

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No. 29 of 2020**

**In the matter of:**

Petition under Section 86 (1) (a), Section 86(1)(f) read with Section 61(d) seeking directions to State Load Despatch Centre of Uttarakhand to consider Scheduled Capacity as the Declared Capacity in accordance with Section 32(2)(a) of the Electricity Act, 2003.

**In the matter of:**

M/s Greenko Budhil Hydro Power Pvt. Ltd.

... Petitioner

**AND**

**In the matter of:**

Uttarakhand Power Corporation Ltd. (UPCL)

State Load Dispatch Centre, Uttarakhand (SLDC)

... Respondents

**CORAM**

**Shri D.P. Gairola      Member (Law)**

**Shri M.K. Jain        Member (Technical)**

**Date of Hearing: December 22, 2020**

**Date of Order: June 14, 2021**

This Order relates to the Petition filed by M/s Greenko Budhil Hydro Pvt. Ltd. (hereinafter referred to as "Petitioner" or "M/s GBHPL" or "M/s Greenko") under Section 86(1)(a), Section 86(1)(f) read with Section 61(d) of the Electricity Act, 2003 seeking direction to State Load Despatch Centre of Uttarakhand (hereinafter referred to as "SLDC") to consider schedule capacity as the Declared capacity in accordance with Section 32(2)(a) of the Electricity Act, 2003.

The Petitioners have made the following prayers:

- (i) Quash the minutes of meetings dated 25.04.2017 and 07.07.2017,

- (ii) Declare that the Declared Capacity of the Petitioner's Hydro Power Plant shall have to be determined, verified and certified by SLDC in accordance with Regulation 7.5 (14) of the UERC (State Grid Code) Regulations, 2016, read with Regulation 3 (22) of the UERC MYT Tariff Regulations, 2015 and 2018, read with Article 1.1 (15) of the PPA dated 06.01.2017,
- (iii) Direct SLDC to verify/ determine PAFM as per Regulation 50 (3) of the MYT Regulations, 2015 and 2018, by considering declared capacity as being declared by the Petitioner, in accordance with Regulation 3 (22) of the MYT Regulations, 2015 and 2018,
- (iv) Direct SLDC and/or UPCL, jointly or severally, to pay an amount of Rs. 5,50,85,464/-, for the period 01.04.2018 to 31.03.2019 forthwith based on the corrected PAFM percentage to the Petitioner's company,
- (v) Direct UPCL, and/or SLDC, jointly or severally, to pay Rs. 1,89,11,484/-, towards capacity charge for the period 01.04.2019 to 31.03.2020 based on the corrected PAFM percentage, to the Petitioner's company,
- (vi) Direct UPCL, and/or SLDC, jointly or severally, to pay Rs. 1,68,75,136/-, Rs 1,22,17,505/- and Rs 64,63,285/- towards interest amount for delay in certification of Declared Capacity for FY 17-18, FY 18-19 & FY 19-20 respectively,
- (vii) Allow the Petitioner to raise supplementary invoices based on account of Declared Capacity, and interest on delay in certification of Declared Capacity,
- (viii) Direct SLDC to issue certification of Declared Capacity within five days from the date of submission of DC statement by the Petitioner, and
- (ix) Pass such other order(s) as this Hon'ble Commission may deem fit and proper in the facts and circumstances of the case and in the interest of justice and fair play.

## **1. Background**

1.1. M/s GBHPL is a company incorporated under the Companies Act, 1956. M/s GBHPL is a generating company falling within the definition under Sub-section 28 of Section 2 of the Act and has developed a 70 MW (2x35 MW) Hydro Electric power project (hereinafter referred to as the "Project" or "Budhil HEP"). The Petitioner had executed a PPA for 70 MW capacity with the distribution licensee, i.e. UPCL and had initiated scheduling of power

w.e.f. 01.12.2015.

- 1.2. The Petitioner had filed a Petition under Section 62 read with Section 86(1)(a) read with MYT Regulations, 2011 and MYT Regulations, 2015 before the Commission for determination of tariff for supply of power from the project to UPCL w.e.f. 01.12.2015 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19. Accordingly, the Commission vide Order dated 30.11.2016 approved the Annual Fixed Charged for the respective financial years. Further, while approving the AFC, the Commission while relaxing the relevant regulations, allowed recovery of AFC for FY 2015-16 through a single-part tariff, i.e. based on total AFC and saleable energy only. However, for the ensuing Control Period FY 2016-17 to FY 2018-19, recovery of AFC would have to be carried out in accordance with the regulations based on the stipulated NAPAF of 85%.
- 1.3. Subsequently, the Petitioner had approached the Commission requesting for single part tariff till November 2016 and also requested the Commission to provide appropriate directions to SLDC for verification of Declared Capacity considering the difficulties faced by it, namely location of project outside State of Uttarakhand, and the project was directly connected with CTU and no methodology for calculation of water availability existed at the project site. UPCL also had concerns that the Petitioner may mis-declare its Declared Capacity (MW) as it can easily achieve the said Capacity even with a single machine with requisite storage in its reservoir since SLDC derives MW capacity based on the daily average generation (MWhr) for 3 hours.
- 1.4. Based on the request of M/s GBHPL, the Commission held a meeting on 07.07.2017 wherein it was mutually agreed between M/s GBHPL, UPCL and SLDC that ABT meters shall be installed at the generators bays in the switchyard and verification of Declared Capacity by SLDC by deriving  $DC_i$ , i.e. Declared Capacity (in ex-bus MW) for each day of a billing month from 3 hours average daily MWhr generation/energy can continue for another 3 months and, thereafter, it was decided that verification of Declared Capacity shall be based on hourly MW capacity (which the station can deliver for atleast 3 hours) on the basis of analysis of daily Load Survey Report for each billing month by SLDC. Minutes of Meeting held on 07.07.2017 were forwarded to the stakeholders, i.e. M/s GBHPL, SLDC and UPCL for comments.

1.5. Based on the comments received from all the stakeholders, the Commission vide letter dated 12.09.2017 amended the minutes of meeting held on 07.07.2017 and specified as follows:

*“It was agreed upon by SLDC, M/s Greenko (Generator) and UPCL that this present methodology of verification of Declared Capacity by SLDC by deriving DCi i.e. Declared Capacity (in ex-bus MW), for each day of billing month from 3 hours average daily MWhr generation/energy can continue. However, whenever possible, the verification of Declared Capacity shall be based on hourly MW capacity (which the station can deliver for atleast three (3) hours) on the basis of analysis of daily Load Survey Report for each billing month by SLDC. In this regard, UPCL is hereby directed that in case the generator declares availability of both of its machines and declares capacity in excess of installed capacity of one machine, UPCL should give its schedule to the generator for the day in such a manner that it exceeds the unit rating of one machine plus its overload capacity in order to ensure availability of both machines. Simultaneously, UPCL should also ensure to schedule its requirement equivalent to generator’s declared capacity for atleast 3 hours in a day.”*

1.6. Thereafter, the Commission had approved the ARR for FY 2018-19 based on the true-up for FY 2015-16 and FY 2016-17 in accordance with the provisions of prevailing MYT Tariff Regulations vide its Tariff Order 21.03.2018 and vide Tariff Order dated 27.02.2019 determined ARR for FY 2019-20 based on true-up for FY 2017-18. Subsequently, the Petitioner had filed Tariff Petition for determination of ARR for FY 2020-21, during the proceedings the Commission noted that there was a substantial difference between the declared capacity claimed and provisionally verified by SLDC in certain months of FY 2018-19. In reply, the Petitioner submitted that for the hydro plants, whose generation is based on multiple natural factors such as frequency and intensity of rains, snowfall as well as rate of melting of snowfall, there is bound to be irregular inflow of water in the pondage of the plant. Essentially, this leads to variation between scheduled generation based on declared capacity and actual generation of the plant and any penal implication of the same is being currently borne by the Petitioner itself. In case of under-injection, the Petitioner not only bears the DSM penalty but also reduction in Declared Capacity quantum by SLDC. This leads to additional unqualified/illegitimate penal implication on the Petitioner significantly reducing its allowable return on equity. In the matter, the Commission advised the Petitioner to file a separate Petition before the Commission.

