREEMENT**

(“**AGREEMENT**”) is established this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, and is accepted by and between:

**[Full legal name]** (“Transferee Balancing Authority”), having its registered and principal executive office at [address],

and

**California Independent System Operator Corporation (“CAISO or Transferee Balancing Authority”)**, 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 Transferee Balancing Authority and the CAISO are hereinafter referred to as the “Parties” or individually as “Party.”

**Whereas:**

- A.** The Parties named above operate Balancing Authority Areas.
- B.** On January 16, 2014, the Federal Energy Regulatory Commission (“FERC”) approved Order No. 794, for the North American Electric Reliability Corporation (“NERC”) reliability standard BAL-003-1.
- C.** NERC uses regional coordinators to implement reliability standards and the entity for the west is the Western Electricity Coordinating Council (“WECC”).
- D.** NERC will determine on an annual basis the Frequency Response Obligation for each Balancing Authority in the Western Interconnection.
- E.** The Parties wish to enter into this Agreement to establish the terms and conditions for Transferred Frequency Response.

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

**1 Definitions**

**Commented [A1]:** Note: Question whether the CAISO wishes to use the same designation as its counterparty. Most of the contract is structured with the Transferee Balancing Authority being the non-CAISO party in the transaction. Suggest “Transferor” may be appropriate.

**Commented [A2]:** See Attachment A, BAL-003-1.1 (identifying the ERO as the entity that determines and posts each BA’s FRO).

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- 1.1 BAL-003-1.** A NERC reliability standard, as it may be amended from time to time, which requires each Balancing Authority in NERC to have, on an annual median basis, a Frequency Response performance calculated in MW/0.1 Hz that meets a minimum Frequency Response Obligation calculated as MW/0.1 Hz, which is its share of the required Frequency Response needed for the reliable operation of an Interconnection.
- 1.2 Balancing Authority.** The responsible entity that integrates resource plans ahead of time, maintains demand and resource balance within a Balancing Authority Area, and supports Interconnection frequency in real time.
- 1.3 Balancing Authority Area.** The collection of generation, transmission, and loads within the metered boundaries of the Balancing Authority. The Balancing Authority maintains load-resource balance within this area.
- 1.4 Frequency Response Obligation.** The Balancing Authority's share of the required Frequency Response needed for the reliable operation of an Interconnection. This will be calculated as MW/0.1Hz.
- 1.5 Frequency Response.** The sum of the change in demand, plus the change in generation, divided by the change in frequency, expressed in megawatts per 0.1 Hertz (MW/0.1 Hz).
- 1.6 Interconnection.** A geographic area in which the operation of Bulk Power System components is synchronized such that the failure of one or more of such components may adversely affect the ability of the operators of other components within the system to maintain Reliable Operation of the Facilities within their control. When capitalized, any one of the four major electric system networks in North America: Eastern, Western, ERCOT and Quebec.
- 1.7 Transferred Frequency Response.** A frequency response performance obligation under Applicable Reliability Criteria expressed in MW/0.1 Hz that a receiving Balancing Authority may acquire under an arrangement whereby another Balancing Authority increases its performance obligation by the same amount, or that a delivering Balancing Authority may provide under an arrangement whereby another Balancing Authority reduces its performance obligation by the same amount. . Transferred Frequency Response is a compliance instrument and there is no exchange of physical services between Balancing Authorities. Transferred Frequency Response is reported on applicable NERC/WECC forms, and applied consistently to each reported frequency disturbance event. On these forms, the delivering Balancing Authority increases its performance

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**Commented [A3]:** BAL-003-1.1's R1 requires each BA to achieve a Frequency Response Measure equal or greater than its FRO. The FRM, in turn, is equal to the **median (not the average)** of the Single Event Frequency Response Data values for each of the events selected by the ERO during the 12-month compliance period.

obligation and the receiving Balancing Authority decreases its performance obligation by the same amount. Transferred Frequency Response may reflect an aggregate amount from multiple contracts.

