

Decision No. 24175

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

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In the Matter of the Application of
MODOC LOGGING RAILROAD COMPANY for
an order authorizing the construction
at grade of a main line track crossing
the tracks of Modoc Logging Railroad
Company and Great Northern Railway
Company in Section 18, Township 44
South, Range 6 East, M. D. B. & M.,
County of Modoc, State of California.

) ORIGINAL

) Application No. 17639

W. C. Van Emon, for the Applicant

Thomas Balmer and Earl & Hall, by
Chaffee E. Hall, for Protestant
Great Northern Railway Company

STEVENOT, Commissioner:

O P I N I O N

In this proceeding Modoc Logging Railroad Company asks for an order authorizing the construction of its line of railroad at grade across the tracks of Great Northern Railway Company in Section 18, Township 44 North, Range 6 East, M.D.B. & M. Modoc County, California.

A public hearing was held in this matter in San Francisco on October 14, 1931.

Applicant, Modoc Logging Railroad Company, proposes to construct a line of railroad in Modoc County, beginning from a connection with the Southern Pacific Company Klamath Falls-Alturas line, at Dry Lake Junction, (Section 28, Township 45

North, Range 6 East, M. D. B. & M.) running thence in a south-westerly direction for a distance of approximately 6.4 miles to the timber lands of the Shaw-Bertram Lumber Company. The proposed line contemplates crossing Great Northern Railway's new constructed Klamath Falls-Bieber Line at grade at a point approximately 4.4 miles from the connection with the Southern Pacific tracks, and it is this crossing which is involved in this proceeding. The southerly end of the proposed track is to be located in Section 24, Township 44 North, Range 5 East; all of which is shown by the map attached to the application and marked Exhibit "A".

The record shows that applicant desires to construct its line of railroad for the purpose of transporting saw logs, lumber and forest products from timber lands in Siskiyou and Modoc Counties to Dry Lake Junction, where it connects with Southern Pacific Company's line. The timber lands are located in the vicinity of the southwest terminal of the railroad. The president of the Modoc Logging Railroad Company testified that it would require about eight years to move the merchantable timber which is immediately tributary to the line.

Applicant is a Nevada corporation and was organized by the Shaw-Bertram Lumber Company for the purpose of constructing the proposed line. The road was conceived for the purpose of handling the products of Shaw-Bertram Lumber Company, hereinafter referred to as the Lumber Company, which maintains and operates a manufacturing plant at Klamath Falls, Oregon. The Lumber Company owns the timber lands which will be entered by the new road, known as the Tionesta timber, and they plan to

draw from the area about 25 million board feet of logs per year for approximately eight years. The normal output of the Timber Company's plant at Klamath Falls, Oregon, is about 40 million feet per year of manufactured products.

The president of the Lumber Company, who is also president of the applicant company, testified that the applicant would operate no equipment over the new line, but would grant to the Lumber Company a trackage right over the line and all operations would be conducted by it. The Lumber Company would move the logs from the timber land to Dry Lake Junction, avowedly as a private carrier, and at said Junction would bill the logs over the Southern Pacific's line to its plant at Klamath Falls, Oregon.

The applicant would purport to be an intrastate carrier, and would file with this Commission a tariff for the movement of logs and lumber products over its line from timber land to Dry Lake Junction. It would refuse to accept shipments moving in interstate traffic.

From the facts of record, it is clear that the applicant does not propose to operate as a bona fide common carrier railroad. No shipper in the area has requested the service. The territory served, the Tionesta timber lands, are owned by the Lumber Company, and it does not appear that there are other shippers in that area. If shipments were received they obviously would be destined to points beyond Dry Lake, a mere junction point.

All shipments of logs and lumber products beyond

Dry Lake would unquestionably move in interstate commerce. Of course, any local movement beyond Dry Lake, destined to points in California on the Alturas line or the Fernley-Lassen branch of the Southern Pacific, would be intrastate, but such shipments can hardly be contemplated since the territory is largely a lumber area. All other shipments, even though destined to California points, would be interstate in character since it would be necessary for the Southern Pacific in reaching California points to move the shipments through Oregon, via Klamath Falls or through Nevada via Fernley.

The Lumber Company is simply endeavoring to establish a plant facility and the applicant does not propose to become a bona fide common carrier. Under Section 43 of the Public Utilities Act, it is unnecessary for a private carrier to obtain authority from this Commission for the establishment of a grade crossing such as here proposed and the application will, therefore, be dismissed.

It is clear under the record that if applicant were in fact proposing to operate as a common carrier, its operations would necessarily be interstate in character rather than intrastate. The facts above outlined demonstrate the soundness of this conclusion. If this be true, the Commission should not grant the authority requested herein until the applicant shall have first obtained from the Interstate Commerce Commission, under Paragraphs 18-21 of Section 1 of the Interstate Commerce Act, a certificate of public convenience and necessity authorizing the construction. No such certificate has been obtained or sought by the applicant herein.

The application herein should properly be dismissed

on an additional ground. Applicant is a foreign corporation, avowedly desirous of operating only as an intrastate carrier. Under Section 26 of the Public Utilities Act a foreign corporation not lawfully transacting a public utility business in the state upon the effective date of the section is prohibited from engaging in an intrastate public utility business.

I recommend the following form of order.

O R D E R

A public hearing having been held on the above entitled application, the matter having been duly submitted, the Commission being now fully advised and basing its order on the findings appearing in the opinion preceding this order;

IT IS HEREBY ORDERED that the above entitled application be and the same is hereby dismissed without prejudice.

The foregoing opinion and order are hereby approved and ordered filed as the opinion and order of the Railroad Commission of the State of California.

Dated at San Francisco, California, this 2nd day of November, 1931.

Leon Whissey
W. P. Am
M. B. Lewis
Fred G. Stewart