

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 03/2017

M/s. OCL India Limited	Petitioner
Vrs.		
WESCO Utility & others	Respondents

**In the matter of: An application under Regulation 9 (1) of the OERC
(Conduct of Business) Regulations, 2004 for amendment of
Reg. 19(1) of the OERC (Conditions of Supply) Code, 2004
regarding mode of payment of initial and additional
security Deposit to the licensee/Utility for supply of power.**

For Petitioner: Shri R. P. Mohapatra, authorized representative

**For Respondents: Shri K. C. Nanda, DGM (Fin.), WESCO Utility
 Ms. Malancha Ghose, AGM (RA), NESCO Utility,
 Shri G. S. Mohapatra, Manager (Fin.), NESCO Utility
 Shri S. K. Harichandan, AGM (Law), CESU.**

ORDER

Date of hearing: 06.06.2017

Date of order: 08.06.2017

The present petitioner M/s. OCL India Limited is a cement manufacturing company having its industries in Rajgangpur (WESCO Utility) and Tangi (CESU). The Petitioner had requested the Commission to amend Regulation 19 (4) of the OERC (Supply Code), 2004 to permit consumers to deposit security money through bank guarantee in addition to payment by cash / DD/ Cheque etc. The Commission has also dealt with this matter in past in several tariff orders starting from 2010-11 to 2017-18. The Commission in their tariff order have categorically stated that modification to the existing provision may be considered only after the distribution companies achieve financial turn around and are able to generate enough cash for timely repair and renovation of existing old distribution network.

2. The petitioner has also submitted that it has deposited Rs.5.78 crore with WESCO utility and Rs.4.27 crore with CESU as security deposit through bank draft. The method of collection and repayment of security deposit is governed under Regulations 19, 20, 21 & 22 of OERC Supply Code. Regulation 19 (4) provides that security

deposit shall be paid in cash or by bank draft/ cheque or credit card. The Regulation 21 provides that the Licensee shall pay interest on security deposit at the bank rate notified by RBI. The interest accruing to the credit of the consumer shall be adjusted annually in the amounts outstanding from the consumers to the licensee on the 1st May of every year. Accordingly, the Petitioner as per RBI notification had been getting 6% interest per annum upto 2012-13 and @ 8.75% thereafter upto 2015-16. The interest on security deposit was reduced to 7.75% for the year 2016-17. The Petitioner said that payment of security deposit through bank draft is a financial burden on the applicant as it has to borrow money from banks / financial institutions paying interest at much higher rate of 11%. The representative of the petitioner has also submitted that the security amount deposited with the distribution utilities is being diverted for purposes other than what it was meant for. The total amounts of security deposit collected have not been invested in bank. The said security deposit should have been maintained intact so as to meet the liabilities to pay interest. The Commission had also directed the distribution utilities to recoup the deficit of the security deposit through enhanced collection and to submit a plan of action for such a programme but the said direction is not carried out by the distribution utilities.

3. The representative of WESCO Utility has submitted that the present application of M/s. OCL India Limited is not maintainable as the issue has already been deliberated during the tariff proceeding for FY 2017-18. In the said proceeding the issue of inclusion of bank guarantee as a mode of payment of SD/ASD was addressed vide para-91 & 92 of the RST order dated 23.03.2017 in Case Nos. 66, 67, 68 & 69 of 2016. The Commission vide Para-282 of the said order has held that the existing provision of Regulation 19, 20 & 21 shall continue. The Commission has also clarified regarding the mode of payment of SD/ASD and therefore there is no further requirement of clarifying the same issue again. As regards payment of interest on SD/ASD, the utility has been making payment of interest on yearly basis at prevailing bank rate by way of reflecting the same in the electricity bill of the consumer. All the matters arising out of SD/ASD are dealt within the ambit of and scope of prevailing position of the Act, 2003 and the Rules and Regulation made there under.
4. The representative of CESU has submitted that in exercise of power conferred under the provisions of Electricity Act, 2003 and Orissa Electricity Reforms Act, 1995, the Commission has framed OERC Distribution (Conditions of Supply) Code, 2004 and the same after being published in the official Gazette has become law and has come into effect from 28.05.2004. The Hon'ble Apex Court in case of Bhavnagar

University Vrs. Palitana Sagar Mills Pvt. Ltd. reported in AIR 2003 SC 511 has held that while dealing with the provisions of the statute, the Court would not approach or give meaning to an expression which would produce unintelligible, absurd and unreasonable result and would render the legislative intent unworkable or totally irreconcilable with the provision of the statute. Further, the Hon'ble Supreme Court in a case reported in AIR 1975 SC 915 have also held that where a power is given to do a certain thing in a certain way, the things must be done in that way or not at all and that other methods of performance are necessarily forbidden. In view of the aforesaid settled position of law, when the Regulation framed by the Commission has prescribed certain specific procedure with respect to security deposit and the RST order passed by OERC for different financial years hold the same, the present application of the petitioner is devoid of any merit and liable to be dismissed.

5. The above contention of WESCO Utility and CESU are also supported by the other two distribution utilities of Odisha i.e. NESCO Utility and SOUTHCO Utility respectively.
6. After hearing of the parties and perusal of the case records we observe that since the issues raised here by the petitioner have been settled in our tariff orders for different years, the same issue cannot be reopened through another petition now. The Commission is under the process of framing new supply code. The Petitioner is at liberty file its objection/suggestion on this particular issue during the draft publication of the proposed Regulation in future.
6. Accordingly, the case is disposed of.

Sd/-
(S.K.Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson