

Decision No. 6053

ORIGINAL

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

County of Contra Costa,

Complainant,

vs.

Oakland, Antioch & Eastern Rail-
way Company, a corporation,

Defendant.

Case No. 1281.

Thos. D. Johnston, District Attorney of
Contra Costa County, for Complainant.
H. A. Mitchell for Defendant.

GORDON, Commissioner.

O P I N I O N

In this proceeding, filed November 23, 1918, the County of Contra Costa asks permission to abandon two public grade crossings, to open one private crossing as a public crossing and to continue an existing private crossing, across the tracks of the Oakland, Antioch and Eastern Railway. Although this matter has been initiated in the form of a complaint, it is, to all intent and purpose, a formal application and it was so considered at the hearing, which was held at Martinez on December 24, 1918.

The crossings covered by this case are situated on the old county road near Ohmer Station, between Concord and Bay Point. The crossing nearest Bay Point is lettered "A" on the map accompanying the application and is a public crossing on the old highway. The next crossing south is marked "B" and it has been a private crossing in the past. The next crossing south is at Ohmer Station and is marked

"C" on the map. This crossing has also been a private crossing. The last crossing south and toward Concord is marked "D" and is a public crossing on the old county road, which crosses again at "A", the crossing first mentioned.

A new concrete county highway was built through this section recently and instead of crossing the railway at "A" and "D", it was kept entirely on the west side of the railway; hence, the County asks that these two crossings be abandoned.

It appears from the testimony that this section of the old county road was never deeded to the County, but has become a public road through use. The County has never officially abandoned this piece of road, although the ranch owner of the property adjacent to it has proceeded to build fences across the road and plow it up, since the new highway has been put into use.

There is no reason why the crossings at "A" and "D" should not be closed as public crossings, but I believe that the crossing at "D" should be equipped with gates and continued as a private crossing for the benefit of the ranchers on the property adjacent to it.

The crossing at "B", which has been a private crossing, will be necessary as a public crossing to those people traveling the Willow Pass Road to Antioch, which used to join the old county road near this point. Unless crossing "B" is opened, the Willow Pass Road will have no means of reaching the new concrete highway, as the old county road crossing to the north at "A" will be abandoned. I recommend, therefore, that the part of the petition referring to this crossing be also granted.

The crossing at "C", which the County has asked to have continued as a private crossing, is the only part of the complaint on which an agreement could not be reached, as the Oakland, Antioch and Eastern Railway petitioned that this crossing be either closed

or an overhead crossing be established, on account of its dangerous character, caused by the steep incline from the highway on the west side to the railroad track, which runs through a very deep cut at this point.

Under ordinary conditions, this Commission would have no jurisdiction over this portion of the complaint, but it appears that the station of Ohmer on the railway is situated at this crossing and that passengers boarding or alighting from the trains at this point can use this crossing as a public crossing, in order to get to the highway, as at the present time the crossing is open and without the customary gates. The county officials do not feel that they would be justified in spending money for an overhead crossing at this point.

The status of this crossing could be cleared up if the station building were moved to the west side of the track, as in that case it would not be necessary for the public to cross the tracks at all and the crossing could be continued as a private crossing with a gate on the east side of the track, for the convenience of the owner of the adjacent ranch.

Summing up, I recommend (1) that crossings "A" and "D" be closed to public travel, but that crossing "D" be equipped with gates and retained as a private crossing; (2) that crossing "B" be opened to public travel; (3) that the station at crossing "C" be moved to the west side of the track and that the crossing be equipped with a gate on the east side of the track, thereby making it a private crossing.

I recommend the following form of order:

O R D E R

The COUNTY OF CONTRA COSTA having, in this proceeding, requested permission of the Commission to close two public cross-

sings, to change a private crossing to a public crossing and to continue another private crossing as a private crossing, all of which are over the tracks of the Oakland, Antioch and Eastern Railway near Ohmer, Contra Costa County, California; a public hearing having been held and the Commission having been fully apprised in the premises;

IT IS HEREBY ORDERED, (1) That the County of Contra Costa be and the same is hereby granted permission to close the two public crossings, shown at "A" and "D" on the map accompanying the petition, provided the crossing at "D" be equipped with gates and continued as a private crossing; (2) that the crossing marked "B" on said map be opened as a public crossing; (3) that the crossing at "C" on said map be continued as a private crossing and equipped with a gate on the east side of the track; (4) the station building at this point "B" shall be moved to the west side of the track, the cost of moving same to be borne by the Oakland, Antioch and Eastern Railway.

The crossing at "B" shall be constructed subject to the following conditions, viz.:

(1) The entire expense of constructing the crossing, together with the cost of its maintenance thereafter in good and first-class condition for the safe and convenient use of the public, shall be borne by applicant, except for that portion between the rails and two (2) feet outside thereof, which shall be borne by the Oakland, Antioch and Eastern Railway.

(2) The crossing shall be constructed of a width of not less than twenty-four (24) feet, with grades of approach not exceeding six (6) per cent; shall be protected by a suitable crossing sign and shall in every way be made safe for the passage thereover of vehicles and other road traffic.

(3) The Commission reserves the right to make such fur-

ther orders relative to the location, construction, operation, maintenance and protection of said crossing as to it may seem right and proper, and to revoke its permission if, in its judgment, the public convenience and necessity demand such action.

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 27th day of December, 1918.

Edwin O. Edgerton
H. D. Ireland
Alfred L. Gordon
Frank R. Verlin

Commissioners.