

FORUM OF REGULATORS (FOR)



Forum of Regulators (FOR)

Study on

**Developing Model Regulations for Import of Power from
Captive Generators Using Open Access**

September 2022

Table of Contents

1	Introduction	1
2	Deliberations of the WG	2
3	Finalization of the Report by FOR.....	3
4	Summary of Recommendations	4
	Annexure – I.....	6
	Annexure – II	7
	Annexure – III.....	9
	Annexure – IV.....	12
	Annexure – V	15
	Annexure - VI	17

List of Abbreviations

Acronyms	Full Out
APTEL	Appellate Tribunal Authority
AoP	Association of Persons (AoP)
CGP	Captive Generating Plant
CPP	Captive Power Plant
CERC	Central Electricity Regulatory Commission
DERC	Delhi Electricity Regulatory Commission
ERC	Electricity Regulatory Commission
FoR	Forum of Regulators
MERC	Maharashtra Electricity Regulatory Commission
OERC	Odisha Electricity Regulatory Commission (OERC)
RLDC	Regional Load Despatch Centre
SPV	Special Purpose Vehicle
SERC	State Electricity Regulatory Commission
SLDC	State Load Despatch Centre
TNERC	Tamil Nadu Electricity Regulatory Commission
TERC	Tripura Electricity Regulatory Commission (TERC)
UPERC	Uttar Pradesh Electricity Regulatory Commission
WBERC	West Bengal Electricity Regulatory Commission (WBERC)
WG	Working Group

1 INTRODUCTION

1.1 The Forum of Regulators, in its 74th meeting held on 9th April, 2021 deliberated on the issue of import of power from captive generators located within/outside the State through Open access. The Forum deliberated and noted that it would be useful if Model Regulations are prepared on the matter, which could bring uniformity. After discussion, it was agreed to constitute a Working Group (WG) (**Annexure – I**) to examine the issue and suggest Model Regulations.

1.2 In view of the above, Competent Authority constituted a WG with the following composition:

1. Chairperson, UPERC - Chairman of WG.
2. Chairperson, Delhi ERC - Member.
3. Chairperson, Tripura ERC - Member.
4. Chairperson, Maharashtra ERC - Member.
5. Chairperson, Odisha ERC - Member.
6. Chairperson, West Bengal ERC - Member.
7. Chairperson, Tamil Nadu ERC - Member.
8. Dr. Sushanta K. Chatterjee, Chief (Regulatory Affairs), CERC - Convener.

1.3 The scope of the WG was as under:

- a. Examine the nature of import of power by large consumers from captive generators located within/outside the State through open access;
- b. Examine and suggest methodology to verify status of captive generators
- c. Examine and recommend Model Regulation in this regard;
- d. The Working Group shall submit the report within two months. The Secretariat of the Forum of Regulators would provide secretariat services to this Working Group

2 DELIBERATIONS OF THE WG

- 2.1 The first meeting of the WG was held on 17th August, 2021. During the meeting, the WG examined the judgements of APTEL wrt CGP consumption and equity criteria as also Orders of few SERCs and decided that the SERCs should be the verifying authority for ascertaining eligibility criteria of consumption and equity share holding of CPPs . The minutes of the 1st meeting of the WG has been attached at **Annexure – II**.
- 2.2 The second meeting of the WG was held on 12th November, 2021, wherein it was decided that security deposit must be collected from the Captive consumers, who intend to avail benefit of CGP for a duration of less than one year. Further, it was decided that opinion/ advice of Additional Solicitor General should be requested on the issues pertaining to duration for which the minimum threshold ownership in the CGP shall be maintained by CGP user and the time period for undertaking assessment of equity share holding pattern of the captive user in the CGP. The minutes of the 2nd meeting has been attached at **Annexure – III**.
- 2.3 The 3rd meeting of WG held on 18th April, 2022. During the meeting the WG decided on aspects related to minimum shareholding , sources for collection of data pertaining to consumption and generation and nature and form of security deposit to be provided by the applicant for availing open access. The minutes of the 3rd meeting of the WG has been placed at **Annexure – IV**.
- 2.4 During the 4th meeting, the WG deliberated on the draft model guideline regulations prepared by FOR Secretariat and updated the same based on observations/ suggestions of the members . The minutes of the 4th meeting of the WG is placed at **Annexure – V**.

