

THE BOHOL PRIVATIZATION INITIATIVE

A Documentation of the Experience To Privatize the Province of Bohol's Water and Power Utility Departments

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Executive Summary

Summary of the Process

In November 1998, the Bohol Provincial Development Council Executive Committee passed a resolution favorably endorsing a proposal to establish two public-private joint ventures for the purpose of privatizing the province-owned electric and water supply companies. The province elected to take this course of action because it was faced with several concerns related to its ability to manage both utilities. In the water sector, there was a growing demand for potable water in the capital city of Tagbilaran and in the rest of the province coupled with high system losses incurred by the Provincial Water System. In addition, the province was increasingly convinced that it had inadequate ability to maintain the sanitary quality of the water being provided. In the electrical sector, although the Provincial Electric System was established in 1925, system losses had been a continual problem along with under voltage and low power occurrences. These were primarily due to the inadequate and poor condition of distribution lines and substations that tend to be overloaded, particularly during peak hours.

In early 1999, the Provincial Governor, Rene Relampagos, submitted a resolution to the President requesting endorsement of the joint venture proposal to the Committee on Privatization. After waiting several months for a response, in September 1999 the Governor and his team approached the Committee and found that privatization transactions of local government units do not require the approval of the Committee and the President.

Immediately, the province initiated its own efforts to create the joint ventures. They began the process by convening an open forum for interested citizens in a major hotel in the provincial capital. In late 1999, the Provincial Government completed the preparation of the tender documents and published an invitation to pre-qualify and bid in national newspapers.

The joint venture proposal for the Electric Supply Company received five bids, but the water supply company proposal only received one bid. The Provincial Attorney ruled that although there was only one bid for the Water Company, this did not constitute a 'failure to bid'. In March and April 2000, the provincial government reviewed and evaluated the qualification documents of all bidders, both electric and water, and found all complied with the basic criteria. After a series of discussions, public notice was issued on the intent to award both joint venture contracts to one bidder, SALCON Power Corp. Following lengthy negotiations, public debates, and legal challenges the Joint Ventures to Rehabilitate-Own-Operate-and-Maintain the Bohol Provincial Waterworks System and Bohol Provincial Electric System were signed on August 28, 2000. After further legal issues were resolved, the operation was able to get underway in early 2001.

Lessons Learned

Establish The Context Of Privatization

The decision to privatize came out of a long process of public consultation. It was a derivative of the decision to turn the Province into both an agro-industrial center and a major tourist destination. The multi-sectoral consultations identified the improvement of the power and water services as essential to the realization of the growth strategy they agreed to. It was just as clear to them that the Province was in no position to provide either the capital or the engineering and management technology necessary to bring the utilities to par. The clarity with which the Province set the context of privatization made it easier for its political leaders to initiate the process.

Careful Financial and Legal Study

Detailed studies of the two utility facilities were conducted to evaluate the financial viability of their operations and on that basis prepare a plan for rehabilitation and/or expansion. The Rehab and Expansion plans formed the basis for determining the financial requirements of improving water and power services delivery. The plans in turn became the basis for deciding on the appropriate financing option. Without those studies, the province would not have been in a position to know the technical and management conditionalities of the joint venture. Transactions of such scale need careful study.

It is best that such studies be done with the involvement of professional, legal and financial advice. Bohol was fortunate to have the ARD/GOLD project to support the initiative although the province invested substantially as its share to retain the Consultants fielded under the GOLD project. Both financial and legal advice came in handy during consultations with the public where expert advice was frequently called for.

Decisive Political Leadership

At no point in the process, did the Province's political leadership waver in its resolve to bring in the needed capital and technology to improve its water and power delivery system. In the same breadth, the political leadership maintained prudence in the exercise of its authority. Every right was respected, despite negative financial repercussions on the province.

Public Participation

Without public participation in the decision process, the privatization initiative would not have prospered. The chronology of events show the extent of consultations held with the public. The political leadership took its time to explain the advantages and disadvantages of privatization. Employees who were to be directly affected by the move were consulted. The consultative process resulted in a more manageable opposition with the latter limited mostly to the political opponents of the present administration.

Private Sector Interest

The experience established private sector interest in local government enterprises. Seven (7) private sector groups, including one consortium (SALCON) expressed interest

in the offering. Interest was sustained throughout the tender period. Five bids were received for the power supply facility. The experience belies the allegation that the private sector shies away from transactions involving local governments. Perhaps an attractive feature of the Bohol transaction was the transparency with which the Province carried out the process.

Selection By Competitive Bidding

Selection by competitive bidding indeed allows the local government to get the best conditions from the private sector. It is important however, to establish the legitimacy of a prospective offer. In this respect, the pre-bidding conference allows the local government to know all interested parties. At that conference, all prospective investors are asked to provide the LGU with their respective credentials. The LGU must spare no effort to check on those credentials.

The Bohol experience established that there are enough good rules and regulations to guide LGUs in their privatization effort. In the case of Bohol, the guidelines established under RA 7718 were followed strictly. The Coordinating Council for Private Sector Participation (CCPSP) supported the effort. That support proved crucial in settling the controversy over whether or not the Water Utility project had to be rebid. It would be wise for all LGUs to follow the same guidelines and involve CCPSP in the process.

The LGU Must Expect Legal Tussles

The LGU must expect legal opposition to privatization, especially from political adversaries. It must take extra care to ensure that all laws, rules and regulations are followed to minimize serious legal controversies. Perhaps the most common legal hurdle would be the Temporary Restraining Order. A transparent process is the best prescription against legal discomforts.

Privatization Can Be Beneficial

Contrary to the most widely held view, the Bohol experience showed that privatization can be directly and indirectly beneficial to the community. Under the operating agreement with the joint venture partner, power and water rates will be lowered with no power rate increases over a five-year period. Additional discounts for the water consumers will be put in place with no rate increases in the next two years.

The Provincial government benefits with the take-out of an outstanding loan amounting to P21 million and the guarantee to absorb all employees of the two utility departments under terms better than what they are receiving now. In addition, the province will be receiving a total cash of P185 million for both facilities.

Introduction

The Bohol Privatization experience is a landmark in the Philippines' decentralization effort. This is so for three reasons:

- In the past, initiatives of such magnitude were expected only of the more sophisticated and urbanized local governments such as the cities of Cebu, Davao, Iloilo and the Metro Manila LGUs. Such thinking was not surprising given the historical dependence of the provinces on the central government when it came to making decisions involving large scale infrastructure projects. The province of Bohol broke that mindset.
- It is also a landmark because it is the first major privatization initiative of a local government unit involving a joint venture between a local government and a private investor covering not one but two large scale utility projects.
- Lastly, the privatization initiative made use of highly transparent, participatory and consultative approaches to ensure acceptance by the majority of Boholanos. The process included the use of the Implementing Rules and Regulations of the BOT Law (RA 7718), specifically the rules on bidding.

This is a summary of the process that the province of Bohol underwent. It is meant to serve as guide for other LGUs willing to use privatization as a way of financing their strategic decisions and bringing these to reality.

Context

Legal Mandate

The Code mandates the LGUs to provide for certain basic services. However, it does not obligate them to provide these services on their own. The 1987 Constitution itself encourages private sector participation in governance, which includes the delivery of basic services.

Section 3 of the Local Government Code of 1991 provides: “ The participation of the private sector in local governance, particularly in the delivery of basic services, shall be encouraged to ensure the viability of local autonomy as an alternative strategy for sustainable development.” Section 35 of the same stipulates that LGUs may “enter into joint ventures and such other cooperative arrangements”. Finally, the Code, under Section 302 also empowers LGUs to enter into BOT arrangements for the “financing, construction, operation and maintenance of infrastructure projects by the private sector..”. Infrastructure projects are defined in Executive Order No. 380 dated November 27, 1989 to include water supply and power facilities.

Situationer: Province of Bohol

Issues/Concerns

Despite its immense potential for economic development, the Province of Bohol faces several obstacles to development. At present, the following are believed to be the main impediments to Bohol's economic growth:

1. Continuing emigration of promising young graduates because of scarce job opportunities.
2. An institutional environment that does not encourage investments and thereby hampers progress.
3. Inadequacy of power and water services. This includes the following:
 - slow response to calls for repairs and other emergencies;
 - bureaucratic procurement processes leading to delays in service delivery;
 - high rates of systems loss, considered to be well above industry standards;
 - old or obsolete equipment;
 - no funding source for future rehabilitation and upgrading efforts.

Vision, Mission and Goals

In 1996 under the leadership of Governor Rene L. Relampagos Bohol province held extensive multi-sectoral consultations in municipal clusters to define its vision, mission, goals as well as its choice of primary and secondary strategies for growth. The following summarizes the results of those consultations.

