

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVE., N.W., SUITE 520N
WASHINGTON, DC 20004-1710

September 13, 2023

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. LAKE 2023-0038
ADMINISTRATION (MSHA)	:	A.C. No. 11-03193-559468
	:	
v.	:	
	:	
PRAIRIE STATE GENERATING	:	
COMPANY LLC,	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

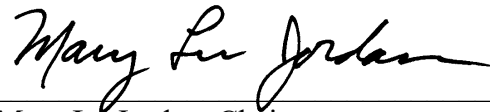
This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On November 18, 2022, the Commission received from Prairie State Generating Company LLC (“Prairie”) a motion to reopen a final order of the Commission pursuant to section 105(a) of the Act, 30 U.S.C. § 815(a).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

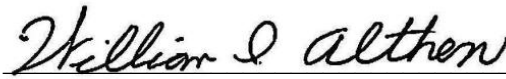
We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered to the operator on August 8, 2022, and became a final order of the Commission on September 7, 2022. On August 17, 2022, Prairie paid the proposed civil penalty for 19 of the 23 citations at issue in the assessment. Praire asserts that on that day it also mailed a notice of contest, reflecting its intent to contest the remaining four citations and civil penalties. On October 24, 2022, MSHA sent the operator a delinquency notice after failing to receive Prairie’s notice of contest. On November 18, 2022, Prairie filed a motion to reopen the four citations that it originally sought to contest, stating that it mailed the form to the wrong address or otherwise made a mistake in mailing it. The Secretary of Labor does not oppose the operator’s motion, but reminds Prairie to ensure that future contests are timely mailed to MSHA’s Civil Penalty Compliance Office in Arlington, Virginia.

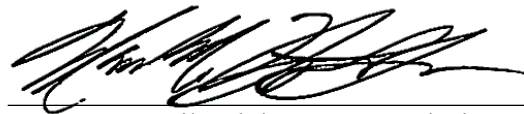
Having reviewed Prairie’s request and the Secretary’s response, we find that the operator has demonstrated that its failure to timely file was the result of a mistake. In the interest of justice, we hereby reopen Citation Nos. 9199089, 9199090, 9196779, and 9199099 and remand the case to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



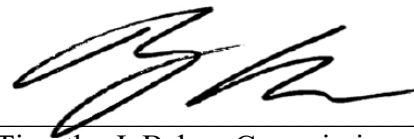
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

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