

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for an)
Exemption from Stopping for School Buses)
and Certain Hazardous Materials Vehicles)
at the Highway/Railroad Grade Crossing) Case No. 13-1226-RR-RCP
AARDOT No. 503327N Located on State)
Route 7 (Grant Avenue) in Martins Ferry,)
Belmont County, Ohio.)

OPINION AND ORDER

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

OPINION:

I. Procedural History

On May 21, 2013, Scott Warner (Mr. Warner), District 11 Railroad Coordinator of the Ohio Department of Transportation (ODOT), filed a letter, pursuant to Section 4511.63, Revised Code, requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at grade crossing AARDOT No. 503327N, located on Grant Avenue/State Route 7 (SR7) in Martins Ferry, Belmont County, Ohio. In the letter, Mr. Warner stated that SR7 is a four lane highway with a speed limit of 50 miles per hour. He contends that approval of the exemption would increase safety for school buses and certain hazardous materials vehicles by eliminating their need to stop at the crossing. Mr. Warner noted that, on a daily basis, there are three switching trains traveling at five miles per hour that travel over the crossing.

By entry issued May 31, 2013, a local public hearing was scheduled for July 15, 2013, in Martins Ferry, Ohio, and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Belmont County, Ohio, one time, not less than seven days prior to the scheduled hearing. On June 18, 2013, Staff filed an investigative report on the exemption request. Norfolk Southern Railway Company (Norfolk Southern) filed a letter on June 28, 2013, stating that it does not object to the exemption request.

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 Code of Federal Regulations (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 investigative report, Staff noted the number of lanes and the speed limit on SR7, as well as the number and speed of trains on the track. In addition, Staff notes that the most recent traffic count, made in 2011, indicates an average of 27,933 vehicles moving over the crossing daily. According to Staff, because the track is used for industrial purposes and thus is governed by business need, fewer switching movements may sometimes occur. Warning devices at the crossing consist of two sets of mast-mounted flashing lights and two sets of cantilevered flashing lights. Staff observes that ODOT's request is based upon the likelihood of reducing a rear end collision, given that a school bus or commercial motor vehicle transporting certain hazardous materials must stop at the crossing. Staff recommends that the Commission grant ODOT's request, and suggests that Norfolk Southern institute a stop and flag order at the crossing if it has not already done so.

Two witnesses testified at the July 15, 2013, local public hearing. Mr. Warner of ODOT stated that the Martins Ferry Police Department had complained to PUCO railroad inspector Shawn Zurfley that some commercial motor vehicles carrying hazardous materials were not stopping at the SR7 crossing (ODOT Ex. 1; Tr. at 5-6). Mr. Warner added that he and several other ODOT Employees examined the crossing and determined that because of SR7's four lanes, 50 miles per hour speed limit, and the volume of vehicle traffic, requiring hazardous materials vehicles and school buses to stop creates a dangerous situation (Tr. at 5-6).

Chuck Bennett, Service Director of the City of Martins Ferry, explained that he is a former school bus driver. He contends that, although he would slow down well in advance of the crossing and activate the bus's flashing lights, drivers would nearly collide with the bus. In an attempt to increase the safety of the bus passengers, Mr. Bennett eventually changed the direction of his route to avoid the crossing. In Mr. Bennett's opinion, many drivers did not realize that the bus was required to stop at a grade crossing (Tr. at 10-11).

On August 26, 2013, Dirk Fitch, Superintendent of the Martins Ferry City School District, filed a letter indicating that the Martins Ferry City School District supports the exemption request. Mr. Fitch explains that the track that crosses SR7 is only used to provide limited service to a bakery. He adds that the 50 miles per hour speed limit and heavy traffic on SR7 has nearly resulted in many collisions between school buses and trucks, as the buses approach the crossing and slow down with their lights flashing. Mr. Fitch closes by stating that allowing school buses to travel SR7 without having to stop may be safer than having local police and the Ohio State Highway Patrol monitor traffic at the crossing.

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 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.

After consideration of the evidence of record, we find that the request for an exemption from stopping for school buses and certain hazardous materials vehicles, pursuant to Section 4511.63, Revised Code, is warranted. We agree that the risk of accidents at the designated crossing, created by stopped buses or placarded vehicles being struck from behind on vehicles traveling on SR 7 with a speed limit of 50 miles per hour, far outweighs the potential of a vehicle/train accident, given the low speed and infrequent number of trains on the track. Therefore, upon considering all of the evidence, the Commission finds it reasonable to grant, pursuant to Section 4511.63, Revised Code, the request to exempt school buses and certain hazardous materials vehicles from stopping at Grant Avenue, as would ordinarily be required by 49 C.F.R. 392.10.

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 crossing. 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 the crossing. Accordingly, the City of Martins Ferry, as the local highway authority, 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, Norfolk Southern and the Commission staff should monitor the rail traffic at the 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 May 21, 2013, ODOT filed a letter, pursuant to Section 4511.63, Revised Code, requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at grade crossing AARDOT No. 503327N, located on SR7 in Martins Ferry, Belmont County, Ohio.
- (2) On June 18, 2013, Commission staff filed an investigative report on the exemption request.
- (3) By entry issued May 31, 2013, a local public hearing was scheduled for July 15, 2013, in Martins Ferry, Ohio.
- (4) Notice of the hearing was duly published in *The Times Leader* of Martins Ferry, Ohio.
- (5) A hearing was held on July 15, 2013, in Martins Ferry, Ohio, at which two public witnesses testified in support of the exemption request. No one testified in opposition to the exemption request.
- (6) On August 26, 2013, the Martins Ferry City School District filed a letter supporting the exemption request.

- (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

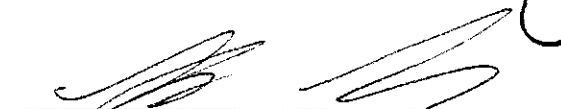
It is, therefore,


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 crossing located at SR7 in Martins Ferry, Belmont County, Ohio. It is, further,

ORDERED, That a copy of this opinion and order be served on Norfolk Southern Railway Company, ODOT District 11 Railroad Coordinator, Superintendent of Martins Ferry City Schools, Mayor of the City of Martins Ferry, and all other interested persons of record.

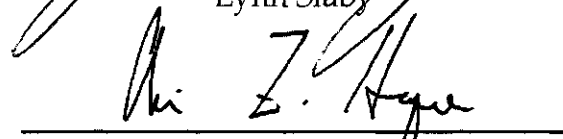
THE PUBLIC UTILITIES COMMISSION OF OHIO


Todd A. Snitchler, Chairman


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JML/sc

Entered in the Journal

SEP 04 2013



Barcy F. McNeal
Secretary