

CENTRAL ELECTRICITY REGULATORY COMMISSION

The Draft Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform

Introduction

The Commission notified the Central Electricity Regulatory Commission (Power Market Regulations) 2021 on 15th February, 2021 that came into effect from 15th August, 2021. Part-6 of PMR 2021 specifies the provisions relating to the Over the Counter (OTC) Platform. Clause (1) of Regulation 44 of PMR 2021 requires the Commission to notify the guidelines for registration and filing application for establishing and operating OTC Platform. The relevant provision reads as under:

“44 (1) Application for grant of registration to establish and operate OTC Platform shall be filed online on the website of the Commission, in accordance with the guidelines for registration and filing application as may be notified.”

In pursuance of the aforesaid provisions of PMR 2021, the Commission makes the following Guidelines:

1. Title and Applicability

- 1.1 These Guidelines may be called “the Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform”.
- 1.2 These Guidelines shall come into effect from the date of their notification in the official gazette.
- 1.3 These Guidelines shall apply to the OTC Platform, the OTC Platform Operator and participants on OTC Platform.

2. Scope of the Guidelines

These Guidelines seek to describe: (a) eligibility criteria; (b) procedure for filing application and grant of registration for establishing and operating OTC Platform; (c)

operational and risk management framework; and (d) submission of information by the OTC Platform.

3. Definitions and Interpretation

In these Guidelines, unless the context otherwise requires:

- 3.1** “**Act**” means the Electricity Act, 2003 (36 of 2003), as amended from time to time;
- 3.2** “**Business Rules**” means the Business rules of the OTC Platform;
- 3.3** “**Commission**” means the Central Electricity Regulatory Commission constituted under Section 76 of the Act;
- 3.4** “**Net worth**” means aggregate value of the paid-up equity share capital and compulsorily convertible preferential shares and free reserves (excluding reserves created out of revaluation and write back of depreciation) reduced by (i) the aggregate value of accumulated losses (ii) deferred expenditure (including miscellaneous expenses) not written off (iii) loans and advances to the Associates and (iv) investments made in the Associates;
- 3.5** “**Over the Counter (OTC) Platform**” is an electronic platform for exchange of information amongst the buyers and sellers of electricity;
- 3.6** “**Over the Counter (OTC) Platform Operator**” means an entity registered to establish and operate the OTC Platform under PMR 2021 read with these Guidelines;
- 3.7** “**Payment of Fees Regulations**” means the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012, as amended from time to time or subsequent re-enactment thereof;
- 3.8** “**Power Market Regulations**” or “**PMR 2021**” means the Central Electricity Regulatory Commission (Power Market) Regulations, 2021, as amended from time to time; and
- 3.9** “**Relative**” shall have the same meaning as assigned to it in the Companies Act, 2013.
- 3.10** Save as aforesaid and unless repugnant to the context or if the subject-matter otherwise requires, words and expressions used in these Guidelines and not defined, but defined in the Act or PMR 2021 or other regulations made thereunder by the Commission shall have the meaning assigned to them in the Act or PMR 2021 or such other regulations made by the Commission.

4. Objectives of OTC Platform

The objectives of the OTC Platform as provided under Regulation 41 of PMR 2021 shall be to:

- (i) provide an electronic platform with the information of potential buyer and seller of electricity;
- (ii) maintain a repository of data related to buyers and sellers and provide such historical data to market participants; and
- (iii) provide such services as advanced data analysis tools to market participants.

5. Requirement of Registration for operating OTC Platform

No entity shall operate an OTC Platform unless it has been granted registration to establish and operate such platform by the Commission under PMR 2021 read with these Guidelines.

6. Eligibility Criteria for Registration of OTC Platform

An applicant seeking grant of registration for establishing and operating an OTC Platform shall be required to fulfil the following criteria:

6.1 General Criteria

- (i) The applicant shall be a company incorporated in India under the Companies Act, 2013.
- (ii) Shareholding by non-residents, if any, in the applicant company seeking registration as an OTC Platform Operator shall conform to all applicable laws and regulations.
- (iii) The applicant company shall have key managerial personnel with experience of at least five years in operating or developing technology services or products, preferably for power sector.

Explanation: The expression 'key managerial personnel' for the purpose of this clause shall have the same meaning as assigned to it in the Companies Act, 2013.

(iv) The following entities shall not be eligible to make application for establishing and operating an OTC Platform (Negative List):

- (a) a power exchange or any of its associates;
- (b) trading licensee or any of its associates; and
- (c) grid connected entities such as generating companies, distribution licensees, open access consumers or any person acting on their behalf, or any of their associates.

