

HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION, SHIMLA

NOTIFICATION

Shimla, the 24 August, 2021.

HPERC-H(1)-34/2021.- In exercise of powers vested under section 181(1) read with section 9 of the Electricity Act, 2003 and rule 3 of the Electricity Rules, 2005 and Regulation 39 of the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term intra-State Open Access and Related Matters) Regulations, 2010 and regulation 42 of the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010 and the powers contained in regulation 67 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005, the Himachal Pradesh Electricity Regulatory Commission hereby proposes to make the Procedure for Verification of Captive Generating Plant (CGP) Status in the State of Himachal Pradesh and as required under rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005, the draft procedure is hereby published for the information of all the persons likely to be affected thereby and notice is hereby given that the said draft procedure shall be taken into consideration, after the expiry of thirty (30) days from the date of publication in the Rajpatra, Himachal Pradesh together with any objections or suggestions, which may, within the aforesaid period, be received in respect thereto.

The text of the aforesaid draft procedure is also available on the website of the Commission, i.e. www.hperc.org.

The objections or suggestions in this behalf should be addressed to the Secretary, Himachal Pradesh Electricity Regulatory Commission, Block No.37, SDA Complex, Kasumpti, Shimla-171009.

DRAFT

Procedure for verification of Captive Generating Plant (CGP) Status in the State of Himachal Pradesh.

1. **Short title and commencement.-**

- (1) This procedure may be called the Procedure for verification of Captive Generating Plant (CGP) Status in the State of Himachal Pradesh.
- (2) This procedure shall be applicable from the date of publication in the Rajpatra, Himachal Pradesh.

2. **Definitions.-** In this procedure, unless the context otherwise requires,-

- (a) "Act" means the Electricity Act, 2003 (36 of 2003);
- (b) "section" means a section of the Act;
- (c) "Verifying Authority" means the agency authorized by the Commission for verifying the captive status of the Generating station(s); and
- (d) expressions used and not defined in these rules, but defined in the Electricity Act, 2003 (36 of 2003) and in the Regulations of the Himachal Pradesh Electricity Regulatory Commission, shall have the meanings respectively assigned to them in that Act/Regulation(s).

3. **Statutory provisions:**

(1) **Section 9 of the Electricity Act, 2003, reads as under:-**

“Section 9. (Captive generation):

- (1) *Notwithstanding anything contained in this Act, a person may construct, maintain or operate a 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 licence 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 subsection (2) of section 42.

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

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

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

- (2) The Rule 3 of the Electricity Rules, 2005 stipulates the following:

“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."

4. **General Conditions:**

Keeping in view the aforesaid statutory provisions, following general provisions to verify compliance of conditions under Rule 3 of the Electricity Rules, 2005 shall be considered:-

- (i) The captive generators/users shall be required to identify the unit/units intended for captive consumption at the time of induction of equity itself.
- (ii) If the Captive Generating Plant(s) and some of the captive user(s) are situated outside Himachal Pradesh and the captive status has been determined by an authorized Authority in the state where Captive Generating Plant is situated, the status as determined for Captive Generating Plant shall be adopted in Himachal Pradesh, if in such determination the consumption as certified by Verifying Authority in Himachal Pradesh has been taken.

Provided that if any other consumption is taken, the Verifying Authority in Himachal Pradesh shall re-determine the captive status of users in Himachal Pradesh.

- (iii) The CGP users/owners shall ensure that at any point of time in a financial year not less than twenty six percent of the ownership with voting rights of the generating plant/station or the units identified for captive use, as the case maybe, is held by the captive users and they consume not less than fifty one percent of the electricity generated on annual basis as per this procedure.
- (iv) In case, if there is one captive user, the user shall hold not less than twenty six percent of the equity share capital with voting rights throughout the year and shall consume not less than fifty one percent of the electricity generated on annual basis for captive use as per this procedure.
- (v) In case of two or more captive users or Association of Persons (AoP), the captive users shall hold in aggregate not less than twenty six percent of the equity share capital with voting rights throughout the year and consume not less than fifty one percent of the electricity generated on annual basis for captive use as per this procedure in proportion to their share of the power plant within the variation not exceeding ten percent.

The proportionality test shall be calculated for fifty one percent of aggregate generation and not for consumption beyond fifty one percent by captive consumers.

