

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

MAR 05 2018

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

v.

PRAIRIE STATE GENERATING  
COMPANY, LLC

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: Docket No. LAKE 2017-158  
: A.C. No. 11-03193-418476  
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BEFORE: Althen, Acting Chairman; Jordan, Young, and Cohen, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012) (“Mine Act”). On February 13, 2017, the Commission received from Prairie State Generating Company, LLC (“Prairie State”) a motion seeking to reopen a penalty assessment that appeared to have become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was mailed to Prairie State on August 8, 2016. The proposed assessment became a final order of the Commission on or about September 7, 2016, when it appeared that the operator had not filed a Notice of Contest within 30 days.<sup>1</sup>

Prairie State asserts that it timely contested the proposed assessment on September 6, 2016. Prairie State provided copies of USPS tracking documents showing that its contest was mailed on September 6, 2016 and delivered to MSHA’s Arlington, Virginia office on September 8, 2016. On December 16, 2016, the Secretary issued a delinquency notice to the operator. On December 22, 2016, the operator promptly contacted MSHA regarding the alleged delinquency. Prairie State posits that the Secretary may have misplaced the contest after receipt. The

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<sup>1</sup> MSHA represents in its December 16, 2016 delinquency letter that proposed assessment became a final order on October 31, 2016. The Secretary has not provided the Commission with any explanation as to why MSHA considered the final order date to be more than four months after the proposed assessment was mailed to the operator. Regardless of this discrepancy in the record, the Secretary does not contest Prairie State’s assertion that it filed its contest on September 6, 2016, prior to any possible final order date.

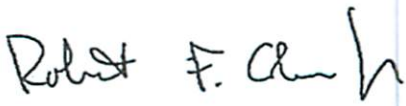
Secretary does not oppose the request to reopen nor does he challenge the assertion that the contest was misplaced.

Having reviewed Prairie State's request and the Secretary's response, we conclude that the proposed penalty assessment did not become a final order of the Commission because the operator timely contested the proposed assessment. Section 105(a) states that if an operator "fails to notify the Secretary that he intends to contest the . . . proposed assessment of penalty . . . the citation and the proposed assessment of penalty shall be deemed a final order of the Commission." 30 U.S.C. § 815(a). Here, Prairie State notified the Secretary of the contest. This obviates any need to invoke Rule 60(b). Accordingly, the operator's motion to reopen is moot, and this case is remanded to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission's Procedural Rules, 29 C.F.R. Part 2700.

  
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William I. Althen, Acting Chairman

  
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Mary Lu Jordan, Commissioner

  
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Michael G. Young, Commissioner

  
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Robert F. Cohen, Jr., Commissioner

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