

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of a Request by the City of)
Wadsworth for an Exemption from)
Stopping for School Buses and Hazardous) Case No. 15-2114-RR-RCP
Materials Vehicles at the East Bergey Street)
Grade Crossing (AAR920907D) Located in)
Wadsworth, Medina County, Ohio.)

OPINION AND ORDER

The Commission, considering the applicable law and evidence of record, and being otherwise fully advised, hereby issues its Opinion and Order in this matter, granting the request by the city of Wadsworth for an exemption from stopping for school buses and hazardous materials vehicles at the East Bergey Street grade crossing (AAR920907D), located in Wadsworth, Medina County, Ohio.

OPINION:

I. Procedural History

On December 17, 2015, Matthew Hiscock (Mr. Hiscock), Director of Public Safety for the city of Wadsworth, Ohio, filed a letter on behalf of the city of Wadsworth, the local highway authority (LHA), pursuant to R.C. 4511.63, requesting an exemption for school buses and commercial motor vehicles carrying certain hazardous materials from stopping at grade crossing AARDOT No. 920907D, located on East Bergey Street in Wadsworth, Medina County, Ohio. In the letter, Mr. Hiscock stated that the crossing is on a two-lane roadway with a speed limit of 35 miles per hour. He asserts 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. Hiscock also notes that the crossing at issue previously served a manufacturing facility and that, at this time, the tracks have been removed and no longer connect to the spur and manufacturing facility so that only the crossing remains. The operating railway is Akron Barberton Cluster Railway Company (ABC).

By Entry issued January 13, 2016, a local public hearing was scheduled for March 3, 2016, in Wadsworth, Ohio, and the Commission's Docketing Division was directed to publish notice of the hearing in a newspaper of general circulation in Medina County, Ohio, one time, not less than seven days prior to the scheduled hearing. On January 21, 2016, Staff filed an investigative report on 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 R.C. 4511.63, 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 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, 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 that there was a single track crossing with crossbucks and attached yield signs on both sides providing protection on a two-lane asphalt surfaced road, in an industrial area. Staff further stated the track is an industrial lead from the ABC railway into the Luke Engineering and Manufacturing Company (Luke Engineering) facility and that Luke Engineering is the track owner. Staff noted the track has been disconnected from the ABC railway main track, as both the switch and section of rail between the railway's track and the grade crossing have been removed. Additionally, Staff stated the additional rail leading into the manufacturing facility had also been removed. Staff also noted that, upon further investigation, it discovered the manufacturing facility had not been used in over three years. (Staff Report at 9.) As the investigative report concluded that the rail crossing is inaccessible to rail traffic and has not been used for over three years, Staff recommends that the Commission grant the city of Wadsworth's request for an exemption from the stopping requirements, pursuant to R.C. 4511.63 (Staff Report at 10).

At the hearing, Mr. Hiscock provided testimony in which he confirmed that operations at the nearby manufacturing facility, owned by Luke Engineering, have been non-existent for years. Mr. Hiscock noted that the side rails which once connected the grade crossing to the railway have been removed from either side of the grade crossing, making it impossible for any train to actually use the track at the crossing. (Tr. at 4-5.) He also described receiving various complaints and concerns from the public regarding the East Bergey Street crossing, noting many of these complaints dealt with frustrated residents who were confused by the need to stop at a crossing where no train could ever cross (Tr. at 5).

Mr. Hiscock also stated that representatives of the school district had echoed the public's concerns regarding the risk of potential accidents that might occur due to the requirement for buses to stop at the crossing (Tr. at 6). Finally, Mr. Hiscock testified that he believes the requirement the school buses and hazmat vehicles stop prior to traveling over the crossing presents a safety hazard to motorists and, if the Commission grants the requested exemption, the safety concern would be alleviated (Tr. at 7).

Herbert A. Shanklin, the general manager of ABC, also testified at the local public hearing, noting that ABC determined it to be more cost effective to simply remove sections of the railway than to completely close the crossing. Additionally, Mr. Shanklin testified that the manufacturing facility has not received any rail services in several years and does not look to receive service in the near future (Tr. at 8). Mr. Shanklin noted that he has no issue with granting the crossing exemption (Tr. at 9). However, Mr. Shanklin stated that as rail service to the manufacturing facility may be reinstated at some point in the future, ABC would prefer that the crossing remain in place, rather than be removed completely (Tr. at 8-9).

Finally, Joseph Magnacca, Director of Facilities at Wadsworth City Schools, testified that he agreed with many of the comments provided by Mr. Hiscock, emphasizing the safety concerns of the students and the bus drivers (Tr. at 9-10). Mr. Magnacca also provided that, at this time, two buses currently drive over the East Bergey Street crossing as a part of their regular routes (Tr. at 10). In conclusion, Mr. Magnacca agreed with Mr. Hiscock's belief that these safety concerns would be alleviated in the event the Commission grants the pending exemption request (Tr. at 11).

IV. Commission Conclusion

R.C. 4511.63 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. R.C. 4511.63(B)(2) 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 R.C. 4511.63, is warranted. We agree that the risk of accidents at the designated crossing, created by stopped buses or placarded vehicles being struck from behind by vehicles traveling on East Bergey Street with a speed limit of 35 miles per hour, far outweighs the potential of a vehicle/train accident. We base our decision on the fact that this grade crossing is completely inaccessible to rail traffic and there has been no rail service to the manufacturing facility for the past three years, in addition to the fact ABC was unaware whether this facility will require rail service in the near future (Tr. at 8-9).

Therefore, upon considering all of the evidence, the Commission finds it reasonable to grant, pursuant to R.C. 4511.63, the request to exempt school buses and certain hazardous materials vehicles from stopping at the crossing located on East Bergey Street, 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 other state of Ohio motor vehicle safety rules. Accordingly, the City of Wadsworth, 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, R.C. 4511.63 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, ABC and Staff should monitor the rail traffic at the crossing and notify the Commission in the event there is a significant change in rail operations, such as renewed operation of the railway to the manufacturing facility. In the event such change takes place, the Commission may reevaluate this exemption.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) On December 17, 2015, Matthew G. Hiscock, on behalf of the city of Wadsworth, filed a letter, pursuant to R.C. 4511.63, requesting an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the East Bergey Street grade crossing (AARDOT No. 920907D), located in Wadsworth, Medina County, Ohio.
- (2) On January 21, 2016, Staff filed an investigative report on the exemption request.
- (3) By Entry issued January 13, 2016, a local public hearing was scheduled for March 3, 2016, in Wadsworth, Ohio.
- (4) Notice of the hearing was duly published in *The Medina County Gazette* on February 22, 2016.
- (5) A hearing was held on March 3, 2016, in Wadsworth, Ohio, at which three public witnesses testified in support of the exemption request. No one testified in opposition to the exemption request. A representative from ABC testified that ABC was not contesting the request.

- (6) The request for an exemption from stopping for school buses, as well as certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, is warranted based upon the evidence presented at the hearing.

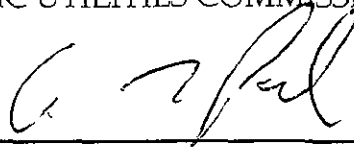
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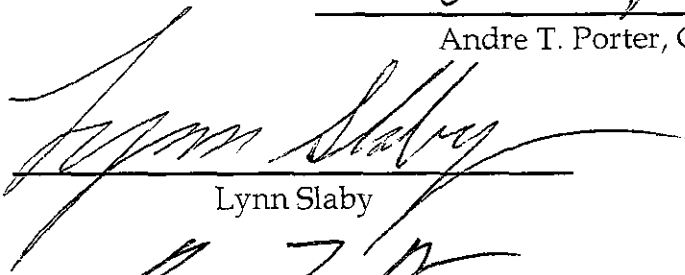
It is, therefore,


ORDERED, That an exemption, pursuant to R.C. 4511.63, 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 East Bergey Street in Wadsworth, Medina County, Ohio. It is, further,

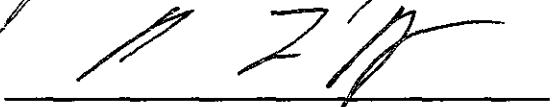
ORDERED, That a copy of this Opinion and Order be served on Akron Barberton Cluster Railway Company, the city of Wadsworth Director of Public Safety, and all other interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO


Andre T. Porter, Chairman


Lynn Slaby


M. Beth Trombold


Asim Z. Haque


Thomas W. Johnson

MJA/sc

Entered in the Journal

MAY 04 2016



Barcy F. McNeal
Secretary