- (vi) If an operating company is non Special Purpose Vehicle (SPV), the captive user shall hold not less than twenty six percent of the equity share capital with voting rights throughout the year and shall consume not less than fifty one percent of the electricity generated on annual basis for captive use as per this procedure.
- (vii) In the case of Cooperative Society, members of society shall collectively satisfy not less than twenty six percent of the ownership and consume not less than fifty one percent of the electricity generated on annual basis for captive use as per this procedure.
- (viii) In the case of partnership firm/limited liability partnership (LLP), ownership shall be with respect to not less than twenty six percent proprietary interest and control over the generating station or power plant and the consumption shall be not less than fifty one percent of the energy generated on annual basis as per this procedure.
- (ix) In the case of CGPs identified for captive use, as under clause (b) of sub- rule (1) of Rule 3 of the Electricity Rules, 2005, in a generating station owned by a Company which is formed as a Special Purpose Vehicle (SPV) and has multiple generating units, the captive users shall hold in aggregate not less than twenty six percent of the proportionate paid up equity share capital with voting rights as per illustration at clause 3(1)(b) of the Electricity Rules, 2005 and consume not less than fifty one percent of energy generated as per this procedure shall be with reference to the generating units identified for captive use and not generating station/company, as a whole.
- (x) The test of proportional consumption in Association of Persons (AoP) and in SPV (where applicable) shall be on fifty one percent of electricity generated, determined on an annual basis, in proportion to the shares in ownership of the power plant within a variation not exceeding ten percent.
- (xi) Verification of ownership and consumption for any change in the captive user in a financial year shall be for each corresponding period of change i.e. by considering the proportionate generation for the corresponding period and the energy consumed by the captive user(s).
- (xii) Weighted average of shareholding to verify twenty six percent ownership annually when there is change in ownership structure, shall be considered subject to the condition that change in extent of shareholding of a captive user is intimated to the distribution licensee and the Verifying Authority within 10 days of such change. Failure to

intimate the change within the specified period will render the Verifying Authority to conduct verifications without considering weighted average of shareholding.

- (xiii) The Verifying Authority shall verify minimum equity share capital of twenty six percent before the grant of permission for Open Access from the Captive Generating Plants. In case if the criteria of minimum equity share capital of twenty six percent is not fulfilled at the time of seeking Open Access, the Open Access shall be considered as if the applicant is non-captive user.

5. **Verifying Authority:**

- (1) The Commission designates the State Load Despatch Centre (SLDC), Himachal Pradesh as the Verifying Authority.
- (2) The verifying Authority shall determine the captive status of the Generating station(s).
- (3) The verifying authority shall seek clarifications, if any, and confirm the CPP status or otherwise for the previous financial year by 30th June of the next financial year based on conditions stipulated in this procedure:

Provided that the Verifying Authority shall also inform the percentage of consumption of energy with respect to aggregate electricity generated for the previous month on monthly basis and cumulative basis by the end of next month.

- (4) Failure to furnish data, documents for the purpose of verification of captive status within the time frame fixed in this procedure would empower the Verifying Authority to determine the status of the plant with the available data or documents if any.
- (5) The Verifying Authority may conduct cross verification of data furnished with the available downloaded data from the meter terminals of captive generators and their captive users.
- (6) The Verifying Authority shall intimate fulfillment of condition in regard to the captive status or otherwise to the CGPs/captive users and the distribution licensee.

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

- (1) *Verification of ownership of the CGP (as per condition in sub clause (i) of clause (a) of sub rule (1) of Rule 3 of the Electricity Rules, 2005).*
The Authorized signatory of CGP shall identify the category of ownership with respect to the provisions contained in the Electricity Rules, 2005.
- (2) For verification of ownership, the documents as detailed below shall be

furnished by the CGP owners/captive users for different compositions of ownership:

(a) Where the generating plant is a Company under the Companies Act:

