

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

MEEKER SOUTHERN RAILROAD	)	DOCKET NO. TR-100036
)	
Petitioner,	)	PETITIONER’S MOTION TO
	)	AMEND ORDER 01 (THE ORDER
vs.	)	GRANTING PETITION TO MODIFY
	)	A PUBLIC HIGHWAY-RAIL GRADE
PIERCE COUNTY PUBLIC WORKS & UTILITIES	)	CROSSING AND UPGRADE
	)	WARNING DEVICES AT 134TH
Respondent	)	AVENUE EAST)
)	
	)	USDOT CROSSING #085536R
.....	)	UTC CROSSING #42A32.40

I. RELIEF REQUESTED

- 1 Petitioner MEEKER SOUTHERN RAILROAD (“Movant”) hereby moves for an order amending Order 01 entered January 12, 2010, the order granting Petitioner’s petition to modify a public highway-rail grade crossing and upgrade warning devices at 134th Avenue East in unincorporated Pierce County. Specifically, Movant seeks an order correcting Background ¶ 5 and amending Conditions 1 and 3 as currently set forth in Order 01.
- 2 RCW 80.04.210 and WAC 480-07-875(1) authorize the Washington Utilities and Transportation Commission (the “Commission”) to alter or amend an order after providing notice to the affected public service company and to all parties in the underlying proceeding. In support of this Motion, the Movant states:

II. STATEMENT OF FACTS

3 The grade crossing modification that is the subject of the Petition granted by Order 01 is an addition of a spur track along the south side of 134th Avenue East's current at-grade crossing of Petitioner's existing main line track that is located immediately north of Pioneer Way East (in unincorporated Pierce County, Washington). A five-sheet set of civil engineering design drawings prepared by Sitts & Hill Engineers, Inc. and approved by Pierce County Engineer Brian D. Stacy, P.E. on behalf of the Pierce County Public Works Director¹ sets forth the proposal's design. (Those design drawings are referred to below as the "Original Design Drawings.") A set of copies of those drawings was attached to the Petition and incorporated in its entirety therein by reference. In addition, a December 31, 2009 *Engineering Review and Evaluation (Third Revised Version)* report and supporting documents binder concerning the proposal (prepared by Gregory B. Heath, P.E. of Heath & Associates, Inc.) (referred to below as the "Engineering Review and Evaluation") was incorporated in its entirety therein by reference.

4 In addition to specifying the location of the proposed spur, the Original Design Drawings specify certain pavement improvements at the crossing (primarily on the crossing's south side), a road shoulder-mounted flashing lights crossing signal system (connected to a motion sensitive train detection system to detect approaching trains), pavement markings, and advance warning signs.

5 Background ¶ 5 of Order 01 states:

Meeker Southern proposes to add a spur track to the crossing which will allow service to a new customer. Operations on the new spur track will increase the

¹ Sheet C1.0 of those approved drawings bears a December 29, 2009 approval signature by Mr. Stacy on behalf of the Pierce County Public Works Director and Sheets C1.1, C1.2, C1.3, and C2.0 of them bear an October 20, 2009 approval signature by Mr. Stacy on behalf of the Public Works Director.

number of trains using the crossing on operating days to 12 and eventually up to 18 per operating day.

Background ¶ 9 of Order 01 states:

The proposed modification of this crossing is in the interest of providing rail access to industrial properties located to the east-southeast of 134th Avenue East and promoting economic development in Pierce County.

Pages 3, 11, and 19 of the Engineering Review and Evaluation report together explain that the addition of the spur track and an associated Phase 1 Service Siding would allow Sound Delivery Service to be served via the spur track as an initial new customer, as well as allow additional future industrial customers to be served once a Phase 2 Service Siding is constructed off of the spur track. (Order 01 Background ¶ 5's reference to "a new customer" rather than to "new customers" is technically inaccurate.) The table on page 19 of the Engineering Review and Evaluation report correlates its forecasted 18 train crossings per train operating day upon future completion of such a Phase 2 Service Siding. (None of the Phase 2 Service Siding has yet been constructed, and none of it is now anticipated to be constructed until the second half of 2011 at the very earliest.)

