REGISTERED No. M - 302 / L.-7646

The Gazette of Pakistan

EXTRAORDINARY
PUBLISHED BY AUTHORITY

ISLAMABAD, WEDNESDAY, MAY 25, 2022

PART II

Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

NOTIFICATION

Islamabad, the 18th May, 2022

S. R. O. 632(I)/2022.— In exercise of the powers conferred by section 47 of the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (Act No. XL of 1997) read with all other enabling provisions thereof, the National Electric Power Regulatory Authority is pleased to make the following regulations.—

1. **Short title and commencement.**—(1) These regulations shall be called the National Electric Power Regulatory Authority Licensing (Market Operator) Regulations, 2022.

(2) These regulations shall come into force at once.

2. **Definitions.**—(1) In these regulations, unless there is anything repugnant in the subject or context,

(a) "Act" means the Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 (Act No. XL of 1997), as amended from time to time;

(b) "anti-competitive practices" shall include competition restricting agreements or deceptive practices and shall also include any other practice that distorts fair competition, unfairly eliminates competition or results in abuse of dominant position;

(c) "applicable documents" means the rules, regulations, terms and conditions of any licence, registration, authorisation, determination, any codes, manuals, directions, guidelines, orders, notifications, agreements and documents issued or approved under the Act;

(d) "associated company" or "associated undertakings" shall have the same meanings as assigned to them in the Companies Act, 2017 (Act No. XIX of 2017);

(e) "Commercial Code" or "Market Commercial Code" means the commercial code prepared and maintained by the market operator pursuant to sections 23A and 23B of the Act and approved by the Authority from time to time;

(f) "confidential information" shall mean any commercially sensitive information relating to a market participant and shall include any other information as may be declared confidential by the Authority or in a market participation agreement, service provider agreement or the Commercial Code;

(g) "CTBCM" or "Competitive Trading Bilateral Contract Market" means electric power market established in accordance with the high-level and detailed designs approved by the Authority vide its determinations dated 5th day of December, 2019 and 12th day of November, 2020 as may be amended by the Authority from time to time;

(h) "Grid Code" means the code prepared by the national grid company and approved by the Authority or, when a separate entity is licensed as system operator, prepared by the system operator licensee under section 23H of the Act and approved by the Authority;

(i) "market operations" means the functions, operations and responsibilities to be performed and discharged by the market operator in accordance with the Market Commercial Code and other applicable documents but shall not include the sale and purchase of electric power carried out through bilateral contracts by market participants;

(j) "market operator" means a person responsible for organization and administration of trade in electricity and payment settlements among generators, licensees and consumers;

(k) "market participant" means any person who has signed a market participation agreement with the market operator;

(l) "public information" means any information other than confidential information;

(m) "service provider" means any distribution or transmission licensee and shall include any licensee or registered person who has signed a service provider agreement with the market operator; and

(n) "system operator" means a person licensed under the Act to administer system operation and dispatch.

(2) Words and expressions used but not defined in these regulations shall have the same meanings as assigned to them in the Act.

3. **Grant of licence.—**(1) Any person who fulfils the eligibility criteria prescribed under section 23A of the Act, may make an application to the Authority in accordance with the National Electric Power Regulatory Authority Licensing (Application, Modification, Extension and Cancellation) Procedure Regulations, 2021 for grant of market operator licence.

(2) The application for grant of market operator licence shall be accompanied with a draft Market Commercial Code, in addition to other requirements as stipulated in the applicable documents.

(3) The Authority may after such enquiry as it may deem appropriate and subject to the conditions specified in the applicable documents grant the market operator licence to the applicant:

Provided that only one market operator licence shall be granted at any one time.

4. **Functions of market operator.—**The market operator shall be responsible for performing following functions,**—**

(a) organisation, development, operation and administration of competitive electric power market in accordance with the Act, these regulations, the Market Commercial Code and applicable documents;

(b) settlement and payment of capacity and energy imbalances among the market participants;

(c) drafting, amending or replacing, from time to time, Market Commercial Code with approval of the Authority; and

(d) any other functions assigned under the Act, licence or other applicable documents.

