

MINUTES OF THE REGULAR MEETING
OF THE BOARD OF DIRECTORS
VIVANT CORPORATION
May 13, 2011 @ 9:30 AM
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. Gil A. Garcia II - 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

ALSO PRESENT:

Mr. Arlo A.G. Sarmiento – Chief Operating Officer
Atty. Jess Anthony N. Garcia – Corporate Secretary
Atty. Macario C. Padullo – Finance Manager
Mr. Juan Eugenio L. Roxas – AVP External Affairs & Admin.
Mr. Ericson Omamalin – AVP

NOT PRESENT:

Mr. Alfred Ty – Director
Atty. Jesus B. Garcia, Jr. – Independent Director

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

Amb. Rabe noted that he had suggestions during the last BOD meeting regarding the establishment of a risk management unit that were not recorded in the minutes. He suggested the following amendments to the minutes:

- Hire a risk officer.
- Establish a risk management unit in the company.
- Create a risk evaluation committee within the BOD.

The BOD was also informed that Amb. Rabe has a copy of the ATS risk management unit and that he will furnish the BOD of the same. The Minutes of the previous BOD meeting was not yet approved pending the abovementioned amendments.

IV. To Do's From Previous Meeting

Mr. Arlo G. Sarmiento reminded the BOD of Mr. Elbert Zosa's advice to focus on sustainable revenue and the need to manage the overhead. He further reported that the BOD needs to address the issue on what level of revenue is needed by the company in order to sustain the business. He also mentioned that the largest chunk of overhead is the manning requirement which is at PhP28 Million. He added that, including interest expense and other costs, the company will need about PhP100 Million a year just to sustain the overhead. He emphasized that the need to focus on sustainable revenue is significant in relation to managing the invariability of income.

The second item from the To Do List centered on the company's current ratios. Atty. Macario Padullo explained that as of December 31, 2010, the current ratio is *0.64* based on the records of the parent company's Financial Statements; but if based on the consolidated Financial Statements, the current ratio is *1.1*. He further reported that as of March 31, 2011 the parent company's FS is at *1.08* while the consolidated FS is at *1.29*.

V. 1590 EC Update

- Dispute Brief

Mr. Erickson Omamalin presented the amounts of the claims against PEMC and the negative variances for each questioned billing month from November 2010 to January 2011. He then explained that the collated figures show that the real time dispatch amounts to the following variances: November: 142 Million, December: 144 Million, January: 56 Million, or for a total of 343 Million.

Atty. Joan Baron discussed the dispute between 1590EC and PEMC. She explained that the claim of 1590 EC hinges on the negative variances of the payment. That 1590 EC was paid much lower than the one offered and dispatched by the plant for the mentioned months. She also

informed the BOD that the explanation given by PEMC in answer to the claim was categorized into two. First, PEMC justified the same saying that there was a possibility of reduction in system demand during the interval; the explanation was insufficient as 1590 EC was still dispatched at the same quantity offer. Second, PEMC said it was possible that during the interval the must run units were increased.

Atty. Baron also reported that other generators sided with 1590 EC as co-claimants and MERALCO as respondent for the side of PEMC. She added that there were already two mediation conferences. The first one, which was supposed to be a procedural mediation, resulted into a heated argument with the PEMC lawyer saying upfront that there was no dispute as the claim of 15990 EC did not clearly point out the violation of PEMC and that the claim was a mere fishing expedition.

The second mediation conference took place on May 2, 2011. During the conference, the lawyers and representatives of the merchant generators agreed on the following: First, there is a dispute and not only a rules change or a request for transparency. Second, there is a resulting damage to the generators caused by PEMC and that relief must be granted monetarily. It was then reported that ultimately the basis of the violation is PEMC's refusal to show its basis for price substitution which was calculated manually. In that, the provision of transparency in the WESM Rules is clearly breached.

Following a thorough discussion on the matter, the BOD decided to extend the mediation proceedings for one more month in order to buy time to arrive at a settlement that will result in a PEMC per interval explanation of the negative variances (should be from November to January). The BOD also agreed that PEMC should effect a rules change and specifying thereto what rules and on how such rule is to be changed.

- Financial Position

Mr. Erickson Omamalin presented the financial position of 1590EC. He presented the income statement from August to March 2011 and the cash flow projections of 1590EC. He reported that the company's total assets amount to 3.1 Billion to date.

- Value of the Company moving forward

Mr. Emil Garcia reported on the value of the company moving forward. He discussed the recent WESM prices and the latest hourly supply and demand situation in the grid. A graph was also presented showing the discrepancies on NGCP's demand wherein there is a lack of reserves on the part of NGCP. It was also stressed that with the current trend in the market, it can be conservative to surmise that there is still a place for 1590 EC in the market.

Mr. Erickson Omamalin also presented the assumptions made for the income and cash flow projections for the company moving forward in order to guide the BOD in determining the value of the corporation moving forward. Mr. Arlo G. Sarmiento asked guidance from the BOD on whether to move forward with the Power Plant or not. It was also stressed that the best way to remain in the market and stay with the project is for the company to get the ASPA really soon.

Mr. Elbert M. Zosa said that he would like to see on a worst case scenario for 1590EC. The BOD wants to see first the Vivant financial position before taking a position on the 1590EC project moving forward.

