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**Petition No 797 of 2012**

**BEFORE  
THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION  
LUCKNOW**

**Date of Order : 30<sup>th</sup> MAY, 2013**

**PRESENT:**

1. Hon'ble Shri Shree Ram, Member
2. Hon'ble Smt. Meenakshi Singh, Member

**IN THE MATTER OF:**

Adoption of transmission tariff under Section 63 of the Electricity Act, 2003 with respect to intra-state transmission system, to be established by South East U.P. Power Transmission Company Limited.

**AND**

**IN THE MATTER OF**

**Petitioner**

South East U.P. Power Transmission Company Limited  
Shalimar Titanium, 601-602, 6th floor, Plot no TC/G-1/1,  
Vibhuti Khand, Gomti Nagar, Lucknow - 226010.

**Respondents**

1. Managing Director, UPPTCL, Lucknow
2. Managing Director, PVVNL, Meerut
3. Managing Director, DVVNL, Agra
4. Managing Director, PuVVNL, Varanasi
5. Managing Director, MVVNL, Lucknow



The following were present:

1. Sri S.K. Garg, Director (W&P), UPPTCL
2. Sri P.K. Sharma, Chief Engineer, UPPTCL
3. Sri D.C. Chaudhry, Superintendent Engineer, UPPTCL
4. Sri Vineet Kumar, Executive Engineer, UPPTCL
5. Sri Alfonso, Director, SEUPPTCL
6. Sri S.K. Bhattacharya, Director, Business Development, SEUPPTCL
7. Sri Ravinder Singh, CGM, SEUPPTCL
8. Sri R.L. Singh, GM, SEUPPTCL
9. Sri A.K. Ganesan, Advocate, SEUPPTCL
10. Sri S.S. Mehta, Consultant, SEUPPTCL
11. Sri Sudhanshu Dwivedi, Director (F), PuVVNL, Varanasi
12. Sri A. K. Verma, Director (Com) PVVNL, Meerut
13. Sri Ravindra Kumar, Superintending Engineer, MVVNL, Lucknow
14. Sri A. K. Singh, Executive Engineer, MVVNL

### **Order**

(Date of Hearing 07.05.2013)

- 1 The Petitioner, M/s South East UP Power Transmission Company Limited (SEUPPTCL) has filed this petition on 06-03-12 under section 63 of Electricity Act,2003 (the Act) and in accordance with Para 12.4 of 'Tariff Based Competitive Bidding Guidelines for Transmission Service', issued by Ministry of Power, Govt. of India (hereinafter referred to as "GOI"), ***for adoption of transmission tariff with respect to the development of following intra-state transmission system titled "765KV S/C Mainpuri-Bara line with 765KV/400KV AIS at Mainpuri and associated Schemes/Works" on 'Build, Own, Operate & Maintain and Transfer' ((hereinafter referred to as "BOOT")) basis.***

Elements of Transmission System titled "765KV S/C Mainpuri-Bara line with 765KV/400KV AIS at Mainpuri and associated Schemes/Works"



<u>S.No.</u>	<u>Name of the Transmission Element / Project</u>
<b>(I)</b>	<b><u>Transmission lines</u></b>
1	765kV SC Mainpuri - Unnao with Quad Bersimis (175Kms)
2	400kV DC (Quad Moose) Mainpuri (765kV) - Aligarh (120kms)
3	LILO of both circuits of 400kV DC Orai - Mainpuri (PG) at Mainpuri (765kV) with Twin Moose (30Kms)
4	765kV 2x SC Mainpuri - Bara with Quad Bersimis (2x350kms)
5	LILO of 400kV Panki - Obra at 400kV Rewa Road with Twin Moose (12 kms)
6	400kV DC (Quad Moose) Rewa Road -Karchhana (30kms)
7	400kV DC (Quad Moose) Rewa Road -Meja (25kms)
8	400kV DC (Quad Moose) Bara - Meja (25kms)
9	400kV DC (Quad Moose) Bara -Karchhana (30kms)
10	400kV DC (Quad Moose) Tanda - Gonda (100kms)
11	400kV DC (Quad Moose) Gonda -Shahjahanpur (230kms)
12	LILO of 400kV Sarojininagar - Kursi Road (PG) at 400kV Sultanpur Rd, Lucknow with Twin Moose (20kms)
13	LILO of 400kV Obra - Sultanpur at 400kV Aurai with Twin Moose (15kms)
<b>(II)</b>	<b><u>Substations</u></b>
1	2x1000MVA (765/400kV) AIS at Mainpuri
2	2x315MVA (400/220kV) GIS at Rewa Road
3	2x315MVA (400/220kV), 2x100MVA (220/132kV) AIS at Gonda
4	2x500MVA( 400/220kV), 2x160MVA, (220/132kV) GIS at Sultanpur Road, Lucknow
5	2x315MVA ( 400/220kV), 2x160MVA(220/132kV) AIS at Aurai
<b>(III)</b>	<b><u>Bus Switching-Arrangement</u></b>
1	<b>Mainpuri</b> : One & half breaker with double main bus scheme for 765 & 400kV side
2	<b>Rewa Road</b> : Double Main Bus scheme for 400kV and 220kV side
3	<b>Gonda</b> : One & half breaker with double main bus scheme for 400kV, Double main and transfer scheme for 220kV & single main and transfer bus scheme for 132kV side
4	<b>Sultanpur Road, Lucknow</b> : Double Main Bus scheme for 400kV , 220kV & 132kV side
5	<b>Aurai</b> : One & half breaker with double main bus scheme for 400kV, Double main and transfer scheme for 220kV & single main and transfer bus scheme for 132kV side



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- 2 The Petitioner has also enclosed the copies of following documents with the petition:-
- (a) Letter of Intent (LOI) dated 05-07-11, issued by UPPTCL to M/s Isolux Corsan CONCESIONES S.A. (hereinafter referred to as “Isolux” or “Successful Bidder”) to establish the transmission system for “765KV S/C Mainpuri-Bara line with 765KV/400KV AIS at Mainpuri and associated Schemes/Works” (hereinafter referred to as “Project” or “Transmission System” or “Package-1”) specified under Tender Specification no ESD-765/4 (Package-1) and all its amendments thereof till the bid deadline.
  - (b) The Transmission Service Agreement (TSA) signed on 20-01-12 by SEUPPTCL and the Long Term Transmission Customers (hereinafter referred to as the “LTTCs”) of the Transmission System namely – Paschimanchal Vidyut Vitran Nigam Ltd (PVVNL), Dakshinanchal Vidyut Vitran Nigam Ltd (DVVNL), Purvanchal Vidyut Vitran Nigam Ltd (PuVVNL) and Madhyanchal Vidyut Vitran Nigam Ltd (MVVNL).
- 3 The Petitioner has also submitted that:-
- a) The Energy Task Force (herein after referred to as “ETF”) constituted by the Government of Uttar Pradesh (herein after referred to as “GoUP”) has authorized U.P. Power Transmission Corporation Ltd (hereinafter referred to as “UPPTCL”) to act as the Bid Process Coordinator (hereinafter referred to as “BPC”) to carry out the bidding process for selection of the Successful Bidder as Transmission Service Provider (hereinafter referred to as “TSP”) for construction, operation and maintenance of the transmission lines in the Project on BOOT basis through tariff based competitive bidding process under the guidelines of section 63 of the Act.
  - b) South East UP Power Transmission Company Ltd. (hereinafter referred to as the “SEUPPTCL or “Petitioner”) was incorporated on 11th September, 2009 under the Companies Act, 1956 by the BPC/UPPTCL as it is wholly owned subsidiary to act as Special Purpose Vehicle (SPV) to initiate the activities of the Project and to subsequently to act as TSP after being acquired by the Successful Bidder.
  - c) Subsequent to the process of competitive bidding conducted by BPC, M/s Isolux Corsan Concesiones S.A. has been evaluated as the successful bidder and in this regard a Letter of
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Intent (LOI) has been issued by the BPC on 05-07-11. Thereafter the Transmission Service Agreement has been signed on 20-01-12 between the Petitioner and the LTTCs of the Transmission System.

- 4 While initiating the bidding process, UPPTCL had submitted that the selection of the developer would be as per 'Tariff based Competitive Bidding Guidelines for Transmission Service' and 'Guidelines for Encouraging Competition in Development of Transmission Projects' (hereinafter referred to as the "Guidelines"), issued by Ministry of Power. After completion of the bidding process and subsequent to the signing of SPA and TSA, UPPTCL submitted that the bidding documents (RFQ & RFP) were made as per the Standard Bid Documents of Ministry of Power, GOI, after incorporating the provisions contained in the Commission's orders and certified that the bid process & bid evaluation has been carried out in conformity with tariff based competitive bidding guidelines for transmission service of GOI.
- 5 The Commission heard the above petition on 26-04-12 and directed UPPTCL and SEUPPTCL vide its order dated 18-05-12, to submit certain documents to the Commission, including the Certification by the Bid Evaluation Committee (hereinafter referred to as "BEC") required under Para 12.4 of the Guidelines, within three weeks from the date of the order and decided to fix the next date of hearing in the matter after filing of complete documents by both the parties. UPPTCL submitted the copies of the documents to the Commission vide its letter dated 07-06-12. SEUPPTCL submitted the copies of the documents to the Commission vide its letters dated 30-04-12 and 07-06-12.
- 6 Subsequent to the submission of a conformity certificate of Sri Nevneet Sehgal, CMD UPPTCL in Feb'12, another conformity certificate dated 17-07-12 of Sri Anil Kumar Gupta, Principal Secretary, GoUP, has been submitted to the Commission. However, the Commission directed UPPTCL, vide letter dated 27-07-12, to submit the Certification of Bid Evaluation Committee at the earliest.as per requirement of guideline.

MD UPPTCL, vide letter dated 30-07-12, intimated the Commission that BEC was formed by Empowered Committee with a specific purpose for evaluation of bids and after the completion of process of evaluation, BEC is not in existence. He further added that RFQ & RFP evaluation reports as cleared by BEC, ETF & UP Govt. along with all related minutes of meeting have already been



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submitted to the Commission and therefore the certification by Principal Secretary (Energy) should suffice the requirement envisaged under para-12 of Guidelines. In light of this, MD UPPTCL requested the Commission to accept the certificate already submitted by Principal Secretary (Energy) Govt of U P.

7 The Commission observed that in spite of its clear directions to UPPTCL vide order dated 18-05-12 and subsequent letters dated 27-07-12 & 08-08-12, the certification by the Bid Evaluation Committee has not been submitted. The Commission also observed that apart from the non-submission of the Certification by BEC, there are some more issues which need to be addressed. In light of these facts, the Commission decided to review all the pending issues through a hearing and accordingly issued a notice dated 30-04-2013 to all the concerned parties (SEUPPTCL, UPPTCL, PVVNL, DVVNL, PuVVNL and MVVNL) for hearing in the matter on 7-03-2013.

8 Sri Avdresh Kumar Verma, Chairman Rajya Vidyut Upbhokta Parishad and the member of State Advisory Committee submitted a representation on 19-11-12 raised the issues as mentioned in Commission's interim order dated 2-04-2013.

Similarly an intervener application on behalf of Sri Rama Shankar Awasthi was filed on 20-11-12 raising the issues as mentioned in Commission's interim order dated 2-04-2013.

The Commission asked UPPTCL and SEUPPTCL that the replies to be objections raised by the objectors have been sent to them.

UPPTCL replies have been sent to the objectors whereas SEUPPTCL submitted that the hearing under section 63 of the Electricity Act 2003 for adoption of transmission tariff is not a public hearing and public can not file the objections.

**The Commission finds that the issue of adoption of transmission tariff will also affect the public at large so the Commission will consider the objection raised by the objectors.**

During the hearing the Commission took up the following issues:-

a) Certification by Bid Evaluation Committee

The Commission reiterated its earlier stand for submission of Certification by Bid Evaluation Committee after quoting the provisions of section-63 of the Act and para-12.4 of the Guidelines. The tariff adoption U/s 63 of the Act refers to the bidding process in accordance with the guidelines issued by the Central Government and Para-12.4 of 'Tariff based

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Competitive-bidding Guidelines for Transmission Service' of GOI requires final TSA along with the Certification by Bid Evaluation Committee to be forwarded to the Commission for adoption of tariffs.

Section 63 of the Act for Determination of tariff by bidding process

*“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”*

Para 12.4 of Tariff based Competitive-bidding Guidelines for Transmission Service of GOI

*“The final TSA along with the **certification by the Bid Evaluation Committee** shall be forwarded to the Appropriate Commission for adoption of tariffs in terms of Section 63 of the Act.”*

The Commission is of the view that it was the responsibility of the members of the Bid Evaluation Committee to certify the adoption of transparent process in the bid evaluation process (RFQ & RFP). In light of above Commission in its earlier order dated 18-05-12 and 02-04-2013 had emphasized the requirement of Certificate by the Bid Evaluation Committee.

The Bid Evaluation Committee has been constituted by the government of U.P as follows:

सचिव, उत्तर प्रदेश शासन, ऊर्जा (निजी निवेश) प्रकोष्ठ द्वारा जारी कार्यालय ज्ञाप संख्या 493 दिनांक 07-09-09

“ग्यारहवीं पंचवर्षीय योजना में पारेषण स्कंध की परियोजनाओं का क्रियान्वयन पी0पी0पी0 विधि द्वारा कराने हेतु विकासकर्ता के चयन हेतु आमंत्रित निविदा प्रपत्रों (आर0एफ0क्यू0 व आर0एफ0पी0) के ऑकलन समिति का गठन निम्नवत किया जाता है:-

1. अवस्थापना एवं औद्योगिक विकास आयुक्त, उ0प्र0 शासन (अध्यक्ष)
2. प्रमुख सचिव, न्याय, उ0प्र0 शासन (सदस्य)
3. प्रमुख सचिव, वित्त, उ0प्र0 शासन अथवा उनके प्रतिनिधि (सदस्य)
4. प्रमुख सचिव, नियोजन, उ0प्र0 शासन (सदस्य )
5. सचिव, ऊर्जा, उ0प्र0 शासन (सदस्य )
6. अध्यक्ष, उ0प्र0 पावर ट्रॉसमिशन कारपोरेशन लि0 (सदस्य )
7. प्रबन्ध निदेशक, उ0प्र0 पावर ट्रॉसमिशन कारपोरेशन लि0 (सदस्य/संयोजक)
8. सदस्य, केन्द्रीय विद्युत प्राधिकरण अथवा उनके प्रतिनिधि (सदस्य )
9. निदेशक, वित्त उ0प्र0 पावर कारपोरेशन लि0 (सदस्य )
10. अधिशासी निदेशक (पारेषण), उ0प्र0 पावर ट्रॉसमिशन कारपोरेशन लि0 (सदस्य/सहसंयोजक) “



UPPTCL as BPC submitted Bid Evaluation Committee Certificate in the matter of petition no. 797 / 2012 filed by M/s South East UP Power Transmission Company Ltd. for adoption of Transmission charges for PPP package – 1 vide letter no. 27 / ESD – 765 kV/PPP / 4 / Isolux/ Vol – 4 dated 26.4.2013 which is reproduced below:

“ Certificate of Bid Evaluation Committee

Subject: Selection of bidder as Transmission Service Provider to establish the transmission system for 765 kV S/C Mainpuri-Bara line with 765 kV / 400 kV AIS at Mainpuri & associated schemes / works through Tariff based Competitive bidding process under PPP Package – 1. The Bid Evaluation Committee constituted by Secretary (Energy) U.P. Govt. vide O.M no. 493/24 – ऊ0कल0कल0न0 / 09–29 (प्रकोष्ठ) / 09 dated 07.09.2009 had completed the bid evaluation for the transmission project under PPP package- 1 in the last meeting held on dated 30.03.2011. In terms of Clause 12.4 of Tariff based Competitive- bidding Guidelines for Transmission Service, it is hereby certified that:

- a. M/s Isolux Corsan Concesiones S.A. has emerged as successful bidder with the lowest levelised tariff of Rs. 870 crore per annum for the above project as per Bid Evaluation Committee Minutes of Meeting dated 30.03.2011 enclosed at Annexure – 1.
- b. The rates quoted by successful bidder are in line with the prevalent market prices.
- c. The entire bid process has been carried out in accordance with the “Tariff based Competitive – bidding Guidelines for Transmission Service” and “Guidelines for encouraging competition in development of the transmission projects” issued by ministry of power, Govt. of India under section 63 of Electricity Act, 2003 and as amended from time to time.”

The objectors Shri Avadhesh Kumar Verma and Shri Rama Shankar Awasthi had raised the issue of non availability of certificate of Bid Evaluation Committee. As the certificate of Bid Evaluation Committee has been submitted by UPPTCL on 26.4.2013, **therefore their objection on this issue is set at rest.**

**On observing the above certificate of Bid Evaluation Committee the Commission finds that nine out of ten members of the Bid Evaluation Committee have signed the certificate and one member has retired, as the majority of members have signed the certificate the Commission accepts it. The scanned copy of the certificate issued by**



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**the Bid Evaluation Committee has been made the part of this order as Annexure B.**

b) Use of Conductor in the Project

The petitioner submitted that this issue need not to be addressed in this petition but it can be dealt in another petition but the Commission observed this issue was first raised by SEUPPTCL itself by submitting a letter a day before the hearing on 26-04-2013 stating that SEUPPTCL is planning to use All Aluminium Alloy Conductor (AAAC) conductor in the implementation of the Project. The Commission took up this issue in the hearing on 26-04-12 and accordingly conveyed its decision vide para-6 of the order dated 18-05-12 that it did not agree to any amendment of the specifications of the project after the completion of the bidding process. Subsequently, in reference to another letter dated 29-05-12 of SEUPPTCL, the Commission issued a letter dated 11-06-12 and denied any amendment of para-6 of its order dated 18-05-12. It is relevant to mention here that the Commission had rejected the similar request of Western UP Power Transmission Company Limited (WUPPTCL) vide its order dated 19-03-12 in petition 782/2012 because ***UPPTCL had strongly objected their request to use Bersimis & Moose equivalent AAAC in place of ACSR conductor because the benchmark price of the project cost was worked out at the bidding stage with the use of ACSR conductors.*** AAAC even if found technically better, has the financial implications, affecting the overall price structure of the project and it cannot be allowed at post bid stage.

