

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET N.W., 6TH FLOOR

WASHINGTON, D.C. 20006

January 22, 1996

SOUTHERN MINERALS, INC.,	:	
TRUE ENERGY COAL SALES, INC.,	:	
and FIRE CREEK, INC.	:	
	:	
v.	:	Docket Nos. WEVA 92-15-R, etc.
	:	
SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	

ORDER

On January 11, 1996, the Secretary of Labor filed with the Commission a petition for discretionary review of Administrative Law Judge David F. Barbour’s December 13, 1995 Partial Decision dismissing True Energy Coal Sales, Inc. (“True Energy”) from the proceedings.

The judge based the dismissal on his conclusion that True Energy is not an operator, as defined in section 3(d) the Mine Act, 30 U.S.C. § 803(d). In dismissing True Energy, the judge did not expressly direct that his dismissal “be entered as a final decision, nor did he find, pursuant to Rule 54(b)¹ [of the Federal Rules of Civil Procedure,] that there is no just reason for delay.”

¹ Rule 1(b) of the Commission’s Procedural Rules provides that the Federal Rules of Civil Procedure shall apply “so far as practicable” in the absence of applicable Commission rules. 29 C.F.R. § 2700.1(b).

Rule 54(b) states in part:

[W]hen multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates . . . the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time

Pontiki Coal Corp., 17 FMSHRC 263, 264 (March 1995).

Accordingly, we conclude that the order dismissing True Energy is not final, and that therefore the Secretary's petition for discretionary review is premature. The Secretary's petition is denied without prejudice.

Mary Lu Jordan, Chairman

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner

Marc Lincoln Marks, Commissioner

James C. Riley, Commissioner

before the entry of judgment adjudicating . . . the rights and liabilities of all the parties.

Fed. R. Civ. P. 54(b).