## 2. Term and Termination

### 2.1 Effective Date and Term

This Agreement shall be effective as of December 1, 2016, unless this Agreement is accepted for filing and made effective by the Federal Energy Regulatory Commission (“FERC”) on some other date, and shall continue in effect until November 30, 2017 (“Contract Term”) or terminated.

**Commented [A4]:** Note: Suggest modifying the contract term so that the contract remains in effect until each BA’s respective FRS Form 1 and 2 reporting obligation has been completed, in March/April 2018.

### 2.2 Termination

**2.2.2 Termination by the CAISO.** In the event of termination under this section by the CAISO, the CAISO shall be required to pay Transferee Balancing Authority for Transferred Frequency Response pro rata for the effective months of this agreement.

**Commented [A5]:** Note: This section should be numbered as 2.2.1.

**2.2.3 Termination by Transferee Balancing Authority.** In the event of termination under this section by Transferee Balancing Authority, Transferee Balancing Authority shall be required to provide thirty (30) days written notice to the CAISO and pay any damages as measured by the difference between the Contract Price for the Contract Amount described herein and the cost of a commercially reasonable replacement product plus any incidental expenses. The replacement cost to be paid by Transferee Balancing Authority may be calculated, as agreed by the Parties prior to the effective date of termination, based on the lesser of : (a) the simple average of transactable quotes for a replacement product for the remaining term of the Agreement; or (b) the actual costs incurred by the CAISO to replace the Transferred Frequency Response product from the date of termination by Transferee Balancing Authority until the date upon which the Agreement would have terminated in the absence of termination under this section; or (c) some other method as mutually agreed to by the CAISO and Transferee Balancing Authority. In no event shall Transferee Balancing Authority be liable for payment of any 1) damages or 2) fines and penalties levied for, or arising from, events that occur after the effective date of a termination under this section. In the event of termination by Transferee Balancing Authority, The CAISO shall

**Commented [A6]:** Note: Reference to partial payment or reimbursement of a partial-year “replacement” contract seems to not align with the BAL-003-1.1 requirement that the value of the adjustments each BA makes on its FRS Forms 1 and 2, including TFR, be “made for all events in an evaluation year.” This indicates that a mid-year termination will require CAISO to enter into a replacement contract that covers the full term of the compliance year, and not just the “remaining term” of the Agreement.

still be obligated to pay Transferee Balancing Authority pro rata for the effective months of this Agreement.

**2.2.4 General.** For entities subject to FERC jurisdiction, termination will be effective upon acceptance by FERC of notice of termination or thirty (30) days after the date of the notice of termination, if terminated in accordance with the requirements of FERC Order No. 2001 and related FERC orders. The CAISO shall timely file any required notice of termination with FERC. 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 with FERC within sixty (60) days after issuance of the notice of termination by Transferee Balancing Authority; or (2) the CAISO files the notice of termination with FERC in accordance with the requirements of FERC Order No. 2001. Any outstanding financial right or obligation or any other right or obligation that may have arisen under this Agreement, and any provision of this Agreement necessary to give effect to such right or obligation, shall survive such termination until satisfied.

**Commented [A7]:** Note that typically the supplier is responsible to file the notice of cancellation or termination.

**Commented [A8]:** Note: not sure that Order No. 2001 applies – typically its procedures apply only to standard form-of-service agreements and agreements entered into pursuant to a seller's market-based rate authorization. Order 2001, at P249.

### 3. Purpose

This Agreement sets forth the terms and conditions for Transferred Frequency Response from the CAISO to the Transferee Balancing Authority.

### 4. Transferee Balancing Authority Obligations

- 4.1** Transferee Balancing Authority shall provide the CAISO with \_\_\_\_\_MW/0.1 Hz (the "Contract Amount") of Transferred Frequency Response in accordance with terms of the BAL-003-1 during the Contract Term.
- 4.2** During the performance measurement period associated with the Contract Term, Transferee Balancing Authority shall include the Contract Amount during the Contract Term in Transferee Balancing Authority's NERC Frequency Response standard annual form event-by-event evaluations and reporting as required by BAL-003-1 or equivalent under the Transferred Frequency Response column or equivalent, (as the same may be updated or modified by NERC from time to time). As the Transferee

Balancing Authority, the Contract Amount will be reflected as a positive value.

