

# CLIENT ALERT

FUNDAMENTAL CHANGES TO  
INDIA'S CAPTIVE & GROUP  
CAPTIVE POWER FRAMEWORK

**SKW** LAW  
OFFICES

# Existing Legal Framework Governing Captive Generating Plants



Under the Electricity Act, 2003 ("**the Act**"), captive generation constitutes a key enabling provision allowing consumers to generate electricity primarily for their own use, thereby ensuring reliable and cost-effective supply. Section 2(8) of the Act defines a "*captive generating plant*" ("**CGP**") as a power plant set up by any person for generating electricity primarily for his own use, including a plant set up by a co-operative society or an association of persons ("**AoP**") for use by its members.

Section 9 of the Act confers on any person the right to construct, maintain, and operate a CGP and dedicated transmission lines without the requirement of a generation license. Further, when read with Section 42 of the Act, captive users are entitled to exemption from payment of cross-subsidy surcharge ("**CSS**") and additional surcharge ("**AS**") to the distribution licensee, subject to the plant satisfying the conditions for captive status.

The conditions governing qualification of a generating plant as a CGP are prescribed under Rule 3 of the Electricity Rules, 2005. Rule 3 laid down two fundamental conditions, commonly referred to as the "*twin test*": first, that not less than twenty-six per cent of the ownership of the generating plant must be held by the captive user(s); and second, that not less than fifty-one per cent of the aggregate electricity generated in the plant during a financial year must be consumed for captive use.

Rule 3 also contemplated the establishment of generating plants by multiple users collectively, including through an AoP or a special purpose vehicle ("**SPV**"). In such cases, the ownership and consumption requirements were required to be satisfied collectively by the participating captive users, with each user's consumption corresponding to their proportionate shareholding in the plant. This framework enabled the development of "*group captive*" projects, wherein multiple consumers could jointly invest in and procure power from a CGP.

## Judicial Interpretation – Dakshin Gujarat Judgement

The interpretation of the twin conditions under Rule 3 fell for consideration before the Hon'ble Supreme Court in *Dakshin Gujarat Vij Company Ltd. v. Gujarat Electricity Regulatory Commission*. The Court affirmed that the twin conditions of ownership and consumption must be strictly satisfied for a plant to qualify as a CGP. It further clarified that companies incorporated as SPVs for the purpose of operating CGPs are to be treated as AoPs for the purposes of Rule 3. Consequently, in group captive arrangements, the electricity consumption of each captive user must broadly correspond to its proportionate ownership in the plant, and where ownership changes during a financial year, compliance must be assessed on the basis of weighted average shareholding.

The judgment thereby reinforced a strict construction of the statutory requirements governing captive status and made clear that the captive framework cannot be deployed merely as a mechanism to avoid payment of CSS and AS without genuine compliance with the conditions prescribed under the Act and the Rules. A small deviation by any user could potentially disqualify the entire plant.

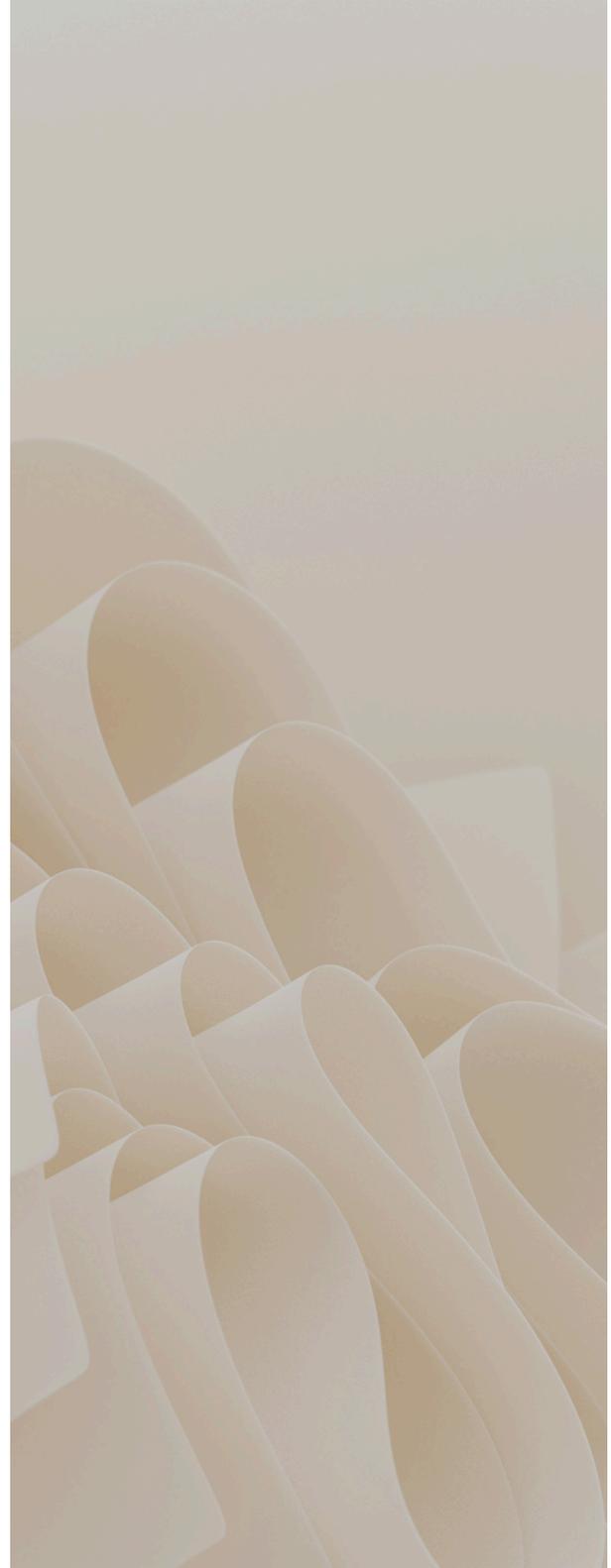
## The Electricity (Amendment) Rules, 2026 – Key Changes to the Captive Generation Framework

