

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

May 3, 1996

SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. KENT 94-972
 :
BROKEN HILL MINING COMPANY, INC. :

BEFORE: Jordan, Chairman; Holen, Marks and Riley, Commissioners

ORDER

BY THE COMMISSION:

This civil penalty proceeding arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). On October 11, 1995, the Commission granted the petition for discretionary review filed by Broken Hill Mining Company, Inc. (“Broken Hill”). Pursuant to Commission Procedural Rule 75, 29 C.F.R. § 2700.75 (1995),¹ Broken Hill’s opening brief was due to be filed by November 13, 1995. Broken Hill has not filed its brief and has proffered no reason for its failure to do so.

¹ Rule 75 provides, in part:

(a) *Time to file.* (1) *Opening and response briefs.* Within 30 days after the Commission grants a petition for discretionary review, the petitioner shall file his opening brief. If the petitioner desires, he may notify the Commission and all other parties within the 30-day period that his petition and any supporting memorandum are to constitute his brief. . . .

On January 26, 1996, the Secretary of Labor filed a Motion to Dismiss for Want of Prosecution pursuant to Commission Procedural Rule 75(e), 29 C.F.R. § 2700.75(e).² The Secretary states that Broken Hill failed to file its opening brief or designate its petition as such. Mot. at 1. The Secretary notes that he has not been able to reach Broken Hill by telephone or facsimile. *Id.* at 2 & n.2. He asserts that no injustice would result from the dismissal of Broken Hill's petition. *Id.* at 2. The Secretary requests that the petition be dismissed with prejudice. *Id.* at 3. Broken Hill has not filed an opposition to the motion.

On March 14, 1996, the Commission issued an order directing Broken Hill to show cause within 14 days why its appeal should not be dismissed. The file contains the return receipt showing that Broken Hill received the show cause order on March 22, 1996. Broken Hill has not responded to the show cause order. The Commission may vacate its direction for review if a petitioner fails to file an opening brief in accordance with Rule 75. *See* 29 C.F.R. § 2700.75(e).

² Rule 75(e) provides:

Consequences of petitioner's failure to file brief. If a petitioner fails to timely file a brief or to designate the petition as his brief, the direction for review may be vacated.

In light of the foregoing considerations, we grant the Secretary's motion. Accordingly, the direction for review is vacated and this proceeding is dismissed.

Mary Lu Jordan, Chairman

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

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