

STAFF INVESTIGATION

OF

MEEKER SOUTHERN RAILROAD

DOCKET TR-110221

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PURPOSE, SCOPE, AND AUTHORITY

Purpose

The purpose of this investigation is to determine if the operating practices of Meeker Southern Railroad (Meeker Southern) violated a Washington Utilities and Transportation Commission (commission) order in Docket TR-100036.

Scope

The scope of this investigation, as directed by the commission, includes the operations of Meeker Southern related to the railroad crossing at 134th Avenue East in Pierce County.

Authority

Staff undertakes this investigation under the authority of the Revised Code of Washington (RCW) 80.01.040(2) and 81.01.010. RCW 81.04.070 makes it clear that the commission is authorized to conduct such an investigation. RCW 81.04.380 and 81.04.405 authorize the commission to assess penalties against companies for violation of the statutes, rules, orders, decisions, or directives of the Legislature or the commission. Appendix A includes copies the appropriate laws and rules.

BACKGROUND

Petition to Modify Highway-Rail Grade Crossing

On January 4, 2010, Meeker Southern filed a “Petition to Modify an Existing Highway-Rail Grade Crossing” with the commission in Docket TR-100036. The petition sought approval to modify a railroad-highway grade crossing and upgrade warning devices at 134th Avenue East in Pierce County. The US Dept. of Transportation number assigned to this crossing is 085536R.

The materials filed with Meeker Southern’s petition included an overview and details of the crossing and the proposed modifications, expected characteristics of the crossing after the modification, current highway traffic information, sight distance considerations and proposed warning signals and devices.

The petition outlined Meeker Southern’s proposal to add a spur track to its existing main line track located north of Pioneer Way East. The purpose of the spur track was to provide rail access to industrial properties. The existing railroad warning devices at the crossing consisted of cross bucks, advance warning signs and pavement markings. 134th Avenue East is classified as a collector arterial with two-lane, two-way traffic and a posted vehicle speed limit of 35 miles per hour. Average annual daily traffic through the crossing is estimated at 2,525 vehicles, including eight school bus trips.

Based on consultations with Pierce County Public Works and commission staff, Meeker Southern proposed to upgrade the existing passive warning devices to shoulder-mounted flashing lights. Motion sensitive train detection would be installed to detect approaching trains. Each assembly mast would have three pairs of 12-inch flashing LED light signals, a pedestrian bell, a cross buck sign, a “2 Tracks” sign and a “Stop Here When Flashing” sign. The signal equipment bungalow would contain a back-up power supply, power-on indicator light and an emergency notification sign.

According to its design drawings submitted with the petition, Meeker Southern proposed to install advance warning signs, pavement markings and stop lines. Meeker Southern also proposed trimming and maintaining existing brush within the sight distance triangles shown in the design drawings. The existing crossing surface would also be upgraded from plank to asphalt and the new spur track crossing surface would also be asphalt.

The petition specifically stated:

“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 line and the Phase 1 Service Siding.”¹

The petition was signed by Byron D. Cole, Managing Member of Meeker Southern. Pierce County Public Works and Utilities also signed the petition, waiving a hearing and stating that the agency had investigated the conditions at the crossing proposed for modification. The county further stated that it was satisfied that the conditions were the same as described by Meeker Southern in the petition and agreed that the crossing should be modified.

The commission must grant approval prior to a railroad company constructing multiple railroad tracks at a crossing.² The commission must also grant approval prior to a railroad company adding active crossing signal warning devices at public railroad-highway grade crossings within the state.³

On January 12, 2010, the commission issued an order granting Meeker Southern’s petition to modify the crossing at 134th Avenue, subject to the following conditions⁴:

1. The modifications must conform to those described and attached to the petition and set forth on the five-sheet set of civil engineering design drawings. The drawings are identified by December 29, 2009, and October 20, 2009, approval signatures by Brian D. Stacy, P.E., on behalf of Pierce County Public Works Director.
2. Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.
3. All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding.

Operations on Spur Track

In November 2010, Kathy Hunter, commission Deputy Assistant Director for Transportation Safety, contacted Byron Cole by email regarding a new spur track at the 134th Avenue crossing. Within that email, Ms. Hunter stated her understanding that the spur track had been installed and the main crossing surface repaved as part of the crossing surface modification. Ms. Hunter questioned when active warning devices would be installed and reminded Meeker Southern that according to condition three from the commission’s order, all work for the proposed spur track had to be completed to the satisfaction of Pierce County and commission staff prior to

1 Petition to Modify Railroad-Highway Grade Crossing at page 3, #7 at Appendix B.

2 WAC 480-62-150(1)(f).

3 WAC 480-62-150(2)(b).

4 Commission Order 01 in Docket TR-100036 at Appendix C.

operational use of the track. Ms. Hunter stated that the county and commission staff should be notified when all modifications to the crossing were complete and prior to operations beginning on the spur line.⁵

Mr. Cole responded on December 1, 2010, and provided information about the progress at the 134th Avenue crossing, stating, “We are keeping a close eye on the stability of the newly constructed spur subgrade and grade, and our customers retaining wall, by operating a test train about once a week. The conductor hand flags the crossing as needed.”⁶

Compliance Letter/Company Response

On December 7, 2010, the commission sent Mr. Cole a letter outlining its concerns about the situation at the 134th Avenue crossing. The letter stated commission staff’s understanding that the spur track was constructed but the flashing light signals and other warning devices had not been installed in compliance with Commission Order 01. The letter communicated staff’s concerns that the crossing did not have the appropriate level of protection for highway users and that the company’s operations presented an unacceptable and unnecessary risk to public safety that must be remedied immediately.

The letter required Meeker Southern to submit a plan for full compliance with the commission’s order by December 20, 2010, and outlined specifically what the plan should include. The letter also provided Meeker Southern with official notice that commission staff considered any commercial use of the spur track as configured to be a violation of the commission’s order. The letter explained that if staff found any material violation of the commission’s order, staff intended to initiate enforcement action which could result in an emergency cease and desist or abatement order and monetary penalties up to \$1,000 per violation.⁷

On December 20, 2010, David L. Halinen, attorney for Meeker Southern, responded to the commission’s compliance letter. Mr. Halinen filed a motion to amend the commission’s order, as well as a proposed amended order, to address the items raised in the commission’s December 7 letter. The motion and amended order included a proposed timeline for Meeker Southern to fully conform with the conditions in the proposed amended order and specific steps Meeker Southern proposed to take to protect the public until the signals and other safety devices were installed and fully operational. The motion stated that the spur track had been recently installed and that roadway pavement improvements were made to the crossing. The motion also argued that the commission’s order should be amended to allow “immediate and continued use of the spur track.”⁸

5 Kathy Hunter email dated November 1, 2010, at Appendix D.

6 Byron Cole email dated December 1, 2010, at Appendix E.

7 Commission letter dated December 7, 2010, signed by David Danner, at Appendix F.

8 Letter and Motion to Amend Order from Mr. Halinen dated December 20, 2010, at Appendix G.

Pierce County filed a response on December 30, 2010, opposing Meeker Southern’s motion to modify the commission’s order unless Meeker Southern agreed to four specific conditions.⁹

These conditions would require Meeker Southern to:

- 1) Remove specific language in the proposed amended order.
- 2) Obtain required county permits prior to working within the county right-of-way.
- 3) Submit bi-weekly certified payroll reports as proof that flaggers are on site when the spur track is in use.
- 4) Obtain a performance bond or assignment of funds to guarantee the remaining work is completely timely and properly.

Commission staff filed its response on January 4, 2011, supporting the amendments requested by Meeker Southern, subject to specific conditions and corrections to the proposed amended order.¹⁰

Staff’s conditions included:

- 1) That Meeker Southern be required to file reports with the commission on the 1st and 15th of each month, describing Meeker Southern’s progress in completing the work described in Table 1 of the proposed amended order.
- 2) That Meeker Southern be required to file with the commission notice that revisions to engineering design drawings had been made, along with any revised design drawings, within seven days of the completion of any revisions.
- 3) That the commission include Pierce County’s request for bond as a condition in its order.
- 4) That Meeker Southern report bi-monthly with specific information related to traffic flagging and operations over the spur track, verifying compliance with the conditions in Table 2 of the proposed amended order.

Commission staff also requested that certain factual inaccuracies be corrected in the proposed amended order and outlined its intentions to pursue enforcement action if Meeker Southern did not meet the conditions.

On January 6, 2011, Meeker Southern filed a letter explaining that Pierce County Public Works and commission staff had negotiated some conditions for Meeker Southern’s operation on the spur track.¹¹ On January 13, 2011, Meeker Southern filed a report on its use of the spur track between December 19, 2010, and January 8, 2011, in accordance with the conditions described in the January 6 letter.¹²

Show Cause Proceeding

On January 19, 2011, the commission issued a “Notice of Hearing and Order to Show Cause

⁹ Pierce County’s response to Motion to Amend dated December 30, 2010, at Appendix H.

¹⁰ Commission staff’s response to Motion to Amend dated January 4, 2011, at Appendix I.

¹¹ Letter from Mr. Halinen dated January 6, 2011, at Appendix J.

¹² Letter from Mr. Halinen dated January 12, 2011, at Appendix K.

Why Meeker Southern Railroad Should Not be Fined for Violating Commission Order 01,” setting a hearing date of January 26, 2011.¹³

During that proceeding, Meeker Southern testified that it had begun operational use of the spur track on or around October 17, 2010.¹⁴

At the conclusion of the hearing, the administrative law judge stated that commission staff should follow up with an investigation to determine prior non-compliance with the commission order of January 2010 and a recommendation for penalties if appropriate.¹⁵

The administrative law judge also issued Order 03 amending the January 2010 order in Docket TR-100036.¹⁶

13 Commission’s Notice of Hearing dated January 19, 2011, at Appendix L.

14 TR-100036 Hearing Transcript, page 10, at Appendix M.

15 TR-100036 Hearing Transcript, pages 53-54, at Appendix N.

16 TR-100036 Order Amending Order 01, dated January 26, 2011, at Appendix O.

INVESTIGATION

Staff Information Request

On February 2, 2011, commission staff sent a letter to Mr. Halinen requesting specific information from Meeker Southern regarding its operations.¹⁷ The letter requested the following information by February 15, 2011:

1. Specific information related to each Meeker Southern/Sound Delivery train movement over the 134th Avenue crossing from October 17, 2010, through December 18, 2010, including:
 - Date
 - Time
 - Track (main or spur)
 - Direction
 - Destination
 - Length of train in feet
 - Type and number of train cars
 - Whether the movement was a test train or a load hauled for compensation
 - How the crossing was protected during train movements
2. Meeker Southern's explanation, including any mitigating factors, of why the company modified the 134th Avenue crossing and commenced operational use of the new spur track prior to satisfying the conditions in the commission's Order 01 in Docket TR-100036.
3. Spreadsheet of all Meeker Southern train movements from October 1, 2010, thru January 30, 2011.

Company Response

Mr. Halinen provided a written response with exhibits to staff's information request on behalf of Meeker Southern on February 15, 2011.¹⁸

Item 1 – Meeker Southern/Sound Delivery train movements: In response to Item 1 in staff's request, Meeker Southern provided the following specific information related to train crossings for Sound Delivery Service from October 17 through December 18, 2010¹⁹:

¹⁷ Commission staff's February 2, 2011, information request at Appendix P.

¹⁸ Mr. Halinen's February 15, 2011, response to staff's information request at Appendix Q.

¹⁹ Exhibit A to letter from Mr. Halinen dated February 15, 2011, at Appendix Q.