The Central Government, now in exercise of its rule-making powers under Section 176 of the Act, has notified the Electricity (Amendment) Rules, 2026 ("**2026 Rules**") on 14.03.2026, substituting Rule 3 of the Electricity Rules, 2005 in its entirety. The amendment marks a watershed moment in India's captive power generation framework. Amending Rule 3 of the Electricity Rules, 2005, the foundational provision governing CGP under Section 9 of the Act, the 2026 Rules introduce substantial modifications that address long-standing interpretational ambiguities, structural rigidities, and institutional gaps that had plagued the captive generation regime for over two decades. Finalized after extensive stakeholder consultations and aligned with India's broader energy transition goals, the amendments signal a deliberate policy pivot from a compliance-centric regime to one that prioritizes clarity, flexibility, and industrial competitiveness in equal measure.

While retaining the foundational twin criteria, namely, minimum ownership of twenty-six per cent by captive user(s) and consumption of not less than fifty-one per cent of the electricity generated for captive use, the amendment introduces several clarifications and definitions intended to streamline the functioning of the captive generation framework.

The key changes introduced by way of the 2026 amendment are as follows:

- The amended Rule 3 now defines key terms, including "*captive user*," "*ownership*," "*holding company*," "*subsidiary company*," and "*special purpose vehicle*." The recognition of corporate group structures within the captive framework is not entirely new. The Electricity (Third Amendment) Rules, 2023 had earlier inserted an explanation to Rule 3 clarifying that electricity consumed by a subsidiary company or a holding company of a company which is a captive user would be treated as captive consumption of that captive user.
- The definition of "*captive user*" now provides that where the captive user is a company, its subsidiaries, its holding company, and any other subsidiaries of such holding company shall collectively be treated as a single captive user. This broader codification resolves earlier disputes as to whether consumption by the full range of group entities could be counted towards captive use.
- "*Ownership*" is now expressly defined to include both direct and indirect holding through subsidiaries, holding companies, and other subsidiaries of the same holding company. This removes earlier uncertainty as to whether indirect shareholding through group corporate structures could satisfy the minimum twenty-six per cent ownership criterion.



- A more detailed framework is introduced governing AoP-based captive projects, including provisions relating to proportionate consumption, the treatment of group entities as a single captive user, and the determination of individual consumption on the basis of weighted average shareholding where ownership varies during the financial year. These provisions are intended to afford greater clarity and operational certainty to group captive structures, which have become increasingly prevalent in the renewable energy sector. Importantly, excess consumption by an individual user in an AoP will no longer result in the loss of captive status for the plant as a whole; instead, only the excess consumption attributable to that individual user will attract CSS and AS.

Finally, the amended Rule 3 introduces a more comprehensive statutory verification framework for the determination of captive status. It is relevant to note that a verification mechanism for inter-state CGPs had already been introduced by the 2023 Amendment, which inserted Rule 3(3) providing that captive status of generating plants where the CGP and its captive users are located in more than one State shall be verified by the Central Electricity Authority ("**CEA**") as per the procedure issued by it with the approval of the Central Government.

The 2026 Amendment supersedes this position: inter-state verification is now assigned to the National Load Despatch Centre ("**NLDC**") in place of the CEA, and the framework is additionally extended to intra-state cases, with verification to be carried out by a nodal agency designated by the State Government. The amendment further provides for a grievance redressal mechanism and, critically, clarifies that CSS and AS shall not be levied pending verification, subject to the conditions and declaration requirements prescribed under the Rules.

