



February 5, 2016

**Statement Concerning Auction Specific Bilateral Transactions (Tariff, Attachment DD,
Section 4.6(b))**

An auction specific bilateral transaction (also referred to as a “Bilateral Capacity Transaction Transferring Title to Capacity But Not Transferring Performance Obligations”) is a bilateral transaction between two PJM market participants for the physical purchase and sale of capacity that has cleared a capacity market 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 specific Generation Capacity Resource that has cleared a capacity market auction to a buyer, who obtains the rights and title to the cleared capacity. This buyer in turn assumes the role of 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 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 buyer under the bilateral in its capacity as the Capacity Market Seller indemnifies PJM Settlement and PJM Members for any failure of the cleared capacity to meet its performance obligations.

In January 2016, PJM received several thoughtful questions from market participants concerning the implementation details of auction specific bilateral transactions, particularly with respect to how non-performance 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 believes discussion regarding clarifying revisions through the stakeholder process is needed in the near future, and will hold an initial discussion of the issues at PJM’s February 10, 2016 Market Implementation Committee meeting.

Sincerely,

Stu Bresler, Sr. Vice President, Markets
Vince Duane, Sr. Vice President & General Counsel