



Tamil Nadu Generation and Distribution  
Corporation Limited  
(TANGEDCO)  
144, Anna Salai  
Chennai – 600 002  
Represented by its  
Chief Financial Controller-Revenue

.... Respondent  
(Thiru.M.Gopinathan  
Standing Counsel for TANGEDCO)

**Dates of hearing:** 10-03-2020; 18-08-2020; 25-08-2020;  
01-09-2020; 22-09-2020; 20-10-2020;  
24-11-2020; 29-12-2020; 23-02-2021;  
15-04-2021; 13-07-2021; 17-08-2021;  
27-08-2021

**R.P. No.3 of 2020  
in  
R.A. No. 7 of 2019**

Tamil Nadu Generation and Distribution  
Corporation Limited  
(TANGEDCO)  
144, Anna Salai  
Chennai – 600 002  
Represented by its  
Chief Financial Controller-Revenue  
.... Petitioner

(Thiru. M.Gopinathan  
Standing Counsel for TANGEDCO)

Vs.

1. Sugapriya Paper & Boards Pvt. Limited  
107/2, N.Subbniahpuram  
SatturTaluk, Virudhunagar District – 626 205.
2. Tamil Nadu Spinning Mills Association  
12, Karur Road, Modern Nagar  
Dindigul – 624 001.

3. Indian Wind Power Association  
Represented by its Secretary General  
Door No.E, 6<sup>th</sup> Floor, Shakti Towers – II  
766, Anna Salai, Chennai – 600 002.
4. The Southern India Mills' Association  
Represented by its Deputy Secretary  
General Mr.V.Regurajan  
41, Race Course Road, Coimbatore – 641 018.  
Represented by its Vice President  
Mr.K. Sathiavan
5. Tamil Nadu Electricity Consumers Association  
SIEMA Building, 8/4, Race Course  
Coimbatore – 641 018  
Represented by its Vice President Mr.K.Sathiavan
6. Sri Venkateshwara Boards  
1/40A, NH 7 Road  
Pethureddipatti Village  
Odaipatti Post, SatturTaluk  
Virudhunagar District – 626 205  
Represented by Mr.G.Seenivasan its Director

.....Respondents  
(Thiru. R.S.Pandiyaraj  
Advocate for Respondent for R2  
Thiru Rahul Balaji  
Advocate for Respondents  
for R3 and R4)

**Dates of hearing:** 04-08-2020; 01-09-2020; 22-09-2020;  
20-10-2020; 24-11-2020; 29-12-2020;  
23-02-2021; 15-04-2021; 13-07-2021;  
17-08-2021; and 27-08-2021

**R.P. No.4 of 2020**  
**in**  
**R.A. No. 7 of 2019**

M/s. Sugapriya Paper & Boards Pvt. Ltd.  
107/2, N.Subbniahpuram  
SatturTaluk, Virudhunagar District – 626 205.

..... Petitioner  
(Thiru Rahul Balaji  
Advocate for the Petitioner)

Vs.

Tamil Nadu Generation and Distribution  
Corporation Limited  
(TANGEDCO)  
144, Anna Salai, Chennai – 600 002  
Represented by its  
Chief Financial Controller-Revenue  
.... Respondent

(Thiru. M.Gopinathan  
Standing Counsel for TANGEDCO)

Dates of hearing: 28-07-2020; 18-08-2020; 25-08-2020;  
01-09-2020; 22-09-2020; 20-10-2020;  
24-11-2020; 29-12-2020; 23-02-2021;  
15-04-2021;13-07-2021; 17-08-2021;  
and 27-08-2021

**Date of order : 07-12-2021**

The R.P.No.2 of 2020 in R.A. No.7 of 2019, R.P. No.3 of 2020 in R.A. No. 7 of 2019, R.P. No. 4 of 2020 in R.A. No. 7 of 2019 and M.P. No. 24 of 2020 came up for final hearing before the Commission on 27-08-2021 and the Commission upon perusing the petition and connected records and after hearing the submissions of both sides passes the following:-

### **COMMON ORDER**

1.1 Prayer of the petitioner in M.P No.24 of 2020

a) To issue appropriate clarifications to the said order dt.28.1.2020, in terms of the present petition under Regulation 16 of the TNERC –Conduct of Business Regulations 2004 and accordingly, pass appropriate and other suitable orders,

wherever necessary as prayed for, in order to maintain consistency between the CGP procedure notified in R.A No.7 of 2019 dt.28.01.2020 and the Electricity Act,2003,Electricity Rules 2005,binding judgments of APTEL,New Delhi and issue appropriate directions.

b) pass such further order(s) as it deems just,fit and proper in the facts and circumstances of the case.

#### 1.2 Prayer of the petitioner in R.P No.2 of 2020

To take on file the Review petition under Regulation 43 of TNERC Conduct of Business Regulations 2004 and accordingly pass appropriate orders by ordering to make such changes and modifications wherever necessary as prayed for.

#### 1.3 Prayer of the petitioner in R.P No.3 of 2020

To take on file the Review petition under Regulation 43 of TNERC Conduct of Business Regulations 2004 and accordingly pass appropriate and other suitable orders.

#### 1.4Prayer of the petitioner in R.P No.4 of 2020

To issue appropriate clarifications to the order dt.28.1.2020, in terms of present petition under Regulation 16 of TNERC-Conduct of Business Regulations 2004 and accordingly pass appropriate and other suitable orders wherever necessary as prayed for.

## **2.0 Case in brief :**

**2.1** The Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO) had issued circular memoranda requiring the captive generators and captive users to furnish documents, data for the purpose of verification of status of Captive Generating Plants in accordance to Rule 3 of Electricity Rules 2005. Writ petitions in W.P Nos.10497,10542,10576 etc. of 2017 and in W.P Nos.9304,9305 of 2017 were filed by captive users/captive generators for issue of mandamus against the circulars issued by TANGEDCO calling for requisite details from the Captive Generating Plants (CGPs) to verify the compliance of rule 3 of Electricity Rules 2005. The Hon'ble High Court of Madras-Madurai Bench ordered the Commission to look into the matter of verification of status of CGPs. This order was appealed by TANGEDCO in W.A Nos.930 and 931 of 2017 contending that the power of verification and adjudication is available with them. The Hon'ble High Court of Madras – Madurai Bench upon hearing the Appellants, Respondents and the Commission, passed the following order on 9.10.2018 :

*“10. In view of the above, we are not inclined to undertake any academic exercise in deciding the jurisdiction qua verification and adjudication as ultimately, final adjudication, in any case, would lie in the court of the second respondent. We may note that we are at the initial stage and therefore it would only be just and proper to proceed further resulting the adjudication. There is also a broad agreement on this course. In such view of the matter, these writ appeals stand disposed of with the following directions/observations.*

*(i) The issue qua the jurisdiction and power of the appellants to verify and determine CGP Status leading to entitlement of cross surcharge subsidy is left open;*

*(ii) The second respondent is directed to issue either a general or special order detailing the procedure to be followed for verification of the CGP Status either by directing or giving liberty to the appellants to verify the Captive Status of the Generating Companies;*

*(iii) The aforesaid order will have to be passed within a period of six weeks from the date of receipt of a copy of this order;*

*(iv) The private respondents are directed to furnish the particulars to facilitate the process of verification as per the procedure contemplated and the directions of the second respondent when asked by the appellants preferably within a period of four weeks;*

*(v) The appellants can make a determination on receipt of the aforesaid verification particulars from the respective Generating Companies and in the event of disputes, place them before the second respondent for adjudication after marking copies of the same to the concerned Generating Companies.*

*(vi) As and when the said exercise is done with respect to each and every Generating Company, the adjudication process will have to be commenced and thereafter completed by the second respondent within a period of six weeks;*

*11. It is open to the second respondent to pass a common order in view of the commonality of the issues involved. All other issues both on fact and law are left open to be agitated by the appellants and the private respondents and thus, adjudicated by the second respondent. No costs. Consequently, connected civil miscellaneous petitions are closed."*

**2.2** The case was taken on remand and Commission webhosted a draft procedure on 27-02-2019 for verification of consumption by captive users and status of CGP by the Distribution Licensee.

**2.3** The Tamil Nadu Association of Spinning Mills filed a contempt petition No. CMP No.442 of 2019 before the Hon'ble Madurai Bench of Madras High Court objecting to the hosting of the Draft procedure for verification of CGP status in the Commission's website without taking up the matter for adjudication. In a clarificatory petition filed by the Distribution Licensee, TANGEDCO, in CMP No.(MD) No.5958 of 2019 & 5959 of 2019, the Hon'ble High Court of Madras in the order dt.17.9.2019 issued directions to the Commission to grant a personal hearing to the petitioners before finalizing the draft procedure. The contempt

petition No. 442 of 2019 initiated by the Tamil Nadu Spinning Mills Association was withdrawn.

**2.4** Upon withdrawal of the contempt petition, based on requests received from stakeholders, a revised draft procedure for verification of CGP status was hosted on 9.12.2019 and a hearing conducted on 23.12.2019 and orders passed in R.A No.7 of 2019 detailing the procedure to be followed for verification of status of Captive Generating Plants. In the said order, Commission specified :

- i) Procedure for verification of ownership of the captive generating plant and documents to be submitted for 'ownership' for various compositions of ownership
- ii) Timeframe for verification of ownership
- iii) To ensure 26% ownership at any point of time in a financial year and 51% consumption on annual basis
- iv) Verification of qualification of CGP for an operating company, co-operative society, AoP, SPV, test of proportion for AoP and SPV (where applicable)
- v) Consider weighted average of shareholding to verify 26% ownership annually when there is change in ownership structure
- vi) Levy of cross subsidy surcharge on balance captive users who fail test of proportion barring other users who meet 26% ownership criteria and 51% annual consumption
- vii) Methodology of verification of criteria of consumption annually in a financial year
- viii) Documents to be furnished for annual verification of captive status



ix) Permitted the Distribution licensee TANGEDCO to verify the captive status of CGP and captive users, and to intimate fulfilment of condition in regard to the captive status or otherwise to the CGPs/captive users by 30<sup>th</sup> June with a time period for captive users to accept or raise objections to the verification statement of the Distribution licensee and to refer cases of dispute before the Commission.

viii) Made the procedure applicable from the Financial year 2014-15, the period in dispute before the Courts of appeal.

**2.5** Tamil Nadu Power Producers Association appealed against the order passed by this Commission in R.A No.7 of 2019 dt.28.1.2020 before the Hon'ble APTEL in Appeal No.131 of 2020. Hon'ble APTEL has delivered the judgment in A.No.131 of 2020 on 07-06-2021.

### **3.0 Facts of the case in M.P No.24 of 2020:**

**3.1** The petitioner is a registered association consisting of more than 1500 members who have invested in the putting up of windmills in India. The petitioner's association comprises of owners of Wind Energy Generators (WEGs) otherwise known as windmills. The petitioner's need for clarification arose after the Respondent TANGEDCO commenced implementing the Procedure issued by this Commission in R.A No.7 of 2019.

**3.2** The petitioner submits that the Commission's order was implemented contrary to the provisions in Rule 3 which has resulted in seeking the clarifications.

**3.3**The petitioner has sought clarifications as follows:

**i) To clarify whether the Respondent TANGEDCO is both, the authority to collect and collate the information, as well as the adjudicatory authority in respect of CGP verification with respect to the compliance.**

The order in R.A No.7 of 2019 states that TANGEDCO will have the authority to verify and effectively make a determination on whether a CGP applicant is entitled to the CGP status. Such delegation of authority requires clarity since, the TANGEDCO, being the sole distribution licensee in the State of Tamil Nadu, might hamper competition by unilaterally rejecting the CGP status. The petitioner seeks the Commission to clarify the scope, extent and manner in which the delegated powers are to be exercised by TANGEDCO. The petitioner has referred to the judgments of Hon'ble APTEL in A.No.136 of 2011, A.No.252 of 2014 and A.No.252 of 2015 where it has been held that the power to verify CGP status vests with the State Electricity Regulatory Commissions. The petitioner has suggested that the determination of captive status be done by the regulatory wing in the Commission. This would ensure that the power of determination is always vested with the independent authority and the CGPs are protected from the arbitrary actions by the distribution licensee for the future periods as they remain bound by the determination of the Commission.

