

**VIVANT CORPORATION**  
MINUTES OF THE REGULAR MEETING  
OF THE BOARD OF DIRECTORS  
*September 2, 2011 at 10:30 AM*  
Suite 907-908, Ayala Life-FGU Center  
Cebu Business Park, Cebu City

**PRESENT:**

Mr. Dennis N. A. Garcia	Chairman
Mr. Ramonitto 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. Emil M. Garcia	Director
Atty. Jesus B. Garcia, Jr.	Independent Director

**ALSO PRESENT:**

Mr. Arlo A.G. Sarmiento	Chief Operating Officer
Atty. Macario C. Padullo	Finance Manager
Atty. Angelo Fornolles	Acting Corporate Secretary

**NOT PRESENT:**

Mr. Elbert M. Zosa	Director
Mr. Alfred Ty	Director
Amb. Raul Ch. Rabe	Independent Director
Atty. Jess Anthony N. Garcia	Corporate Secretary

---

**I. Call to Order**

The Chairman, Mr. Dennis N.A. Garcia (DAG), called the meeting to order at 10:30 AM and presided over the same.

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

The Acting Corporate Secretary, Atty. Angelo A. Fornolles (AAF) 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 by Ramonito E. Garcia (REG), the minutes of the previous BOD Meeting was approved and duly ratified by the BOD.

### **IV. To Do's from last BOD Meeting**

The Board discussed the possibility of referring the Silay Project to the Risk Committee for assessment and evaluation. Mr. Arlo G. Sarmiento (AGS) mentioned that Mr. Elbert M. Zosa has agreed to head the Risk Committee of the Company. However, the BOD decided that it would be premature for the Risk Committee to evaluate the Silay Project considering that the project company had not yet been incorporated.

AGS said that he understood from previous BOD discussions that the Risk Committee would be appointed to evaluate prospective projects. It was also agreed that any evaluation should only be on a per project basis. He said that the Audit Team would oversee the activities of the Risk Committee but the latter would still report to the BOD.

After a thorough discussion on the matter, the members of the BOD concluded that the Risk Committee should assess and evaluate the risks on a per project basis only. The members of the BOD also agreed that the committee head should not be a Board Member but must come from and be familiar with the industry being evaluated. In addition, the Risk Committee should report directly to the BOD. The BOD did not pass a formal resolution pertaining to the Risk Committee because the matter was still pending subject to Amb. Rabe's comment or further clarification.

Thereafter, AGS said that the other task from the previous BOD Meeting was to find out if Vivant is allowed by accounting standards to consolidate the financial statements of Northern Renewables. He said that the finance group assured him that the consolidation was permitted. The said consolidation would be allowed because Vivant could establish sufficient control over NR despite owning only 46% of the outstanding capital stock. It would also bulk up the balance sheet and the income statement of the corporation.

Another task assigned by the BOD during the previous meeting was to visit the banks and explain to them about the losses. During the meeting with Metrobank, it was mentioned that they do not evaluate a company's profitability midway through the year but only at year end. The loan covenants were also checked against the losses experienced by the subsidiaries and it was affirmed that no provision was breached.

## V. 1590 ENERGY CORPORATION DISPUTE RESOLUTION

Mr. Ernil M. Garcia (EMG) reported regarding the workshop with PEMC. EMG said that there were 6 issues that needed to be addressed via Rules Change.

In the initial discussion with the Merchant Generators, EMG mentioned that there were 3 options discussed under the subject of Pricing Error Notices. These 3 options were seen as possible solutions to fix the Pricing Error problem. These 3 will be delivered to the Rules Change Committee.

The options are:

- 1) To exclude a N-1 contingency if it is breached 25% at anytime
- 2) To define a N-1 contingency localized pricing error
- 3) To remove the cost of congestion to arrive at a valid price.