3 FINALIZATION OF THE REPORT BY FOR

3.1 The Model Regulations drafted by the WG was discussed in the 82nd meeting of the FOR held on 16.9.2022 at Vishakhaptnam , Andhra Pradesh . The approved Regulations are placed at **Annexure – VI.**

4 SUMMARY OF RECOMMENDATIONS

4.1 General

4.1.1 The objective of these regulations is to specify the methodology for verification of status of captive generating plants and captive users when consumers import power from their captive generator(s) located either within the State or outside the State.

4.1.2 These regulations shall apply to all the captive generating plants (CGP) and captive users.

4.2 Verification of Status of CGP

4.2.1 Verification of status of CGP and captive users with respect to the criteria of consumption and equity share holding, shall be done annually by the State Commission after the end of financial year based on the information submitted on affidavit by the CGP and Captive User.

4.2.2 The State Commission shall take assistance of the concerned RLDC, SLDC, Distribution Licensee (in whose area the CGP or Captive User is located) for the verification of captive status of CGP or Captive Users.

4.3 Verification of consumption criteria

4.3.1 The Verification of criteria of consumption for Single captive user, Partnership firm/ Limited Liability Partnership (LLP), Association of Persons (AoP), Cooperative Society and Special Purpose Vehicle (SPV) shall be based on the net electricity generated (determined on annual basis at the end of the year) from the generating unit(s) in a generating station.

4.3.2 The method of assessment of data related to generation from CGP and consumption by captive user shall depends on the location of CGP and its captive users i.e. whether the CGP and its captive user(s) are co-located or are located within the State (but not co-located) or whether they are located in different States.

4.4 Verification of equity share holding criteria

- 4.4.1 The Verification criteria for various types of CGP depend upon the type of captive user (Single captive user, Partnership firm/LLP, AoP, Cooperative Society or SPV/ Company) and the equity share capital with voting rights throughout the year.
- 4.4.2 The certifying authority w.r.t. equity share holding for the CGP shall depend on the type of the captive users as shall be as indicated below:
- a. Single captive user - The Company Secretary.
 - b. Partnership firm/LLP - The Company Secretary
 - c. AoP – The registered Chartered Accountant
 - d. Cooperative Society – The District Registrar of Cooperative Society\
 - e. SPV/ Company – The registered Chartered Accountant.

4.5 Consequence of failure to meet Captive user status

- 4.5.1 If the CGP or Captive User fails to meet the criteria of ownership and consumption, by the end of the year, such CGP or Captive User shall lose its Captive status for that year leading to imposition of Cross Subsidy Surcharge and Additional Surcharge and such other charges as applicable on open access consumers.

4.6 Detailed Procedure

- 4.6.1 The State Commission shall publish the detailed procedure for verification of status of CGP and captive users in pursuance to the provision of the Electricity Rules, 2005 and these regulations.

FORUM OF REGULATORS (FOR)

C/o. CENTRAL ELECTRICITY REGULATORY COMMISSION (CERC)

3rd & 4th Floor, Chandralok Building, 36 Janpath, New Delhi - 110 001.

B: 011-23353503/23752958

Dated: 8th June, 2021

No. 11018(11)/1/2021-CERC

Subject: Constitution of FOR Working Group on “Developing Model Regulations on import of power from captive generators using Open Access”.

The Forum of Regulators, in its 74th meeting held on 9th April, 2021 deliberated on the issue of import of power from captive generators located within/outside the State through Open access. The Forum deliberated and noted that it would be useful if Model Regulations are prepared on the matter, which could bring uniformity. After discussion, it was agreed to constitute a Working Group to examine the issue and suggest Model Regulations.