**ii)To clarify whether the process of CGP verification has to be linked or made dependent with the application for open access wheeling since both rights are statutorily independent rights**

Para 6.3.8 read with para 7.5 and its sub-clauses specified the documents to be furnished by the entity intending to obtain open access/wheeling approval, before starting wheeling of power in a financial year for captive purposes. The CGPs would be required to share documents, other than a certificate issued by the Chartered Accountant certifying equity shareholding with voting rights. It appears that the wheeling/open access permission is interdependent with the captive generation verification process. The only requirement that has to be satisfied for captive wheeling is the compliance of minimum equity shareholding in the CGP by captive users as per the Electricity Rules for which a certificate from a Chartered Accountant would suffice. In the procedure in addition to CA certificate, more documents from CGP and captive users have been listed. The petitioner seeks clarity on the documents to be provided while commencing wheeling and documents for status verification and confirmation at the end of the year.

**iii)Inconsistencies with respect to certificates to be provided from ‘Statutory Auditor’ and ‘Chartered Accountant’ and collection of documents from 100% owned CGPs.**

The position of providing a certificate from a ‘Statutory Auditor’ has been accepted by the Commission. The expression ‘Chartered Accountant who signs

the annual financial statement' and 'Company Secretary who signs the annual return' may be removed. Also, the order has not considered the separate character of 100% owned windmills where the entire consumption is by the single entity owning it. The 100% owned windmills are not falling under the Group Captive category and qualify straight as a CGP under section 2(8) of the Electricity Act,2003 and therefore may be exempted from the purview of the CGP ownership verification guidelines.

**iv) Clarification of timelines for submission of document for open access approval, change in shareholding/ownership, to clarify that the new CGP verification norms are to be applied prospectively or retrospectively?**

Para 6.3.8(1) and para 7.5.1 may be modified such that it applies only to captive users who seek approval afresh or seek extension.

The timelines mentioned in para 7.5.2, 7.5.3 & 7.5.4 of 10,15 and 30 days appears to be too long a period which may be replaced with 7,10 and 15 days and made applicable only for new captive users.

Intimation of change in shareholding is a new introduction and therefore can take effect prospectively i.e from 1.4.2020. Para 7.5.5 and 7.5.7 are applicable only when there is change in ownership/shareholding. A clause 'Approval is required to be obtained only for new captive users. No approval is required for other existing consumers for whom OA approval has been obtained already. DL shall process the application within the time frame mentioned in 7.5.4' may be added.

**v) Availability of 26% shareholding throughout the financial year.**

Para 7.6.2,7.6.3,7.6.4 and 7.6.6 state that the 26% threshold equity shareholding is applicable throughout the financial year. As the ownership has to be verified on the basis of the shareholding available on the closure of the financial year, the ownership needs to be reckoned only as on 31<sup>st</sup> March. The words 'throughout the financial year' may be removed.

**vi) Verification of ownership and consumption for each corresponding year of change**

In Para 7.6.8, it is provided that verification of ownership and consumption for any change in the captive user in a FY shall be for each corresponding period of change i.e by considering the proportionate generation for the corresponding period. Whenever a new consumer was granted OA approval, for example, Maharashtra ERC considered the proportionate generation from the date on which the OA approval was granted for verification of compliance. In respect of other consumers, the verification was done for the annual generation and not different periods. This methodology has been upheld. Format II that requires captive users to furnish details of captive generators needs to be modified as the users may not be in a position to file data of generators.

**vii) Clarification in accounting of generation and consumption**

Para 7.7 provides for accounting mechanism. Banking charges deducted in kind are not available for consumption. Grossing up of T&D losses have not been mentioned in the procedure. T&D losses have been grossed up in MERC order

117 of 2012 dt.28.8.2013. This methodology has been upheld by APTEL in A.No.316 of 2013 dt.17.5.2016. Format V (A) needs to be corrected and Format V (B) made applicable only for SPVs. CGPs with number of energy wheeling agreements can be aggregated and therefore the Authority to whom consolidated data of all HT services has to be provided may be mentioned.

#### **viii) Ceasing of qualification of CGP**

Para 7.8 deals with the issue of ceasing of qualification of CGP. A significant aspect under Rule 3(1)(a) is that the minimum percentages are prescribed for the 26% ownership and 51% consumption. Once the twin criteria of 26% and 51% are complied with, the plant qualifies to be a CGP. The para may be modified as 'Where the minimum 26% ownership and not less than 51% consumption criteria are met, but one or more captive users do not meet the proportionality principle, such users who do not fulfil the proportionality criteria shall alone lose their captive status and other captive users who fulfil the proportionality criteria will retain their captive status provided the CGP complies with the twin criteria of 26% ownership and 51% consumption. Only the defaulting consumers shall be liable to pay Cross Subsidy Surcharges, if applicable.'

#### **ix) Clarification of formats to be provided**

Format II requires the captive user to certify details of the CGP. The auditor of captive user cannot certify the details relating to CGP which is a different entity

.Format II requires suitable modification. Format V(A) needs to be corrected by deducting banking charges, grossing up of consumption with T&D losses. Format V(B) is only for SPV category generators. The format V(B) may indicate as to how the verification of compliance of norms is to be made. Format V(B) may be exempted for non SPV category generators.

**x) Fixation of cut off date in para 7.9.4 as 30<sup>th</sup> April**

The cut off date of 30<sup>th</sup> April is impossible of being achieved for submission of documents in view of vast collection of data and compilation. A captive user cannot undertake/certify something that comes under the purview of CGP. The generators may be given time until 30<sup>th</sup> June of every financial year for furnishing relevant documents for verification purposes.

**xi) Non levy of cross subsidy surcharge during R&C measures period**

There is no mention about the non levy of cross subsidy surcharge during the period of restriction and control measures in force more particularly during 2014-15. As per the orders of Hon'ble APTEL in A.No.38 of 2013 dt.1.8.2014, no cross subsidy is liable to be levied during 2014-15. This may be clarified by the Commission.

**4) Review petition filed in R.P No.2 of 2020**

4.1 The petitioner, an association of spinning mills with 630 members, is a registered society registered under the Tamil Nadu Societies Registration Act 1975 with registration No. 330/1997. The members are all HT industries drawing power from TANGEDCO and in addition to the same have set up their own wind electric generators (WEGs) for their own captive consumption. The petitioner states that there are certain mistakes of facts, errors on the face of the record and also ignorance of certain material facts and seeks review of the petition in the following areas:

**i) Whether the Authority provided for verification of the status of CGP to the Distribution Licensee is legally valid in view of the binding judgements of APTEL?**

Para 6.1.6 of the order in R.A No.7 of 2019 says, "6.1.6 In view of the above, we decide that the TANGEDCO, shall conduct the verification of CGP status based on the procedure duly passed by the Commission in this order."

The petitioner submits that the Hon'ble Division Bench of Madurai High Court has left open the matter of jurisdiction to verify and determine the CGP status and therefore Commission is obligated to go with the binding judgments of Hon'ble APTEL in the matter of identifying and providing jurisdiction to verify CGP status. In all the judgments of APTEL, A.No.116 of 2009 dt.18.5.2010, A.No.136 of 2011 dt.21.12.2012, A.No.252 of 2014 dt.3.6.2016, the jurisdiction and the power to verify the CGP status, was vested with the State



Commissions. Even though para 10(v) of the order dt.9.10.2018 of the Hon'ble Division Bench of Madras High Court, appears to apply like a passing remark that the appellants can make a determination on receipt of the aforesaid verification particulars from the respective Generating Companies, such an observation has to be analysed based on the primary condition provided in para 10 & 10(i) of the judgment dt.9.10.2018. Verification of CGP status is a matter that involves adjudication and such matters cannot be delegated to TANGEDCO due to the specific bar provided under section 97 of the Electricity Act 2003, except the powers to adjudicate disputes under section 79 and section 86. The petitioner has sought to review the order to the extent of providing jurisdiction and power to TANGEDCO to verify the status of CGPs.

**ii) Whether 100% owned windmills /solar plants/CGPs are to be considered at par with other CGPs /Generating stations?**

Para 6.3.8 provides timelines for submission of documents for grant of approval to avail open access. This part of the procedure applies only to new consumers and no approval is required in respect of consumers for whom approvals are available until expiry. The question of minimum maintenance of 26% does not arise for the CGPs owned 100% by captive user and hence, the financial documents mentioned under para 6.3.8 would not be applicable to 100% owned windmills. Format of undertaking for CGPs is not relevant for 100% owned CGPs. The contents in para 6.3.8 may be reconsidered for review in order to

exempt 100% ownership CGP windmills/solar plants where the owner of CGP and other captive users are involved in the process.

**iii) Whether the timelines provided in para 6.3.8 cover all issues?**

The time lines in the order provided duration for generators to seek approval and licensee to grant approval in para 6.3.8 and 7.5.4.

Timelines for applying by CGP/Generating station is 30 working days when no. of captive users are upto 50 and 45 working days when no. of captive users are above 50. Period of 45 days to seek approval by a generator is too long a period as the captive user should take the shares 45 days before the actual date of arrangement of flow of power to the captive user. The timelines may be altered considering actual requirement.

**iv) Whether the removal of the words 'Statutory Auditor' is fully in place?**

Para 6.3.9 though recognises the difficulties raised by stakeholders in providing certificates from statutory auditor, it further states that ownership/shareholdings should be certified by a Chartered Accountant who signs the annual financial statement/practising Company Secretary who signs the annual return. The above provision finds place in para 7.4.4. The expression 'who signs the annual financial statement' and 'who signs the annual return' may be removed.

**v) Whether the ownership at 26% has to be maintained throughout the year?**

Para 7.4.1,7.6.2,7.6.3 and 7.6.6 mentions that ownership of 26% has to be held throughout the year. If ownership change is effected in the middle of the year, outgoing shareholder will be member of the Company until he is removed and the incoming shareholder will get power only within 30 days and therefore during such period the outgoing shareholder would have already transferred the shares and the incoming shareholder is not yet a captive user till he is approved even though he continues to be a shareholder. During such occasions the shareholding of captive users could be less than 26%. The ownership has to be verified based on the shareholding available on the closure of the financial year. Maintaining 26% ownership is nowhere mandated under the Electricity Rules 2005. Therefore, the words 'throughout the financial year' needs to be removed.

**vi) Issues related to MGT7**

Para 6.3.9 & 7.4.4(i) 3 mentions that the Form MGT 7 showing shareholding details filed by generators/captive users with the ROC has to be furnished. Form MGT7 gives details of shareholding of the Company during a particular year. When the captive user is required to provide a copy of MGT7, it would provide only the details of shareholders of the captive users' company. Verification of shareholding is to be done only in respect of CGP and demanding MGT7 from captive users additionally would not serve any purpose.

**vii) Whether the undertaking from captive user is needed?**

An undertaking provided by a CGP is valid. Obtaining undertaking from a captive user would be superfluous and therefore the obligation to provide undertaking by a captive user may be removed.

**viii) In a case of a captive user introduced in the middle of the year, is it necessary to file documents for existing captive users?**

Para 7.5.5 says 'For any change in shareholding of existing captive users, the proof of documents shall be furnished within 10 days of such change.' Para 7.5.7 says that for any change in ownership/shareholding in CGP, approval is to be obtained for wheeling. Approval would be required only in respect of a new captive consumer. Therefore, para 7.5.5 may be modified to the extent that no approval is required when change in shareholding is made within the existing captive users. Timelines to provide approvals by the Distribution licensee in case of change in shareholding should also be provided.

**ix) Requirement of intimation of change for prospective application**

The requirement of intimation of change in para 7.5.5 and 7.6.9 has to be ordered to be made prospectively applicable.

**x) Verification only on annual basis with no split period**

Para 7.6.8 mentions that if a captive user is included in the middle of the year, verification shall be done for each period separately meaning that a year can be split up for more than 1 year for verification. In the Kadodara order in A.No.171

of 2008 dt.22.9.2009, Hon'ble APTEL has clearly held that the verification should be done only on an annual basis for the year as a whole. Whenever a new consumer was granted with OA approval during the middle of the year, MERC has considered generation from the date on which the new OA approval was granted for verification of compliance. Para 7.6.8 may be modified to the extent of accommodating the judgment of Hon'ble APTEL in A.No.171 of 2008.

**xi) Deduction of banking charges from aggregate generation**

For the Wind Energy Generators, banking charges are deducted in kind at 14% and therefore banking charges are to be deducted from aggregate generation or included in aggregate consumption as deemed consumption.

