

Comments and Suggestions for the Draft Amendment in the provisions relating to Captive Generating Plant in Electricity Rules, 2005

by Prayas (Energy Group), 23rd June 2018

With the proliferation of captive power plants, increase in group captive and renewable energy captive options, the proposed amendments to Electricity Rules- 2005 dated 22nd May, 2018, relating to captive generating plants has come at an opportune time to address emerging trends and lack of operational clarity on certain issues. Given the flux in the power sector with demand uncertainty, idle 'surplus' capacity in various states, volatility in growing short term markets, measures to encourage and provide flexibility to serious, long-term investments in long-term captive options are welcome. Such measures will help to deepen and broaden power markets in India.

The proposed amendments have several such measures which provide clarity and which encourage long-term captive investments. These include the increased variation in the consumption limit allowed for captive plants, disallowing the use of preference share capital for group captive and allowing the consumption of subsidiary companies to be considered while assessing captive consumption requirements.

However, there are some issues where more clarity and more detailed processes would be useful to prevent policy and implementation issues and ensure efficient and periodic monitoring of this sector. In this context, some of the comments and suggestions are given below:

1. Certification process and approval of consumption when the captive plant and the users are not in the same state

As per Rule 3 Sub-rule (3) of the draft amendment, the Commission in whose area the generating station or power plant is located certifies a plant as a captive generating plant. Therefore, in case the Captive Power Plant (CPP) is located in one state and the consumers, in another state, the consumption criterion is verified by the Commission of the state where the CPP is located. As per the suggested amendment, the consumption data is submitted by the DISCOM where the consumer is located to the DISCOM where the CPP is located which in turn submits the information to its Commission for approval. With three agencies involved, such a process seems unnecessarily complex and could result in many legal, jurisdictional and operational difficulties. The issue will get even more complicated when variation in permissible consumption limit as proposed in the second and third proviso of Rule 3 Sub-rule 1 Clause (a) Sub-Clause (ii) is operationalised as well.

To address this, we suggest that in case of CPPs which have consumers in other states, the appropriate commission for certifying the status as a CPP and the commission for scrutinising and approving

consumption of various consumers across states should be the Central Electricity Regulatory Commission. This is also consistent with the overall jurisdictional framework as CERC is already the appropriate commission for the determination of tariff generation projects where sale and generation of power takes place in more than one state.

In order to reduce scrutiny burden on CERC (as there is a possibility of large number of such plants being operational), a web based centralised information system (explained in the last section of the submission) should be put in place. CERC can take appropriate decisions based on reports generated using such a system.

2. Lack of clarity in applicability of captive consumption norms and the 15% variation permitted

As per the third proviso of Rule 3 Sub-rule (1) Clause (a) Sub-clause (ii) of the draft amendment:

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**;

The provision for the variation is a welcome step to encourage captive options in India. However, there is a need for more clarity on the method of implementation and the point of incidence.

To further elaborate, let us consider the example of a group CPP having net generation of 10,000 MUs. A consumer has contributed to 10% of the 26% of the equity share capital for the plant. Thus, if 51% is the eligibility criteria for consumption and 15% is the variation allowed, then:

- a. Is 15% of the allowed annual variation (765 MU, i.e., 15% of 51% of 10,000 MUs) on an aggregate for the plant irrespective of the individual consumer's contribution? If not, is the variation allowed in proportion to their shares? In such a case, the plant is allowed an annual variation of 765 MUs while the consumer in question is only allowed an annual variation of 76.5 MUs (i.e., 10% of 765 MUs)?
- b. If the variation allowed is in proportion to the shares for each consumer, is 15% of the annual variation applicable for all captive generation consumed by the consumer? Or is the variation only on the basis of the 51% eligibility criteria? Thus, if the captive users on an aggregate consume 70% of the 10,000 MUs instead of the 51% of the eligibility criteria, does the consumer in question have to consume 700 MUs (i.e., 10% of 70% of 10,000)? If so, is the permissible variation 105 MUs (i.e., 15% of 1400 MUs)? Alternatively does the consumer only have the obligation to consume only 1020 MUs (i.e., 51% of 10,000 MUs) with a variation of 76.5 MUs?
- c. The scenario described above also points to lack of clarity in the intent behind the use of the word variation. Is it 15% of variation or shortfall that is permitted? In case, the consumption of any consumer is much in excess of the prescribed limit would that disqualify the consumer or the CPP?

