

MINUTES OF THE REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
VIVANT CORPORATION  
December 17, 2010  
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. Effen P. Sarmiento - Director  
Mr. Elbert M. Zosa – Director  
Mr. Emil M. Garcia - Director  
Amb. Raul Ch. Rabe – Independent Director  
Mr. Jesus B. Garcia, Jr. – Independent Director

**ALSO PRESENT:**

Mr. Arlo A. G. Sarmiento – Chief Operating Officer  
Atty. Jess Anthony N. Garcia – Corporate Secretary  
Atty. Macario C. Padullo – Finance Manager  
Mr. Lyndon Jayme – VECO AYP for Utility Economics

**NOT PRESENT:**

Mr. Alfred Ty – Director

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**I. Call to Order**

The Chairman, Mr. Dennis N.A. Garcia, called the meeting to order at 9:30 AM and presided over the same.

**II. Proof of Notice and Certification of Quorum**

The Corporate Secretary, Atty. Jess Anthony N. Garcia, 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 the Previous Minutes of Meeting**

Upon motion duly made and seconded, the minutes of the previous meeting of the BOD was ratified and approved.

#### IV. To Do's From Previous Meeting

The Chief Operating Officer, Arlo G. Sarmiento (AGS), reported on the status of the matters that were left as "To Do's" during the last BOD Meeting. AGS reported that management was tasked to determine the options available to VSNRGC in case Luzon Hydro Power Corporation defaults on its Real Property Tax Payments. He asked Atty. Jess Anthony N. Garcia (JNG) to explain the options to the BOD. JNG reported that in case Luzon Hydro fails to make Real Property Tax payments, there is a possibility that the Local Government Unit concerned could foreclose on the power plant. JNG said that if this happens, PSALM would be in default of its legal obligations under the IPPA Agreement with VSNRGC. Under a PSALM default, PSALM would have to pay VSNRGC the PSALM default compensation sum, which is essentially the sum of all monthly payments given to PSALM until the date of default with interest. JNG also mentioned that there are other equivalent relief remedies that may be available to VSNRGC prior to foreclosure of the power plant considering that it has the contingent right to acquire the plant after 15 years.

#### V. Update on Subsidiaries

##### 1. VECO

Lyndon Jayme reported on the statistics for November 2010. It was noted that kWhrs. sold for November was below budget by 10% because CEMEX was not able to draw as it was supposed to. However, it was explained that even without CEMEX, kWhr. sales for the month grew by 5% compared to the same month last year.

He also reported the number of customers of VECO grew this year from the levels recorded last year. He presented the distribution of the growth in sales based on the different customer classes and noted that there was growth in the industrial area. He also reported that while the percentage of residential customers compared to the entire mix of VECO's customers went down, the number of residential customers increased, ultimately giving the company better sales.

Year to date growth in kWhr. sales was reported at 9.1%, mainly as a result of an increase in the number of customers in the industrial class.

November 2010 result of operations was also reported; specifically, total kWh sold against budget, operating profit, net income, revenues and operating expenses.

##### 2. 1590 EC

AGS reported on how the WESM has been performing for the year, showing maximum, minimum and average prices. He also explained some pricing errors that were experienced in the month of November. He reported that there were intervals with pricing errors where 1590 EC was dispatched at a certain capacity and price, but after re-run by PEMC, the resulting price for these intervals were substantially less than 1590 EC's nominated price. He reported that if this practice is continued by PEMC, then there is a very high risk to 1590 EC of being dispatched

but paid a price that is not economically viable. He reported that for the billing period in November 2010, this resulted in a negative variance in revenues of about 140 million pesos, representing the difference between the price offered by 1590 EC during the trading intervals concerned and the price indicated in the final settlement report issued by PEMC. With this, AGS then informed the BOD of the action plan to resolve the problem. As of time of reporting, a clarificatory letter has already been written to PEMC, asking them to explain the discrepancy in price. AGS also discussed with generator's representative in the PEMC Board, Mr. Miguel Aboitiz, and talked to a former WESM President, Mr. Lasse Holopainen.

JNG further explained the legal aspect of the dispute to the BOD. He said that the proper procedure was to file a dispute with the Dispute Resolution Administrator of the Philippine Electricity Spot Market (PEMC). Thereafter, the next legal remedy is to elevate the matter to the Energy Regulatory Commission (ERC). Finally, it could be filed with the Courts of law.

Atty. Macario C. Padullo (MCP) reported on the financials for the month of November. He discussed the revenues, operating and maintenance expenses, cost of generation, administrative expenses, operating income and net income of 1590EC. He also reported on the balance sheet including items such as current assets, liability and shareholder's equity, other liabilities, and total liabilities & equity.

