IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Joint Stock Company State Savings Bank of Ukraine (a/k/a JSC Oschadbank), Petitioner, v. The Russian Federation, Respondent.	CIVIL ACTION NO. 1:23-cv-00764 (ACR)

RESPONDENT RUSSIAN FEDERATION'S RESPONSE TO NOTICE OF SUPPLEMENTAL AUTHORITY (ECF 54) OF JOINT STOCK COMPANY STATE SAVINGS BANK OF UKRAINE (OSCHADBANK)[1]

Oschadbank's Notice (ECF 54) misstates the application of *NextEra Energy Global Holdings B.V. v. Kingdom of Spain*, 2024 WL 3837484 (D.C. Cir. Aug. 9, 2024) to this case.

First, *NextEra* does not preclude the RF's argument that there is no jurisdiction under FSIA, §1605(a)(6) because the RF never offered to arbitrate this dispute, given, *inter alia*, Crimea was not considered Russian territory under the 1998 BIT. *See* MTD, ECF 38, at 13-15; MTD Reply, ECF 51, at 7. In support of the RF's view of jurisdiction, *NextEra* states, "[w]e therefore may look to the investment treaty itself to identify the ***scope of the sovereign's consent*** and the relevant agreement for purposes of the FSIA's arbitration exception." *Id.*, at 28. This is exactly what the RF argues – in order to decide jurisdiction, the Court must identify the "scope of the sovereign's consent" by determining what the RF offered to arbitrate, which did not include Crimea, which was not Russian territory under the BIT at the time the investment was made. And, as explained in the MTD Reply, at 5-6, this Court must decide this jurisdictional now, even if it overlaps the merits, as mandated *Helmerich*, 581 U.S. at 179.

[1] Unless otherwise stated, all emphases are added, and all citations, quotation marks, footnotes, ellipses and brackets omitted. Abbreviated citations and defined terms are those used in the MTD.

Second, *NextEra* does not preclude the RF's argument that Oschadbank is not a "private party" under §1605(a)(6) because it is 100% owned by Ukraine. *See* MTD, at 30; MTD Reply, at 20. The Notice cites *NextEra* for the proposition that "an investment treaty can both (1) constitute an agreement 'for the benefit' of a private party; and (2) give rise to a separate agreement 'with' a private party." But this is all irrelevant to the RF's argument that Oschadbank is not a "private party", and, thus, §1605(a)(6) does not apply. As explained in the MTD Reply, at 21, the "private party" must be the claimant. Oschadbank is not a "private party" but the foreign state itself under §1603(b). *NextEra* does not address whether a governmental entity like Oschadbank can avail itself of FSIA's arbitration exception, which is statutorily limited to private parties.

Third, *NextEra* has nothing to do with the RF's argument that there is no "legal relationship … which is considered as commercial" under the N.Y. Convention. *See* MTD, at 34-36; MTD Reply, at 22-23. Here, the RF argues: (1) there is no legal relationship between Oschadbank and the RF because, *inter alia,* Crimea is not Russian territory under the BIT, and (2) there is no "commercial" relationship because the dispute is between two foreign states. *NextEra* literally does not discuss this jurisdictional issue.

Respectfully, *NextEra* is irrelevant to this case for the reasons asserted by Oschadbank.

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