Federal Circuit Affirms Interior Department Breach of Contract for $6.8 Billion Natural Gas Pipeline

In *Rockies Express Pipeline LLC v. Salazar*, the U.S. Court of Appeals for the Federal Circuit recently affirmed a decision by the Civilian Board of Contract Appeals that the U.S. Department of the Interior breached its contract with a developer of a $6.8 billion natural gas pipeline project. The Court also reversed the Board's decision to severely limit the calculation of damages.

The case involved the plan to construct a $6.8 billion pipeline that ships gas from Wyoming to Ohio in two phases. As a "royalty-in-kind" for leases to extract natural gas from federal land, Rockies Express agreed to reserve 2.5% of the gas shipped on the pipeline for the U.S. Department of the Interior. Under the now-defunct royalty-in-kind program, the federal government received royalties for mineral resource extraction on federal lands in actual minerals, rather than in cash. Interior also agreed to pay monthly "reservation charges" of up to $1.6 million per month, which helped ensure that the government received its gas and enabled Rockies Express to recoup its massive capital investment.

In 2008, however, before completion of the eastern leg of the pipeline, the government refused to execute a necessary "Firm Transportation Agreement" required by the Precedent Agreement, demanding that the parties negotiate an agreement using Federal Acquisition Regulation provisions, rather than using the standard industry contract. After negotiations failed, the government refused to execute the standard industry contract and stopped shipping gas on the pipeline, contrary to the Precedent Agreement. Rockies Express sued for breach of the contract.

The Civilian Board of Contract Appeals held that the Interior Department breached the contract by not paying the reservation charges or signing the necessary standard industry contract. Rockies Express sought ten-years-worth of reservation charges ($173 million), but the Board limited damages to $6.8 million, reasoning that the government would have exercised a termination option based on an announced policy decision to terminate the royalty-in-kind program.

On appeal, the Federal Circuit affirmed the liability ruling but reversed and remanded the Board's decision limiting damages.

The opinion can be found here.