

An Analysis of the Electricity (Amendment) Rules, 2026 – Rule 3

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On March 13, 2026, the Ministry of Power, Government of India, notified amendments to Rule 3 (**Amendment**) of the Electricity Rules, 2005 (**Electricity Rules**).¹ Rule 3 of the Electricity Rules prescribes the conditions under which a power plant qualifies as captive generating plant (**CGP**), enabling captive user(s) to avail exemptions from cross-subsidy and additional surcharges under the Electricity Act, 2003 (**Electricity Act**).² The Amendment will be effective from the date of its notification in the gazette of India, except for sub-rule 3 (2)(d)(ii), sub-rule 3(2)(d)(iii) and sub-rule 3(4) which will become effective from April 1, 2026.

The Amendment seeks to address prevailing interpretational ambiguities under Rule 3 and introduces certain substantive refinements to further enable group captive structures to fully access captive power benefits.³ We have analysed the Amendment and set out our observations below:

S. No.	Rule 3 under the Erstwhile Electricity Rules	Rule 3 under the Amendment	CMS IndusLaw Comments and Observations
Expanded Recognition of Group Entities for Captive User and Ownership Determination			
1.	<p>(a) “Annual Basis” is to be determined based on a financial year;⁴</p> <p>(b) “captive user” means the end user of the electricity generated in a Captive Generating Plant and the term “captive use” shall be construed accordingly:</p> <p>Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System:</p> <p>Provided further that the consumption by a subsidiary company as defined in clause (87) of section 2 of the Companies Act, 2013 (18 of 2013) or the holding company as defined in clause (46) of section 2 of the Companies Act, 2013 (18 of 2013), of a company which is a captive user, shall also</p>	<p>(a) “captive user” shall mean the end user of the electricity generated in a Captive Generating Plant and includes a person or group of persons who consume such electricity either directly or through an Energy Storage System used for storing energy generated from such Captive Generating Plant, and the term “captive use” shall be construed accordingly:</p> <p>Explanation – Where a captive user is a company, the captive user shall be deemed to include its subsidiary or subsidiaries, its holding company, and any other subsidiary or subsidiaries of such holding company, and all such entities shall be collectively treated as a single captive user.⁸</p> <p>(b) “subsidiary company” shall have the meaning assigned to it under clause (87) of section 2 of the</p>	<p>Recognising the operational realities of group structures, the Amendment proposes to significantly broaden the group-level treatment of captive arrangements. First, it expands the definition of “Captive User” to include not only the captive user itself, but also its subsidiary or subsidiaries, its holding company, and any other subsidiary or subsidiaries of such holding company, all of which are to be treated as a single captive user.¹¹</p> <p>In this respect, the Amendment also defines the terms “Subsidiary Company” and “Holding Company”, with reference to their respective definitions under the Companies Act, 2013.</p>

¹ Electricity (Amendment) Rules, 2026, Ministry of Power, Government of India, Available at: https://powermin.gov.in/sites/default/files/webform/notices/Electricity_Amendment_Rules_2026_alongwith_Explanatory_Note.pdf

² Section 42, Electricity Act, 2003.

³ Explanatory Note for the Amendments in the Captive Rules, Electricity (Amendment) Rules, 2026.

⁴ Explanation (1) (a) of Rule 3(2) of the Electricity Rules.

⁸ Explanation to Rule 3(1) (a) of the Amendment Rules.

¹¹ Definition of the term – ‘Captive User’, Rule 3(1)(a) of the Electricity (Amendment) Rules, 2026.

