



MAHARASHTRA STATE ELECTRICITY DISTRIBUTION CO. LTD.

(A Govt. Of Maharashtra Undertaking)

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REF.: SE / TRC /Electricity Rules / R40/ 14262

DATE: 11/06/2018

To,

The Secretary (Power),

Ministry of Power

Shram Shakti Bhavan,

Rafi Marg, New Delhi 110066

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Subject: Draft Amendments in provisions relating to Captive Generating plant in Electricity Rules 2005 MSEDCL's Comments thereof

Reference: Y.O. Letter No 23/23/2005-R&R/(Vol-IV) dated 22.05.2018

This has reference to the letter under reference, wherein comments have been invited on Draft amendments in provisions relating to Captive Generating Plant (CGP) in Electricity Rules 2005.

Amendment in Electricity Rules 2005 is a welcome step. However, there are certain issues which are required to be addressed while issuing amendments so as to prevent the misuse of the said Rules. Accordingly, the comments / suggestions of Maharashtra State Electricity Distribution Company Ltd., in the requisite format are enclosed.

It is requested that the same may please be taken on record and be considered while issuing the amended Electricity Rules.

Yours Faithfully


(Sanjeev Kumar)
Chairman & Managing Director
(MSEDCL)

Comments on proposed amendments in Electricity Rules (with respect to Captive Power Plants) issued by Ministry of Power on 22nd May 2018

S No.	Existing provision/ Draft amended proposed	Modified proposed provision by MSEDCL	Justification
1.	<p><u>Rule 1 – Short title and commencement</u></p> <p><u>Existing Provision</u></p> <p>(1) These rules shall be called the Electricity Rules, 2005.</p> <p>(2) These Rules shall come into force on the date of their publication in the Official Gazette.</p> <p><u>Draft amended proposed</u></p> <p>a) These rules shall be called the <u>draft Electricity (Amendment) Rules, 2018.</u></p> <p><u>b) These Rules except sub-clause (c) of clause (2) of Rule 3 shall come into force with effect from the date of publication in the Official Gazette.</u></p> <p><u>c) Sub-clause (c) of Clause (2) of Rule 3 shall come into force with effect from 1.4.2019 and shall be applicable to all Power plants seeking captive status.</u></p>	<p><i>“(1) Short title and commencement</i></p> <p><i>a) These rules shall be called the draft Electricity (Amendment) Rules, 2018.</i></p> <p><i>b) These Rules except sub-clause (c) of clause (2) of Rule 3 shall come into force with effect from the date of publication in the Official Gazette.</i></p> <p><i>c) Sub-clause (c) of Clause (2) of Rule 3 shall come into force with effect from 1.4.2019 and shall be applicable to all Power plants seeking captive status.”</i></p>	<p>MoP has proposed that all the changes shall come into force immediately upon notification of the amended rules.</p> <p>However, in the draft provision, clause (Rule (3)(2)(c) regarding the equity ownership proposed to be made applicable from 01st April 2019.</p> <p>It is suggested that the aforementioned clause should also come into force immediately to avoid gaming/ retrofitting in IPPs.</p>
2.	<p><u>Rule 3(1)(a)(ii)</u></p> <p><u>Existing Provision</u></p> <p>not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:</p> <p><u>Draft amended proposed</u></p>	<p><i>Rule 3(1)(a)(ii) – not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:</i></p> <p><i>Provided that “aggregate electricity generated” shall be computed:</i></p> <p><i>a) as the total electricity generated in the power</i></p>	<p>The Captive users should not be allowed to take undue advantage on account of inefficiencies in operating the plant and thus the computation of aggregate electricity generated shall not be more than normative parameters. In view of the same, the auxiliary consumption should be normative or actual</p>

