

## Untimely Filing Costs Successful Plaintiff its Costs

In July of 2012, the Federal Circuit largely affirmed a decision by the CFC to award over \$10.6 million in breach of contract damages stemming from the Government's failure to accept spent nuclear fuel from the owners of the Wolf Creek Generating Station in Coffey County, Kansas. On remand, the CFC entered a revised judgment in favor of the utility companies.

Under the CFC's Rules, costs to the prevailing party are recoverable if the bill of costs is filed within 30 days of final judgment. But in this case, an unusual procedural wrinkle arose—the Federal Circuit had not remanded the case back to the CFC before the CFC entered its revised judgment. So the utility companies reasoned that the time to file an appeal was 90 days—the period of time in which the Government could file a petition for certiorari to the U.S. Supreme Court—from the entry of the CFC's final judgment.

But the trial court held that the bill of costs was due much earlier. Without specifying what date the bill of costs was actually due, the Court found that under any reasonable interpretation of the rules, the bill of costs was filed too late:

*The only confusion that Plaintiffs cite was the question on what date judgment in the case became final and not appealable, thus triggering the 30-day time for filing a BOC under RCFC 54: whether, because there was no actual remand, they should have counted 90 days from the Federal Circuit's October 1, 2012, denial of the Government's motion for panel rehearing on the overhead issue, when the Government's opportunity for certiorari would be over; or whether the RCFC [54's] 30-day period was to start running once 60 days—the time for appealing again to the Federal Circuit—had passed from the entry of the revised judgment in the trial court, that is, from November 1, 2012. Either way, however, Plaintiffs' deadline for filing their BOC had passed prior to their having filed it on February 6, 2013.*

Notably though, the CFC also flatly rejected the Government's argument that it had no authority to extend the time for a bill of costs, but here the CFC found that the delay was not excusable and granted the Government's motion to dismiss the bill. The case is *Kansas Gas & Electric Co. v. United States*.

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