



*Fondazione Culturale*  
**RESPONSABILITÀ ETICA**

## **- ENEL AGM 2010 -**

### **Intervention of the**

## **Fondazione Culturale Responsabilità Etica Onlus**

### **1. Introduction**

The Cultural Foundation of Banca Etica - Fondazione Culturale Responsabilità Etica Onlus – started in 2007 a critical shareholding initiative. The Fondazione bought some shares of major Italian corporations that are targeted by Italian and international civil society organisations and networks. These firms are criticized for their negative environmental, social and human rights behaviour, regarding their questionable impact on local and national development processes, their lack of transparency, their poor democratic governance, and more broadly for their responsibility and controversial sustainability record and performance.

The critical shareholding is carried on in close contact with Italian and international civil society organisations. The Fondazione bought the shares of ENEL after the proposal of Greenpeace Italy and the Campagna per la Riforma della Banca Mondiale – CRBM.

The goal of this initiative is at least three-fold:

–Firstly, it gives the chance to bring the voice of the Southern communities and of international civil society organisation campaigns directly to the board of the companies and to the other shareholders. Too many projects carried on by Northern transnational corporations badly impact on the life and the fundamental rights of local groups in the global South. These latter hardly can make their voice heard in the country where the mother company is based. The critical shareholding initiative may therefore be an effective tool to try and bring this voice directly to the board, the managers and the shareholders of the company. The result is an increase of the social and environmental performance of the company in order to reduce broader negative development impacts and to foster a more active dialogue between the company and all its stakeholders;

–Secondly, the Foundation sees the critical shareholding as an instrument of “economic democracy”, thus increasing the knowledge and the participation of small shareholders and of the general public in financial matters. With this initiative, the Cultural Foundation wants to open a debate on the role of the shareholder and on its duties. The current crisis has shown the threats of a financial system based upon the short termism and the only maximization of profits. Being a shareholder means you become an owner – even if of an extremely small percentage – of the company you invest in. Thus it must imply rights as well as duties, and namely to actively participate in the life of the company; this is regarded as central in any development process both in the North and the South, given the prominent role nowadays of the private sector in most societies.

– Lastly, the critical shareholding increases the representativity of the small shareholders in the AGM and, more broadly, in the life of the company. A 2009 OECD report “The corporate governance lessons from the financial turmoil” points out that one of the main reasons for the actual crisis has been the flaws in the corporate governance schemes of many companies. The same OECD report pledges, as a major step forward, to increase the participation of the small shareholders in the life and the decisions of the companies. The critical shareholding goes precisely in this direction and will contribute to increase democratisation and accountability of private sector operations.

In several European countries, as well as in the US, active shareholders engagement has become a widespread practice. The interventions and proposals of the small active shareholders helped in many cases in increasing the company environmental and social responsibility, its governance and accountability, and its long term sustainability. This strategy has already been used in some campaigns targeting Northern corporations's responsibility in solidarity with affected communities in the global South and to promote their right to development.<sup>1</sup>

This same practice has hardly been done in Italy, apart from some seldom initiatives carried on in specific cases. We therefore believe that the initiative undertaken in Italy by the Fondazione Culturale Responsabilità Etica Onlus could contribute to develop a more proactive and dynamic participation of other shareholders in the Italian firms.

To sum up, this initiative was conceived to make progresses in the medium and long term, both towards the firms responsibility and towards the shareholders participation.

---

<sup>1</sup>DI RECENTE SUL SUPPLEMENTO ORDINARIO N. 43 DELLA GAZZETTA UFFICIALE N.53 DEL 5 Marzo 2010 è stato pubblicato il Dlgs n.27.1.2010 con il quale è stata definitivamente recepita la Direttiva Comunitaria 2007/36/CE (Shareholders Rights) che amplia l'esercizio dei diritti degli azionisti di minoranza di Società quotate, che avrà integrale efficacia già a partire dal prossimo 30.10.2010. Il decreto in questione interviene sulle vari fasi del procedimento assembleare rimodellando, peraltro: il regime delle convocazioni assembleari e le informazioni pre-assembleari, il diritto dei soci ad inserire punti all'ordine del giorno e di presentare proposte di delibera, i requisiti per partecipare e per votare in assemblea, il diritto dei soci di porre domande, l'obbligo di aggiornamento dei libri soci e trasparenza dell'azionariato, la rappresentanza del diritto di voto e la possibilità di distribuire dividendi maggiorati. Particolare interesse va, altresì, accordato alla nuova modifica sostanziale in tema di sollecitazione di deleghe di voto che con l'attuale riforma risulta nettamente semplificato rispetto alla precedente procedura assolutamente complessa ed onerosa. Infatti adesso la richiesta di voto rivolta a **più** di 200 azionisti su specifiche richieste di voto ovvero accompagnate da raccomandazioni, dichiarazioni o altre indicazioni volte ad influenzare il voto, dovrà essere effettuata sulla base di un prospetto, ma senza i precedenti limiti che erano costituiti dalla l'intervento necessario di un intermediario (banche, imprese di investimento sicav ect.) e, soprattutto, dai requisiti di possesso minimo azionario. . Conseguentemente più strumenti per l'esercizio dei propri diritti (da far valere nelle attività delle prossima Assemblea dei Soci) sono stati accordati ai soci di minoranza che possono condividere, dal nell'ambito di un nuovo quadro normativo di riferimento, le finalità presenti e future sin qui esplicate.

In order to increase the efficiency of the initiative, the intervention in the AGM has been focused on a small number of concrete cases and investments where ENEL is involved. Moreover, the projects considered are those where we believe that some concrete social, environmental or human rights improvements could take place. In the last years, the main projects the Fondazione Culturale has presented to the AGM have been:

The overall company policies on climate change. During the first two years of critical shareholding, ENEL has been the Italian company with the highest CO2 emissions, both in absolute terms and compared to the fixed target according to the Kyoto protocol. Despite these very poor results, the company keeps on investing massively in fossil fuels power plants.

The intervention in the 2009 AGM touched upon the crucial issue of the impacts and economic costs of nuclear energy. A study commissioned by Greenpeace Italy and the Fondazione Culturale to the Prof. Steve Thomas, teaching Energy Policy at the University of Greenwich, London, shown that ENEL nuclear plans will require investments for some 30 billion Euro in the next 10 years. A specific case study was brought to the AGM, regarding the Nuclear Power Plant of Mochovce, in Slovakia, where ENEL is involved.

The Fondazione also raised some sharp critiques regarding ENEL project to build five large dams in Chilean Patagonia in the HidroAysen project, at a cost of more than 4 billion US\$. A project with huge environmental and social impacts on the local communities, that faces the opposition of the majority of the Chilean population, after the latest polls.