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	<p>Rule 3(1)(a)(ii) – not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:</p> <p>Provided that “aggregate electricity generated” shall be computed:</p> <p>a) as the total electricity generated in the power plant minus the auxiliary consumption where in the auxiliary consumption for this purpose shall be the actual auxiliary consumption or normative Auxiliary consumption, whichever is higher, for similar kind of units as per the regulations of Appropriate Commission.</p> <p>b) Where any free power supplied by the Hydro Generating Station to the State Government, same shall be excluded from calculating the aggregate electricity generated in such plants.</p>	<p><i>plant minus the auxiliary consumption where in the auxiliary consumption for this purpose shall be the actual auxiliary consumption or normative Auxiliary consumption, whichever is lower, for similar kind of units as per the regulations of Appropriate Commission.</i></p> <p><i>b) Where any free power supplied by the Hydro Generating Station to the State Government, same shall be excluded from calculating the aggregate electricity generated in such plants.</i></p>	<p>whichever is lower</p>
3.	<p><u>Rule 3(1)(a)(ii)</u></p> <p><u>New rule proposed by MoP</u></p> <p>c) in case of Renewable generators, banking of power which is redeemed for consumption for own use by the captive users, shall be included for the purpose of determination of aggregate electricity consumption on an annual basis. The redemption of banked energy will be permitted within the same financial year.</p>	<p><i>e) in case of Renewable generators, banking of power which is redeemed for consumption for own use by the captive users, shall be included for the purpose of determination of aggregate electricity consumption on an annual basis. The redemption of banked energy will be permitted within the same financial year.</i></p>	<p>The provisions of Banking are different for different states. In some states, banked energy is permitted within the same financial year while in others the banked energy is permitted within the same month. Thus the provision of treatment of banked energy should be left within the jurisdiction of appropriate state commission. Hence, the said rule is proposed to be deleted.</p>
4.	<p><u>Rule 3(1)(a)(ii)</u></p> <p><u>Existing Provision</u></p>	<p>Provided also that in case of a person, association of persons, Company, Special Purpose Vehicle, Partnership Firm, Body of Individuals, Body of</p>	<p>The variation in electricity consumption should not be increased beyond 5%. Normal variations are integral part of</p>

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	<p>Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent;</p> <p><u>Draft amended proposed</u></p> <p>Provided also that in case of a person, association of persons, Company, Special Purpose Vehicle, Partnership Firm, Body of Individuals, Body of Corporate, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding fifteen percent;”</p>	<p>Corporate, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding <u>fifteen five</u> percent;</p>	<p>business decision making and are factored in business planning & risk mitigation. Any unreasonable variation gets loaded on to the common consumer of the Discom thereby adversely affecting their tariff.</p>
5.	<p><u>Rule 3(1)(a)(ii)</u></p> <p><u>New rule proposed by MoP</u></p> <p>Rule 3(1)(a)(ii) – Provided also that variation in consumption in proportion of their shares in ownership of the solar and wind power plant exceeding beyond fifteen percent and upto thirty percent shall be agreed and allowed by the State Government, if considered appropriate, in consultation with the Appropriate Commission,</p> <p>Explanation:</p> <p>(1) The electricity consumed by the captive user(s) from the</p>	<p>“Rule 3(1)(a)(ii) – Provided also that variation in consumption in proportion of their shares in ownership of the solar and wind power plant exceeding beyond fifteen percent and upto thirty percent shall be agreed and allowed by the State Government, if considered appropriate, in consultation with the Appropriate Commission,</p> <p>Explanation:</p> <p>(1) The electricity consumed by the captive user(s) from the Captive Generating Plant <u>(Including Renewable Energy)</u>, over and above, 51% shall</p>	<p>Since, now renewable energy being a schedulable energy and various other facilities like banking, REC, etc., under promotional policies are already being provided to renewable energy developers, there is no requirement for further relaxation in variation beyond 5% and thus the provision of exceeding the variation to 30% should not be considered by MoP.</p> <p>Hence, the said clause is proposed to be</p>

