

**Present :**      **Shri D.K.Roy, Chairman**  
                      **Shri H.S. Sahu, Member**

M/s Grid Corporation of Orissa Ltd. .... **Petitioner**  
- Vrs. -

- .... **Respondents**

Supply Tariff specifying all the amounts payable by WESCO to GRIDCO under the terms of the Agreement or otherwise as per the directions of the Commission. GRIDCO shall give requisite details of the calculation of charges in respect of the relevant month in each Monthly Invoice.

(b) The amount of each Monthly invoice shall become payable by WESCO on the date falling 30 days after the date of such Monthly invoice whereupon WESCO shall pay the full amount of such Monthly invoice to GRIDCO without deduction set off or withholding on any account whatsoever unless, otherwise, agreed between GRIDCO & WESCO".

4. The Bulk Supply Agreement further provides that WESCO shall procure that within 10 days of the date of this Agreement, the Bank issues in favour of GRIDCO a Letter of Credit capable of being called or utilised by GRIDCO on simple demand to duly secure the payment of all amounts becoming due and payable from WESCO to GRIDCO.
5. GRIDCO and WESCO have also signed an Escrow Agreement dated 10.8.2000 in regard to Securitisation of payment of the amounts due from WESCO. In terms of the said Escrow Agreement, M/s Union Bank of India (UBI, for short) has been appointed by GRIDCO and WESCO to be the Escrow Agent and further,

"2. In the event of default on the part of WESCO in the payment of any amount due to GRIDCO on or before due dates under the Bulk Supply Agreement, GRIDCO shall be entitled to recover the amounts outstanding from the Escrow Account in accordance with the provisions of this Agreement.

3. So long there is any default in the payment of any amount due to GRIDCO on the due dates as provided in the Bulk Supply Agreement, WESCO hereby irrevocably and unconditionally agreed that from the time the default occurs all receivables to the extent of default amount without exception from the electricity

sold or supplied by WESCO shall be deposited or caused to be deposited by WESCO in the account maintained by the Escrow Agent".

6. GRIDCO & WESCO have also signed a Loan Agreement dated 28<sup>th</sup> October, 1999 for payment of an amount of Rs.11,696 lakhs together with interest at the fixed rate of 13.837% per annum in accordance with and at the times set out in Schedule I to the agreement plus interest tax at the rate prevailing at the time of payment.
7. WESCO has defaulted in payment of Bulk Supply Bills and Loan Instalment to GRIDCO to the tune of Rs.132.22 crores comprising, shortfall in payment of Bulk Supply bills (from April, 1999 to September 2000), D.P.S., repayment of loan instalment (from April, 1994 to October, 2000) and penal interest, due to non-payment of loan instalment.
8. GRIDCO has therefore prayed that the Commission should:
  - (i) Direct WESCO to forthwith pay all outstanding amounts due to GRIDCO along with DPS applicable.
  - (ii) Direct WESCO to rectify the breach in the fulfillment of agreements entered into with GRIDCO.
  - (iii) Direct WESCO to put in place effective Escrow Mechanism as envisaged in Bulk Supply Agreement, Loan Agreement and the Escrow Agreement and duly fulfill and comply with the provisions of the said agreements including in regard to collection of receivables in the Escrow Account and establishment of the letter of credit.
  - (iv) Restrain WESCO from utilising any part of its receivables contrary to agreement signed with GRIDCO.
9. In its reply, WESCO has submitted that it disputes the averment made by GRIDCO that it is under an obligation to deposit all the receivables in the area of supply from the Consumers, in various collection accounts, which should

normally flow to the Escrow account maintained with the UBI, Sambalpur, so that the amounts will be available to duly pay the outstanding dues of the applicant. Perusal of the stipulations made in the Escrow Agreement and Supplementary Escrow Agreement dated 10.08.2000 will show that the obligation of WESCO for deposits of all the receivables into the Escrow account will arise only when the applicant will raise a bill and WESCO becomes a defaulter in paying the dues to applicant. In substance, the Escrow Mechanism devised under the said agreement dated 10.08.2000 is in essence 'a default Escrow Mechanism'. The agreements under no circumstances cast an obligation on WESCO to deposit all the receivables in the normal circumstance when there is no default. Further WESCO does not dispute that it is also required to arrange for a Letter of Credit as provided in the Escrow Agreement. However, alternatively, an option is provided for opening the Escrow account as per Clause 8 of the Escrow Agreement.

