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SOL (MSHA) V. MONTEREY COAL
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Federal Mine Safety and Health Review Commission
Office of Administrative Law Judges

SECRETARY OF LABOR,
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),
PETITIONER

Civil Penalty Proceeding

Docket No. WEVA 80-64
A/O No. 46-05121-03022

v.

Wayne Mine

MONTEREY COAL COMPANY,
RESPONDENT

ORDER APPROVING WITHDRAWAL

On March 5, 1980, Petitioner filed a motion for approval of the withdrawal of the above-captioned civil penalty proceeding and for the vacation of the citation at issue herein. As grounds for this motion, Counsel for Petitioner asserted the following:

Citation No. 677462 was issued for a violation of 30 CFR 77.1710(g) for failure to use safety belts and lines while climbing a 40 feet high steel column to a power station.

Futher investigation revealed that the persons who were working without proper safety equipment were employees of the Appalachian Power Company. The respondent, Monterey Coal Company, was in the process of putting in a mine near the location of the transfer station. Appalachian Power Company was to provide the power necessary for that mine. At the time the citation was issued, employees of the Appalachian Power Company were working on the column to the power station in preparation for their own use of this station in supplying power. The respondent exercised no control over the Power Company's work. Nor did the respondent monitor the progress of the Power Company's work in any way. Therefore, the Appalachian Power Company was not acting as an independent contractor of the respondent at the time the citation was issued.

Furthermore, the respondent had granted an easement and an absolute right of way to the Appalachian Power Company in the metering station located at this transformer station. Thus, the power company was not working on respondent's property at the time the citation was issued. The power station exists near the mine, but not on the mine site. In addition, non of respondent's employees are allowed in the power station.

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Respondent had relinquished all ownership rights in the property and respondent's employees were never present on the property. Consequently, respondent should not be found liable for a violation.

For these reasons, it has been determined that the citation was issued in error. The inspector who issued the citation has been consulted and he agrees that, under these circumstances, the citation should be vacated and the petitioner withdrawn.

In view of the above, Petitioner's motion is GRANTED.

ORDER

Petitioner's withdrawal of the above-captioned civil penalty proceeding is approved and Citation No. 677462 is vacated. The proceeding is DISMISSED.

Forrest E. Stewart
Administrative Law Judge