Vision. *Bohol is a prime eco-cultural tourism destination and a strong agro-industrial province with an empowered and self-reliant people who are God-loving, law-abiding, proud of their cultural heritage and committed to the growth and protection of the environment.*

Mission. *To continuously transform its social, economic, political and cultural life through effective collaboration of people from various sectors of the province to achieve and sustain its vision.*

Goals:

1. *To establish the importance and contribution of Bohol to the nation's socio-cultural and political growth and economic competitive edge.*
2. *To establish sustainable eco-cultural tourism and agro-industrial sites in the province to encourage investments and employment opportunities.*
3. *To ensure sustainable growth in revenues from major industries that adhere to a sustainable framework for developing, utilizing and managing the environment and natural resources of the province.*
4. *To enrich and continuously develop the dynamic and creative Boholano culture in all municipalities and in the capital city of Bohol.*
5. *To develop a well-informed citizenry in healthy communities, aware and proud of its competencies that enable it to be much more productive, enterprising and participative in attaining the vision and goals of Bohol.*

Major Strategy. *Establish Bohol as a major destination for eco-cultural tourism with a strong agro-industrial support through an effective government-private sector collaboration.*

Primary Strategy: *Eco-Cultural Tourism*

Secondary Strategy: *Agro-Industrialization*

It was plain to the provincial government as well as the private business community in Bohol that to achieve the vision it had set for itself, its power and water utilities needed to be rehabilitated to meet the demands of an agro-industrial community.

The Provincial Government operates both the Provincial Waterworks System (PWS) and Provincial Electric System (PES). But the word “provincial” here may be a misnomer, because the coverage areas of both utilities are essentially limited to the capital city of Tagbilaran.

The State of Bohol’s Water Supply Systems

Overview of the Water Situation

At the time the Province decided to privatize the water utility department, it was faced with quite a number of concerns relating to water supply: the prospect of salt water intrusion into its aquifers due to over-extraction of fresh groundwater, a growing demand for potable water not only in Tagbilaran City but all over the province, a controversial proposal to tap the Inabanga River to meet Cebu City’s water needs, the sad state of its watersheds, high systems losses incurred by the Provincial Water System and growing annual subsidies to the same. A final but crucial consideration was the health of the community.

Present practices lead to over-extraction of groundwater and caused the water levels to lower and saltwater to intrude into the fresh water formations. Distribution of water in the Province is carried out by the Provincial Water System (PWS) covering about 90% of Tagbilaran City, the Tagbilaran City Water System covering those unserved by the provincial system, and the municipal water systems. All these systems get their water from deep wells.

The main source of water supply in Tagbilaran City and the towns is groundwater. At present, 70% of the population in the Province have access to Level I water systems that include shallow wells, artesian wells, rain collectors and springs. Only about 14% to 16% are provided with facilities provided by Levels II and III systems.

Efforts to upgrade the delivery of water service in the Province have led to the completion of projects through the Central Visayas and Water Sanitation Project (CVWSP). Through this project 12 municipalities were provided with 1,238 shallow wells, 36 deep wells, 192 rain collectors 66 spring development and several Level I and Level II systems. In addition, the Province is presently implementing the Water Supply, Sewerage and Sanitation Master Plan (BW4SMP) and is being undertaken with a team of consultants from Sweden. The objective of the project is to improve the management of water resources, water supply, and sanitation for the population and when completed, the project will spell out the guidelines for the detailed planning of investigations and the implementation of water supply, sewerage and sanitation facilities for the next 25 years. The rate of water supply source development however has not caught up with the need.

At the time it decided to privatize its water and power utilities, Bohol was faced with resolving the issues surrounding the controversial Bohol-Cebu Water Supply Project. That project involves the delivery of potable water to Cebu by tapping the Inabanga River. The issues related to this project involve watershed exploitation, reduced water flow to downstream areas of the river, loss of water to the upstream population, and soil and water contamination. The project continues to face stiff opposition from the general public.

Bohol is endowed with rich water resources that are not fully utilized for agricultural, domestic and industrial uses. While there are a number of springs, rivers and creeks from which water can be drawn, there is yet a need to efficiently manage this vital resource including the need for an effective watershed management program.

There are seven major watershed areas in the Province and four of these have been declared as protected areas. However, these places are slowly being denuded due to farming and other activities harmful to the watersheds. The Provincial Government has realized the need for a sustainable approach towards the protection, rehabilitation and management of watersheds.

The PWS experiences excessive losses of water because of leaking and undersized pipes. It is recognized that the system has to be rehabilitated to replace many of the pipes that have been there for 40 years and to reduce system losses which, from January to October 1999, averaged about 24% of water produced with the month of September posting as high as 28%. The Province allocates more than P10.0 million annually to fund the operation and maintenance of the water supply system which benefits basically only some residents of Tagbilaran City. In 1997, the province had to borrow P35.0 million to operate the system and keep it going. That loan had to be repaid in five (5) years.

The PWS and the city water system are under the National Water Resources Board (NWRB) that grants the permits to these systems. The rates charged by the PWS and the city system are regulated by the Provincial Government, in the case of the PWS, and the City Government, for the Tagbilaran City Water System. On the other hand, the municipal assemblies act on their own with regard to permits and rates. The province wanted to provide water that would meet world health standards. To achieve this, filtration and water treatment methods, other than chlorination (currently in use) had to be installed.

Situationer: The Provincial Waterworks System (PWS)¹

The Provincial Waterworks System was established in 1924 but was granted a franchise by the Public Service Commission only on December 2, 1932. The franchise allowed the Provincial Government to operate, administer and maintain a waterworks system for the then municipality of Tagbilaran and the town of Dauis. At that time, the system operated two wells and two reservoirs. At present, there are 22 operating wells and five storage facilities serving 11 of the 15 barangays of Tagbilaran City and the poblacion area of the town of Dauis.

All water distributed in the franchise area of the PWS comes from deep wells with varying capacities of three liters per second (lps) to 30 lps and are capable of producing

¹ as featured in the PWS Information Memorandum, released to bidders for the Joint Venture Project in January 2000

14,128 cubic meters per day. Each of these wells has submersible electric pumps of different ratings, from five horsepower (Hp) to 50 Hp. There are five operating reservoirs with a total capacity of 1,290 cubic meters and are made of concrete or steel. Distribution pipes consist of cast iron, cement, galvanized iron and PVC of sizes less than a meter to 2.8 meters in diameter. There are about 50 kilometers of pipes maintained by the PWS.

The system's demand profile in 1998 shows a maximum demand of 13,329 cubic meters per day. Residential users, government offices and commercial establishments provided most of the demand. In 1998, total sales of water reached 2,502,179 cubic meters. System loss has been a continual problem for the PWS primarily to excessive pipe leakages, undersized pipes and the general poor condition of the system.

The table below indicates in summary the development of the PWS' water service over the last few years. It is immediately apparent that, until recently, the PWS was never able to offer more than 6 hours of water service a day. The industry standard for systems loss in water utilities is 20%.

Year	Source of Water	No. of Pumping Units	Service	Systems Loss
Before 1993	Tagbilaran	10	4-6 hours	46%
1993	Tagbilaran	17	4-6 hours	46%
1997	Tagbilaran Corella	16 5	24 hrs, 90% of service area	29%
1999	Tagbilaran Corella	16 5	24 hrs, 90% of service area	25%

In September 1998, in contemplation of a possible Joint Venture or BOT project for the PWS (the exact nature of which would still have to be definitely decided), the Provincial Government commissioned the Asian Appraisal Co., Inc. to conduct an appraisal of the PWS' fixed assets. The appraisal disclosed that these assets had a total value of P75,839,000.

The Bohol Electric Distribution System²

Distribution of electricity in the Province is carried out by three utilities: the Provincial Electric System (PES), the Bohol I Electric Cooperative, Inc. (BOHECO I), and the Bohol II Electric Cooperative, Inc. (BOHECO II). The Provincial Electric System serves the city of Tagbilaran BOHECO I distributes power to the northwestern portion of Bohol, and BOHECO II serves the municipalities in the southeastern side of the Province. All 47 municipalities of the Province and Tagbilaran City are already connected to the systems although some 10% of the barangays, mostly far-flung areas, still have to be provided with electricity. All three utilities source their power from the National Power Corporation.

NAPOCOR supplies the power requirements of the Province through three power plants. These are the Bohol Diesel Power Plant (22 megawatts) in Tagbilaran, a diesel power barge (14.4 megawatts) in Cortes and the Loboc Hydroelectric Plant (1.2 megawatts) in Loboc. In addition, BOHECO I operates the Janopol Hydroelectric Plant (5 megawatts) and is connected to the NAPOCOR transmission grid in the Province.

² as featured in the PES Information Memorandum, released to bidders for the Joint Venture Project in January 2000

The two electric cooperatives are under the supervision of the National Electrification Administration while the PES is administered by the Provincial Government. Power rates charged by the cooperatives are regulated by the National Electrification Commission while the rates imposed by the PES are regulated by the Energy Regulatory Board. Power rates at the distribution level in the Province are reportedly one of the highest in the country, at levels in excess of P4.50 per kilowatt-hour. In December 1998, distribution rates charged by the three utilities ranged from P 3.802 to P 4.91 per kilowatt-hour. The NAPOCOR effective rate for the Bohol Grid during the same month was P2.7547 per kilowatt-hour.

The load demand in the Province is mainly characterized by household demand and a typical daily load curve would show a demand of 11 to 15 megawatts happening from 10:00 a.m. to 3:00 p.m. Peak load occurs from 6:00 to 9:00 p.m. with a demand of about 25 megawatts.

