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1 BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION

2 COMMISSION

3	MEEKER SOUTHERN RAILROAD,	)	
		)	
4	Petitioner,	)	
		)	
5	vs.	)	DOCKET NO. TR-081407
		)	Volume I
6	PIERCE COUNTY PUBLIC WORKS	)	Pages 1 - 28
	AND UTILITIES,	)	
7		)	
	Respondent.	)	

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10 A prehearing conference in the above matter  
 11 was held on April 23, 2009, at 9:30 a.m., at 1300 South  
 12 Evergreen Park Drive Southwest, Olympia, Washington,  
 13 before Administrative Law Judge PATRICIA CLARK.

14

15 The parties were present as follows:

16 MEEKER SOUTHERN RAILROAD, by DAVID L.  
 17 HALINEN, Attorney at Law, 1019 Regents Boulevard, Suite  
 18 202, Fircrest, Washington 98466-6037; telephone, (253)  
 627-6680.

19 PIERCE COUNTY PUBLIC WORKS AND UTILITIES, by  
 JOHN SALMON, Deputy Prosecuting Attorney, Civil  
 Division, 955 Tacoma Avenue, Suite 301, Tacoma,  
 20 Washington 98402-2160; telephone, (253) 798-4282.

21 WASHINGTON UTILITIES AND TRANSPORTATION  
 COMMISSION, by JONATHAN THOMPSON, Assistant Attorney  
 22 General, 1400 South Evergreen Park Drive Southwest,  
 Post Office Box 40128, Olympia, Washington 98504;  
 23 telephone, (360) 664-1225.

24

25 Kathryn T. Wilson, CCR

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1 P R O C E E D I N G S

2 JUDGE CLARK: Good morning. It's  
3 approximately 9:30, April 23rd, 2009, in the  
4 Commission's hearing room in Olympia, Washington. This  
5 is the time and place set for a prehearing for Meeker  
6 Southern Railroad, Petitioner, versus Pierce County  
7 Public Works and Utilities, Respondent, given case  
8 TR-081407, Patricia Clark, administrative law judge for  
9 the Commission presiding. This prehearing was  
10 scheduled by notice entered in the proceeding on April  
11 3rd, 2009.

12 The first thing I'm going to ask the parties  
13 to do is enter an appearance, and because this is the  
14 first prehearing conference we have held in this  
15 matter, I'm going to ask everyone to do what we call a  
16 complete appearance, which is more information than you  
17 thought we would ever want. I would like you to please  
18 provide your name, your address, your telephone number,  
19 your fax number, and your e-mail address, and I would  
20 like to start with Meeker Southern Railroad, please.

21 MR. HALINEN: My name is David Halinen,  
22 H-a-l-i-n-e-n. I'm legal counsel for Meeker Southern  
23 Railroad. My mailing address is 1019 Regents,  
24 R-e-g-e-n-t-s, Boulevard, Suite 202, Fircrest,  
25 Washington, 98466. My telephone number is area code

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1 (253) 627-6680. My fax number is (253) 272-9876. My  
2 e-mail address is davidhalinen@halinenlaw.com.

3 JUDGE CLARK: Thank you, Mr. Halinen.  
4 Appearing on behalf of Pierce County Public Works and  
5 Utilities, please?

6 MR. SALMON: Good morning, Your Honor. I'm  
7 John Salmon. I'm with the Pierce County prosecuting  
8 attorney's office, and I will be representing Pierce  
9 County in this matter. My address is Office of the  
10 Pierce County Prosecuting Attorney, Civil Division, 955  
11 Tacoma Avenue South, Suite 301, Tacoma, Washington,  
12 98402-2160. My telephone number is (253) 798-4282 and  
13 my e-mail address is jsalmon@co.pierce.wa.us. I don't  
14 have the fax number, but I will send it to you.

15 JUDGE CLARK: I do have a fax number that I  
16 believe our able administrative assistant pulled off  
17 the Internet. If you could just confirm that it's  
18 (253) 798-6713, I would appreciate it.

19 MR. SALMON: I will do that, Your Honor.

20 JUDGE CLARK: Appearing on behalf of  
21 Commission staff?

22 MR. THOMPSON: Jonathan Thompson, assistant  
23 attorney general, representing Commission staff. My  
24 address is 1400 South Evergreen Park Drive Southwest,  
25 Olympia, 98504. My telephone number is (360) 664-1225.

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1 The fax is (360) 586-5522, and my e-mail address is  
2 jthompso@wutc.wa.gov.

3 JUDGE CLARK: Thank you very much. Before I  
4 set forth the agenda for this morning's prehearing  
5 conference, I would like to know if there are any  
6 preliminary matters that we need to address.  
7 Mr. Halinen?

8 MR. HALINEN: We are interested in the UTC  
9 mediation service, and either now or before we are done  
10 today, we would like to better understand the  
11 availability of that possibility.

12 JUDGE CLARK: All right. The Commission does  
13 favor the resolution of disputes between parties in  
14 front of it using alternative dispute resolution. The  
15 Commission has a limited ability to provide a mediator  
16 for that particular purpose, and that is dependent on  
17 the availability of an individual to serve in that  
18 capacity.

19 As a matter of boilerplate, we always offer  
20 alternative dispute resolution to the parties in our  
21 first prehearing conference order, which will follow  
22 today's prehearing conference. That prehearing  
23 conference order will direct you to contact the  
24 director of the administrative law judge division, and  
25 she will determine the availability of another

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1 administrative law judge to serve in that capacity.

2 I can't serve in the capacity as the mediator  
3 and also serve in the capacity of the ALJ in the event  
4 you are unable to resolve the dispute to everyone's  
5 satisfaction, so she will check on that availability  
6 after receiving a request, which can be a phone call,  
7 and then let you know whether or not there is an  
8 individual to serve in that capacity.

9 If ALD does not have an individual, given  
10 workload, who can serve in that capacity, then the  
11 parties can certainly hire a mediator rather than  
12 proceed into hearing. While the Commission does  
13 encourage alternative dispute resolution, I'm going to  
14 go ahead and set a procedural schedule today because I  
15 don't want us not to have that in place in the event  
16 that those discussions are not fruitful.

17 MR. HALINEN: Thank you very much.

18 JUDGE CLARK: Are there any other preliminary  
19 matters that we should address? Mr. Thompson?

20 MR. THOMPSON: I don't know if it would be a  
21 preliminary matter, but certainly an issue about what  
22 the scope of the proceeding is. I had raised this with  
23 the parties yesterday regarding which specific statute  
24 in Chapter 81.53 RCW is really at issue here, and the  
25 Staff had provided the Company with a form for a

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1 petition for alteration of a crossing, which is  
2 considered under 81.53.060, and the general standard  
3 there is whether the public safety requires the  
4 alteration, but on further reflection, I think what is  
5 actually called for in this case is a petition under  
6 81.53.030, which is essentially a petition for a new  
7 at-grade crossing in which the issues are a bit  
8 different and the notice requirements are more limited.

9           But anyway, the chief issue under 81.53.030  
10 is whether it is feasible to cross above or below grade  
11 and if not, then there would generally be crossing  
12 allowed, but the Commission has the ability to impose  
13 requirements related to safety improvements or safety  
14 requirements.

15           I'm not sure where we stand on whether  
16 everybody agrees that that's the applicable statute,  
17 but that's Staff's view. I think the petition actually  
18 addresses everything it needs to in terms of the  
19 requirements or the consideration for 81.53.030, and  
20 certainly, the notice is broad enough to encompass that  
21 other statute as well, so it's more of an issue as to  
22 what issues we'll need to address in the case.

23           JUDGE CLARK: All right, and so I'm going to  
24 call on you first, Mr. Halinen. Is there disagreement  
25 regarding the applicable statute for the construction

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1 of the spur?

