

UPERC Verification of Generating Plants and Captive Consumers, 2022 [Draft]

Introduction:

The draft focuses on verification of the status of Captive Generating Plants (CGP) and Captive consumer, with respect to criteria of consumption and equity share as given in Electricity Rules, 2005. The verification will be done annually by the State Commission with the help of concerned SLDC, RLDC, and Distribution Licensees, after the end of the financial year on the basis of information submitted by the CGP and Captive users. The criteria of consumption and equity share as per Electricity Rules, 2005 for (CGP) and Captive consumer respectively is as follows-

- 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. Consumption shall be based on net electricity generated (i.e. gross generation minus auxiliary consumption) and net electricity generated is determined on annual basis at the end of the financial year.
- Not less than twenty six percent of the ownership is held by the captive user(s).

Objective:

The objective of these regulations is to specify a methodology for verification of status of captive generating plants and captive users, when consumers import power from their respective captive generator(s) located either within the State or outside the State.

Consequence of failure to meet Captive user status:

If the CGP and captive fails to meet the criteria of consumption and ownership then they shall lose its captive status for that year and leading to impose cross subsidy surcharge and additional surcharge as applicable on open access consumer which shall be payable to concerned distribution licensee(s).

The document can be accessed [here](#).

CER Opinion

- 1. Short Title of the Regulations (Clause 1.1):** The Regulations UPERC (Verification of Generating Plants and Captive Consumers) Regulation, 2022, may be renamed as UPERC (Verification of **Captive** Generating Plants and Captive Consumers) as the Regulations are applicable to **captive generating plants**.
- 2. Verification of status of CGP (Clause 5.1):** The draft Clause states “.....*shall be done annually by the State Commission... (emphasis added)*”. It is suggested that word ‘state’ may be omitted.
- 3. Responsibility for Verification of Captive Status:** Neither the Electricity Act 2003 nor the Electricity Rules 2005 ascribe the task of verification of captive status to the SERC This would reduce the procedural burden on the Commission, which would address any difficulties in its implementation, to address the need for adjudicating a dispute arising out of the same.

The SLDC should be required to submit compliance report on the verification process and result thereof within 2 weeks of the identified cut-off date/time by the UPERC. The

Commission may ask for detailed information submission by SLDC to ensure that the process is implemented objectively and, in a fair and transparent manner.

4. **Data to be submitted by CGP and Captive user(s) (Clause 5.2):** It may be clarified in the draft document whether the affidavit(s) to be submitted regarding the details of the generation and consumption has to be done in a single affidavit or separate affidavits has to be filled by CGP and Captive user(s). The clause may be modified appropriately.
5. **Verification of consumption criteria for single captive user (Clause 5.4.c.i):** The draft Clause's 1st criteria states "...*self-consumption shall not be less than 51%...*". It is suggested that word 'self - consumption' should be replaced by **captive consumption** and may rephrased as "...*captive consumption shall not be less than 51%...*". Self-consumption may be erroneously attributed to the consumption at the end of the captive generating plant.
6. **Verification of consumption criteria for Association of Persons (Clause 5.4.c.iii):** The draft Clause's 3rd criteria states "...*.....for captive use in proportion to their share in the power plant within...*". It is suggested that word 'respective' may be added to the clause and rephrased as '*.....for captive use in proportion to their **respective** share in the power plant within...*".
7. **Verification of consumption criteria for Association of Persons (Clause 5.4.c.iii):** The applicability of allowed variation of 10% is meant to be applicable on the percentage value of the percentage share of captive consumption, or as percentage points. It may be clarified in the criteria and thus be modified appropriately. The suggested modification along with an illustration may be added as suggested below.

"The captive users shall consume not less than 51% of the net electricity generated on annual basis for captive use in proportion to their **respective** share in the power plant within the variation not exceeding 10%. For example, a captive user, whose share in ownership of the captive power plant is 10 %, should have a share in the net electricity generation within the range of 9% and 11%."

8. **Verification of equity share holding criteria (Clause 5.5.a.i):** The draft Clause's 1st criteria states "...*.....less than 26% of the equity share capital having.....*". It is suggested that word 'paid up' may be added as mentioned in 5.5.a.iii, and may rephrased as "...*.....less than 26% of the **paid up** equity share capital having.....*".
9. **Verification of equity share holding criteria (Clause 5.5.a.ii):** The draft Clause's 2nd criteria states "...*.....not less than 26% proprietary interest and*". It is suggested that word 'throughout the year' may be added after proprietary interest and may rephrased as "...*.....not less than 26% proprietary interest **throughout the period of claim for captive status and***".
10. **Verification of equity share holding criteria (Clause 5.5.a.ii):** The draft Clause's 2nd criteria states "...*.....the generating station or power plant on annual basis.....*". It is suggested that word 'throughout the year' may be added in place of annual basis as mentioned in 5.5.a.iii, and may rephrased as "...*.....the generating station or power plant **throughout the year.....***".

