

Decision No. 21910.

## BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

SUTTER CO-OPERATIVE GROWERS, )

Complainant, )

vs. )

SOUTHERN PACIFIC COMPANY, )

Defendant. )

Case No. 2785.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation with its principal place of business in San Francisco. By complaint filed November 18, 1929, it is alleged that the charges assessed and collected on numerous carloads of peaches moving from Tisdale to Elmhurst during the year 1928 were unjust and unreasonable in violation of Section 13 of the Public Utilities Act.

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

Tisdale is on the Sutter Basin Branch of the Southern Pacific Company 28 miles north of Woodland; Elmhurst is a sub-station of Oakland. Charges were assessed against complainant's shipments, consisting of 23 carloads of peaches, on basis of the Class "C" rate, protecting the third class minimum of  $17\frac{1}{2}$  cents. Effective July 23, 1929, on 15th revised page 26 of Southern Pacific Company Tariff 817-C, C.R.C. 2865, defendant published a commodity rate of 17 cents for the movement here involved and it is on the basis of this subsequently established rate 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 find that the assailed rate is unjust and unreasonable to the extent it exceeded the subsequently established rate of 17 cents; that complainant made the shipments as described, paid and bore the charges thereon 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 supplemental 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 to complainant Sutter Co-operative Growers all charges collected in excess of 17 cents per 100 pounds for the transportation from Tisdale to Elmhurst of the shipments of peaches involved in this proceeding.

Dated at San Francisco, California, this 16th day of December, 1929.

Thomas E. Smith  
Chas. J. ...  
Leon ...  
W. J. ...  
Commissioners.