SWINGLINE INC.

Docket 8759. Order, May 24, 1968

Order denying respondent's request that proceeding be withdrawn from adjudication.

Order Denying Request to Withdraw Proceeding From Adjudication

This matter is before the Commission upon the hearing examiner's certification of May 10, 1968, of respondent's request to certify a motion to withdraw the proceeding from adjudication. The hearing examiner recommends that the motion be denied.

Although § 2.34(d) of the Rules of Practice and Procedure provides that the consent order procedure is not available after complaint has issued, it also provides that the Commission, upon request, may in exceptional and unusual circumstances and for good cause shown withdraw a proceeding from adjudication in order to negotiate a consent order.

In its motion respondent states that since the issuance of the complaint it has obtained new counsel and it now desires the opportunity to negotiate a consent order. In addition, respondent claims that changed circumstances warrant withdrawal of the matter from adjudication.

Respondent has not met the exceptional and unusual circumstances requirement nor shown good cause which would warrant withdrawal of the proceeding from adjudication. It should be noted that prior to the issuance of the complaint an attempt was made to settle the matter by entry of a consent order to cease and desist. Moreover, as a general rule the Commission will not entertain a request to withdraw a proceeding from adjudication unless it is accompanied by at least a concrete proposal of settlement by respondent. In the instant proceeding, respondent has done no more than express a desire to dispose of the matter through negotiation of a consent order without even submitting to the Commission, for its consideration, a proposed order to cease and desist.

For these reasons we agree with the hearing examiner that the requirements of § 2.34(d) for withdrawal of the proceeding from adjudication have not been met. Accordingly,

It is ordered, That the request to withdraw the proceeding from adjudication be, and it hereby is, denied.

SUBURBAN PROPANE GAS CORPORATION