BOHECO I

The Bohol I Electric Cooperative, Inc. is an electric cooperative organized in 1971 under the provisions of the National Electrification Administration (NEA) Act (R.A. 6038) as amended by Presidential Decree (PD) 269. The cooperative is registered under the Cooperative Code (R.A. 6938). BOHECO I serves 26 municipalities in the northwestern part of the Province, including the island municipality of Panglao. The cooperative is owned by its member-consumers and is a non-profit, non-stock corporation. Its primary mandate is to provide adequate, reliable and reasonable cost electric service on an area-coverage basis. Under existing laws and regulations, electric cooperatives enjoy certain tax and duty exemption privileges. Funding of an electric cooperative's system construction and expansion come mainly from loans given by NEA. Typically these loans carry interest rates of 2% to 12% per annum and have terms extending from 10 to 25 years.

As of December 31, 1998, BOHECO I served 592 barangays in the 26 towns of its franchise area. It had 60,270 customers and this represented about 70% of potential connections. The cooperative maintained a total of 1,884 kilometers of distribution lines in its area and registered an average system loss for the year of 7.8%.

In 1998, BOHECO I sold 36 million kilowatt-hours and grossed P177 million in revenues. The average rate the cooperative charged in 1998 was P4.86 per kilowatt-hour.

BOHECO II

The Bohol II Electric Cooperative, Inc. was organized in 1979 and serves 21 municipalities in the southeastern portion of the Province. As of December 31, 1998, the cooperative had 42,693 consumers in 374 barangays. The present consumers represented 50% of potential connections.

In 1998, BOHECO II sold 26 million kilowatt-hours and grossed P102 million in revenues. The average rate the cooperative charged in 1998 was P4.91 per kilowatt-hour. The average system loss during the year was 17.3%.

The Provincial Electric System (PES)³

The Provincial Electric System was established in 1925 as distribution utility and is owned and managed by the provincial government. In May 18, 1931, the Provincial Government of Bohol was granted a Certificate of Public Necessity and Convenience by the Public Service Commission of the Philippine Government. The certificate allowed the operation by the Provincial Government of an electric plant in the municipality of Tagbilaran and was subsequently renewed on July 12, 1946 for a period of 50 years. With the certificate having expired in July 12, 1996, the Province filed an application for a franchise with the National Electrification Commission (NEC) on December 8, 1997.

In its early operating years, the PES was providing service only within the city proper and a few barangays. At present, the system now distributes electricity to the entire city including all the 15 barangays of Tagbilaran. All power purchased from NAPOCOR is delivered to three 13.8 kV points located in the Bohol Diesel Power Plant compound, in Janssen Heights and in the PPUD/PWS pumping unit in Dao district. A 5 MVA substation near the power plant compound provides another delivery point from the 69 kV transmission line of NAPOCOR.

The system's load profile in 1998 showed a maximum demand of 9.57 megawatts occurring at around seven o'clock in the evening. The base load was 6.7 megawatts and the average load factor was registered at 56%. Government offices and commercial establishments accounted for most of the daytime demand while residential users, street lighting, and commercial enterprises doing business in the evening largely contributed to nighttime demand. System losses have been a continual problem for the PES along with under voltage and low power occurrences. These were primarily due to the inadequate and poor condition of distribution lines and substations that tend to be overloaded particularly during peak hours.

The table below shows in summary the systems losses of the PES over the years. It may be seen that the 1999 average of 17% is way above the industry standard of 10%.

Year	Systems Loss
Average Systems Loss Before 1995	33%
1995	20%
1997	17%
1999	17%

In September 1998, in anticipation of a possible Joint Venture or BOT project for the PES (the exact nature of which would still have to be definitely decided), the Provincial Government commissioned the Asian Appraisal Co., Inc. to conduct an appraisal of the PES' fixed assets. The appraisal disclosed that these assets had a total value of P59,390,000.

³ as featured in the PES Information Memorandum, released to bidders for the Joint Venture Project in January 2000

Upgrading and Expansion Needs

With the province's development needs, plans for the rehabilitation and expansion of the water and power utilities were drawn. The expansion of the water supply system called for the establishment of the Uhan and Loboc Water Treatment Plants, laying of mains and transmission lines, establishment of several reservoir to facilitate the distribution of water to the municipalities. The total cost of this plan amounted to P967 million at 1998 pesos. Details of the plan are presented in the following table.

Provincial Waterworks System (PWS) Expansion program

Year	Activity/Program	Cost
1	Land Acquisition	1,050,000
	Uhan Spring Development	1,615,019
	Construction of Uhan water Reservoir	1,865,347
	Laying of Transmission Lines (Uhan-Tagb.) Phase 1	31,337,500
	Laying of Distribution Mains-Phase 1	20,482,817
	Acquisition of Service Vehicles	1,575,000
		<u>57,925,683</u>
2	Uhan Water Treatment Plant-Phase 1	17,549,000
	Laying of Transmission Lines (Uhan-Tagb.) Phase 2	12,537,382
	Laying of Distribution Mains - Phase 2	20,482,817
	Laying of Distribution Laterals - Phase 1	12,741,771
	Acquisition of Office Furnitures	157,500
	<u>63,468,469</u>	
3	Uhan Water Treatment Plant - Phase 2	17,759,362
	Construction of Building	3,133,750
	Construction of Booster Stations	
	Transmission	5,285,543
	Distribution	1,629,550
	Laying of Distribution Laterals- Phase 2	25,276,771
	Commercial Fire Hydrants	557,005
	Residential Fire Hydrants	1,073,936
	<u>54,715,918</u>	
4	Land Acquisition	1,050,000
	Source Development - Loboc River	1,654,620
	Loboc Water Treatment Plant - Phase 1	57,761,280
	Storage Facilities - Loboc Plant, Western Muns.	43,785,319

	Transmission Lines - Banat-i to Loon - Phase 1	74,382,690
	Acquisition of Service Vehicles	2,100,000
		<u>180,733,909</u>
5	Loboc Water Treatment Plant - Phase 2	57,661,000
	Transmission Lines - Loboc-Tagbilaran Phase 1, Banat-i - Loon Phase 2,	122,951,678
		<u>180,612,678</u>
6	Loboc Water Treatment Plant - Phase 3	57,860,557
	Construction of Building	3,760,500
	Pumping Station - Intake	5,209,546
	Transmission Lines - Loboc-Tagbilaran Phase 2, Banat-i - Loon Phase 3, Reservoir Lines (West)	101,081,864
	Tools and Equipment	1,050,000
		<u>168,962,467</u>
7	Pumping Station - Water Treatment Plant, Booster	12,179,006
	Transmission Lines - Loboc-Tagbilaran Phase 3, Banat-i - Panglao, Elley Hill Res.	145,334,174
	Tools and Equipment	1,050,000
		<u>158,563,180</u>
8	Storage Facilities - Southern Municipalities	29,813,683
	Transmission Lines - Loboc-Tagbilaran Phase 4, Reservoir Lines (South)	64,075,160
	Fire Protection Facilities- Commercial & Res. Hydrants	3,969,734
	Acquisition of Equipment	5,014,000
		<u>102,872,577</u>
TOTAL		<u><u>967,854,882</u></u>

As to the electric distribution system, the plan called for the purchase and installation of additional transformers and substations, the replacement of rotten electric posts, the purchase and installation of reconductoring lines and equipment. Total cost amounts to about P212 million by 1998 prices. Details of the costings are presented below.

**Provincial Electric System (PES)
Capital Expansion Program**

Year	Activity/Program	Cost
1	20 MVA Main Substation (lot and complete accessories)	25,000,000
	Upgrading and Reconductoring of Main Lines	10,000,000
	Upgrading of 2.4 KV and 13.8 KV Lines	5,000,000
	Upgrading of Secondary Lines	3,000,000
	Replacement of Rotten Poles	10,000,000
	Purchase of Distribution Transformer	5,000,000
	Purchase of Electrical Materials/high side meterings	5,000,000
	Purchase of line capacitors	950,000
	Purchase of line protection equipment	800,000
	Purchase of electric meters (PES substation)	2,000,000
	Renovation of PES Powerhouse including control room	3,000,000
	Purchase of service vehicle	720,000
	Purchase of linemen tools and other hot line equipment	400,000
	Purchase of hydraulic boom truck	2,500,000
	<u>73,370,000</u>	
2	Purchase of Office Equipment and Supplies	300,000
	Purchase of Office Furnitures	150,000
	Renovation/Expansion of PES office and other office facilities	1,500,000
	Service Vehicle	1,440,000
	Line Truck (Maintenance Crew)	600,000
	VHF Radio (Repeater System)	60,000
	Handheld Radio	144,000
		<u>4,194,000</u>
3	Service Vehicle	720,000
	Purchase of distribution transformer	4,000,000
	Linemen Tools and other hot line equipments	400,000
	Purchase of line protection equipment	500,000
	<u>5,620,000</u>	
4	Primary and secondary lines upgrading	1,500,000
	Purchase of line protection equipment	500,000
	<u>2,000,000</u>	