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	<p>be admissible as captive consumption by the captive user.⁵</p> <p>(c) “Ownership” in relation to a generating station or power plant set up by a company or any other body corporate means the equity share capital with voting rights. In other cases, ownership means proprietary interest and control over the generating station or power plant;⁶</p> <p>(d) “Special Purpose Vehicle” means 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.⁷</p>	<p>Companies Act, 2013 (18 of 2013);</p> <p>(c) “holding company” shall have the meaning assigned to it under clause (46) of section 2 of the Companies Act, 2013 (18 of 2013).</p> <p>(d) “Ownership” in relation to a generating station or power plant set up by any person shall 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.⁹</p> <p>(e) “Special Purpose Vehicle” shall mean 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.</p> <p>Explanation – Special Purpose Vehicle is to be treated as an ‘Association of Persons’.¹⁰</p>	<p>Second, it correspondingly expands the definition of “ownership” in relation to a power plant to mean equity share capital with voting rights held, whether directly or indirectly, through such subsidiary or subsidiaries, holding company, or other subsidiaries of the holding company.¹²</p> <p>In contrast, under the pre-existing Rule 3, affiliate recognition was significantly narrower. While consumption by a subsidiary company or the holding company of a captive user was permitted to be counted as captive consumption of that captive user,¹³ there was no corresponding recognition of indirect or group-level ownership.</p> <p>Furthermore, the Amendment recognises special purpose vehicles as an ‘Association of Persons’,¹⁴ a position that has also been judicially recognised.¹⁵</p>
<i>Shift of Terminology from Annual Basis to Financial Year</i>			
2.	<p>For a power plant to qualify as a CGP:</p> <p>(a) not less than twenty-six percent of the ownership is to be held by the captive user(s); and:</p> <p>(b) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is</p>	<p>For a power plant to qualify as a CGP:</p> <p>(a) not less than twenty-six percent of the ownership is to be held by the captive user(s); and:</p> <p>(b) not less than fifty one percent of the aggregate electricity generated in such plant, during the financial</p>	<p>The Amendment retains the twin qualifying criteria for a power plant to qualify as a CGP, being: (i) not less than 26% of the ownership of the power plant must be held by the captive user(s); and (ii) not less than 51% of the aggregate electricity generated must be consumed for captive use (Twin Qualifying Criteria).</p>

⁵ Explanation (1) (b) of Rule 3(2) of the Electricity Rules.

⁶ Explanation (1) (c) of Rule 3(2) of the Electricity Rules.

⁷ Explanation (1) (d) of Rule 3(2) of the Electricity Rules.

⁹ Rule 3(1) (d) of the Amendment Rules.

¹⁰ Explanation to Rule 3(1) (e) of the Amendment Rules.

¹² Definition of the term – ‘Ownership’, Rule 3(1)(d) of the Electricity (Amendment) Rules, 2026.

¹³ Definition of the term – ‘Captive User’, Rule 3(3)(b), Electricity Rules, 2005.

¹⁴ Explanation to Rule 3(1) (e) of the Amendment Rules.

¹⁵ Para 48, Dakshin Gujarat.

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	to be consumed for the captive use. ¹⁶	year, is to be consumed for the captive use. ¹⁷	Further, the Amendment provides that the assessment shall be undertaken on a financial year basis. Under the earlier framework, the assessment was required to be carried out on an 'annual basis', which was defined to mean a financial year. The Amendment removes the reference to 'annual basis' and replaces it with a direct reference to the financial year, thereby simplifying the terminology used under the Electricity Rules.
<i>Retention of Twin Principal Test for Cooperative Society</i>			
3.	In case of power plant set up by registered cooperative society, the Twin Qualifying Criteria can be satisfied collectively by the members of the co-operative society. ¹⁸	In the case of power plant set up a registered co-operative society, the Twin Qualifying Criteria can be satisfied collectively by the members of the co-operative society. ¹⁹	No Changes.
<i>From Individual Proportionality to Collective Satisfaction of Captive Criteria</i>			
4.	In case of association of persons, the captive user(s) are required to hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) are to consume not less than fifty one percent of the electricity generated, determined on an annual basis, in proportion to their shares in ownership of the power plant within a variation not exceeding ten percent. ²⁰	In the case of association of persons, the Twin Qualifying Criteria is to be satisfied collectively by all the captive user(s), and the aggregate consumption by all such captive users from the power plant is to be considered for the purpose of verifying compliance with the Twin Qualifying Criteria. ²¹	Previously, where the power plant was set up by an association of persons, the Twin Qualifying Criteria was required to be satisfied on a proportional basis, i.e., such that the captive user(s), in aggregate, held not less than 26% of the ownership of the power plant, and captive user(s) consumed not less than 51% of the electricity generated in proportion to their ownership in the power plant, subject to a permissible variation not exceeding 10% (Proportionality Principle). ²²

¹⁶ Rule 3(1) (a) of the Electricity Rules, 2005 (“**Electricity Rules**”).

¹⁷ Rule 3(2) (a)(i) and (ii) of the Electricity (Amendment) Rules, 2026 (“**Amendment Rules**”).

¹⁸ Proviso I to Rule 3(1)(a)(ii) of the Electricity Rules

¹⁹ Rule 3(2)(c) of the Amendment Rules.

²⁰ Proviso II to Rule 3(1)(a)(ii) of the Electricity Rules.

²¹ Rule 3(2)(d) of the Amendment Rules.

²² Proviso, Rule 3(1)(a), Electricity Rules.