2 MR. HALINEN: Your Honor, this came to our  
3 attention first yesterday, and we were a little bit  
4 surprised because my client has worked with Staff and  
5 been advised to file an application for a modification,  
6 which appears to fit under the 060 statute, and  
7 physically out at the site, because this is really a  
8 spur off of a main line, it is immediately adjacent to  
9 that main line, it appeared logically it was an  
10 alteration, and so when we heard about this yesterday,  
11 we were a bit perplexed about a switch right at this  
12 point in time.

13 I'm not quite sure, other than possible  
14 difference in notice, whether there is any other  
15 language in the statute that will ultimately make a  
16 difference to the way this proceeding is heard. There  
17 is a provision, one sentence I notice in 030 that says,  
18 The Commission may provide the order authorizing a  
19 grade crossing, or any subsequent time that the  
20 railroad company shall install and maintain proper  
21 signals, warnings, flag or interlocking devices or  
22 other devices or means to secure the safety of the  
23 public and its employees. That sentence is in the 060  
24 statute.

25 In some regard, this might relate to our

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1 contention that we should also be considering, given  
2 the County's letters that have been submitted into the  
3 record so far, or at least on file, that there should  
4 be some type of active measures for signalization at  
5 the site, which we contend are unnecessary, and that  
6 those should be considered under 81.53.261, and the  
7 allocation provisions, if there was a ruling that  
8 signalization is required, should be considered under  
9 81.53.271 and .275. So that really for us is the  
10 issue, and I think that consideration of .261, .271,  
11 and .275 need to be considered when making the  
12 decision as to whether we are going to deal with the  
13 030 statute.

14 JUDGE CLARK: We will get to that in a  
15 minute. I'm trying to confirm right now whether  
16 parties are of agreement whether we should be  
17 proceeding under construction or modification.

18 MR. HALINEN: We are not in agreement at this  
19 time. We filed our petition under 060. I haven't  
20 heard anything yet that mandates we move to the 030  
21 statute, and since we just heard about this yesterday,  
22 we are not yet in a position to make any change to the  
23 petition or the statute that we will be operating  
24 under.

25 JUDGE CLARK: I would like to also hear from



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1 Pierce County.

2 MR. SALMON: We are in agreement that it's a  
3 new crossing, not just an alteration of an existing  
4 crossing.

5 JUDGE CLARK: I also received an e-mail from  
6 counsel yesterday, Commission staff counsel, indicating  
7 to me that there would be a preliminary matter to  
8 address this morning, and the only matter that was  
9 brought to my attention was the matter of the form of  
10 the petition that had been filed by the Railroad,  
11 provided by Commission staff and filed by the Railroad,  
12 and whether or not that was the appropriate petition,  
13 and so I did my homework and I read the petition that  
14 was filed by Meeker Southern Railroad, and I also  
15 pulled the other form that the Commission uses for this  
16 particular kind of event. I happen to have three  
17 copies of that petition with me, and so if it's  
18 possible to have someone distribute these -- thank you  
19 very much, Mr. Thompson -- I think it might be helpful  
20 just to take a look at that particular form and look at  
21 that in conjunction with the document that was actually  
22 filed by Meeker Southern Railroad.

23 Please correct me at any time if I misspeak,  
24 but if I take a look at the petition that was actually  
25 filed by Meeker Southern Railroad and I look at the

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1 content of that, it appears from the content of that  
2 that Meeker Southern Railroad is not looking to modify  
3 track that you already have, but rather you are looking  
4 to construct a new spur. That's my understanding of  
5 what the Railroad is seeking.

6           If I take a look at what was filed by Pierce  
7 County, if my memory serves me correctly, I believe  
8 it's in the second paragraph of the County's response,  
9 the indication is that there will be a construction of  
10 a new spur or a new portion of track that does not  
11 exist at this particular time, so that allays some of  
12 my concerns about appropriate notice under the  
13 petition, and as Mr. Thompson pointed out, there are  
14 actually lesser requirements for notice under new  
15 construction rather than modification of the existing  
16 track.