More broadly, the Cultural Foundation questioned the investments of ENEL in short-sighted energy development projects, focused on fossil fuels, such as coal power plants in Italy, Albania and other countries. Lastly, the Fondazione highlighted the complex structure of ENEL subsidiaries and controlled companies in foreign jurisdictions and in countries often considered as tax havens.

During the AGMs of the last years, the Foundation stressed the fact that a poor environmental track record and an industrial development plan that does not seriously take into account investments in renewable energies, may also have severe impacts on the companies long term financial sustainability, affecting their ability to maintain their leadership in the market and their competitiveness, thus damaging all shareholders.

In the 2010 AGM, the Fondazione Culturale wants to further expand on these projects, and ask some specific questions regarding the impacts of ENEL investments in the global South.

## 2. ENEL'S CONTRIBUTION TO 2020 RENEWABLE ENERGY TARGET FOR ITALY STILL LARGELY INSUFFICIENT

This briefing was prepared by Greenpeace Italy for *Fondazione Responsabilità Etica*, a shareholder of Enel. Over the last two years, Greenpeace has produced reports critical of Enel's nuclear policy both in terms of its foreign investment and of the future prospects of its agreement with EDF concerning investments in Italy. Last November, Enel sent a letter to Greenpeace Italy and to Greenpeace International HQ asking for a €1.6mn compensation for damages to some Enel coal plants in Italy allegedly caused by Greenpeace activists through their peaceful actions.

Greenpeace does not wish to deal with the merits of this claim, which anyway it deems unfounded; nevertheless, in this briefing, it confirms criticism of Enel's industrial policies; also, it considers Enel's Corporate Social Responsibility policy to be very little reliable if Enel's response to peaceful protest is to threaten legal action for damages, while, on the other hand, its industrial policy is pulling in a diametrically opposed direction to the one requested by environmentalists.

On its institutional website, Enel declares: «We firmly believe that developing solar, geothermal and hydroelectric power is vital for improving production performance, energy security and environmental protection. This is because wind, water and the heat of the earth are inexhaustible and environmentally-friendly energy sources».

In spite of these statements, Enel's commitment is still very low. In fact, its renewables investment in 2009 was quite limited, as shown in this report.

In 2009, Enel showed a 12-GW evolution of its total net production, due to new installed capacity and new acquisitions<sup>2</sup>. Its capacity increase included 3.7 GW hydropower (almost entirely due to Enel's acquisition of Endesa plants in Latin America), 2.1 GW coal plants, 1.9 GW of combined-cycle facilities and 3.6 GW oil and gas plants. Finally, there was also a 720-MW net evolution of nuclear installed capacity due to the acquisition of Spanish nuclear power plants.

**Table 1 – Evolution of the capacity installed by Enel in 2009 (MW)**

|                 | Hydro        | Other Renewables | Nuclear    | Coal         | CCGT         | Oil and gas  | TOTAL         |
|-----------------|--------------|------------------|------------|--------------|--------------|--------------|---------------|
| Italy           | 7            | 97               | 0          | 637          | 0            | -644         | 97            |
| Other countries | 3,705        | -122             | 720        | 1,457        | 1,931        | 4,220        | 11,911        |
| <b>TOTAL</b>    | <b>3,712</b> | <b>-25</b>       | <b>720</b> | <b>2,094</b> | <b>1,931</b> | <b>3,576</b> | <b>12,008</b> |

Source: Processing of the data contained in: 'Enel 2009 Results, 2010-2014 Plan', March 2010

<sup>2</sup> 2009 Results, 2010-2014 Plan, March, 2010, "Resilience, growth and cash generation"

Investment in renewable energies other than hydroelectric power, on the contrary, is substantially unchanged, occupying an extremely marginal position: “other renewables” account for a mere 3.4% of the total installed capacity, dropping to a mere 2.8% in Italy.

**Table 2 – Enel’s installed capacity as at 31<sup>st</sup> December 2009 (MW)**

|                              | <b>Hydro</b>  | <b>Other<br/>Renewables</b> | <b>Nuclear</b> | <b>Coal</b>   | <b>CCGT</b>   | <b>Oil and<br/>gas</b> | <b>TOTAL</b>  |
|------------------------------|---------------|-----------------------------|----------------|---------------|---------------|------------------------|---------------|
| <b>Italy</b>                 | 14,431        | 1,134                       | 0              | 6,212         | 5,946         | 12,697                 | <b>40,420</b> |
| <b>Other<br/>countries</b>   | 16,588        | 2,064                       | 5,284          | 11,188        | 6,032         | 13,751                 | <b>54,907</b> |
| <b>TOTAL</b>                 | <b>31,019</b> | <b>3,198</b>                | <b>5,284</b>   | <b>17,400</b> | <b>11,978</b> | <b>26,448</b>          | <b>95,327</b> |
| <b>% Italy</b>               | 35.7%         | 2.8%                        | 0              | 15%           | 15%           | 31%                    | 100,0%        |
| <b>% Other<br/>countries</b> | 30.2%         | 3.8%                        | 9.6%           | 20%           | 11%           | 25%                    | 100.0%        |
| <b>% total</b>               | 32.5%         | 3.4%                        | 5.5%           | 18.3%         | 12.6%         | 27.7%                  | 100.0%        |

*Source: Processing of the data contained in: ‘Enel 2009 Results, 2010-2014 Plan’, March 2010*

It should be pointed out that most of Enel’s installed capacity in “other renewables” in Italy comes from geothermal power (671 MW). If one does not take into account this energy source, the overall renewable energy percentage is even lower: less than 1% of Enel’s total installed capacity in Italy comes from new renewables.

Among the five priorities listed in its Strategic Plan to 2014, Enel recognises the key role played by renewable energy and innovation. Enel submitted a plan providing for the integration of the renewable energy activities undertaken by Endesa and Enel Green Power (EGP) in the Iberian peninsula. At the end of 2009, EGP had a net installed capacity of 5.7 GW and a production of 20.7 TWh.

Only as few as 2.6 GW of EGP’s 5.7 GW are invested in Italy: they are made up of 1.5 GW hydroelectric, 0.7 GW geothermal, 0.4 GW windpower and 0.004 GW photovoltaic<sup>3</sup>.

In the 2010-2014 period, out of a total of €29.7bn investment estimated by Enel, EGP plans to make a total investment of €5.1bn, which – according to Enel’s estimates – would produce an increase in EGP’s net installed capacity to about **9.2 GW in 2014**, that is an additional **3.5 GW** to the **5.7 GW** installed in 2009 between Italy, Spain and North America, according to its new corporate structure (Table 3).

