

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF A REQUEST BY THE
VILLAGE OF FORT RECOVERY FOR AN
EXEMPTION FROM STOPPING FOR
SCHOOL BUSES AND HAZARDOUS
MATERIALS VEHICLES FOR A CROSSING
IN MERCER COUNTY, OHIO.

CASE NO. 22-324-RR-RCP

OPINION AND ORDER

Entered in the Journal on February 22, 2023

I. SUMMARY

{¶ 1} The Commission grants a request by the Village of Fort Recovery for an exemption from stopping at a crossing in the Village of Fort Recovery in Mercer County, Ohio.

II. FACTS AND PROCEDURAL BACKGROUND

{¶ 2} On April 4, 2022, Randy Diller, Village Administrator of the Village of Fort Recovery (Fort Recovery or the Village), filed a letter requesting an exemption from stopping for buses and trucks carrying certain hazardous materials (hazmat) at one grade crossing, DOT No. 477-072X, in Mercer County, operated by R.J. Corman Railroad Group, LLC (RJ Corman). Mr. Diller states that it is the Village's belief that eliminating the need for school buses and hazmat vehicles from stopping at this crossing will result in an increase in safety for the traveling public where this crossing is just around a curve in the road while traveling over a hill, making it hazardous for drivers.

{¶ 3} On September 6, 2022, Staff filed a report regarding its investigation (Staff Report) of the request made on behalf of the Village. Staff recommends that the exemption be granted for DOT No. 477-072X.

{¶ 4} By Entry issued on September 7, 2022, the attorney examiner scheduled a local public hearing in this matter for September 28, 2022. The attorney examiner also requested

that any person interested in submitting comments on the exemption request to do so by September 28, 2022. No comments were ultimately filed.

{¶ 5} The first public hearing was conducted on September 28, 2022, at St. Henry Consolidated Local Schools, in St. Henry, Ohio. Three witnesses testified in support of the exemption request (Tr. 1 at 3-11). Thereafter, it was discovered that notice of the hearing had not been published prior to the hearing.

{¶ 6} By Entry issued January 20, 2023, the attorney examiner scheduled a second public hearing in this case. The second hearing was scheduled for February 7, 2023, at the same location as the first hearing in St. Henry, Ohio. Notice of the second hearing was published in *The Daily Standard*, a newspaper of general circulation in Mercer County, Ohio.

{¶ 7} The second hearing occurred, as scheduled, and one witness testified in support of the exemption request (Tr. 2 at 4-8).

III. LAW

{¶ 8} The Commission's authority to grant an exemption from stopping at railroad grade crossings, applicable to school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, 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 C.F.R. Parts 100-1855, before crossing at grade any track of a railroad, shall stop the vehicle.

{¶ 9} R.C. 4511.63(B) 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

{¶ 10} In its Staff Report concerning the request made on behalf of Fort Recovery, Staff observes that the RJ Corman line related to the crossing has not experienced train traffic for several years, meaning no train traffic will be seen at this crossing (Staff Report at 3). Staff states that the crossing, located at S.R. 49, is a single-track crossing with crossbucks and flashers. Staff notes that this section of the rail is embargoed and therefore sees no traffic. Staff opines that where the rail line has seen no service in several years and the rail is protected from the active portion of railroad due to being out of service, the exemption request should be granted. (Staff Report at 5.)

{¶ 11} Given its findings, Staff recommends the following actions be taken: (1) approve the exemption request for the crossing to prevent vehicles from stopping at the crossing; (2) require RJ Corman to notify the Commission if rail traffic resumes at the crossing; (3) require Staff to conduct a follow-up inspection to verify that exemption signs are posted and to update the rail database (Staff Report at 9).

{¶ 12} At the September 28, 2022 hearing, three witnesses testified in support of the exemption request. Randy Diller, the Village Administrator for Fort Recovery, testified that, where this rail is embargoed in this area, and RJ Corman has no plans to make improvements to the rail such that trains would begin using it again, the exemption should be granted. Going further, Mr. Diller stated that the crossing is in an area of the village where the speed limit does not drop from 55 miles-per-hour until after crossing the rail. Mr. Diller states that the speed limit near the rail presents an issue where the road is curved and changes elevation when approaching from the north. Finally, Mr. Diller emphasized that the crossing is near a very busy intersection which handles a large daily traffic count, much of which is school buses and hazmat-carrying trucks. Mr. Diller stated that while there have fortunately been no serious accidents near this crossing, there have been many reported “near misses” that could have been serious accidents, so this is a hazardous area and would benefit the safety of the traveling public by being made exempt. (Tr. 1 at 4-8; Tr. 2 at 5-8). Larry Brown, Superintendent of Fort Recovery Local Schools, testified regarding

