

CORRECTION

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Decision No. 73104**ORIGINAL**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

LYDE MAE BAKER,

Complainant,

v.

SOUTHERN PACIFIC COMPANY,

Defendant.

Case No. 8679
(Filed September 6, 1967)

Price, Burness and Price by Grayson Price, for applicant.
Harold S. Lentz, for Southern Pacific Company.
 K. G. Soderlund, for the Commission staff.

O P I N I O N

A Commission survey of crossings in Butte County was made in 1964. In the course of this survey it developed that a crossing of Hamilton Road across Southern Pacific Company's East Valley Line (part of its Shasta Route) was not a public crossing. Hamilton Road is a public road east of its intersection with Riceton Highway a little over 100 feet east of the crossing.

Southern Pacific apparently did not submit a private crossing agreement to owners of property west of the crossing. Lyde Mae Baker is one of the owners. The crossing leads directly to the southeast corner of Mrs. Baker's property.

Mrs. Baker now owns 272 acres planted to rice. She and her husband acquired the southerly part of this property (adjacent to the crossing) in the 1920's. Hamilton Road was open when the Bakers took over and thereafter until Southern Pacific closed the

crossing late in 1965 or early in 1966. Exhibit No. 2 reveals that witness Meyer, Mrs. Baker's tenant, wrote to Southern Pacific's Division Superintendent at Sacramento requesting company to submit a private crossing agreement. This request was denied by a letter of March 3, 1966 (Exhibit 2). The reason assigned by the Exhibit No. 2 letter was that:

"....As it is our company's policy to eliminate as many crossings at grade as possible, we do not look favorably upon the reopening of this crossing, even as a private crossing. There is an existing public road crossing only 0.2 miles from this closed crossing, which is protected by automatic flashing lights. It is our desire that this crossing should be used in lieu of reopening the most recently closed crossing..."

The crossing referred to is Riceton Road P.U.C. No. C-164.0. To reach it it is necessary to cross property owned (as indicated on a map, Exhibit No. 1) by George and Elaine E. Boeger. Apparently no route across this property has ever existed.

There are three other routes that have been used at various times by Mrs. Baker's tenant. One is across property of Otis Jenkins. This route is not available at present because Jenkins has planted a crop of his own. Another route is over a road belonging to Richvale Irrigation District. The tenant testified that the district does not allow trucks and heavy equipment on the road. In wet weather no passage at all is allowed. Incidentally, there are practical objections to both of these routes. Another route used by Meyer was over property apparently to the west of Boeger land. This was left in fallow one year and Meyer was allowed to use it. It will be noted that two of these routes are not available when the ranches are planted and that it is extremely doubtful that the third (Richvale Irrigation District) route will support heavy equipment.

The present state of the record does not permit of a final determination of the access situation. It is clear, however, that no access now is available in time to save the 1967 rice crop on Mrs. Baker's land.

The Commission will order an opening of the crossing for a temporary period to allow the harvesting of this year's rice crop. In the meantime, hearings will be held in Butte County to complete the record.

This proceeding was commenced by Mrs. Baker as an application. Because of certain allegations it was filed in the Commission as a complaint. It appears from the proof offered that in fact it is an application under Section 7537 of the Public Utilities Code.

The Commission finds that:

1. Lyde Mae Baker is the owner of 272 acres of land, more or less, in Butte County.
2. This property is not contiguous to any public road.
3. Prior to 1965 access to said land was had by using a crossing of the railroad line of Southern Pacific Company, sometimes called the East Valley Line, situated approximately at Mile Post 164.16 thereon. Such crossing was believed, prior to 1965, to be a public crossing and had been in existence for at least 40 years.
4. Southern Pacific Company closed this crossing sometime prior to February, 1966, it having been ascertained that it was not a public crossing.
5. As a matter of right, Lyde Mae Baker has no present means of access to her property.
6. An emergency exists in that no dependable or reasonable means of access to Mrs. Baker's property for the impending rice harvest is available.

The Commission concludes that:

1. A private crossing should be authorized on a temporary basis at or near Mile Post No. 164.16 on Southern Pacific Company's East Valley (C) Line.

2. Before a private crossing is authorized on a permanent basis, further hearings should be held within Butte County to expand the record.

3. It is reasonable that the cost of restoring this crossing be allocated 100 percent to Lyde Mae Baker.

O R D E R

IT IS ORDERED that:

1. Within twenty days after the effective date of this order Southern Pacific Company shall temporarily reopen the crossing at approximately Mile Post No. 164.16 on its East Valley Line at the location shown on Exhibit No. 1.

2. Such crossing shall be protected by a gate on the side toward Riceton Highway provided with a lock. Lyde Mae Baker shall be provided with two keys to said lock. Southern Pacific Company may install not to exceed two signs at the crossing.

3. A fair and reasonable allocation of the cost of installing this crossing is one hundred percent to Lyde Mae Baker.

4. After one year from the effective date of this order unless otherwise ordered by the Commission, the Southern Pacific Company may again close the crossing herein referred to.

The effective date of this order shall be the date hereof.

Dated at San Francisco, California, this 19th day of SEPTEMBER 1967.

[Signature]
President

[Signature]

[Signature]

[Signature]
Commissioners

Commissioner William M. Bennett, being necessarily absent, did not participate in the disposition of this proceeding.