<sup>3</sup>[http://www.enelgreenpower.com/en/dove\\_siamo/](http://www.enelgreenpower.com/en/dove_siamo/)

**Table 3 - Enel Green Power's installed capacity (GW)**

|                 | 2009       | 2014       | New installed capacity<br>2010-2014 |
|-----------------|------------|------------|-------------------------------------|
| Italy           | 2.6        | 3.4        | 0.8                                 |
| Iberia          | 1.4        | 2.6        | 1.2                                 |
| Other countries | 1.7        | 3.2        | 1.5                                 |
| <b>Total</b>    | <b>5.7</b> | <b>9.2</b> | <b>3.5</b>                          |

*Source: Processing of the data contained in: 'Enel 2010-2014 Plan', March 2010*

Currently, Enel generates about 33 TWh of the total 66TWh of renewable energy produced in Italy in 2009. However, it should be pointed out that as many as 28 TWh, accounting for 85% of Enel's production, come from hydroelectric plants, while as few as 5 TWh are produced from other renewable sources, including geothermal power. **In 2009, energy production from renewable sources registered a mere 2 TWh increase, while Italy ended 2009 with a meagre 104 MW increase in its installed renewables capacity.**

In order to meet its 17% renewables target by 2020, Italy should generate about 100 TWh from renewable sources.

According to the estimates of the Fondazione per lo Sviluppo Sostenibile – Sustainable Development Foundation (FSS), in order to achieve EU's 2020 targets, Italy needs 22.9 GW of new installed renewables capacity, which would mean an increase from 23.8 GW in 2008 to 46.7 GW in 2020<sup>4</sup>.

Enel's strategic plan 2010-2014 shows that its contribution will be very small.

According to its strategic plan, Enel will only install 3.4 GW of new renewables capacity by 2014, which would mean a total increase of 36% compared to 2008. Assuming a similar commitment in the following five-year period and estimating the same growth rate to 2020, the resulting estimate is of 4.6 GW installed capacity. This means that Enel would only install 2.1 GW by 2020 (Table 4).

---

<sup>4</sup> Fondazione per lo sviluppo sostenibile – Sustainable Development Foundation, *Energia elettrica da fonti rinnovabili: l'obiettivo per l'Italia del 33% al 2020*, May 2009

**Table 4 – Projected estimates of Enel Green Power’s installed capacity by 2014 and by 2020 (GW)**

|                         | <b>2008<br/>GW</b> | <b>Increase<br/>(according to<br/>Enel’s plan)</b> | <b>2014<br/>GW</b> | <b>Increase<br/>(projected<br/>estimates)</b> | <b>2020</b> | <b>Total<br/>increase<br/>(08-14)<br/>GW</b> |
|-------------------------|--------------------|--|--------------------|---|-------------|--|
| <b>EGP in<br/>Italy</b> | 2.5                | 0.9  | 3.4                | 1.2   | 4.6         | 2.1  |
| <b>% increase</b>       |                    | 36%  |                    | 36%   |             |  |

*Source: Projected estimates based on the data contained in: “Enel 2009 Results, 2010-2014 Plan”, March 2010*

**Thus, Enel’s contribution to the increase in renewables capacity would be as little as 9% of the 22.9 GW Italy needs in order to reach EU’s 2020 targets (Table 5).**

**Table 5 – Enel’s contribution to renewables increase by 2020 (GW)**

|                       | <b>2008</b> | <b>Total planned increase<br/>(08-14)</b> | <b>2020</b> |
|-----------------------|-------------|---|-------------|
| <b>EGP in Italy</b>   | 2.5         | 2.1                                       | 4.6         |
| <b>Total in Italy</b> | 23.8        | 22.9                                      | 46.7        |
| <b>% Enel</b>         |             | 9%  |             |

*Source: Processing of the data contained in: “Enel 2010–2014 Plan” and FSS data, May 2009*

It is hard to envisage a stronger commitment in the following period (2014-2020), especially when considering that Enel declares that, after 2014, it intends to support nuclear investment in Italy. According to Enel’s estimates, investment in this field would amount to €18bn; while the evaluations included in the 2009 Prof. Stephen Thomas from the University of Greenwich report, the next nuclear investments of Enel would amount to 25 billion Euro. These estimates are basically confirmed by Citigroup’s recently issued estimates<sup>5</sup>.

<sup>5</sup> ‘New Nuclear, The Economics Say No’, November 2009, Citi Investment Research & Analysis, a division of Citigroup Global Market.

In its strategic plan to 2014, Enel also reasserted that it intended to sell shares of Enel Green Power to help bring its net debt down to €39bn by 2014<sup>6</sup>. However, **Enel Green Power is the most profitable division** of the Enel Group, as shown in the financial report for 2009 prepared for Greenpeace by Stephen Thomas of the University of Greenwich<sup>7</sup>. As this report illustrates, in 2007, after its takeover of Spanish company Endesa, Enel's debt increased fivefold.

Despite its €8bn capital increase in 2009 and the disposals made in the same year, **at the end of 2009, Enel's net financial debt still stood at €50.8bn** which was mostly due to the completion of the second phase of the Endesa takeover in June 2009<sup>8</sup>. It should be pointed out that this acquisition involved Endesa's disposal of its renewable energy plants (1.4 GW) and hydroelectric power stations to Spanish Acciona, for a total of about 2.1GW. If Enel had acquired these clean power plants, it could have improved its poor investment record in renewable energy, at least abroad.

**All things considered**, publicly available data show that Enel's commitment to developing renewable sources in Italy seems low. Applying the same growth rate to 2020 projections, Enel will only supply less than 10% of the new renewable capacity to be installed in the country in order to reach EU targets. If one considers that Enel currently produces about 50% of renewable energy generation in Italy (most of which was a legacy of the 20<sup>th</sup> century), the resulting discrepancy clearly shows that Enel's commitment to 2020 targets is utterly insufficient.

Although the Italian government has decided to make extensive and sometimes excessive use of the possibility to import renewable electricity from third countries, **Enel's industrial choices are a further example of this appalling policy, which is set to reduce occupational and economic benefits for Italy and produce renewable energy incentive schemes that will go to the benefit of other countries.**

### Questions for the company

During 2009, just slightly more than 100 MW in renewable energy has been installed. At the end of 2009, the installed power from renewable by ENEL, excluding hydroelectric and geothermal, results in less than 1% of the total installed capacity. The investments for the next years seem very limited too, with an increase from renewables of less than 1 GW in 2014.

ENEL currently produces 50% of renewable energy in Italy (mainly inherited from the XX Century), but following until 2020 the same trend of growth indicated in its own plans for 2014, the company contribution to new renewables will be very scarce: around 10% of what is needed to fulfil the EU objectives in 2020.

Does ENEL management believe that such a marginal role in the development of renewables in Italy is consistent with the main electrical company of our Country?

