

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request for an)
Exemption by the City of Tiffin, Ohio.) Case No. 14-94-RR-RCP

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 January 16, 2014, Aaron D. Montz, Mayor of the city of Tiffin, Ohio filed a letter requesting, pursuant to R.C. 4511.63, an exemption for school buses from stopping at three grade crossings within the city of Tiffin, Seneca County, Ohio, referred to as: Second Avenue (509-215K); Fourth Avenue (509-214D); and Fourth Avenue at Wall (509-217Y). On March 6, 2014, Staff filed an investigative report on the exemption request.

By Entry issued on February 25, 2014, a public hearing was scheduled for April 1, 2014, in Tiffin and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Seneca County, Ohio. In addition, the February 25, 2014 Entry directed that any interested person could file comments on the exemption request by April 5, 2014. No comments were filed.

On April 9, 2014, the Commission's Docketing Division filed proof of publication of its notice of the hearing. On April 1, 2014, a public hearing was held as scheduled. At the hearing, four witnesses testified in favor of the exemption request and no witnesses testified in opposition to the exemption request.

II. Applicable Law

The Commission's authority to grant exemptions for vehicles from stopping at railroad grade crossings is found in R.C 4511.63. Paragraph A of that statute 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.

R.C. 4511.63(B) provides that R.C. 4511.63(A) does not apply when the Commission has authorized and approved an exempt crossing pursuant to this division.

III. Summary of the Evidence

A. Staff Report

In its March 16, 2014 report, Staff stated that it conducted a field inspection of all three involved crossings, which are operated by the Northern Ohio & Western Railroad (the NOW Railroad). The inspection revealed that all three crossings are located within Tiffin, on an industrial lead track providing access to the former American Standard plant site. The plant site is gated, such that all track access into the property is restricted by locked gates. Staff also found that the involved industrial track does not presently service revenue customers inside the former American Standard facility, although future service is not precluded. Rail movement over the track crossings occurs with negligible infrequency, but when it does occur, is generally made only for purposes of placing cars for storage. According to Staff, the current operating procedure requires all rail movements to be protected by a crew member on the leading end of a shoving movement. Track speed is designated at not to exceed five miles per hour, vehicular traffic is limited to 25 miles per hour, and sight views are generally very good. Current vehicular traffic counts are unavailable. (Staff Report, at 20, 22).

In its March 16, 2014 report Staff recommended that the Commission grant the requested exemption, subject to the following requirements:

- (1) As regards Second Avenue, the granted exemption applies only where Second Avenue crosses the industrial track leading into the former American Standard plant site, and not to the other Second Avenue grade crossing where, approximately 225 feet further west, Second Avenue crosses the NOW Railroad's main track. Thus, the requirements under R.C. 4511.83, shall remain in place where Second Avenue crosses the NOW Railroad's main track.
- (2) The NOW Railroad shall issue a timetable - special instruction, and/or standing bulletin order requiring crews to stop and flag each location prior to movement through the exempted crossings.

- (3) The NOW Railroad shall ensure compliance with the requirement immediately preceding this one and, in addition, shall file with the Commission, a copy of the railroad instruction mandated under this same requirement.
- (4) "Exempt" signs (conforming to Manual on Uniform Traffic Control Devices Figure 8B-4 Plaque W-10-1aP) shall be fixed to existing respective signage by the city and the railroad and, additionally, such signage shall be permanently maintained.
- (5) In the event of significant change in rail traffic into the industrial plant site or area vehicular traffic density, the railroad may request a change of crossing status, indicating the change as being in the interest of railroad and/or public safety.

B. Local Public Hearing

Four witnesses testified at April 1, 2014 local public hearing. Randy Conger, the Transportation Supervisor for the Tiffin City Schools, testified in support of the requested exemption (Tr. 6). Mr. Conger explained that, because the vehicular intersection is located in such close proximity to the railroad track, unless the exemption is granted, school buses that happen to be engaged in turning off of Wall Road onto Second Avenue, must stop in manner that leaves them, while stopped, hanging out into the vehicular intersection blocking oncoming traffic. Mr. Conger stressed that this results in a safety concern because oncoming vehicular traffic is not likely to expect or anticipate that the buses making their way through the turn would find it either necessary or useful to stop in the middle of the intersection as they proceed through it (Tr. 5). Mr. Conger testified that at least three or four school busses cross the involved tracks every day (Tr. 14).

Mario Livojevic, the Tiffin City Engineer testified that the same traffic hazard exists at each of the three crossings involved in this case. In each instance, the proximity of the involved grade crossing to a nearby vehicular intersection, results in a situation which, unless the requested exemption is granted, finds school busses (or other vehicles that are legally being required to stop at grade crossings) being forced to stop in spots which position them less than fully through the involved vehicular intersections and, as such, exposed to oncoming vehicular traffic that is likely not expecting them to be so stopped (Tr. 8, 12).

