

Decision No. 27683.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

THE CUDAHY PACKING COMPANY,  
Complainant,

vs.

THE ATCHISON, TOPEKA AND SANTA FE  
RAILWAY COMPANY,  
SOUTHERN PACIFIC COMPANY,

Defendants.

Case No. 3938.

BY THE COMMISSION:

ORIGINAL

O P I N I O N

By complaint filed December 4, 1934, it is alleged that the charges assessed and collected on numerous shipments of fat sheep transported in double deck cars from Cantil and Olancha to San Diego during the two-year period immediately preceding the filing of the complaint, 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.

The movements here in issue are similar to those involved in Case 3404, The Cudahy Packing Company vs. Southern Pacific Company et al. In that proceeding the Commission found that the applicable charges were unreasonable to the extent they exceeded those that would have accrued on basis of a rate of 40½ cents from Cantil and 47½ cents from Olancha to San Diego. Reparation was awarded with interest and rates established for the future. It is upon the basis of the rates estab-

lished in that proceeding that complainant here seeks reparation.

Defendants do not deny that the applicable charges are unreasonable to the extent they exceed those sought, and have signified their willingness to make a reparation adjustment provided complainant furnishes proper proof that it was damaged by the assailed rates. 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 40½ cents from Cantil and 47½ cents from Olancha to San Diego. We further find that upon proper proof that it was damaged by the collection of the assailed rates on the shipments involved, complainant is entitled to reparation with interest at six (6) per cent. per annum.

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 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 upon proper proof that complainant

paid or bore the charges, defendants The Atchison, Topeka and Santa Fe Railway Company and Southern Pacific Company, according as they participated in the transportation, be and they are hereby authorized and directed to refund to complainant, The Cudahy Packing Company, with interest at six (6) per cent. per annum, all charges collected in excess of those that would have accrued on basis of the rates found reasonable in the opinion which precedes this order, for the transportation of the shipments of fat sheep involved in this proceeding.

Dated at San Francisco, California, this 21st day of January, 1935.

Leon Arkhiv

W. J. Lee

M. B. Harris

W. H. Brown

Frank R. Kelly  
Commissioners.