Meeker Southern Railroad
Log of 134th Ave. E Train Crossings for Sound Delivery Service
for the period of October 17, 2010 through December 18, 2010

<u>Date</u>	<u>Time*</u>	<u>Track**</u>	<u>Direction</u>	<u>Destination</u>	<u>Length (ft)***</u>	<u>Train Components</u>
	Sunday					
10/17/2010	1-5 PM	spur	east	testing of track only	≤ 350 ft	engine + 3 freight cars
10/17/2010	1-5 PM	spur	west	testing of track only	≤ 350 ft	engine + 3 freight cars
10/18/2010	8-12 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
10/18/2010	8-12 AM	spur	west	unknown	50	engine
10/22/2010	8-1130 AM	spur	east	Sound Delivery	50	engine
10/22/2010	8-1130 AM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
10/25/2010	8-10 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
10/25/2010	8-10 AM	spur	west	unknown	50	engine
10/27/2010	8-10 AM	spur	east	Sound Delivery	50	engine
10/27/2010	8-10 AM	spur	west	unknown	≤ 150 ft	engine + 1 freight car
11/1/2010	8-10 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/1/2010	8-10 AM	spur	west	unknown	50	engine
11/3/2010	8-10 AM	spur	east	Sound Delivery	50	engine
11/3/2010	8-10 AM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	west	unknown	50	engine
11/5/2010	8-1130 AM	spur	east	Sound Delivery	50	engine
11/5/2010	8-1130 AM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	west	unknown	50	engine
11/8/2010	8AM-1PM	spur	east	Sound Delivery	50	engine
11/8/2010	8AM-1PM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/8/2010	8AM-1PM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/8/2010	8AM-1PM	spur	west	unknown	50	engine
11/8/2010	8AM-1PM	spur	east	Sound Delivery	50	engine
11/8/2010	8AM-1PM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/10/2010	8-1030 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
11/10/2010	8-1030 AM	spur	west	unknown	50	engine
11/12/2010	8-10 AM	spur	east	Sound Delivery	50	engine
11/12/2010	8-10 AM	spur	west	unknown	≤ 150 ft	engine + 1 freight car

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11/12/2010 8-10 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
11/12/2010 8-10 AM	spur	west	unknown	50	engine
11/15/2010 8-12 AM	spur	east	Sound Delivery	50	engine
11/15/2010 8-12 AM	spur	west	unknown	≤ 150 ft	engine + 1 freight car
11/22/2010 8-10 AM	spur	east	Sound Delivery	≤ 250 ft	engine + 2 freight cars
11/22/2010 8-10 AM	spur	west	unknown	50	engine
11/24/2010 11AM- 1PM	spur	east	Sound Delivery	50	engine
11/24/2010 11AM- 1PM	spur	west	unknown	≤ 250 ft	engine + 2 freight cars
12/3/2010 8-12 AM	spur	east	Sound Delivery	≤ 250 ft	engine + 2 freight cars
12/3/2010 8-12 AM	spur	west	unknown	50	engine
12/6/2010 830-1030AM	spur	east	Sound Delivery	50	engine
12/6/2010 830-1030AM	spur	west	unknown	≤ 250 ft	engine + 2 freight cars
12/8/2010 8-10 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
12/8/2010 8-10 AM	spur	west	unknown	50	engine
12/9/2010 1130-230PM	spur	east	Sound Delivery	50	engine
12/9/2010 1130-230PM	spur	west	unknown	≤ 150 ft	engine + 1 freight car
12/17/2010 8-10 AM	spur	east	Sound Delivery	≤ 250 ft	engine + 2 freight cars
12/17/2010 8-10 AM	spur	west	unknown	50	engine
12/17/2010 8-10 AM	spur	east	Sound Delivery	50	engine
12/17/2010 8-10 AM	spur	west	unknown	≤ 250 ft	engine + 2 freight cars
12/17/2010 8-10 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
12/17/2010 8-10 AM	spur	west	unknown	50	engine

Time* The time range shown for each crossing event is the total time range that the train crew worked that day. (Example: 8-10 AM means the crew start working at 8 am and finished by 10 am.) The actual crossings shown took place sometime during each such period. The specific time at which each crossing event took place was not recorded during the period October 17, 2010 through December 18, 2010.

Track** All crossings listed are shown as having taken place on the spur track because the associated freight cars were all deliveries to or pick-ups from Sound Delivery Service as the customer. Most if not all of these deliveries and pick-ups were from or to the Sound Delivery site. However, a few of these crossings may have involved delivery of cars via the main line track for pick-up by Sound Delivery Service at Meeker Southern's siding east of 134th, which is accessible from the south side of 80th Street East.

Length (ft)*** Actual length of each freight car is unknown, but no single freight car was longer than 100 feet from coupling knuckle to coupling knuckle.

end of log

Analysis: Based on the information Mr. Halinen submitted in response to staff’s request, and on the information contained in Meeker Southern’s Report #1 submitted in Docket TR-100036,²⁰ it appears Meeker Southern conducted operations on the spur track over the 134th Avenue crossing on two occasions for the purposes of testing the track and on 50 occasions for the purposes of delivering or picking up freight cars from Sound Delivery Service between October 17, 2010, and December 20, 2010.²¹ Commission staff believes these operations constitute a direct violation of the commission’s Order 01 in Docket TR-100036.

Item 2 – Explanation of why Meeker Southern modified the crossing and commenced operations prior to satisfying the conditions in the commission’s order in TR-100036, including mitigating factors:

In its response, Meeker Southern provided the following four reasons and/or mitigating factors for commencing operational use of the new spur track prior to satisfying the commission’s order²²:

Reasons why Meeker Southern Railroad commenced operational use of the new spur track prior to satisfying the conditions in the Commission’s Order 01 in Docket TR-100036		
Reason and/or Mitigating Factor Number	Reason and/or Mitigating Factor	Comments
1	Meeker’s customer Sound Delivery Service had (and continues to have) a desperate need to have freight rail cars loaded at its new facility located at the east end of Meeker’s new spur track.	
2	Without use of the new spur track, the freight cars would have had to have continued to be delivered via the main line track for unloading by Sound Delivery Service at Meeker’s long-time existing service siding along the north side of the main line track located approximately a quarter mile east of 134th Avenue East (at Meeker’s “East Puyallup Yard and Shops Facility”), a siding that is only accessible by motor vehicle from the south side of 80th Street East.	
3	By the time that use of the new spur had begun, (a) the spur track and its bedding had been installed in accordance with the approved civil drawings and (b) substantial 134th Avenue NE road improvements had been made. Even though all of the road improvements contemplated by the approved civil drawings had not been completed, the road improvements that had been made substantially enhanced the condition of the 134th Avenue East roadway at the crossing over the long-standing poor condition that existed prior to the spur track installation.	
4	With the enhanced roadway condition of 134th and the ability to	Unloading by Sound Delivery Service at Meeker’s East Puyallup Yard and

20 Letter from Mr. Halinen dated January 12, 2011, at Appendix K.

21 Meeker filed its motion to amend Order 01 in Docket TR-100036 on December 20, 2010.

22 Exhibit B to letter from Mr. Halinen dated February 15, 2011, at Appendix Q.

	<p>safely run all trains crossing along the spur track outside of 134th's PM peak traffic hours (trains that were all 350 feet or less in length) at slow, safe speeds of approximately only 5 mph, in Meeker's view overall safety to both the public and Sound Delivery's workers was enhanced by using the spur track to deliver freight cars directly to the new Sound Delivery Site for unloading at Sound Delivery's new loading dock rather than continuing to deliver those freight cars via the main line track for unloading by Sound Delivery Service at Meeker's East Puyallup Yard and Shops Facility.</p>	<p>Shops Facility necessitated Sound Delivery's forklifts (forklifts that were generally needed for use in Sound Delivery's outside storage yard) being driven or trucked on surface streets through the 134th crossing in order to get to 80th Street East to access that Facility. Once the forklifts were there, the Sound Delivery forklift operators then had to unload the delivered freight cars and load the materials onto transport trucks for hauling back to the Sound Delivery yard.</p> <p>All of the Sound Delivery haul trucks picking up materials unloaded by the forklifts at Meeker's East Puyallup Yard and Shops Facility would have had to continue to cross the public trail and be loaded by the forklifts.</p>
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Analysis: When Meeker Southern submitted its petition to modify the crossing, the company proposed that all work for the proposed spur track and the Phase 1 Service Siding be completed to the reasonable satisfaction of Pierce County prior to Meeker Southern starting its operation of the spur line and the service siding. The commission accepted this proposal and stated it as a condition in its order, adding that the work be completed to the reasonable satisfaction of commission staff as well.

Commission staff rejects Meeker Southern's assertion that the safety of the public was somehow enhanced by Meeker Southern operating in contravention to the commission's order. While Meeker Southern's reasons for installing the spur track and commencing operational use prior to satisfying the conditions in the commission's order may be persuasive, at no point did Meeker Southern contact the commission to discuss these matters. In fact, Meeker Southern did not file the petition to modify the commission's order until after commission staff discovered that the company had already commenced operations.

Commission staff maintains that the operations conducted over the spur crossing between October 17, 2010, and December 20, 2010, the date Meeker Southern filed its motion to amend Order 01, directly violated the commission's Order 01 in Docket TR-100036.

Item 3 – Spreadsheet of all Meeker Southern train movements from October 1, 2010, through January 30, 2011. In response to Item 3 in staff's request, Meeker Southern provided a

spreadsheet showing monthly rail car logs for the four-month period from October 2010 through January 30, 2011.²³

Analysis: The information provided appears to correspond with the testimony given by Meeker Southern and Sound Delivery Service during the January 26, 2011, hearing. In early October 2010, the logs appear to show service to Sound Delivery Service prior to the installation of the spur track. As indicated in testimony, Meeker Southern used its main line and storage yard to facilitate these deliveries.

On February 28, 2011, under separate cover, Mr. Halinen sent staff a letter titled, “Arguments as to Why, in View of Mitigating Circumstances and the Functional Equivalent of a Civil Penalty that Meeker Has Already Incurred, Civil Penalties Should Not Be Imposed Upon Meeker.”²⁴ This letter is provided within this report for informational purposes only. Staff will respond to arguments contained in the letter through testimony if the commission schedules a hearing regarding penalties in this docket.

²³ Exhibit C to letter from Mr. Halinen dated February 15, 2011, at Appendix Q.

²⁴ Letter from Mr. Halinen dated February 28, 2011, at Appendix R.

DISCUSSION AND FINDINGS

Commission staff has determined that Meeker Southern violated Commission Order 01 in Docket TR-100036 when it commenced operation on the spur track and Phase 1 Service Siding prior to all proposed work shown on the design drawings being completed to the reasonable satisfaction of commission staff and Pierce County Public Works and Utilities Staff. Meeker Southern conducted operations on the spur track over the 134th Avenue crossing on two occasions for the purposes of testing the track and on 50 occasions for the purposes of delivering or picking up freight cars from Sound Delivery Service between October 17, 2010, and December 20, 2010.

RCW 81.04.010(11) states that a common carrier "... includes ... railroads, railroad companies..."

RCW 81.04.010(16) states that a public service company "... includes every common carrier."

RCW 81.04.380 Penalties – Violations by public service companies states, in part:
"Every public service company ... shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense ..."

Recommendations

Commission staff recommends the commission file a complaint on its own motion setting forth any act or omission by Meeker Southern that violates any law, or any order or rule of the commission, as provided by RCW 81.04.110. In addition, staff recommends that the commission impose penalties of up to \$1,000 each for 50 violations of Order 01 in Docket TR-100036, as provided by RCW 81.04.380.