1.7. Accordingly, the present Petition has been filed by the Petitioner under section 86(1)(a) and 86(1)(f) read with Section 61(d) requesting the Commission to issue appropriate directions to SLDC to consider Schedule Capacity as the Declared Capacity in accordance with the Section 32(2)(a) of the Electricity Act, 2003.

## **2. Petitioner's submissions**

2.1. The Petitioner submitted that it is a company, incorporated under the provisions of the Companies Act, 1956 and is also a Generating Company within the meaning of Section 2 (28) of the Electricity Act, 2003 and owns & operates 70 MW Budhil HEP situated at Chamba, Himachal Pradesh.

2.2. The Petitioner submitted that the Commission during the proceedings for determination of ARR for FY 2020-21, observed that there was a substantial difference between the declared capacity claimed by the Petitioner and provisionally verified by SLDC in some of the months of FY 2018-19 and directed the Petitioner to submit the reasons for variation. In reply, the Petitioner submitted that instead of considering scheduled capacity as declared capacity, SLDC considers the quantum of actual power injection to calculate the Declared Capacity of the day. After hearing all the concerned stakeholders, the Commission vide its Tariff Order dated 18.04.2020, advised the Petitioner to file a separate Petition before the Commission in the matter.

2.3. The Petitioner submitted that a meeting was conducted on 25.04.2017 at SLDC's office with the officials of UPCL and SLDC regarding verification of declared capacity wherein it was decided that until further directions of the Commission, SLDC shall verify the provisional Declared Capacity (DC) for the period starting from the month of December 2016 on the basis of MW capacity declared (ex-bus) by the generator, or, the MW capacity calculated on the basis of actual generation (MWH) for the day that could have been delivered by the plant for 3 hours of running subject to availability of required number of machines/units. Subsequently, a meeting was conducted at the Commission's office wherein it was decided that that the present methodology of Declared Capacity by SLDC by deriving DC<sub>i</sub>, i.e. Declared Capacity (in ex-bus MW) for each day of a billing month from 3 hours average daily MW hour generation/energy, can continue. However, whenever possible, the verification of Declared Capacity shall be based on hourly MW capacity (which the station

can deliver for at least three (3) hours) on the basis of analysis of daily Load Survey Report for each billing month by SLDC.

- 2.4. The Petitioner submitted that it was of the bonafide belief that SLDC will accept the declaration made by the Petitioner and clarify the same as “Declared Capacity”, as the same is the correct legal position, in terms of Regulation 3(22) of MTY Regulations, 2015 & MYT Regulations, 2018. Further, as per minutes of meeting dated 25.04.2017 it was categorically recorded that the arrangement decided during the meeting was subject to the final decision of the Commission and SLDC cannot take it for granted that it has the freedom to consider actual generation as declared capacity.
- 2.5. The Petitioner submitted that SLDC erred in not considering the availability of the plant as declared by the Petitioner as Declared Capacity. SLDC considered the actual power injected quantum to verify and certify the Declared Capacity for the day. The Petitioner also submitted that during the proceedings for determination of ARR for FY 2020-21, the Commission noted that there was a substantial difference between the declared capacity claimed and provisionally verified by SLDC in certain months of FY 2018-19 and sought clarification from the Petitioner. In reply, it was submitted that the issue was discussed several times with SLDC and M/s GBHPL has been providing day ahead Declared Capacity to SLDC, considering the available machine capacity and estimated water availability and a cumulative (whole month) Declared Capacity is provided to SLDC at the end of each month.
- 2.6. The Petitioner submitted that the deviations between the scheduled capacity based on Declared Capacity and the actual injection is considered under the purview of DSM Regulations and consequential UI charges are being paid by the Petitioner to NLDC. These UI charges incurred by the Petitioner are not forming part of the true up petitions. As such, the Petitioner is entitled to claim and recover these UI charges as part of its tariff under the PPA. In case, the provisional Declared Capacity being provided by SLDC is based on the actual injection by the plant, then the consequential DSM penalties/incentives should be allowed to be recovered as part of tariff. The Petitioner also submitted that SLDC stated that the verification of Declared Capacity of the Petitioner’s HEP is being done in accordance with the Minutes of Meeting dated 07.07.2017.

- 2.7. The Petitioner submitted that the term 'Declared Capacity' as provided under Regulation 3 (22) of MYT Regulations, 2015 is binding on the Parties, and the Petitioner has been notifying the Declared Capacity in accordance with said Regulation. However, SLDC has been wrongly taking Declared Capacity as actual generation instead of taking into account Declared Capacity of the plant as notified by the Petitioner. As such, the conduct of SLDC is causing losses to the Petitioner.
- 2.8. The Petitioner submitted that pursuant to the above, the Commission vide its Tariff Order dated 18.04.2020 directed the Petitioner to file a separate Petition for a detailed consideration on the issue of deviation observed in the capacity declared by the Petitioner and the capacity provisionally verified as Declared Capacity by SLDC.
- 2.9. The Petitioner submitted that Regulation 3(22) of MYT Regulations, 2015 and MYT Regulations, 2018 specifies that Declared Capacity means the capability to deliver ex-bus electricity in MW declared by such generating station in relation to any timeblock of the day or whole of the day, duly taking into account the availability of fuel or water, and subject to further qualification on the relevant Regulations. The same definition has been provided in the PPA executed with UPCL.
- 2.10. The Petitioner submitted that from the above definitions as provided under respective MYT Regulations and PPA, it is evident that the generator has to indicate the "Declared Capacity". As such, the Petitioner declared its capacity of 21702 (PAFM % - 85.97) for the period April 2018 to March 2019, and hence, it is the aforementioned figure which ought to have been taken into account by SLDC. However, SLDC certified the Declared Capacity of the project as 19136 MW, which is equivalent to the actual injection (PAFM % - 75.80). As a result, there is a variation of 2567 MW of Declared Capacity for the aforesaid period, because of which, the Petitioner suffered a loss of Rs. 5.51 Crore.
- 2.11. The Petitioner submitted that the Declared Capacity ought to have been 22171 MW (PAFM % - 87.59) for the period between April, 2019 to March, 2020. However, SLDC certified the Declared Capacity as 21264 MW (PAFM % - 84.01), by considering the actual injection. This arbitrary and under certification of Declared Capacity is being further continued by SLDC from April 2020 onwards also. As a result of the aforesaid faulty certification of Declared Capacity by SLDC, the Petitioner again suffered a loss of Rs. 1.89 Crore, towards capacity

charges that it could have claimed for the quantum of variation in the Declared Capacity of 906 MW based on monthly plant availability factor. The Petitioner submitted that it reserves its right to raise supplementary invoices to claim the aforesaid amounts from UPCL towards capacity charges.

2.12. The Petitioner submitted that the Commission has notified the UERC (State Grid Code) Regulations, 2016, for the purpose of maintenance of grid discipline in the State by SLDC. It is pertinent to mention that the aforesaid Regulations explicitly provide that the schedule which will be finalized for a hydro generating station shall be based upon the Declared Capacity of such hydro generator. In this context, relevant provision of the aforesaid Regulations, i.e. Regulation 7.5 (14), specifies as follows:

*“14 The schedule finalized by the State load despatch centre for hydro generating station, shall normally be such that the scheduled energy for a day equals the total energy (ex-bus) expected to be available on that day, as declared by the generating station, based on foreseen/planned water availability/release. It is also expected that the total net energy actually supplied by the generating station on that day would equal the declared total energy, in order that the water release requirement is met. “*

*(Underline Supplied)*

From the perusal of the aforesaid Regulation, it is amply clear that the SLDC has to necessarily take the capacity declared by the generator into account while preparing the final schedule. Any exercise contrary to the same, would be in violation of the Grid Code.

