

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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

December 16, 2022

SECRETARY OF LABOR	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	Docket Nos. WEVA 2022-0301
v.	:	WEVA 2022-0428
	:	A.C. No. 46-08930-551112
APPALACHIAN RESOURCE WEST	:	
VIRGINIA, LLC	:	

BEFORE: Jordan, Chair; Althen, Rajkovich, and Baker, Commissioners

ORDER

BY THE COMMISSION:

These proceedings arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018). On approximately October 14, 2022, the Secretary of Labor filed motions to approve settlement in these proceedings. On December 13, 2022, a Commission Administrative Law Judge issued orders certifying for interlocutory review the question of whether the Secretary is obligated, upon a Judge’s request, to supply orders issued pursuant to section 104(b) of the Act, 30 U.S.C. § 814(b), that are associated with citations in a docket before the Judge on a motion to approve settlement.

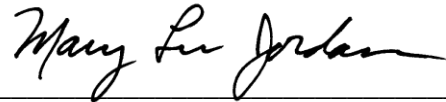
Commission Procedural Rule 76(a) provides that interlocutory review is a matter of sound discretion of the Commission, and that the Commission may grant interlocutory review upon a determination that the Judge’s interlocutory ruling involves a controlling question of law and immediate review will materially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

Upon consideration of the Judge’s December 13 orders and the case records, we conclude that, because the Judge has yet to rule on the Secretary’s motions to approve settlement, the Judge’s certification for interlocutory review is premature. *See Cty Line Stone Co.*, 44 FMSHRC 507, 508 (July 2022).¹

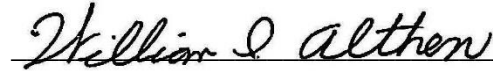
¹ The Commission granted the Secretary’s *second* petition for interlocutory review, filed after the Judge issued orders denying the Secretary’s renewed motions to approve settlement. *Cty Line Stone Co.*, 44 FMSHRC 548, 549 (Aug. 2022).

In *Perry County Resources, LLC*, 44 FMSHRC ____, No. KENT 2022-0024 (December 6, 2022), the Commission granted interlocutory review on 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.” In contrast, in these proceedings, the Judge has yet to issue an order either granting or denying the Secretary’s motions to approve settlement.

For these reasons, we deny interlocutory review without prejudice.



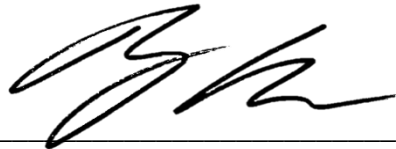
Mary Lu Jordan, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner



Timothy J. Baker, Commissioner

Distribution:

Emily Toler Scott, Esq.
Counsel for Appellate Litigation
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Scott.Emily.T@dol.gov

April Nelson, Esq.
Associate Solicitor
Office of the Solicitor
U.S. Department of Labor
Division of Mine Safety and Health
201 12th Street South, Suite 401
Arlington, VA 22202
Nelson.April@dol.gov

Melanie Garris
U.S. Department of Labor
Office of Civil Penalty Compliance
Mine Safety and Health Administration
201 12th Street South, Suite 401
Arlington, VA 22202-5452
Garris.Melanie@dol.gov

K. Brad Oakley, Esq.,
Jackson Kelly PLLC,
100 W. Main Street, Suite 700
Lexington, KY 40507
kboakley@jacksonkelly.com

David C. Trent
Conference & Litigation Representative
U.S. Department of Labor, MSHA
4499 Appalachian Highway
Pineville, WV 24874
Trent.david@dol.gov

Chief Administrative Law Judge Glynn F. Voisin
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710
GVoisin@fmshrc.gov

Administrative Law Judge William B. Moran
Federal Mine Safety & Health Review Commission
1331 Pennsylvania Ave. N.W., Suite 520N
Washington, DC 20004-1710
WMoran@fmshrc.gov