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			<p>The Amendment departs from the existing Proportionality Principle applicable to associations of persons by removing the requirement that each captive user consume electricity in proportion to its ownership in the power plant. Instead, the Amendment allows the Twin Qualifying Criteria, for association of persons, to be satisfied collectively by captive user(s) – similar to registered co-operative societies.²³</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><u>CMS IndusLaw Comment:</u> So long as the captive user(s), in aggregate, hold not less than 26% of the ownership of the captive generating plant and collectively consume not less than 51% of the electricity generated, the plant would qualify as a CGP.</p> </div>
<i>Capping Captive Consumption to Proportionate Ownership Consumption</i>			
5.		<p>In the case of association of persons -</p> <p>(a) captive consumption by an individual captive user is admissible only up to one hundred per cent of its proportionate consumption, calculated with reference to its share in the total captive ownership in the power plant.²⁴</p> <p>(b) where any captive user(s) holds not less than twenty-six per cent of the ownership in the power plant, the condition relating to proportionate consumption specified above is</p>	<p>In <i>Dakshin Gujarat Vij Company Limited v. Gayatri Shakti Paper and Board Limited and Another (Dakshin Gujarat)</i>,²⁷ the Hon'ble Supreme Court clarified that the 26% ownership requirement applies only to the captive portion of generation (51% of total output), meaning that each 1% shareholding in the CGP must correspond to a captive consumption of approximately 1.764% to 2.156% of the electricity generated, inclusive of the permissible 10% variation, to meet the Twin Qualifying Criteria.²⁸</p>

²³ Rule 3(2)(d)(i), Amendment Rules.

²⁴ Rule 3(2)(d) (ii) of the Amendment Rules.

²⁷ 2023 SCC OnLine SC 1276

²⁸ Para 48, Dakshin Gujarat.

S. No.	Rule 3 under the Erstwhile Electricity Rules	Rule 3 under the Amendment	CMS IndusLaw Comments and Observations
		<p>not applicable to such captive user.²⁵</p> <p>(c) For the purposes of calculating proportionate consumption of the captive user(s), the captive user(s), their subsidiary(s), their holding company, and other subsidiary(s) of such holding company are collectively treated as a single captive user.²⁶</p>	<p>Under the erstwhile legal framework, while Rule 3 permitted a ±10% variation in applying the ownership and consumption thresholds to determine CGP qualification, in practice the upper limit of 2.156% per 1% shareholding was not considered.²⁹ Once the minimum captive criteria were met, any electricity in excess of the 51% used for calculating the Twin Qualifying Criteria could be sold to any person, including the captive user(s) themselves.³⁰ If such excess electricity was supplied to the captive user(s), it remained exempt from cross-subsidy surcharge and additional surcharge.</p> <p>The Amendment takes away this benefit by stipulating that the captive consumption admissible for an individual captive user shall be limited to 100% of its proportionate consumption,³¹ calculated based on its share in the total captive ownership of the power plant (Proportionate Entitlement).³²</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>CMS IndusLaw Comment:</i></p> <p><i>By capping the captive consumption for group captive structure, there is a shift from the current framework. The limitation on captive consumption does not apply where a captive user holds at least 26% or more of the ownership, allowing such captive user to continue availing captive benefits on 100% of the</i></p> </div>

²⁵ Rule 3(2)(d) (iii) of the Amendment Rules.

²⁶ Rule 3(2)(d) (v) of the Amendment Rules..

²⁹ Illustration 2 and Illustration 3, Para 49, Dakshin Gujarat.

³⁰ Para 17, Kadodra Power Private Limited v. Gujarat Electricity Regulatory Commission., 2009 SCC OnLine APTEL 119.

³¹ **Effective from April 1, 2026.**

³² Rule 3(2)(d) (ii) of the Amendment Rules.

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			<p><i>power generated by the CGP,³³ without restriction.³⁴</i></p> <p><i>From a Commercial & Industrial (C&I) market perspective, it is not clear why the captive benefit is available to single captive use structures for 100% of the electricity generated, whereas it is capped in case of group captive structures. This may see a decline of group captive structures and single captive use structures may be preferred.</i></p> <p>Further, the Amendment provides that, for the purpose of calculating Proportionate Entitlement, the captive user, its subsidiary or subsidiaries, its holding company, and any other subsidiary or subsidiaries of such holding company shall be collectively treated as a single captive user, which is a welcome step.³⁵</p> <p>Additionally, under the proviso to Rule 3(3) of the Amendments, any consumption by an individual captive user in excess of 100% of its proportionate consumption shall be treated as supply of electricity by a generating company and cross-subsidy surcharge and additional surcharge will be levied on such consumption.</p>
<i>Statutory Recognition of the Weighted Average Principle for Mid-Year Ownership Changes</i>			
6.	-	Where the ownership pattern of the power plant varies during the financial year, the proportionate settlement of each captive user is to be determined on the basis of the	The Hon'ble Supreme Court in <i>Dakshin Gujarat</i> , held that in cases of changes in ownership during a year, the principle of weighted average should be

³³ **Effective from April 1, 2026.**

³⁴ Rule 3(2)(d)(iii) of the Amendment Rules.

