

CCASE:
SOL (MSHA) V. SOUTHMOUNTAIN COAL
DDATE:
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TTEXT:

March 16, 1994

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	CIVIL PENALTY PROCEEDING
	:	
v.	:	Docket Nos. VA 93-165
	:	VA 93-166
SOUTHMOUNTAIN COAL, INC.	:	
	:	CONTEST PROCEEDING
and	:	
	:	Docket Nos. VA 93-108-R, et al.
WILLIAM RIDLEY ELKINS	:	
	:	
	:	

ORDER

Southmountain Coal, Inc. ("Southmountain") has filed with the Commission a petition for interlocutory review of the January 25, 1994, Decision and Order Granting Limited Continuance of Stay of Administrative Law Judge Gary Melick. By order dated February 7, 1994, the judge denied Southmountain's Motion for Certification for Review of Interlocutory Ruling. See Commission Procedural Rule 76, 58 Fed Reg. 12158, 12172 (March 3, 1993), to be codified at 29 C.F.R. 2700 (1993).

Subsequent to the Commission's receipt of Southmountain's petition for interlocutory review, the judge held a status conference with the parties on February 25, and on March 7 issued his Decision and Order Granting Limited Continuance of Stay. In that order, the judge agreed with the Secretary's position to continue the stay "until a verdict is reached in the criminal trials or a mistrial is declared." The criminal trial involving Southmountain is presently scheduled to begin on May 2, 1994, although the criminal investigation is continuing.

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Upon consideration of Southmountain's petition and the Secretary's response(Footnote 1)7, we conclude that Southmountain has failed to establish a basis for granting interlocutory review of the judge's orders and, therefore, we deny the petition.(Footnote 2)

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

1We reject Southmountain's contention that the decision in Thunder Basin Coal Co. v. Reich, ___ U.S. ___, 127 L.Ed. 2d 29, 62 U.S.L.W. 4058 (January 19, 1994), has any bearing on the advancement of a criminal proceeding in district court under the Mine Act prior to the disposition of civil citations and penalties by the Commission.

2Pursuant to section 113(c) of the Mine Act, 30 U.S.C. 823(c), we have designated ourselves as a panel of three members to exercise the powers of the Commission.