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December 30, 2010

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

Re: Pierce County’s Response to Petitioner Meeker Southern Railroad’s Motion to Amend Order

Dear Mr. Danner,

As County Engineer for Pierce County, I am writing this response to Meeker Southern Railroad’s Motion to Amend the Washington State Utilities and Transportation Commission’s January 12, 2010 Order regarding Meeker’s at grade crossing located at Pioneer Way East and 134th Ave East in Pierce County. That order was the end result of many weeks of negotiation between Pierce County Traffic Engineering and Meeker. Throughout the negotiations Pierce County insisted on two absolute conditions; first, that the Crossing must meet all safety requirements prescribed by the MUTCD and the Railroad-Highway Grade Crossing Handbook, August 2007 Edition, and second, that Meeker must be responsible for all costs incurred as a result of adding a new spur line across 134th Ave East.

Unfortunately, Meeker has utterly failed to comply with the Commission’s Order, leaving Pierce County with no confidence that either of these conditions are likely to be fulfilled if the Commission grants the motion to amend as submitted. While we are concerned with the effect Meeker’s inability to comply with the Commission’s order may have on Sound Delivery Service’s business, we are even more concerned with public safety and responsible use of the public’s purse.

Therefore, Pierce County is opposed to the motion to modify unless Meeker agrees to the following:

First, remove the language relating to multiple customers being served by the new spur track. The original order and Engineering Review contemplated that only one new customer would be served by the construction of Phase 1 Service Siding. Paragraph 5 of Meeker’s motion restates paragraph 6 of the January 12, 2010, Order: “*Meeker Southern proposes to add a spur track to the crossing which will allow service to a new customer.*” The motion then asserts that “new customer” rather than “new customers” is technically inaccurate, and it references certain pages of the Engineering Review and Evaluation Report (Third Revised Version). This assertion that the order



- is technically inaccurate is not itself accurate, and the County objects to the proposed modification of this language. The purpose of the Engineering Review and Evaluation Report was to evaluate if the proposed spur track to service Sound Delivery, Phase 1 would queue vehicles onto East Pioneer Way during the PM peak hour.¹ It is likely that additional lanes on East Pioneer Way will be needed to contain the queue caused by Phase 2 Service Siding or limits to their operation would need to be in effect to promote public safety on 134th Avenue East and East Pioneer Way.

Second, Meeker must obtain the required county permits prior to working within the County right of way so a County inspector can be assigned to the project and confirm that improvements being made are consistent with the approved plans, field conditions, and County standards. Meeker shall inform the County inspector on the dates and times that they will be working in the right of way so that the inspector can make arrangements to inspect the work. Condition number 3 of the January 12th order reads: *“All work for the proposed spur track and the Phase 1 Service Siding shown on the accompanying civil engineering design drawings shall be completed to the reasonable satisfaction of Pierce County Public Works and Utilities prior to the Petitioner starting its operation of the spur track and the Phase 1 Service Siding.”* Meeker failed to obtain a permit from the County prior to working within County right of way, as required by item 5 of the Settlement Agreement between Meeker and the County. If Meeker had obtained a permit, a County inspector would have been assigned to oversee the work and that inspector would have noticed inadequate information on the plans as it related to the cross slope of 134th Avenue East by lack of roadway cross sections, incorrect lane widths, areas that were filled and thus altered the natural drainage – none of which were shown on the plans, piles of gravel and asphalt left on the shoulder of the road, and lack of restoration between improvements and matching existing conditions. To date, Meeker has performed all work within the County right of way with no permits or knowledge by the County that such work was in progress. It is unknown by the County if proper compaction of storm trenches/ pipes and electrical conduits were performed/installed in accordance with industry standards, preparation of the asphalt surface and installation of new asphalt was

¹ The computation made was based on 2009 turning movement counts at East Pioneer Way and 134th Avenue East. Total train impedence time was estimated using a train length of 325 feet that will then trigger the flashing railroad signal 20 seconds prior to entering 134th Avenue East, plus time spent traveling at 10 MPH approaching the crossing, plus time spent traveling at 10 MPH through the crossing, plus time spent traveling at 10 MPH to the end of the far side detection zone. This computation was made to determine if Sound Delivery’s use of the spur track queued traffic onto East Pioneer during a typical PM peak hour train crossing. The computation showed that the operation of the spur track by Sound Delivery caused an estimated queue length of 66 feet compared to an available queuing area of 79 feet. At the time the Engineering Review and Evaluation Report was prepared it was unknown what the actual needs of future customers might be, and an estimated number of 18 trips per day was assumed in Table 1, page 16. The study assumed six crossings would be made per week with the addition of the new spur track and they would occur between 4:00 to 4:45 PM. It is unknown if this is an accurate number of crossings during the PM peak hour, an accurate train length, and accurate train speeds based on the newly sited Phase 2 Service Siding and point of switch. Also, the queue computation would need to be made again with current year turning movement counts for the year Phase 2 Service Siding is being proposed to be in operation.

constructed properly, and proper materials were used. This work if performed inadequately will require the County to reconstruct said work in the near future. In addition, it is unknown by the County how Meeker signed for their work zone and whether the signing met Section VI of the MUTCD. An improperly executed traffic control plan not only puts the motoring public at risk, it also puts the workers within the work zone at risk.

Third, Meeker must submit bi-weekly Certified Payroll Reports (copy of form attached) as proof that two certified flaggers (one on the north side and one on the south side of the tracks) are on site between the hours of 9:00 AM to 3:00 PM for the days that the spur track is in use. Petitioner states this will be three days per week. This will help to ensure that Meeker Railroad will have in place two certified flaggers to properly control vehicle traffic prior to the train entering 134th Avenue East.²

Fourth, because of Meeker's past performance on the construction of their spur track, lack of County oversight of their work, and current use of the spur track, in direct violation of the January 12th Order, Pierce County will require an approved Performance Bond (copy of form attached) or an Assignment of Funds to guarantee the remaining work will be constructed timely and properly before it will agree to any modification of the January 12th order.

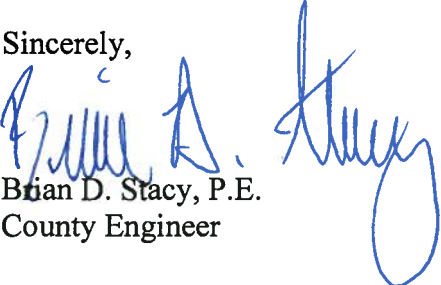
Finally, the County reserves the right to review, make comments, and approve the revised drawings prepared by Sitts & Hill Engineers, Inc. At this time, the County has not completed their review of the newly submitted drawings that were re-engineered to address the roadway grades and lane widths of 134th Avenue East on the north side of the tracks and the storm drainage issues that were created by Meeker filling of the areas located on the northeast and southwest side of 134th Avenue East.

² Also, please note that the County allowed the Petitioner to eliminate the need for Corner Sight Distance (Exhibit 13-A, letter from Tom R. Lancaster, P.E., PTOE dated December 29th, 2009) due to assurances that Meeker would install two flashing railroad signals to alert and control traffic prior to the use of the spur track. Now with Meeker operating the spur track prior to the installation of the active traffic control devices and with inadequate Corner Sight Distance, two certified flaggers positioned properly to stop traffic must be present to promote and maintain a reasonable level of public safety.

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In conclusion, Sound Delivery's problems are the direct result of Meeker's inability to comply with basic conditions it agreed on over one year ago. Installing the crossing with the proper safety equipment and signals should not be a complicated process. Far too much time and energy has been spent because Meeker either cannot or refuses to honor its obligations to construct and operate this crossing in accordance with basic safety regulations. Pierce County objects to any modification of the January 12, 2010, order that does not include strict enforcement mechanisms to ensure compliance with the order.

Sincerely,



Brian D. Stacy, P.E.
County Engineer

BDS:RDG:MF;jlb

Enclosure

C: Brian Ziegler, P.E., Director, Pierce County Public Works & Utilities
Byron Cole, Meeker Southern Railroad
David Halinen, P.E., Halinen Law Offices
Kathy Hunter, Deputy Assistant Director, WUTC
Paul Curl, WUTC
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Jerry Bryant, P.E., Field Engineering Manager, Public Works & Utilities
Marlene Ford, P.E., Associate Traffic Engineer, Pierce County
BDS/Letters/Danner response