

Final Statement

HELIO ATACAMA TRES (EDF AND MARUBENI) & CONTRACTOR
COMPANY WORKER (2019)

Non-official English translation

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CHILE'S NATIONAL CONTACT POINT | RESPONSIBLE BUSINESS CONDUCT DIVISION | UNDERSECRETARIAT OF
INTERNATIONAL ECONOMIC AFFAIRS

FINAL STATEMENT

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I. Introduction

1. Chile's National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (Guidelines), located in the Responsible Business Conduct Division of the Undersecretariat of International Economic Affairs, issues this Final Statement.
2. The Final Statement describes the process and the results of the analysis of the specific instance to which it refers. It is based on information received from the parties and the steps taken by the NCP. If there was confidential information submitted to the NCP in the course of the procedure, it has not been disclosed in this statement. According to the Chilean NCP's rules of procedure, the NCP will always issue a Final Statement, which is public, whether or not it has been preceded by an Initial Statement or good offices.
3. The Final Statement marks the closure of the NCP procedure, without prejudice to the possibility of a follow-up stage.

II. Parties

a) Identification of the submitter

4. The submitter party is a natural person, an employee of Consorcio Qatar SpA (Consorcio Qatar or contractor company), which was a contractor for the "Construction of the Bolero Oeste Photovoltaic Park" project, located in the Sierra Gorda commune and owned by Helio Atacama Tres SpA, which, at the time of the events and the request for a specific instance, was owned by EDF Renewables Chile and Marubeni.

b) Identification of the company

5. Helio Atacama Tres SpA, which at the time of the events and the request for a specific instance, was a company owned by the multinational corporations EDF EN Chile Holding SpA (EDF Renewables Chile) and MC Andes Power Chile SpA (Marubeni). In June 2023, Helio Atacama Tres SpA was sold to a third party, unrelated to the facts considered in this specific instance.
6. EDF Renewables Chile is part of the EDF Group, a conglomerate owned by the French state, with its parent company being EDF Renouvelables. EDF Renouvelables has expertise in the construction, operation, and development of wind and solar energy projects and operates in several countries.
7. MC Andes Power Chile SpA is part of the Marubeni Group, a Japanese conglomerate whose parent company Marubeni Corporation. The Marubeni Group operates in numerous countries and industries, including automotive, transportation, mining, and energy.

III. Issues raised

a) Summary of the request for a specific instance

8. On 13 May 2019, the applicant, represented by a lawyer, submitted a specific instance request to the Chilean NPC, identifying alleged violations of the Guidelines in the context of a workplace accident suffered while working on the "Construction of the Bolero Oeste Photovoltaic Park" project, located in the Sierra Gorda commune.

9. According to the applicant, these violations include: the absence of an emergency protocol; inefficient management of the procedures for monitoring and support after a workplace accident; mistreatment by an EDF-Marubeni engineer assigned to provide assistance; and technical deficiencies in the installations, specifically improper installation of grounding grids supporting the general electrical lines of the site, as well as corrosion and moisture in most of the metal structures supporting them.
10. The submitter states that, on 28 March 2018, while working as a roller compactor operator, accompanied by a supervisor for earthmoving operations, in the context repair work on the inner roads of the photovoltaic farm, he disembarked from his vehicle, tripped, and reflexively placed his right hand on the structure of a solar panel, suffering an electric shock.
11. The supervisor reported the accident via radio to the occupational health and safety officer and the contract administrator of Consorcio Qatar. Contractor company personnel went to the EDF-Marubeni offices to report the situation and request emergency personnel be dispatched to the site. However, they allegedly lacked an emergency protocol and were unaware of the accident location, requiring guidance from a contractor company vehicle. Upon arrival, emergency personnel assessed the situation and immediately transferred the submitter to the Baquedano polyclinic, later transporting him in an ambulance from the Chilean Safety Association (ACHS) to La Portada Clinic in Antofagasta.
12. The submitter claims that, during these post-accident events, he suffered mistreatment from an EDF-Marubeni engineer. He also states that this situation was reported by the contractor company's manager to EDF-Marubeni.
13. The submitter asserts that the solar panels should not have posed an electrocution risk. He further claims that the accident resulted from poor installation of the grounding grids supporting the general electrical lines and that most of the supporting metal structures exhibited corrosion and moisture. Consequently, the company allegedly failed to comply with standard NCH4/2003, as confirmed by an external technical report.
14. The submitter indicates that the contracting company has reportedly taken the decision to abandon the workplace of the project due to the aforementioned conditions, which compromised worker safety.
15. The submitter identifies alleged breaches by the company of the following chapters of the Guidelines:
- Chapter II. General Policies.
 - Chapter IV. Human Rights.
 - Chapter V. Employment and Industrial Relations.
 - Chapter VI. Environment.
16. The expected outcome by the submitter through the NCP procedure is as follows:
- Full compensation for damages through financial reparation.
 - Coverage of complete medical treatment until full recovery by a private entity other than ACHS.
 - A written apology from EDF-Marubeni for the alleged mistreatment suffered after the accident.