- (i) A certificate issued by the Chartered Accountant, who signs the annual financial statement of the company/practicing Company Secretary, who files the annual return of the Company, providing details of Total Equity, Authorized, Issued, Subscribed and Paid up Equity Share Capital of the Generators and the details of holding of Equity Share Capital with voting rights of the CGP and that of the captive users as per FORMAT-I.
- (ii) Certified copy of Memorandum of Association and Articles of Association and its amendments issued from time to time, along with the certification that there is provision in Memorandum of Association and Articles of Association for taking up captive generation.
- (iii) Furnishing of Relevant extract of Latest Annual Return-MGT 7 (electronic form provided by Ministry of Corporate Affairs) showing shareholding details filed by the generators/captive users with the Registrar of Companies, within a month of filing, for the purpose of cross verification.
- (iv) A certificate regarding holding of Equity Share Capital with voting rights in the CGP by the captive user duly certified by the Chartered Accountant who signs the annual financial statement of the Company/practicing Company Secretary who files the annual return of the Company as per FORMAT II.
- (v) A copy of Board's resolution authorizing the signatory of the Company. The authorized signatory shall be the Managing Director or Whole Time Director or Company Secretary.
- (vi) The authorized signatory shall furnish the documents mentioned in preceding items (i) to (v).
- (vii) Any change in the authorized signatory and revocation for approval for captive generation by the Board by way of amendment to Memorandum of Association and Articles of Association shall be intimated within 30 days from the date of such change to the distribution licensee and the Verifying Authority.

(b) Where the generating company is a partnership firm/limited liability partnership (LLP):

- (i) A certificate issued by the Firm's Chartered Accountant, who

signs the annual financial statement of the company/Tax Auditor, as the case may be, showing breakup details of total capital of the Firm, the capital held by the captive users, the percentage of proprietary interest and control over the generating plant by the captive users in the FORMAT-III along with a certificate that there is provision in the partnership deed of the Company for carrying on captive generation.

- (ii) A certificate regarding extent of 'ownership' in the Captive Generating Plant by the captive user duly certified by the Chartered Accountant who signs the annual financial statement/Tax Auditor of the Partnership Firm/LLP in FORMAT-IV.
- (iii) Furnishing of relevant extract of the latest Annual Financial Statement of Accounts/annual return/tax audit return of the firm and the captive users showing details of ownership by the end of November for the purpose of cross verification.
- (iv) A copy of the agreement/nomination by all partners in a Partnership Firm/members in an LLP authorizing the signatory of the Partnership Firm/LLP.
- (v) A certified copy of the Partnership deed/agreement for a Partnership Firm/LLP along with Form A issued by the Registrar of Firms for a Partnership Firm and by the Registrar of Companies (ROC) in case of LLP and its amendments issued from time to time.
- (vi) The authorized signatory of the Partnership Firm/LLP shall furnish the documents mentioned in preceding items (i) to (v).
- (vii) Any revocation of approval for captive generation by the Firm or by way of amendment to partnership deed shall be duly informed within 30 days from such change, to the distribution licensee and the Verifying Authority.

(c) Where the generating plant is owned by Association of Persons (AoP):

Copy of the Business Agreement showing the details of the shareholding of persons as members of the Association of Persons (AoP) certified by the Chartered Accountant, who signs the annual financial statement, furnished by the Authorized signatory of the AoP with certified copy of such nomination of the signatory.

(d) Where the generating plant is owned by a Special Purpose Vehicle (SPV):

Documents as in the preceding items (a), (b) and (c) depending

on whether the SPV is a Company, Partnership Firm/LLP or AoP.

(e) Where the generating plant is owned by a Co-operative Society:

- (i) A certificate by the Chartered Accountant, who signs the annual financial statement, showing detailed breakup of the Issued, Subscribed and Paid up Equity Share Capital of the generators and the details of holding of Equity Share Capital with voting rights by the captive users as per FORMAT-I.
 - (ii) Certificate of incorporation of the Co-operative Society.
 - (iii) Copy of byelaws of Society and its amendments made from time to time.
 - (iv) Relevant extract of the latest Annual Report of the generators showing details of share capital.
 - (v) A copy of the resolution passed by the General Body authorizing the Managing Director or Whole Time Director or Company Secretary or the Chief Executive of the Co-operative Society as the Authorized signatory with attested signature of such signatory.
 - (vi) The Authorized signatory shall furnish documents mentioned in Sl.No.(i) to (v) of this clause through a letter.
 - (vii) Any revocation of sanction for carrying on captive generation by the Society shall be informed within 30 days from the date of such change to the distribution licensee and the Verifying Authority.
- (3) The documents, listed in the preceding sub-para 6(2), are to be furnished at the time of seeking open access by the generator or captive user. Approval for open access shall be granted under captive category subject to furnishing of the documents. This also applies to any change in shareholding pattern/ownership at the beginning of the financial year or within a financial year.
- (4) The verification of CGP status is an annual process. The documents in sub-para 6(2) shall also be furnished by the CGP owners/captive users to the distribution licensee and the Verifying Authority at the time of annual verification of CGP status at the end of the financial year.
- (5) Any change in shareholding pattern, has to be intimated to the distribution licensee and the Verifying Authority within 10 days of such change alongwith proof of documents.
- (6) Verification of not less than fifty one percent consumption by captive users:**
- (a) The aggregate energy generated from CGP unit shall be the gross

