

IN BRIEF

CAPTIVE POWER: KEY CHANGES TO RULE 3 UNDER THE ELECTRICITY (AMENDMENT) RULES, 2026



Introduction

On March 13, 2026, the Ministry of Power published the Electricity (Amendment) Rules, 2026 (2026 Amendment) through the Gazette Notification G.S.R. 186(E), which has restated Rule 3 of the Electricity Rules, 2005 (Rule 3) in its entirety. Rule 3 sets out the conditions for a power plant to qualify as a ‘captive power plant’, as well as the criteria for ensuring that it continues to retain its captive status.

To put it simply, a captive power plant is a power plant established primarily for private consumption rather than for sale to the public. Consequently, Rule 3 requires a captive power plant to ensure that at least 26% of the ownership of the power plant is held by its captive users, and that a minimum of 51% of the aggregate electricity generated during a financial year is consumed for captive use.

While the 2026 Amendment retains consistency with the pre-amendment Rule 3 in respect of the conditions for a power plant to qualify as a captive power plant, it has overhauled the compliance framework required for maintaining the captive status and provides clarity on previously ambiguous structures involving associations of persons and group corporate arrangements.

The key changes to Rule 3 pursuant to the 2026 Amendment are set out below:

1. Definition of a ‘Captive User’

For companies which are captive users, the 2026 Amendment now treats consumption by a company, its subsidiaries, holding companies and other subsidiaries of the holding company as a single captive user. Prior to the 2026 Amendment, consumption by a company included the consumption by its subsidiary while holding companies and fellow subsidiaries were not explicitly covered.

In addition, the 2026 Amendments also includes consumption by a captive user through an energy storage system used to store energy from the captive plant.

2. Ownership – Indirect Holdings Recognized

Indirect ownership has now been folded into the criteria of ‘ownership’ under Rule 3 and now includes proprietary interest and control, or equity share capital with voting rights, held either directly or through a company’s subsidiary or subsidiaries, its holding company, and any other subsidiary or subsidiaries of such holding company.

Prior to the 2026 Amendment, Rule 3 prescribed the criteria for ‘ownership’ of a power plant set-up by a company or other body-corporate to mean equity share capital with voting rights, without recognition of indirect holding through group structures.

3. Omission of the ‘Affiliate’ Proviso

Prior to the 2026 Amendment, Rule 3(1) contained a proviso requiring a captive user to hold at least 51% (fifty one percent) ownership in a power plant which was set up by its affiliate. This was higher than the usual 26% (twenty six percent) ownership requirement that applied to other captive power plants.

The 2026 Amendment has removed this requirement, and a uniform 26% (twenty six percent) ownership threshold now applies across all captive power plants.

4. Proportionate Consumption by an Association of Persons (AoPs)

In terms of compliance with the captive conditions by an AoP, the 2026 Amendment permits the consolidation of consumption by all captive users of a power plant, in the aggregate, when testing compliance with the requirements for captive users to hold 26% (twenty six percent) ownership in the generating plant and consume not less than 51% (fifty one percent) of the electricity generated on an annual basis.

At the individual level, however, each captive user's consumption is capped at 100% (one hundred percent) of its entitlement, which is proportionate to its ownership in the generating plant. Consumption beyond this entitlement would not qualify as captive consumption and would attract the levy of cross-subsidy surcharge and additional surcharge. As an exception, captive users that hold at least 26% (twenty six percent) of the ownership in a power plant are not subject to the aforesaid proportionate consumption restriction.

Prior to the 2026 Amendment, captive users forming part of an AoP were required to consume electricity strictly in proportion to their ownership shares, subject to a permissible variation of up to 10% (ten percent), which has been revised as discussed above.

5. Special Purpose Vehicles — Expressly Classified as an AoP

Rule 3 previously did not clarify the treatment of special purpose vehicles as an AoP. The Supreme Court of India, however, in the matter of Dakshin Gujarat Vij Company Limited v. Gayatri Shakti Paper and Board Limited (Civil Appeal Nos. 8527–8529 of 2009), clarified that a special purpose vehicle falls within the scope of an association of persons for the purposes of Rule 3.

The 2026 Amendment now expands the definition of an AoP to include special purpose vehicles - which are defined as a legal entity established for the sole purpose of owning, operating and maintaining a generating station.

6. A Mandatory Verification Framework

The 2026 Amendment prescribes a new framework for the verification of compliance by a power plant with the conditions prescribed under Rule 3, based on inter-state or intra-state nature of a captive user and the generating plant.

Intra-state: Where the generating plant and the captive users are located within the same State or Union Territory, verification is to be carried out by a nodal agency designated by the State Government.

Inter-state: Where the arrangement is inter-state, verification is to be undertaken by the National Load Dispatch Centre in accordance with procedures approved by the Central Government.

A grievance redressal mechanism is also to be established for disputes arising from the verification process. Pending verification, however, cross-subsidy surcharge and additional surcharge would not be levied (subject to a declaration being provided by the captive user); however, if the plant fails verification, applicable surcharges along with carrying cost at the base rate under the Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 would be payable.

Conclusion

The 2026 Amendment substantially liberalises the captive generation framework by recognising group structures, removing the affiliate company threshold, codifying surcharge consequences, and introducing a formal verification regime.

The rules have come into force on March 13, 2026, except provisions relating to proportionate consumption by an AoP and the verification mechanism for captive consumption which have come into force on April 1, 2026.

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