Commission staff does not recommend penalties for Meeker Southern's use of the spur track for the two test train runs conducted on October 17, 2010. Condition three of Order 01 required Meeker Southern to complete all work before starting "operation" of the spur line. Staff does not view testing of the track as "operation." Staff also does not recommend penalties for Meeker Southern's use of the spur track between December 20, 2010, the date that Meeker Southern filed its motion to amend Order 01 in Docket TR-100036, and January 26, 2011, the date that the administrative law judge granted that motion. Between December 20, 2010, and January 26,

2011, it appears that Meeker Southern sought to comply with the conditions that the administrative law judge approved on January 26, 2011.

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APPENDICES

APPENDIX A

APPLICABLE STATUTES AND RULES

RCW 80.01.040 General powers and duties of commission.

The utilities and transportation commission shall:

- (1) Exercise all the powers and perform all the duties prescribed by this title and by Title 81 RCW, or by any other law.
- (2) Regulate in the public interest, as provided by the public service laws, all persons engaging in the transportation of persons or property within this state for compensation.
- (3) Regulate in the public interest, as provided by the public service laws, the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation.
- (4) Make rules and regulations necessary to carry out its other powers and duties.

RCW 81.01.010 Adoption of provisions of chapter 80.01 RCW.

The provisions of chapter 80.01 RCW, as now or hereafter amended, apply to Title 81 RCW as fully as though they were set forth herein.

RCW 81.04.010 Definitions.

As used in this title, unless specially defined otherwise or unless the context indicates otherwise:

- (1) "Commission" means the utilities and transportation commission.
- (2) "Commissioner" means one of the members of such commission.
- (3) "Corporation" includes a corporation, company, association, or joint stock association.
- (4) "Low-level radioactive waste site operating company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing a low-level radioactive waste disposal site or sites located within the state of Washington.
- (5) "Low-level radioactive waste" means low-level waste as defined by RCW 43.145.010.
- (6) "Person" includes an individual, a firm, or copartnership.

(7) "Street railroad" includes every railroad by whatsoever power operated, or any extension or extensions, branch or branches thereof, for public use in the conveyance of persons or property for hire, being mainly upon, along, above, or below any street, avenue, road, highway, bridge, or public place within any one city or town, and includes all equipment, switches, spurs, tracks, bridges, right of trackage, subways, tunnels, stations, terminals, and terminal facilities of every kind used, operated, controlled, or owned by or in connection with any such street railroad, within this state.

(8) "Street railroad company" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, controlling, operating, or managing any street railroad or any cars or other equipment used thereon or in connection therewith within this state.

(9) "Railroad" includes every railroad, other than street railroad, by whatsoever power operated for public use in the conveyance of persons or property for hire, with all facilities and equipment, used, operated, controlled, or owned by or in connection with any such railroad.

(10) "Railroad company" includes every corporation, company, association, joint stock association, partnership, or person, their lessees, trustees, or receivers appointed by any court whatsoever, owning, operating, controlling, or managing any railroad or any cars or other equipment used thereon or in connection therewith within this state.

(11) "Common carrier" includes all railroads, railroad companies, street railroads, street railroad companies, commercial ferries, motor freight carriers, auto transportation companies, charter party carriers and excursion service carriers, private nonprofit transportation providers, solid waste collection companies, household goods carriers, hazardous liquid pipeline companies, and every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers appointed by any court whatsoever, and every city or town, owning, operating, managing, or controlling any such agency for public use in the conveyance of persons or property for hire within this state.

(12) "Vessel" includes every species of watercraft, by whatsoever power operated, for public use in the conveyance of persons or property for hire over and upon the waters within this state, excepting all towboats, tugs, scows, barges, and lighters, and excepting rowboats and sailing boats under twenty gross tons burden, open steam launches of five tons gross and under, and vessels under five tons gross propelled by gas, fluid, naphtha, or electric motors.

(13) "Commercial ferry" includes every corporation, company, association, joint stock association, partnership, and person, their lessees, trustees, or receivers, appointed by any court whatsoever, owning, controlling, leasing, operating, or managing any vessel over and upon the waters of this state.

(14) "Transportation of property" includes any service in connection with the receiving, delivery, elevation, transfer in transit, ventilation, refrigeration, icing, storage, and handling of the property transported, and the transmission of credit.

(15) "Transportation of persons" includes any service in connection with the receiving, carriage, and delivery of persons transported and their baggage and all facilities used, or necessary to be used in connection with the safety, comfort, and convenience of persons transported.

(16) "Public service company" includes every common carrier.

(17) The term "service" is used in this title in its broadest and most inclusive sense.

RCW 81.04.070 Inspection of books, papers, and documents. This statute states, in part, "The Commission...or any person employed by the Commission, shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company..."

RCW 81.04.110 Complaint — Hearing.

Complaint may be made by the commission of its own motion or by any person or corporation, chamber of commerce, board of trade, or any commercial, mercantile, agricultural or manufacturing society, or any body politic or municipal corporation, by petition or complaint in writing, setting forth any act or thing done or omitted to be done by any public service company or any person, persons, or entity acting as a public service company in violation, or claimed to be in violation, of any provision of law or of any order or rule of the commission.

When two or more public service companies or a person, persons, or entity acting as a public service company, (meaning to exclude municipal and other public corporations) are engaged in competition in any locality or localities in the state, either may make complaint against the other or others that the rates, charges, rules, regulations or practices of such other or others with or in respect to which the complainant is in competition, are unreasonable, unremunerative, discriminatory, illegal, unfair or intending or tending to oppress the complainant, to stifle competition, or to create or encourage the creation of monopoly, and upon such complaint or upon complaint of the commission upon its own motion, the commission shall have power, after notice and hearing as in other cases, to, by its order, subject to appeal as in other cases, correct the abuse complained of by establishing such uniform rates, charges, rules, regulations or practices in lieu of those complained of, to be observed by all of such competing public service companies in the locality or localities specified as shall be found reasonable, remunerative, nondiscriminatory, legal, and fair or tending to prevent oppression or monopoly or to encourage competition, and upon any such hearing it shall be proper for the commission to take into consideration the rates, charges, rules, regulations and practices of the public service company or companies complained of in any other locality or localities in the state.

All matters upon which complaint may be founded may be joined in one hearing, and no motion shall be entertained against a complaint for misjoinder of complaints or grievances or misjoinder of parties; and in any review of the courts of orders of the commission the same rule shall apply and pertain with regard to the joinder of complaints and parties as herein provided: PROVIDED, All grievances to be inquired into shall be plainly set forth in the complaint. No

complaint shall be dismissed because of the absence of direct damage to the complainant.

Upon the filing of a complaint, the commission shall cause a copy thereof to be served upon the person or company complained of, which shall be accompanied by a notice fixing the time when and place where a hearing will be had upon such complaint. The time fixed for such hearing shall not be less than ten days after the date of the service of such notice and complaint, excepting as herein provided. Rules of practice and procedure not otherwise provided for in this title may be prescribed by the commission.

RCW 81.04.380 Penalties --Violations by public service companies. Every public service company, and all officers, agents and employees of any public service company, shall obey, observe and comply with every order, rule, direction or requirement made by the commission under authority of this title, so long as the same shall be and remain in force. Any public service company which shall violate or fail to comply with any provision of this title, or which fails, omits or neglects to obey, observe or comply with any order, rule, or any direction, demand or requirement of the commission, shall be subject to a penalty of not to exceed the sum of one thousand dollars for each and every offense. Every violation of any such order, direction or requirement of this title shall be a separate and distinct offense, and in case of a continuing violation every day's continuance thereof shall be and be deemed to be a separate and distinct offense.

RCW 81.04.405 Additional penalties – Violations by public service companies and officers, agents, and employees. This statute states, in part: “In addition to all other penalties provided by law every public service company subject to the provisions of this title and every officer, agent or employee of any such public service company who violates...any provision of this title or any order, rule, regulation or decision of the commission...shall incur a penalty of one hundred dollars for every such violation. Each and every such violation shall be a separate and distinct offense and in case of a continuing violation every day’s continuance shall be and be deemed to be a separate and distinct violation.”

WAC 480-62-150 Grade crossing petitions.

(1) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.020 and 81.53.060:

- (a) Opening a railroad-highway crossing at-grade, or by constructing an overcrossing or undercrossing;
- (b) Closing a railroad-highway crossing;
- (c) Constructing supplemental safety measures under RCW 81.48.015(1), including, but not limited to, median barriers;
- (d) Realigning highway or railroad tracks;
- (e) Widening highways;
- (f) Constructing multiple tracks; or
- (g) Changes to crossing surfaces that alter:
 - The dimensions of an existing surface;
 - The angle at which the tracks intersect a highway; or

- The vertical alignment of a crossing (i.e., to accommodate track superelevation, or changes in railroad or roadway grade).

(2) Whenever a railroad company, city, county, the department of transportation, the parks and recreation commission, or the commission seeks to take any of the following actions at a railroad-highway grade crossing, it must file a petition with the commission seeking approval under RCW 81.53.261:

- (a) Modifying or upgrading warning signals or devices;
- (b) Adding a crossing signal;
- (c) Adding gates to a crossing signal;
- (d) Modifying or upgrading circuitry for a warning signal; or
- (e) Installing an intertie between railroad crossing signals and highway traffic signals.

(3) This rule applies to all railroad companies, including logging and industrial railroads, however, it does not apply to crossings within the limits of first class cities, unless federal funding is used at the crossing.

APPENDIX B



WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

MEEKER SOUTHERN RAILROAD	)	DOCKET NO. <u>TR-100036</u>
Petitioner,)	
vs.	)	PETITION TO MODIFY A
PIERCE COUNTY PUBLIC WORKS & UTILITIES	)	HIGHWAY-RAIL GRADE CROSSING
Respondent	)	USDOT CROSSING #085536R
.....	)	UTC CROSSING #42A32.40

2010 JAN -4 PM 4:02
STAFF INVESTIGATION
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

Petitioner MEEKER SOUTHERN RAILROAD hereby asks the Washington Utilities and Transportation Commission to approve pursuant to RCW 81.53.060 the proposed modification of the existing highway-rail grade crossing referenced in this Petition.

Section 1 - Petitioner's Information

Petitioner MEEKER SOUTHERN RAILROAD
Street Address c/o Halinen Law Offices, P.S. 1019 Regents Blvd. Suite 202
City, State and Zip Code Fircrest, WA 98466-6037
Mailing Address, if different than the street address Same as above
Contact Person Name David Halinen
Contact Phone Number and E-mail Address (253) 627-6680 davidhalinen@halinenlaw.com

ORIGINAL

Section 2 – Respondent's Information

Respondent PIERCE COUNTY PUBLIC WORKS AND UTILITIES
Street Address c/o Office of the Pierce County Prosecuting Attorney Civil Division 955 Tacoma Ave S Suite 301
City, State and Zip Code Tacoma, WA 98402-6713
Mailing Address, if different than the street address: Same as above
Contact Person Name: John Salmon III
Contact Phone Number and E-mail Address (253) 798-4282 jsalmon@co.pierce.wa.us

Section 3 – Petitioner's Proposal to Modify a Highway-Rail Grade Crossing

Petitioner proposes to modify 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) by adding a spur track. The design of the proposal is set forth on a five-sheet set of civil engineering design drawings prepared by Sitts & Hill Engineers, Inc., Sheet C1.0 of which bears a December 29, 2009 approval signature by Brian D. Stacy, P.E. on behalf of the Pierce County Public Works Director and Sheets C1.1, C1.2, C1.3 and C2.0 of which also bear an October 20, 2009 approval signature by Pierce County Engineer Brian D. Stacy, P.E. on behalf of the Pierce County Public Works Director. A set of copies of those drawings is attached to this Petition and is hereby incorporated in its entirety 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.) is incorporated in its entirety herein by reference. Among other things, the report and supporting documents contained in the binder set forth:

- (a) An overview and details of the current crossing and the proposed modification;
- (b) Expected crossing characteristics after the modification;
- (c) Current highway traffic information;
- (d) Sight distance considerations; and
- (e) Proposed warning signals and devices.