³⁵ Rule 3(2)(d) (v) of the Amendment Rules.

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		weighted average shareholding of such captive user during the financial year. ³⁶	<p>applied to ensure compliance with the Proportionality Principle.³⁷ For example, if a captive user exits or transfers its shareholding in the middle of the year, the new or acquiring captive user would be required to consume electricity proportionate to its effective shareholding during the period it holds ownership (Weighted Average Principle).</p> <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <p><i>CMS Induslaw Comment: The Weighted Average Principle allows calculation of the average shareholding over the year and the corresponding proportionate electricity consumption. The Amendment recognizes this approach and proposes to incorporate it explicitly under Rule 3.³⁸</i></p> </div>
<i>Retention of the applicability of the Twin Test Requirements to SPVs</i>			
7.	<p>In case of a generating station owned by a company formed as special purpose vehicle for such generating station, the Twin Qualifying Criteria shall apply to the generating unit or units of identified for captive use and not to the generating station as a whole.³⁹</p> <p>Explanation: (1) The electricity required to be consumed by captive users shall be determined with reference to such generating unit or units in aggregate identified for captive use and not with reference to</p>	<p>In case of a generating station owned by a company formed as special purpose vehicle for such generating station, the Twin Qualifying Criteria shall apply to the generating unit or units of identified for captive use and not to the generating station as a whole.⁴³</p> <p>Explanation: (1) The electricity required to be consumed by captive users shall be determined with reference to the aggregate generation of the generating unit or units identified for captive use and not with to the generating station as a whole; and⁴⁴</p>	No Substantive Changes.

³⁶ Rule 3(2)(d) (iv) of the Amendment Rules..

³⁷ Para 53, Dakshin Gujarat.

³⁸ Rule 3(2)(d) (iv) of the Amendment Rules..

³⁹ Rule 3(1)(b) of the Electricity Rules.

⁴³ Rule 3(2)(b) of the Amendment Rules.

⁴⁴ Explanation (1) to Rule 3(2)(b) of the Amendment Rules.

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	<p>generating station as a whole; and⁴⁰</p> <p>(2) the equity shares to be held by the captive user(s) in the generating station shall not be less than twenty six per cent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.⁴¹</p> <p>Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen per cent of the equity shares in the company (being the twenty six percent proportionate to Unit A of 50 MW) and not less than fifty one percent of the electricity generated in Unit A determined on an annual basis is to be consumed by the captive users⁴²</p>	<p>(2) The equity shares to be held by the captive user or users in the generating station shall not be less than twenty-six per cent of the proportionate of the equity of the company corresponding to the generating unit or units identified as the captive generating plant.⁴⁵</p> <p>Illustration: In a generating station with two units of 50 MW each namely Units A and B, one unit of 50 MW namely Unit A may be identified as the Captive Generating Plant. The captive users shall hold not less than thirteen per cent of the equity shares in the company (being the twenty-six per cent proportionate to Unit A of 50 MW) and not less than fifty-one per cent of the electricity generated in Unit A determined during the financial year is to be consumed by the captive users.⁴⁶</p>	
<i>Retention of the Obligation of the maintain Captive Status on Captive User</i>			
8.	It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned under the Twin Qualifying Criteria is maintained and in case the minimum percentage of captive use is not complied with in any year, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company. ⁴⁷	It shall be the obligation of the captive users to ensure that the consumption by the captive users at the percentages mentioned under the Twin Qualifying Criteria is complied during the financial year and in case the minimum percentage of captive use is not complied is met during such period, the entire electricity generated shall be treated as if it is a supply of electricity by a generating company. ⁴⁸	No Substantive Changes.
<i>Revised Verification Authorities and Introduction of an Appellate Mechanism⁴⁹</i>			

⁴⁰Explanation (1) to Rule 3(1)(b) of the Electricity Rules.

⁴¹Explanation (2) to Rule 3(1)(b) of the Electricity Rules.

⁴² Illustration to Explanation (2) to Rule 3(1)(b) of the Electricity Rules.

⁴⁵ Explanation (2) to Rule 3(2)(b) of the Amendment Rules.

⁴⁶ Illustration to Explanation (2) to Rule 3(2)(b) of the Amendment Rules.

⁴⁷ Rule 3(2) of the Electricity Rules.

⁴⁸ Rule 3(3) of the Amendment Rules.

