

UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**Notification No. UPERC/Secy./Regulation/2022/644***Lucknow: dated : December 26, 2022*

In exercise of powers conferred by Sub section (1) of section 181, read with section 9 of the Electricity Act, 2003 (36 of 2003) and all other powers enabling it in that behalf, the Uttar Pradesh Electricity Regulatory Commission hereby makes the following Regulation.

1. Short Title and Commencement

1.1 These regulations shall be called the Uttar Pradesh Electricity Regulatory Commission (Verification of Generating Plants and Captive Consumers) Regulation, 2022.

1.2 These regulations shall come into force from the date of notification in the Official Gazette.

2. Objective

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

3. Scope and Extent of Application

3.1 These regulations shall apply to all the captive generating plants (CGP) and their captive users.

3.2 These regulations shall extend to the whole of the State of Uttar Pradesh.

4. Definitions

4.1 In these regulations, unless the context otherwise requires; –

(a) “Act” means the Electricity Act, 2003;

(b) “Captive generating plant” or CGP means a captive generating plant as defined in the Act read with Rule 3 of the Electricity Rules, 2005;

(c) “Captive User” shall mean the end user of the electricity generated from its own Captive Generating Plant and the term “Captive Use” shall be construed accordingly;

(d) “Electricity Rules, 2005” means the Rules notified by the Central Government vide G.S.R. 379 (E) dated 8th June 2005 and as amended from time to time;

(e) 'Year' means a financial year from 1st April to 31st March.

4.2 Words and expressions used in these regulations and not defined herein but defined in the Act, or the Electricity Rules, 2005 or any other regulations specified by the State Commission shall, unless the context otherwise requires, have the meanings assigned to them under the Act or the Electricity Rules, 2005 or any other regulations specified by the State Commission, as the case may be.

5. Verification of Status of CGP

5.1 Verification of status of CGP and captive users with respect to the criteria of consumption and equity share holding, as prescribed under these regulations, shall be done annually by the State Commission after the end of financial year based on the information submitted by the CGP and their Captive User(s).

5.2 The CGP and their Captive User(s) shall file affidavit in specified format(s) before the Commission giving details regarding their electricity generation, user-wise consumption and equity share holding during the previous year before 15th May of each year.

5.3 The Commission shall take assistance of the concerned RLDC, SLDC, Distribution Licensees (in whose area the CGP or their Captive User(s) are located) for the verification of captive status of CGP or Captive Users based on the affidavit submitted by such CGP and captive users.

5.4 Verification of consumption *criteria*

(a) For unit(s) which has/have been identified for captive use, verification of criteria of consumption shall be based on the net electricity generated from this/these generating unit(s) in a generating station, *i.e.*, gross electricity generated less auxiliary consumption.

(b) The net electricity generated shall be determined on annual basis at the end of the year.

(c) Verification criteria for various types of captive users shall be as follows:

Sl. No.	Type of captive user	Criteria
<i>i</i>	Single captive user	The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.
<i>ii</i>	Partnership firm/Limited Liability Partnership (LLP)	The self-consumption shall not be less than 51% of the net electricity generated on an annual basis.
<i>iii</i>	Association of Persons (AoP)	The captive users shall consume not less than 51% of the net electricity generated on annual basis for captive use in proportion to their share in the power plant within the variation not exceeding 10%.
<i>iv</i>	Co-operative Society	Members of Society shall collectively consume not less than 51% of the net electricity generated on annual basis.
<i>v</i>	Special Purpose Vehicle (SPV)	The captive user(s) shall consume not less than 51% of the net electricity generated on annual basis in proportion to their shares in the units identified for captive use.

*Self-consumption of captive user (s) mean consumption by captive user(s) at the consumer meter of the captive generating plant adding normative transmission and wheeling losses as applicable and as approved in the ARR for the corresponding year.

(d) Manner of assessment of data related to generation from CGP and consumption by captive user(s) :

Sl. No.	Location	Method of assessment
1	2	3
<i>i.</i>	CGP and its captive user(s) are co-located	<p>(i) For CGP:</p> <p>Net generation from the CGP and consumption by the captive user shall be based on the reading of the meter installed for recording the generation at the injection side (“generation meter”).</p> <p>(ii) For Captive User:</p> <p>The electricity sourced at the consumption side (“consumption meter”).</p>

1	2	3
ii.	CGP and its captive users are located within the State (but not co-located),	<p>(i) For CGP: Based on actual injection from the CGP as per the data provided, by UPSLDC.</p> <p>(ii) For Captive Users: The corresponding consumption or the actual consumption whichever is lower, based on the meter reading at the user interface with the grid as provided by, UPSLDC and the distribution licensees in whose area the user(s) are located.</p>
iii.	The CGP and its captive user(s) is/are located in different States	<p>(i) For CGP: Based on actual injection from the CGP as per the data provided, by the respective RLDC/UPSLDC.</p> <p>(ii) For Captive User(s): The corresponding consumption or the actual consumption whichever is lower, based on the meter reading at the user interface with the grid as provided by the concerned SLDC of the recipient state(s) and the distribution licensees in whose area the user(s) are located.</p>

*Self-consumption of captive user (s) mean consumption by captive user(s) at the consumer meter of the captive generating plant adding normative transmission and wheeling losses as applicable and as approved in the ARR for the corresponding year.

5.5 Verification of equity share holding criteria

(a) Verification criteria for various types of CGP shall be as follows:

Sl. No.	Type of Captive user	Criteria	Support Document
1	2	3	4
i	Single captive user	The user shall hold not less than 26% of the equity share capital having voting rights throughout the year	A certificate from the Company Secretary.
ii	Partnership firm/LLP	Ownership in the captive plant shall be not less than 26% proprietary interest and control over the generating station or power plant on annual basis.	A certificate from the Company Secretary.
iii	AoP	The captive users shall hold an aggregate of not less than 26% of the ownership/paid up equity share capital with voting rights throughout the Year.	A certificate from a registered Chartered Accountant.
iv	Co-operative Society	Members of society shall collectively satisfy not less than 26% of the ownership on annual basis.	A certificate from District Registrar of Co-operative Society.
v	SPV/ Company	The captive user(s) shall hold an aggregate of 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) throughout the year.	A certificate from a registered Chartered Accountant.

6. Consequence of failure to meet Captive user status

6.1 The Captive user(s) shall deposit before the date of commencement of supply having validity up to by 15th July of following year, the security deposit in the form of unconditional and irrevocable Bank Guarantee equivalent to 51% captive consumption, to the concerned distribution licensee as payment security against estimated cross subsidy surcharge and additional surcharge as may be decided by the State Commission.

6.2 The Bank guarantee should be renewed/revised of amount equivalent to 51% of its estimated captive consumption for the entire year by 31st of May every year before its expiry date of 15th July or after completion of captive verification by the Commission, whichever comes first. In case Bank guarantee not renewed/revised by 31st of May before its expiry date of 15th July the Bank guarantee shall be invoked by the Distribution licensee to wards its cross-subsidy surcharge and additional surcharge or any other applicable Open access charges.

Provided that there shall be no exemption from Cross-Subsidy Surcharge and Additional Surcharge on the electricity consumed by other consumers who are receiving power from this captive generating plant and are not the captive consumers.

6.3 If the CGP or Captive User(s) fails to meet the criteria of ownership and/or consumption, specified in Rule 3 of Electricity Rule, 2005 and in these Regulations, as the case may be as amended from time to time, by the end of the financial year, such CGP or Captive User(s) shall lose its Captive status for that year leading to imposition of Cross-Subsidy Surcharge and Additional Surcharge besides other charges as applicable on open access consumers which shall be payable to the concerned distribution licensee(s). The deposited Bank guarantee shall be invoked by the Distribution licensee(s) to cover the charges of Cross-Subsidy Surcharge and Additional Surcharge besides other charges as applicable on open access consumers.

7. Detailed Procedure

The detailed procedure for verification of status of CGP and captive users in pursuance to the provision of the Electricity Rules, 2005 and this regulation is placed at Annexure-(I).

8. Power to remove difficulties

If any difficulty arises in giving effect to the provisions of this Regulation, the State Commission may, by general or specific Order, make such provisions not in consistent with the provisions of the Act, as may appear to be necessary for removing the difficulty.

9. Power to amend

The Commission may, at any time vary, alter, modify, or amend by notification any provision of this Regulations.

By Order of the Commission,
Sanjay Kumar Singh,
Secretary.

Annexure-I (Detailed Procedure)

1. This procedure provides a methodology for verification of status of captive generating plants and captive users, when consumers import power from their captive generator(s) located either within the State or outside the State as per conditions specified in sub rule 1 of Rule 3 of Electricity Rules, 2005:

1.1. The CGP owners/captive users for different compositions of ownership is listed below:

(a) **Company:** company means a company incorporated under Company Act, 2013 or under any previous company law;

(b) **Association of Persons:** Formulation of companies with charitable objects, etc.; Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company.

(c) **Special Purpose Vehicle:** “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.

(d) **Registered Co-operative Society:** Companies capable of being registered; For the purposes of this Part, Co-operative society, Society or any other business entity formed under any other law for the time being in force which applies for registration under this Part.

1.2. For verification of equity share holding, the documents as detailed below shall be furnished by the CGP owners/captive users for different compositions of ownership:

Sl. No.	Type of captive user	Criteria	Support Document
1	2	3	4
<i>i</i>	Single captive user	The user shall hold not less than 26% of the equity share capital having voting rights throughout the year.	A certificate from the Company Secretary, providing details of the Authorized, Issued, Subscribed and Paid-up Equity Share Capital with voting rights in the Captive Generating Company as per FORMAT along with the copy of Form – SH4 or Demat Statement, whichever is applicable and latest Annual Report of the Captive Generator and any other supporting documents.
<i>ii</i>	Partnership firm/LLP	Ownership in the captive plant shall be not less than 26% proprietary interest and control over the generating station or power plant on annual basis.	A certificate from the Company Secretary providing details of the Authorized, Issued, Subscribed and Paid-up Equity Share Capital with voting rights as per FORMAT along with the certification that there is provision in partnership deed for taking up captive generation and the copy of Form – SH4 or Demat Statement, whichever is applicable.
<i>iii</i>	AoP	The captive users shall hold an aggregate of not less than 26% of the ownership/paid up equity share capital with voting rights throughout the Year.	A certificate from registered Chartered Accountant as per FORMAT providing details of the Authorized, Issued, Subscribed and Paid-up Equity Share Capital with voting rights that the captive users shall hold in aggregate not less than 26% of the ownership/paid up equity share capital with voting rights throughout the Year.

1	2	3	4
iv	Registered Co-operative Society	Members of society shall collectively satisfy not less than 26% of the ownership on annual basis.	A certificate from District Registrar of Co-operative Society providing details of the Authorized, Issued, Subscribed and Paid-up Share Capital along with any other supporting documents.
v	SPV/ Company	The captive user(s) shall hold an aggregate of 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) throughout the year.	A certificate from a registered Chartered Accountant as per FORMAT providing details of the Authorized, Issued, Subscribed and Paid-up Equity Share Capital with voting rights along with any other supporting documents.

1.3—The verification of CGP status is an annual process. The documents in Para 1.2 shall also be furnished by the CGP owners, Captive users to UP Electricity Regulatory Commission at the time of annual verification of CGP status at the end of the financial year on or before 15th May of the year following. Moreover, Captive users can submit the provisional balance sheet of financial year for which assessment for captive verification can be done and can submit the latest Audited balance sheet of previous financial year's available as on 15th of May.

1.4—In case of captive user(s) receiving supply from CGP located outside the State, such captive user(s) shall forward the documents of its CGP highlighting the CGP status of the captive user(s).

2.—Verification of not less than 51% consumption by captive users:

2.1—The Net generation from CGP unit shall be the gross energy generated from the unit less aggregate auxiliary consumption.

Sl. No.	Location	Method of assessment
1	2	3
i.	CGP and its captive user(s) are co-located.	<p>(i) For CGP: Net generation from the CGP and consumption by the captive user shall be based on the reading of the meter installed for recording the generation at the injection side ("generation meter").</p> <p>(ii) For Captive User: The electricity sourced at the consumption <i>side</i> ("consumption meter").</p>
ii.	CGP and its captive users are located within the State (but not co-located).	<p>(i) For CGP: Based on actual injection from the CGP as per the data provided by UPSLDC.</p> <p>(ii) For Captive Users: The corresponding consumption or the actual consumption whichever is lower, based on the meter reading at the user interface with the grid as provided by UPSLDC and the distribution licensees in whose area the user(s) are located.</p>

1	2	3
iii.	The CGP and its captive user(s) is/are located in different States.	<p>(i) For CGP: Based on actual injection from the CGP as per the data provided by the respective RLDC/UPSLDC.</p> <p>(ii) For Captive User(s): The corresponding consumption or the actual consumption whichever is lower, based on the meter reading at the user interface with the grid as provided by the concerned SLDC of the recipient state(s) and the distribution licensees in whose area the user(s) are located.</p>

*Self-consumption of captive user (s) mean consumption by captive user(s) at the consumer meter of the captive generating plant adding normative transmission and wheeling losses as applicable and as approved in the ARR for the corresponding year.

2.2–The applicant shall submit the details of Gross, Auxiliary and Net-Generation from the power plant and the actual consumption made by the captive users to the “Uttar Pradesh Electricity Regulatory Commission” and the Distribution Licensee.

