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SOL (MSHA) V. ANLO ENERGY  
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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. KENT 84-185  
A.C. No. 15-13862-03510

v.

Peacock Mine No. 1

ANLO ENERGY, INC.,  
RESPONDENT

DECISION

Appearances: Mary Sue Ray, Esq., Office of the Solicitor,  
U.S. Department of Labor, Nashville, TN,  
for Petitioner;  
Respondent did not appear at the hearing.

Before: Judge Fauver

This case was brought by the Secretary of Labor for  
assessment of civil penalties under the Federal Mine Safety and  
Health Act of 1977, 30 U.S.C. 801, et seq.

Respondent did not appear at the hearing, but submitted a  
letter stating its position on the charges. Having considered the  
letter, the hearing evidence, and the record as a whole, I find  
that a preponderance of the substantial, reliable, and probative  
evidence establishes the following:

FINDINGS OF FACT

1. At all relevant times, Respondent operated Peacock Mine  
No. 1 at Greenville, Hopkins County, Kentucky. It had operated  
the Peacock Mine No. 1 since December 1, 1982. The Peacock Mine  
No. 2 is an underground coal mine operating two shifts per day,  
employing 15 to 20 employees, and producing coal for resale in  
interstate commerce.

2. Respondent had a history of twelve violations of the Act  
between December 1, 1982, and March 25, 1984, including  
electrical, roof control, ventilation, methane monitor, and two  
recordkeeping violations.

3. In a spot inspection of the Peacock Mine No. 1 in March,  
1984, Inspector Curtis Haile found that around the general face  
area water was ranging in depth from 0 to 10 inches. The floor of  
the mine was erratic in height, and the

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water level varied depending on the floor. Inspector Haile issued 107(a) withdrawal order on March 26, 1984, after finding a imminent danger because of defects in the power center. In connection with that order, on the same day he issued Citations 2338752 and 2338753, which are the subject of this proceeding.

4. Citation 2338752 was issued for a violation of 30 C.F.R.

75.900 in that grounded phase protection was not provided for three phase circuits on the power center. Inspector Haile tested these circuits by simulating a ground fault condition by the use of a five amp fuse. He testified that, during the first test on the first breaker, the breaker tripped as normal, but when he checked the remaining breakers, none of them would de-energize. He went back and checked the first breaker and it also failed to trip. He testified that the first breaker test in which the breaker tripped as normal was most likely faulty because of a carbon arc or a very small wire connecting its zig zag transformer, which burned out in the second test. He stated that when he checked the power center to verify abatement, he found that the grounding resistors had been completely bypassed. This resulted in a grounded system with no circuit limitation. Inspector Haile testified that it was highly likely this condition would result in a fatal accident involving at least one person should a ground fault condition appear on the frame of any piece of equipment. He testified that a reasonably qualified electrician would have detected the condition upon testing, and that it was negligence to bypass the grounding resistors.

5. Citation 2338753 was issued for a violation of 30 C.F.R.

75.902 in that the ground monitoring circuits were not operative on the main power center. Inspector Haile testified that ground monitoring circuits are required to ensure that there is a viable ground wire continuously in operation from the power system center to the frame of the piece of equipment. In the event that a ground fault occurs, this would provide a path for energy to return from the frame of the equipment to the power center where it would be de-energized by a breaker. Inspector Haile found three separate circuits in which the ground wire monitor was not functioning: shuttle car number three, a satellite pump, and shuttle car number two. None of these was tagged out and all of them were available for use. Inspector Haile testified that it was likely that the satellite pump would be used sometime in the near future and that the shuttle car circuits were used routinely in coal production operations. This was a very serious violation in that, at any given time, the ground wire could sever due to faulty manufacture, a faulty splice, or normal wear and tear. If the ground wire were severed and the machinery were involved in a ground fault,

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the hazard could result in a fatality. Normally the ground monitors would be checked weekly.

6. Respondent presented no claim or evidence of financial hardship with respect to payment of the proposed penalties.

#### DISCUSSION WITH FURTHER FINDINGS

The violation charged in citation 2338752 was due to negligence in that the company knew or should have known of the violation. It was likely that the condition would cause a fatality.

The violation charged in citation 2338753 was due to negligence in that the company knew or should have known of the violation. It was a serious violation with a risk of a fatality.

Respondent is a small operator within the meaning of the Act.

Respondent had a total of 12 reported citations from December 1, 1982, to March 25, 1984. Six of these citations were significant and substantial and one was accompanied by a 107(a) order. Prior violations include a cable violation, a ground monitor violation, an improper identification of circuit breaker violation, improper splicing of cables, and improper inspection and cover plates.

The violations involved here were both abated within the time given.

Considering all of the criteria of 110(i) of the Act for assessing civil penalties, Respondent is ASSESSED a penalty of \$900 for the violation charged in Citation 2338752 and a penalty of \$550 for the violation charged in Citation 2338753.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this proceeding.
2. Respondent violated 30 C.F.R. 75.900 as alleged in Citation 2338752.
3. Respondent violated 30 C.F.R. 75.902 as alleged in Citation 2338753.

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ORDER

Respondent shall pay the above civil penalties in the total amount of \$1,450.00 within 30 days of this Order.

William Fauver  
Administrative Law Judge