2.13. The Petitioner submitted that SLDC ought to consider the Declared Capacity, on the basis of the declaration made by the generator, for the purpose of PAFM calculation of the generating station, which is in accordance with the Grid Code. In this context, reference be made to the Order dated 12.02.2019 passed by Central Electricity Regulatory Commission in Petition No. 205/MP/2018 in the matter of Himachal Baspa Power Company Limited v. Northern Regional Load Despatch Centre, wherein it was held as follows:

*“ 23. In the light of the express provisions in the Grid Code; dispensation provided to the Central Generating Stations for scheduling the generation corresponding to overload capacity during peak season; LTA being in place in the instant case for 880 MW; and availability of margins in transmission system commissioned at the behest of LTA customers, we are of the considered view*

*that the hydro generating stations irrespective of ownership (private or government) are not required to obtain LTA corresponding to overload capacity (upto 10%) and the injection of the same should be allowed by concerned RLDC. In our view, even in case of a hydro generating station in the private sector, the RLDCs cannot compel them to obtain LTA/ MTOA/ STOA for overload capacity up to 10% of existing LTA during high inflow period. Accordingly, RLDCs are directed to allow injection of power corresponding to overload capacity upto 10% of LTA without obtaining additional LTA/ MTOA/ STOA for the overload capacity. Needless to mention, the RLDCs shall allow the Declared Capacity declared by the generator for the purpose of PAF calculation of the generating station. In order to ensure that the CTU and RLDCs receive their respective charges, we also think it appropriate to clarify that in case of scheduling of overload capacity up to 10% beyond granted LTA, the hydro generating station or the beneficiary, as the case may be, shall be required to pay additional LTA charges and additional RLDC fees & charges for the overload capacity. These additional charges shall be in proportion to the existing LTA charges and RLDC fees & charges respectively. CTU and respective RLDCs shall raise bills accordingly."*

**(Underline Supplied)**

2.14. The Petitioner stated that the Declared capacity (in ex-bus MW) for the day of the month which the station can deliver for at least three (3) hours, as certified by SLDC after the day is over. Thus, if the plant is able to generate more than or equal to 210 MWh (i.e. 70 MW x 3 Hrs) on a given day, the Declared Capacity shall be considered as 70 MW. Whereas, if the plant generates less than 210 MWh on a given day, the declared capacity shall be the derivative of the actual energy injected (in MWh) on the respective day divided by 3 (Hours).

2.15. The Petitioner submitted that SLDC not only erred in the computation of the Declared Capacity as mentioned above but also, failed to provide the certification of Declared Capacity in time. There is inordinate delay every time in certification of the Declared Capacity on the part of the SLDC post submission of Declared Capacity by the Petitioner. The Petitioner on account of the delay in certification of Declared Capacity, suffered a further delay in submission of invoices for the realisation of revenue and therefore, the Petitioner is entitled to interest on account of the aforesaid delay. As per the computation of the amount of interest on the invoice amount, on account of delay in certification of Declared Capacity for the FY 2017-18, FY 2018-19 & FY 2019-20, the Petitioner is entitled to,

and SLDC or UPCL is liable to pay, Rs. 1.69 Crore, Rs. 1.22 Crore and 0.65 Crore respectively.

2.16. The Petitioner has provided two different scenarios for reference which are as follows:

**Case #1: When the actual generation on a given day is 210 MWh or above**

The aforesaid example considered is for the date 19.09.2018

As per NRPC reports, the data of M/s Greenko Budhil Hydro Power Plant for 19.09.2018 is as under:

Total No of Units generated as per REA (LU)	A	9.12648
Units (kWh)	$B = A \times 100000$	912648
Units (MWh)	$C = B / 1000$	912.648
Possible Generation in three Hours if water is continuously available (MW)	$D = C / 3$	304
No. of Hours the plant can operate at 70 MW (Hrs.)	$E = C / 70$	13

As per the above table, the actual generation, the Declared Capacity of the plant after considering the losses shall be 69.16 MW whereas, the Declared Capacity as per SLDC is as under:

Time block	Actual	Hourly Average (MW)
1	17.328	69.07
2	17.28	
3	17.256	
4	17.208	
5	17.184	68.35
6	17.088	
7	17.064	
8	17.016	
9	17.016	51.33
10	12.384	
11	10.968	
12	10.968	

As per the methodology adopted by SLDC for computing declared capacity, which is provided in the letter dated 14.02.2020, the said capacity comes to 51.33 MW. Thus, there is a huge difference between the declared capacity as declared by the Petitioner and as per the methodology adopted by SLDC.

**Case #2: When the actual generation on a given day is less than 210 MWh.**

The example considered for the date 18.01.2019

**As per the Petitioner - Greenko Budhil:**

As per NRPC reports, the data of Greenko Budhil Hydro Power Plant for 18.01.2019 is as under:

Total No. of Units generated as per REA (LU)	A	1.77156
Units (kWh)	$B = A \times 100000$	177156
Units (MWh)	$C = B / 1000$	177.156
Possible Generation in three Hours if water is continuously available (MW)	$D = C / 3$	59.05
No. of Hours the plant can operate at 70 MW (Hrs.)	$E = C / 70$	2.53

As per the above table, the actual generation is 177.156 MWh and the corresponding Declared Capacity of the plant shall be 58.78 MW if both the machines are technically available. Whereas, on that day, one of the units in the plant was under annual maintenance. Thus, the Petitioner submitted Declared Capacity as 34.58 MW after considering the losses whereas SLDC calculated Declared Capacity as follows:

Time Block	Actual	Hourly Average
1	8.604	34.30
2	8.568	
3	8.568	
4	8.568	
5	8.532	34.12
6	8.532	
7	8.532	
8	8.532	
9	8.532	34.12
10	8.532	
11	8.532	
12	8.532	

As per the methodology adopted by SLDC for computing declared capacity, which is provided in the letter dated 14.02.2020, the said capacity comes to 34.12 MW whereas SLDC has certified Declared capacity on that day as 34.01 MW.

2.17. The Petitioner submitted that the aforesaid erroneous certification of Declared Capacity by SLDC is completely contrary to the Regulations of the Commission and the PPA, whereunder it is the capacity declared by the Generator which has to be considered as

Declared Capacity. Once the Regulations are clear and unambiguous, then the same have to be followed by SLDC.

2.18. The Petitioner submitted that in case of under-injection/over-injection, under the Regulations of the Commission, the Petitioner is liable and has to bear DSM penalty in proportion to the under-supply as well as over-supply. The said levy on account of deviation is calculated based on the difference between the schedule provided by the Petitioner, and the actual power injected into the grid, and as such, the DSM penalty is, accordingly, borne by the Petitioner.

2.19. The Petitioner submitted that the Annual Fixed Charge for the Budhil HEP is recoverable in two parts viz. Capacity Charge and Energy Charge from UPCL. The prescribed formula under Tariff Regulations, 2018 for determination of Capacity is as follows:

$$\frac{AFC \times 0.5 \times NDM}{NDY} \times (PAFM/NAPAF) \text{ (in Rupees)}$$

*Where,*

*AFC = Annual fixed cost specified for the year, in Rupees.*

*NAPAF = Normative plant availability factor in percentage*

*NDM = Number of days in the month*

*NDY = Number of days in the year*

*PAFM = Plant availability factor achieved during the month, in Percentage*

*Further, PAFM shall be computed in accordance with the following formula:*

$$PAFM = 10000 \times \frac{\sum DC_i}{N \times N} \times \frac{100 - AUX}{100}$$

$$IC \times (100 - AUX)\%$$

*Where,*

*AUX = Normative auxiliary energy consumption in percentage*

*DC<sub>i</sub> = Declared capacity (in ex-bus MW) for the i<sup>th</sup> day of the month which the station can deliver for at least three (3) hours, as certified by the Uttarakhand State Load Despatch Centre after the day is over.*

*IC = Installed capacity (in MW) of the complete generating station*

*N = Number of days in the month.*

2.20. The Petitioner submitted that Tariff Regulations, 2018 provides for consideration of capacity declared by generator for computation of Plant Availability Factor during a month (PAFM). In this regard, the contention raised by SLDC that it is following the minutes of meeting dated 07.07.2017 and thereby verifying the Declared Capacity of the Petitioner's HEP is completely erroneous, misplaced and untenable in as much as the said Respondent, being a statutory body, is obligated to perform its functions in accordance with the provisions of the Act, and in accordance with the Regulations of the Commission. In addition, the Minutes also provide that the issue of computation of declared capacity is to be finally adjudicated by the Commission. Therefore, there is no sanctity of the stipulations mentioned in the Minutes, till a final decision is taken by the Commission.