**4.3** Transferee Balancing Authority and CAISO shall notify WECC of the Transferred Frequency Response.

**4.4** In order to permit CAISO to evaluate performance by Transferee Balancing Authority on an ongoing basis during the term of the Agreement, Transferee Balancing Authority shall within 30 calendar days of a request from the CAISO, provide the CAISO with data for every frequency disturbance event for the Contract Term to date sufficient to permit CAISO to evaluate Transferee Balancing Authority's performance during each such event, and shall be the same data required to be submitted under FRS Form 1 and FRS Form 2, found on the NERC website at <http://www.nerc.com/pa/stand/pages/project-2007-12-frequency-response.aspx>.

**Commented [A9]:** Suggested edits to this provision to clarify that the data requirements are in the nature of an "audit" response, rather than an additional contractual performance obligation that the Transferee BA perform at or above its FRO in every frequency disturbance event in the compliance year.

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**4.5** Transferee Balancing Authority and the CAISO agree to reasonably cooperate with one another in the event that either Party is subject to NERC regulatory inquiry or audit in connection with the Transferred Frequency Response that is the subject of this Agreement.

**4.6** Transferee Balancing Authority shall be responsible for all fines or penalties assessed by NERC or FERC for its non-compliance with BAL-003-1.

**Deleted:** non-compliance with BAL-003-1 based on evaluation of the Transferee Balancing Authority's adjusted Frequency Response Obligation including the Contract Amount during the Contract Term relative to Transferee Balancing Authority's Frequency Response Obligation.

## **5 CAISO Obligations**

**5.1** The CAISO shall include the Contract Amount during the Contract Term in its NERC Frequency Response standard form under the Transferred Frequency Response data column. As the Transferee Balancing Authority, the Contract Amount will be reflected as a negative value in the CAISO's annual NERC reporting form during the performance measurement period associated with the Contract Term.

**Commented [A10]:** Suggest removing language that is not needed to impose the stated obligation to pay all fines and penalties. The deleted language is not consistent with the BAL-003-1 standard, as it indicates that TFR is an "adjustment" to a BA's NERC-calculated FRO. As specified in BAL-003-1, TFR is an adjustment that changes the level of performance that both BAs must demonstrate to comply with R1. Each BA's FRO remains unchanged for the relevant compliance year.

**5.2** As full consideration to Transferee Balancing Authority for its performance under this Agreement and all costs in connection with such performance, the CAISO shall compensate Transferee Balancing Authority <insert compensation price> ("Contract Price"). Payment shall be made according to the terms described in Section 6.

## 6 Invoices and Payment

### 6.1 Invoices

Unless otherwise agreed, Transferee Balancing Authority will invoice CAISO for the Contract Price.

### 6.2 Payment Terms

CAISO will pay undisputed Invoices no later than thirty (30) days after receipt thereof. CAISO will notify Transferee Balancing Authority of any Disputed Invoices within thirty (30) days after receipt thereof. Disputed invoices will be paid no later than sixty (60) days after the dispute is resolved. All invoices must be submitted to CAISO the earlier of (1) sixty (60) days after the effective date of this Agreement or (2) prior to the January 10, 2017. CAISO is not required to pay late invoices. All invoices must be submitted to the attention of [Accounts Payable], California ISO, to 250 Outcropping Way, Folsom, CA 95630.

### 6.3 Billing Disputes

**6.3.1** If the CAISO disputes any portion of the invoice the CAISO shall provide written notice to Transferee Balancing Authority with a copy of the invoice noting the disputed amount. Notwithstanding whether any portion of the bill is in dispute, the CAISO shall pay the entire bill by the due date.

**6.3.2** If the Parties agree, or if after a final determination of a dispute, the CAISO is entitled to a refund of any portion of the disputed amount, then Transferee Balancing Authority shall make such refund with simple interest computed from the date of receipt of the disputed payment to the date the refund is made. The daily interest rate shall equal the Prime Rate (as reported in the Wall Street Journal or successor publication in the first issue published during the month in which payment was due) divided by 365.