The next issue tackled was the use of the Merit Order Table. EMG reported that there should be a clear definition of Merit Order Table and how the System Operator (SO) could utilize this Merit Order Table. He added that there must also be transparency in auditing the use by the SO of the Merit Order Table. All three concerns should be embodied in the Dispatch Protocol Manual.

The issue regarding Must Run Units (MRU) was discussed. It was reported that there is a need to establish the proper implementation and use of MRUs and to provide a better compensation scheme for the generators.

In the second Rules Change Committee meeting next week, the following items will be discussed: 1) Ancillary Services 2) Ex Post Price Determination and 3) Non Scheduled Generators.

AGS asked regarding the time frame for the filing with RCC. EMG said that there is no time frame allotted for the filing of the proposed rules. REG inquired about the current composition of the PEMC board. EMG and AGS explained the composition. They mentioned that the Chairman was the DOE Secretary and the other directors were from cross sections of industry players and then there were three independent directors.

AGS said the dispute has achieved something. It was also reported by EMG that after the dispute, re-runs were reduced from more than 50 per month to around 5.

## VI. WESM PRICES

EMG also reported on settlement summary from WESM for period Sept 2010 – Aug 2011. Mr. Jose Marko Sarmiento (JMS) commented on the situation of SUAL being always down.

AGS said with the data at hand, the company cannot rely on the market alone for steady cash flow and the best way to go is for the company to have a bilateral contract.

## VII. Financial Reports

### 1590 ENERGY CORPORATION

Atty. Macario C. Padullo (MCP) presented 1590 EC's financial reports for the month ending July 31, 2011. MCP reported the following figures: Energy Revenues – negative 55% against budget, Gross Profit – negative 47%, Operating Income – negative 45% which was a result of lower generation, Net income before tax – negative 10%, Net income after tax with a 10 year depreciation schedule – plus 10%, Net income after tax 5 year depreciation – negative 14%, Taxes and licenses – positive because the LGU did not assess Real Property Tax for 2011, MCP said management was considering a change in depreciation from 5 years to 10 years which would ultimately help the company in terms of equity earnings. MCP reported that the Administrative expenses were still within budget but the management fee expenses exceeded the budget primarily due to the VIVANT management fees and the upward adjustment of the expense starting last March.

On year to date figures, MCP reported the following: Energy Revenue – negative 70% lower than that of budget, Gross profit– negative 100%, Operating Income – negative 108%, Net income before tax – negative 149%, Net income after tax and 10 year depreciation – negative 149%, Net income after tax 5 with year depreciation schedule – 221%.

AGS explained the impact of 1590 Energy Corporation's financial statement to VIVANT. He said that the payment of the amortization allows the accruing of the asset. Hence, the actual cash loss would be the operations and maintenance expenses and the interest expenses versus the income.

MCP also reported on the 2011 Rolling Forecast. Assuming a worst case scenario, where there would be no generation starting the month of September to December, the following figures would be the estimated loss per month: September-74 Million, October-66 Million, November-65 Million, December-66 Million; or a total of 476 Million, with VIVANT having a 225 Million share of the loss.

MCP also presented and discussed the balance sheet as of July 2011 and December 2011.

AGS asked MCP whether we can argue with the auditors not to book the Bauang Power Plant because there is still no Commission on Audit (COA) approval. MCP said that booking is based on the contract's wording and it is only when the COA does not approve it that the booking is reversed. JBG said that contracts are presumed valid unless otherwise declared.

AGS intimated to the BOD that it could be possible that a third party interested in stepping in is delaying the COA approval. He said that from February to June, there was no COA chairman yet making the non-approval understandable, however, from July to the present, there is already a commissioner but still no approval. AGS said that if it is being blocked by a third party, it could only mean that there is value in the plant. The discussion was essential so as to make known to the BOD that there may be an issue with the COA.

EMG discussed the 10 year bilateral with MERALCO. EMG said that 1590 EC is the cheapest diesel bilateral known to present to MERALCO. AGS mentioned that MERALCO technical consultants assessed the plant and said that the plant is needed and that they will recommend the signing of a bilateral contract to MERALCO management. They said that the offered price was also reasonable. It was reported that they are willing to sign, however, there is still the ownership issue. The underlying reasons why MERALCO would not sign would be because of ownership issues, such as the COA issue or if they would want to own the plant for themselves.

JGB asked if there are any other prospects aside from MERALCO, AGS said there is the option of procuring an ASPA. The bottom line is, there are still other options available for the plant and people are interested in it.

AGS also discussed the strategies moving forward for the 1590 EC Bauang Power Plant.

- 1.) Abandon the asset
- 2.) Sell part of the shares of 1590 EC or sell all
- 3.) Assignment of the Contract To Sell which would still require consent of Province

AGS explained the impact of the losses of 1590 EC to VIVANT. The loss, since the beginning of the investment is around 130 Million. The company likewise owns 15% of the asset to date.

#### Vivant Sta. Clara Northern Renewables Generation Corporation (NR)

AGS informed the BOD of the scheduled shutdown of the Bakun plant on November 23, 2011. He said that during shut down, the company would pay only 20% of the amount owed to the government. He reported the various meetings between NR representatives and the PSALM lawyers. He said that the indications were positive there would be a good chance that PSALM would confirm the legal position of NR that only 20% of the monthly payments are due during the shut down. The approval of the 20% payment by PSALM would give 172 Million worth of savings to the company if the same would push through.

The Board of Investment (BOI) Application was also mentioned. AGS said that Northern Renewables was scheduled to file its application by the second week of September.

MCP discussed the FOREX hedging arrangement for NR. He said that he has already talked to two banks, HSBC and MBTC. However, he stressed that the FOREX hedging transaction would still need BSP authority and it would also require the company to open a credit line with the bank. AGS told MCP to do the ForEx hedging quickly, as things are moving very fast. MCP committed to do as told.

Thereafter, MCP discussed the Financial Statement of NR.

MCP also presented a rolling forecast of NR's financials for the rest of the year. AGS summarized that NR is controlling its costs but that WESM prices are lower than projected, hence the loss. MCP also reported and presented the balance sheet of NR.

AGS inquired on the status of the amendment of the Articles of Incorporation to increase the capital stock. AAF said that the same should be done before the end of the year.

#### CEDC

MCP reported on CEDC's financial statement and its rolling forecast. DAG inquired on the status of the VECO shares. MCP said Metro Bank Trust & Co. has been studying the matter for 3 weeks already. MCP said that he has asked Metrobank that in computing Book Value, they should include the advances because it's the actual investment. AGS said that the same should be done by the end of the year.

EMG reported on the Balance of Plant Update and the remaining EPC/BOP works as of August 31, 2011. There was also a report on the improvements and on-going construction of CEDC where target is by the end of November. He also reported on the Project Cost to date. EMG also reported on Commercial Updates for CEDC. EMG said CEMEX is not getting CEDC ash because it does not pass their requirements, and that there is another possible taker of the ash that he would need to talk to.

#### CPPC

Ms. Janice Villaflo (JV) of CPPC reported regarding the financial statement of CPPC. AGS mentioned that the turnover of CPPC's asset to VECO will be by 2013, sometime June or November. AGS then told the BOD that the things to be done during the (BOT) transfer should be addressed before 2013.

JV reported that WESM sales are higher than forecast. She also reported and presented the balance sheet. She also reported that within the year, there were no additional cash advances, but there will be cash dividends. JV also reported on the cash flow of CPPC.

AGS inquired about the premium per barrel of fuel and duration of the fuel contract. JV replied that the renegotiation of the fuel contract will be in 2 years.

AGS asked how CPPC was billing Aboitiz for the CPPC personnel assigned to the rehabilitation of the Navotas Power Plant. JV responded that the actual expenses plus charges on timely billing plus mark up are all billed for the Navotas rehabilitation. AGS also inquired how much of CPPC's resources are used and JV said that there are 5 operations people and 4 supervisory people; all are being charged by CPPC to Aboitiz Power.

