

CE/Comm/Open Access/Captive Status/9680

Date: 26.04.2018

COMMERCIAL CIRCULAR NO. 303:

Sub: Setting time frame along with roles and responsibilities for the process of determining Captive Power Plant (CPP) status.

Ref: 1. The Electricity Act, 2003 & all other enabling provisions.
2. The Electricity Rules 2005.
3. MERC Order dated 17.01.2018 in Case No. 23 of 2017.

"This Circular is issued without prejudice to any of the rights & contentions of MSEDCL that have already been raised or shall be raised in any of the presently pending or future proceedings before any Court or Authority, as the case may be."

1. PREAMBLE:

1.1 A CPP which meets the criteria under Rule 3 of Electricity Rules, 2005 of 26% of equity contribution and 51% consumption for self-use is exempted from the payment of Cross Subsidy Surcharge (CSS) and Additional Surcharge (AS).

The determination of captive status of a Generating Plant is done only at the end of the financial year. The Distribution Licensee has to verify the shareholding pattern, the generation data of the Plant and self-consumption data of the Captive Users as per the provisions of the Electricity Rules, 2005.

1.2 The Captive Users routinely apply for Short Term Open Access (STOA) permissions on month to month basis. The shareholders at the time of STOA application in each month are different, i.e. the shareholding pattern of such claimed CPPs keeps changing. Hence, at the end of financial year when the CPP status of such Plants is determined, MSEDCL has to rigorously follow up with their individual consumers for recovery of CSS and Additional Surcharge in case they fail to satisfy the criteria as per the Rules.

1.3 Thus, MSEDCL filed a petition bearing Case No. 23 of 2017 before MERC proposing Bank Guarantee / Letter of Credit equivalent to Cross-Subsidy Surcharge and Additional Surcharge from Captive Generators as payment security before providing Open Access.

1.4 The MERC vide order dated 17th January 2018 in Case No. 23 of 2017 ruled that, the request of MSEDCL is not tenable.

1.5 However, MERC in the said order has set out the modalities to be followed by the Distribution Licensees and the entities claiming to be CPPs.

2. CPP CRITERION AS LAID DOWN IN ELECTRICITY RULES 2005.

2.1 The requirement as laid down in Electricity Rules 2005 has for claiming CPP status is reproduced as follows:

"3. Requirements of Captive Generating Plant.-

(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-

(a) in case of a power plant -

(i) not less than twenty six percent of the ownership is held by the captive user(s), and

(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:

Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the co-operative society:

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;

(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including -

Explanation :-

(1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to generating station as a whole; and

(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in

sub-clauses (a) and (b) of sub-rule (1) above is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company.”

3. METERING.

- 3.1 Each CPP Generating Unit shall have a separate Special Energy Meter (SEM) with real time communication facility with SLDC as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time and in line with MERC order dated 17.05.2007 (Case No. 42 of 2006 - Availability Based Tariff Regime). The concerned SE (O&M), MSEDCL where the generator is located and SE (TQA), MSEDCL shall verify and confirm the same.
- 3.2 In case of Embedded CPP generators, if such generators are selling power under bilateral transaction to third party consumers or having Energy Purchase Agreement (EPA) with any Distribution Licensee, then it is necessary to access the 51% Self Consumption Criteria by obtaining segregated generation and consumption data in the Embedded premises. Hence, separate metering arrangement shall be observed for generation and self consumption within same premises.
- 3.3 The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption shall be submitted by the captive generator in hard and soft versions by 10th day of the next month in the Office of the Chief Engineer (Commercial), HO, Mumbai and concerned SE (O&M), MSEDCL where the generator is located. Downloading of monthly data of all these meters shall be jointly undertaken by the Generator and concerned SE (O&M), MSEDCL where the generator is located alongwith SE (TQA), MSEDCL and the State Transmission Utility (STU) (if relevant).
- 3.4 The sealing of the respective meters, their testing, etc. should be jointly undertaken by the Generator, concerned SE (O&M), MSEDCL alongwith SE (TQA), MSEDCL and the STU (if relevant), and appropriately certified.
- 3.5 The general practice adopted for any HT consumer monthly meter reading shall be followed.
- 3.6 The SEM meters should be tested periodically as per the prescribed testing procedures.

