

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

1331 PENNSYLVANIA AVE., N.W., SUITE 520N  
WASHINGTON, DC 20004-1710

**July 27, 2023**

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	Docket No. WEVA 2023-0141
ADMINISTRATION (MSHA)	:	
	:	
v.	:	
	:	
CONSOL MINING COMPANY LLC	:	

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

**ORDER**

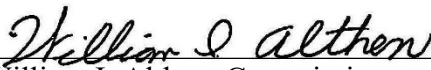
BY THE COMMISSION:


This case arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”). On July 7, 2023, the Administrative Law Judge assigned to this matter issued an order granting certification of questions for interlocutory review.

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, if certain conditions are met. This includes a Judge certifying that his interlocutory ruling involves a controlling question of law and that immediate review will materially advance the final disposition of the proceeding.

We find that the qualifications contained in Procedural Rule 76, 29 C.F.R. § 2700.76, have been met, and hereby GRANT interlocutory review.

  
 \_\_\_\_\_  
 Mary Lu Jordan, Chair

  
 \_\_\_\_\_  
 William I. Althen, Commissioner

  
 \_\_\_\_\_  
 Marco M. Rajkovich, Jr., Commissioner

  
 \_\_\_\_\_  
 Timothy J. Baker, Commissioner

Distribution:

Emily Toler Scott  
Counsel for Appellate Litigation  
U.S. Department of Labor  
Office of the Solicitor  
Division of Mine Safety & Health  
201 12th Street South, Suite 401  
Arlington, VA 22202  
[scott.emily.t@dol.gov](mailto:scott.emily.t@dol.gov)

Robert S. Wilson  
Office of the Solicitor  
U.S. Department of Labor, MSHA  
201 12<sup>th</sup> Street, Suite 401  
Arlington, VA 22202  
[wilson.robert.s@dol.gov](mailto:wilson.robert.s@dol.gov)

D. Cass Trent, CLR  
U.S. Department of Labor, MSHA  
4499 Appalachian Hwy  
Pineville, WV 24874  
[trent.david@dol.gov](mailto:trent.david@dol.gov)

Jim McHugh  
Hardy Pence LLC  
10 Hale Street, 4<sup>th</sup> Floor  
P.O. Box 2548  
Charleston, WV 25329  
[jmchugh@hardypence.com](mailto:jmchugh@hardypence.com)

Craig Aaron  
CONSOL Energy Inc.  
275 Technolgy Drive, Suite 101  
Canonsburg, PA 15317  
[craigaaron@consolenergy.com](mailto:craigaaron@consolenergy.com)

Michael G. Young  
Administrative Law Judge  
Federal Mine Safety and Health Review Commission  
Office of the Chief Administrative Law Judge  
1331 Pennsylvania Ave, NW, Suite 520N  
Washington, DC 20004  
[myoung@fmshrc.gov](mailto:myoung@fmshrc.gov)