

Draft regulations for verification of captive status of generating plants/consumers

The Tamil Nadu Electricity Regulatory Commission (“TNERC”), *vide* notification dated June 24, 2024, had issued the ‘Draft TNERC (Verification of Captive Status of Generating Plants /Consumers) Regulations, 2024’ (“**Draft Verification Procedure**”) for seeking views/comments/suggestions from the public. The Draft Verification Procedure, proposed under the Electricity Act, 2003, aims to specify the methodology for verification of status of captive generating plants (“CGP”) and captive users located within the State.

Key highlights of the Draft Verification Procedure

1. **Scope and extent:** The Draft Verification Procedure will apply to all CGPs and captive users throughout the State of Tamil Nadu.
2. **Determination of captive status of CGP:**
 - a) **Annual monitoring** – The distribution licensee authorised by the TNERC will monitor CGPs annually, after the end of the financial year, for compliance with consumption and equity share-holding criteria. For newly commissioned plants, for the first year, the start date is the latter of the open access date, receipt of the wheeling agreement, or commissioning date. For the subsequent years, generation from April 1st to March 31st of a financial year will be considered for determining captive status.
 - b) **Role of distribution licensee and TNERC** - TNERC has authorised the distribution licensees in Tamil Nadu to annually collect documentation from generator(s) and user(s) to assess their captive status based on ‘criteria’ of consumption and equity shareholding. Furthermore, in instances where consumers do not meet the criteria for captive status, the distribution licensees are empowered to issue demand notices that include detailed calculations demonstrating the consumers' non-compliance with the captive status requirements. If any CGP fails to satisfy the eligibility criteria for CGP status, the distribution licensee will, after due reconciliation with the CGPs, submit the pertinent documents in their entirety to TNERC for final determination regarding the CGP status of the plant.
 - c) **Accounting for captive use** - For generating stations/pooling stations with units identified for captive use, the ‘aggregate’ energy generated, allocated, and consumed will determine captive status. For wind energy with multiple units under separate energy wheeling agreements but the same ownership structure, aggregate energy of all units is accounted for.
 - d) **Multi-State CGPs** - For CGPs and users in more than one State, captive status verification will be done by the Central Electricity Authority according to approved procedures.

- e) **Security deposit** - By April 30th each year, captive users must deposit a bank guarantee equivalent to cross-subsidy surcharge and additional surcharge for 51% of captive consumption from the previous year (or an estimate for new plants), as payment security to the distribution licensee.

3. **Verification of ownership and consumption criteria:**

a) **Verification of consumption criteria** -

- i) as per the Draft Verification Procedure, the criteria for consumption will be verified based on the aggregate net electricity generated from the generating unit(s) designated for captive use. This is calculated as gross electricity generated minus auxiliary consumption and other relevant consumptions such as banked energy and startup energy (including self-consumption). The detailed accounting mechanism is set out in the Draft Verification Procedure;
- ii) further, the aggregate net electricity will be determined annually at the end of the year; and
- iii) the verification of consumption criteria for different types of captive users will be as per the criteria set out in the Draft Verification Procedure.

b) **Verification of equity share holding criteria** -

- i) the Draft Verification Procedure outlines the specific shareholding criteria and the necessary supporting documentation (including articles of association, memorandum of association, shareholding certificates, etc) required for verifying the different categories of captive users;
- ii) the generators/consumers must provide equity shareholding details as of March 31st, annual consumption, and electricity generation details in prescribed formats;
- iii) further, any change in shareholding or ownership during the year must be reported within 15 (fifteen) days and weighted average shareholding percentage will be used if shareholding changes during the year; and
- iv) technical losses in the electrical network, as determined by the TNERC in its tariff orders, and those in the energy storage system will be added to the energy consumption of captive users for the purpose of verifying consumption criteria.

- 4. **Meeting and reporting:** As per the Draft Verification Procedure, separate energy meters with automated meter reading facilities are required for each generating unit. Further, data on generation and consumption must be reported regularly to the distribution licensee.
- 5. **Non-Compliance consequences:** CGPs or users failing to meet the criteria will lose captive status for that year, resulting in cross-subsidy surcharges and additional charges. Defaulting entities must pay these charges within a month of the invoice.
- 6. **Dispute resolution:** Disputes between distribution licensees and captive power producers/users regarding captive status and related charges can be petitioned before the TNERC.

Conclusion

The TNERC's release of the Draft Verification Procedure establishes a framework for verifying CGP status based on the consumption and ownership criteria set out in the Electricity Rules, 2005. This is intended to create a more predictable regulatory environment for captive power users. For the industry, the draft regulation introduces detailed reporting and monitoring mechanisms designed to streamline operations and address disputes. A key aspect of the Draft Verification Procedure which is noteworthy is the requirement for captive users to deposit a bank guarantee equivalent to cross-subsidy surcharge and additional surcharge for 51% of captive consumption as payment security to the distribution licensee, which can have an impact on the financials of the CGP.

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