- 9.1 WESCO further submits that, immediately after signing of the Escrow Agreement in the month of August, 2000, WESCO has opened Escrow account with the Escrow Agent, Union Bank of India, Sambalpur in September, 2000. The Escrow Agent has issued letter of confirmation to the applicant GRIDCO regarding the implementation of Escrow Mechanism. All payments to the applicants are routed through Escrow accounts as per terms of the Escrow Agreement. WESCO has several Bank accounts in which entire revenue receipts are deposited. The revenue receipts include not only the amounts but also security deposits, electricity duty payable to Govt. and receivables are deposited into the Escrow Account operated by the 'Escrow Agent'. Therefore issuance of an irrevocable letter of authority to the bankers other than Escrow agent as directed by GRIDCO will cause serious difficulty in the financial management of WESCO.
- 9.2 WESCO further submits that it does not admit the alleged default to the tune of Rs.132.22 crores, but rather the outstanding dues would be Rs.77 Crores. WESCO has also agreed to issue bonds worth Rs.88 crores to GRIDCO to be reassigned to NTPC by GRIDCO in lieu of payment of outstanding dues. In terms of the agreement arrived at in the meeting held on 24.10.2000, WESCO has taken

prompt steps for issue of bonds w.e.f. 1<sup>st</sup> October and letter of advice has been issued to GRIDCO. As WESCO has disputed the balance amount demanded by the applicant, the question of default in payment by WESCO does not arise.

10. After hearing the parties, we have decided to act as arbitrator to adjudicate the dispute between GRIDCO & WESCO u/s 37(1) of the OER Act, 1995. We had felt that the crux of the problem lies with meter reading and billing and accordingly expert advice on meter reading and billing was called for.
11. Director (Tariff), OERC took up a meeting in connection with disputes regarding metering and billing relating to securitisation of payments on 26.02.2001. The following decisions were taken in the above meeting:
  - i) Availability of meters of proper accuracy – Main and Check meters have been provided by GRIDCO at all supply points. The readings of existing meters to be adjusted to take care of the errors in accuracy of CTs/PTs.
  - ii) Testing of meters – GRIDCO will take two months for testing of all meters of all Distcos with accu checks available with all Distcos. Until procurement of standard CT/PT the present arrangement of testing shall continue.
  - iii) Method of measurement of simultaneous maximum demand – SMD calculated by GRIDCO includes the reactive power drawn by the Distcos at the point of metering which is not in accordance with the procedure stipulated in the BST order. Hence the SMD should be revised and billing be done accordingly.
  - iv) Joint meter reading – It was advised that henceforth at the time of taking joint meter reading, the representative of Distcos should take down the meter reading at 00-00 hours at then end of each month.
  - v) Auxiliary consumption – It was agreed that colony consumption should not be included in the auxiliary consumption.
  - vi) Metering errors due to energy accounting – GRIDCO agreed to give year end adjustment, exact number of units claimed in the bill due to rounding off.
  - vii) Rounding off errors in energy accounting should be taken up in the year end adjustment.

- viii) Inter Distcos interface metering – Testing of meters, CTs, PTs and other associated equipments will be arranged by the concerned Distcos. Testing and sealing of meters and associate equipments is to done jointly.
- ix) Errors in SMD readings in the pre-privatisation period has been accepted by GRIDCO.

We endorse the decisions taken in the above meeting and direct GRIDCO and WESCO to follow them scrupulously.

- 12. Since many more issues cropped up during hearing, we have decided to first identify the issues for adjudication. After considering the draft issues submitted by the parties, we identified the following issues for adjudication:

Issue No.1 : Whether the respondents (WESCO and U.B.I.) have committed breach of Loan Agreement, Bulk Supply Agreement and Escrow Agreement?

Issue No.2: Whether the respondent No.1(WESCO) has put in place the effective Escrow mechanism as per the Bulk Supply Agreement, Escrow Agreement and Loan Agreement and has duly complied with the provisions of the said agreement including with regard to collection of receivables and deposit the same into Escrow Account?

Issue No.3: Whether there is appropriate metering arrangements and satisfactory billing procedure?

Issue No.4: Whether the Respondent No.1 is liable to pay the Bulk Supply Tariff as per the order dated 21.11.1998 of OERC or as per the tariff order dated 30.12.1999 of OERC when Commission's order dt.30.12.1999 has been stayed and set aside by Orissa High Court and remitted back to OERC for redetermination in accordance with law?

Issue No.5: Whether as per clause 8 of the Escrow Agreement it is optional for Respondent No.1 to arrange letter of credit?

Issue No.6: Whether claims of petitioner in regard to Bulk Supply Bills, loans, interest and D.P.S. pertaining to period prior to 31.03.1999 should be treated as correct before finalisation and audit of accounts for the year 1998-99, and whether these amounts are recoverable through Escrow mechanisms?

Issue No.7: Whether Respondent No.1 is liable to pay penal interest and delayed payment surcharge as claimed by the petitioner?

Issue No.8: To what reliefs or relieves is the petitioners entitled to?

Issue No.9: Whether the Respondent No.1 is liable to pay the Bulk Supply Bill outstanding on 16.02.2001 as stated by the applicant, or the Bulk Supply bill amount as stated by the Respondent No.1?