Section 4 – Proposed crossing signals and other warning devices

Following consultation with Pierce County Public Works and the WUTC Staff, the proposed crossing modification includes installation of the following items and performance of the related work called-for by the accompanying civil engineering design drawings and in the *Engineering Review and Evaluation (Third Revised Version)* report:

- (1) Three pairs of flashing light signals (with an associated warning bell and with “RAILROAD CROSSING” cross-bucks and “2 TRACKS” signage) on each of two flashing-light crossing signal assembly masts (one mast to be located along the east edge of 134th to the south of the spur track and the other mast to be located along the west edge of 134th to the north of the existing main line track), with such flashing lights and bells set up to be automatically activated when any train begins entry into a detection zone of energized track to be installed along both the main track and the spur track and centered across 134th’s centerline;
- (2) A signal equipment bungalow;
- (3) A back-up power supply;
- (4) A “STOP HERE WHEN FLASHING” sign with a downward arrow (MUTCD sign R8-10) mounted on each of the two Flashing Lights Signal poles at the correct height per the MUTCD;
- (5) An emergency notification sign (MUTCD sign I-13) to be mounted on the signal equipment bungalow as called for on Sheet C1.1 of the Sitts & Hill Engineers, Inc. drawings;
- (6) Trimming down existing brush to a maximum height of two feet within the “clearing sight distance triangles” shown on Sheet C1.0 of the accompanying civil engineering design drawings (and continually maintaining the brush within those triangles at a maximum height of two feet) and annually limbing the lower branches of existing trees within those triangles; and
- (7) 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 line and the Phase 1 Service Siding.

Section 5 – Execution of Petition on Behalf of the Petitioner

This Petition is executed this 31st day of December, 2009.

Ballard Terminal Railroad Company, LLC
dba Meeker Southern Railroad

By: Byron D. Cole
Byron D. Cole, Managing Member

Waiver of Hearing

The undersigned represents the Respondent in the petition to modify this highway-railroad grade crossing.

We have investigated the conditions at the crossing proposed for modification. We are satisfied the conditions are the same as described by the Petitioner in this docket. We agree the crossing be modified and consent to a decision by the commission without a hearing.

Dated at Tacoma, Washington on the 31st day of December, 2009.

PIERCE COUNTY PUBLIC WORKS & UTILITIES

J. Salmon WSRA # 20812
Signature of Respondent's Representative

Deputy Prosecuting Attorney
Title

(253) 798-4282
Phone number and e-mail address

J.Salmon@co.pierce.wa.us

955 Tacoma Ave South Suite 301
Mailing address Tacoma WA 98402

APPENDIX C

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

MEEKER SOUTHERN RAILROAD,	)	DOCKET TR-100036
)	
Petitioner,	)	ORDER 01
)	
	)	ORDER GRANTING PETITION TO
	)	MODIFY A PUBLIC HIGHWAY-RAIL
	)	GRADE CROSSING AND UPGRADE
PIERCE COUNTY PUBLIC WORKS	)	WARNING DEVICES AT 134 th
AND UTILITIES,	)	AVENUE EAST
)	
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 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.
- 2 Respondent Pierce County Public Works and Utilities consented to entry of an Order by the Commission without further notice or hearing.
- 3 Current railroad warning devices at the crossing consist of cross bucks, advance warning signs, and pavement markings.
- 4 134th Avenue East is classified as a collector arterial with two-lane, two-way traffic and a posted vehicle speed limit of 35 miles per hour (mph). Average annual daily traffic through the crossing is estimated at 2,525 vehicles, including eight school bus trips. Commercial motor vehicle traffic is minimal.
- 5 The Petitioner currently operates trains over the crossing 10 days per month. On these operating days, Meeker Southern operates four trains per day over a single main line track. The maximum allowable train speed limit is 10 mph. No passenger trains operate on these tracks.

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ORDER 01

PAGE 2

- 6 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 number of trains using the crossing on operating days to 12 and eventually up to 18 per operating day.
- 7 Meeker Southern will upgrade the passive warning devices to shoulder-mounted flashing lights. Motion sensitive train detection will be installed to detect approaching trains. Each assembly mast will have three pairs of 12-inch flashing LED light signals; pedestrian bell; cross buck sign; "2 Tracks" sign, and a "Stop Here When Flashing" sign. The signal equipment bungalow will contain a back-up power supply, power-on indicator light, and an emergency notification sign.
- 8 Meeker Southern will also install advance warning signs and pavement markings in accordance with the design drawings submitted with this petition. In addition, Meeker Southern will trim and maintain existing brush within the clearing sight distance triangles as specified in the design drawings. The existing crossing surface will be upgraded from plank to asphalt. The new spur track crossing surface will also be asphalt.
- 9 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.

FINDINGS AND CONCLUSIONS

- 10 (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.*
- 11 (2) The 134th Avenue East grade crossing, identified as USDOT #085536R, is a public railroad-highway grade crossing within the state of Washington.
- 12 (3) WAC 480-62-150(1)(f) requires that the Commission grant approval prior to constructing multiple railroad tracks at a crossing and WAC 480-62-150(2)(b) requires that the Commission grant approval prior to adding active crossing signal warning devices at a public railroad-highway grade crossing within the state of Washington.
- 13 (4) Commission Staff investigated the petition and recommended that it be granted with conditions.

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ORDER 01

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- 14 (5) After examination of the petition filed by Meeker Southern Railroad on January 4, 2010, and giving consideration to all relevant matters and for good cause shown, the Commission grants the petition.

ORDER

THE COMMISSION ORDERS:

- 15 The petition of Meeker Southern Railroad to modify a railroad-highway grade crossing and upgrade warning devices at the intersection of 134th Avenue East and Petitioner's tracks in Pierce County is granted. Approval of the petition is subject to the following conditions:
- (1) The modifications must conform to those described and attached to the petition and set forth on the five-sheet set of civil engineering design drawings. The drawings are identified by December 29, 2009, and October 20, 2009, approval signatures by Brian D. Stacy, P.E., on behalf of Pierce County Public Works Director.
 - (2) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.
 - (3) All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding.

The Commissioners, having determined that this filing complies with the requirements of WAC 480-62-150(1)(f), WAC 480-62-150(2)(b) and RCW 81.53.030, directed the Secretary to enter this Order.

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ORDER 01

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DATED at Olympia, Washington, and effective January 12, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary

NOTICE: This is an order delegated to the Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least fourteen (14) days a listing of all matters delegated to the Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).

APPENDIX D

From: Hunter, Kathy (UTC)
Sent: Monday, November 01, 2010 11:38 AM
To: 'Byron Cole'
Cc: Curl, Paul (UTC); 'Jerry Bryant'
Subject: New Spur Track at the 134th Avenue Crossing

Bryon,

It's my understanding that the new spur line has been installed and the main line crossing surface repaved as part of the crossing surface modification.

When will the active warning devices be installed? The final order states, as a condition:

"All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding."

The County and UTC staff should be notified when all modifications to the crossing are complete and prior to operations beginning on the spur line.

Thank you.

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 586-1150

APPENDIX E

Hunter, Kathy (UTC)

From: Byron Cole [byroncole2@comcast.net]
Sent: Wednesday, December 01, 2010 10:58 AM
To: Hunter, Kathy (UTC)
Cc: byroncole@comcast.net
Subject: RE: USDOT Number Posted at Shaw Road

Kathy:

Sorry about the missing message, I don't know what I did there. Probably multi-tasking, but not very effectively.

As to signage at the new MSN/Shaw Road grade crossing: I am having a second sign made, as I decided to subscribe to a contractor furnished answering service for all grade crossings on both MSN and BDTL. I should have it within a week. We will update our other bungalows within the next few months.

Regarding progress on the crossing at 134th avenue east, we continue to gather the required components needed to control the flashing lights. We are also keeping a close eye on the stability of the newly constructed spur subgrade and grade, and our customers retaining wall, by operating a test train about once a week. The conductor on the test train hand flags the crossing as needed. We will be meeting, on site, with Pierce County Public Works, fairly soon to discuss the grade of the north approach of 134th, to our mainline track. This grade does not meet federal highway standards for gradients on approaches to railroad tracks. It is too steep, and has been this way for years. In addition, the paving is narrower at this point than at any other place in the vicinity of the crossing.

Regards, Byron

From: Hunter, Kathy (UTC) [mailto:khunter@utc.wa.gov]
Sent: Wednesday, November 24, 2010 10:25 AM
To: Byron Cole
Subject: RE: USDOT Number Posted at Shaw Road

Hi Byron,

There was no message included in the e-mail you sent me late Monday. Did you mean to include some information?

Thanks -

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 588-1150

From: Byron Cole [mailto:byroncole2@comcast.net]
Sent: Monday, November 22, 2010 6:12 PM
To: Hunter, Kathy (UTC)
Cc: byroncole@comcast.net
Subject: RE: USDOT Number Posted at Shaw Road

From: Hunter, Kathy (UTC) [mailto:khunter@utc.wa.gov]
Sent: Friday, November 19, 2010 1:55 PM
To: Byron Cole
Subject: USDOT Number Posted at Shaw Road

Hi Byron,

Checking back in with you to see if the USDOT's (sign) has been posted at the new Shaw Road crossing.

Thanks -

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 586-1150

APPENDIX F



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

December 7, 2010

Byron Cole
Meeker Southern Railroad
4725 Ballard Avenue NW
Seattle WA 98107-4810

Sent via E-mail and First Class Mail

**Re: TR-100036 – Status of Crossing Modifications at 134th Avenue East
USDOT #085536R**

Dear Mr. Cole:

Thank you for your December 1, 2010, e-mail regarding progress on the crossing modifications at the 134th Avenue East grade crossing in Pierce County. A copy of the e-mail is attached. Washington Utilities and Transportation Commission (Commission) staff is very concerned about the current situation you describe at this crossing. As we understand it, the spur track was constructed several weeks ago but the flashing light signals and other warning devices have not yet been installed in compliance with Commission Order 01 in Docket TR-100036. A copy of this order is attached.

We further understand that you have been operating trains on a regular basis over the modified crossing on the main line track and about once a week over the spur track for "testing" purposes. The 134th Avenue crossing does not have the appropriate level of protection for highway users. Staff strongly believes that these operations present an unacceptable and unnecessary risk to public safety and must be remedied immediately.

In accordance with Washington Administrative Code (WAC) 480-07-883, you are directed to submit a plan of action for full compliance with the Commission's Order by December 20, 2010. A copy of WAC 480-07-883 is attached. Staff expects the plan to include:

- A reasonable timeline for fully conforming to the conditions in Order 01 in Docket TR-100036, dated January 12, 2010.

Byron Cole
December 7, 2010
Page 2

- Specific steps you will take to protect the public until the signals and other safety devices are installed and fully operational. To say “[t]he conductor on the test train hand flags the crossing as needed” is not acceptable.

