Department of Energy Faces Full Spent Nuclear Fuel Damages

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In 1983, the U.S. Department of Energy and Entergy Nuclear Indian Point 2, LLC (Consolidated Edison's predecessor in interest) contracted to remove and dispose of spent nuclear fuel and high-level radioactive waste. The Government failed in its contractual obligation to dispose of spent nuclear fuel and therefore partially breached the agreement. Entergy Nuclear claimed damages of $37.4 million for a period from 2008 to 2013 for this partial breach.

The Government moved for partial summary judgment regarding Entergy Nuclear's claim for $1.9 million in damages for fees Entergy Nuclear paid to the Nuclear Regulatory Commission. The Government argued that Entergy Nuclear was collaterally estopped from seeking recovery of these fees.

The Court, however, disagreed and denied the Government's motion, holding that there were genuine issues of material fact that precluded summary judgment. The Court held that to establish collateral estoppel, the moving party must show that all four conditions have been met: (1) the issue is identical to one decided in the first action, (2) the issue was actually litigated in the first action, (3) resolution of that issue was essential to the final judgment in the first action, and (4) the plaintiff had a full and fair opportunity to litigate that issue in the first action. Here, the Court the concluded that at least two conditions had not been met. First, the Court concluded that significant financial considerations outweighed Entergy Nuclear's incentive to fully litigate the issue of the National Regulatory Commission fees. In addition, the Court agreed with Entergy Nuclear that there had been an undeniable shift in the law that precluded the application of collateral estoppel.

The Court held that because there are no prior judgments that preclude Entergy Nuclear's claim for National Regulatory Commission fees assessed against it, those claims will be considered on the merits as part of damages.

Read full decision here.