

**Subject: Procedure for verification of Captive Generating Plant (CGP) status in accordance to requirements in Rule 3 of the Electricity Rules, 2005 and Punjab State Electricity Regulatory Commission (Harnessing of Captive Power Generation) Regulations, 2022”.**

## **Draft Procedure**

### **1. Scope:**

The present procedure is applicable to all power plants functioning/ seeking status as Captive Generating Plant and having one or more captive consumers in the State of Punjab, irrespective of the fact whether the captive generating station is within the State of Punjab or not.

### **2. Statutory provisions:**

**2.1** The Electricity Rules, 2005 notified vide Notification No. G.S.R 379(E) dated 8.6.2005 lays down the following criteria for a Captive Generating Plant:

*“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 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 cooperative society; 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 ownership of the power plant within a variation not exceeding ten percent. (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 paragraphs (i) and (ii) of subclause (a) 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 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.*

***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.*

*(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in subclauses (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 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."*

**2.2** The provisions in the Electricity Act, 2003 that relate to Captive Generation and the definitions of generating company, generating station are reproduced for ease of reference and understanding: Section 2(8):

*“Captive generating plant” means a power plant set up by any person to generate electricity primarily for his own use and includes a power plant set up by any cooperative society or association of persons for generating electricity primarily for use of members of such cooperative society or association;” Section 2 (28):*

*“generating company” means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;”*

*Section 2 (30):*

*“Generating station” or “station” means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch-yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by waterpower, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station.”*

*Section 9: Captive Generation-*

*“(1) Notwithstanding anything contained in this Act, a person may construct, maintain or operate captive generating plant and dedicated transmission lines:*

*Provided that the supply of electricity from the captive generating plant through the grid shall be regulated in the same manner as the generating station of a generating company:*

*Provided further that no license shall be required under this Act for supply of electricity generated from a captive generating plant to any licensee in accordance with the provisions of this Act and the rules and regulations made there under and to any consumer subject to the regulations made under sub-section (2) of Section 42.*

*(2) Every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right to open access for the purposes of carrying electricity from his captive generating plant to the destination of his use:*

*Provided that such open access shall be subject to availability of adequate transmission facility and such availability of transmission facility shall be determined by the Central Transmission Utility or the State Transmission Utility, as the case may be:*

*Provided further that any dispute regarding the availability of transmission facility shall be adjudicated upon by the Appropriate Commission.”*

**2.3** A generating plant desirous of being declared as a Captive Generating Plant (CGP) is required to meet the provisions in the Electricity Act, 2003 and the Rule 3 of the Electricity Rules, 2005.

**3.**In terms of the above and to ensure that the captive consumers and the captive generating stations, who claim captive status to seek exemption from payment of cross-subsidy surcharge and any other charges, the following provisions to verify compliance of conditions under Rule 3 of the Electricity Rules, 2005 shall be considered:

- i. The captive users shall be required to identify the unit/units intended for captive consumption at the time of induction of equity itself.
- ii. The CGP users/owners shall ensure that at any point of time in a financial year not less than twenty-six per cent of the ownership of the generating plant/station or the units identified for captive use, as the case maybe, is held by the captive users. Further, only the members having ownership and voting rights in the captive plant can be considered for being captive consumers in the plant. The verification of minimum shareholding shall be undertaken at the end of the financial year along with verification of minimum consumption by the captive users.
- iii. In case, if there is one captive user, the user shall hold minimum 26% of the equity share capital with voting rights throughout the year and consume 51% of the electricity generated on annual basis.
- iv. In case of two or more captive users or Associations of persons, the captive users shall hold in aggregate minimum 26% of the equity share capital with voting rights throughout the year and consume 51% of the electricity generated on annual basis for captive use in proportion to their share of the power plant within the variation not exceeding 10%.
- v. In the case of Cooperative Society, members of society shall collectively satisfy 26% of the ownership and consume 51% of the electricity generated on annual basis or captive basis.

- vi. In the case of Partnership firm/LLP, ownership shall be with respect to proprietary interest and control over the generating station or power plant and the consumption shall be 51% of the energy generated on annual basis.
- vii. In the case of CGPs identified for captive use as under clause (b) of sub-rule (1) of Rule 3(1) in a generating station owned by a Company which is formed as a Special Purpose Vehicle and has multiple generating units, the minimum equity share capital of 26% and 51% of consumption shall be with reference to the generating units identified for captive use and not generating station/company, as a whole. The identification of the individual generating unit or units shall however be made in advance at the stage of seeking open access.
- viii. The captive users must hold minimum 26% shareholding at all times during the relevant year.