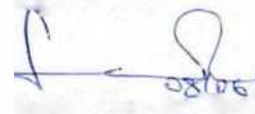
2. In view of the above, Competent Authority has constituted a Working Group with the following composition:

- a. Chairperson, UPERC - Chairman of Working Group.
- b. Chairperson, Delhi ERC - Member.
- c. Chairperson, Tripura ERC - Member.
- d. Chairperson, Maharashtra ERC - Member.
- e. Chairperson, Odisha ERC - Member.
- f. Chairperson, West Bengal ERC - Member.
- g. Chairperson, Tamil Nadu ERC - Member.
- h. Dr. Sushanta K. Chatterjee, Chief (Regulatory Affairs), CERC - Convener.

3. The scope of the Working Group would be as under:-

- a. Examine the nature of import of power by large consumers from captive generators located within/outside the State through open access;
- b. Examine and suggest methodology to verify status of captive generators
- c. Examine and recommend Model Regulation in this regard;

4. The Working Group shall submit the report within two months. The Secretariat of the Forum of Regulators would provide secretariat services to this Working Group



(Sanoj Kumar Jha)
Secretary

Copy to:

Members of the Working Group.

Copy for information to:

- a. Sr. Exec.(O) to Chairperson, CERC / FOR.
- b. Sr. PPS to Secretary, CERC.
- c. Sr. Exec.Steno(O) to Chief (RA), CERC.
- d. PS to Deputy Chief (RA), CERC

**MINUTES OF THE MEETING OF FORUM OF REGULATORS WORKING GROUP
ON “DEVELOPING MODEL REGULATIONS FOR IMPORT OF POWER FROM
CAPTIVE GENERATORS USING OPEN ACCESS”**

Date: 17.08.2021

Venue: M S Teams (Virtual Mode)

List of participants - Annexure-I

The meeting was chaired by Chairperson, UPERC who welcomed all members to the first meeting of the Working Group.

Thereafter, Dy Chief (Regulatory Affairs), CERC apprised the members on the background for constituting the working group, which was based on a reference received from Chairperson, WBERC who had requested for framing Model regulations for import of power from captive generators using Open access. Thereafter, staff of FOR Secretariat briefed the working group members on the background note prepared which captured major developments w.r.t. captive power plants (CPP) that has taken place in the recent past.

Discussion

The members were apprised of the APTEL judgement dated 7th June, 2021 in the matter of *Tamil Nadu Power Producers Association vs. Tamil Nadu Electricity Regulatory Commission and others*, which held inter alia that any dispute related to the status of CPP needs to be adjudicated by the Electricity Regulatory Commission of the State in which the application for availing CPP status has been filed by the applicant. This responsibility cannot be delegated to Discoms. The APTEL also made certain observations on the criteria for equity share holding and consumption requirement for CPPs.

The Working Group felt that the respective Discoms, SLDC and RLDC will have relevant data to determine the energy exported to the grid and energy drawn from the grid by the captive users. As such, these agencies may need to be asked to submit data to SERCs for verification of consumption criteria. As regards equity share holding criteria, the members felt further discussions are required on this issue. Chairperson, TNERC agreed to send the modified criteria as in TNERC Procedure after incorporating APTEL's findings in this context.

Decision:

State Electricity Regulatory Commissions (SERCs) would be the verifying authority for ascertaining eligibility criteria of consumption and equity share holding of CPPs.

As regards consumption criteria, the data for consumption and generation by CPPs would be compiled by SLDCs and Discoms for State embedded transactions; and by RLDC, SLDCs and Discoms for inter-State transactions by CPPs; and would be submitted to the SERCs for verification of CPP status.

As regards shareholding / equity criteria, Chairperson, TNERC will share the modified criteria as in TNERC procedure which will be deliberated in the next meeting.

