

Auction-Specific Bilateral Transactions

Problem / Opportunity Statement

An auction specific bilateral transaction (also referred to as a “Bilateral Capacity Transaction Transferring Title to Capacity But Not Transferring Performance Obligations” in Tariff, Attachment DD, section 4.6(b)) is a bilateral transaction between two PJM market participants for the purchase and sale of capacity that has cleared an RPM Auction, but where performance in the Delivery Year has yet to commence. This type of bilateral allows for the sale of a specified MW amount of capacity from a Capacity Market Seller for a specific Generation Capacity Resource that has cleared a RPM Auction to a buyer, who obtains the rights and title to the cleared capacity. This buyer in turn becomes the new Capacity Market Seller of this cleared capacity to PJM Settlement and accordingly receives directly from PJM Settlement the revenues associated with the cleared capacity.

Under this type of transaction, however, the original Capacity Market Seller under the bilateral retains, in the first instance, the performance obligation including any related deficiency charges arising out of such performance obligation. Ultimately, however, the new Capacity Market Seller under the bilateral indemnifies PJM Settlement and other PJM Members for any failure of the original Capacity Market Seller to meet its performance obligations.

PJM received several thought-provoking questions from market participants concerning the implementation details of auction specific bilateral transactions, particularly with respect to how nonperformance charges and bonus payments will be assessed and allocated, respectively, under PJM's new Capacity Performance construct. After reviewing the Tariff to determine how to address the questions raised, PJM has concluded its current Tariff does not clearly address several important details related to bonus payments, and indemnification (as may be impacted by replacement transactions). Until these issues can be resolved through Tariff revisions, PJM strongly cautions Members that in PJM's opinion there is a significant degree of ambiguity concerning the nature of auction specific bilateral transactions and attendant risks as to how such transactions might be treated in litigation or bankruptcy. These risks may impact not only the parties to these transactions, but also potentially PJM Settlement.

PJM issued a statement on this on February 5, 2016 and initiated a discussion at PJM's February 10, 2016 Market Implementation Committee meeting. PJM believes further discussion regarding clarifying revisions through the stakeholder process is needed.