6.2 Technological criteria

(i) The applicant shall own and maintain robust technology infrastructure with a high degree of reliability, availability, scalability, and security in respect of its systems, data and network, appropriate to support its operations and manage the associated risks.

(ii) The applicant's technological infrastructure shall be capable of disseminating transaction information on a real-time basis or near real-time basis.

6.3 Financial criteria

(i) In terms of sub-clause (a) of clause (1) of Regulation 43 of PMR 2021, the minimum Net worth of the applicant shall be Rs.1 (one) Crore as on any date falling within 30 days immediately preceding the date of filing the application for grant of registration.

(ii) The Company or any of its Associates, or partners, or promoters, or Directors have not been declared insolvent.

7. Application Form and Documents for Registration to Establish and Operate an OTC Platform

The application shall be filed online as per **Form-I** appended to these Guidelines along with documents mentioned therein.

8. Procedure for Filing Application

- 8.1** Application for grant of registration to establish and operate OTC Platform shall be filed online (**Form-I**) through e-filing portal of the Commission along with the application fee as may be specified in the Payment of Fee Regulations.
- 8.2** The applicant shall publish the application along with details of the proposed OTC platform on its website as per **Form-II** inviting public objections and suggestions up to a period of 30 days from the date of publication of such notice on the website.
- 8.3** The applicant shall submit before the Commission, its reply on the objections and suggestions received.

9. Grant of Registration

- 9.1** The Commission may, after consideration of the proposal, and making such inquiries as may be considered necessary, either grant registration (as per **Form-III**) subject to such conditions as deemed fit for establishing and operating an OTC platform or reject the application of the applicant:

Provided that the Commission, before rejecting the application, shall give reasonable opportunity to the applicant of being heard.

- 9.2** In terms of clause (3) of Regulation 44 of PMR 2021, the registration of an OTC Platform shall continue to be in force for a period of **five (5)** years from the date of grant of registration unless such registration is revoked or cancelled earlier.
- 9.3** The registration granted to an entity to operate an OTC Platform is not transferrable.
- 9.4** The Commission may, on an application filed by the OTC Platform Operator, and after making such inquiries as may be necessary, renew registration for a further period of 5 years at a time.

10. Annual Registration Charge

- 10.1** An OTC Platform Operator shall pay annual registration charge as may be specified in the Payment of Fees Regulations.
- 10.2** The annual registration charge shall be payable by 30th April of every year.

11. Conditions of Registration

The Registration granted shall, inter-alia, be subject to the following conditions, namely:

- (i) the OTC Platform Operator shall abide by the provisions of the Act, PMR 2021, these Guidelines and other applicable laws; and
- (ii) the OTC Platform Operator shall inform the Commission in writing, whenever there is any material change in the information already submitted by the OTC Platform Operator to the Commission.

12. Operating Framework

The OTC Platform Operator shall ensure that the OTC Platform operates according to its Business Rules. The OTC Platform Operator shall adhere to the following requirements:

- (i) Participation: An OTC Platform Operator shall:
 - (a) Have objective, fair and transparent criteria for participation on its OTC Platform.
 - (b) Undertake due diligence at the time of on-boarding of participants and maintain all relevant information about them.
 - (c) Identify participants on its OTC Platform uniquely using Legal Entity Identifier (LEI) or Permanent Account Number (PAN).
- (ii) Access to Information: An OTC Platform Operator shall make available analytics services, information such as historical trade analysis, or such other information, to all participants in a fair and non-discriminatory basis.

13. Risk Management Framework

13.1 An OTC Platform Operator shall put in place a comprehensive risk management framework covering all aspects of its operations. It shall ensure that the risks associated with its operations are identified properly and managed prudently.

13.2 An OTC Platform Operator shall:

- (a) Ensure access control for participants on its OTC Platform and prevent unauthorised access to its OTC Platform.

(b) Not engage in financial or infrastructure services, where there is a likelihood of conflict of interest.

(c) Ensure that operation of the OTC Platform is always in compliance with the conditions of registration and with legal and regulatory requirements.

13.3 The OTC Platform shall not engage in the negotiation, execution, clearance or settlement of the contracts.

13.4 The OTC Platform shall maintain neutrality without influencing the decision making of the participants in any manner.

14. Dispute resolution

An OTC Platform Operator shall put in place an arrangement to address any dispute that may arise or are likely to arise between its members.

