

**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

MEEKER SOUTHERN RAILROAD,)	DOCKET TR-100036
)	
Petitioner,)	ORDER 04
)	
v.)	SUPPLEMENTAL ORDER
)	GRANTING PETITION FOR
PIERCE COUNTY PUBLIC WORKS)	EXEMPTION TO MUTCD ON
AND UTILITIES,)	CONDITION AND SETTING
)	DEADLINE TO COMPLETE WORK
Respondent.)	
.....)	USDOT: #085536R

BACKGROUND

- 1 On January 4, 2010, Meeker Southern Railroad (Meeker Southern or Petitioner) filed with the Utilities and Transportation Commission (Commission), a petition seeking approval to modify a railroad-highway grade crossing and to upgrade warning devices. The crossing is identified as USDOT #085536R and is located at the intersection of 134th Avenue East and Petitioner’s tracks in Pierce County. Respondent Pierce County Public Works and Utilities (Pierce County) consented to entry of an Order by the Commission without further notice or hearing.

- 2 On January 12, 2010, the Commission entered Order 01, granting Meeker Southern’s petition to add a spur track to the crossing and increase the number of operating days and trains using the crossing. The Commission conditioned approval of the new spur track and increased rail traffic on Meeker Southern upgrading the passive warning devices to shoulder-mounted flashing lights, motion sensitive train detection equipment, and various other safety improvements at the crossing.¹ The Commission also conditioned its approval on Meeker Southern completing all required safety upgrades and road work to the reasonable satisfaction of Commission Staff and Pierce

¹ Order 01 ¶¶ 7-8.

County Public Works and Utilities Staff prior to “starting operation of the spur line and Phase 1 Service Siding.”²

- 3 In December 2010, the Commission learned that Meeker Southern had initiated operations on the spur track prior to completing all required safety upgrades and road work. Commission Staff expressed strong concerns about the “unacceptable and unnecessary risk to public safety” presented by Meeker Southern’s premature operations on the spur track and directed the railroad to promptly submit a plan for compliance.³ Meeker Southern subsequently filed a Motion to Amend Order 01 seeking permission to continue using the spur track for commercial support of Sound Delivery Service before installation of operational active warning devices.
- 4 On January 26, 2011, Administrative Law Judge Adam E. Torem conducted a hearing to rule on Meeker Southern’s motion and to evaluate all parties’ proposals for conditions to be imposed on the railroad to ensure public safety during interim operations.⁴ At the hearing, Meeker Southern, Commission Staff and Pierce County jointly presented a detailed schedule for Meeker Southern to complete all roadway and crossing improvements, including updated design drawings and a listing of safety precautions and operational limitations to allow Meeker Southern continued use of the spur track to access its commercial customer, Sound Delivery Service.
- 5 The parties presented a proposed Order 03, Order Amending Order 01, incorporating their joint suggestions for ensuring public safety during construction and installation of active safety features at the 134th Avenue East crossing.⁵ The recommended schedule set March 18, 2011, as the deadline for installation of the automatic flashing light crossing signal and May 2, 2011, as the deadline for completion of all other work; time extensions were permitted if approved by both Commission Staff and Pierce County. The proffered interim operational restrictions included limits on

² Order 01 ¶ 15(3).

³ Letter of December 7, 2010, from David Danner to Byron Cole.

⁴ See Order 02 ¶¶ 9 and 12-13.

⁵ Order 03.

Meeker Southern's use of the spur track, to include the number of days per week, number of crossings per day, hours of use, length of trains, and a requirement for employment of certified traffic flaggers. The proposed order also required Meeker Southern to file semi-monthly status reports with the Commission, Commission Staff, and Pierce County to keep all parties apprised of its progress and compliance. With only one minor modification, Judge Torem signed Order 03 as presented.⁶

6 From January 2011 through May 2011, Meeker Southern filed regular progress reports, as required. Although Meeker Southern was diligent in its efforts to complete work at the crossing, it encountered some unanticipated delays in acquiring municipal right-of-way permits⁷ and also suffered weather-related postponements.⁸ On May 24, 2011, Meeker Southern filed a letter with the Commission confirming installation of all required safety upgrades and completion of all roadwork at the crossing.

