

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 NEW JERSEY AVENUE, N.W., SUITE 9500  
WASHINGTON, D.C. 20001

April 17, 2007

TRANS ALTA CENTRALIA MINING, LLC,	:	CONTEST PROCEEDINGS
Contestant	:	
	:	Docket No. WEST 2007-102-RM
	:	Citation No. 7284647; 10/31/2006
	:	
v.	:	Docket No. WEST 2007-103-RM
	:	Citation No. 7284648; 10/31/2006
	:	
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION, MSHA,	:	Centralia Coal Mine
Respondent	:	Mine ID 45-00416
	:	
	:	
	:	
INTERNATIONAL UNION OF	:	COMPENSATION PROCEEDING
OPERATING ENGINEERS,	:	
Applicant	:	Docket No. WEST 2007-172-C
	:	Citation No. 6384697; 9/12/2006
	:	
	:	
	:	
TRANS ALTA CENTRALIA MINING, LLC,	:	Centralia Coal Mine
Respondent	:	Mine ID 45-00416

**ORDER LIFTING STAY,**  
**CONSOLIDATING CASES**  
**AND**  
**NOTICE OF HEARING**

Before: Judge Barbour

Docket No. WEST 2007-172-C is before me on a complaint filed pursuant to section 111 of the Mine Safety and Health Act of 1977 (Mine Act or Act). 30 U.S.C. § 821. In the case the International Union of Operating Engineers (Union) seeks compensation for miners idled at a coal processing plant that is owned and operated by Transalta Centralia Mining, LLC (Transalta). A reading of section 111 reveals it provides miners with the right to receive full pay for certain time periods if they are idled by withdrawal orders. First, if a mine or a part of a mine is closed by an order issued under sections 103, 104 or 107 of the Act, all idled miners working on the shift when the mine was closed are entitled to full compensation at the regular rate of pay for the time period they were idled or for the balance of the shift, whichever is less. If the order has not been terminated before the next working shift, all miners idled by the order are entitled to compensation at the regular rate of pay for the time they are idled up to 4 hours for the shift. Second, and additionally, if the mine is closed by an order issued under sections 104 or 107 for failure to comply with a mandatory safety standard, miners are entitled to compensation at their regular rates of pay for the time they were idled or for up to one week, whichever is less. Third, if an operator fails to comply with a closure order issued under section 103, 104 or 107, all miners who would have been idled by the order, but instead continued to work, are entitled to full compensation at their regular rate of pay in addition to the pay they received for the work they performed between the time the order was issued and the time it was complied with, vacated or terminated. Pay entitlement under the first provision accrues to idled miners regardless of the outcome of any litigation challenging the withdrawal order.

Although the complaint does not specifically state that part of section 111 under which the Union seeks compensation, the complaint notes miners were idled by Order No. 7284647 and by “Order” No. 7284648.<sup>1</sup> These enforcement actions were issued pursuant to sections 107(a) of the Act and 104(d)(1) of the Act respectively. 30 U.S.C. §§ 817(a), 814(d)(1). Order No. 7284647 alleges an imminent danger existed at the plant due to the failure of certain parts of the plant’s superstructure. Citation No. 7284647 states it was issued “in conjunction with . . . Order [No.] 7284647” and charges the imminent danger existed because Transalta’s management “failed to maintain the superstructure of the . . . plant” in violation of mandatory safety standard 30 C.F.R. §77.200.<sup>2</sup>

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<sup>1</sup> Order 7284648 is actually a citation.

<sup>2</sup> Section 77.200 states: “All mine structures, enclosures, or other facilities (including custom coal preparation) shall be maintained in good repair to prevent accidents and injuries to employees.”

In answering the compensation complaint, the company, which previously contested the order (Docket No. WEST 1007-102-R) and the citation (Docket No. WEST 2007-103-R), stated the complaint should be stayed pending the outcome of the contest proceedings, which in turn were stayed pending the filing of a proposed civil penalty for the alleged violation of section 77.200 set forth in Citation No. 7284648. The Union was ordered to state its position on the company's request. Order to State Position (March 13, 2007). The Union responded the compensation complaint should go forward. The Union noted the first sentence of Section 111 states if a coal or other mine is closed by an order issued pursuant to Section 107 of the Act (30 U.S.C. §817), certain miners shall be entitled to compensation, "regardless of the result of any review of such order." 30 U.S.C. §821.