The meeting ended with vote of thanks to the Chair

Annexure-I

List of participants of the 1st meeting of the FOR Working Group on
“ Developing model regulations for import of power from captive generators
using open access”

Date :17th August 2021

Through MS Teams

S. No.	Name & Designation	Organization
01	Shri R P Singh, Chairperson	UPERC & Working Group
02	Shri U N Behera, Chairperson	OERC
03	Shri Suthirtha Bhattacharya, Chairperson	WBERC
04	Shri N Chandrasekar, Chairperson	TNERC
05	Shri D. Radhakrishna, Chairperson	TERC
06	Justice Shri Shabihul Hasnain “Shastri”, Chairperson	DERC
07	Dr S,K,Chatterjee, Chief (RA) and Member, Convenor	CERC
	Other participants	
08	Ms. Rashmi Nair, Deputy Chief (RA)	CERC
09	Shri Sanjeev Tinjan, Asst Chief (RA)	CERC
10	Shri Saurabh D, Principal Research Officer	CERC
11	Shri Manvendra Pratap, Research Officer	CERC

MINUTES OF THE 2ND MEETING OF THE WORKING GROUP OF THE FORUM OF REGULATORS ON “DEVELOPING MODEL REGULATIONS FOR IMPORT OF POWER FROM CAPTIVE GENERATORS USING OPEN ACCESS”

Date: 12.11.2021 - Friday

Venue: M S Teams (Virtual Mode)

List of participants - Annexure-I

The meeting was chaired by Chairperson, UPERC who welcomed all members of the Working Group. Thereafter, Dy. Chief (Regulatory Affairs), CERC apprised the members about decisions taken in the 1st meeting of the Working Group and informed that as decided, the documents have been received from TNERC on their revised procedures post the APTEL Order on ascertaining the status of CGP.

Thereafter, the members of the Working Group deliberated on the revised TNERC Procedure for verification of the status of CGPs that evolved consequent to the directions of APTEL and observed that the following issues are critical to be resolved. :-

- a) When should the assessment of equity share holding pattern of the captive user in the captive plant be undertaken? Whether such assessment should be carried out at the end of the calendar year/ financial year or at the lapse of a year from the date of accord of CGP status?
- b) Who should be the certifying authority w.r.t. equity share holding pattern and financial ownership of the captive plant?
- c) Whether minimum threshold 26% of the ownership in the plant held by captive users is to be maintained throughout the year or only at the end of the year?

Decisions:

Based on the discussion, the following decisions were taken:

a) Captive consumers who intend to avail benefit of CGP for a duration of less than one year need to submit security deposit at the time of application in the form of unconditional & irrevocable bank guarantee or any other form of security mutually agreeable, equivalent to estimated Cross Subsidy Surcharge and Additional Surcharge payable by general open access consumer for availing open access for the same duration. In case of failure of the CGP to fulfill the criteria stipulated for a CGP the security deposit made available should be forfeited.

b) As regards equity share holding criteria, Chartered Accountant should be the certifying authority in case of Association of Persons (AoP) and Special Purpose Vehicle (SPV). Further, a Company Secretary should be the certifying authority in case the CGP is a company registered under the Companies Act.

c) Opinion/advice of Additional Solicitor General should be taken on the following: i. Whether minimum threshold of 26% of the ownership in the CGP held by captive users is to be maintained throughout the year or at the end of the year only.

ii. Time period for undertaking assessment of equity share holding pattern of the captive user in the CGP, i.e., whether such assessment should be carried out at the end of the financial year

or calendar year or on lapse of a year from the date of claiming CGP status of the plant.

The meeting ended with a vote of thanks to the Chair.

List of participants of the 2nd meeting of the FOR Working Group on “Developing model regulations for import of power from captive generators using open access”

Date :12th November2021 - Friday

Venue: Through MS Teams

S. No.	Name & Designation	Organization
01	Shri R P Singh, Chairperson	UPERC & Working Group
02	Shri U N Behera, Chairperson	OERC
03	Shri Suthirtha Bhattacharya, Chairperson	WBERC
04	Shri N Chandrasekar, Chairperson	TNERC
05	Shri D. Radhakrishna, Chairperson	TERC
06	Shri Sanjay Kumar, Chairperson	MERC
07	Dr. S,K, Chatterjee, Chief (RA) and Member, Convenor	CERC
	Other participants	
08	Ms. Rashmi Nair, Deputy Chief (RA)	CERC
09	Shri Sanjeev Tinjan, Asst Chief (RA)	CERC
10	Shri Saurabh D, PRO	CERC
11	Shri Manavendra Pratap, RO	CERC

**MINUTES OF THE THIRD MEETING OF FORUM OF REGULATORS WORKING GROUP ON
“DEVELOPING MODEL REGULATIONS FOR IMPORT OF POWER FROM CAPTIVE
GENERATORS USING OPEN ACCESS”**

Date: 18.04.2021

Venue: M S Teams (Virtual Mode)

List of participants - Annexure-I

The meeting was chaired by Chairperson, UPERC who welcomed all the members to the third meeting of the Working Group (WG).