<sup>6</sup> [http://www.enel.it/eWCM/salastampa/comunicati/1602635-1\\_PDF-1.pdf](http://www.enel.it/eWCM/salastampa/comunicati/1602635-1_PDF-1.pdf)

<sup>7</sup> <http://www.greenpeace.org/italy/ufficiostampa/rapporti/debiti-enel-nucleare>

<sup>8</sup> Interim Financial Report at September 30, 2009

[http://www.enel.com/en-GB/investor/financial\\_reports/interim/](http://www.enel.com/en-GB/investor/financial_reports/interim/)



ENEL intends to invest in nuclear energy after 2014, in order to build 4 nuclear power plants in Italy, according to the agreements signed with the French EDF.

These investments would be in the range of 18 billion Euro, according to ENEL own estimations. According to the evaluations included in the 2009 report by Prof. Stephen Thomas from the University of Greenwich, the investments of ENEL in nuclear power may amount to 25 billion Euro. These estimations are basically in agreement with those made this year by Citigroup.

Given that, with over 50 billion Euro of net financial debt, ENEL is the most indebted multiutility company in Europe, we ask ENEL management how such an enormous investment be consistent with the development of renewables in Italy.

The same Citigroup report highlights the great risks regarding the investments for the private sector in building nuclear power plants.

Why ENEL plans to use such enormous resources for nuclear investments that pose high risks to its shareholders and investors, instead of concentrating the same resources in renewable energy that could bring a high return, as the results of Enel Green Power already demonstrate?

### 3. Hydro Aysén Project

**Enel**, through its control of Endesa/España/Chile, is currently in charge of deciding about HidroAysén (**HA**), a mega hydroelectric project in Chilean Patagonia. This project was not conceived by ENEL, but by Endesa/Chile/Spain. The flawed logic behind the **HA** project is that Endesa captured massive water rights in Chile's southern rivers and has since then been planning to use them with strictly commercial purposes. Since February 2009, both the **HA** project as well as these water rights are Enel's responsibility, so that its management should seriously consider the devastating environmental impacts that the exercise of these water rights would provoke, and that they were acquired in a highly questionable manner during the military dictatorship (1973-1989) and in early 1990, at a time when democracy in Chile had just been restored with huge difficulties, in such a way that these rights were registered at zero cost and in total absence of a democratic process.

The "**Patagonia Defence Council**" ("**Consejo de Defensa de la Patagonia - CDP**") is a growing coalition, today conformed by 58 organisations from Chile, Argentina, Canada, Spain and Italy who have taken on the mission of protecting the environmental integrity of Chilean Patagonia, gravely threatened by the **HA** project and its associated transmission lines. For three and a half years now, the **CDP** has been conducting a campaign called "**Campaña Patagonia Sin Represas**" ("**Patagonia without Dams Campaign**") at the local, national, and international levels.

**Chilean Patagonia** is an ecosystem mosaic with high rates of biodiversity and endemism; its unique landscapes are an extraordinary and priceless natural capital. Patagonia, which has been proposed to UNESCO for Natural World Heritage status, boasts one of the world's major freshwater reserves and it is home to a culture with a rich identity. Local people aim at developing the region's potential on the basis of conserving its environmental attributes and territorial integrity. Patagonia's tourism potential, which relies on its exceptional natural resources and environmental amenities, would be seriously and irreversibly damaged by **HA**.

#### **HidroAysén Project:**

a) Generation component: 5 hydroelectric plants (2,750 MW; 18,400 GWh/a; 6.000+ ha. flooded area): two in the Baker river and three in the Pascua river; estimated cost: US\$ 3.2 Bn; project developed by the *HidroAysén* company, a joint venture 51% owned by *Endesa-Chile* (a subsidiary of *Endesa-España*, of which *ENEL* retains a 92% control) and 49% owned by Chilean company *Colbún*. **HA** submitted an Environmental Impact Assessment (EIA) of the project in August 2008 and a first "EIA addendum" in August 2009; it is to submit a second addendum by 30<sup>th</sup> June 2010;

b) Transmission component: a 1,500-mile direct-current transmission line; 6,000 towers measuring between 164 to 230 feet high; 56,069 acres clear-cut for the line's service lane; estimated cost: US\$ 3 Bn.; a project of the Chilean company *Transelec*, owned by the Canadian consortium *Brookfield Asset Management*. No EIA has been presented yet for the transmission component<sup>9</sup>. The whole of the electricity generated would be

---

<sup>9</sup> To our knowledge, no company has presented yet an environmental impact assessment for the transmission line that the Hidroaysén project, the hydroelectric dams component would need to transport the electricity to the centre of

transported through the 1,500-miles to supply industries around Santiago and mining operations north of it. None of the nine regions crossed by this transmission line would receive any of the electricity produced by the **HA** project.

**Opposition.** In November 2007, 120 residents of various localities of the Aysén Region rode on horseback for almost 200 miles to the region's capital to express their opposition to **HA** before the regional authorities; in three official surveys, Chilean people voiced their rejection of **HA**; in April 2009, a survey conducted by IPSOS showed that 57.6% of the Chilean people opposed this major hydroelectric project in Patagonia; 20,000 people support the *Patagonia Sin Represas* campaign through [www.patagoniasinrepresas.cl](http://www.patagoniasinrepresas.cl) while 90 Facebook groups on this topic have reached a total of 105,340 members. At an international level, this campaign has the active support of organizations from Argentina, the United States, Canada, Spain and Italy.

**Flawed Environmental Governance System.** During the last two periods, Chilean governments have been debating a radical change in environmental governance and laws. This results from a transversal negative assessment of the current system, where decision-making is sharply criticized for not being democratic, political rather than technical, disproportionately influenced by project promoters. Problems in environmental governance are leading to serious governance issues in general, and to a loss of confidence in the establishment by citizens.

**Incomplete Assessment.** The generation and transmission components of a major hydroelectric project are inseparable parts of an integrated whole. In Chile, due to the serious shortcomings of environmental legislation, each component, having different proponents, is to be assessed separately. Thus, the impact of the **HA** project—sum and synergy of the impacts of the generation and transmission components—cannot be properly assessed. On August 28<sup>th</sup>, 2008, the *Fiscalía del Medioambiente (Attorneys for the Environment)*, a member organization of the **CDP**, filed a lawsuit in the 28<sup>th</sup> Civil Court of Santiago, Chile, requesting the suspension of the EIA until an appropriate study including the assessment of transmission lines is submitted. The lawsuit is pending. The development of the generation component independently from the transmission component is creating a legal oddity, which carries high risks for the proponents of the **HA** project.

**Water and Energy Monopoly.** Endesa-Chile and Colbún account for 74% of power generation in the Central Interconnected System (SIC), which serves 93% of Chile's population. If the **HA** project is built, these companies would have monopoly control of 80% of power generation in the SIC grid, hindering an effective state regulation of the sector. The installation of **HA's** 2,750 MW would thwart the deployment of non-conventional renewable energy sources, precisely now that recent legal changes have created favourable conditions for this. Endesa-Chile also controls 80% of Chile's non-consumptive water rights, which rises to 96% in the Aysén region. This monopoly in the energy and water resources sectors leads to an excessive concentration of financial and social power, posing serious problems for democratic governance in Chile. As a matter of facts, such an extreme monopoly in two such strategic sectors as water and energy affects democratic governance in general not only in these two sectors.

