

**Before the Appellate Tribunal for Electricity  
(Appellate Jurisdiction)**

**Appeal No. 26 of 2007 and appeal  
No. 36 of 2007**

**Dated: May 8, 2008.**

Present: Hon'ble Mr. H.L. Bajaj, Technical Member

**Appeal No. 26 of 2007.**

Uttar Pradesh Power Corporaton Ltd.  
Shakti Bhawan, 14 Ashok Marg  
Lucknow

....Appellant

versus

1.M/s Noida Power Company Ltd.  
Commercial Complex, H-Block  
Sector Alpha-II  
Greater Noida-201308

2. Uttar Pradesh Electricity Regulatory Commission  
Kisan Mandi Bhawan, IInd floor  
Gomti Nagar  
Lucknow (U.P.)

....Respondents

Counsel for appellant(s) : Mr. Sitesh Mukherjee,Advocate  
Mr. Vishal Anand, Advocate  
Mr. Sapan K.Mishra,Advocate  
Mr. Sakya. S.Choudhary

Counsel for respondent(s) : Mr.Shanti Bhushan Sr. Advocate  
Mr.M.G.Ramachandran,Advocate  
Mr. Sanjeev K.Kapoor and  
Mr. Vishal Gupta,Advocates for  
Resp.I.

Mr. Suresh Tripathy, Advocate  
for UPERC  
Mr. Sanjay K.Singh Director and  
Mr. Vivek Dikshit, Jt.Director for  
UPERC.  
Mr. Avinash Menon for Resp.I  
Mr. N.K. Sahoo for MrTripathi.  
Mr. Sanjay K.Pathur for Respn.I  
Mr. Pranav Kumar for UERC

**Appeal No. 36 of 2007**

M/s Noida Power Company Ltd.  
Commercial Complex, H-Block  
Alpha-II Sector  
Greater Noida

....Appellant

Versus

1. Uttar Pradesh Power Corporation Ltd.  
Shakti Bhawan, 14, Ashok Marg  
Lucknow

2. The Uttar Pradesh Electricity Regulatory Commission  
Kisan Mandi Bhawan, IInd floor  
Gomti Nagar  
Lucknow (U.P.)

....Respondents

Counsel for appellant(s) : Mr. Shanti Bhushan, Sr. Advocate  
Mr. M.G. Ramachandra, Advocate  
Mr. Sanjeev K. Kapoor and  
Mr. Vishal Gupta, Advocates.  
Mr. Shabyashachi Patra.

Counsel for respondents : Mr. Suresh Mukherjee, Mr. Vishal  
Anand & Mr. Sapan Kumar  
Mishra, Advocates.  
Mr. Suresh Tripathy for UPERC

Mr. Sakya.S.Choudhary  
Mr. Sanjay K.Singh,Director and  
Mr. Vivek Dikshit, Jt.Director(BSRT)  
Mr. Pravan Kumar,Advocate

## **J U D G M E N T**

**Per Hon'ble Mr. H.L. Bajaj, Technical Member**

These appeals were heard by Hon'ble IInd Bench of this Appellate Tribunal consisting of the Hon'ble Technical Member (Hon'ble Mr. A.A. Khan) and Hon'ble Judicial Member ( Hon'ble Mrs. Justice Manju Goel).

2. Hon'ble Mr. A.A. Khan, Technical Member and Hon'ble Mrs. Justice Manju Goel, Judicial Member issued an Order under Section 123 of The Electricity Act, 2003, which, *inter alia*, gives points of divergence culled out by both the Hon'ble Members at para 11 & 12 of their Order dated 25<sup>th</sup> October, 2007. It is considered necessary to give below the order of the two Hon'ble Members:

### **Order under section 123 of Electricity Act 2003**

*"The two appeals viz. the appeal Nos. 26/2007 & 36/2007 arise out of the same impugned order viz the one dated 08 Feb. 2007 passed on a petition filed by the Noida*

*Power Company Ltd (NPCL for short). The detailed facts of the case are available in the two judgments of the two members of the bench. For the purpose of the present order under section 123 Electricity Act 2003, we need to place only the basic facts.*