**xii) Grossing up of T&D losses levied on WEGs/CGPs in kind**

Transmission and Distribution losses (T&D losses) are deducted in kind depending on the injection voltage level and drawal voltage level. T&D losses are a statutory charge regulated by the orders of the Commission issued from time to time and hence has to be grossed up with the consumption of consumers to determine the minimum consumption norm. The methodology of T&D losses has already been followed by MERC and upheld by APTEL in A.No.316 of 2013 dt.17.5.2016.

**xiii) Ceasing of qualification of CGP**

Para 6.6.3 and 7.8.2 of the order in R.A No.7 of 2019 which mentions that if one or more consumers do not fulfil test of proportionality other consumers can retain CGP status only if after excluding the defaulting consumers together hold 26% financial stake and consume not less than 51% of aggregate energy may be set aside as per APTEL's order in A.No.131 of 2020 dt.7.6.2021.

**xiv) Formats provided in annexure**

Format II, V (A), V (B) may be modified. Format I may be modified to provide break-up details of captive users, include changes in share holding in a year. Format II may be modified such that details of CGP are deleted. Format V (A) has to include banking charges, T&D losses.

xv) In para 2 of the order in R.A No.7 of 2019, the written submissions of the petitioner filed during the hearing held on 23.12.2019 do not find place.

**5) Review petition filed in R.P No.3 of 2020**

5.1 The petitioner is the Tamil Nadu Generation and Distribution Corporation Ltd.(TANGEDCO) . The petitioner has raised certain issues terming the same as mistake of fact, errors on the face of record and ignorance of certain material facts and has filed the review petition.

**i) Review of para 7.4.4.(iii)**

The petitioner submits that para 7.4.4.(iii) of the order requires to be reviewed. Para 7.4.4(iii) deals with documents to be furnished by AoP – Association of

Persons. Since AoP can be a Company or Partnership firm/LLP, the documents stipulated in para 7.4.4(i) or 7.4.4(ii) as the case maybe have to be included in para 7.4.4(iii).

## **ii) Review of Para 7.5.1**

Para 7.5 of the order sought to be reviewed is reproduced below:

*“7.5 Documents to be furnished for obtaining approval for captive wheeling*

*7.5.1 The authorized signatory of the CGP shall furnish documents listed below in support of ownership structure/shareholding pattern prior to seeking wheeling approval under captive category. This applies to all captive users in a CGP.*

*(a) A letter of the authorized signatory with an undertaking in Annexure;*

*(b) Certificate by Chartered Accountant/practicing Company Secretary on ownership as per the Formats in Annexure, as may be applicable.”*

The petitioner submits that they are duty bound to ensure that the generating plant has 'Ownership' qualification so as to accord permission for wheeling under captive category so that the HT billing to users is exempted from levy of CSS on a monthly basis subject to final determination of CGP status. As per column 7.4.2.CGP has to furnish proof of documents for ownership before seeking permission for captive wheeling. The 'ownership documents' prescribed for verification under 7.4 differs from that prescribed in para 7.5.1. All documents as in 7.4.4,share certificate, S.H 4 may be added to the list of documents.

## **iii) Review of para 7.6.5**

Para 7.6.5 of the order specifies that in the case of Cooperative Society, members of society shall collectively satisfy not less than 26% of the ownership and consume not less than 51% of the aggregate electricity generated on annual basis on captive basis. In the case of Partnership firm/LLP, ownership shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant and the consumption shall be not less than 51% of the energy generated on annual basis.' Rule of proportionality is applicable for partnership firm/LLP since Hon'ble APTEL observed in A.No.171 of 2008 in KadodharavsDakshin Gujarat Vij Company that the Rule has exempted only Co-operative Society from the Rule of proportionality. Hence, Rule of proportionality may be made applicable to Partnership firm/LLP.

**iv) Review of para 7.6.8**

Para 7.6.8 of the order specifies that verification of ownership and consumption for any change in captive user in FY shall be for each corresponding period of change and this basis of verification shall take effect prospectively. As per Electricity Rules,2005, there is no provision for considering verification of 'Ownership' and 'Consumption' for the corresponding period and has to be considered on annual basis only. If the CGP status is lost even for a day, the CGP status is lost for the year. Para has to be reviewed and modified accordingly.

**v) Review of para 7.6.9**



Para 7.6.9 of the order provides for weighted average of shareholding when there is change in ownership structure. Weighted average of shareholding is not prescribed in the Electricity Rules 2005.

#### **vi) Review of Para 7.7.1**

Para 7.7.1 of the order reads as follows:

“7.7.1 Verification of criteria of consumption shall be based on the aggregate energy generated from generating unit(s) in a generating station identified for captive use before the commencement of captive wheeling to be determined on annual basis i.e. gross energy generated less auxiliary consumption. In the case of wind energy, if the CGP having multiple generating units have separate Energy Wheeling Agreements, aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements, provided the captive users of each EWA are the same holding same proportion of ownership.....”

Rule 3(1)(b) says as follows:

*(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 (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (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.*

....”

Rule 3(1)(b) of Electricity Rules 2005 read with definitions of Captive generating plant, company, electrical plant, generating station makes it clear that generation can take place in a location. There can be generation by their generating station from one unit or more than one unit. Where more than one unit is available in a generating station, then the company which owns the generating station should identify the units within such generating station for captive use and Electricity Rules 2005 will apply for such units identified for captive use. The company has Wind energy generators in various locations and have been assigned separate HT service connections. Each such HT service connection has executed a separate contract i.e energy wheeling agreement for wheeling under captive category. Even if such energy wheeling agreement is not executed as per the definition of a generating station , each WEG located in a place with grid connectivity to the grid as a generating station and is certainly not an unit within a generating station. Verification status of a CGP has to be done Energy Wheeling Agreement wise. Para 7.7.1 requires to be reviewed and modified.

#### **vii) Review of para 7.8.2**

Para 7.8.2 is reproduced below:

“7.8.2 Where the minimum 26% ownership and not less than 51% consumption criteria are met, but one or more captive users do not meet the proportionality principle, such users who do not fulfil the proportionality criteria shall lose their captive status and other captive users who fulfil the proportionality criteria will retain their captive status provided the CGP complies with the twin criteria of 26% ownership and 51% consumption excluding users who lost their captive status.”

The word ‘minimum’ may be replaced with ‘not less than’.

## **6.0 Review petition filed in R.P No.4 of 2020**

**6.1** The petitioner is in the business of manufacturing paper boards and a captive consumer connected with TANGEDCO grid vide HT SC No.147 with Virudhunagar EDC. Petitioner filed the review petition under section 94(1)(f) of Electricity Act 2003 read with regulation 43 of TNERC(Conduct of Business) regulations. The review petitioner seeks review of the order on the following issues:

### **i) Vesting TANGEDCO with the power to verify**

In the event the captive users and captive generating plant fail to fulfil the criteria under Rule 3 of Electricity Rules 2005, the users have to make payment of Cross

subsidy surcharge and additional surcharge to the distribution licensee, TANGEDCO. TANGEDCO being an interested party cannot be vested with the powers or right to adjudicate /verify the captive status. The judgments of Hon'ble APTEL in A.No.136 of 2011, A.No.252 of 2014, A.No.252 of 2015 have held that power to verify CGP status vest with the State Regulatory Commissions. Without prejudice to the foregoing, if the Commission decides to delegate its powers, the power to collect and verify data may be given to CEIG or any other independent neutral committee/body.

**ii) Denial of independent statutory right to open access by linking it to CGP verification**

Para 6.3.8 read with para 7.4.1 and 7.4.2 of the order specifies documents to be furnished by the entity intending to obtain open access/wheeling approval before commencing wheeling of power. Section 9, 42(2), 42(3) of the Act would entail that open access to a CGP for wheeling of power has to be granted as a matter of right and the CGP is permitted to wheel 49% of power in any year to third party or consumer. While furnishing of documents at the end of the year for verification is in the interest of the CGP seeking detailed documents at the start of the financial year is erroneous. The requirement to intimate change in shareholding

within 10 days is an error apparent since requisite data are to be provided at the end of the financial year.

### **iii) Time limit and verification exercise**

In terms of para 6.3.8(2) read with para 7.5.2 of the order, time period for submission of documents for proof of ownership has been specified. Documents by generators are to be furnished within a period of 30 days/45 days when the number of captive users are upto 50 and above 50 respectively. Requirement of providing ownership details has to be limited to new captive users. In **any** case furnishing details in advance has practical difficulties owing to the fact that the decision to subscribe to a specific shareholding by a captive user could be just before the date from which open access is to be availed.

### **iv) Conditions beyond the scheme of statutory framework**

Para 6.6.3 and para 7.8.2 provide the requirement of having 26% equity share with voting rights and consumption of 51% of the electricity generated as minimum condition. Reference to APTEL's judgment in A.No.252 of 2014 and A.No.316 of 2013 would make it clear that once the minimum conditions are met, the balance power can be consumed by any or all of the captive users in whatever proportion they wish.

### **v) Status of SPV and AoP**

Equating SPV with an AoP is an error by applying the judgment in A.No.171 of 2008 since the implementation of the aforesaid judgment was stayed by the Hon'ble Supreme Court of India in C.A Nos.8527-8529 of 2009. The Tribunal failed to appreciate that an AoP and SPV cannot be equated together and are distinct entities and that while SPV is a Company, once an AoP is incorporated it becomes a Company. The Hon'ble Supreme Court has held in a number of cases that an AoP is recognised as a tax entity which is not an incorporated entity. Also, an AoP is akin to Partnership wherein Association of Persons come together for a common purpose or object.

**vi) Other issues**

a) On the issue of weighted average of shareholdings, held in paras 6.4.9 read with 7.6.9 the same has to be considered with respect to the captive users existing at the end of a financial year. Even when there is change in shareholding, verification of generation and consumption has to be done qua only those captive users who remain/continue as equity shareholders at the end of the financial year. Rule 3(1)(a)(ii) does not mention that consumption has to be determined for those shareholders who cease to be part of the CGP.

b) Verification of ownership and consumption for any change in group captive structure cannot be made for the corresponding period of such change maintained in para 7.6.8 of the order in R.A No.7 of 2019. This direction is in the

teeth of Rule 3. The said direction finds place in clause 3(6) of the proposed draft amendment to Rule 3.

c) Para 7.6.9 requires that whenever there is change in ownership or change in shareholding, the same is to be intimated within 10 days otherwise the licensee will proceed to verify captive status without considering weighted average of shareholding. When the shareholding and consumption has to be verified annually, it does not matter whether change is intimated within 10days or at the end of the financial year.

d) Para 6.2.5 &7.2.4 directs applicability of procedure retrospectively i.e. from FY 21. It is a settled principle of law that delegated legislation can be retrospective only in the event the same is permitted in the parent Act. The Electricity Act 2003 which is the parent Act nowhere contemplates promulgation of any delegated legislation with retrospective effect.

e) R& C measures were imposed across all industries from 2005 to 2015. Levy of cross subsidy surcharge was suspended during R&C period. Over the years R&C measures were eliminated. CGP status was verified on the basis of 26% ownership criteria as certified by CA/practising Company Secretary and 51% consumption. Any further verification for past years would amount to changing the rules of the game.

**7.0 Written submissions by the petitioner and review petitioners after the judgment delivered by APTEL in A.No.131of 2020 dt.7.6.2021**

**7.1**The petitioner and review petitioners have prayed to clarify the issues other than those covered by APTEL in the A.No.131of 2020. All the petitioners except TANGEDCO have requested to detail the procedure that will be followed by TANGEDCO with respect to the direction of APTEL of collecting and verifying data with respect to CGP verification. Other issues sought to be clarified are the documents to be submitted, exemption of 100% owned CGPs from filing of documents and verification, collection of data by a single agency when captive users of a CGP are in various Distribution circles, deduction of banking charges, grossing up of T& D losses, a separate cell in the Commission for verification of CGPs, hosting of draft procedure subsequent to APTEL's order in A.No.131of 2020.

## **8.0 Judgment delivered by Hon'ble APTEL in A.No.131of 2020**

**8.1** The Hon'ble ATE after hearing the learned senior counsel appearing for the Appellant,learned counsel for the Respondent Commission, learned senior counsel for the Respondent No. 2 TANGEDCO, the learned counsel for the Respondent Nos. 3 to 5, and the learned senior counsel for the Respondent No. 8 and after carefully going through their written submissions/arguments and relevant material available on record during the proceedings, framed seven issues.



