

Bhopal, the 7th December 2023

No. MPERC/2023/2740 In exercise of the powers conferred by Section 181 read with sub-section (b) of Section 86 of the Electricity Act 2003 (N0.36 of 2003) and all powers enabling it in that behalf, the Madhya Pradesh Electricity Regulatory Commission hereby makes the following amendment in the Madhya Pradesh Electricity Regulation Commission (Power Purchase and other matters with respect to conventional fuel based captive power plants) Regulations, 2009 [RG 30(I) of 2009] hereinafter referred to as the "Principal Regulations" namely:-

FIRST AMENDMENT TO MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION (POWER PURCHASE AND OTHER MATTERS WITH RESPECT TO CONVENTIONAL FUEL BASED CAPTIVE POWER PLANTS) REGULATIONS, 2009

PREAMBLE

Whereas the Commission had notified Madhya Pradesh Electricity Regulatory Commission (Power Purchase and Other Matters with respect to conventional fuel based Captive Power Plants) Regulation, 2009 (RG-30(I) of 2009) on 20.02.2009 and whereas certain changes are necessary in these Regulations to align them with the Electricity Amendment Rules 2023 notified by the Ministry of Power, Government of India on 30.06.2023 and 01.09.2023, therefore these amendments in Madhya Pradesh Electricity Regulatory Commission (Power Purchase and Other Matters with respect to conventional fuel based Captive Power Plants) Regulation, 2009 are being notified.

1. Short title, commencement and interpretation

- 1.1 These Regulations may be called the 'Madhya Pradesh Electricity Regulatory Commission (Power Purchase and Other Matters with respect to conventional fuel based Captive Power Plants) Regulations, (Revision-I) 2009 (First Amendment) {RG-30 (I) (i) of 2023}'.
- 1.2 These Regulations shall extend to the whole of Madhya Pradesh and shall apply only to the Captive Power Plants using conventional fuels.
- 1.3 These Regulations shall come into force on the date of their publication in the official gazette of the Government of Madhya Pradesh.

2. Amendment to regulation 1 of the Principal Regulations:

- 2.1 Regulation 1.4 of the Principal Regulation shall be amended as follows:

2.1.1 A new sub-clause, namely, (aa) shall be inserted after sub-clause (a) of regulation 1.4 of the Principal Regulations as under: -

(aa) **“Affiliate Company”** in relation to a Company means another Company which controls, or, is controlled by, or is under the common control with such Company. The expression ‘control shall mean the ownership, directly or indirectly, of more than 50% of the voting shares of such Company or right to appoint majority Directors.

2.1.2 A new sub-clause, namely, (ii) shall be inserted after sub-clause (i) of regulation 1.4 of the Principal Regulations as under: -

(ii) **“Designated Authority”** shall have the same meaning as defined in **“MPERC (Verification of Captive Generating Plants and Captive Users) Regulations, 2023 (G-45 of 2023)** as amended from time to time;

2.1.3 A new sub-clause, namely, (qq) shall be inserted after sub-clause (q) of regulation 1.4 of the Principal Regulations as under: -

(qq) **“Subsidiary Company”** shall have the same meaning as defined in **“The Companies Act 2013”** as amended from time to time.

2.2 Regulation 1.5 of the Principal Regulation shall be substituted by the following:

“1.5 A power plant shall be identified as a Captive Power Plant only if it satisfies the conditions contained in clause 3 (1) (a) and (b) of the Electricity Rules, 2005 and its amendments notified by the Ministry of Power, Government of India, from time to time, namely:

1.5(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);*

Provided that if the Captive Generating Plant is set up by an affiliate company, not less than fifty- one per cent of the ownership, is held by the captive user, in that affiliate company; 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-

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 generating station as a whole; and

(2) The equity shares to be held by the captive User (s) in the generating station shall not be less than twenty six percent of the proportionate of the equity of the company related to the generating unit or units identified as the captive generating plant.

2.3 Regulation 1.6 of the Principal Regulation shall be substituted by the following, namely:

“1.6 (1) If in any financial year, the conditions contained as per Regulation 1.6(2) are not satisfied by the captive user(s), entire electricity (generated from the captive power plant) consumed by captive users in the year shall be treated as if it is a supply of electricity by a generating company and shall be liable to all the charges as recoverable from an Open Access User. In such an eventuality, the captive user, if not satisfied with the determination of its captive status by “Designated Authority”, can represent against such determination under dispute redressal mechanism specified in MPERC (Verification of Captive Generation Plants and Captive Users) Regulations, 2023 (G-45 of 2023).

1.6(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.*

Explanation: (1) For the purpose of this rule-

- (a) *“Annual Basis” shall be determined based on a financial year;*
- (b) *“Captive User” shall mean the end User of the electricity generated in a Captive Generating Plant and the term “captive use” shall be construed accordingly;*
Provided that the consumption of electricity by the captive user may be either directly or through Energy Storage System:
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), of a company which is an existing captive user shall also be admissible as captive consumption by the captive user.
- (c) *“Ownership” in relation to a generating station or power plant set up by a company or any other body corporate shall mean the equity share capital with voting rights. In other cases, ownership shall mean proprietary interest and control over the generating station or power plant;*
- (d) *“Special Purpose Vehicle” shall mean 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.*

By order of the Commission,
UMAKANTA PANDA, Commission Secy.