JV also presented the midyear forecast assumptions and the key performance indicators for the midyear forecast. AGS asked how much can be made from WESM and the savings that would be derived from it. EMG asked for a sample of the WESM formula or computation. JV said that she would send her answers thru email.

JV also presented the balance sheet; the actual and the forecast respectively. JV also presented the CAPEX.

## VECO

Nelson Perez (NP) presented a report on the accruals. NP said that while VECO is already billed by suppliers, it has not on the other hand billed its consumers yet. He said that this situation clearly needed to be corrected. NP also reported on the recoveries for generation and for systems loss for August 2011.

NP then reported on the sales to residential and industrial and commercial customers. He stated that there was a general decline on the improvement of the systems losses. NP also reported on the monthly operating revenues and said that it's higher than budget. On a year to date basis, operating revenues were also higher compared to same period from last year. NP reported the Operating expenses for the month and for year to date. He also presented a report on miscellaneous income. Finally, NP presented the Rolling Reforecast of 2011.

Lyndon Jayme (LJ) presented a report on UEG Statistics and the megawatt analysis for the month of July. He reported that sales for July were generally higher than last year but lower than this month's budget. He also said that there was an increase in the number of customers.

JBG inquired on how a condominium is charged and AGS said that if it is individually metered then it is residential while if aggregated, then it's billed as commercial. LJ said that industrial sales increased as compared to same period last year. Year to date, there is some growth due to the increase of the number of customers in general. Currently, the condominiums are the ones making money by using a mother meter and billing their tenants. It was reported that there was large growth in industrial sales due to the entry of CEMEX. LJ reported that in terms of contribution, the industrial customers are growing while that of residential customers is shrinking. AGS said that ultimately, the consumers are using lesser electricity than that of last year.

LJ also reported that the ERC already sent 24 letters of contestability to VECO's contestable customers. LJ also reported on the top 5 consumers per industry type. LJ then reported on the amount of company use allowed to VECO which is around 2 million. He then said that VECO is thinking of charging the light privilege of retirees to this because VECO is not using all of it.

Engr. Noel S. Modesto (NSM) reported regarding the systems loss. NSM reported on the cumulative systems loss for the period July 2010-July 2011. He noted that there is a general

improvement. NSM reported that the target which is by March 2012, systems loss would be at 8.5%, the cap of Energy Regulatory Commission (ERC). Currently, VECO is at 9.5%.

NSM also reported on the energy purchased vis-à-vis kilo-watt hrs. sold. He reported a general increase in the amount of kilo-watt hrs. sold which is a good indication that the projects are on the right track. NSM also reported on the updates of the Elevated Metering Center (EMC) project. He also mentioned that the EMCs can withstand heavy winds or a typhoon. This project was done so as to minimize the exposure of secondary lines and thereby lessen electricity pilferage. He said that reading of the meters is done through the aid of high-zoom cameras.

NSM also reported that most barangays have been converted into EMC and that has greatly helped in achieving great savings in terms of systems loss. NSM also reported on the apprehensions on pilferage of electricity and the updates of the recent apprehensions made.

### **DELTA P**

AGS said that the Palawan Mayor now wants a coal plant. DMCI is coming in to build a small coal plant. AGS discussed the expansion plan with DMCI and that there is an increase in growth in Palawan by 13%. He also said that DPI is secured for the next 10 years. AGS also presented the Income Statement of Delta P and reported a net income to date, compared to last year where there was a loss. AGS also presented the balance sheet as of July 31, 2011.

### **CIPC**

EMG reported on CIPC. He also reported that the PSA was already signed last Aug 8, 2011. EMG presented a Project Overview; he said that the 2<sup>nd</sup> hand engines eyed are no longer available and that there is a need to find new engines with accompanying price change. He mentioned that the company would try to apply for an Income Tax Holiday for it.

