CHAPTER III

3 Transaction Audit Observations

Important audit findings emerging from test check of transactions made by the State Government companies/corporations are included in this Chapter.

Government companies

Himachal Pradesh Power Corporation Limited

3.1 Avoidable payment of interest

Failure of the Company to timely exercise the option available for repayment of loan resulted in avoidable payment of interest of ₹ 98.27 lakh at higher rate.

The Power Finance Corporation Limited (PFC) sanctioned (March 2005) a loan of ₹ 453 crore in favour of Pabbar Valley Power Corporation Limited (PVPCL) for the construction of 3 x 36.37 MW[♣] Sawara Kuddu Hydro Electric Project. PVPCL was merged in July 2007 with Himachal Pradesh Power Corporation Limited (HPPCL). The PFC and PVPCL signed (March 2005) a Memorandum of Agreement for the purpose. As per clause 2.1 of the terms and conditions of sanction, the PVPCL was required to pay interest at the rate prevailing on the date of each disbursement. The rate of interest prevailing at the time of sanction was 8.25 *per cent per annum*. Further, as per clause 2.2, the PFC had a right to reset the rate of interest, at its discretion, at the end of third year beginning with the date of first disbursement. The interest reset was to be applied from the date immediately following the end of third year period. The borrower had the option to repay the entire loan on the date of reset if the interest reset was not acceptable.

Against the sanctioned loan of ₹ 453 crore, the PVPCL/HPPCL availed a loan of ₹ 28.02 crore (₹ 15 crore on 15 April 2005, ₹ 9.50 crore on 15 October 2007 and ₹ 3.52 crore on 15 January 2008). As the first instalment of ₹ 15 crore was availed on 15 April 2005, the date for reset of interest by PFC was 15 April 2008. The PFC reset the interest rate at 12 *per cent per annum* and intimated (25 March 2008) the HPPCL. The PFC requested the PVPCL/HPPCL to repay the entire outstanding amount within 15 days from 25 March 2008 or by 15 April 2008, whichever was later or to accept the reset rate of interest. The HPPCL, however, failed to repay the loan by 15 April

♣ MW: Mega Watt.

2008. It, however, intimated (19 April 2008) the PFC that new reset rate of interest was not acceptable and hence, it was interested in liquidating the entire outstanding loan of ₹ 28.02 crore. The PFC refused (21 August 2008) to accept the request of HPPCL on the ground that it failed to exercise its option for repayment of loan before 15 April 2008. The loan of ₹ 28.02 crore was accordingly reset at the interest rate of 12 *per cent* per annum with effect from 15 April 2008. Thus, the HPPCL had to make avoidable payment of interest of ₹ 98.27 lakh up to 14© January 2010. The total avoidable payment of interest till the final repayment schedule of 15 April 2021 worked out to ₹ 4.55 crore.

The Government *inter alia* stated (May 2010) that letter of PFC regarding resetting of interest was received by the Company on 16 April 2008 *i.e.* after the last date (15 April 2008) of repayment of loan/resetting of interest. It further stated that the HPPCL took up the matter for repayment of loan with the PFC but the PFC did not agree despite repeated requests. The reply is not convincing because the terms and conditions of sanction of loan and also the fact that the loan was due for resetting of interest on 15 April 2008, were known to the management. Besides, the Company had sufficient surplus funds parked in fixed deposits at interest rate of ten *per cent per annum*. Hence, instead of waiting for a communication from the PFC regarding resetting of interest, the Management should have itself enquired from the PFC about the factual position in this regard well before the crucial date of 15 April 2008. Such a step could have facilitated repayment of loan well in time and the loss of ₹ 98.27 lakh could have been avoided.

The Management should consider fixing of responsibility for the lapse and streamline its financial management system to avoid such lapse in future.

Beas Valley Power Corporation Limited

3.2 Loss due to avoidable payment

Failure of the Company to handover the quarry sites to the contractor in time resulted in a loss of ₹ 33.18 lakh due to avoidable payment on account of higher cost of concreting material arranged from the open market.

Himachal Pradesh State Electricity Board (Board) awarded (April 2003) construction of 8,477 metre long and 4.15 metre finished dia Modified Horse Shoe Shaped Head Race Tunnel for Uhl-III Hydroelectric Project (2x50 MW) to SSJV Projects Pvt. Ltd. (contractor) for ₹ 69.58 crore with completion date of April 2007. As per Clauses 8.3 and 8.4 contained in Chapter-VIII (Additional Conditions of Contract), the contractor was required to make

© Interest is payable quarterly on 15 April, 15 July, 15 October and 15 January every year.

arrangement for opening of quarries and rehandling of material at his own cost. The land required for the work was to be handed over to the contractor free of cost. The project was transferred to Himachal Pradesh Jal Vidyut Vikas Nigam Limited (February 2004) which was renamed (November 2006) as Beas Valley Power Corporation Limited.