A comparative chart setting out the earlier framework and the amended provisions is provided hereunder for ease of reference:

Aspect	Position BEFORE Amendment (Pre-2026)	Position AFTER Amendment (2026 Rules)
<b>Definition of 'Captive User'</b>	The 2023 Amendment recognised consumption by a subsidiary company or holding company of a captive user as admissible captive consumption, by way of an explanation to Rule 3.	Defined in Rule 3(1)(a). Expanded beyond the 2023 position to include the entire corporate group i.e., company, its subsidiaries, its holding company, and any other subsidiaries of such holding company, collectively treated as a single captive user. Also includes consumption through energy storage systems.
<b>Definition of 'Ownership'</b>	Disputes over whether indirect/group ownership counted towards 26% threshold.	Defined in Rule 3(1)(d). Expanded beyond the 2023 position to include direct and indirect ownership through subsidiary, holding company, and holding company's other subsidiaries.
<b>SPV Status</b>	Pre-Oct 2023: Disputed – APTEL held SPVs are not AoPs (exempting them from proportionality). Post-Oct 2023 SC judgment: SPVs are AoPs and must comply with proportionality.	Rule 3(1)(e) SPVs defined and explicitly stated to be AoPs. <b>Dakshin Gujarat Judgement</b> now has statutory basis.
<b>Twin Criteria (Core)</b>	26% ownership + 51% consumption.	26% ownership + 51% consumption Core criteria unchanged.
<b>AoP – Proportionality Rule</b>	Consumption must be in proportion to ownership shares $\pm 10\%$ variation.	Individual user cap is 100% of proportionate share (no $\pm 10\%$ variation concept).

<b>AoP – Exception for <math>\geq 26\%</math> Owner</b>	No exception. Even a user holding $>26\%$ was subject to proportionality/unitary ratio restrictions.	New Rule 3(2)(d)(iii) Captive user holding $\geq 26\%$ is entirely exempt from proportionate consumption cap; entire consumption qualifies as captive.
<b>AoP – Group Entities</b>	Earlier, consumption by subsidiaries and holding companies was admissible as captive consumption	Rule 3(2)(d)(v) Expanded beyond the 2023 Amendment to include corporate group entities (i.e., other subsidiaries of the holding company) as <b>one captive user</b> for proportionate consumption calculations.
<b>Weighted Average Ownership</b>	Recognised in <i>Dakshin Gujarat</i> Judgement where ownership changed during the year.	Rule 3(2)(d)(iv) Proportionate consumption determined on basis of weighted average shareholding during financial year.
<b>Co-operative Societies</b>	Twin criteria satisfied collectively by members. No proportionality requirement.	Unchanged
<b>SPV Unit-Level Captive</b>	Rule 3(1)(b) recognised unit-level CGP identification for SPVs.	Rule 3(2)(b) clarifies that specific generating units within an SPV-owned plant may qualify as captive units. Ownership calculated proportionate to those units.
<b>Consequence of Individual Excess (AoP)</b>	Any user's consumption exceeding proportionate limit with $>\pm 10\%$ variation could jeopardise the plant's captive status.	Rule 3(3) proviso: Only the individual user's EXCESS consumption is treated as supply by generating company (CSS/AS levied on excess only). Plant-level captive status is preserved.

<b>Verification Mechanism</b>	No intra-state framework. The 2023 Amendment introduced inter-state verification by the CEA under Rule 3(3), as per procedure issued by CEA with Central Government approval.	Rule 3(4): CEA replaced by NLDC for inter-state verification. New intra-state framework introduced whereby State nodal agency designated by State Government. Dedicated Grievance Redressal Committee. CSS/AS stay pending verification on submission of declaration.
<b>CSS/AS During Verification</b>	No statutory protection.	Rule 3(4)(c) CSS/AS NOT levied pending verification, subject to declaration. If verification fails, CSS/AS + carrying cost (at LPS rate) become payable.
<b>'Affiliate Company' Proviso</b>	2023 Amendment: 51% ownership required in 'affiliate company' setting up the CGP. 'Affiliate' undefined – created significant confusion.	The 2026 Amendment substitutes Rule 3 entirely  Replaced with a structured framework using defined terms (subsidiary, holding company, SPV).

The Electricity (Amendment) Rules, 2026, represent a significant step towards providing clarity and certainty to the captive generation framework. By introducing comprehensive definitions, recognising corporate group structures, codifying the treatment of SPVs and AoP-based captive projects, and establishing a formal verification mechanism, the amendment addresses several longstanding interpretational and procedural ambiguities that had beset the sector. The amendments are well-timed, arriving precisely when Indian industry's accelerating shift towards renewable and storage-backed captive projects demands a clear and predictable regulatory foundation.



## Contact

E - [shri.venkatesh@skvlawoffices.com](mailto:shri.venkatesh@skvlawoffices.com)

W - [www.skvlawoffices.com](http://www.skvlawoffices.com)

## LinkedIn



## Delhi

B-50

Defence Colony,

New Delhi – 110024

T - +91 11 47099991 / 47099951

[Google Map Directions](#)

## Mumbai

Office No. 235, 1st Floor,

Building 213, Raheja Chambers,

Free Press Journal Road, Nariman Point,

Mumbai 400021

T - +91 22 40509235 / 40509459

[Google Map Directions](#)