

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REQUEST FOR AN  
EXEMPTION BY THE OHIO DEPARTMENT OF  
TRANSPORTATION FROM STOPPING FOR  
SCHOOL BUSES AND HAZARDOUS  
MATERIALS VEHICLES AT A TOLEDO, LAKE  
ERIE & WESTERN RAILWAY & MUSEUM, INC.  
CROSSING IN LUCAS COUNTY, OHIO.

CASE No. 16-1608-RR-RCP

## OPINION AND ORDER

Entered in the Journal on November 30, 2016

### I. SUMMARY

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

### II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On July 25, 2016, Aaron Behrman, Rail Coordinator, Ohio Department of Transportation, District 2 (ODOT), filed a petition pursuant to R.C. 4511.63, in Case No. 16-1608-RR-RCP, for an exemption for school buses and motor vehicles carrying hazardous materials from stopping at the Berkey Southern Road/SR 295 (DOT# 475261M) crossing owned by the Toledo, Lake Erie & Western Railway & Museum, Inc. (TLEW or Railroad) within Providence Township in Lucas County.

{¶ 3} In support of this request, Mr. Behrman stated that making this crossing exempt would increase safety for school buses and hazardous materials vehicles by eliminating their need to stop on this highway. Mr. Behrman stated that, based on TLEW's website, the Railroad's Bluebird passenger train is currently not running and that visual inspection of the crossing shows no signs of activity on the rail line, as the area is overgrown with brush and rails are missing at the crossing. Further, by exempting this crossing, no vehicles would be required to stop creating less hazards and increasing safety for the travelling public. (ODOT Petition at 1.)

{¶ 4} By Entry issued July 29, 2016, this case was scheduled for hearing, which was held on September 1, 2016, at the Providence Township Hall near 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 release issued by the Commission. Proof of publication was filed on August 24, 2016.

{¶ 5} TLEW filed a letter objecting to the request for exemption on August 30, 2016. In the letter, which was signed by Duane Karam and Rick Westphal, the president and vice president of TLEW, respectively, the Railroad states that the subject crossing was rehabilitated August 13-17, 2016, allowing improved driving conditions for vehicle traffic, and to allow train movements to resume at this location. TLEW states that vegetation abatement is on-going at the crossing, and it intends to resume limited operations over this crossing in the near future. TLEW further states that it has concerns over confusion as to how the exempt status would be applied by the vehicles it affects and that it has noted, on several occasions, the failure of placarded, hazardous materials vehicles to reduce speed, let alone stop, at this and other crossings on its line. According to TLEW, this type of situation could bring about an incident, where a vehicle driver, used to not being attentive, fails to heed any visual or audible warnings at the crossing when a train is approaching or crossing the intersection. (TLEW letter at 1.)

{¶ 6} TLEW also notes that it has no crossings that qualify to be posted as “abandoned” and that it currently conducts motorcar excursions which carry passengers over a section of its mainline outside the scope of this petition. TLEW states that, at this time, it does not feel it is in the public’s best interest to declare this crossing exempt as requested in this petition. Further, TLEW argues that resuming operations would cause the Commission to re-evaluate this and other crossings that have been declared exempt and could result in confusion to the drivers of those vehicles required to stop, which in itself could pose additional safety hazards. (TLEW letter at 2.)

{¶ 7} On August 16, 2016, Staff filed an investigative report in this case, recommending that the requested exemption be granted.

### 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 stated that Berkey Southern Road/SR 295 is a two lane state route that runs north and south and has a posted speed limit of 55 miles per hour. Staff noted that the road is located in Providence Township, Lucas County, Ohio, and it crosses a currently unused TLEW single line track. Moreover, the crossing is equipped with mast-mounted flashing lights and roadway gates, and there are Manual of Uniform Traffic Control compliant pavement markings and advanced warning signs present. Staff also noted that a portion of the tracks at the crossing had been removed and patched over with asphalt.

