

CEA issues procedure for verification of inter-state captive projects

The Central Electricity Authority (**CEA**) has recently issued a comprehensive “*procedure for verification of captive status of such generating plant, where captive generating plant and its captive user(s) are located in more than one state*” (**Procedure**). The Procedure has been issued pursuant to Rule 3(3) of the Electricity Rules, 2005 (**Electricity Rules**), which was introduced by way of the Electricity (Amendment) Rules, 2023 by the Ministry of Power (**MoP**).

Background

Rule 3(3) of the Electricity Rules provides that determination and verification of captive status of projects where the project and its user(s) are located in more than one state (**Inter-state Projects**) shall be carried out by the CEA. This amendment was introduced with a view to streamline the verification process for such Inter-state Projects and their captive users.

The Procedure brings much needed clarity on the terms and modalities of the verification process for captive Inter-state Projects. The key features of the Procedure are briefly discussed below:

Applicability of the Procedure

⌋ The Procedure is applicable from FY 2024-25 to all captive Inter-state Projects and their users.

Verifying Authority

- ⌋ Director, Legal Division, CEA has been designated as the verifying authority (**Verifying Authority**).
- ⌋ Based on its assessment, the Verifying Authority shall



intimate the concerned distribution licensees, state electricity regulation commissions, SLDCs and RLDCs, regarding the captive state of the Inter-state Project and its captive users.

Verification Procedure and Appeals

- ⌋ The owner of the generating station (**Applicant**) is required to submit an application to the Verifying Authority along with all the requisite documents as mentioned under Clause 8 of the Procedure, on or before May 31st of every year. The Procedure requires the applicant to identify the category of ownership (single captive user/ Group Captive Users (Company/Co-operative Society)) and submit documents accordingly, such as, undertaking, CA Certificate, MoA, AoA, Annual Return, certificate of incorporation of the co-operative society, Board Resolution, etc.

- ▮ The Verifying Authority is required to make decision within two months from the receipt of the complete application.
 - ▮ The Procedure also provides the Applicants the ability to challenge the decision of the Verifying Authority by way of an appeal to the Chief Engineer, Legal Division, CEA, who shall dispose of such appeal within 45 days.
 - ▮ A second appeal against the decision of the Chief Engineer may also be filed before a committee comprising Member (E&C), Member (GO&D) and Chief Engineer (PDM&LF) of CEA. No specific timeline has been stipulated in the Procedure for disposal of the second appeal.
 - ▮ While the Procedure is silent about the possibility of a further appeal, it is unlikely that the CERC and/or a SERC, or even the APTEL, will entertain an appeal against such an order, as they are quasi-judicial authorities under the Electricity Act, 2003. As such, aggrieved parties may look to challenge decisions of the CEA's appellate committee before the jurisdictional High Courts in writ proceedings.
- ### Key takeaways from the Procedure
- ▮ **Minimum threshold of ownership:** The Procedure clarifies that the minimum shareholding threshold of 26% to be met collectively by captive users is a continuing requirement and needs to be maintained throughout the year.
 - ▮ **Weighted averages of shareholding:** The principle of weighted average of shareholding has been applied only in respect of verifying compliance with the proportionate consumption requirement, in cases where there is a change in shareholding in the middle of financial year. The relevant captive user will be required to demonstrate consumption on the basis of the weighted average of its shareholding for the financial year, or part thereof.
 - ▮ **Treatment of technical losses:** Technical losses in electrical network and ESS shall be counted towards energy consumption of the captive user(s) (technical losses including ISTS, STU & discom network, as applicable).
 - ▮ **Commencement of accounting period for new projects:** For newly commissioned projects, the first accounting year shall commence on the COD of the project and end on 31st March. Similarly for operational projects which are seeking captive status for the first time, the first accounting year shall commence on the date of approval from the board of directors of the company declaring the project to be a captive project. Subsequent accounting years shall commence from 1st April. Captive status shall be determined on a pro-rata basis for the first year of commercial operation/captive declaration, as the case may be. Given that some of these obligations apply to the Qualified Coordination Agencies (**QCAs**) as well, it may require suitable modifications to existing agreements to align the same with the Procedure.
 - ▮ **Metering of cluster projects:** The Procedure sets out special provisions and obligations for Inter-state Projects seeking captive status which are a part of a cluster of multiple other generating plants connected at the same pooling sub-station, having a common interface point. The said provisions aim to ensure that the generation data of such projects is credibly segregated and communicated for compliance. The special provision contemplated under the Procedure include requirement for installation of separate interface meters with real time communication facility, certifications from the QCA on the segregated energy data, etc.
- Compliance with the aforesaid requirements may also require alignment and appropriate contractual understanding between such generators sharing the common evacuation infrastructure, as well as with the owner of such common infrastructure. This may also require the owner of such infrastructure to undertake a more active role in the process, requiring suitable contractual clarity to ensure that.

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