

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1331 PENNSYLVANIA AVENUE, NW, SUITE 520N
WASHINGTON, DC 20004-1710

December 6, 2022

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. KENT 2022-0024
	:	
PERRY COUNTY RESOURCES, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, 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). On October 5, 2022, a Commission Administrative Law Judge issued an order denying approval of a settlement motion filed by the Secretary of Labor and Perry County Resources, LLC in this proceeding. In that order the Judge also denied the Secretary’s alternative motion to certify for interlocutory review the Judge’s order denying settlement. On November 4, the Commission received the Secretary’s petition for interlocutory review.

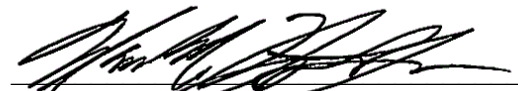
Commission Procedural Rule 76(a) provides that interlocutory review is a matter of sound discretion of the Commission, and that the Commission may grant interlocutory review upon a determination that the Judge’s interlocutory ruling involves a controlling question of law and immediate review will materially advance the final disposition of the proceeding. 29 C.F.R. § 2700.76(a).

Upon consideration of the Secretary’s petition, we hereby grant interlocutory review of the Judge’s order of October 5, 2022, and the issue of whether the Judge abused his discretion in denying approval of the settlement motion based on the Secretary’s refusal to provide a section 104(b) order that was associated with a citation that was a subject of the motion to approve settlement.

The Secretary shall file an opening brief with the Commission within 30 days of this order. If the operator wishes to file a brief, it shall file that brief 30 days after the filing of the Secretary's brief.


Mary Lu Jordan, Chair


William I. Althen, Commissioner


Marco M. Rajkovich, Jr., Commissioner


Timothy J. Baker, Commissioner

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