

CCASE:
JIM WALTER RESOURCES, INC. V. SOL (MSHA) AND UMWA
DDATE:
19931105
TTEXT:

November 5, 1993

JIM WALTER RESOURCES, INC.,	:	
	:	
Contestant	:	
	:	
v.	:	Docket No. SE 93-56-R
	:	
SECRETARY OF LABOR,	:	Docket No. SE 93-132
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA),	:	
	:	
Respondent	:	
	:	
UNITED MINE WORKERS OF	:	
AMERICA,	:	
	:	
Intervenor	:	

ORDER

In this proceeding, Jim Walter Resources, Inc., ("JWR") has filed a petition seeking interlocutory review by the Commission of a pretrial order issued on August 23, 1993, by Administrative Law Judge Gary Melick. JWR's petition, filed "pursuant to 29 C.F.R. 2700.74," erroneously refers to the Commission's previous procedural rule for interlocutory review. The Commission's procedural rules were revised, effective May 3, 1993. 58 Fed. Reg. 12158 (March 3, 1993). The new rule regarding interlocutory review, found at 2700.76, to be codified at 29 C.F.R. 2700.76 (1993), provides that review cannot be granted unless: the judge has certified, either on his own or as the result of a party's motion, that his interlocutory ruling involves a controlling question of law and that, in his view, immediate review will materially advance final disposition of the matter; or that the judge has denied a party's motion for certification of the interlocutory ruling, and review is sought within 30 days of the denial.

JWR filed its petition directly with the Commission. Thus, JWR's petition for interlocutory review was not filed in conformance with the Commission's current rules. Nevertheless, because the Commission's rules have only recently been revised and in the interest of judicial economy, we have reviewed the petition.

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Having fully considered the petition of JWR, we conclude that it does not establish a basis for granting interlocutory review and we deny its request.

Arlene Holen, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

L. Clair Nelson, Commissioner