⁴⁹ Effective from April 1, 2026

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9.	<p>The captive status of such generating plants, where captive generating plant and its captive user(s) are located in more than one state, shall be verified by the Central Electricity Authority as per the procedure issued by the Authority with the approval of the Central Government.⁵⁰</p>	<p>Where a captive power plant and its captive user(s) are located in more than one state, the verification shall be carried out by the National Load Despatch Centre (NLDC) in accordance with the procedure issued by the NLDC with the approval of the Central Government.⁵¹</p> <p>The verification of a captive status of a power plant and the captive user(s) are located in the same State, shall be carried out by the nodal agency designated by the State Government, as per the procedure issued by such nodal agency.⁵²</p> <p>An appeal against the verification shall lie before a Grievance Redressal Committee constituted by the Appropriate Government.⁵³</p> <p>Pending verification of captive status for any financial year, the cross-subsidy surcharge and additional surcharge shall not be levied, subject to the declaration furnished by the captive user(s) in accordance with the procedure issued by the nodal agency and NLDC as the case may be.⁵⁴</p> <p>Provided that where the power plant fails verification of captive status for the financial year after furnishing such declaration, the applicable cross-subsidy surcharge and additional surcharge, as determined by the respective State Commission, along with the carrying cost calculated at the base rate of Late Payment Surcharge specified in the Electricity (Late Payment Surcharge and Related Matters)</p>	<p>Under the pre-existing Rule 3, the captive status of power plants where the CGP and its captive user(s) were located in more than one state is verified by the Central Electricity Authority (CEA) in accordance with procedures issued by the CEA with the approval of the Central Government.⁵⁵ Under the Amendment, the CEA has been replaced by the National Load Despatch Center (NLDC), and verification is to be carried out according to procedures issued by the NLDC with the approval of the Central Government.⁵⁶</p> <p>Additionally, the Amendment introduces clarity for power plants where the CGP and captive users are located within the same state: in such cases, verification of captive status is to be conducted by the nodal agency designated by the State Government, following procedures issued by that nodal agency.⁵⁷</p> <p>The Amendment also introduces an appeal mechanism against the determination of captive status, to be heard by a 'Grievance Redressal Committee' constituted by the Appropriate Government.⁵⁸</p> <p>Further, the Amendment provides that, pending verification of captive status for a financial year, cross-subsidy surcharge and additional surcharge shall not be levied, subject to the captive user(s)</p>

⁵⁰ Rule 3(3) of the Electricity Rules.
⁵¹ Proviso to Rule 3(4)(a) of the Amendment Rules.
⁵² Rule 3(4)(a) of the Amendment Rules.
⁵³ Rule 3(4)(b) of the Amendment Rules.
⁵⁴ Rule 3(4)(c) of the Amendment Rules.
⁵⁵ Rule 3(3), Electricity Rules.
⁵⁶ Proviso to Rule 3(4)(a) of the Amendment Rules.
⁵⁷ Rule 3(4)(a) of the Amendment Rules.
⁵⁸ Rule 3(4)(b) of the Amendment Rules.

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		Rules, 2022, as amended from time to time, shall be payable.	<p>furnishing a declaration in accordance with the procedure issued by the nodal agency / NLDC.⁵⁹</p> <p>The Amendment further provides that, where a power plant fails to qualify as a captive generating plant upon verification for the relevant assessment period after furnishing the requisite declaration, the applicable cross-subsidy surcharge and additional surcharge shall become payable, along with the carrying cost calculated at the base rate of Late Payment specified in the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022.⁶⁰</p>

CONCLUSION

The Amendment marks a significant recalibration of India’s captive power framework under Rule 3 of the Electricity Rules. While the core eligibility thresholds for qualifying as a captive generating plant remain unchanged, the Amendment introduces several clarifications.

In particular, the recognition of affiliates and group entities for determining both captive consumption and ownership reflects the commercial realities of modern corporate structures and is likely to facilitate growth of the C&I market. Similarly, the statutory incorporation of the weighted average principle provides much-needed clarity in cases involving mid-year ownership changes.

At the same time, the introduction of a cap on proportionate captive consumption represents a substantive shift in the regulatory framework. While the eligibility criteria for CGP status remain intact, the limitation on the captive benefits that may be availed by group captive users may lead to preference of single captive user structures over group captive structures.

The efficacy of the revised framework will also depend significantly on the manner in which verification authorities and other regulatory bodies interpret and implement these changes.

⁵⁹ Rule 3(4)(c) of the Amendment Rules.

⁶⁰ Proviso to Rule 3(4)(c) of the Amendment Rules.

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