

Decision No. 29986.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

WESTERN SUN FERTILIZER CO.,  
Complainant,

vs.

SOUTHERN PACIFIC COMPANY,  
Defendant.

Case No. 2659.

BY THE COMMISSION:

**ORIGINAL**

O P I N I O N

Complainant is a corporation engaged in the sale and distribution of fertilizer and fertilizer compounds, with its principal place of business at Covina, California. By complaint filed February 15, 1929, it is alleged that the rate assessed on three carloads of fertilizer shipped from San Francisco to Covina September 17, December 4 and December 31, 1926, was unjust and unreasonable in violation of Section 13 of the Public Utilities Act to the extent that it exceeded 25 cents per 100 pounds.

Reparation only is involved. Rates are stated in cents per 100 pounds.

Complainant's shipments, consisting of a mixture of cocoa bran and peanut chaff, originated on an industry track of the Western Pacific at San Francisco and were line-hauled to Covina by the Southern Pacific Company. The rate assessed and collected was 35½ cents, made combination over Los Angeles, using a commodity rate of 25 cents to Los Angeles and the Class "B"

rate of 10½ cents beyond, plus the Western Pacific switching charge of \$2.70 per car. The latter charge is not at issue in this proceeding. Because of the presence of peanut chaff in the shipments the commodity rate factor of 25 cents from San Francisco to Los Angeles was inapplicable, and the lawful rate was the through Class "B" rate of 48½ cents from San Francisco to Covina, resulting in a straight undercharge of 13 cents per 100 pounds on complainant's shipments which has not been collected. At the time the shipments moved defendant maintained in its Tariff 730-C, C.R.C. 2904, a rate of 25 cents applying on various other kinds of fertilizer, and effective October 13, 1927, published in this same tariff a like rate of 25 cents on the commodity here at issue. It is upon the basis of these rates that complainant seeks reparation.

Defendant admits the allegations of the complaint and has signified a willingness to make a reparation adjustment, therefore under the issues as they now stand a formal hearing will not be necessary.

Upon consideration of all the facts of record we are of the opinion and so find that the assailed rate was unjust and unreasonable to the extent it exceeded the subsequently established rate of 25 cents; that complainant paid freight charges at the erroneous rate of 35½ cents; that there remains an uncollected undercharge of 13 cents per 100 pounds on the shipments in question, and that complainant has been damaged to the extent of the difference between the charges paid and those that would have accrued at the rate herein found reasonable, and is entitled to reparation without interest. Complainant specifically waived the payment of interest.

Complainant will submit statement of shipments to defendant for check. Should it not be possible to reach an agreement as to the amount of reparation the matter may be referred to the Commission for further attention and the entry of a sup-

plemental order should such be necessary.

O R D E R

This case being at issue upon complaint and answer on file, full investigation of the matters and things involved having been had, and basing this order on the findings of fact and the conclusions contained in the opinion which precedes this order,

IT IS HEREBY ORDERED that defendant Southern Pacific Company be and it is hereby authorized and directed to refund, without interest, to complainant Western Sun Fertilizer Company all charges collected in excess of 25 cents per 100 pounds plus \$2.70 per car switching charge for the transportation from San Francisco to Covina of the shipments of fertilizer involved in this proceeding.

Dated at San Francisco, California, this 17<sup>th</sup> day of April, 1929.

Thos. L. Lott

C. S. Leary

Francis C. ...

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M. A. ...  
Commissioners.