

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20004-1710

August 5, 2022

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	Docket No. YORK 2022-0003
	:	A.C. No. 30-00026-541944
v.	:	
	:	
COUNTY LINE STONE CO., INC.	:	
	:	
SECRETARY OF LABOR,	:	Docket No. PENN 2021-0108
MINE SAFETY AND HEALTH	:	A.C. No. 36-07416-539405
ADMINISTRATION (MSHA)	:	
	:	
v.	:	
	:	
CONSOL PENNSYLVANIA COAL	:	
COMPANY LLC	:	
	:	
SECRETARY OF LABOR,	:	Docket No. WEVA 2022-0260
MINE SAFETY AND HEALTH	:	A.C. No. 46-09495-549775
ADMINISTRATION (MSHA)	:	
	:	
v.	:	
	:	
RAMACO RESOURCES, LLC	:	

BEFORE: Traynor, Chair; Althen and Rajkovich, Commissioners

ORDER

BY THE COMMISSION:

These captioned cases arise under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2018) (“Mine Act”), and are currently before Administrative Law Judge Michael G. Young. The Secretary of Labor has now filed a second Petition for Interlocutory Review of these cases pursuant to Commission Procedural Rule 76(a)(1)(ii), 29 C.F.R. § 2700.76(a)(1)(ii) (“The Judge has denied a party’s motion for certification of the interlocutory

ruling to the Commission, and the party files with the Commission a petition for interlocutory review within 30 days of the Judge’s denial of such motion for certification.”).¹

The Commission denied the Secretary’s first Petition for Interlocutory Review, finding that the Secretary’s petition was filed prematurely as the Judge had yet to issue an order either granting or denying the subject motions to approve settlement.

Thereafter, the Secretary filed renewed motions with the Judge. On August 2, 2022, the Judge issued three separate orders, each denying the Secretary’s renewed motions to approve settlement and for certification of interlocutory review.

The Secretary’s motions to approve settlement were filed with the Judge in accordance with section 110(k) of the Mine Act, 30 U.S.C. § 820(k).² Each motion to approve settlement contains a proposal to vacate one or more of the citations at issue. In consideration of the motion, the Judge asked if the Secretary’s representative could attest that the decision to vacate any citation was independent from, and not contingent upon, the compromise or settlement of other citations in that case. Instead of providing the Judge with his requested assurance, the Secretary filed motions for certification of interlocutory review with the Judge, requesting that the Judge certify to the Commission the question of whether the Secretary has unreviewable discretion to vacate a contested citation as part of a settlement.

As the Secretary’s petition recognizes, a similar controlling question of law is currently on review before the Commission in *Crimson Oak Grove Resources*, SE 2021-0112, et al. Specifically, in *Crimson Oak*, on March 2, 2022, the Commission granted interlocutory review of “the Judge’s orders denying the motions and the issue of whether section 110(k) of the Mine Act authorizes review of the Secretary’s decision to vacate a citation in the context of a settlement, when the vacatur is contingent upon the resolution of other citations.”

Commission Procedural Rule 76 provides that “the Commission, by a majority vote . . . may grant interlocutory review upon a determination 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.” 29 C.F.R. § 2700.76(a)(2). Rule 76 further provides that “[i]nterlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission.” 29 C.F.R. § 2700.76(a).

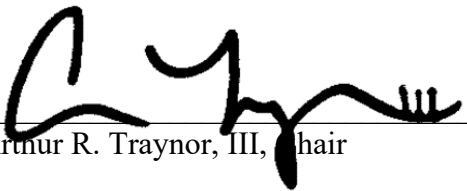
¹ On June 28, 2022, the Judge issued three separate orders, each denying the Secretary of Labor’s respective motion for certification of an interlocutory ruling.

² Section 110(k) of the Mine Act, 30 U.S.C. § 820(k), provides, in pertinent part, that “no proposed penalty which has been contested before the Commission under section 105(a) shall be compromised, mitigated, or settled except with the approval of the Commission.”

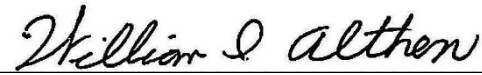
Upon consideration of the Secretary's petition, we hereby grant review of the Judge's orders and the issue of whether section 110(k) of the Mine Act authorizes review of the Secretary's decision to vacate a citation in the context of a settlement, when the vacatur is contingent upon the resolution of other citations.³

The Secretary's petition also contains an unopposed motion to hold the cases in abeyance. We grant the Secretary's motion in part and order all proceedings before the Judge to be stayed pending further order of the Commission. No hearing on these captioned matters shall commence without further order of the Commission.


The Secretary shall file an opening brief with the Commission within 30 days of this order. Any operator wishing to file a brief shall file that brief 30 days after the filing of the Secretary's brief.



Arthur R. Traynor, III, Chair



William I. Althen, Commissioner



Marco M. Rajkovich, Jr., Commissioner

³ Pursuant to Commission Procedural Rule 12, 29 C.F.R. § 2700.12, we hereby consolidate these three captioned proceedings: *County Line Stone Co., Inc.*, YORK 2022-0003, *Consol Pennsylvania Coal Co., LLC*, PENN 2021-0108, and *Ramaco Resources, LLC*, WEVA 2022-0260.

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