

In the United States Court of Federal Claims

No. 98-126C
(Filed July 13, 2012)

YANKEE ATOMIC *
ELECTRIC COMPANY, *
Plaintiff, *
v. *
THE UNITED STATES, *
Defendant. *

ORDER

Pursuant to RCFC 54(d)(1)(B) a bill of costs must be filed "[w]ithin 30 days after the date of final judgment as defined in 28 U.S.C. § 2412(d)(2)(G)." As so defined, when an appeal is filed, a judgment does not become final until the appellate court has issued its mandate and the time for filing a petition for certiorari with the Supreme Court has expired. Impresa Constuzioni Geom, Domenico Garufi v. United States, 531 F.3d 1267, 1372 (Fed. Cir. 2008).

In the instant case the time for filing a petition for certiorari has not expired with the result that the 30-day period for filing a bill of costs pursuant to RCFC 54(d)(1)(B) has not commenced.

Nevertheless, plaintiff has filed and corrected a bill of costs, and defendant has moved to have it returned to plaintiff unfiled or for its dismissal as premature. Plaintiff objects to defendant's motion.

As cited by defendant, in its briefs, most court precedent supports dismissal without prejudice to subsequent refileing as the remedy for a premature bill of costs filing. There also exists precedent for deeming the premature bill filing to be

1/ This shall also be deemed applicable in Connecticut Yankee v. United States, No. 98-154 C and Maine Yankee v. United States, No. 98-474 C.

subsequently filed during the appropriate 30-day period. *Brewer v. American Battle Monuments Comm'n*, 814 F.2d 1564, 1569 (Fed. Cir. 1987).

Accordingly, it is **ORDERED** that:

(1) Plaintiff's bill of costs shall be held by the clerk in abeyance to await the occurrence of judgment finality as defined in 28 U.S.C. § 2412(d)(2)(G).

(2) Upon judgment finality pursuant to (1) plaintiff shall promptly file a notice to proceed with its bill of costs being held or, alternatively, file a substitute bill.

(3) The time for objections under RCFC 54(d)(1)(C)(i) shall commence to run upon service of plaintiff's notice or substitute bill of costs filed pursuant to (2).

(4) Defendant's motion for the return of plaintiff's bill of costs or its dismissal is **GRANTED** to the extent provided herein and is, otherwise, **DENIED**.

s/ James F. Merow

James F. Merow

Senior Judge