The relevant portions of the Commission's orders dated 18-05-12, 19-03-12 and letter dated 11-06-12 are being reproduced as hereunder:-

**Order dated 18-05-12 in petition no 797/2012**

*“(6) In reference to the letter submitted by SEUPPTCL on 25-04-12, stating that it shall use ‘All Aluminum Alloy Conductor’ (AAAC) for the establishment of the project, instead of the conductor specified in the bidding documents, the Commission held that at this stage when the bidding process has been completed and the Letter of Intent (LOI) has been issued by the BPC to the successful bidder, the Share Purchase Agreement (SPA) has been signed by the concerned parties and the Transmission Service Agreement (TSA) has been executed between SEUPPTCL & the Long Term Transmission Customers (LTTCS) it*

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cannot agree to any amendment of specifications of the project.

In view of above, the Commission does not take cognizance of the said letter dated 24-04-12 of SEUPPTCL.”

#### **Letter dated 11-06-12 addressed to SEUPPTCL**

“Please refer to the clause 1.3 of RFQ and 1.5(a) & 2.14.2.4 of RFP documents. The survey report provided to you by the Bid Process Coordinator (UPPTCL) at RFQ stage explicitly mentions that ACSR conductors are to be used. Besides, after issuance of LOI, amendment in the specifications is not permissible, as mentioned in the Commission’s order dated 18-05-2012. As such I am directed to inform you that modification of para-6 of the said Commission’s order is not required.”

#### **Order dated 19-03-12 in petition no 782/2012 of WUPPTCL**

“5(c)

##### Use of other equivalent type of transmission line conductors

The petitioner is of the view that Indian utilities have been specifying and using ‘Bersimis equivalent’ and ‘Moose equivalent’ All Aluminium Alloy Conductor (AAAC) instead of ACSR due to the benefit of lower losses, lower weight and lower sag and therefore requested that an option may be given for use of ACSR/AAAC Bersimis/Bersimis-equivalent and Moose/Moose-equivalent conductors for 765kv and 400kv lines respectively, instead of using only Bersimis and Moose conductors, mentioned in bid documents and accordingly relevant clauses of RFP & TSA may be amended.”

“6)

.....

UPPTCL strongly objected the petitioner’s request to use Bersimis & Moose Equivalent AAAC conductor in addition to ACSR conductor, as the benchmarking of project cost had been carried out at bidding stage with the use of ACSR conductor as per CERC guidelines. They further reiterated that any such deviation, at this stage, is not possible as the equivalent AAAC conductor requires technical suitable study, which even if found technically better, has the financial implications also and hence may affect the overall price structure of the project.

.....”

“8) Having heard the deliberations of both the petitioner (WUPPTCL) and the Bid Process Coordinator (UPPTCL) with due consideration to their written submissions, the Commission finds that all the issues raised by the petitioner require amendments in RFP & TSA documents, on the basis of which, the BPC processed the entire competitive bidding. The Commission affirmed that as of now it is not going into the merit of the transparency of the competitive bidding process and asserted that the same is being taken up separately while considering the petition for adoption of tariff of package-2. Having said that, the



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*Commission is of the firm view that in light of the fact that the bidding process has been completed by the BPC, the Letter of Intent (LOI) has been issued to the successful bidder, the Share Purchase Agreement (SPA) has been signed by the concerned parties and the Transmission Service Agreement (TSA) has been executed between the petitioner and the Long Term Transmission Customers (LTTCS), **the Commission, at this stage, cannot accord approval to further amend the RFP & TSA documents, on the basis of which the entire bidding process took place.***

**9) In view of above, the Commission does not deem it fit to approve now the amendments sought in this petition.”**

Subsequent to its order dated 18-05-12 and letter dated 11-06-12 in this petition, the Commission observed that several letters, pertaining to use of the conductor in the Project, were submitted by UPPTCL and SEUPPTCL to the Commission to resolve the issue of conductor. It made the Commission understand that the issue is still not settled among the parties, causing undue delay in the progress of the Project. As the transmission system under this Project is linked with the evacuation of power of upcoming thermal power projects (Bara, Karchana, Meja etc) and any delay in its execution may hamper the evacuation of power from these thermal projects, causing the consumers of the state to suffer ultimately, therefore the Commission decided to intervene in the matter. Accordingly, the letters which have been addressed by the UPPTCL and SEUPPTCL to the Commission to address the issue of Conductor are being taken on record and have been made the part of the Petition. SEUPPTCL sent letter No. 109 dated 18.7.2012, letter dated 12.7.2012 to the Commission. UPPTCL wrote letter No. 952 dated 30.07.2012, letter No. 928 dated 25.07.2012 to Commission to settle the issue of Conductor. There are other letters also on the issue between both the parties regarding this issue. The letters from UPPTCL to SEUPPTCL are No. 952 dated 30.07.2012, No. 1007 dated 28.08.2012, No. 989 dated 14.08.2012. The letters from SEUPPTCL to UPPTCL are dated 31.08.2012, dated 1.08.2012, letter No. 108 dated 18.07.2012 on the issue.

*The Commission expressed its displeasure as the directions of the Commission contained in its order dated 18-05-12 and subsequent letter dated 11-06-12, regarding the use of conductor in Package-1, were not complied.*

The Commission in its order dated 2-04-2013 has stated



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“ -----Since the conductor type to be used in the transmission line has been associated with Bersimis or moose under the scope of work in the bid document, therefore, the Commission decides that only Bersimis or moose conductor (which stands for ACSR conductor) shall be used in the construction of line. One more important reason in support of above decision is this that benchmark price of the project was worked out by the UPPTCL on BERSIMIS and MOOSE conductors only.-----

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In view of above deliberations, the Commission finds no substantial reason to deviate from its decision in its interim order dated 18.5.2012 and subsequent letter dated 11.06.12 in the same petition regarding the use of conductor and therefore, Commission directs SEUPPTCL to use BERSIMIS and MOOSE Conductors only for construction of transmission lines under the project and submit its acceptance in this regard to UPPTCL within two weeks from the date of this order under an intimation to the Commission.”

SEUPPTCL has submitted that the Petitioner has always confirmed that it does not seek any deviation from the bidding documents and conditions specified therein and shall implement the project as per the bidding documents and the TSA. In line with this, the Petitioner will use the conductor strictly in terms of the Bidding documents including the Moose and Bersimis as defined and applicable under the bidding documents.

UPPTCL vide letter dated 3528 / Dir (W&P) / PTCL/13 dated 29.4.2013 submitted that in reference to para 14 (b) of Commission order dated 2.4.2013 M/s SEUPPTCL have not yet submitted the confirmation regarding use of ACSR Moose and Bersimis conductors for construction of transmission lines under the project.

***Commission finds that the benchmark price of the project cost was worked out at the bidding stage with the use of ACSR conductors and survey report attached with RFQ document of this package too specifies Bersimis conductor as ACSR Bersimis having specific number of steel and aluminium strands with specific diameters, area, weight, Ultimate Tensite Strength, elasticity and coefficient of Linear Expansion. The Commission in its earlier order dated 2-04-2013 have already clarified that Bersimis conductor and Moose Conductor as specified in the bidding documents stands for ACSR Bersimis conductor & ACSR Moose Conductor .***

The Commission once again directs SEUPPTCL to use ACSR Bersimis and ACSR

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### **Moose in construction of Transmission lines under this project.**

The issue of conductor raised by the objectors and respondents is set at rest.

c) Clause 19.2.3 of TSA

The Commission had pointed out in its earlier order dated 2-04-2013 that there is no clarity in regard to change of ownership in a gap of three years between COD+2 & COD+5 in clause 19.2.3 of TSA and directed the parties to clarify it.

The Commission referred to the review petition 691/2010 filed by UPPTCL vide which UPPTCL added the provision of the technical criteria to be fulfilled by the new owner / consortium in case of any change in the ownership of SEUPPTCL under clause 19.2.3 of TSA.

The Commission further pointed out that clause 19.2.1 of TSA says that “the aggregate equity share holding of the selected bidder in the issued and paid up equity share capital of SEUPPTCL shall not be less than (a) 51% up to a period of 2 years after COD of the Project; and (b) 26% for a period of 3 years thereafter”. In view of above clause of TSA, if the aggregate equity share holding of the selected bidder in the issued and paid up equity share capital of SEUPPTCL shall not be less than 26% up to a period of 5 years after COD of the project and the selected bidder shall be the part of SEUPPTCL up to five years after COD of the Project. Therefore any exit of the selected bidder from SEUPPTCL will come up only after (COD+5) years and hence the technical criteria to be fulfilled by the new owner / consortium in case of any change in the ownership of SEUPPTCL may arise only after (COD+5) years.

This issue came to the knowledge of the Commission after the signing of TSA documents and then only the Commission observed some inconsistency in the clause. The Commission decided that it cannot leave any ambiguity in the documents. As this clause was finalized by the BPC, therefore the Commission directed UPPTCL to file its reply within two weeks from the order dated 02-04-2013.

UPPTCL through affidavit vide letter no. 276 dated 26.4.2013 submitted as under:-

Clause 19.2.3 is defined as below:-

19.2.3 Subject to Article 19.2.1, all transfer(s) of shareholding of South-East UP Power Transmission Company Limited by any of the entities referred to in Article 19.2.1 and 19.2.2 above, shall be after prior written permission from the Long Term Transmission Customers /



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nominee of Long Term Transmission Customers. In case of any change in ownership, the new owner / consortium must fulfill the minimum technical requirement as specified below:

a) In case of change in ownership until COD+2 years, the new owner / consortium shall have at least the same technical requirements than the bidders were required to have at the RFQ stage to be qualified.

b) After COD-5 years the new owner / consortium shall demonstrate capacity to operate Transmission lines & substation achieving the stipulated standards of performance either himself or through a contractor who have at least 10 years experience of maintaining 765 kV substation and 400 kV lines. In case of persistent failure to deliver the stipulated performance the LTTC will have a right to terminate the TSA after giving one month notice.

Since the clause 19.2.3 is subject to the provisions of clause 19.2.1, the period between COD+2 & COD+5 years will be covered by the provisions of 19.2.1 (b).

SEUPPTCL submitted that there is no ambiguity or doubt on the scope of the Clause 19.2.3 of the TSA. The Respondents have also not raised any dispute on the applicability of the said Clause 19.2.3.

**The Commission is satisfied with the reply of UPPTCL and SEUPPTCL that the period between COD+2 years and COD+5 years is covered by the provisions of 19.2.1 (b) of TSA.**

d) Schedule-10 of TSA

As per TSA document, the entire bid (both financial and non-financial bids) of the Selected Bidder is required to be attached under Schedule-10 of TSA.

It has been observed that only the originally quoted transmission charges were attached by BPC under TSA schedule-10, whereas the LOI dated 05-07-11 indicated that some negotiation with the L1 bidder (Isolux Corsan) also took place during the bidding process and thereafter the bidder submitted the revised transmission charges of 35 years corresponding to the levelized tariff of Rs 870Cr/year. The revised transmission charges quoted by the L1 Bidder on the basis of which LOI has been issued by BPC, has not been made the part of TSA schedule-10. Therefore there is an inconsistency between TSA schedule-10 and TSA schedule-6. In view of such inconsistency, the Commission is of the opinion that the revised transmission charges should have also been made the part of TSA schedule-10 (financial bid). UPPTCL agreed to make the revised transmission charges as part of TSA Schedule-10.

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The Commission directed UPPTCL to make the revised transmission charges of the Selected Bidder along with all the relevant correspondences in this regard, as part of TSA Schedule-10 and get the amended part of TSA signed by all the concerned parties within two weeks from the order dated 2-04-2013, with a copy to the Commission.

The Commission also inquired how the non-financial bid had been evaluated as most of the documents attached with TSA Schedule-10 under non-financial bid are in foreign language. Both the parties, UPPTCL & SEUPPTCL confirmed that the English version of all such documents has also been made the part of the TSA Schedule-10.

**The Commission observed that all the above documents signed by four Discoms viz. Paschimanchal Vidyut Vitran Nigam Ltd, Dakshinanchal Vidyut Vitran Nigam Ltd, Purvanchal Vidyut Vitran Nigam Ltd, Madhyanchal Vidyut Vitran Nigam Ltd & M/s Western U.P Power Transmission Company have been made part of Schedule-10 (Vol.-2) of the Transmission Service Agreement for PPP Package -2 executed on 20.01.2012.**

e) Signing of Share Purchase Agreement (SPA)

In accordance with the contents of approved SPA documents, "SPA" is an agreement amongst UPPCL, SEUPPTCL and the Successful Bidder for the purchase of 100% shareholding of SEUPPTCL, for the Acquisition Price, by the Successful Bidder. Further, as per LOI dated 05-07-12 issued by UPPTCL, the Successful Bidder in the Project was M/s Isolux Corsan CONCESIONES SA. Therefore, the Commission is of the view that SPA was required to be signed only by the three parties - UPPCL, SEUPPTCL and M/s Isolux Corsan CONCESIONES SA., whereas it has been observed that SPA was signed by the fourth party - Mainpuri Power Transmission Pvt. Ltd also. The Commission also observed that SEUPPTCL in its letter dated 01-06-12 addressed to Registrar of Companies stated that Mainpuri Power Transmission Private Limited has acquired 100% equity stake of SEUPPTCL from UPPTCL in accordance with SPA dated 16-12-11.

In view of above, the Commission asked who acquired SEUPPTCL and inquired about the role of Mainpuri Power Transmission to sign SPA. The Commission considered it as a deviation from the approved SPA document and directed UPPTCL & SEUPPTCL to file their replies under an affidavit within two weeks from the date of this order.



The Commission also directed SEUPPTCL to submit the latest share holding pattern and the Board of Directors of SEUPPTCL, Isolux Corsan CONCESIONES SA and Mainpuri Power Transmission Pvt. Ltd along with the Board resolution of Isolux Corsan CONCESIONES SA for authorization to sign Share Purchase Agreement (SPA), as already directed vide its order dated 18-05-12. All these documents will be submitted under an affidavit within two weeks from the date of this order.

UPPTCL replied that under format 2 : (Details of equity investment in project of RFP Non-financial bid), the Bidding Company M/s Isolux Corsan have specified that its affiliate company M/s Mainpuri Power Transmission Pvt. Ltd., will invest 100% equity in South-East U.P Power Transmission Company Ltd. Further the clause 2.14.4.2 of RFP also permits the selected bidder to invest through the affiliate company. Due to above fact, M/s Mainpuri Power Transmission Pvt. Ltd have also signed SPA in addition to the bidding company i.e. M/s Isolux Corsan.

SEUPPTCL submitted that the 100% shares of the petitioner were purchased by M/s Mainpuri Power Transmission Pvt. Ltd. which is the subsidiary of M/s Isolux Corsan in accordance with RFP.

**The Commission is satisfied with the reply of UPPTCL & SEUPPTCL that M/s Mainpuri Power Transmission Pvt. Ltd. is an affiliate company of M/s Isolux Corsan which has invested 100% equity in SEUPPTCL which is permitted in RFP.**

f) Delay in bidding process

(I) As per the Guidelines of GOI, the total time to complete the bidding process, starting from publication of RFQ to signing of agreements, is only 240 days; whereas UPPTCL took more than 875 days to complete the bidding process. The Commission inquired the reasons of this delay.

(II) As per bidding documents, the SPA & TSA were required to be signed within 15 days of issue of LOI. Since LOI was issued on 05-07-11 and SPA & TSA were signed on 16-12-11 & 20-01-12 respectively, the Commission inquired about the delay in signing of SPA



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(after a period of five months) and TSA (after a period of 6 months). UPPTCL replied that it was due to the time taken by the Successful Bidder (Isolux Corsan Concesiones), in completing the requisite formalities.

- (III) UPPTCL allowed submission of RFQ bids up to 12-11-09 and RFP bids up to 20-11-10, which was not in accordance with the directions of the Commission. The Commission vide its orders dated 15-10-09 & 20-10-09 directed UPPTCL to issue modified RFQ to the bidders within seven days of the order and next seven days for filing the responses.

Similarly the Commission, vide its orders dated 02-07-10 directed UPPTCL to issue modified RFP documents within seven days of the order and next 30 days for submission of RFP bids. Since the modified RFP & RFQ Project Documents had already been issued to the bidders, the Commission directed UPPTCL vide its order dated 15-09-10 in the review petition 690/2010 filed by UPPTCL, to make the necessary modifications in the documents according to the decisions and directions of the Commission through an amendment within seven days of the order and issue the amendment to both the bidders within three days thereafter. In view of above, the Commission inquired why the submission of RFQ and RFP bids did not take place as per the orders of the Commission.

For point no (I) UPPTCL replied that it was due to the delay in getting the approval of various documents and procedures required at different levels of decision making bodies. For point no (II) & (III) UPPTCL replied that this was first power project, of such a large magnitude, taken up under Public Private Partnership (PPP) mode in the state of U.P. Even the consultant, appointed for this project, M/s CRISIL Risk & Infrastructure Solutions Pvt. Ltd. was not thoroughly aware of procedures & regulations applicable to such type of projects. Very few PPP Projects in Transmission Power Sector have been taken up in the country & therefore guidelines are also at a nascent stage.

The Global tender notice for submission of RFQ & RFP was advertised in the National Newspapers on 10.08.2009. Accordingly RFQ & RFP was sent to UPERC for approval. The approval of Commission for RFQ was received on 20.10.2009.

As per directive of Commission, the RFQ opening date was fixed for 31.10.2009. But in order to enable more participants to submit the bids & on request of prospective bidders

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the date of submission of RFQ bids was extended from time to time & finally fixed for 12.11.2009. The RFQ bids were received & opened on 12.11.2009.

