

Decision No. 23025.

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA.

In the Matter of the Application
of SACRAMENTO NORTHERN RAILWAY
for permission to discontinue and
abandon a passenger station known
as Ohmer in the County of Contra
Costa, State of California, and to
establish, in lieu thereof, a sta-
tion to be located approximately
.04 miles easterly therefrom.

Application No. 16819.

ORIGINAL

L. N. Bradshaw, for Applicant.
H. M. Bishop, for Ella T. Sweet, et al., supporting
Applicant.
A. S. Sherlock, for Mrs. Lucinda P. Williams,
Protestant.

BY THE COMMISSION:

O P I N I O N

Applicant herein seeks authority to remove its
passenger station shed at Ohmer station to a point four-tenths
of a mile east thereof, pursuant to the provision of General
Order No. 36 of this Commission. Applicant also requests
authority to discontinue and abandon passenger station service
at the present site at Ohmer.

Public hearings thereon were conducted by Examiner
Williams at Concord, at which time the matter was submitted
for decision.

The station at Ohmer, which is 2.3 miles from Concord,
was established in compliance with a right-of-way deed, dated
in 1911, from Manuel and Lucinda P. Williams to applicant, which
grant contained the provision that:

*** when said railroad shall be built and in
operation that all regular trains shall stop
and signal near the northerly boundary of the
land of the parties of the first part."

In compliance with this agreement, the station shed was established about 1912, not on the northerly side of the land of grantees but at the southerly end, and has since been maintained at that point, although by order of this Commission, after hearing, the applicant was authorized to move the station from the south side of the track to the north side thereof. During the intervening years it appears that development of residential property and small farms increased east and north of the station, while the western and southerly parts have not changed materially. Due to demands upon applicant that facilities of the railroad be made more convenient and accessible by moving them to the junction of two highways and the railroad, approximately 0.4 miles easterly of the present site, applicant is prepared to move the station and abandon the present site at the order of the Commission. This purpose is opposed by Mrs. Lucinda P. Williams and two other residents.

H. A. Mitchell, President of applicant company, testified that the traffic originating at Ohmer amounted to 66 passengers during a 12-months' period ending August, 1930, or an average of 5-1/2 passengers per month, while the passengers to Ohmer were 57, or an average of 4+ per month. In other words, the facilities accommodated approximately 12 passengers each month. Mr. Mitchell also testified that there was a potential life hazard at the present site due to the fact that the trains from the east emerged from a cut making visibility of the trains obscure; that passengers are required to proceed parallel with the tracks to the west and then cross them and retrace to the east to reach the station. At the site proposed at the junction of two county roads 4/10 of a mile east, the station is visible from all directions and trains

have visibility for at least half a mile in every direction and the access to the station by roads is very much improved.

Applicant was supported by all of the residents affected by the operation of the railroad except Mrs. Williams and two others. The testimony of G. F. Thompson, R. A. Holt, J. A. Jory, and Manuel Duarte was presented by applicant. Each testified that as to the inconvenience and danger attaching to the present site and its unsuitability for use of school children going to school, and others, particularly those going to various points along the line, including Berkeley. The testimony of 14 other witnesses who concurred in this testimony was received in the record in support of applicant.

Protestant introduced no witnesses, but rested opposition on the theory that applicant herein was bound by its grant of right-of-way from Mrs. Williams and her husband (now deceased) and would be required to maintain the stop and signals even if a new site was established. Protestant stipulated that the present site is at the south side of protestant's land and not at the north side and that the new location is at the north side. Protestants presented a written statement by counsel, citing many decisions of the various courts. The citations, however, we believe are not very material in view of the fact that they relate to the legality of such contracts as between the railroad and the individual, but do not discuss the question of paramount public convenience and necessity. In a proceeding of this character, the question of convenience and necessity of the public in use of facilities of this nature is paramount to a contract between the carrier and the landowner. This was specifically determined by this Commission in Town of Fairfield v. Southern Pacific Company in Decision No. 498 in Case No. 263 (Vol. 2, Opinions and

Orders of the Railroad Commission, page 292 (1913)), wherein it was stated:

"The weight of authority is that such contracts are not void per se, and are enforceable so long as they do not conflict and interfere with the duty of carriers to the public, but where the rights of the public conflict with those of the contracting party under his contract, the latter must yield and such contracts must be deemed to have been made with the reference to such contingency."

In the instant proceeding all evidence submitted is affirmative of the right of the public to have station facilities at a safe and convenient point. Protestants have not shown that they ever used the facilities of applicant at the present site nor that the removal proposed will injure them. Even if no evidence that applicant had actually purchased for \$250.00 a release from protestant Williams in 1911, the record would still justify granting the applicant. Nine-tenths of the patrons of the station served and the carrier itself agree that the change is in public interest and safety. Under such facts, the contract which has never been enforced and whose obligations apparently long since were terminated, presents no bar. An order granting the removal will be entered.

O R D E R

IT IS HEREBY ORDERED that permission and authority be and it is hereby granted to Sacramento Northern Railway to remove and abandon its passenger station stop and passenger station shelter shed at the Station of Ohmer, located approximately two and three-tenths (2.3) miles east of Concord, County of Contra Costa, State of California, subject, however, to the following conditions:

- (1) Applicant shall establish a passenger station stop and erect a passenger shelter shed at a location approximately four-tenths (0.4) miles east of said Ohmer Station and as shown by the drawing attached to the application.

- (2) All rate tariffs now applying at Ohmer Station shall continue to apply at said passenger stop to be established four-tenths (0.4) miles east of said Ohmer Station.

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

Dated at San Francisco, California, this 28 day of October, 1930.

Chas. J. ...

Leon ...

Thos. ...

Commissioners.