

Decision No. 36895

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of Application of NORTHWESTERN)
PACIFIC RAILROAD COMPANY for an order closing)
that certain roadway over its right of way and)
tracks opposite Clay Street, in the vicinity)
of Northwestern Pacific Railroad Company's)
station premises in the City of Ukiah, County)
of Mendocino, State of California.)

ORIGINAL

Application
No. 25824

R. S. Myers for applicant

Hale McCowen, City Attorney, for
protestant City of Ukiah

BY THE COMMISSION:

O P I N I O N

Northwestern Pacific Railroad Company asks that a crossing at the east end of Clay Street in Ukiah be ordered closed to public use. The business district in Ukiah is west of the railroad line. Clay Street leads east from the business district to the railroad right of way, but does not cross the tracks. A large parcel of property on the other side of the tracks is owned by the railroad. Traffic travelling east on Clay Street crosses the tracks diagonally in a northeasterly direction, then proceeds northerly on railroad property, passes two packing houses on the right and the railroad's freight house and depot on the left, and emerges on Perkins Street. Perkins Street is an east-west street which crosses the tracks near the depot and about fourteen hundred feet north of Clay Street. (1)

The railroad alleges that the crossing at the end of Clay Street presents a serious hazard because of switching movements, and should be closed in the interest of public safety. At the hearing applicant presented witnesses who testified concerning operating conditions. According to applicant the crossing interferes with rail

(1) The crossing sought to be closed extends over five tracks, while Perkins Street crosses the main line and two auxiliary tracks.

switching movements, because of the necessity of keeping the crossing clear for vehicular traffic. During the fruit season a large amount of perishable fruit moves out of Ukiah by railroad. The railroad takes the position that the Perkins Street crossing will take care of all vehicular traffic crossing the tracks at both locations. A traffic check taken for a 24-hour period on November 12 and 13, 1945, showed that 99 automobiles and 44 trucks passed over the Clay Street crossing.

The City of Ukiah objects to the closing of the crossing. It insists that both crossings are necessary for the orderly flow of traffic across the railroad, and to facilitate the free movement of the city's fire equipment. The Fire Department is located west of the tracks, on School Street, near Clay Street, and about four city blocks from the east end of Clay Street. The city contends that both crossings are necessary so that if one crossing should happen to be blocked by railroad cars the other would be open for quick access to the packing house district east of the railroad right of way.

If the crossing at the end of Clay Street is closed, the Perkins Street crossing will be the only reasonably accessible crossing in the vicinity. The nearest other existing crossing is about a quarter of a mile south of the crossing at the end of Clay Street, and use thereof would require a long and roundabout route in order to reach that part of the industrial section east of the railroad and of the railroad property on which the depot is located. The next nearest crossing is at Clara Street, about one-half mile north of the Perkins Street crossing.

The evidence indicates that closing of the crossing at the end of Clay Street would facilitate railroad switching movements, particularly during the fruit season. However, testimony of city officials, including the police chief and the fire chief, as well as citizens using the crossing, is to the effect that the existing

crossing serves an essential public need and that the Perkins Street crossing alone would not meet the needs of the travelling public and of the city's Fire Department. The alleged hazardous character of the crossing has not been established to the degree necessary to outweigh the apparent public need for two crossings in the vicinity, and under such circumstances the application will be denied.

At the hearing the question arose as to whether the crossing at the end of Clay Street is a public way, and the parties have filed briefs upon this point. The city contends that this crossing is a public way and that dedication has resulted from continuous use by the public for some fifty years without objection by the railroad or its predecessors. The railroad maintains that the public has no rights either in the crossing or in the railroad's property for use as a thoroughfare between the crossing at the end of Clay Street and Perkins Street, the crossing and the roadway on applicant's property having been constructed for the convenience of railroad patrons. The railroad contends that although the crossing is not a public road, it is at least a publicly used road, and that the Commission has jurisdiction to order the closing thereof. In effect both parties thus concede the power of the Commission to hear and determine the application on its merits. The application alleges that a "public roadway exists." Section 43(b) of the Public Utilities Act confers upon the Commission certain powers over crossings which involve "a public or publicly used road or highway," including the power "to abolish by physical closing any such crossing." As the exact status of the road is not a real issue in this proceeding, there is no occasion for the expression of any opinion upon that question.

O R D E R

Evidence in the above proceeding having been taken by Examiner Hall at a public hearing, briefs having been filed, and based

upon the record and upon the factual findings contained in the above opinion,

IT IS ORDERED that Application No. 25824 be and it is hereby denied.

Dated at San Francisco, California, this 24th day of February, 1944.

Richard Locke

Justus J. Green
Francis R. Haven

Francis R. Haven
Commissioners