

1. Issuance of Procedure for Verification of Captive Status by Central Electricity Authority where Captive Generating Plant And its Captive User(s) are located in more than one state

2. Power Ministry Amends Bidding Guidelines for Renewable Energy Projects

# ETERNITY:LAW APPRISE

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## MINISTRY OF POWER

The Central Electricity Authority (“CEA”), under the aegis of the Ministry of Power, Government of India, has issued a "Procedure for Verification of Captive Status of Such Generating Plant, Where Captive Generating Plant and Its Captive User(s) Are Located in More Than One State" vide Office Order No. 18/2025 dated February 10, 2025 (“Procedure”). This procedure, approved by the Central Government, comes into effect from the Financial Year 2024-25 and is designed to ensure compliance with the Electricity Rules, 2005, particularly for Captive Generating Plants (“CGPs”) operating across state boundaries.

The Procedure for verifying the CGPs and its Captive Users spread across multiple states is issued under sub-rule (3) of Rule 3 of the Electricity Rules, 2005, and aims to enhance transparency, streamline compliance, and facilitate the operation of CGPs in India’s evolving power sector.

### Key Objectives

The primary objective of this Procedure is to verify the captive status of generating plants where the CGP and its captive user(s) are located in different states, ensuring adherence to ownership and consumption criteria as mandated by the Electricity Rules, 2005. It seeks to provide clarity to power plant owners and consumers while fostering a robust mechanism for regulatory oversight by the CEA.

### Scope and Applicability

The procedure applies to all power plants and consumers seeking verification of their status as a CGP and associated captive user(s) under sub-rule (3) of Rule 3 of the Electricity Rules, 2005. It is effective from FY 2024-25 and covers diverse categories of CGPs, including those owned by companies, cooperative societies, or special purpose vehicles (“SPVs”), and those utilizing energy storage systems (“ESS”).



## Key Features of the Procedure

### ***Ownership and Consumption Criteria:***

- A minimum of 26% ownership by captive user(s) and at least 51% consumption of the generated electricity by these users, calculated annually, are prerequisites for captive status.
- For group captive users (except cooperative societies), consumption must be proportionate to ownership, with a permissible variation of  $\pm 10\%$ .

### Calculating Proportionality

- ⇒ A **Unitary Qualifying Ratio (“UQR”)** is used to determine each user’s required consumption:

Total consumption by captive users (in %) (“Y”)

Total ownership by captive users (in %) (“X”)

**Y:** Percentage of total electricity generated that is consumed by all captive users.

**X:** Percentage of total equity held by all captive users.

- ⇒ Required **Consumption per User:** UQR x Individual ownership (in %)

- ⇒ Each user must consume within  $\pm 10\%$  of this required amount.

### ***Verification Process:***

- The Director, Legal Division, CEA, is designated as the Verifying Authority responsible for assessing compliance.
- Applicants must submit applications with requisite documents, including affidavits and data in prescribed formats (FORMAT-I, II, III), by May 31 each year.

### ***Special Provisions:***

- For SPVs, specific generating units must be identified for captive use, with proportionate equity ownership by captive users.
- Consumption by subsidiary or holding companies of captive users is admissible towards the 51% threshold.
- Use of ESS is accommodated, with distinct guidelines depending on whether it functions as a generator or storage system.



**Documentation and Metering:**

- Detailed documentation, including equity shareholding certificates and annual returns, must be submitted.
- Separate interface meters with real-time communication are mandatory for CGPs, captive users, and ESS units.

**Appeal Mechanism:**

- A two-tier appellate process is established, with appeals first directed to the Chief Engineer, Legal Division, CEA, and subsequently to a committee comprising senior CEA members.

**Implementation Framework**

**Submission Deadline:** Applications must be filed with the Verifying Authority by May 31 annually, accompanied by authenticated generation and consumption data from Regional Load Despatch Centres (“RLDCs”), State Load Despatch Centres (“SLDCs”), or distribution licensees.

**Verification Timeline:** The Verifying Authority will issue captive status confirmation within two months of receiving complete applications.

**Stakeholder Coordination:** RLDCs, SLDCs, and distribution licensees are required to assist in data authentication and verification processes.

The Procedure also mandates CGP registration on the CEA’s e-Gen portal, ensuring a centralized tracking mechanism for compliance.



## MINISTRY OF POWER

On February 12, 2025, the Ministry of Power, Government of India (“MoP”) notified amendments to its tariff-based competitive bidding guidelines, enhancing the process for procuring power from wind, solar, wind-solar hybrid and firm and dispatchable renewable energy projects with energy storage systems. These changes to the principal guidelines notified in 2023 aim to improve flexibility, transparency, and technical robustness.