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	<p>Captive Generating Plant, over and above, 51% shall also be determined on annual basis in proportion to their share in ownership of the power plant within a variation not exceeding fifteen percent and in case of solar and wind power plant upto thirty percent as allowed, for Power Plant to become qualified as Captive Generating Plant.</p> <p>(2) The Non-compliance by any of the captive users with regard to consumption in proportion to its share in ownership of the power plant within a variation not exceeding fifteen percent shall disqualify the power plant as Captive Power Plant and all the captive users shall be considered as non-captive users for the period considered for the aggregate consumption.</p>	<p><i>also be determined on annual basis in proportion to their share in ownership of the power plant within a variation not exceeding fifteen five percent and in case of solar and wind power plant upto thirty percent as allowed, for Power Plant to become qualified as Captive Generating Plant.</i></p> <p><i>(2) The Non-compliance by any of the captive users with regard to consumption in proportion to its share in ownership of the power plant within a variation not exceeding fifteen five percent shall disqualify the power plant as Captive Power Plant and all the captive users shall be considered as non-captive users for the period considered for the aggregate consumption.</i></p>	deleted.
6.	<p><u>Rule 3(1)(a)(ii)</u></p> <p><u>New rule proposed by MoP</u></p> <p>Rule 3(1)(a)(ii) – Provided also that the consumption by the subsidiary company (ies) of the parent company setting up the Captive Power Plant shall also be considered for the purpose of captive consumption by the parent company,</p>	<p>The same is proposed to be deleted</p> <p>Rule 3(1)(a)(ii) – Provided also that the consumption by the subsidiary company (ies) of the parent company setting up the Captive Power Plant shall also be considered for the purpose of captive consumption by the parent company,</p>	Inclusion of subsidiary companies as a part of group captive structure should not be considered by MoP. Subsidiary companies are legally separate companies and should not be treated as same. This clause may lead to misuse in case of large conglomerate wherein the subsidiaries can draw a large portion of the power without infusing any equity.
7.	<p><u>Rule (3)(2) Explanation (c)</u></p> <p><u>Existing Provision</u></p> <p>“Ownership” in relation to a generating station or power plant</p>	<p><i>Rule (3)(2) Explanation (c) - Ownership in relation to a generating station or power plant set up by a company or any other body corporate, shall mean</i></p>	Equity share capital holders through preferential route should also be excluded for computation of equity

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	<p>set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant</p> <p><u>Draft amended proposed</u></p> <p>Rule (3)(2) Explanation (c) - Ownership in relation to a generating station or power plant set up by a company or any other body corporate, shall mean the issued and paid-up share capital in the form of equity share capital with voting rights (excluding equity share capital with differential voting rights) only as per the provisions of the Companies Act, 2013. In other cases, ownership shall mean proprietary interest and control over generating station or power plant,</p> <p>Provided further that for the purpose of assessing status as captive generating plant, a normative debt: equity ratio of 70:30 will be considered i.e. atleast 26% of the equity base of 30% of capital employed, in the form of equity share capital with voting rights (excluding equity share capital with differential voting rights) needs to be invested by Captive user(s).</p> <p>Example:</p> <p>Let there be a power plant with investment of Rs 100 Crore (Debt: Equity- 70:30). The plant is owned by Company A and Company B. The Company A is a captive user and Company B is other than captive user. Company A (captive user) should hold minimum 26% (i.e. minimum Rs 7.8 Crore) of the ownership in the form of equity share capital (excluding Preference Share Capital and/or equity share capital with differential voting rights) of capital employed in the power plant. Company A</p>	<p><i>the issued and paid-up share capital in the form of equity share capital with voting rights (excluding <u>preferential share capital and</u> equity share capital with differential voting rights) only as per the provisions of the Companies Act, 2013. In other cases, ownership shall mean proprietary interest and control over generating station or power plant,</i></p> <p><i>Provided further that for the purpose of assessing status as captive generating plant, a normative debt: equity ratio of 70:30 will be considered i.e. atleast 26% of the equity base of 30% of capital employed, in the form of equity share capital with voting rights (excluding <u>preferential share capital and</u> equity share capital with differential voting rights) needs to be invested by Captive user(s).</i></p> <p><i>Example:</i></p> <p><i>Let there be a power plant with investment of Rs 100 Crore (Debt: Equity- 70:30). The plant is owned by Company A and Company B. The Company A is a captive user and Company B is other than captive user. Company A (captive user) should hold minimum 26% (i.e. minimum Rs 7.8 Crore) of the ownership in the form of equity share capital (excluding Preference Share Capital and/or equity share capital with differential voting rights) of capital employed in the power plant. Company A should also hold minimum 26% voting rights in</i></p>	<p>share capital with voting rights as preferential equity holders also does not have the voting rights.</p>

