

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Petition for an)
Exemption from Stopping for School)
Buses and Other Motor Vehicles at the) Case No. 11-4291-RR-RCP
State Route 119 Grade Crossing)
(477-073E), in Mercer County.)

OPINION AND ORDER

The Commission, considering the applicable law, the evidence of record, and being otherwise fully advised, hereby issues its opinion and order in this matter.

OPINION:

I. Procedural History

On July 12, 2011, the Ohio Department of Transportation (ODOT) filed a request, pursuant to Section 4511.63, Revised Code, to exempt buses, school buses, and any vehicle transporting a material or materials required to be placarded under 49 Code of Federal Regulations (C.F.R.) Parts 100-185, from stopping at the State Route 119 (SR 119) grade crossing (477-073E), located near the village of Fort Recovery, in Mercer County, Ohio. The request indicated that there have been several complaints from school bus and tanker truck drivers that the rail line at the crossing is currently not in use and the crossing is paved over, but these drivers are still required to stop before traveling over the crossing. ODOT claimed that an exemption at the crossing would make it safer and create fewer hazards, because no vehicles would have to stop at the crossing.

By entry issued July 15, 2011, a public hearing was scheduled for August 18, 2011, in Fort Recovery, Ohio. The July 15, 2011 entry also directed the Commission's Docketing Division to publish notice of the hearing in a newspaper of general circulation in Mercer County and directed that any interested person could file comments on the exemption request by August 11, 2011. On August 4, 2011, Commission staff filed an investigative report (Staff Report) on the exemption request. Notice of the hearing was published in *The Daily Standard*. On August 18, 2011, the public hearing was held as scheduled. At the hearing, one witness testified in favor of the exemption request and no one testified in opposition. No comments were filed on the exemption request.

II. Applicable Law

The Commission's authority to grant exemptions for vehicles from stopping at railroad grade crossings is found in Section 4511.63, Revised Code, which provides, in part:

Except as provided in division (B) of this section, the operator of any bus, any school vehicle, or any vehicle transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185, before crossing at grade any track of a railroad, shall stop the vehicle....

Section 4511.63(B), Revised Code, provides that Section 4511.63(A), Revised Code, does not apply when the Commission has authorized and approved an exempt crossing pursuant to the division.

III. Summary of the Evidence

In the Staff Report, staff indicated that Norfolk Southern Railway (NS) owns the rail line over the crossing, which it leases to R.J. Corman (RJC) and RJC assumes all operating responsibilities and maintenance for the rail line. Staff noted that a derail device is located west of the crossing to prevent any railway equipment movement from reaching the crossing. In addition, staff indicated that there are no trains being operated over this line and that RJC currently, and for the past six years, has designated the rail line "out of service" with the protective provisions through its Bulletin & General Orders (Orders)¹ prohibiting rail access to or near the crossing. Staff recommended that the exemption request be granted on the condition that RJC both place a derail device east of the crossing and continue issuing Orders indicating the "out of service" condition and stop and flag provisions. (Staff Report at 30-31.)

At the August 18, 2011 local public hearing, Randy Diller, village administrator of Fort Recovery, provided testimony. Mr. Diller testified that the village of Fort Recovery supports the exemption request. He stated that no trains have been operated over the crossing "in years" and that the rail line at the crossing is covered with asphalt. In addition, he noted that SR 119 is a high speed road that curves in advance of the crossing and, as a result, drivers have less time to react to any vehicles

¹ Orders provide instructions to train crews on crossings where the railroad has concerns.

that might be stopped at the crossing. Mr. Diller maintained that allowing school buses and other vehicles that are required to stop in advance of the crossing to travel over the crossing without stopping will increase safety. (Public Hearing Transcript at 2-4).

IV. Commission Conclusion

Section 4511.63(B)(2), Revised Code, provides that, after considering any comments or other information received, the Commission may approve or reject an exemption request and may establish conditions for the exempt crossing designation. Section 4511.63(B)(2), Revised Code, also provides that an exempt crossing becomes effective only when appropriate signs giving notice of the exempt designation are erected at the crossing as ordered by the Commission and any other conditions ordered by the Commission are satisfied.

