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SECRETARY OF LABOR, :
MINE SAFETY AND HEALTH :
ADMINISTRATION (MSHA) :
 :
v. : Docket No. WEVA 92-783
 :
UNITED STATES STEEL MINING CO., INC. :

BEFORE: Jordan, Chairman; Backley, Doyle and Holen, Commissioners

ORDER

BY THE COMMISSION:

The issue in this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 et seq. (1988), is whether interlocutory review should be granted. See Commission Procedural Rule 76, 29 C.F.R. 2700.76 (1993)("Rule 76"). The Commission remanded this case to Administrative Law Judge William Fauver for his determination, within the framework of Mathies Coal Co., 6 FMSHRC 1, 3-4 (January 1984), of whether the violation at issue was "significant and substantial." U.S. Steel Mining Co., 15 FMSHRC 2445, 2448-49 (December 1993). On April 15, 1994, the judge issued a "Decision on Remand," in which, on his own motion, he certified his ruling for interlocutory review. See Rule 76(a)(1)(i). Both parties have filed in opposition to interlocutory review.

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We conclude that Judge Fauver's ruling does not meet the criteria for interlocutory review set forth in Rule 76(a)(2) and, accordingly, review is denied. The judge is directed to issue a final disposition, on the existing record, pursuant to the Commission's previous remand instructions. 15 FMSHRC at 2448-49.

Mary Lu Jordan, Chairman

Richard V. Backley, Commissioner

Joyce A. Doyle, Commissioner

Arlene Holen, Commissioner