

Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

IN THE MATTER OF
ASH GROVE CEMENT COMPANY

Docket 8785. Order, June 10, 1975

Denial of respondent's motions to stay a final decision in this matter, reopen the record for the reception of evidence, or dismiss the complaint.

Appearances

For the Commission: *Thomas F. McNerney, Paul N. Kane and Nancy P. Rosenfeld.*

For the respondent: *David McKean and Robert Williams, McKean, Whitehead & Wilson, Wash., D.C.*

ORDER DENYING RESPONDENT'S MOTION TO STAY A FINAL DECISION IN THIS MATTER, REOPEN THE RECORD FOR THE RECEPTION OF EVIDENCE, OR DISMISS THE COMPLAINT.

By Motions filed Feb. 10, 1975 and Apr. 3, 1975, respondent in the above-captioned matter requests: (a) a stay of any final order, other than a dismissal of the complaint, pending the judicial outcome of the first of respondent's two separate attempts to obtain Commission documents under the Freedom of Information Act, 5 U.S.C. §551, *et seq.*; (b) a reopening of the adjudicative record until such time as respondent obtains, and offers into evidence, documents sought under both of its Freedom of Information Act requests; or, in the alternative (c) a final order dismissing the complaint.

The first and second request each seek essentially the same relief. Each would have the Commission hold in abeyance any final order in this matter until after the resolution of respondent's pending attempts to obtain documentation. Such documentation as might be forthcoming, it is urged, could be probative with respect to certain affirmative defenses raised in the course of this adjudication. The request for dismissal is grounded on the argument that because the Commission recently elected to close an investigation of certain acquisitions allegedly similar to those of respondent, it would be an abuse of discretion to continue the current case against respondent.

With respect to the request for dismissal, it is the Commission's view that it is well within its discretion to continue this proceeding, despite having elected to close the investigation referenced in respondent's

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motion papers. *See Federal Trade Commission v. Universal-Rundle Corp.*, 387 U.S. 244, 251 (1967). As to the requests for stay of a final order and subsequent reopening of the record, the Commission finds that the respondent had ample opportunity for discovery in this matter. The ALJ determined that the documents now requested pursuant to the Freedom of Information Act, 5 U.S.C. §551, *et seq.*, were not subject to discovery in the adjudicative proceeding. The Commission finds that arguments predicated upon the receipt and attempted introduction of these same documents into evidence are too speculative and uncertain a base upon which to stay this proceeding. Accordingly,

It is ordered, That respondent's motions filed Feb. 10, 1975 and Apr. 3, 1975, be, and they hereby are, denied.