**8.2** The issues framed by APTEL and the summary of the findings in A.No.131 of 2020 are as follows:

**Issue No.1:- Whether the appointment of TANGEDCO as the verifying as well as adjudicating authority is justified in law?**

***Findings:** We hold that the second Respondent/TANGEDCO can be entrusted with the exercise of collecting & verifying data for the purpose of verification of captive plant status only. However, any coercive action to be initiated against the CGP /captive users regarding its captive status or for recovery of CSS, as per law, it shall be decided by the first Respondent / State Commission.*

**Issue No.2:- Whether the documents to be provided for availing open access under Section 9 of the Act can be linked to Wheeling/ Open Access with captive verification?**

***Findings:** We hold that for the purpose of granting open access for captive purpose, the document as recorded at Para 11.3 shall be adequate/sufficient. Needless to mention that these documents, as specified therein, are within the framework of TNERC Grid Connectivity & Intra State Open Access Regulations, 2014 and also do not violate the provisions of Rule 3 of the Electricity Rules, 2005.*

**Issue No.3:- Whether it is correct on the part of Respondent Commission to treat SPV as an AOP for ascertaining the eligibility of captive status?**

*Findings:* We hold that as per provisions stipulated under the Rule 3 of the Electricity Rules, 2005, the SPV & AOP are two distinct entities and cannot be equated at par for computation of annual power consumption for determining the captive status.

**Issue No.4:- Whether the State Commission is justified in implementation of the proposed Draft amendment to Electricity Rules, 2005 proposed by Ministry of Power which are yet to be approved and notified?**

*Findings:* We hold that the verification for determining ownership & consumption for CGP/captive users under Rule 3, being an independent exercise, has to be done on annual basis, at the end of financial year.

**Issue No.5:- Whether the State Commission has correctly followed the Criteria for verification of consumption provided under Rule 3?**

*Findings:* We hold that the directions contained in Paras 6.6.3 and 7.8.2 of the impugned order passed by the State Commission are in disregard to Rule 3 of the Electricity Rules and hence, cannot be sustained.

**Issue No.6:- Whether Retrospective applicability of proposed procedure/ guidelines is justified under the law?**

**Findings:** *We hold that as per settled principles of law, there cannot be retrospective application of the procedure formulated under the impugned order for verification of status of CGP/captive users. However, it is clarified that for the past years, the second Respondent/TANGEDCO can verify data for the purpose of determination of captive plant status on the basis of data already furnished by CGP/Captive users while availing the open access.*

**Issue No.7:- Whether the proposed Methodology for verification of change in ownership and consumption is in accordance with law?**

**Findings:** *We set aside the directions contained in Para 7.6.9 of the impugned order wherein the State Commission has held that, in the event, the weightage average of shareholding of captive users changes within a financial year, then the same has to be intimated within ten days to the second respondent/TANGEDCO, otherwise the said licensee would proceed to verify captive status without considering weightage average shareholding.*

## **ORDER**

*For the forgoing reasons, as stated supra, we are of the considered opinion that the Appeal is partly allowed. The impugned order dated 28.01.2020 passed by Tamil Nadu Electricity Regulatory Commission in R.A. No. 07 of 2019 is set aside to the extent of our findings and directions as indicated above under Para 17.1 to 17.7.*

*In view of the disposal of the Appeals, the relief sought in the IA No. 425 of 2020, IA No. 426 of 2020, IA No. 1210 of 2020 & IA No.1215 of 2020 does not survive for consideration and accordingly stand disposed of. There shall be no order as to costs.*

*Pronounced in the Virtual Court on this the 7th day of June, 2021.”*

## **9.0 Findings of the Commission:**

**9.1** Hon'ble APTEL has set aside the findings of this Commission on the specific issues, seen in para 8.0 above relating to the procedure for verification of status of CGP. In order to conduct the process of verification smoothly, it is required that clear procedure be framed considering APTEL's directions in A.No.131 of 2020 and also the clarifications raised by the petitioners and review petitioners. The review petitioners though have termed as mistake of fact, error in law etc., in essence many of the issues raised are for clarifications.

**9.2** Hence, the Commission would like to limit itself to the modification of the order passed in R.A.No.7 of 2019 with reference to the judgment of APTEL in Appeal No.131 of 2020 and the issues that require to be clarified. Any further examination would lead to appeal in disguise. With these initial observations, we proceed to issue the present order.

**9.3** The issues that were framed in R.A.No.7 of 2019 by this Commission are taken up one by one and first re-answered in accordance to the APTEL's findings. In the subsequent paragraphs, the issues raised in the clarificatory/

review petitions of R.A No.7 of 2019 by M/s. IWPA, M/s.TASMA, TANGEDCO, M/s.Sugapriya are dealt with.

**9.4**The following are the list of issues framed by the Commission in R.A No. 7 of 2019:

- (i) Whether the authority for verification of the CGP status of the generators can be given to the licensee?
- (ii) The date of applicability of this procedure.
- (iii) Documents to be provided as proof of ownership for verification by different kinds of entities for treating them as CGPs prior to approval for captive wheeling.
- (iv) Entities that attract test of proportionality in consumption, test upto 51% generation and effects of changes in shareholding
- (v) Computing aggregate generation and verification of consumption on aggregate generation of identified unit(s) Vs each unit
- (vi) Qualification of CGP status
- (vii) Other issues

**9.5** The modified status of the issues framed by this Commission in R.A No.7 of 2019 consequent to the judgment in A.No.131 of 2020 are taken upon by one :

**9.5.1 Issue (i): - Whether the authority for verification of the CGP status of the generators can be given to the licensee?**

**9.5.1.1** Commission in R.A No.7 of 2019 viewed that 'The statutory provisions viz. of the Electricity Act 2003, Electricity Rules 2005 are the ones that are binding and to be followed by the licensee. The verification process is a preliminary work which can be done by the licensee, and the CGPs have a recourse under section 86 of the Electricity Act 2003 to approach the Commission in case of disputes for

adjudication which is a function of the State Commission, and decided that the TANGEDCO, shall conduct the verification of CGP status based on the procedure duly passed by the Commission in this order.

**9.5.1.2**APTEL in A.No.131 of 2020 struck down the relevant para of observation and decision of the Commission permitting TANGEDCO to conduct the verification process to determine the status of CGPs.

Relevant para of the discussions and findings are extracted below:

*“10.18 Thus, we are unable to accept the contentions of the Respondents on this issue and set aside the directions of TNERC contained in paragraphs 6.1.4 to 6.1.6 and 7.9.6 to 7.9.10 in the impugned order. However, we hold that Respondent No. 2 can be appointed for undertaking an exercise of collecting and verifying data for the purpose of verification of captive generating plant status in the State of Tamil Nadu, without the powers to itself take any coercive action against any CGP/Captive User(s). It is clarified that any action to be initiated against the CGP/Captive User(s) regarding its captive status or for recovery of CSS, as per law, needs to be done through appropriate proceeding initiated before the Respondent No.1 Commission.”*

*‘17.1 Issue No.1:- We hold that the second Respondent/TANGEDCO can be entrusted with the exercise of collecting & verifying data for the purpose of verification of captive plant status only. However, any coercive action to be initiated against the CGP /captive users regarding its captive status or for recovery of CSS, as per law, it shall be decided by the first Respondent / State Commission.’*

**9.5.1.3**Therefore, as per the directions of the Tribunal in the discussions and findings, all the CGP holders shall submit the data as per formats specified in this 'Procedure for verification of CGP status' as on 31<sup>st</sup> March to TANGEDCO/verifying authority on or before 31<sup>st</sup> May every year.

The TANGEDCO shall verify the data every year to check the captive status of the CGP and submit a report to the Commission every year on or before 31<sup>st</sup> July and furnish the details of verification viz. name of the company, date of submission of documents by CGP, compliance of twin criteria of ownership and consumption for all CGPs and other details relevant to this issue.

Wherever non-compliance of CGP status is noticed, TANGEDCO shall file a Miscellaneous Petition before the Commission for adjudication and the Commission shall dispose the same within six months.

Before adjudicating by the Commission, the licensee should not issue any show cause notice to the CGP/end users demanding Cross Subsidy Surcharge.

**9.5.2 Issue (ii) :-The date of applicability of the procedure**

**9.5.2.1**Commission in R.A 7 of 2019 decided that, ' Since the disputes arose from the date of notices issued in 2017 which relates to the period from 2014-15 FY and the writ petitions filed challenge the notices issued covering the period from 2014-15, the cause of action would be from the impugned period i.e. from FY 2014-15, and therefore, 'Applicability of this procedure for verification of CGP

status will be from the Financial year 2014-15 for the CGPs and its users. All matters of adjudication shall be brought before the Commission by TANGEDCO.

**9.5.2.2** On the issue of date of applicability of procedure, APTEL's observations and directions in A.No.131 of 2020 are as follows:

*“15.6 Another aspect related to issuance of show cause notices, as already recorded above, needs a mention in the present judgement. The Respondent No. 2 has already submitted that it has issued such notices to many captive users and CGPs in the State of Tamil Nadu since the year 2014 till 2017, as also in the year 2020. In this regard, we are constrained to observe that the Respondents are endeavouring to reopen and verify the already closed and concluded transactions of availing open access for captive purposes. For such concluded transactions, the documents have already been submitted with the Respondents and on the basis of the said documents, the Respondents permitted open access for wheeling of captive power.*

*15.8 ..... Accordingly, we set-aside the directions contained in paras 6.2.5 and 7.2.4 and hold that there cannot be any retrospective application of the procedure formulated under the impugned order for verification of status of CGPs and captive users in the State of Tamil Nadu. We however clarify that for the past years, the Respondent No.2 can verify data for the purpose of verification of captive generating plant status in the State of Tamil Nadu, on the basis of data already furnished by CGP/captive user(s) while availing open access.”*

*‘17.2 We hold that as per settled principles of law, there cannot be retrospective application of the procedure formulated under the impugned order for verification of*



*status of CGP/captive users. However, it is clarified that for the past years, the second Respondent/TANGEDCO can verify data for the purpose of determination of captive plant status on the basis of data already furnished by CGP/Captive users while availing the open access.”*

**9.5.2.3**In view of the above direction of the Tribunal, the procedure framed in this order shall be applicable from the financial year 2020-21.

**9.5.2.4**Hon'ble APTEL's order does not prevent TANGEDCO from conducting the exercise of verification of data with respect to CGP status for the past years. For the past years i.e. prior to 2020-21, TANGEDCO shall verify data for the purpose of verification of captive generating plant status in the State, on the basis of data already furnished by CGP/captive user(s) while availing open access.

**9.5.3 Issue (iii): - Documents to be provided as proof of ownership for verification by different kinds of entities for treating them as CGPs prior to approval for captive wheeling:**

**9.5.3.1**Commission specified the documents to be furnished for verification of CGP status for different types of compositions of entities viz. Company,LLP,Partnership Firm,AoP,SPV,Co-operative Societies.

**9.5.3.2** Commission also specified documents to be furnished for obtaining wheeling approval and timelines for submission of documents as well as for according approval by TANGEDCO.

**9.5.3.3** APTEL has struck down the paragraphs leading to the formulation of the procedure on the above issues and has indicated the documents to be provided for obtaining approval of open access in para 11.3 of A.No.131 of 2020.

**9.5.3.4** Direction of APTEL

*“We hold that for the purpose of granting open access for captive purpose, the document as recorded at Para 11.3 shall be adequate/sufficient. Needless to mention that these documents, as specified therein, are within the framework of TNERC Grid Connectivity & Intra State Open Access Regulations, 2014 and also do not violate the provisions of Rule 3 of the Electricity Rules, 2005.”*

**9.5.3.5** The documents specified by APTEL are:

- i. Open Access application as per the format given in TNERC (Grid connectivity and Intra-State Open Access) Regulation, 2014 with list of captive users;
- ii. Certificate from a Chartered Accountant or Practising Company Secretary providing details of the ownership of the CGP with shareholding details as on the date of the application;
- iii. Consent/NoC obtained from DISCOM (Electricity Distribution Circle (EDC)) where the CGP is located. (Consent/NoC needs to be issued within 3 days as per OA Regulation, 2014);

- iv. Consent/ NOC obtained from DISCOM//EDCs where the captive users are located (for only new users);
- v. An undertaking of not having entered into a Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person for the same quantum of power for which open access is sought from the Captive user;
- vi. Applicable Open Access application fee.

The documents listed from i to vi above shall be furnished by captive users prior to obtaining open access.