In order to promote long-term captive consumption and robustness of the sector, it is suggested that:

- a. 15% variation in the amendment be changed to 15% of annual shortfall.
- b. The annual permissible shortfall should be allowed in proportion to the shares for each consumer only on the basis of the 51% eligibility criteria for consumption, irrespective of the aggregate consumption of all consumers of the CPP.

It is suggested that the proviso be modified as follows with suggested amendments are marked in green:

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) together shall consume not less than fifty one percent of the electricity generated, determined on an annual basis. The minimum consumption of each captive user shall be in proportion to their shares in ownership of the power plant and 51 % of the generation with an allowed shortfall of 15 % of this minimum consumption.

It is also suggested that an example be added here similar to the example in Explanation (2) of Rule 3 Sub-Rule (1) Clause (b). The suggested addition for an example is provided below:

Illustration: In order for a generating station with captive consumers holding 26 % equity and with annual net generation of 10,000 MU to be eligible as captive, the captive consumers need to consume a minimum of 5100 MUs and each captive consumer needs to consume in proportion to their. Thus, a consumer contributing 10% of the total equity would need to consume minimum 10% of 51% of the generation which is 510 MUs with a permitted shortfall of 15% of this consumption which would be 76.5 MUs.

3. Lack of clarity in mechanism for allowing further variation for renewable- energy based captive

The fourth proviso of Rule 3 Sub-rule (1) Clause (a) Sub-clause (ii) of the draft amendment provides a further relaxation of this permitted variation in consumption norms which can range from the current 15% up to 30% as allowed by the State Government in consultation with the Appropriate Commission.

There is a need for clarity on which the Appropriate State Government and Commission will be for CPPs where the consumers are not in the same state as the CPP. It is suggested that the treatment be similar to that suggested for the certification and approval of CPPs as mentioned earlier. Therefore for projects where consumer and the generator are not in the same state, the Central Government in consultation with CERC can stipulate the permissible variation for renewable energy based captive projects.

4. Lack of clarity on the treatment of transmission and distribution losses while assessing captive consumption

The first proviso of Rule 3 Sub-Rule (1) Clause (a) Sub-Clause (ii) of the draft amendment clarifies the methodology for the computation of 'aggregate electricity generation'. In the same vein, it is important to also provide clarity on the methodology for assessment of consumption especially given the minimum consumption criteria. The proposed amendment does not provide clarity on whether the consumption considered includes applicable transmission and distribution losses or is net of transmission and distribution losses. Clarity in the rules in this regard will help standardise assessment practices and enable captive uptake.

5. Centralised reporting and monitoring system for captive generation, consumption and ownership

The draft amendment specifies the following Rules to ensure reporting and monitoring with respect to the status of a captive plant:

1. As per Rule 3 Sub-Rule (3) of the suggested amendment, the captive power plant shall file an annual statement reporting generation and consumption details to the Commission in a format specified by CEA. The consumption data needs to be submitted by the DISCOMs where the captive consumers are located to the DISCOM where the captive generating plant is located. The DISCOM where the captive plant is located is to compile and submit the consumption-related information for the captive plant to their Commission for approval of status as a CPP.
2. As per Rule 3 Sub-Rule (4) of the suggested amendment, the CEA is to keep a record of the generation and consumption data of the plant to be submitted by the CPP on a monthly basis and publish reports on the same on its website. In case of non-submission, the CEA can request the Commission to cancel the status of the captive plant.
3. As per Rule 3 Sub-Rule (6) of the suggested amendment, a group captive generating plant can claim the status of a captive generating plant if they have up to two changes in their shareholding pattern by captive users. As per proviso 1 of Rule 3 Sub-Rule (6), the consumption by these users should be in proportion to the shareholding pattern applicable during the period of consumption. There is little clarity on the mechanism and agencies which will monitor and verify changes in ownership.

Some observations in the context of these draft amendments are listed below:

- **Specification of a monitoring mechanism imperative:** The need for robust monitoring and approval system is paramount to ensure the development and long-term sustainability of the captive power sector in India. This is especially needed to ensure consumers are not taking undue advantage of provisions to encourage captive generation and consumption to evade open access related charges. Therefore, in the light of group captive arrangements and the proliferation of CPPs, amendment of the rules to ensure better mechanisms for approval and monitoring and ease the burden on the Commissions are important.
- **Proposed approach for monitoring difficult to implement:** More importantly, the approach in the suggested amendments might be difficult to implement because of several ambiguities and the level of co-ordination needed between agencies for smooth implementation. Such issues could lead to legal issues and delays in verification and approval and could be a concern once the volume of captive consumption grows. This is especially true if captive consumers and the CPP are in different states. Thus, there is a need for a centralised system for submission of information and verification of data for the approval process.
- **Need to monitor changes in shareholding pattern:** The changes in shareholding patterns is also an important parameter which needs to be tracked by the Commission while approving captive status.

