

IN THE UNITED STATES COURT OF FEDERAL CLAIMS  
No. 04-118-C

(December 19, 2005)

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ROCHESTER GAS AND ELECTRIC )  
CORPORATION, )  
and )  
R. E. GINNA NUCLEAR POWER )  
PLANT, LLC, )  
Plaintiffs, )  
v. )  
UNITED STATES, )  
Defendant. )

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ORDER

Pending before the court is a Notice of Indirectly Related Case and Motion to Transfer and Suggestion of Consolidation of this case with *Constellation Generation Group, LLC, et al. v. United States*, No. 04-68C. That motion was filed by R.E. Ginna Nuclear Power Plant, LLC (“Ginna”), a plaintiff in this case. The government has responded to the Notice and Motion, but the other plaintiff, Rochester Gas, has not. Ginna has filed a reply.

The motion to transfer and consolidate is quite unusual in that the *Constellation* case is related to the instant case only insofar as they are actions based upon contracts for disposal of spent nuclear fuel and one of the two plaintiffs in the instant case, Ginna, is an affiliate of the Constellation group. Ordinarily, in these circumstances, given the tenuous link between the cases, the court would neither transfer this case nor would it be consolidated with the *Constellation* case. See *Entergy Nuclear Indian Point 2, LLC v. United States*, 62 Fed. Cl. 798, 801-03 (2004). Moreover, in the instant case, an unusual partial assignment complicates the claims of the two plaintiffs and would introduce a separate and distinct set of issues into any trial, thus complicating and making more difficult consolidation of this case with any other. See *Rochester Gas and Elec. Corp. v. United States*, 65 Fed. Cl. 431 (2005).

Nonetheless, as contemplated by Rule 40.2(b)(3), the judges assigned to the instant case and the *Constellation* case have conferred regarding the motion to transfer and have reached a decision that transfer is appropriate. Thus, the motion to TRANSFER is GRANTED, and, with

the agreement of Senior Judge Margolis to whom the *Constellation* case is assigned, this case shall be transferred to Senior Judge Lawrence S. Margolis.

The suggestion regarding consolidation is deferred pending further action by Senior Judge Margolis.

It is so ORDERED.

s/ Charles F. Lettow

Charles F. Lettow

Judge