I agree with the Union the case should go forward, but I reach the conclusion for a somewhat different reason. As I interpret the complaint, the Union is seeking compensation under the second compensation provision of section 111.<sup>3</sup> (I note again the Union's reference to both Order No. 7284647 and to "Order" No. 7284648. I also note its statement, "[T]he Company has confirmed that our members were idled as a result of the above mentioned Orders". Complaint Letter (January 2, 2007) (emphasis supplied)). As applicable to the case at hand, this means the Union is seeking, in addition to the amounts to which its members are entitled for closure of the mine for an alleged imminent danger, compensation for miners idled for up to one week by the company's alleged failure to comply with section 77.200.

Because the Act states that miners be compensated "after all interested parties are given an opportunity for a public hearing , which shall be expedited", it is imperative a hearing on the merits of the order and citation be scheduled to determine, inter alia, whether Order No. 7284647 was issued for a valid violation of section 77.200 as alleged in Citation No. 7285648. Put another way, it is important to determine whether there is a causal nexus between the fact of violation (assuming a violation of section 77.200 as alleged in Citation 7285648 is established) and the imminent danger withdrawal order (Order No. 7284647). The issue can most speedily be determined by lifting the stay in the contest proceedings, consolidating them with the instant proceeding and trying the three proceedings together.

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<sup>3</sup> The union is not represented by counsel. Perhaps as a result, its complaint is somewhat inartful. It is not however, incomprehensible. Although the specific provision under which compensation is sought is not stated, reading the complaint in conjunction with the subject order and citation makes clear in addition to compensation under the first provision of section 111, the Union is concerned with entitlement to compensation due to the mine being closed by an order issued for failure to comply with a mandatory safety standard.

**ACCORDINGLY**, the parties are advised the stay in Dockets No. WEST 2007-120-RM and WEST 2007-103-RM is **DISSOLVED**. Docket Nos. WEST 2007-120-RM, WEST 2007-103-RM and WEST 2007-172-C **ARE CONSOLIDATED** for hearing and decision.

A hearing in the consolidated cases will be convened at 8:30 a.m., on **May 23, 2007**, in **Olympia, Washington**. The issues in the contest proceedings are whether the contested citation and order were validly issued, including whether an imminent danger existed as alleged in Order No. 7284647 (WEST 2007-102-M) and if so, whether the imminent danger was the result of Transalta's failure to comply with section 77.200 as alleged in Citation No. 7284648 (WEST 2007-103-R).<sup>4</sup> In addition, if the violation occurred, the questions of whether the violation was a significant and substantial contribution to a mine safety hazard and whether the violation was the result of Transalta's unwarrantable failure to comply with section 77.200 are at issue. The issues in the compensation proceeding include whether Order No. 7284647 was issued for a failure to comply with section 77.200 and if so, the identify of those entitled to compensation and amounts to which they are entitled.<sup>5</sup>

David F. Barbour  
Administrative Law Judge  
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<sup>4</sup> I note the Union has not yet sought to intervene in the contest proceedings.

<sup>5</sup> It is clear from the pleadings miners will be entitled to some compensation. They will obtain it either under the first or the second provision of section 111. It is the obligation of the company, its counsel and the representative of the Union to agree upon the identities of those entitled under both scenarios and upon the amounts each entitled miner should receive in each situation, excluding interest which will be calculated and added as of the date the order becomes final. In this way, once the finality of the order is determined, proper compensation and interest may be promptly awarded. The company and the Union should be able to agree upon such lists without the need for time consuming and complicated discovery. Counsel for Transalta is therefore requested to contact the representative of the Union to discuss the matter. The parties may wish to present agreed upon lists to me at the hearing where they can be entered into the record as a joint exhibit.

Distribution:

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