

party representatives and their contact information is attached to this Order as Appendix A.

- 4 **PETITION.** During the prehearing conference, Staff stated that it had inadvertently provided Meeker with a form “*Petition to Modify an Existing Highway-Rail Grade Crossing*” rather than a “*Petition to Construct A Highway-Rail Grade Crossing.*” Meeker filed a petition to modify, rather than construct, a highway-rail grade crossing. However, Meeker confirmed that it intends to construct a new spur line that will cross an existing roadway.
- 5 While Meeker filed the incorrect form of petition, it appears that filing the incorrect form is harmless error. The respondent, Pierce County, addressed in its answer the issue of a new crossing, rather than modification of an existing crossing. Moreover, a comparison of the two forms of petition reveals that the information contained in both forms is substantially similar. The primary distinction between the two forms is that a petition to construct a new crossing requests additional information in “*Section 3 – Proposed Crossing Location.*” Meeker agreed to provide the supplemental information in this section. No party objected to Meeker supplementing its petition. The information in this section is limited to six straightforward questions. Accordingly, it is reasonable to require Meeker to supplement its petition with the information contained in “*Section 3 – Proposed Crossing Location*” within 10 days of the date of this Order, or by May 11, 2009.
- 6 **APPLICABLE STATUTE.** The Commission evaluates highway-rail crossings according to the applicable statutes in RCW, Title 81. Meeker argued that its petition should be considered under RCW 81.53.060, *Petition for alteration of crossing-Closure of grade crossing without a hearing.* Staff argued that the applicable statute was RCW 81.53.030, *Petition for crossing-Hearing-Order.* Pierce County concurred with Staff.

proceeding. There is an “*ex parte* wall” separating the Commissioners, the presiding Administrative Law Judge, and the Commissioners’ policy and accounting advisors from all parties, including regulatory staff. *RCW 34.05.455.*

7 Meeker confirmed that, despite the form of the petition, its intent is to obtain Commission approval to construct a new rail crossing over a public roadway. Meeker is seeking approval to construct an industrial spur track to reach a new customer, Sound Delivery Service.² The new spur track will cross a public roadway. Therefore, RCW 81.53.060, which governs the *alteration* of crossings is not applicable. The underlying facts in the petition and the intent of the petition demonstrate that the applicable statute is RCW 81.53.030.

8 By Notice of Prehearing Conference entered April 3, 2009, the Commission informed all parties and interested persons that it would hear this matter according to RCW 81.53.060. The notice requirements in RCW 81.53.060 are broader than those contained in RCW 81.53.030. Moreover, the sole appearances at the prehearing conference were those of the petitioner, respondent, and Commission Staff. Each party was given an opportunity to present argument regarding the statute under which the Commission should consider the petition. Because the Commission applied the greater, not lesser, notice standard in this matter and because all parties were given notice and an opportunity to be heard on this issue, no party or interested person should be adversely affected by applying RCW 81.53.030 to evaluate the merits of the petition.

9 **PROCEDURAL SCHEDULE/PROCEDURAL RULES.** During the prehearing conference, the parties agreed on a procedural schedule. Pierce County offered the use of county facilities in Tacoma for the evidentiary hearing. The Commission adopts the procedural schedule, including the hearing location, proposed by the parties. The procedural schedule is set forth in Appendix B to this Order.

10 The presiding officer informed all parties that the Commission's procedural rules at WAC 480-07-100, *et. seq.*, apply to all procedural matters in this case. The parties were advised to familiarize themselves with these rules.

11 **NOTICE OF HEARING.** The Commission will hold evidentiary hearings in this matter beginning, **September 1, 2009**, at 9:30 a.m. **and continuing thereafter, as necessary, on September 2, 2009**, at 9:30 a.m. in the Tacoma Mall Office Building, 4301 S. Pine St., 4th Floor, Suite 446, Tacoma, Washington 98409-7207.

²See Petition at 12.