## 7 FAILURE TO PERFORM

**7.1** If Transferee Balancing Authority fails to perform under Section 4 and as a result of that failure NERC/WECC initiate an audit or inquiry into the WECC Balancing Authorities reports to determine why the reported adjustments do not sum to zero across all submitted reports, then the CAISO shall be entitled to damages from incidental expenses and subject to any fines or penalties assessed by NERC/WECC as result of Transferee Balancing Authority's reporting error.

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**Commented [A11]:** Note: 7.1 is triggered only in the limited circumstance where the TFR adjustment values have been improperly entered on the FRS Forms 1 and 2, and an audit has been initiated specifically on that basis.

7.2 Should Transferee Balancing Authority fail R1 of BAL-003-1, or fail to perform its obligations under Section 4, and such failure directly results in the CAISO incurring fines or penalties imposed by FERC or NERC for non-compliance with R1 of BAL-003-1 on a final basis, and the non-compliance is directly caused by Transferee Balancing Authority's failure to perform its obligations under this agreement, Transferee Balancing Authority shall be liable for the amount of any such fines. The Parties agree that the CAISO shall not be entitled to recover any other damages, consequential or incidental under this Section, including but not limited to attorney's fees and filing fees required by NERC or FERC. In no circumstances shall Transferee Balancing Authority's liability extend to any regulatory fines described in this Section caused, in whole or in part, by (a) a third party not subject to the terms of this Agreement; (b) the CAISO's failure to perform any of its obligation under this contract, regardless of fault; (c) the CAISO's negligent or intentional conduct; or (d) the declaration of an uncontrollable force declared by either Party to this Agreement pursuant to Section 9.1 of this Agreement. Any disputes involving (a) through (d) shall be subject to Section 11.6 of this Agreement. If dispute resolution pursuant to Section 11.6 of this Agreement is not successful, then the dispute will be resolved as a contract dispute pursuant to the requirements of the Contract Disputes Act (41 U.S.C 601 – 613). However, any appeal or other legal proceeding challenging the amount or legality of the fine or penalty shall be as provided for by applicable law or regulation, as appropriate, depending on whether the fine and/or penalty was imposed by FERC or NERC.

**Commented [A12]:** Suggested edit to this sentence to better conform it to BAL-003-1. Neither BA will "adjust" its FRO as a result of the sale/purchase of TFR. The TFR is an adjustment that changes the level of performance that both BAs must demonstrate to comply with R1. Each BA's FRO remains unchanged for the relevant compliance year.

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**Commented [A13]:** Note: Perhaps intended to reference Section 10.5?

**Commented [A14]:** Note: Unclear that the Contract Disputes Act can be applied as a general matter, though it may be applied in disputes with some sellers. If applicable, confirm this is the correct/ current citation to the US Code (see 41 USC 7101-7109)

## 8 REPRESENTATIONS AND WARRANTIES

- 8.1 The CAISO is a California nonprofit public benefit corporation and that it has the full power and authority to execute, deliver and perform its obligations under this Agreement.
- 8.2 Transferee Balancing Authority is a Balancing Authority and has the full power and authority to contract for, execute, deliver and perform obligations under this Agreement.
- 8.3 Both the CAISO and Transferee Balancing Authority mutually represent and warrant that this Agreement has been duly authorized, executed and delivered by or on behalf of Transferee Balancing Authority and the CAISO, respectively, and is, upon execution and delivery, the legal, valid and binding obligation of each Party, enforceable against it in accordance with its terms.

8.4 Transferee Balancing Authority represents that to the best of its information and belief, entering into this Agreement will not cause it to fail to comply with R1 of NERC BAL-003-1.

9 Liability

9.1 Uncontrollable Forces

An Uncontrollable Force means any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond the reasonable control of a Balancing Authority which could not be avoided through the exercise of Good Utility Practice.