- 11. Verification of equity share holding criteria (Clause 5.4.a.iv):** The draft Clause's 4th criteria states "*.....not less than 26% of the ownership on annual basis.....*" It is suggested that word 'throughout the year' may be added in place of annual basis as mentioned in 5.5.a.iii, and may be rephrased as "*.....not less than 26% of the ownership throughout the year*".
- 12. Duration of Captive Status Verification:** In all the instances of shareholding criteria, "throughout the year" may be replaced with "throughout the period of claim for captive status". This would be relevant in case the claim of Captive status does not extend for the whole of the financial year.
- 13. Change in consumption share due to Demand Response:** In the event of direction for a reduction in generation of captive consumption or drawl by the respective SLDC/RLDC so as to ensure system security, appropriate adjustment should be made with reference to the schedule of generation/drawl while calculating the proportion of consumption in net generation of captive generating plant.
- 14. Bank guarantee equivalent to cross subsidy surcharge and additional surcharge:** The draft Clause 6.1 states "*.....commencement of supply having validity up to by 31st May of following year, the security deposit in the form of unconditional and irrevocable Bank Guarantee...*". It is suggested that the Clause may be rephrased as '*The Captive user(s) shall deposit before the date of commencement of supply, a security deposit having validity up to by 31st May of the following year, in the form of unconditional and irrevocable Bank Guarantee by a scheduled bank for an amount equivalent to the applicable cross subsidy surcharge and additional surcharge as decided by Commission applicable equivalent to the 51% of the captive consumption of the captive user(s)*'. In case of loss of captive status, based on the data of the preceding year/period, the respective CGP and user(s) shall be informed within a 2 days so that any discrepancy could be rectified (if any) at the earliest by the captive users. **Invoking Bank Guarantee for a Forthcoming year (Clause 6.2):** It may be legally untenable¹ to invoke a bank guarantee, which was a security against the estimated cross subsidy surcharge and additional surcharge for the 51% equivalent estimated captive consumption **of the previous year**, for failure to a bank guarantee **for the ensuing year**. The SLDC should also be informed about the revocation captive status of CGP/ captive user(s).

A provision should be incorporated wherein the criteria for invoking bank guarantee should also include 'failure to provide bank guarantee for the ensuing year/period'. Furthermore, the clause seems to suggest that the whole of 'annual' bank guarantee would be invoked. Bank guarantee for a proportional period of, say 2 months' equivalent, may be invoked, giving an option to the captive user to either provide the additional bank guarantee till the 15th of the month after the next month or forfeit the eligibility as a captive consumer. The captive status (when meeting the said criteria) should be available for the period of the bank guarantee invoked minus the 15 days of advance review period i.e. 1.5 months after invoking the bank guarantee for a period of 2 months.

¹ A legal opinion may be obtained on the same.

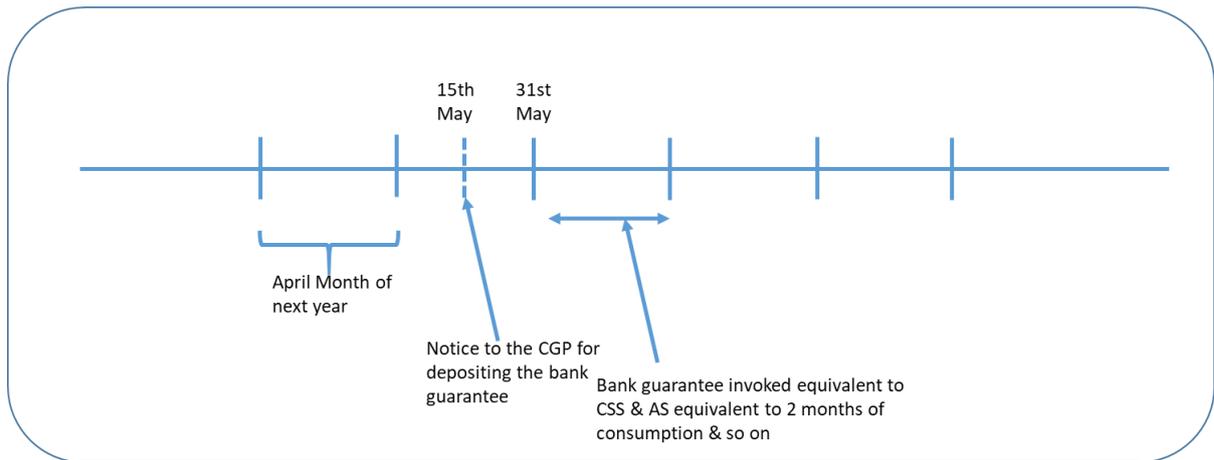


Figure 1. Process for invoking bank guarantee

- 15. Provisions for bank guarantee in excess (short) of default:** The draft Clause should also include provisions to address the condition where the bank guarantee is in excess (short) of the actual energy consumption in the year. For e.g., against a bank guarantee of Rs. 10 lakhs (equivalent to cross subsidy surcharge and additional surcharge equivalent to the 51% consumption) and the actual incidence of such charges as, say Rs. 8 Lakh, due to lower captive generation. Due to this or on account of lesser quantum of open access for captive consumption, a prorated amount should only be exposed for invocation of the bank guarantee.
- 16. Availability of information in public domain:** It is suggested that the detailed information about the captive status of consumers and reasons for not meeting the same be placed on the website of the SLDC. This information should be archived and accessible in machine readable form (e.g. PDF, Worksheet etc.). This information may include, for each applicant, the estimated amount towards cross subsidy surcharge and additional surcharge, status of bank guarantee, current status.
- 17. Templates, Detailed Procedure and Timelines:** An Annexure may provide a template for the information sought and the timeline associated with various processes.
- 18.** In Clause (5.4.d.iii), UPSLDC should be replaced by SLDC as the CGP may be located in another state while the consumer is located in the state of U.P. In such case, the relevant information would be provided by the SLDC of the host state of the captive generating plant.