Captive Power Framework in Transition: Rethinking Rule 3 of the Electricity Rules, 2005

PUNYAM BHUTANI
ASSOCIATE

DEVISHI GUPTA
ASSOCIATE

The Ministry of Power, Government of India on 23.09.2025 has issued the Draft Electricity (Amendment) Rules, 2025. These draft rules significantly reform the regulation of captive generating plants. The draft also proposes a significant change in the way captive generation is perceived, governed, and integrated into India's broader energy transformation[1]. Although seemingly technical, they may have a direct impact on the cost of industrial power, the uptake of renewable energy, and the distribution companies and large consumers balance. They are also important for India's 2030 decarbonization plan, which calls for adaptable, scalable, and reasonably priced power solutions for businesses.

At the heart of this reform is Rule 3, which determines who qualifies as a "captive user" and what constitutes a "captive generating plant" (CGP). Captive plants enjoy two major exemptions i.e. cross-subsidy surcharge (CSS) and additional surcharge, provided users genuinely own and consume most of the electricity produced. Over time, however, this structure grew unduly restrictive, litigious, and occasionally detached from the operational reality of enterprises. The Draft Rules attempt to correct these shortcomings with an approach that is both pragmatic and forward-looking.

Correcting long-standing rigidity in group captive rules

The most consequential changes relate to Associations of Persons (AoPs) i.e., groups of companies or individuals who jointly develop a generating plant. This is the backbone of India's group captive model, now one of the most widely used routes for procuring renewable electricity. Under the existing Rule 3, each member of an AoP must consume electricity strictly in proportion to their shareholding in the ownership of the CGP. The Supreme Court in M/s Dakshin Gujarat Vij Company Ltd. v. Gayatri Shakti Paper and Board Limited and Another, Etc. even prescribed a precise ratio of 1% of share: 1.96% of energy consumption based on the proportionality test, leaving negligible room for variation[2]. A small deviation by any user could potentially disqualify the entire plant.

The dynamics of seasonal loads, business closures, and market cycles affect demand and hence were often disregarded by the proportionality rule which resulted in a compliance maze. A change from individual proportionality to collective eligibility is suggested in these Draft Rules. The 26% ownership criterion and the 51% consumption criteria can now be met collectively by all members of an AoP rather than individually under the new system.

This modification recognizes that a group captive project is essentially an investment made by the entire group. It makes sense to characterize the arrangement as truly captive if the group as a whole owns the

---

[1] https://powermin.gov.in/sites/default/files/webform/notices/Seeking_comments_on_Draft_Electricity_Amendment_Bill_2025.pdf

[2] (2023) 11 SCC 664

SKV LAW OFFICES

plant and uses the necessary minimal amount of electricity. Secondly, this change lessens the vulnerability of these structures, where the project as a whole was previously at risk from a single noncompliant user.

A new balancing tool: the 110% safeguard

To prevent disproportionate benefit taking, the Draft Rules introduce a 110% cap on the captive-use benefit a user can claim. A user may consume more than their share, but they will receive CSS and surcharge benefits only up to 110% of their proportional entitlement. This safeguard preserves fairness without undermining operational flexibility. It prevents a situation where a user with a minor stake draws most of the plant's power while enjoying full captive benefits, but still allows high-demand users to consume more when required. However, the draft language could be clearer. The government must clarify whether the 110% ceiling applies only to benefit calculation or also affects the eligibility test itself.

Modernising ownership to reflect real corporate structures

Another major reform is the broader definition of "ownership". Under current rules, captive shareholding must be held directly by users in the generating plant. But modern renewable energy investments are typically structured through special purpose vehicles (SPVs), holding companies, and subsidiaries. The Draft Rules now recognise this reality by allowing ownership to be held directly, through a holding company, through a subsidiary, or through subsidiaries of the holding company.

This aligns captive regulation with actual corporate practice and provides clarity to group structures that invest through multiple entities. It also eases the development of large or hybrid renewable projects such as those combining solar and storage by allowing more flexible internal structuring. Importantly, the requirement that ownership must consist of equity share capital with voting rights has been retained. This ensures that captive users exercise real control and prevents misuse through token or purely economic shareholding.

Why these amendments matter now

These amendments arrive at a moment when India's energy system is undergoing rapid transformation. Industrial electricity demand is rising, and companies are increasingly turning to renewable captive projects to secure affordable and reliable power. According to ETC India's roadmap for achieving 2030 decarbonization targets, India must rapidly scale low-cost renewable energy and enable flexible procurement models for industries to cut emissions at scale. Group captive structures especially for solar, wind and hybrid projects are one of the fastest ways to achieve this[3].

The earlier proportionality rules made these models legally fragile and financially risky. By enabling collective compliance and recognising modern corporate structures, the draft amendments remove long-

SKV LAW OFFICES

[3] https://www.teriin.org/sites/default/files/files/Roadmap-to-India-2030-Decarbonization-Target.pdf

standing uncertainties and make it easier for industries, particularly MSMEs, to participate in renewable captive projects. In doing so, they support lower-cost clean power, reduce dependence on DISCOMs, and directly aid India's 2030 climate and industrial competitiveness goals.

What remains to be resolved

Despite the progress, some clarity is essential to ensure effective and uniform implementation. The language of the proposed amendment on the 110% cap must clearly state whether it affects only the benefit calculation or the eligibility test. Uniformity in regulatory interpretation is also crucial, State Commissions often apply captive rules differently, which may undermine the purpose of a national framework.

Additionally, the Draft Electricity Amendment Bill, 2025 suggests granting the Central and State governments the authority to establish distinct captive standards. This could result in inconsistent standards and more complicated regulations if they are not harmonized. In order to guarantee that the new framework provides for consistent, litigation-free routes for enterprises to engage in captive renewable energy and support India›s decarbonization program, it would be imperative to address these challenges as soon as possible.

A move in the direction of a more efficient captive regime

The Draft Electricity (Second Amendment) Rules, 2025 mark a pivotal shift in India's captive power policy. By embracing collective compliance, providing reasonable guardrails, modernising ownership and consumption pathways, and recognising corporate and technological realities, the amendments create a framework that is both industry friendly and aligned with India's decarbonisation trajectory.

If finalised with clarity on the unresolved issues, these reforms have the potential to substantially reduce disputes, simplify captive project structuring, and accelerate industrial adoption of renewable energy, strengthening both India's energy security and its climate competitiveness.