**9.5.3.6** For the purpose of verification of CGP status at the end of the financial year, the documents to be provided by the CGPs are:-

**(a)** Certificate from a Chartered Accountant or Cost and Management Accountant or Company Secretary (Practicing or Appointed) who is 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; 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.

**(b)**the consumption data as per formats specified in 'Procedure'. (Review petitioners in R.P No.2,4 of 2020 and petitioner in M.P No.24 of 2020 have requested modification of format I,II,V(A), V(B) which is dealt later in this order) .

**9.5.4 Issue (iv) - 'Entities that attract test of proportionality inconsumption, test upto 51% generation and effects of changes in shareholding' and other issues of 'intimation of change in shareholding'.**

**9.5.4.1**Hon'ble APTEL has set aside the paragraphs that deal with test of proportionality for a SPV as in the case of AoP, treatment of an operating company that owns CGP, verification of CGP status for corresponding period of change in shareholders in para 7.6 of R.A No.7 of 2019. The remaining portion of para 7.6 of R.A No.7 of 2019 after the verdict of APTEL in A.No.131 of 2020 is:

**"i.**The captive generators shall be required to identify the unit/units intended for captive consumption at the time of furnishing documents for proof of ownership.

**'ii**lf there is one captive user, the user shall hold not less than 26% of the equity share capital with voting rights and shall consume not less than 51% of the electricity generated on an annual basis for captive use.

**iii.**In case of AoP, the captive users shall hold in aggregate not less than 26% of the ownership/paid up equity share capital with voting rights and consume not less than 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%. In other words, proportionality test shall be calculated for 51% of aggregate generation and not for consumption beyond 51% by captive consumers.

iv. In the case of Cooperative Society, members of society shall collectively satisfy not less than 26% of the ownership and consume not less than 51% of the aggregate electricity generated on annual basis.

v. In the case of Partnership firm/LLP, ownership shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant and the consumption shall be not less than 51% of the energy generated on annual basis.

vi. In the case of SPV under Rule 3(1)(b), 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) and shall consume not less than 51% of the aggregate electricity generated on annual basis from the identified units.

**9.5.4.2** For changes in shareholding APTEL has made the following observations:

*“16.9 We also note that the Act nowhere prescribes that a CGP once set up by an entity cannot be transferred to another owner or on transfer of ownership, the CGP loses its character of being captive despite fulfilment of all other conditions requiring it to be so, under Rule 3 of the Rules. A captive generating plant does not lose its character by transfer of the ownership or any part of the ownership provided, the generating plant produces power primarily for the use of its owner(s) and this can be done within the confines of a financial year*

16.10 *In light of our findings, we also observe that suppose there are ten (10) captive users who avail open access for captive use under Section 9 of the Act at the start of the financial year, and in the event three (3) of such captive users stops sourcing captive power after six months, and instead three new captive users are introduced within the captive structure by subscribing equity shareholding with voting rights immediately thereafter, then when the verification of captive status will be done annually on the basis of the shareholding existing at the end of such financial year, in that case the total number of captive users throughout the financial year would be treated as thirteen (7+3+3) and not 10. This is because the shareholding of the three captive users who stopped sourcing captive power, cannot have a zero/nil shareholding, as they sourced captive power for the first six months. **While verifying the condition under Rule 3(1)(a)(i) and (ii) of the Rules, the consumption of captive power has to be done by captive users holding a minimum of 26% shareholding. Therefore, in the event shareholding of a captive user is considered as zero/nil after a few months into the financial year, then such user cannot be permitted to take benefit of availing captive power thereby seeking exemption from payment of CSS. In any event, the applicability of CSS will also depend upon the observations made by us in Appeal No. 38 of 2013 titled as “M/s. Steel Furnace Association of India v. PSERC &Anr.”***

**9.5.4.3** Therefore, at the end of the financial year, wherever there are changes in shareholding, CGP status has to be verified as illustrated in para 16.10 of APTEL’s order in A.No.131 of 2020.

**9.5.5 Issue No.(v):- ‘Computing aggregate generation and verification of consumption on aggregate generation of identified unit(s)’**

APTEL has not struckdown the findings of this Commission. However, this issue has been agitated in the clarificatory/Review petitions filed by stakeholders before this Commission which is dealt separately in the succeeding paragraphs.

**9.5.6 Issue (vi) – Ceasing of Qualification of CGP status**

**9.5.6.1** Commission framed guidelines as follows in the 'procedure' in R.A No.7 of 2019:

*“6.6.2 If the criteria of not less than 26% ownership and not less than 51% consumption specified in Rule 3(1)(a) and (b) are not met by the CGPs in a FY, the generating plant will cease to be a CGP and the users will cease to be captive users and further liable to pay cross subsidy surcharge.*

*6.6.3 Where the minimum 26% ownership and 51% consumption criteria are met, but one or more captive users do not meet the proportionality principle, such users who do not fulfil the proportionality criteria shall lose their captive status and other captive users who fulfil the proportionality criteria will retain their captive status provided the CGP complies with the twin criteria of 26% ownership and 51% consumption excluding users who lost their captive status.”*

APTEL has set aside para 6.6.3.Hence, para 6.6.2 will remain in the revised procedure.

## **9.6 Issues raised in M.PNo.24 of 2020,R.PNo.2 of 2020,R.P No.3 of 2020 and R.P No.4 of 2020**

**9.6.1 The petitioner in M.P No.24 of 2020 and the review petitioners in R.P No.2 of 2020 and RP No.3 of 2020 have raised similar issues and hence are summed up below:**

(a) Validity of appointing TANGEDCO as authority to verify and determine CGP status.

- (b) Necessity to submit documents specified in particular to acquire open access when open access is an unequivocal right to a CGP.
- (c) Removal of certain expressions like Chartered Accountant 'who signs the financial statement', 'who files the annual return'
- (d) To specify separate list of documents for 'ownership' for obtaining open access and for submission at the end of financial year for verification of CGP status.
- (e) To set aside Documents with respect to change in shareholding, timelines for submission and approval.
- (f) Whether MGT 7 is to be filed by captive user also?
- (g) To modify or set aside the timelines for submission and approval of documents.
- (h) Whether 'ownership' at 26% has to be maintained throughout the year? Verification only on annual basis and not for split period.
- (i) Equating of SPV with AoP is an error. Hon'ble Supreme Court has held in a number of cases that an 'Association of persons' is a recognised tax entity which is not an incorporated entity and is akin to partnership.
- (j) Clarity on ceasing of qualification of CGP.
- (k) To exempt 100% owned wind mills from status verification and providing of documents.
- (l) If a new captive user enters in the middle of the year, is it necessary to file documents of 'ownership' for all captive users.



(m) Is it necessary for captive user to file undertaking?

(n) To modify cut off date of submission of verification details from 30<sup>th</sup> April to 30<sup>th</sup> June.

(o) Change in Format V(A) by deducting banking charges in kind and gross up consumption with T&D losses, exempt Format V(B) which is only for SPV for 100% owned CGPs. Format I may be modified to provide break up details of captive users, change in ownership / shareholding pattern in the year. Format II may suitably be modified when provided by a captive user as the auditor of captive user cannot certify the details relating to CGP which is a different legal entity. For a Captive user, the CA/PCS will certify details of shareholding of captive user in CGP and HTSC details.

(p) Non levy of Cross subsidy surcharge during R&C measures period

#### **9.6.2 Issues raised by TANGEDCO in R.P No.2 of 2020:**

(q) Review for para 7.4.4(iii) – If AoP is a Company or Partnership firm/LLP, documents stipulated in 7.4.4(i) or (ii) may be furnished by AoP.

(r) All documents prescribed under 7.4.4 may be added to 7.5.1 in addition to share certificate, S.H 4.

(s) Para 7.6.5 requires review in as much as in applying rule of proportionality to partnership firm/LLP.

(t) Para 7.6.8 requires review as there is no provision for considering 'ownership' and 'consumption' verification for corresponding period and has to be made on 'annual basis'. If CGP status is lost for a day, CGP loses status for entire FY.

(u) Para 7.6.9 on weighted average of shareholding may be reviewed as the same is not prescribed in Rule 3 of Electricity Rules 2005.

(v) Para 7.7.1 requires review to the extent that verification for wind generators has to be Energy Wheeling Agreement wise. Electricity Rules 2005 and Electricity Act 2003 states the status of CGP only.

(w) In Para 7.8.2 the expression 'minimum' may be replaced with 'not less than'.

**9.6.3** The queries raised by Review petitioners and in the clarificatory petition from (a) to (j), and from (q) to (u) and (w) have been covered and answered in the findings rendered by Hon'ble APTEL. Relevant paragraphs of APTEL's order which sets aside the findings of this Commission related to the queries raised in the clarificatory and review petitions are tabulated below for the purpose of clarity:

<b>Queries raised in Clarificatory/review petitions</b>	<b>Relevant paragraph of APTEL's order in A.No.131 of 2020 that has set aside the findings /directions of this Commission in R.A No.7 of 2019</b>
(a) Validity of appointing TANGEDCO as authority to verify and determine CGP status	Para 10.18 and para 17.1
(b) Necessity to submit documents specified in particular to acquire open access when open access is an unequivocal right to a CGP.	

<p>(c) Removal of certain expressions like 'who signs the financial statement' &amp; 'who files the annual return'</p> <p>(d) To specify separate list of documents for 'ownership' for obtaining open access and for submission at the end of financial year for verification of CGP status.</p> <p>(e) To set aside Documents with respect to change in shareholding, timelines for submission and approval for new users and not all existing users.</p> <p>(f) Whether MGT 7 is to be filed by captive user also</p> <p>(g) To modify or set aside the timelines for submission and approval of documents.</p> <p>(q) Review for para 7.4.4(iii) – If AoP is a Company or Partnership firm/LLP, documents stipulated in 7.4.4(i) or (ii) may be furnished by AoP.</p> <p>(r) All documents prescribed under 7.4.4 may be added to 7.5.1 in addition to share certificate, S.H 4.</p>	<p>Para 11.29 and para 17.2</p>
<p>(h) Whether 'ownership' at 26% has to be maintained throughout the year? Verification only on annual basis and not for split period.</p> <p>(t) Para 7.6.8 requires review as there is no provision for considering 'ownership' and 'consumption' verification for corresponding period and has to be made on 'annual basis'. If CGP status is lost for a day, CGP loses status for entire FY.</p>	<p>Para 13.4 to 13.6 and 17.4</p>

<p>(j) Equating of SPV with AoP is an error. Hon'ble supreme Court has held in a number of cases that an 'Association of persons' is a recognised tax entity which is not an incorporated entity and is akin to partnership.</p> <p>(s) Para 7.6.5 requires review in as much as in applying rule of proportionality to partnership firm/LLP.</p>	<p>Para 12.19 and para 17.3</p>
<p>(k) Clarity on ceasing of qualification of CGP</p>	<p>Para 14.6 ,Para 14.7,para 17.5</p>
<p>(u) Para 7.6.9 on weighted average of shareholding not prescribed in Rule 3 of Electricity Rules 2005</p>	<p>Para 16.12,para 17.7</p>
<p>(w) In Para 7.8.2 the expression 'minimum' may be replaced with 'not less than'.</p>	<p>Para 7.8.2 of R.A No.7 of 2019 set aside in para14.7 of A.No.131 of 2020.</p>

**9.6.4 The issues left to be clarified are:**

- k) To exempt 100% owned wind mills from status verification and providing of documents
- m) Is it necessary for captive user to file an undertaking
- n) To modify cut off date of submission of verification details from 30<sup>th</sup> April to 30<sup>th</sup> June
- o) Change in Format V(A) by deducting banking charges in kind and gross up consumption with T&D losses deducted and exempt Format V(B) which is only for SPV for 100% owned CGPs.

- p) Non levy of Cross subsidy surcharge during R&C measures period
- v) Para 7.7.1 requires review to the extent that verification for wind generators has to be Energy Wheeling Agreement wise. Electricity Rules 2005 and Electricity Act 2003 states the status of CGP only.