17           If I take a look at the information that is  
18 actually filed without any assessment of that  
19 information, but just simply the information, under the  
20 form to construct a new spur or track, there seems to  
21 be just a small amount of information that is not  
22 included in this petition, and that would be in  
23 Section 3 regarding the proposed crossing location, and  
24 that's not under what was filed. That is under the  
25 document I had you distribute, and there is some

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1 additional information about the existing highway or  
2 roadway, the existing railroad, I think we are able to  
3 figure out, the location of the proposed crossing, GPS  
4 location, railroad mileposts, so it's a very limited  
5 amount of information in this one section that might be  
6 helpful.

7           If it isn't the intent of Meeker Southern  
8 Railroad to construct a new spur rather than modify an  
9 existing track, I think it would probably be helpful to  
10 have some of this supplemental information in the  
11 record, but I would like to hear from the parties.

12           MR. HALINEN: You are correct that this is a  
13 new track, the spur. It is immediately located  
14 adjacent to the existing track stemming off of it on a  
15 curve. We have no objection providing the additional  
16 information called for in Section 3. We think it would  
17 be helpful in any event now that we have this form, and  
18 we are perfectly willing to provide that.

19           JUDGE CLARK: Unless someone corrects me, I  
20 don't think there any other differences between the two  
21 petitions that are material. They might be numbered  
22 something differently, but basically, the same  
23 information is there. Mr. Thompson?

24           MR. THOMPSON: I would agree with that.  
25 There is really no question as to the sufficiency of

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1 what's been filed, I think, for purposes of the statute  
2 that we think it falls under, but it would be helpful  
3 to have the addition of that information about the  
4 location.

5 JUDGE CLARK: Mr. Salmon?

6 MR. SALMON: Let me make sure I understand.  
7 So we will be going under the --

8 JUDGE CLARK: We haven't made any  
9 determination. I just asked if the Railroad is willing  
10 to provide the additional information, which is  
11 minimal, and they have agreed to provide this  
12 additional information. So my concern first is whether  
13 or not you think that would be helpful, would aid the  
14 record in making a decision regarding this petition.

15 MR. SALMON: Are you asking for additional  
16 comments at this point on what was just discussed? I  
17 have a comment to make if this is the appropriate time  
18 to make it.

19 JUDGE CLARK: Is your comment regarding  
20 whether or not it would be helpful to the record to  
21 have the additional information I cited?

22 MR. SALMON: No.

23 JUDGE CLARK: Then I am going to ask and  
24 require Meeker Southern Railroad to provide additional  
25 minimal information in Section 3 of this particular

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1 petition.

2           Secondly is the issue of the applicable  
3 statute, and I'm certainly willing to hear more on that  
4 particular issue. The first thing I would like to hear  
5 is a response to Mr. Halinen's description that it  
6 would be appropriate to apply additional provisions of  
7 the Commission's statute, specifically 81.53.261 and  
8 271, and I would like to know if the parties have a  
9 comment on that particular provision. Mr. Thompson.  
10 I'll turn to you first.

11           MR. THOMPSON: I haven't completely thought  
12 that through at this point, but I think the theory is  
13 that those statutes are the ones where the Commission  
14 can at any time, I think, on petition of a railroad or  
15 on its own motion, consider whether additional safety  
16 measures are warranted at a grade crossing, and so  
17 arguably, that could provide the framework for  
18 considering whether improvements would be required as a  
19 result after the spur is constructed here, but as I  
20 say, I haven't completely come up with a final opinion  
21 at this point, so that's all I can say.

22           JUDGE CLARK: Mr. Salmon?

23           MR. SALMON: This relates back to whether or  
24 not it's a new crossing or not, because our position is  
25 that all of these issues could be avoided by simply

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1 moving the new spur over about 110 feet to the east,  
2 and you would no longer have a second crossing under  
3 134th Street, and it's really the second set of tracks  
4 that causes Pierce County to have concerns about the  
5 safety. That's essentially where all of their issues  
6 with additional warning devices lie. So are we talking  
7 about the cost-sharing provisions? I don't know these  
8 statutes well enough to...