15. Surveillance

An OTC Platform Operator shall implement systems and controls to ensure that participants participate with fairness and integrity and monitor the activities on a real time as well as post facto basis.

16. Transparency

An OTC Platform Operator shall disclose conflict of interest, if any, arising from participation of related parties or group agencies to the Commission.

17. Preservation, Access and Reporting of Data

17.1 All data relating to the activities on the OTC Platform Operator shall be maintained in easily retrievable media for at least 10 years. Without prejudice to the minimum requirement for storage of data, the data sought for any investigation by the Commission or any other authority as required under the Indian laws or regulations shall be maintained for three years from the date of completion of the investigation.

17.2 The OTC Platform Operator shall:

- (i) provide any data or information as required by Commission in the format and within the timeframe as may be required by the Commission;
- (ii) submit copies of Annual Reports including Directors' report, Auditors' report, Balance Sheet and Profit and Loss Account along with all the Schedules and notes to the accounts, not later than nine months after the close of the respective financial year; and
- (iii) inform the Commission of any event(s) resulting in disruption of activities or market abuse, if observed, without undue delay.

18. Revocation of Registration

18.1 The Commission may revoke the registration if the OTC Platform Operator is found to have violated the provisions of PMR 2021 or these Guidelines or any other rules or regulations or conditions of registration:

Provided that the Commission shall before revoking the registration for OTC Platform shall give the OTC Platform Operator a reasonable opportunity of being heard.

18.2 In case of rejection of the application of renewal received from the existing operators or revocation of registration by the Commission, the OTC Platform Operator shall stop the OTC Platform operations within 90 days unless the Commission has indicated any other specific date in the written communication to stop operations of the OTC Platform.

18.3 In case of revocation of registration of an OTC Platform Operator, the registration in original shall be surrendered to the Commission.

FORM-I

Application form for grant of Registration for OTC Platform

General Information

1. Name of the applicant:
2. Address:
 - (a) Registered office address:
 - (b) Address for correspondence:
 - (c) Website address:
3. Name, Designation and Address of the contact person:
4. Contact Tel. Nos.:
5. Fax No.:
6. E-mail ID:
7. Status of the applicant:
(Whether a company incorporated under the Companies Act, 1956 or 2013)
8. Place of Incorporation/Registration:
9. Year of Incorporation/Registration:
10. Clause of the Memorandum of Association which authorizes to set up & operate an OTC Platform (Extract the relevant portion).
11.
 - (a) Authorised share capital
 - (b) Issued share capital
 - (c) Subscribed share capital
 - (d) Paid up share capital

Note: Copies of the following documents shall be enclosed

 - (a) Certificate of incorporation/registration
 - (b) Certificate for commencement of business, where applicable
 - (c) Memorandum of Association and Articles of Association
 - (d) Original power of attorney in favour of the signatory to commit the Applicant
 - (e) Copy of PAN, TAN and ITR for previous year
12.
 - (i) Net worth as per the last year's audited accounts prior to the date of application (if applicable).
 - (ii) Net worth on the date of preparation of the special balance sheet in accordance with clause 6.3(i) of these guidelines and accompanying the application.
13. Details of shareholding as on the date of making application

(Give details of each of the shareholders holding 5% and above of the shares of the applicant directly or with relatives)

- (a) Name of the shareholder
- (b) Citizenship
- (c) Residential status
- (d) No. of shares held
- (c) Percentage holding of total paid up capital of the company

14. (i) Annual turnover as per the audited accounts for the last FY prior to the date of application (if applicable).

(ii) Turnover on the date of preparation of the special balance sheet in accordance with clause 6.3(i) of these guidelines and accompanying the application.

Enclosures: List of Documents to be uploaded with the application

An applicant shall submit a brief description of OTC Platform for which authorization is sought, covering the details including but not limited to the following:

- (i) Details of services offered
- (ii) Key organizational structure
- (iii) Key processes
- (iv) Indicative project plan
- (v) Organizational and Managerial capability of the applicant: The applicant is required to enclose proof of his Organizational and Managerial capability, in terms of these regulations, in form of his organizational structure and curriculum vitae of key and senior executives, proposed office and communication facilities, etc.
- (vi) Approach and Methodology: The Applicant is required to describe approach and methodology for establishment of the arrangements as proposed by him.
- (vii) Affidavit as per **Form-IV**

Place: (Signature of the Applicant or the Authorized Person)

Date:

Name of the Applicant (in Bold letters)

Registered Office/Corporate Office Address (in Bold letters)

1.	<p>The person above-named, a company incorporated under the Companies Act, 2013 (the applicant) has made an application for grant of registration of OTC platform before the Central Electricity Regulatory Commission, New Delhi. The necessary details in respect of the applicant are given hereunder:</p> <ul style="list-style-type: none"> i) Authorized, issued, subscribed and paid up capital. ii) Financial and technical strength. iii) Profile of the key managerial personnel. iv) Net worth as on the date of application. v) A statement whether the applicant is authorized to set up & operate an OTC Platform under the Memorandum of Association or any other document. vi) Details of cases, if any, where the applicant or any of his associates, or partner, or promoters, or Directors has been declared insolvent and has not been discharged. vii) Details of cases, if any, in which the Applicant or any of its Associates or partners or promoters or Directors have been convicted of an offence involving moral turpitude, fraud or any economic offence during the previous three years preceding the year of making the application and the year of making the applicant and the date of release of the above person from imprisonment, if any, consequent to such conviction. <p><u>Name of the person</u> <u>Relationship with the Applicant</u> <u>Nature of offence</u> <u>Date of conviction</u></p>
2.	<p>The application made and other documents filed before the Commission are available for inspection by any person withGive name, designation, address and telephone number of the person with whom the application can be inspected).</p>
3.	<p>The application made and other documents filed before the Commission have been posted on _____ (Give address of the website on which the application is posted).</p>
4.	<p>Objections or suggestions, if any, on the application made before the Commission may be sent to the Secretary, Central Electricity Regulatory Commission (Give the address where office of the Commission is situated) within 30 days of publication of this notice, with a copy to the applicant.</p>
5.	<p>No objections or suggestions shall be considered by the Commission if received after expiry of 30 days of publication of this notice.</p>

Place:

Name and Designation of

Date:

the Authorised Signatory

FORM-III

CENTRAL ELECTRICITY REGULATORY COMMISSION

REGISTRATION OF OTC PLATFORM

1. The Central Electricity Regulatory Commission (hereinafter referred to as 'the Commission'), in exercise of the powers conferred under the Electricity Act, 2003 (hereinafter referred to as 'the Act'), hereby grants this registration as an OTC Platform Operator having its registered office situated at _____ in the area _____ subject to the terms and conditions contained in the Act, the Rules made by the Central Government under the Act (hereinafter referred to as 'the Rules') and the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (specified by the Commission (hereinafter referred to as 'PMR 2021'), including statutory amendments, alterations, modifications, re-enactments thereof, which shall be read as part and parcel of this licence.
2. This registration is not transferable, except in accordance with the provisions of the Act, the Rules, the Regulations and the Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform.
3. (1) The OTC Platform Operator shall not without prior approval of the Commission-
 - (a) undertake any transaction to acquire by purchase or take over or otherwise, the utility of any licensee under the Act; or
 - (b) merge its utility with utility of any licensee under the Act;(2) The OTC Platform shall not at any time assign its licence, or transfer its utility, or any part thereof, by sale, lease, exchange or otherwise without the prior approval of the Commission;
- (3) Any agreement relating to any transaction referred to in sub-clause (1) and sub-clause (2) unless made with the approval of the Commission, shall be void.
4. The grant of this registration to the OTC Platform Operator shall not in any way hinder or restrict the right of the Commission to grant a registration to any other person within the same area for OTC Platform. The OTC Platform Operator shall not claim any exclusivity.

5. This registration shall commence on the date of its issue and unless revoked earlier, shall continue to be in force for a period of 5 (five) years.

The OTC Platform Operator shall not engage in the business of trading of electricity or operating a power exchange.

6. Unless otherwise specified by the Commission, the OTC Platform Operator shall pay annual registration charge as may be specified in the Payment of Fees Regulations

(Authorised Signatory)

AFFIDAVIT

1. I/, Director of _____ (hereinafter called “the Company”), incorporated on ___/___/_____ under the Companies Act, 1956 having its Registered Office at _____and having CIN No _____ do solemnly affirm and state as under:

2. The Company or any of its Associates, or partners, or promoters, or Directors have not been declared insolvent.

3. The Company or any of its Associates, or partners, or promoters, or Directors have not been convicted in cases for moral turpitude, fraud of economic offences during the year of making the application and three years immediately preceding the year of making application.

4. The Company or any of its Associates, or partners, or promoter, or Directors were not found guilty of contravention of any of the provisions of the Act or the rules or the regulations made there under or an order made by the Appropriate Commission, in any proceedings.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature: _____
(Deponent)

Verification:

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place: _____

Signature : _____
(Deponent)

Date: _____