---

Chile where consumption is concentrated. This is a legal oddity, something which shouldn't happen, which wouldn't be allowed in many countries, but is possible under Chile's environmental legislation.

**High Risks. a)** Patagonia is a geologically unstable region. It is crossed by important geological faults. On 21<sup>st</sup> April 2007, the region was hit by an earthquake (6.2° Richter) and a tsunami, after which Aysén was declared a “seismic region”. Nevertheless, neither this situation, nor reservoir induced seismicity were taken into account in the EIA;

**b)** On May 1<sup>st</sup>, 2008, the Chaitén volcano erupted in Chile’s northern Patagonia. This volcanic event, which is still ongoing, would have destroyed an important stretch of the transmission line associated to **HA**, causing an unprecedented energy crisis in the SIC with the sudden loss of **HA**’s 2,750 MW for an undetermined period of time;

**c)** In Patagonia’s basins, where the dams are being planned, glacial lake outburst floods (Glofs) have been occurring with an unprecedented recurrence rate. Six Glofs directly related to climate change and the melting of the glaciers hit the Baker river basin in the last sixteen months producing serious rises in water levels and flow rates in the Baker river, flooding farmland, causing loss of cattle and affecting road infrastructure;

**d)** There are growing security concerns about large dams worldwide. The world’s 45,000 large dams were built without considering the erratic hydrology that is being caused by climate change; today, most of them should be considered liabilities. With earthquakes, volcanic eruptions and glofs, the **HA** dams could put at risk the life of the population living downstream from the dams, and install a high risk of power shortages for 93% of Chile’s population, due to the high probability of failures in the hydroelectric power stations and transmission lines. It is worth mentioning the total, four-hour collapse of the SIC grid (running through three quarters of the Chilean territory) which occurred as recently as 14<sup>th</sup> March 2010, and caused a black-out that affected 93% of Chile’s population. According to Transelec (owner of the system), this was due to the failure of one transformer caused by the earthquake of February 27<sup>th</sup>, 2010;

**e)** If **HA** is imposed on Chile’s population through sheer corporate and political lobbying, it will carry an extremely high social risk. Five major hydroelectric dams built in a remote and much cherished part of Chile, and a 1,500-mile long transmission line crossing 9 regions, 67 counties, thousands of properties --including lands of indigenous Mapuche communities-- and 14 protected wildlife sites, would be extremely vulnerable to the human/social unrest factor.

**Violation of International Treaty.** On June 12<sup>th</sup>, 2008, **CDP** lawyers submitted a claim before the Canada-Chile Commission for Environmental Cooperation in Ottawa<sup>10</sup>, calling for the enforcement of the 1991 Environmental Treaty between Chile and Argentina, and reporting “a persistent pattern of non-compliance of sector-specific legislation on the part of the Chilean State”<sup>11</sup>. The Chilean government granted Endesa a provisional electricity concession to carry out studies for hydroelectric projects in Aysén. This was done without considering the Additional Specific Protocol on Shared Water Resources contained in the Treaty mentioned above, which requires “general plans for the utilization of shared watersheds” before any intervention on bi-national basins. These plans do not exist and an EIA for the damming of the Baker and the Pascua rivers is

<sup>10</sup> “Resumen de la Petición Presentada a la Comisión para la Cooperación Ambiental entre Chile-Canadá en conformidad con los Artículos 14 y 15 del Acuerdo de Cooperación Ambiental Chile-Canadá.” Ver en: <http://www.conama.cl/chilecanada/1288/article-45281.html>

<sup>11</sup> Quoted from the claim made by the lawyers of the Consejo de Defensa de la Patagonia.

currently underway, in clear violation of the Protocol given that both basins belong are shared water resources. This situation might generate conflicts between Chile and Argentina, as well as with Canada. In fact, in the Canada-Chile Agreement on Environmental Cooperation, both parties agreed to abide by all their environmental obligations. On December 23d, 2008, the **CDP** was given leave to proceed by the Canadian Secretariat, who declared they would invite a Panel of Experts to start an enquiry. They also announced that they would issue a request for information to Chile and open a case file on the matter.<sup>12</sup>

**Unnecessary Energy Project.** A recent study conducted by energy experts focusing solely on the SIC grid --which serves 93% of the country's population and into which the energy generated by **HA** would be injected-- clearly proves that this project is unnecessary. The study shows that in Chile there are now several companies that are planning non-conventional as well as conventional energy projects which would satisfy the energy demand of the SIC. The National Energy Commission (CNE) forecast that, in 2025, this demand will be of 22,375 MW. The study also looked at the alternative scenario for the 2009-2025 period, considering the SIC's current installed capacity (9,118 MW) plus an additional 13,962 MW to be installed by plants that have already been approved and the capacity of other projects that are being assessed. These figures add up to 23,080 MW, which exceeds the future demand estimated by the CNE. What is more, the predicted potentials of energy efficiency and renewable sources in 2025, always within the SIC, should amount to 2,719 MW and 4,565 MW respectively. If we incorporate these data in the overall scenario, figures will speak for themselves: they clearly show that Chile does not need **HA** to have the energy it needs for its present and future development.

In Chile, over the last few decades, Endesa has gained a negative reputation for imposing projects that have been designed without serious environmental considerations, have been very poorly assessed, and which, consequently, have caused serious environmental damage, and violated indigenous and human rights<sup>13</sup>

If Enel does not take control of Endesa Chile by making a radical and conspicuous change of orientation --of operational directives--, it will wholly inherit Endesa's controversial legacy and bad image. Furthermore, it should be considered that Enel's entry in Chile has already been tarnished by the unfortunate and widely reported geothermal exploration accident by the company Geotérmica del Norte (51% owned by Enel) at its El Tatio's concession, in the Antofagasta region.

---

<sup>12</sup> The Environmental Treaty signed by Chile and Argentina in 1991 is an applicable national law in Chile; for this reason, it also became an enforceable rule specifically included in the Canada-Chile Agreement on Environmental Cooperation, which Chile and Canada signed in 1997 in association with the Canada-Chile Free Trade Agreement (CCFTA) with the aim of promoting environmental development and cooperation. Therefore, the claim made by the **CDP** is fully in line with CCFTA objectives. The CCFTA also sets out a special procedure for "petitions concerning the implementation of environmental legislation", which can be initiated by any stakeholder or NGO.

