



**ORDER  
OF THE**

**WEST BENGAL ELECTRICITY REGULATORY COMMISSION**

**IN CASE NO. OA – 357/ 20-21**

IN REGARD TO THE APPLICATION SUBMITTED BY WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED (WBSEDCL) FOR ISSUANCE OF PROCEDURE FOR VERIFICATION AND DECLARATION OF CAPTIVE GENERATING PLANT (CGP) STATUS IN ACCORDANCE TO REQUIREMENTS IN RULE 3 OF THE ELECTRICITY RULES, 2005 FOR REMOVAL OF DIFFICULTIES IN TERMS OF REGULATION 27 OF THE WEST BENGAL ELECTRICITY REGULATORY COMMISSION (OPEN ACCESS) REGULATIONS, 2007, AS AMENDED AND REGULATION 8.10 OF WEST BENGAL ELECTRICITY REGULATORY COMMISSION (TERMS AND CONDITIONS OF TARIFF) REGULATIONS, 2011, AS AMENDED

**PRESENT:**

**SRI SUTIRTHA BHATTACHARYA, CHAIRPERSON**

**SRI DURGADAS GOSWAMI, MEMBER**

**SRI PULAK KUMAR TEWARI, MEMBER**

**DATE: 21.06.2021**



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Application for issuance of procedure for verification and declaration of Captive Generating Plant (CGP) status in accordance to requirements in Rule 3 of the Electricity Rules, 2005 for removal of difficulties in terms of regulation 27 of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007, as amended and regulation 8.10 of West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended



### Facts in brief:

- 1.0 The West Bengal State Electricity Distribution Company Limited (WBSEDCL) has submitted an application vide letter dated 03.02.2021 for issuance of procedure for verification and declaration of Captive Generating Plant (hereinafter referred to as CGP) status in accordance with the requirements of Rule 3 of the Electricity Rules, 2005 for removal of difficulties in terms of regulation 27 of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007, as amended (in short 'Open Access Regulations') and regulation 8.10 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2011, as amended (in short 'Tariff Regulations'). The application has been admitted by the Commission on 06.03.2021 in Case No. OA – 357/20 - 21.
- 2.0 The application of WBSEDCL inter-alia stated the following:
  - 2.1 WBSEDCL is currently receiving applications from the HV/ EHV consumers with/ without requirement of open access of distribution networks to consume power from their own generating plant stating their status as captive consumer. WBSEDCL also stated that the applications which are without the requirement of open access are being made by those consumers who desire to run their generating plant in synchronization with the grid.
  - 2.2 WBSEDCL has submitted that as per clause (a) of sub-rule (1) of Rule 3 of the Electricity Rules, 2005, a power plant is to be qualified as a CGP if the captive user (s) consuming the power from the CGP for self-use must hold at least 26% of ownership in the captive generating company and such captive user consume at least 51% of the aggregate electricity generated in such plant determined on annual basis.

WBSEDCL also stated that the Electricity Act, 2003 (hereinafter referred to as 'the Act') and the regulations framed thereunder provide that the captive consumers consuming power from CGP and complying with such provisions under the Electricity Rules, 2005 do not have to bear cross-subsidy surcharges. Further, the regulations also specify that the applicable tariff for their consumer mode of power supply, if any, taken from the Distribution Licensees be different, i.e. either emergency tariff or non-TOD tariff.

  - 2.3 WBSEDCL submitted that in absence of formal procedure for verification of conditions laid down for CGP, there is a possibility of misuse of such provision of the Act.
  - 2.4 WBSEDCL also referred an order dated 25.08.2020 given by the Delhi Electricity Regulatory Commission in the matter of procedure for verification of CGP status in accordance with the requirements of Rule 3 of the Electricity Rules, 2005.







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- 2.5 In view of the above WBSEDCL has prayed before the Commission to prescribe a suitable procedure for verification and declaration of Captive Generating Plant (CGP) status in accordance with the requirements of Rule 3 of the Electricity Rules, 2005.

