

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
(BID PROTEST)**

SPACE EXPLORATION)	
TECHNOLOGIES CORP.)	
Plaintiff,)	Civil Action No. 14-354C
v.)	Judge: Braden
THE UNITED STATES,)	
Defendant,)	
and)	
UNITED LAUNCH SERVICES, LLC,)	
Defendant-Intervenor.)	

**PLAINTIFF’S RESPONSE TO DEFENDANT’S MOTION TO DISSOLVE
PRELIMINARY INJUNCTION**

Plaintiff Space Exploration Technologies Corp. (“SpaceX”) respectfully submits this response to the United States’ Motion to Dissolve Injunction, and Request for Expedited Consideration.

The Court enjoined Defendant and Intervenor from making any purchases from or payments to NPO Energomash or any other entity controlled by Russian Deputy Prime Minister Dmitry Rogozin “unless and until” they provide the Court with opinions from the Departments of Treasury, Commerce and State “that any such purchases or payments will not directly or indirectly contravene Executive Order 13,661.” What Defendant has provided instead with its motion are three nonresponsive letters stating that these agencies have simply not yet made any determination one way or the other regarding whether payments to NPO

Energomash violate Executive Order 13,661. For example, the Department of Treasury expressly states that “in our view, control by Deputy Prime Minister Rogozin of NPO Energomash, if true, could be a potential basis for OFAC to block formally the property and interests in property of the company pursuant to Executive Order 13661[.]” But rather than actually make a determination one way or the other, Treasury’s letter states only that, “as of today,” they have not *yet* done so.¹ In Defendant’s view, the agencies’ failure to conduct the analysis that the Court requested merits the Court’s lifting of its Preliminary Injunction. SpaceX respectfully disagrees and submits that the injunction should remain in place until the Court receives the three letters that it requested.

Among other things, Executive Order 13,661 and companion Executive Orders 13,660 and 13,663 block—i.e., prohibit transfer, payment, export, withdrawal or any other dealing in—any property that comes from individuals or entities determined (1) “to operate in the arms or related materiel sector in the Russian Federation” or (2) “to be owned or controlled by or have acted or purported to act for or on behalf of, *directly or indirectly*, a senior official of the Government of the Russian Federation or a person whose property [is] blocked pursuant to this order.” (emphasis added). There should be little doubt that the Russian engines at issue come from an entity that operates in the Russian arms or related materiel sector and is controlled by or acts at least indirectly if not directly on behalf of Russian government officials, including Rogozin as an explicitly blocked official.

NPO Energomash—as Russia’s leading developer and manufacturer of liquid propellant rocket engines—certainly operates in the arms or related materiel sector. The Arms Export

¹ While SpaceX quotes here from the Department of Treasury letter, the Department of State letter contains *identical* language, and the Department of Commerce merely “defers to the Departments of the Treasury and State[.]”.

Control Act (AECA)², as implemented by the International Traffic in Arms Regulations, which are administered by the State Department’s own Bureau of Political-Military Affairs, designates launch vehicle power plants (i.e., rocket engines) as not only “Defense Articles” but also as “Significant Military Equipment.”³ If more were needed, a quick visit to NPO Energomash’s own website speaks to the significant work that it has done developing and building ICBMs and the ongoing use of its rocket engines in military launch vehicles.⁴ Indeed, just this week, Russia launched a spy satellite using an NPO Energomash-made rocket engine.⁵

And NPO Energomash is just as certainly controlled by and/or acts (whether directly or indirectly) on behalf of senior Russian officials, including Rogozin. Its 2012 annual report—the most recent available—reveals that NPO Energomash is 86% directly owned by the Russian Federation and 14% owned by RSC Energia.⁶ Its Board of Directors includes the Head of the Russian Property Management Agency, two Heads and a Deputy Head of the Russian Space

² 22 U.S.C. §§ 2751 – 2799.

³ See U.S. Munitions List, Category IV(d). 22 CFR 121.1. See also definition of “Defense Article” (22 CFR 120.6) and “Significant Military Equipment” (22 CFR 120.7).

⁴ See <http://www.npoenergomash.ru/eng/> (“NPO Energomash ... is leading enterprise in the world on development of powerful liquid rocket engines for space launch-vehicles.... For last years it has [developed] near[ly] 60 [liquid propellant rocket engines] which were produced serially and were in operation *and continue to be in operation in structure of space and military launch-vehicles.*).

⁵ William Graham, “Soyuz-2-1A launches Kobal’t-M reconnaissance satellite,” NASASpaceflight, May 6, 2014, available at <http://www.nasaspaceflight.com/2014/05/soyuz-2-1a-kobalt-m-reconnaissance-satellite/>.

⁶ RSC Energia is itself largely controlled by the Russian Federation. See RSC Energia’s 2012 Annual Report, available at http://www.energia.ru/en/corporation/inf_shareh.html. The entire Russian space sector has recently become more centralized under Putin and Rogozin. See, e.g., <http://www.themoscowtimes.com/business/article/putin-signs-united-rocket-and-space-corporation-into-existence/490824.html>.

Agency, and the President and Senior Vice President of RSC Energia. And Rogozin himself is apparently actively involved in NPO Energomash's operations.⁷

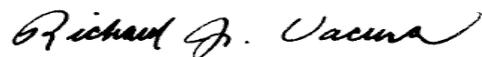
In light of these facts, if Treasury reviews NPO Energomash's activities, it presumably would determine that NPO Energomash does operate in the arms sector in Russia and is controlled by a senior Russian government official, in which case dealings by ULS with Energomash would be prohibited. Given the importance of this matter to the Court's decision, Treasury should promptly review NPO Energomash's activities and make the appropriate determination, including whether the nature of ULS's dealings with NPO Energomash implicate the sanctions on Rogozin. In any event, Defendant should not be permitted to evade the injunction until the Court receives the agency opinions that it requested.

While SpaceX did not request the Preliminary Injunction, it is worth noting that from the first moment the Court raised obvious questions about whether the continued procurement of Russian rocket engines violates President Obama's Executive Orders, Defendants have attempted to raise technicalities in an effort to avoid the substance of those Executive Orders. Their most recent submission is no different.

⁷ For example, when NPO Energomash's security was breached, Rogozin made it clear that he controlled the company. *See* "Minister Orders Russian Space Agency Security Blitz after Blogger Invasion," *Ria Novosti*, December 29, 2011, available at <http://en.ria.ru/russia/20111229/170546115.html>.

DATED: May 7, 2014

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Plaintiff's Response to Defendant's Motion to Dissolve Preliminary Injunction was served this 7th day of May, 2014, on the parties through the Court's electronic filing system.

/s/ Pablo A. Nichols
Pablo A. Nichols