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Federal Mine Safety and Health Review Commission (F.M.S.H.R.C.)
Office of Administrative Law Judges

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

CIVIL PENALTY PROCEEDING

Docket No. SE 89-141
A.C. No. 40-02017-03531

v.

Old Energy No. 1

OLD ENERGY INCORPORATED,
RESPONDENT

DEFAULT DECISION

Appearances: Mary Sue Taylor, Esq., U.S. Department of Labor,
Office of the Solicitor, Nashville, Tennessee
for Petitioner;
No appearance on behalf of Respondent.

Before: Judge Melick

At hearings scheduled to commence on August 15, 1990 at 9:00 a.m., in Clinton, Tennessee no representative of Old Energy Incorporated (Old Energy) appeared. By telephone conference call on August 13, 1990, the operator's representative, James Lowe, stated that because of personal real estate business he would not appear at the scheduled hearing. Mr. Lowe was then advised that his purported excuse for non-appearance was not acceptable and that if no one authorized to represent the operator appeared at the hearing a default decision would be issued.

While a custodian of company records, Ms. Gail Ray, appeared and produced a company "Balance Sheet" as of April 30, 1990, and an "Affidavit" of James Lowe relating to an order not at issue in these proceedings, she stated that she was not representing Old Energy for purposes of this litigation. The unaudited balance sheet is in any event inadequate for purposes of establishing the effect of the penalty on the operator's ability to remain in business -- a criterion that may be considered in determining the amount of penalty to be assessed under Section 110(i) of the Federal Mine Safety and Health Act of 1977. In any event Ms. Ray stated that Old Energy is no longer in business and does not intend to resume business.

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ORDER

Old Energy Incorporated is in default and accordingly the civil penalties of \$2,600.00 proposed by the Secretary in this case must be paid with 30 days of the date of this decision.

Gary Melick
Administrative Law Judge