

Decision 90 05 089 MAY 22 1990

ORIGINAL

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ROBERT MONDAVI WINERY,)
 EVERITT BELLAMI, JEAN)
 BELLAMI, BERNARD SKODA)
 (RUTHERFORD VINTNERS), JOE)
 TADDEI, JOSEPHINE TADDEI,)
 DON HUDSON, KAY HUDSON)
 (CHATEAU BOTTLERS), JOE)
 HEITZ WINERY, BERINGER)
 VINEYARDS, DENIS BOULT,)
 JACKIE BOULT, GREG)
 BISSONETTE, ARTHUR B.)
 MCCRYSTAL, HAL BEELER,)
 BRENDA BEELER, VINE HILL)
 RANCH, BECKSTOFFER VINEYARD I,)
 BARITELLE VINEYARDS, LOUIS)
 MARTINI WINERY, RICK TOMASCO,)
 MRS. M. H. ANNAB,)

Case 90-04-049
(Filed April 26, 1990)

Complainants,

vs.

NAPA VALLEY WINE TRAIN, INC.,)
 Defendant.)

**EMERGENCY CEASE AND DESIST ORDER REQUIRING DEFENDANT
 TO IMMEDIATELY CEASE AND DESIST COMPLETELY BLOCKING
 ACCESS TO COMPLAINANTS' PROPERTIES AND REQUIRING
 DEFENDANT TO PROVIDE REASONABLE ACCESS TO PROPERTIES
 WHILE MAKING GRADE CROSSING REPAIRS**

The Commission finds it necessary and appropriate, pending final determination of these proceedings, in order to prevent irrevocable harm to Complainants as determined based on the verified Complaint requesting an immediate cease and desist order, to issue this emergency cease and desist Order.

Statement of Facts

On April 26, 1990, Complainants filed a verified Complaint for Violation of Public Utilities Code and Request for

Immediate Cease and Desist Order. On that date, service was effected on counsel for Defendant. The Complainants are numerous vineyards and other agricultural businesses situated along the route of the Defendant Napa Valley Wine Train, in Napa County, California. Due to the nature of such businesses, reasonable access to transportation arteries is essential.

Complainants each have private and/or farm grade crossings over the railroad right of way owned by Defendant. Complainants assert Defendant is conducting repairs on such grade crossings and "has and is threatening to close many of Complainants' farm and private grade crossings to conduct these repairs to its railroad right-of-way and to Complainants' private roads and road crossings without, in several instances, providing reasonable access to Complainants' property. . . ." The verified Complaint also states such repairs may began as early as April 30, 1990 and other work is being conducted or threatened immediately. Complainants also assert attempts at informal resolution of the problems have been unsuccessful. Complainants request Defendant be ordered to cease making repairs and blocking crossings until this matter has been finally resolved.

Discussion

Public Utilities Code § 7537 declares:

"The owner of any lands along or through which any railroad is constructed or maintained, may have such farm or private crossing 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. The owner or operator of the railroad shall construct and at all times maintain such farm or private crossing in a good, safe, and passable condition. The commission shall have the authority to determine the necessity for any crossing and the place, manner, and conditions under which the crossing shall be constructed and maintained and shall fix and assess the cost and expense thereof."

The issues raised in the Complaint concerning the propriety of and payment terms for the grade crossing repairs and the legal validity of existing grade crossings of complainants do not give rise to dangers of irreparable harm pending final resolution of this case. Public health and safety necessitates that repairs be effected as needed to keep the track in safe condition. Therefore, no cease and desist order shall be granted to prevent repairs which are subject to the orders of the appropriate governing authorities.

However, lack of reasonable access over the railroad right-of-way to effect ingress and egress on Complainants' properties will result in irreparable harm while this case is pending. Such access is required to be granted as a matter of law under Public Utilities Code § 7537. Defendant has been given prior written notice of Complainants' request for an immediate cease and desist order by virtue of service of the verified Complaint. This matter has been set for expedited prehearing conference on June 8, 1990 by ALJ Watson, and, at or prior to that hearing, a request may be made for a full evidentiary hearing on the issues underlying this emergency cease and desist order. At the prehearing conference, the parties will also be expected to address their respective positions on the substantive issues in the complaint and the appropriate procedures for resolving same.

Notice of this matter did not appear on the Commission's public agenda; however, an emergency exists in that the blocking of access to Complainant's property is being conducted or is threatened immediately, which justifies our action today under Public Utilities Code § 306(b).

Findings of Fact

1. On April 26, 1990, Complainants filed a verified Complaint for Violation of Public Utilities Code and Request for Immediate Cease and Desist Order.

2. Complainants each have private and/or farm grade crossings over the railroad right of way owned by Defendant.

3. Complainants assert Defendant is conducting repairs on such grade crossings and "has and is threatening to close many of Complainants' farm and private grade crossings to conduct these repairs to its railroad right-of-way and to Complainants' private roads and road crossings without, in several instances, providing reasonable access to Complainants' property. ..."

Conclusion of Law

The owner of any lands along or through which any railroad is constructed or maintained, may have such farm or private crossing 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.

IT IS ORDERED that:

1. Defendant shall temporarily cease and desist completely blocking access to each Complainant's respective property over the private and farm grade crossings on Defendant's railroad right-of-way and Defendant shall provide reasonable access to each Complainant's respective property during reasonable hours: (1) by means of partial access over the grade crossings or (2) by an alternate temporary route provided at Defendant's expense which ties in to existing roadways on each Complainant's property.

2. Such reasonable access shall be, at a minimum, one lane wide traffic areas to accommodate the passage of automotive vehicles necessary to the respective conduct of business or agriculture on each respective Complainants' properties. Such reasonable access shall also include one lane ingress and egress for personal vehicles for those Complainants or their agents, employees or tenants who also reside on Complainants' properties. Reasonable hours shall include normal operating hours for the business or agricultural functions currently carried on by

Complainants on their respective properties and shall include normal hours for ingress and egress for those persons in residence on such properties. Emergency access shall be provided for residential, commercial, and agricultural use as necessary.

3. The developing emergency requires making this Order effective immediately. This Order shall remain in effect through the conduct of the expedited prehearing conference, set for June 8, 1990, before ALJ Watson and until either: (1) the parties stipulate to continue the reasonable access on a mutually satisfactory temporary basis until the Commission's final determination of this proceeding or (2) a full hearing is requested and held on the issue of whether a temporary injunction should be issued and a final Commission order upon such a hearing is issued and effective.

This order is effective today.

Dated May 22, 1990, at San Francisco, California.

G. MITCHELL WILK
President
STANLEY W. HULETT
JOHN B. OHANIAN
PATRICIA M. ECKERT
Commissioners

Commissioner Frederick R. Duda,
being necessarily absent, did
not participate.

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY


NEAL J. STULMAN, Executive Director