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ROCHESTER & PITTSBURGH COAL V. SOL (MSHA)
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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

ROCHESTER & PITTSBURGH COAL
COMPANY,

CONTESTANT

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

CONTEST PROCEEDING

Docket No. PENN 88-243-R
Safeguard Notice 2885431; 5/18/88

Greenwich Collieries No. 2 Mine

Mine ID 36Ä02404

PARTIAL DECISION AND
STAY ORDER

Before: Judge Melick

On May 18, 1988, a notice to provide safeguard was issued by the Secretary under section 314(b) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq., the "Act," to the Rochester and Pittsburgh Coal Company (the Company). On June 16, 1988, the Company attempted to contest that safeguard notice.

Thereafter, on July 1, 1988, the Secretary filed a Motion to Dismiss on the grounds that Contestant failed to state a claim for which relief may be granted under section 105 of the Act. Under section 105(d) a mine operator may contest an order issued under section 104, a citation or a penalty assessment issued under section 105(a) or section 105(b), or the reasonableness of the length of abatement time fixed in a citation. However the safeguard notice here challenged is not within any of these categories. Accordingly the Secretary's Motion to Dismiss the Contest Proceeding is granted and the attempted contest of Safeguard No. 2575910 is dismissed.

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On June 27, 1988, the contestant moved to amend its pleadings to also request a declaratory judgement holding that the subject safeguard is invalid. The proposed amendment is unopposed and comports with the procedural rules. The issue of whether a Commission Administrative Law Judge has the jurisdictional authority to grant declaratory relief is however presently before the Commission in the case of Kaiser Coal Corp. v. Secretary and UMWA, Docket No. WEST 88Ä131ÄR. Accordingly further proceedings in this case concerning the issue of declaratory relief are hereby stayed pending a decision by the Commission in the Kaiser case.

Gary Melick
Administrative Law Judge
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