

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 84973 / December 26, 2018**

**ACCOUNTING AND AUDITING ENFORCEMENT**  
**Release No. 4010 / December 26, 2018**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-18962**

**In the Matter of:**

**Centrais Elétricas  
Brasileiras S.A.,**

**Respondent.**

**ORDER INSTITUTING CEASE-AND-  
DESIST PROCEEDINGS, PURSUANT TO  
SECTION 21C OF THE SECURITIES  
EXCHANGE ACT OF 1934, MAKING  
FINDINGS, AND IMPOSING REMEDIAL  
SANCTIONS AND A CEASE-AND-DESIST  
ORDER**

**I.**

The Securities and Exchange Commission (“Commission”) deems it appropriate that cease-and-desist proceedings be, and hereby are, instituted pursuant to Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”), against Centrais Elétricas Brasileiras S.A. – Eletrobras (“Eletrobras” or “Respondent”).

**II.**

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”) which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which are admitted, Respondent consents to the entry of this Order Instituting Cease-and-Desist Proceedings, Pursuant to 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (“Order”), as set forth below.

### **III.**

On the basis of this Order and Respondent's Offer, the Commission finds<sup>1</sup> that:

#### **Summary**

1. These proceedings arise out of Eletrobras's violations of the internal accounting controls and recordkeeping provisions of the Foreign Corrupt Practices Act of 1977 (the "FCPA"), 15 U.S.C. § 78m.

2. As described below, former officers at Eletrobras Termonuclear S.A ("Eletronuclear"), Eletrobras's majority-owned (over 99%) nuclear power generation subsidiary, engaged in an illicit bid-rigging and bribery scheme involving the construction of a nuclear power plant ("UTN Angra III") from approximately 2009 until 2015. These officers used their influence at Eletronuclear in favor of a bid-rigging scheme among certain private Brazilian construction companies. The officers also misused their official positions in authorizing unnecessary contractors and inflating the cost of Eletronuclear's infrastructure project. In return, the construction companies involved in the scheme agreed to pay, and did pay, the former Eletronuclear officers approximately \$9 million

3. Eletronuclear paid invoices related to the inflated contracts in the ordinary course of its business because Eletrobras had failed to devise and maintain a sufficient system of internal accounting controls from 2009 through 2015. The corruption scheme at Eletronuclear caused misstatements in Eletrobras's books and records because Eletronuclear recorded payments made to UTN Angra III contractors, a percentage of which was used for bribes, as money legitimately spent to acquire and improve assets.

4. As a result, Eletrobras violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act.

#### **Respondent**

5. Eletrobras is a Brazilian power generation, transmission and distribution company based in Rio de Janeiro, Brazil. Eletrobras's common and preferred shares are registered with the Commission pursuant to Section 12(b) of the Exchange Act and trade on the New York Stock Exchange.

6. The Brazilian federal government currently owns a 51% stake in Eletrobras and appoints seven of Eletrobras's eleven board members. Eletrobras files periodic reports with the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

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<sup>1</sup> The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

## **Facts**

### **Eletrobras's Power Generation and Transmission Operations**

7. Eletrobras is a holding company. From 2009 through 2017, Eletrobras operated through as many as 13 regional subsidiaries, at least 175 special purpose entities, and non-controlling interests in approximately 25 companies. As of 2017, Eletrobras had 21,563 salaried employees, but less than 4% were employees of the holding company. Eletrobras consolidates the financial reporting of its operations at the parent level.

8. Eletrobras's core business is the generation, transmission and distribution of energy. Hydroelectric plants generally account for the vast majority of Eletrobras's total power generation, but the company also generates power from thermal and nuclear plants. As of 2017, Eletrobras owned and operated 44 hydroelectric plants and two nuclear plants.

### **UTN Angra III Timeline**

9. In 2009, Eletrobras's nuclear power generation and transmission subsidiary, Eletronuclear, began renegotiation and execution of the UTN Angra III civil construction contract then valued at approximately \$4.6 billion. In 2014, Eletronuclear executed another contract related to UTN Angra III in connection with electromechanical assembly services valued at approximately \$1.1 billion. All work on UTN Angra III was suspended in 2015.

### **Former Officers at Eletronuclear Received Bribes in a Bid-Rigging and Bribery Scheme**

10. Several Brazilian government officials, the former Eletronuclear president, and other Eletronuclear officers received bribes from Brazilian construction company executives engaged in a bid-rigging and bribery scheme involving UTN Angra III. The scheme ultimately benefited certain construction companies, at least two Brazilian political parties and Brazilian government officials, and several now former officers at Eletronuclear.

11. Specifically, construction company executives agreed to pay 2% of the UTN Angra III contract value to officials associated with two of Brazil's largest political parties (1% each). The former Eletronuclear president also received approximately \$4.1 million relating UTN Angra III. Finally, other former Eletronuclear officers collectively received approximately \$4.9 million.

12. In return, the former Eletronuclear officers used their influence over the UTN Angra III prequalification, budgeting and procurement processes to, among other things, authorize unnecessary contractors, and inflate the cost of Eletronuclear's infrastructure project. The improper payments made by the construction companies to Brazilian officials were funded, in part, using inflated contract prices or sham invoices that contractors involved in the UTN Angra III scheme submitted to Eletronuclear for payment.

