

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

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**Present: Shri U. N. Behera, Chairperson  
Shri S. K. Parhi, Member  
Shri G. Mohapatra, Member**

**Case No. 68/2020**

GRIDCO Ltd., ..... Petitioner

Vrs.

WESCO Utility & Others ..... Respondents

**In the matter of:** Application under Section 94(1) (g) read with 86(1) (k) of the Electricity Act, 2003 and Regulation 70 of the OERC (Conduct of Business) Regulations, 2004 and all other enabling provisions of the Act for issue of directions regarding interest on SoD recouped from escrow account by DISCOM Utilities and interest on security deposit adjusted in consumer bills not deposited into Escrow account.

**For Petitioner:** Shri Srinibas Mohapatra, CGM (Fin.) and Shri Srikant Sahoo GM (Fin), GRIDCO Ltd.,

**For Respondent:** Shri K. C. Nanda, DGM (Fin.), TPWODL, Shri Pratap Mohanty of TPNODL, Shri Vidyadhar Wagle, M/s. TPCODL and the representative of M/s. TPSODL.

**ORDER**

**Date of hearing: 27.04.2021**

**Date of order: 09.08.2021**

This petition has been filed by GRIDCO in the matter of (i) Interest on Secured overdraft (SoD) recouped by DISCOMS Utilities from Escrow account and (ii) interest on security deposit deducted/adjusted in the consumer's bills not deposited in Escrow account. The petitioner has submitted to the Commission to direct DISCOMSs to deposit the same with GRIDCO.

2. The petitioner, GRIDCO has stated that it had entered into Bulk Supply agreements with the erstwhile WESCO, NESCO, SOUTHCO on 24.05.1999 and with erstwhile CESCO on 18.09.1999 with regard to supply of bulk electricity, which provides for invoicing by

GRIDCO and payments by DISCOMs. In pursuance to the Bulk Supply Agreement, an Escrow mechanism had been put in place whereby the DISCOMs were required to deposit the entire sale proceeds from their customers in the Escrow Account.

3. Petitioner GRIDCO further stated that it had entered into separate Escrow Agreements with the DISCOMs appointing Union Bank of India as the ESCROW Agent to maintain the ESCROW Account in line with the Terms and Conditions contained in the ESCROW Agreement. The Escrow Agreement was executed with WESCO, NESCO & SOUTHCO on 04.08.2000 and with CESCO on 11.07.2000 covering the Escrow arrangement for payment of all the amounts becoming due to GRIDCO from DISCOMs under the Bulk Supply Agreement or otherwise under the Bulk Supply Tariff or other orders issued by the Commission.
4. Petitioner has stated that the Bulk Supply Agreement and Escrow Agreement executed with WESCO, NESCO and SOUTHCO are identical in nature. However, the Bulk Supply Agreement and Escrow Agreement executed with CESCO though different but carry the same import.
5. The Petitioner has stated that the essential features of Escrow Agreements are as follows:
  - a) The entire sale proceeds of the power sold by the DISCOMs collected from their customers are to be deposited directly into the Escrow Account.
  - b) GRIDCO will have the first claim on the sale proceeds so deposited.
  - c) The amount of sale proceeds of the DISCOMs so deposited can be withdrawn from the Escrow account only for payment of the bulk supply bills of GRIDCO raised on the DISCOMs.
  - d) Withdrawals of the deposits so made by DISCOMs for any purpose other than payment of the bulk supply bills can be made only with the consent and permission of GRIDCO.
  - e) The Bulk Supply Agreement also provided for the additional arrangement of opening of revolving Letters of Credit by the DISCOMs with the bank.

