

No-23/23/2005-R&R (Vol-III)
Government of India
Ministry of Power

Shram Shakti Bhawan, Rafi Marg,
New Delhi, 6th October, 2016

To,

1. Chairperson, Central Electricity Authority, Sewa Bhavan, R.K. Puram, New Delhi
2. Secretary, Central Electricity Regulatory Commission (CERC)/FOR, Chanderlok Building, 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. CEO, POSOCO, New Delhi
7. CMDs/MDs of Discoms of all State Governments

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

Sir/Madam,

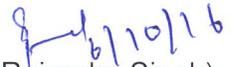
A numbers of representations have been received in the Ministry of Power suggesting certain modifications in the provisions relating to Captive Generating Plant in Electricity Rules, 2005.

2. Based on the suggestions received and deliberations held in this regard, certain amendments in the said Rules have been proposed by this Ministry to bring more clarity.

3. The draft amendments in the Electricity Rules, 2005 in *track mode* as well as tabular form are forwarded herewith with the request that the comments/suggestions on the proposed amendments, if any, may be sent to this Ministry by **1st November, 2016**. The draft amendments have also been uploaded on the website of the Ministry of Power i.e. www.powermin.nic.in. The comments/suggestions may also be emailed at raj.singh66@nic.in & arun.kumar82@nic.in.

Yours faithfully,

Encl: as above


(Rajendra Singh)

Under Secretary to the Government 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, Federation House, Tansen Marg New Delhi
3. Prayas (Energy Group), Unit-III A, Kothrud Industrial Area, Kothrud, Pune
4. Private Power Developers (*as per list*)

Copy also to: for similar action

1. All JSs/EA/JS&FA, Ministry of Power
2. All Directors/DSs of Ministry of Power

Copy for information to: PPS to Secy.(P), PPS to SS(BPP), PPS to AS(SP),
PPS to JS(RR), PS to DS(RR)

Copy to: In-charge, NIC Cell for uploading on MOP's website under 'what's new'.

(To be published in Part II, Section 3, Sub-section (i) of the Gazette of India,
Extraordinary)

GOVERNMENT OF INDIA
MINISTRY OF POWER

DRAFT

NOTIFICATION

..... - In exercise of powers conferred by section 176 of the Electricity Act, 2003 (Act 36 of 2003), the Central Government hereby makes the following rules to amend the Electricity Rules, 2005:-

1. Short title and commencement.-

- (1) These rules shall be called the Electricity (Second Amendment) Rules 2016.
- (2) These Rules shall come into force on the date of their publication in the Official Gazette.

2. In rule 3 of the Electricity Rules, 2005 for the clause (a) of sub-rule (1), the following clause shall be substituted, namely:-

"(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 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 [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 percent;

[Provided also that the electricity consumed by the Captive user from the captive generating units, over and above, 51% shall also be determined on annual basis in proportion to their share in ownership of the power plant within variation not exceeding ten percent"](#)

3. In rule 3 of the Electricity Rules, 2005, in sub-rule (2), for clause (c) to the Explanation, the following shall be substituted, namely:-

"c. "Ownership" in relation to a generating station or power plant set up by a company or any other body corporate shall mean the paid up equity share capital with full right such as, value of shares, sharing of profit/dividends, capital appreciation, voting rights, transfer of shares etc. In other cases ownership shall mean proprietary interest and control over the generating station or power plant;"

[F.No. 23/23/2005-R&R]

[.....]

Joint Secretary to Government of India

Note: The principal Rules were published vide GSR 379(E) dated the 8th June 2005 in the Gazette of India dated the 8th June 2005 and was further amended vide GSR No.667(E) dated 26th October 2006.

Table of Existing provisions of Electricity Rules, 2005 regarding Captive Generation and amendment proposed along with the rationale

S. No	Existing Provisions of Electricity Rules 2005	Amendment Proposed	Rationale/Remark
	<p>1. Short title and commencement.- (1) These rules shall be called the Electricity Rules, 2005. (2) These Rules shall come into force on the date of their publication in the Official Gazette.</p>	<p>No Change</p>	
	<p>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.</p>	<p>No Change</p>	
	<p>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</p>	<p>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</p>	

<p>Act unless-</p> <p>(a) in case of a power plant -</p> <p>(i) not less than twenty six percent of the ownership is held by the captive user(s), and</p> <p>(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 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:</p> <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</p>	<p>unless-</p> <p>(a) in case of a power plant -</p> <p>(i) not less than twenty six percent of the ownership, <u>as defined in clause (c) of explanation to sub-rule (2) of rule 3</u>, is held by the captive user(s), and</p> <p>(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 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:</p> <p>Provided further that in case of <u>a person association of persons, Company, Special Purpose Vehicle, Partnership Firm, Body of Individuals, Body of Corporate</u>, 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</p>	<p>Minor change for referring the definition of ownership</p> <p>APTEL in its judgment dated 22.09.2009 in A.No.171/2008 etc. has held that SPV should also be considered as association of person. Therefore rule of proportionality is required to be followed by SPV. This is already cleared as the conditions as specified in Rule 3(1) (a) (ii) have been specifically made applicable to SPV. However for making it more clear name of SPV and other</p>
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	<p>ownership of the power plant within a variation not exceeding ten percent;</p> <p>(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 -</p> <p>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</p>	<p>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>Provided also that the electricity consumed by the Captive user from the captive generating units, over and above, 51% shall also be determined on annual basis in proportion to their share in ownership of the power plant within variation not exceeding 10 percent.</u></p> <p>(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 -</p> <p>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</p>	<p>form of companies may be included in second proviso of Rule 3(1)(a). However name of Cooperative society may not be included because separate condition for the same has been given in first proviso. Modified proviso may be as under:</p> <p>In several representations to this Ministry clarification were sought about the treatment of power beyond 51% if same is not sold in market but consumed by Captive User himself. Therefore this Ministry has brought the clarificatory proviso.</p>
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	<p>use and not with reference to generating station as a whole; and</p> <p>(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.</p> <p>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 equity shares 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.</p>	<p>and not with reference to generating station as a whole; and</p> <p>(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.</p> <p>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 equity shares 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.</p>	
	<p>(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</p>	<p>(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</p>	

	<p>generating company. Explanation.- (1) For the purpose of this rule.-</p> <ul style="list-style-type: none"> 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 with voting rights. In other cases ownership shall mean proprietary interest and control over the generating station or power plant; 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. 	<p>generating company. Explanation.- (1) For the purpose of this rule.-</p> <ul style="list-style-type: none"> 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 <u>paid up</u> equity share capital with <u>full rights such as, value, share of profit/dividends, capital appreciation, voting rights, transfer of shares etc.</u> In other cases ownership shall mean proprietary interest and control over the generating station or power plant; 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. 	<p>It has been decided to remove the ambiguity that the ownership should be in terms of value of capital along with the voting rights and not in terms of number of shares only. As the same is being misused by issuing shares of small face value which actually do not represent the monetary share of the capital of the plant. Therefore definition of ownership is being changed accordingly.</p>
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