7 On May 26, 2011, Commission Staff and Pierce County conducted a joint inspection of Meeker Southern's work at the 134th Avenue East crossing. Pierce County did not identify any roadwork discrepancies;⁹ however, Commission Staff noted three items that were not in full compliance with the terms and conditions of Order 03:¹⁰

- a missing bell on the signal mast on the north side of the crossing;
- “do not stop on tracks” signs mounted too low on both signal masts; and
- placement of both signal masts too close to the roadway pavement.

⁶ See Order 03 ¶ 31 (changing the word “day” to “weekday”).

⁷ On March 16, 2011, the parties filed a Notice of Approval by Staff and Public Works to a Time Extension regarding installation of the automatic flashing lights crossing signal no later than May 2, 2011.

⁸ On April 27, 2011, the parties filed a Notice of Approval by Staff and Public Works to a Time Extension regarding paving work at the crossing as well as installation of the automatic flashing lights crossing signal. The new deadline for completion of all work was set for May 23, 2011.

⁹ Commission Staff and Pierce County Inspection Report ¶ 11.

¹⁰ *Id.* ¶¶ 7-9.

The first two items failed to comply with the project's civil engineering design drawings; the last item violates a provision of the U.S. Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD).

- 8 The Commission adopted Part 8 of the MUT-CD by reference.¹¹ According to the MUTCD, Section 8C.01, Paragraph 07, the minimum horizontal offset distance required between the edge of a paved road's shoulder and any part of an active traffic control device at a grade crossing is two feet (or 24 inches). Commission Staff's inspection discovered that Meeker Southern's signal masts were both placed too close to the edge of the paved surface: the south side mast is offset only 20 inches and the north side's mast is offset a mere nine inches from the roadway.¹²

MEEKER SOUTHERN'S PETITION FOR EXEMPTION TO MUTCD

- 9 On June 7, 2011, Meeker Southern filed a Petition for Exemption from the MUTCD's minimum two-foot horizontal offset standard. Meeker Southern's filing also included a corresponding motion to further amend Order 01's Approval Condition 2 which requires compliance with the MUTCD.
- 10 Meeker Southern concedes that it was unaware of the minimum two-foot horizontal offset standard embodied in Section 8C.01 the MUTCD and that its civil engineering design drawings for the grade crossing modification at 134th Avenue East failed to depict this required setback for the signal masts.¹³ As installed, the signal masts are embedded in reinforced concrete foundations and not easily moved.¹⁴
- 11 The metal roundels surrounding the flashing light lamps are the only portion of the active warning signal intruding into the two-foot offset area. Meeker Southern

¹¹ WAC 480-62-230(1) and WAC 480-62-999(2). Adoption of the current (2009) version of the MUTCD was required by federal law. 74 Fed. Reg. 240 (Dec. 16, 2009); *see also* 23 CFR 655.

¹² Commission Staff and Pierce County Inspection Report ¶ 9.

¹³ Meeker Southern Petition ¶12 and ¶ 10.

¹⁴ *Id.* ¶ 12.

contends that this intrusion toward the roadway does not pose any safety hazard because of the physical circumstances of the roadway and the height of the roundels.¹⁵

12 First, Meeker Southern describes the segment of 134th Avenue East between Pioneer Way and 80th Street East as “short and includes a curve.” Average speeds along that portion of the roadway range are approximately 13 miles per hour. According to the railroad, the risk of any collision between a vehicle and the active warning signal is “especially unlikely” because of the slow speed of traffic and the fact that the roundels do not actually intrude into or over the paved shoulder of the roadway.¹⁶ Second, the roundels are almost 8 feet above the roadway and generally out of the vertical range of the majority of passenger vehicles and cargo vans that would simply pass under the adjacent roundels.¹⁷

13 Meeker Southern does not believe that public safety is jeopardized by its failure to place the signal masts the full MUTCD-required distance from the edge of the paved roadway. Meeker Southern argues that relocation of the signal masts is unwarranted and that an exemption from the adopted MUTCD standard is appropriate.