### **Silav Update**

EMG reported regarding the endorsement of the Local Government Units which were already given. He also mentioned that CIPC's application is on track and that the application for water rights is likewise in progress. EMG then reported on the additional steps that need to be taken by August 2012. The need to authorize a representative in the application of the corporation for an Environmental Compliance Certificate was also discussed. Thus, the BOD approved and adopted the following resolutions:

**“RESOLVED, AS IT IS HEREBY RESOLVED, that the Corporation shall authorize Mr. Emil Andre M. Garcia to apply and process on behalf of the Corporation an Environmental Compliance Certificate (ECC) with the**



Department of Environment and Natural resources (DENR)  
for the Silay Hydro Power Plat project;

RESOLVED, FURTHER, that Mr. Emil Andre M. Garcia is also authorized to act and sign in behalf of the Corporation any document that may be necessary for the said ECC application and processing and to implement this resolution;

RESOLVED, FINALLY, that the corporation hereby confirms and ratifies any and all acts done by Mr. Emil Andre M. Garcia pursuant to the above resolutions.”

Amlan Hydro Updates

MCP reported on the budgeted CAPEX approved by the AMLAN board, which was a total of around 9.7 Million pesos, with the biggest portion going to the dam diversion. AGS said that Director Boy Gonzaga stopped this CAPEX budget and is doing other matters that the board didn't approve like prioritizing the transformers and spares.

Engr. Kent presented a report regarding the Operations of Amlan Hydro Plant. He reported that Unit 1 is running well but Unit 2 is on standby because the voltage cannot reach the rated value anymore and he discussed the probable causes. Engr. Kent also reported on the NGCP upgrade. He said that NGCP made the upgrade at their cost, amounting to around 8 Million Pesos which in turn only cost the company at around 500 Thousand Pesos. It was also reported that the service road was already fixed and cemented with a perimeter fence around the station for security.

AHPI Income Statement

MCP reported the financial statement of AHPI. He reported that revenue was 41% lower than budget, and total expenses was 49% lower than the budget. He also mentioned that net income (or loss) was 1,418% lower than budget.

AGS intimated to the BOD that this project should be independent in operations from VIVANT.

**VIII. Vivant Corporation**

Public Float

Ms. Maria Victoria E. Sembrano (MIES) reported on the public float of Vivant. She reported that float was below the 10% requirement set by the PSE, and that it is now only 4.2%.

She said that the PSE grace period ends on Nov. 30, 2011 with penalties of 1 million pesos 1 year after the grace period. She reported that there is already a scheduled meeting with First Metro Investment for a possible consultancy agreement.

MES also asked the BOD to authorize the President and/or Chairman to negotiate and sign various VIVANT contracts as follows: Management Services, Consultancy Services and Legal, tax and stock transfer Retainer Agreements. JBG moved that the BOD authorize either the President and/or Chairman to represent VIVANT and negotiation and sign the above mentioned contracts and it was duly seconded by JMS. Hence, the BOD resolved to adopt the above mentioned resolution.

The BOD then discussed the required 10% compliance with the PSE together with the various strategies and suggestions for compliance.

MES also reported on the financial statement of VIVANT and its subsidiaries together with the comparative consolidated statements of the corporation's income.

MES also made a report on the Rolling Forecast for the 2011 Income Statement and the consolidated balance sheet as of July 2011. Thereafter, MES also reported on the key financial ratios for July 2011 vs. Dec. 2010.