2.21. The Petitioner submitted that SLDC has been considering a much lower figure as the Declared Capacity which is derived from the Actual Injection, which is neither contemplated nor provided under the Regulations or under the Tariff Orders. SLDC is required to determine Declared Capacity as per the formula given in the Tariff Regulations, 2015 and 2018. The PAFM, i.e. Plant availability factor in percentage has to be determined taking into account DCi. Further, Regulation 50(3) of the said Regulation clearly states as follows:

*"DCi= Declared capacity (inn ex-bus MW) for the ith day of the month which the station can deliver for at least three (3) hours, as certified by the Uttarakhand State Load Despatch Centre after the day is over."*

2.22. SLDC instead of verifying the Declared Capacity of the Petitioner's Hydro Power Plant in accordance with the provisions of Regulation 50 (3) of MYT Regulations, 2018, has been harping upon and trying to justify its actions placing reliance on Minutes of the Meeting dated 07.07.2017. The Petitioner in its letter dated 27.02.2020 has amply demonstrated that SLDC is not following the formula stipulated for determination of declared capacity as stipulated above. This has led to substantial deviation thereby resulting in any increased impact of UI.

2.23. The Petitioner submitted that it has been penalised twice for no fault of it and is forced to pay DSM penalty and is subjected to reduced Declared Capacity quantum by SLDC. This

is having adverse effect on its tariff and thereby reducing its allowable return on equity.

2.24. The Petitioner submitted that in case of over-injection, SLDC is not recognising a higher Declared Capacity. The actions of SLDC are clearly prejudicial, since the Petitioner is penalized in case of under-injection, while not providing any incentive in case of over-injection. The Petitioner also submitted that SLDC is not permitted under the law to take the Declared Capacity to suit its convenience, which in turn is detrimental to the Petitioner. It is settled principle of law that a party cannot approbate and reprobate at the same time.

2.25. The Petitioner submitted that as per the Electricity Act, 2003, the State Load Dispatch Centre has been entrusted with the function of optimum scheduling and dispatch of electricity within a State in accordance with the contracts entered into with the licensees or the generating companies operating in that State.

In terms of the PPA dated 06.01.2017, the parties had categorically understood and entered into the agreement with the express understanding that Declared Capacity shall be the one which has been declared by the Generating Station. The said PPA was approved by the Commission. However, SLDC is erroneously taking into account the actual injection as the Declared Capacity for the Petitioner's generating units. The same goes against the express understanding of the parties in terms of the PPA dated 06.01.2017 which was approved by the Commission. The Petitioner also submitted that the Commission while approving the PPA dated 06.01.2017 also directed UPCL to amend the definition of Declared Capacity mentioned in the PPA to sync it with the applicable Tariff Regulations. On account of the aforesaid departure from the provisions of the Electricity Act, 2003, as well as the contractual understanding arrived at between the Petitioner and UPCL, SLDC has arbitrarily exercised its power and authority delegated upon it under Section 32 of the Act.

### **3. Respondents' submissions**

3.1. The Commission forwarded the copy of the Petition to UPCL and SLDC for comments and fixed a hearing on 29.10.2020. SLDC vide its letter dated 19.11.2020 requested the Commission to allow additional 10 days for submission of comments in the matter. Subsequently, UPCL vide its letter dated 21.11.2020 also sought additional time of 15 days for submission of comments. The Commission accepted the requests of the Respondents

and rescheduled the hearing for 22.12.2020. SLDC and UPCL vide letters dated 01.12.2020 and 04.12.2020 submitted their reply to the Commission which have been dealt in the subsequent paragraphs of this Order.

- 3.2. SLDC submitted that the Petitioner's plant is connected to the CTU network. Therefore, as per Regulation 6.4.2 of Indian Electricity Grid Code (IEGC) Regulations, 2010, the control areas of the generating station are under the scheduling jurisdiction of NRLDC and if a generating station is connected only to State Transmission Network, then SLDC shall coordinate scheduling. Further, as per Regulation 7.4 of State Grid Code, 2016 the SLDC is responsible for coordinating the scheduling of a generating station, within the State Control area and checking that there is no gaming (gaming is an intentional mis-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain) in its availability declaration.
- 3.3. SLDC submitted that since the Petitioner's Budhil HEP fall under the control area jurisdiction of NRLDC, its scheduling, DSM accounting, real time monitoring, station operation etc. is being carried out by NRLDC. Further, since the plant is situated outside the State of Uttarakhand and does not come under the control area jurisdiction of SLDC, the State Grid Code Regulations, 2016 are not applicable on the Petitioner's plant.
- 3.4. SLDC submitted that during the meeting held on 25.04.2017 with the Petitioner in the presence of official of UPCL regarding verification of declared capacity. It was mutually agreed that the Petitioner shall seek appropriate directions from the Commission on the methodology of verification of Declared Capacity by SLDC. Accordingly, the Petitioner had approached the Commission in the matter and a meeting was convened on 07.07.2017 on the said issue. Subsequently, based on the comments received from the stakeholders on the minutes of meeting held on 07.07.2017, the Commission issued amendment to the said minutes and stated that whenever possible the verification of Declared Capacity shall be based on the hourly MW capacity (which the station can deliver for atleast three (3) hours) on the basis of analysis of daily Load Survey Report for each billing month by SLDC and UPCL should ensure to schedule its requirement equivalent to generator's declared capacity for atleast 3 hours in a day.
- 3.5. SLDC submitted that it continues to verify the Declared Capacity of the Petitioner's plant

by deriving DC (in ex-bus MW) for each day of billing month from 3 hours average daily MWhr generation/energy till July, 2018. UPCL started providing validated MRI data (Load Survey data) to SLDC w.e.f. August, 2018. Therefore, SLDC is verifying the Declared Capacity of the Petitioner's plant w.e.f. August, 2018 based on the hourly MW capacity which the station can deliver for atleast three hours on the basis of the daily Load Survey Report for each billing month.

- 3.6. The Petitioner submitted that SLDC is issuing verified provisional Declared Capacity for each month directly to the Petitioner with a copy to UPCL. In response, the Petitioner has never represented or raised its concern before SLDC but has rather chosen to file the present Petition.
- 3.7. With regard to delay in verification of the Declared Capacity, SLDC submitted that SLDC is verifying DC of the Petitioner on the basis of analysis of MRI data (Load Survey report) of meters installed at the generator bays of the Petitioner's plant as provided by UPCL. SLDC submitted that barring few instance, SLDC verifies the Declared Capacity of the Petitioner's plant within a week after getting the Load Survey data from UPCL.
- 3.8. SLDC also submitted that the Petitioner was a consenting party in the meeting held on 07.07.2017 and the Petitioner never objected or represented before SLDC against the provisionally verified Declared Capacity that indicates that the Petitioner is making post-meditative claims before the Commission with an intent to draw more commercial gain.
- 3.9. With regard to deviation in the Declared Capacity claimed by the Petitioner and approved by SLDC, SLDC submitted the main reason for variation between the Declared Capacity claimed by the Petitioner and verified by it is that during most of the months of FY 2018-19 the Petitioner had claimed Declared Capacity for two machines while as per the Load Survey Data only one machine was available for the required period of time, i.e. 3 hours in a day. SLDC submitted that the major differences between the Declared Capacity claimed by the Petitioner and verified by SLDC is on account of mis-declaration by the Petitioner and not due to the prevailing procedure and methodology for verifying the DC.
- 3.10. SLDC submitted that it is due to the methodology decided during the meeting held on 07.07.2017, such act of gaming by the generators could be checked by SLDC. Further, as per State Grid Code Regulations 2016, a generator is liable to pay penalty for every mis-

declaration. However, the said Regulations are not applicable on the Petitioner's plant as it is situated outside the State of Uttarakhand. Therefore, penalty under the said regulation cannot be levied on the Petitioner.

