

had not been accomplished. *Id.* Twentymile attached to its motion a copy of a Federal Express Air Bill, a copy of the petition for discretionary review, and a copy of its counsel's letter conveying the petition.

On August 19, 2003, the Commission received the Secretary's response to the operator's motion. The Secretary states that because of the unique circumstances surrounding the misdelivery of Twentymile's petition for discretionary review, she believes that the Commission has jurisdiction to consider the petition. S. Resp. at 2. As to the merits of the petition, the Secretary argues that the petition should not be granted because the judge's decision is supported by substantial evidence. *Id.* at 2-3.

On August 20, 2003, Federal Express delivered Twentymile's petition for discretionary review to the Commission. The Federal Express envelope reveals that the petition was mailed on August 8, 2003; that the petition was mailed priority overnight mail; and that the petition was to be delivered by August 11, 2003.

The judge's jurisdiction over these proceedings terminated when he issued his decision on July 14, 2003. 29 C.F.R. § 2700.69(b). Relief from a judge's decision may be sought by filing a petition for discretionary review within 30 days of its issuance. 30 U.S.C. § 823(d)(2)(A)(i); 29 C.F.R. § 2700.70(a). Filing of a petition for discretionary review is effective upon receipt. 29 C.F.R. § 2700.5(d). If the Commission does not direct review within 40 days of a decision's issuance, it becomes a final decision of the Commission. 30 U.S.C. § 823(d)(1). Here, Twentymile was required to file its petition for discretionary review with the Commission by August 13, 2003. The Commission received Twentymile's petition past the 30-day deadline, but before the judge's decision had become a final order of the Commission.

The Commission has entertained late-filed petitions for discretionary review where good cause has been shown. *See, e.g., McCoy v. Crescent Coal Co.*, 2 FMSHRC 1202, 1204 (June 1980) (vacating judge's order of dismissal and finding good cause where petitioner was pro se during part of the proceedings, subsequently-retained counsel obtained judge's decision only 10 days prior to deadline for petition, and petition was mailed on the 30th day). We conclude that Twentymile has shown good cause for its late filing.

Accordingly, we excuse the late filing and accept Twentymile's petition for discretionary review as filed on this date. Furthermore, upon consideration of the merits of Twentymile's petition for discretionary review, it is hereby granted.

Michael F. Duffy, Chairman

Robert H. Beatty, Jr., Commissioner

Mary Lu Jordan, Commissioner

Stanley C. Suboleski, Commissioner

Michael G. Young, Commissioner

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