4. Timeframe for Verification of Captive Status:

- 4.1 In every financial year, the Chief Engineer (Commercial), HO, Mumbai and the Superintending Engineer (O & M) Circle Office, MSEDCL (routed

through Chief Engineer, Commercial) shall prepare and updated list of all such consumers / generators who has:

- i. Aailed OA under section 09 of EA 2003.
 - ii. Embedded captive generators who sold power to third party under bilateral transactions or had EPA /PPA with distribution licensees.
 - iii. Captive Generators who sold power to third party.
- 4.2 The Chief Engineer (Commercial), HO, Mumbai and the Superintending Engineer, (O & M) Circle Office shall issue letter / E-Mail well in advance to all such consumer / generator specified in the list seeking the Captive compliance as early as possible after end of the financial year latest by 1st April.
- 4.3 The Generator shall submit all the relevant data in the office of Chief Engineer (Commercial), HO, Mumbai and concerned SE (O&M) Circle Office, MSEDCL required for establishing its CPP status in the previous financial year latest by 30th of April. The data shall include the quantum of generation at the Generator Terminal, auxiliary consumption, consumption recorded at the EHV side of the Generator Transformer, the consumption recorded at the outgoing feeders and the consumption of captive consumers grossed up at the Generator Terminal level (along with the necessary computations). This data shall be provided for each month of the financial year, in Excel format.
- 4.4 Verifying Authority:
- A. The Chief Engineer (Commercial), HO, Mumbai shall seek clarifications, if any, and confirm the CPP status or otherwise by 10th May in Case of Conventional CPP Generators under open access / group captive generators and interstate CPP. In case any clarifications required are not received or are inadequate, the Chief Engineer (Commercial), HO, Mumbai in consultation with other Distribution Licensees involved, if any shall jointly decide on the CPP status.
 - B. In Case of Renewable Captive Generator / embedded conventional generators (As the billing is being done at Circle level and data available with local IT), the concerned SE (O&M), Circle Office, MSEDCL shall confirm the CPP status or otherwise by 10th May and shall submit the proposal alongwith amount involved to Chief Engineer (Commercial), Mumbai. In case any clarifications required are not received or are inadequate, the Chief Engineer (Commercial), HO, Mumbai in consultation with other Distribution Licensees involved, if any shall jointly decide on the CPP status.

- C. By 10th May of next financial year, the CE (Commercial) shall submit the CPP Status verification proposals to the Competent Authority for approval.
- D. The CPP status (for previous financial year) shall be confirmed by 31st May and the same shall be communicated to the generator and also IT section.

4.5 Recovery of CSS and AS:

- 4.5.1 If the Generator is not satisfied with the status as determined by the Distribution Licensee, it may approach the Commission by 15th June. In that event, the supplementary CSS and Additional Surcharge bill shall be kept in abeyance and no coercive action shall be taken, till the final decision of the Hon'ble Commission.
- 4.5.2 If the Generator does not approach the Hon'ble Commission by 15th June with any dispute regarding its CPP status, MSEDCL shall proceed for recovery of the CSS and Additional surcharge. This shall be without prejudice to the Generator's statutory right to approach the Hon'ble Commission for adjudication of its dispute after that date.

5 TIMEFRAME (at a glance):

SN.	Time Line	Applicable to	Remark
01		SE (O&M) Circle office,	The List of all such consumers / generators shall be prepared who has: i. Embedded captive generators having EPA /PPA with distribution licensees. ii. RE Captive users.
		CE (Commercial)	i. Conventional captive OA users. ii. Captive conventional generators who sold power to third party.
02	Latest by 1 st April	SE (O & M), CE (Commercial)	Letter to be issued to CPP generator regarding compliance.
03	Latest by 30 th April	Generator claiming CPP Status	The Generator shall submit all the relevant data in the office of Chief Engineer (Commercial), HO, Mumbai and concerned SE (O&M) Circle Office, MSEDCL required for establishing its CPP status in the previous financial year

04	10 th May	SE (O & M), CE (Commercial)	The concerned SE (O&M), Circle Office, MSEDCL shall confirm the CPP status or otherwise of Renewable Captive Generator / embedded conventional generators and shall submit the proposal along with amount involved to the Competent Authority for approval routed through Chief Engineer (Commercial), Mumbai.
05	Latest by 31 st May	SE (O & M), CE (Commercial)	The generators shall be informed of their CPP status as determined.
06	15 th June	IT section, SE (O & M) CE (Commercial)	If the disqualified generator does not dispute the CPP status (by approaching the Honorable MERC), then MSEDCL shall levy the CSS and ASC through supplementary bill.

All the field officers are requested herewith to take necessary action accordingly.

CHIEF ENGINEER (COMMERCIAL)

Copy to: All as per mailing list.