- f) In the event of a shortfall in the collections from the customers deposited in the Escrow Account, the letter of credit may be encashed at the discretion of GRIDCO to the extent of the shortfall from the bulk supply bills on due dates.
6. Petitioner has further stated that DISCOMs had also opened Secured Overdraft (SOD) account with limit for payment of BSP dues of GRIDCO and transmission charge of OPTCL. The shortfall in payment of above dues is met by availing fund from SOD account and subsequently the credit allowed through SOD account is recouped from the fund which has flown to Escrow Account.
7. Petitioner GRIDCO stated that vide its letter dated 5th Feb'2004 it had considered DISCOM's request for opening of Letter of Credit by ceding pari-pasu first charge in favour of Escrow Agent to the extent of the Irrevocable Letter of Credit (IRLC) value. GRIDCO also had allowed the Escrow Agent to utilize the monies available in the Escrow Account to recoup the credit (SOD) allowed for operation of Letter of Credit within a period of 30 days of the date of the BST bill or before the date of the presentation of the next BST bill, whichever is earlier.
8. Petitioner stated that, the letter under reference above is a sequel to the DO letter of CMD, Grid Corporation of Orissa Limited dated 24th Sept' 2003 regarding opening of LC in favour of GRIDCO for payment of the BST bills as per the Bulk Supply Agreement. The same letter of CMD dated 24th Sept'2003 was duly endorsed by the OERC vide its letter dated 29.09.2003 with a direction to open letter of Credit.
9. Petitioner submitted that as per the decision of the Commission in the Minutes of the Meeting dated 16.08.2018 DISCOMs were to meet their A&G expenses from their non-escrow revenue. As per the direction of the Commission GRIDCO has been conducting audit of Escrow account on annual basis w.e.f. FY 2010-11 and the audit reports are also being submitted to the Commission. GRIDCO has completed the Escrow audit of the DISCOMs for the period up to FY 2018-19 and for FY 2019-20 the audit is in progress. The Escrow Audit Report of FY 2018-19 was submitted to the OERC on 10.01.2020 during compliance on ARR & BSP application for FY 2020-21.

10. Petitioner stated that the two major principal observations of the Auditors of different DISCOMs Utilities on Escrow account of FY 2018-19 are as follows:

**A. Interest on Secured Over Draft (SoD) have been recouped by DISCOMs Utilities except CESU from Escrow account;**

- (i) During FY 2018-19 except CESU all other DISCOMs have recouped the interest on SoD from Escrow account.
- (ii) Based on GRIDCO's letter dated 5th Feb'2004 DISCOMSs are allowed to recoup the credit (SOD) and not the interest on SOD.
- (iii) The interest on SoD being in the nature of A&G expenditure, as per the Commission's decision taken vide Minutes of Meeting dated 16.08.2018 the same should be paid by DISCOMs from their non-escrow revenue.
- (iv) As per the Escrow Auditor's Report, interest on SOD to the tune of Rs 28.53 Crore has been debited from the Escrow Accounts in respect of WESCO, NESCO and SOUTHCO Utility as detailed below;

WESCO Utility	:	Rs12.84Crore
NESCO Utility	:	Rs10.28 Crore
SOUTHCO Utility	:	Rs 5.41 Crore

**B. The amount of interest on security deposit deducted from consumer's bills has not been deposited in Escrow account.**

Petitioner stated that amount of interest on security deposit deducted from consumer's bills has not been deposited in escrow account. The Supply code has following provisions in this regard.

- a. *The Licensee/supplier shall pay interest on security deposit to the consumers, at the bank rate. (SBI Base Rate as on 1st April of the relevant year)*
- b. *The interest accruing to the credit of consumer shall be adjusted annually in the amounts outstanding from the consumer to the licensee/supplier as on 1st May of every year and the amounts*

*becoming due from the consumer to the licensee/supplier immediately thereafter.*

- c. *The licensee/supplier shall duly show the amounts becoming due to consumer towards interest on security deposit in the bills raised on the consumer.*

Petitioner stated that based on the Supply Code, the interest on security deposit is being credited against the consumer's bill. As a result, the consumer bill or the Escrow revenue is reduced to that extent. The interest earned by DISCOMs on the investment of consumer's security deposit, is not treated as Escrow Revenue and therefore, is not deposited in the escrow account.

11. Petitioner stated the DISCOMs should have credited in the escrow account the amount matching with the interest on security deposit so credited against the consumer's bill from its non-escrow revenue.
12. Petitioner stated though WESCO Utility have deposited portion of Interest on Security Deposit into the Escrow Revenue for FY 2016-17 and FY 2017-18, they have not deposited any amount against FY 2018-19. Other DISCOMs have not deposited any amount on account of Interest on Security Deposit into Escrow Account.
13. Petitioner stated the total amount of Rs.57.44 crore has been deposited by WESCO Utility in the Escrow Account for FY 2016-17 and FY 2017-18 against Rs.61.62 crore so credited to consumer's account. The year wise information are as follows;

**(Rs in Crore)**

<b>Financial Year</b>	<b>Amt. credited against consumer's bill</b>	<b>Amount transferred to Escrow Account in the subsequent years</b>
2016-17	29.07	24.89
2017-18	32.55	32.55
<b>Total</b>	<b>61.62</b>	<b>57.44</b>

14. As per the auditor's report in respect of WESCO Utility for the FY 2018-19 interest on security deposit amounting to Rs.30.85 crore credited against consumer's bill has not been deposited in escrow account.

15. Petitioner stated that the details of Interest on Security Deposit Credited against consumer's bill and amount transferred by DISCOMs to Escrow Account during FY 2018-19 are as follows;

(Rs in Crore)

Financial Year	Amt. credited against consumer's bill	Amount transferred to Escrow Account
WESCO Utility	30.85	NIL
NESCO Utility	29.89	0.07
SOUTHCO Utility	12.58	NIL
CESU	29.61	NIL
<b>Total</b>	<b>102.93</b>	<b>0.07</b>

16. Respondents WESCO, NESCO and SOUTHCO Utilities stated that they have never violated the terms of the Escrow agreement. The monthly BST dues are being duly paid on monthly basis. All the Respondents have stated that GRIDCO has filed the present application citing audit observation for FY 2018-19 to the extent of
- Interest on SoD recouped by DISCOMs from Escrow account,
  - Interest earned on Security Deposit,
  - The amount of interest on Security Deposit deducted from consumer's bills has not been deposited in Escrow account.
17. Respondents in this context submitted that the Commission has allowed A&G expenses in the minutes of the meeting in the following manner.
- “3. *As regards the request by DISCOMs for relaxation towards A&G costs it was decided that DISCOMs are required to deposit in the escrow account all the revenue collected from the consumers towards energy charges, demand charges and cross subsidy charges. All other miscellaneous collections such as reliability charges, meter rent, PF penalty, other penalties, DPS and other collections could be retained by the DISCOMs for their A&G expenses subject to limit prescribed in ARR.*”
18. Respondents have stated that the Commission while approving ARR of the DISCOMs approves component wise cost and interest is a separate component which has not been dealt in the aforementioned minutes of the meeting.
19. Respondents have stated that the DISCOMs were depositing entire revenue out of sale of energy in the escrow account. As regards cross subsidy surcharge which was a substantial

amount was previously deposited in expenditure account (as it was in the nature of other income). However, as per direction of the Commission the same was deposited subsequently in escrow account. The licensee is left with limited resource of other income to meet approved A&G cost.

20. Respondents have further stated that the interest on security deposit is being credited to consumer's bill on 1<sup>st</sup> May of each year as per OERC regulation and RST order from time to time. It is an adjustment in the consumer bill and only net amount is collected from consumer. On the other hand the interest earned on security deposit is being added to the security deposit amount to match security deposit fund with the amount as per consumer data base. OERC has also directed to recoup the shortfall of Security Deposit amount so that the physical balance should match with consumer ledger. Hence, the Utility has not done anything unlawfully or against any prescribed regulation.
21. Heard the parties. The present petition has been filed by the petitioner GRIDCO raising certain issues relating to the escrow account which it separately signed with erstwhile four DISCOMs i.e. CESCO/CESU, WESCO, NESCO and SOUTHCO. The Escrow accounts were opened in terms of the Bulk Supply Agreement with the primary purpose to secure monthly payment of BSP bill. The Union bank of India was the third signatory as the Escrow Agent. As an additional arrangement under the Bulk Supply Agreement the DISCOMs were also required to open revolving Letter of Credit with the bank. In the event of a shortfall in the collections from the DISCOMs deposited in the Escrow Account, the letter of credit may be encashed at the discretion of GRIDCO to the extent of the shortfall, and applied for payment of the Bulk Supply Bills to GRIDCO on due dates. DISCOMs accordingly opened Secured Overdraft (SOD) account with limit for payment of BSP dues of GRIDCO and transmission charge of OPTCL.
22. Petitioner GRIDCO has filed the present application citing audit observation for FY 2018-19. Petition relates to two following issues.
  - a. As per the Escrow Auditor's Report, interest on SoD to the tune of Rs 28.53 Crore has been debited from the Escrow Accounts in respect of WESCO, NESCO and SOUTHCO. GRIDCO in the present petition seeks direction