Bid Evaluation Committee (BEC) in its meeting on 30.11.2009 instructed to submit comprehensive assessment report after getting some clarifications from the bidders by giving them 15 days time. Again in its meeting on 23.02.2010, BEC recommended to ETF for selection of M/s Isolux & M/s Cobra for issuance of RFP documents. Thereafter E.T.F. in its meeting on 24.02.2010 decided to issue RFP to M/s Isolux & M/s Cobra. Accordingly RFP documents were issued to both the bidders. These documents were also submitted to UPERC. After the hearings on 18.03.2010, 18.05.2010, 03.06.2010, 08.06.2010 & 25.08.2010. RFP project documents were finally approved by UPERC on dated 15/16.09.2010. RFP documents were issued to selected bidders on 30.09.2010.

Thereafter opening of RFP bid was scheduled on 30.10.2010 but the same had to be extended on the request of the bidders as they wanted to clarify some matters regarding bid. The RFP bids were finally scheduled for submission on 20.11.2010 and accordingly both the bidders submitted their financial and non financial bids on 20.11.2010. RFP Non-Financial bid was opened same day i.e. on 20.11.2010.

Some Post bid clarifications were desired by UPPTCL. The replies to clarifications by both the bidders were submitted up to 19.01.2011.

During this period Benchmark cost for both the packages was also worked out. Based on Benchmark cost, the minimum levelized tariff was approved by ETF in its meeting dated 28.02.2011 which was intimated to UPERC by UPPTCL vide Director (Finance) letter no. 862 dated 10.03.2011.

ETF as empowered committee finalized the selection of developers on 30.03.2011. U.P. Govt. issued orders vide letter no. 452/24/ ऊाणिनिप्र०/११-४८ (प्रकोष्ठ)/१० dated 26.05.2011 to award the package – 1 to M/s Isolux Corsan & Package – 2 to M/s Cobra – MEIL Consortium.

All the related minutes of meeting of ETF & U.P. Govt. letter have already been submitted to UPERC. The delay in excessive time taken in finalization of bids was due to approval of documents & procedures required at different levels of decision making bodies.

**The Commission is satisfied with the submissions /replies of UPPTCL in regard to points f (I),(II) and (III)**



- g (I) The Commission sought clarifications from UPPTCL about the negotiation with the L1 bidder and placement of LOI on negotiated price, when there was no such provision in the RFP bid document. UPPTCL could not reply satisfactorily. The Commission directed UPPTCL to file its reply under an affidavit within two weeks from the date of this order.

UPPTCL submitted that Tariff based competitive bidding guidelines issued by Ministry of Power, GOI do not prohibit negotiation. BEC have done the negotiation as per directions of ETF decision dated 28.02.2011. Since ETF was nominated as the Empowered Committee by Govt. of U.P., it was authorized to take decisions which are economical to the state.

**The Commission is satisfied with the reply of UPPTCL as the negotiated bid was lower than the quoted bid and negotiations held was in the interest of public.**

- (II) In view of clause 3.4.1.5 of RFP read with para-11(c) of the Commission's order dated 02-07-10 and para-7 of the Commission's order dated 15-09-10, the Commission sought clarifications from UPPTCL about non-adoption of Swiss Challenge Method (SCM) even when the originally quoted levelized tariff was above the benchmark cost of the Project. UPPTCL could not reply satisfactorily. The Commission directed UPPTCL to file its reply under an affidavit within two weeks from the date of this order.

UPPTCL submitted that ETF in its meeting dated 28.02.2011 had decided not to go for Swiss Challenge Method (SCM) if the quoted tariff is within +10% of benchmark tariff. Since the lowest quoted rates were higher by only 9.16% from Benchmark prices for package-I, Swiss Challenge Method was not adopted.

Package – 1 : Benchmark tariff (informed to UPERC) – 833.76 Crs.

Quoted Levelised tariff – 910.182 Crs.

Obtained by bidding diff. +9.16%

It was less than 10% higher than bench mark tariff therefore SCM was not adopted.

**The Commission is satisfied with the reply of UPPTCL.**

- h) Submission of documents as per Commission's earlier order dated 2-4-2013



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The Commission directed UPPTCL to submit the following documents within two weeks from the date of this order:-

- (I) An affidavit for publishing RFQ & RFP notices on the website of UPPTCL and the Govt. along with the copies of newspaper cuttings for publication of NIT with publication date, required under para-9.2 of guidelines.

UPPTCL submitted that the notice regarding opening of RFQ was uploaded on UPPTCL's website. RFQ notices published in the newspapers are enclosed as Annexure – 3. RFP notices were not required to be published in the newspapers as it was sent to the selected bidders by the BPC. RFP documents were also uploaded on UPPTCL's website.

- (II) An affidavit for opening the RFQ & RFP bids in public and in the presence of representatives of bidders along with the copy of the attendance sheet, having details & signatures of persons, present during the opening of the RFQ & RFP bids, required under para-9.9 of guidelines.

UPPTCL submitted that RFQ & RFP were opened publically in presence of authorized representatives of bidders and members of bid opening committee. Photo copy of the attendance sheet dated 12.11.2009 for RFQ bids, dated 20.11.2010 for RFP non-financial bids and dated 25.03.2011 for RFP Financial bids are enclosed.

**The Commission is satisfied with the reply of UPPTCL**

g) Provisions under Article 3.3.1 of TSA

The Commission inquired from UPPTCL regarding payment of additional Contract Performance Guarantee of Rs 4.72 Cr per week from SEUPPTCL to LTTCs in terms of Article 3.3.1 of TSA. UPPTCL replied that letters in this regard have already been sent to SEUPPTCL but SEUPPTCL requested to waive such additional CPG under the Article 11 (Force Majeure) of TSA.

The UPPTCL submitted that the M/s SEUPPTCL vide letter dated 19.10.2012 & 19.11.2012 (Annexure-5) have informed that the company have taken all the necessary steps for fulfillment of conditions subsequent. The non-fulfillment of the same is not in control of company as the same is affected by Force Majeure conditions. Under these circumstances, the provision of additional Contract Performance Guarantee (CPG) will not apply till appropriate Commission issue the order for adoption of Transmission Charges.



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Commission finds that the responsibility of delay in adoption of transmission charges submitted by SEUPPTCL lies with both the parties. The Commission directs the parties to mutually decide upon this issue.

