



TNERC's order on procedure for captive generation determination: A welcome step

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On 28 January 2020, TNERC issued an [order](#) with procedural guidelines to streamline the process of captive status determination and verification in the state. The order is of significance as captive energy generated in Tamil Nadu accounts for 5% of India's captive energy generation, according to CEA's All India Statistics for FY17. Moving forward, the role of captive is likely to grow as sales migration from TANGEDCO towards captive consumption could be lucrative for many consumers. Such consumers could potentially save 30% to 40% as compared to TANGEDCO tariffs³. Given the current role and the likely growth of captive generators and consumers in the state, the TNERC order is an important step towards increasing accountability and streamlining captive operations. Deliberations that led to this order, and pertinent points of the order itself are discussed in this article.

1. Background and context

As per the [Electricity Rules 2005](#), in order to qualify as a captive generation plant (CGP) a power plant must satisfy the following conditions:

- a. Captive user(s) must hold at least 26% of ownership
- b. At least 51% of the aggregate electricity generated⁴ by the plant must be consumed for captive use on an annual basis

Power plants that meet the above conditions for the financial year are categorised as CGP and are exempt from paying the cross subsidy surcharge (CSS), as per Section 42(2) of the [Electricity Act 2003](#). Plants that do not meet the conditions on an annual basis are treated like open access consumers, and will be liable to pay CSS. Owing to this, the status verification of CGPs on the basis of the ownership and consumption criteria, and the adjudication of related disputes are crucial responsibilities with regard to upholding the accountability of captive generation. Looking at past examples in the state and the practise in other states like Maharashtra and Gujarat, status verification usually is a function of the state licensee i.e. Tamil Nadu Generation and Distribution Company (TANGEDCO), whereas adjudicating appeals and disputes fall under the purview of the TNERC. However, there has been contention regarding the authority for status verification and adjudication between stakeholders in the power sector.

TANGEDCO [claimed](#) both the functions fall under its purview and required CGPs to furnish details in order to verify their captive status, through a [circular memorandum](#) dated 15 March 2017. However, this led to contention over the jurisdiction and responsibility of the state DISCOM from other stake holders, who claimed verification and adjudication fell within the TNERC's jurisdiction. Given this dissonance, TANGEDCO filed writ appeals (Nos. 930 and 931 of 2017, dated 9 October 2018) with the Madras High Court, with other stakeholders like the TNERC and private generators as the respondents⁵. The court, in its [judgement](#), found that while the TNERC had the jurisdiction to carry out both the functions of status determination and verification, there were certain constraints that had to be considered.

TNERC's limited staff strength might be insufficient to carry out the substantial task of CGP status verification, given the number of captive generators and users present in the state⁶. Further, the verification

of captive status is dynamic and requires continuous tracking, which is also a resource intensive undertaking. TANGEDCO was found to be better placed to carry out the functions of status determination and verification, due to its staff strength, experience in dealing with captive consumers, and existing consumer and interface metering infrastructure and billing systems. However, all adjudicatory functions, such as cases of disputed CGP status, fit in the scope of the TNERC.

2. TNERC's procedure for CGP status determination

The recently issued TNERC [order](#) operationalises the directions of Madras High Court. As per the order, compliance to the ownership and consumption criteria is to be conducted annually by TANGEDCO. Initial verification of ownership is to be carried out by the utility before the commencement of supply from a power plant for captive use. The annual verification process varies with the type of ownership (i.e., whether it is a company, partnership, association of persons, special purpose vehicle, or a cooperative society).

The criteria of compliance also change with the category of ownership. The ownership criteria (>26%) and consumption criteria (>51%) is to be met by users categorised as company, partnership, special purpose vehicles (SPV) and cooperative society (to be met collectively). Users categorised as association of persons (AoP), including SPV owned by AoP, have to fulfil an additional proportionality criterion, as per the procedure issued by TNERC. These consumers also have to ensure consumption proportional to the shares in ownership of the power plant, within a variation not exceeding 10%, to retain captive status.

As per the procedure, captive generators are required to provide data relating to generation, auxiliary consumption, and captive consumption for each month of the preceding year to the licensee by 30th April. However, any changes in shareholding must be intimated within ten days. The licensee is instructed to install meters at the generating stations, until such metering, the licensee is to conduct verification based on details provided by the CGP. Once TANGEDCO verifies the captive status, it is required to notify generators and users with regard to their compliance or lack thereof by 30th June. Disqualified captive users are to be informed of their provisional liabilities, like pending CSS payments, and are required to convey their concurrence or objection within fifteen days. If the disqualified CGPs disagree with TANGEDCO's decision, they can bring up the matter before the TNERC for adjudication. The TNERC is required to decide on the issue no later than six months from the date the petition was filed, after hearing both parties.

3. Points to consider during implementation

The procedure put forward by the TNERC, to standardise the process of captive status determination and verification, is a necessary and timely step towards ensuring accountability of CGPs in the state. While the Commission has detailed some positive actions; such as clarifying the process of status verification, highlighting the licensee's responsibility of meter provision, and suggesting a web portal; there are some aspects that need further refining.

For instance, while the procedural guidelines clearly address the verification and adjudication of intra-state captive generators and users, the status and procedure for verification and adjudication of inter-state captive users dependent on in-state CGPs and vice versa is unclear.

Another area of concern is the varying treatment of captive use with multiple investors (group captive) in TNERC's procedure. As per the Electricity Rules, 2005 all group captive users are subject to the proportionality criterion. However, as per the TNERC procedure, only group captive consumers that are categorised as AoP are subject to the proportionality criteria. Such treatment lacks clarity and consistency.

There is also ambiguity regarding the retrospective applicability of the procedure on captive transactions from FY15 onwards. Any such action would require generation and consumption data, that is subject to availability of disaggregated past records. In addition, there could be discrepancies between the licensee and the CGP's meter readings. The framework to resolve such discrepancies is not clearly detailed in the order, which could lead to avoidable disputes. Further, in case of retrospective applicability, the order does not clarify whether a consumer is liable to pay interest on pending payments.

The TNERC plays a pivotal role with regard to operations in the captive sector. Owing to this, it might prove beneficial to have dedicated staff within the Commission to deal with CGP and related issues. While TNERC did adjudicate in some matters in the past, settling them took a long time. Dedicated staff may aid in efficient adjudication and adherence to the six month time period, allowed in the procedure to decide on CGP issues, and thus avoid pendency.

Additionally, the guidelines state that TANGEDCO may create a web portal through which generators can login relevant data corresponding to unique CGP and captive user ids. This would be useful toward monitoring any changes in operational parameters and ensuring that information is updated in a timely manner. It would also ensure easy access to information for the ERC and all stakeholders. Such information will aid in reducing disputes and highlighting systemic issues with TANGEDCOs verification process and issues with CGP compliances. However, what could be a positive and pioneering step is left as a discretionary suggestion. The TNERC could ensure tracking of captive data and aid verification by mandating the creation of the web portal. In addition to operational parameters, the portal could be used to further capture relevant information with regard to captive generation, such as location of the generator and user, source of fuel used in generation, industry of the captive user, etc. Such action can bridge the data gaps present in the captive sector to some extent, and can go a long way in ensuring accountability.

Finally, given the dynamic nature of captive operations especially owing to increased penetration and operational issues renewable options, quarterly, rather than annual, assessment of captive generation and consumption is necessary with regard to making informed policy responses. Toward this end, TNERC could stipulate that TANGEDCO must publish quarterly reports on their website which include details regarding:

- Number, capacity, generation and auxiliary consumption of captive plants by ownership type, and fuel source
- Number of captive consumers and their consumption based on whether they are in-state or out of state and whether they receive supply for renewable or non-renewable CGPs
- Number of companies which have changed their shareholding pattern in the intervening period
- Number of consumers and generators who were unable to comply with the shareholding and consumption limits
- Revenue from transmission charges, wheeling charges, as well as any surcharges, penalties, incentives or concessions provided to captive consumers
- Open access consumption and charges paid by consumers who lose their captive status in the period

Hence, while the TNERC has taken pivotal steps in streamlining captive operation in the state, it must further be ensured that it is implemented effectively to ensure accountability.

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² This article is part of an ongoing series called Power Perspectives which provides brief commentaries and analysis of important developments in the Indian power sector, in various states and at the national level. The portal with all the articles can be accessed here: <https://prayaspune.org/peg/resources/power-perspective-portal.html>

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³ Assuming a 33kV HT captive consumer who continues to maintain contracted demand with the DISCOM, such that the savings calculated is only on the basis of the energy charge. Applicable wheeling and transmission charges and losses along with RE concessions in relevant scenarios are also considered while calculating the range of savings.

⁴ Annual energy generated prior to the application of captive wheeling is considered for calculation of the consumption criteria, i.e., gross energy generated without auxiliary consumption, calculated annually.

⁵ The other stakeholders include the Tamil Nadu Spinning Mills Association, Indian Wind Power Association, The Southern India Mills Association, Tamil Nadu Electricity Consumers' Association, and private generators.

⁶ There are about 7300 generators and 3000 users in captive mode, as per the Additional Advocate General of Tamil Nadu, as stated in the CGP procedure [order](#).