**9.7The above issues that are to be clarified are discussed below:**

**(i) Request for exemption of 100% owned wind mills from providing documents for status verification**

The review/clarificatory petitioners have reasoned that in 100% owned wind mills, the entire consumption is by the single entity owning the CGP and are not supplying energy to any other person, and therefore is to be exempted from the purview of CGP verification guidelines. For a power plant to qualify as a CGP, the twin rules of not less than 26% ownership and not less than 51% consumption have to be satisfied. Even when the CGP is owned 100% by the captive user, the onus is on the CGP to prove that it is 100% owned at the end of the financial year also. Also, the extent of consumption has to be verified by TANGEDCO. Therefore, at the end of the financial year, CGPs owned 100% by the captive users shall file documents as prescribed in the 'Procedure for verification of CGP status.i.e Certificate from a Chartered Accountant or Cost and Management Accountant or Company Secretary (Practicing or Appointed), Copy of MoA/AoA, Partnership Deed/Agreement / Co-operative Bye-laws, LLP Agreement etc. as the case may be, consumption data in Format V (A) and V (D).

**(ii) Deduction of banking charges in kind in addition to auxiliary consumption from gross generation, grossing up of T&D losses with captive consumption, changes in Formats I,II,V.**

a. M/s. IWPA, TASMA, Sugapriya have requested to deduct banking charges in addition to auxiliary consumption from gross generation and to consider grossing up of T&D losses citing the case of MERC in order No.117 of 2012. In the written submissions, M/s.IWPA has raised the issue of deducting start up power from aggregate generation or consider the start up power as deemed consumption.

b. In the Tariff orders issued for wind energy, Commission has permitted banking of wind energy generated and has fixed banking charges in kind. Commission has also specified in the above tariff orders that the drawal of energy by the wind generators during the start up from the distribution licensee will be adjusted against the generated energy. Therefore, Commission decides that banking charges in kind and start up power consumed may also be deducted from aggregate generation provided the CGP has appropriate metering, and provides details of power consumed for start up power.

c. For a CGP with wind generating units, Net generation to be considered for the purpose of verification shall be:

Net generation for wind = Gross generation (-) banking charges in kind (in units) (-) start up power (in units) (no auxiliary consumption for wind)

For all other sources of generation except wind, net generation = Gross generation of generating plant or\*units identified (–) Auxiliary consumption

\*in case of SPV

d. For captive user, the consumption to be considered for verification shall be =adjusted units grossed up with applicable T&D losses.

Separate formats for wind energy, viz. V(C) and V(D)(for 100% ownership of CGP) are formulated and appended to the 'Procedure'. FormatV(B) appended to the Procedure is for all CGPs other than wind generators.

e. Petitioners have requested to modify Format I and Format II such that Format I includes columns to indicate changes in shareholding and Format II contains information only of the captive user that can be certified by the Chartered Accountant of the captive user and not any information of the CGP. The Formats I and II have accordingly been modified.

**(iii) Verification for wind generators Energy Wheeling Agreement wise**

**a) Commission in R.A No.7 of 2019 under para 6.5 'Computing aggregate generation and verification of consumption on aggregate generation of identified unit(s) Vs each unit decided two issues:**

- i) Method to arrive at Quantum of Generation (net) to be considered for verification , and

**ii)** Instances where generation from more than one unit of a generating plant in a generating station can be aggregated and captive status decided on aggregated generation.

**b)** On (ii), since *Clause 3 (1) (b) of Electricity Rules, 2005 prescribes that a generating station can identify a unit or units of such generating stations for captive use, it was decided that when units are identified for captive use, aggregation of energy shall be based on identification of captive units before commencement of captive wheeling provided the ownership structure/shareholding is the same in each agreement.*

**c)** In the case of wind energy, if the CGP having multiple generating units having separate Energy Wheeling Agreements with the ownership structure/shareholding being the same in each agreement aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements. If shareholding of each Energy Wheeling Agreement where substantial difference exists between the wheeling agreement and the shareholding, then at the option of the captive generator, Energy Wheeling Agreement wise verification shall be done.

**(iv) Necessity of captive user to file an undertaking:**

The undertaking for a captive user/CGP is not prescribed in this revised procedure.

**(v) Change in cut off date of submission of verification details from 30<sup>th</sup>**

**April to 30<sup>th</sup> June**



The prescribed documents for verification of status of CGPs along with relevant data of generation, auxiliary consumption, consumption of captive users for each month of the preceding financial year in excel format as per Formats V (A) to V(D) (as applicable), annexed to this 'Procedure', in hard and soft copies shall be filed by 31<sup>st</sup> May of each year to TANGEDCO.

**(vi) Other issues viz. Non levy of Cross subsidy surcharge during R&C measures period, written submissions of TASMA not being considered, filing of documents of 'ownership when a new captive user enters in the middle of the year, documents to be furnished at the end of the financial year, collection of data from CGPs/captive users**

**(a)**R&C measures were in place during FY 2014-15 and a part of FY 2015-16. Vide G.O (Ms) No.10,Energy(C3) Department dt.27.2.2009, when Restrictions and Control on supply of electricity were in place, GoTN issued the following direction:

“In view of the prevailing shortages, the Government has also taken the step of permitting private power producers in the state to avail of open access to sell tradable surplus power generated by them to any HT consumers within the state. As a special measure, keeping in view the restrictions already imposed on such consumers, it has also been decided to temporarily waive cross subsidy surcharges which would be collectable from such consumers under normal circumstances.”

The above G.O waived payment of cross subsidy surcharge by third party power purchaser temporarily.

In G.O (Ms) No.79,Energy(C3) department dt.11.07.2012, in partial modification of the orders issued in G.O (Ms) No.10 dt.27.2.2009, cancelled the temporary waiver of cross subsidy surcharges and authorised TANGEDCO 'to collect the cross subsidy surcharges (for the purchased quantum from outside) from the HT consumers who are not availing Tamil Nadu Generation and Distribution Corporation Limited quota power fully or partially and purchase power from outside sources.

Thus, there was no complete waiver of cross subsidy surcharges for the period in question i.e. 2014-2016. In the case of captive users, Commission in recent orders passed have taken a view that there is no merit in strict adherence to all conditions in Rule 3 of the Electricity Rules 2005 for a CGP when R&C measures were in place.

Commission decides that levy of cross subsidy surcharge for non compliance of Rule 3 for the period when R&C measures were in force will be decided on merits of each case.

**(b)** TASMA has represented that their written submissions did not find place in R.A 7 of 2019 and were not considered by the Commission. Though written submissions were not brought out explicitly in R.A No.7, which was inadvertent Commission has passed the order considering all submissions made by them.

**(c)** The para on furnishing of 'ownership' documents with specified timelines when there is change in shareholding/ownership was struck down by APTEL(paraNo.7.5 of R.A No.7 of 2019). However, when there is change in ownership, the provision in para 11.3,11.28,17.2 of APTEL' s order in A.No.131 of 2020 will be applicable i.e.para 11.3 that specifies documents to be furnished while seeking approval for open access. The new owner(captive user) alone will submit the requisite documents and seek approval for open access/wheeling of energy from the CGP to the location of the HT service connection of the new owner.

**(d)**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 is duly authorised by the Board of the Company, 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)/V(C)/V(D), as applicable, appended to this procedure.

\*Format V(B) appended to the Procedure is for all CGPs other than wind generators. Formats V(C) and V(D) are for wind energy generators. Format V(D) is for wind CGPs owned 100% by captive user.

**(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.

**(e) Collection of data from CGPs/captive users**

The documents for verification of CGP status at the end of the financial year shall be submitted by the CGP to the Electricity Distribution Circle where the CGP is located. In case of captive user who owns 100 % of the Captive Generating Plants that are located in different places and the usage of energy from all CGPs by the captive user is in a single location, then at the option of the captive user, the documents for verification of CGP status may be submitted to the Electricity Distribution Circle where the captive user is located.

**9.8 With respect to the petitions in M.P No.24 of 2020, R.P No.2 of 2020, R.P No.3 of 2020 and R.P No.4 of 2020, decision on issues raised in the above petitions are summarised :**

**Following issues have been disposed by APTEL in A.No.131 of 2020:**

1. Validity of appointing TANGEDCO as authority to verify and determine CGP status – **disposed by APTEL in A.No.131 of 2020 in para 10.8 and 17.1**

2. (a) Necessity to submit documents specified in particular to acquire open access

(b) Removal of certain expressions like 'who signs the financial statement' & 'who files the annual return'

(c) To specify separate list of documents for 'ownership' for obtaining open access and for submission at the end of financial year for verification of CGP status.

(d) To set aside submission of Documents within 10 days with respect to change in shareholding, timelines for submission and approval for only new users and not all existing users.

(e) Filing of MGT 7 by captive user

(f) To modify or set aside the timelines for submission of documents by Generators and approval of documents by distribution licensee.

(g) Modification of para 7.4.4(iii) related to submission of documents by AoP being a Company or Partnership firm

(h) Addition of documents prescribed under 7.4.4 to 7.5.1 in addition to form S.H 4.

**2(a) to (h) – disposed by APTEL in A.No.131 of 2020 in Para 11.29 and para 17.2**

3.(a) Maintaining 'ownership' at 26% throughout the year

(b) Review of Para 7.6.8 related to considering 'ownership' and 'consumption' verification for corresponding period.

**3(a) and (b) disposed by APTEL in A.No.131 of 2020 in para 13.4 to 13.6 and 17.4**

4. (a) Equating of SPV with AoP

(b) Review of Para 7.6.5 in as much as in applying rule of proportionality to partnership firm/LLP.

**4 (a) and (b) disposed by APTEL in A.No.131 of 2020 in Para 12.19 and para 17.3**

**5. Clarity on ceasing of qualification of CGP - disposed by APTEL in A.No.131 of 2020 in Para 14.6,14.7 and para 17.5**

**6. Para 7.6.9 on weighted average of shareholding -disposed by APTEL in A.No.131 of 2020 in Para 16.12and para 17.7**

**7.To replace in Para 7.8.2 the expression 'minimum' with 'not less than'. – disposed by APTEL in A.No.131 of 2020. Para 7.8.2 set aside by APTEL.**

**Other issues to be clarified:**

**8. Request forExemption of 100% owned wind mills from providing documents for status verification**

**Decision** –At the end of the financial year, CGPs owned 100% by the captive user shall file prescribed documents in the 'Procedure' for verification of CGP status i.e.Certificate from a Chartered Accountant or Cost and Management AccountantorCompany Secretary (Practicing or Appointed) , Copy of MoA/AoA, Partnership Deed/Agreement / Co-operative Bye-laws, LLP Agreement etc. as the case may be, consumption data in Format V (A) and V (D).

**9.Deduction of banking charges in kind from gross generation, grossing up of T&D losses with captive consumption, changes in Formats I,II,V.**

**Decision** – **(i)**For a CGP with wind generating units, Net generation to be considered for the purpose of verification shall be:

Net generation for wind =Gross generation (-)banking charges in kind (in units)

(-) start up power (in units)(no auxiliary consumption for wind)

**(ii)**For all other sources of generation except wind, net generation = Gross generation of generating plant or\*units identified (-) Auxiliary consumption

\*in case of SPV

**(iii)**For captive user, the consumption to be considered for verification shall be = adjusted units grossed up with applicable T&D losses.

Separate formats for wind energy, viz. V(C), and V(D)(for 100% ownership of CGP) are formulated and appended to the 'Procedure'. Format V(B) appended to the Procedure is for all CGPs other than wind generators.

**(iv) Formats I and II have been suitably modified.**

#### **10. Verification for wind generators Energy Wheeling Agreement wise**

**Decision** -In the case of wind energy, if the CGP having multiple generating units having separate Energy Wheeling Agreements with the ownership structure/shareholding being the same in each agreement aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements. If shareholding of each Energy Wheeling Agreement where substantial difference exists between the wheeling agreement and the shareholding, then at the option of the captive generator, Energy Wheeling Agreement wise verification shall be done.

#### **11 .Necessity of captive user to file an undertaking:**

Decision - The undertaking for a captive user/CGP is not prescribed in this revised procedure.

**12. Change in cut off date of submission of verification details from 30<sup>th</sup> April to 30<sup>th</sup> June**

**Decision** - The prescribed documents for verification of status of CGPs along with relevant data of generation, auxiliary consumption, consumption of captive users for each month of the preceding financial year in excel format as per Formats V (A) to V(D) (as applicable), annexed to this 'Procedure', in hard and soft copies shall be filed by 31<sup>st</sup> May of each year to TANGEDCO.

**13. Other issues viz. Non levy of Cross subsidy surcharge during R&C measures period, filing of documents of 'ownership when a new captive user enters in the middle of the year, collection of data when captive users in a CGP are in different distribution circles**

**(i) Non levy of Cross subsidy surcharge during R&C measures period**

Decision - R&C measures were in place during FY 2014-15 and a part of FY 2015-16. Vide G.O (Ms) No.10,Energy(C3) Department dt.27.2.2009, when Restrictions and Control on supply of electricity were in place.

