

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for an Exemption)
from Stopping for School Buses at the)
Highway/Railroad Grade Crossings Located)
at W. Market Street (477-027D), W. Logan) Case No. 08-1147-RR-RCP
Street (477-022U), W. Warren Street (477-)
023B), and W. Fayette Street (477-025P), in)
the City of Celina, Mercer County.)

OPINION AND ORDER

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

OPINION:

I. Procedural History

By letter filed on October 3, 2008, and supplemented by a second letter filed on October 20, 2008, Ms. Kim Sutter, Transportation Supervisor for the Celina City Schools, requested, pursuant to Section 4511.63, Revised Code, an exemption for school buses from stopping at railroad grade crossings located at W. Market Street (477-027D), W. Logan Street (477-022U), W. Warren Street (477-023B), and W. Fayette Street (477-025P) in the city of Celina, Mercer County. As stated by Ms. Sutter, for safety purposes the school bus drivers must presently:

... turn on their hazards, open their window, turn off all fans, radios, etc. Set the parking brake, take it out of gear, open the door, look-listen and check for trains. Put the bus back in gear, close the door, release the brake and proceed. In our district we've got quite a few tracks that aren't being used and some are even paved over - but since they keep the cross bucks up we need to go through the procedure.

On November 5, 2008, Commission staff filed an investigative report on the exemption request. By Entry issued November 7, 2008, a hearing was scheduled and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Mercer County, not less than seven days prior to the hearing date. Notice of the hearing was duly published in the *The Daily Standard*. The hearing was held on November 21, 2008, in Celina, Ohio.

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After the hearing, it was determined by staff that R. J. Corman had not been properly served with notice of the hearing. Therefore, on January 14, 2009, an entry was issued directing R. J. Corman to file comments in the case by January 30, 2009. R. J. Corman's comments were filed on February 12, 2009.

II. Applicable Law

The Commission's authority to grant an exemption from stopping at railroad grade crossings, applicable to school buses and vehicles placarded for hazardous materials, is found in Section 4511.63, Revised Code. Section 4511.63(A), Revised Code, 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.

Division (B) of Section 4511.63(B), Revised Code, provides that the section does not apply at railroad grade crossings when the Commission has authorized and approved an exempt crossing pursuant to the division.

III. Summary of the Evidence

In its report, staff indicates that the four crossings of concern to Ms. Sutter involve a rail siding or "spur" serving Mercer Landmark (Landmark). Staff adds that the spur enters from the south and crosses West Logan Street first, proceeding until it ends just north of West Market Street.¹ Photos taken by staff indicate no active grade crossing devices at any of the four crossings; crossbucks are present at all but the West Warren Street crossing. Staff states that the Celina City Schools is aware that the spur has not received any rail service recently. In addition, Staff has determined that there have been no requirements for rail service over West Logan Street in over two years, nor has rail service been required over West Warren Street, West Fayette Street, or West Market Street in over six years. Staff noted that R. J. Corman uses the southern end of the spur for the placement of freight cars and observed, during staff's investigation on October 14, 2008, and October 27, 2008, that there were covered gondola rail cars south of West Logan Street.

Staff asserts that Landmark has been interviewed in the past and also as part of this investigation, and does not want the spur to be abandoned or placed in a status that would prevent rail service in the future. Staff states that R. J. Corman has had, at least since 2006, a "Stop and Flag" order in place requiring that a "train crew must stop and provide . . . [flag]

¹ Testimony at hearing indicates a grain elevator operated by Mercer Landmark is located at the West Market Street end of the spur (Tr. at 17-18).

protection at the following crossings at Celina Landmark siding: Logan Street, Warren Street, Fayette Street, and Market Street in Celina, Ohio." Under a "Stop and Flag" order, staff explains, a train will not travel across a grade crossing until motor vehicles have first been required to stop, at which time the train proceeds.

Staff concludes that while consideration could be given to all or part of the spur being placed out of service by R. J. Corman, it appears that the spur will not be abandoned and that the track will remain imbedded in the aforementioned streets, requiring warning devices to remain erected. Therefore, concludes staff, an exemption from requiring vehicles to stop is the only way to remedy the concerns expressed by Ms. Sutter.