- Formal notification to regulatory entities to rectify any potential substandard conditions at the Bolero Photovoltaic Park and prevent further accidents.

b) Summary of the company's response

17. On 15 July 2019, EDF Renewables Chile responded, stating that the described accident was not the company's responsibility, as the submitter allegedly acted outside regulations and contrary to the training, induction, and best practice procedures relevant to his role as a contractor worker. The company stated that it had explicitly outlined the risks associated with parking outside designated areas and handling solar panels by unauthorised personnel.

18. The company also indicated that:

- There was no no-compliance with NCH4/2003 electrical installation standards nor any safety risk to individuals on-site, as supported by technical evidence.
- The contractor worker had not been mistreated by EDF Renewables Chile staff. The company had activated the appropriate protocols, but the submitter never directly contacted them. EDF Renewables Chile added that internal investigation mechanisms were available through Consorcio Qatar but were not used.
- EDF Renewables Chile had terminated its contractual relationship with Consorcio Qatar due to serious breaches by the contractor company in executing the assigned works.
- The contractor worker had signed a severance agreement with his employer, Consorcio Qatar, in which he explicitly waived any action arising from the provision of services by the contractor company at the Bolero Photovoltaic Park.
- At the time of signing the severance agreement, no complaints had been filed with the Labour Directorate against Consorcio Qatar, EDF Renewables Chile, or any related companies regarding the events described in the specific instance request.

19. After the company's initial response, the NCP requested additional information regarding follow-up actions taken after the incident and the accident protocols for both the company and its contractors. EDF Renewables Chile provided additional information that the NCP deemed relevant to evaluate the situation in light of the Guidelines.

IV. NCP evaluation of the specific instance

a) Preliminary issues

20. The preliminary question is whether the NCP is competent to hear the case.

21. To determine this, two requirements: must be verified (1) the requested company must be a multinational enterprise, and (2) the events must have occurred in Chilean territory or, if they occurred in a foreign country without an NCP, the multinational enterprise must be Chilean.

22. Regarding the first requirement, the requested companies are multinational in nature because they have entities in different countries and can coordinate their activities in all of them. Therefore, the first requirement is met.

23. As to the second requirement, the events occurred on Chilean territory. Thus, the second requirement is fulfilled and the NCP is competent to hear the case.

b) Initial assessment

24. In determining whether the issue raised merits further consideration, the NCP must establish whether the issue is bona fide and whether it relates to the Guidelines. In this context, the NCP takes account into the following criteria:

- The identity of the party concerned and its interest in the matter.
- Whether the issue raised in the specific instance request is material and justified.
- Whether the company's activities are linked to the issues raised in the specific instance.
- The relevance of concurrent legislation and procedures to the case, including court decisions.
- How similar or the same issues have been, or are being, addressed in other local or international processes.
- Whether the review of the specific instance will contribute to the purpose and effectiveness of the Guidelines.

