

MINUTES OF THE REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
VIVANT CORPORATION  
October 29, 2010  
Suite 907-908, Ayala Life-FGU Center  
Cebu Business Park, Cebu City

**PRESENT:**

Mr. Dennis N. A. Garcia - Chairman  
Mr. Ramontito E. Garcia- President  
Mr. Charles Sylvestre A. Garcia - Director  
Mr. Jose Marko G. Sarmiento - Director  
Mr. Efren 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

**NOT PRESENT:**

Mr. Gil A. Garcia II – Director  
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. The extended shutdown of the Bakun Hydroelectric Power Plant (BHEPP) created a positive financial impact to VSNRGC due to the provision in the IPPA which allows a reduction in the monthly payments by 20% if there are any prolonged outages. However, if the outage would go beyond 8 to 12 months, further legal implications will be considered. The Corporate Secretary, Atty. Jess Anthony Garcia (JNG) then reported on the legal implications of the extended shutdown of the BHEPP. He reported that under the IPPA Agreement with PSALM, the IPPA Administrator would be entitled to an 80% reduction in monthly payments for the months that the BHEPP does not generate any electricity. JNG also explained that with the provisions on equivalent relief, IPPA Administrator may also invoke the default provisions under the Electricity Supply Agreement between NPC and Luzon Hydro Corporation. Under the default scenario, the IPPA Administrator may be entitled to an early turn-over of the power plant.

As regards the possibility of bidding jointly with the Aboitizes for Unified Leyte, Ramontito E. Garcia (REG) reported to the Board that Montxu Aboitiz gave positive reaction during their initial conversation. However, during subsequent conversations with AGS, the Aboitizes were having second thoughts on bidding jointly as they were already planning to limit partnerships with their generation plants as they prefer the flexibility of being able to supply their customers from any of their plants. But the Aboitizes were amenable to agree that, should both VVT and Aboitiz P win the bid, supply to VECO will be pro-rata (60% AP-40%VVT).

### **V. Prospective Projects**

A summary on the prospective projects in line for the company was reported, specifically on the Silay in Negros Occidental, Trans Asia Coal in Calaca, Unified Leyte in Leyte, and Naga in Naga, Cebu. The Board was briefly informed of the project specifics such as location, beneficial capacity, capacity, type of plant, prospective partners, proposed ownership structure, total project cost, equity and status updates.

### **VI. Update on Subsidiaries**

#### **1. VECO**

September 2010 result of operations was reported; specifically, total kWh sold against budget, operating profit, net income, revenues and operating expenses, particularly on the labor and non-labor costs were discussed. The Board was informed of the key issues

affecting the company today, namely; outages, systems loss, and labor issues. AGS then reiterated that systems loss has really gone up and is affecting margin, noting that the current systems loss as of time of reporting was more than 4% or at the same level as that of January 2007.

Lyndon Jayme then reported on the sales statistics for September 2010, shown at 8.96% higher as compared to the same period last year. Different customer classes were discussed; there was a growth of 4.12% in the number of customers. Residential contribution was higher last year and the industrial customers were noted to be the ones driving the company's growth this year. Year-to-date sales with and without CEMEX was also briefly discussed, noting that sales would have been better had it not for the outages. Mr. Jayme then presented the list of top customers with an average bill of 1 Million Pesos a month and customers per industry type.

AGS reported on the very important labor issue of VECO with its Union President, Cas Mahilum. On October 27, 2010, VECO arrived at a resolution of the administrative investigation against Mahilum which investigation started on May 22, 2009. The investigation arose from a press statement Mahilum gave in May 1, 2009 accusing VECO and Aboitiz of conniving with NPC to increase rates and calling on all customers of VECO to fight any application for rate increase as it serves only to enrich the Aboitiz family. The administrative investigation found Mahilum guilty of violating the company Code of Discipline and Article 282 of the Labor Code (Loss of Trust and Confidence). With this finding, a notice of termination was given to him last October 28, 2010. A notice of strike was also filed on the same day. VECO Management feared Mahilum might gather the necessary signatures to get a strike vote.

In closing, AGS informed the Board that management had already tightened up security and a statement for media has been released.

## 2. VSNRGC

AGS reported on generation results of the BHEPP showing the actual energy generation in 2009 as compared to the actual energy generation for the current year, and against what was projected. He also reported briefly on the impact study of downtime for BHEPP which was reported to have a positive impact on the cashflows of the company.

On the marketing strategy, AGS discussed on the conservative position that the Board wants to take for 2011. The plan was to market 85% of the energy through bilateral contracts at Php5.41/kWh to have guaranteed revenues and only float 15% to the WESM.

