

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:
Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member

No. L-1/257/2020/(PMR-3)/CERC

Date: 11th May, 2022

In the matter of Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform

STATEMENT OF REASONS

1. Introduction

1.1. The Central Electricity Regulatory Commission (hereinafter referred to as “the Commission”) vide notification dated 15th August 2021 notified the Central Electricity Regulatory Commission (Power Market) Regulations, 2021 (hereinafter referred to as “PMR 2021”). As per Clause (1) of Regulation 44 of PMR 2021, the Commission is required to notify guidelines for registration and filing application for establishing and operating Over the Counter (OTC) Platform.

1.2. Accordingly, vide notification dated 26th January 2022, “The Draft Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform” (hereinafter referred to as “the Draft Guidelines”) were prepared and posted on the website of the Commission for comments/ suggestions/ objections of the stakeholders. List of stakeholders who have submitted written comment is annexed.

1.3 The Draft Guidelines have been finalized after detailed analysis and due consideration of the comments/suggestions provided by the stakeholders which have been detailed in the succeeding paragraphs.

2. Definition of OTC Platform (Clause 3.5)

Commission’s proposal

2.1 The Commission proposed the following under Clause 3.5 of the Draft Guidelines:

“Over the Counter (OTC) Platform” is an electronic platform for exchange of information amongst the buyers and sellers of electricity”

Comments Received

2.2 Elekore and Operative Save Urja Solutions commented that OTC Platform has been defined as an electronic platform for exchange of information amongst the buyers and sellers of electricity. The definition of OTC Platform be elaborated, and it should provide that an OTC Platform should facilitate the buyers and the sellers to directly transact conventional and renewable electricity, including negotiation the price and contract, amongst themselves. This is on the lines of the existing DEEP Platform and is required to avoid creating any ambiguity.

2.3 GMR commented that as per the definition, an OTC Platform is expected to only provide a mechanism for exchange of information amongst the market participants and does not allow any OTC Platform to enter into any negotiation or settlement of contracts. However, a number of Clauses in the proposed Guidelines are designed as if the OTC Platforms are meant for Real-Time Transactions or settlements.

Analysis and Decision

2.4 We have noted the comments and are of the view that the PMR 2021 introduces OTC Platform, as an electronic platform, only for exchange of information amongst the buyers and the sellers of electricity, while the actual finalization of the transaction and financial settlement takes place outside the OTC Platform. Accordingly, the definition of OTC Platform has been retained as proposed in the Draft Guidelines which is in line with the Power Market Regulations 2021. With regard to stakeholders’ submissions on its conflict with other clauses, they have been dealt in a sequential manner in subsequent paragraphs.

3. Objective of OTC Platform (Clause 4)

Commission’s proposal

3.1 The Commission proposed the following under Clause 4 of the Draft Guidelines:

“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.”*

Comments Received

3.2 PTC commented that ambiguity in the role of an OTC Platform may lead to establishment of a parallel OTC market wherein OTC Platforms may partially play the role of Power Traders without actually holding a power trading license from the appropriate regulator. Overall, as outlined in the draft guidelines, the OTC Platform has been envisaged to be a transparent information sharing platform which will provide real time information to all the potential buyers and sellers of electricity. However, on a comprehensive reading of the guidelines, there appears to be a limitation in terms of clearly defining the objective and scope of an OTC Platform with certain guidelines that seek to operationalize the stated objectives.

3.3 Panaaya commented that the objectives mentioned in the Draft Guidelines are mere reiteration of Regulation 41 of the PMR, 2021 and therefore need not be included in the Guidelines.

Analysis and Decision

3.4 We have noted the comments and reiterate that the OTC Guidelines have to be framed within the overall framework of OTC Platform as specified under the PMR 202. Accordingly, the definition and the objectives of the OTC Platform have been derived from the PMR, 2021.

3.5 OTC Platform shall provide such information to the buyers and sellers of electricity in OTC market considered necessary for such buyers and the sellers to take informed buy/sell decisions. Under no circumstances, OTC Platform shall be involved in the actual transactions between the buyers and the sellers as in the case of power traders. Accordingly, Clause 4 of the draft Guidelines has been retained as proposed.

4. General criteria (Clause 6.1)

Commission's proposal

4.1 The Commission proposed the following under Clause 6.1 of the Draft Guidelines:

“(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.

(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.”

Comments Received

4.2 IIT Kanpur suggested that all transmission licensees, being grid-connected entities, should also be included in the same list as mentioned in Clause 6.1 (iv)(c).