9 JUDGE CLARK: The second statute that was  
10 cited is the allocation statute.

11 MR. SALMON: Our position is that would not  
12 apply if they were to cross 134th Street a second time.  
13 That's not a safety improvement issue. That's the  
14 Railroad putting in a new spur, and they would be  
15 responsible for any costs of additional warning devices  
16 that the Commission would require.

17 JUDGE CLARK: All right. Does anyone else  
18 want to be heard on this?

19 MR. HALINEN: I would simply mention in the  
20 .261 statute that this deals with any crossing of a  
21 railroad at a common grade by county highway or road,  
22 and that's what we have here. This proposal certainly  
23 fits within the scope of any, and this statute should  
24 apply to the consideration of what's before the  
25 Commission in this proceeding. There is nothing that

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1 excludes its application in this particular case.

2 JUDGE CLARK: All right. I'm going to take a  
3 moment off record because I wanted to have the  
4 opportunity to pull up 81.53.030 and 060, and so we are  
5 at recess until further call.

6 (Recess.)

7 JUDGE CLARK: We are back on record. During  
8 the recess, I had the opportunity to pull up both of  
9 the statutes in question, and it appears that the  
10 applicable statute would be 81.53.030. The petition  
11 about the standard in 81.53.060 is a petition for  
12 alteration of a crossing, and it's my understanding  
13 that you are not looking to alter an existing crossing  
14 but rather to create a new crossing with a construction  
15 of a spur, and so I'm going to view this case under the  
16 statute that does talk about construction of a new  
17 crossing.

18 There appears to be substantive argument  
19 about whether or not .261 and 271 are applicable to  
20 this case, and I'm going to allow each side to argue  
21 whatever position you want regarding those particular  
22 statutes, and you can encompass that in your argument,  
23 and you can certainly encompass that in your testimony  
24 in this matter.

25 MR. HALINEN: Thank you.

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1           JUDGE CLARK: Are there any other preliminary  
2 matters we should address before I get to my agenda?  
3 All right. The first thing I want to do is recognize  
4 that we do have two attorneys present who may not be  
5 familiar with all of the Commission's procedural rules.  
6 I certainly understand that. Each administrative  
7 agency has its own set of rules, and I would like to  
8 point you to WAC 480-07, and in that particular  
9 chapter, you will find all the Commission's procedural  
10 rules that should govern your practice in this  
11 particular matter.

12           It's important that you follow those  
13 procedural rules when you make filings before the  
14 Commission. The Commission expended a great amount of  
15 effort to find things that work for the filings that we  
16 receive, so it's important for you to do that. If you  
17 have procedural questions, not substantive questions  
18 but procedural questions, you should feel free to  
19 contact me at any time either via e-mail or telephone  
20 and I will try to respond to procedural inquiries. I  
21 will not engage in any substantive communication with  
22 any party.

23           The purpose of this morning's prehearing  
24 conference is to establish a procedural schedule, to  
25 address whether or not there is a need for discovery in



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1 this matter, address whether or not there is a need for  
2 a protective order in this matter, and then to address  
3 any other procedural matters the parties would like to  
4 have addressed. I think we've probably done the last  
5 thing first and addressed the request for alternate  
6 dispute resolution and the applicable statutes, and  
7 that probably is and more appropriate in which to  
8 address those two issues.

9           With respect to a procedural schedule, the  
10 parties should know that unlike some other  
11 administrative agencies, the Commission usually  
12 requires the parties to predistribute their testimony  
13 and exhibits, and we do that predistribution process  
14 through WAC 480-07-460, and that particular rule  
15 provides the guidelines for predistribution. The  
16 Commission usually refers to that process as prefilng  
17 testimony and exhibits. Having tired to say the word  
18 "predistribution," I can see why we have shortened  
19 that, but anyway, the testimony and exhibits are simply  
20 presented in written form question and answer rather  
21 than doing a question and answer orally, and then when  
22 the witness takes the stand after being sworn in,  
23 everyone has the direct testimony of those individuals,  
24 and we only entertain cross-examination during the  
25 hearing. It does greatly expedite the hearing process,

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1 and it is very helpful when we are dealing with  
2 technical matters like this to have that information in  
3 advance of the hearing, so I'm going to require  
4 prefiled testimony in this particular proceeding.

