DEAN FOODS COMPANY ET AL.

Docket 8674. Order, April 25, 1966

Order vacating hearing examiner's order denying respondent's request for subpoenas duces tecum directed to four dairies and ordering hearing examiner to reconsider the matter.

ORDER GRANTING APPEAL, VACATING RULING DENYING REQUEST FOR SUBPOENAS AND DIRECTING RECONSIDERATION

This matter is before the Commission upon the appeal of complaint counsel under § 3.17(f) of the Commission's Rules of Practice from the hearing examiner's ruling contained in his memorandum to complaint counsel, dated March 29, 1966, denying their request to issue subpoenas duces tecum directed to four named persons to appear and to testify and to produce documents, for the reason that a hearing had not been scheduled in the proceeding. The hearing examiner stated, in his memorandum, that the time and place of hearings will be fixed at a prehearing conference scheduled for May 23, 1966, that he sees no necessity to require the appearance of the parties prior to the time of the "regular hearings," and that the said counsel's request could be renewed after hearings have been scheduled.

the "Jencks rule" as described in the Commission's opinion of this date;

(2) deliver to respondents' counsel any of such reports or portions thereof found by him to be statements within the meaning of the "Jencks rule" and to be relevant for the purposes of cross-examination;

(3) if requested by respondents' counsel, reconvene the hearing-in-chief to permit respondents' counsel to utilize such reports or portions thereof for the purpose of cross-examining any of such witnesses whom respondents' counsel requests be recalled for such purpose; and

(4) issue a new initial decision which should include specific findings with respect to the issues presented on this remand.

Commissioner Elman dissented and has filed a dissenting opinion. Commissioner MacIntyre concurred and has filed a separate concurring statement.

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