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ORIGINAL

Decision No. \_\_\_\_\_

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of )  
 MODESTO & EMPIRE TRACTION CO. to increase )  
 rates and charges in Modesto & Empire )  
 Traction Co., local Freight Tariff No. )  
 2-I, I.C.C. No. 17, issued by T. K. Beard, )  
 Vice-President, 530 Eleventh Street, Modesto, )  
 California to the extent shown in Ex Parte )  
 Tariff X-206-A, I.C.C. No. 1605, of Pacific )  
 Southcoast Freight Bureau, Agent, and in )  
 Ex Parte Tariff 212, I.C.C. No. 1609, of )  
 Pacific Southcoast Freight Bureau, Agent, )  
 to the same level as authorized other rail )  
 carriers in California by Decision 58226, )  
 dated April 7, 1959, in Application No. )  
 38557, of the Public Utilities Commission )  
 of the State of California. )

Application No. 41149

For an order to maintain authorized depar- )  
 tures from the provisions of Sections 454 )  
 and 491 of the Public Utilities Code. )

O P I N I O N

Modesto & Empire Traction Co. is a common carrier railroad operating between Modesto and Empire, a distance of five miles. By this application it seeks authority to increase its rates and charges, as set forth in its local Freight Tariff No. 2-I. The sought increases are the same as those which California railroads generally were authorized to establish pursuant to Decision No. 58226, dated April 7, 1959, in Application No. 38557.<sup>1/</sup>

The instant application states that it was the intention of applicant herein to be made a party to the aforesaid Application No. 38557, as had been its practice in prior general rate increase proceedings. It is further stated that through misunderstanding or oversight

<sup>1/</sup> The rate increases authorized by Decision No. 58226 corresponded generally to those established on interstate traffic in Tariffs of Increased Rates and Charges Nos. X-206-A and X-212. The increase under the first-named Tariff, is approximately 7 per cent; those under the latter tariff vary with the commodity, the estimated over-all average being from 2 to 3 per cent over the base rates.

applicant herein was not included in said Application No. 38557.<sup>2/</sup>

It appears that all common carrier railroads now operating in California, except Modesto & Empire Traction Co. were applicants in the aforesaid general rate increase proceeding. The applicants therein comprised some 35 railroads, including many short-line carriers operating under conditions comparable to those experienced by the Traction Co. It further appears that the considerations which justified the granting to other short-line roads the rate increases authorized by Decision No. 58226, apply with equal force to said Traction Co. Accordingly, we find that the increased rates sought in the instant application have been justified. The application will be granted. A public hearing is not necessary.

O R D E R

Based on the evidence of record and on the findings and conclusions set forth in the preceding opinion,

IT IS ORDERED that:

1. Modesto & Empire Traction Co. is hereby authorized to establish, on not less than five days' notice to the Commission and to the public, the increases in rates and charges as proposed in the application filed in this proceeding.

2. Applicant is hereby authorized to depart from the provisions of Article XII, Section 21 of the Constitution of the State of California and of Section 460 of the Public Utilities Code to the extent necessary to effect the increases herein authorized.

3. Applicant is hereby authorized to publish the increased rates and charges in the same form as that authorized by the

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<sup>2/</sup> According to the application herein, Modesto & Empire Traction Co., assuming that it was a party to Application No. 38557, published in its tariff the increased rates authorized for other railroads by Decision No. 58226. Subsequently, on being advised by the Commission that said increased rates were unauthorized for it applicant restored the old level of rates.

Interstate Commerce Commission for the interstate rates. To the extent that departure from the terms and rules of Tariff Circular No. 2 of the Commission is required to accomplish such publication, authority for such departure is hereby granted.

4. The authority herein granted is subject to the express condition that applicant will never urge before this Commission in any proceeding under Section 734 of the Public Utilities Code, or in any other proceeding, that the opinion and order herein constitute a finding of fact of the reasonableness of any particular rate or charge, and that the filing of rates and charges pursuant to the authority herein granted will be construed as a consent to this condition.

5. The authority herein granted shall expire unless exercised within sixty days after the effective date of this order.

This order shall become effective twenty days after the date hereof.

Dated at San Francisco, California, this 16<sup>th</sup> day of June, 1959.

[Signature]  
President  
[Signature]  
[Signature]  
Commissioners