This letter also serves as official notice that Commission staff considers any commercial use of the spur track as currently configured to be a violation of Commission Order 01 in Docket TR-100036, issued January 12, 2010. Commercial use in this context is defined as dropping off or picking up cars at your customers’ facility for compensation. If staff finds any material violation of the Commission’s Order, we intend to initiate enforcement action which may result in an emergency cease and desist or abatement order and monetary penalties up to \$1,000 per violation.

If you have questions or require additional information, please contact Kathy Hunter at (360) 664-1257 or khunter@utc.wa.gov.

Sincerely,



David W. Danner
Executive Director and Secretary

Attachments

cc: David Halinen, Attorney, Meeker Southern Railroad
John Salmon, Attorney, Pierce County
Jerry Bryant, Pierce County
Marlene Ford, Pierce County

Hunter, Kathy (UTC)

From: Byron Cole [byroncole2@comcast.net]
Sent: Wednesday, December 01, 2010 10:58 AM
To: Hunter, Kathy (UTC)
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Thanks -

Kathy Hunter, Deputy Assistant Director, Transportation Safety
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- 9 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.

FINDINGS AND CONCLUSIONS

- 10 (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.*
- 11 (2) The 134th Avenue East grade crossing, identified as USDOT #085536R, is a public railroad-highway grade crossing within the state of Washington.
- 12 (3) WAC 480-62-150(1)(f) requires that the Commission grant approval prior to constructing multiple railroad tracks at a crossing and WAC 480-62-150(2)(b) requires that the Commission grant approval prior to adding active crossing signal warning devices at a public railroad-highway grade crossing within the state of Washington.
- 13 (4) Commission Staff investigated the petition and recommended that it be granted with conditions.

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ORDER 01**

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- 14 (5) After examination of the petition filed by Meeker Southern Railroad on January 4, 2010, and giving consideration to all relevant matters and for good cause shown, the Commission grants the petition.

ORDER

THE COMMISSION ORDERS:

- 15 The petition of Meeker Southern Railroad to modify a railroad-highway grade crossing and upgrade warning devices at the intersection of 134th Avenue East and Petitioner's tracks in Pierce County is granted. Approval of the petition is subject to the following conditions:
- (1) The modifications must conform to those described and attached to the petition and set forth on the five-sheet set of civil engineering design drawings. The drawings are identified by December 29, 2009, and October 20, 2009, approval signatures by Brian D. Stacy, P.E., on behalf of Pierce County Public Works Director.
 - (2) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.
 - (3) All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding.

The Commissioners, having determined that this filing complies with the requirements of WAC 480-62-150(1)(f), WAC 480-62-150(2)(b) and RCW 81.53.030, directed the Secretary to enter this Order.

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ORDER 01**

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DATED at Olympia, Washington, and effective January 12, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary

NOTICE: This is an order delegated to the Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least fourteen (14) days a listing of all matters delegated to the Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).

WAC 480-07-883

Compliance filing — Filing requirements; timing; commission action.

A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by falling short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has preapproved the variance. If the commission accepts in error a compliance filing that does not comply with the order authorizing the filing, the commission's acceptance does not validate the noncompliant elements of the filing.

(1) Filing requirements.

(a) A party who files a compliance filing must make its filing consistent with the filing requirements of the docket authorizing the filing, i.e., file the required number of copies, and serve the filing on all other parties in the docket.

(b) A compliance filing must include the following:

- (i) A cover letter that identifies the order to which the filing relates;
- (ii) All required tariff sheets; and
- (iii) Work papers that clearly demonstrate the derivation of the proposed tariffs.

(2) **Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

(3) Timing; effective date.

(a) The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

(b) A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

(4) Commission action on compliance filing.

(a) The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

- (i) Approves the compliance filing; or
- (ii) Rejects a compliance filing or any portion of the filing that apparently fails to comply.

(b) If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refiling.

(c) If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.

APPENDIX G

HALINEN LAW OFFICES, P.S.
A Professional Service Corporation

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December 20, 2010

VIA EMAIL AND HAND-DELIVERED

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

Re: TR-100036

(1) Response on behalf of my client Meeker Southern Railroad to your December 7, 2010 letter to him and (2) submission of Meeker's Motion for Amendment of Order 01 along with a proposed form of order amending Order 01
(USDOT Crossing No. 085536 R)
(WUTC Crossing No. 42A32.40)

Dear Mr. Danner:

I am writing on behalf of my client Meeker Southern Railroad ("Meeker") in response to your December 7, 2010 letter to Meeker's general manager, Byron Cole. Since the time of Mr. Cole's receipt of your letter, he and I have discussed the subject matter of your letter by phone on at least two occasions with Kathy Hunter of your office. Mr. Cole and I have also discussed that subject matter and the status of the crossing project during a site meeting at the subject crossing on Thursday, December 16, 2010 with Jerry Bryant and Marlene Ford of the Pierce County Department of Public Works & Utilities. Further, I have discussed the matter with Mr. Bryant by phone both before and after that meeting. In addition, I have had phone discussions concerning this matter with Assistant Washington Attorney General Fronda Woods, who represents your office.

As a result of these efforts, we contend that an amendment to the conditions set forth in the Commission's Order 01 in Docket TR-100036 dated January 12, 2010 would be appropriate and that compliance therewith would not present an unacceptable or unnecessary risk to public safety. Accordingly, I herewith submit Meeker's Motion for Amendment of Order 01 (along with a proposed form of order amending Order 01). The Motion sets forth the factual basis for this contention.

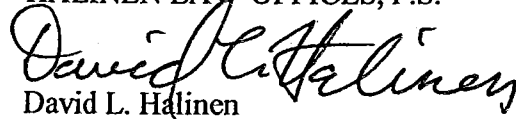
Please note that the accompanying Motion and the proposed amending order address the expectations set forth in bullet points in your December 7, 2010 letter to Mr. Cole. In that regard, the Motion and the proposed amending order provide (1) a timetable for fully conforming

to the conditions in the proposed amended order (see Table 1 attached thereto) and (2) specific steps that Meeker hereby proposes to take to protect the public until the signals and other safety devices are installed and fully operational consistent with the proposed amended order (see Table 2 attached thereto).

Please let me know immediately if you have any questions or comments.

Sincerely,

HALINEN LAW OFFICES, P.S.


David L. Halinen

Enclosures (Motion to Amend Order 01; [Proposed] Order Amending Order 01)

- cc: Meeker Southern Railroad
Attn: Byron Cole, Manager (via email and First Class Mail, with copies of enclosures)
- Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC
(via email and hand-delivered through the Records Center, with copies of enclosures)
- Frona Woods, Washington Attorney General's Office (via email and hand-delivered
through the Records Center, with copies of enclosures)
- Gregary B. Heath, P.E., P.T.O.E., Heath & Associates, Inc. (via First Class Mail, with
copies of enclosures)
- Robert Dahmen, P.E., Sitts & Hill Engineers, Inc. (via email and First Class Mail, with
copies of enclosures)
- John F. Salmon III, Deputy Pierce County Prosecutor (via email and First Class Mail,
with copies of enclosures)
- Jerry P. Bryant, P.E., Field Engineering Manager, Pierce County Public Works &
Utilities Department, Field Engineering Division (via email and First Class Mail,
with copies of enclosures)
- Marlene Ford, P.E., P.T.O.E., Associate County Traffic Engineer, Pierce County Public
Works & Utilities Department, Traffic Engineering Division (via email and First
Class Mail, with copies of enclosures)

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 &	)	CROSSING AND UPGRADE
UTILITIES	)	WARNING DEVICES AT 134TH
	)	AVENUE EAST)
Respondent)	
	)	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


Staff Investigation - Meeker Southern Railroad - TR-110221

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	<p>(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).</p> <p>(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.</p>

<p>5</p>	<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>
<p>6</p>	<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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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:

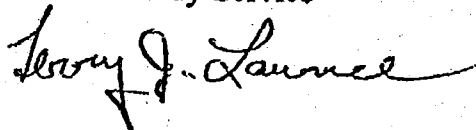
Sound Delivery Service has recently moved its operational facilities from Seattle to its new 7.99-acre site at 13505 Pioneer Way East just outside the City of Puyallup. Our company's primary business is flatbed trucking and railcar transloading of large, heavy construction materials and equipment as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

<p align="center">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</p>		
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.

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

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

BACKGROUND

- 1 Pursuant to a delegation to the Commission’s Secretary for decision, on January 12, 2010 the Commission’s Executive Director and Secretary David W. Danner issued Order 01 under Docket No. TR-100036 granting Petitioner MEEKER SOUTHERN RAILROAD’s petition to modify a public highway-rail grade crossing and upgrade warning devices at 134th Avenue East in unincorporated Pierce County.

- 2 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 was prepared by Sitts & Hill Engineers, Inc. and

Public Works Director 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.

3 On December 20, 2010, Petitioner filed a motion to amend Order 01 (the "Motion") seeking an order correcting Background ¶ 5 and amending Conditions 1 and 3 as currently set forth in Order 01.

4 In addition to specifying the location of the proposed spur, the Original Design Drawings specified certain planned 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 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 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 (as was contemplated by Background ¶ 8 of Order 01), and the newly constructed spur track crossing surface is now asphalt (as was contemplated by Background ¶ 8 of Order 01).
- 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.

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). A proposal by Meeker proposal to regrade 134th to the north to a point approximately 50 lineal feet north of the main line track's centerline was set forth in the Motion and 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

approved by Public Works). (The now-proposed regrading and repaving of 134th to the north of the main line track is planned to 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 contemplated by the Original Design Drawings, 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 amending order 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, was prepared in consultation with Mr. Bryant of the Pierce County Department of Public Works & Utilities and is acceptable to that Department.

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 (a customer of Petitioner) 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.

14 Attached to this amending order as Exhibit B 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. 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.

FINDINGS AND CONCLUSIONS

- 15 (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.*

- 16 (2) The 134th Avenue East grade crossing, identified as USDOT #085536R, is a public railroad-highway grade crossing within the state of Washington.
- 17 (3) WAC 480-62-150(1)(f) requires that the Commission grant approval prior to constructing multiple railroad tracks at a crossing and WAC 480-62-150(2)(b) requires that the Commission grant approval prior to adding active crossing signal warning devices at a public railroad-highway grade crossing within the state of Washington. In Order 01, the Commission granted such approval for the t134th Avenue East grade crossing, subject to three conditions.
- 18 (4) On December 20, 2010, the Petitioner filed a motion to amend Order 01.
- 19 (5) The Commission has authority to amend its prior orders. *RCW 80.04.210 and WAC 480-07-875.*
- 20 (6) Commission Staff has reviewed the motion and its supporting exhibits and has recommended that it be granted as set forth below.
- 21 (7) The Pierce County Department of Public Works & Utilities has advised the Commission that it has no objection to the grant of the Motion.
- 22 (8) Granting Petitioner's Motion would be in the public interest and would not present an unacceptable or unnecessary risk to public safety.

ORDER

THE COMMISSION ORDERS:

- 23 (1) Petitioners Motion to Amend Order 01 is hereby granted.
- 24 (2) Background ¶ 5 of Order 01 is hereby 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.
- 25 (3) Approval Condition 1 of Order 01 is hereby amended to state:
- (1) The crossing modifications must conform to those described and attached to the petition and set forth on the five-sheet set of civil engineering design drawings. The drawings are identified by December 29, 2009, and October 20, 2009, approval signatures by Brian D. Stacy, P.E., on behalf of Pierce County Public Works Director, as those drawings may be

supplemented and/or revised by Sitts & Hill Engineers, Inc. (consistent with Table 1 attached to this amending order as Exhibit A) and thereafter approved by or on behalf of the Pierce County Public Works Director following consultation with the Commission's Staff. Leave is hereby granted to Meeker to have Sitts & Hill Engineers, Inc. supplement and/or revise the drawings consistent with Table 1.