5	10 MVA Transformer/Substation (with accessories)	20,000,000
	Purchase of lot for additional substation	1,000,000
	Purchase of distribution transformer and poles	5,000,000
	Linemen Tools and Other hot line equipments	400,000
		26,400,000
6	Purchase of additional line equipment	4,500,000
	Acquisition of Office Equipment	500,000
	Line Truck (Maintenance Crew)	600,000
	Purchase of service vehicle	720,000
	Hydraulic Boom Truck	2,500,000
		8,820,000
7	Additional Office Equipment	300,000
	Linemen Tools and other hot line equipments	400,000
	Purchase of distribution transformer	3,000,000
	Addition to Communications Equipment	500,000
		4,200,000
8	Primary and Secondary Lines Upgrading	1,500,000
	Purchase of line protection equipment	500,000
		2,000,000
9	Purchase of Distribution Transformer	3,000,000
	Linemen Tools and other hot line equipments	400,000
		3,400,000
10	Primary and Secondary Lines Upgrading	1,500,000
	Purchase of line protection equipment	500,000
		2,000,000
11	Replacement of Rotten Poles	12,000,000
	Purchase of distribution transformer	3,000,000
	Linemen tools and other hot line equipments	400,000
		15,400,000
12	20 MVA substation (lot and complete accessories)	35,000,000
	Purchase of electrical equipment	750,000
	Acquisition of Furniture and Fixtures	450,000

	Acquisition of Tools	300,000
	Purchase of Service Vehicle	720,000
	Hydraulic Boom Truck	2,500,000
		39,720,000
13	Purchase of distribution transformer	4,000,000
	Primary and secondary lines upgrading	2,000,000
	Linemen tools and other hot line equipments	400,000
	Purchase of line protection equipment	500,000
		6,900,000
14	Replacement of Rotten Poles	5,000,000
	Addition to Communication Equipment	500,000
		5,500,000
15	Purchase of distribution transformer	4,000,000
	Linemen tools and other hot line equipments	400,000
	Purchase of service vehicle	720,000
		5,120,000
16	Acquisition of office equipment	500,000
	Primary and secondary lines upgrading	2,000,000
	Purchase of line protection equipment	500,000
		3,000,000
17	Purchase of distribution transformer	4,000,000
	Linemen Tools and other hot line equipment	400,000
		4,400,000
	TOTAL	212,044,000

The total cost to expand the water utility facility and rehabilitate the power supply system was to amount to about to P1.2 billion in 1998 prices. There was no way the province could raise that amount. Several options to raise the necessary financing was needed.

Deciding on the Appropriate Resource Mobilization Option

Creation of Technical Working Group To Study Options Available to the Province

As early as 1996, the Province of Bohol was granted technical assistance under the Governance and Local Democracy (GOLD) Project. Through that assistance, the municipal cluster workshops earlier described, were held. It was through those workshops that the Province's vision and mission as well as primary and secondary development strategies were defined and agreed upon. Initially designed as an assistance to establish the province's investment promotion capability, it continued to support Bohol's desire to study alternative ways of mobilizing resources for the rehabilitation and expansion of the utilities departments. Through that support financial studies were conducted to ascertain the province's rehab and expansion needs and to assist in determining ways of mobilizing resources to finance the realization of those needs.

A Technical Working Group was organized by the province to conduct the study. GOLD Consultants joined the Group which consisted of technical staff from the Governor's office and the Provincial Planning and Development Office (PPDO). The Province hired several technical staff to complement the Province's personnel. GOLD provided several Consultants to guide the Province in its work.

Several options were looked into, namely:

1. Outright Sale
2. Bond Issue
3. Cooperative
4. Water District/MCWD Model
5. Rehabilitate-Operate-Transfer Arrangement (a variant of BOT)
6. Stand-Alone Entity (Debt Financing)
7. Pure Joint Venture
8. Joint Venture on a Rehabilitate-Own-Operate- Arrangement

The advantages and disadvantages of each option were discussed. These are summarized below:

Outright Sale

An outright sale of the utilities would obviate the need for capital. Technically, it was considered the easiest way to solve both the problems of financing and inefficiencies (high system losses). Future costs would be handled by the new owner. This option, however, does not allow the Provincial Government to retain its stake in the management and operations of the systems and its corresponding share in the profits. Furthermore, the Provincial Government would have no assurance that the new owner, will expand water services to the proposed 10 municipalities on its own initiative.

Bond Issue

With its current loan liabilities amounting to over P100 million, another borrowing would definitely strain the province's finances. The province also noted that bond issues had only short to medium maturities. It was pointed that the rehabilitation and expansion projects needed long financing terms to ensure financial viability.

Moreover, bonds would not solve the problem of high system losses for both the water and power systems. New management approaches were needed to ensure that such losses were brought to more manageable levels.

It was on those bases that the Multinational Investment Bancorporation, in its report to the Associates in Rural Development on the twin projects, recommended that other financing modes be used.⁴

Cooperative

Under this scheme, the water and power utilities departments are to be sold to cooperatives to be established for the purpose of operating the two utilities. It was noted however that the cooperatives themselves may not have the capacity to raise the finances needed to carry out the rehab and expansion plans. Such a scheme would therefore not solve the problem of financing. Without any major investors to commit to purchasing block shares, it was noted that the cooperative will be able to raise such capital only after years of operation.

Nevertheless, granting that the cooperatives would be in a position to raise the capital, there is still the problem of inefficiency and very few cooperatives have garnered passing grades for efficiency. This option left more questions asked than answered.

Water District/MCWD Model (PWS Only)

The conversion of the PWS into a water district assures the Provincial Government that it will retain ownership over the system. Technical assistance from the Local Water Utilities Administration (LWUA) may also help curb its systems losses and operational inefficiencies.

However, the Water District option does not present a real solution with respect to resource mobilization. The LWUA has already informed major water districts in the country that they are no longer in a position to fund rehabilitation and expansion plans. Many water districts today are, in fact, exploring the possibility of eliciting private sector partnerships.

The Metro Cebu Water District (MCWD), which was suggested as a model for the PWS to follow, does not present a good picture for the Provincial Government to emulate: currently, it serves only 30% of its total service area. The system is on a permanent rationing basis, with consumers getting less than 12-hour water service. Systems losses are estimated at 40%-50%.

⁴ "Report on the Privatization of the Electric Water Utilities of the Province of Bohol", A Report prepared by the Multinational Investment Bancorporation to the Associates in Rural Development, Inc. under the Governance and Local Development (GOLD) Project, July 1997.

Rehabilitate-Operate-Transfer (ROT) Arrangement (a variant of BOT)

An ROT arrangement was expected to improve management, reduce systems loss and at the same time relieve the Province of the burden of raising capital requirements. However, participation in the economic benefits will be limited to a fixed income, thereby depriving the Province of additional revenues from an improved and revitalized public utility.

With a fixed period for the investor to recoup its investment, usually from 20 to 25 years, the province feared that exorbitant user rates would be charged.

An added risk is that under an ROT mode there is no incentive for the investor to maintain the facility as the contract period nears its end. In addition, such an arrangement does not provide for the Provincial Government's participation in the management of the assets. Consequently, it was decided that an ROT arrangement does not meet the developmental objectives of maximum participation in the economic benefits and limited participation in management.

Stand-Alone Entity (Debt Financing)

On a stand-alone basis, the Provincial Government will have to secure a loan from a government or private financial institution to finance the rehabilitation and expansion program. Based on this assumption, the Technical Working Group of the Provincial Government prepared projections relative to the stand-alone option. These projections show that income from operations cannot sustain the enterprise, owing mainly to substantial loan payments. Interest included, the amortization on the loan will amount to more than double the cost of rehabilitation and expansion. Such a loan is definitely beyond the financial capability of the Provincial Government.

Stand-alone operations will mean that, aside from loans or similar financing arrangements, the Provincial Government will have no way to augment its existing financial resources. Neither will it have the opportunity to access technological resources from outside, much less solve the persistent problems of operational inefficiency, systems losses, and obsolete equipment.

Pure Joint Venture (under Rules of Partnership)

A joint venture will enable the Provincial Government to generate the necessary capital without necessarily straining its own financial resource base. Such capital is expected to be provided by the joint venture partner, assuming a trustworthy one is found. There is also a better assurance of accessing the engineering and managerial technology needed to improve operations and reduce the inefficiencies.

Under a joint venture scheme, the Provincial Government will remain a part owner of both facilities. With participation in the management of the systems assured, the interest of the community is represented before the joint venture's board.

Based on an analysis by the Technical Working Group, a 70:30 sharing (in favor of the private Filipino partner) would be ideal taking into consideration the value of assets of both utilities departments. Furthermore, while most investors prefer an 80:20 sharing in their favor, a 20% stake of the Provincial Government in the systems is not very material. A 60:40 sharing, on the other hand, is not very inviting to private investors. A

50:50 sharing defeats the purpose of eliciting private sector assistance in the first place: under this arrangement, both systems remain to be government-owned entities, with all the attendant problems of inefficiency and systems losses attributable to bureaucratic constraints. A greater sharing by the Provincial Government will also require it to invest more capital, which it cannot afford to do.

Joint Venture on a Rehabilitate-Own-Operate-and-Maintain (ROOM) Arrangement

A last option available to the province was another BOT variant, Rehabilitate-Operate-Own (ROO). Under this scheme, the investor is allowed to provide the capital needed to rehabilitate the enterprise, operate the facility over an agreed period under certain terms and conditions and having met those conditions over the agreed upon period, eventually owns the facility. However, because the province did not want to totally relinquish control over the facility, the provincial leadership decided to operate the facility through a joint venture with a competent partner. There were many considerations other than simply retaining partial ownership over the facility. These included the anticipated public reaction to total privatization. Even more was the concern that some public control had to be maintained to ensure that public interest was protected. With those considerations, the province decided to pursue the ROO under a joint venture scenario.

