

IN THE MATTER OF
HORIZON CORPORATION

Docket 9017. Order, June 10, 1975

General counsel ordered to take action to notify the Arizona District Court in accordance with Commission's determination contained in its order.

Appearances

For the Commission: *Eugene Kaplan, Alan N. Schlaifer and Morgan D. Hodgson.*

For the respondent: *Basil Mezines, Stein, Mitchell & Mezines, Wash., D.C. and Samuel Pruitt, Jr. and J. Michael Brennan, Gibson, Dunn & Crutcher, Los Angeles, Calif.*

ORDER DIRECTING GENERAL COUNSEL TO TAKE
APPROPRIATE ACTION IN JUDICIAL PROCEEDING

By motion filed May 12, 1975, complaint counsel requested that the General Counsel of the Commission be directed to appear as *amicus*

* Commission order of July 29, 1975, corrected the statement of compliance deadlines in the final order by substituting the words "this Order becomes final," for the words "service of this Order upon respondents" in each of subparagraphs IV A., B., and C.

Order

85 F.T.C.

curiae in *O'Neil v. Horizon Corp.*, Docket No. 10427, an action now pending in the Arizona District Court in which, they contend, a proposed settlement may have some effect on the above-captioned matter. Respondent does not object to such an appearance by a representative of the Commission, but argues that it would violate the Administrative Procedure Act, 5 U.S.C. § 554(d), for the General Counsel, as the Commission's chief legal adviser, to perform the investigative and prosecutorial duties necessary to make the appearance. Pursuant to Section 3.22 of the Commission's Rules of Practice, the law judge certified this motion to the Commission.

The Commission has determined to grant the motion to the extent of notifying the court of 1) the pending Commission action against Horizon; 2) the authority of the Commission to seek consumer redress in court and the possibility that such authority might be exercised if a final cease and desist order were entered against Horizon; and 3) the effect of the proposed settlement in the *O'Neil* case on any future Commission consumer redress action. The Commission finds no impropriety in the General Counsel representing the Commission in this matter, since he will not be prosecuting the Commission's complaint within the meaning of 5 U.S.C. § 554(d) but will simply be informing the court of matters relevant to the court's consideration of the potential settlement in the *O'Neil* case.

It is ordered, That the General Counsel take action to notify the court in the *O'Neil* case in accordance with the above.
