

**VIVANT CORPORATION**  
MINUTES OF THE REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
*December 16, 2011 at 9:00 AM*  
Suite 907-908, Ayala Life-FGU Center  
Cebu Business Park, Cebu City

**PRESENT:**

Mr. Dennis N. A. Garcia	Chairman
Mr. Ramonito E. Garcia	President
Mr. Charles Sylvestre A. Garcia	Director
Mr. Gil A. Garcia II	Director
Mr. Jose Marko G. Sarmiento	Director
Mr. Emil M. Garcia	Director
Mr. Elbert M. Zosa	Director
Atty. Jesus B. Garcia	Independent Director

**ALSO PRESENT:**

Mr. Arlo A.G. Sarmiento	Chief Operating Officer
Atty. Macario C. Padullo	Finance Manager
Atty. Jess Anthony N. Garcia	Corporate Secretary

**NOT PRESENT:**

Mr. Alfred V. Ty	Director
Mr. Efren P. Sarmiento	Director
Arnab. Raul Ch. Rabe	Independent Director

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**I. Call to Order**

The Chairman, Mr. Dennis N.A. Garcia (DAG), called the meeting to order at 9:00 AM and presided over the same.

## II. Proof of Notice and Certification of Quorum

The Corporate Secretary, Atty. Jess Anthony N. Garcia (JNG) certified to the Board of Directors (BOD) that notices were sent in accordance with the law and a quorum was present to transact business.

## III. Reading and approval of minutes of previous meeting

The previous minutes of the BOD Meeting was approved without any revisions.

## IV. Report on Risk Committee

Mr. Juan Eugenio L. Roxas (JLR) presented templates for the composition, functions, and practices of the risk committees of different companies like APC, AEV and BDO. Mr. Elbert M. Zosa (EMZ) commented that normally there are less people from management in the Risk Committee (RC) of companies because it is supposed to serve as a check and balance on management. He also said that this was normally a board committee and that management personnel are only present as resource persons. The BOD asked JLR to look into other RC models from other international companies. Atty. Jesus B. Garcia (JBG) said that the main person in RC is a mathematician because the bottom line in risk management is probabilities and statistics. JBG commented that the RC should not determine policy because that is a BOD function. EMZ said that this was the reason why the RC was a board committee because while it does not determine policy, it recommends to the BOD.

## V. 1590 Energy Corp.

- WESM Report

Mr. Emil M. Garcia (EMG) presented the WESM report for 1590EC. Mr. Arlo G. Sarmiento (AGS) commented that 159EC contributed to the increase in WESM prices and changed the bidding behaviour of other power plants as well. AGS said that based on WESM prices throughout the year, it seems that 1590EC was not dispatched often during the summer months but more during the wet months. He was of the opinion that 1590EC was actually functioning as a replacement power plant because the wet months was also the time when large power plants go on scheduled maintenance.

- Commission on Audit (COA) Report

JLR discussed the COA report. He said that the 1590EC Contract to Sell (CTS) was discussed in the last *en banc* meeting on Dec. 13, 2011. He said COA held in abeyance the approval of the CTS pending submission of documents of NPC and PSALM. Also, that a re-

appraisal team from the COA central office was constituted to verify the valuation of the CTS. He said that COA approval was required for the funds in escrow to be released and that the balance of the escrow account is already Php459 Million. The BOD asked JNG the consequences of COA disapproval. JNG said that in the event of disapproval, all money deposited in escrow will be returned to 1590EC and the sale would not push through.

- Bilateral Contracts Update

AGS reported that 1590EC made good headway with MERALCO during their negotiations for a peaking bilateral contract. However, he reported that MERALCO decided to defer their decision to contract with 1590EC because they were busy securing their base loads.

AGS also reported on the developments regarding the NGCP ASPA. AGS reported that through Vivant's (VVT) partner in 1590EC in the person of Mr. Zaldy Co, 1590EC management was able to get in touch with NGCP management to sign a contract for ASPA. He reported that an agreement in principle has been reached with NGCP to sign an ASPA contract for 150MW. JLR reported that he met with Bigboy Sy, Dr. Arroyo, Z. Co, and Tony Almeda in order to discuss the details of the ASPA contract. He reported that NGCP would conduct a special ManCom on Monday, December 19, 2011 in order to discuss the approval of the ASPA. He also stressed that the ASPA will not be contingent on COA approval, and not subject to the resolatory condition that the contract falls away if the ancillary market becomes operational.

Mr. Elbert M. Zosa (EMZ) asked the effect of a disapproval by the Commission on Audit on 1590EC's obligations under the ASPA. JNG said that since the proposal was for a firm ASPA, in the event of COA disapproval of the CTS, 1590EC should ensure that it can continue to legally operate the power plant to serve the ASPA, otherwise this could expose the company to a default scenario. The BOD instructed JNG to properly review the ASPA to take into consideration the COA disapproval and ensure that 1590EC can continue complying with its obligations under the ASPA despite COA disapproval of the CTS.

EMZ commented that although the NGCP ASPA is good news, he also said Vivant management should remain careful and wary of the political, financial, economic and social risks that may affect the power industry and these risks and threats should always be taken into consideration in all corporate actions. He said that management should not be carried away every time there is good news, but always be aware of the risks and threats to the corporation.

AGS also discussed the IRR of 1590EC on the proposed ASPA with NGCP. He said that the proposal was a firm ASPA contract at Php800.00 per kw/ month while fuel and lube is a pure pass through.

- October Financial Statement

Atty. Macario C. Padullo (MCP) presented the income statement for the month of October 2011. He said that October was a good month for 1590EC. Energy delivered was 16.2Mwhrs or 35% more than budget of 12Mwhrs. Revenues were also higher at Php325 Million versus budget of Php140 Million. He reported that in general other expenses were lower

than budget. Gross profit was PhP143 Million against a budgeted loss of PhP30 Million. Net income using 5 year depreciation was PhP126 Million and PhP152 Million using 10 year depreciation.

MCP presented the income statement as of October 2011. Generation was 57Mwhrs or 64% lower than budget of 161Mwhrs. Revenues were also lower at PhP978 Million or 54% lower than budget of PhP2.1 Billion. The net loss using 5 year depreciation was PhP157 Million against a budgeted loss of PhP104 Million. On the other hand, under a 10 year depreciation, net income was PhP66 Million against budget of PhP150 Million.

MCP also discussed the balance sheet of 1590EC. He discussed the assets and liabilities of the company. He reported that total liabilities and equity amounted to PhP3.2 Billion as of October 2011.

- 2011 Rolling Forecast

MCP reported the rolling forecast for December 2011.

AGS said that he was asking for BOD approval to shift from 5 to 10 year depreciation schedule. He said that 5 years was initially used as a tax saving position, and also that this was also because as of last year, 1590EC just took over the power plant and didn't know how long the plant would last.

EMZ said that whereas the shift may be justified for accounting purposes and that he would endorse the shift as well, he said that for internal management purposes, and depending on the outcome of the ASPA, and taking into consideration the government's desire to lower power costs in the Philippines, it would be best to use the 5 year depreciation.

***The BOD approved the shift to a 10 year depreciation schedule from 5 years for accounting and auditing purposes.***

- January 26, 2012 Options

MCP presented the projected cash flows in 2012 under a bilateral contract. He said that despite the ASPA, 1590EC may still have cash flow related challenges for 2012.

He presented the expected cash calls from shareholders for 2012 assuming a scenario that the ASPA will be signed. He said that a total of around PhP779 Million will be needed from the shareholders for 2012.

- 1590EC Abandonment Report

JNG reported on the legal consequences if 1590EC would abandon the BDPP and its assets. EMZ asked management to look into the bank covenants of VVT and see if 1590EC's abandonment will trigger the cross default provisions.

## **VI. Report on Northern Renewables**

- November Monthly Payment Dispute

AGS reported on the November 2011 monthly payment dispute. The BOD discussed the legal merits of the NR position regarding the interpretation of the IPPA on monthly payments.

- December 2011 to May 2012 Monthly Payment Disputes

MCP presented the schedule of monthly payments assuming the discount expected by NR based on the IPPA agreement is implemented by PSALM.

- October Financial Statement

MCP presented the October 2011 income statement of NR. He reported that NR sold 35Mwhrs which was 1% lower than the budget of 36Mwhrs. He discussed the expenses which were 40% lower than budget. He also said that net income after finance lease accounting was Php89 Million against budget of Php58 Million

MCP presented the income statement as of October 2011. He reported that payroll expenses were below budget because NR did not hire a general manager yet. Net loss under cash accounting was at Php46 Million against a budgeted income of Php167 Million. Net loss under finance lease accounting was Php128 Million against budgeted income of Php90 Million or a negative variance of 247%.

MCP presented the company's balance sheet. He discussed the company's current assets and liabilities. Retained earnings stood at Php214 Million. Total liabilities and equity amounted to Php14.1 Billion.

- 2011 Rolling Forecast

MCP presented the 2011 rolling forecast. He reported lower gross profit of Php821 Million against budget of Php1 Billion due to lower WESM prices. Under cash accounting, the net loss was Php100 Million against a budgeted income of Php138 Million. Under finance lease accounting, net loss was at Php244 Million against a budgeted loss of Php25 Million.

- FOREX Hedging

MCP presented the FOREX hedging undertaken by NR for the months of November and December. AGS said the management was inclined to hedge its dollar purchases moving forward. AGS said that for next year, NR is looking to 1.) Sign a bilateral contract 2.) Hire a GM, and 3.) Procure a short term loan facility to ease up cash flows.

EMZ said that banks have good relationships with the larger corporations and they would give these corporations priority over smaller companies like Vivant. However, he said that due

to the uncertainty in Philippine politics and the pressure on the government to lower power rates, it is possible that banks may not be as receptive in granting loans to power projects in the future.

## **VII. Report on CPPC**

- 2013 Turn Over to VECO.

EMG reported that the CPPC Board has commissioned the Salvador Law Office to identify the most tax efficient way to transfer the asset to VECO. He said that as far as O&M is concerned, the 2013 date is irrelevant and all maintenance will go on as scheduled.

AGS said that his concern is that VECO has a specific shareholders agreement. If CPPC is owned by VECO, AGS said that it will also be subject to the shareholders agreement of VECO. He also said that it would not be advisable to put an unregulated entity into the umbrella of a regulated entity such as VECO.

- October Financial Statement

MCP reported the October 2011 income statement of CPPC. He reported that revenues were at Php156 Million or 18.6% higher than budget of Php131 Million. Net income was at Php33 Million versus budget of Php13.8 Million or 138% higher.

For YTD October 2011, MCP reported revenues at Php1.24 Billion against budget of Php1.20 Billion or 2.8% higher. He reported that expenses were within or below budget. Net income was at Php194 Million versus budget of Php135 Million or 43% higher than budget.

MCP presented the budget of CPPC. He reported cash of Php371 Million, receivables of Php184 Million and he discussed also the advances to shareholders and other current assets. Total liabilities and equity amounted to Php1.38 Billion.

AGS said that one of the plans of CPPC for 2012 is to increase short term borrowings in order to free up cash of the company.

- 2011 Rolling Forecast

MCP reported the income statement as forecasted until the end of 2011. Revenues are projected to be Php1.51 Billion and expenses should be within or below budget. He said the CPPC expects a net income of Php217 Million by year end against budget of Php109 Million or a variance of 99%.

## VIII. Report on DPI

- October Financial Statement

MCP presented the October 2011 income statement of DPI. He reported revenues of PhP56 Million vs. budget of PhP47.3 Million or a positive variance of 19.5%. He noted increase in expenses such as HFO and materials and supplies. He explained that materials and supplies are higher than budget due to repairs in engines that were not budgeted. Net income was at PhP3.2 Million vs. budget of PhP4 Million or 20% lower.

