

IMMEDIATE

**23/23/2005-R&R(Vol-IV)
Government of India
Ministry of Power**

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 22nd May, 2018

To,

1. The Chairperson, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi
2. The Secretary, Central Electricity Regulatory Commission (CERC)/FOR, Janpath, New Delhi
3. Principal Secretaries/Secretaries (Power/Energy) of all State Governments/UTs
4. Secretaries of All State Electricity Regulatory Commissions/JERCs.
5. Chairman/CMDs of all PSUs under administrative control of Ministry of Power
6. CMDs/MDs of Discoms/Gencos of all State Governments

Subject: Draft amendments in the provisions relating to Captive Generating Plant in Electricity Rules, 2005-Reg

Sir/Madam,

I am directed to refer the Ministry of Power letter No. 23/23/2005-R&R(Vol-III) dated 6th October, 2016 forwarding therewith the draft amendments in the Electricity Rules, 2005 related to provisions regarding Captive Generating Plants. Based on the comments received from various stakeholders and further deliberations at different levels, the draft Amendments to Electricity Rules 2005 related to provisions regarding Captive Generating Plants have been further modified.

2. A revised proposal for amendments in the Electricity Rules, 2005 related to provisions regarding Captive Generating Plants is enclosed herewith(proposed changes are marked in red colour) with the request to provide your comments, if any. The comments may be forwarded to this Ministry in the enclosed format by 06/06/2018. The draft amendments is also uploaded on the website of the Ministry of Power i.e. www.powermin.nic.in. The comments may also be emailed at sandeep.naik68@gov.in and debranjan.chattopadhyay@nic.in.

Encl: as above

Yours faithfully



(Debranjan Chattopadhyay)
Under Secretary to Govt. of India
Ph: 011-2373 0265

Copy to- with request to furnish comments/suggestions, if any

1. Director General, Association of Power Producers, New Delhi
2. President, FICCI, House No. 1, Tansen Marg New Delhi
3. Member, PRAYAS Energy Group, Pune

Copy also to:

All JSs of Ministry of Power/JS&FA & Economic Adviser, Ministry of Power

Copy for information to: PPS to Secy.(P), PPS to AS(R&R), PS to CE(R&R), PS to Dir(R&R)

Copy to: Technical Director, NIC Cell for uploading on MOP's website under "Current Notices " with the heading of "Draft Amendments in the provisions relating to Captive Generating Plant in Electricity Rules, 2005"

FORMAT

| S. No | Existing provision / Draft Amendment proposed | Modified proposed provision | Justification |
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GOVERNMENT OF INDIA
MINISTRY OF POWER

New Delhi, the 22nd May , 2018

NOTIFICATION

G.S.R. - In exercise of powers conferred **under** in Section 176 of the Electricity Act, 2003 (Act 36 of 2003), **and all the powers enabling in this behalf**, the Central Government hereby makes the following rules to amend the Electricity Rules, 2005, namely :

1. Short title and commencement

- a) These rules shall be called the **draft Electricity (Amendment) Rules, 2018.**
- 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.**
- 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.**

2. Definitions

In these rules, unless the context otherwise, requires:

- a) "Act" means the Electricity Act, 2003;
- b) The words and expressions used and not defined herein but defined in the Act shall have the meaning assigned to them in the Act.
- c) **"Group Captive Generating Plant" means a captive generating plant setup by two or more captive users.**

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, **as defined in clause (c) of explanation to sub-rule (2) of rule 3**, 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 “aggregate electricity generated” shall be computed:

- 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.
- 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.
- 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.

Provided also 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 also further that in case of a person, association of persons; Company, Special Purpose Vehicle, Partnership Firm, Body of Individuals or Body 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 ~~ten~~ fifteen percent;

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,

Explanation:

- (1) The electricity consumed by the captive user(s) from the 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.
- (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.

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,

- (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(ies) the conditions contained in ~~Sub-clause paragraphs~~ (i) and (ii) of ~~sub-clause~~ **Clause (a) of Sub-Rule 1 of Rule 3** 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 **share capital in the form of equity share capital** ~~equity shares~~ to be held by the captive users in the generating station shall not be less than twenty six percent of the proportionate of the **equity share capital** of the company related to the generating unit or units identified as the captive generating plant.

Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen percent of the **share capital in the form of equity shares** ~~equity share capital~~ in the company (being the

twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit-A determined on an annual basis is to be consumed by the captive users.

- 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.

Explanation.- (1) For the purpose of this rule,-

- a) "annual basis" shall be determined based on a financial year,
- b) "captive user" shall mean the end user of the electricity generated in a Captive Generating Plant and the term "captive use" shall be construed accordingly;
- c) "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate, shall mean ~~the equity share capital~~ **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,

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).

Example:

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 the company.

d) "Special Purpose Vehicle" shall mean a legal entity owning, operating and maintaining a generating station and with no other business or activity to be engaged in by the legal entity.

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.

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.

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.

4) The Authority will also keep the record of the generation and consumption by the Captive Generating Plant as submitted in the format prescribed by the Authority on monthly basis and publish the same on its website. In case the record of the generation and consumption is not submitted to the Authority within the specified time limit, the Authority shall request the Appropriate Commission to cancel the captive status of the generating plant.

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.

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.

Provided further that if an IPP, have not availing 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.

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.

- 6) 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.

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 non-captive shareholding will not affect captive status.

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.

- 7) In case of a Captive Generating Plant to be part of the integrated business of a company, the generating station shall require to be carved out as an independent legal entity in the form of a Special Purpose Vehicle to qualify as a group captive generating plant.

Explanation: "Integrated Business" means a business, which simultaneously carry out two or more forms of business activities including one business as owning a Captive Generating Plant.

- 8) Notwithstanding anything contained in these amendments rules, the above provisions shall also be applicable in case of existing captive power plants.

Note: No amendments proposed under rule 4 to rule 12.