6 The spur track has recently been installed, as well as enough of the Phase 1 Service Siding along the north edge of the Sound Delivery Service property to allow only three long freight cars to abut that property for loading and unloading.

7 During October 2010, in conjunction with the installation of the spur track at the 134th crossing, roadway pavement improvements were made to 134th Avenue East immediately north and south of the crossing. As part of those pavement improvements, the existing crossing surface has been upgraded from plank to asphalt, and the newly constructed spur track crossing surface is asphalt.

8 Because the spur track is on the south side of the main line track, the Original Design Drawings only required pavement work extending 4 feet north along 134th from the main line track's centerline.

9 Sheet C1.1 of the Original Design Drawings contemplated paving work extending south of the spur track's centerline approximately 40 feet along 134th's centerline to achieve a roadway surface slope of 1 percent along 134th's centerline. The roadway pavement work that has been performed only extends along 134th's centerline about 19 feet south of the spur track's centerline, resulting in a roadway surface slope of approximately 3.16 percent along 134th's centerline.

10 On December 16, 2010, representatives of the Petitioner met at the 134th crossing site with Jerry P. Bryant, P.E., Field Engineering Manager of the Pierce County Public Works & Utilities Department's Office of the County Engineer, and with Marlene Ford, P.E., P.T.O.E., Associate County Traffic Engineer of the Pierce County Public Works & Utilities Department's Traffic Engineering Division, to examine the paving work that has been completed to date and consider whether to (a) have further pavement work done on the south side of the crossing to comport with Sheet C1.1 of the Original Design Drawings or (b) instead have some further roadway surface regrading done on the north side of the crossing (where the existing, historic roadway surface slope is much steeper than it is on the south side—up to approximately 6.8 percent along 134th's centerline pavement starting about 10 feet north of the main line track's centerline and up to approximately 10.7 percent along a low portion of the west edge of 134th's westerly lane before 134th flattens out to the north into a sag vertical curve). Based on that meeting and subsequent discussions with Mr. Bryant, Meeker understands that Meeker's proposal to regrade 134th to the north to a point approximately 50 lineal feet north of the main line

track's centerline is acceptable to Public Works as an alternative to regrading 134th further to the south of the spur track than has already been done (provided that the Original Design Drawings are first supplemented and/or revised to reflect the proposed design of the 134th regrading and repaving and are then approved by Public Works). (The now-proposed regrading and repaving of 134th to the north of the main line track will reduce 134th's maximum longitudinal slope to approximately 4.67 percent.) Had the pavement work been performed precisely in accordance with the Original Design Drawings, the total longitudinal slope differential on both sides of the crossing would have been approximately 7.8 percent along 134th's centerline and approximately 11.7 percent along a portion of the west edge of 134th's westerly lane. In comparison, with 134th's existing approximately 3.16 percent longitudinal slope south of the crossing and now proposed maximum 4.67 percent longitudinal slope north of the crossing, the total longitudinal slope differential on both sides of the crossing will be approximately 7.8 percent (namely, the same along the centerline as, and less along a portion of the west edge of 134th's westerly lane than, contemplated by the Original Design Drawings).

11 Order 01 did not have a schedule for completion of the crossing improvements. Attached to this Motion as Exhibit A is a four-page table (Table 1) that sets forth Meeker's proposed "Completion Schedule for Items Yet to Be Completed Concerning Meeker Southern Railroad's Modification of 134th Avenue East's existing at-grade crossing of Meeker's main line track." That completion schedule, which notes planned changes to the Original Design Drawings, has been prepared in consultation with Mr. Bryant of the Pierce County Department of Public Works & Utilities.