5. **Fees.—**The market operator applicant and the licensee shall timely pay to the Authority relevant fees including application fee and annual fee as may become due under the applicable documents.

6. **Term of the licence.—**(1) The market operator licence shall be issued for a period of twenty years and shall be valid during this period subject to compliance with the Act, the applicable documents and payment of annual fee, as specified from time to time, unless revoked earlier by the Authority.

(2) The market operator licence may be renewed, after expiry of its term, upon the licensee's application, subject to satisfactory performance of the licensee, compliance with the Act, the applicable documents, payment of such fees as may be determined and on such terms and conditions as the Authority may deem appropriate.

7. **Market operator fee.—**The market operator shall charge only such fee as determined or approved by the Authority.

8. **General obligations of market operator.—**(1) The market operator shall—

(a) carry out its functions in accordance with the applicable documents including the Market Commercial Code, CTBCM design and terms and conditions of its licence;

(b) administer, implement and enforce the Market Commercial Code;

(c) promptly inform the Authority in writing:

i. if it is unable to conduct any of the market operations;

ii. if the conduct of market operations may lead to breach of any of the terms and conditions in its licence, or materially affect delivery of market operation services to market participants; or

iii. any material change in circumstances that may adversely affect the performance of the licensed activities;

(d) publicly make available information regarding prices, number of market participants, percentage of market share of each market participant, forecasted prices, statistics of trading and such other information as may be required to ensure transparency in market operations;

(e) maintain accurate accounts related to the transactions, imbalances, settlements, market fees, regulatory fees, charges, fines and other financial and commercial information related to market operations;

(f) ensure proper support and coordination with the system operator and other service providers;

(g) establish an efficient system of collection, organisation and processing of data sent by the system operator for the purpose of market settlements;

(h) administer a settlement system for the capacity and energy balancing mechanisms to clear differences between actual and contracted quantities; and

(i) administer a payment system for the settlement of imbalances of the market participants, including the determination and verification of financial guarantees and security cover requirements in accordance with the Commercial Code.

(2) In addition to the duties and responsibilities specified in these regulations, the licensee shall also comply with such other terms and conditions as may be provided in its licence or other applicable documents.

9. **Submission of annual market report.—**(1) The market operator shall submit an annual market report to the Authority within one month of the close of financial year along with the following information and documents:

(a) details of its board of directors indicating change in the same, if any;

(b) details of its senior management including their respective qualifications and experience;

(c) details of the market participants and any change therein;

(d) details of the market participants who have defaulted during the year along with nature and amount of defaults along with the actions taken by the market operator in this regard;

(e) action taken against the market participants for contravention of the Market Commercial Code, if any; and

(f) actions taken to address any emergency in the settlement of imbalances and fulfilment of its financial obligations.

(2) The market operator shall also furnish to the Authority such other documents, information or explanation relating to market operations as the Authority may, from time to time, require in writing.

10. **Duty to maintain confidentiality.—**(1) The market operator or any officer, agent or member of the market operator, whether during the tenure of his office or thereafter, or any other person who has by any means knowledge of any confidential information in relation to the commercial affairs of any of the market participant or service provider and in particular relating to their accounts, shall not give, divulge, reveal or otherwise disclose such information or document to any other person.

(2) Nothing in sub-regulation (1) shall entitle any person to refuse disclosure of any information or document, in cases, where:

(a) prior written consent is given by the person to whom the information is related;

(b) the information is public;

(c) the market operator is required or allowed to disclose the information to fulfil the terms and conditions of its licence and other applicable documents;

(d) it is in pursuance of any summons or notice issued by any court, tribunal or any other authority having competent jurisdiction to require the production of such information or document;

(e) it is required in the course of an investigation into an offence or contravention of the Act;

(f) disclosure is required under any other law for the time being in force; or

(g) the information is required to be disclosed in the normal course of performing the licensed activity.