energy generated from the unit less aggregate auxiliary consumption during the time block. In the absence of measured data on auxiliary consumption, until metering as prescribed in the succeeding sub-para 7(2) of this Procedure is completed, the normative auxiliary consumption and the losses specified in the Regulations of the Commission may be considered for the purpose of CGP verification status.

- (b) The consumption of energy by the captive users under Open Access for this purpose shall be considered as lower of actual energy generated by CGP unit(s) or actual energy drawn through open access limited to a maximum of scheduled open access energy during that time block as per FORMAT-VII.
- (c) The applicant shall submit the details of actual generation from the power plant and the actual consumption made by the captive users on monthly basis as per FORMAT-I, V, VI and VII to the 'Verifying Authority' and the distribution licensee, within 7 days of the end of the month in soft copy also.
- (d) For determination of "annual basis" for the first year of declaring the plant under captive status, the date of grant of Open Access shall be considered as a start date for the financial year for counting the generation of the plant under captive status. For the subsequent years, total generation from 1st April to 31st March of a financial year shall be considered for determining the captive status of the generation station.
- (e) Where the shareholding pattern/ownership is maintained throughout the financial year, verification of consumption criteria of not less than fifty one percent of aggregate electricity generated and the test of proportional consumption shall be for the financial year. In cases where the shareholding pattern has changed within a financial year, verification of consumption criteria shall be made on the energy generated and consumed in the corresponding period against the revised shareholding pattern.

(7) Ceasing of Qualification of CGP:

- (a) If CGPs fails to meet the requisite conditions in a financial year, the generating plant will cease to be a Captive Generating Plant and the users will cease to be captive users and further shall be liable to pay Cross Subsidy Surcharge and/or additional surcharge, as applicable.
- (b) In case the Open Access consumers are availing energy from

more than one source and the cumulative consumption satisfies the criteria of captive status in respect of multiple generators, the captive status shall be given for all sources. In case if the condition is not met cumulative for all sources, the Open Access consumers shall cease to retain the status of captive user(s).

(8) Default by a shareholder(s):

- (1) When a shareholder(s) defaults in fulfilling criteria of consumption in Rule 3 of the Electricity Rules, 2005 and when other captive users together comply with ownership criteria of not less than twenty six percent, the defaulting shareholder(s) alone shall forgo the concessions available to a captive user. The other captive users together who comply with criteria of not less than twenty six percent ownership and consumption of not less than fifty one percent of aggregate electricity generated +/- ten percent in proportion to their individual shareholdings shall retain the captive status.
- (2) When a shareholder(s) defaults in fulfilling the consumption criteria of Rule 3 of the Electricity Rules, 2005 and when other captive users together do not comply with ownership criteria of not less than twenty six percent, the CGP will lose its captive status, and all captive users shall forgo the concessions available to a captive user.

7. Metering:

- (1) Each Captive Generating Plant (CGP) Unit located in Himachal Pradesh shall have a separate Special Energy Meter (SEM) with real time communication facility with State Load Despatch Centre (SLDC) as per the specifications in the Central Electricity Authority (CEA) (Installation and Operation of Meters) Regulations, 2006 as amended from time to time.
- (2) In case of Embedded CGP generators, if such generators are selling power under bilateral transaction to third party consumers or having Energy Purchase Agreement (EPA) with any distribution licensee, it is necessary to access fifty one percent Self Consumption Criteria by obtaining segregated generation and consumption data in the Embedded premises. Hence, separate metering arrangement shall be made for generation and self-consumption within same premises.
- (3) The monthly reading data unit wise at the Generation Transformer EHV level, outgoing feeder level and that of auxiliary consumption shall be submitted by the captive generator or the captive user in hard and soft versions by 10th day of the next month in the Office of the Verifying Authority and the concerned distribution licensee.

Downloading of monthly data of all these meters shall be jointly undertaken by the generator or captive user and distribution licensee concerned, wherever possible.