4.3 IEX suggested that Facilitator Members of the Power Exchange act on behalf of the grid connected entities. Therefore, they should also be included in the negative list for setting up of OTC Platform to avoid any potential conflict.

4.4 Tata Power commented that traders should also be allowed to operate OTC Platforms or they can have the share in equity. The negative list is beyond comprehension, rather it should be more inclusive as it will be difficult to check market participants in case they are carrying out activities listed in the scope of OTC Operator without registering as OTC Platform.

4.5 Kreate Energy submitted that traders may be allowed to extend maximum of 5% equity of OTC Platform.

4.6 As per PTC, disallowing the Trading Licensees to take any kind of equity in an OTC Platform or operate their own OTC Platform is akin to restricting the natural digitization of a

Trading Licensee's business. This does not allow a level playing field for all the market participants. It is, therefore, submitted that the power traders may be allowed to (1) take preferential equity in an OTC Platform (2) provide infrastructural support to an OTC Platform and/or (3) operate an OTC Platform.

4.7 RE connect submitted that some of the power trading companies are operating with shadow entities in different names and a large number of them would not even have meaningful business activities ongoing. It is important to restrain such entities from owning or operating an OTC Platform through such shadow entities.

Analysis and Decision

4.8 We have noted the stakeholders' submissions and are of the view that the eligibility conditions and the negative list have been provided as per the provisions of the PMR 2021, and are adequate. The suggestion of allowing traders' participation in the OTC Platform is beyond the scope of the present regulatory dispensation.

5. Technological criteria (Clause 6.2)

Commission's proposal

5.1. The Commission proposed the following under Clause 6.2 of the Draft Guidelines:

“(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.”

Comments Received

5.2 RE Connect commented that there should be an annual cyber security audit carried out by a CERT-In certified auditor. The OTC Platform Operator should provide such audit report on or before 30th June each year to the Commission. Moreover, data management infrastructure and the data storage should be managed with data centers hosted strictly in India and in accordance with the data localisation rules as applicable from time to time. An automated and digital audit trail on buyer-seller-trader transactions, data exchange between the parties should be maintained by the OTC Platform Operator.

5.3 Prayas submitted that technology infrastructure should be subject to an external audit to verify robustness before grant of registration. Further, data and network security protocols put in place by the applicant should be shared with the Commission for approval at the time of registration. This should be evaluated against minimum technological criteria developed by the Commission.

5.4 IEX submitted that Clause 6.2(ii) provides applicant's technological infrastructure be capable of disseminating transaction information on a real-time basis or near real-time basis. It is submitted that as per Regulation 46(1) of PMR 2021, the OTC Platform cannot engage in execution of the contract and the definition of OTC Platform provided that it would be a platform only for "exchange of information" amongst buyers and sellers. It is very clear that PMR 2021 has not envisaged involvement of OTC Platform in the transactions or price discovery between the buyer and the seller. Therefore, the information dissemination of transactions cannot be carried out by the OTC Platform, which is to happen beyond their platform. At best such Platform can disseminate information about the offers of the buyer and the sellers available at its platform.

5.5 POSOCO submitted that cyber security aspect of the OTC Platform should be covered by the Guidelines.

Analysis and Decision

5.6 We note that the stakeholders have raised concerns over the use of the expression "transaction information" as being outside the role of the OTC Platform, and also highlighted the need for inclusion of cyber security aspects in technology criteria. We find merit in these suggestions and accordingly, have modified Clause 6.2 of the Draft Guidelines as under:

"(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 exchange of information on a real-time basis or near real-time basis.

(iii) Applicant shall formulate and implement a cyber security and cyber resilience framework to manage risk to systems, networks and databases from cyber-attacks and

threats with the approval of the Board and submit it to the Commission for information. Security audit of the IT systems shall be carried out as per norms of the Ministry of Electronics & Information Technology, Government of India.

6. Financial criteria (Clause 6.3)

Commission's proposal

6.1 The Commission has provided the following under Clause 6.3 of the Draft Guidelines:

“(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.”

Comments Received

6.2 As per IIT Kanpur, the net worth of the applicant must be certified by a practicing Chartered Accountant to prove that it meets the prescribed minimum value. Further, in case the net worth of the OTC operator falls below “Rs. 1 (one) Crore”, it should promptly be informed to the Commission within one (1) week of such change by the CEO/CFO of the OTC Platform operator.

6.3 Elekore and Operative Save Urja Solutions mentioned that the minimum net worth criteria of Rs. 1 (One) Crore is a deterrent for emerging start-ups and MSMEs, therefore, this criteria should be relaxed for start-ups and MSMEs.

Analysis and Decision

6.4 We have noted the comments and observe that the net worth requirement flows from the PMR, 2021. Accordingly, Clause 6.3 of the Draft Guidelines has been retained as proposed.

7. Grant of registration (Clause 9)

Commission's proposal

7.1 The Commission proposed the following under Clause 9 of the Draft Guidelines:

“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.”

Comments Received

7.2 Prayas submitted that delivery of power on OTC contracts does not exceed the validity of the OTC Platform, which cannot be more than 5 years as per Regulation 44 (3) of the PMR 2021. Also, registration approval as well as renewal of registration should be subject to public consultation and public hearing processes. This will give the stakeholders an opportunity to represent their views on platform operations as well as aid informed decision making and mid-course correction by the Commission. This is critical at this stage, when OTC Platforms are in their nascent stage and the regulatory framework for their oversight and accountability is still evolving.

7.3 Elekore mentioned that since an OTC Operator will be putting up an effort to create an altogether a new platform, registering it for a period of 25 years may be considered.

Analysis and Decision

7.4 We have examined the comments and observe that the concern regarding registration of OTC Platform has already been taken care of under Clause 8 wherein the applicant is required to 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. The Commission has ample powers under Clause 9.4 to make such inquiries as it may deem fit, at the time of renewal of registration.

7.5 Further, the suggestion of reviving the validity period of registration is beyond the scope of the present regulatory dispensation. As such, the provision of Clause 9 is retained as in the Draft Guidelines.

8. Operating framework (Clause 12)

Commission's proposal

8.1. The Commission proposed the following under Clause 12 of the Draft Guidelines:

“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.”

Comments Received

8.2 IEX submitted that Clause 12(ii) inter-alia is mandating OTC Platform operators to provide information on “historical trade analysis”. Since an OTC Platform is not envisaged to be involved in the transaction or trade, therefore cannot be mandated to provide such information.

8.3 Panaaya submitted that Business Rules may include rules and bye-laws and to act in a

prudent and systematic manner. RE Connect sought clarification as to whether in the event of a participant misusing the platform by means not defined under the business rules of the OTC Platform, the OTC Platform can suspend the participation of such participant.

8.4 As per Prayas, business rules of the OTC Platform should describe the operating frameworks, dispute resolution mechanisms, market surveillance mechanisms, services provided by the platform, technology used, and risk management frameworks insignificant detail.

Analysis and Decision

8.5 We have carefully examined the comments of stakeholders and are of the view that OTC Platform being a new concept, we would not like it to be over-regulated at its inception. Adequate checks and balances have been provided to ensure, such platforms operate within the mandate of the PMR 2021. Should there be a need, the Commission has powers to intervene. However, the Commission has accepted the suggestion in relation to the use of the expression ‘historical trade analysis’ and has accordingly decided to modify the clause 12(ii) of the Draft Guidelines as under:

12(ii) Access to Information: An OTC Platform Operator shall make available historical data related to buyers and sellers and provide such services as advanced data analysis, to all market participants in a fair and non-discriminatory basis.”

9. Risk management framework (Clause 13)

Commission’s proposal

9.1. The Commission has provided the following under Clause 13 of the Draft Guidelines:

“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.”*

Comments Received

9.2 RE Connect submitted for clarification as to whether the OTC Platform Operator will not engage in negotiation, execution, clearance or settlement of the contract. The participants including the electricity traders will be carrying out negotiation, execution, clearance and settlement of the contract through an OTC Platform as it happens in the actual OTC Market. The OTC Platform will essentially provide counterparty discovery enabling online-to-offline transactions among the participants where the OTC Platform is not involved in the offline leg of the transaction.

9.3 PTC and GMR sought further clarification on whether OTC Platforms would be allowed to engage in matching Buy/Sell bids, Price Discovery or conduct Competitive Bidding for stakeholders. IEX submitted that it would be prudent to explicitly mention that OTC Platform shall not engage in ‘price discovery’ along with other restrictions provided under Clause 13.3 for clarity.

9.4 PTC submitted that in its current form, OTC Platform may be prone to market abuse without any regulatory oversight. In unscrupulous hands, the platform may provide an alternative power trading mechanism for the participants through information shared on the platform without undertaking trading through a licensee. To illustrate, the platform may function like e-commerce platforms wherein the platform operator shall facilitate trades offline based on information displayed on such platforms.