*2. NPCL contracted to purchase 10 MW of power from UPPCL on marginal cost. The UPPCL commenced supply of 10 MW w.e.f. 10 May 2006 and raised the bill for this supply for the first time in September 2006. Subsequently in November 2007 UPPCL revised the bill. The NPCL found the rate charged being higher than its expectations and defaulted in paying the bill. UPPCL vide its letter dated 04 Nov. 2001 threatened to discontinue the additional supply of power and restrict the power supply to the original 45 MW for which the parties had an existing power purchase agreement. This led to filing a petition No.414 by NPCL to UPERC under Section 86 of the Electricity Act 2003 and Section 34 of the U.P. Electricity Reforms Act 1999. In the proceedings before the Commission, the NPCL made Additional Submissions on 16 Nov. 2006 seeking certain reliefs.*

*3. The Commission despite having found the transaction being costliest proceeded to consider it as a 'sunk cost' as it was fait accompli, and directed vide impugned order that NPCL should compensate the cost incurred by the UPPCL by making payment to it at the rate of marginal cost as claimed by the UPPCL. However, in order to balance the higher cost for 10 MW to be borne by the NPCL it further directed that for the original 45 MW*

*of power bulk supply tariff fixed earlier should be reduced and the NPCL should pay for the bulk supply of 45 MW at the rate of 1.987 per unit. While UPPCL is aggrieved of the order reducing the bulk supply tariff rate for the 45 MW power the NPCL is aggrieved with the order directing it to pay for the 10 MW of additional power at marginal cost for being 'sunk cost'. Both the members are of the opinion that the Commission could not have altered the bulk supply tariff for the original 45 MW of power which had been fixed by an earlier tariff order. However, they are at divergence about the price to be paid for the additional 10 MW.*

*4. One of us, the Judicial Member, has found that the appeal of UPPCL has to be allowed and that of NPCL dismissed. The rationale for such finding is as under.*

*5. NPCL challenged the impugned order on the following grounds:*

*i) The agreement dated 08.05.2006 was obtained by UPPCL from NPCL by undue influence as defined under Section 16 of the Contract Act and did not amount to a contract under Section 10.*

*ii) The claim of UPPCL to charge power supply to one distribution company in the State @ Rs.8.80 per unit while it is supplying to all other distribution companies in the State at the rate of Rs.1.897 per unit is clearly discriminatory and un-constitutional.*

*iii) The agreement dated 08.05.2006 was contrary to law and therefore not binding and enforceable under Section 23 of The Contract Act.*

*iv) UPPLC being a State transmission utility is not permitted to trade in electricity.*

*v) There is no clear concept of marginal cost. Therefore so called agreement dated 08.05.06 could not amount to a valid contract”*

*6. The Judicial Member finds that order dated 08 May 2006 was a valid contract and not hit by either Section 16 or by Section 23 of the Contract Act. She also finds that the marginal cost contract was not discriminatory. So far as UPPCL’s function as a trader is concerned, the Judicial Member finds it to be irrelevant to the controversy. She finds the concept of marginal cost generally understood and clear and particularly defined by the letter of dated 10 May 2006 of the UPPCL and that the parties fully understood what they were agreeing to and hence the contract was not bad for uncertainty. The Judicial Member also holds that dominant position heretofore enjoyed by UPPCL being the transmission utility and by denying open access had come to an end in January 2006 when open access was made available to NPCL as evidenced by letter of 13 Jan. 2006 of the UPPCL. She finds that NPCL, despite availability of open access as well as offers from other suppliers for additional electricity, opted to enter into the agreement with UPPCL for supply of 10 MW at marginal cost. The Judicial Member also holds that NPCL*

*was not a company which could be entitled to succeed to any of the power purchase agreements held by the erstwhile UP State Electricity Board. The Judicial Member further holds that the transaction in question is not hit by Section 60 of the Electricity Act 2003.*

*7. The Judicial Member further finds that NPCL never alleged that the impugned agreement had any adverse effect on competition and that the presumed dominant position of UPPCL had no adverse effect on competition so far as the transaction in question is concerned. Further she finds that no 'directions' under Section 60 of the Electricity Act 2003 can be issued to deny the seller the contracted price after the sale is complete and the product consumed. The conclusion of the Judicial Member is as under :*

*"73. To summarise the above discussion, I say that the contract of 08<sup>th</sup> May, 2006 was legal and valid and for the purchase of power under the agreement, NPCL is legally bound to pay the agreed price. Even if the objections to the validity of the contract are sustained, the NPCL has to compensate the UPPCL and such compensation would be the same as marginal price as held by the Commission. No mistake in the calculation of marginal cost having been pointed out, the NPCL is bound to pay the amount for which UPPCL raised the bill. The impugned order to this extent has to be upheld. The part of the order which amends the bulk supply tariff for 45 MW cannot be sustained and has to be set aside".*