5           When we require prefiled testimony, we have a  
6 number of deadlines that we need to establish. I'm  
7 sure Commission staff is very familiar with those, but  
8 we will need prefiled direct testimony from Meeker  
9 Southern Railroad, prefiled responsive testimony from  
10 Pierce County Public Works and Utilities and Commission  
11 staff, prefiled rebuttal testimony from Meeker  
12 Railroad, and we will schedule an evidentiary hearing.

13           Now, what I normally do is see if the parties  
14 would like an opportunity to discuss a procedural  
15 schedule off the record and see if you can come to an  
16 agreement regarding the deadlines for each of those  
17 filings and for setting a hearing date. If you can  
18 reach agreement, generally I have no problem adopting  
19 the procedural schedule the parties are able to work  
20 out. If you are unable to work out a procedural  
21 schedule, I will set one. Would you like the  
22 opportunity to confer off record?

23           MR. HALINEN: I have a question, if I may.  
24 I'm wondering whether before we get there we should  
25 discuss any other major case issues which might have

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1 some bearing on our off-record discussion.

2 JUDGE CLARK: Other major case issues such  
3 as...

4 MR. HALINEN: I'm looking at 480-07-430, and  
5 I see a prehearing conference identification and  
6 simplification of the issues. I heard Mr. Salmon  
7 mention a bit ago that there was some contention on the  
8 County's part that perhaps this spur should not be  
9 constructed across --

10 JUDGE CLARK: Let me interrupt, because we  
11 are not going to go down that road. That's a  
12 substantive road, and if Pierce County wants to take  
13 the position that the spur should not be constructed at  
14 all, that is something I expect to see in testimony of  
15 the witness saying this is why it's a bad idea.

16 I do have a petition from Meeker Southern  
17 Railroad requesting that you have the opportunity to  
18 build that spur. Meeker Southern Railroad is the party  
19 with the burden of proof and they can rebut that, but  
20 I'm not going to entertain a substantive issue and  
21 whether or not Meeker Southern Railroad should be  
22 entitled to pursue its petition at a prehearing  
23 conference.

24 MR. HALINEN: Thank you.

25 JUDGE CLARK: And hopefully, we did address

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1 the other matters in terms of simplifying issues. I  
2 think we have now established the applicable statute  
3 that we will be using in this proceeding, and I'm  
4 giving everyone an opportunity to address both .261 and  
5 .271 argument in your testimony.

6 MR. SALMON: One other quick issue. We would  
7 like to do a bit of discovery. We will probably want  
8 to send some interrogatories and do depositions.

9 JUDGE CLARK: What we ordinarily do is try to  
10 establish a procedural schedule and then entertain  
11 whether or not the parties have the need for discovery,  
12 but we can talk about discovery first, and you've  
13 already indicated that there is a need for discovery.  
14 Mr. Thompson, do you believe there will also be a need  
15 for discovery on behalf of Commission staff?

16 MR. THOMPSON: Possibly; although, we might  
17 just look at what the other parties do and find that  
18 sufficient for our needs as well.

19 JUDGE CLARK: I understand. Mr. Halinen?

20 MR. HALINEN: We may want to depose  
21 Commission staff and possibly one or two County  
22 representatives.

23 JUDGE CLARK: All right. The Commission has  
24 rules governing discovery. We have rules regarding  
25 lots of things. The Commission's rules regarding

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1 discovery are at WAC 480-07-400 to 425, and parties  
2 have indicated a need for discovery. I am invoking the  
3 discovery rules in this case. Those rules will govern  
4 the form of discovery that you may undertake, and they  
5 will also govern the deadlines by which you must submit  
6 replies.

7           Continuing out of order, do the parties see a  
8 need for the Commission to enter a protective order in  
9 this proceeding? The Commission issues protective  
10 orders in proceedings where the parties conceive that  
11 confidential information might need to be disclosed to  
12 the other side, and if the parties find a need for  
13 confidential information to be exchanged, we usually  
14 protect the confidentiality of that information through  
15 a standard protective order. Do the parties feel any  
16 need to have a protective order in this matter;  
17 Mr. Halinen?

18           MR. HALINEN: Our only concern is whether the  
19 discovery might delve into confidential commercial  
20 transactional matters involving my client. Since I  
21 don't know what is perhaps being contemplated by  
22 Mr. Salmon, I can't better articulate that now, but if  
23 we find the need for a protective order during the  
24 course of having received such materials, can I apply  
25 for a protective order at a later date?

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1           JUDGE CLARK: Absolutely. I'm summarizing to  
2 say that you don't need feel the need for a protective  
3 order at this juncture, but you do not want to waive  
4 your right to request one should some discovery arise  
5 that might make you think you need one.

6           MR. HALINEN: That's exactly right.

7           JUDGE CLARK: Does anyone else want to be  
8 heard on the topic of a protective order?

9           MR. SALMON: Your Honor, Pierce County does  
10 not need a protective order. However, if we do find  
11 that we need a protective order between Pierce County  
12 and the Railroad, it may be helpful to actually have  
13 the Commission implement its rules to avoid public  
14 records issuance, so we may be back. I don't  
15 anticipate that we will or we won't, but that's a good  
16 way to handle it.

17           JUDGE CLARK: So if you find a need for a  
18 protective order, the location of that is also WAC  
19 480-07, and those rules are generally contained at 420  
20 and 423 of that particular section of our rules. You  
21 can request that at any time, and of course,  
22 confidential information is the exception to the public  
23 record's law. Generally, all documents filed with the  
24 Commission and all proceedings before the Commission  
25 are open to the public, and so confidential information

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1 is that exception.

2 Are there other matters we should discuss  
3 before I see if the parties would like to confer off  
4 record regarding the procedural schedule? Mr. Halinen,  
5 are you interested in conferring off record regarding  
6 procedural schedule?

7 MR. HALINEN: Yes.

8 JUDGE CLARK: Mr. Thompson?

9 MR. THOMPSON: Yes.

10 JUDGE CLARK: Mr. Salmon?

11 MR. SALMON: Yes, Your Honor.

12 JUDGE CLARK: We are going to be at recess.

13 I have a copy of the Commission's most current  
14 calendar. I'm going to leave that with Mr. Thompson  
15 for all of you to share regarding available hearing  
16 dates and other dates that might be helpful for you to  
17 work on that procedural schedule, and I'm going to  
18 return to my office. If you could either call or send  
19 someone down after you've had an opportunity to confer,  
20 I would appreciate that. We are at recess until  
21 further call.

22 (Recess.)

23 JUDGE CLARK: We are back on the record.

24 During the recess, have the parties had an adequate  
25 opportunity to confer regarding a procedural schedule?

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1 MR. THOMPSON: Yes, Your Honor.

2 JUDGE CLARK: Were you able to arrive at a  
3 procedural schedule that will meet everyone's needs?

4 MR. THOMPSON: We think so.

5 JUDGE CLARK: Who is going to present that  
6 procedural schedule to me?

7 MR. THOMPSON: I would be happy to do that.  
8 Starting with the date for prefiled direct testimony by  
9 the Railroad, the date we have for that is June 8th,  
10 and then for response testimony by Staff and the  
11 County, we have July 17th, and for rebuttal testimony  
12 by the Railroad, August 10th, and then finally a  
13 cross-examination hearing preferably the first week of  
14 September, looking at September 1st and 2nd. We may  
15 only need one day but just thinking of reserving two  
16 days just in case, and the County has graciously  
17 offered a location near the Tacoma Mall for us to hold  
18 the hearing if we want to have it up close to the  
19 location.

20 JUDGE CLARK: Can you given me that location?

21 MR. THOMPSON: Yes. I'll let them explain  
22 that.

23 MR. SALMON: It's the Tacoma Mall Office  
24 Building, 4301 South Pine Street, Tacoma, Washington.

25 JUDGE CLARK: Is there a suite number?



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1           MR. SALMON: We will have a conference room  
2 which we will make available on the fourth floor, and  
3 actually, you can report to Suite 446.

4           JUDGE CLARK: And that's in Tacoma?

5           MR. SALMON: Correct.

6           JUDGE CLARK: Do you have a zip code for me,  
7 please?

8           MR. SALMON: 98409-7207. I think we can  
9 provide a Mapquest-type thing for you if you would  
10 like.

11           JUDGE CLARK: I think we can probably do that  
12 ourselves. Is that the preference of the parties, to  
13 have the hearing conducted in Tacoma rather in Olympia;  
14 Mr. Halinen?

15           MR. HALINEN: It is.

16           JUDGE CLARK: Mr. Thompson?

17           MR. THOMPSON: That's fine with us. Another  
18 issue that kind of plays into that is that in the last  
19 couple of grade-crossing proceedings that we've had  
20 before your colleague, Mr. Torem, he went on sort of a  
21 self-guided tour of the crossing and surrounding roads,  
22 and the parties agreed on a driving route for him to  
23 drive to familiarize himself with the area. So we  
24 would also propose that in this case, and that might  
25 make it convenient for you to do that in conjunction

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1 with the hearing, which is another reason to have the  
2 hearing closer to the location of the crossing.

3 JUDGE CLARK: I see. Actually, the process  
4 that you are suggesting is something that is most akin  
5 to a jury's view, and I think that it would probably be  
6 better not to have me do a self-guided tour gathering  
7 evidence intentionally or unintentionally regarding  
8 that particular crossing but rather to conduct that in  
9 the presence of all of the parties so any observations  
10 I might have you are all aware of and any questions I  
11 might have, everyone would have the opportunity to  
12 respond.

13 I don't ordinarily do that unless I don't  
14 have enough information based on what the parties give  
15 me to understand what's at issue in the particular  
16 crossing, and in that regard, the parties might find it  
17 helpful in conjunction with your prefiled testimony to  
18 come up with an illustrative exhibit just to describe  
19 to me the proposed crossing; although, I do have the  
20 diagram submitted with the petition. So far I've been  
21 able to figure out, I believe, what's at issue in here,  
22 but if I decide to do a judicial view of that site, it  
23 is my preference not to do it alone, but certainly,  
24 holding the hearing in Tacoma would give us the  
25 opportunity for that, and it sounds like Pierce County

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1 is also amenable since you've offered the location, but  
2 I guess I should ask you.

3 MR. SALMON: We are prepared to appear in  
4 Tacoma, Your Honor.

5 JUDGE CLARK: Let me go back to my procedural  
6 schedule then. You have come up with all of the  
7 deadlines that I requested. I certainly appreciate  
8 that. I think the procedural schedule proposed by the  
9 parties is reasonable and I am going to adopt that  
10 schedule, including the hearing location.

11 I just have a question in conjunction with  
12 Mr. Halinen's inquiry earlier about the use of  
13 alternate dispute resolution in this proceeding, and  
14 I'm wondering if you would like me in this order to  
15 also schedule a settlement conference that would be  
16 attended by the parties only. Are you interested in  
17 having that deadline built into the calendar or not?  
18 Mr. Halinen?

19 MR. HALINEN: We anticipate having further  
20 informal discussions with the other parties, and I  
21 don't know that it's necessary to schedule that in the  
22 order. Do you have any preference, Mr. Salmon?

23 MR. SALMON: I think we agreed that if we  
24 needed to, we would try to have a mediation a week  
25 before the hearing, if we get that far. If we don't

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1 resolve it between the parties, we will mediate it, and  
2 we will do that a week beforehand.

3 JUDGE CLARK: So the answer is no.

4 MR. HALINEN: The answer to your question is  
5 no.

6 JUDGE CLARK: Is there anything further that  
7 should be considered on the record this morning?

8 MR. HALINEN: Nothing further, thank you.

9 JUDGE CLARK: Anything further from Pierce  
10 County?

11 MR. SALMON: No, Your Honor.

12 JUDGE CLARK: We are adjourned.

13 (Prehearing conference adjourned at 11:05 a.m.)

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