Analysis and Decision

9.5 We have gone through the submissions of stakeholders and would like to reiterate that the PMR 2021 and the Guidelines are amply clear about the role of the OTC Platform. Such Platform will provide information to the buyers and the sellers of electricity in the OTC market as it is necessary for such buyers and sellers to make informed buy/sell decisions. Under no circumstances, the OTC Platform shall be involved in the actual transactions between the buyers and the sellers as in the case of the Traders. The OTC Platform shall

maintain neutrality without influencing the decision-making of the participants in any manner. Accordingly, Clause 13 of the draft Guidelines has been retained as proposed.

10. Dispute resolution (Clause 14)

Commission's proposal

10.1 The Commission proposed the following under Clause 14 of the Draft Guidelines:

“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.”

Comments Received

10.2 RE Connect and APPCPL sought clarity as to whether in the event of a dispute between the participant of the OTC Platform and the OTC Platform Operator, such disputes can be escalated to the Commission or whether the contract law shall prevail in resolving such disputes.

10.3 Prayas suggested that OTC Platforms should maintain a portal for addressing grievances and any complaint related to functioning of the Platform. They should specify procedures and internal provisions for online registration and forwarding of complaints to the buyers and the sellers through the portal enabling bilateral resolution of disputes based on transparency and mutual agreement of the buyers and the sellers.

Analysis and Decision

10.4 We are of the view that dispute resolution and its mechanism shall form an internal arrangement of the OTC Platform operator. Accordingly, Clause 10 of the Draft Guidelines has been retained as proposed.

11. Clause 17.2

The Commission proposed the following under Clause 17.2 of the Draft Guidelines:

“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.”

Comments Received

11.1 Energy Analytics Lab (CER, IIT Kanpur) stated that the Clause 17.2 (iii) requires the OTC Platform to “*inform the Commission of any event(s) resulting in disruption of activities or market abuse, if observed, without undue delay.*” The reference to “market abuse” does not carry sufficient regulatory teeth as the OTC Platform operator is itself expected to define, identify and report the market abuse. Such a provision would be self-defeating as the OTC Platform Operator will not have any incentive to engage itself in identifying the market abuse. Furthermore, in the absence of a clear definition of “market abuse”, the individual OTC Platform Operators may end up having their own criteria to define such a situation. Moreover, market abuse would not be limited to a single OTC Platform, but it may extend across various market participants across various platforms.

11.2 Kreate Energy suggested that another Clause namely, “No lagging in publication of submission of data in public domain” should be added.

Analysis and Decision

11.3 We would like to observe that the terms like market domination, abuse are already referred in Section 60 of the Act, which empowers the Commission to issue directions against market domination, abuse etc. As such, we do not feel it necessary to further elaborate these terms in these Guidelines. Accordingly, Clause 17.2 has been retained as proposed in the Draft Guidelines.

12. Miscellaneous

Comments Received

12.1 Tata Power raised query on the revenue model for OTC Platforms, i.e., exactly how they are going to earn the revenue is not clear, while the payments which are required to be made to CERC are clearly mentioned.

12.2 APPCPL suggested that the Commission should prescribe penalties and prohibitive provisions for any non-disclosure by the OTC Platform operator regarding conflict of interest, delay in submission of information, engagement in gaming or suppression of information after due process of inquiry.

Analysis and Decision

12.3 We are of the view that the revenue model of the OTC Platform shall be as per its internal strategic decisions taken in line with the PMR 2021. Even for the Power Exchanges, the Commission did not require approval of transaction fee at its inception. Should the Commission feel the need for intervention in this regard, based on implementation experience, necessary provisions shall be made in due course of time. Moreover, any non-compliance by the OTC Platform shall be governed by the PMR 2021 and these Guidelines.

**Sd/-
(P.K. Singh)
Member**

**Sd/-
(Arun Goyal)
Member**

**Sd/-
(I. S. Jha)
Member**

**Sd/-
(P. K. Pujari)
Chairperson**

Annexure

List of stakeholders who have submitted written comments on “Draft Guidelines for Registration and Filing Application for Establishing and Operating Over the Counter (OTC) Platform”:

1. Arunachal Pradesh Power Corporation Pvt Ltd.
2. Elekore Systems Pvt Ltd
3. GMR Energy Trading Limited
4. IIT Kanpur
5. India Energy Exchange (IEX)
6. Kreate Energy (I) Private Limited
7. Operative Save Urja Solutions Pvt. Ltd.
8. Panaaya Technologies
9. Power System Operation Corporation Limited
10. Prayas (Energy Group)
11. PTC India Limited
12. REConnect Energy Solutions Ltd.
13. Tata Power