the significant bus and school van traffic at the crossing given the location of the school district's refueling station, as well as buses and vans that normally travel the route. (Tr 1. at 9-10). Finally, Jared Laux, Fort Recovery's Police Chief, testified that from the police department's perspective, he agreed with the testimony of Mr. Diller. Further, Mr. Laux stated that he can confirm the same complaints and public concerns with the crossing being a stopping point that Mr. Diller mentioned and that if this crossing continues to be a stop a risk of loss of life still exists to the traveling public. (Tr. 1 at 10-11.)

{¶ 13} At the second public hearing on February 7, 2023, Mr. Diller attended and for the record read verbatim his comments from the transcript of the September 28, 2022 hearing. No other witnesses attended. (Tr. 2 at 4-8.)

V. COMMISSION CONCLUSION

{¶ 14} 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.

{¶ 15} After consideration of the evidence, we find that, in light of Staff's recommendations and the testimony of the witnesses, pursuant to R.C. 4511.63, the request for an exemption is warranted at the grade crossing located at Broadway St. and S.R. 49 (DOT No. 477-072X) in Mercer County.

{¶ 16} 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 hazmat vehicles from stopping at the crossings, as would usually be required by 49 C.F.R. 392.10. We note that, because there is no train traffic on this rail, train/vehicle collisions are

not likely to occur. Furthermore, the exemption will decrease the potential for accidents caused by inattentive drivers not realizing that a school bus or hazmat 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.

{¶ 17} Accordingly, Fort Recovery, 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 respective crossing and at other appropriate locations in advance of the grade crossing.

{¶ 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 continuing the exempt crossing designation compromises public safety. If RJ Corman or any other railroad files a petition to rescind a granted exemption, we shall reconsider such petitions according to R.C. 4511.63. We note that the granting of the exemption request has little impact on the railroad, since RJ Corman conducts no operations affecting the crossing under consideration in this proceeding. Nevertheless, RJ Corman shall provide advance notice to the Commission, the Mercer County Engineer, and the local school district in the event that RJ Corman intends to increase rail operations at the crossing which would impact school bus or hazmat transportation activities. In the event an increase in rail operations is intended at the crossing, the Commission will reevaluate the exemption.

VI. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 19} On April 4, 2022, the Village Administrator for the Village of Fort Recovery filed a letter requesting an exemption for school buses and certain commercial motor vehicles, as specified in 49 C.F.R. 392.10, from stopping at the crossing at Broadway St. and S.R. 49 (DOT No. 477-072X) in Mercer County.

{¶ 20} On September 6, 2022, Staff filed its Staff Report regarding the exemption request.

{¶ 21} Hearings were held on September 28, 2022 and February 7, 2023, at St. Henry Consolidated Local Schools, in St. Henry, Ohio.

{¶ 22} Notice of the February 7, 2023 hearing was published in *The Daily Standard*, a newspaper in general circulation in Mercer County, Ohio.

{¶ 23} The request for 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 hearings for the crossing located at Broadway St. and S.R. 49 (DOT No. 477-072X).

VII. ORDER

{¶ 24} It is, therefore,

{¶ 25} 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 Broadway St. and S.R. 49 (DOT No. 477-072X) grade crossing in Mercer County. It is further,

{¶ 26} ORDERED, That Fort Recovery place signs marked “Exempt” that are in conformance with the Ohio Manual of Uniform Traffic Control Devices at the grade crossing Broadway St. and S.R. 49 (DOT No. 477-072X) and at other appropriate locations in advance of the crossing. It is, further,

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

{¶ 28} ORDERED, That RJ Corman shall notify the Commission, the Mercer County Engineer, and the local school district in the event that RJ Corman intends to increase rail

operations at the crossings which would impact school bus or hazmat transportation activities.

{¶ 29} ORDERED That a copy of this Opinion and Order be served on RJ Corman, Fort Recovery, and all other persons of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Lawrence K. Friedeman
Dennis P. Deters

JMD/dr

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2/22/2023 2:25:52 PM

in

Case No(s). 22-0324-RR-RCP

Summary: Opinion & Order that the Commission grants a request by the Village of Fort Recovery for an exemption from stopping at a crossing in the Village of Fort Recovery in Mercer County, Ohio electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio