

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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July 17, 2026

SECRETARY OF LABOR
MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA),

v.

RESPONSIBLE ENERGY
OPERATIONS, LLC

Docket No. LAKE 2025-0279
A.C. No. 11-03064-619363

BEFORE: Rajkovich, Chair; Jordan and Baker, Commissioners

ORDER

BY THE COMMISSION:

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On June 27, 2025, the Commission received from Responsible Energy Operations, LLC (“Responsible Energy”) 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).

Under section 105(a) of the Mine Act, an operator who wishes to contest a proposed penalty must notify the Secretary of Labor no later than 30 days after receiving the proposed penalty assessment. If the operator fails to notify the Secretary, the proposed penalty assessment is deemed a final order of the Commission. 30 U.S.C. § 815(a).

We have held, however, that in appropriate circumstances, we possess jurisdiction to reopen uncontested assessments that have become final Commission orders under section 105(a). *Jim Walter Res., Inc.*, 15 FMSHRC 782, 786-89 (May 1993) (“*JWR*”). In evaluating requests to reopen final orders, the Commission has found guidance in Rule 60(b) of the Federal Rules of Civil Procedure, under which the Commission may relieve a party from a final order of the Commission on the basis of mistake, inadvertence, excusable neglect, or other reason justifying relief. *See* 29 C.F.R. § 2700.1(b) (“the Commission and its Judges shall be guided so far as practicable by the Federal Rules of Civil Procedure”); *JWR*, 15 FMSHRC at 787. We have also observed that default is a harsh remedy and that, if the defaulting party can make a showing of good cause for a failure to timely respond, the case may be reopened and appropriate proceedings on the merits permitted. *See Coal Prep. Servs., Inc.*, 17 FMSHRC 1529, 1530 (Sept. 1995).

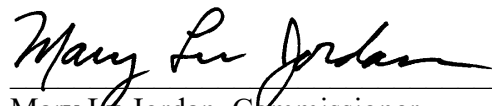
Records of the Department of Labor’s Mine Safety and Health Administration (“MSHA”) indicate that the proposed assessment was delivered on May 5, 2025, and became a final order of the Commission on June 4, 2025. Responsible Energy asserts that its Safety Manager, who processes its proposed assessments, received the proposed assessment and set it aside to discuss later with counsel. However, the Safety Manager miscalculated the deadline and let it pass. On June 5, the Safety Manager discovered the mistake after he found the proposed assessment. That day, he emailed the proposed assessment to the operator’s counsel for processing. Counsel attempted to contest the proposed assessment on June 5, 2025. On June 11, 2025, counsel received a letter from MSHA informing them that the notice of contest was untimely. Counsel promptly filed the motion to reopen on June 27, 2025. The Secretary does not oppose the request to reopen, but urges the operator to take steps to ensure that future penalty contests are timely filed.

Having reviewed Responsible Energy’s request and the Secretary’s response, we find that the circumstances justify relief given the brief nature of the delay, the prompt filing of the motion to reopen, as well as the operator’s lack of any recent history of filing prior motions to reopen. *See, e.g., Morton Salt, Inc.*, 45 FMSHRC 286, 287 (May 2023) (granting the motion to reopen where the operator “believed it had timely contested the proposed assessment when it mailed its notice of contest . . . one day after the assessment became final”). We further note the operator’s commitment that, in the future, when proposed assessments come in the mail, it will calendar the deadline to ensure they are timely processed. The Commission urges Responsible Energy to ensure that it contests proposed assessments in a timely manner in the future.

In the interest of justice, we hereby reopen this matter and remand it to the Chief Administrative Law Judge for further proceedings pursuant to the Mine Act and the Commission’s Procedural Rules, 29 C.F.R. Part 2700. Accordingly, consistent with Rule 28, the Secretary shall file a petition for assessment of penalty within 45 days of the date of this order. *See* 29 C.F.R. § 2700.28.



Marco M. Rajkovich, Jr., Chair



Mary Lu Jordan, Commissioner



Timothy J. Baker, Commissioner

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