- 12 **DISCOVERY.** During the prehearing conference, the presiding officer inquired of the parties whether the Commission should invoke its rules governing discovery. The parties requested that the discovery rules be invoked. This proceeding meets the criteria in WAC 480-07-400(2)(b). Accordingly, the Commission's discovery rules will be invoked and discovery will be conducted pursuant to WAC 480-07-400 – 425.
- 13 **PROTECTIVE ORDER.** The presiding officer inquired of the parties whether there was any need to issue a protective order in the proceeding to govern the use of confidential information. The parties stated that they did not foresee the need for a protective order at this time. Should the need for a protective order arise during the course of this proceeding, any party may file a motion requesting that the Commission issue a protective order.
- 14 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the original plus **5 copies** of the unredacted versions of all pleadings, motions, briefs, and other prefiled materials. Parties must also file the original and 1 copy of any redacted version(s). These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 15 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 16 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Electronic versions of all documents must be filed in accordance with WAC 480-07-140(6). Specifically, all documents must be filed in .pdf (Adobe Acrobat) format, supplemented by a separate file in .doc (MS Word), .wpd (WordPerfect), .xls (Excel), or .ppt (Power Point) format.

- 17 A copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to [<records@utc.wa.gov>](mailto:records@utc.wa.gov). Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 18 According to WAC 480-07-145(6), the parties may electronically submit documents to the Commission provided the electronic submission is received by 3:00 pm on the filing deadline and the Commission receives the original and required number of copies by 12:00 pm on the following business day. Parties must submit documents through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov, and file an original, plus **5 paper copies**, of the documents with the Commission by the following business day. Parties must provide courtesy copies of their electronic submissions to the presiding administrative law judge at pclark@utc.wa.gov and to the parties to the proceeding.
- 19 **ALTERNATE DISPUTE RESOLUTION.** The parties expressed interest in the use of the Commission's alternate dispute resolution services. The Commission supports the informal settlement of matters before it. Parties are encouraged to consider means of resolving disputes informally. The parties were informed that the Commission has a limited ability to provide dispute resolution services and that they should contact the Director, Administrative Law Division, at 360-664-1144; to explore those services.

20 **NOTICE TO PARTIES: A party who objects to any portion of this Order must file a written objection within ten (10) calendar days after the service date of this Order, pursuant to WAC 480-07-430 and WAC 480-07-810. The service date appears on the first page of the order in the upper right-hand corner. Absent such objection, this Order will control further proceedings in this matter, subject to Commission review.**

Dated at Olympia, Washington, and effective April 30, 2009.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

PATRICIA CLARK
Administrative Law Judge

APPENDIX A

Docket TR-081407

PARTY	REPRESENTATIVE	PHONE	FACSIMILE	E-MAIL
Meeker Southern Railroad	David Halinen Halinen Law Offices, PS 1019 Regents Blvd. Suite 202 Fircrest, WA 98466-6037	253-627-6680	253-272-9876	davidhalinen@halinenlaw.com
Pierce County	John F. Salmon III Office of the Pierce County Prosecuting Attorney, Civil Division 955 Tacoma Avenue S Suite 301 Tacoma, WA 98402-6713	253-798-4282	253-798-6713	jsalmon@co.pierce.wa.us
Commission Staff	Jonathan Thompson 1400 S. Evergreen Park Dr. SW P.O. Box 40128 Olympia, WA 98504-0128	360-664- 1225	360-586-5522	jthompo@utc.wa.gov

**APPENDIX B
PROCEDURAL SCHEDULE
DOCKET TR-081407**

<u>EVENT</u>	<u>DATE</u>
Meeker Southern Railroad Supplement to Petition	May 11, 2009
Meeker Southern Railroad Prefiled Direct Testimony and Exhibits	June 8, 2009
Pierce County and Commission Staff Prefiled Responsive Testimony and Exhibits	July 17, 2009
Meeker Southern Railroad Prefiled Rebuttal Testimony and Exhibits	August 10, 2009
Evidentiary Hearing	September 1, 2009, and continuing thereafter on September 2, 2009