12 As noted in the Comment cell corresponding to Item #5 in Table 1 (Exhibit A), pursuant to the direction of Ed Harper, Chief Grade Crossing Signal Inspector of the Commission,

Meeker now proposes using a more advanced signal controller (a *Harmon* PMD-2 Bi-Directional Motion Detector controller) as part of the automatic flashing lights crossing signal system than the signal controller previously planned when the Original Design Drawings were prepared. (The controller relating to train detection on the spur track will be a TD-4 AC/DC Relay System.) As also noted in that comment cell, (a) the now-planned use of the PMD-2 Bi-Directional Motion Detector controller will eliminate the need for all but one of the insulated rail joints on Meeker's main line track and reduce the number of necessary insulated rail joints on the spur track to four and (b) Meeker intends to have its consulting engineering firm, Sitts & Hill Engineers, Inc., note these changes on a revision to Sheet C2.0 of the civil design drawings.

13 Sound Delivery Service has recently moved its operational facilities from Seattle to its 7.99-acre site at 13505 Pioneer Way East, which lies along a portion of the recently completed Phase 1 Service Siding. Sound Delivery Service's primary business is flatbed trucking and railcar transloading of large, heavy construction materials and equipment, as well as shipping containers from its site throughout Western Washington for both public sector and private sector projects. In order to effectively provide the materials that Sound Delivery's public and private sector customers need in order to meet their respective scheduling demands, Sound Delivery Service needs immediate freight rail service via the recently installed spur track and Phase 1 Service Siding of up to three freight car loads per train delivery day on an average of three train delivery days per week during the next few months. (See attached Exhibit B, which is a copy of a December 20, 2010 letter from Sound Delivery Service to the Commission.)

14 Attached to this Motion as Exhibit C is a one-page table (Table 2) that sets forth Meeker's proposed "Special Requirements and Operational Limitations Concerning

Meeker Southern Railroad's Crossings of 134th Avenue East Via the Recently Installed Spur Track Prior to Completion and Commencement of Operation of the Planned Flashing Lights Crossing Signal System." [As noted in Table 1 (Exhibit A) at Item #5, Meeker's proposed outside completion date for installation and operation of the automatic flashing lights crossing signal system for the crossing and of corresponding advance warning signs is March 1, 2011.] Prior to such completion, Item #5 of Table 2 would require traffic flagging of 134th Avenue East on the north and south sides of the crossing in accordance with WAC 296-155-305 by certified flaggers provided by Meeker during all train crossings of 134th via the spur track. Also prior to such completion, Item #s 1 through 4 of Table 2 would (a) limit the average number of days per week that the spur track will be used for crossings of 134th to 3 days, (b) limit the number of round-trip crossings per day that the spur track may be used for crossings of 134th to 2, (c) limit the time period during the day when spur crossings will allowed to the period between 9:00 AM and 3:00 PM (i.e., to daylight hours outside of the AM and PM hours of peak traffic on nearby roadways), and (d) limit the maximum number of train cars per train to be operated through the spur crossing to 3 freight cars plus an engine. Those limitations on use of the spur are more restrictive than the limitations set forth in the Engineering Review and Evaluation report for spur operations once the flashing lights system is installed and operational. Meeker contends that those limitations coupled with the proposed traffic flagging of 134th Avenue East on the north and south sides of the crossing in accordance with WAC 296-155-305 by certified flaggers provided by Meeker during all train crossings of 134th via the spur track would not present an unacceptable or unnecessary risk to public safety.

III. ARGUMENT

15 RCW 80.04.210 and WAC 480-07-875(1) authorize the Commission to alter or amend an order after providing notice to the “affected public service company” (in this case, only Pierce County Public Works & Utilities) and to “all parties in the underlying proceeding” (in this case, also only Pierce County Public Works & Utilities).

16 The minor error in Background ¶ 5 of Order 01 (the reference to “a new customer” rather than to “new customers”) should be corrected in view of the clear documentation on pages 3, 11, and 19 of the Engineering Review and Evaluation report that the addition of the spur track and an associated Phase 1 Service Siding would allow Sound Delivery Service to be served via the spur track as an initial new customer, as well as allow additional future industrial customers to be served once a Phase 2 Service Siding is constructed off of the spur track.