At this point, Mr. Elbert M. Zosa (EMZ) then suggested for AGS to be more aggressive in his forecasts and go below 85% in bilateral as the year 2011 is foreseen to be a year with more brownouts and energy would be highly in demand.

For the Admin Strategy, AGS reiterated to the Board that VSNRGC is having non-functioning key officers and a proposed re-organization was presented. Despite their competencies, a lot of factors have been observed since operation started. It was noted that key officers were never found in the office to take care of the business which have been found to be causing problems. As a result, other officers were forced to fill the gaps, doubling their workload that might compromise quality of work output. AGS then strongly recommended to remove idle officers and make VVT as the head of the company since it's VVT that's been doing the bulk of the work. Other administrative issue discussed was the plan to share resources in the office with 1590 EC, specifically on marketing and trading costs, and share one office for both companies.

Update on Benguet closing was discussed by JNG. Benguet Plant is supposed to be a direct assignment of the PPA from NPC to VSNRGC. However, after the award, HEDCOR was hesitant to sign the Assignment Agreement because of credit worthiness concerns and consequences of default. HEDCOR then re-negotiated with PSALM to revise the terms of the Assignment Agreement and inserted provisions that were not disclosed during the bidding. As a result, the turn-over of the Benguet PPA is now conditioned on VSNRC's acceptance of the revised Assignment Agreement. JNG then informed VVT Board that it is the position of the VSNRC Board to refuse the terms of the revised Assignment Agreement.

For financials, Atty. Macario C. Padullo (MCP) presented the September 2010 income statement and balance sheet. He reported on other financial items such as operating expenses, revenues, operating income, and other financial figures.

### 3. 1590 EC

Generation and Revenue report was presented by AGS. 2010 actual energy generation was noted to be approximately on target with forecast figures. However, revenues have tremendously exceeded with what was originally projected due to favorable WESM prices.

AGS also reported on the table of organization of 1590EC, briefly explaining the duties and responsibilities of each position. He also presented the table of organization for

Operations which is headed by Gigawatt Power, Inc., as well as the Finance and Trading & Marketing table of organization.

Income statement for August and September 2010 was also reported by AGS, noting a favourable variance in the net income against projected net income. He also presented a comparative table on the financial projections from August to October 2010 against actual income for the said months, noting a very strong month of October as far as income is concerned. With this, AGS then raised the points to consider in coming up with the decision to purchase the plant:

1. Strong Financial Performance from July 2010 to January 2011
2. Shortage of Supply in 2010 which is projected to continue until 2012
3. WESM prices are projected to reflect the tightening of supply through higher prices
4. Ancillary Services continue to be deficient and more pressure from DOE is being applied to NGCP to contract
5. Electric Coops and Utilities which are exposed to the WESM will want to hedge against the high projected prices
6. After 3 months, we now know that the plant is in good shape
7. Bauang PP is one of only a few merchant plants available which can plug the supply gap

AGS warned the Board of other factors that might cause the Province of La Union to renegotiate the deal and sought decision from the Board on whether or not to proceed with the purchase of Bauang Power Plant. He then presented base-case and worst-case scenario in terms of financials for the Board to decide on the purchase.

After a thorough discussion, the Board recommended for more time to study on the project and prepare the Contract to Sell by November 15, 2010 at the latest and final decision can be made by early December 2010.

## **VI. Vivant Financials**

MCP reported on the consolidated financial statements of the company for the month of September 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 also presented the treasury report, briefly explaining the placements of VVT to certain banks as well as the credit lines.

In closing, MCP showed the 10-year term loan restructuring for the company. Plan was to procure a new loan to pay off an existing loan which has a bigger annual interest as compared to the proposed new loan. The proposed new loan will have 7 different terms, and each term will be subject to different rates which will come out cheaper. After a

thorough discussion, EMZ advised management to consider things and weigh the risks very carefully.

## VII. Adjournment

There being no other matters discussed, the meeting was adjourned upon motion duly made and seconded.

Prepared by:



**EIRREN L. BADAYOS**  
Recording Secretary

Reviewed by:



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

Attested by:



**DENNIS N. A. GARCIA**  
Chairman



**CHARLES SYLVESTRE A. GARCIA**  
Director



**JOSE MARKO G. SARMIENTO**  
Director



**EMIL ANDRE M. GARCIA**  
Director



**RAUL CH. RABE**  
Independent Director



**RAMONTITO E. GARCIA**  
President



**ELBERT M. ZOSA**  
Director



**EFREN P. SARMIENTO**  
Director



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