

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

March 27, 1995

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket Nos. LAKE 94-72, etc.
	:	
v.	:	
	:	
BUCK CREEK COAL INC.	:	

ORDER

On February 17, 1994, Buck Creek Coal Inc. ("Buck Creek") filed with the Commission a petition for interlocutory review of Administrative Law Judge T. Todd Hodgdon's February 15, 1995, Order Continuing Stay (the "Stay Order").<sup>1</sup> The judge had previously stayed proceedings for ninety days or until the United States Attorney made a determination regarding the criminal prosecution of Buck Creek. The Commission dismissed as moot the operator's petition for interlocutory review of the judge's previous stay. *Buck Creek Coal Inc.*, 17 FMSHRC \_\_\_\_ (February 1995). The Stay Order continues the stay until May 16, 1995, and directs the parties to attend a status conference on that date for the purpose of deciding whether and under what conditions the stay should be continued. Stay Order at 5.

Buck Creek urges the Commission to grant interlocutory review and to grant it relief from the Stay Order so that it can defend itself against the 554 citations and orders in these consolidated dockets. Pet. at 4. The Secretary responds that the judge did not abuse his discretion in granting the stay in light of potential adverse effects on the ongoing criminal investigation. S. Opp'n at 4-6.

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<sup>1</sup> The Commission held this petition in abeyance pending the judge's ruling on Buck Creek's late-filed motion for certification. *Buck Creek Coal Inc.*, 17 FMSHRC \_\_\_\_ (March 1995). The judge has now denied Buck Creek's motion. Order Denying Mot. for Certification at 6.

We conclude that the Stay Order involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. *See* Commission Procedural Rule 76(a)(2), 29 C.F.R. ' 2700.76(a)(2). The Commission therefore grants Buck Creek's petition.

We find that the issues are adequately addressed in the parties' submissions. If the parties wish to file supplemental briefs, they must be received by the Commission by April 4, 1995.

At the hearing on continuing the stay, counsel for the Secretary represented that he may be prepared to address, prior to May 16, 1995, the advisability of lifting the stay as to some consolidated dockets. Tr. 17. We encourage the parties to confer promptly and report to the judge regarding how the stay might be limited or modified before its expiration. During the pendency of this matter before the Commission, the judge shall have continuing jurisdiction to lift or modify the stay based on the parties' submissions.

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Mary Lu Jordan, Chairman

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Joyce A. Doyle, Commissioner

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Arlene Holen, Commissioner

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Marc Lincoln Marks, Commissioner