<sup>13</sup> Petición del los Representantes Mapuche Pewenche a la Comisión Interamericana de Derechos Humano, Sistema Interamericano. Santa Bárbara, Chile, Lunes 24 de Noviembre de 2008. *Febrero de 2003*. REF: Miembros Comunidad Indígena Ralco Lepoy. Caso P-4617-02, Cumplimiento de las recomendaciones. *Extracto Informe Abogado Roberto Celedon Enviado A La O.E.A. En Enero 2009*. Cidh. Santiago, 05 de enero de 2009.

<http://www.cidh.org/default.htm>

Los detalles de este proceso y la totalidad de la documentación puede consultarla directamente en la página de WEB de la OEA en el siguiente enlace <http://www.cidh.oas.org/annualrep/2004sp/Chile.4617.02.htm>

We are very interested in ENEL's non-conventional renewable energy agenda and we hope that ENEL's presence in our continent will help bring about a much needed change towards decentralised distributed power generation systems and energy policies aimed at the common good, renewable sources, energy efficiency and environmental sustainability.

#### Questions For Enel's Management and Stakeholders:

Why a supposedly environmentally and socially responsible corporation as Enel hasn't already cancelled HidroAysén, the outdated and destructive mega hydroelectric project in the heart of Chilean Patagonia, inherited by Enel from Endesa, which would have devastating environmental impacts, which is fraught with high risks, whose projected costs have almost tripled in only three years, which is already negatively affecting Enel's international image... why not put all of Enel's expertise and capital on the deployment of decentralized, small-scale, socially and environmentally friendly power generation, using the sun, wind, geothermal and oceanic potentials instead of degrading watersheds, fluvial and coastal ecosystems, as well as local cultures, economies and livelihoods?

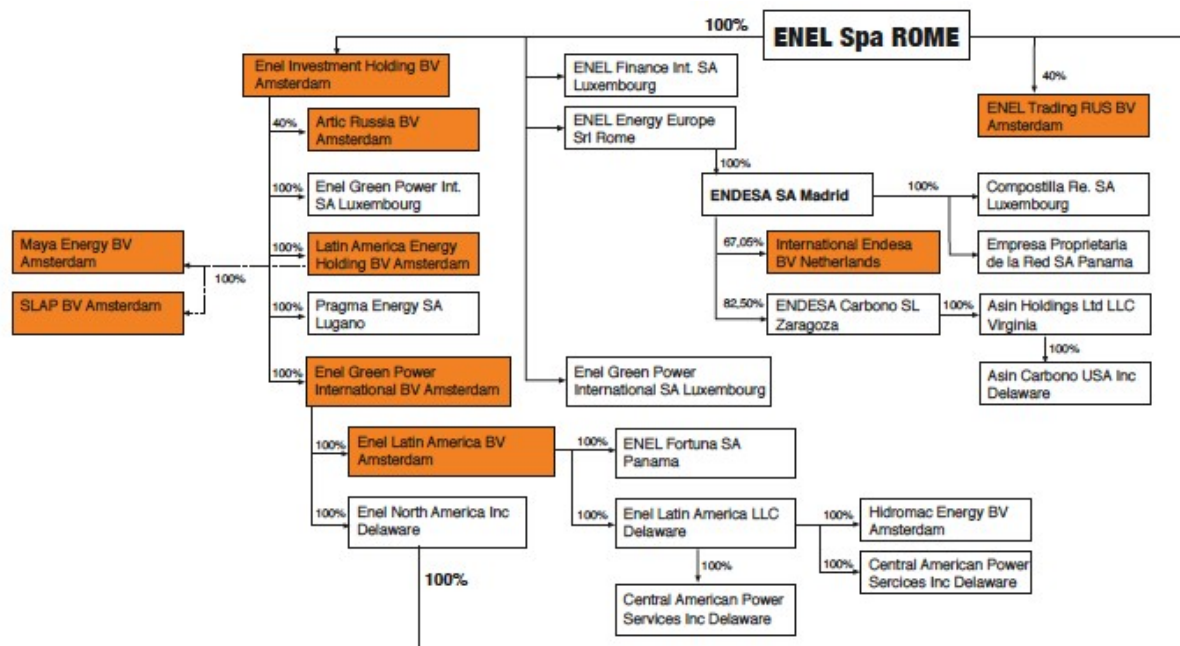
Several Chilean public agencies (Dirección General de Aguas, Servicio Nacional de Geología y Minería, Corporación Nacional Forestal, Servicio Agrícola Ganadero, Sub-Secretaría de Pesca, Ilustre Municipalidad de Tortel, Gobernación Provincial de Capitán Prat) have criticized HidroAysén's Environmental Impact Assessment for providing insufficient and flawed information concerning seismic and flooding risks, these being among the reasons that several of these agencies have actually recommended the outright rejection of HidroAysén's EIA. In light of these concerns, and the massive Feb. 27th earthquake in Chile that caused approximately US\$30 billion in damages, have shareholders in the HidroAysén project been provided with accurate information that describes the true extent of the seismic and flooding risks inherent in the project, and have the potential costs that destructive earthquake and/or flooding phenomena would have on the HidroAysén project been estimated? If so, why has the HidroAysén EIA failed to include this information?

## 4. Update on ENEL subsidiaries and controlled companies

In the last years, the Fondazione raised the problem of the complex structure of the companies, with the presence of dozen of subsidiaries in low-taxation countries, or even in countries considered as tax havens. Going through ENEL 2008 balance sheet, there were several companies registered in countries such as Delaware, Panama, Luxembourg, and others. Further in detail Enel is present in the USA with at least 63 companies based in Delaware, 100% controlled by Enel. All these companies are controlled by Enel North America Wilmington, Delaware, which at its turn is controlled by one of Enel's holdings in the Netherlands. Besides Netherlands and Delaware holdings, further holdings are based in Luxembourg.