**Observations of the Commission:**

- 3.0 Rule 3 of the Electricity Rules, 2005 specify the requirements of Captive Generating Plant which is reproduced below:

*(1) No power plant shall qualify as a 'captive generating plant' under section 9 read with clause (8) of section 2 of the Act unless-*

*(a) in case of a power plant –*

- (i) not less than twenty six percent of the ownership is held by the captive user(s), and*  
*(ii) not less than fifty one percent of the aggregate electricity generated in such plant, determined on an annual basis, is consumed for the captive use:*

*Provided that in case of power plant set up by registered cooperative society, the conditions mentioned under paragraphs at (i) and (ii) above shall be satisfied collectively by the members of the co-operative society:*

*Provided further that in case of association of persons, the captive user(s) shall hold not less than twenty six percent of the ownership of the plant in aggregate and such captive user(s) shall 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;*

*(b) in case of a generating station owned by a company formed as special purpose vehicle for such generating station, a unit or units of such generating station identified for captive use and not the entire generating station satisfy (s) the conditions contained in paragraphs (i) and (ii) of sub-clause (a) above including –*

...

*(2) It shall be the obligation of the captive users to ensure that the consumption by the Captive Users at the percentages mentioned in sub-clauses (a) and (b) of sub-rule (1) above 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.*

...

- 4.0 The Commission observes that Granting Open Access is governed by the Open Access Regulations. The role of SLDC and STU is limited to granting open access to an applicant and operationalization thereof based on relevant technical consideration and in terms of related statute and regulations.







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- 5.0 The Commission observes that the fourth proviso of sub-section (2) of Section 42 of the Act specifies that cross subsidy surcharge shall not be leviable in case open access is provided to a person who has established a CGP for carrying the electricity to the destination of his own use.
- 6.0 Sub rule (2) of rule 3 of the Electricity Rules, 2005 specifies that it shall be the obligation of the captive users to ensure that the conditions for captive use are complied with, failing which the entire generation shall be treated as a generation from a generating company and not as a generation from a captive power plant. In that case cross subsidy surcharge shall be levied in terms of sub-section (2) of section 42 of the Act.
- 7.0 The Commission observes from the submissions of WBSEDCL that there is no difficulty in granting and implementing the open access in accordance with the prevailing regulations. However, WBSEDCL has prayed for a modality to verify the captive status as per Rule 3 of Electricity Rules 2005 since it involves waiver of cross subsidy surcharge in terms of sub-section (2) of section 42 of the Act.

**Order:**

- 8.0 In view of the above, the Commission gives the following directions:
- (i) The Distribution licensee shall implement open access in accordance with the provisions of Open Access Regulations and related statute.
  - (ii) Any open access consumer intending to avail the benefits of exemption of cross-subsidy surcharge under captive category must establish his qualification as CGP as per requirements specified in Rule 3 of the Electricity Rules, 2005 by submitting declaration in the form of sworn affidavit periodically to the concerned distribution licensee in the format to be made available by the distribution licensee for the purpose and certified/authenticated copies of all relevant documents as required by the concerned distribution licensee for such verification.
  - (iii) The distribution licensee shall require and verify these documents for the purpose of ascertaining CGP status only.
  - (iv) Furnishing of false information and /or documents may entail penal action as per extant Laws.
  - (v) If the open access consumer or applicant fails to meet the requisite conditions as per Rule 3 of Electricity Rules, 2005 during verification the generating plant, from where power is being







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drawn will cease to be a CGP and the users will cease to be the captive users and consequently shall be liable to pay cross subsidy surcharge as per provision of the Act and Rules made thereunder.

- 9.0 Disposal of such application at the end of Distribution licensee must take place within a limited time period not exceeding 30 days on submission of required documents by the consumer.
- 10.0 Let a copy of the order be served upon all Distribution licensees and a copy of this order be posted in the website of the Commission.
- 11.0 The application is thus disposed off.

Sd/-

(PULAK KUMAR TEWARI)  
MEMBER

Sd/-

(DURGADAS GOSWAMI)  
MEMBER

Sd/-

(SUTIRTHA BHATTACHARYA)  
CHAIRPERSON

Dated: 21.06.2021

(Smt. M. GUHA ROY)  
SECRETARY



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