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	should also hold minimum 26% voting rights in the company.	<i>the company.</i>	
8.	<p><u>Rule 3(3)</u> <u>New rule proposed by MoP</u></p> <p><i>Rule 3(3) - The Appropriate State Commission (the commission in whose area the generating station or power plant is located) shall certify a generating station or power plant to be a Captive Generating Plant.</i></p>	<p><i>Rule 3(3) - The Appropriate State Commission (the commission in whose area the generating station or power plant is located) shall certify a generating station or power plant to be a Captive Generating Plant <u>and till such time, the users of such plants shall not be exempted from levy of all open access charges (including CSS, AS, etc.)</u></i></p> <p><u>Provided wherein the generating station or power plant and Distribution Licensee(s) where captive consumers are connected and are situated in different states, Central Electricity Regulatory Commission shall certify a generating station or power plant to be a Captive Generating Plant</u></p>	<p>In case the captive status to a particular generating station is not granted by the commission, it becomes difficult for the discom to collect open access charges from the users of such power plant for the previous periods.</p> <p>Moreover, in case of cancellation, the captive users resort to legal route and file the petitions against the order in APTEL/ Supreme Court which unnecessarily drags the matter for number of years. This results into delay in recovery of open access charges.</p> <p>For example, Sai Wardha Power Generation Limited has raised litigations at various legal forums (Since FY 2011-12) in the similar matter and now the matter is pending at Supreme Court (Civil Appeal No. 12282 of 2016).</p> <p>Thus, the users of power plants should pay open access charges to the discom till the captive status for such plants has not been approved. The same should be refunded by discom to users once the captive status is decided.</p> <p>It is also submitted that in case of inter-</p>

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			state transaction (wherein captive power plant is situated in one state and consumer is in other state), it would be difficult for the discom to make representations before the commission and thus such matters should be dealt by CERC.
9.	<p><u>Rule 3(3)</u></p> <p><u>New rule proposed by MoP</u></p> <p><i>The generating station or power plant shall file the annual statement of generation and consumption and such other details to the Appropriate Commission in the format as may be notified by the Authority for claiming benefits as captive generating plant.</i></p>	<p><i>The generating station or power plant shall file the annual statement of generation and consumption and such other details <u>including ownership details along with documentary evidences</u> to the Appropriate Commission in the format as may be notified by the Authority for claiming benefits as captive generating plant.</i></p>	<p>The details regarding the entire shareholding pattern (not restricted to CPP users only) including the changes made during the year should also be submitted to the Commission. In order to ascertain the shareholding pattern as well as the changes during the year, following documents should be considered:</p> <ul style="list-style-type: none"> ➤ Copies of PPA executed between CPP users and owners ➤ CA certificate certifying monthly details of shareholding with documentary evidence ➤ Copies of Article & Memorandum of Association ➤ Share transfer deed ➤ Share certificate/ share allotment letter ➤ Share register