2.3–For determination of ‘Annual basis’ for the first year of declaring the plant under captive status, the date of injecting power in the grid shall be considered as a start date for the financial year for counting the Net-Generation of the plant under captive status. From the subsequent year, Net-generation from 1st April to 31st March of a financial year shall be considered for determining the captive status of the generation station.

2.4–The verification of consumption criteria of not less than 51% of net electricity generated and the test of proportional consumption of AoP and SPV, shall be done at the end of the financial year.

3. Verifying Authority:

3.1–Verification of status of CGP and captive users with respect to the criteria of consumption and equity share holding, as prescribed under the Electricity Rules, 2005 shall be done annually by the Uttar Pradesh Electricity Regulatory Commission after the end of financial year based on the information submitted by CGP and Captive User(s) as specified by the Commission and receipt of report from the RLDC, UPSLDC/Other state SLDC (if applicable) and Distribution licensee(s).

3.2–The Commission shall get the captive consumption data claimed by the CGP verified by the respective Distribution Licensee(s), in which the consumption is said to have taken place.

3.3–The Captive generating plant or the captive user shall lose the captive status if it fails to furnish data and the documents specified by 15th May, it shall lose the captive status for the previous year and its security by way of Bank guarantee shall be forfeited in favor of Distribution licensee.(New Bank Guarantee for current year to be furnished).

4. Ceasing of Qualification of CGP:

(a) If CGPs fails to meet the requisite conditions as specified in Clause 1.2 and/or 2.1 of this procedure 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 the applicable Cross Subsidy Surcharge and/or additional surcharge and/or late payment surcharge and/or such other charges as applicable on Open Access consumer.

5. Default by a shareholder(s):

(a) When a shareholder(s) defaults in fulfilling the consumption criteria of Rule 3, and when other captive users together do not comply with ownership criteria of 26%, the CGP will lose its captive status, and no concession shall be available to the captive consumer for that financial year.

6. Default in Payment:

(a) Non-payment of any charge or sum of money payable by the open access consumer shall be considered as non-compliance and shall be liable for action under the Electricity Act, 2003.

(b) The distribution licensee may discontinue open access after giving consumer an advance notice of 15 days without prejudice to its right to recover such charges as per applicable laws.

By Order of the Commission,
Sanjay Kumar Singh,
Secretary.

FORMAT**[To be submitted by the Captive Generating Plant]**

“CERTIFICATE ON “OWNERSHIP” AS PER RULE 3 OF ELECTRICITY RULES, 2005”

We hereby certify that the Equity Share Capital with voting rights of _____ (Name of company) having constitution as Single captive user/ Partnership firm/LLP/AoP/SPV having its registered Office at _____ satisfy the requirements under Rule 3 of the Electricity Rules 2005 for qualifying as a Captive Generation Plant with reference to “Ownership” criteria. The detailed breakup of the issued, subscribed and paid-up equity share capital, including percentage of holding in Equity Share Capital with voting rights of the Company held by captive user *vis-a-vis* other users have been tabulated below.

Equity Share Capital Captive user(s)/others with Voting rights as on

Sl. No.	Class of Share holder	Class of Equity shares	No. of Equity Shares	Value per Equity Share	Amount of Equity Share Capital	Percentage holding in Equity Share capital	No. of Voting Rights	Percentage holding in Voting Rights	Percentage holding in Equity Share Capital with Voting Rights
	Captive user(s)/ others								

Total

Please find attached the following:

Annexure

1. Copy of the latest audited balance sheet of the Captive User.

(a) Copy of the Share Certificate for the above.

(b) Copy of the SH-4 Certificate.

Place:

Date:

Signature of Chartered Accountant/Company Secretary:

Name in Block letters:

Membership No.:

Name of firm:

Firm Registration number:

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

[To be submitted by the Captive users (also owners) of the Limited Liability**Partnership Firm]***Auditor's Certificate*

I hereby certify that **Captive User Name**, a company incorporated under Companies Act, 2013 (or earlier Act) and having its registered office at _____ with HT. SC.No. _____ at _____ EDC is a partner 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 on date.

Please find attached the following:

Annexure

1. Copy of the latest audited balance sheet of the Captive User.
2. Copy of the latest partnership deed.

Signature :

Name in Block letters :

Membership No. :

Name of the Firm :

Firm Registration No. :

Name of the Partner : _____

Membership No. : _____

By the Order of the Commission,
SANJAY KUMAR SINGH,
Secretary,
U. P. Electricity Regulatory Commission.