TABLE OF OPTIONS

Objectives	Bond Issue	Cooperative	Water District/ MCWD Model	Stand-Alone Entity	ROT (variant of BOT)	Pure Joint Venture	Joint Venture thru ROOM
1. To generate enough capital to improve the electric and waterworks systems without straining the Provincial Government's financial resources.	✓	?	?	?	✓	✓	✓
2. To upgrade and expand the systems' services.	✓	?	?	?	✓	✓	✓
3. To improve the systems' technical capability and access technological resources.	?	?	?	?	✓	✓	✓
4. To retain the Provincial Government's stake in the management and operations of the systems.	✓	✓	✓	✓	?	✓	✓
5. To retain the Provincial Government's corresponding share in the profits.	✓	✓	✓	✓	?	✓	✓
6. To augment the Provincial Government's financial resources by making the systems' operations more financially viable.	?	?	?	?	✓	✓	✓
7. To give the project legal insulation/protection thru a bidding process	na	na	na	na	✓	?	✓

Carrying Out the Decision

Objectives of Privatization Restated

For the Provincial Government, the objectives were very clear:

- Ensure the adequacy and sustainability of power distribution and water supply for the end goal of stimulating economic growth by creating an investment-ready environment; and
- Reduce the systems loss, thereby improving the financial viability of both utilities.

In addition, specifically for the water project, the Provincial Government aims to:

- Improve the health and well-being of the people, by providing quality water in compliance with world health standards;
- Develop reliable and safe water sources to meet future demand; and
- Expand water service to a bigger area outside of Tagbilaran.

The Provincial Government recognizes that a Joint Venture arrangement with a private partner is probably the most realistic mode of:

- Infusing fresh capital into the water and power utility enterprises of the Province;
- Accessing the needed engineering and management technologies to improve operations efficiency; and
- Free the Province's resources to meet its other needs.

Challenges Faced

The absence of a legal framework for Joint Venture arrangements, as discussed above, was the Provincial Government's first challenge in the project. Further complicating matters was its lack of any relevant expertise, either technical or legal, in the conduct of projects using joint venture or Build-Operate-Transfer (BOT) schemes.

There were also political and social angles to consider. While the project was most assuredly meant to benefit the people, there was the question of whether or not the Boholanos would be open to any form of privatization in the first place, particularly in the area of public utilities.

In the last quarter of 1998, the Provincial Government made initial consultations and presentations to the Provincial Development Council (PDC), the Provincial Board (SP), and other groups representing a cross-section of Boholano society. Judging from the public reaction, these consultations turned out to be inadequate. Questions were raised by many sectors, mostly through the media, regarding the project. Is privatization really necessary? Why through a Joint Venture? Would the process of selection of the winning bidder be transparent? Why is the Provincial Government apparently running away from its legal obligation to provide basic services?

The Provincial Government's leadership saw that presentations, consultations and public discussions on a more detailed basis at the grassroots level would have to be conducted. If the Provincial Government was to have the support of the people in a project that would affect their lives on a daily basis, these people would have to understand the project in its entirety.

How the Challenges Were Hurdled

As stated earlier, the Province was fortunate enough to be assisted in this initiative by the GOLD Project. Teams of Consultants were involved from 1997 to the middle of 2000 to provide advice on how to proceed with privatization.

Together with the Province's TWG and the ARD/GOLD team of financial consultants, conferred on the options available to the Provincial Government and evaluated each option's advantages and disadvantages. The consultants then assisted the TWG in preparing a financial study comparing projections for the utilities' operations as a JV-operated concern and on a stand-alone (meaning, Provincial Government-operated) basis.

The Provincial Government also found it necessary to consult with, and secure the legal opinions of, the appropriate government bodies, namely, the National Committee on Privatization (COP) and the National Coordinating Council for Private Sector Participation (CCPSP). Also pursuant to a Memorandum from the President dated August 25, 1996, governing government transactions worth P50 million and above, the Governor furnished the President copies of the Provincial Development Council and Sanggunian Resolutions supporting the privatization of the two utilities departments. It took some time before the request was forwarded from the office of the President to the Committee on Privatization for its action. The Province was informed of The President endorsement by the third quarter of 1999.

During a meeting with the COP on September 17, 1999, it was ascertained that the privatization transactions of LGUs actually do not require the approval of either the COP or the President.

To further raise the project's level of social acceptability, the Provincial Government involved Bohol's private sector in all processes. The Pre-qualification, Bids and Awards Committee (PBAC) was organized for the project, with four members from the Provincial Government and 3 from the Private Sector, tasked to determine the most qualified bidder. The PBAC Technical Committee was created to assist the PBAC in the more technical areas of the evaluation, with members from both inside and outside the Provincial Government having expertise in both power and water.

The provincial leadership also tapped the Bohol Social Marketing Team (BoholSMART) to strategize on how to deal with the people's apprehensions and win them over. At the instance of the Sangguniang Panlalawigan, the BoholSMART, led by Gov. Rene Lopez Relampagos, Vice Gov. Edgar M. Chatto, and the Members of the Provincial Board Panlalawigan, conducted barangay assemblies in all 15 barangays of Tagbilaran City to get the constituents' sentiments on the project, explain the benefits thereof to these constituents, and reassure them that, at all steps of the project, the Provincial Government would be sure to protect their rights as consumers and citizens.

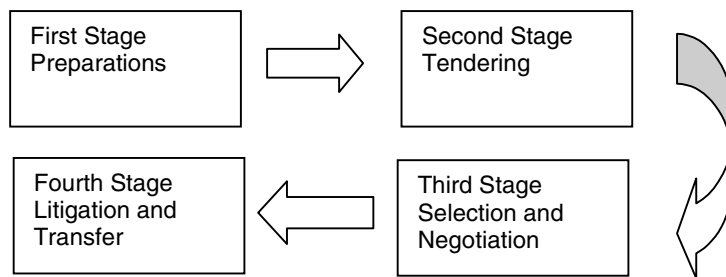
As a result of these efforts, public sentiment about the JV project changed from insistent questioning to informed, open-minded acceptance. An overwhelming majority (88%) of the 2,800 people attending these barangay assemblies, said "Yes" to the project. In addition, there were other positive developments:

1. Nine Municipal Board (out of 10 which were given presentations) passed resolutions in support of the initiative.
2. One municipality which was not given a presentation also passed a resolution of support.

3. Other resolutions of support were received from various political leagues (five), and from the business sector (two).
4. A mini poll conducted in one barangay revealed that 73% of the people therein were in favor of the project, 13% were not in favor, and 12% were undecided.
5. In a survey conducted among student leaders, 85% said “Yes” to the project.
6. Among PES/PWS employees, almost all understood the necessity of the project.
7. Mediamen followed the Question & Answer guide provided to them by the Province and cooperated in answering questions.
8. Towards the middle of March 2000, negative statements about the project were greatly reduced.
9. Radio monitoring results showed no more significant negative statements by the end of March and the months of April and May, 2000.

Chronicle of Key Events Of the Privatization Process

The privatization process underwent roughly four stages which, under the circumstances, overlap at many phases.



Preparatory Stage

In its entirety, the preparatory stage can be traced to a point as early as when the local governments of Bohol and civil society representatives agreed on the Primary and Secondary development strategies for the province. In those consultative conferences, held in the later part of 1996, the Province agreed that adequate power and water services would be crucial to the province’s development. Immediately after the series of consultations, the Province established a Committee to study ways of mobilizing resources for the improvement of water and power delivery. Even then, privatization was an active option.

In early 1998, the Province agreed to conduct a financial study on the operation of the two utilities departments. The Province also agreed to re-appraise the assets used by those utilities. The appraisal was to include a valuation of the franchise rights held by the Provincial Government. ARD/GOLD fielded Consultants to help the Province in this endeavor. In October, 1998, a conference was held at the GOLD office in Manila to discuss the results of the financial study. At that meeting, which was attended by representatives of the Bohol Provincial Government and ARD/GOLD consultants, privatization was identified as the most viable mode of mobilizing resources to finance the expansion and/or rehabilitation of the power and water utilities. At that meeting, the Provincial Government’s representatives agreed to take up the privatization option

before the Provincial Development Council. This started the series of actions leading eventually to the tendering process. These included ratification, by the PDC in full council, of the Executive Committee Resolution on joint venture, communication to the President, endorsement by Regional Development Council VII and a series of consultations with national government agencies and civil society representatives. Capping this stage was the December 1999 conference of multisectoral representatives to discuss the joint venture. By the last few days of 1999, the province had commenced working on the tender documents.

Tendering Stage

The province followed the tendering process outlined under Republic Act 7718 otherwise known as the BOT Law, and its Implementing Rules and Regulations. Drafting of the tender documents started in early December 1999. Invitations-to-Bid were published in January 2000. Seven major corporations showed interest in the offering. These corporations were given sufficient time to do render due diligence on the subjects of the offering. The Pre-qualification, Bids and Awards Committee was organized and a pre-qualification conference was held in January.