In view of the above the Commission adopts the transmission charges provided in schedule 10 of TSA on the levelized transmission charge of Rs 870 crores per annum for a period of 35 years to be provided by Transmission Service Provider in regard to establishment of the intra state Transmission System titled *765KV S/C Mainpuri-Bara line with 765KV/400KV AIS at Mainpuri and associated Schemes/Works” Package-1* on ‘Build, Own, Operate & Maintain and Transfer’ basis as provided in the Annexure A of this order.

The petition is disposed off accordingly.

(Meenakshi Singh)  
Member

(Shree Ram)  
Member

Place: Lucknow

Dated: 30<sup>th</sup> May, 2013



## Annexure A


Year (Term of License)	Commencement Date of Contract Year	End Date of Contract Year	Non-Escalable Transmission Charges (in Rupees Millions)	Escalable Transmission Charges (in Rupees Millions)
1)	(2)	(3)	(4)	(5)
1.	Scheduled COD	31 March, 2014	10,209.98	118.80
2.	1 April, 2014	31 March, 2015	10,199.68	Same as above
3.	1 April, 2015	31 March, 2016	10,191.92	Same as above
4.	1 April, 2016	31 March, 2017	10,183.69	Same as above
5.	1 April, 2017	31 March, 2018	10,174.97	Same as above
6.	1 April, 2018	31 March, 2019	8,409.75	Same as above
7.	1 April, 2019	31 March, 2020	8,399.94	Same as above
8.	1 April, 2020	31 March, 2021	8,389.57	Same as above
9.	1 April, 2021	31 March, 2022	8,378.56	Same as above
10.	1 April, 2022	31 March, 2023	7,127.37	Same as above
11.	1 April, 2023	31 March, 2024	7,115.01	Same as above
12.	1 April, 2024	31 March, 2025	7,101.91	Same as above
13.	1 April, 2025	31 March, 2026	7,088.02	Same as above
14.	1 April, 2026	31 March, 2027	7,073.29	Same as above
15.	1 April, 2027	31 March, 2028	7,057.69	Same as above
16.	1 April, 2028	31 March, 2029	7,040.36	Same as above
17.	1 April, 2029	31 March, 2030	7,022.83	Same as above
18.	1 April, 2030	31 March, 2031	7,004.25	Same as above
19.	1 April, 2031	31 March, 2032	6,984.56	Same as above
20.	1 April, 2032	31 March, 2033	6,963.69	Same as above
21.	1 April, 2033	31 March, 2034	6,941.57	Same as above
22.	1 April, 2034	31 March, 2035	6,918.13	Same as above
23.	1 April, 2035	31 March, 2036	6,893.28	Same as above
24.	1 April, 2036	31 March, 2037	6,866.94	Same as above
25.	1 April, 2037	31 March, 2038	6,839.02	Same as above
26.	1 April, 2038	31 March, 2039	6,809.43	Same as above
27.	1 April, 2039	31 March, 2040	6,778.07	Same as above
28.	1 April, 2040	31 March, 2041	6,744.84	Same as above
29.	1 April, 2041	31 March, 2042	6,709.61	Same as above
30.	1 April, 2042	31 March, 2043	6,672.27	Same as above
31.	1 April, 2043	31 March, 2044	6,632.69	Same as above
32.	1 April, 2044	31 March, 2045	6,590.75	Same as above
33.	1 April, 2045	31 March, 2046	6,545.55	Same as above
34.	1 April, 2046	31 March, 2047	6,498.43	Same as above
35.	1 April, 2047	31 March, 2048	6,448.49	Same as above
36.	01 April, 2048	(35 <sup>th</sup> Anniversary of the Scheduled COD)	6,395.56	Same as above

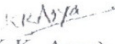
Certificate of Bid Evaluation Committee


**Subject: Selection of bidder as transmission service provider to establish the transmission system for 765kV S/C Mainpuri- Bara line with 765kV/400kV AIS at Mainpuri & Associated schemes/ work through Tariff based Competitive bidding process under PPP Package-1.**


The Bid Evaluation Committee constituted by Secretary (Energy) U.P. Govt. vide O.M no. 493/24-ऊ०नि०नि०प्र०/०९-२९ (प्रकोष्ठ)/०९ dated 07.09.2009 had completed the bid evaluation for the transmission project under PPP Package-1 in the last meeting held on dated 30.03.2011. In terms of Clause 12.4 of Tariff based Competitive- bidding Guidelines for Transmission Service it is hereby certified that :

- M/s Isolux Corsan Concesiones S.A has emerged as successful bidder with the lowest levelised tariff of Rs 870 crores per annum for the above project as per Bid Evaluation Committee minutes of meeting dated 30.03.2011 enclosed at Annexure -1.
- The rates quoted by successful bidder are in line with the prevalent market prices.
- The entire bid process has been carried out in accordance with the "Tariff based Competitive - bidding Guidelines for Transmission Service" and "Guidelines for encouraging competition in development of the transmission projects" issued by ministry of power, Govt of India under section 63 of Electricity Act, 2003 and as amended from time to time.


  
(R.S. Panday)  
Director (P&A)  
The then Director (Project) UPPTCL  
(Member/Co-convenor)

  
(K.K. Arya)  
The then Director (SETD)  
Chief Eng. CEA, New Delhi  
(Member)

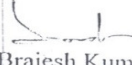
  
(S.K. Agarwal)  
Director (Finance)  
UPPTCL  
(Member)

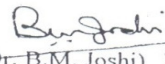
  
(Navneet Sehgal)  
Principal Secretary (Dharmarth karya)  
The then Secretary (Energy) & CMD, UPPTCL  
(Member/Convenor)



  
(Anoop Mishra) 8.04.2013  
Chairman, UPSRTC/The then Infrastructure and Industrial Development Commissioner  
Chairman Bid Evaluation Committee

(Sri Krishna Srivastava)  
Special Secretary (Planning) (Retired)  
Representative Principal Secretary  
(Member)

  
(Brajesh Kumar)  
Representative Principal Secretary  
(Law), U.P. Govt.  
(Member)

  
(Dr. B.M. Joshi) 8/4/13  
Secretary (Finance)  
Representative Principal Secretary  
(Finance), UP Govt.  
(Member)

(V.N. Garg)  
Principal Secretary (Forest)  
The then Principal Secretary (Industrial Development)