In this case, the evidence supports approving the exemption request. First, the rail on the SR 119 grade crossing is covered with asphalt. Second, there has been no rail traffic over the SR 119 grade crossing for many years. Third, SR 119 is a high speed road that curves in advance of the SR 119 grade crossing and, as a result, drivers have less time to react to any vehicles that might be stopped at the crossing. Fourth, approving an exempt status for the SR 119 grade crossing will not impair safety at the crossing and may lower the risk that buses and other vehicles, stopped at the crossing, could be struck from behind. Accordingly, we find that, pursuant to Section 4511.63, Revised Code, the request for an exemption for vehicles from stopping at the SR 119 grade crossing should be granted subject to the following conditions: that, within 30 days of the issuance of this opinion and order, RJC place a derail device east of the crossing; that RJC continue issuing Orders indicating the "out of service" condition and stop and flag provisions; and that ODOT place "Exempt" signs that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at appropriate locations in advance of the crossing.

Finally, Section 4511.63(B)(3), Revised Code, provides that the Commission may rescind any exempt crossing designation made under this section if it finds that a condition at the exempt crossing has changed to such an extent that the continuation of the exempt crossing designation compromises public safety. Therefore, RJC and/or NS should provide at least 90 days advance notice to the Commission's Rail Division, ODOT, the Fort Recovery engineer, and the Mercer County engineer, in the event either NS or RJC learns that any railroad intends to initiate rail operations at the SR 119 grade crossing in the future. In the event rail operations are initiated at the crossing, the Commission may reevaluate this exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On July 12, 2011, ODOT filed a request, pursuant to Section 4511.63, Revised Code, for an exemption from stopping at the SR 119 grade crossing.
- (2) By entry issued July 15, 2011, a public hearing was scheduled, a deadline was established for filing comments, and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Mercer County.
- (3) The Staff Report was filed on August 4, 2011.
- (4) Notice of the hearing was published in *The Daily Standard*.
- (5) No comments were filed on the exemption request.
- (6) The hearing was held on August 18, 2011, in Fort Recovery, Ohio. One witness testified in favor of the exemption; no one testified in opposition.
- (7) Approving an exempt status for the SR 119 grade crossing will not impair safety at the crossing.
- (8) The request for an exemption for vehicles from stopping at the SR 119 grade crossing, pursuant to Section 4511.63, Revised Code, should be granted.

ORDER:

It is, therefore,

ORDERED, That an exemption, pursuant to Section 4511.63, Revised Code, be granted to allow buses, school buses, and any vehicle transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185 to proceed without stopping at the SR 119 grade crossing (477-073E), located in Mercer County, Ohio. It is, further,

ORDERED, That, within 30 days of the issuance of this opinion and order, RJC place a derail device east of the crossing and continue issuing Orders indicating the "out of service" condition and stop and flag provisions. It is, further,

ORDERED, That ODOT place "Exempt" signs, that are in conformance with the Ohio Manual of Uniform Traffic Control Devices, at appropriate locations in advance of the SR 119 grade crossing. It is, further,

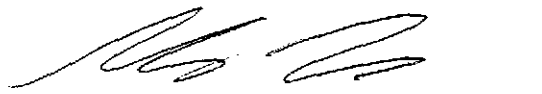
ORDERED, That RJC and/or NS provide at least 90 days advance notice to the Commission's Rail Division, ODOT, Fort Recovery engineer, and Mercer County engineer, in the event either RJC or NS learns that any railroad intends to initiate rail operations at the SR 119 grade crossing in the future. It is, further,

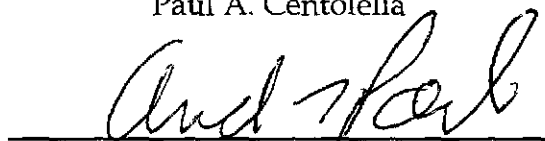
ORDERED, That a copy of this opinion and order be served on RJC, NS, ODOT, Fort Recovery engineer, Mercer County engineer, the Ohio Petroleum Marketers Association, the Ohio Trucking Association, National Tank Truck Carriers, Inc., and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


Paul A. Centolella


Steven D. Lesser

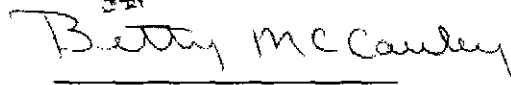

Andre T. Porter


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SEF/sc

Entered in the Journal

SEP - 7 2011


Betty McCauley
Secretary