

ORIGINAL

Decision No. 45699

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of)	
MODESTO AND EMPIRE TRACTION COMPANY,)	
a corporation, for a certificate of)	
public convenience and necessity, to)	
operate motor truck service as a high-)	Application No. 32056,
way common carrier of property, between)	as amended
Modesto and Empire, in Stanislaus County,)	
California, and to render incidental)	
pick-up and delivery service.)	

O P I N I O N

Modesto and Empire Traction Company requests a certificate authorizing it to substitute highway common carrier service between Modesto and Empire for its present rail car service for the transportation of intrastate less-than-carload traffic, originating or destined beyond Empire, handled jointly at Empire with the Santa Fe Transportation Company or the Santa Fe Railway. No local service is proposed between Modesto and Empire. Applicant offers to transport general commodities with the following exceptions: (a) petroleum products in bulk in tank trucks or trailers; (b) articles of unusual value; (c) livestock; (d) uncrated household goods; (e) explosives; (f) nuts in shells, dried vegetables and dried fruit, unmanufactured and unprocessed; (g) fresh fruits and vegetables destined to processing plants or ice houses. Southern Pacific Company, Pacific Motor Trucking Company, Valley Motor Lines, Western Pacific Railroad Company and Tidewater Southern Railway Company have advised the Commission that they have no objection to the granting of the requested certificate.

(1) Applicant has consented to the imposition of a restriction against the excepted items in any certificate issued herein.

Applicant proposes to charge the rates now applicable to its less-than-carload rail service between Modesto and Empire, as set forth in the tariff publications indicated below. ⁽²⁾ Two round-trip schedules will be operated daily except Sundays and holidays, permitting next-morning delivery at Modesto of shipments arriving the previous night at Empire from such points as San Francisco, Oakland, Stockton, Fresno and Merced. Applicant also proposes to furnish pick-up and delivery service within the same zones now receiving such service, as provided in Item 21725, Supplement No. 10, Pacific Southcoast Tariff No. 247-I, C.P.U.C. No. 158, and as described in Exhibit B attached to the application.

Applicant alleges that the contemplated truck operation will provide a better and more expeditious service to shippers than can be furnished by the rail facilities now in use. Rail service, however, will be continued for the transportation of carload traffic.

Upon full consideration of the application, as amended, we find that public convenience and necessity require the proposed highway common carrier service. A certificate will therefore be issued.

Applicant is hereby placed upon notice that operative rights, as such, do not constitute a class of property which may be capitalized or used as an element of value in rate-fixing for any amount of money in excess of that originally paid to the State as the consideration for the grant of such rights. Aside from their

(2) Pacific Southcoast Freight Bureau Tariff No. 255-E, C.P.U.C. No. 159; Consolidated Freight Classification No. 19, C.P.U.C. No. WC 7; Pacific Southcoast Freight Bureau Exception Sheet No. 1 R, C.P.U.C. No. 133; and successive reissues thereof.

purely permissive aspect, they extend to the holder a full or partial monopoly of a class of business over a particular route. This monopoly feature may be changed or destroyed at any time by the State, which is not in any respect limited to the number of rights which may be given.

O R D E R

An application, as amended, having been filed therefor and having been considered, the Commission now being fully advised and basing its order upon the findings and conclusions contained in the foregoing opinion,

IT IS ORDERED:

(1) That Modesto and Empire Traction Company, a corporation, be and it is hereby granted a certificate of public convenience and necessity authorizing the establishment and operation of service as a highway common carrier, as that term is defined by Section 2-3/4(a) of the Public Utilities Act (Stats. 1915, Chap. 91, as amended), for the transportation of property between Modesto, on the one hand, and Empire, on the other hand, subject, however, to the following restrictions:

- a. Applicant shall not, as a highway common carrier, transport local freight originating at Modesto having final destination at Empire, or originating at Empire having final destination at Modesto.
- b. Applicant shall not, as a highway common carrier, transport any of the following commodities:
 - (1) Petroleum products in bulk in tank trucks or trailers;
 - (2) Articles of unusual value;
 - (3) Livestock;
 - (4) Uncrated household goods;
 - (5) Explosives;

- (6) Nuts in shells, dried vegetables and dried fruits, unmanufactured and unprocessed;
- (7) Fresh fruits and vegetables destined to processing plants or ice houses.

(2) That in providing service pursuant to the certificate herein granted, applicant shall comply with and observe the following service regulations:

- a. Applicant shall file a written acceptance of the certificate herein granted, within a period of not to exceed 30 days after the effective date hereof.
- b. Within 60 days after the effective date hereof and on not less than 5 days' notice to the Commission and the public, applicant shall establish the service herein authorized and comply with the provisions of General Order No. 80 and Part IV of General Order No. 93-A, by filing, in triplicate, and concurrently making effective, satisfactory tariffs and time tables.
- c. Subject to the authority of this Commission to change or modify it by further order, applicant shall conduct operations pursuant to the certificate herein granted over and along the following route:

Commencing at the terminal of the Modesto and Empire Traction Company, 11th and F Streets, at Modesto; thence via 11th Street, D Street, 14th Street, Grand Street, Yosemite Boulevard to Santa Fe Avenue, at Empire; thence via Santa Fe Avenue to the terminal of The Atchison, Topeka & Santa Fe Railway Company at Empire, and return to Modesto via the reverse of said route.

The effective date of this order shall be twenty (20) days after the date hereof.

Dated at San Francisco, California, this 15th day of May, 1951.

R. L. [Signature]
Justice J. [Signature]
Harold P. [Signature]
John E. [Signature]

COMMISSIONERS