

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,  
SHIMLA

M/S Vamshi Hydro Energies Private Ltd.  
141, Avenue 8, L.V. Parsad Marg Road No.2,  
Banjara Hill Hyderabad (A.P) -500034

...Petitioner

V/s

1. State of Himachal Pradesh, through Principal Secretary (MPP&Power) to the Govt. of H.P. Shimla-2.
2. Himachal Pradesh State Electricity Board  
Kumar House, Shimla.

...Respondent

Petition No. 136 of 2009

(Decided on 10.12.2009)

**CORAM**  
**YOGESH KHANNA,**  
**CHAIRMAN**

Counsels:-

for the petitioner

Sh. Ajay Vaidya,  
Advocate

for the respondents

Sh. Narinder Singh Thakur,  
Advocate.

**ORDER**

(Last heard on 7.11.2009 and Order reserved)

M/S Vamshi Hydro Energies Private Ltd. 141, Avenue 8, L.V. Parsad Marg Road No.2, Banjara Hill Hyderabad (A.P)-500034, a Company incorporated under the Companies Act, 1956 (hereinafter referred as “the petitioner”) entered into on 22.11.2005, an Implementation Agreement with the Government of Himachal Pradesh, whereby the petitioner was granted right to establish, operate and maintain the Hydro Electric Project on IKU Khad, a tributary of Baner Khad, which is tributary of Beas River, in Distt. Kangra (H.P.) with an installed capacity of 05.00 MW. In pursuance of the said Implementation Agreement and also the provisions of section 86 (1) (b)

of the Electricity Act, 2003, (hereinafter referred as “the Act”) the petitioner and the Himachal Pradesh State Electricity Board (hereinafter referred as “the Board”) filed the joint petition bearing No. 65/2006, before the Himachal Pradesh Electricity Regulatory Commission (hereinafter referred as “the Commission”) for approval of the Power Purchase Agreement (for brevity “PPA”) to be executed between the Board and the Petitioner in respect of the said IKU-II Hydro Electric Project. The Commission approved the Power Purchase Agreement on 13<sup>th</sup> July, 2006, subject to the following observations:-

“Tariff and other terms and conditions of the PPA shall be subject to the provisions of the Commission’s regulations on power procurement from renewable sources, as and when such regulations are framed.”

2. The PPA, as approved by the Commission, was executed by the petitioner Company and the Board on the 1<sup>st</sup> Dec; 2006.

3. Subsequently in compliance with the statutory provisions in the Act [i.e. section 61(h) and section 86 (1)(e)], the policy guidelines given in the National Policy and National Tariff Policy and the directions given by the Hon’ble **APTEL in its decision dated 18<sup>th</sup> May, 2007 rendered in appeal No. 124 of 2006 – M/s Rajshree Sugars and Chemicals Ltd V/s Tamilnadu Electricity Commission**, the Commission made the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by the Distribution Licensee) Regulations, 2007 and issued thereunder an Order on the Small Hydro Power Projects and Tariff and other issues on the 18<sup>th</sup> December, 2007, as result of which the levelised tariff rate, at which the Board is required to purchase power from private parties/ joint sector Companies setting up micro hydel projects/ stations, stands refixed at rupees 2.87 per unit. Para 5.35 of the said Order reads as under:-

“5.35. This Order shall be applicable to all such Power Purchase Agreements (not exceeding 5 MW) which have already been approved by the Commission with a specific clause that “Tariff and other terms and conditions of the PPA shall be subject to the provisions of the Himachal Pradesh Electricity Regulatory Commission (Power Procurement from Renewable Sources and Co-generation by Distribution Licensee) Regulations, 2007” and

also the Power Purchase Agreements to be approved by the Commission hereinafter”.

4. The petitioner Company, under bonafide belief that the petitioner Company will automatically be able to receive the payment of enhanced tariff as fixed in the SHEP Order dated 18<sup>th</sup> Dec., 2007, raised the bills, but the respondent Board chose not to make the payments in accordance with the enhanced tariff, rather it continued to make the payment at the earlier rate. Subsequent representation made by the petitioner Company on 31.3.2009 also remained un- responded.

5. In these circumstances, the petitioner Company has approached this Commission, to direct the respondents -

(i) to pay the petitioner Company, the differential unpaid amount calculated @ of Rs. 2.87 paise per unit according to the SHEP Order dated 18<sup>th</sup> Dec., 2007; w.e.f. the date of achieving commercial operation date of its unit for generation i.e. 30.12.2008; and

(ii) to make consequential modifications in the PPA.

6. In its reply to the petition the respondent Board submits that the petitioner Company is not fully covered under the SHEP Order dated 18.12.2007 as much as the PPA approved on 13<sup>th</sup> July, 2006, i.e. prior to 31<sup>st</sup> July, 2006 does not fall within that order and hence the rate of Rs. 2.87 per KW is not applicable in this case.

7. The petitioner Company, through a rejoinder, has reiterated the averments made in the petition and has stated that the averments in relation to the cut of dated of 31.7.2006 made by the respondent Board are factually incorrect and the provisions of SHEP Order dated 18<sup>th</sup> December, 2007 are applicable to their project under para 5.35 thereof. Moreover, the PPA has been executed with the clear cut stipulation that tariff shall be subject to the provisions of the Commission’s regulations on power procurement from renewable sources as and when such regulations are framed.

8. This Commission had occasion to consider this issue while disposing of the petition Nos. 11/08, 20/2008, 21/2008, 43/08, 53/08,62/2008, 70/2008, 97/08, 183/08, 184/08, 267/08, 268/08 and 5/09 petitions **M/S DSL Hydrowatt Ltd; and others V/s State of Electricity Board decided on 29<sup>th</sup> Oct, 2009**. In para 19 of that order the Commission has concluded that in regard to the PPAs executed after 1<sup>st</sup> July, 2006, with clear

stipulation that the price to be paid by the licensee shall be as per HPERC (Power Procurement from Renewable Sources and Co-generation by the Distribution Licensee) Regulations, 2007.

9. In view of the position set out in the proceeding paras of this order there remains no doubt, as to the applicability of SHEP Order dated 18.12.2007 to the PPA executed by the petitioner Company with the Board on 13<sup>th</sup> July, 2006 in relation to the IKU-II HEP located on Baner Khad a tributary of the Beas River, in Kangra District. The Commission, therefore, directs the Board:-

- (i) to pay to the petitioner Company, w.e.f. the date of commercial operation of the generation of the unit i.e. 30.12.2008, the differential unpaid amount calculated at the rate of Rs. 2.87 per unit; and
- (ii) to make the consequential modifications in the executed PPA.

(Yogesh Khanna)  
Chairman