14 On June 8, 2011, Commission Staff filed its Response to Meeker Southern’s petition and corresponding motion. Commission Staff does not oppose the petition or motion, stating that Meeker Southern has already agreed orally to address the missing bell and low-slung signs. Commission Staff recommended that August 15, 2011, be set as a deadline for Meeker Southern to install the second bell and raise the signage. Commission Staff’s response did not state any specific opinion on whether public safety would be affected by the roundels infringing on the MUTCD offset zone.

¹⁵ *Id.* ¶ 13.

¹⁶ *Id.* ¶ 14.

¹⁷ *Id.* ¶ 15; *see also* Exhibit B to Meeker’s Petition, which provides vehicle specification sheets on a variety of motor vehicles in order to demonstrate that the height of most vehicles does not approach, let alone exceed, 95 inches.

15 Pierce County did not file a response to Meeker Southern’s petition. However, Pierce County previously stated it did not oppose the Commission granting the requested exemption.¹⁸

16 *Legal Standard.* The Commission is authorized to grant exemptions from the provision of any rule in WAC Chapter 480-62 when doing so “is consistent with the public interest, the purposes underlying regulation, and applicable statutes.”¹⁹ In determining whether to grant requests for exemption, the Commission may consider whether application of the rule would impose undue hardship on the petitioner, of a degree or a kind different from hardships imposed on other similarly situated persons, and whether the effect of applying the rule would be contrary to the purposes of the rule.²⁰ Further, the Commission is authorized to amend or waive requirements in its own orders.²¹

17 *Commission Decision.* The MUTCD requires installation of uniform traffic control signs and devices in order to ensure nationwide consistency of vehicle and pedestrian traffic patterns and expectations on our roadways. Even so, the MUTCD recognizes that due to the “large number of significant variables to be considered, no single standard system of traffic control devices is universally applicable for all highway-rail grade crossings.”²² Further, the MUTCD provides that “the appropriate traffic control system to be used at a highway-rail grade crossing should be determined by an engineering study involving both the highway agency and the railroad company.”²³

18 The Commission may grant an exemption from the strict application of the standards published in the MUTCD in appropriate circumstances. Here, Meeker Southern hired an engineering design company to study and propose all necessary roadway

¹⁸ Commission Staff and Pierce County Inspection Report ¶ 10.

¹⁹ WAC 480-62-140(1).

²⁰ WAC 480-62-140(4).

²¹ See RCW 80.04.210 and WAC 480-07-875(1).

²² MUTCD, Section 8A.02.

²³ *Id.*

improvements at the 134th Avenue East crossing. Pierce County reviewed and approved these engineering diagrams, including the placement of the signal masts adjacent to the roadway. Pierce County has no objection to the signal masts remaining where Meeker Southern installed them, even if they are too close to the roadway edge to meet the MUTCD's published standard.

- 19 Strict application of the MUTCD standard would impose a financial hardship on the railroad, requiring additional construction costs and essentially a repeat of the entire signal installation process. Although Meeker Southern's engineering firm should have been aware of the MUTCD offset standards for highway-railroad grade crossings, we recognize that the roadway authority approved the proposed design drawings and is not now opposing the exemption petition. As Meeker Southern points out, the height of the roundels makes any actual obstruction of, or hazard to, vehicle traffic highly improbable.
- 20 We defer to Pierce County's judgment as the roadway authority to evaluate whether the infringement of the signals' roundels by a matter of inches into a horizontal offset zone well outside the actual lane of travel presents a significant safety hazard to the motoring public. In this case, Pierce County makes no objection. Nevertheless, we expect Meeker Southern to accept responsibility for placing the signal masts within a federally endorsed buffer zone that would normally provide the traveling public with an additional margin of safety when transiting the 134th Avenue East crossing. If Meeker Southern is willing to accept all risk and liability associated with its placement of the signal masts several inches closer to the edge of the paved roadway and avoid the expense of moving them to comply with the 24 inch MUTCD standard, the Commission will grant the requested exemption.
- 21 We agree with Commission Staff that allowing Meeker Southern additional time to address the other two discrepancies identified in the Inspection Report is proper. Commission Staff's recommendation of an August 15, 2011, deadline is reasonable.
- 22 In sum, we conclude that granting Meeker Southern a conditional exemption in this instance is consistent with the public interest, the purposes underlying the MUTCD and Commission regulations, and does not conflict with any applicable statutes.