For YTD October, revenues were higher than budget at PhP590 Million vs. budget of PhP478 Million. MCP noted as increase in expenses. Net income was at PhP32 Million vs. budget of PhP10 Million or a variance of 220%.

MCP presented the balance sheet of Delta P. He reported that there was cash of PhP45 Million and receivables of PhP185 Million. Total liabilities and equity amounted to PhP681 Million.

## IX. VECO

- Statistics Report

Mr. Lyndon C. Jayme (LCJ) gave the statistics report of VECO. He reported growth of 11% over November 2010 and 7% excluding CEMEX. AGS said that the growth was probably due to the outage registered in November 2010. LCJ reported an increase of 10 thousand customers compared to Nov. 2010. He presented the sales mix of VECO and the percentages of the different types of customers. YTD growth registered at 5.83% but growth was only .66% excluding CEMEX sales. YTD growth in numbers was 10 thousand customers or 3.39% increase over the previous year. He reported a steady increase in industrial sales for VECO. LCJ reported on the top customers of VECO with an average bill of 1 million per month. LCJ presented the top 5 customers per industry type. LCJ also reported on the system losses for the VECO as of Nov. 2011. He also presented a comparison of the average residential rates and 200kwhrs of the different utilities and VECO was 3<sup>rd</sup> highest at PhP10.49, next to PECO and MERALCO.

- Financials

Mr. Nelson Perez (NP) presented the financial report of VECO. He said the operating revenue was at PhP1.4 Billion, purchased power was at PhP1.2 Billion. Gross profit for Nov 2011 was at PhP181 Million. Gross margin per kWhr was at PhP0.98. Operating expenses was at PhP108 Million vs. budget of PhP136 Million. Net operating income was PhP72.3 Million vs. budget of PhP75.5 Million. Net income was at PhP116.4 Million vs. budget of PhP172.3 Million.

NP presented the income statement as of Nov. 2011. He reported a gross profit of PhP2.18 Billion vs. budget of PhP2.09 Billion. Gross margins were at PhP1.12 per kWhr vs.

budget of Php1.06 per kWhr. Operating expenses was at Php1.23 Billion vs. budget of Php1.32 Billion. Net operating income was at Php948 Million vs. budget of Php766 Million. Net income YTD 2011 was reported to be Php1.07 Billion vs. budget of Php927 Million.

#### **X. Report on CEDC**

- October Financials

MCP presented the October 2011 income statement of CEDC. He reported higher revenues at Php706 Million against budget of Php550 Million. He noted that there was an expense item that was unbudgeted. This was due to purchased power used to serve to contracts during outages. Net income was reported to be Php82 Million against budget of Php717 Thousand.

YTD income statement was also reported. MCP said that total revenues were Php6.4 Billion vs. budget of Php6 Billion. Purchased power was against noted to be an unbudgeted expense. Net income was reported to be Php1.1 Billion vs. budget of Php436 Million or 153% above budget.

AGS and EMG said that CEDC revised their budgets mid-year and changed their projections to around Php900 Million net income.

- Rolling forecast

MCP presented the rolling forecast for 2011. Revenues were at Php7.7 Billion against budget of Php7 Billion. Total O&M cost was at Php4.6 Billion vs. Php4.4 Billion in the budget. Net income was at Php1.21 Billion vs. a budget of Php707 Million.

#### **XI. VVT Business Development**

- PALECO BID

EMG reported on the PALECO BID. He said the most logical thing to do was for DPI to form a consortium with the winning bidder. He said that this was the reason why DPI did not participate in the bid. He reported that the bid was actually a failed bid because only DMCI participated in the process. He said that with the failed bid, DPI can now open negotiations with PALECO on a new contract.