Neither the CAISO nor the Transferee Balancing Authority will be considered in default of any obligation under this Agreement or liable to the other for direct, indirect, and consequential damages if prevented from fulfilling that obligation due to the occurrence of an Uncontrollable Force. Neither the CAISO nor the Transferee Balancing Authority will be considered in default of any obligation under this Agreement to the extent caused by any act, or failure to act, of any intermediary Balancing Authority.

In the event of the occurrence of an Uncontrollable Force, which prevents either the CAISO or the Transferee Balancing Authority from performing any obligations under this Agreement, the affected entity shall not be entitled to suspend performance of its obligations in any greater scope or for any longer duration than is required by the Uncontrollable Force. The CAISO and the Transferee Balancing Authority shall each use its best efforts to mitigate the effects of such Uncontrollable Force, remedy its inability to perform, and resume full performance of its obligations hereunder.

9.2 Transferee Balancing Authority's Indemnity

Each Transferee Balancing Authority, to the extent permitted by law and except as limited by other provisions of this agreement, shall indemnify the CAISO and hold it harmless against all losses, damages, claims, liabilities, costs or expenses (including legal expenses) arising from any act or omission of the Transferee Balancing Authority in the performance of its obligations under Section 4 of this Agreement; provided however,

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**Commented [A15]:** Note: Section 9.2 appears to conflict with Section 7.2, which states that upon a seller's failure to fulfill its Section 4 obligations, seller will be responsible for any NERC or FERC fines, but that "that the CAISO shall not be entitled to recover any other damages, consequential or incidental under this Section, including but not limited to attorney's fees and filing fees required by NERC or FERC."

Suggested edits to clarify.

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that the Transferee Balancing Authority shall not be required to indemnify and hold harmless CAISO from any losses, damages, claims, liabilities, costs or expenses that result from the CAISO's default under this Agreement or gross negligence or intentional wrongdoing on the part of the CAISO or of its officers, directors or employees.

### **9.3 Liability To Third Parties**

Except as otherwise expressly provided herein, nothing in this Agreement shall be construed or deemed to confer any right or benefit on, or to create any duty to, or standard of care with reference to any third party, or any liability or obligation, contractual or otherwise, on the part of CAISO or the Transferee Balancing Authority.

### **9.4 Liability Between the Parties**

The Parties' duties and standard of care with respect to each other, and the benefits and rights conferred on each other, shall be no greater than as explicitly stated herein. Neither Party, its directors, officers, employees, or agents, shall be liable to the other Party for any loss, damage, claim, cost, charge, or expense, whether direct, indirect, or consequential, arising from the Party's performance or nonperformance under this Agreement, except for a Party's gross negligence, or willful misconduct.

## **10 Miscellaneous**

### **10.1 Notices**

Any notice, demand, or request which may be given to or made upon either Party regarding this Agreement shall be made in writing and unless otherwise stated or agreed shall be made to the representative of the other Party indicated in Schedule 2 and shall be deemed properly served, given, or made: (a) upon delivery if delivered in person, (b) five (5) days after deposit in the mail if sent by first class United States mail, postage prepaid, (c) upon receipt of confirmation by return facsimile if sent by facsimile, (d) upon receipt of confirmation by return e-mail if sent by e-mail or (e) upon delivery if delivered by prepaid commercial courier service. A Party must update the information in Schedule 2 relating to its address as that information changes. Such changes shall not constitute an amendment to this Agreement.

## 10.2 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 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.

## 10.3 Governing Law and Forum

Subject to Section 11.4, 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. The Parties irrevocably consent that any legal action or proceeding arising under or relating to this Agreement shall be brought in any of the following forums, as appropriate: a court of the State of California or 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. No provision of this Agreement shall be deemed to waive the right of any Party to protest, or challenge in any manner, whether this Agreement, or any action or proceeding arising under or relating to this Agreement, is subject to the jurisdiction of the Federal Energy Regulatory Commission.

