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May 22, 2024

Via Electronic Case Filing

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

Re: Rule 28(j) Response in *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, No. 23-7031, and *9REN Holding S.Á.R.L. v. Kingdom of Spain*, No. 23-7032 (argued February 28, 2024 before Pillard, Pan, and Rogers, JJ.)

Dear Mr. Langer:

I write in response to appellees' May 20 letter discussing Spain's withdrawal from the Energy Charter Treaty.

Spain and the EU have legally committed themselves to achieving carbon neutrality by 2050. Regulation 2021/1119, 2021 O.J. (L 243) 1; Climate Change and Energy Transition Act 7/2021 (Spain). As the European Commission has observed, the Energy Charter Treaty—a 1990s agreement to develop fossil-fuel resources in the former Soviet bloc—“is no longer compatible with the EU’s enhanced climate ambition.” Eur. Comm’n, *European Commission Proposes a Coordinated EU Withdrawal from the Energy Charter Treaty* (July 7, 2023), <https://tinyurl.com/zfr9986e>. The Treaty, for example, commits signatories “to facilitate the Transit of Energy Materials and Products,” including coal, natural gas, and crude oil. Energy Charter Treaty art. 7(1), annex EM. And signatories must eliminate “obstacles to the transfer of technology ... and related equipment and services” to exploit fossil fuels. *Id.* art. 8(2), annex EM. Those provisions are fundamentally incompatible with Spain and the EU’s climate-change goals.

Accordingly, seven other EU members¹ have withdrawn from the Treaty and the EU itself is in the process of doing so. See Int’l Energy Charter, *Written Notification of Withdrawal* (Mar. 7, 2024), <https://tinyurl.com/bdfn74f4>; Eur. Parliament Consent, P9_TA(2024)0335. As Blasket previously observed, Spain has long contemplated withdrawing. Blasket Reply Br. 17 n.3. So have several other EU members. Kate Abnett, *EU to Propose Exit from Energy Charter Treaty*

¹ France, Germany, Italy, Luxembourg, Poland, Portugal, and Slovenia.

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Over Climate Concerns, Reuters (June 29, 2023), <https://tinyurl.com/3epeckn6>. The May 9 bulletin appellees now highlight simply formalizes Spain's process.

Spain's sovereign pursuit of its climate policy does not concede that Spain "consented ... to arbitrate" here. *Contra* Letter 2. Spain has never argued that it is not "bound by the ECT." *Contra* Letter 2. The Energy Charter Treaty contains numerous generally applicable provisions, like those cited above, that are incompatible with Spain's climate goals. As for arbitration, Spain stood "ready, willing, and able to arbitrate with investors" from the Energy Charter Treaty's 24 non-EU signatories. Spain Br. 42. Spain's withdrawal in no way suggests that Spain could or did consent to intra-EU arbitration.

Sincerely,

/s/ Sarah M. Harris

Sarah M. Harris