At the hearing, no witnesses from staff or R. J. Corman were present. Ten public witnesses provided testimony in support of the exemption request. David McKnight of the Ohio Department of Transportation (ODOT) stated that he was most familiar with the West Logan Street crossing, located on State Route 29. To Mr. McKnight's knowledge, the spur is no longer in use and the rails need not be removed from West Logan Street for the exemption to be granted. Therefore, he added, ODOT does not object to granting the exemption (Tr. at 4-5)

Kim Sutter, Transportation Supervisor for Celina City Schools, stated that there has been no rail traffic on the spur for at least two or three years. According to Ms. Sutter, at some of crossings the tracks are paved over, but the crossbucks are still standing, so the schools buses must stop, causing extra wear and tear for the buses (Tr. at 5-7).

Norma Luth, Secretary at the garage for the school buses, testified that the spur had not been used for two years and agreed with Ms. Sutter's concerns about unnecessary delays when the schools buses stop (Tr. at 8-9).

Joe Bey, school bus driver, asserted that at least three school buses have been hit in the rear while stopping at the West Logan Street crossing. In Mr. Bey's opinion, the collisions occurred because automobile drivers have not seen rail traffic on the spur and thus did not expect a school bus to stop. Mr. Bey noted that, to reduce the likelihood of such collisions, he sometimes takes an alternate route to avoid the West Market Street crossing. He added that West Warren Street and West Fayette Street are not as heavily traveled but contends that any such stopping creates more maintenance problems for buses (Tr. at 9-12).

Matt Miller, Superintendent for Celina City Schools, favors the exemption because it would lessen the likelihood of collisions between school buses and other vehicles. Regarding the collisions that have already occurred, Mr. Miller stated that "we have been, for lack of a better term, lucky so far" (Tr. 12-14).

Wayne Fisher, school bus driver, is most familiar with the crossings at West Market Street and West Wayne Street, although he has driven over all four crossings. Mr. Fisher has not seen rail traffic on the spur in the past two years. He added that aside from school buses, commercial motor vehicles that carry hazardous materials have been hit when drivers of other vehicles do not anticipate commercial vehicles stopping at the spur (Tr. at 14-16). Further, contended Mr. Fisher, the alternate routes that he travels to avoid the grade crossings consist of streets that are inappropriate for buses because of the streets' narrow width and deteriorating pavement (Tr. at 16-17). Mr. Fisher stated that he drives over the grade crossings 22 times per day and agreed with other witnesses that the spur at locations such as West Market Street is paved over, with trucks sometimes parked on the tracks (Tr. at 17). At West Logan Street, he added, automobiles from a dealership are parked on the tracks (Tr. at 17-18).

Debbie Hole, school bus driver, testified that she is most familiar with the crossings at West Market Street and West Logan Street, and that the tracks are deteriorated and partially paved over. She added that she has not seen train traffic at the West Market Street crossing for at least two years and that there is gravel and piles of mulch on the track at that location. Mr. Hole asserted that she stops her bus at the spur 11 times a day and often has her bus full of students when approaching the tracks, adding to her safety concerns when the bus is stopped (Tr. 18-21).

Mike McKirnan, Business Manager for Celina City Schools, stated that because of an anticipated increase in future rail traffic, there is probably no need to have the track removed from the crossings named in Ms. Sutter's request. Mr. McKirnan agreed with the bus safety and maintenance issues stated by other witnesses, and added that the higher speed limit for vehicles on West Market Street and West Logan Street creates a greater chance for collisions when a school bus stops (Tr. at 21-22).

Janice Tincher, school bus driver, has driven over all but the West Fayette Street crossing and agreed with the statements of other witnesses regarding the apparent non-use of the spur. Regarding the likelihood of collisions when stopping her bus, she commented that while she carefully observes the distance of vehicles behind her, "sometimes people don't pay attention." She also believes that there is increased wear and tear on the buses because of stopping at the crossings (Tr. at 23-26).

Joe Wolff, Public Works Superintendent for the City of Celina, favors the exemption because it would "help get the buses off of some of the streets that aren't designated for the buses," thereby avoiding damage to the streets. He added that he has not seen rail traffic on the spur for two or three years (Tr. at 27-29).

Comments filed by R. J. Corman after the hearing indicate that it does not object to the exemption request, assuming that (1) the signage stating "exempt" at the specified

crossings complies with the Manual of Uniform Traffic Control Devices, (2) it will not be responsible for any expenses associated with purchase and/or installation of the "exempt" signs, (3) it will continue to provide flagmen at the crossings during times when the crossings are in use, and (4) it can and will seek reversal of the "exempt" status should the frequency of rail operations at the crossings change.