We observed (February 2009) that the Board/Company obtained (August 2004) approval of the Ministry of Environment and Forests (MOE&F), Government of India for diversion of 19.4478 hectares of forest land for the construction of above project. They, however, failed to take up simultaneously the matter with the MOE&F for diversion of 18.1840 hectares of forest land for quarry sites as required under sub-section 1.6 (iii) of Section 6 of the Forest (Conservation) Act, 1980 and instead the case for the said purpose was initially taken up (February 2000) with the Industries Department (Mining) of the State Government. The Conservator of Forests concerned of the State Government directed (January 2004) the Company to comply with the provisions of the Forest (Conservation) Act, 1980 before starting the work and the Company started pursuing the case with the MOE & F. The requisite approval from the MOE&F was received in November 2007 and the sites were handed over to the contractor thereafter.

Due to delay in handing over the quarry site, the contractor arranged (July 2003 to September 2007) concreting[♦] material from the open market and claimed an amount of ₹ 33.18 lakh from the Company on account of higher cost of concreting material when compared to the cost from the quarry sites. The Company paid the said amount to the contractor in January 2008. The delay in handing over the quarry sites to the contractor resulted in avoidable payment of ₹ 33.18 lakh.

The Management stated (July 2009) that the matter for reserving quarry sites was taken up (February 2000) with the Mining Officer, Mandi. As nothing was heard from that office, it was presumed that the sites were reserved for the purpose. The Management, however, admitted that the case for diversion of forest land for quarry purpose was processed after mid 2004 when the Conservator of Forests concerned directed the Company to comply with the provisions of Forests (Conservation) Act, 1980 before starting the work. The reply confirms that the Board/Company failed to approach the MOE & F in time for diversion of forest land for quarry purpose. They also failed to pursue the matter with the Industries (Mining) Department of the State Government after February 2000 and waited for four years to receive direction from the Conservator of Forests concerned to comply with the provisions of Forest (Conservation) Act, 1980. In fact, all requisite approvals of the MOE & F should have been obtained before award of work to the contractor.

♦ Aggregate (bajri) and sand.

The Management should strengthen internal control mechanism to ensure that such lapse is not repeated in future.

The matter was referred to the Government/Company in April 2010; their reply is awaited (September 2010).

3.3 Loss due to undue favour to the contractor

The Company suffered a loss of ₹ 8.18 crore due to its failure to recover penalty of ₹ 6.96 crore imposed on the contractor and payment of inadmissible price escalation of ₹ 1.22 crore.

The Himachal Pradesh State Electricity Board (Board) awarded (April 2003)♠ the work of construction of Modified Horse Shoe Shaped Head Race Tunnel of Uhl-III Hydroelectric Project (project) to SSJV Projects Pvt. Ltd. (contractor) for ₹ 69.58 crore with completion period of 48 months (30 April 2007). According to clause 10 I (b) (ii), (ii) the price variation clause was applicable only for the work carried out within the stipulated completion period and for authorised extended time for which no compensation had been levied on the contractor.

We noticed that the progress of work was very slow from the very beginning. The contractor did not achieve the first and second milestones fixed for April 2004 and April 2005 and a penalty of ₹ six lakh was recovered (February and July 2005) from the contractor. Provisional extension of time was also granted (June 2007) to the contractor up to 30 April 2008 subject to the condition that the contractor would achieve progress of excavation of 200 mtrs. per calendar month. However, the contractor could not achieve the targets set for underground excavation and concrete lining within the extended time *i.e.* 30 April 2008. Therefore, the contract was rescinded (April 2008) after imposing a further penalty of ₹ 6.96 crore for delay in completion of work. The Company had not taken action for recovery of the aforesaid penalty of ₹ 6.96 crore so far (March 2010). As penalty had been imposed on the contractor for delay in completion of work, price escalation was not payable during the extended period of the contract. The Company, however, paid (August 2007) price escalation of ₹ 1.22 crore to the contractor for the work done after the stipulated date of completion of work. Violation of terms and conditions of the contract agreement resulted in undue benefit to the contractor. The loss due to wrongful payment of escalation and penalty not recovered thus worked out to ₹ 8.18 crore.

♠ The Project was later on (February 2004) transferred to the Himachal Pradesh Jal Vidyut Vikas Nigam Limited which was renamed (November 2006) as Beas Valley Power Corporation Limited.

The Management admitted (August 2009) that the payment of escalation beyond April 2007 was inadmissible and stated that the payment so made had been included in the counter claim filed (August 2009) by the Company before the Arbitral Tribunal appointed by the High Court of Himachal Pradesh to deal with the case. The facts are indicative of the inept and inefficient approach on the part of the management leading to financial loss to the Company. Further developments of the case are awaited (September 2010).

The Management should fix the responsibility for making undue payment towards price escalation to the contractor beyond the scope of the contract. Besides, internal control mechanism should also be strengthened to avoid recurrence of such lapses in future.

The matter was referred to the Government/Company in May 2010; their reply is awaited (September 2010).

Himachal Pradesh State Forest Development Corporation Limited

3.4 Avoidable payment of value added tax

Failure of the Company to deduct rebate/cash discount on sale of timber according to the provision of the Himachal Pradesh Value Added Tax Act, 2005 resulted in avoidable payment of value added tax amounting to ₹ 2.31 crore.

The Company sells timber through its Himkashtha Sale Depots (HSDs) in open auction. As per the terms and conditions of sale/auction, the offers of bidders are inclusive of taxes. The sale of timber and taxes to be paid/deposited are worked out by the Company after auction. The terms and conditions of sale/auction also provide for rebate of five, four and three *per cent* for payment within 15, 30 and 45 days respectively from the date of auction. According to the Himachal Pradesh Value Added Tax Act, 2005, which came into force with effect from 1 April 2005, the value added tax (VAT) is payable on sale/turnover and the sum allowed as cash discount according to ordinary trade practices is not to be included in the turnover.

We observed that during the last five years ended March 2010 since the application of VAT, the Company allowed rebate/cash discount of ₹ 18.50 crore[♣] for payment received within 15, 30 and 45 days as mentioned above. While working out the amount of VAT payable, the Company, however, failed to deduct the amount of rebate/cash discount from the turnover/sale amount. Thus, failure of the Company to deduct the element of rebate before arriving at turnover for computation of VAT resulted in avoidable payment of VAT on rebate amounting to ₹ 2.31 crore.

♣ 2005-06: ₹ 3.41 crore, 2006-07: ₹ 3.79 crore, 2007-08: ₹ 3.81 crore, 2008-09: ₹ 3.84 crore and 2009-10: ₹ 3.65 crore.

The Management should take up the matter with the authority concerned for obtaining refund of VAT paid in excess. Besides, it should also be ensured that henceforth VAT on turnover/sale is paid according to the provisions of the Himachal Pradesh Value Added Tax Act, 2005.

The matter was referred to the Government/Company in April 2010; their reply is awaited (September 2010).

Statutory corporations

Himachal Pradesh State Electricity Board

3.5 Loss due to non-recovery of survey and investigation cost

Lackadaisical approach of the Board resulted in a loss of ₹ 1.63 crore due to non-recovery of expenditure incurred on survey and investigation work of a project from a private party.

The State Government allotted 300 MW project for execution to Jaiprakash Industries Limited (JIL), an Independent Power Producer; now Jaiprakash Hydro Power Private Limited (JPHL). As per clause 19 of the Implementation Agreement (IA), executed between the Government of Himachal Pradesh and JIL during the year 1992, JIL was required to reimburse to the Board the expenditure incurred on survey and investigation work of the project. The reimbursement of the expenditure along with compound interest at the rate of 16 *per cent per annum* was to be made by way of adjustment towards sale of power from the project starting immediately after its commissioning. The project was commissioned in June 2003.

Audit noticed (March 2009) that the Board failed to ascertain actual expenditure incurred on survey and investigation of the Project after reconciling it between different wings of the Board till October 2008. Even after reconciliation of the expenditure worked out to ₹ 1.63 crore, no efforts were made to adjust this amount from the payments released to the JIL (later renamed as JPHL) on account of purchase of power as per the terms and conditions of the agreement *ibid*. The total recoverable amount after compounding of interest at the rate of 16 *per cent per annum* worked out to ₹ 87.41 crore (principal: ₹ 1.63 crore and interest: ₹ 85.78 crore) as of March 2010.

