

March 2026

## Ministry of Power notifies Electricity (Amendment) Rules, 2026 amending the norms for captive generating plants and significantly easing compliance for group Captive Generating Plants

On March 13, 2026, the Ministry of Power notified the Electricity (Amendment) Rules, 2026 (“**Amended Rules**”)<sup>1</sup> amending Rule 3 of the Electricity Rules, 2005<sup>2</sup> governing Captive Generating Plants (“**CGPs**”). The amendments clarify ownership and consumption criteria and significantly ease compliance requirements for group CGPs.

Rule 3 under the Electricity Rules, 2005 has been the subject of extensive litigation, particularly for group captives, leading to divergent interpretations and regulatory uncertainty. The Amended Rules seek to address this by providing clarity and streamlining compliance, while balancing the interests of captive users and distribution licensees.

The Amended Rules are effective from March 13, 2026, except certain provisions relating to proportionate consumption and verification, which will come into force on April 1, 2026.

### Key changes

#### ‘Captive User’ and ‘Ownership’

The Amended Rules define ‘Captive User’ to include subsidiaries of a company, its holding company and other subsidiaries of the holding company. All of them will now be treated as a single captive user. The definition of the term ‘Ownership’ has accordingly been amended to recognise the treatment of group companies as a single captive user. As a result, group companies can plan their individual captive power consumption independently of their shareholding. These amendments will significantly ease power planning for group companies and enable them to access affordable power under the captive route. (Rule 3(1)(a), Rule(3)(1)(d) and Rule 3(2)(d)(v) read with Schedule III of the Amended Rules)

#### Group captive compliance

1. Compliance of Rule 3 under the Amended Rules, by group CGPs is primarily predicated upon its captive user meeting the minimum ownership and consumption thresholds prescribed under Rule(3)(2)(a) i.e., not less than 26% of the ownership is collectively held by captive user(s) (“**Ownership Test**”) and not less than 51% of the aggregate electricity generated in the CGP, during the financial year, is consumed collectively by the captive user(s) (“**Consumption Test**”). (Rule(3)(2)(a) and Rule 3(2)(d)(i) read with Schedule III of the Amended Rules)
2. The Amended Rules provide that, as long as the Ownership Test and Consumption Test is collectively met:
  - a) each individual captive user (below individual ownership of 26%), gets the benefit of captive consumption up to 100 % of its proportionate consumption. Any consumption beyond 100% would be treated as non-captive

<sup>1</sup> G.S.R. 186(E) notified by the Ministry of Power on March 13, 2026

<sup>2</sup> G.S.R. 379(E) notified by the Ministry of Power on June 8, 2005

consumption. However, the entire consumption of such captive user must be considered for the purposes of group captive verification; (Rule 3(2)(d)(ii)(iii) read with Schedule III of the Amended Rules)

- b) the group captive structure does not fail on account of an individual captive user failing to meet the test of proportionality; (Rule 3(2)(d)(i)(ii)(iii)(v) read with Schedule III of the Amended Rules)
- c) an exception has been created for a captive user holding 26% or more in a group captive structure. Such captive user(s) gets the benefit of captive consumption for its entire consumption; (Rule 3(2)(d)(iii) read with Schedule III of the Amended Rules)
- d) in the event of variation in the ownership pattern during the financial year, the proportionate consumption of each captive user is to be determined on the basis of the 'weighted average shareholding' of such captive user during the financial year. (Rule 3(2)(d)(iv) read with Schedule III of the Amended Rules). It is pertinent to note that the Amended Rule does not provide the methodology for computing 'weighted average shareholding' which ought to have been clarified for avoidance of litigation. While the concept of 'weighted average shareholding' was recognised by the Supreme Court in *Gayatri Shakti*<sup>3</sup>, the Supreme Court did not clarify as to how the same is to be determined; and
- e) the new test for group CGPs not only eases the compliance requirements from a captive user(s)'s perspective but also addresses the concerns of authorities and courts regarding gaming.

### Formula for 100 % proportionate consumption

1. Previously, Rule 3 of the Electricity Rules, 2005 required that captive users of a CGP set up as an association of persons/Special Purpose Vehicle ("SPV") would have to consume electricity in proportion to their shareholding within a permissible variation of +/- 10% ("Proportionality Test"). To better apply the Proportionality Test, the Supreme Court in *Gayatri Shakti (supra)* had propounded the unitary qualifying ratio ("UQR"), a fixed ratio of consumption divided by shareholding (i.e., 1.96 %). The Proportionality Test was applied only on the minimum consumption requirement of 51% and ownership requirement of 26%.

This has been done away with by the Amended Rules where 100% proportionate consumption is pegged to the actual shareholding and actual total consumption by the captive user(s). Schedule III of the Amended Rules sets out various illustrations demonstrating compliance of Rule 3 of the Electricity Rules, 2005 under different scenarios. The illustrations use the following formula for determining the 100% proportional consumption for a captive user:

$$\frac{(\text{Total actual consumption collectively by all captive users}) \times (\text{Individual actual ownership of the captive user})}{(\text{Total ownership collectively by all captive users})}$$

For example, if a captive user holds 15% equity shareholding individually (where the captive users collectively hold 30% and consume 70 (seventy) units of electricity), then the 100 % proportionate consumption for such captive user translates to 35 (thirty-five) units. Any consumption up to 35 (thirty-five) units qualifies for exemption from levy of Cross-Subsidy Surcharge ("CSS") and Additional Surcharge ("ASC"), however; consumption over and above 35 (thirty-five) is subject to levy of CSS and ASC. (Schedule III of the Amended Rules)

### Verification of captive status

1. For intra-State captive consumption, the Amended Rules provide for verification by the nodal agency designated by the State Government. For inter-State captive consumption, the Amended Rules provide for verification by the National Load Despatch Centre ("NLDC").
2. Appeals against verification carried out by the nodal agency/NLDC will be adjudicated upon by a Grievance Redressal Committee constituted by the Appropriate Government. State Commissions will no longer be the forum for adjudication of disputes between captive users, CGPs and distribution licensees *qua* issues relating to captive

<sup>3</sup> *Dakshin Gujarat Vij Company Ltd. vs. Gayatri Shakti Paper and Board Ltd. and Anr.* (2023) SCC OnLine SC 1276

verification. (Rule 3(4) of the Amended Rules)

### **CSS and ASC**

It has been clarified that pending verification of captive status for any financial year by the nodal agency/NLDC, as the case may be, no CSS and ASC will be levied by the distribution licensee. This clarification addresses the issues raised by distribution licensees in certain States that required bank guarantees to the extent of CSS and ASC as a pre-requisite for granting captive open access. (Rule 3(3) and Rule 3(4)(c) of the Amended Rules)

### **Late Payment Surcharge**

Failure to meet the captive compliance will result in levy of CSS and ASC along with carrying cost calculated at the base rate as per base rate of Late Payment Surcharge specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, as amended from time to time. (Rule 3(4)(c) of the Amended Rules)

### **Conclusion**

The Amended Rules significantly enhance the group CGP framework by improving clarity, simplifying qualification criteria, and easing earlier constraints particularly those related to the Proportionality Test. They preserve group CGP status based on compliance with the Ownership Test and Consumption Test while introducing safeguards, such as proportionate consumption caps, to prevent misuse.

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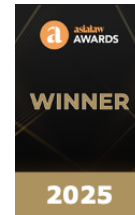
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