

Decision No. 23520.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE SEERWIN-WILLIAMS CO. OF CALIFORNIA,

Complainant,

vs.

SOUTHERN PACIFIC COMPANY,
PACIFIC ELECTRIC RAILWAY COMPANY,

Defendants.

ORIGINAL

Case No. 2940.

BY THE COMMISSION:

O P I N I O N

Complainant is a corporation engaged in the manufacture of insecticides, paints and other articles. By complaint filed October 16, 1930, and as amended, it is alleged that the rates assessed and collected for the transportation of numerous carloads of tree spray compound shipped from Oakland to Orange and Garden Grove during July, August and September, 1929, 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.

Garden Grove and Orange are on the Pacific Electric Railway, 27 and 36 miles respectively southeast of Los Angeles. Complainant's shipments consisted of nine carloads of tree spray compound all of which originated at Emeryville, a sub-station of Oakland on the line of the Southern Pacific Company. Four of the cars were destined to Garden Grove and five to Orange. Charges

were assessed on basis of rates of 33 cents and 35½ cents respectively. The 33¢ rate is obtained by combining commodity rates of 25¢ and 8¢ applying to and from Los Angeles; the 35½¢ rate is the Class "E" rate from Oakland to Orange. Effective March 15, 1930, in Supplement 41 to Pacific Freight Tariff Bureau Tariff 30-J, C. R.C. 436, defendants published a joint through commodity rate of 25 cents on lime and sulphur solution and petroleum tree spray emulsion from Oakland to Orange. This rate also applies as maximum at Garden Grove. It is on the basis of these subsequently established rates that complainant seeks reparation.

Defendants admit the allegations of the complaint and have 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 rates were unjust and unreasonable to the extent they exceeded 25 cents per 100 pounds; 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.

The exact amount of reparation due is not of record. Complainant will submit to defendants for verification a statement of the shipments made and upon the payment of reparation defendants will notify the Commission the amount thereof. Should it not be possible to reach an agreement as to the reparation award 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 answers 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 defendants, Southern Pacific Company and Pacific Electric Railway Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund without interest to complainant, The Sherwin-Williams Co. of California, all charges collected in excess of 25 cents per 100 pounds for the transportation from Oakland to Garden Grove and Orange of the shipments of tree spray compound involved in this proceeding.

Dated at San Francisco, California, this 16th day of March, 1931.

C. L. Weaver
Leon Whiskey
M. J. Linn
M. B. Harwin
Fred G. Stewart
Commissioners.