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May 20, 2024

Mark J. Langer  
Clerk of Court  
U.S. Court of Appeals for the D.C. Circuit  
E. Barrett Prettyman U.S. Courthouse  
333 Constitution Ave., NW  
Room 5205  
Washington, DC 20001

RE: *NextEra Energy Global Holdings B.V., et al. v. Kingdom of Spain*, No. 23-7031 (D.C. Cir.), and *9REN Holding S.À.R.L. v. Kingdom of Spain*, No. 23-7032 (D.C. Cir.): Federal Rule of Appellate Procedure 28(j) letter about Spain's Announcement of its Withdrawal from the Energy Charter Treaty (May 9, 2024)

Dear Mr. Langer:

On May 9, 2024, Spain announced that it will withdraw from the ECT, confirming that it recognizes, despite its arguments before this Court, that the treaty binds it in these cases – and in future cases, too, so long as it remains a member.

Spain's announcement explains that it denounced the ECT by communicating its decision to the depositary of the treaty (the Portuguese Republic, *see* ECT art. 49) on April 16, 2024. The announcement acknowledges that Spain will withdraw from the ECT "in accordance with" "Article 47.2 of the Treaty," which provides that a "withdrawal shall take effect upon the

expiry of one year after the date of the receipt of the notification by the Depository,” or on a later “specified” date, ECT art. 47(2). The announcement says withdrawal “will take effect” on April 17, 2025.

Spain’s announcement shows that it recognizes, despite its arguments here, that it is bound by the ECT, including Article 47, which governs withdrawal, and that to terminate its prospective obligations under the ECT, Spain must withdraw from, not purport to rewrite, the treaty. *Accord* Vienna Convention art. 54. The announcement thus reaffirms that Spain cannot rely on internal EU law to duck its ECT obligations, and that if Spain wishes to avoid those obligations prospectively, it must use the processes the ECT provides: withdrawal (Article 47) or amendment (Article 42). NextEra Br. 52; Supp. Br. 7.

Article 47(3) underscores that Spain’s withdrawal is prospective only, with no effect here: “The provisions of this Treaty shall continue to apply to Investments made in the Area of a Contracting Party” –Spain– “by Investors of other Contracting Parties” –NextEra and 9REN– “as of the date when that Contracting Party’s withdrawal from the Treaty takes effect for a period of 20 years from such date.” ECT art. 47(3). Spain’s withdrawal thus doesn’t –and can’t– disturb its unconditional consent in ECT Article 26 to arbitrate here, or any of its preexisting substantive treaty obligations in the ECT (as applicable to NextEra and 9REN), much less its continuing obligation under the ICSID Convention to honor the awards in these cases.

Respectfully submitted,

/s/ Shay Dvoretzky

Shay Dvoretzky

*Counsel for Petitioners-Appellees*

*NextEra Energy Global Holdings B.V.,*

*et al. (No. 23-7031); Plaintiff-Appellee*

*9REN Holding S.À.R.L. (No. 23-7032)*

## CERTIFICATE OF COMPLIANCE

I hereby certify that (1) this letter complies with the type-volume limitation of Federal Rule of Appellate Procedure 28(j) because, as calculated by Microsoft Word, the body of the letter contains 350 words, and (2) this letter complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in a 14-point Book Antiqua font.

Dated: May 20, 2024

/s/ Shay Dvoretzky

Shay Dvoretzky

## CERTIFICATE OF SERVICE

I hereby certify that on May 20, 2024, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: May 20, 2024

/s/ Shay Dvoretzky

Shay Dvoretzky

## **Addendum**

Certified translation and original version, Official State Bulletin of the Kingdom of Spain (May 9, 2024)

# CERTIFICATE OF TRANSLATION

I, Roberto Cano, am over 18 years old, fluent in English and Spanish, and competent to translate from Spanish into English and from English into Spanish. I certify that I have translated the notice titled Denuncia por España del Tratado de la Carta de la Energía y del Protocolo de la Carta de la Energía sobre la eficacia energética y los aspectos medioambientales relacionados, hechos en Lisboa el 17 de diciembre de 1994, BOE-A-2024-9618, BOE n. 117, 14 May 2024, at 54515, from Spanish into English to the best of my ability, and that my translation was complete and accurate.