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 the application. After consideration of the evidence of record, we find that the request for an exemption from stopping for school buses, pursuant to Section 4511.63, Revised Code, is warranted. We agree with local officials and others that the risk from vehicle accidents at each of the designated crossings, created by stopped buses or placarded vehicles being struck from behind, far outweighs the potential of a vehicle/train accident, given that no rail traffic has been seen on the spur for several years, and staff's determinations that rail traffic has been absent from each of the crossings for at least two years. Indeed, staff observed that only the south end of the spur is in use by R. J. Corman, and that its use is only for the storage of rail cars. The Commission also notes that several witnesses testified that collisions have already occurred when schools buses and placarded vehicles have been hit from behind.

In addition, the Commission understands the concerns expressed during testimony regarding the increased need for bus maintenance caused by stopping at the four grade crossings. The Commission also takes notice of testimony that school buses must, when avoiding the grade crossings, be driven on streets that are inappropriate for buses. In sum, upon considering all of the preceding arguments, the Commission finds it reasonable to grant, pursuant to Section 4511.63, Revised Code, the request for a school bus exemption from stopping at the four grade crossings.

Notwithstanding our granting of this exemption request, all vehicles, including those covered by the exemption, must fully comply with all state of Ohio motor vehicle safety rules and obey all existing warning devices whenever a train is operating over the named crossings. Therefore, although we are granting the request for an exemption, we are not exempting operators of these vehicles from stopping at the crossing when a train is operated over any of the crossings. Accordingly, ODOT should place signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the crossing and at other appropriate locations in advance of the crossing.

Finally, Section 4511.63(B)(3), Revised Code, also 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, R. J. Corman and the

Commission staff should monitor the rail traffic at each crossing and notify the Commission in the event there is a significant change in rail operations. In the event such change takes place, the Commission may reevaluate this exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On October 3, 2008, and October 20, 2008, Ms. Kim Sutter, Transportation Supervisor for the Celina City Schools, filed letters requesting, pursuant to Section 4511.63, Revised Code, an exemption for school buses from stopping at the grade crossing located at W. Market Street (477-027D), W. Logan Street (477-022U), W. Warren Street (477-023B), and W. Fayette Street (477-025P) in the city of Celina, Mercer County.
- (2) On June 28, 2005, Commission staff filed an investigative report on the exemption request.
- (3) By Entry issued November 7, 2008, a hearing was scheduled and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Mercer County.
- (4) Notice of the hearing was duly published in *The Daily Standard*.
- (5) A hearing was held on November 21, 2008, in Celina, Ohio, at which ten public witnesses testified in support of the exemption request.
- (6) Comments were filed by R. J. Corman on February 12, 2009.
- (7) The request for an exemption from stopping for school buses is warranted based upon the evidence presented at the hearing. The exemption also applies to commercial motor vehicles, as specified in 49 C.F.R. 392.10.

ORDER

It is, therefore,

ORDERED, That an exemption, pursuant to Section 4511.63, Revised Code, be granted to allow school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, to proceed without stopping at the grade crossings located at W. Market Street (477-027D), W. Logan Street (477-022U), W. Warren Street (477-023B), and W. Fayette Street (477-025P) in the city of Celina, Mercer County. It is, further,

ORDERED, That a copy of this opinion and order be served on the Transportation Supervisor of the Celina City Schools, Ohio Petroleum Marketers Association, Ohio Trucking Association, National Tank Truck Carriers, Inc., ODOT Sidney District Office, R. J. Corman, Norfolk Southern Corporation, and all interested persons of record.

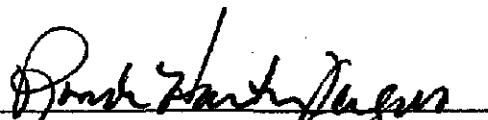
THE PUBLIC UTILITIES COMMISSION OF OHIO



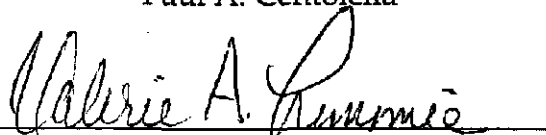
Alan R. Schriber, Chairman



Paul A. Centolella



Ronda Hartman Fergus



Valerie A. Lemmie

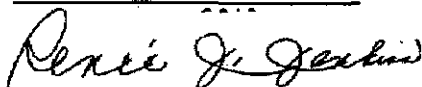


Cheryl L. Roberto

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Entered in the Journal

MAR 04 2009

Renee J. Jenkins
Secretary