17 Order 01 should be amended to incorporate Table 1 because that table will:

- (a) Provide a reasonable schedule for completion of the items of the crossing improvements that are yet to be completed, a schedule developed in consultation with Jerry P. Bryant, P.E., Field Engineering Manager of the Pierce County Public Works & Utilities Office of the County Engineer;
- (b) Guide Meeker’s consulting engineering firm, Sitts & Hill Engineers, Inc., in supplementing and/or revising the Original Design Drawings to provide a substitution of pavement regrading on the north side of the crossing (where it will be more beneficial for motor vehicles traveling along 134th at the crossing than further pavement regrading on the south side of the crossing would

be because, along the west edge of 134th, the substitution will result in less total longitudinal slope differential on both sides of the crossing than adherence to the pavement regrading contemplated by the Original Design Drawings would have provided) in exchange for a reduction in the extent of pavement regrading shown on the south side of the crossing; and

- (c) Provide for positive changes to the automatic flashing lights crossing signal system (including, among other things, elimination of the previously necessary insulated rail joints on Meeker's main line track and a reduction in the number of necessary insulated rail joints on the spur track) stemming from the now-planned use of a more advanced signal controller as part of the system than the signal controller previously planned when the Original Design Drawings were prepared.

18 Order 01 should be amended to grant leave to Meeker to supplement and/or revise the Original Design Drawings consistent with Table 1 (with the supplemented and/or revised drawings subject to approval by the Pierce County Department of Public Works & Utilities following review thereof and comment by Commission staff) and with the supplemented and/or revised drawings to be effective upon approval by the Pierce County Department of Public Works & Utilities without need of a further order from the Commission.

19 Order 01 should be amended to allow immediate and continued use of the spur track to serve Sound Delivery Service prior to completion and commencement of operation of the flashing lights crossing signal system consistent with the requirements and limitations set

forth in attached Table 2 (Exhibit C) because (a) Sound Delivery Service has an urgent need for such use in order to effectively supply materials that it needs to receive by freight rail via the spur for major, important public and private construction projects and (b) with the operational limitations and requirements set forth in attached Table 2 such limited use of the spur track would not present any unacceptable or unnecessary risk to public safety.

IV. REQUESTS AND CONCLUSION

20 Movant requests that Background ¶ 5 of Order 01 be revised to state:

Meeker Southern proposes to add a spur track to the crossing which will allow service to ~~a~~ new customers. Operations on the new spur track will increase the number of trains using the crossing on operating days to 12 and eventually up to 18 per operating day.

21 Movant requests that Order 01 be amended to incorporate Table 1 as a reasonable schedule for completion of the items of the crossing improvements that are yet to be completed and as a guide for supplementing and/or revising the Original Design Drawings.

22 Movant requests that Order 01 be amended to grant leave to Meeker to supplement and/or revise the Original Design Drawings consistent with Table 1 (with the supplemented and/or revised drawings subject to approval by the Pierce County Department of Public Works & Utilities following review thereof and comment by Commission staff) and with the supplemented and/or revised drawings to be effective upon approval by the Pierce County Department of Public Works & Utilities without need of a further order from the Commission.

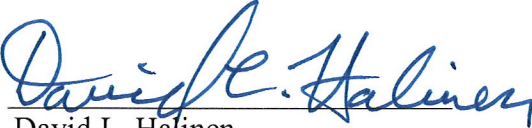
23 Movant requests that Order 01 be amended to allow Meeker immediate and continued use of the spur track to serve Sound Delivery Service prior to completion and

commencement of operation of the flashing lights crossing signal system subject to and consistent with the requirements and limitations set forth in attached Table 2 (Exhibit C).

24 For the foregoing reasons, this Motion should be granted.

DATED this 20th day of December 2010.

HALINEN LAW OFFICES, P.S.