## 10.4 Consistency with Federal Laws and Regulations

**10.4.1** Nothing in this Agreement shall compel any person or federal entity to: (1) violate federal statutes or regulations; or (2) in the case of a federal agency, to exceed its statutory authority, as defined by any applicable federal statutes, regulations, or orders lawfully promulgated thereunder. If any provision of this Agreement is inconsistent with any obligation imposed on any person or federal entity by federal law or regulation to that extent, it shall be inapplicable to that person or federal entity. No person or federal entity shall incur any liability by failing to comply with any provision of this Agreement that is inapplicable to it by reason of being inconsistent with any federal statutes, regulations, or orders lawfully promulgated thereunder; provided, however, that such person or federal entity shall use its best efforts to comply with the CAISO Tariff to the

extent that applicable federal laws, regulations, and orders lawfully promulgated thereunder permit it to do so.

**10.4.2** If any provision of this Agreement requiring any person or federal entity to give an indemnity or impose a sanction on any person is unenforceable against a federal entity, the CAISO shall submit to the Secretary of Energy or other appropriate Departmental Secretary a report of any circumstances that would, but for this provision, have rendered a federal entity liable to indemnify any person or incur a sanction and may request the Secretary of Energy or other appropriate Departmental Secretary to take such steps as are necessary to give effect to any provisions of this Agreement that are not enforceable against the federal entity.

#### **10.5 Dispute Resolution**

All disputes arising out of or in connection with this Agreement whereby relief is sought by or from the CAISO shall be settled in accordance with the provisions of Article 13 of the CAISO Tariff, except that references to the CAISO Tariff in such Article 13 of the CAISO Tariff shall be read as references to this Agreement.

#### **10.6 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.

**10.7 Section Headings**

Section headings provided in this Agreement are for ease of reading and are not meant to interpret the text in each Section.

**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 are subject to FERC approval shall not take effect until FERC has accepted such amendments for filing and has made them effective. Nothing contained herein shall be construed as affecting in any way the right of the CAISO or the Transferee Balancing Authority 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; 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 first written above.

**California Independent System Operator Corporation**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**[Full legal name of Transferee Balancing Authority ]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SCHEDULE 2**

**NOTICES**

**[Section 11.2]**

**Transferee Balancing Authority**

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

**ATTACHMENT 2**

**REVISED TFR RFP**



California ISO

**California Independent System Operator  
Corporation**

**Request for Proposal**

Transferred Frequency Response

**Submittal Deadlines:**

*Friday, July 1, 2016*

*Time: 11:59pm Pacific Daylight Time*

**Submit Proposals to:**

Joanne Bradley

[JBradley@caiso.com](mailto:JBradley@caiso.com)

916-608-1060

California ISO

250 Outcropping Way,

Folsom, CA 95630

## Introduction

In January 2014, the Federal Energy Regulatory Commission (“FERC”) approved Reliability Standard BAL-003-01 that was submitted by the North American Electric Reliability Corporation (“NERC”). Among other things, this standard requires Balancing Authorities to meet an annual frequency response measure, compliance with this requirement begins December 1, 2016. This standard requires each Balancing Authority or reserve sharing group to demonstrate that it meets the required measure through the submission of a compliance form each year after the conclusion of the compliance year to NERC/Western Electricity Coordinating Council (“WECC”). These NERC/WECC forms reflect that compliance with the obligation can be met through “Transferred Frequency Response” which is a compliance instrument that allows one Balancing Authority to increase its frequency response obligation and another Balancing Authority to reduce its frequency response obligation for purposes of reporting compliance with the standard. The California Independent System Operator Corporation (“CAISO”) is seeking to purchase up to 100 MW per 0.1 Hz Transferred Frequency Response capability to meet its frequency response obligation for the compliance period starting on December 1, 2016 and continuing up to and including November 30, 2017.

The CAISO is defining Transferred Frequency Response as a Frequency Response performance obligation adjustment expressed in MW per 0.1 Hz that the CAISO may acquire from another Balancing Authority pursuant to a contract. The CAISO is proposing to report Transferred Frequency Response annually on applicable NERC/WECC forms by reducing the Transferred Frequency Response from its Frequency Response performance obligation in each reported frequency disturbance event. CAISO’s Transferred Frequency Response adjustment reported on its forms may reflect an aggregate amount of frequency response from contracts with multiple Balancing Authorities. The CAISO expects its frequency response performance rate reported for each frequency disturbance event expressed in MW per 0.1 Hz will be evaluated for compliance with the Applicable Reliability Criteria including the Transferred Frequency Response adjustment.

