

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

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WASHINGTON, DC 20001

May 25, 2011

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket No. LAKE 2010-190
	:	
MACH MINING, LLC	:	

BEFORE: Jordan, Chairman; Duffy, Young, Cohen, and Nakamura, Commissioners

ORDER

BY: Duffy, Young, Cohen, and Nakamura, Commissioners

In this civil penalty proceeding arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (2006), Mach Mining, LLC (“Mach”) seeks to stay the instant proceeding pending the Commission’s disposition of an issue relating to its ventilation plan in *Mach Mining, LLC*, Docket Nos. LAKE 2010-1-R, et al. (“*Mach I*”). On February 2, 2011, Administrative Law Judge Margaret Miller issued an order denying Mach’s motion to stay. On February 9, 2011, Mach filed a motion for certification of the ruling for interlocutory review and a motion to stay. On February 16, 2011, the Secretary of Labor filed an opposition to this motion. The Judge issued an order denying the motion for certification and motion to stay on February 25, 2011.

On March 25, 2011, Mach filed with the Commission a petition for interlocutory review pursuant to Commission Procedural Rule 76, 29 C.F.R. § 2700.76, and a motion to stay this proceeding pending Commission review. In its petition, Mach seeks review of the Judge’s February 2 order denying the stay and February 25 order denying the certification and motion to stay. On April 6, 2011, the Secretary filed with the Commission an opposition to the petition for interlocutory review.

Upon consideration of Mach's petition, we have determined that it has failed to establish that the denial of the stay 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). We therefore deny the petition. We further deny as moot Mach's March 25 motion to stay proceedings pending Commission review.

Michael F. Duffy, Commissioner

Michael G. Young, Commissioner

Robert F. Cohen, Jr., Commissioner

Patrick K. Nakamura, Commissioner

Chairman Jordan, dissenting:

I would grant the operator's petition for interlocutory review and reverse the judge's order denying the motion to stay this proceeding pending the Commission's disposition in *Mach I*. The central issue in both cases is whether the termination of the March 13, 2009 withdrawal order constituted an approval of the operator's ventilation plan. Thus the judge's terse conclusion that the connection between the order at issue in this case and the cases on appeal in *Mach I* is "tenuous at best," Unpublished Order at 2 (February 2, 2011), is erroneous. Given the overlapping questions presented, I believe that judicial resources would best be served by staying this proceeding pending the Commission's decision in *Mach I*.

Mary Lu Jordan, Chairman

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