By: 
David L. Halinen
WSBA #15923
Attorney for Meeker Southern Railroad

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**Table 1
Completion Schedule for Items Yet to Be Completed Concerning
Meeker Southern Railroad's Modification of 134th Avenue East's
existing at-grade crossing of Meeker's main line track**

Item #	Item	Outside Completion Date	Comments
1	Remove gravel from the paved road surface at the intersection of 134th Avenue East and 80th Street East.	Monday, December 20, 2010	
2	Remove pile of existing asphalt tailings lying immediately to the west of 134th Avenue East and south of Meeker's recently installed spur track. Following the removal, smooth and shape the ground surface at that location so that the ground surface will allow surface water runoff to drain to the north-northwest.	Monday, December 20, 2010	
3	Re-establish a ditch/swale between (a) the area at the southeast corner of the intersection of 134th Avenue East and 80th Street East (an area that is currently experiencing ponding after heavy rainfall events) and (b) the west end of the existing railroad ditch that lies to the east of 134th along the north edge of Meeker's main line track.	Wednesday, December 22, 2010	
4	Some short stretches of roadway edge drop-offs along 134th exist immediately north of and/or south of the main track and the spur track. As an <i>interim</i> measure, eliminate those roadway edge drop-offs by creating a crushed rock temporary roadway shoulder with a maximum cross-slope of 3H:1V where those drop-offs currently exist.	Monday, January 31, 2011	(a) The south edge of the recently-repaved area south of Meeker's recently installed spur track lies approximately 19 feet south of the centerline of the spur track along the centerline of 134th (rather than 40 feet +/- as indicated by the previously approved plans). (b) The 134th roadway shoulder paving work contemplated by Item 7, below, will eliminate the need for continuation of the crushed rock temporary roadway shoulder contemplated by Item 4.

5	<p>Install and make operational the remainder of the automatic flashing lights crossing signal system for the crossing and corresponding traffic control signs.</p>	<p>Tuesday, March 1, 2011</p>	<p>Pursuant to the direction of Ed Harper, Chief Grade Crossing Signal Inspector of the Washington Utilities and Transportation Commission (WUTC), a more advanced signal controller (a <i>Harmon</i> PMD-2 Bi-Directional Motion Detector controller) than the signal controller previously planned will be used as part of the automatic flashing lights crossing signal system. (The controller relating to train detection on the spur track will be a TD-4 AC/DC Relay System.) The planned use of the PMD-2 Bi-Directional Motion Detector controller will eliminate the need for all but one of the insulated rail joints on Meeker's main line track and reduce the number of necessary insulated rail joints on the spur track to four. (Sheet C2.0 of the civil design drawings will be updated by Sitts & Hill Engineers, Inc. to note the changes.)</p>
6	<p>Regrade and repave 134th immediately north of Meeker's existing main line track for a distance of approximately 50 feet from the main line track's centerline to reduce 134th's surface slope.</p> <p>Paint remaining fog lines in accordance with Sitts & Hill's supplemental and/or revised civil engineering design drawing(s) that will be reviewed and approved by Public Works.</p> <p>Install the torch-down, plastic retroreflectorized white railroad crossbuck pavement marking in the southbound lane of 134th Avenue East to the north of 134th's intersection with 80th Street East.</p>	<p>Monday, May 2, 2011</p>	<p>The proposed regrading and repaving of the north side of 134th (which was not a requirement of the previously approved civil engineering design drawings) will substantially reduce the surface slope and thereby substantially improve the crossing over its historic condition. This work is being provided as an alternative to reconstructing the south side of 134th, which was not constructed as far to the south as called-for by the previously approved plans.</p> <p>Not later than December 22, 2010, Meeker is to have its consulting civil engineering firm, Sitts & Hill, Engineers, Inc.,</p>

			submit to Public Works' Marlene Ford for review and approval supplemental and/or revised civil engineering design drawing(s) to reflect the proposed design of the 134th regrading and repaving.
7	Pave the shoulders of 134th to comply with the supplemental and/or revised civil engineering design drawing(s) contemplated by the Comment under Item 6, above, after approval thereof by Public Works.	Monday, May 2, 2011	
8	Seal/reseal the currently unsealed portion of the pavement seam along the south edge of the recently repaved portion of 134th south of Meeker's recently installed spur track.	Monday, May 2, 2011	<p>In view of the pavement work contemplated as part of Item 6, above (including the pavement work north of Meeker's main line track, Meeker understands from the December 16, 2010 site meeting with Public Works' officials Jerry Bryant and Marlene Ford that (1) no further pavement work to the south of the recently repaved portion of 134th south of Meeker's recently installed spur track will be required by Public Works and (2) that the existing railroad crossbuck pavement markings in the northbound lane of 134th Avenue East south of Meeker's recently installed spur track are acceptable to Public Works and that replacement with a torch-down, plastic retroreflectorized white railroad crossbuck pavement markings will no longer be required.</p> <p>Meeker is to have Sitts & Hill, Engineers, Inc. reflect those changes on the supplemental and/or revised civil engineering design drawing(s) to be submitted to Public Works' Marlene Ford for review and approval.</p>