Discussion

- 1.** At the outset, Deputy Chief (RA), CERC apprised the members on the agenda items and action taken on the minutes of the second meeting of the WG after which, the members of the WG approved the minutes.
- 2.** Thereafter, Chief (RA), CERC informed the members that due to paucity of time, opinion of Senior Legal Advisor, CERC has been taken instead of Additional Solicitor General on the matters related to 26% shareholding and 51% consumption, as follows:
 - i. Whether minimum threshold of 26% of the ownership in the CGP held by captive users is to be maintained throughout the year or at the end of the year only.
 - ii. Time period for undertaking assessment of equity share holding pattern of the captive user in the CGP, i.e., whether such assessment should be carried out at the end of the financial year or calendar year or on lapse of a year from the date of claiming CGP status of the plant.
- 3.** Senior Advisor (Legal), CERC indicated that Rule 3(1)(a)(i) of the Electricity Rule 2005, which provides that not less than 26% of the shares in the CGP shall be held by the captive users, is unqualified with regard to periodicity unlike Rule 3(1)(a)(ii), which provides that captive consumption calculated on annual basis shall not be less than 51%. He also referred to the judgement of the Appellate Tribunal dated 7.6.2021 in Appeal No.131/2020 which stated that essentially between Rule 3(1)(a)(i) and Rule 3(1)(a)(ii), there is no exclusivity and that the two conditions are dependent on each other and that verification of the criteria mentioned under Rule 3(1)(a)(ii) cannot be done on a stand-alone basis, by ignoring Rule 3(1)(a)(i). Thus, consumption of 51% of the aggregate electricity generated by Captive User(s), annually, can only be done by considering and verifying as to whether the captive users hold 26% of ownership. Since 26% shareholding by captive users and consumption of minimum 51% of the electricity generated during the year has to be determined on annual basis, the captive users must hold minimum 26% shareholding at all times during the relevant year.
- 4.** He also referred to the judgement of the Appellate Tribunal dated 7.6.2021 in Appeal No.131/2020 which established that the verification of the tests contemplated under Rule 3(1)(a)(i) and Rule 3(1)(a)(ii) can only be done annually, i.e. with respect to the shareholding existing at the end of the financial year. In view of the

above judgement, Senior Advisor (Legal), CERC suggested that verification of minimum shareholding may be undertaken at the end of the financial year along with verification of minimum consumption by the captive users.

5. The Working Group members appreciated the legal opinion as accepted the interpretation in principle with minor editorial corrections as discussed during the meeting. The WG also noted the decisions taken during the previous meetings of the WG and the process to be adopted for compilation and verification of the generation and consumption data of the captive plant.

6. Summary of decisions of all working group meetings:

- a) State Electricity Regulatory Commissions (SERCs) would be the verifying authority for ascertaining eligibility criteria of consumption and equity share holding of CPPs.
- b) As regards consumption criteria, the data for consumption and generation by CPPs would be compiled by the captive generators and captive consumers. The beneficiaries of the captive plants i.e. captive generators and the captive consumers would provide the data under affidavit to the concerned SERCs for verification and approval. SERCs may take the assistance of agencies (SLDC/ RLDC/ Discoms in whose area beneficiaries are located etc.) for carrying out verification of the data submitted.
- c) Captive Generator needs to submit a security deposit at the time of application in the form of unconditional & irrevocable bank guarantee or any other form of security mutually agreeable, equivalent to estimated Cross Subsidy Surcharge and Additional Surcharge payable by general open access consumer for availing open access for the same duration. In case of failure of the CGP to fulfil the criteria stipulated for a CGP, the security deposit made available should be forfeited.
- d) As regards equity share holding criteria, a registered Chartered Accountant should be the certifying authority in case of Association of Persons (AoP) and Special Purpose Vehicle (SPV). Further, a Company Secretary should be the certifying authority in case the CGP is a company registered under the Companies Act.
- e) As regards shareholding requirement, the captive users must hold minimum 26% shareholding at all times during the relevant year. Further, only the members having ownership and voting rights in the captive plant can be considered for being captive consumers in the plant.
- f) As regards time period for undertaking assessment of equity share holding pattern of the captive user in the CGP, verification of minimum shareholding shall be undertaken at the end of the financial year alongwith verification of minimum consumption by the captive users.
 - g) Based on the above decisions, Model Guidelines for verification of 26% equity holdings and 51% electricity consumption for captive generation of the consumers may be prepared by the FOR Secretariat and placed for consideration of the WG in its next meeting. The meeting ended with vote of thanks to the Chair.

