

Electricity Amendment Rules 2026: Preliminary Observations



Introduction

On 13 March 2026 the Ministry of Power, Government of India has notified the Electricity (Amendment) Rules, 2026 (bearing G.S.R. 186(E)) (**Captive Amendment Rules**) to amend Rule 3 of the Electricity Rules, 2005 in its entirety, and has introduced significant changes to regulatory framework governing captive power generation in India.

The Captive Amendment Rules contain staggered commencement provisions with different effective dates:

- **General Provisions:** The Captive Amendment Rules has come into force from the date of publication in the Official Gazette, i.e., from 13 March 2026.
- **Deferred Provisions:** Sub-rule (2)(d)(ii) (*concerning proportionate consumption cap for individual captive users, as discussed below*), sub-rule (2)(d)(iii) (*concerning exemption from proportionality for users holding $\geq 26\%$ ownership*), and sub-rule (4) (*concerning verification mechanism*) of the Captive Amendment Rules will come into force from 1 April 2026.

The Captive Amendment Rules reaffirm the two fundamental requirements for a generating plant to qualify as a captive generating plant (**CGP**):

- **Ownership Condition:** Captive users must collectively hold not less than 26% of the ownership in the CGP.
- **Consumption Condition:** Captive users must consume not less than 51% of the aggregate electricity generated by the CGP (during the financial year).

What has changed?

The Captive Amendment Rules clarify how Rule 3 will operate in practice. Key changes are summarised below:

1. **Changes to definition of Ownership:** The definition of "ownership"^[1] has been expanded to include subsidiaries, holding companies and other subsidiaries of the holding company of the entity that establishes the CGP - recognising modern corporate structures and power projects housed in SPVs. The reference of Subsidiary and holding company in definition of ownership have the meanings assigned in the terms in Section 2(87) and Section 2(46) of the Companies Act, 2013 respectively.

This change addresses the key structural issue by permitting corporate groups—with CGP ownership permitted to be distributed across holding and subsidiary entities to meet the 26% ownership threshold in aggregate, this eliminates the prior requirement for a single entity directly holding 26%. This means ownership and consumption criteria can now be fulfilled collectively at the group level, qualifying the generating plant as a CGP. The change markedly simplifies eligibility assessment and regulatory compliance allows for use of broader corporate holding structures.

2. **Recognition of Energy Storage:** The definition of "captive user" has been broadened to include end-users who consume electricity directly or through an energy storage system, where such storage system holds energy generated from a CGP.

This is an important change, since increasingly, industrial users are looking at 'round the clock' secured power, and allowing use of electric storage, pumped or BESS, within the captive power regime will make the renewable energy more attractive.

[1] "Ownership" under the Captive Amendment Rules is defined to mean proprietary interest and control, or equity share capital carrying voting rights, held either directly or through its subsidiary or subsidiaries, its holding company, and any other subsidiary or subsidiaries of such holding company.

3. **Special Purpose Vehicles (SPV) and Association of Persons (AoP):**

- o An SPV is expressly defined as a legal entity established for the sole purpose of owning, operating and maintaining a generating station and which does not undertake any other business or activity. The Explanation to Rule 3(1)(e) of Captive Amendment Rules categorically treats all SPVs as Associations of Persons for the purposes of Rule 3.

This change eliminates the inconsistency of view across SERCs on whether SPV held generating stations were subject to company-level or AoP-level captive rules, and ensures that all AoP provisions (including proportionate consumption requirements) apply uniformly to SPV structures across states.

- o Rule 3(2)(d) of Captive Amendment Rules prescribes detailed provisions for power plants set up by an Association of Persons (*which pursuant to Explanation to Rule 3(1)(e) includes CGP set up through an SPV*), introducing changes to the proportionality rules that resolve prior ambiguities:

| Provision | Details |
|--|---|
| <p>Collective Satisfaction [Rule 3(2)(d)(i)]</p> <p><i>Ownership Conditions and Consumption Conditions must be satisfied collectively by all captive users, and the aggregate consumption by all captive users from the power plant shall be considered for verifying compliance.</i></p> | <p>As per the extant Rule 3, the consumption requirement for an AoP is meant to be proportionate to their shares in the ownership of the CGP, with an allowed variation of ± 10 percent. The Supreme Court in its decision in <i>Dakshin Gujarat Vij Company Limited versus Gayatri Shakti Paper and Board Limited & Another</i> had specified a unitary qualifying ratio of 1% share: 1.96% of energy consumption based on such proportionality test.</p> <p>The Captive Amendment Rules cut across the proportionality test. As per the Captive Amendment Rules, the conditions of eligibility in terms of ownership and consumption have to be satisfied collectively by all captive users in case of AoP. The unitary qualifying ratio worked out by the Supreme Court will no longer apply to captive power plants set up by an association of persons, including SPVs.</p> |
| <p>Individual Proportionate Consumption Cap [Rule 3(2)(d)(ii)]</p> <p><i>Effective: 1 April 2026</i></p> | <p>Under the extant Rule 3, there is no express provision of individual proportionate consumption cap.</p> <p>However, Rule 3 of Captive Amendment Rules provide that the captive consumption by an individual captive user shall be admissible only up to 100% of its proportionate consumption, calculated with reference to its share in the total captive ownership in the power plant.</p> <p><i>Group captive users now have more flexibility, reducing the risk that strict proportionality deviations by one participant could affect the entire structure.</i></p> |
| <p>Exemption for $\geq 26\%$ Owners [Rule 3(2)(d)(iii)]</p> <p><i>Effective: 1 April 2026</i></p> | <p>Where any captive user holds not less than 26% ownership in the power plant, the proportionate consumption condition specified in Rule 3(2)(d)(ii) of Captive Amendment Rules shall not apply to such captive user. Therefore, such captive user's entire consumption qualifies as captive consumption - whereas under the earlier framework such exemptions and treatment were not expressly recognised</p> |