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10.	<p><u>Rule 3(3)</u></p> <p><u>New rule proposed by MoP</u></p> <p><i>Provided further that the Distribution Licensee(s) where captive consumers are connected with the grid shall also collect the consumption data and submit it to the Distribution Licensee where generating station or power plant is located for compilation and submission to Appropriate Commission for approval of status of Captive Generating Plant.”</i></p>	<p><i>Provided further that the Distribution Licensee(s) where captive consumers are connected with the grid shall also collect the consumption data and submit it to the Distribution Licensee where generating station or power plant is located for compilation and submission to Appropriate Commission for approval of status of Captive Generating Plant.”</i></p> <p><u>Provided wherein the generating station or power plant and Distribution Licensee(s) where captive consumers are connected and are situated in different states, CERC shall be the authority for approval of status of Captive Generating Plant</u></p>	<p>In case of inter-state transaction (wherein captive power plant is situated in one state and consumer is in other state), it would be difficult for the discom to make representations before the commission and thus such matters should be dealt by CERC</p>
11.	<p><u>Rule 3(5)</u></p> <p><u>New rule proposed by MoP</u></p> <p>Rule 3(5) - Any generating station setup as an Independent Power Project (IPP) shall not be considered for benefits of a Captive Generating Plant on or after the commencement of Electricity (Amendment) Rules 2018.</p> <p>Provided that any Generating station, setup as an IPP, have been taken over by the lenders or its consortium due to Non-Performance and likely to be declared as a Non Performing Asset (NPA) may be considered for benefits as a Captive Generating Plant, if it is applied for, by the developer.</p> <p>Provided further that if an IPP, have not availing any benefit as</p>	<p><i>Rule 3(5) - Any generating station setup as an Independent Power Project (IPP) shall not be considered for benefits of a Captive Generating Plant on or after the commencement of Electricity (Amendment) Rules 2018.</i></p> <p><u>Provided that any Generating station, setup as an IPP, have been taken over by the lenders or its consortium due to Non-Performance and likely to be declared as a Non Performing Asset (NPA) may be considered for benefits as a Captive Generating Plant, if it is applied for, by the developer.</u></p> <p><u>Provided further that if an IPP, have not availing</u></p>	<p>As per Section 2 (8) of The Electricity Act 2003,</p> <p><i>“Captive generating plant” means a <u>power plant set up by any person to generate electricity primarily for his own use</u> and includes a power plant set up by any co-operative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;”</i></p> <p>From the above, it can be inferred that even the Electricity Act does not</p>

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	<p>an IPP (eg allocation of linkage coal etc.) and does not have a PPA, may be considered for benefits as a Captive Generating Plant if it satisfies the criteria for being a CPP as per the Electricity (Amendment) Rules 2018. Such conversion of status shall be allowed only once.</p> <p>Provided further that Appropriate Commission based on the recommendations of Distribution Licensee(s) (where Generating Plant is located) accord the approval for a generating station to be considered as a Captive Generating Plant if it satisfies the criteria for being a CPP as per the Electricity (Amendment) Rules 2018.</p>	<p>any benefit as an IPP (eg allocation of linkage coal etc) and does not have a PPA, may be considered for benefits as a Captive Generating Plant if it satisfies the criteria for being a CPP as per the Electricity (Amendment) Rules 2018. Such conversion of status shall be allowed only once.</p> <p>Provided further that Appropriate Commission based on the recommendations of Distribution Licensee(s) (where Generating Plant is located) accord the approval for a generating station to be considered as a Captive Generating Plant if it satisfies the criteria for being a CPP as per the Electricity (Amendment) Rules 2018.</p>	<p>envisage the conversion of IPPs into CPP.</p> <p>The 1st and 2nd proviso may lead to misuse of provisions of captive power plants by existing IPPs. The purpose for which the power plant was set up should not be changed under any circumstances. Hence, the first and second proviso of rule 3(5) should be deleted.</p> <p>Also in view of the above, the third proviso should also be deleted as the same is redundant.</p>
12.	<p><u>Rule 3(6)</u></p> <p><u>New rule proposed by MoP</u></p> <p>Notwithstanding anything contained in Explanation (1) to sub-rule (2) of Rule 3, above, the group captive generating plant shall be allowed to claim the status of captive generating plant up to the period during which the shareholding pattern by captive users is maintained with two changes only during a financial year, provided that the status of captive generating plant shall cease to exist from the third change in the shareholding pattern in the financial year.</p> <p>Explanation: If captive shareholding is changed say first in June second in September and then third in November, then from November Plant will lose its Captive Status. However, change in</p>	<p>Notwithstanding anything contained in Explanation (1) to sub-rule (2) of Rule 3, above, the group captive generating plant shall be allowed to claim the status of captive generating plant up to the period during which the shareholding pattern by captive users is maintained with two one changes only during a financial year, provided that the status of captive generating plant shall cease to exist from the third second change in the shareholding pattern in the financial year.</p>	<p>In order to prevent the misuse of the provisions of Captive Power Plants, the group captive power plant should be allowed to change the shareholding pattern only once in a year.</p>

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	<p>non-captive shareholding will not affect captive status.</p> <p>Provided that the test of proportionality as per fourth proviso to sub-rule (1) of rule (3) shall be made applicable separately for the period(s) of maintaining the same share holding pattern by the captive users.</p>		