

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for an)
Exemption by the City of Hamilton from)
Stopping for School Buses at Certain)
Highway/Railroad Grade Crossings) Case No. 12-2936-RR-RCP
Located Within the City of Hamilton,)
Butler County, Ohio.)

OPINION AND ORDER

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

OPINION:

I. Procedural History

On November 8, 2012, the city of Hamilton, Ohio (city), filed a letter requesting, pursuant to Section 4511.63, Revised Code, an exemption for school buses from stopping at ten grade crossings located within the city. Specifically, the request concerns the following U.S. Rail Corporation (US Rail) grade crossings: B Street (154-040Y), B Street (154-041F), Black Street (154-043U), and B Street (154-046P) and the following CSX Transportation (CSX) grade crossings: Franklin Street (154-031A), Ross Avenue (154-032G), Main Street (154-034V), Cereal Avenue (154-035C), Eaton Avenue (154-037R), and Cleveland Avenue (154-039E).

On November 28, 2012, Commission Staff (Staff) filed an investigative report on the exemption request. By entry issued on December 5, 2012, a public hearing was scheduled for December 18, 2012, in the city. The Commission's Docketing Division was directed to publish notice of the hearing and the comment period in a newspaper of general circulation in Butler County. Additionally, the December 5, 2012 entry directed that any interested person could file comments on the exemption request by December 17, 2012. No comments were filed. On December 18, 2012, 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.

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 its investigative report, Staff noted that there are ten grade crossings that are included within the exemption request located on a portion of track called the Hamilton Belt Line (Belt Line). According to Staff, the former customer on the Belt Line was Smart Paper, which has gone out of business and its facilities were purchased by the city. Staff reported that the track has been removed from most of US Rail grade crossings, making all of those inaccessible to rail traffic and the CSX grade crossings, while still accessible to rail traffic, currently have no reported rail traffic. Staff further indicated that the grade crossings located at Main Street and Cereal Street have mast-mounted and cantilevered flashing lights, and the grade crossings located at Eaton Avenue and Cleveland Avenue have mast-mounted flashing lights and roadway gates, and that these warning devices function as intended. In addition, Staff reported that the Cleveland Avenue grade crossing is out-of-service, with a section of rail removed. Staff recommended that the Commission grant the exemption request. (Staff Report at 54-55.)

One witness testified at the December 18, 2012 local public hearing. Kris Butterfield, the transportation and traffic engineer of the city, testified that all of the grade crossings included in the city's exemption request are associated with the Belt Line. According to Mr. Butterfield, the Belt Line was originally constructed to provide rail service to the Champion Paper Company, which was subsequently purchased by Smart Paper. Mr. Butterfield noted that, during 2012, Smart Paper permanently terminated business in the city, the property was purchased by the city, and the city does not anticipate the need for rail service in the future. Mr. Butterfield also indicated that, ultimately, the city would like the grade crossings completely

removed, but at this time the city is only requesting that the Commission grant its exemption request. He contended that exempting the grade crossings will improve safety and traffic operations and will improve traffic flow at the grade crossings. He also claimed that, without the exemptions, there will be a greater likelihood of rear-end accidents associated with vehicles stopping unnecessarily at the tracks. (Tr. at 6-7.)

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. In this case, the evidence supports the granting of the request for an exemption from stopping for buses and school buses, pursuant to Section 4511.63, Revised Code. We also find that, based on the evidence, an exemption from stopping, pursuant to Section 4511.63, Revised Code, is also warranted for vehicles transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185. Because of the closed status of four of the grade crossings, there is currently no possibility of rail traffic; and for the other five grade crossings, there is no reported rail traffic. Therefore, approving an exempt status for the grade crossings will not impair safety at the grade crossings and the risk of vehicular accidents at the grade crossings, created by stopped buses, may be lowered.