- 3.11. With regard to DSM penalty, SLDC submitted that during the meeting held on 07.07.2017, it was advised that UPCL should also ensure to schedule its requirement equivalent to generator's declared capacity for atleast 3 hours in a day. Accordingly, the generator is punching its schedule at NRLDC equivalent to its Declared Capacity for atleast three hours in a Day. There have been many instances where the generator could not demonstrate its Declared Capacity for three hours. Further, there have been instances where the generator has claimed its Declared Capacity on the basis of availability of both of its Machines for more than three hours while only one machine was available. SLDC also submitted that there have been many recorded instances where the generator claimed its Declared Capacity on the basis of availability of generation for more than three hours (12 Time Blocks) but could actually remain available for lesser time duration. In order to avoid DSM charges, the generator rather revised its schedule with NRLDC for less than three hours but claimed higher DC in its monthly application raised to SLDC. This could only be identified on the basis of analysis of Load Survey data of meters installed at its generator's bays.
- 3.12. SLDC submitted that Indian Electricity Grid Code and State Grid Code of Uttarakhand assigns responsibility of Load Despatch Centres to check that there is no gaming (gaming is an intentional mis-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain) in its availability declaration and revision of availability declaration and injection schedule. Further, the matter of Budhil HEP is a peculiar case where the generator is punching its schedule with RLDC and claiming its Declared Capacity from SLDC and in such a scenario gaming to an extent can only be avoided if SLDC verifies the Declared Capacity of the generator outside its control area jurisdiction on the basis of analysis of Load Survey data of meters installed at its generator's bays.
- 3.13. SLDC submitted that there are many instances i) where machine was available for only 09 time blocks, however, Declared Capacity was claimed for 12 time blocks (3 hours running), ii) the Petitioner revised the schedule at NRLDC level to avoid DSM charges, however, no

revision in Declared Capacity submitted to SLDC and iii) only one turbine available for minimum 3 hours, however, Declared Capacity was claimed considering both turbines as available.

- 3.14. UPCL vide its reply dated 04.12.2020 submitted that the tariff of the Petitioner's plant was determined vide Commission's Order dated 30.11.2016, thereafter, Tariff Order dated 21.3.2018 was passed by the Commission approving the AFC for FY 2018-19, then again Petition was filed by the Petitioner seeking true up of AFC for FY 2017-18, APR for FY 2018-19 & AFC for FY 2019-20 in which the Tariff Order was passed on 27.2.2019, all this while the Petitioner did not make any such assertions, however, the Commission itself during the proceedings of truing up of AFC for FY 2018-19, APR for 2019-20 & AFC for 2020-21, directed the Petitioner to submit the reasons for substantial difference between the declared capacity claimed by the Petitioner and provisionally verified by SLDC in the month of September and October 2018 and January 2019.
- 3.15. UPCL submitted that in the meeting held on 25.04.2017, it was agreed that until further directions of the Commission, SLDC shall verify the provisional declared capacity for the period starting from the month of December 2016 on the basis of MW capacity declared (Ex-bus) by the generator or the MW capacity calculated on the basis of actual generation (MWh) for the day that could have been delivered by the plant for 3 hours of running subject to availability of required numbers of machine or unit, whichever, is less. UPCL also submitted that during the said meeting various difficulties were pointed out with respect to verification of Declared Capacity owing to plant located outside the State and directly connected to transmission network of CTU, however, considering the difficulty of the generator in case the verification of Declared Capacity got delayed both SLDC and UPCL had cooperated with the generator and had framed the provisional methodology for verification of Declared Capacity.
- 3.16. UPCL submitted that the Petitioner in the meeting dated 25.04.2017 had agreed that demonstration of declared capacity by Uttarakhand SLDC was not possible as being outside its control area and NRLDC was approached for verifying the declared capacities which was refused by them. Thereafter, the declaration of the capacity has been done as per the agreement reached on 25.04.2017 and no objection in that regard was raised by the

Petitioner. Subsequent to meeting held on 25.04.2017, further meeting was conducted by the Commission on 07.07.2017 wherein the Commission had given consent to continue with the methodology finalized in the earlier meeting, however, had directed that whenever possible, the verification of Declared Capacity shall be based on hourly MW capacity (which the station can deliver for atleast 3 hours) on the basis of analysis of load survey report for each billing month by SLDC. Moreover, the Commission had instructed to install the meters at generator bays and in their direction had relied upon the load survey data of these meters only. UPCL submitted that the Petitioner itself had agreed on the said procedure as the settled methodology was actually the part of minutes of meeting in which the Petitioner himself was present and had also willingly installed the meters which were duly sealed by UPCL.

3.17. UPCL submitted that the Petitioner was a party to meetings held on 25.04.2017 and 07.07.2017 wherein the methodology was specifically elaborated. Therefore, the Petitioner had no reason to believe that SLDC would accept the declaration of the Petitioner as it is and certify the declared capacity on the basis of such declaration when actually Declared Capacity is to be verified based on the analysis of daily load survey report. UPCL also submitted that if the Petitioner bonafidely believed that SLDC should have verified the Declared Capacity as declared by the Petitioner without any cross check then the same contention should have been raised before the Commission in the meeting held on 07.07.2017. Further, it is to emphasize that both Indian Electricity Grid Code and State Grid Code clearly mandates that SLDC is the responsible body to ensure that there should be no gaming, i.e. mis-declaration of Declared Capacity by the generator and SLDC has rightfully cross checked the Declared Capacity as per the minutes of meeting issued by the Commission. Moreover, the Tariff Regulations, 2015 and 2018 provide for the verification of the DCi by the SLDC after the day is over and, therefore, SLDC could best verify Declared Capacity from the Load Survey Report and upon this consideration the Commission directed for installation of meter at Generator Ex Bus.

3.18. UPCL submitted that in the said meeting held on 07.07.2017, the SLDC had mentioned the difficulties faced by it in verification of Declared Capacity and, accordingly, the Commission had further directed UPCL that in case the generator declares availability of both its machines and declares capacity in excess of installed capacity of one machine,

UPCL should give its schedules to the generator for the day in such a manner that it exceeds the unit rating of one machine plus its over load capacity in order to ensure availability of both machines. Simultaneously, UPCL should also ensure to schedule its requirement equivalent to generator's DC for atleast 3 hours in a day.

3.19. UPCL submitted that the communication w.r.t Declare Capacity variation was made by the Petitioner vide various letters initially starting from 07.07.2018. Referred communications were actually the covering letters of monthly invoices and had not contained information about any reason of objection on Declared Capacity by SLDC and, accordingly, are of no consequences as if the Petitioner actually had any objection regarding verification of declared capacity by SLDC. The objection should have been made before the SLDC and without doing the same the Petitioner had no right to make any reservation to raise a supplementary invoice subsequently. UPCL also submitted that the Petitioner was aware that UPCL was bound to make payments as per the Declared Capacity verified by SLDC and UPCL has no right or responsibility in the declaration of Declared Capacity. UPCL also submitted that without any objections or communication being made to SLDC, it cannot be considered that there is any dispute regarding verification of declared capacity.

3.20. UPCL submitted that the Petitioner has not actually challenged the methodology adopted by SLDC for verifying the declared capacity, the Petitioner could not be permitted to challenge the same as the same was agreed by the Petitioner in the minutes of meeting dated 07.07.2017 which was circulated through letter dated 12.09.2017 by the Commission. Further, the method for verification of Declared Capacity is available and agreed between the parties which is not only reasonable but very just and fair. UPCL submitted that it has noticed that there were major differences between the capacities declared by the Petitioner and the one verified by the SLDC which clearly demonstrate that the Petitioner at times had mis-declared their capacities.

3.21. UPCL also requested the Commission to forward the comments of SLDC and permit UPCL to make further submissions, if any. The Commission accepted the request of UPCL and forwarded the copy of SLDC's comments to UPCL. Subsequently, UPCL vide its letter dated 21.12.2020 submitted that SLDC has filed a detailed and elaborative reply catering to all the contentions raised by the Petitioner and SLDC has correctly and factually given the

reply considering both the provisions of the Regulations and consensus according to which the capacity of the Petitioner's plant was certified by SLDC.