Meanwhile, the Provincial Board received an objection to the Joint Venture Project through a letter captioned "An Initiative for the Repeal of Provincial Resolution No. 435, Series of 1998 with attached signatures of alleged residents of Tagbilaran City". The Board recommended the holding of further public consultations in aid of legislation. The Provincial Government used this opportunity to discuss the issues with its constituency.

From February 12-20, 2000, the Sanggunian conducted public consultations in all 15 barangays of the City of Tagbilaran and caused consultations in the Municipalities of Dausi, Panglao, Maribojoc, Corella, Loon, Baclayon, Loboc, Loay, Albur and Cortes, which would most likely benefit from the Joint Venture Project, as well as with several government and non-government organizations. On February 28, 2000, a joint meeting of the Sangguniang Panlalawigan of Bohol and the Sangguniang Panlungsod of Tagbilaran was held, during which a formal presentation of the JV project to the City Government officials was made by the Provincial Government of Bohol.

Because of the need for consultations, the deadline for the submission of bids was postponed to March, 2000.

Selection and Negotiation

Details of the opening of the bids and subsequent actions on them are detailed in the table of events in Annex 1. On March 10, five bids for the power facilities were acknowledged. A two step opening of bids was conducted. On March 16, the technical bids were opened while the financial bids were opened on March 30.

As may be gleaned from the chronology of events, only one bidder for the water facility was received. However, the PBAC decided to pursue negotiations with the lone bidder after its bid was found to comply with the minimum bid conditions. Nevertheless on March 23, the PBAC held a Special Meeting with SP Members relative to the lone proposal on water and decided to evaluate the same in the light of the opinion given the Provincial Attorney on the matter, i.e., that there was no failure of bid. This opinion was also supported by the ARD consultants and the CCPSP.

The evaluation of bids was carried out using a selection criteria presented in Annex 2. Using those criteria, the PBAC decided to issue letters of Intent to Award to SALCON for having submitted the best bids for both the water and power utilities. The features of those bids are summarized in a later section.

By May 10, the PBAC decided that a negotiating team take over the transaction as the PBAC had already performed its function. Thus on May 12, the Board formed a negotiating team to tackle the details of the joint venture agreement with SALCON. The Board passed on first and final reading Resolution No. 2000-288 sponsored by BMs Cajés and Uy entitled, *“A Resolution Authorizing The Provincial Vice Governor, Edgar M. Chatto And The Chairman, Committee On Public Utilities, Honorable Board Member Tomas Abapo, Jr. To Be The Representatives To The 5-Man Negotiating Team Who Will Sit Down With The Bidders To Agree On The Final Terms And Conditions Of The Joint Venture Project.”* Negotiations between the Provincial Government and SALCON continued from May 12 to June 28, 2000.

The following summarizes the final terms and conditions of the joint venture.

Power

- Lower total rates
- Rate stability; no increase in basic rates for at least 5 years
- 4% discount to all consumers if power demand reaches amounts projected by the Provincial Government
- Comprehensive rehabilitation and upgrading
- Absorption of all employees with the same or even better employment terms
- Up-front cash of P75 million
- Free 30% equity in the JV company, valued at P22.5 million

Water

- Lower rates by P0.30/cubic meter
- Additional discount for consumers using less than 10 cu m per month (from flat rate of P71.80 to P65.00)
- Rate stability; no increase in rates for at least 2 years
- Comprehensive rehabilitation, upgrading and expansion
- Absorption of all employees with the same or even better employment terms
- Assumption of Provincial Government’s loan for the 1997 rehabilitation of the PWS (P21 million)
- Up-front cash of P80 million
- Free 30% equity in the JV Company, valued at P24 million

Overall

- Unanimous vote of Board of Directors (BOD) members required for major decisions affecting the JV Company
- Consortium (Preferred Bidder) to guarantee all debts for first 5 years
- Operation of PES and PWS in compliance with international standards
- Steering committee to be created by the consortium and the Provincial Government to decide on safety, technical, administrative guidelines

Exit Mechanisms (by which JV Agreement may be terminated)

- Occurrence of any Event of Default (failure by Consortium to start rehabilitation in 6 months; failure to provide services as agreed)
- Due to Force Majeure (upon mutual agreement)
Upon dissolution, Consortium shall give the Provincial Government the right of first refusal to re-acquire the utilities.

Litigation and Transfer

Despite the Provincial Government’s efforts to make all sectors understand the joint venture project, certain factions persistently refused to recognize its necessity, feasibility, and beneficiality. On July 19, 2000, several Petitioners, purportedly representing the residents of Tagbilaran filed a Petition for a Class Action for Prohibition with a Prayer for Preliminary Injunction and a request for Issuance of a Temporary Restraining Order (Special Civil Action No. 6516), which was raffled to Regional Trial Court (RTC) Branch 4, to be handled by Presiding Judge Achilles Melicor.

What follows is a chronicle of the Provincial Government’s legal tussle with opponents to the joint venture.

July 20	<ul style="list-style-type: none"> • Summary Hearing on the necessity of issuing a Temporary Restraining Order (TRO) • The Governor filed Respondent’s Opposition/Position Paper on the Issuance of a TRO.
July 21	<ul style="list-style-type: none"> • The Provincial Government received a copy of the TRO issued by RTC Branch 4 through Presiding Judge Achilles Melicor dated July 20, 2000.
July 28	<ul style="list-style-type: none"> • The Governor filed a Motion for Reconsideration relative to the TRO. • The SP filed a similar Motion for Reconsideration.
August 3	<ul style="list-style-type: none"> • The Provincial Government received a copy of Comments of Petitioners to the Respondents’ Motion for Reconsideration
August 4	<ul style="list-style-type: none"> • The SP and the Governor filed an Answer to the Petition for a Class Action for Prohibition with a Prayer for Preliminary Injunction and a Request for Issuance of a TRO
July 31-Aug. 4	<ul style="list-style-type: none"> • Summary Hearings were held relative to the Preliminary Injunction for Civil Case 6516 at RTC Branch 4.
August 9	<ul style="list-style-type: none"> • The Provincial Government received a copy of the Omnibus Order issued by RTC Branch 4 through Presiding Judge Achilles Melicor dated August 8, 2000, lifting the TRO issued on July 20, 2000 and denying the application for the Issuance of a Writ of Preliminary Injunction for lack of merit.
August 11	<ul style="list-style-type: none"> • The Provincial Government received a copy of Petitioners’ Manifestation in Abundante Cautela dated August 11, 2000.
August 23	<ul style="list-style-type: none"> • The Provincial Government received a copy of the Motion for Reconsideration filed by the petitioner. • The Provincial Government received an order from RTC Branch 4 Judge Archilles Melicor informing the Respondents (Provincial Government) of the hearing on September 5, 2000 for the Petitioners’ Motion for Reconsideration.
August 24	<ul style="list-style-type: none"> • The Provincial Government received a copy of the Order of the Court directing Respondents to file comment on the Motion for Reconsideration of Petitioners.
August 25	<ul style="list-style-type: none"> • The Provincial Government filed a Comment to Petitioners’ Motion for Reconsideration.

August 28	<ul style="list-style-type: none"> The Provincial Government received a copy of the Petitioners' Urgent Manifestation and Motion. The Provincial Government received an order setting the Hearing on the Urgent Manifestation and Motion and Petitioners' Motion for Reconsideration on September 1, 2000.
August 31	<ul style="list-style-type: none"> The Provincial Government received a copy of the Petitioners' Memorandum
September 1	<ul style="list-style-type: none"> The Provincial Government filed a Comment/Opposition to the Urgent Manifestation and Motion for the Issuance of a Writ Preliminary Injunction Dated August 26, 2000. The Salcon Group filed an Answer-In-Intervention, as well as an Urgent Motion for Intervention
September 5	<ul style="list-style-type: none"> The Provincial Government received a copy of Petitioners' Demand for Immediate Inhibition The Provincial Government received an order dated September 1, 2000 in which the court gave the respondents five (5) days from September 1, 2000 within which to reply to the Petitioners' Memorandum.
September 6	<ul style="list-style-type: none"> The Provincial Government filed a Reply-Memorandum.
September 7	<ul style="list-style-type: none"> The Provincial Government filed a Submission of Additional Evidence in Support of Respondents' Reply-Memorandum
September 8	<ul style="list-style-type: none"> The Provincial Government received a copy of an order from Judge Archilles Melicor inhibiting himself and ordering the re-raffling of Special Civil Action 6516
September 15	<ul style="list-style-type: none"> The Provincial Government received a copy of an order from RTC Branch 3 Judge Venancio Amila for joint hearing on September 22, 2000.
September 18	<ul style="list-style-type: none"> The Provincial Government received a copy of an order from Judge Venancio Amila dismissing petitioners' (new) motion for preliminary injunction, as well as the main case, Special Civil Action No. 6516, and canceling the .
September 20	<ul style="list-style-type: none"> The Provincial Government received a copy of Petitioners' Omnibus Motion for Inhibition
September 22	<ul style="list-style-type: none"> The Provincial Government received an Omnibus Order from Judge Venancio Amila.
September 28	<ul style="list-style-type: none"> The Provincial Government received Petitioners' Motion for Reconsideration on the Order dated September 18, 2000
October 3	<ul style="list-style-type: none"> The Provincial Government received an Order from the Court dated October 2, 2000 dismissing the instant case (SPA No. 6516) for lack of jurisdiction.
October 11	<ul style="list-style-type: none"> The Provincial Government received a copy of the Appeal by Certiorari from Civil Case No. 6516 of RTC Tagbilaran with A Prayer for Preliminary Injunction and the Issuance of a Temporary Restraining Order.
October 27	<ul style="list-style-type: none"> The Provincial Government received a copy of the Temporary Restraining Order issued by Associate Justice Roberto A. Barrios of the Court of Appeals (CA), effective for 60 days unless earlier lifted.
October 31	<ul style="list-style-type: none"> The Provincial Government filed a Motion for Extension of Time to File Comment (for 15 days) with the Court of Appeals, furnished Petitioners a copy of the same.
November 8	<ul style="list-style-type: none"> The Provincial Government submitted Respondents' Manifestation for CA-G.R. SP No. 61274 with the Court of Appeals/ furnished Petitioners a copy of the same.
November 17	<ul style="list-style-type: none"> The Provincial Government filed a Comment on the TRO (CA-G.R. SP No. 61274) with the Court of Appeals/furnished Petitioners a copy of the same.