26 (3) Approval Condition 3 of Order 01 is hereby amended to state:

(3) All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed (a) in a timeframe consistent with the time schedule set forth in Table 1 attached to this amending Order as Exhibit A and shall be and (b) to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff ~~prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding~~; PROVIDED, HOWEVER, that (i) Petitioner may immediately operate the spur line and Phase 1 Service Siding subject to the Special Requirements and Restrictions set forth in Table 2 attached to this amending order as Exhibit B and (ii) following installation and commencement of operation of the remainder of the automatic flashing lights crossing signal system for the crossing and of corresponding traffic control signs (which must occur by March 1, 2011), Petitioner must thereafter operate the spur line and Phase 1 Service Siding with the automatic flashing lights crossing signal system in operation.

The Commissioners, having determined that this filing complies with the requirements of WAC 480-62-150(1)(f), WAC 480-62-150(2)(b) and RCW 81.53.030, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective _____, 201_.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary

NOTICE: This is an order delegated to the Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least fourteen (14) days a listing of all matters delegated to the Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).

Y:\cf2585\010\WUTC\Order Amending Order 01\Proposed\ Order Amending Order 01 D1 (DLH 12-20-10).doc

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	<p>(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).</p> <p>(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.</p>

<p>5</p>	<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>
<p>6</p>	<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>

Staff Investigation - Meeker Southern Railroad - TR-110221

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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<p align="center">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</p>		
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.

APPENDIX H



Pierce County

Public Works and Utilities

2702 South 42nd Street, Suite 201
Tacoma, Washington 98409-7322
(253) 798-7250 • Fax (253) 798-2740
December 30, 2010

Brian J. Ziegler, P.E.
Director

Brian.Ziegler@co.pierce.wa.us

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



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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 impedance 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.

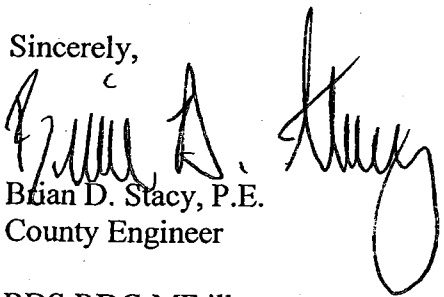
Washington Utilities and Transportation Commission

December 30, 2010

Page 4

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
Frona Woods, Assistant Attorney General, WUTC
Terry Lawrence, Sound Delivery Service
Jerry Bryant, P.E., Field Engineering Manager, Public Works & Utilities
Marlene Ford, P.E., Associate Traffic Engineer, Pierce County
BDS/Letters/Danner response

CERTIFIED PAYROLL REPORT												
For the week ending:			Meeker Southern Railroad Flagging Personnel									
Month	Day	Year	134 Avenue East & Pioneer Way East Rail Crossing									
Name and Address of Employee			Day and Date (i.e. 10/10/11)						Total Hrs			
			Sun	Mon	Tues	Wed	Thu	Fri				Sat
			Hours Worked Each Day (i.e. 9:00 AM - 3:00 PM)									
			1									
			2									
			3									
			4									
			5									
Today's Date:			Printed name of party signing this report:						Title:			
The party signing this report pays or supervises the payment (Name of flagging Company)												
Project Name:			134 Av E Railroad Crossing									
For the week starting:			For the week ending:									
The party signing below declare under penalty of perjury that all information contained in this Certified Payroll Report is correct and complete and that all persons hold a current certified flagging card.												
Print name of party signing this report:			Title:						Signature:			

PERFORMANCE BOND

Meeker Southern Rail Road, as Principal, and _____
as Surety, are held and firmly bound unto Pierce County, a political subdivision of the State of
Washington, as Obligee, hereinafter referred to as the County, in the full and just sum of \$
_____, the payment of which to be made we do bind ourselves, successors, and
assigns firmly by these presents.

The purpose of this Bond is to secure the completion and approval of the following.

Construct Railroad Crossing at 134th Avenue East and Pioneer Way East according to Plans and
Specifications referenced in the Washington Utilities and Transportation Commission Order
issued on day/month/2011. The parties understand that time is of the essence. Therefore all
work must be completed by May 2, 2011, in accordance with the schedule set out in the Order
and failure to complete the work within that time period shall constitute failure of the principle to
complete the work.

The requirements will be met or the work performed in accordance with the applicable County
ordinance (s), approvals, permits, mitigation and/or approved plans.

The Principal is constructing a railroad crossing at 134th Avenue East and Pioneer Way East in
Pierce County.

The County requires that a good and sufficient bond be furnished by said Principal guaranteeing
the satisfactory completion of said requirements or work. The condition of this obligation is
such that said Principal shall complete said requirements and perform work to the satisfaction of
the County. This obligation shall remain in full force and effect until a written release is
received from Pierce County.

Upon failure of the Principal to complete the requirement or work, the Surety shall, within 7 days
of receiving notice of Principal's failure make a written commitment to Pierce County that it will
(a) cure the default to the satisfaction of the County within a time period agreed to by the Surety
and the County, or (b) tender to the County the full amount of the Bond.

Should the Surety elect option (b), then upon completion of the requirements or work and
acceptance of such requirements or work by the County, the County shall, after acceptance of
any warranty, monitoring, or other ordinance requirements, return and excess to the Surety.

The obligations of the Surety and Principal shall not be discharged and shall remain in effect in
the event of any extension of time for the Principal's performance of the requirements or work,
including amendments thereto. The Surety hereby waives notice of any extensions or
amendments.

The Principal's obligation to perform the requirements or work or pay fees and other amounts is not limited to the amount of this Bond.

No right of action shall accrue hereunder to or for the use of any persons, firm or corporation other than the County. In the event that this project becomes part of an incorporated area, Pierce County may transfer its rights and obligations under this Bond to any successor jurisdiction. Notice of the transfer will be mailed to the last known address of the Principal and Surety.

If this financial guarantee is collected for any reason, Pierce County will not accept subsequent financial guarantees from the above-named Principal.

Dated this _____ day of _____, 20__.

PRINCIPAL

SURETY

Print Name of Company

Print Name of Principal

Address

City State Zip

Telephone Number

Signature of Principal

Name of Surety

Address

City State Zip

Telephone Number

Signature of Surety
Attach Power of Attorney Form to Bond

PIERCE COUNTY

Address

City State Zip

Telephone Number

**DO NOT FAX THIS FORM
ONLY ORIGINAL SIGNATURES WILL BE ACCEPTED**

APPENDIX I

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

MEEKER SOUTHERN RAILROAD,

Petitioner,

v.

PIERCE COUNTY PUBLIC WORKS &
UTILITIES,

Respondent.

DOCKET TR-100036

COMMISSION STAFF RESPONSE
TO PETITIONER'S MOTION TO
AMEND ORDER 01

1 In accordance with the December 23, 2010 letter from David Danner to John Salmon, Washington Utilities and Transportation Commission Staff ("Commission Staff" or "Staff") submit this response to Petitioner's Motion to Amend Order 01.¹ Staff will agree to the amendments requested by Petitioner Meeker Southern Railroad ("Meeker"), but only if additional conditions are imposed to protect the public and assure compliance. If the Commission uses the proposed order filed by Meeker as a starting point for its ruling, Staff also requests that certain factual misrepresentations in the proposed order be deleted.

I. SCHEDULE AND CONDITIONS FOR COMPLETION OF WORK

2 In Paragraph 11 of its motion, Meeker proposes to amend Order 01 by appending a schedule for completion of crossing improvements at 134th Avenue East. The Commission

¹ In its motion and propose order, Meeker cites RCW 80.04.210 as the basis for the Commission's authority to amend Order 01. That citation is incorrect. The correct citation is RCW 81.04.210, which authorizes the Commission to amend orders that apply to railroads. See RCW 81.04.010 (a "public service company" under RCW Title 81 includes every railroad).

has authority to fix the time within which the work must be performed, and Staff agrees that a schedule is desirable.² Staff believes that the schedule Meeker has proposed in Table 1 (Exhibit A to Meeker's motion) is reasonable, but recommends that the Commission impose additional conditions.

3 First, Staff recommends that Meeker be directed to file reports with the Commission describing Meeker's progress in completing the work described in Table 1. Reports should be due on the 1st and 15th of each month. Staff will recommend penalties if Meeker does not file the reports or complete the work on time.³

4 Second, Staff recommends another reporting condition. In Paragraph 18 of its motion, and in Paragraph 25 of its proposed order, Meeker proposes that it be permitted to revise the engineering design drawings submitted in this docket upon approval by Pierce County without need of a further order from the Commission. Staff agrees that Commission approval is unnecessary for revisions that do not relate to public safety at the 134th Avenue East crossing,⁴ but Staff needs an opportunity to examine any revisions to determine whether they implicate the Commission's jurisdiction. Meeker should be required to file with the Commission notice that revisions have been made, along with any revised design drawings, within seven days of the completion of any revisions. If Staff learns that revisions have been made without notice to the Commission, Staff will recommend penalties.⁵

5 Third, Staff recommends a bonding condition. In its response filed on December 30, 2010, Pierce County states that it will require Meeker to execute a performance bond or assignment of funds to guarantee performance of the work at the 134th Avenue East

² RCW 81.53.140.

³ See RCW 81.04.380; RCW 81.04.405.

⁴ See RCW 81.53.060; RCW 81.53.261.

⁵ See RCW 81.04.380; RCW 81.04.405.

crossing. Order 01 in this docket does not mention financial responsibility, but other materials in the Commission's files suggest that the parties expected Meeker to be responsible for all costs of the modifications at the 134th Avenue East crossing.

6 Docket TR-100036 is a successor to Docket TR-081407, which involved the same crossing and the same parties. After a settlement was reached in Docket TR-081407, the parties elected to dismiss the petition in TR-081407 and open a new docket instead of using the settlement procedures of WAC 480-07-740.⁶ The file in Docket TR-081407 includes a transcript of a prehearing conference convened on December 7, 2009. The transcript contains this statement by Pierce County:

The County's concerns were essentially that the crossing comply with all the requirements in the manual on uniform traffic control devices and also that the County not be held responsible for any of the costs of the improvement at the crossing, and we understand that part of the new petition, we are going to make it very clear that the County won't be responsible for any of the costs
.....⁷

The transcript does not show that any party objected to or disagreed with the quoted statement.

7 Under RCW 81.53.130, the Commission has authority to apportion costs between Meeker and Pierce County. Commission Staff believes that Pierce County's request for a bond is appropriate, and that the Commission should include that condition in its order.

II. CONDITIONS FOR OPERATING TRAINS BEFORE ACTIVE WARNING DEVICES ARE OPERATIONAL

8 In Paragraph 14 of its motion and proposed order, Meeker proposes to amend condition (3) in Paragraph 15 of Order 01. Condition (3) provides that all work shown on

⁶ See *Meeker S. R.R. v. Pierce Cnty. Pub. Works & Utils.*, Docket TR-081407, Order 04, Initial Order Granting Motion to Dismiss Petition, Without Prejudice (Wash. Utils. & Transp. Comm'n, Jan. 6, 2010).