- BISELCO PSA

EMG discussed the Energy sales forecast for the BISELCO PSA. He discussed the details of the BISELCO PSA Project. He presented a comparison between a base case and the upside of the project. Equity IRR was 12.93% for the base case and 23.95% for the upside. He also presented other details like the plant configuration and project costs. EMG said that the



total project investment was around Php500 Million. EMG also said that the risks in the project were: 1) the expected demand may not materialize, and 2) the creditworthiness of NPC for the subsidized portion of the rates.

## **XII. VVT Financials**

Ms. Marivic E. Sembrano (MES) sought approval for BOD resolution to obtain a loan for year-end settlement of CPPC advances. She discussed the process of the settlement of CPPC advances and the funds required to complete the transaction. She said that Php295 Million was needed for sourcing. Total cost for the short term loan was around Php93,750.00. The BOD approved the short term loan for the settlement of CPPC advances.

MES presented the income statement for the month of October 2011. She reported total revenues of Php222 Million against budget of Php82 Million. Net income after finance lease was at Php210 Million against budget of Php74.9 Million or a positive variance of 181%. She noted that the largest contributor to the income of VVT for the month of October was 1590EC, registering revenues of Php115 Million. She also discussed the details pertaining to the expenses and compared actual figures against the budget. EMZ said that the performance of 1590EC for the month of October 2011 illustrates the importance of signing a contract because it represents a lump in the income statement and it would be glaring if it were not there.

MES presented the income as of the month of October 2011. She discussed the equitized earnings from each subsidiary of VVT as of October 2011. She noted that in general, expenses were higher than last year because of the organic growth of the company due to the required increase in manpower. She noted a significant decrease in the financing cost of the company. Net income was reported to be Php540 Million vs. budget of Php616 Million or 12% below budget.

MES also showed the rolling forecast for 2011.

The chairman requested MES to present the status of the PSE requirement for public float. She reported the options available to VVT in complying with the PSE minimum float requirement. The options were 1.) undertake a public offering 2.) do a rights offering or 3.) a private placement to strategic investors or warehouse VVT shares to investors. She also discussed the areas to be considered for each option.

## **IX. Other Matters**

- Resignation of Mr. Alfred Ty

The chairman informed the BOD that Mr. Alfred Ty resigned as member of the BOD. The BOD accepted with deep regret the resignation of Mr. Alfred Ty as member of the Board. The BOD unanimously elected Mr. Antonio Abacan as new member of the BOD effective upon

his qualification as member of the board based on the Articles of Incorporation, the By-laws of the company, and the regulations of the SEC and PSE.

- Account with Bank of the Philippine Islands (BPI)

The BOD also discussed the Corporation's transactions and use of the products and facilities of Bank of the Philippine Islands for the benefit and interest of the Corporation. Thus, the Board unanimously approved and adopted the following resolutions:

“RESOLVED, that the Corporation be, as it is hereby authorized to enter into transaction and/or avail of the products or facilities of, or brokered by, or through the intermediation of, Bank of the Philippine Islands, or any of its branches, affiliates and wholly/partly owned subsidiaries (hereinafter individually or collectively referred to as “BPI” for the purpose of these resolutions) including, but not limited to, deposit accounts (including phone/electronic/internet banking facilities), cash management services, and similar transactions as the Corporation may deem reasonable, beneficial and in the furtherance of the interest of the Corporation;

RESOLVED, that any combination of Set A & B of the following officers or directors of the Corporation be, as they are hereby, authorized to sign, for and in behalf of the Corporation any documents, papers, instruments, checks and withdrawal slips, debit and credit instructions, funds transfer instructions, check encashment/endorsement, forms, agreements, or contracts as may be appropriate and/or required for the implementation of the foregoing powers/transactions, authorized above;

Position                      Name of Incumbent Officers/Directors                      Signature