(3) The market operator shall undertake all necessary steps to prevent un-authorised access to the confidential information.

(4) Any Information submitted to the Authority by the market operator shall be considered public information except in cases where upon specific or special request of the licensee, the Authority decides that such information shall be treated as confidential information.

11. **Financial and organizational affairs.**—The market operator shall not, except to the extent specified in the terms and condition of its licence, stand surety, give guarantees, acquire or offer to acquire any interest in any entity without prior written approval of the Authority.

12. **Accounting practices.—**(1) The market operator shall prepare its accounts in accordance with the applicable documents as may be revised from time to time:

Provided that the requirements with regard to maintenance of accounts specified in these regulations shall apply in addition to any other requirements as may be applicable in any other law for the time being in force.

(2) The market operator shall ensure that it and each of its associated undertakings maintain accounting and financial reporting arrangements which enable separate accounts to be prepared for each separate business, showing the financial affairs of each such separate business as if it were a separate company so that the revenues, costs, assets, liabilities, capital, reserves and provisions thereof, reasonably attributable to each separate business are separately identifiable in the books of the market operator and its associated undertakings from those of any other business, in sufficient detail for the purposes of determination of the revenue requirements of the market operator and other purposes.

(3) In specifying the accounting requirements in the market operator licence, the Authority may require the licensee and any of its associated undertakings to

(a) maintain and preserve the books of accounts and accounting records in respect of each financial year for the time specified in the licence;

(b) prepare on a consistent basis from such accounting records in respect of each financial year, accounting statements comprising of a profit and loss account, a balance sheet and a statement of source and application of funds, together with notes thereto, showing separately in respect of each separate business and in appropriate detail the amounts of any revenue, costs, asset, liability, reserve, or provision which has been either—

(i) charged from or to any other business, whether or not a separate business, together with a description of the basis of that charge; or

(ii) determined by apportionment or allocation between any separate business together with a description of the basis of the apportionment or allocation.

(4) The Authority may, for reasons to be recorded in writing, order a special financial audit of the market operator.

13. **Performance standards and monitoring.—**(1) The market operator shall comply with the relevant performance standards and public service obligations as provided in the Act and the applicable documents.

(2) The market operator shall submit to the Authority quarterly and yearly reports on its performance and compliance with the Act, these regulations, Market Commercial Code and other applicable documents including the relevant eligibility criteria rules, and the terms and conditions of its licence.

(3) The Authority may require the market operator to provide any special reports on such format as may be deemed appropriate by the Authority.

(4) The Authority may, if deemed necessary for reasons to be recorded in writing, order a performance audit of the market operator.

14. **Risk and administrative requirements.—**(1) The market operator shall, subject to the provisions of its licence, promptly and diligently adhere to all reasonable risk-management and risk containment measures, and shall implement risk-mitigation measures.

(2) The market operator shall submit to the Authority for its prior approval any changes to its management control, ownership or nature of business.

(3) The market operator shall inform the Authority, in writing, at least thirty days prior to any change in its address and other contact details.

15. Maintenance of record.—(1) The market operator shall keep complete and accurate record and other data in respect of all aspects of the market operations including any contractual arrangements, agreements, and any other information in the manner and form as may be required by the Authority.

(2) All records and data referred to in sub-regulation (1) shall be retained by the licensee for a minimum period of ten years from the date of expiry of the relevant agreement, arrangement or transaction or for such further extended period as may be provided in the Market Commercial Code or specifically required by the Authority.

(3) All records shall be kept in good order, properly indexed and shall ensure quick search by different criteria including with respect to market participant, trade volume with regard to a particular market participant or time, imbalances in a given time or with regard to a particular market participant, settlements made in a given time or with regard to a particular market participant and such other criteria as the Authority may require from time to time.

(4) The Authority may, upon forty-eight hours prior notice, in writing, to the market operator, enter any premises of the market operator where the record and data referred to in sub-regulation (1) are kept for the examination or taking of copies thereof during office hours.

