

Decision No. 72309**ORIGINAL**

## BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of  
the County of Tehama, State of  
California, for a crossing at a grade  
of tracks of SOUTHERN PACIFIC COMPANY  
at Vadney Avenue in the Vina Area,  
Tehama County, California.

Application No. 46679

In the Matter of the Application of  
the County of Tehama, State of  
California, for a crossing at a grade  
of tracks of SOUTHERN PACIFIC COMPANY  
at Stephens Road in the Vina Area,  
Tehama County, California.

Application No. 46680

Robert W. Trimble, District Attorney, and Graham  
James & Rolph, by Boris H. Lakusta, for  
applicant.  
Harold S. Lentz, for Southern Pacific Company,  
protestant.  
Bob Martin, William L. Knecht and Ralph O.  
Hubbard, for Tehama County Farm Bureau,  
interested party.  
Martin J. Lewis, for the Commission staff.

OPINION ON REHEARING

On January 11, 1966, the Commission issued its Decision No. 70209 in these proceedings. It provided for the opening of both Vadney Avenue and Stephens Road across tracks of the Southern Pacific Company's C-line. Protection was fixed at two Standard No. 8 flashing light signals equipped with automatic gate arms at each crossing. Costs were allocated 75 percent to the County of Tehama and 25 percent to Southern Pacific Company.

Southern Pacific subsequently petitioned for rehearing in protest against any allocation of costs to it. This petition was granted on April 5, 1966, without limitation of the issues.

Subsequently, the County also petitioned for rehearing to insure that the issues would be unlimited, some doubt existing because of the nature of Southern Pacific's petition. This was granted on May 24, 1966. Rehearing was held before Examiner Power, at Red Bluff, on June 28 and 29, 1966, and submitted on the latter date subject to the filing of briefs. These have been received and the matters are ready for decision.

Southern Pacific has a line of railroad from Portland, Oregon, to connections with its Overland Route over the tracks of which it extends to Oakland and San Francisco. Entering Tehama County from Redding it passes through Red Bluff to Tehama. At Tehama it divides in a wishbone pattern. One line extends via Chico to Roseville and is sometimes called the East Valley Line. The other line proceeds via Orland to Davis.

Stephens Road crossing is on the East Valley Line. This line has an estimated train count of 18 per day. The prospective vehicular count at Stephens Road was put at 50 by Witness Crain, Road Commissioner of Tehama County. The location is between the stations of Vina and Anita. It is 18.1 timetable miles from Anita to Tehama and 8.7 timetable miles from Vina to Tehama.

Because of the low vehicular count the County requests that the protection of Stephens Road be reflectorized crossing signs (Standard No. 1-A). The County requested dismissal of the Vadney Avenue application because the road is private. Vadney Avenue may possibly become the subject of a private crossing agreement.

The responsible fire fighting officials who testified, three in number, were unanimous in their desire for both the crossings. The chairman of the Corning Hospital testified that ambulances could advantageously use another crossing to supplement Gardiner Ferry Road in this area.

Gardiner Ferry Road crossing, located .9 mile north (Railroad east) of Stephens Road, is the major route of access to the farms between the railroad and the Sacramento River. It is a Federal Aid secondary highway and its crossing of Southern Pacific's tracks near Vina is protected by automatic gates. The nearest public crossing to the south (Railroad west) is more than five miles away. From time to time Gardiner Ferry Road is blocked by trains.

Just how much blockage of Gardiner Ferry Road actually took place was a vigorously contested issue at the hearings. Nevertheless, when the evidence is reviewed it appears that the disagreement was more forensic than real. Some, at least, of the resident witnesses were prepared to concede that the railroad employees made an effort to minimize down-time of the signals at Gardiner Ferry Road. The railroad's evidence confirms the testimony of some residents that, at times, they were not successful.

The area here between the track and the Sacramento River is effectively cut off from fire protection and certain ambulance services when the Gardiner Ferry Road crossing is blocked by a train. For this reason alone a crossing at Stephens Road is justified.

The Stephens Road crossing was open for many years.<sup>1/</sup> Southern Pacific contends that it was open under a private crossing agreement. Accordingly, Southern Pacific closed it shortly before these applications were filed.

Stephens Road had been covered for many years by a private crossing agreement between an adjacent rancher and Southern Pacific Company. By the time it was closed by the railroad, street dedications had progressed to such a point that this crossing actually connected two public roads.

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<sup>1/</sup> Witness Roy Joiner testified that water company records indicate that Stephens Road crossing dates from 1886. It was closed some time in 1965.