9	<p>Prior to Meeker commencing any work associated with items 6, 7 and 8, above, a permit to work within the Pierce County road right-of-way will be obtained from Pierce County Public Works and a preconstruction conference will be held.</p> <p>If a simultaneous closure of both traffic lanes of 134th is planned, a road closure permit must also be required from Pierce County Public Works.</p>		
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December 20, 2010

**Exhibit B to Motion to
Amend Order 01**

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Re: Docket No. TR-100036(
USDOT Crossing No. 085536 R)
(WUTC Crossing No. 42A32.40)
**Our Request That the Commission Immediately Grant Meeker Southern Railroad's
Motion to Amend Order 01**

Dear Mr. Danner:

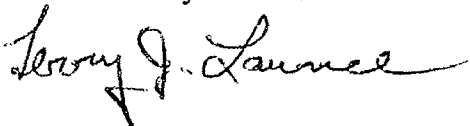
Sound Delivery Service has recently moved its operational facilities from Seattle to its new 7.99-acre site at 13505 Pioneer Way East just outside the City of Puyallup. Our company's primary business is flatbed trucking and railcar transloading of large, heavy construction materials and equipment as well as shipping containers from its new site throughout Western Washington for both the public and private sectors.

In order to effectively operate on our site and provide the materials that our public and private sector customers desperately need in order to meet their respective scheduling demands, Sound Delivery Service needs immediate freight rail service via Meeker Southern Railroad's recently installed spur track across 134th Avenue East and the portion of the Phase 1 Service Siding that has been installed so far along a portion of our site's north edge. During the next few months, we need to be able to receive up to three freight car loads per train delivery day on an average of three train delivery days per week.

I understand that Meeker Southern Railroad is submitting to the Commission today a Motion to Amend Order 01 in regard to your Docket No. TR-100036. Please do everything humanly possible to expedite the Commission's grant of that motion and enable immediate freight rail service to be provided to Sound Delivery Service's site via Meeker Southern Railroad's recently installed spur track across 134th Avenue East.

Sincerely,

Sound Delivery Service



Terry Lawrence, Vice-President

cc: Meeker Southern Railroad, Attn: Attn: Byron Cole, Manager
David L. Halinen, Halinen Law Offices, P.S.

Table 2 Special Requirements and Operational Limitations Concerning Meeker Southern Railroad's Crossings of 134th Avenue East Via the Recently Installed Spur Track Prior to Completion and Commencement of Operation of the Planned Flashing Lights Crossing Signal System		
Requirement/ Limitation #	Description of Requirement/Limitation	Comments
1	Average number of days per week that the spur track will be used for crossings of 134th: <u>3 days</u>	This limitation coupled with Requirement/Limitation #2 will mean a relatively small number of spur crossings per week.
2	Maximum number of round-trip crossings per day that the spur track may be used for crossings of 134th: <u>2</u>	This limitation coupled with Requirement/Limitation #1 will mean a relatively small number of spur crossings per week.
3	Hours during the day that spur crossings will be limited to: <u>9:00 AM to 3:00 PM</u>	These proposed operating hours are daylight hours outside of the AM and PM hours of peak traffic on nearby roadways.
4	Maximum number of train cars per train to be operated through the spur crossing: <u>3 cars plus an engine</u>	Such short trains will minimize the length of time of each of the crossings along the spur track.
5	Traffic flagging of 134th Avenue East on the north and south sides of the crossing must be performed in accordance with WAC 296-155-305 by certified flaggers provided by Meeker during all train crossings of 134th via the spur track.	Meeker has already arranged to hire and will hire a third-party contractor to provide the certified flaggers.