**LIST OF PARTICIPANTS OF THE 3RD MEETING OF THE FOR WORKING GROUP ON
“DEVELOPING MODEL REGULATIONS FOR IMPORT OF POWER FROM CAPTIVE
GENERATORS USING OPEN ACCESS “**

Date :18.04.2022

Through MS Teams

S. No.	Name & Designation	Organisation
01	Shri R P Singh, Chairperson	UPERC & Working Group
02	Shri Suthirtha Bhattacharya, Chairperson	WBERC
03	Shri D. Radhakrishna, Chairperson	TERC
04	Shri N Chandrasekar, Chairperson	TNERC
05	Justice Shri Shabihul Hasnain “Shastri”, Chairperson	DERC
06	Shri Gajendra Mohapatra, Officiating Chairperson	OERC
07	Dr S. K. Chatterjee, Chief (RA) and Member, Convener	CERC
	Other participants	
08	Ms. Rashmi Nair, Deputy Chief (RA)	CERC
09	Shri Sanjeev Tinjan, Asst Chief (RA)	CERC
10	Shri Saurabh, Principal Research Officer	CERC
11	Shri Manvendra Pratap, Research Officer	CERC
12	Shri Kushal Pal, Research Associate	CERC
13	Shri Rajat Srivastav, Executive (Admin)	CERC

**MINUTES OF THE 4th MEETING OF FORUM OF REGULATORS WORKING GROUP ON
“DEVELOPING MODEL REGULATIONS FOR IMPORT OF POWER FROM CAPTIVE
GENERATORS USING OPEN ACCESS”**

Date: 17.08.2022 – Wednesday

Venue: M S Teams (Virtual Mode)

List of participants – Appendix -I

The meeting was chaired by Chairperson, UPERC who welcomed all members of the Working Group.

AGENDA NO 1: CONFIRMATION OF THE MINUTES OF THE 3RD MEETING OF THE WORKING GROUP

Dy. Chief (Regulatory Affairs), CERC apprised the members of the Working Group (WG) on the deliberations held in the 3rd meeting of the WG and placed the minutes of the meeting for approval of the WG. The members after deliberations, approved the minutes MoM of the 3rd WG meeting.

AGENDA NO 2: DRAFT MODEL REGULATIONS ON VERIFICATION OF CAPTIVE GENERATING PLANTS AND CAPTIVE USER(S) STATUS

1. The members of the WG were informed that during the 3rd meeting, the WG had directed the FOR secretariat to develop draft Model Regulations on Verification of Captive Generating Plants and Captive User(s) in accordance with the decisions reached during the 3rd meeting. Accordingly, the draft Model Regulations, have been evolved. The members discussed the draft Model Regulations clause-wise.
2. Based on the observations/ suggestions of the members provided during the meeting, the draft Regulations were updated. The Updated draft Model Regulations on Verification of Captive Generating Plants and Captive User(s) Status are placed at **Annexure – I**.
3. The WG decided that the draft Model Regulations may be circulated to the members of the WG and thereafter, may be taken up for discussion in the next FOR meeting.

The meeting ended with a vote of thanks to the Chair.