Under the standard, NERC will determine in October the frequency response obligation of each Balancing Authority in the WECC. Based on the CAISO’s obligation which is anticipated to be approximately 258 MW/0.1 Hz the CAISO intends to transfer, pursuant to a contract or contracts, up to 100 MW/0.1 Hz Frequency Response performance obligation to another one or more Balancing Authorities.

The following table illustrates an example of the CAISO’s expectations for performance in varying frequency disturbance events.

	CAISO	BA 1
NERC assigned Frequency Response Obligation (FRO)	250 MW/0.1 Hz	100 MW/ 0.1 Hz
Transferred Frequency Response (TFR)	- 100 MW/0.1 Hz	+ 100 MW/0.1 Hz
Median BA Frequency Response Measure necessary to meet FRO	150 MW/ 0.1 Hz	200 MW/ 0.1 Hz

**Deleted:** Obligation

**Deleted:** Obligation

**Deleted:** Assigned

**Deleted:** Resulting NERC Obligation

**Deleted:** .

Examples of Disturbance Event Obligation		
0.1 Hz Frequency Drop	150 MW	200 MW
0.2 Hz Frequency Drop	300 MW	400 MW

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**Terms:**

- Product - Transferred Frequency Response
- Eligible Provider – Balancing Authority in the WECC or its authorized seller, as discussed further below
- Quantity – 100 MW/0.1Hz (Total amount which can be procured through multiple contracts)
- Term (compliance period) – December 1, 2016 – November 30, 2017
- Price - \$/compliance period

**Timeline: (the following is a sample timeline based that still needs to be refined)**

- July 1, 2016 – Request For Proposal responses are due to CAISO
- Mid-July 2016 – CAISO announces successful bidder(s)
- Mid-July 2016 – Transferred Frequency Response Agreement tendered to successful bidder(s)
- September 15, 2016- Agreement finalized
- October 1, 2016 – Executed agreement filed with FERC with a December 1, 2016 effective date

**Bidding Instructions:**

- A bidding template is provided as Attachment A to this Request for Proposal and bids must be submitted using this template.
- In addition to the bidding template, submission of Proof of Capability for the past three years is required through submitting the prior three years of NERC forms, Frequency Response Standard Form.
- Submit Bids and Proof of Capability by midnight on July 1, 2016 to:

Joanne Bradley  
[jbradley@caiso.com](mailto:jbradley@caiso.com)

**Eligibility:**

- Bids will not be considered from single generator Balancing Authorities

**Evaluation Criteria:**

- Demonstration of ability to provide the amount of Frequency Response Transfer
- Least Cost

**Terms and Conditions of Service:**

- A draft agreement is provided as Attachment B and the bidder must be willing to execute the agreement as drafted. If the bidder does not agree with the terms and conditions in the draft agreement, then the bidder must address in their bid the following:
  - What term or condition bidder disagrees with?
  - Why does the bidder disagree with the term or condition?
  - What does the bidder propose as an alternative?
  - Are there other terms and conditions the bidder would need in the agreement if selected? If yes, please provide those terms and conditions.

## Attachment A

### Transferred Frequency Response Bidding Template

Please submit this form along with proof of capability for the past three years to Joanne Bradley at [JBradley@caiso.com](mailto:JBradley@caiso.com) by 11:59 pm Pacific Daylight Time on July 1, 2016. For any questions please contact Joanne Bradley at 916-608-1060.

Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Contact Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Alternative Phone Number (optional): \_\_\_\_\_

E-mail Address: \_\_\_\_\_

**Bid Quantity** (MW/0.1 Hz): \_\_\_\_\_

**Bid Price** (\$/compliance period): \_\_\_\_\_

Comments on draft Transferred Frequency Response Agreement:

\_\_\_\_\_