25. As part of this initial assessment, the NCP held meetings with the submitter's representatives on 27 June and 1 August 2019, with the submitter on 2 October 2019, and with the respondent party on 24 June 2019 and 3 January 2020, maintaining periodic phone and email communication with both parties. The case was also brought to the attention of the French and Japanese NCPs in July 2019. Additionally, meetings were held in Paris in June and November 2019 with the French NCP to share perspectives on the notification received.

26. After conducting its initial assessment, the NCP concluded that this specific instance warranted further consideration, taking into account the fulfilment of the criteria established in the Guidelines.

c) Good offices

27. On 11 August 2020, the NCP issued its Initial Statement, offering good offices to the parties with the aim of providing a space for dialogue, giving the company an opportunity to clarify the actions taken concerning the incident, and supporting the parties in better understanding the principles and best practices established in the Guidelines.

28. In the same statement, it was stated that two aspects would not be part of the good offices process: (1) the request for financial compensation, as other competent national bodies could address this matter; and (2) the request for communication with regulatory entities since the NCP had already contacted the Superintendence of Electricity and Fuels, which confirmed that on-site inspections had verified compliance with current regulations.

29. After multiple efforts to facilitate communication with both parties, on 10 February 2022, the submitter declared that they did not accept the good offices offered by the NCP.

V. Conclusion

30. In light of the above, the NCP issues this Final Statement, concluding the specific instance and making recommendations to the company in light of the circumstances and available information.

a) NCP Observations and Recommendations

31. Recommendations for companies:

- Maintain the highest standards of workplace health and safety (Paragraph 4(c), Chapter V; 2023 Guidelines). Continuously strive to improve health and safety outcomes in all areas of operation, even when not formally required by current Chilean regulations (Commentary 63, Chapter V; 2023 Guidelines).
- Seek to prevent and mitigate negative impacts—particularly, but not exclusively, those affecting workers' health and safety—directly linked to their activities, products, or services through a business relationship, even if the company has not contributed to these impacts. To achieve this, the company should use its leverage with the entity causing the negative impact, though this should not be interpreted as a transfer of responsibility from that entity to the company (Paragraph 13, Chapter II, 2023 Guidelines).
- Implement risk-based due diligence processes in accordance with the Guidelines (particularly concerning Chapters IV: Human Rights, V: Employment and Industrial Relations, and VI: Environment) and the OECD Due Diligence Guidance for Responsible Business Conduct. These processes should be ongoing and involve identifying, preventing, and mitigating the actual or potential negative impacts of the company's activities and business relationships, and disclosing how these impacts are being addressed (Paragraphs 10, 11, and 12, Chapter II; Paragraph 5, Chapter IV; 2023 Guidelines).
- Encourage, to the extent possible, that their business partners and supply chain apply responsible business conduct standards and implement risk-based due diligence processes in line with the Guidelines, particularly regarding Chapters IV, V, and VI.

If the NCP offers its good offices or, in its Final Statement, makes recommendations to the company, this should in no way be interpreted as an assertion that the requested multinational has failed to comply with the Guidelines.

The Guidelines state that confidentiality of the proceedings shall be maintained throughout its duration. Information and opinions provided during the proceedings shall be kept confidential, unless the party concerned consents to the disclosure of such information or opinions or where non-disclosure would be contrary to the provisions of national law.

In accordance with the principle of transparency that governs the functions of the NCP, the final statements are published on the NCP's website and are translated into English and sent to the OECD Working Party on Responsible Business Conduct.

Before the Final Statement is issued, the parties are given the opportunity to comment on the draft statement, bearing in mind that the drafting of the statement is always the responsibility of the NCP, which will define the final version of the document.

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Non-official English translation¹

¹ In case of discrepancy, the Spanish version of this Final Statement shall prevail.