

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

1730 K STREET NW, 6TH FLOOR
WASHINGTON, D.C. 20006

March 28, 2002

SECRETARY OF LABOR,	:	
MINE SAFETY AND HEALTH	:	
ADMINISTRATION (MSHA)	:	
	:	
v.	:	Docket Nos. CENT 2001-363-M
	:	CENT 2001-364-M
CACTUS CANYON QUARRIES	:	
OF TEXAS, INC.	:	

BEFORE: Verheggen, Chairman; Jordan and Beatty, Commissioners

ORDER

BY: THE COMMISSION

This matter arises under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 801 et seq. (1994) (“Mine Act”). Cactus Canyon Quarries of Texas, Inc. (“Cactus Canyon”) has filed with the Commission a document styled “Petition for Discretionary Review” challenging an order by Administrative Law Judge Irwin Schroeder denying Cactus Canyon’s motion to certify for interlocutory review an earlier order by the judge. 24 FMSHRC 247 (Feb. 2002) (ALJ). In his earlier order, Judge Schroeder permitted the Secretary of Labor to file petitions for penalty assessment late. The Secretary filed an opposition to Cactus Canyon’s petition with the Commission.

Although Cactus Canyon has styled its document as a “Petition for Discretionary Review,” the petition meets the requirements for filing a petition for interlocutory review under Commission Rule 76(a)(1), 29 C.F.R. § 2700.76(a), and we therefore construe the petition accordingly. *Southmountain Coal Inc.*, 16 FMSHRC 28 (Jan. 1994) (construing a filing styled as a petition for discretionary review as a petition for interlocutory review).

Upon consideration of the pleadings filed by Cactus Canyon and the Secretary, we have determined that the judge’s order permitting the late-filing of the Secretary’s petitions for assessment of penalty does not involve a controlling question of law and that immediate review of that ruling would not materially advance the final disposition of this proceeding. *See J. Davidson & Sons Constr. Co.*, 23 FMSHRC 1099, 1100 (Oct. 2001). Accordingly, we conclude

that Cactus Canyon has failed to establish a basis for granting interlocutory review and, therefore, we deny the petition.

Theodore F. Verheggen, Chairman

Mary Lu Jordan, Commissioner

Robert H. Beatty, Jr., Commissioner

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