A second TRO expired in December, allowing the province to pursue the joint venture.

Annex 1 Chronology of Events

1998	
November 11	The Provincial Development Council Executive Committee (PDC Execom) passed Resolution No. 16-98 adopting and favorably endorsing to the SP the proposal for a JV.
November 18	PDC in Full Council Ratified PDC Execom Res. No. 16-98.
December 4	SP adopted Res. No. 435, endorsing PDC Execom Res. No. 16-98 to the Office of the President.
1999	
January 18	Governor Relampagos submitted to Pres. Estrada SP Res. No. 435 and PDC Res. No. 16-98
September 03	RDC-7 passed Res. No. 48 endorsing the proposal of the Provincial Government of Bohol.
September 17	The Governor, with certain members of the TWG of the Provincial Government and ARD Consultants, met with officials of the Privatization Office under the Committee on Privatization, and of the Coordinating Council of the (then) Philippine Assistance Program-BOT Center in Manila to know more about the privatization program of the Philippine government, more particularly, its applicability to LGUs. It was learned that privatization transactions of LGUs do not require the approval of COP & the President.
December 24	The Provincial Government Held a Multi-Sectoral Forum on the JV at the Metro Centre Hotel.
December 1-31	The TWG prepared the tender documents for bidders together with consultants.
2000	
December 1999 to January 2000	<ul style="list-style-type: none"> • The Provincial Government published an invitation to pre-qualify and bid in 2 national papers, TODAY and The Philippine Star, on Dec. 10,17,24, 1999, and in 2 local papers, Bohol Chronicle and Bohol Sunday Post Dec. 15 & 26, 1999 and Jan. 2, 2000. • The following responded to the invitation and bought the tender documents for power: CEPALCO; MECCRON POLYWELD; the Consortium of EAST ASIA, et al; ABOITIZ EQUITY VENTURES; and the Consortium of SALCON POWER CORPORATION, et al. The following bought the tender documents for water: JL BUSINESS & TECHNOLOGY CONSULTANTS; CGE PHILS./ABOITIZ; the Consortium of SALCON INTL., et al; and MECCRON POLYWELD.
January 13	The PBAC confirmed the PBAC-Technical Committee (PBAC-TC) Members.
January 14	A Pre-bid Conference, attended by the representatives of all prospective bidders, was held at the PPDO Conference Room.
January 17-28	The period allowed for Due Diligence reviews by prospective bidders. Data were provided in data rooms, during field visits, consultations and wrap-up sessions.
January 24	The SP received an objection to the Joint Venture Project through a letter captioned "An Initiative for the Repeal of Provincial Resolution No. 435, Series of 1998 with attached signatures of alleged residents of Tagbilaran City".

February 11	The SP passed on first and final reading Resolution No. 2000-83 sponsored by BM Abapo entitled, "A Resolution Calling for Further Study of the Feasibility of the Provincial Public Utilities' Joint Venture Project (Water and Power) And The Conduct Of Public Discussions In Affected Barangays, In Aid of Legislation."
February 12-20	The SP conducted public consultations in all 15 barangays of the City of Tagbilaran and caused consultations in the Municipalities of Dausis, Panglao, Maribojoc, Corella, Loon, Baclayon, Loboc, Loay, Albur and Cortes, which would most likely benefit from the Joint Venture Project, as well as with several government and non-government organizations.
Feb. 14-Mar. 10	Period set for the submission of bids (the deadline was first set on February 14, and was eventually moved to March 10).
February 28	Joint Meeting of the Sangguniang Panlalawigan of Bohol and the Sangguniang Panlungsod of Tagbilaran, during which a formal presentation of the JV project to the City Government officials was made by the Provincial Government of Bohol.
March 10, 2000	<ul style="list-style-type: none"> The SP passed on first and final reading Resolution No. 2000-162 sponsored by BMs Lungay, Abapo, Alesna and Caberte entitled, "A Resolution Authorizing the Governor To Proceed with The Conduct Of Bidding Of The Joint Venture Project of the Provincial Waterworks and Provincial Electric System." The PBAC with the PBAC-TC inventoried the sealed envelopes containing the bid proposals in the presence of bidders and thereafter opened the envelopes containing the qualification documents. The following had submitted bids for Power: CEPALCO; MECCRON POLYWELD; EAST ASIA, et al; ABOITIZ EQUITY VENTURES; and SALCON POWER CORPORATION, et al. The only bid for Water came from SALCON INT'L, et al.
March 10, 13	The PBAC-TC reviewed/evaluated the qualification documents of all bidders, both for PES and PWS, and all were found to be complying.
March 16	<ul style="list-style-type: none"> The PBAC approved the recommendation of the PBAC-TC qualifying all bidders for both power and water, per evaluation of their qualification documents. The Technical Proposals for power were opened. The technical proposal for the Lone Bidder for water, SALCON Int'l Inc., et al, was not opened.
March 20, 21, 27	The PBAC-TC evaluated the technical proposals for PES. All were found to be complying.
March 23	The PBAC held a Special Meeting with SP Members relative to the lone proposal on water and decided to evaluate the same in the light of the opinion given the Provincial Attorney on the matter, i.e., that there was no failure of bid. This opinion was also concurred by the ARD consultants and the CCPSP.
March 28	The PBAC-TC presented their findings and recommendations to the PBAC for the Technical Proposals for Power (all were found complying); the PBAC approved said findings and recommendations.
March 30	<ul style="list-style-type: none"> Opening of the financial proposals for power. Opening of the lone technical proposal for water.
April 3	The PBAC-TC evaluated the technical proposal for water; it was found to be complying.
April 4-5	The PBAC-TC evaluated the financial proposals for power, and all were found to be complying.

April 7	<ul style="list-style-type: none"> The PBAC approved the findings of the PBAC-TC; that the lone technical proposal for water was complying. The lone financial proposal for water was opened.
April 10	The PBAC-TC evaluated the financial proposal for water, and it was found to be complying.
April 11	The PBAC-TC reviewed ratings given to bidders for both power and water, and consolidated and finalized the same for reporting and recommendation to the PBAC.
April 17	A clarificatory meeting with SALCON Int'l, et al, relative to their proposal on water, was held, attended by the PBAC, PBAC-TC and SP Members.
April 25	The PBAC-TC presented their Findings and Recommendations to the PBAC; these were approved by the latter.
April 27	The PBAC issued Notices of Intent to Award to SALCON Power Corp., et al, the most qualified bidder for power, and to SALCON Int'l, et al, the only bidder for water.
May 10	The PBAC-TC conducted an initial review of the JV (ROO) Agreement; it was decided that a Negotiating Team should take over and the PBAC-TC would just be called upon if necessary, since its job of determining the most qualified bidder had already been accomplished.
May 11	The PBAC-TC presented the Results of Evaluation for Power and Water to the SP Members.
May 12	The SP passed on first and final reading Resolution No. 2000-288 sponsored by BMs Cajes and Uy entitled, "A Resolution Authorizing The Provincial Vice Governor, Edgar M. Chatto And The Chairman, Committee On Public Utilities, Honorable Board Member Tomas Abapo, Jr. To Be The SP's Representatives To The 5-Man Negotiating Team Who Will Sit Down With The Bidders To Agree On The Final Terms And Conditions Of The Joint Venture Project."
May 16	A meeting of the Negotiating Team in preparation for the negotiation proper was held.
May 17-18	Conduct of Negotiation Proper with SALCON
June 20	Pre-Negotiation Meeting of the Negotiating Team
June 22	Second round of Negotiations with SALCON
May 12-June 28	Continuous review and refinement of negotiating documents based on results of negotiations conducted and clerical errors observed
June 29	Copies of Proposed JV Agreement were endorsed by the Governor to the SP for appropriate action.
June 30	The SP referred the JV endorsement from the Governor to the SP Committee on Public Utilities and Franchises and Committee on Ways and Means.
July 5	Proposed ordinances and resolutions covering the JV were submitted by the above committees to the SP.
July 7	1 st Reading by SP of proposed ordinances/ resolution relative to the JV
July 11	A meeting was held with the Sangguniang Panlungsod of Tagbilaran during which an update of the JV project was discussed, among others.
July 12	A Public hearing-consultation was conducted by the Committee on Public Utilities and Franchises and the Committee on Ways and Means chaired by BM's Tomas Abapo, Jr. and Arnold R. Lungay, respectively, at the Bohol Cultural Center, Tagbilaran City.

