It is ordered, That the respondents' appeal be, and it hereby is, denied.

Chairman Kirkpatrick not participating.

MISSOURI PORTLAND CEMENT COMPANY

Docket 8783. Order, April 28, 1972

Order denying request for review of hearing examiner's adverse rulings on a request for an extension of time, and for oral depositions and subpoenas *duces tecum*.

ORDER DENYING REQUEST FOR REVIEW OF HEARING EXAMINER'S RULINGS AND REQUEST TO RULE DIRECTLY ON MOTION FOR EXTENSION OF TIME

This matter is before the Commission upon the filing by respondent of two documents, the first entitled "Appeal From Hearing Examiner's Denial Of Request For Extension Of Time And Denial Of Application For Oral Depositions And Subpoenas Duces Tecum," filed April 20, 1972; and the other entitled "Motion For Extension Of Time In Which To Respond To Summary Judgment Motion," filed April 24, 1972.

On the first filing, termed an "appeal," the Commission has determined that respondent has not complied with the provisions of Commission Rule Section 3.23, governing interlocutory appeals, published in the Federal Register March 17, 1972 (Volume 37, No. 53, page 5608), and effective fifteen (15) days thereafter. There has been no determination by the hearing examiner of justification in accordance with Paragraph (b) of Section 3.23, nor has respondent shown that the rulings complained of fall within any of the four categories set out in Paragraph (a) of such rule.

Thus, respondent has not justified its request for a review of the hearing examiner's rulings under the Commission's Rules of Practice.

The Commission has further determined that respondent's other filing, which is a direct request to the Commission for an extension of time pursuant to Section 3.22(d) of the Commission's Rules of Practice, is inappropriate in the circumstances. Paragraph (d) of Section 3.22 is intended to give the hearing examiner or the Commission discretion to waive the requirements of Paragraph (c) of that section in the case of motions for extension of time, permitting such motions to be ruled on *ex parte*. Furthermore, Paragraph (d) must be read in the light of Paragraph (a) of Section 3.22, which provides

that during the time a proceeding is before the hearing examiner all motions except those filed under Section 3.42(g) are to be addressed to the hearing examiner, and if within his authority ruled on by him.

Thus, Paragraph (d) clearly means that a motion for an extension of time relating to an issue within the authority of the hearing examiner shall be ruled on by the hearing examiner and a motion for an extension of time relating to an issue reserved to the Commission shall be ruled by the Commission. It does not mean that during the time a proceeding is before the hearing examiner either the Commission or the examiner may rule on all motions for extensions of time nor does it mean that in connection with an issue properly before the hearing examiner a party may move the Commission directly for an extension of time.

In the circumstances, the Commission will not rule on the merits of the request for the extension of time. We hold only that in the circumstances the request was not properly made to the Commission. Accordingly,

It is ordered, That respondent's request filed April 20, 1972 for a review of the hearing examiner's rulings in his order filed April 17, 1972, denying (1) a request for an extension of time by respondent to oppose complaint counsel's motion for summary judgment, and (2) applications for oral depositions and subpoenas *duces tecum*, be, and it hereby is, denied.

It is further ordered, That respondent's request filed April 24, 1972, that the Commission directly rule on its motion for an extension of time, be, and it hereby is, denied.

EATON YALE & TOWNE, INC.

Docket 8826. Order, May 3, 1972

Order denying respondent's request for permission to file interlocutory appeal and for stay of hearings pending appeal.

ORDER DENYING REQUEST TO FILE INTERLOCUTORY APPEAL AND MOTION TO STAY HEARINGS