## **Eletrobras's Compliance Policies and Internal Accounting Controls were Insufficient or Ineffective**

13. Eletrobras's anti-corruption policies or procedures and accounting controls relied, in part, on general or boilerplate prohibitions that did not apply to all employees or were ignored. For example, Eletrobras adopted a code of ethics in 2005 to ensure that competitiveness and profitability did not override ethical behavior. However, Eletrobras's code of ethics only applied to the holding company and made no mention of the subsidiaries and special purpose entities.

14. In 2009, Eletrobras began anti-corruption training for a small number of its workforce. The company also approved a code of conduct for its subsidiaries in 2010 that required all employees, including employees at its subsidiaries, to observe Eletrobras's ethical principles that prohibited, in part, support or contribution to political parties or campaigns for elective office. Additionally, Eletrobras's ethical principles required the selection and hiring of suppliers based on specific criteria including legal, technical, quality, cost and timeliness. However, many accounting controls designed to promote these ethical principles, such as certain contractual measurement criteria requiring that payments to suppliers be proportional to the work performed, were ignored or circumvented.

15. Many of these efforts were ineffective because of significant material weaknesses in Eletrobras's internal control over financial reporting that were not remediated for many years. For example, from 2009 through 2015 Eletrobras disclosed in its annual reports material weaknesses related to its ability to maintain an effective control environment, adequately perform risk assessments, and effectively maintain and operate controls with respect to its accounting for property, plant and equipment. Many of these material weaknesses, including the failure to maintain effective controls to ensure the completeness, accuracy, validity, and valuation over the purchase and payments of goods and services, contributed to the bribery scheme flourishing undetected for years.

16. Additionally, Eletrobras failed to devise and maintain a sufficient system of internal accounting controls in part because of weaknesses that allowed employees at the subsidiary level to ignore prohibitions against direct payments to subcontractors and allow the payment of upfront costs for work not performed. This occurred against a backdrop where Eletrobras's compliance policies and procedures were not specifically tailored to the inherent risks associated with Eletrobras's business operations.

## **Eletrobras Improperly Accounted for Expenses Relating to the UTN Angra III Project**

17. In order to effectuate the bid-rigging and bribery scheme described above, the former Eletronuclear officers involved used their influence and official positions to, among other things, authorize certain contractors, services and expenses connected to the scheme. Pursuant to this scheme, the construction companies overcharged Eletronuclear under construction contracts and contracts to provide goods and services, and used the overpayment to fund the bribes to the executives and political parties. From about 2009 until 2015, the former Eletronuclear officers

caused Eletronuclear to approve and pay invoices from contractors involved in the bid-rigging and bribery scheme relating the UTN Angra III project. At least 28 invoices were from a contractor used as a conduit for the bribes paid to the former Eletronuclear president.

18. These inflated contract prices and sham invoices were recorded by Eletronuclear as legitimate expenses for goods or services in connection with UTN Angra III and consolidated to Eletrobras. As such, Eletrobras's books and records did not, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the company's assets.

19. As a result of the conduct described above, Eletrobras violated Sections 13(b)(2)(A) and 13(b)(2)(B) of the Exchange Act. Eletrobras violated Section 13(b)(2)(A) of the Exchange Act by improperly recording, as legitimate expenses, the payment of invoices related to contracts with inflated prices that derived from the bid-rigging and bribery scheme. Eletrobras also violated Section 13(b)(2)(B) by failing to devise and maintain a sufficient system of internal accounting controls.

### **Eletrobras's Remedial Efforts**

In determining to accept the Offer, the Commission considered remedial acts promptly undertaken by Respondent and cooperation afforded the Commission staff. Eletrobras's cooperation included sharing facts developed during the course of an internal investigation by its board and voluntarily producing and translating documents. Eletrobras's remediation included disciplining employees involved in the misconduct, enhancing its internal accounting controls and compliance functions, remediating material weaknesses identified in its annual reports with the Commission, and adopting a new anti-corruption policies and procedures.

## **IV.**

In view of the foregoing, the Commission deems it appropriate to impose the sanctions agreed to in Respondent's Offer.

Accordingly, it is hereby ORDERED that:

A. Pursuant to Section 21C of the Exchange Act, Respondent cease and desist from committing or causing any violations and any future violations of Sections 13(b)(2)(A) and 13(b)(2)(B) of the Securities Exchange Act of 1934 [15 U.S.C. §§ 78m(b)(2)(A) and 78m(b)(2)(B)].

B. Respondents shall, within 10 days of the entry of this Order, pay a civil money penalty in the amount of \$2,500,000 to the Securities and Exchange Commission for transfer to the general fund of the United States Treasury, subject to Exchange Act Section 21F(g)(3). If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. § 3717.

Payment must be made in one of the following ways:

- (1) Respondent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request;
- (2) Respondent may make direct payment from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>; or
- (3) Respondent may pay by certified check, bank cashier's check, or United States postal money order, made payable to the Securities and Exchange Commission and hand-delivered or mailed to:

Enterprise Services Center  
Accounts Receivable Branch  
HQ Bldg., Room 181, AMZ-341  
6500 South MacArthur Boulevard  
Oklahoma City, OK 73169

Payments by check or money order must be accompanied by a cover letter identifying Centrais Elétricas Brasileiras S.A. as a Respondent in these proceedings, and the file number of these proceedings; a copy of the cover letter and check or money order must be sent to Charles Cain, Division of Enforcement, Securities and Exchange Commission, 100 F St., NE, Washington, DC 20549.

C. Amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that in any Related Investor Action, it shall not argue that it is entitled to, nor shall it benefit by, offset or reduction of any award of compensatory damages by the amount of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the Securities and Exchange Commission. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding.

By the Commission.

Brent J. Fields  
Secretary