JNG updated the BOD about some important developments on the Contract to Sell. He reported that it was signed last December 8, 2010. He discussed the following highlights of the Contract to Sell:

#### 1. Key Provisions

- Total Price    Php 3,097,327,685.00
- Payment Terms:
  - January 2011    Php 206,488,128.00
  - July 2011    Php 412,977,024.00
  - Monthly payment for 3 years                      Php 68,829,504.00
  - Interest Rate    6% p.a.

#### 2. Insurance

- Beneficiary is the PGLU.
- In case of total loss, PGLU is entitled to the proceeds only to the extent of the unpaid purchase price; the excess shall be for the benefit of 1590 EC.

#### 3. COA Approval

- Pending the approval by COA, the payments for the price shall be deposited in an escrow account.
- In the meantime, 1590 EC will continue to pay Php 10 million monthly to the PGLU.

- If COA approves the contract, the Php 10 million monthly payment shall be credited against the price.
  - If COA disapproves or COA's approval is not secured within a period of 3 years:
    - The amount in escrow shall be returned to 1590 EC;
    - The Php 10 million monthly payments already paid shall be considered as compensation for the use of the plant.
4. Ownership
- The PGLU remains to be the owner of the property until after full payment by 1590 EC of the purchase price
5. Option to prepay
- Prepayment may be exercised on the 2<sup>nd</sup> and 3<sup>rd</sup> years.
6. Option to discontinue payments
- Payments made shall be forfeited;
  - Transfer possession of the Properties to the PGLU.

Upon motion duly seconded, the BOD approved the release of the down payment pursuant to the Contract to Sell for the purchase of the Bauanag Diesel Power Plant.

### 3. VSNRC

MCP presented the November 2010 income statement and balance sheet. He reported on other financial items such as operating expenses, revenues, operating income, and other financial figures, noting a favorable variance due to higher kWh sold over budget.

## VI. Update on Pending Projects

### 1. Unified Leyte

AGS briefly discussed the background on the Unified Leyte (UL) project. He said that the power plants were owned by PNOC-EDC with a total installed capacity of 640MW and Contracted Annual Energy of 4,370 GWhrs. with NPC. The output of Unified Leyte is to be bidded in two portions at 60% and 40% of the Contracted Annual Energy respectively. Although all bidders can bid for both portions of the output, the winning bidders can each only be awarded one of the two portions of the energy output. AGS also informed the BOD that Vivant hired consultants, Asian Energy Advisors, to give advice on the bidding process and verify the assumptions used during the bid.

Latest developments on the UL project were reported as follows:

- Bidding has been postponed indefinitely.
- Asian Energy Advisors has raised several issues:
  - Non-availability of historical data on actual generation.
  - CAE, 60% 2,622 GWh
  - Minimum Allowable Energy Delivered 2,359.80 GWh
  - Uncertainty band on energy 262.20 Gwh
  - Equivalent Annual Revenue, @ P4/kWh P1.05 billion
  - Non-delivery Risks
  - Dispatch
  - Administrator has no control over the dispatch of energy.
  - Asian Energy Advisors is still working on:
  - Bilateral pricing strategy in terms of variable and fixed fees.
  - Secure and collate historical data on generation.

## 2. Silay Project

MCP gave a brief description of the Silay Hydro Power Project. He reported it as a greenfield hydro project that will be located in Silay City, Negros Occidental, along the Malugo River with an estimated capacity of between 8MW to 10MW. He then informed the BOD that the company has engaged the services of Meadowland Developers, Inc. to conduct a feasibility study with an overall project completion of 83% as of the time of reporting. Target submission of the 1<sup>st</sup> draft of the report is expected to be the last week of January 2011.

## VII. Vivant Financials

MCP reported on the consolidated financial statements of the company for the month of November 2010. He presented VVT's income statement and balance sheet. He also reported on key financial ratios of the company as well as the cash flows.

MCP presented the treasury report, briefly explaining the placements of VVT with certain banks as well as the credit lines.

Thereafter, AGS gladly informed the BOD that the company has successfully refinanced its long-term debt which was sourced to funds Vivant's share of the CEDC project. He reported that the interest rate was successfully reduced to 6.6% for the remaining 7 years, giving the company an actual savings of about 11 million pesos a year.

VIII. Other Matters

No other matters were discussed by the BOD.

IX. Adjournment

The meeting was adjourned upon motion duly made and seconded.

Prepared by:



**ERREN L. BADAYOS**  
Recording Secretary

Reviewed by:



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

Attested by:



**DENNIS N. GARCIA**  
Chairman



**RAMONITTO E. GARCIA**  
President



**CHARLES SYLVESTRE A. GARCIA**  
Director



**ELBERT M. ZOSA**  
Director



**JOSE MARKO G. SARMIENTO**  
Director



**ERREN P. SARMIENTO**  
Director



**EMIL ANDRE M. GARCIA**  
Director



**GIL A. GARCIA**  
Director



**JESUS B. GARCIA, JR.**  
Independent Director



**RAUL CH. RABE**  
Independent Director