On this being pointed out in audit (March 2009) the Government admitted (July 2010) the fact regarding reimbursement of ₹ 1.63 crore to the Board as per the agreement but stated that if recovery of ₹ 87.41 crore on account of survey and investigation charges including interest accrued till date is effected, the company shall necessarily incorporate the said amount in the capital cost of the project which in turn shall become due to the said company and the

tariff chargeable to HPSEB shall increase accordingly. Since tariff of the project is worked out on cost plus system, the entire burden of any increase in capital cost shall pass on to the consumers and may result in benefit to the company in the long run. In view of this non recovery at this stage was considered better option.

The plea put forth by the Government for not recovering the survey and investigation cost from a private party is a complete disregard of the specific provisions of the agreement *ibid* and the Hydro Power Policy 2006 issued by the State Government which provides for recovery of such cost incurred on various projects by the Board along with compound interest from all private parties to whom the projects have been allotted. Therefore, non recovery of said cost is a direct loss to the Board and this situation could have been avoided had the Board taken action to recover/adjust the amount due immediately after commissioning of the Project during 2003.

The responsibility for abnormal delay in adjustment/recovery of the amount should also be fixed. Besides, effective internal control mechanism should be put in place to avoid recurrence of such lapses in future.

3.6 Avoidable liability due to violation of statutory provision

Failure of the Board to devise a suitable procedure for deduction of tax at source on interest payment in conformity with the provisions of Income Tax Act, 1961 resulted in additional liability of ₹ 0.48 crore.

As per Regulation 4 of Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005, the consumers of the Board shall at all times maintain an amount equivalent to consumption charges for the billing cycle period, as security during the period the agreement for supply of energy to such consumers remains in force. Regulation 7 further provides that the licensee shall, with effect from the month succeeding the date on which the security amount is deposited, pay simple interest on security deposit of the consumer at the Bank Rate (as on 1 April of every year) as notified by the Reserve Bank of India or such higher rate as may be fixed by the Commission from time to time. The licensee shall duly show the amount becoming due to the consumer towards interest in the bills raised and due after 30th June.

According to Section 194 A of the Income Tax Act, 1961, the Board is responsible for deduction of tax at source at the rate of 10 *per cent* (individual) and 20 *per cent* (companies) on interest exceeding ₹ 5,000 each. In addition to above, surcharge and education cess as applicable is also to be deducted. Failure to deduct tax at source attracts penalty equivalent to a sum equal to the amount of tax deductible at source. In addition, interest at the rate of one *per cent per* month is also payable on the defaulted tax payment.

During test check of records (December 2008 to December 2009) in ten♣ Electrical Sub-Divisions (ESDs) of the Board, we observed that the Chief Engineer (Commercial) of the Board had directed (December 2005) all the field officers concerned to comply with the above mentioned Regulations. He, however, failed to direct them to deduct tax at source on interest in conformity with the provisions of the Income Tax Act, 1961. Resultantly, three• out of ten test checked ESDs failed to comply with the Regulations in as much as they did not credit the interest to the consumers' accounts annually. While ESD, Barotiwala (2005-06) and ESD, Nalagarh No. I (2004-05 and 2006-07) delayed crediting of interest by one year each, ESD, Baddi delayed it by one year (2005-06) to two years (2004-05). This resulted in denial of timely benefit to the consumers. Further, all the ten ESDs failed to deduct income tax of ₹ 1.89 crore as tax at source at the rate of 20 per cent on interest of ₹ 9.45 crore credited to High Tension and Extra High Tension consumers as interest on security deposits during July 2005 to September 2009 though the interest payment exceeded ₹ 5,000 each. The absence of suitable procedure and internal control mechanism to ensure compliance of the Regulations and provisions of Income Tax Act resulted in additional liability of the Board to pay interest of ₹ 0.48 crore calculated up to March 2010 on the amount of tax not deducted at source.

The Government stated (July 2010) that detailed instructions had been issued (June 2010) to field units to deduct income tax along with surcharge and education cess on interest exceeding ₹ 5000/- for the year 2009-10 and to adjust the income tax, not deducted from such interest paid for previous years, from the interest to be released on security deposit for 2009-10; to be paid in 2010-11. We noticed that the recovery had not been made as of August, 2010. Further, even if the taxes are deducted now with retrospective effect, the Board will have to deposit the same with tax authorities along with simple interest at the rate of one per cent per month on the amount of such tax from date on which such tax was deductible to the date on which taxes is actually paid in terms of Section 201 (1A) of Income Tax Act, 1961.

