

# In the United States Court of Federal Claims

No. 03-2625C

(Filed: September 21, 2016)

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**ENTERGY GULF STATES, INC., and  
ENTERGY GULF STATES  
LOUISIANA, L.L.C.,**

**Plaintiffs,**

**v.**

**THE UNITED STATES,**

**Defendant.**

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**Spent Nuclear Fuel; Partial  
Breach of Contract; Damages;  
Causation; Cask Loading Costs.**

Alexander D. Tomaszczuk, Pillsbury Winthrop Shaw Pittman LLP, 1650 Tysons Boulevard, McLean, VA 22102, for Plaintiffs. Jay E. Silberg, and Clare Cavaliero Pincoski, Pillsbury Winthrop Shaw Pittman LLP, 1200 17<sup>th</sup> Street NW, Washington, D.C. 20036, Of Counsel. L. Jager Smith, Jr., Jager Smith LLC, 1340 Echelon Parkway, Jackson, MS 39213, Of Counsel.

Benjamin C. Mizer, Robert E. Kirschman, Jr., Allison Kidd-Miller, and Eric P. Bruskin, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 480, Ben Franklin Station, Washington, D.C. 20044, for Defendant. Christopher J. Carney, Christopher K. Wimbush, and Anand R. Sambhwani, U.S. Department of Justice, Civil Division, Commercial Litigation Branch, P.O. Box 480, Ben Franklin Station, Washington, D.C. 20044, Of Counsel. Jane K. Taylor, U.S. Department of Energy, Office of General Counsel, 100 Independence Avenue, SW, Washington, DC 20585, Of Counsel.

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**OPINION AND ORDER ENTERING PARTIAL JUDGMENT**

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**WILLIAMS**, Judge.

This opinion is a continuation of the Court’s prior decision in Entergy Gulf States, Inc. v. United States, 125 Fed. Cl. 678 (2016), which deferred one claim pending the decision of the United States Court of Appeals for the Federal Circuit in System Fuels, Inc. v. United States, 818 F.3d 1302 (Fed. Cir. 2016). Following a 12-day trial beginning in 2015, this Court awarded Plaintiffs a partial judgment of \$42,341,604 in damages for site modifications, payroll and materials loaders, and additional security. Entergy Gulf States, 125 Fed. Cl. at 718. The Court stayed consideration of Plaintiffs’ claim for cask loading costs, including fuel characterization, as the cask loading cost issue was under consideration by the Federal Circuit in System Fuels. Id. at 703.

The Federal Circuit issued its opinion in System Fuels on April 4, 2016, finding that because storage casks may not be used for transportation, “System Fuels was entitled under the law to all of the costs of loading these storage casks.” Sys. Fuels, 818 F.3d at 1306-07. The court stated that the expenses incurred for loading the storage casks “are expenses incurred entirely for storage due to the government’s breach,” and that because the storage casks cannot be used for transportation, “System Fuels will be required, if and when the government begins to comply, . . . to unload the spent nuclear fuel from these storage casks and reload it into suitable transportation casks provided by the government.” Id. at 1307.

Following the issuance of the Federal Circuit’s decision, this Court permitted supplemental briefing on Plaintiffs’ claims for cask loading and fuel characterization costs. Order (May 20, 2016). The parties filed their supplemental briefs on June 22, 2016.

In light of the Federal Circuit’s ruling in System Fuels, Defendant no longer contests the \$5,143,279 in damages Plaintiffs claim for the preparation, packaging, and loading of spent nuclear fuel. See Sys. Fuels, 818 F.3d at 1306-07. The Court awards Plaintiffs \$5,143,279 for this activity. The Court also awards Plaintiffs \$7,930 in allegedly unsupported costs and \$46,555 in payroll loader costs associated with the preparation, packaging, and loading of spent nuclear fuel. See Entergy Gulf States, 125 Fed. Cl. at 706-08.

Pursuant to Rule 54(b), there being no just reason for delay, the Clerk is directed to enter partial judgment for Plaintiffs in the amount of \$5,197,764. This case shall remain open pending resolution of Plaintiffs’ claim for fuel characterization costs. Briefing on that claim will close on **September 30, 2016**.

s/Mary Ellen Coster Williams  
**MARY ELLEN COSTER WILLIAMS**  
**Judge**