SET A

AVP-Finance & Treasury	Maria Victoria E. Sembrano	_____
AVP-Corp.	Macario C. Padullo, Jr.	_____
Mgt. Systems		_____
AVP-Corp.	Emil Andre M. Garcia	_____
Planning & Devt.		_____
AVP-Ext.	Juan Eugenio L. Roxas	_____
Affairs & Admin.		_____

SET B

EVP-COO	Arlo A.G. Sarmiento	_____
Chairman	Dennis N.A. Garcia	_____
President	Ramonito E. Garcia	_____
Treasurer	Gil A. Garcia II	_____

RESOLVED FURTHER that the Corporate Secretary of the Corporation be authorized, as hereby authorized, to submit the updated list of the incumbent officers/directors occupying the above-mentioned positions, from time to time;

“RESOLVED, FINALLY, that this Resolution shall remain valid, subsisting and enforceable unless subsequently modified, revoked, rescinded or superseded by a resolution of the Board of Directors and a copy of such resolution is actually received by BPI.”

- Opening of Investment Management Account with RCBC

The Board of Directors discussed the necessity of opening an investment management account with Rizal Commercial Banking Corporation through its Trust and Investments Division (RCBC). Thus the Board unanimously approved and adopted the following resolution:

“RESOLVED, that the Corporation be authorized to open and maintain an investment management account with RIZAL COMMERCIAL BANKING CORPORATION through its Trust and Investments Division (RCBC) and to execute and deliver any and all agreements, contracts and necessary for the purpose;

RESOLVED, FURTHER, that the Corporation through RCBC as Investment Manager, be authorized to invest in fixed income instruments such as but not limited to time deposits and the Special Deposit Account (SDA) facility of the Bangko Sentral ng Pilipinas;

RESOLVED, FURTHER, that the following officers be authorized to negotiate, sign, execute and deliver the Investment Management Agreement:

<u>NAME</u>	<u>RANK</u>	<u>SIGNATURE</u>
Maria Victoria E. Sembrano	AVP-Finance & Treasury	_____
Macario C. Padullo, Jr.	AVP-Corp. Mgt. Systems	_____
Emil Andre M. Garcia	AVP- Corp. Planning & Development	_____
Juan Eugenio L. Roxas	AVP-Ext. Affairs & Admin.	_____
Arlo A.G. Sarmiento	EVP-COO	_____
Dennis N.A. Garcia	Chairman	_____
Ramonito E. Garcia	President	_____
Gil A. Garcia II	Treasurer	_____

**RESOLVED, FINALLY, that any combination of Set A & B of the following officers, acting and signing jointly and together, shall be authorized to transact or deal with, issue instructions to or receive notice from RCBC:”**

<u>NAME</u>	<u>RANK</u>	<u>SIGNATURE</u>
<b><u>Set A</u></b>		
Maria Victoria E. Sembrano	AVP-Finance & Treasury	_____
Macario C. Padullo, Jr.	AVP-Corp. Mgt. Systems	_____
Emil Andre M. Garcia	AVP-Corp. Planning & Development	_____
Juan Eugenio L. Roxas	AVP-Ext. Affairs & Admin.	_____

<b><u>Set B</u></b>		
Arlo A.G. Sarmiento	EVP-COO	_____
Dennis N.A. Garcia	Chairman	_____
Ramonito E. Garcia	President	_____
Gil A. Garcia II	Treasurer	_____

**X. Adjournment**

The meeting was adjourned upon motion duly made and seconded as there was no other matter taken up by the Board.

Prepared by:

**ATTY. JESS ANTHONY N. GARCIA**  
*Corporate Secretary*

Attested by:

**DENNIS N. A. GARCIA**  
*Chairman*

**RAMON TITO E. GARCIA**  
*President*

**CHARLES SYLVESTRE A. GARCIA**  
*Director*

**GIL A. GARCIA II**  
*Director*

**JOSE MARKO G. SARMIENTO**  
*Director*

**ELBERT M. ZOSA**  
*Director*

**EMIL ANDRE M. GARCIA**  
*Director*

**ATTY. JESUS B. GARCIA**  
*Independent Director*