

Decision No. 53750**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

THE CITY OF MODESTO, CALIFORNIA,)
a municipal corporation,)

Complainant,)

vs.)

SOUTHERN PACIFIC COMPANY, a)
corporation,)

Defendant.)

Case No. 5767

O P I N I O N

The defendant in the above-numbered case has filed a motion and an amended motion to dismiss the amended complaint herein asserting that the jurisdiction of the Commission has not been properly invoked in that complainant has not followed the jurisdictional procedures set up by the Public Utilities Code and by the Commission's rules of procedure in matters involving Section 1202 of said code. It is also asserted that by the use of a complaint instead of an application, any action taken in this matter will deprive defendant of property without due process of law.

Defendant's motion appears to be without merit and will be denied. Section 1702 of the Public Utilities Code providing for complaints in cases where it is alleged that a utility has violated the law or order of the Commission is applicable to this proceeding.

Complainant has properly followed the procedure provided in Decision No. 49565, dated January 18, 1954, in Case No. 5495. The City of Modesto, not being in agreement with the Southern Pacific Company on the type of protection or the division of costs thereof as to the crossings involved, was instructed by the provisions of said decision to file a "formal complaint requesting the Commission

to direct or authorize the installation of appropriate protective devices and apportion the cost thereof between the parties."

O R D E R

The defendant's motion as amended to dismiss the amended complaint herein having been filed and said motion and the attached memorandum of points and authorities having been considered and found to be without merit,

IT IS ORDERED that defendant's motion as amended to dismiss the amended complaint herein is denied.

Dated at San Francisco, California, this 11th day of SEPTEMBER, 1956.

[Signature]
 President

[Signature]

[Signature]

[Signature]

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 Commissioners