#### **4. Requirement of Bank Guarantee or Letter of Credit or Fixed Deposit:**

##### **4.1 Short Term Open Access Consumer, Medium Term Open Access and Long Term Open Consumer:**

(i) The applicant/captive user shall be required to submit the security deposit by 30th April of every year in the form of unconditional and irrevocable Bank Guarantee (BG) or Letter of Credit (LC) or Fixed Deposit (FD) for an amount equivalent to 51% captive consumption for one year period, to the concerned distribution licensee as a payment security mechanism towards estimated cross subsidy surcharge and/or additional surcharge, as applicable which shall be forfeited by concerned distribution licensee in case the applicant fails to meet the criteria for captive status.

The Bank Guarantee (BG) or Letter of Credit (LC) or Fixed Deposit (FD) shall have a term of 12 months and will have to be renewed annually at least thirty (30) days prior to its expiry. It should remain valid upto one month after Open Access period.

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

(ii) The supply of electricity from the captive generating plant through the grid shall be governed by the Terms and Conditions for Intra State Short Term Open Access Regulations, 2011 (as amended from time to time).

#### **5. METERING:**

**5.1** Each Captive Generating Plant (CGP) Unit shall have a separate Special Energy Meter (SEM) with real time communication facility with SLDC as per the specifications in the

Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time.

**5.2** In case of Embedded CGP generators, if such generators are selling power under bilateral transaction to third party consumers or having Energy Purchase Agreement (EPA) with any Distribution Licensee, it is necessary to access 51% Self Consumption Criteria by obtaining segregated generation and consumption data in the Embedded premises. Hence, separate metering arrangement shall be made for generation and self-consumption within same premises.

**5.3** The monthly reading data at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption shall be submitted by the captive generator or the captive user in hard and soft versions by 10th day of the next month in the office of **SLDC Punjab and the concerned distribution licensee**. Downloading of monthly data of all these meters shall be jointly undertaken by the Generator or captive user and concerned distribution licensee, wherever possible.

**6. Procedure for verification of Captive Generating Plant status:**

**6.1** Verification of ownership of the CGP/share holding criteria as per condition in sub clause (i) of clause (a) of sub rule 1 of Rule 3:

**6.1.1 Verification criteria for various types of CGP shall be as follows:**

| Sr. No. | Type of captive user     | Criteria   | Support Document  |
|---------|--------------------------|--|---|
| 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/<br>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. (Format- III &IV)   |
| iii     | AoP                      | The captive user 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. |

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| 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. |
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### **6.1.2 Documents to be furnished at the end of financial year:**

At the end of the financial year, the CGP shall furnish the following documents for verification of CGP status:

(A) Certificate from a Chartered Accountant or Cost and Management Accountant or Company Secretary (Practicing or Appointed) who are duly authorised by the Board of the Company / Firm /LLP / Co-operative Society / AoP/ SPV as the case may be, providing details of the ownership of the CGP with shareholding details as on the date of the application;(formats I to IV )

(B) \*The consumption data as per formats V(A) and V(B), as applicable, appended to this procedure.

\*Format V(B) appended to the Procedure is for all CGPs other than wind generators.

(C)Copy of MoA/AoA, Partnership Deed / Agreement / Bye-laws / LLP Agreement, Trust Deed, Government orders(in case of Local Bodies, Government Departments) etc. as the case may be.

### **6.1.3 Documents to be furnished at the time of seeking Open Access:**

At the time of seeking open access by the generator or captive user, the documents listed in the PSERC (Terms and conditions for Intra State Open Access), Regulations, 2011 (amended from time to time) are to furnished.

**6.1.4** The verification of CGP status is an annual process. The documents in Para 6.1.1 shall also be furnished by the CGP owners/captive users to the distribution licensee at the time of annual verification of CGP status at the end of the financial year.

### **6.2 Verification of not less than 51% consumption by captive users:**

**6.2.1** The aggregate energy generated from CGP unit shall be the gross energy generated from the unit less aggregate auxiliary consumption. In the absence of measured data on auxiliary

consumption, until metering as prescribed in para 5.2 of this procedure is completed, the normative auxiliary consumption and the losses specified in the Regulations of the Commission may be considered for the purpose of CGP verification status.

