

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW

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WASHINGTON, DC 20001

May 1, 2008

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. VA 2008-95
	:	A.C. No. 44-07046-122850
v.	:	
	:	
BANNER BLUE COAL COMPANY	:	

BEFORE: Duffy, Chairman; Jordan and Young, Commissioners¹

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2000) (“Mine Act”). On January 28, 2008, the Commission received from Banner Blue Coal Company (“Banner Blue”) a motion seeking to reopen a penalty assessment that had become a final order of the Commission pursuant to section 105(a) of the Mine Act, 30 U.S.C. § 815(a).

On March 28, 2008, the Commission received from Banner Blue a “notice of withdrawal of motion to re-open,” in which the operator asked that its motion to re-open be withdrawn and that the Commission dismiss this proceeding.

¹ Commissioner Robert F. Cohen, Jr. assumed office after this case had been filed. A new Commissioner possesses legal authority to participate in pending cases, but such participation is discretionary. *Mid-Continent Res., Inc.*, 16 FMSHRC 1218 n.2 (June 1994). In the interest of efficient decision making, Commissioner Cohen has elected not to participate in this matter.

Banner Blue's request is granted, and, accordingly, this proceeding is dismissed.

Michael F. Duffy, Chairman

Mary Lu Jordan, Commissioner

Michael G. Young, Commissioner

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