⁷ *Meeker S. R.R. v. Pierce Cnty. Pub. Works & Utils.*, Docket TR-081407, Transcript Vol. II at 33:17-24 (Wash. Utils. & Transp. Comm'n, Dec. 7, 2009).

the design drawings for the spur track at the 134th Avenue East crossing must be completed to the reasonable satisfaction of Commission Staff before Meeker starts running trains over the spur line. Among other things, the design drawings show that active warning devices must be installed. Meeker now proposes to run trains on the spur track before active warning devices are operational, subject to the conditions described in Table 2 (Exhibit C to Meeker's motion). Staff is not pleased with Meeker's delay in installing the active warning devices or with Meeker's apparent disregard of Order 01. Nevertheless, Staff will agree to a modification of Order 01 to include the conditions described in Table 2, but only if the additional conditions described below are also included.

9 First, Staff requests that Item 5 in Table 2 be revised to read as follows:

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 either the spur track or the mainline track.

10 Second, Staff requests that Meeker be required to file reports, due on the 1st and 15th of each month, containing the following information verifying compliance with the conditions in Table 2:⁸

- a. Daily number of trains crossing 134th Avenue East on the spur track, their length, and the date and time of each crossing.
- b. Daily number of trains crossing 134th Avenue East on the mainline track, and the date and time of each crossing.
- b. Certified Payroll Reports listing the flaggers controlling traffic at the 134th Avenue East crossing, and showing the dates and times worked by each flagger. Staff agrees with the form proposed by Pierce County in its response filed on December 30, 2010 in this docket. Staff also requests that Meeker be required to file evidence that each flagger listed on the Certified Payroll Reports holds a valid traffic control flagger card that meets the requirements of WAC 296-155-305(6). A photocopy of each flagger's card would be such evidence.

⁸ In its response, Pierce County states that Meeker should file "bi-weekly Certified Payroll Reports." Staff recommends that the reports should be due on a date certain approximately every two weeks.

11 If Meeker fails to comply with Table 2 or the conditions described above, Staff will recommend penalties, pursue a cease and desist order, or seek abatement of the crossing.⁹

III. **PROPOSED AMENDMENT OF BACKGROUND PARAGRAPH**

12 Meeker proposes to amend Paragraph 5 of Order 01. It appears that Meeker's proposed amendment applies to Paragraph 6, not ¶ 5. Staff takes no position on the proposed amendment.

IV. **FACTUAL INACCURACIES IN THE PROPOSED ORDER**

13 In Paragraph 12 of Meeker's motion and proposed order, Meeker proposes a change in the type of equipment to be installed in the active warning device system at 134th Avenue East. Staff does not object to Meeker's use of the equipment described in the motion and proposed order. Staff does object, however, to some factual inaccuracies in Paragraph 12. Paragraph 12 represents that Meeker is making this proposal "pursuant to the direction of Ed Harper," an employee of the Commission. There is no evidence that Mr. Harper provided any "direction" to Meeker, and Paragraph 12 mischaracterizes Mr. Harper's role in this matter. Mr. Harper located some surplus state signal equipment that Meeker wishes to use, but did not "direct" Meeker to install it. If the Commission uses the proposed order filed by Meeker as a starting point for its ruling, Staff requests that the phrase "pursuant to the direction of Ed Harper, Chief Grade Crossing Signal Inspector of the Commission" be deleted.

14 Item #5 in Table 1 (Exhibit A) attached to Meeker's motion and proposed order also represents that Mr. Harper "directed" Meeker to install certain equipment. As described above, that is inaccurate. If the Commission uses Meeker's Table 1 as a starting point for its

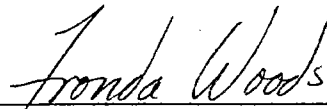
⁹ See RCW 81.04.380; RCW 81.04.405; RCW 81.04.510; RCW 81.53.190; RCW 81.53.210.

ruling on Meeker's motion, Staff requests that the phrase "Pursuant to the direction of Ed Harper, Chief Grade Crossing Signal Inspector of the Washington Utilities and Transportation Commission (WUTC)" be deleted.

DATED this 4th day of January, 2011.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General



FRONDA WOODS, WSBA #18728
Assistant Attorney General
Counsel for Washington Utilities and
Transportation Commission Staff

APPENDIX J

HALINEN LAW OFFICES, P.S.
A Professional Service Corporation

David L. Halinen, P.E., Attorney at Law
davidhalinen@halinenlaw.com

1019 Regents Boulevard, Suite 202
Fircrest, Washington 98466-6037

Tacoma: (253) 627-6680
Seattle: (206) 443-4684
Fax: (253) 272-9876

January 6, 2011

VIA EMAIL AND FIRST CLASS MAIL

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

Re: TR-100036
MEEKER SOUTHERN RAILROAD'S REQUEST FOR LEAVE TO SUBMIT ON OR BEFORE FRIDAY, JANUARY 21, 2011 REPLIES TO BOTH (1) PUBLIC WORKS' DECEMBER 30, 2010 RESPONSE TO MEEKER'S DECEMBER 20, 2010 MOTION FOR AMENDMENT OF ORDER 01 (THE "MOTION") AND (2) THE COMMISSION STAFF'S RESPONSE TO THE MOTION, SUBJECT TO AGREED CONDITIONS AMONG MEEKER, PUBLIC WORKS, AND COMMISSION STAFF SET FORTH HEREIN.
(USDOT Crossing No. 085536 R)
(WUTC Crossing No. 42A32.40)

Dear Mr. Danner:

I am again writing on behalf of my client Meeker Southern Railroad ("Meeker"). Meeker hereby requests leave for submittal of replies on or before Friday, January 21, 2011 to both (1) Public Works' December 30, 2010 response to Meeker's December 20, 2010 Motion for Amendment of Order 01 (the "Motion") and (2) the Commission Staff's response to the Motion. Please let me explain.

Meeker's Byron Cole and I met this morning with Deputy Pierce County Prosecuting Attorney John Salmon and other Pierce County officials regarding the Motion and Public Works' December 30, 2010 response thereto. Meeker, Public Works and Commission Staff are engaged in good faith negotiations seeking to resolve their differences regarding this matter. I have spoken multiple times by phone with Mr. Salmon and Assistant Attorney General Fronda Woods (counsel for Commission Staff) to discuss Meeker having through close of business on Friday, January 21, 2011 in order to submit such replies. The parties believe that having this time window will facilitate settlement.

Mr. Salmon, Ms. Woods and I have agreed on behalf of our respective clients via a three-way phone call late this afternoon that, in conjunction with this request for leave, through Friday,

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
January 6, 2011
Page 2

January 21, 2011 limited operation of the spur by Meeker to serve Sound Delivery Service will be permitted subject to the conditions set forth in Table 2 attached to Meeker's Motion (copy of Table 2 attached hereto as well) and subject to the following additional conditions derived from Paragraphs 9 and 10 of the Staff Response to Meeker's Motion:

- (1) Item 5 in Table 2 is hereby revised to read as follows:

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 either the spur track or the mainline track.

- (2) Meeker will be required to file a report to both Public Works and Commission Staff, due on the 12th and 26th days of January, containing the following information verifying compliance with the conditions in Table 2:

- a. Daily number of trains crossing 134th Avenue East on the spur track, their length, and the date and time of each crossing.
- b. Daily number of trains crossing 134th Avenue East on the mainline track, and the date and time of each crossing.
- c. Certified Payroll Reports (in conformance with the form proposed by Pierce County in its response filed on December 30, 2010 in this docket) listing the flaggers controlling traffic at the 134th Avenue East crossing, and showing the dates and times worked by each flagger.

- (3) Meeker is required to file evidence (which may be sent via email) not later than Monday, January 10, 2011 with Public Works and with Commission Staff (and, in follow-up, via First Class Mail) that each flagger who will be listed on the Certified Payroll Reports holds a valid traffic control flagger card that meets the requirements of WAC 296-155-305(6). A photocopy of each flagger's card would be such evidence.

Thank you for your consideration of this request. Please let me know if you have any questions or comments.

Sincerely,

HALINEN LAW OFFICES, P.S.



David L. Halinen

Enclosure (copy of Table 2 that was attached to Meeker's Motion to Amend Order 01)

David W. Danner, Executive Director and Secretary
Washington Utilities and Transportation Commission
January 6, 2011
Page 3

cc: Meeker Southern Railroad
Attn: Byron Cole, Manager (via email and First Class Mail, with copy of enclosure)

Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC
(via email and First Class Mail, with copy of enclosure)

Frona Woods, Washington Attorney General's Office (via email and First Class Mail,
with copy of enclosure)

Gregary B. Heath, P.E., P.T.O.E., Heath & Associates, Inc. (via email, with copy of
enclosure)

Robert Dahmen, P.E., Sitts & Hill Engineers, Inc. (via email, with copy of enclosure)

John F. Salmon III, Deputy Pierce County Prosecutor (via email and First Class Mail,
with copy of enclosure)

Brian D. Stacy, P.E., County Engineer, Pierce County Public Works & Utilities
Department (via email)

Jerry P. Bryant, P.E., Field Engineering Manager, Pierce County Public Works &
Utilities Department, Field Engineering Division (via email and First Class Mail,
with copy of enclosure)

Marlene Ford, P.E., P.T.O.E., Associate County Traffic Engineer, Pierce County Public
Works & Utilities Department, Traffic Engineering Division (via email and First
Class Mail, with copy of enclosure)

Y:\cf\2585\010\WUTC\Danner LT2 (DLH 1-6-11).doc

<p align="center">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</p>		
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.

APPENDIX K

HALINEN LAW OFFICES, P.S.
A Professional Service Corporation

David L. Halinen, P.E., Attorney at Law
davidhalinen@halinenlaw.com

1019 Regents Boulevard, Suite 202
Fircrest, Washington 98466-6037

Tacoma: (253) 627-6680
Seattle: (206) 443-4684
Fax: (253) 272-9876

January 12, 2011

VIA EMAIL AND FIRST CLASS MAIL

Pierce County Public Works and Utilities
Office of the County Engineer
Field Engineering Division
Attn: Jerry P. Bryant, P.E., Field Engineering Manager
Tacoma Mall Office Building
4301 S. Pine Street, Suite 446
Tacoma, WA 98409-7207

Pierce County Public Works and Utilities
Traffic Engineering Division
Attn: Marlene Ford, P.E., P.T.O.E., Associate County Traffic Engineer
Tacoma Mall Office Building
4301 S. Pine Street, Fifth Floor
Tacoma, WA 98409-7207

John F. Salmon III
Office of the Pierce County Prosecuting Attorney
Civil Division
955 Tacoma Avenue S., Suite 301
Tacoma, WA 98402-6713

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Frona Woods
Assistant Attorney General
Utilities and Transportation Division
P.O. Box 40128
1400 S. Evergreen Park Drive S.W.
Olympia, WA 98504-0218

Re: WUTC Docket No. TR-100036
(1) Meeker's Report #1 on Interim Use of the Spur at the 134th Crossing and (2)
Photocopy of a New Flagger Card for Jim L. Rose
(USDOT Crossing No. 085536 R) / (WUTC Crossing No. 42A32.40)

2011 JAN 13 AM 8:03

Pierce County Public Works and Utilities, Attn: Jerry P. Bryant, P.E., and Marlene Ford, P.E.
John F. Salmon III, Office of the Pierce County Prosecuting Attorney, Civil Division
Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC
Fronda Woods, Assistant Attorney General, WUTC

January 12, 2011

Page 2

Dear Pierce County and WUTC Officials:

In view of condition 2 on page 2 my January 6, 2011 letter to David W. Danner of the WUTC,¹ I am writing on behalf of my client Meeker Southern Railroad ("Meeker") to herewith forward Meeker's first report concerning limited operation of the spur track prior to completion and operation of the 134th Avenue East flashing lights signal crossing signal system. That report (copy attached), which covers the time period from Sunday, December 19, 2010 through Friday, January 7, 2011 consists of the following items:

- (a) Meeker's "Log (spreadsheet) for 134th Ave. E Crossing" setting forth the "[d]aily number of trains crossing 134th Avenue East on the *spur track*, their length, and the date and time of each crossing" **and** the "[d]aily number of trains crossing 134th Avenue East on *the mainline* track, and the date and time of each crossing;"
- (b) Three Certified Payroll Report sheets from Asphalt Patch Systems, Inc. concerning the flagging of the 134th Avenue East crossing by certified flaggers; and
- (c) Meeker's table entitled "Verification of Compliance with the conditions in Table 2" (Table 2 being the table attached to my January 6, 2010 letter to Mr. Danner and attached as Exhibit C to Meeker's Motion to Amend WUTC Order 01).