{¶ 10} Staff stated that, currently, the railroad does not have any traffic over the roadway and that the road is used by both school buses and multiple hazardous materials vehicles. Further, an exempt crossing status would help reduce the possibility of rear-end collisions caused by vehicles that are required to stop. Staff stated that, although the Railroad has the intent to start operations, it does not have a date set and the tracks have not been in use for multiple years. As a result, Staff recommended that the Commission grant the exemption with the option to reopen the case once the railroad is in operation again.

{¶ 11} At the September 1, 2016 hearing of this case, Adam Koch, superintendent of Otsego Local Schools, Mr. Behrman, Chris Waterfield, a traffic engineer with ODOT, and Eva Vasher, director of transportation for Otsego Local Schools, testified in support of granting the exemption. Frank Oles, treasurer for TLEW, and Curtis Borrer, a conductor on the TLEW train, testified against granting the exemption.

{¶ 12} Mr. Koch testified that, as a result of a previous hearing concerning crossing exemptions for 12 railroad crossings along this same highway, Route 295 in Lucas County, exemption status was granted for those 12 other crossings. He requested that an exemption now be granted for this crossing for the same reason that the exemptions were granted previously, safety. Mr. Koch testified that most people are not prepared for school buses to stop at these unused tracks, with the drivers having to perform ten different safety procedures at each stop. Mr. Koch stated that it would increase the safety of the community if the school district's buses and other vehicles would not have to stop at the railroad tracks. He also noted that, in total, with the previously granted crossing exemptions, about 45 minutes a day will be saved on the bus routes by not having to make stops at all of the crossings. (Tr. at 3-4.)

{¶ 13} Mr. Behrman testified that, after receiving a letter from the Otsego Local Schools about the exemption request, ODOT examined the situation involving the subject

crossing and found that some track was missing at the crossing. Mr. Behrman stated that, due to that fact, ODOT felt that it should submit the request for exemption. (Tr. at 4-5.)

{¶ 14} Mr. Waterfield testified that ODOT has had similar crossings in this district that were either unused or very infrequently used, and exemptions were granted for those crossings. He stated that, for ODOT, the concern is increased crash risk, because other vehicles are not expecting school buses and tanker trucks to stop at the crossing on a tangent section of road. Mr. Waterfield testified that, if there is no conflict with train traffic, there is no reason, from ODOT's standpoint, to incur the risk of school buses and tanker trucks stopping at the crossing. (Tr. at 5.)

{¶ 15} Ms. Vasher testified that the school district's biggest concern in the request for an exemption is the safety factor. She noted that, several times, bus drivers have reported that they were almost struck from the rear by other motorists who were not expecting them to stop (Tr. at 6).

{¶ 16} Mr. Oles testified that, two weeks prior to the hearing, the crossing was replaced, and TLEW has had motorcars, but not yet locomotives, operating over the crossing. He stated that TLEW hoped to be operating its locomotive over the crossing in the near future and that TLEW's passenger train itself will not run until next year. TLEW's official position, as noted by Mr. Oles, is that the Railroad objects to the crossing being granted a stopping exemption. Mr. Oles explained that, according to one of TLEW's officers, who is a railroad engineer with a major railroad, hazardous materials truck drivers may become confused by an exemption at this crossing, and decide they do not have to stop at other non-exempt crossings in the area. Finally, Mr. Oles testified that there are signals at the crossing, so when a locomotive does approach the crossing, the gates will come down and that should stop the school buses and hazardous materials trucks. (Tr. at 6-7.)

{¶ 17} Mr. Borrer testified that, as a conductor on TLEW's train, he is worried about people not looking either way for a train when they drive over an exempt crossing. He noted that there are a couple of crossings that still just have crossbuck and yield signs and that it is a bad idea just to scatter exempt signs around. (Tr. at 8.)

#### V. COMMISSION CONCLUSION

{¶ 18} 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.