Fred Stevens, the chief of the Tiffin Police Department, testified that a grant of the requested exemption would be beneficial to traffic flow and public safety in the city of Tiffin (Tr. 13). Also testifying was Mr. James Supance, the Chairperson of the Sandusky County/Seneca County/City of Tiffin Port Authority. He indicated that the Port Authority owns all of the tracks involved in this case; and that the NOW Railroad operates those tracks. Mr. Supance testified that neither the Port Authority nor the NOW Railroad objects to a grant of the requested exemption (Tr. 10). He also explained that, while two grade crossings exist on Second Avenue, the exemption requested is intended to apply where Second Avenue crosses an industrial track near the intersection of Second Avenue and Maule Road, but that it is not, and never has been, intended to apply at the location where Second Avenue crosses the NOW Railroad's main track, at a point approximately 226 feet further west (Tr. 9, 12; Staff Report, at 21).

IV. Commission Conclusion

R.C. 4511.63(B)(2) 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 R.C. 4511.63. We additionally find that, based on the evidence, an exemption from stopping, pursuant to R.C. 4511.63, 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 inactive status of the former plant site, there is currently only a negligible amount of rail traffic at the three involved grade crossings. Therefore, approving an exempt status for the crossings should not impair safety and the risk of vehicular accidents at the crossings, created by stopped buses being struck, 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 crossing. These exemptions are granted subject to the requirements elaborated in Staff's recommendations, as summarized above in this order. The city of Tiffin, 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 the crossing. The city of Tiffin may apply to the Commission for financial assistance for the cost of signage.

R.C. 4511.63(B)(3) 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. In the event of significant changes in rail traffic into the involved former industrial plant site or in area

vehicular traffic density, the NOW Railroad should provide 90 days advance notice to the Commission and the city of Tiffin and the Commission may reevaluate this exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On January 16, 2014, the City of Tiffin, Ohio filed a letter requesting, pursuant to R.C 4511.63, Revised Code, an exemption from stopping at three grade crossings within the city of Tiffin, Seneca County, Ohio, including Second Avenue (509-215K), Fourth Avenue (509-214D), and Fourth Avenue at Wall (509-217Y).
- (2) The public hearing was held on April 1, 2014, in Tiffin, Ohio. Four witnesses testified in favor of the crossing exemption and no witnesses testified in opposition.
- (3) Currently only a negligible amount of rail traffic occurs at the three involved grade crossings. Therefore, approving an exempt status for the crossings, subject to the Staff-recommended requirements, should not impair safety. In fact, the risk of vehicular accidents at the crossings, created by stopped buses being struck from behind, may be lowered.
- (4) The request for an exemption for vehicles from stopping at the three involved crossings, pursuant to R.C. 4511.63, should be granted, subject to all of the requirements recommended by Staff, as summarized in the body of this Opinion and Order.

It is, therefore,

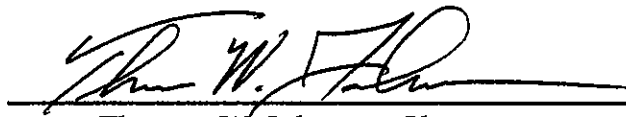
ORDERED, That an exemption, pursuant to R.C. 4511.63, be granted, subject to all of the requirements recommended by Staff, as summarized in the body of this Opinion and Order, to allow buses, school buses, and any vehicle transporting a material or materials required to be placarded under 49 C.F.R. Parts 100-185, to proceed without stopping at three grade crossings within the city of Tiffin, Ohio, namely, Second Avenue (509-215K), Fourth Avenue (509-214D), and Fourth Avenue at Wall (509-217Y). It is, further,

ORDERED, That the city of Tiffin place "Exempt" signs at appropriate locations in advance of the crossing. It is, further,

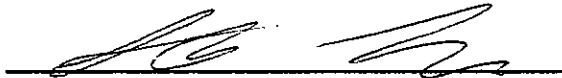
ORDERED, In the event of significant changes in rail traffic into the involved former industrial plant site or in area vehicular traffic density, the NOW Railroad shall give 90 days advance notice to the city of Tiffin and the Commission and the Commission may reevaluate this exemption. It is, further,

ORDERED, That a copy of this Opinion and Order be served on the NOW Railroad and its counsel, the Ohio Department of Transportation, the city of Tiffin, Ohio Rail Development Commission, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



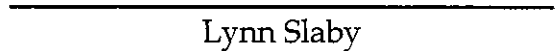
Thomas W. Johnson, Chairman



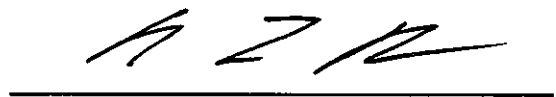
Steven D. Lesser



M. Beth Trombold



Lynn Slaby



Asim Z. Haque

DEF/sc

Entered in the Journal

JUL 09 2014



Barcy F. McNeal
Secretary