Accordingly, we find that the request for an exemption for buses, school buses, and vehicles transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185, from stopping at the grade crossings located at B Street (154-040Y), B Street (154-04IF), Black Street (154-043U), and B Street (154-046P), Franklin Street (154-031A), Ross Avenue (154-032G), Main Street (154-034V), Cereal Avenue (154-035C), Eaton Avenue (154-037R), and Cleveland Avenue (154-039E), pursuant to Section 4511.63, Revised Code, should be granted. The city, as the local highway authority, should place signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at appropriate locations in advance of these grade crossings. The city may apply to the Commission for financial assistance for the cost of signage.

Section 4511.63(B)(3), Revised Code, also provides that the Commission may rescind any exempt grade crossing designation made under this section if it finds that a condition at an exempt grade crossing has changed to such an extent that the continuation of the exempt grade crossing designation compromises public safety. We note that the granting of this exemption request should have no impact on US Rail's or CSX's operations which, as we have stated, are not currently occurring in the city. Nevertheless, US Rail and CSX should provide at least 90 days advance notice to the

Commission and the city in the event either railroad intends to commence rail operations at any of these grade crossings in the future. In the event rail operations commence at any of these grade crossings, the Commission may reevaluate this exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On November 8, 2012, the city filed a letter requesting, pursuant to Section 4511.63, Revised Code, an exemption for school buses from stopping at ten grade crossings within the city including: B Street (154-040Y), B Street (154-041F), Black Street (154-043U), and B Street (154-046P); Franklin Street (154-031A), Ross Avenue (154-032G), Main Street (154-034V), Cereal Avenue (154-035C), Eaton Avenue (154-037R), and Cleveland Avenue (154-039E).
- (2) By entry issued on December 5, 2012, a public hearing was scheduled, a deadline was established for the filing of a Staff report of investigation and comments, and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Butler County. Copies of the entry were served on US Rail, CSX, and the city.
- (3) The public hearing was held on December 18, 2012, in the city. One witness testified in favor of the exemption request and no witnesses testified in opposition.
- (4) Approving an exemption for the identified grade crossings will not impair safety at the grade crossings.
- (5) The requested exemption for vehicles from stopping at the grade crossings located at B Street (154-040Y), B Street (154-041F), Black Street (154-043U), and B Street (154-046P); Franklin Street (154-031A), Ross Avenue (154-032G), Main Street (154-034V), Cereal Avenue (154-035C), Eaton Avenue (154-037R), and Cleveland Avenue (154-039E), pursuant to Section 4511.63, Revised Code, should be granted.

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 grade crossings located at B Street (154-040Y), B Street (154-04IF), Black Street (154-043U), and B Street (154-046P); Franklin Street (154-031A), Ross Avenue (154-032G), Main Street (154-034V), Cereal Avenue (154-035C), Eaton Avenue (154-037R), and Cleveland Avenue (154-039E), in the city of Hamilton, Butler County, Ohio. It is, further,

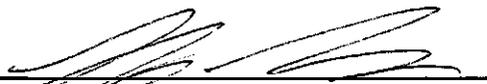
ORDERED, That the city of Hamilton place "Exempt" signs at appropriate locations in advance of the grade crossings. It is, further,

ORDERED, That US Rail and CSX provide at least 90 days advance notice to the Commission and the city of Hamilton in the event either railroad intends to commence rail operations at any of the grade crossings in the future. It is, further,

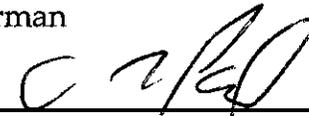
ORDERED, That a copy of this opinion and order be served on US Rail, CSX, the city of Hamilton, the Ohio Department of Transportation, the Ohio Petroleum Marketers Association, Ohio Trucking Association, National Tank Truck Carriers, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

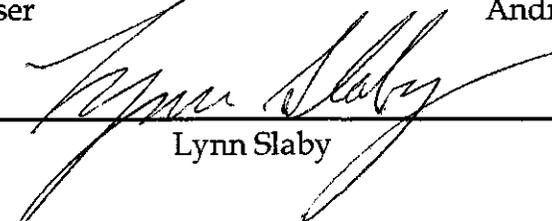
Todd A. Snitchler, Chairman



Steven D. Lesser



Andre T. Porter



Lynn Slaby

SEF/sc

Entered in the Journal **FEB 13 2013**



Barcy F. McNeal
Secretary