### General Amendments Across All Guidelines

**Location-Specific Bids:** For projects where location matters, procurers (entities buying the power) can now designate specific substations in the Inter-State Transmission System (“ISTS”) or Intra-State Transmission System (“InSTS”). This shall ensure that developers know exactly where to connect their projects to the grid, reducing ambiguity and aiding smoother integration with India’s power infrastructure.

**Capacity Utilization Factor (CUF) Adjustments:** The CUF measures how much energy a project generates relative to its maximum potential. If a generator fails to meet the minimum CUF specified in the Power Purchase Agreement (“PPA”) for two consecutive years—excluding the first year ending March 31 after the project starts operating—it’s considered a default. In such cases, the yearly CUF requirement will be lowered to the average of the actual CUF achieved over those two years. The generator must then pay lump-sum damages to the procurer, calculated as the tariff rate for 24 months or the remaining PPA term, whichever is shorter. If the generator doesn’t pay, this could trigger PPA termination, requiring further damages based on the contracted capacity and original CUF commitment. This provides flexibility while holding developers accountable.

**Change in Law Provisions:** These amendments align with the Electricity (Timely Recovery of Costs due to Change in Law) Rules, 2021, as amended. A “Change in Law” is now defined as any event affecting the project that occurs seven days before the bid submission deadline. This clarity helps developers and procurers address cost impacts from legal or regulatory shifts, ensuring fair adjustments during the project lifecycle.

**PPA and PSA Signing Timeline:** The PPA and Power Sale Agreement (“PSA”), if applicable, must be signed within 30 days of issuing the Letter of Award (“LoA”), which confirms the successful bidder. However, this period can be extended up to 12 months from the LoA date if delays occur. If the deadline passes without signing, the LoA shall stand



canceled. The guidelines note that extensions due to delays in preparatory activities (e.g., approvals or land acquisition) won't count as deviations, offering practical leeway without compromising the process.

**Tariff Adoption Process:** After tariffs are determined through e-reverse auctions or other methods in the transparent bidding process, distribution licensees or intermediary procurers must submit them to the Appropriate State Electricity Regulatory Commission within 30 days for adoption under Section 63 of the Electricity Act, 2003. This ensures swift regulatory approval, keeping projects on track.

**Earnest Money Deposit (EMD) and Performance Bank Guarantee (PBG) Options:** Developers now have more ways to provide financial assurances. Alongside traditional bank guarantees, they can use Insurance Surety Bonds—unconditional payment instruments akin to bank guarantees—or any other tool approved under the Central Government's General Financial Rules, as amended from time to time. The PBG can be encashed to recover damages or unpaid dues if a generator breaches the PPA, with the recovered amount credited to a Payment Security Fund managed by the Intermediary Procurer. The PBG is returned within 45 days of when power supply begins, and for projects starting in phases, partial PBG amounts corresponding to operational capacity are released within the same timeframe.

**Handling Deviations:** If a procurer needs to stray from these guidelines or the Standard Bidding Documents, they must seek approval from the Appropriate State Electricity Regulatory Commission before starting the bidding process. The concerned commission has 60 days to approve or suggest changes to the bid documents. However, if deviations were already approved by the government before these amendments, no fresh approval is needed, avoiding redundant steps for ongoing bids.

### **Additional Amendments by Project Type**

#### ⇒ **Solar PV Power Projects**

**Technical Specifications:** Procurers are directed to prioritize commercially proven technologies to minimize risks and ensure timely power supply, with detailed parameters set by the Ministry of New and Renewable Energy, Government of India ("MNRE"). Developers must install GPS-enabled Automatic Weather Stations ("AWS") to monitor conditions, following technical standards from a relevant central agency. Data from these stations must be available as required by the Indian Electricity Grid-Code and instructions from Load Dispatch Centres. Additionally, projects must comply with cybersecurity regulations issued by central authorities, safeguarding grid-connected infrastructure.



⇒ **Wind-Solar Hybrid Projects**

**Technical Specifications:** To balance competition and project success, procurers can set technical criteria after assessing how many developers might qualify, ensuring a robust yet competitive bidding pool. Like Solar PV projects, developers must install and maintain GPS-enabled AWS as per central agency standards, with data accessibility aligned with grid codes and Load Dispatch Centre directives. Compliance with cybersecurity rules is also mandatory, reflecting the hybrid nature of these projects combining wind and solar.

⇒ **Firm and Dispatchable Renewable Energy with Storage**

**Deviation Clarity:** When preparing the Request for Selection, PPA, PSA, or other agreements, procurers can include detailed provisions consistent with the guidelines. These additions won't be treated as deviations, even if the guidelines don't spell them out, providing clarity for complex storage-integrated projects.

**Technical Specifications:** Similar to other categories, procurers can define technical standards to encourage participation while ensuring feasibility. This includes installing GPS-enabled AWS and adhering to cybersecurity regulations, aligning with the need for reliable, dispatchable power from renewable sources with storage.

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