16. **Prohibition against anti-competitive practices.—**(1) The market operator shall not engage in any form of anti-competitive activities, or activities contrary to free and fair competition.

(2) Except as may be specifically allowed by the Authority, the market operator shall not at any time, directly or indirectly, acquire or undertake any beneficial interest in or associate itself with any other licensee or person involved or intending to get involved in generation, transmission, distribution, supply or trading business:

Provided that nothing in sub-regulation (1) shall prevent the Federal Government being a shareholder of the market operator to keep, acquire or undertake any beneficial interest in or associate itself with the generation, transmission, distribution, electric power supply or trading business.

17. **Information technology and operational technology requirements.—** All information systems, computer programs or other systems especially market management system used by the market operator shall be adequately equipped and secured to meet relevant information technology and operational technology standards to enable it to perform market operations efficiently and effectively.

18. **Fair and equitable treatment.—**The market operator shall in performing its licensed obligations provide non-discriminatory and fair treatment

to all the market participants at all stages of their relationship and the market operator shall avoid practices that may have any adverse impact on free competition and fair market operations.

19. **Disclosure and transparency.—**The market operator shall provide complete, accurate and not misleading public information regarding the organization, administration, settlement and market participation agreement, and shall also ensure easy access to the information, especially relating to the electric power imbalances settlements.

20. **Market participant complaints and dispute resolution.—**(1) The market operator shall make available complaint-handling mechanism that provide market participants with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary cost or burden.

(2) Any dispute between the market operator and any market participant or between two or more market participants arising out of the Market Commercial Code or these regulations shall be, in the first instance, settled in accordance with the mechanism provided in the Commercial Code.

(3) In the event the parties to a dispute are not able to resolve their dispute as per the procedure provided in the Market Commercial Code, any aggrieved party may file a complaint with the Authority for resolution of the dispute.

(4) Subject to admission of the complaint by the Authority, the Authority shall give its decision in any matter referred to it under sub-regulation (3) within a period of three months after providing opportunity of hearing to the concerned parties and the market operator.

21. **Market Commercial Code.—**(1) The Market Commercial Code developed by the market operator shall provide detailed procedures, mechanisms and arrangements with regard to market operations including:

(a) procedures for becoming a market participant and recognition of service providers;

(b) relationship between the market operator, market participant and service provider with regard to market operations;

(c) details as to the mode and manner in which market operations are to be carried out;

(d) business conduct of market participants;

(e) procedures and mechanisms for settlement of capacity and energy imbalances; and

(f) any other matter as deemed appropriate by the Authority for effective and efficient market operations.

(2) The Authority may, if required in the public interest, direct the market operator to amend its existing Market Commercial Code:

Provided that if the market operator does not comply with the direction of the Authority within a period of thirty days without providing just cause for such non-compliance to the Authority, the Market Commercial Code of the market operator shall be deemed to have been made or amended, as the case may be, and shall take effect accordingly.

(3) The market operator, market participants and service providers shall comply with the Market Commercial Code as approved by the Authority, from time to time.

22. **Power to suspend or revoke licence.—**(1) Without prejudice to the powers of the Authority under the Act, upon being satisfied that the market operator licensee is not discharging its functions in accordance with these regulations or terms and conditions of the licence, or otherwise fails to carry on its business in the interests of the market, the Authority may, after providing an opportunity to show cause, take such measures as it deems expedient including, but not limited to, suspension or cancellation of the licence under these regulations and take such other action as may be necessary to safeguard the interests of all stakeholders.

(2) Where the Authority revokes or suspends the licence of a market operator, it may appoint an administrator to take over its functions.

[No. NEPRA/LA(Legislation/CTBCM)/NRG-29/7751.]

SYED SAFEER HUSSAIN,
Registrar.

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PUBLISHED BY THE DEPUTY CONTROLLER, STATIONERY AND FORMS, UNIVERSITY ROAD, KARACHI.