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EMERY MINING 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

EMERY MINING CORPORATION  
AND/OR UTAH POWER & LIGHT  
COMPANY,

CONTESTANTS

v.

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

AND

UNITED MINE WORKERS OF  
AMERICA, (UMWA),  
INTERVENOR

CONTEST PROCEEDINGS

Docket No. WEST 87-130-R  
Citation No. 2844485; 3/24/87

Docket No. WEST 87-131-R  
Order No. 2844486; 3/24/87

Docket No. WEST 87-132-R  
Order No. 2844488; 3/24/87

Docket No. WEST 87-133-R  
Order No. 2844489; 3/24/87

Docket No. WEST 87-144-R  
Order No. 2844795; 3/24/87

Docket No. WEST 87-145-R  
Order No. 2844796; 3/24/87

Docket No. WEST 87-146-R  
Order No. 2844798; 3/24/87

Docket No. WEST 87-147-R  
Order No. 2844800; 3/24/87

Docket No. WEST 87-150-R  
Order No. 2844805; 3/24/87

Docket No. WEST 87-152-R  
Order No. 2844807; 3/24/87

Docket No. WEST 87-153-R  
Order No. 2844808; 3/24/87

Docket No. WEST 87-156-R  
Order No. 2844813; 3/24/87

Docket No. WEST 87-157-R  
Order No. 2844815; 3/24/87

Docket No. WEST 87-160-R  
Order No. 2844822; 3/24/87

Docket No. WEST 87-161-R  
Order No. 2844823; 3/24/87

Docket No. WEST 87-248-R  
Order No. 2844835; 8/13/87

Wilberg Mine  
Mine I.D. No. 42-00080

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

v.

EMERY MINING CORPORATION, AND  
ITS SUCCESSOR-IN-INTEREST  
UTAH POWER & LIGHT COMPANY,  
MINING DIV.,  
RESPONDENT

AND

UNITED MINE WORKERS OF  
AMERICA (UMWA),  
INTERVENOR

CIVIL PENALTY PROCEEDINGS

Docket No. WEST 87-208  
A.C. No. 42-00080-03578

Docket No. WEST 87-209  
A.C. No. 42-00080-03579

Docket No. WEST 88-25  
A.C. No. 42-00080-03584

Wilberg Mine

Consolidated

DECISION APPROVING SETTLEMENT

Before: Judge Morris

These are contest and civil penalty proceedings arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq.

These cases arose from the Wilberg Mine Fire disaster, an underground coal mine fire that occurred in Orangeville, Emery County, Utah.

As a result of the fire, on March 24, 1987, the Secretary issued to Emery Mining Corporation ("Emery") and Utah Power and Light ("UP&L"), as Emery's alleged successor-in-interest, 34 citations and orders alleging violations of the Mine Act. UP&L challenged all 34 citations and orders. Emery filed notices of contest challenging 18 of the citations and orders, paid the penalties assessed for eight of the citations and orders and challenged eight other violations in the related penalty proceedings.

Subsequently, Emery paid the civil penalties assessed on three of the citations and orders for which it had previously filed notices of contest. UP&L's 34 and Emery's 23 challenges were consolidated in Docket Nos. WEST 87-130-R through WEST 87-163-R ("130-series dockets").

On August 13, 1987, the Secretary issued seven additional citations to Emery as the operator of Wilberg and UP&L as Emery's

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successor-in-interest. UP&L again challenged all seven citations, while Emery filed a notice of contest in only one case, paying the assessed civil penalties in the remaining six. These notices of contest were assigned Docket Nos. WEST 87-243-R through WEST 87-249-R ("243-series dockets") and consolidated with the 130-series dockets.

Parallel penalty proceedings were also consolidated with the above contest cases (Docket Nos. WEST 87-208; WEST 87-209; WEST 88-25).

On March 9, 1988, 11 of the 130-series citations and orders and the related penalty cases were vacated as to UP&L. Emery Mining Corp., 10 FMSHRC 339 (1988). (Docket Nos. WEST 87-138-R; WEST 87-139-R; WEST 87-140-R; WEST 87-141-R; WEST 87-142-R; WEST 87-143-R; WEST 87-148-R; WEST 87-149-R; WEST 87-151-R; WEST 87-154-R; WEST 87-162-R.) These 11 cases were later dismissed as to Emery as well, by Order dated August 5, 1988, on the grounds that Emery had paid the assessed civil penalties. In a separate Order dated March 24, 1988, and amended March 25, 1988, the Presiding Judge noted that six of the seven 243-series cases could also be vacated as to UP&L on the basis of the March 9 Order. (Docket Nos. WEST 87-243-R; WEST 87-244-R; WEST 87-245-R; WEST 87-246-R; WEST 87-247-R; WEST 87-249-R.)

The Secretary sought to modify the 30 remaining citations and orders, including the 243-series cases, to which the March 9 ruling had not been applied. The modification sought to cite UP&L directly, as an operator of the Wilberg Mine.

