SUBPOENA FOR APPEARANCE OF GOVERNMENT OFFICIAL

This matter is before the Commission upon the hearing examiner's certification filed December 4, 1970, of complaint counsel's motion for the issuance of a subpoena *ad testificandum* addressed to Mr. Reese R.

Morgan, Chief, Chemical Section, Industry Division, United States Department of Commerce pursuant to Section 3.37 of the Commission's Rules of Practice.

The hearing examiner recommends that complaint counsel's application be granted. He made his recommendation apparently on the ground that respondent does not object to the granting of the motion and on the further ground that if, "as indicated in complaint counsel's application, * * * Mr. [Morgan's] testimony is limited to merely testifying as to the manner in which proposed CX 67 a–b was prepared, the hearing examiner finds no conflict with the provisions of 13 U.S.C.A., Section 9, as amended."

The whole question of the application of Commission Rule, Section 3.37 and the hearing examiner's responsibility thereunder has been dealt with in detail in two other decisions in interlocutory matters issued simultaneously herewith, namely, *Avnet, Inc.*, Docket No. 8775 [p. 1686 herein] and *Missouri Portland Cement Company*, Docket No. 8783 [p. 1688 herein].

In this instance, we will approve the issuance of the requested subpoena, but the hearing examiner is instructed to apply the principles set forth in the other matters referred to above. The hearing examiner should not base his determinations on questions relative to the scope of Mr. Morgan's testimony, either on direct or on cross examination, on the possible application, or lack thereof, of a confidentiality provision protecting the records of another agency; rather he should decide such questions on their own merits by reference to the procedural rules including the rules on the receipt of evidence applicable to Commission proceedings. Nothing herein stated however is to the prejudice of the examiner in exercising his broad discretion to determine the admissibility and the appropriateness of the testimony in all respects otherwise. Accordingly,

It is ordered, That the hearing examiner be, and he hereby is, authorized to issue a subpoena *ad testificandum* addressed to Mr. Reese R. Morgan, Chief, Chemical Section, Industry Division, United States Department of Commerce.

ASH GROVE CEMENT COMPANY

Docket 8785. Order and Opinion, Dec. 28, 1970

Order denying various respondent and third party appeals, vacating certain of the hearing examiner's orders, and remanding case to hearing examiner for appropriate action.

Order and Opinion Ruling on Interlocutory Appeals

The Commission has before it in this already much appealed proceeding further appeals which will be separately considered below.