FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

601 NEW JERSEY AVENUE, NW SUITE 9500 WASHINGTON, DC 20001

September 12, 2003

SECRETARY OF LABOR, :

MINE SAFETY AND HEALTH
ADMINISTRATION (MSHA)

CENT 2002-80-M
CENT 2002-124-M
CENT 2001-285-M
CENT 2001-286-M
CENT 2001-363-M
CENT 2001-363-M
CENT 2001-364-M

OF TEXAS, INC. : CENT 2001-379-M

BEFORE: Duffy, Chairman; Beatty, Jordan, Suboleski, and Young, 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("Cactus Canyon") has filed with the Commission a document styled "Petition for Discretionary Review" challenging an unpublished order issued by Administrative Law Judge Irwin Schroeder denying its motion to certify for interlocutory review an earlier order by the judge. In his earlier order, Judge Schroeder denied Cactus Canyon's motion to dismiss the instant proceeding on the basis of the Secretary of Labor's delayed proposed penalties and late-filed petitions for assessment. *See* 25 FMSHRC 164, 169 (Mar. 2003) (ALJ). 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)(1), and we therefore construe the petition accordingly. *Southmountain Coal, Inc.*, 16 FMSHRC 28 (Jan. 1994) (construing a pleading styled as a petition for discretionary review as a petition for interlocutory review).

Upon c	consideration of	the pleadings	filed by Cactus	Canyon and th	e Secretary, the
Commission, i	n its discretion,	denies review	of Cactus Can	yon's petition.	See 29 C.F.R.
§ 2700.76(a).					

Mich	ael F. Duff	y, Chair	man		
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Mary	Lu Jordan	, Comm	issioner		
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