On August 30, 1988, all 30 "modified" citations and orders were vacated as to UP&L. The Secretary sought review of the August 30 Order, but, at the joint request of the Secretary and UP&L, briefing and further proceedings at the Commission level were stayed pending the final disposition of the proceedings involving Emery (in the belief that resolution of the Emery cases might obviate the need for further Commission proceedings).

On appeal, the Commission did not stay proceedings before the Presiding Judge. Accordingly, the Judge has jurisdiction to consider the proposed settlement. Further, it is necessary to formally dismiss the contest proceedings.

#### CONTEST PROCEEDINGS

The contest cases remaining pending herein should be dismissed for the reasons hereafter noted:

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WEST 87-130-R (Citation No. 2844485):

UP&L's motion to vacate this citation was granted and Emery has withdrawn its contest.

WEST 87-131-R (Order No. 2844486):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-132-R (Order No. 2844488):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-133-R (Order No. 2844489):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-144-R (Order No. 2844795):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-145-R (Order No. 2844796):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-146-R (Order No. 2844798):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-147-R (Order No. 2844800):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-150-R (Order No. 2844805):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

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WEST 87-152-R (Order No. 2844807):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-153-R (Order No. 2844808):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-156-R (Order No. 2844813):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-157-R (Order No. 2844815):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-160-R (Order No. 2844822):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-161-R (Order No. 2844823):

UP&L's motion to vacate this order was granted and Emery has withdrawn its contest.

WEST 87-248-R (Citation No. 2844835):

Vacated as to UP&L and pending as to Emery. The citation herein has been settled, as provided in the civil penalty proceedings.

#### CIVIL PENALTY PROCEEDINGS

The parties at this time have reached an amicable settlement of the three penalty proceedings (Docket Nos. WEST 87-208, WEST 87-209, WEST 88-25). These penalty cases involve 24 of the alleged violations that were initially challenged in the 130-series and 243-series. Emery is the sole respondent in these cases.

The outstanding civil penalties herein were originally assessed for a total amount of \$106,749. Emery has offered to settle these matters by the voluntary payment of \$95,000 with the specific amounts to be allocated by the Secretary.

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The Secretary's allocation set forth in her motion is based on the statutory criteria for assessing civil penalties.

The proposed dispositions are as follows:

Citation/ Order No.	30 C.F.R.	Proposed Assessment	Settlement Amount
2844485	75.1725(a)	\$10,000	\$10,000
2844486	75.512	\$10,000	\$10,000
2844488	75.1101-23(a)	\$10,000	\$10,000
2844489	75.1704-2(d)	\$10,000	\$10,000
2844490	75.1714(b)	\$10,000	\$10,000
2844815	75.1704	\$10,000	\$10,000
2844491	75.1105	\$ 7,000	\$ 7,000
2844492	75.1107-1(a)(2)	\$ 5,000	\$ 5,000
2844493	75.1600-2(e)	\$ 5,000	\$ 5,000
2844816	75.103(j)	\$ 4,000	\$ 4,000
2844822	75.316	\$ 4,000	\$ 1,000
2844826	75.1704-2(a)	\$ 329	\$ 329
2844813	75.1702	\$ 1,600	\$ 250
2844817	75.508	\$ 20	\$ 20
2844823	75.1103-4(a)(1)	\$ 2,000	\$ 2,000
2844805	75.904	\$ 1,900	\$ 1,900
2844800	75.513	\$ 1,200	\$ 200
2844795	75.900	\$ 4,000	\$ 4,000
2844796	75.1101-5(b)	\$ 2,000	\$ 1,000
2844798	75.1101-5(2)	\$ 1,800	\$ 800
2844807	75.512	\$ 1,800	\$ 500
2844808	75.512	\$ 1,800	\$ 500
2844811	75.1103-4(e)	\$ 1,400	\$ 1,000
2844835	75.1704	\$ 2,000	\$ 501

I have reviewed the proposed settlement and I find it is reasonable and in the public interest. It should be approved.

For the foregoing reasons I enter the following:

ORDER

1. The following contest cases are DISMISSED:

WEST 87-130-R  
WEST 87-131-R  
WEST 87-132-R  
WEST 87-133-R  
WEST 87-144-R  
WEST 87-145-R  
WEST 87-146-R  
WEST 87-147-R  
WEST 87-150-R  
WEST 87-152-R  
WEST 87-153-R  
WEST 87-156-R  
WEST 87-157-R  
WEST 87-160-R  
WEST 87-161-R  
WEST 87-248-R

2. The Motion to Approve Settlement of the penalty cases (WEST 87-208, WEST 87-209, and WEST 88-25) is GRANTED.

3. Emery is ordered to pay to the Secretary the sum of \$95,000 within 10 days after this "Decision Approving Settlement" becomes a final Commission Decision.

John J. Morris  
Administrative Law Judge