Commission decides that levy of cross subsidy surcharge for non compliance of Rule 3 for the period when R&C measures were in force will be decided on merits of each case.

**(ii) Filing of documents of 'ownership when a new captive user enters in the middle of the year**



**Decision** -When there is change in ownership, the provision in para 11.3,11.28,17.2 of APTEL' s order in A.No.131 of 2020 will be applicable i.e.para 11.3 that specifies documents to be furnished while seeking approval for open access. The new owner (captive user) alone will submit the requisite documents and seek approval for open access/wheeling of energy from the CGP to the location of the HT service connection of the new owner.

**(iii) 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)/V(C)/V(D), as applicable, appended to this procedure.

\*Format V(B) appended to the Procedure is for all CGPs other than wind generators. Formats V(C) and V(D) are for wind energy generators. Format V(D) is for wind CGPs owned 100% by captive user.

**(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.

**(iv) Collection of data when captive users in a CGP are in different distribution circles**

**Decision** - The documents for verification of CGP status at the end of the financial year shall be submitted by the CGP to the Electricity Distribution Circle where the CGP is located. In case of captive user who owns 100 % of the Captive Generating Plants that are located in different places and the usage of energy from all CGPs by the captive user is in a single location, then at the option of the captive user, the documents for verification of CGP status may be submitted to the Electricity Distribution Circle where the captive user is located.

**9.8.1** In consideration of the directions of Hon'ble APTEL in A.No.131 of 2020 and the extent of findings therein, and the deliberations in this order, Commission accordingly passes the following revised procedure for collection, verification of data for reckoning CGP status.

**9.9. Procedure to be followed for collection, verification of data for reckoning status of Captive Generating Plant in accordance to rules prescribed in Rule 3 of Electricity Rules 2005.**

**9.9.1 Preamble**

**9.9.1.1** Section 42(2) of the Electricity Act 2003 exempts from payment of cross subsidy surcharge to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.

**9.9.1.2** The Central Government in exercise of powers conferred under Section 176 of the Electricity Act, 2003 (Act 36 of 2003) has made rules called

'The Electricity Rules, 2005'. Rule 3 of the Electricity Rules of 2005 lays down the requirements of Captive Generating Plant. In order that a generating plant is to be qualified as a Captive Generating Plant, such plant has to fulfil the requirements laid down in Rule 3. Failure to fulfil the conditions would render the CGP to be treated as an ordinary generating plant and the captive users who have consumed energy from the plant shall have to pay cross subsidy surcharge as determined by the Commission from time to time.

**9.9.1.3** This procedure is issued in compliance with the directions of the Hon'ble High Court of Madras in W.A(MD) Nos.930 & 931 of 2017 dt. 9.10.2018 and CMP(MD)Nos. 5958 and 5959 of 2019 in WA(MD) No.930 and 931 of 2017 dt. 17.9.2019 and the judgment passed by Hon'ble APTEL in Appeal No.131 of 2020 dt.7.6.2021.

### **9.9.2 Applicability**

**9.9.2.1** This procedure for verification of data for reckoning the captive status of a Captive Generating Plant is applicable from the financial year 2020-21.

**9.9.2.2** Hon'ble APTEL's order does not prevent TANGEDCO from conducting the exercise of verification of data with respect to CGP status for the past years. For the past years i.e. cases from 2014-15 to 2019-20, TANGEDCO shall verify data for the purpose of verification of captive generating plant status in the State, on the basis of data already furnished by CGP/captive user(s).

### **9.9.3 Statutory provisions**

**9.9.3.1** The Electricity Rules 2005 notified vide Notification No. G.S.R 379(E) dt.8.6.2005 lays down the following requirements 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 (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (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 sub-clauses (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."*

**9.9.3.2**The provisions in the Electricity Act, 2003 that relate to Captive Generation and the definitions of generating company, generating station, person 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 co-operative society or association of persons or generating electricity primarily for use of members of such co-operative 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, switch-gear, 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 water-power, 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 2(49):**

*“person” shall include any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person;*

**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 thereunder 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.”*

**9.9.3.3A** CGP is required to meet the provisions in the Electricity Act, 2003 and the Rule 3 of Electricity Rules 2005.

**9.9.3.4** The captive users have the obligation to ensure consumption at the percentages mentioned in sub-clauses (a) & (b) of Rule 3(1) of the Electricity Rules 2005. Failure to comply with minimum percentage of captive use in a year will entail in the CGP losing its captive status and the entire electricity generated from the CGP will be treated as supply of electricity by a generating company.

#### **9.9.4 Documents to be furnished for obtaining approval for captive wheeling**

**9.9.4.1** All intended captive users including any new captive user due to change in ownership, who require approval for open access i.e wheeling of energy generated from their captive generating plants to their respective HT service connections shall furnish the documents listed below. When there is any change in ownership in the middle of the financial year, the new owner alone shall submit the requisite documents (mentioned below) to obtain approval for open access/wheeling of energy.

- i. Open Access application as per the format given in TNERC (Grid Connectivity and Intra-State Open Access) Regulation, 2014 with list of captive users;
- ii. 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 providing details of the ownership of the CGP with shareholding details as on the date of the application;
- iii. Consent/NoC obtained from DISCOM (Electricity Distribution Circle (EDC)) where the CGP is located. (Consent/NoC needs to be issued within 3 days as per OA Regulation, 2014);
- iv. Consent/NOC obtained from DISCOM//EDCs where the captive users are located (for only new users);
- v. An undertaking of not having entered into a Power Purchase Agreement (PPA) or any other bilateral agreement with more than one person for the same quantum of power for which open access is sought from the Captive user;
- vi. Applicable Open Access application fee.

### **9.9.5 Verification of qualification of CGP**

**9.9.5.1** The captive generators shall be required to identify the unit/units intended for captive consumption at the time of furnishing documents for proof of ownership.



**9.9.5.2 (i)** If there is one captive user, the user shall hold not less than 26% of the equity share capital with voting rights and shall consume not less than 51% of the electricity generated on an annual basis for captive use.

**(ii)** In case of AoP, the captive users shall hold in aggregate not less than 26% of the ownership/paid up equity share capital with voting rights and consume not less than 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% i.e. proportionality test shall be calculated for 51% of aggregate generation and not for consumption beyond 51% by captive consumers.

**(iii)** In the case of Cooperative Society, members of society shall collectively satisfy not less than 26% of the ownership and consume not less than 51% of the aggregate electricity generated on annual basis.

**(iv)** In the case of Partnership firm/LLP, ownership shall be with respect to not less than 26% proprietary interest and control over the generating station or power plant and the consumption shall be not less than 51% of the energy generated on annual basis.

**9.9.5.3** In the case of SPV under Rule 3(1)(b), 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) and shall consume not less than 51% of the aggregate electricity

generated on annual basis from the identified units. The condition of consumption of 51% of aggregate generated electricity has to be met by the consumers of SPV collectively.

**9.9.5.4** In the event shareholding of a captive user is considered as zero/nil after a few months into the financial year, then such user cannot be permitted to take benefit of availing captive power thereby seeking exemption from payment of CSS. Suppose there are ten (10) captive users who avail open access for captive use under Section 9 of the Act at the start of the financial year, and in the event three (3) of such captive users stops sourcing captive power after six months, and instead three new captive users are introduced within the captive structure by subscribing equity shareholding with voting rights immediately thereafter, **then when the verification of captive status will be done annually on the basis of the shareholding existing at the end of such financial year, in that case the total number of captive users throughout the financial year would be treated as thirteen (7+3+3) and not 10.** This is because the shareholding of the three captive users who stopped sourcing captive power, cannot have a zero/nil shareholding, as they sourced captive power for the first six months. While verifying the condition under Rule 3(1)(a)(i) and (ii) of the Rules, the consumption of captive power has to be done by captive users holding a minimum of 26% shareholding.

**9.9.5.5**All the CGP holders shall submit the data as per formats specified in this 'Procedure for verification of CGP status as on 31<sup>st</sup> March to TANGEDCO/verifying authority on or before 31<sup>st</sup> May every year.

The TANGEDCO shall verify the data every year to check the captive status of the CGP and submit a report to the Commission every year on or before 31<sup>st</sup> July and furnish the details of verification viz. name of the company, date of submission of documents by CGP, compliance of twin criteria of ownership and consumption for all CGPs and other details relevant to this issue.

Wherever non-compliance of CGP status is noticed, TANGEDCO shall file a Miscellaneous Petition before the Commission for adjudication and the Commission shall dispose the same within six months.

Before adjudicating by the Commission, the licensee should not issue any show cause notice to the CGP/end users demanding Cross Subsidy Surcharge.

**9.9.6 Documents to be provided at the end of financial year for verification**

**(a)**Certificate from a Chartered Accountant or Cost and Management Accountant or Company Secretary (Practicing or Appointed) who is duly authorised by the Board of the Company 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)/V(C)/V(D), as applicable, appended to this procedure.

\*Format V(B) appended to the Procedure is for all CGPs other than wind generators. Formats V(C) and V(D) are for wind energy generators. Format V(D) is for wind CGPs owned 100% by captive user. Wind mill CGPs owned 100% by captive users shall file certificate from CA or CMA or CS and copy of MoA/AoA etc. as applicable as in (a) and (c), Format V(A) and V(D).

**(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.

### **9.9.7 Accounting of aggregate generation and consumption**

**9.9.7.1** Verification criteria of consumption shall be based on the aggregate energy generated from generating unit(s) in a generating station identified for captive use before the commencement of captive wheeling to be determined on annual basis i.e. gross energy generated less auxiliary consumption.

In the case of wind energy, if the CGP having multiple generating units having separate Energy Wheeling Agreements with the ownership structure/shareholding being the same in each agreement aggregate energy of all generating units of the CGP shall be considered irrespective of separate wheeling agreements. If shareholding of each Energy Wheeling Agreement where substantial difference exists between the wheeling agreement and the shareholding, then at the option of the captive generator, Energy Wheeling Agreement wise verification shall be done.

The quantum of auxiliary consumption shall be the metered auxiliary consumption or the normative auxiliary consumption whichever is less. The captive consumption (the captive user) may be within the premises where the CGP is located or at a different location. In the absence of measured data on auxiliary consumption, until metering as prescribed in para 9.9.9.1 of this procedure is completed, the normative auxiliary consumption specified in the Tariff Regulations of the Commission may be considered for the purpose of CGP verification status.

**9.9.7.2** As per the explanation to Rule 3, 'annual basis' refers to determination in a financial year. For determination of captive status on an annual basis, for the first year, the date of grant of open access shall be considered as the start date for the Financial Year (FY). For the subsequent years, generation from 1<sup>st</sup> April to 31<sup>st</sup> March of a FY shall be considered for determining captive status.

**9.9.7.3** The Aggregate Generation for each Generating Plant/Unit identified (unit identification applies to SPV) for captive use on Annual basis shall be calculated as follows:

**(a) For all generators except wind generator:**

Aggregate generation = Gross generation of generating plant or \*units identified (-  
) Auxiliary consumption

\* in case of SPV

(b) In the case of wind generator CGPs, banking of energy and adjustment of start up power with the energy generated is permitted in the Tariff orders issued by the Commission for wind power. Therefore, the banking charges in kind and the start up power in the case of wind energy generators may be deducted from aggregate generation provided the CGP has appropriate metering, and provides details of power consumed for startup power.

**For wind energy, the aggregate generation shall be as follows:**

Aggregate generation = Gross generation (-)banking charges in kind(in units) (-)start up power(in units)

**9.9.7.4**Forall captive users, applicable T&D losses shall be grossed up on adjusted units.

### **9.9.8 Ceasing of Qualification of CGP**

**9.9.8.1** If the criteria of not less than 26% ownership and not less than 51% consumption specified in Rule 3 are not met by the CGPs 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.