#### **IX. Other Matters**

- Contract of Lease

The BOD also discussed the necessity of entering a lease contract with Ricor Mills Corporation for the office space located at the 9<sup>th</sup> Floor of Ayala FGU Center. Thus, the BOD unanimously approved and adopted the following:

**“RESOLVED, AS IT IS HEREBY RESOLVED, to authorize Vivant Corporation (the “Corporation”) to enter into a contract of lease starting November 15, 2011 with Ricor Mills Corporation for an office space located at the 9<sup>th</sup> Floor of Ayala-FGU Center, Cebu Business Park, Cebu City;**

**RESOLVED, FURTHER, to authorize its AVP – External Affairs and Administration, JUAN EUGENIO L. ROXAS, as the duly authorized representative of the Corporation to sign any and all documents to implement this resolution including, but not limited to, a contract of lease.”**

- Bank Signatories

The BOD discussed the need to authorize two sets of signatories in all authorized transactions with all of the corporation's bank accounts. Thus, the BOD unanimously approved and adopted the following:

“RESOLVED, as it is hereby resolved, that in all of the Corporation's bank accounts, there shall be two separate sets/groups of signatories, namely Group “A” and Group “B”;

RESOLVED, FURTHER, that the compositions of the 2 groups mentioned above and their corresponding specimen signatures are as follows:

GROUP “A”

Name

Specimen Signature

DENNIS N. A. GARCIA  
 RAMONITTO E. GARCIA  
 GIL A. GARCIA  
 ARLO A.G. SARMIENTO

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

GROUP “B”

Name

Specimen Signature

EMIL ANDRE M. GARCIA  
 JUAN EUGENIO L. ROXAS  
 MACARIO C. PADULLO, JR.  
 MARIA VICTORIA E. SEMBRANO

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

RESOLVED, FURTHERMORE, that in order to constitute a valid and duly authorized transaction there must be present one signature from either of the signatories belonging to Group “A” AND one signature from either of the signatories belonging to Group “B”;

RESOLVED, FINALLY, that the above-signatories and system of signatories shall apply to the bank accounts of the Corporation in the following banks:

- Metropolitan Bank and Trust Company – A.S. Fortuna Branch
- Rizal Commercial Banking Corporation – Ayala Branch
- Rizal Commercial Banking Corporation – Manalili Branch
- Bank of the Philippine Islands – Ayala Branch
- Banco de Oro – Ayala Branch
- Banco de Oro – Insular Building Branch, Cebu Business Park”
- Purchase of Shares of Stock

The BOD also discussed on the necessity of authorizing a representative in the transactions covering the purchase of the proprietary shares of stock of Mr. Sebastian R. Lacson in Cebu Country Club. Thus, the BOD unanimously approved and adopted the following:

“RESOLVED, AS IT IS HEREBY RESOLVED, that the Corporation shall be authorized, as it is hereby authorized, to purchase the proprietary share of Mr. Sebastian R. Lacson in Cebu Country Club, Inc. covered by Proprietary Ownership Certificate No. 1830 consisting of one (1) share;

RESOLVED, FURTHER, that the authorized purchase price for the said proprietary share shall be within the range of One Million Eight Hundred Thousand (PhP1,800,000.00) to Three Million Four Hundred Thousand Pesos (PhP3,400,000.00), Philippine currency, subject to the discretion of the person authorized herein;

RESOLVED, FINALLY, that Mr. Arlo A.G. Sarmiento shall be authorized, as he is hereby duly authorized, to represent, act and sign on behalf of the Corporation to implement the above-authorized transaction, hereby confirming and ratifying all acts of Mr. Arlo A.G. Sarmiento for the implementation of the above-authorized transaction.

#### 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. ANGELO A. FORNOLLES**  
*Acting Corporate Secretary*

Attested by:

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

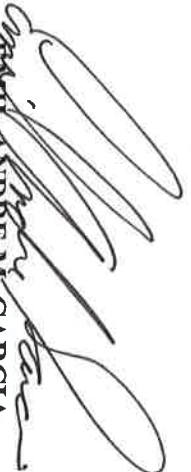
  
**RAMONITTO E. GARCIA**  
*President*

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

**ARLO G. SARMIENTO**  
*Director*

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

**ERREN P. SARMIENTO**  
*Director*

  
**EMILE ANDRE M. GARCIA**  
*Director*

**GIL A. GARCIA**  
*Director*