

## THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF A REQUEST BY THE  
OHIO DEPARTMENT OF TRANSPORTATION  
FOR AN EXEMPTION FROM STOPPING FOR  
SCHOOL BUSES AND HAZARDOUS  
MATERIALS VEHICLES AT THE STATE  
ROUTE 93/ADAMSVILLE ROAD GRADE  
CROSSING IN MUSKINGUM COUNTY.

CASE No. 17-915-RR-RCP

### OPINION AND ORDER

Entered in the Journal on September 13, 2017

#### I. SUMMARY

{¶ 1} The Commission grants a request by the Ohio Department of Transportation District 5 for an exemption from stopping for school buses and hazardous materials vehicles at the State Route 93/ Adamsville Road (DOT# 515009L) grade crossing in Muskingum County.

#### II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On April 5, 2017, Douglas Morgan, District 5 Railroad Coordinator for the Ohio Department of Transportation (ODOT), filed a letter pursuant to R.C. 4511.63, requesting that school buses and motor vehicles carrying certain hazardous materials be exempt from stopping at the State Route 93/Adamsville Road (DOT#515009L) grade crossing in Muskingum County. Mr. Morgan stated that he has received complaints from the Crooksville Exempted Village School District (Crooksville Schools) concerning accidents that nearly occurred between school buses and other vehicles, when buses have stopped at the grade crossing. He noted that the highway has a speed limit of 55 miles per hour and asserted that exempting school buses from stopping will increase safety for the traveling public. Mr. Morgan added that Zanesville & Western Railway (Z&W), which currently operates the section of track that crosses State Route 93/Adamsville Road, indicated that it supports the exemption request.

{¶ 3} By Entry issued May 2, 2017, a local public hearing was scheduled for May 16, 2017. The hearing was conducted on May 16, 2017, at the Avondale Youth Center near Zanesville. Notice of the hearing was published in the Zanesville Times Recorder, a newspaper of general circulation in Muskingum County, and in press releases issued by the Commission. The May 2, 2017 Entry also directed Staff to file, no later than May 31, 2017, a report of its investigation on the exemption request.

{¶ 4} On May 18, 2017, Staff filed its investigative report, recommending that the exemption request be granted.

### III. LAW

{¶ 5} 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

{¶ 6} In its investigative report, Staff states that there is no rail traffic at the grade crossing, because the track currently ends approximately 300 feet west of the crossing. Given the absence of rail traffic, Staff recommends approving the exemption request.

(Staff Report at 7, 11.) In addition, Staff recommends that Z&W place a stop and flag order at the crossing if train movements do occur. Further, if train traffic increases at the crossing, Staff recommends that Z&W must notify the Commission so that the exemption can be reviewed to determine if it should remain effective. Finally, Staff recommends that the Commission require Staff to conduct a follow-up inspection to verify that exemption signs are posted and to update the Commission's rail database. (Staff Report at 7, 11.)

{¶ 7} At the May 16, 2016 hearing, five witnesses testified in support of the exemption request; there was no opposing testimony. Douglas Morgan spoke on behalf of ODOT District 5, the local highway authority (LHA). Mr. Morgan reiterated comments made in his April 5, 2017 letter, emphasizing that an exemption will increase safety for school bus passengers and other vehicles. He contends that the absence of rail traffic results in many drivers not expecting a school bus to stop. (Tr. at 4-5.)

{¶ 8} Debbie Reed, Transportation Supervisor for Crooksville Schools, testified that, in addition to buses, the school district transports students in a Chevrolet Suburban. Ms. Reed asserts that "when one of our vehicles stops on the highway \* \* \* it just puts that vehicle in jeopardy of being involved in an accident." (Tr. at 6-7.) She added that the school vehicles must stop, even if no students are riding in the vehicle (Tr. at 8). In her opinion, an exemption would be in the best interest of all the school districts in the area that use that crossing (Tr. at 7).

{¶ 9} James Creech, a Crooksville Schools mechanic, explained that one school bus is driven over that crossing four times daily (Tr. at 9-10). Aside from school buses, he added, the school district's Chevrolet Suburban and Ford F-250 four door pickup truck also transport students and are marked with signage indicating that the vehicles stop at all grade crossings. Mr. Creech contends that safety for school bus passengers would

improve with an exemption. In his opinion, the infrequency of trains using the crossing “puts the danger higher \* \* \* [for] all of our vehicles and children.” (Tr. at 9-10.)

{¶ 10} Michael Connor, Vice President of marketing for Z&W, testified that he expects to reopen the line for freight service, as 67 potential freight users have been identified. However, he added, there is no definite schedule for reinstating freight service, because the rail ties are in “mixed condition,” and grass and trees must be removed from the track. He estimated that such service might be restored within two years. (Tr. at 11-12, 14-15.) Mr. Connor added that there is excursion service operating where the track has been cleared of grass and brush, but presently no excursion trains operate over the grade crossing (Tr. at 14). Mr. Connor emphasized that Z&W does not oppose granting the exemption request, provided that “nothing that is done will stand in the way of bringing the freight service back that is needed” (Tr. at 13-14). When the track immediately adjacent to the crossing is eventually reopened, Mr. Connor expects low speed service at 10 miles per hour, which would allow for flagging at the crossing (Tr. at 13, 15).

{¶ 11} Scott Dunbar, Vice President of Z&W’s scenic and freight operations, testified that the grade crossing “is our connection to the world,” because it assists in connecting with track owned by other railroads (Tr. at 17). Mr. Dunbar added that, presently, no excursion trains use the crossing, and he does not expect usage to occur at “any time in the future.” Mr. Dunbar emphasized that, if the crossing is used again, Z&W will ensure that flagging occurs, because “people are not used to anything going across there” (Tr. at 18-19).

#### V. COMMISSION CONCLUSION

{¶ 12} R.C. 4511.63 provides that, after considering any comments or other information received, the Commission may approve or reject an application for an exemption 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.

{¶ 13} After consideration of the evidence, we find that, pursuant to R.C. 4511.63, the request for an exemption is warranted at the State Route 93/Adamsville Road (DOT#515009L) grade crossing. The evidence indicates that there are currently no excursion or freight trains using this crossing, as the track currently ends approximately 300 feet west of the crossing (Tr. at 7). The evidence also shows that the current legal requirement for school buses and certain other vehicles to stop at the crossing is creating needless delay for the traveling public who make use of the grade crossing. In addition, because this crossing is no longer used for train traffic, some motor vehicle drivers do not expect school buses or other school vehicles used for pupil transportation to stop at the crossing, and the likelihood for motor vehicle accidents is increased (Tr. at 4-5, 9-10).

{¶ 14} Upon considering all of the evidence, and pursuant to R.C. 4511.63, the Commission finds it reasonable to grant the request to exempt school buses and certain hazardous materials vehicles from stopping at the crossing, as would usually be required by 49 C.F.R. 392.10. We note that, because there are no rail movements at the crossing, there is no risk of a train/vehicle collision. Furthermore, the exemption will decrease the potential for accidents caused by inattentive drivers not realizing that a school bus or placarded vehicle has stopped in front of them. Notwithstanding our granting of the 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 a grade crossing.

{¶ 15} Accordingly, ODOT District 5, as the LHA, 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 grade crossing. Additionally, we find that Z&W must place a stop and flag order at the crossing for any future train movements over the crossing.

{¶ 16} 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 continuing the exempt crossing designation compromises public safety. We note that Z&W has no objection to the exemption request, but indicated that it may resume rail movements in the future for excursion or freight service (Tr. at 11-12, 14-15). Accordingly, if Z&W or any other railroad files a petition to rescind the granted exemption, we shall reconsider such petitions according to R.C. 4511.63. We note that the granting of the exemption request has no impact on the railroad, since Z&W is not currently conducting any operations effecting the crossing under consideration in these proceedings. Nevertheless, Z&W should provide advance notice to the Commission, ODOT District 5, and the Transportation Supervisor for Crooksville Schools, in the event that Z&W intends to resume rail operations at this crossing, which would impact school bus or hazard material transportation activities. In the event rail operations resume at this crossing, the Commission will reevaluate the exemption.

## VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 17} On May 31, 2016, Douglas Morgan, ODOT District 5 Railroad Coordinator, 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 State Route 93/ Adamsville Road (DOT#515009L) crossing within Muskingum County.

{¶ 18} Notice of the hearing was duly published in the Zanesville Times Recorder, a newspaper of general circulation in Muskingum County, and in press releases issued by the Commission.

{¶ 19} On May 18, 2017, Staff filed its investigative report regarding the exemption request.

{¶ 20} A hearing was held on May 16, 2017, at the Avondale Youth Center near Zanesville.

{¶ 21} 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

{¶ 22} It is, therefore,

{¶ 23} 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 State Route 93/Adamsville Road (DOT#515009L) grade crossing located in Muskingum County. It is, further,

{¶ 24} ORDERED, That ODOT District 5, as the LHA, places signs marked "Exempt" that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the State Route 93/Adamsville Road (DOT#515009L) grade crossing located in Muskingum County, and at other appropriate locations in advance of the crossing. It is, further,

{¶ 25} ORDERED, That Z&W place a stop and flag order at the crossing when train movements occur, and if train traffic increases at the crossing, notify the Commission of the increase in train movements. It is, further,

{¶ 26} ORDERED, That Staff should conduct a follow-up inspection to verify that exemption signs are posted, and update the Commission's rail database as needed. It is, further,

{¶ 27} ORDERED, That a copy of this Opinion and Order be served on Z&W, ODOT District 5, and all other persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

*Z & W*

Asim Z. Haque, Chairman

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JML/sc

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**SEP 13 2017**

*Barcy F. McNeal*

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Secretary