

**HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA**

IN THE MATTER OF:-

Procedure for Verification of the status of Captive Generating Plant (CGP) in the State of Himachal Pradesh.

Decided on: 29th March, 2022

**CORAM: Hon'ble Sh. Devendra Kumar Sharma, Chairman
Hon'ble Sh. Bhanu Pratap Singh, Member
Hon'ble Sh. Yashwant Singh Chogal, Member(Law)**

ORDER

1. The Electricity Act, 2003 ("The Act" for short), defines '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 for generating electricity primarily for use of members of such cooperative society or association. The owner of a Captive Generating Plant is also a generating Company. The requirement for Captive Generating Plant has been provided in the Electricity Rules, 2005 and the Commission while framing the Himachal Pradesh Electricity Regulatory Commission (Grant of Connectivity, Long-term and Medium-term Intra-State Open Access and Related Matters) Regulations, 2010, has also defined the term Captive Generating Customer'. Sub-Section (2) of Section 9 of the Act, provides that every person, who has constructed a captive generating plant and maintains and operates such plant, shall have the right of Open Access for the purposes of carrying electricity from his captive generating plant to the destination of his use.
2. Fourth Proviso of Section 42(2) of the Act also provides that no cross subsidy surcharge shall be leviable in case Open Access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use. Further, Sub-regulation (2) of Regulation 1 of the Himachal Pradesh Electricity Regulatory Commission (Cross Subsidy Surcharge, Additional Surcharge and Phasing of Cross Subsidy) Regulations,

2006 read with its second amendment dated 9th April, 2021, provides that the Cross Subsidy Surcharge, Additional Surcharge shall not be applicable to Captive Generating Plants in the State of Himachal Pradesh.

3. However, neither the Act, nor Rules framed under it nor the Regulations framed by the Commission provide for the mechanism for verification of the Captive Generating Plant.
4. Therefore, in view of the aforesaid statutory provisions, it has become necessary to formulate the Procedure to be followed for Verification of the status of Captive Generating Plant. Hence, the Commission in exercise of the powers, conferred under section 181(1) read with section 9 of the Act, and Rule 3 of the Electricity Rules, 2005 (hereinafter referred to as “the Rules”), 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, Regulation 42 of the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010, regulation 67 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and all other powers enabling it in this behalf, notified the draft Procedure for Verification of the Status of Captive Generating Plant in the State of Himachal Pradesh on 24th August, 2021.
5. As per provision of Sub-section (3) of the Section 181 of the Act and Rule 3 of the Electricity (Procedure for Previous Publication) Rules, 2005, the Commission invited public objections and suggestions by publishing the draft Procedure in two daily News papers i.e. “Times of India” and “Divya Himachal” on 05.09.2021. The full text of the draft Procedure was also made available on the Commission’s website: www.hperc.org. The Commission, vide letter dated 07.09.2021, also requested the major stakeholders, including State Government, Directorate of Energy, Major Industries, Chief Electrical Inspector, State Transmission Utility and Distribution Licensee to send their objections/suggestions on the aforesaid draft Procedure by 27th September, 2021.

6. The Commission received suggestions/objections on the draft Procedure from the following stakeholders:
- (a) The Chamber of Commerce and Industry, Kutch
 - (b) the Himachal Pradesh State Load Dispatch Centre, Shimla
 - (c) the Captive Power Producers Association, Mumbai
 - (d) M/s Winsome textiles Ltd, Baddi
7. A public hearing was held on 30th September, 2021 in the matter through video conferencing. The following participants attended the said public hearing :-
- (i) Er. Ram Parakash, Chief Engineer (Comm.), HPSEBL.
 - (ii) Er. Abhimanyu, AEE, HPSLDC.
 - (iii) Sh. Ashish Bagrodia, CMD, M/s Winsome Textiles Ltd, Baddi.
 - (iv) Sh. Sanjeev Mittal, M/s Winsome Textiles Ltd, Baddi .
 - (v) Ms. Seda Khan, Captive Power Producers Association, Mumbai.
 - (vi) Sh. Ankit Gupta, Chamber of Commerce & Industry, Kutch.
 - (vii) Sh. Mridul Chakravarty, Chamber of Commerce & Industry, Kutch.

8. **Consideration of written submissions made by the stakeholders and Commission's views.-**

The issues and concerns voiced by the aforesaid objectors have been carefully gone through. The Commission finds it appropriate to discuss the relevant key points, raised by the objectors, instead of discussing each of the submissions separately. The Commission's views on such key issues are given in the following sub-paragraphs.

(A) Verification and period for assessment of captive status of CGPs.

Comments :-

- (i) The Chamber of Commerce and Industry, Kutch and the Captive Power Producers Association, Mumbai have stated that there is no such obligation or condition under the Electricity Act or the Electricity Rules, 2005, wherein, captive users are mandated to identify the unit/units at time of induction of equity. Further, as per the definition provided under the Electricity Rules, 2005, ownership with respect to a captive generating plant is equity

shares capital with voting rights only and the captive users are required to maintain ownership of 26% in the captive generating plant. The stakeholders have further stated that under the Companies Act, 1956 (as amended up to 2013) there is no provision of law, where equity share certificate(s) are issued towards a particular equipment, or a part portion of a Firm/Company. The share certificate can be issued qua a Company, as a whole.

- (ii) The Chamber of Commerce and Industry, Kutch and the Captive Power Producers Association, Mumbai have submitted that the status of CGPs can be determined only at the end of financial year and requested to modify the prevalent draft provisions of the Procedure accordingly.

Commission's view

- (i) The Commission agrees with the objections made above that the captive users are not required to identify the unit/units at time of induction of equity. The Commission finds it appropriate that the captive generators shall be required to identify the unit/units intended for captive consumption at the time of furnishing documents for the proof of ownership. Therefore, the Commission decides to modify the proposed provision of the draft Procedure accordingly.
- (ii) The Commission finds it appropriate that the verification of minimum shareholding and minimum consumption on proportionate basis for Captive generating Plants and Captive Users has to be done in terms of Rule 3 of the Electricity Rules, 2005 without any deviation as the said Rule envisages verification under Rule 3(1)(a)(i) and Rule 3(1)(a)(ii) to be at the end of financial year only. Therefore, the Commission decides to align the provisions as per the Rules.

(B) Conditions for Captive status in case of ‘Special Purpose Vehicle’ :-

Comments :-

The Chamber of Commerce and Industry, Kutch and Captive Power Producers Association, Mumbai have referred to the Judgment of Hon’ble APTEL rendered in Appeal No. 131 of 2020 & IA Nos. 425, 426, 1210 & 1215 of 2020, Tamil Nadu Power Producers Association Vs Tamil Nadu Electricity Regulatory Commission, and others and have submitted that the requirement of consuming minimum of 51% electricity generated on an annual basis in proportion to the shares of ownership of the power plant cannot be applied to power plants set-up as a SPV.

Commission’s view

The Commission, after gone through the judgment of the Hon’ble APTEL referred above and also considering the provisions of the Rules, observes that second proviso to Rule 3(1)(a) of Electricity Rules, 2005 exclusively deals with an Association of Persons, which stipulate that the captive user(s) shall hold not less than 26% ownership of the plant in aggregate and shall not consume less than 51% of the electricity generated, determined on an annual basis, in proportion to their ownership of the power plant. The Commission is also of the view that the Rule 3(1)(b) of the Electricity Rules, 2005 exclusively deals with a Special Purpose Vehicle, and decide to align the proposed provision as per the said Rule.

(C) Designation of HPSLDC as Verifying Authority :-

Comments:-

The Captive Power Producers Association, Mumbai has submitted that the power to certify whether a plant/unit qualifies as a “CGP” vests with the Appropriate Commission. The Govt. of Himachal Pradesh ordered the setting up of State Load Dispatch Centre as an independent entity in the form of “Himachal Pradesh State Load

Dispatch Society” vide its order No. MPP-B (13)-2/2010 dated 8.11.2010. It is widely accepted across the country that the verification of the status of Captive Generating Plant should not be delegated to the DISCOM/SLDC. The Association has also suggested that the verification should be delegated to the Chief Electrical Inspector of the State who has been not only been entrusted function in the Electricity Act, 2003 to approve the installation and apparatus connected with the CGPs to ensure the necessary technical standards and safety regulations but also approves the drawings of the installations and energization of the recipient units who consume power generated by the group captives and is the authority for collection of electricity duty for the state. The Association has further suggested that the Commission may constitute a committee of three independent members, who do not have and did not, in the past, have any association with the State DISCOM/SLDC with a fixed tenure of 3 Years for the purpose.

Commission’s view

The Commission observe that the Chief Electrical Inspector and Himachal Pradesh State Load Despatch Centre are appointed / established under the provisions of the Act and both have independent working. However, the Commission finds it appropriate to designate the Himachal Pradesh State Load Despatch Centre as the ‘Verifying Authority’ for the determination of the status of various Captive Generating Stations in the State as the Himachal Pradesh State Load Despatch Centre has data access in respect of generation and wheeling of energy by generating plants in the State. Therefore, the Commission decides to retain the proposed provision in the final Procedure without any change.

**(D) Ceasing of Qualification of CGP:-
Comments :-**

- (i) The Captive Power Producers Association, Mumbai has submitted that the draft provisions may be made applicable for a particular financial year only and may not be linked with other financial year.
- (ii) M/s Winsome textiles Ltd, Baddi have submitted that there should be some benefit for Force majeure situation to be given to consumer which may arise due to unforeseen circumstances.

Commission's View :-

- (i) The Commission agrees with the suggestion made above and decides as under :-

“Ceasing of Qualification of CGP:

In case the criteria of not less than 26% ownership and not less than 51% consumption specified in Rule 3 are not met by the Captive Generating Plant(s) in a financial year, such generating plant will cease to be a Captive Generating Plant and the user(s) shall cease to be captive user(s) and further liable to pay Cross Subsidy Surcharge and /or Additional Surcharge, as applicable.”

- (ii) The Commission also agrees with the suggestion and decides to make the provision at appropriate place in the Procedure to consider the forced outages which may be caused due the reasons beyond their control and as certified by the State Load Despatch Centre and/or the Distribution Licensee.

(E) Right of the CGPs /user(s) to approach the Commission to prove their captive status :

Comments :-

The Captive Power Producers Association, Mumbai has suggested that captive generator person(s) may be given a right to approach the Commission to prove their captive status, in case the Verifying Authority determines non-fulfilment of the captive status for a particular financial year and till the time the matter is under

adjudication by the Commission, no distraint proceedings or coercive action may be taken.

Commission's view

The Commission has already provided this provision in the draft Procedure. However, to make this provision more clear, the Commission decides to modify the said provision as under :-

“10.2 The Captive Generating Plant 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 under this Procedure, it may approach the Commission through a Petition within 45 days from the date of determination of the captive status, by the Verifying Authority, for determination of captive status :

Provided that the Distribution Licensee shall not recover cross subsidy surcharge and/or additional surcharge till the expiry of the timelines as specified above:

Provided further that in case the Captive Generating Unit or the Captive User(s) file a Petition before the Commission, the Distribution Licensee shall not recover cross subsidy surcharge and/or additional surcharge till the matter is under adjudication by the Commission or as may be directed by the Commission.”

(F) Default by a shareholder(s) :
Comments

- (i) The Captive Power Producers Association, Mumbai has referred to Hon'ble Appellate Tribunal for Electricity (APTEL) Order dated 22.09.2009 passed in Appeal No. 171 of 2008 titled as Kadodara Power Pvt. Ltd. Versus GERC and Ors and has submitted that the proposed Procedure suggests that the test of proportional consumption applies only to AoPs and not to Captive Generating Plants/Units that are SPVs or Cooperative Societies. The Association has further submitted that only AoPs are required

to maintain proportionate of +10% and -10% hence all the other captive power plants should have to maintain only consumption of 51% of the electricity generated on an annual basis and 26% of the ownership of the plant.

- (ii) The Captive Power Producers Association, Mumbai has referred to Hon'ble Appellate Tribunal for Electricity (APTEL) Order Appeal No. 131 of 2020 & IA Nos. 425, 426, 1210 & 1215 of 2020, In the matter of: Tamil Nadu Power Producers Association Vs Tamil Nadu Electricity Regulatory Commission, and others and has submitted that when the two basic conditions of ownership of not less than 26% and minimum consumption of 51% of the annual generation, are satisfied collectively by all the consumers and in case, the rule of proportionality alone is not satisfied by one or few consumers, the power supplied to the defaulting consumer(s) alone needs to be treated as supply from a Generating Company and therefore, cannot be extended for other Captive Users, fully complying with the twin conditions.

Commission's view

The Commission finds merit in the suggestions made above and decides to delete the proposed provisions in this regard in the final Procedure.

(G) Recovery of Cross Subsidy Surcharge and Additional Surcharge on monthly basis :

Comments :

The Captive Power Producers Association, Mumbai has submitted that according to the Electricity Rules, 2005, verification of status of the captive plant is only on annual basis. The Association has suggested that there is no need of any verification and charging/collection of Cross Subsidy Surcharge and Additional Surcharge from a CGP on monthly basis and no need for refund /return of payments recovered on monthly basis and any other payment security instrument.

Commission's view

The Commission agrees to the suggestion that the determination and verification of status of a captive generating plant is to be done, by the Verifying Authority, on an annual basis. However, the Commission finds it appropriate to retain the provision to give an option to the applicant seeking Open Access under captive use either to pay the cross-subsidy surcharge and/or additional surcharge on monthly basis 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. The Commission also finds it appropriate to make a provision –

- (a) to refund / adjust within 30 days from the date of receipt of report from the Verifying Authority, the requisite cross subsidy surcharge and /or additional surcharge recovered by the Distribution Licensee. In case such adjustment / refund is delayed beyond this timeline, a simple interest at the rate of 12% per annum shall be paid by the Distribution Licensee; and
- (b) to return, within 30 days from the date of receipt of report from the Verifying Authority, the requisite payment security mechanism received in the form of Bank Guarantee or Letter of Credit or Fixed Deposit by the Distribution Licensee.

(H) Submission and Verification of data/documents :- **Comments**

- (i) The Captive Power Producers Association, Mumbai has submitted that in the event the Captive Generating Plant/Unit fails to furnish data in the timeline affix in the Procedure, the notified authority/independent committee should first serve a notice providing a last opportunity to the Captive Generating Plant/Unit to furnish the data prescribed in the Draft Directions

within 15 days of the receipt of the notice. It is only after failure to comply with this 15 days' notice period the notified authority/independent committee should use the data available with it to determine the status of the Captive Generating Plant.

- (ii) The Captive Power Producers Association, Mumbai has submitted that the accounting of aggregate energy generated from CGP unit should be as per the implemented scheduled data accounted in the monthly energy statements. It has further been submitted that in case of any mismatch between the actual injected energy and scheduled energy, generators are bound to comply to the Deviation Settlement Mechanism (UI) mechanism ordered by the respective State Commission and are exposed to payment of penalties, compelling the generators to maintain minimum mismatch between the scheduled energy and injected energy. The Association has further submitted that as per the regulations issued by Central Electricity Authority, the export meter accounting the net-generation from the generating unit(s) has to be installed at outgoing feeder of the power plant but in certain cases such export meters are installed at other location which results into corresponding line losses etc. also getting deducted from gross generation. The Association has also submitted that to get the exact data, the statement provided by respective SLDC must be considered which is almost equivalent to the actual energy drawn by the captive user plus the corresponding transmission losses and wheeling losses. It has further been submitted that as per the Electricity Rules, 2005, verification of status of Captive of plant is only on annual basis on aggregate generation and captive consumption basis where aggregate electricity generation means electricity generated on an annual basis by a CGP unit(s) i.e. the net electricity exported from that CGP unit(s) during the Financial Year after deducting the auxiliary consumption and unavoidable losses and the

Captive Consumption means the actual consumption at consumer end plus T&D losses. Reference in this regard has been drawn to Maharashtra Electricity Regulatory Commission Order in Case No. 117 of 2012.

- (iii) The Captive Power Producers Association, Mumbai has submitted that Open Access Captive Consumer should not be responsible for any compliance of Captive Generating Status as information related to shareholding, consumption along with generating data is with the Captive Generating Plant and therefore the Captive Generating Plant should be treated as a Nodal Agency for compliance at end of Financial Year.
- (iv) M/s Winsome textiles Ltd, Baddi have suggested to cover the situation where a unit of the Company is a generating unit and another unit of the same Company is a captive user and has also requested that a simple format may be specified, for such a case, be specified to certify that the generating unit and captive unit (user) belong to the same company and also to specify the certifying authority to do so.
- (v) The Chamber of Commerce and Industry, Kutch and Captive Power Producers Association, Mumbai have submitted that there is no mean to submit the shareholding to Distribution Licensee, as vesting the power and function to verify captive status upon the Distribution Licensee would in fact be permitting the said Distribution Licensee to act as a Judge in its own cause, which in turn would lead to dilution of the principle of fair play and transparency. It has been emphasised that verification of captive status can only be done by State Commission and the direction vesting such powers with Distribution Licensee is contrary to the settled legal framework of the Act.
- (vi) M/s Winsome Textiles Ltd, Baddi have commented that the metering data can't be processed at the end of generator or consumer as both don't have requisite, authorised and

calibrated MRI Instrument. It has been suggested that the monthly reading data of both ends i.e. Captive Generating unit and Captive Consumer end, should be collected/recorded by the HPSLDC (Verifying Authority) or the HPSEBL themselves only in the shape of mentioned Formats.

- (vii) The Captive Power Producers Association, Mumbai has submitted that Hitherto a certificate from a Chartered Accountant (“CA Certificate”) that certifies the shareholding of the captive consumers in the SPVs submitted at the end of the financial year is accepted as evidence of compliance with the ownership conditions. CAs are well versed in the Company Law and accounting, and are subject to disciplinary process and other professional regulations, and their certificates are accepted under multiple statutes. Thus, requiring generators to submit myriad forms and registers to the Verification Authority would make the process more tedious and cumbersome.
- (viii) The Captive Power Producers Association, Mumbai has submitted that according to the Electricity Rules, 2005, the determination and verification of status of a captive generating plant is mandated exclusively on an annual basis, therefore, there is no requirement under law for submission of any data on monthly basis. The Association has further submitted that there is no connection or relevance of a Distribution Licensee, with any process of verification of captive status of a generating plant, and it has been reiterated that the need to submit any data to such a Distribution Licensee, does not arise under the law.

Commission’s view :-

The submissions of H(i) to (viii) are dealt with as under in the same chronology :-

- (i) The Commission finds no merit in the suggestions given by the stakeholder as the sufficient time, i.e. about two months from

the date of closing of the financial year has been proposed for submission of data / documents for verification of status of the Captive Generating Plants. Accordingly, the Commission decides to retain the time period of 60 days from the date of closing of financial year to submit the data / documents to Verifying Authority in the final Procedure.

- (ii) The Commission finds no merit to consider the aggregate energy generated from the Captive Generating Plant unit as per implemented schedule. The Commission decides that the aggregate energy generated from Captive Generating Plant unit shall be the gross energy generated from the unit less aggregate auxiliary consumption. However, in the absence of measured data on auxiliary consumption, the normative auxiliary consumption and the losses specified in the relevant Regulations of the Commission may be considered for the purpose of Captive Generating Plant verification status. For consumption of energy by the Captive User(s) under Open Access for this purpose shall be considered as lower of actual energy generated by Captive Generating Plant unit(s) or actual energy drawn through Open Access limited to a maximum of scheduled Open Access energy during that time block.
- (iii) The Commission does not agree with the suggestion made by the stakeholder. The data for generation and consumption shall be submitted by such applicant seeking Open Access under captive use.
- (iv) For a power plant to qualify as a Captive Generating Plant, the twin rules of not less than 26% ownership and not less than 51% consumption have to be satisfied. Even when the Captive Generating Plant is owned 100% by the Captive User, the onus is on the Captive Generating Plant to prove that it is 100% owned at the end of the financial year also. The extent of

consumption has to be verified by the Himachal Pradesh State Load Despatch Centre. Therefore, at the end of the financial year, Captive Generating Plant 100% owned by the Captive User shall file documents as prescribed in this Procedure. Therefore, the Procedure does not require separate treatment in case both the entities are owned by the same owner(s).