**LIST OF PARTICIPANTS OF THE 4TH MEETING OF THE FOR WORKING GROUP ON
“DEVELOPING MODEL REGULATIONS FOR IMPORT OF POWER FROM CAPTIVE
GENERATORS USING OPEN ACCESS”**

DATE :17TH AUGUST, 2022 – WEDNESDAY

VENUE: VIRTUAL ON MS TEAMS

S. No.	Name & Designation	Organization
01	Shri R P Singh, Chairperson	UPERC & Working Group
02	Shri Sanjay Kumar, Chairperson	MERC
03	Justice Shabihul Hasnain ‘Shastri’	DERC
04	Shri Gajendra Mohapatra, Chairperson Officiating	OERC
05	Dr. S,K, Chatterjee, Chief (RA) and Member, Convenor	CERC
	Other participants	
06	Shri. Harpreet Singh Pruthi, Secretary	CERC
07	Smt. Rashmi Nair, Deputy Chief (RA)	CERC
08	Shri Sanjeev Tinjan, Asst Chief (RA)	CERC
09	Smt. Sukanya Mandal, Asst Chief (RA)	CERC
10	Shri. P M Antony, Asst Chief (FOR)	CERC
11	Shri Saurabh, PRO	CERC

MODEL REGULATIONS ON VERIFICATION OF STATUS OF GENERATING PLANTS AND CAPTIVE USERS

NOTIFICATION

In exercise of powers conferred by sub section (1) of section 181, read with section 9 of the Electricity Act 2003 (36 of 2003) and all other powers enabling it in that behalf, the “State” Electricity Regulatory Commission hereby makes the following Regulations.

1. Short Title and Commencement

- 1.1 These regulations shall be called the “State” Electricity Regulatory Commission (Verification of Captive Generating Plants and Captive Consumers) Regulations, “Notification Year”.
- 1.2 These regulations shall come into force from the date of their notification in the Official Gazette.

2. Objective

The objective of these regulations is to specify the methodology for verification of status of captive generating plants and captive users when consumers import power from their captive generator(s) located either within the State or outside the State.

3. Scope and Extent of Application

- 3.1 These regulations shall apply to all the captive generating plants (CGP) and captive users
- 3.2 These regulations shall extend to the whole of the State of [Name of the State].

4. Definitions

- 4.1 In these regulations, unless the context otherwise requires; -
 - a) “Act” means the Electricity Act, 2003;
 - b) “Captive generating plant” or CGP means a captive generating plant as defined in the Act read with Rule 3 of the Electricity Rules, 2005;
 - c) “Captive User” shall mean the end user of the electricity generated from its own Captive Generating Plant and the term “Captive Use” shall be construed accordingly;
 - d) “Electricity Rules, 2005” means the Rules notified by the Central Government vide G.S.R. 379 (E) dated 8th June 2005 and as amended from time to time;
 - e) 'Year' means a financial year from 1st April to 31st March.

4.2 Words and expressions used in these regulations and not defined herein but defined in the Act or the Electricity Rules, 2005 or any other regulations specified by the State Commission shall, unless the context otherwise requires, have the meanings assigned to them under the Act or the Electricity Rules, 2005 or any other regulations specified by the State Commission, as the case may be.

5. Verification of Status of CGP

5.1 Verification of status of CGP and captive users with respect to the criteria of consumption and equity share holding, as prescribed under the Electricity Rules, 2005 shall be done annually by the State Commission after the end of financial year based on the information submitted by the CGP and Captive User.

5.2 The CGP and the Captive User shall file affidavit in specified format(s) before the State Commission giving details regarding their electricity generation, entity-wise consumption and equity share holding during the previous year before 30th April each year.

5.3 The State Commission shall take assistance of the concerned RLDC, SLDC, Distribution Licensee (in whose area the CGP or Captive User is located) for the verification of captive status of CGP or Captive Users based on the affidavit submitted by such CGP and captive users.