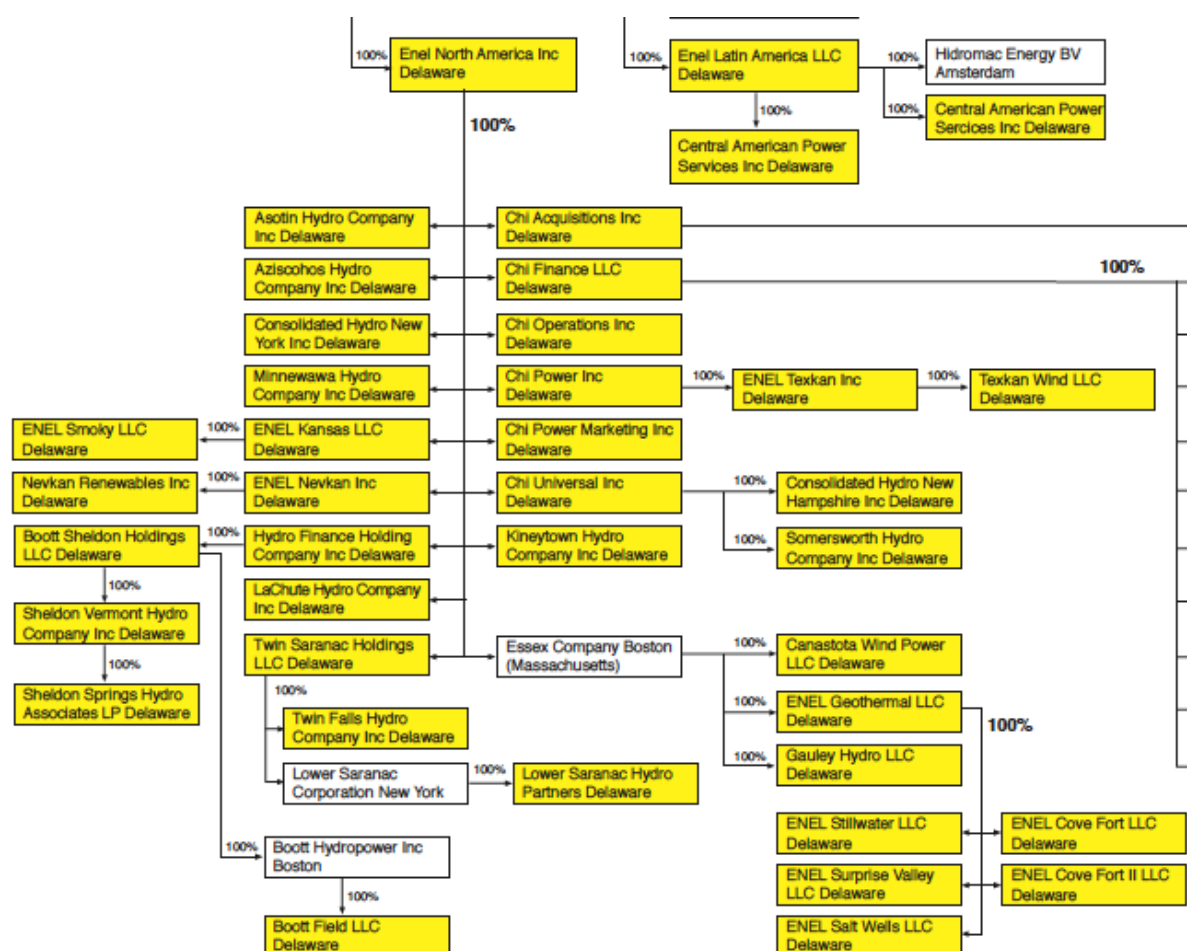
An analysis of Enel's subsidiaries and associates of the Enel Group at December 31, 2009 (Source: Enel's Annual Report 2009) demonstrated that the large majority of Enel's companies abroad (Romania, France, Russia, Albania, Greece, North America, Ireland, Belgium) are controlled (directly or indirectly) by Enel Investment Holding BV (100% owned by Enel Spa, Rome), a holding company based in Amsterdam, NL (see table below).

**Table X: Enel's investment holdings in the Netherlands (scheme by Merian Research on Enel's own data)**



Enel Investment Holding BV 100% owns another Dutch holding, Enel Green Power International BV, Amsterdam, which, at its turn, controls Enel North America Inc, Delaware, which is at the top of a long chain of Delaware companies (63 if we count only the companies that are 100% controlled by Enel), through which Enel controls its business in North America (see table below).

**Table X: Enel's investment holdings and controlled companies in Delaware (scheme by Merian Research on Enel's own data)**



An analysis of Enel Spa's financial statements highlighted that, while income taxes paid by Enel Spa in Italy amount at 9,37% of Enel's Spa total income (296.6 million EUR out of 3,163.8 million EUR, see table X), income taxes paid by the Enel's Group at a consolidated level amount at 27,8% of Enel's Group total income (2,520 million EUR out of 9,068 million EUR, see table X2)

**Table X. Performance of Enel SpA in 2009 and 2008** (from *Report and Financial Statements of Enel SpA at December 31, 2009*, Source: Enel's website)

|                                |                |                |              |
|--------------------------------|----------------|----------------|--------------|
| Income before taxes            | 3,163.8        | 2,642.9        | 520.9        |
| Income taxes                   | (296.6)        | (100.9)        | (195.7)      |
| <b>NET INCOME FOR THE YEAR</b> | <b>3,460.4</b> | <b>2,743.8</b> | <b>716.6</b> |



**Table X2. Consolidated Income Statement of Enel SpA in 2009 and 2008** (from Annual Report 2009, Source: Enel's website)

|  |    |              |   |              |             |
|--|----|--------------|---|--------------|-------------|
| <b>Income before taxes</b>   |    | <b>9,068</b> |   | <b>6,379</b> |             |
| Income taxes   | 11 | 2,520        |   | 585          |             |
| <b>Net income from continuing operations</b>   |    | <b>6,548</b> |   | <b>5,794</b> |             |
| <b>Net income from discontinued operations</b>   | 12 | <b>(158)</b> | - | <b>240</b>   | <b>(44)</b> |
| <b>Net income for the year (shareholders of the Parent Company and minority interests)</b> |    | <b>6,390</b> |   | <b>6,034</b> |             |

This means that Enel, which is controlled (31,3%) by the Italian government, is paying only one third of its income taxes to Italy. This is due to the fact that:

- foreign activities pay taxes in the countries where income is produced (France, Russia, Albania, etc.);
- dividends from foreign activities are allegedly repatriated to Dutch holding companies and ultimately to Enel Investment Holding BV Amsterdam thus paying dividend taxes in The Netherlands. When dividends are then repatriated from Enel Investment Holding BV to Enel Spa, they do not need to pay taxes again to Italy because of double taxation agreements.

All this considered, we would like to ask Enel the following questions:

- why are the company's foreign activities controlled by a Dutch holding based in Amsterdam and not by Enel Spa itself?
- which % of taxes are not paid to Italy due to Enel Investment Holding BV, Amsterdam?

As far as the massive presence of Enel's subsidiaries in the US State of Delaware, we would like to underline that, according to the "Financial Secrecy Index", published by Tax Justice Network (TJN), an independent organisation launched in the British Houses of Parliament in March 2003, Delaware is considered as the most opaque financial center in the World (see an extract of the Index below, from Tax Justice Network internet site).

The Financial Secrecy Index (FSI) creates a ranking which identifies the jurisdictions that are "most aggressive in providing secrecy in international finance, and which most actively shun co-operation with other jurisdictions". It attaches a weighting to each jurisdiction, according to the scale of cross-border financial services activity that it hosts. The two measures – the opacity score, and the weighting, are combined to create the Financial Secrecy Index.