July 14	<ul style="list-style-type: none"> • Second reading by the SP of Ordinance No. 2000-014 entitled “Authorizing the Setting Up of a Joint Venture Arrangement for the Rehabilitation, Ownership, Operation and Maintenance of the Provincial Electric System”; and Ordinance No. 2000-015, of the same tenor, pertaining to the Provincial Waterworks System. • The SP approved Resolution No. 2000-305 entitled, “A Resolution Authorizing The Provincial Governor To Enter Into A Joint Venture Agreement With the Qualified Bidder For the Rehabilitation, Ownership, Operation and Maintenance Of The PES and The PWS Of the Province of Bohol.”
July 20	<ul style="list-style-type: none"> • The Provincial Government received a copy of Resolution No. 00-133 from the Sagguniang Panlungsod, City of Tagbilaran requesting the Sangguniang Panlalawigan of Bohol to suspend for at least one (1) month the deliberation on the proposed ordinance or resolution for the privatization of the PES and PWS.
<i>July 20-August 15</i>	<i>This period of relative inactivity marked the Provincial Government's defense of the JV Project in Court during the Summary Hearings thereon [please refer to the section on “Legal Opposition to the JV Project”].</i>
August 16-22	Conduct of a more detailed review of JV documents by the SP members.
August 25	Third and final reading by the SP of Ordinance No. 2000-014 entitled “Authorizing the Setting Up of a Joint Venture Arrangement for the Rehabilitation, Ownership, Operation and Maintenance of the Provincial Electric System”; and Ordinance No. 2000-015, of the same tenor, pertaining to the Provincial Waterworks System.
August 28	<ul style="list-style-type: none"> • Signing of the Joint Venture Agreement to Rehabilitate-Own-Operate-and-Maintain the Bohol Provincial Waterworks System (PWS) between the Provincial Government, represented by Gov. Rene Lopez Relampagos, and the Consortium of Salcon International, Inc., Salcon Limited, and Salcon Phils., Inc., represented by Mr. Dennis T. Villareal. • Signing of the Joint Venture Agreement to Rehabilitate-Own-Operate-and-Maintain the Bohol Provincial Electric System (PES) between the Provincial Government, represented by Gov. Rene Lopez Relampagos, and the Consortium of Salcon International, Inc., Salcon Power Corp., and Pure and Pam, Inc., represented by Mr. Dennis T. Villareal.

Annex 2 Details Of The Selection Criteria And Point System

The documentation of the JV Project would in no way be complete without a section on the Selection Criteria and Point System, as recommended by the PBAC-TC and adopted by the PBAC. Presented below and on the following pages are said Selection Criteria and Point System, which were consistently applied in evaluating the bidders' technical and financial proposals.

The Selection Criteria

I. GENERAL BREAKDOWN

Technical	40%
Financial	55%
Others	5%
	100%

II. DETAILED BREAKDOWN

Technical	
Technical organization	2.00%
Rehabilitation program	20.00%
Capex program	5.00%
System loss reduction program	5.00%
Targets/milestones	4.00%
Timetable	4.00%
	40.00%

Financial	
Bid amount	15.00%
Funding program	15.00%
Tariff proposal	25.00%
	55.00%

Others	
Overall organization	0.75%
Commitment	0.75%
Presence in RP	0.50%
Employee benefits	1.50%
Employee retirement program	0.50%
Employee Stock Option Plan (ESOP)	0.25%
Others/Enhancements	0.75%
	5.00%

TOTAL	100.00%
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The Point System

[Points assignment on a scale of 1 to 5, 1 being the least and 5 being the highest]

I. Technical Proposal

	Points
A. Technical Organization	
Complete technical organization, identified key positions, defined departmental functions, detailed chart	5
General technical departmental organization, key positions identified, detailed chart	4
Broad technical organization shown, only top managers identified	3
Shows only general description of technical organization	2
No submission	1
B. Rehabilitation Program	
Comprehensive rehab program following 100% requirements of tender docs and providing technical enhancements	5
Comprehensive rehab program following 100% requirements of tender docs with no enhancements	4
Substantial compliance to tender docs (80%)	3
Partial compliance (60%) to requirements	2
Bare minimum compliance of at least 50% of requirements	1
C. System Expansion Program	
Comprehensive expansion program and providing enhancements	5
Comprehensive expansion program with no enhancements	4
Substantial compliance with requirements (80%)	3
Partial compliance with requirements (60%)	2
Minimum compliance with requirements	1
D. Systems Loss Reduction Program	
If program will achieve industry standard in less than 5 years	5
Achieve industry standard on the 5th year	4
Program will achieve 80% of the target reduction to bring losses to industry standards	3
Program will achieve 60% of the target reduction to bring losses to industry standards	2

Program will achieve 50% of the target reduction to bring losses to industry standards	1
E. Targets and Milestones (Rehab and Capex)	
Individual activities (in capex program) identified and time frame to complete clearly shown supported by detailed description as to quantity, cost and dates	5
General description of targets without details	3
Bid form accomplished without accompanying general or detailed description	1
G. Timetable	
Completion of rehabilitation in 3 years or less	5
Completion of rehabilitation in 4 years	4
Completion of rehabilitation in 5 years	3
Completion of rehabilitation in 6 years	2
Completion of rehabilitation in 7 years or more	1

II. Financial Proposal

A1. Bid Price (Water)			
	Range	Amount	Points
70 Million exactly	1	70	1.00
71-75 Million	2	71	1.20
		72	1.40
		73	1.60
		74	1.80
		75	2.00
76-80 Million	3	76	2.20
		77	2.40
		78	2.60
		79	2.80
		80	3.00

81-85 Million	4	81	3.20
		82	3.40
		83	3.60
		84	3.80
		85	4.00
86 Million and above	5	86	4.20
		87	4.40
		88	4.60
		89	4.80
		90-above	5.00
A2. Bid Price (Power)			
50 million - below		50-below	0.00
51-59 million	1.1-1.9	51	1.10
		52	1.20
		53	1.30
		54	1.40
		55	1.50
		56	1.60
		57	1.70
		58	1.80
		59	1.90
60-69 million	2.0-2.9	60	2.00
		61	2.10
		62	2.20
		63	2.30
		64	2.40
		65	2.50
		66	2.60
		67	2.70
		68	2.80
69	2.90		
70 million exactly	3	70	3.00
71-80 million	3.1-4.0	71	3.10
		72	3.20
		73	3.30
		74	3.40
		75	3.50
		76	3.60
		77	3.70
		78	3.80
		79	3.90
		80	4.00

81 million-above	4.1-5.0	81	4.10
		82	4.20
		83	4.30
		84	4.40
		85	4.50
		86	4.60
		87	4.70
		88	4.80
		89	4.90
		90-above	5.00

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B. Tariff Proposal

	Range	Years	
		Unchanged	Points
lower than current by P0.26 or higher	5	1-2	4.50
		3-4	4.75
		5 above	5.00
lower than current by P0.25 or less	4	1-2	3.50
		3-4	3.75
		5 above	4.00
same as existing	3	1-2	2.50
		3-4	2.75
		5 above	3.00
higher than current by P0.001 to P0.25	2	1-2	1.50
		3-4	1.75
		5 above	2.00
higher than current by P0.26 or higher	1	1-2	0.50
		3-4	0.75
		5 above	1.00

C. Funding Program

Adequate and complete funding program with no cost to the Province and with benefits to the Province	5
With substantial funding program and no cost to the Province	4
With general funding program and no cost to the Province	3
With general funding program and with Province sharing costs	2
Vague program, no credit history	1

III. Others

	Points
A. Overall organization	
Complete overall organization, identified key positions, defined departmental functions, detailed chart (positions commensurate to qualifications & functions)	5
General departmental organization, key positions identified	4
Broad organization shown, only top managers identified	3
Shows only general description of organization	2
No submission	1
B. Commitment	
Total commitment, with specific plans to provide commitment, showing any existing investments in the Province and use of local resources	5
General commitment and plans, no existing investment in the Province	3
Vague or no statement of commitment other than investing in the project	1
C. Employee benefits	
Complete and clear compensation package including all benefits	5
Lower than above in terms of amounts	4
Lower than above in terms of amounts	3
Lower than above in terms of amounts	2
Lower than above in terms of amounts	1
D. Presence in RP	
<i>Points to be given on the basis of company's service history in the Philippines.</i>	1-5
E. Employee Retirement and Separation from Province	
Complete and clear compensation package including all benefits	5
Lower than above in terms of amounts	4
Lower than above in terms of amounts	3
Lower than above in terms of amounts	2
Lower than above in terms of amounts	1

E. Employee Stock Option Plan	
Complete and clear plan	5
Lower than above in terms of amounts	4
Lower than above in terms of amounts	3
Lower than above in terms of amounts	2
No plan	0
F. Others / Innovations / Enhancements (Non-technical)	
Best enhancements and suggestions	5
With enhancements and suggestions but with little benefit to the transaction and project	3
No suggested enhancements	0