- (v) The Commission agrees with the suggestions made by the stakeholders and decides to delete the proposed provisions in this regard in the final Procedure.
- (vi) The provision of the draft Procedure provides for installation of a separate Special Energy Meter (SEM) with real time communication facility with the State Load Despatch Centre as required under the Central Electricity Authority (Installation and Operation of Meters) Regulations, 2006 and as far as the submission of data, as per the attached formats is concerned, this data is required for determination and the verification of captive status and cannot be left to the Verifying Authority or the Distribution Licensee. Accordingly, the Commission declines to accept the suggestion given by the stakeholder in this regard.
- (vii) The Commission finds merit in the suggestions made and decides to modify the proposed provisions in this regard in the final Procedure.
- (viii) The Commission agrees to the fact that the determination and verification of the status of a Captive Generating Plant is to be done by the Verifying Authority only, on an annual basis. The purpose to submit the monthly data as per relevant proposed provision is only for record and not for the determination and verification of captive status, unless circumstances so warrant in case of failure in furnishing data/documents, within the time frame fixed elsewhere in this Procedure. Accordingly, the

Commission decides to retain the proposed provisions in the final Procedure.

(I) Weighted Average of Shareholding to verify ownership in case of change in ownership structure:-

Comments:

The Chamber of Commerce and Industry, Kutch has submitted that the concept of weighted average of shareholding dehors the provision of Rule 3 of the Electricity Rules, 2005 and prorated consumption by each shareholders can only be determined based on their ownership at the end of the financial year and suggested to delete the proposed provision.

Commission's Views :-

The relevant findings of Hon'ble APTEL for change in shareholding, in the Judgment rendered in Appeal No. 131 of 2020 & IA Nos. 425, 426, 1210 & 1215 of 2020, Tamil Nadu Power Producers Association Vs Tamil Nadu Electricity Regulatory Commission, and others, are reproduced as under :-

"16.8 It is critical for us to note the practical difficulties staring down at the face of the captive users and CGPs in the event the concept of weighted average is applied. We agree with the submissions of the Appellant that the nature of shareholding in a captive structure is fluid and dynamic. That, existing captive users within the said captive structure can choose to give-up its ownership along with consumption of captive power at any point of time if it considers no usage for the same. In such a scenario, if no new captive user(s) is added then the shareholding along with consumption is accordingly adjusted. A CGP cannot foresee the future and predict as to how many of its shareholders may give up their ownership along with consumption of captive power, neither can it be predicted, if any new/ how many captive user(s) will be inducted within the structure. In such a scenario, if in terms of Rule 3 of the Rules verification of minimum shareholding along with minimum consumption is not done annually, at the end of the financial year but done considering ownership at different periods during the year, then same would create unforeseen difficulties for a CGP to maintain its captive structure. As such, we opine that the verification mandated under the Rule 3 has to be done annually, by considering the shareholding existing at the end of the financial year. This is also evident from a perusal of Format-5 formulated by TNERC as a part of the impugned order, which also specifically contemplates verification to be done as per the shareholding existing at the end of the financial year. Similar view has already been taken by us in Appeal No. 02 and 179 of 2018 titled as "Prism Cement Limited v. MPERC & Ors" (supra).

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 fulfillment 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."*

The Commission observes that at the end of the financial year, if there are changes in shareholding, the Captive Generating Plant status has to be verified as per para 16.10 of above referred judgment and decides to include the same in the final Procedure.

No comments have been received on any other provisions of the draft Procedure. The Commission also finds it appropriate to include certain relevant definitions and minor modifications especially related to the timelines in the proposed Procedure for more clarity. The Commission also finds it appropriate to align the provisions of the proposed Procedure based on the Hon'ble APTEL Judgement rendered in Appeal No. 131 of 2020 & IA Nos. 425, 426, 1210 & 1215 of 2020, in the matter of Tamil Nadu Power Producers Association Vs Tamil Nadu Electricity Regulatory Commission, and others.

Thus, the Commission, in exercise of the powers, conferred under section 181(1) read with section 9 of the Act, and Rule 3 of the Electricity Rules, 2005, 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, Regulation 42

of the Himachal Pradesh Electricity Regulatory Commission (Short Term Open Access) Regulations, 2010, Regulation 67 of the Himachal Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and all other powers enabling it in this behalf, has decided to finalize the 'Procedure for Verification of the Status of Captive Generating Plant in the State of Himachal Pradesh' annexed at Annexure – A, which shall come into force from the 00.00 hrs. of the 1st day of April, 2022.

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(Yashwant Singh Chogal)
Member(Law)

-sd-

(Bhanu Pratap Singh)
Member

-sd-

(Devendra Kumar Sharma)
Chairman