Granting this exemption, however, does not require that we further amend Order 01. Rather, the Commission can and should waive Approval Condition 2 of Order 01 to the extent necessary to grant the conditional exemption. Finally, it is appropriate to set a deadline for Meeker Southern to complete all other work required at the crossing to bring the railroad into full compliance with Order 01, as previously amended.

FINDINGS AND CONCLUSIONS

- 23 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over public railroad-highway grade crossings within the State of Washington. Chapter 81.53 RCW.
- 24 (2) The 134th Avenue East grade crossing, identified as USDOT #085536R and UTC #42A32.40, is a public railroad-highway grade crossing located in Pierce County, Washington.
- 25 (3) The Manual on Uniform Traffic Control Devices (MUTCD) requires active traffic control device at grade crossings to be horizontally offset from the edge of a paved roadway's shoulder at least two feet. As installed by Meeker Southern, the roundel portions of both active warning devices installed at the 134th Avenue East grade crossing are located closer than two feet to the paved roadway edges.
- 26 (4) On June 7, 2011, Meeker Southern filed a Petition for Exemption from the MUTCD's minimum two-foot horizontal offset standard. Meeker Southern's filing also included a corresponding motion to further amend Order 01's Approval Condition 2 which requires compliance with the MUTCD.
- 27 (5) The Commission has authority to waive requirements in its prior orders.
- 28 (6) Neither Pierce County nor Commission Staff object to the requested exemption or express any reservation regarding public safety.
- 29 (7) Meeker Southern should assume the risk and liability of its placement of the signal masts of the active warning devices closer to the roadway than the two foot horizontal offset required by the MUTCD standard, including holding the

Commission and Pierce County harmless from any and all liability resulting from that placement.

- 30 (8) Conditionally granting Meeker Southern's Petition for an Exemption is in the public interest and would not present an unacceptable or unnecessary risk to public safety.
- 31 (9) The Commission should set a deadline for completion of all other work to remedy deficiencies identified in the Inspection Report.

ORDER

THE COMMISSION ORDERS THAT:

- 32 (1) Petitioner's Motion for an Exemption to the U.S. Department of Transportation Manual on Uniform Traffic Control Devices (MUTCD) is granted in accordance with WAC 480-62-140 as conditioned in this Order.
- 33 (2) The Commission grants a permanent partial waiver of Approval Condition 2 of Order 01, specifically the Minimum Two-Foot Horizontal Offset Standard set out in Section 8C.01 of the MUTCD, to the extent necessary to permit Meeker Southern to retain both active warning devices where they are now installed at the 134th Avenue East grade crossing with the roundels intruding closer than two feet to the paved roadway edges. All other traffic control devices must comply with all applicable standards specified in the MUTCD.
- 34 (3) Meeker Southern shall assume all risk and liability associated with the placement and maintenance of the active warning devices installed at the 134th Avenue East grade crossing, including the roundel portions that intrude closer than two feet to the paved roadway edges, and shall hold harmless the Commission and Pierce County Public Works and Utilities from any and all liability resulting from that placement and maintenance.
- 35 (4) Meeker Southern shall complete all work associated with the 134th Avenue East crossing and remedy all deficiencies noted in the Commission Staff and Pierce County Inspection Report of June 3, 2011, no later than Monday, August 15, 2011.

- 36 (5) All other terms and conditions of Order 01, as previously modified by
Order 03, remain in effect.
- 37 (6) The Commission retains jurisdiction to effectuate the terms of this Order.

DATED at Olympia, Washington, and effective July 5, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge