

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REQUEST FOR EXEMPTIONS BY PROVIDENCE TOWNSHIP FROM STOPPING FOR SCHOOL BUSES AND HAZARDOUS MATERIALS VEHICLES AT TOLEDO, LAKE ERIE & WESTERN RAILWAY & MUSEUM, INC. CROSSINGS IN LUCAS COUNTY, OHIO.

CASE No. 16-1419-RR-RCP

IN THE MATTER OF THE REQUEST FOR EXEMPTIONS BY LUCAS COUNTY FROM STOPPING FOR SCHOOL BUSES AND HAZARDOUS MATERIALS VEHICLES AT TOLEDO, LAKE ERIE & WESTERN RAILWAY & MUSEUM, INC. CROSSINGS IN LUCAS COUNTY, OHIO.

CASE No. 16-1549-RR-RCP

OPINION AND ORDER

Entered in the Journal on August 17, 2016

I. SUMMARY

{¶ 1} The Commission grants the requests for exemption from stopping for school buses and hazardous materials vehicles at 12 railway crossings owned by the Toledo, Lake Erie & Western Railway & Museum, Inc. in Lucas County, Ohio.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On June 20, 2016, Ken Biller, Providence Township Road Superintendent, filed a request pursuant to R.C. 4511.63, in Case No. 16-1419-RR-RCP, for an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the following five crossings owned by the Toledo, Lake Erie & Western Railway & Museum, Inc. (TLEW or Railroad) within Providence Township in Lucas County:

- 1) 475255J Bailey Rd./TR 145
- 2) 475258E Pollock Rd./TR 147
- 3) 475262U Patton Rd./TR 148

- 4) 475264H Hartman Rd./TR 113
- 5) 475265P Yawberg Rd./TR 112

{¶ 3} In support of this request, Mr. Biller attached a letter from Superintendent Adam Koch, and Director of Transportation Eva Vasher, for the Otsego Local Schools urging Providence Township to request the exemptions as the TLEW tracks are no longer in use. They state that the requested exemptions would reduce safety hazards for the public as well as the Otsego school buses which are currently required to stop over 30 times per day at these crossings.

{¶ 4} On July 11, 2016, a resolution approved by the Lucas County Commissioners was filed in Case No. 16-1549-RR-RCP, requesting exemptions, pursuant to R.C. 4511.63, for school buses and motor vehicles carrying certain hazardous materials from stopping at the following TLEW crossings in Lucas County:

- 1) 475268K Grand Rapids Rd./CR 1577
- 2) 475266W Jeffers Rd./CR 111
- 3) 475267D Ludwig Rd./CR 1576
- 4) 475257X Heller Rd./CR 151
- 5) 475256R Box Rd./CR 146
- 6) 475254C Hertzfeld Rd./CR 221
- 7) 475252N Neowash Rd./CR 143

The resolution indicates that the request was made on behalf of the Otsego Local Schools to reduce safety hazards for school buses which are currently required to stop over 30 times per day at crossings which are not currently in use.

{¶ 5} By Entries issued June 22 and July 11, 2016 in Case Nos. 16-1419-RR-RCP and 16-1549-RR-RCP, respectively, these cases were combined for hearing, which was held on July 21, 2016, at the Providence Township Hall in Grand Rapids, Ohio. Notice of the hearing was duly sent to TLEW and published in the Toledo Blade, a newspaper of general circulation in Lucas County, Ohio, and by press releases issued by the Commission. Proof of publication was filed on August 4, 2016 in both dockets.

{¶ 6} TLEW filed objections to the requests for exemptions on July 13, 2016 in Case No. 16-1419-RR-RCP and on July 25, 2016 in Case No. 16-1549-RR-RCP. The Railroad stated that trains were operated over the tracks involving the subject crossings in both cases as recently as 2013, and that TLEW intends to resume operations in a few months over the Patton Rd./TR 148 (475262U), Hartman Rd./TR 113 (475264H), Yawberg Rd./TR 112 (475265P), and Jeffers Rd./CR 111 (475266W) crossings. TLEW also indicated that they do not oppose exemptions for the Grand Rapids Rd./CR 1577 (475268K) or Ludwig Rd./CR 1576 (475267D) crossings. Further, the Railroad stated that they do currently conduct "motorcar excursions" which carry passengers over a section of mainline outside of the tracks under consideration in these proceedings.

{¶ 7} On July 25, 2016, Staff filed investigative reports in both cases, recommending that the requested exemptions be granted under certain conditions.

III. LAW

{¶ 8} 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.

IV. SUMMARY OF THE EVIDENCE

{¶ 9} In its investigative report, Staff notes that TLEW is not currently conducting operations, and as these tracks have not been in use for multiple years, obstructive vegetation would need to be removed at eight of the crossings before operations could begin. Further, Staff reports that each of the crossings have passive warning devices (crossbucks and yield signs), but that there are no pavement markings as required by the Manual of Uniform Traffic Control at the Patton Rd. crossing. Staff recommends that the requested exemptions be granted to reduce the possibility of rear end collisions. Further, Staff recommends that the Railroad be required to notify the Commission before TLEW begins any operations, and that they place a stop and flag order on the crossing for any future train movements.

{¶ 10} At the July 21, 2016 hearing of these cases, Mr. Koch, Ms. Vasher, and bus driver Christopher Feather testified on behalf of Otsego Local Schools; Ronald Myers, traffic operations engineer testified on behalf of Lucas County; and Mr. Biller testified on behalf of Providence Township, each in support of granting the exemptions. Mr. Koch testified that Otsego school buses stop at the railroad tracks 42 times per day at 11 of the grade crossings in Providence and Waterville townships and many of the crossings have no railroad track. He explained the procedures school bus drivers must follow before proceeding over a railroad grade crossing and he noted that these stops increase route times by 45 to 60 minutes per day, and increase ride times for students (Tr. at 7-9.) In

addition, he explained that, because there are no trains and in some cases no tracks at these crossings, drivers of motor vehicles are not expecting school buses to stop (Tr. at 9). Ms. Vasher provided pictures of the crossings where no rails are present (Tr. at 10), copies of which were filed in both dockets on July 26, 2016. Mr. Biller emphasized that the Township is not asking to close the railroad or remove the existing signs and crossbucks. Rather, the only change will be the addition of a sign that only affects school buses and hazard materials haulers (Tr. 23, 35). Mr. Feather indicated that he has driven a school bus for approximately 11 years and has stopped 30 times each day without any trains being operated on the tracks (Tr. at 19).

{¶ 11} Treasurer Frank Oles, Vice President Rick Westphal, and conductor Curtis Borrer each testified on behalf of TLEW. Mr. Oles testified that TLEW is a non-profit, volunteer enterprise that currently runs no trains on the tracks involved in these cases, but does operate motorcars on tracks in Wood County. Mr. Oles also indicated that TLEW plans to expand its scenic excursion operations to Lucas County in the near future, perhaps to include school days (Tr. at 14-16). In addition, he stated that in the future, if TLEW began operations, it would want to try to reverse the exemptions because the crossings would have to be flagged every time a train was traveling over the crossing (Tr. at 32-33). The TLEW witnesses expressed concern that as their operations begin, people will get complacent and not pay attention if the exemptions are granted at these crossings (Tr. 15-18).

{¶ 12} Karen Kingston and Joseph Schroeder testified on behalf of the Grand Rapids Area Chamber of Commerce in support of TLEW's efforts to begin rail operation. Ms. Kingston testified that the Chamber is supportive of both TLEW and the school district and can see both points (Tr. at 21). Mr. Schroeder and Ms. Kingston both indicated that such operations were formerly conducted under the Bluebird name, and were very beneficial in bringing visitors to the downtown business district (Tr. 21-26).

V. COMMISSION CONCLUSION

{¶ 13} 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.

{¶ 14} After consideration of the evidence of record, we find that, pursuant to R.C. 4511.63, the requests for an exemption from stopping for school buses and hazardous materials haulers at each crossing under consideration is warranted. From a review of the evidence, there are currently no trains operating on the tracks at the crossings involved in these cases. This is creating needless delay for school buses traveling over the crossings. (Tr. at 7-10.) In addition, because many of these crossings have no tracks and no trains operating, drivers of motor vehicles are not expecting school buses to stop at the crossings, which creates a safety hazard (Tr. at 9). There is also evidence that TLEW is operating vehicles but not trains on the tracks but is planning on commencing rail operations on some of the tracks involved in the exemption request "in the near future"; although no time line was indicated (Tr. at 14-16).

{¶ 15} 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 each subject crossing as would ordinarily be required by 49 C.F.R. 392.10. We agree that, because there are no rail movements at the crossings there is no risk of a train/vehicle collision. Further, the risk of accidents at the designated crossing, created by stopped buses or placarded vehicles being struck from behind by vehicles outweighs the potential of a vehicle/train accident, particularly so long as no operations are being conducted over the subject rails. While TLEW expressed concern that drivers of school buses and hazardous materials may become complacent with regard to

these crossings, drivers of school buses and commercial motor vehicles transporting hazardous materials are professional drivers and are required to understand the rules applicable to the transportation of vehicles they are operating, irrespective of whether these crossings are exempt or nonexempt. Because exempt signs modify the legal requirements for professional drives of certain vehicles at certain locations, all such drivers are legally required to know what such signage means and what actions such signage permits.

{¶ 16} 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 and obey all existing warning devices whenever a train is operating over these crossings.

{¶ 17} Accordingly, Providence Township and Lucas County, as the local highway authorities, should place signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at each crossing and at other appropriate locations in advance of the crossings. Additionally, TLEW must notify Commission Staff and the appropriate school authorities prior to beginning any operations. Moreover, TLEW will be required to comply with all applicable requirements of the Federal Railroad Administration for any future train movements over any of the subject highway rail grade crossings.

{¶ 18} Further, R.C. 4511.63 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. Thus, if TLEW or any other railroad files a petition to rescind the granted exemptions, we shall reconsider such petitions according to R.C. 4511.63. We note that the granting of these exemption requests have no impact on the Railroad since TLEW is not currently conducting any operations effecting the crossings

under consideration in these proceedings. Nevertheless, TLEW should provide advance notice to the Commission, and Providence Township and the superintendent of Otsego Local Schools in the event TLEW intends to resume rail operations at these crossings which would impact school bus or hazard material transportation activities. In the event rail operations resume at these crossings, the Commission will reevaluate these exemptions.

{¶ 19} Finally, we note that TLEW is not currently listed as a regulated entity on the records of the Commission, and has not filed an annual report as required by railroad companies under R.C. 4907.02 and 4907.20, despite TLEW's admissions that they are currently conducting motorcar excursions which carry passengers over tracks not under consideration in these proceedings. Accordingly, TLEW is directed to file, as directed by Staff, notice of all Ohio jurisdictional operations within 30 days of the issuance of this Opinion and Order.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 20} On June 20, 2016, the Providence Township Road Superintendent filed a request pursuant to R.C. 4511.63, in Case No. 16-1419-RR-RCP, for an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the following five crossings owned by the TLEW within Providence Township in Lucas County.

{¶ 21} On July 11, 2016, a resolution approved by the Lucas County Commissioners was filed in Case No. 16-1549-RR-RCP, requesting exemptions, pursuant to R.C. 4511.63, for school buses and motor vehicles carrying certain hazardous materials from stopping at seven TLEW crossings in Lucas County.

{¶ 22} By Entries issued June 22 and July 11, 2016, in Case Nos. 16-1419-RR-RCP and 16-1549-RR-RCP, respectively, these cases were consolidated for hearing, which has held on July 21, 2016, at the Providence Township Hall in Grand Rapids, Ohio.

{¶ 23} Notice of the hearing was duly published in the Toledo Blade.

{¶ 24} On July 25, 2016, Staff filed its investigative reports regarding the exemption requests.

{¶ 25} A hearing was held on July 21, 2016, in Grand Rapids, Ohio.

{¶ 26} 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.

VII. ORDER

{¶ 27} It is, therefore,

{¶ 28} 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 each grade crossing identified in paragraphs 2 and 4 in Lucas County, Ohio. It is, further,

{¶ 29} ORDERED, That TLEW file with this Commission notice of all Ohio jurisdictional operations within 30 days of the issuance of this Opinion and Order. It is, further,

{¶ 30} ORDERED, That a copy of this Opinion and Order be served on TLEW, Providence Township, Superintendent and Director of Transportation for the Otsego Local Schools, the Lucas County Commissioners, the Ohio Rail Development Commission, and all other persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

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Asim Z. Haque, Chairman

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AUG 17 2018

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Secretary