5.4 Verification of consumption criteria

- a) Verification of criteria of consumption shall be based on the net electricity generated from the generating unit(s) in a generating station, i.e gross electricity generated less auxiliary consumption, identified for captive use.
- b) The net electricity shall be determined on annual basis at the end of the year.
- c) Verification criteria for various types of captive users shall be as follows:

<i>Sl No</i>	<i>Type of captive user</i>	<i>Criteria</i>
i	Single captive user	The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.
ii	Partnership firm/ Limited Liability Partnership (LLP)	The self-consumption shall not be less than 51% of the net electricity generated on an annual basis
iii	Association of Persons (AoP)	The captive users shall consume not less than 51% of the net electricity generated on annual basis for captive use in proportion to their share in the power plant within the variation not exceeding 10%.

iv	Cooperative Society	Members of Society shall collectively consume not less than 51% of the net electricity generated on annual basis
v	Special Purpose Vehicle (SPV)	The captive user(s) shall consume not less than 51% of the net electricity generated on annual basis in proportion to their shares in the units identified for captive use.

- d) Manner of assessment of data related to generation from CGP and consumption by captive user:

<i>Sl No</i>	<i>Location</i>	<i>Method of assessment</i>
i	CGP and its captive user(s) are co-located	Based on net generation from the CGP and consumption by the captive user shall be based on the reading of the meter installed for recording the generation at the generation side (“generation meter”) and the electricity sourced at the consumption side (“consumption meter”).
ii	CGP and its captive users are located within the State (but not co-located),	Based on actual generation from the CGP as per the data provided by the respective SLDC and the corresponding consumption or the actual consumption whichever is lower, based on the meter reading at the user interface with the grid as provided by the concerned SLDC and the distribution licensee in whose area the user(s) are located.
iii	The CGP and its captive user(s) is/are located in different States	Based on actual generation from the CGP as per the data provided by the respective RLDC and the corresponding consumption or the actual consumption whichever is lower, based on the meter reading at the user interface with the grid as provided by the concerned SLDC and the distribution licensee in whose area the user(s) are located.

5.5 Verification of equity share holding criteria

- a) Verification criteria for various types of CGP shall be as follows:

<i>Sl No</i>	<i>Type of captive user</i>	<i>Criteria</i>	<i>Support Document</i>
i	Single captive user	The user shall hold not less than 26% of the equity share capital having voting rights throughout the year	A certificate from the Company Secretary.
ii	Partnership firm/LLP	Ownership in the captive plant shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant on annual basis.	A certificate from the Company Secretary.
iii	AoP	The captive users shall hold in aggregate not less than 26% of the ownership/paid up equity share capital with voting rights throughout the year	A certificate from a registered Chartered Accountant.
iv	Cooperative Society	Members of society shall collectively satisfy not less than 26% of the ownership on annual basis.	A certificate from District Registrar of Cooperative Society.
v	SPV/ Company	The captive user(s) shall hold in aggregate not less than 26% of the proportionate paid up equity share capital with voting rights of the units identified for captive use (i.e. the proportionate of the Equity of the company related to the generating unit or units identified as the CGP) throughout the year	A certificate from a registered Chartered Accountant.

6. Consequence of failure to meet Captive user status

- 6.1 The Captive user shall deposit by 30th April of every year, the security deposit in the form of unconditional and irrevocable Bank Guarantee equivalent to 51% captive consumption, to the concerned distribution licensee as payment security against estimated cross subsidy surcharge and additional surcharge as may be decided by the State Commission;

Provided that there shall be no exemption from Cross Subsidy Surcharge and Additional Surcharge on the electricity consumed by non-Captive consumers.

- 6.2 If the CGP or Captive User fails to meet the criteria of ownership and consumption, specified in

Rule 3 of Electricity Rule 2005, as amended from time to time, by the end of the year, such CGP or Captive User shall lose its Captive status for that year leading to imposition of Cross Subsidy Surcharge and Additional Surcharge and such other charges as applicable on open access consumers.

7. Detailed Procedure

7.1 The State Commission shall publish the detailed procedure for verification of status of CGP and captive users in pursuance to the provision of the Electricity Rules, 2005 and these regulations.

8. Power to remove difficulties

8.1 If any difficulty arises in giving effect to the provisions of these Regulations, the State Commission may, by general or specific Order, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

(Secretary)