8. **Recovery of Cross Subsidy Surcharge (CSS) and Additional Surcharge (AS):**

- (1) The applicant seeking Open Access under captive use shall have option either to pay cross-subsidy surcharge and/or additional surcharge etc. on monthly basis as per the provisions of succeeding sub-para 8(2) or to submit a Bank Guarantee (BG) or Letter of Credit (LC) or Fixed Deposit (FD) for an amount equivalent as a payment security mechanism towards cross subsidy surcharge and/or additional surcharge applicable for the period of financial year for which open access has been sought:

Provided that the validity of payment security instrument shall be till 31st July of next financial year or till the captive generator status is ascertained, whichever is later:

Provided further that in such cases where a valid payment security instrument has been submitted, the distribution licensee shall not raise bill for such charges.

(2) **On Monthly Basis**

- (i) In case if the captive users are able to consume not less than fifty one percent of the aggregate energy generated on cumulative basis upto a particular month, the distribution licensee shall not raise the bill for recovery of the Cross Subsidy Surcharge and Additional Surcharge upto the cumulative month.
- (ii) If the captive user(s) fails to consume not less than fifty one percent of the aggregate energy generated on cumulative basis upto a particular month, the distribution licensee shall raise the bill for recovery of the Cross Subsidy Surcharge and Additional Surcharge upto the cumulative month:

Provided further that in the subsequent months, if the captive user(s) consume not less than fifty one percent of the aggregate energy generated on cumulative basis upto that month, the amount billed on the account of Cross Subsidy Surcharge and Additional Surcharge, shall be adjusted.

{Illustration: The recovery of charges under these provisions with respect to consumption pattern of the captive user(s) shall be as

under:-

Month	Whether the captive users consume not less than 51% of the aggregate energy generated		Bill to be raised by Distribution Licensee	Remarks
	Month Basis	Cumulative Basis		
April	Yes	Yes	No	Captive users are meeting the requirement on cumulative basis
May	Yes	Yes	No	
June	Yes	Yes	No	
July	Yes	Yes	No	
August	No	Yes	No	
September	Yes	No	Yes	Charges to be billed upto the month of September
October	Yes	Yes	No	Adjustment of previously billed amount
November	Yes	Yes	No	Captive users are meeting the requirement on cumulative basis
December	No	Yes	No	
January	No	No	Yes	Charges to be billed upto the month of January
February	Yes	Yes	No	Adjustment of Previously billed amount
March	Yes	Yes	No	Captive users are meeting the requirement on cumulative basis

(3) On Annual Basis

- (i) If the Generator or the captive user(s) or the distribution licensee, as the case may be, is not satisfied with the status as determined by the Verifying Authority, it may approach the Commission by 31st July of the financial year.
- (ii) If at the end of financial year, it is established that the generating plant meets the requirement of captive generating plant status, the amount collected by the distribution licensee, if any, on account of recovery of Cross Subsidy Surcharge and Additional Surcharge shall also be adjusted/ refunded within 30 days from the date of establishment of captive generating plant status:

Provided further that if the adjustment/refund is delayed beyond 30 days, an interest at the rate of 1.0% per month shall be payable by the distribution licensee for the period of delay beyond such 30 days:

Provided further that if the applicant has submitted a requisite payment security instrument in the form of Bank Guarantee or Letter of Credit or Fixed Deposit, the Licensee shall

return the payment Security Mechanism within 30 days from the date of establishment of captive status by the 'Verifying Authority' or 31st July of the Financial Year whichever is later:

Provided also that if the distribution licensee has approached the Commission for determination of captive status under sub-clause(i), the payment security instrument shall not be returned:

Provided also that the applicant shall extend the validity of payment security instrument during the period of determination of captive status by the Commission.

(iii) If at the end of financial year, in case the Open Access consumer is not able to establish that the generating plants meet the requirement of captive generating plant status and even if the distribution licensee has raised the bill for amount of Cross Subsidy Surcharge (CSS) and Additional Surcharge as per sub-para 8(2), the distribution licensee shall raise the bill along with late payment surcharge after adjustment of payment received, if any. The late payment surcharge shall be levied as if the amount was part of regular bill raised by the licensee during the relevant period.

9. **Default in Payment:**

- (i) Non-payment of any charge or sum of money payable by such open access consumer under captive use shall be considered as non-compliance and shall be liable for action under section 142 of the Electricity Act, 2003.
- (ii) The distribution licensee may discontinue open access under captive use after giving consumer an advance notice of 15 days without prejudice to its right to recover such charges as per applicable laws/ Regulations.

