

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, D.C. 20004-1710

SEP 09 2014

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. SE 2013-301
	:	SE 2013-352
OAK GROVE RESOURCES, LLC	:	SE 2013-368
	:	SE 2013-399

BEFORE: Nakamura, Acting Chairman; Cohen and Althen, Commissioners

ORDER

BY THE COMMISSION:

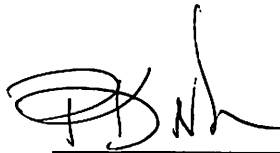
These matters arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2012). On August 22, 2014, the Administrative Law Judge certified for interlocutory review his Order Requiring Secretary’s Pre-Hearing Statement, which he issued on June 12, 2014. In that order, the Judge articulated criteria for establishing repeated flagrant violations pursuant to section 110(b)(2) of the Mine Act, 30 U.S.C. § 820(b)(2), and ordered the Secretary to submit a pre-hearing statement regarding whether the evidence in the case satisfied these criteria. Order at 13-14. The Secretary submitted his pre-hearing order on August 7, 2014, but the Judge determined that this statement failed to clarify a controlling question of law in the case. Certification at 3.

Pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, the Commission may review a Judge’s ruling, prior to the Judge’s final decision in the case, only if certain conditions are met. First, pursuant to Rule 76(a)(1), either the Judge must certify that his or her interlocutory ruling involves a controlling question of law and that immediate review will materially advance the final disposition of the proceeding or the Judge must deny a party’s motion for certification of the interlocutory ruling to the Commission and the party must file with the Commission a petition for interlocutory review within 30 days of the Judge’s denial of such motion for certification. This criterion was met by the Judge’s August 22, 2014 certification.

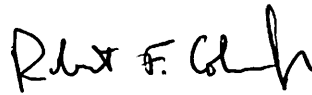
Second, under Rule 76(a)(2), a majority of Commission members must conclude that the Judge’s interlocutory ruling involves a controlling question of law and that immediate review may materially advance the final disposition of the proceeding. Here, however, review of the Judge’s June 12, 2014 Order would amount to an advisory opinion on an abstract legal principle.

Although the Judge has articulated his view of the legal standard that should be applied in this case, he has done so by ordering the Secretary to submit a pre-hearing statement applying this standard. Consequently, at this juncture, the only question on review would be whether the Judge abused his discretion in ordering the Secretary to submit the pre-hearing statement. This does not constitute a controlling question of law, nor does it frame, in the proper procedural posture, the legal question on which the Judge seeks interlocutory review.

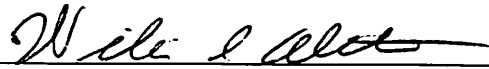
For the reasons set forth above, we deny interlocutory review.



Patrick K. Nakamura, Acting Chairman



Robert F. Cohen, Jr., Commissioner



William I. Althen, Commissioner

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