from the Commission that Interest on SoD be recouped by DISCOMs debited from Escrow account.

- b. As per the provisions of the Supply Code, the interest on security deposit is being credited against the consumer's bill reducing the Escrow revenue to that extent. Moreover the interest earned by DISCOMs on the investment of consumer's security deposit, is not treated as Escrow Revenue. The DISCOMs should have credited the amount matching with the interest on security deposit so credited against the consumer's bill from its non-escrow revenue. The total Interest on Security Deposit Credited against consumer's bill for all the four DISCOMs during FY 2018-19 is Rs.102.93 crore. Against such amount only NESCO has transferred Rs. 0.07 Crore to the Escrow account for such year.
23. DISCOMs regarding interest on secured overdraft (SoD) have replied that the Commission while approving ARR of the DISCOMS approves component wise cost and interest is a separate component. The interest on SoD is not allowed in the ARR, therefore, is not taken as expense. The Commission also while allowing and defining the A&G expenses in the minutes of the meeting dated 16.08.2018 has not dealt with interest on SoD. Moreover all the respondents have submitted that the amount allowed for A&G expenses is insufficient with respect to the number of consumers. Moreover the interest earned on security deposit is added to match with security deposit Fund as per consumer ledger.
24. The Commission after going through the petition of GRIDCO understands that these two issues have arisen due to the observation from the Auditors. The DISCOMs in their replies on these two issues have pleaded that they have not committed any error on these count.
25. The Commission observes that the interest on Secured Overdraft (SoD) which the petitioner has claimed now must have been recovered by the Bank from the escrow account. This amount should have been recouped by the DISCOMs subsequently which is a continuous activity. This situation arose as in all the DISCOMs collection efficiency was poor leading to delayed payment to GRIDCO and OPTCL. The petitioner GRIDCO as such had no control over the revenue stream of DISCOM and its concern relates



mainly to the power purchase dues. At this stage we are of the view that no measure can be taken for recovery of the interest on SOD.

26. As regards the interest on the security deposit, it is being adjusted in the bills of the individual consumers during the month of May every year as per the rates prescribed by the Commission in the ARR. Interest earned on the security deposits are also matched against the total consumer security fund based on the consumer ledger. In the ARR interest on security deposit is allowed to the DISCOM as expense and accordingly this is built in the tariff.
27. In the meantime the four DISCOM Utilities have been privatised after a sale proceeding through a competitive bidding process as per the provisions of Section 20 of the Electricity Act. Four new Operating companies having 51% share held by the Tata Power Company Limited and 49% held by Government of Odisha in each, were incorporated and vested with incumbent utilities.
28. Accordingly, the opening balance sheet for each of the Operating Company is being carved out from the balance sheet of the Utilities as on last financial year and principles laid out in the vesting order. The issues relating to the present petition relate to the period prior to the vesting of the utilities. Liability if any on such account will not be passed to the new operating companies in terms of the Act and vesting order.
29. In view of the foregoing no relief can be provided to GRIDCO on its petition.
30. The case is accordingly disposed of.

Sd/-  
**(G. Mohapatra)**  
**Member**

Sd/-  
**(S. K. Parhi)**  
**Member**

Sd/-  
**(U. N. Behera)**  
**Chairperson**