

In the United States Court of Federal Claims

No. 14-1228C

(Filed: December 29, 2016)

GUSC ENERGY, INC.,

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Plaintiff,

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v.

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THE UNITED STATES,

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Defendant.

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OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR RECONSIDERATION

On November 8, 2016, this Court awarded Plaintiff GUSC Energy, Inc. \$456,860 that the Government had failed to pay under the Section 1603 grant program. Op., Dkt. No. 58. GUSC Energy has filed a motion for reconsideration of this Court's Opinion and Order pursuant to Rule 59(a) of the Court of Federal Claims ("RCFC"). In that Opinion, the Court found that GUSC Energy had failed to present at trial an activity-based allocation of its biomass plant's cost basis between qualifying electricity production and non-qualifying steam heat production. Op. at 7–8. Still, the Court found the Government expert's allocation method to be more reasonable than the Government's initial allocation method, so the Court awarded GUSC Energy damages based on that expert's allocation method. Id.

In its motion, GUSC Energy argues that the Court's activity-based allocation leads to manifestly unjust results. First, it argues that the Court should not have performed an activity-based allocation "on a facility-wide basis" in the context of GUSC Energy's biomass plant. See Mot. for Reconsideration at 4–5, Dkt. No. 62 (filed Dec. 6, 2016). It next points to components and upgrades of its biomass plant that, it alleges, relate solely to electricity production. Id. at 6–11. GUSC Energy further argues that its award does not align with the allocation the Court performed in W.E. Partners II, LLC v. United States,

119 Fed. Cl. 684 (2015), aff'd without published opinion, 636 F. App'x 796 (Fed. Cir. 2016). Mot. for Reconsideration at 11–13.

Under RCFC 59(a)(1), a court may alter or amend a judgment on a motion for reconsideration. When a party moves for reconsideration under RCFC 59(e), it “must support its motion for reconsideration by a showing of exceptional circumstances justifying relief based on a manifest error of law or mistake of fact.” Stueve Bros. Farms, LLC v. United States, 107 Fed. Cl. 469, 474, aff'd, 737 F.3d 750 (Fed. Cir. 2013) (citations omitted). The Court may reconsider its judgment if the movant shows “(1) that there has been an intervening change in controlling law, (2) that previously unavailable evidence is now available, or (3) that the motion is necessary to prevent manifest injustice.” Salem Fin., Inc. v. United States, 119 Fed. Cl. 84, 86 (2014). Where a party bases its reconsideration motion on the ground of manifest injustice, “it cannot prevail unless it demonstrates that any injustice is apparent to the point of being almost indisputable.” Stueve Bros. Farms, 107 Fed. Cl. at 475 (citation omitted). Further, a party may not raise arguments for the first time on a motion for reconsideration. See Lamle v. Mattel, Inc., 394 F.3d 1355, 1359 n.1 (Fed. Cir. 2003). Finally, a motion for reconsideration is not an opportunity for an unhappy litigant to have an “additional chance to sway the court.” Matthews v. United States, 73 Fed. Cl. 524, 525 (2006) (citation omitted).

Here, there was no intervening change in controlling law, and no new evidence has come to light that would impact the Court’s decision in this case. The Court further finds that its decision is not manifestly unjust. The biomass plant is a cogeneration plant, and therefore it uses the same components to produce both electricity and steam (the exhaust product of the electricity generation process). Therefore, allocation of costs between these two activities on a facility-wide basis is appropriate. The Government presented a reasonable activity-based allocation through expert testimony. GUSC Energy chose not to present such an allocation at trial, and it may not raise possible activity-based allocations for the first time in its reconsideration briefing.¹ See Lamle, 394 F.3d at 1359 n.1. In sum, the Court has considered the evidence in this case extensively, and is not convinced that reconsideration of its award is warranted. Therefore, Plaintiff’s motion for reconsideration is DENIED.

IT IS SO ORDERED.

s/Thomas C. Wheeler
THOMAS C. WHEELER
Judge

¹ Further, more detailed evidence of costs associated with various components of the biomass plant would not change the Court’s conclusion that its allocation between steam heat production and electricity production on a facility-wide basis is appropriate.