**6.2.2** The consumption of energy by the captive users under open access for this purpose shall be considered as lower of actual energy generated by CGP unit(s) or actual energy drawn through open access limited to a maximum of scheduled open access energy during that time block as per Format VI.

**6.2.3** 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.

**6.2.4** For determination of ‘annual basis’ for the first year of declaring the plant under captive status, the date of grant of open access shall be considered as a start date for the financial year for counting the generation of the plant under captive status. From the subsequent year, total generation from 1st April to 31st March of a financial year shall be considered for determining the captive status of the generation station.

**6.2.5** The responsibility for obtaining requisite information from outside State entities i.e. SLDC, distribution utility(ies) in support of captive status of the Captive Generating Plant shall rest with the Captive Generating Plant.

**6.2.6** 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. The electricity shall be determined on annual basis at the end of the year.

Verification criteria for various types of captive users shall be as follows:

| <i>SI 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 |



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|    |   | power plant within the variation not exceeding 10%<br>i.e. proportionality test shall be calculated for 51% of aggregate generation and not for consumption beyond 51% by captive consumers. |
| iv | Cooperative Society                                     | Members of Society shall collectively consume not less than 51% of the net electricity generated on annual basis   |
| v  | Captive use in respect of Special Purpose Vehicle (SPV) | The captive user(s) shall consume not less than 51% of the net electricity generated on annual basis.  |

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

| Sr. No. | Location   | Method of assessment  |
|---------|--|---|
| 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. |

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| 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. |
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### **6.3 Verifying Authority:**

**6.3.1** Means the authority/ agency authorised by the Commission to collect and verify the data to check the captive status of the Captive Generating Plant as per the provisions of Section 9 of the Act read with Rule 3 of the Electricity Rules, 2005, as amended from time to time, in accordance with the procedure/ guidelines approved by the Commission.

**6.3.2** 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 Verifying Authority after the end of financial year based on the information submitted by the CGP and Captive User.

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

**6.3.4** The Verifying Authority 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.

Explanation:

In cases where the captive user is located in a state other than the state in which the CGP is located, the State Commission in whose jurisdiction the captive user is located shall take assistance of the concerned RLDC, SLDC, Distribution Licensee in whose area the CGP is located for the verification of captive status of CGP and Captive user.

**6.3.5** The verifying authority shall seek clarifications, if any, and confirm the CPP status or otherwise for the previous financial year by 10th May of next financial year based on conditions stipulated in this procedure: Provided that the 'Verifying Authority' shall also

inform the percentage of consumption of energy with respect to Aggregate electricity generated for the previous month on month basis and cumulative basis by the end of next month.

**6.3.6** Failure to furnish data, documents for the purpose of verification of captive status within the time frame affixed in this procedure would empower the Verifying Authority to determine the status of the plant with the available data or documents if any.

**6.3.7** The Verifying Authority may conduct cross verification of data furnished with the available downloaded data from the meter terminals of captive generators and their captive users.

**6.3.8** The Verifying Authority shall intimate fulfillment of condition in regard to the captive status or otherwise to the CGPs/captive users and the distribution licensee.

#### **6.4 Ceasing of Qualification of CGP:**

If CGPs fails to meet the requisite conditions in a financial year, the generating plant will cease to be a Captive Generating Plant and the users will cease to be captive users and further liable to pay Cross Subsidy Surcharge and/or additional surcharge. In case the verifying agency/authority observes non-compliance of the conditions prescribed under Rule 3 of the Electricity Rules 2005 for captive status during a financial year then the matter shall be referred to the Commission by the verifying agency/authority for adjudication in accordance with the procedure approved by the Commission.

#### **6.5 Default by a shareholder(s):**

**6.5.1** When a shareholder(s) defaults in fulfilling the consumption criteria of Rule 3, and when other captive users together do not comply with ownership criteria of 26%, the CGP will lose its captive status, and all captive users shall forgo the concessions available to a captive user.

#### **6.6 Default in Payment:**

**6.6.1** Non-payment of any charge or sum of money payable by the open access consumer shall be considered as non-compliance and shall be liable for action under the Electricity Act, 2003.

**6.6.2** The distribution licensee may discontinue open access after giving consumer an advance notice of 15 days without prejudice to its right to recover such charges as per applicable laws.

**6.7** The above procedure shall be subject to the interpretation of the Electricity Act and the Electricity Rules, by the Courts/Tribunals of competent jurisdiction as applicable from time to time.