It is clear that whatever its status had been in the beginning, it had become a publicly used crossing when it was closed. Private crossings are covered by the provisions of Section 7537 of the Public Utilities Code, the material portion of which is quoted below:

"§ 7537. Farm and private crossings; construction and maintenance; authority of commission. The owner of any lands along or through which any railroad is constructed or maintained, may have such farm or private crossings over the railroad and railroad right of way as are reasonably necessary or convenient for ingress to or egress from such lands, or in order to connect such lands with other adjacent lands of the owner."

This section plainly contemplates a means of reaching some specific piece of private property. In Napa Union High School District (29 CRC 151, 153 (1926)) the Commission interpreted § 485a of the Civil Code which has now been replaced by § 7537. To be a private crossing it should meet the test that:

"when established it will be used only by the owner and his family, their visitors or those having business with them, such a crossing not being designed for use by the general public, the owner having the right to exclude all persons from the crossing." (Emphasis added.)

It hardly needs mention that any crossing which connects two public roads cannot meet this test. The closure of Stevens Road by the Southern Pacific Company therefore violated Section 1202 of the Public Utilities Code which provides that the Commission has exclusive power to abolish by physical closing any crossing of a public or publicly used road or highway by a railroad.

The Commission regards this crossing as an old crossing and not as a new one. Therefore it should take its place with other established crossings in awaiting more sophisticated protection. The warning provided will consist of two reflectorized crossbuck signs (Standard No. 1-A of General Order No. 75-B).

Technological progress on the railroads has permitted the use of much longer freight trains than could be moved in years gone by. Freight trains carry lights only on the locomotives and at the rear end of the trains. There is, therefore, a possibility of accident caused by a vehicle driver hitting a train at a point between the front and back ends at night or other times of impaired visibility. To prevent this type of accident the crossing should be illuminated by a street light having power equal or superior to a 20,000-lumen Mercury Vapor light.

Visibility at the Stevens Road crossing is impaired by trees and brush. The County Road Commissioner expressed the County's intention to realign the road, which would require removal of at least one of these trees; if necessary, other trees should also be removed and the brush cut. The realigning of the road and widening of the crossing are necessary and should be carried out.

To sum up, the opening of Stephens Road should be authorized. It should be protected by two reflectorized crossbuck signs plus extensive cutting of trees and shrubbery to afford better visibility at the crossing. A street light should be so located as to illuminate the crossing and prevent vehicles hitting freight trains between the engines and the caboose at night.

The Commission finds that:

1. At the time of its closing by Southern Pacific Company in 1965, the Stephens Road crossing was a publicly used crossing subject to the provisions of Section 1202 of the Public Utilities Code.
2. Southern Pacific Company's closing of Stephens Road was done without authorization by the Commission.

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3. Public safety requires that Stephens Road be realigned and illuminated and trees and brush removed to improve visibility.

4. Public safety further requires that Stephens Road crossing be protected by two reflectorized crossing signs (Standard No. 1-A of General Order No. 75-B).

5. A reasonable allocation of the cost of relocating and improving Stephens Road crossing is 100 percent to the County of Tehama in accordance with its offer in Application No. 46680.

The Commission concludes that:

1. Application No. 46679 (Vadney Avenue) should be denied.
2. Application No. 46680 should be granted.
3. Stephens Road crossing should be improved as provided by the following order.

O R D E R

IT IS ORDERED that:

1. The County of Tehama is hereby authorized to construct Stephens Road at grade across the main line tracks of Southern Pacific Company near Vina, Tehama County, to be identified as Crossing No. C-201.4.

2. Tehama County shall bear entire construction expense of the crossing, also maintenance cost thereof outside of lines two feet outside rails. Southern Pacific Company shall bear maintenance cost of the crossing between such lines.

3. Width of crossing shall be not less than twenty-four feet and grades of approach not greater than seven percent. Construction shall be equal or superior to Standard No. 2 of General Order No. 72.

4. Protection shall be by two Standard No. 1-A crossing signs (General Order No. 75-B) and by illuminating the crossing.

5. The County of Tehama shall install a light at Stephens Road crossing at a sufficient height so it can be seen in both directions when a train is passing. Said light shall provide illumination equal or superior to a 20,000-lumen Mercury Vapor light.

6. The County of Tehama shall realign the crossing and remove all trees and brush which impair visibility of the tracks for a reasonable sight distance in each direction from the crossing.

7. The costs of installation and maintenance of the herein authorized crossing protection shall be borne by the County of Tehama.

8. Within thirty days after completion, pursuant to this order, applicant shall so advise this Commission in writing.

9. Application No. 46679 is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 18<sup>th</sup> day of APRIL, 1967.

[Signature]  
President  
William L. Bennett  
Augusta  
William Lyons, Jr.  
Jed P. Morrissey  
Commissioners