

Interlocutory Order

90 F.T.C.

IN THE MATTER OF

GENERAL MOTORS CORPORATION, ET AL.

Docket 9074. Interlocutory Order, Sept. 9, 1977

Denial of complaint counsel's application for review of various provisions of a protective order issued by the administrative law judge.

ORDER DENYING APPLICATION FOR REVIEW

Complaint counsel apply for review of various provisions of a protective order (as to respondent General Motors) issued by the administrative law judge on March 29, 1977. The law judge has not determined that interlocutory review would be appropriate under the Commission's Rules, Section 3.23(b), but complaint counsel contend that the Commission should nevertheless exercise its inherent authority to review a "clear abuse of discretion or the exceeding of delegated authority."

It appears that the protective order may contravene the general policy the Commission has consistently pursued regarding the protection of confidential business information. However, complaint counsel have offered no cogent reasons why the Commission should depart from the requirements of Section 3.23(b) and entertain this appeal in the absence of certification by the law judge. Complaint counsel state that they could "work under" the ALJ's order and it is apparent that respondent did not comply with the Commission's process on the condition that the protective order be entered. We therefore decline to review the protective order at this time. The question, of course, may be taken up at such time as the Commission is presented the ALJ's initial decision for review or, perhaps, on other occasions when the order is found to interfere with proper use of the documents in question.

The aforesaid application for review is accordingly denied.¹

It is so ordered.

CONCURRING STATEMENT OF COMMISSIONERS COLLIER AND
CLANTON

We concur in the Commission's disposition of this appeal for the procedural reasons set forth in the order. We reach this conclusion even though we believe it is clear that the protective order is a clear abuse of the ALJ's discretion. Among other things, the order purports to require prenotification of respondent General Motors before

¹ The Commission has determined to treat complaint counsel's application as timely filed.

release of information and to restrict access to documents without regard for the Freedom of Information Act (and at least to that extent is completely outside the law judge's authority), and requires unprecedented restrictions on the access of the Commission's employees and return of documents, without any explanation or findings on the record that such extraordinary treatment is necessary. In this case, however, and for reasons stated in the Commission's order, there is no showing that the ALJ's protective order works any irreparable prejudice on the rights of the parties or the public.

Interlocutory Order

90 F.T.C.

IN THE MATTER OF
ATLANTIC RICHFIELD COMPANY

Docket 9089. Interlocutory Order, Sept. 9, 1977

Denial of respondent's motion to dismiss complaint on ground that continued prosecution of action is not in the public interest.

ORDER DENYING RESPONDENT'S MOTION TO DISMISS
COMPLAINT

The administrative law judge has certified to the Commission respondent's motion to dismiss the complaint on the ground that, because of changed circumstances, continued prosecution of this action is not in the public interest.

The Commission adheres to its view that this proceeding is in the public interest. The only changed circumstance cited in respondent's motion is the sale one month prior to consummation of the merger of its ownership interest in the Clay West Project, a producer of uranium oxide, to its joint venture partners. According to respondent, as a result of this sale, Atlantic Richfield and The Anaconda Company no longer competed with one another and complaint counsel will therefore be unable to prove the merger resulted in the elimination of actual competition. We do not decide the various legal and factual issues raised by respondent's mootness claim. However, the claim that the merger eliminated actual competition in the uranium oxide market is one of only three theories advanced in the complaint. Assuming, without deciding, that the actual competition theory has been mooted, we believe further proceedings with respect to the other two theories would still be warranted. As for respondent's argument that the two potential competition theories are "extremely weak," we believe that these theories can be assessed only on the basis of a full evidentiary record.

Respondent's motion to dismiss the complaint is accordingly denied.

It is so ordered.