the public interest requires reopening of the proceeding and setting aside of the order to cease and desist:

It is ordered, That respondent's request that the proceeding be reopened and the order to cease and desist be set aside be, and it hereby is, denied.

ERIE SAND & GRAVEL CO.

Docket 6670. Order, Sept. 9, 1957

Interlocutory order denying respondent's appeal from rulings granting complaint counsel's motion to amend complaint to conform to evidence introduced by consent of the parties; denying respondent's motion to dismiss complaint as not showing justification; and denying respondent's request for oral argument as serving no useful purpose.

ORDER DISPOSING OF RESPONDENT'S INTERLOCUTORY APPEAL AND REQUEST FOR ORAL ARGUMENT

This matter having come on to be heard upon respondent's interlocutory appeal from the hearing examiner's rulings on July 24, 1957, granting the motion of counsel supporting the complaint to amend the complaint and denying respondent's motion to dismiss the complaint, upon respondent's request for oral argument, and upon the answering briefs of counsel supporting the complaint in opposition thereto; and

It appearing to the Commission that the examiner's ruling on the motion to amend the complaint was in effect a ruling to conform the complaint to the evidence introduced by consent of the parties; and it being the opinion of the Commission that such a determination on the part of the examiner is entitled to great weight and not one to be disturbed in the absence of a clear showing of error; and it also appearing that to protect respondent's rights it is not required that the Commission render a ruling at this time, since respondent may raise this point on appeal from any initial decision which may be filed; and it having been determined that, under the circumstances, the ruling on the motion to amend is not one on which appeal will be granted under section 3.20 of the Commission's rules of practice; and

It further appearing that the examiner's denial of respondent's motion to dismiss the complaint is only a determination that a prima facia case has been established, a determination not affecting the final decision in the proceeding since that decision will be made on the basis of the whole record, including such evidence as may be received from the respondent; and it having been determined that there has been no showing of justification for appeal from the denial of the motion to dismiss, as required by said section 3.20; and

It additionally appearing that the Commission is now fully advised