The research of TJN has been published by several renowned international newspapers (see for example Reuters, 2009, *Delaware beats Switzerland as most secretive financial center*, 1 November, by Kim Dixon). As reported by The Guardian in 2009 (*Obama faces criticism as US state tops secrecy table*, November, by Nick Mathiason), *"The opaque nature of Delaware is seen as America's weak link in its fight against tax evasion, the financing of terrorism and drug money laundering. Both the FBI and the Financial Action*

Task Force, the high-level international body set up to combat money laundering and terrorist finance, have repeatedly expressed concern at the way some US companies use the state as a base from which to operate under their radar".

**Table X3. The Financial Secrecy Index** (from Tax Justice Network website)

## Financial Secrecy Index

**2009 Results**

Download: [PDF](#) | [Excel](#)

| Secrecy Jurisdiction  | Opacity Score | Global Scale Weight | Opacity Component Value | Financial Secrecy Index Value | Financial Secrecy Index Rank |
|-----------------------|---------------|---------------------|-------------------------|-------------------------------|------------------------------|
| <b>USA (Delaware)</b> | 92            | 0.17767             | 84.6                    | 1503.80                       | <b>1</b>                     |
| <b>Luxembourg</b>     | 87            | 0.14890             | 75.7                    | 1127.02                       | <b>2</b>                     |
| <b>Switzerland</b>    | 100           | 0.05134             | 100.0                   | 513.40                        | <b>3</b>                     |
| <b>Cayman Islands</b> | 92            | 0.04767             | 84.6                    | 403.48                        | <b>4</b>                     |

According to the internet site of the State of Delaware, *"More than 850,000 business entities have made Delaware their legal home. More than 50% of all publicly-traded companies in the United States including 63% of the Fortune 500 have chosen Delaware as their legal home"*. This is due to the fact that Delaware charges no income tax on corporations not operating within the state. And this seems to be the case of most part of Enel's companies incorporated in Delaware.

To test Delaware's financial secrecy and efficiency as offshore tax jurisdiction, we bought (for 20 \$) incorporation documents for Enel North America (registered in Wilmington, DE) from Delaware's register of companies. As one can see from an extract of the document shown below, the incorporation document gives only a very limited amount of information (incorporation date, amount of taxes paid and information about the agent by which the company has been registered). No other information was available at Delaware's online companies register, while a lot more information (about shareholders, members of the Board, net income, etc.) is normally available online for other jurisdictions and at lower prices!

"Tax information" reported in the document that we bought online only states that Enel North America has paid \$ 75 in taxes for 5,000 new authorised shares in 2009, but it does not specify which amount of taxes Enel North America paid to the State of Delaware for its general activity, nor the amount of taxable income for the company.

**Picture X, Extract from Delaware's Register of Companies for Enel North America Inc.**

| Entity Details                             |   |   |                            |
|--|---|---|----------------------------|
| <u>File Number:</u>                        | 2066844                                     | <u>Incorporation Date /<br/>Formation Date:</u> | 07/18/1985<br>(mm/dd/yyyy) |
| <u>Entity Name:</u>                        | ENEL NORTH AMERICA, INC.                    |   |                            |
| <u>Entity Kind:</u>                        | CORPORATION                                 | <u>Entity Type:</u>                             | GENERAL                    |
| <u>Residency:</u>                          | DOMESTIC                                    | State:  | DE                         |
| <u>Status:</u>                             | GOOD<br>STANDING                            | Status Date:                                    | 07/18/1985                 |
| <b><u>TAX INFORMATION</u></b>              |   |   |                            |
| <u>Last Annual Report Filed:</u>           | 2009  | Tax Due:  | \$ 0.00                    |
| <u>Annual Tax Assessment:</u>              | \$ 75.00                                    | <u>Total Authorized Shares:</u>                 | 5,000                      |
| <b><u>REGISTERED AGENT INFORMATION</u></b> |   |   |                            |
| Name:                                      | THE CORPORATION TRUST COMPANY               |   |                            |
| Address:                                   | CORPORATION TRUST CENTER 1209 ORANGE STREET |   |                            |
| City:                                      | WILMINGTON                                  | County:   | NEW CASTLE                 |
| State:                                     | DE  | Postal Code:                                    | 19801                      |
| Phone:                                     | (302)658-7581                               |   |                            |

All this considered, we would like to ask Enel the following questions:

- would it be possible to have a statement on income taxes paid by Enel's companies in Delaware?
- why are these companies registered in Delaware and not in the different US states where Enel has its activities?
- does Enel consider the reputational risk - as a company controlled by the Italian Government - of having more than 60 subsidiaries in one of the most opaque financial centres in the world, considered by the FBI and Financial Action Task Force as a base for money laundering and terrorist finance?

*“Tutte le doglianze sono sin qui elaborate con riserva di meglio illustrare e aggiungere (specie ove vi sia un riscontro auspicato da parte degli organi amministrativi) nonché al fine di vedere tutelati le facoltà ed i diritti dell'azionista istante”*

## Fondazione Culturale Responsabilità Etica Onlus

The Cultural Foundation For Ethical Responsibility was founded in the year 2003 by Banca Popolare Etica [[www.bancaetica.com](http://www.bancaetica.com)], the first Italian ethical bank, owned by over 30,000 members.

The Foundation aims at spreading awareness at the national and international levels about the consequences that economic action and the market dynamics have on society and the environment as well as on the production system. Convinced of the need for a strong revision of the economic model for an economy that can positively manage environmental and social limits, the Foundation promotes the principles of ethical finance, the criteria of social utility in the credit system and good manufacturing practice for a more conscious and responsible use of money. The Foundation is very committed on global justice and development issues too, and supports several Italian development NGOs as well as public campaigns on development issues, such as the Social Watch.

Furthermore, the Foundation is taking a leadership role within European and global alternative finance networks in order to promote a more political approach to ethical finance in solidarity with consumers in the North and affected communities both in the North and the South.

In line with its mission, the Foundation initiated innovative activities such as the eco-fair Terra Futura [[www.terrafutura.it](http://www.terrafutura.it)], the Social Value certification [[www.valoresociale.it](http://www.valoresociale.it)], the Observatory on Finance [[www.osservatoriofinanza.it](http://www.osservatoriofinanza.it)], the on-line platform Zoes (Zona equo sostenibile – Fair and Sustainable Zone) [[www.zoes.it](http://www.zoes.it)]. Valori [[www.valori.it](http://www.valori.it)] is the monthly magazine specializing in issues of social, ethical and financial sustainability, promoted by the Foundation.

Sede legale  
Via Nazario Sauro, 15  
35139 PADOVA

Sede operativa di Firenze  
Piazza dei Ciompi, 11  
50122 Firenze

Tel. (++39) 055.26.38.745  
Fax: (++39) 049.73.94.050

Website: [www.fcree.it](http://www.fcree.it)