VI. Update on Subsidiaries

- VECO

Mr. Arlo G. Sarmiento reported on the actual MWH revenues of VECO, breaking them down into the different customer groups, and presenting the growth or reduction in percentage on a per customer basis. He also reported the actual MWH purchased by VECO. He then discussed the Systems Loss problems of VECO and he said that the Systems Loss for March 2011 is reduced from over 10% in the previous month to around 9.5% for the month of March. He likewise reported on the increase of the wholesale market which consists of the large industrial customers like Ayala and ShoeMart. He mentioned that a lot of the growth as shown comes from SMEX. He then reported that the Year to Date growth is 0.8% with SMEX, and that VECO is still cheaper than MERALCO but more expensive than the neighbouring electricity companies like CEBECO.

Atty. Joan G. Baron discussed the Waterfront pilferage problem. She gave a brief synopsis on how the pilferage was discovered and the ERC Temporary Restraining Order. She said that the ERC treated the TRO as a customer complaint and assigned the same on a preliminary conference here in Cebu City. May 20, 2011 was set as deadline for the submission of the position paper for the lifting of the TRO. Atty. Baron said that the lifting of the TRO is the best way to go as of the moment before filing a criminal case.

- Northern Renewables
 - Income Tax Holiday Application

The issue of the Tax Income Holiday was discussed. It was reported that the denial of the application was clearly not fair as another IPP from San Miguel was granted the income tax holiday. Another issue presented to the BOD was the Tax Ruling on allowing NR to use the conditional sale method or finance lease method in computing its income tax. Atty. Macario Padullo explained that the Ruling concerns the granting of NR to claim as tax deductible expense the depreciation of the plant as well as the finance cost associated with the finance lease.

- Turnover of Benguet

Atty. Jess Anthony N. Garcia reported on the changes of the terms of the bid with the Benguet plant which prompted the decision not to proceed with the turn over. Still, NR paid the \$10,000.00 as assignment fee so as to comply with the agreement. He also read out the letter from PSALM which sums up in asking NR to sign a waiver so as to release PSALM from any further claim and failure to turn over the power plant. It was then agreed by the BOD that the waiver should include a categorical statement that the failure of the turnover was caused by the changes of the term of the bid as such was left out by the PSALM Board.

➤ Rehabilitation of Luzon Hydro Plant

Mr. Arlo G. Sarmiento reported on the Aboitiz's rehabilitation of Luzon Hydro. He also told the BOD that the letter to PSALM asking for a confirmation of their consent to waive 80% of the monthly fees has been sent but no word on its reply as to date. Though such provision is stated in the contract, the letter to PSALM is a sure way to affirm their consent in writing.

- Delta P, Inc.

Mr. Emil Garcia reported on the updates of Delta P. He mentioned about the plans for expansion in Palawan and that PALECO started a CSP for NPP for 15 MW. He also said that a possible joint venture was explored by Vivant, GPI and Lanugan Power Corporation, which is a power company headed by a certain Mike Wuton. He also stated that a possible venture joining hydro and diesel is looked at. However, the PALECO Board opted instead for a Korean company which wanted to put up a Biomass plant in the area. He said that the chamber wrote DOE and as a result, instructed PALECO to go through with the CPS. Such event only caused delay on the CPS.

- Amlan Hydro Power Inc.

Atty. Macario C. Padullo reported on the updates for AHPI. He said that NGCP instructed that AHPI's transformers should be shut down as it is very old and has caused the tripping of NGCP's transformers. On May 6, 2011 NGCP allowed AHPI to check its transformers. That being done, AHPI is expected to run and to use one engine at the moment. It was also reported that the plant helped in the road repair and that the telephone line posts were improved.

- Sta. Clara Power

Mr. Arlo G. Sarmiento reported that since Sta. Clara partnered with Ayala, and that Mr. D. Borje was hired to be the COO of the new company, Sta. Clara will have to appoint a new point person for Northern Renewables and AHPI.

VII. Silay Hydro Project Update

Mr. Emil Garcia presented the updates on the Silay Hydro Project and the needed improvements so as to maximize the hydro power of the river. The timeline for the project was also presented to the BOD and that the construction itself will start 2012 and the operation will be in three years time. Mr. Emil Garcia also informed the Board that the Local Government Unit has given its support and the necessary application permits are being processed.

It was also suggested that this project be the initial test for the Risk Management Committee to work on so as to verify on how the company could make use of the same.

VIII. Vivant 2010 Audited Financial Statement

Atty. Macario C. Padullo presented the 2010 Financial Statement of Vivant. The total assets increased to 100% which is from 4 Billion to 8 Billion. The main reason for the same is the increase in cash balance and 1590 EC's receivables from PEMC. He also mentioned the increase of the liabilities which is due mainly to the liabilities of the plant. 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.

IX. Other Matters

The BOD had a general sentiment regarding the 1590 EC Plant and decided to keep the plant. The nominees for the VECO Board of Directors were presented to the BOD. It was also agreed that Mr. Juan Eugenio Roxas be nominated as member of the Board of Advisor so as to make way for the External Affairs matters to be coursed through him.

X. Adjournment

The meeting was adjourned upon motion duly made and seconded.

Prepared by:

Reviewed by:

EIRREN L. BADAYOS
Recording Secretary

ATTY. JESS ANTHONY N. GARCIA
Corporate Secretary


Attested by:


DENNIS N. A. GARCIA
Chairman



RAMONTITO E. GARCIA
President


CHARLES SYLVESTRE A. GARCIA
Director

ELBERT M. ZOSA
Director


JOSE MARKO G. SARMIENTO
Director

EFREN P. SARMIENTO
Director


EMIL ANDRE M. GARCIA
Director


GIL A. GARCIA
Director

RAUL CH. RABE
Independent Director