### **9.9.9 Methodology of verification of criteria of consumption annually in a financial year:**

**9.9.9.1**Verification of compliance of consumption criteria of not less than 51%within a variation not exceeding 10% in proportion to the share of ownership of a captive user requires proper accounting of generation, auxiliary consumption

and consumption by captive users. It is the responsibility of the licensee to ensure that Special Energy Meters(SEM) as provided in the CEA's Installation and Operation of Meters Regulations 2006 as amended from time to time are installed in generating stations. Specification for providing meters for HT open access consumers have been approved by the Commission in M.P No.18 of 2012 and M.P No. 34 of 2014 and TANGEDCO has informed compliance of installation of ABT meters. The generators may provide the monthly data/quarterly data of recorded generation, auxiliary consumption to the licensee. The generators shall also inform outages of the units indicating period of outage. The practice adopted by TANGEDCO in the case of HT open access consumers for meter reading, downloading data of consumption may be followed. The Special Energy Meters may be tested periodically as per prescribed testing procedures.

**9.9.9.2** Until a metering, communication system as stated in para 9.9.9.1 is completely installed, the licensee may conduct verification based on details furnished by the generators in the prescribed formats and the data available with them.

**9.9.9.3** The licensee may also create a web portal for CGP for login of data by generators providing an ID to each CGP and captive user. This may help in monitoring changes in shareholding pattern etc. and verification of data.

**9.9.9.4** On or before 31<sup>st</sup> May of every year, all CGPs shall furnish necessary documents for ownership/shareholding pattern, relevant data of generation, consumption in formats as detailed in para 9.9.6 of this 'Procedure', in hard and soft copies to TANGEDCO. The documents for verification of CGP status at the end of the financial year shall be submitted by the CGP to the Electricity Distribution Circle where the CGP is located. In case of captive user who owns 100 % of the Captive Generating Plants that are located in different places and the usage of energy from all CGPs by the captive user is in a single location, then at the option of the captive user, the documents for verification of CGP status may be submitted to the Electricity Distribution Circle where the captive user is located.

**9.9.9.5** The licensee may conduct a cross verification of data furnished with the available downloaded data from the meter terminals of captive generators and their captive users/billed data available. With respect to the documents of ownership/shareholding also, the Licensee may conduct cross verification from the data available in the Public domain of Registrar of Companies, Registrar of Firms etc.

**9.9.9.6** Failure to furnish data, documents for the purpose of annual verification within the time frame fixed in this procedure for verification of CGP status would empower the Licensee to conduct verification of the same with the available data with the Licensee.



The TANGEDCO shall verify the data every year to check the captive status of the CGP and submit a report to the Commission every year on or before 31<sup>st</sup> July and furnish the details of verification viz. name of the company, date of submission of documents by CGP, compliance of twin criteria of ownership and consumption for all CGPs and other details relevant to this issue.

Wherever non-compliance of CGP status is noticed, TANGEDCO shall file a Miscellaneous Petition before the Commission for adjudication and the Commission shall dispose the same within six months.

Before adjudicating by the Commission, the licensee should not issue any show cause notice to the CGP/end users demanding Cross Subsidy Surcharge.

#### **9.9.10 Recovery of CSS during R&C period:**

**9.9.10.1** R&C measures were also in place during FY 2014-15 and a part of FY 2015-16. Vide G.O (Ms) No.10,Energy(C3) Department dt.27.2.2009, when Restrictions and Control on supply of electricity were in place, GoTN issued the following direction:

“In view of the prevailing shortages, the Government has also taken the step of permitting private power producers in the state to avail of open access to sell tradable surplus power generated by them to any HT consumers within the state. As a special measure, keeping in view the restrictions already imposed on such consumers, it has also been decided to temporarily waive cross subsidy

surcharges which would be collectable from such consumers under normal circumstances.”

**9.9.10.2** The above G.O waived payment of cross subsidy surcharge by third party power purchaser temporarily.

In G.O (Ms) No.79, Energy(C3) department dt.11.07.2012, in partial modification of the orders issued in G.O (Ms) No.10 dt.27.2.2009, cancelled the temporary waiver of cross subsidy surcharges and authorised TANGEDCO ‘to collect the cross subsidy surcharges (for the purchased quantum from outside) from the HT consumers who are not availing Tamil Nadu Generation and Distribution Corporation Limited quota power fully or partially and purchase power from outside sources.’

**9.9.10.3** Thus, there was no complete waiver of cross subsidy surcharges for the period in question i.e. 2014-2016. In the case of captive users, Commission in recent orders passed have taken a view that there is no merit in strict adherence to all conditions in Rule 3 of the Electricity Rules 2005 for a CGP when R&C measures were in place.

**9.9.10.4** Levy of cross subsidy surcharge for non-compliance of Rule 3 for the period when R&C measures were in force will be decided on merits of each case.

Accordingly, all clarifications raised in all these petitions are clarified.

(Sd.....)  
(K.Venkatasamy)  
Member (Legal)

(Sd.....)  
(M.Chandrasekar)  
Chairman

/True Copy /

**Secretary**  
**Tamil Nadu Electricity**  
**Regulatory Commission**



**ii. Table B(Break up details)**

Break up of Captive user holding in Equity Share Capital with Voting rights as on .....								
Sl. No.	Class of share holder	No. of Equity Shares	Paid Up Value per Equity Share	Amount of Paid Up Equity Share Capital	Percentage holding in Equity Share Capital	No. of Voting rights	Percentage holding in voting rights	Percentage holding in Paid Up Equity Share Capital with voting rights
1	Captive User							
2	Others							
Total								

**iii. Table C(Change in ownership/shareholding)**

Break up of Captive user holding in Equity Share Capital with Voting rights as on .....										
Sl. No.	Name of Share holders / Captive Users	Class of share holder	No. of Equity Shares	Paid Up Value per Equity Share	Amount of Paid Up Equity Share Capital	Percentage holding in Equity Share Capital	No. of Voting rights	Percentage holding in voting rights	Percentage holding in Paid Up Equity Share Capital with voting rights	Date of change in shareholding/ incorporation of incoming & outgoing new owner
1		Captive User								
2		Others								
Total										

**iv. Table D(SPV- applicable for cases of CGP and third party combined)**

Verification of Equity share capital with voting rights proportionate to the units identified for Captive Use as per Electricity Rules.		
Total installed Capacity of the generating station (in MW)	A	
Of the Total installed Capacity, units and capacity identified for Captive Use (in MW)	B	
Proportion of Capacity identified for Captive use on the overall installed capacity (in %)	$C=(B/A)$	
Paid up Equity share capital with voting rights to be maintained by Captive consumers in the generating station (%)	$D=(26\%*c)$	

Actual paid up Equity shareholding with voting rights held by Captive consumers (%)	E	
---	---	--

Note: As the actual paid up equity shareholding with voting rights held by the captive consumers in (E) is not less than 26%( or proportionate, as the case may be) , the plant satisfies the Ownership criteria for CGP as required under Rule 3 read with Explanation of Electricity Rules 2005.

Signature of Practicing or Appointed  
Chartered Accountant/  
Cost& Management Accountant/  
Company Secretary

Place

Name in Block letters

Date

Name of firm with membership no.

UDIN No.(where applicable)

**FORMAT –II**

**[To be submitted by the Captive users (also the owners) who are Company/Corporate Body]**

**Auditor's Certificate**

I / We hereby certify that **Captive User Name**, a company incorporated under Companies Act 2013 (or under the erstwhile Act) and having its registered office at \_\_\_\_\_ with HT. SC.No. \_\_\_\_\_ at \_\_\_\_\_ EDC as given in the annexure is holding \_\_\_\_\_ number of Equity Shares of Rs. \_\_\_\_\_ each amounting to Rs. \_\_\_\_\_ as Equity Share Capital and with \_\_\_\_\_ voting rights per Equity Share in **Name of CGP** HT.SC.No. \_\_\_\_\_ at \_\_\_\_\_ EDC.

Signature of Practicing or Appointed  
Chartered Accountant/  
Cost & Management Accountant/  
Company Secretary

Name in Block letters

Name of firm, Membership No.

UDIN No.(where applicable)

Place:

Date:

**FORMAT-III**

**[To be submitted by THE GENERATOR WHICH IS A FIRM / LLP]**

**CERTIFICATE ON 'OWNERSHIP' AS PER RULE 3 OF ELECTRICITY RULES, 2005**  
**FOR WHEELING UNDER CAPTIVE CATEGORY**

We hereby certify that M/s. \_\_\_\_\_, a Partnership Firm having its place of business at \_\_\_\_\_ satisfy the requirements under Rule 3 of Electricity Rules 2005 for qualifying as a Captive Generation Plant with reference to "Ownership" criteria as per the Partnership Deed dated \_\_\_\_\_ with HT.SC No. \_\_\_\_\_ of \_\_\_\_\_ Electricity Distribution Circle as given in the annexure. We confirm that the captive consumers are holding proprietary interests and control over the Captive Generation Plant.

The detailed breakup of the ownership of each partner in the Partnership Firm has been tabulated below in Table A. Further, specific breakup of the proprietary interest and control in relation to Captive Generation Plant held by captive user vis-à-vis other users has been tabulated below in Table B.

**TABLE A:**

Ownership of the Captive Generation Plant of the Partnership Firm as on .....					
S.No	Name of the partner	Capital contribution	% of capital contribution	Whether Control Proportionate to Capital Contribution?	Remarks on control pattern*
	<b>TOTAL</b>				

\* Please provide remarks in the relevant column whether control is proportionate to the capital contribution.

Contd.

**TABLE B:**

Ownership of the Captive Generation Plant of the Partnership Firm as on .....						
Type of Owner			% of proprietary interest and control in the Captive Generating Plant	Whether Control is Proportionate to Proprietary interest?	Remarks on control pattern*	
Captive User	HT. SC.NO	EDC				
Others						
TOTAL						

\* Please provide remarks in the relevant column whether control is proportionate to the Proprietary interest, with specific reasons as to how the ownership threshold under Rule 3 of the Electricity Rules 2005 is being satisfied.

Signature of Practicing or Appointed  
Chartered Accountant/  
Cost & Management Accountant/  
Company Secretary

Name in Block letters

Name of firm, Membership no.  
UDIN No.(where applicable)

Place :

Date:



## FORMAT-IV

[To be submitted by the Captive users (also owners) of the Partnership Firm/LLP]

### Auditor's Certificate

I hereby certify that **Captive User Name**, and having its registered office at \_\_\_\_\_ with HT. SC.No. \_\_\_\_\_ at \_\_\_\_\_ EDC as given in the annexure is a partner/member with capital contribution of Rs. \_\_\_\_\_ with controlling interest of \_\_\_\_\_ percentage in **Captive Power Generator Firm Name** which owns a Generating Plant with Capacity \_\_\_\_\_ under HT.SC. No. \_\_\_\_\_ at \_\_\_\_\_ EDC as given in the annexure as on date.

Signature of Practicing or Appointed  
Chartered Accountant/  
Cost & Management Accountant/  
Company Secretary

Name in Block letters

Name of firm, membership No.

UDIN No.(where applicable)

Place :

Date:

**FORMAT V (A) (For all type of generators)**

<b>Sl.No.</b>	<b>Particulars</b>	<b>Energy in Units</b>
1	Total Generated units of a generating plant / Station identified for captive use	-
2	Less : Auxiliary Consumption in the above in units(except wind & solar)	-
3.	Less: Banking charges where applicable	
4.	Less: start up power where applicable	
5.	Net units available for captive consumption (Aggregate generation for captive use)	-
6.	51% of aggregate generation available for captive consumption in units (Sl.No.5 x 51%)	-
7.	Actual Adjusted units by the captive users	-
8.	Actual Adjusted units grossed up with T&D losses	
9.	Percentage of actual adjusted/grossed up units by the captive users with respect to aggregate generation for captive use (Sl.No.8 divided by Sl.No.5)	-

If Sl.No.9 is Not Less than 51%, then go to FORMAT V (B),V (C),V(D), as the case may be, for further detailed verification.

Signature

Name:

(Authorised signatory of CGP)



**FORMAT V(B) (Other than Wind Energy Generators)**

Sl. No.	Name of share holder	No. of equity shares of value Rs.		% to be consumed on pro rata basis by each captive user	100% annual generation in units (x)	Annual Auxiliary consumption in units (y)	Generation considered to verify consumption criteria in units (x-y)*51%	Permitted consumption as per norms in units ( where applicable )			Actual consumption in units	Consumption grossed up with T&D losses in units	Whether consumption norms met
		As per share certificate as on 31st March	% of ownership through shares in Company/ unit of CGP					with 0% variation =h *e	-10% =90% of i	10% =110% of i			
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)	(j)	(k)	(l)	(m)	(n)
								Signature					
								Name					
								(Authorised signatory of CGP)					