#### **4. Petitioner's rejoinder**

4.1. The Commission conducted an online hearing on the merits of the Petition on 22.12.2020. The Commission forwarded the comments of SLDC and UPCL to the Petitioner and vide Daily Order dated 22.12.2020 gave a liberty to the Petitioner to submit its rejoinder on the replies made by the Respondents. Subsequently, the Petitioner vide letter dated 04.01.2021 submitted rejoinder which has been discussed in the subsequent paragraphs of this Order.

4.2. The Petitioner submitted that it is aggrieved by the current methodology in computation of Declared Capacity of the Petitioner's plant adopted by SLDC. As a result, the Declared Capacity presently as computed by SLDC works out to be lower than its fair value on account of following:

- Lower of the actual generation or declared schedule is being considered.

The Petitioner gets penalized for under-injection, i.e. (w.r.t. Declared Schedule) through DSM as well as non-allowance of the same in Available Generation Capacity whereas in case of over-injection (w.r.t. Declared Schedule), the computation of Declared Capacity does not recognize/take cognizance of the same.

- Least generation of the three hours is being considered.

In this way, Declared Capacity computation for Petitioner's plant is hourly least as well as lower of scheduled vs actual. This is not in consonance with the definition of "Declared Capacity" as provided in Tariff Regulations, 2015 and 2018.

4.3. The Petitioner submitted that as per Regulation 3(22) of Tariff Regulations, 2015 and 2018, Declared Capacity is as per the schedule "declared" by the generating station and not as per actual generation of the plant. If the actual generation of the plant is to be taken as Declared Capacity, then there is no purpose in asking the generating station to declare its available capacity on a day ahead basis. The Petitioner submitted that the Available generation capacity declared by the Petitioner is same as the generation schedule which is discussed and finalized with UPCL. Moreover, the Petitioner submitted an undertaking confirming their Declared capacity on stamp paper as insisted by SLDC on monthly basis.

Further, any deviation between Scheduled Generation and Actual Generation is being monitored by Northern Region Load Despatch Centre (NRLDC) under the DSM mechanism and the generator is being penalized for the same.

- 4.4. The Petitioner submitted that PLF for a thermal generating station depends on the “scheduled generation” of the thermal plant and not its actual generation. A thermal plant has visibility of generation based on its fuel availability, i.e. coal availability on day ahead basis and even then its scheduled and not actual generation is considered for calculation of its PLF. It is for the simple reason that the beneficiary of the scheduled power from the generator does not get impacted by any variation in actual supply by the generator w.r.t to the schedule under the existing DSM mechanism. However, in case of a Hydro plant, there is no clear visibility of its fuel availability, i.e. water on a day ahead basis and availability of water gets impacted by various weather conditions such as cloud cover, temperature drop, sunlight, humidity etc. for the catchment area of the hydro generating plant. Even a small variation in such weather conditions significantly impacts the water inflow discharge. Due to such variations, there may be some mismatch observed between the scheduled and actual generation. Hence, assuming that a hydro generating station predicts its water availability during the specified 3 hours with 100% accuracy on a day ahead basis is a big ask considering that not even a weather forecaster can predict the weather/rainfall during specified hours 100% accurately.
- 4.5. The Petitioner submitted that Budhil plant is connected to ISTS and is under the control area of the respective RLDC as per CERC (Indian Electricity Grid Code) Regulations, 2010. Respective RLDC in Budhil’s case is NRLDC. Therefore, NRLDC is monitoring Budhil plant’s schedule and actual generation and, accordingly, DSM charges are levied on Budhil hydro plant. Further, any mis-endeavour including gaming by any generating station would be under the purview of respective RLDC as per above mentioned regulation in IEGC. Hence, Budhil plant under above regulations, is also being watched by NRLDC for any gaming with respect to deviation between scheduled vs actual generation to garner any undue benefit for the same Hence, it is in-consistent with the current Indian electricity grid management regulatory framework to align methodology for computation of Declared Capacity of a hydro generating station to manage/prevent gaming by the respective generator since this aspect is being assigned to the respective RLDCs.

- 4.6. The Petitioner submitted that Budhil plant is peculiar as its location and power sale is to different States. NRLDC was also approached for declaring Budhil’s capacity, however, they did not agree to do so since tariff is being determined by a State Commission. Considering the same, the Petitioner requested the Commission to allow the methodology for computation of Declared Capacity for Budhil plant as is being followed by NRLDC for other ISTS connected plants under its control areas.
- 4.7. The Petitioner submitted that the methodology decided in meeting is not being followed while computation of Declaring Capacity. As per the minutes dated 07.07.2017, for each day of a billing month, three (3) hours average daily MWhr generation has to be calculated. Also, the purpose of daily Load Survey Report was to ascertain availability of respective generation units of Budhil plant since it provides generation data of respective generation units of the Budhil plant. As otherwise, the total generation of Budhil hydro plant is anyways being recorded by the CTU meters installed at the NHPC Chamera -III hydro plant sub-station. However, the current computation of Declared Capacity, considers the lowest of three hours. There is an inherent prejudice/law with this methodology as explained below:

Consider the following actual generation example:

Hour	Capacity
1	70 MW
2	70 MW
3	0 MW

As per the present Declared Capacity computation methodology, lowest of the three-hour generation capacity in the above case is zero (0 MW). If the plant follows the same generation schedule every day for a month, then the monthly declared capacity shall become 0 MW despite providing 70 MW for two hours every day to UPCL. Hence, this inherent fallacy in the DC computation methodology being followed has to be corrected.

- 4.8. The Petitioner submitted that as per the current arrangement, Declared Capacity of the Petitioner’s plant is converted to injection schedule on a day-ahead basis. The Petitioner’s plant declares its day-ahead generation schedule after finalization of the same with UPCL. Thus, Declared Capacity is converted into generation schedule on a day ahead basis. Accordingly, UPCL gets its scheduled generation quantum irrespective of actual generation

by Petitioner generation plant and UPCL's requirement is not impacted by any deviation in schedule vis-à-vis actual generation of Petitioner hydro plant. Hence, any deviation between scheduled generation (or Declared Capacity since generation schedule is based on the same) and actual generation, including gaming, is being penalized through DSM regulations by NRLDC. The Petitioner submitted that it has paid DSM penalty of Rs. 4.46 Crore and Rs. 1.62 Crore for FY 2018-19 and FY 2019-20 respectively which clearly demonstrates that the Petitioner has not garnered any undue incentive as alleged through gaming (or wilful mis-declaration of Declared Capacity) under the DSM arrangement. Moreover, prevention/mitigation of gaming by a generator through reduction of computed Declared Capacity is not in line with existing regulatory regime in this regard. Hence, it becomes very clear that on one hand the Petitioner is being penalized (in Crore) under DSM arrangement by NRLDC and at the same time Petitioner is being doubly penalized by under-estimating the computed Declared Capacity in line with the present methodology.

- 4.9. The Petitioner submitted that considering the records produced by SLDC with respect to the issue regarding time delay to issue declared capacity, it can be easily verified that submission of verified MRI by UPCL to SLDC has been mostly done post 15 days of every calendar month, even though MRI data is being submitted by the Petitioner within first 2-3 days of every calendar month. This explains the issue with respect to delay in issuance of Declared Capacity. This time taken needs to be expedited and a maximum time limit needs to be ascertained for submission of verified MRI post receipt of the same by UPCL as well as issuance of Declared Capacity certificate by SLDC post receipt of verified MRI.
- 4.10. The Petitioner submitted that gaming and DSM is being monitored by NRLDC. The Load survey report only provides the data about the availability of respective units of Petitioner generating station and the same has nothing to do with monitoring of gaming since monitoring of deviation including gaming is under the purview of NRLDC for Petitioner's Hydro plant.
- 4.11. With regard to deviation between the scheduled energy and actual generation, the Petitioner submitted that during the months of March & April, when the water flow starts increasing after the lean winter season as well as during the months of October, November & December when water starts receding after the peak monsoon months, deviation

between scheduled and actual generation is observed due to the changing upward/downward trend of water flow. Petitioner is paying penalty in the way of DSM charges primarily for these deviations. These DSM charges are not being recovered in the annual ARR by the Petitioner. Therefore, if Declared Capacity computation based on actual generation is allowed, then consequently DSM penalty/incentive should also be allowed to be incorporated in the ARR of the Petitioner hydro plant.

- 4.12. The Petitioner submitted that provisional declared capacity certificate is being issued by SLDC as this is a provisional arrangement. Therefore, there is an implicit understanding that in future in case any issues in methodology are encountered, then the same can be discussed and attended to. Issues being faced by the Petitioner are thus being raised vide present Petition.
- 4.13. The Petitioner submitted that the purpose of issuing the IEGC regulations was to enable harmonious working of the grid between all entities concerned. This included review of the deviation between the scheduled and actual generation of the generating stations. As per the IEGC, the responsibility to manage the obligated entities to adhere to the schedule generation/drawl is being managed by respective RLDCs.
- 4.14. The Petitioner submitted that as per the current methodology being followed, the declaration of capacity of Petitioner is being discussed with UPCL and accordingly the same is being entered as per schedule in NRLDC's system. Hence, any deviation from scheduled generation vis-à-vis actual generation is same as the deviation between the Declared Capacity and actual declared capacity of the Petitioner plant. Since NRLDC is the statutory authority, it is in a way managing the deviation between the actual generation and declared capacity also. Therefore, deviation in generation including alleged gaming cannot be penalized by any other entity other than NRLDC.
- 4.15. The Petitioner requested the Commission that the methodology for computation of Declared Capacity being followed by NRLDC for ISTS connected plants under its control area to be allowed to be followed even for the Petitioner's plant. The Petitioner also requested the Commission to ascertain a maximum time limit for verification of MRI as well as for issuing declared capacity certificate post receipt of verified MRI.

## 5. Commission's Analysis and view

- 5.1. The present Petition has been filed under Section 86(1)(a), Section 86(1)(f) read with Section 61(d) of the Electricity Act, 2003 seeking directions to SLDC to consider Scheduled Capacity as the Declared Capacity in accordance with Section 32(2)(a) of the Electricity Act, 2003 which specifies one of the functions/responsibilities of SLDCs, i.e. SLDC shall be responsible for optimum scheduling and despatch of electricity within a State, in accordance with the contracts entered into with the licensees or the generating companies operating in that State.
- 5.2. The Commission forwarded the copy of the Petition to UPCL and SLDC for comments and fixed a hearing on 29.10.2020 which was subsequently rescheduled on 22.12.2020 on the request of UPCL. Subsequently, SLDC and UPCL vide letters dated 01.12.2020 and 04.12.2020 submitted their replies to the Commission. The Commission conducted an online hearing of 22.12.2020 and heard the parties in the matter. The Commission vide its daily Order dated 22.12.2020 gave liberty to the Petitioner for submission of rejoinder on the replies made by UPCL and SLDC before the Commission. The Petitioner vide its submission dated 04.01.2021 submitted its rejoinder before the Commission against the reply made by UPCL and SLDC. The Commission heard all the parties and considered their written submissions as well as oral submissions made before the Commission during online hearing. The Commission has critically analysed the issues raised by the Petitioner, UPCL and SLDC. The Commission also conducted a meeting with the officers of the Petitioner and the Respondents in the Commission's office on 19.02.2021 for deliberations in the matter. After examining the relevant material available on records, issues raised by the Petitioner and the Respondents have been dealt in the subsequent paragraphs of this Order.
- 5.3. The Commission observed that the Petitioner in the subject matter of the Petition requested the Commission to direct SLDC to consider Scheduled Capacity as Declared Capacity whereas in the Prayers of the Petition, the Petitioner has requested the Commission to declare that the Declared Capacity of the Petitioner's Plant shall have to be determined, verified and certified by SLDC in accordance with Regulation 7.5 (14) of UERC (State Grid Code) Regulations, 2016 read with Regulation 3(22) of MYT Regulations, 2015 and 2018.
- 5.4. It is to be noted that the issue of verification of declared capacity was first time discussed

during the meeting held on 25.04.2017 at SLDC office in the presence of officials of SLDC, UPCL and the Petitioner. Subsequently, a meeting was also held on 07.07.2017 at the Commission's office with the concerned officers of the Petitioner, UPCL and SLDC which were amended by the Commission vide its letter dated 12.09.2017 based on the comments received from the concerned parties. Thereafter, the Commission approved the ARR for FY 2018-19 and FY 2019-20 vide Tariff Order dated 21.03.2018 and 27.02.2019 respectively. However, no issue was raised by the Petitioner in this regard. The Petitioner raised the objection in the matter first time during the proceedings of ARR for FY 2020-21. The Petitioner should have raised such issue in the very first moment on receipt of amendment to MoM dated 07.07.2017.

- 5.5. The issue of verification of Declared Capacity of Budhil HEP arises as the Plant is connected to CTU system and is located outside the State of Uttarakhand. Furthermore, Regulation 7.3 of UERC (State Grid Code) Regulations, 2016 specifies that the State Grid Code shall be applicable to SLDC/ALDCs, IaSGS, Transmission Licensees/STU and other beneficiaries in the State Grid Code Chapter 7 (Schedule and Despatch Code). The Plant of the Petitioner is situated outside of the State and does not come under the control jurisdiction of SLDC because as per Regulation 1.2 (1) of UERC (State Grid Code) Regulations, 2016, these regulations shall be applicable to all the generating stations which are connected to Intra State Transmission System. Accordingly, demonstration of Declared Capacity by SLDC is not possible as the plant is outside control are of SLDC.
- 5.6. The Commission observed that NRLDC was also approached for verifying the Declared Capacity of Budhil HEP. However, NRLDC refused to verify the same due to the reason that the tariff determination for the project is done by UERC and NRLDC has jurisdiction for verification of Declared Capacity for only those plants where tariff determination is done by Central Commission. Accordingly, in the meeting convened on 25.04.2017 at SLDC office with UPCL and M/s Greenko, it was decided that least of the declared (ex-bus) in MW by the generator and MW capacity calculated on the basis of actual generation (MWH) for the day that could have been delivered by the plant for three hours of running subject to availability of required number of machines/units, shall be verified by SLDC.
- 5.7. The Petitioner submitted that it was under the belief that SLDC will accept the declaration

made by it and clarify the same as “Declared Capacity”, as the same is the correct legal position, in terms of Regulation 3(22) of MTY Regulations, 2015 & MYT Regulations, 2018. In the matter, the Commission observed that it was explicitly mentioned in the MoM convened on 25.04.2017 that until further directions of the Commission, SLDC shall verify the provisional Declared Capacity as least of MW capacity declared (ex-bus) by generator or the MW capacity calculated on the basis of actual generation (MWH) for the day that could have been delivered by the plant for 3 hours of running subject to availability of required number of machines. Moreover, the Commission vide its amended MoM dated 07.07.2017 also clarified that whenever possible, the verification of Declared Capacity shall be based on hourly MW capacity (which the station can deliver for atleast three hours) on the basis of analysis of daily Load Survey Report for each billing month by SLDC.

Further, as far as Regulation 3(22) of MYT Regulations, 2015 and 2018 is concerned, it specifies as follows:

*“Declared Capacity” or “DC” in relation to a generating station means, the capacity to deliver ex bus electricity in MW declared by such generating station in relation to any timeblock of the day or whole of the day, duly taking into account the availability of fuel or water, and subject to further qualification in the relevant Regulations.”*

Further, Regulation 50(3) of aforesaid Regulations specifies as follows:

*“DC<sub>i</sub>” = Declared Capacity (in ex bus MW) for the ith day of the month which the station can deliver for at least three (3) hours, as certified by the Uttarakhand State Load Despatch Centre after the day is over.”*

It is explicitly clear from the aforesaid regulations, that in case of hydro power plants, declared capacity shall be verified by SLDC after the day is over based on the energy that can be delivered for at least three hours. Further, as discussed in above paragraphs of this Order, demonstration of Declared Capacity by SLDC is not possible as the plant is connected to CTU network and outside the control area of SLDC. Furthermore, it is a peculiar case where the Petitioner is punching its schedule with NRLDC and claiming its Declared Capacity from SLDC. Therefore, it was decided during the meeting held on 07.07.2017 that whenever possible, the verification of Declared Capacity shall be based on hourly MW capacity (which the station can deliver for at least three hours) on the basis of

analysis of daily Load Survey Report for each billing month by SLDC. Further, ABT meters were installed at the generator bays to devise a check through Load Survey data. Therefore, the statement of the Petitioner that it was of the bonafide belief that SLDC will accept the declaration made by the Petitioner, is not acceptable as it also accepted the MoM dated 07.07.2017.