Signed this 16<sup>th</sup> day of May, 2024 under the pains and penalties of perjury of the United States.



Roberto Cano  
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Washington, D.C., 20005  
+1 (202) 371-7434

NOTARY PUBLIC

District of Columbia

Signed and sworn to (or affirmed) before me on  
5/16/2024 by Roberto Cano  
Date Name(s) of Individuals(s) making statement

Signature of Notarial Officer

Seal

Notary Public  
Title of Office

My Commission Expires: 8/31/2028



## I. GENERAL DISPOSITIONS

### MINISTRY OF FOREIGN AFFAIRS, EUROPEAN UNION AND COOPERATION

- 9618 *Denunciation by Spain of the Energy Charter Treaty and the Energy Charter Protocol on energy efficiency and related environmental aspects, signed in Lisbon on December 17, 1994.*

Through a Verbal Notice on April 16, 2024, submitted to the Ministry of Foreign Affairs of the Portuguese Republic, Spain has denounced the Energy Charter Treaty, signed in Lisbon on December 17, 1994.

In accordance with the provisions in article 20.2 of the Energy Charter Protocol on energy efficiency and related environmental aspects, signed in Lisbon on December 17, 1994, Spain's complaint of the Energy Charter Treaty will also include the denunciation of this Protocol,

The Treaty and the Protocol entered into effect for Spain on April 16, 1998 (OSB number 65, of March 17, 1998, with corrections of errors in OSB number 140, of June 12, 1998).

The complaint, both of the Treaty and the Protocol, will take effect for Spain on April 17, 2025, one year after the date on which the verbal notice from Spain was received by the Ministry of Foreign Affairs of the Portuguese Republic, recipient thereof. All of this in accordance with the provisions in article 47.2 of the Treaty and article 20.3 of the Protocol.

Madrid, May 9, 2024. – The General Technical Secretary, Rosa Velázquez Álvarez.

## I. DISPOSICIONES GENERALES

### MINISTERIO DE ASUNTOS EXTERIORES, UNIÓN EUROPEA Y COOPERACIÓN

**9618** *Denuncia por España del Tratado de la Carta de la Energía y del Protocolo de la Carta de la Energía sobre la eficacia energética y los aspectos medioambientales relacionados, hechos en Lisboa el 17 de diciembre de 1994.*

Mediante Nota Verbal de 16 de abril de 2024, remitida al Ministerio de Asuntos Exteriores de la República Portuguesa, España ha denunciado el Tratado de la Carta de la Energía, hecho en Lisboa el 17 de diciembre de 1994.

De conformidad con lo dispuesto en el artículo 20.2 del Protocolo de la Carta de la Energía sobre la eficacia energética y los aspectos medioambientales relacionados, hecho en Lisboa el 17 de diciembre de 1994, la denuncia por España del Tratado de la Carta de la Energía llevará aparejada también la denuncia de este Protocolo,

El Tratado y el Protocolo entraron en vigor para España el 16 de abril de 1998 (BOE número 65, de 17 de marzo de 1998, con corrección de errores en el BOE número 140, de 12 de junio de 1998).

La denuncia, tanto del Tratado como del Protocolo, surtirá efectos para España el 17 de abril de 2025, un año después de la fecha de recepción de la nota verbal de España por el Ministerio de Asuntos Exteriores de la República Portuguesa, depositario de los mismos. Todo ello de conformidad con lo dispuesto en el artículo 47.2 del Tratado y en el artículo 20.3 del Protocolo.

Madrid, 9 de mayo de 2024.–La Secretaria General Técnica, Rosa Velázquez Álvarez.