13. While responding to Issue No.1 and 2 we have to refer to GRIDCO's letter dated 14<sup>th</sup> March 2001 addressed to the Principal Secretary, Department of Energy in which he has reported that WESCO have confirmed that they have made arrangements for collection/deposit of their entire receivables through their accounts maintained with different Divisions and have ensured transfer of such deposits to the Escrow Account maintained with Union Bank of India, Sambalpur Branch, Sambalpur. In view of the confirmation received from WESCO, the Escrow Agent, and other Banks regarding flow of all their entire collection of receivable to the Escrow Account ,maintained with Union Bank of India, Sambalpur Branch, Sambalpur for payment of the Bulk Supply Bills and loan installments of the GRIDCO to GRIDCO, GRIDCO has confirmed that the Escrow mechanism, as envisaged under Escrow Agreement has been put in place by WESCO. In view of the categorical confirmation by GRIDCO we conclude that the Escrow Mechanism has been put in place by WESCO as per the Bulk Supply Agreement, Escrow Agreement and Loan Agreement.

- 13.1 As per para 6 of the Bulk Supply Agreement entered into between GRIDCO and WESCO, WESCO irrevocably and unconditionally agrees to open Letter of Credit in favour of GRIDCO through the Escrow Agent within a period of 30 days of the Bulk Supply Agreement. Since Letter of Credit has not yet been opened, WESCO and UBI are clearly in breach of Bulk Supply Agreement, Loan Agreement and Escrow Agreement.
14. As regards issue No.3, the matter has been dealt in para 11 above. GRIDCO and WESCO should follow the decisions taken in the meeting taken by Director (Tariff) on 26.02.2001 and follow them scrupulously.
15. As regards Issue No.4 we have to go by the decision's of Hon'ble High Court in staying the Bulk Supply Tariff Order dt. 30.12.99 and hence the BST is payable at the rate defined in OERC order dt.21.11.98 subject to modification if any on redetermination in pursuance of Hon'ble High Court's order.
16. As regards Issue No.5, about whether Letter of Credit is optional or not it is relevant to refer to para 6 of Escrow Agreement which provides that,

“WESCO hereby irrevocably and unconditionally agrees to open Letter of Credit in favour of GRIDCO through the Escrow Agent within a period of 30 days of this Agreement, and undertakes to comply all terms and conditions to the satisfaction of the Escrow Agent for opening the Letter of Credit and or renewal thereof.”

Para 8 of the aforesaid Agreement provides that:

“ In the event of letter of credit (as provided in Para 6) is not opened by the stipulated date, or in the event, L.C. is not renewed for any reason whatsoever without prejudice to the rights of GRIDCO, Escrow Agent, WESCO hereby agree and undertake that GRIDCO shall be entitled to recover all the amounts due to it



from the Escrow Account by enforcing the first charge over the receivable of WESCO in favour of GRIDCO in terms of Bulk Supply Agreement”.

- 16.1 From the above provisions, it is clear that, opening of L.C. by WESCO is not optional. WESCO should have opened Letter of Credit in favour of GRIDCO. In the event of L.C., not being opened or renewed due to unavoidable circumstances, then GRIDCO shall be entitled to recover the outstanding dues from the Escrow Account, by enforcing the first charge over the receivables of WESCO.
17. As regards Issue No.6, we decide that the claims of the petitioner with regard to Bulk Supply Bills, loans, interest and DPS pertaining to the period prior to 31.03.1999 may be treated as provisional subject to audit of the accounts for the year 1998-99, and these amounts are recoverable through Escrow Mechanism subject to final adjustment after audit reports are available.
18. As regards Issue No.7, we do not consider it necessary to give any fresh finding as penal interest and D.P.S. shall be payable in accordance with Regulation and the Tariff order as applicable.
19. As regards Issue No.8, we decide that the petitioner is entitled to expeditiously recover its dues calculated on the basis of the order of OERC with regard to redetermination of tariff for 1999-2000 along with DPS/penal interest and further liable for fines and penalties if payments are not made in pursuance of orders of OERC.
20. As regards Issue No.9, we decide that the respondent is required to pay the Bulk Supply Dues, as calculated by on the basis of the order of OERC with regard to redetermination of tariff for 1999-2000.

21. Before concluding the proceeding, we have also to observe as follows:

- (i) GRIDCO and WESCO must strictly follow the terms and conditions laid down in the agreements viz., Bulk Supply Agreement, Loan Agreement, Escrow Agreement and Supplementary Escrow Agreement, they have entered into for smooth functioning and settlement of commercial transactions.
- (ii) GRIDCO and WESCO should settle their billing disputes on the basis of the above order by 31<sup>st</sup> August and submit compliance by 10<sup>th</sup> September, 2001. If necessary they can take the assistance of Director (Tariff), OERC.
- (iii) WESCO should take steps for payment of its arrear dues, calculated as per this order to GRIDCO by 31<sup>st</sup> August 2001 and report compliance by 10<sup>th</sup> September, 2001.
- (iv) WESCO shall open Letter of Credit by 31<sup>st</sup> August, 2001 as per the terms of Bulk Supply Agreement, Loan Agreement and Escrow Agreement and report compliance by 10<sup>th</sup> September, 2001.
- (v) Failure to comply with aforesaid decisions of the Commission will invite penalties & fines.

**(H.S. SAHU)**  
**MEMBER**

**(D.K. ROY)**  
**CHAIRMAN**