- 5.8. With regard to the scenarios submitted by the Petitioner stating that there is difference between the Declared Capacity as declared by the Petitioner and as per the methodology adopted by SLDC, the Commission observed that the Petitioner has considered the entire day generation for working out the number of hours for which the plant can be operated at 70 MW whereas as per Regulation 3(22) read with Regulation 50(3) and point (5) of amendment to MoM dated 07.07.2021, it is explicitly clear that the verification of Declared Capacity shall be based on hourly MW capacity which the station can deliver for at least three hours. Further, for the purpose of MW capacity which can be delivered for at least three hours, entire day is divided into ninety-six time blocks of fifteen minutes each and twelve blocks with the highest generation after arranging the generation in descending order. However, during the meeting held at the Commission's office on 19.02.2021, the Petitioner challenged the present methodology specified under regulations and decided in MoM dated 07.07.2017 for verification of Declared Capacity and requested the Commission to allow verification of the Declared Capacity based on the average of the MW capacity which can be delivered for at least three hours.

With respect to the request of the Petitioner, the Commission rejects the same on the ground that the request of the Petitioner amounts to amendment of the Tariff Regulations and any such amendment of Regulations requires a separate procedure given under Section 181 of the Electricity Act, 2003 and cannot be dealt in the current Petition as the same has been filed for seeking directions to SLDC w.r.t. Declared Capacity. The Petitioner is advised to submit its comments separately before the Commission latest by 20.07.2021 on the draft UERC Tariff Regulations for the fourth Control Period issued by the Commission.

- 5.9. The Petitioner, referring to the Central Commission's Order dated 12.02.2019 in Petition no. 205/MP/2018, submitted that SLDC should allow the Declared Capacity declared by the generator for the purpose of PAF calculation of the generating station. In the matter, the

Commission is of the view that the SLDC may certify the Declared Capacity as declared by the generating station based on ex bus electricity in MW declared subject to the further qualification in the relevant regulation. Further, in the present scenario, as discussed in above paragraphs of this Order, due to various difficulties like, location of plant outside the State of Uttarakhand, direct connectivity of plant to transmission network of CTU, it was decided to verify Declared Capacity from the Load Survey Report at the end of the billing month and UPCL was required to give its schedule to the generator for the day in such a manner that it exceeds the unit rating of one machine plus its over load capacity in order to ensure availability of both machines and also ensure to schedule its requirement equivalent to generator's Declared Capacity for at least 3 hours.

5.10. With regard to the interest amount claimed due to delay in raising invoice for supply of electricity to UPCL on account of delay in certification of Declared Capacity by SLDC, it is to be noted that as per the amendment to MoM dated 07.07.2017, verification of Declared Capacity is based on hourly MW capacity on the basis of Load Survey Report for each billing month by SLDC. ABT meter data is shared by the Petitioner with UPCL on monthly basis and which is forwarded to SLDC after processing into software. Further, the Commission observed from the submission of SLDC that the verification of Declared capacity is being done by SLDC within ten days apart from some instance where SLDC took 15-20 days for verification of Declared Capacity based on the MRI (Load Survey Report) submitted by UPCL. The Commission also observed that the Petitioner has not submitted any correspondence done with SLDC by the Petitioner in this regard. The Petitioner has not been diligently pursuing for timely receipt of verified Declared Capacity certificate from SLDC. Accordingly, the Commission does not find it prudent to allow any interest to the Petitioner on account of alleged delay in verification of Declared Capacity. However, considering the substantial time being taken, the Commission directs UPCL to forward Load Survey Report fetched from ABT meter to SLDC within 3 working days of closing of a month. Further, SLDC is directed to verify the declared capacity and issue certificate to the Petitioner within 5 working days from the receipt of Load Survey Report from UPCL.

5.11. With regard to amount on account of correct in PAFM, the Petitioner was one of the consenting parties to the MoM held on 25.04.2017 at SLDC's Office and MoM dated

07.07.2017 held at the Commission's office. Further, the Commission based on the comments received on the MoM dated 07.07.2017, issued an amendment to it taking cognizance of submission made by the Petitioner, SLDC and UPCL. Accordingly, the Commission does not find it prudent to allow any amount to the Petitioner on account of alleged corrected PAFM.

5.12. The Petitioner has submitted that during the month of March and April, when the water flow starts increasing after the lean winter season as well as during the months of October, November and December when water starts receding after the peak monsoon months, deviation between schedule and actual generation is observed due to the changing upward/downward trend of water flow. The Petitioner also submitted that it is paying penalty in the way of DSM charges primarily for these deviations. The Petitioner further submitted that as per current arrangements, Declared Capacity of Budhil HEP is converted into injection schedule on a day-ahead basis. The Petitioner declares its day ahead generation schedule after finalisation of the same with UPCL. Accordingly, UPCL gets its scheduled generation quantum irrespective of actual generation by Budhil HEP and UPCL's requirement is not impacted by any deviation in schedule vis-à-vis actual generation. Hence, any deviation between scheduled generation (or Declared Capacity since generation schedule is based on the same) and actual generation, including gaming, is being penalized through DSM regulations by NRLDC.

In the matter, SLDC submitted that as per Regulation 7.4 (17) & (18) of UERC (State Grid Code) Regulations, 2016 a generator is liable to pay penalty for every mis-declaration. However, State Grid Code of Uttarakhand is not applicable on Budhil HEP as the plant is situated outside the state and connected to CTU. With regard to difference between Declared Capacity claimed by the Petitioner and verified by SLDC, SLDC submitted that during FY 2018-19 and FY 2019-20, the majority difference is on account mis-declaration by the Petitioner and not due to the prevailing procedure and methodology for verifying the Declared Capacity. SLDC submitted that there are many instances where the Petitioner declared the capacity for both turbines, however, as per Load Survey Report only one machine was available for the required period of time. SLDC submitted that there have been many recorded instances where the Petitioner claimed its Declared Capacity on the basis of availability of generation for more than three hours but could actually remain

available for lesser time duration. Further, in order to avoid DSM charges, the generator rather revised its schedule with NRLDC for less than three hours but claimed higher Declared Capacity in its monthly application raised to SLDC.

As mentioned earlier, the Commission held a meeting on 07.07.2017 at the Commission's office with the officers of the Petitioner, UPCL and SLDC. With regard to non-predictability of water flow, SLDC submitted that Budhil HEP has a reservoir with a storage for three hours and the Petitioner can easily manage the fluctuation of power due to low flow of water. Further, the Petition should revise the Declared Capacity claim in accordance with the applicable regulations, the way it revises its schedule with NRLDC. The provisions in the MYT Regulations of the Commission and CERC Regulations regarding declared capacity are similar and hence, there should not be any variation in the capacity declared to NRLDC and SLDC. Further, the Petitioner's plant has been in operation for more than 9 years now and properly methodology to capture water flow for the next day would have been devised without which the Petitioner would not have been in a position to declare its declared capacity with NRLDC. If all the factors remain same, i.e. water availability as well as Machine availability, the capacity declared should match with the energy generated which is relied by SLDC to verify the declared capacity. Besides the Petitioner under the Regulations also has the option to revise its declared capacity which is being done by it before NRLDC and not before SLDC.

SLDC shall continue to verify the Declared Capacity of Budhil HEP as agreed in the meeting dated 07.07.2017 by considering the twelve blocks in a day with the highest generation after arranging the generation in descending order on the basis of validated MRI data of ABT meter installed at generator bays of the plant being provided by UPCL.

6. Ordered accordingly.

**(M.K. Jain)**  
**Member (Technical)**

**(D.P. Gairola)**  
**Member (Law)**