Interlocutory order denying—no sufficient showing having been made as to the relevancy or materiality of the documents concerned—application for release of confidential information, improperly presented as an application

for issuance of a subpoena duces tecum directing the Commission's Secretary to appear and produce certain records relating to compliance reports.

ORDER DENYING APPLICATION FOR CONFIDENTIAL MATERIAL

This matter having been heard upon respondent's appeal from the hearing examiner's denial of its application of January 16, 1963, for the issuance of a subpoena duces tecum; and

The Commission, for the reasons appearing in the accompanying opinion, having determined that the matter should be treated as an application for the release of confidential information and that such application should be denied:

It is ordered, That respondent's appeal from the hearing examiner's denial of its application for a subpoena duces tecum, treated as an application for the release of confidential information, be, and it hereby is, denied.

OPINION ON APPEAL FROM DENIAL OF REQUEST FOR SUBPOENA

BY THE COMMISSION:

This matter is before the Commission upon respondent's appeal from the hearing examiner's denial of its application filed January 16, 1963, for the issuance of a subpoena duces tecum directing the Secretary of the Commission to appear and produce certain records relating to compliance report matters in Docket Numbers 6837, 6888 and 7590. The Commission previously, by its letter of December 10, 1962, denied respondent's application for release of reports of compliance in these same matters.

Respondent in its present application is seeking records and documents showing (1) dates when compliance reports were received and filed in the three aforementioned matters, (2) directions given the custodian of the reports relative to their confidential nature, and (3) the dates when directions were given said custodian to treat the reports as confidential and not to release them to the public.

The documents and information so sought are confidential under the Commission's Rules of Practice and the hearing examiner had no authority to require their production. *Thomasville Chair Company*, Docket No. 7273 (Order Denying Respondent's Appeal From Hearing Examiner's Rulings And Application For Release Of Information, November 6, 1959) [56 F.T.C. 1651]. The proper procedure to follow in seeking the release of confidential information is set forth in § 1.164 of the Commission's Rules of Practice. This procedure is elaborated upon in *L. G. Balfour Company*, Docket No. 8435 (Opinion and Order Remanding Respondent's Motion to Inspect and Copy Documents, October 5, 1962) [61 F.T.C. 1491].

We believe that, although improper procedure was followed, the request of the respondent should be considered, and, therefore, we will treat the matter as an application for the release of confidential information under § 1.164 of the Commission's Rules of Practice. Under this rule, confidential information may be released only for good cause shown. Respondent asserts that the documents and information requested are needed for its defense in this proceeding.