| Provision | Details |
|---|---|
| | <i>This change resolves legacy issues in anchor-tenant models and promoter-led SPVs, where the dominant user historically faced consumption caps despite clear captive intent. Corporate groups can now strategically consolidate $\geq 26\%$ into one entity (e.g., lead subsidiary) to leverage this exemption, materially easing compliance while preserving the discipline of proportionate usage for distributed ownership structure.</i> |
| <p>Weighted Average Shareholding</p> <p>[Rule 3(2)(d)(iv)]</p> | <p>Where the ownership pattern varies during the financial year, proportionate consumption of each captive user shall be determined on the basis of weighted average shareholding held during the financial year, a methodology not expressly provided under the earlier rules.</p> <p><i>However, the procedure for calculating weighted average shareholding under Rule 3(2)(d)(iv) - particularly for mid-year entrants and exits in an AoP - will require further procedural guidance from nodal agencies or NLDC.</i></p> |
| <p>Group Entity Aggregation</p> <p>[Rule 3(2)(d)(v)]</p> | <p>For calculating proportionate consumption, a captive user, its subsidiary(ies), its holding company, and any other subsidiary or subsidiaries of such holding company shall be collectively treated as a single captive user.</p> <p><i>Treating a captive user, its subsidiaries, holding company, and related subsidiaries as a single entity for proportionate consumption calculations streamlines compliance for corporate groups in India's electricity sector. This collective approach benefits C&I players by enabling flexible power sourcing from group captive plants.</i></p> |

4. Verification and Compliance

- Under Rule 3(4) of the Captive Amendment Rules, for the first time, establishes a statutory verification mechanism for CGP status:

| Details | Verifying Authority |
|--|--|
| CGP and all captive user(s) in the same State | Nodal Agency designated by the relevant State Government, as per procedure issued by State Nodal Agenc(ies). |
| CGP or captive user(s) located in more than one State | National Load Despatch Centre (NLDC), as per procedure issued by NLDC with approval of the Central Government. |

The new Rule 3(4)(b) of the Captive Amendment Rules also provides that an appeal against the verification carried out under Rule 3(4)(a) of the Captive Amendment Rules shall lie before a Grievance Redressal Committee constituted by the Appropriate Government (i.e., the Central Government and State Government as specified in Electricity Act, 2003). This replaces the earlier absence of a uniform and clearly defined captive verification framework. This provision enhances certainty by providing a dedicated, government-backed forum for quick resolution of verification disputes (e.g., proportionality ratio challenges), reducing litigation risks and supporting seamless captive power use across group entities.

5. **Treatment of Excess Consumption by Individual Users:**

Under Rule 3(3) of the Captive Amendment Rules, consumption by an individual captive user in excess of its proportional entitlement does not qualify as that individual's captive consumption (and will attract cross-subsidy and additional surcharge), however, such excess consumption will continue to be considered for determining whether the plant meets the minimum 51% collective captive consumption requirement. This is beneficial for large factories having seasonal requirement of power, whereas under the earlier framework such exemptions and treatment were not expressly recognised.

6. **Penalty:**

- If the CGP fails to meet the Ownership Condition or the Consumption Condition during a financial year, the entire electricity generated from the CGP will be treated as supply by a generating company (rather than captive use) and cross-subsidy surcharge (**CSS**) and additional surcharge (**AS**) will be imposed on the electricity consumed. *This is immediately effective from 13 March 2026.*
- Pending verification for any financial year, CSS and AS will not be levied provided the captive user(s) furnish the declaration as per the Captive Amendment Rules. Where a plant fails verification after furnishing such declaration, the applicable CSS and AS (as determined by the relevant State Commission) along with carrying costs at the base rate of the Late Payment Surcharge under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, become payable. This provision will be effective from 1 April 2026.

Contributed by:

Avirup Nag

Partner

Asima Ghosh

Senior Associate

DELHI (NCR)

Bhaskar House, Sector 16 A,
Filmcity, Noida – 201301
+91 (120) 463 0600

NEW DELHI

D-145, Defence Colony,
Opp. South Delhi Public School
New Delhi – 110024
+91 (11) 4405 0600

MUMBAI

2402, Tower 2, One International Center
Senapati Bapat Marg, Prabhadevi West
Mumbai – 400013
+91 (22) 4405 0600

BENGALURU

201, Embassy Square, 148 Infantry Road
Opp. Police Commissioner's Residence
Vasanth Nagar, Bengaluru – 560001
+91 (80) 4405 0600

HYDERABAD

8-2-619/1, 3rd Floor
Saha Complex, Road No.11
Banjara Hills, Hyderabad – 500034
+91 (40) 3551 2050