By Order of the Commission

Sd/-
(Ravinder Nath Sharma), HPAS
Secretary
HPERC, Shimla-171009.

ANNEXURE UNDERTAKING FROM CGP

I/Wehaving registered office at
..... do hereby solemnly declare and undertake as follows:

1. I/We declare that I/We are the owners operating/intend to operate, a generating plant under captive category [hereinafter referred as, 'CGP'] namely[name of the generating plant] within the meaning of Section 2(8) and Section 9 of the Electricity Act, 2003 [hereinafter referred as 'Act'] read with the Electricity Rules, 2005, as amended [hereinafter referred as, 'Rules'] having a total installed capacity of MW located at and maintain the above mentioned generating plant as per the Articles of Association /Memorandum of Association of the Company.
2. I/We declare that we have obtained all the necessary approvals as per applicable laws/rules/regulations/orders, to operate and maintain such generating plant.
3. I/We declare that captive generating plant/station is/is not, an association of person/special purpose vehicle.
4. I/We declare and confirm that CGP meets/shall meet all criteria to qualify it as a CGP in accordance with the Act read with Electricity Rules.
5. I/We declare our captive user M/s.....[name of the user utilizing power from Captive Generating Plant is located at [address] is a consumer of the Distribution Licensee..... connected at voltageKV having CA number.....[hereinafter referred as 'Captive User' or 'Consumer'] at.....
6. I/We undertake and confirm that we shall provide all necessary information/documents/data and seek prior approval for wheeling under captive category. We also undertake to provide all necessary information/documents/data for verifying the qualifying requirements of CGP status as per the procedure and any subsequent order/instruction issued in this regard.
7. I/We submit that the above captive generating plant is desirous to wheel power under captive category through Open Access. We undertake to make payment of all applicable Open Access charges for such consumption of power through such Open Access arrangement in accordance with applicable law/rules/regulation/policies from time to time.
8. I/We declare and confirm that Captive User(s) is / are having % ownership in the CGP and qualify to wheel under captive category. I/We hereby undertake that the holding of Equity Share Capital with voting rights /proprietary interest and control and consumption by the captive users will be as per the provisions of the Act and the Rule-3 of the Electricity Rules, 2005.
9. I/We undertake that there will not be any bogus/fraudulent injection/drawl of energy by the generating company and captive users and in the occurrence of any such event, I undertake to pay the charges to distribution licensee as applicable as per the orders in force along with late payment surcharge and penal charges, if any.
10. I/We undertake to the effect that in case of holding of Equity Share Capital with voting rights/proprietary interest and control and Consumption by the captive user(s) are not as per the requirements of Rule 3 of the Electricity Rules, 2005 during the period of wheeling under captive category, the Captive Generating Plant will be disqualified and cross subsidy surcharge and additional surcharge will be paid to the distribution licensee for the energy consumed from the above generating

plant. I/We undertake that failure to make payment within the due date, the distribution licensee shall recover the cross subsidy surcharge and additional surcharge as per Law.

11. Certificate of a qualified Chartered Accountant with regard to ownership is enclosed.

Dated Signature of authorized signatory

Encl.:

1. Resolution/Agreement/Nomination for authorization of signatory for furnishing undertaking
2. Certificate of a CA/Co.Secy certifying the Ownership (Formats I to IV, as applicable)
3. Copy of MoA/AoA.

UNDERTAKING FROM CGP - User

I/Wehaving registered office at
.....do hereby solemnly declare and undertake as follows:

1. I/We declare that I/We are the owners operating/intend to operate, a generating plant under captive category [hereinafter referred as, 'CGP'] namely[name of the generating plant] within the meaning of Section 2(8) and Section 9 of the Electricity Act, 2003 [hereinafter referred as 'Act'] read with the Electricity Rules, 2005, as amended [hereinafter referred as, 'Rules'] having a total installed capacity of MW located at and maintain the above mentioned generating plant as per the Articles of Association /Memorandum of Association of the Company.
2. I/We declare that we have obtained all the necessary approvals as per applicable laws/rules/regulations/orders, to operate and maintain such generating plant.
3. I/We declare that captive generating plant/station is/is not, an association of person/special purpose vehicle.
4. I/We declare and confirm that CGP meets/shall meet all criteria to qualify it as a CGP in accordance with the Act read with Electricity Rules.
5. I/WE declare our captive user M/s.....[name of the user utilizing power from Captive Generating Plant is located at [address] is a consumer of the Distribution Licensee..... connected at voltageKV having CA number.....[hereinafter referred as 'Captive User' or 'Consumer'] at
6. I/We undertake and confirm that we shall provide all necessary information/documents/data and seek prior approval for wheeling under captive category. We also undertake to provide all necessary information/documents/data for verifying the qualifying requirements of CGP status as per the procedure and any subsequent order/instruction issued in this regard.
7. I/We submit that the above captive generating plant is desirous to wheel power under captive category through Open Access. We undertake to make payment of all applicable Open Access charges for such consumption of power through such Open Access arrangement in accordance with applicable law/rules/regulation/policies from time to time.
8. I/We declare and confirm that Captive User(s) is / are having % ownership in the CGP and qualify to wheel under captive category. I/We hereby undertake that the holding of Equity Share Capital with voting rights /proprietary interest and control and consumption by the captive users will be as per the provisions of the Act and the Rule-3 of the Electricity Rules, 2005.
9. I/We undertake that there will not be any bogus/fraudulent injection/drawl of energy by the generating company and captive users and in the occurrence of any such event, I undertake to pay the charges to distribution licensee as applicable as per the orders in force along with late payment surcharge and penal charges, if any.
10. I/We undertake to the effect that in case of holding of Equity Share Capital with voting rights/proprietary interest and control and Consumption by the captive user(s) are not as per the requirements of Rule 3 of the Electricity Rules, 2005 during the period of wheeling under captive category, the Captive Generating Plant will be disqualified and cross subsidy surcharge and additional surcharge will be paid to the distribution licensee for the energy consumed from the above generating

plant. I/We undertake that failure to make payment within the due date, the distribution licensee shall recover the cross subsidy surcharge and additional surcharge as per Law.

11. Certificate of a qualified Chartered Accountant with regard to ownership is enclosed.

Dated Signature of authorized signatory

Encl.:

1. Resolution/Agreement/Nomination for authorization of signatory for furnishing undertaking
2. Certificate of a CA/Co.Secy certifying the Ownership (Formats I to IV, as applicable)
3. Copy of MoA/AoA.

Table C

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 MW)	$C=(B/A)$	
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 twenty six percent (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 Chartered Accountant/Company Secretary:

Name in Block letters:

Name of firm:

Membership No.:

UDIN No. (where applicable)

Place:

Date:

FORMAT -II

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

Auditor's Certificate

I hereby certify that **Captive User Name**, a company incorporated under Companies Act 2013 (or under the erstwhile Act) and having its registered office at _____ 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 **Captive Power Generator Company Name** which owns a Generating Plant with a Capacity _____ as given in the **annexure as on date.**

Signature of Chartered Accountant:

Name in Block letters:

Membership No.:

Name of the Firm:

UDIN No. (where applicable)

Place:

Date:

FORMAT-III

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

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 principal office 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 _____. 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	Profit sharing Ratio	Whether Control Proportionate to Capital Contribution?	Remarks on control pattern*
Total						

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

TABLE B

Ownership of the Captive Generation Plant of the Partnership Firm as on			
Type of Owner	% of proprietary interest in the Captive Generating Plant	Whether Control Proportionate to Proprietary interest?	Remarks on control pattern*
Captive User			
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 Chartered Accountant/Tax Auditor:

NAME in Block letters:

Name of Firm:

Membership Number:

UDIN No. (where applicable)

Place :

Date:

FORMAT-IV

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

Auditor's Certificate

I hereby certify that **Captive User Name**, having its registered office at _____ 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 _____ as given in the annexure as on date.

Signature of Chartered Accountant: Name in Block letters:

Name of the Firm:

UDIN No. (where applicable)

Place:

Date:

FORMAT V

Sl. No.	Particulars	Energy in Units
1	Total generated units of a generating plant /Station identified for captive use	
2	Less : Auxiliary Consumption in the above in units	
3	Net units available for captive consumption (Aggregate generation for captive use)	
4	51% of aggregate generation available for captive consumption in units	
5	Actual Adjusted / Consumed units by the captive users	
6	Percentage of actual adjusted/consumed units by the captive users with respect to aggregate generation for captive use (Sl.No.5 divided by Sl.No.3)	

If Sl.No.6 is Not Less than 51%, then go to FORMAT VI.