At the moment, the rules do not specify any mechanism for automatic and regular reporting and tracking changes in shareholding patterns. This is particularly relevant which group captive arrangements being provided up to 2 changes in a year.

- **Suggestions for a centralised system for monitoring:** There has been extensive technology and web-based applications to ensure submission of information and monitoring compliance in a centralised manner for several large-scale government programmes such as the PAHAL scheme, Goods and Services Tax (GST) payment and the Pradhan Mantri Indira Awaas Yojana in a centralised manner. A centralised filing and monitoring system similar to the system used for filing GST returns could be set-up and used for monitoring and compliance. Given below is a brief description of the suggested mechanism. Either CEA or NLDC could be entrusted with the responsibility of developing and managing such a centralised web based system.
 - a. **Creation of a web-based platform:** An Appropriate agency is to create a web-based platform which allows for access by multiple agencies and which enables submission and verification of data.
 - b. **Provision of unique identities for every captive generator and consumer:** Each CPP and consumer should be provided a unique numerical ID to help file information. Such IDs can also help anonymize data which can be accessible to multiple agencies. Important information such as the location of the generating plant, type of fuel used, shareholding pattern and captive consumers who are shareholders (with IDs) should be reported during the registration process and updated in case of changes. Similarly, data on the shareholder captive consumer including location of the consumer, type of industry and DISCOM in whose licence area they are located should also be reported.
 - c. **Submission of data by the captive generator:** Each CPP submits information on the following on a monthly basis with a permitted lag of two months
 - i. Net generation by the captive plant
 - ii. Consumption by each captive consumer
 - iii. Shareholding pattern with equity share of each captive consumer and changes, if any
 - d. **Agencies for Data verification:** The data submitted by the CPP needs to be verified by multiple agencies based on the unique ID tagged to the parameters being tracked. Thus:
 - i. Generation data: To be verified by the DISCOM or the transmission company depending on the network the consumer is connected to.
 - ii. Consumption data: To be verified by the DISCOM in whose license area the captive consumer is located. If the consumer is an EHV consumer, the transmission company in whose license area the consumer is located should verify the information.
 - iii. Shareholding pattern: To be based on submissions to Ministry of Corporate Affairs in compliance with provisions of the Companies Act,2013 for annual filings and notification of change in shareholding to be uploaded by the CPP and verified by the DISCOM in

whose area the consumer is located. The DISCOM should verify this information as the change in captive status will have revenue implications for the DISCOM.

- e. **Periodicity of data verification:** Verification of data submitted should take place on a quarterly basis based on information with their records. In case of discrepancy noted by the verifying agencies, the CPP can be flagged on the system which provides the CPP ten days to correct discrepancy.
- f. **Action in case of non-compliance to filing:** If the submission does not take place within the stipulated time or if there are issues with the data submitted and the discrepancy cannot be reconciled, the status of the CPP is revoked temporarily and the CPP, consumers associated with the plant as well as the concerned DISCOMs and appropriate Commission are informed of the revocation. During the period of temporary revocation, the benefits of being a CPP are not applicable until the data is submitted on the system. If the reconciliation and submission of data does not take place within a period of 30 days, the system should notify the Commission to revoke the captive status of the plant. Based on the information, the Commission should revoke the status of the plant for non-compliance to filing procedures. Based on multi-state or single state nature of the captive plant and consumers, appropriate commission could be CERC or respective SERC.
- g. **Action in case of deviation beyond permissible limits on an annual basis:** If the data submitted shows deviation in consumption and shareholding pattern beyond permissible levels on an annual basis, the captive status of the plant is automatically flagged for revocation with notifications issued to the generator, captive consumers, concerned DISCOMs and the appropriate commission. The commission should act on this notification and revoke the status of the plant.
- h. **Reporting of major trends:** Based on the data submitted, CEA can publish a quarterly reports and annual on major trends in captive generation and consumption with region-wise, month-wise, fuel/technology-wise analysis and industry specific insights. Such reports should be available on CEA's website in the public domain.

Such a mechanism will allow for timely and automatic action and reduce the burden of monitoring and verification of information on all concerned agencies especially the SERCs and CERC. It will also enable effective and quick compilation of information to enable various stakeholders to understand trends in a sector which is in a state of flux due to regulatory changes, several technological changes and competitive pressures. This will also enable agile and responsive policy making which is the need of the hour in the sector.