8. One of us (Technical member), on the other hand, in a separate judgment has taken a view that the 'marginal cost' as defined by the Forum of Regulators deals with a view to establish surcharge for open access and is applicable to distribution licensees to supply power to consumers and not to a bulk supply of power to licensees, as in the instant case, particularly when the distribution licensees are not having access to power procurement independent of UPPCL. Even otherwise, he opines that the said definition of 'the marginal cost of purchase of electricity to be equated to the highest purchase cost of utility including fixed and variable costs' does not make us any wiser and cannot be implemented unless it is further qualified by differentiating the purchases in terms of cost; peaking/non-peaking hours; UI purchase, etc. On the contrary, he holds that the 'marginal cost' per unit is the costliest power purchased by UPPCL for all procurement (excluding the UI charges when the grid frequency has dipped below minimum permissible limit) aggregating over 400 MW during each unit of time-period, it procured and supplied additional power to UPPCL, thus, deciding that the fair price of 10 MW should be at the average pool rate of incremental procurement of over 400 MW by UPPCL. He further holds that the supply of additional power of 10 MW at the rate of Rs. 8-9 per kwhr for meeting the growing demand of the NPCL distribution area that continued for a period of 9-10 months was in the nature of long-term arrangement and discriminately



*burdens the consumers in that area with the costliest power and militate against the very spirit of the U.P. Electricity Reforms Act, 1999 and the Electricity Act 2003 as it would hamper the investment from the private sector. He also finds that such an arrangement has potential of wiping out the net-worth of the NPCL making its business unviable and hampers competition in procurement of electricity and is violative of the Clause 5.3.3. of the National Electricity Policy and clearly attracts the provisions of Section 60 of the Act providing suo motto power to the Commission to issue directions to prevent adverse effect on competition, even if the agreement is valid.*

*9. The judgment of the Technical Member sets-aside the impugned order and remands the matter to Commission for de-novo proceedings for determination of cost of 10 MW power supply under Section 86(1)(f) on account of illegality and irregularities in the conduct of the proceeding in that, firstly, due to the Commission's failure in not following the minimum requirement of fair procedure in dealing with the Additional Submissions of NPCL filed on 16 Nov 2006 under Section 129 of the Act in Petition No. 414 of 2006, not being in accordance with the UP Electricity Regulatory Commission (Conduct of Business) Regulations, 2004 and secondly, it has failed not only by not ensuring either parties to file their respective stand as to how the cost of additional power is to be determined but also for not requiring UPPCL to set out details, factuals or materials to*

*ascertain the cost of its purchase of 10 MW and NPCL's response thereupon. He also holds that till the final determination of cost of 10 MW by the Commission, the NPCL shall make a provisional payment additionally at the rate of 20% of the existing tariff for availing 10 MW from UPPCL with effect from the date it commenced receiving the supply (i.e. 10 May 2006).*

*10. As per Section 123 of the Electricity Act we are to set out the points on which we have differed. The two judgments of the two members of this Bench have taken two entirely different routes and have arrived at two different conclusions. Accordingly, the Honorable Chairperson or the Member who will now have to rule on the points of divergence will have to look at these two routes and decide which of the two courses adopted is the correct one. The Members could not reach agreement on common points of divergence. The points of divergence as perceived by them are separately indicated hereunder.*

*11. Some of the important points of divergence according to Justice Manju Goel are as under:*

*I) Does the marginal cost payable by NPCL for the additional bulk supply of 10 MW of power under the impugned agreement means the marginal cost as mentioned in the letter dated 10 May, 2006 and the Minutes of the Meeting held on 17 & 18 December, 2004 of the Forum of*

*Regulators or as defined by the Technical member i.e. “incremental cost of each additional unit of output”.*

*II) Whether any fresh computation of dues is required in view of the fact that NPCL had not disputed the accuracy of the bills or whether fresh computation is required in view of the definition of marginal cost relied upon by the Technical Member.*

*III) Is the transaction in question hit by Section 60 of the Electricity Act and if so what relief can be given to NPCL?*

*IV) The Technical Member has also raised the following points:*

*(x) UPPCL has discriminated between the distribution licensees in the State in terms of quantum of power supplied and that this does not promote the reform in the power sector and encourage private investment in the sector.*

*(y) The Commission has conducted the proceedings in deviation of Uttar Pradesh State Electricity Regulatory Commission (Conduct of Business) Rules 2004.*

*It will be necessary to consider whether these two point at all arise for consideration and have any bearing on the disposal of the two present appeals.*

*12. The points of divergence as culled out by the Technical Member are as under :*

*(a) Does the marginal cost payable by NPCL for the additional bulk supply of 10 MW of power under the impugned agreement means the marginal cost as mentioned in the letter dated 10 May, 2006 and the Minutes of the Meeting held on 17 & 18 December, 2004 of the Forum of Regulators **or** the cost of 10 MW to be computed at the average rate of the rates of incremental power purchases of UPPCL aggregating to over 400 MW (san UI charges when the grid frequency dips below the minimum specified limit) to meet the deficit of the Discoms in the State?*

*(b) Has the proceedings conducted by the Commission been vitiated due to non-adherence to the provision of the Uttar Pradesh State Electricity Regulatory Commission (Conduct of Business) Rules 2004? If so to what result, particularly when the Commission is the sole authority to determine tariff in terms of law?*

*(c) Does the transaction in question hamper competition in procurement of electricity and is violative of Clause 5.3.3 to NEP and hit by Section 60 of the Electricity Act? If so, what are the possible remedies to mitigate the adverse effects on the competition in the electricity sector? Can the Commission invoke its suo moto power under Section 60 of the Act without being approached by the NPCL?*

*(d) Is the discrimination between the distribution licensees in the State in terms of quantum and cost of power supplied by UPPCL conducive to promote the reform in the power sector and encourage private investment in the sector?"*

3. The principal issue of divergence between the two Hon'ble Members that needs to be decided relates to the interpretation

of the Marginal Cost in the contract between NPCL and UPPCL for additional 10 MW power purchase.

4. As the contract between the NPCL and UPPCL for supply of 10 MW power originates from the letter dated May 8, 2006 from NPCL, it is necessary to reproduce the same below:

*NPCL  
Noida Power Company Limited*

*Regd. Office:  
Commercial Complex,  
H-Block Alpha-II, Sector,  
Noida-201308, U.P.*

*Ref: E-9/06-07/*

*May 8, 2006*

*Ashok Khurana, IAS  
Principal Secretary (Energy) & Chairman  
UP Power Corporation Limited  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226 001*

*Dear Sir,*

*Additional Supply of 15 MVA*

*This has reference to our various meetings and correspondence resting with our letter No. E-9/06-07/002 dated April 5, 2006 [copy enclosed for ready reference] on the captioned subject.*

*In this connection, we refer to our meeting of date, wherein you have offered to supply 15 MVA additional power at marginal cost to UPPCL, which we accept and will appreciate if necessary instructions are issued to make this additional power available forthwith.*

*Kind regards,*

*Yours faithfully,  
For Noida Power Company Limited*

*(R.C. Agarwala)*  
*Chief Executive*

*Encl: As above*

**Enclosure:**

*NOIDA POWER COMPANY LIMITED*

*Ref: E-9/06-07/002*

*April 5, 2006*

*Mr. Ashok Khurana, IAS,  
Principal Secretary (Energy) & Chairman,  
U.P. Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226 001.*

*Dear Sir,*

*Sub: Additional Load of 15 MVA*

*We are thankful for the dedicated efforts made by UPPCL in expediting 400 kV Pali Sub station and happy to note that the same is likely to be energized within April, 2006.*

*In this connection, we would like to draw your kind attention towards your letter No. 4483/CGM(T) dated 8.11.2005 and No. 696/PSCHM/2006 dated 13.1.2006 addressed to the Chairman & CEO, GNIDA (copies received through GNIDA) informing that additional 15 MVA Power supply over and above the existing 45 MVA, would be given to NPCL for distribution in Greater Noida, once the Pali Sub station is commissioned.*

*As regards payment, we are pleased to confirm that we will make payment in time to UPPCL for the entire energy drawal against 60 MVA (existing 45 MVA + additional sanctioned power of 15 MVA) as per the existing payment practice.*

*Kind regards,*

*Yours faithfully,*

*For NOIDA POWER COMPANY LTD.,*

*R.C. Agarwala  
Chief Executive*

*Encl: As above.*

*C.C. The Chairman & Chief Executive Officer  
Greater Noida Industrial Development Authority,  
Greater Noida.*

5. Since it has been the contention of UPPCL that the agreement between the parties was contained in letter dated May 10, 2006 addressed to Deputy General Manager, E-Distribution Division NOIDA, Paschimanchal Vidhyut Vitran Nigam Ltd., NOIDA (Ghaziabad), from Managing Director of UPPCL, it is necessary to reproduce the same below:-

*U.P. Power Corporation Ltd  
(A U.P. Govt. Undertaking)*

*Shakti Bhawan  
7<sup>th</sup> Floor, 14, Ashok Nagar,  
Lucknow.*

*No. 678/PASMD/2006,*

*Dated 10<sup>th</sup> May, 2006*

*The Dy. General Manager  
E. Distribution Division NOIDA  
Paschimanchal Vidhyut Vitran Nigam Ltd.,  
NOIDA (Ghaziabad).*

*Subject: Regarding Making available additional Electricity to NOIDA  
Power Co. Ltd.*

*Sir,*

*Keeping in view the increased demand of electricity in Greater NOIDA, it has been decided to provide 10 MV additional electricity to Greater NOIDA Authority and Noida Power Company Ltd. with*

*immediate effect. This additional electricity will be made available subject to following terms and conditions:-*

- 1. The Noida Power Company Limited shall make payment of electricity rate for additional electricity through letter of credit which rate will be worked out after adding marginal electricity cost, transmission expenses and losses of each month incurred by Power Corporation.*
- 2. Power Corporation shall make all efforts to provide 10 MV additional electricity. However, in case it is not possible to provide additional electricity due to availability of power in the grid and grid frequency or for any other reasons, the Power Corporation shall not be responsible for any liability whatsoever on this account.*
- 3. The information required by the Power Corporation regarding electricity rates will be provided to Dy. General Manager, Electricity Distribution Division, NOIDA and he will do the billing at old rate for the power allotted in past and billing for this additional electricity at the rate to be worked out as stated in para 1 above.*
- 4. For the purpose of calculating ;the marginal cost, the highest cost for power drawn from different sources shall be treated as marginal cost for additional 10 MV power.*

*You are requested that for the time being Rs. 4.00 crore additional L.C. may be obtained from NOIDA Power Company for supply of 10 MV additional electricity and after deducting the amount received as L.C. from the bill at the end of the month, the balance amount of bill may be received in cash. The supply of electricity will be commenced immediately on receiving L.C.*

*You may please immediately inform the undersigned of the action taken in this context.*

*Yours faithfully,  
Sd/ Mleg.  
(Avneesh K.Awasthi)  
Managing Director*

*Copy for information and necessary action to:-*

- 1. The Chairman, Greater NOIDA Authority*
- 2. Sh.R.C. Aggarwal, Chief Executive Officer, NOIDA Power*



*Company Ltd., Commercial Complex, H-Block, ALFA-11 Sector,  
Greater NOIDA.*

3. *Managing Director, Paschimanchal, Meerut*
4. *Director (Fin), UP Power Corporation Ltd.*

6. NPCL has contended that the aforementioned letter has not been addressed to them and only a copy of the same has been forwarded to them and the same is basically an internal communication of UPPCL from their Managing Director to their Deputy General Manager and it does not alter the acceptance to the contract established by them vide their letter of May 8, 2006. They contend that May 10th letter of UPPCL does not even refer to May 8, 2006 letter and, therefore, it is unrelated and independent of the contract that got established on May 8, 2006 when NPCL accepted the offer of UPPCL to purchase additional power at marginal cost. Any subsequent internal correspondence not giving even reference of May 8, 2006 letter establishing contract is totally irrelevant. NPCL also contends that the letter of May 10, 2006 cannot be relied upon by UPPCL to contend that there was an agreement between NPCL and UPPCL as regards to the meaning of marginal cost as stated in para 4 of the

aforementioned letter May 10, 2006. They also say that NPCL's letter of May 8, 2006 was addressed to the Chairman, UPPCL who was also the Principal Secretary (Energy), Government of U.P. at the relevant time and that the letter was never disputed by UPPCL, in fact, there was no response whatsoever to their May 8, 2006 disputing the sale of additional power at marginal cost.

7. Per contra it has been the contention of UPPCL that NPCL have agreed to the marginal cost as per their letter of May 10, 2006 as the language of the letter is clear and for further clarification even the Hindi Version was read out during the hearing. UPPCL contends that NPCL never objected as to the manner of calculation of marginal cost laid down in their letter of May 10, 2006. UPPCL has contended that NPCL have drawn power subsequent to their letter of May 10, 2006 without any objection and that they even invoked the Commission to enforce the supply of additional 10 MW power from UPPCL, when they were fully aware of the terms of May 10, 2006 letter. The learned counsel for UPPCL has contended

that there was no abuse of its dominant position under Section 60 of the Act as UPPCL did not force NPCL to enter into an agreement with UPPCL for additional 10 MW power. UPPCL vide letter of January 10, 2006 to NPCL intimated that they can even provide open access after NPCL applies in the manner prescribed under the UPERC Regulations as their system was ready for providing for such open access and there has been no application on record by NPCL for open access. NPCL has not been able to show that they had any alternative source of power purchase during the period of the contract with UPPCL for additional 10 MW i.e. between May, 2006 to February, 2007.

8. Learned counsel Mr. Sitesh Mukherjee for UPPCL further contended that NPCL had entered into an agreement after taking into account, the commercial risk involved in the transaction and after fully agreeing to the contract with them and they cannot now renege from its contractual commitment and that UPPCL is entitled to charge as per their letter dated

May 10, 2006 and that they have been recovering the marginal cost on the basis of the same.

### **Analysis and Decisions**

9. On a consideration of the submissions made on behalf of the appellants as well as respondents and the contention advanced by the rival parties I now proceed to decide the main issue of divergence of views regarding treatment of marginal cost for addition 10 MW power between the Hon'ble Members.

10. Contract to supply additional 10 MW power between NPCL and UPPCL got established on the basis of May 08, 2006 letter, when NPCL conveyed its acceptance to the UPPCL offer to supply additional power. However, the May 10<sup>th</sup> letter of UPPCL was an internal communication and which does not even refer to May 8<sup>th</sup> letter of NPCL cannot be construed to be a part of the additional power purchase contract.

11. There is also no evidence to suggest that the contract was concluded based on any undue influence. In fact, it was NPCL

who needed additional power and UPPCL obliged by agreeing to establish the same. In view of this the contract between NPCL and UPPCL was a valid contract and not hit by either Section 16 or by Section 23 of the Contract Act.

12. The main issue before me is to interpret the “Marginal Cost” in the contract between the two parties. Marginal cost is the incremental cost to procure the next unit of electricity. UPPCL has been procuring not only additional 10 MW for NPCL but also for the requirement of the rest of the Distribution Companies in UP and therefore, the total additional procurement has been approximately 400 MW.

13. Different sources of procurement have contributed to meet the additional demands of NPCL and rest of the Distribution Companies in UP totaling to about 400 MW. Let us assume that the 10 MW additional demand of NPCL was met by the first procurement contract by UPPCL at Rs. 3 per unit and subsequent procurement at Rs. 5 per unit for meeting the demand of remaining Distribution Companies in

UP. Would it mean that NPCL pays only Rs. 3 per unit as the marginal cost of additional power and other UP Distribution Companies pay at Rs. 5 per unit? This kind of interpretation would not stand the test of equity and fairness. Conversely, it cannot also be the case that NPCL pays Rs. 5 per unit and other companies pay only Rs. 3 per unit. Therefore, a fair and equitable interpretation is the average pooled purchase cost of the additional power which has to be applied to the entire 400 MW additional procurement.

14. In appeal No. 124 of 2005 in the case of Kashi Viswanath vs UERC dated June 02, 2006, this Tribunal has ruled that the tariff has to be determined “ on the basis of pooled average cost of power purchase from all sources for all categories of consumers .....” It has to be kept in mind that the retail supply tariff has been kept at uniform level throughout UP and determination of bulk supply tariff and retail supply tariff are linked to each other, and that it would be only fair to treat all licensees equally while working out the applicable marginal cost for additional power. It would not

meet the ends of natural justice if one particular distribution licensee is charged much higher rate when UPPCL has been supplying additional power to all distribution licensees in the state.

15. In the result, in view of the above, I hold that the 'Marginal Cost' is the average pooled purchase cost of the additional power which has to be applied to the entire 400 MW additional procurement. Remaining issues of divergence get covered with this finding by me.

Pronounced in the open court on May 8, 2008.

(H.L. Bajaj)  
Technical Member