

# FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

OFFICE OF ADMINISTRATIVE LAW JUDGES  
601 New Jersey Avenue, N.W., Suite 9500  
Washington, D.C. 20001

September 11, 2006

|                             |   |                                  |
|-----------------------------|---|----------------------------------|
| MARFORK COAL COMPANY, INC., | : | CONTEST PROCEEDINGS              |
| Contestant                  | : |                                  |
|                             | : | Docket No. WEVA 2006-788-R       |
|                             | : | Citation No. 7257574; 06/27/2006 |
|                             | : |                                  |
| v.                          | : | Docket No. WEVA 2006-789-R       |
|                             | : | Citation No. 7257575;06/27/2006  |
| SECRETARY OF LABOR,         | : |                                  |
| MINE SAFETY AND HEALTH      | : | Docket No. WEVA 2006-790-R       |
| ADMINISTRATION, (MSHA),     | : | Citation No. 7257568;06/27/2006  |
| Respondent                  | : |                                  |
|                             | : | Slip Ridge Cedar Grove Mine      |
|                             | : | Mine ID 46-09048                 |

## ORDER REQUESTING CLARIFICATION

On August 11, 2006, I issued an Order requiring Marfork Coal Company, Inc., (Marfork) to show cause why its Notice of Contest of the subject citations should not be dismissed. 28 FMSHRC 745 (Aug. 2006). The Order was issued after the Secretary, as part of her July 27, 2006, response to Marfork's Notice of Contest, alleged that Marfork's counsel was contesting all significant and substantial 104(a) citations. *Id.*

The Order to Show Cause noted that Marfork's contest may be contrary to section 105(d) of the Federal Mine Safety and Health Act of 1977, as amended, (the Mine Act), 30 C.F.R. § 815(d), as well as Commission Rule 20(e)(1)(ii), 29 C.F.R. § 2700.20(e)(1)(ii). *Id.* at 746. The Order also noted that Marfork's contest may be contrary to the Commission's decision in *Energy Fuels Corporation*, 1 FMSHRC 299, 307-08 (May 1979). *Id.* Finally, the Order asked Marfork to address whether its contest was duplicative and a needless consumption of the Commission's resources. *Id.* at 747. The August 11 Order provided the Secretary the opportunity to reply to Marfork's response to the Order to Show Cause.

Marfork filed its response on September 1, 2006, contending that its contest should not be dismissed. Marfork admits it is not seeking a Commission hearing of its contest. Rather, Marfork contends the relief it seeks is discovery while its contest is stayed.<sup>1</sup> Consequently, the

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<sup>1</sup> Marfork refers to the delay as a continuance without date. (*Marfork resp.* p.4). If the contest is not dismissed, I am inclined to stay this matter rather than continue the contest without date.

central issue is the propriety of a request for discovery as the sole basis for a contest.

The Secretary replied to Marfork's response in correspondence dated September 7, 2006. While the Secretary opined that there was "no discernable reason" served by Marfork's contest, and that discovery cannot properly be characterized as "relief sought" by a contestant, the Secretary did not provide any meaningful analysis of Commission case law, or relevant statutory and Commission Rule provisions. (Letter from Glenn Loos, Esq., to Judge Feldman of 9/7/06). Nor did the Secretary articulate whether or not Marfork's contest should be dismissed.

Accordingly, **IT IS ORDERED** that the Secretary, within 10 days of the date of this Order, state in writing, with specificity, whether she believes the subject Notice of Contest should be dismissed. The Secretary's response should provide the relevant statutory and rule provisions and/or case law in support of her position.

Jerold Feldman  
Administrative Law Judge

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