The Board needs to consider fixing of responsibility for non-compliance of the Regulations and provisions of the Income Tax Act. Besides, it should also lay down requisite procedure and internal control mechanism to avoid such lapse in future.

♣ Electrical sub-divisions Barotiwala, Paonta, Nalagarh No. I, Dalhousie, Baddi, ESD No 1&II, Bilaspur, ESD, Ganguwal, ESD, Kala Amb and ESD, Dhaulakuan.

• Electrical sub-divisions Barotiwala, Nalagarh No.I and Baddi.

3.7 Avoidable loss of revenue

Failure of the Board to recover energy charges from a consumer in accordance with the prescribed procedure resulted in revenue loss of ₹ 28.25 lakh.

As per Regulation 4 (1) of the Himachal Pradesh Electricity Regulatory Commission (Security Deposit) Regulations, 2005, every consumer should maintain with the Board an amount equivalent to consumption charges for the billing cycle period, as security during the period of agreement for supply of energy. The security should be in the form of cash/demand draft drawn in favour of the Board. Where the security payable exceeds ₹ five lakh, the same can be in the form of a bank guarantee. Section 56 (1) of the Electricity Act, 2003 further provides that where any person neglects to pay any charges for electricity due from him, the Board may after giving not less than 15 clear days' notice in writing, to such person, cut off the supply of electricity.

We observed that the Board sanctioned (November 2005) a load of 960 KW* to M/s Tigaksha Mettalics Pvt. Ltd. (consumer), Shogi, (Shimla). The consumer had deposited (August 2005) security deposit of ₹ 9.60 lakh and was being billed monthly. It was noticed that monthly energy charges exceeded the security deposit of ₹ 9.60 lakh in February 2006. The monthly bill varied considerably and it ranged between ₹ 2.24 lakh and ₹ 28.77 lakh during the period from February 2006 to February 2008. The sub-division concerned, however, failed to ensure that the consumer maintained with it security deposit equal to the monthly bills. The consumer did not pay the bill of ₹ 21.42 lakh up to June 2008. He also did not pay the bills for subsequent months and the total recoverable amount rose to ₹ 45.85 lakh in January 2010. The Board also did not follow the provision of the Electricity Act, 2003 regarding disconnection of supply of energy to the consumer when he defaulted in payment of the bill up to June 2008. The Board finally disconnected the supply of energy to the consumer in June 2009. Action to adjust the security deposit and to recover the balance amount of ₹ 36.25 lakh had also not been taken as of February 2010. Thus, failure of the Board to follow the prescribed procedure resulted in revenue loss of ₹ 36.25 lakh due to non-recovery of energy charges to that extent.

The Government stated (July 2010) that a sum of ₹ 8.00 lakh had been recovered between February and May 2010 and efforts were being made to recover the balance amount of ₹ 28.25 lakh. Further, necessary provisions are being made in a computer billing system software of the Board to provide facilities of comparison of security deposit and billed amount in future so that

* KW: Kilo Watt.

if the bill of any consumer exceeds security deposit, the list of such consumers could be prepared and notice served to them to increase the security deposit in time. The Board, however, could not make any recovery thereafter. The fact remains that the Board failed to comply with the laid down provisions and put itself in difficult situation to recover the dues.

The Board should initiate immediate action to recover the outstanding amount immediately. It should also put in place the requisite internal control mechanism to ensure that such lapses are not repeated in future.

3.8 Extra payment of excise duty to suppliers

Failure of the Board to insert the standard clause as per the prevailing practice for payment of taxes and duties on actual basis enabled the suppliers to take extra benefit of ₹ 1.51 crore on subsequent reduction in rates of excise duty.

The Board floated (11 July 2008) a tender enquiry for the procurement of Compact Florescent Lamps (CFL) under "*Atal Bijli Bachat Yojna*". In response, seven firms offered their bids which were opened on 10 October 2008. After evaluation, rates of ₹ 396 per pack (four CFL) quoted by M/s HPL Socomec Private Limited, New Delhi were found to be the lowest (L1) and M/s Phoenix Lamps Limited, Noida was second lowest (L2) with its rates of ₹ 473.15 per pack. After negotiation, the rates were brought down to ₹ 387 per pack and this was also accepted by the L2 firm. Accordingly, the purchase orders amounting to ₹ 63.08 crore were placed (October 2008) on M/s Phoenix Lamps Limited, Noida (6,30,000 packs) and M/s HPL, Socomec (P) Limited, New Delhi (10,00,000 packs) at ₹ 387 per pack. These rates were inclusive of 8 *per cent* Excise Duty and 3 *per cent* cess thereon.

Audit scrutiny revealed that the Finance Wing (F&A) of the Board while according the financial concurrence to the purchase proposal submitted by the Chief Engineer (MM) *inter alia* observed that as per the requirement of NIT, FOR prices were required to be split up so as to derive the basic price of each firm with a view to comparing the rates and for placing the purchase orders. Further, it was also emphasised that payment of duties and taxes be made against production of documentary proof and the purchase order issued after splitting up the basic prices and taxes accordingly. These recommendations of the F&A wing were accepted by the CE (MM) in the note ratified by the Member (O) and Member (F&A) before submitting the purchase proposal for the approval of the Board. However, while issuing the purchase order, the standard clause regarding the payment of taxes and duties against production of documentary proof was not inserted in the purchase orders.

Audit scrutiny further revealed that the rates of the excise duty were reduced from 8 *per cent* to 4 *per cent* on CFL with effect from 7 December 2008. Since the clause regarding payment of taxes and duties on actual basis was not inserted in the purchase orders, the benefit of this reduction in duties could not be availed in respect of 15,03,546 packets of CFL received after the reduction in duties. The suppliers charged ₹ 3.02 crore excise duty on these packets on the basis of agreed FOR rates against the actual payment of ₹ 1.51 crore made by them.

Thus, failure of the Board to insert the standard clause regarding payment of taxes and duties on actual basis as per the prevailing practice resulted in extra payment of excise duty of ₹ 1.51 crore to the suppliers.

The Government stated (July 2010) that in order to ensure successful completion of procurement and distribution of CFLs it was decided to seek one firm FOR rate on average basis inclusive of all taxes/duties and the clause to this effect was inserted in the tender document. Accordingly, the bidder submitted their bids and the clause was also incorporated in the purchase orders. Thus, any variation in taxes/duties was to be borne by the firms.

The reply does not address the core issue regarding non-insertion of appropriate clause regarding payment of taxes and duties against documentary proof only despite assurance of the Chief Engineer (MM) on the recommendations of the Member (Finance) before submitting the proposal to the Board for approval. Besides, the exception was made in this case only even though there is a practice and there are provisions in the Purchase Manual of the Board to pay taxes and duties only against presentation of original payment vouchers.

The Board should investigate the reasons for non-insertion of appropriate clause in the purchase orders despite specific recommendations of the F&A wing. Besides, internal control mechanism should also be strengthened so as to avoid recurrence of such lapses in future.

3.9 Non-recovery of lease rent of property rented out to a Private Company

Failure on the part of the Board to initiate effective steps to recover the lease rent of its property rented out to Jaiprakash Hydro Power Private Limited led to non-recovery of lease rent amounting to ₹ 3.95 crore since January 1993.

For the execution of 300 MW Baspa Hydro Electric Project, Stage II (Baspa), an agreement was executed (October 1992) between the Government of Himachal Pradesh and Jaiprakash Industries Limited, now Jaiprakash Hydro Power Private Limited (JPHL). Before transfer, the project was being executed by the Himachal Pradesh State Electricity Board (Board) which had purchased three patches of land measuring 6-35-52 *Hectares* at Sholtu and

Kuppa villages in Kinnaur District. In addition to this, the Board had also constructed residential accommodation having four sets of one room, one set of three rooms at Sholtu, a repair shop and a store shed at Kuppa. In terms of the clause 19 of the *ibid* agreement, the Company (JPHL) agreed to reimburse the money spent by the Board on the investigation and infrastructure works of the Project alongwith compound interest at the rate of 16 *per cent per annum*. This reimbursement was to be effected by the Company to the Board by way of adjustment towards sale of power to the Board immediately after commissioning of the Project. Accordingly, land as mentioned above was handed over to JPHL between January 1993 and September 1998. Residential accommodation and store shed at Sholtu were handed over in February 1993 and repair shop at Kuppa in April 1993. As per the undertaking furnished in February 1993, the JPHL further agreed to accept the terms and conditions to be decided by the Government of H.P. and the Board. In case the final terms and conditions were not acceptable to them the property was to be vacated within one month.

The Board fixed the total rent of ₹ 7.52 lakh *per annum* in May 2001 in respect of all these assets transferred to the JPHL and requested them to sign a supplementary lease deed for this rent. This was not accepted by the JPHL who insisted for assessing the lease rent on the basis of rates circulated by the Deputy Commissioner (DC), Kinnaur. Despite series of meetings held between the Board and JPHL no final settlement could be arrived at. However, JPHL paid ₹ 76.91 lakh to the Board between October 1993 and February 2004 on account of *interim* lease charges and no payment has been released thereafter. Since then no concrete steps have been taken by the Board to recover the outstanding lease rent. It was only in August 2007 when the Board constituted a High Powered Committee which assessed total rent of ₹ 2.43 crore recoverable from the JPHL up to 31 December 2008 and recommended (August 2009) the same for the consideration of the Board. The Managing Committee of the Board in its meeting held on 29 January 2010 did not approve this and decided to re-examine the issue in the light of lease rules of Himachal Pradesh. Meanwhile, the total recoverable amount including interest increased to ₹ 3.95 crore as per the bill issued by the Board to JPHL in February 2010.

The Baspa HEP has been commissioned in the year 2003 and the Board is regularly purchasing power from this project. Despite this, neither lease deed was executed nor adjustment of rent out of the power purchased from the JPHL as per the provisions of clause 19 of the *ibid* agreement had been made by the Board so far. Thus, lease rent amounting to ₹ 3.95 crore including interest (up to December 2009) remained un-recovered from a private Company since 1993.

The Government stated (July 2010) that a high powered committee constituted by the Board for this purpose in August 2007 decided (January 2010) that the issue be examined in the light of Lease Rules of Himachal Pradesh Government. However, the matter is still under process.

The reply points towards the fact that there was abnormal delay in finalisation of lease deed and recovery of lease rent. The Board should initiate immediate action to finalise the lease rent and execute lease deed with the JPHL so that lease rent due for recovery since 1993 could be recovered.

3.10 Loss due to non-recovery of contract demand violation charges

Failure of the Board in detecting non revision of Contract Demand by two large supply consumers after up gradation of power factor value to 0.90 from 0.85 resulted in non-recovery of contract demand violation charges amounting to ₹ 97.97 lakh.

Power Factor is the base for determination of contract demand, energy consumption (KVAh) and quantum of demand (KVA) of the consumer. The Board revised the limit of power factor (to be maintained by the consumer) from 0.85 to 0.90 in August 1998. After the introduction of two part tariff (November 2001) consumers are to be billed on the basis of KVAh tariff as applicable to the relevant category under the Schedule of Tariff. In addition to the KVAh charges, the demand charges per month per KVA on recorded maximum demand were also leviable. In the event the maximum demand recorded exceeds the contract demand the consumer shall be charged Contract Demand Violation Charges at the rates specified in the schedule of tariff. The Board provided an opportunity in February 2004 (further clarified in September 2004) to all the consumers either to enter into fresh contract demand or to revise the same in cases contracted prior to introduction of two part tariff.

Audit noticed that two industrial consumers having connected load of 1785 KW (Regency Carbide Private Limited, Paonta) and 1275 KW (Venkteshwara Ferro Alloy Private Limited, Paonta) with contract demand of 2100 KVA and 1500 KVA respectively were released connections by the Board in 1989 considering power factor of 0.85 applicable at that time. After revision of power factor value to 0.90; sanctioned load of both the consumers worked out to 1983 KVA and 1417 KVA instead of 2100 KVA and 1500 KVA respectively. Despite giving opportunity by the Board both the consumers did not revise their contract demand and continued to draw load according to their old contract demand, which was in excess of the maximum demand admissible at the sanctioned load on revised power factor. The Board had neither asked specifically these consumers to revise their contract demand nor charged contract demand violation charges as per the provisions of the Schedule of Tariff applicable from time to time.

Thus, failure of the Board to take action as per the provisions of the Schedule of Tariff resulted in short recovery of contract demand violation charges amounting to ₹ 97.97 lakh for the period from March 2004 to March 2010.

The Board stated (May 2010) that the concerned Division had been directed to issue notices to these consumers to revise their contract demands by taking into account power factor of 0.90 instead of 0.85 otherwise action would be initiated as per the provisions of the schedule of tariff.

The reply of the Board does not redress the issue but points out towards its failure to initiate timely action for revision of contract demand. Even if the contract demand is revised by the consumers now the Board would be able to recover the demand charges from the date of sanction of the contract demand which cannot be made applicable to make good the loss already suffered on this account.

The Board should investigate the reasons for this omission and initiate immediate action to recover the contract demand violation charges as per the provisions of the Schedule of tariff applicable from time to time. Besides, internal control mechanism should also be strengthened so as to avoid recurrence of such lapses in future.

The matter was referred to the Government in June 2010; their reply is awaited (September 2010).

3.11 Follow-up action on Audit Reports

Explanatory Notes outstanding

3.11.1 Comptroller and Auditor General of India's Audit Reports represent the culmination of the process of scrutiny starting with initial inspection of accounts and records maintained in various Public Sector Undertakings. It is, therefore, necessary that they elicit appropriate and timely response from the Executive. Finance Department, Government of Himachal Pradesh issued (February 1994) instructions to all Administrative Departments to submit explanatory notes indicating corrective/remedial action taken or proposed to be taken on paragraphs and reviews included in the Audit Reports within three months of their presentation to the Legislature, without waiting for any notice or call from the Committee on Public Undertakings (COPU).

Though the Audit Reports for the years 2003-04, 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 were presented to the State Legislature in April 2005, 2006, 2007, 2008, February 2009 and April 2010 six departments did not submit explanatory notes on 37 out of 100 paragraphs/reviews, as of

September 2010, as indicated below:

Year of Audit Report (Commercial)/ Commercial Chapter	Total paragraphs/ reviews in Audit Report/ Commercial Chapter	Number of paragraphs/ reviews for which explanatory notes were not received
2003-04	15	3
2004-05	13	4
2005-06	19	3
2006-07	21	4
2007-08	17	11
2008-09	15	12
Total	**100**	**37**

Department wise analysis is given below:

Name of department	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09
Power	-	-	-	-	10	7
Horticulture	-	-	-	1	-	-
Forest	-	-	-	1	-	-
Industries	-	-	-	-	-	1
Transport	-	-	-	-	-	1
Finance	3	4	3	2	1	3
Total	**3**	**4**	**3**	**4**	**11**	**12**

Those largely responsible for non-submission of explanatory notes were the Power and Finance departments. They did not submit explanatory notes to 33 out of 37 paragraphs/reviews and did not even respond to reviews highlighting important issues like avoidable extra expenditure due to non-comparison of rates received with the rates already available, non-finalisation of requirement in time, non-placement of repeat supply orders, rejection of lowest offer and non-finalisation of design of sub-stations, *etc*.

Compliance to Reports of Committee on Public Undertakings (COPU)

3.11.2 The Action Taken Notes on the recommendations of COPU are required to be furnished within six months from the presentation of the Reports. Replies to 29 paragraphs pertaining to 11 Reports of the COPU, presented to the State Legislature between December 2008 and March 2010 had not been received as of September 2010 as indicated below:

Year of the COPU Report	Total number of Reports involved	No. of paragraphs where replies not received
2008-09	5	12
2009-10	6	17
Total	**11**	**29**

***Response to inspection reports, draft paras and* reviews**

3.11.3 Audit observations made during audit and not settled on the spot are communicated to the heads of the Public Sector Undertakings (PSUs) and departments of the State Government concerned through inspection reports. The heads of PSUs are required to furnish replies to the inspection reports through respective heads of departments within a period of six weeks. Inspection reports issued up to March 2010 pertaining to 21 PSUs disclosed that 4,035 paragraphs relating to 880 inspection reports remained outstanding at the end of September 2010. Department-wise break-up of inspection reports and audit observations outstanding as on 30 September 2010 is given in **Annexure 13**.

Similarly, reviews and draft paragraphs on the working of Public Sector Undertakings are forwarded to the Secretary of the administrative department concerned demi-officially seeking confirmation of facts and figures and their comments thereon within a period of six weeks. It was, however, observed that five draft paragraphs forwarded to three departments between April 2010 and October 2010 as detailed in **Annexure 14** had not been replied to so far (October 2010).

It is recommended that (a) the Government should ensure that procedure exists for action against the officials who fail to send replies to inspection reports/draft paragraphs/Action Taken Notes on the recommendations of COPU as per the prescribed time schedule, (b) action to recover loss/outstanding advances/overpayments is taken within the prescribed time schedule and (c) the system of responding to audit observations is revamped.

The matter was reported to the Government in October 2010; their reply had not been received (October 2010).

Shimla **(RITA MITRA)**
The **Principal Accountant General (Audit)**
Himachal Pradesh

Countersigned

New Delhi **(VINOD RAI)**
The **Comptroller and Auditor General of India**