{¶ 19} The Commission finds that, pursuant to R.C. 4511.63, the request for an exemption from stopping for school buses and hazardous materials haulers at the crossing under consideration is reasonable and warranted under the circumstances presented in this case. The record reveals that no trains currently are operating on tracks at the subject crossing and that this fact creates a danger for school bus transportation, because drivers of other motor vehicles are not expecting the buses to stop at the crossing. Witnesses testifying for Otsego Local Schools also stated that stopping school buses at the crossing adds to the delay in completing bus routes that traverse the crossing. Further, the Commission notes that no definite time for commencing train operations over the crossing was stated by the witnesses testifying for TLEW, although there is evidence that tracks recently have been replaced at the crossing and that TLEW is planning on operating a locomotive and then a passenger train over the crossing in what TLEW describes as "the near future" (TLEW letter at 1).

{¶ 20} After a review 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 subject crossing as would normally be required by

49 C.F.R. 392.10. The Commission believes that, at the present time, the safety hazard created by stopped school buses or placarded hazardous materials trucks being struck from behind by other vehicles must be the primary consideration in our decision to grant this exemption. Accordingly, ODOT, as the local highway authority, is directed to place in advance of this crossing signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices.

{¶ 21} The Commission would emphasize that, even though we are granting 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 this crossing. TLEW, for its part, is required to comply with all applicable requirements of the Federal Railroad Administration for any future train movements over the subject crossing.

{¶ 22} 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 exemption, we shall reconsider the exemption according to R.C. 4511.63.

{¶ 23} The Commission notes that, because TLEW is not currently conducting any operations involving the crossing under consideration in this proceeding, the granting of this exemption request will have no effect on the Railroad. Moreover, should trains begin operating over the crossing at some point in the future, as is forecast by TLEW, and the stopping exemption granted in this matter is rescinded, the warning lights and crossing gates presently existing at the crossing should serve in stopping highway traffic in the advent of an approaching train. Even so, upon commencing rail operations at this crossing, TLEW must provide advance notice to the Commission, Providence Township, and the superintendent of Otsego Local Schools.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 24} On July 25, 2016, ODOT filed a request pursuant to R.C. 4511.63, in Case No. 16-1608-RR-RCP, for an exemption for school buses and motor vehicles carrying certain hazardous materials from stopping at the Berkey Southern Rd/SR 295 (DOT# 475261M) crossing owned by TLEW within Providence Township in Lucas County.

{¶ 25} On August 16, 2016, Staff filed its investigative report regarding the exemption request.

{¶ 26} A hearing was held in this case on September 1, 2016, at the Providence Township Hall near Grand Rapids, Ohio.

{¶ 27} Notice of the hearing was duly published in the *Toledo Blade* and by press release issued by the Commission.

{¶ 28} The request for an exemption from stopping for school buses, as well as hazardous materials vehicles, as specified in 49 C.F.R. 392.10, is warranted based upon the evidence presented at the hearing.

## VII. ORDER

{¶ 29} It is, therefore,

{¶ 30} 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 Berkey Southern Road/SR 295 (DOT# 475261M) crossing in Lucas County. It is, further,

{¶ 31} ORDERED, That ODOT place in advance of this crossing signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices. It is, further,

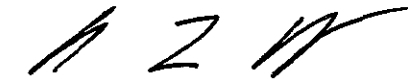


{¶ 32} ORDERED, That TLEW comply with all applicable requirements of the Federal Railroad Administration for any future train movements over the subject crossing. It is, further,


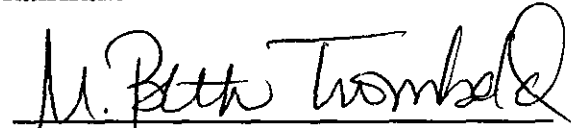
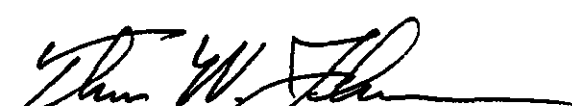

{¶ 33} ORDERED, That TLEW notify Commission Staff, Providence Township, and Otsego Local Schools prior to beginning any operations over the subject crossing. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



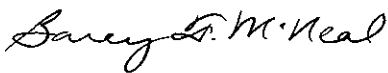
Asim Z. Haque, Chairman

  
Lynn Slaby  
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KKS/vrm

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Barcy F. McNeal  
Secretary