¹ Condition 2 states:

- (2) Meeker will be required to file a report to both Public Works and Commission Staff, due on the 12th and 26th days of January, containing the following information verifying compliance with the conditions in Table 2:
 - a. Daily number of trains crossing 134th Avenue East on the spur track, their length, and the date and time of each crossing.
 - b. Daily number of trains crossing 134th Avenue East on the mainline track, and the date and time of each crossing.
 - c. Certified Payroll Reports (in conformance with the form proposed by Pierce County in its response filed on December 30, 2010 in this docket) listing the flaggers controlling traffic at the 134th Avenue East crossing, and showing the dates and times worked by each flagger.

Pierce County Public Works and Utilities, Attn: Jerry P. Bryant, P.E., and Marlene Ford, P.E.
John F. Salmon III, Office of the Pierce County Prosecuting Attorney, Civil Division
Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC
Fronda Woods, Assistant Attorney General, WUTC
January 12, 2011

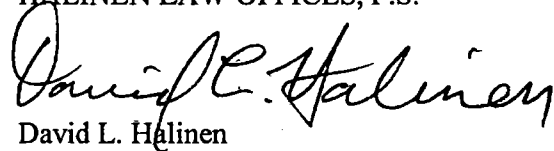
Page 3

In addition, in follow-up to my January 10, 2011 letter to you, I am herewith forwarding you a photocopy of a new Washington State Traffic Control Flagger card for Jim L. Rose, who was recertified today.

Please let me know if you have any questions or comments.

Sincerely,

HALINEN LAW OFFICES, P.S.



David L. Halinen

Enclosures

cc: Meeker Southern Railroad
Attn: Byron Cole, Manager (via email and First Class Mail, with copies of enclosures)


Meeker's Report #1

concerning limited operation of the spur track prior to completion and operation of the 134th Avenue East flashing lights signal crossing signal system

Prepared January 12, 2011

Covering the period from December 19, 2010 through January 8, 2011

I, James Forgett, the Operations Manager for Meeker Southern Railroad, hereby certify that the (a) the data in the enclosed one-page crossing spreadsheet and (b) the comments in the enclosed VERIFICATION OF COMPLIANCE WITH TABLE 2 are true and correct to my best knowledge and belief.



James Forgett 1-12-11
Date

**MEEKER SOUTHERN
LOG FOR 134TH AVE. E CROSSING
DECEMBER 19, 2010 THROUGH JANUARY 8, 2011**

PAGE 1 OF 1

DATE OF OPERATION	ONE-WAY MAINLINE CROSSINGS		TIME OF CROSSING		TRAIN LENGTH FEET		ONE-WAY SPUR CROSSINGS		TIME OF CROSSING		TRAIN LENGTH FEET	
	1	2	8:14	9:45	100	385	1	2	9:05	9:20	50 ENGINE ONLY	335 ENGINE + 3 CARS
12/22/2010	1	2	8:14	9:45	100	385	1	2	9:05	9:20	50 ENGINE ONLY	335 ENGINE + 3 CARS
12/23/2010	1	2	15:00	16:15	385	175	NONE	NONE				
12/24/2010	1	2	8:30	9:30	100	350	NONE	NONE				
12/28/2010	1	2	8:45	9:30	100	170	1	2	9:15	9:25	194 ENG. + 2 CARS	121 ENG. + 1 CAR
12/29/2010	1	2	8:10	8:35	100	403	1	2	9:15	9:20	200 ENG. + 2 CARS	271 ENG. + 3 CARS
12/31/2010	1	2	8:55	9:20	50	250	1	2	9:25	9:30	200 ENG. + 2 CARS	125 ENG. + 1 CAR
1/3/2011	1	2	8:20	9:05	160	303	NONE	NONE	9:05	9:15	50 ENG. ONLY	106 ENG. + 1 CAR
1/5/2011	1	2	8:20	9:10	303	242	NONE	NONE				
1/7/2011	1	2	8:30	9:15	242	220	NONE	NONE				


CERTIFIED PAYROLL REPORT

For the week ending:		Meeker Southern Railroad Flagging Personnel							
Month	Day	Year	134th Avenue East & Pioneer Way East Rail Crossing						
12	25	10							
Name and Address of Employee			Day and Date (e.g. 10/10/11)						
			Sun	Mon	Tues	Wed	Thu	Fri	Sat
			19	20	21	22	23	24	25
			Hours Worked Each Day (e.g. 9:00 AM - 3:00 PM)							Total Hrs
1	James L. Rose					2			2
2	10204 woodland Sharon K. Ward					2			2
3	10204 Woodland Phyllis WA98373								
4									
5									
Today's Date:			Printed name of party signing this report:				Title:		
01-12-11			Jay Looker				Corp. Sec Treas		
The party signing this report pays or supervises the payment of the persons employed by:									
			Asphalt Patch Systems Inc						
Project Name:			For the week starting:				For the week ending:		
134 Av E Railroad Crossing			December 19, 2010				December 25, 2010		
<p>The party signing below declare under penalty of perjury that all information contained in this Certified Payroll Report is correct and complete and that all persons hold a current certified flagging card.</p>									
Print name of party signing this report:			Title:				Signature:		
Jay Looker			Corp. Sec - Treas						

CERTIFIED PAYROLL REPORT

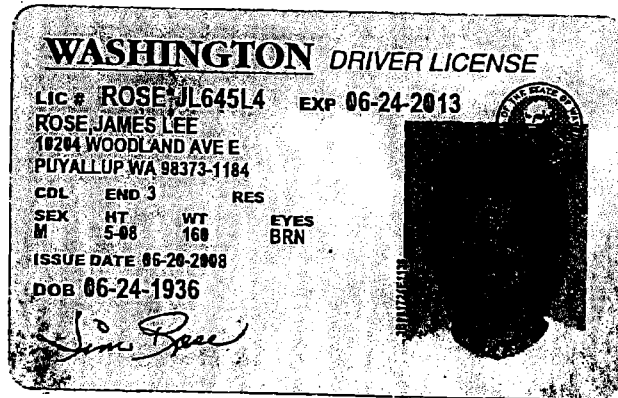
Meeker Southern Railroad Flagging Personnel	
134th Avenue East & Pioneer Way East Rail Crossing	
For the week ending:	Month Day Year 01-01-2011
Name and Address of Employee	Day and Date (e.g. 10/10/11) Sun Mon Tues Wed Thu Fri Sat 26 27 28 29 30 31 1
	Hours Worked Each Day (e.g. 9:00 AM - 3:00 PM) Total Hrs
1	James L. Rose 10204 Woodland Sharon K. Ward 10204 Woodland Puyallup, WA 98373
2	2 2 2 2 2 2 2 6
3	2 2 2 2 2 2 2 6
4	
5	
Today's Date:	Printed name of party signing this report: Title: 01-12-11 Jay Looker Corp. Sec. - Treas
The party signing this report pays or supervises the payment of the persons employed by: (Name of Flagging Company) Asphalt Patch Systems Inc	
Project Name:	For the week starting: For the week ending: 134 Av E Railroad Crossing Dec 26, 2010 January 1, 2011
The party signing below declare under penalty of perjury that all information contained in this Certified Payroll Report is correct and complete and that all persons hold a current certified flagging card.	
Print name of party signing this report:	Title: Signature: Jay Looker Corp. Sec/Treas [Signature]

CERTIFIED PAYROLL REPORT

For the week ending:		Meeker Southern Railroad Flagging Personnel						
Month Day Year 01 - 08 - 2011		134th Avenue East & Pioneer Way East Rail Crossing						
Name and Address of Employee		Day and Date (e.g. 10/10/11)						
		Sun	Mon	Tues	Wed	Thu	Fri	Sat
		2	3	4	5	6	7	8
		Hours Worked Each Day (e.g. 9:00 AM - 3:00 PM)						
1	JAMES L. ROSE 10204 Woodland						2	
2	Sharon K. Ward 10204 Woodland						2	
3	Puyallup WA 98373							
4								
5								
Total Hrs								
Today's Date: 01-12-2011		Printed name of party signing this report: JAY LOOKER					Title: Corp Sec - Treas	
The party signing this report pays or supervises the payment of the persons employed by:		(Name of Flagging Company) Asphalt Patch Systems Inc						
Project Name: 134 Av E Railroad Crossing		For the week starting: January 2, 2011			For the week ending: January 8, 2011			
<p>The party signing below declare under penalty of perjury that all information contained in this Certified Payroll Report is correct and complete and that all persons hold a current certified flagging card.</p>								
Print name of party signing this report: Jay Looker		Title: Corp Sec / Treas					Signature: 	

<p align="center">Portion of Meeker's Report #1 dated January 12, 2011 VERIFICATION OF COMPLIANCE WITH TABLE 2 (a table attached as <u>Exhibit C</u> to Meeker's Motion to Amend WUTC Order 01, which table sets forth "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")</p>		
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>	<p>The period covered by Meeker's Report #1 is Sunday December 19, 2010 through Saturday, January 8, 2011 (a 3-week period). During the week ending Saturday, December 25, 2010, the spur was used for crossings only one day (December 22). During the week ending Saturday, January 1, 2011, the spur was used for crossings three days (December 28, 29 and 31). During the week ending Saturday, January 8, 2011, the spur was used for crossings only one day (January 7). Thus, the average number of days per week that the spur track was used during the reporting period is calculated as follows:</p> $\frac{1 + 3 + 1}{3} = 1.6 \text{ days}$ <p>That is less than the subject limitation.</p>
2	Maximum number of round-trip crossings per day that the spur track may be used for crossings of 134th: <u>2</u>	As Meeker's accompanying "Log (spreadsheet) for 134th Ave. E Crossing" shows, not more than 2 round trip crossings of 134th along the spur track occurred during any of the days that the spur track was used for crossings.
3	Hours during the day that spur crossings will be limited to: <u>9:00 AM to 3:00 PM</u>	As Meeker's accompanying "Log (spreadsheet) for 134th Ave. E Crossing" shows, all spur crossings occurred between the hours of 9:00 AM to 3:00 PM.
4	Maximum number of train cars per train to be operated through the spur crossing: <u>3 cars plus an engine</u>	As Meeker's accompanying "Log (spreadsheet) for 134th Ave. E Crossing" shows, the maximum number of train cars per train operated through the spur crossing was 3 cars plus an engine.
5 (as modified on January 6, 2011 by agreement of the attorneys)	Traffic flagging of 134 th Avenue East on the north and south sides of the crossing must be performed in accordance	During the period of Sunday, December 19, 2010 through Saturday, January 8, 2011, traffic flagging of 134th Avenue East on the north and south sides of the crossing was performed by certified flagger James L. Rose and Washington State Traffic

<p>for Meeker, Public Works and the WUTC)</p>	<p>with WAC 296-155-305 by certified flaggers provided by Meeker during all train crossings of 134th via either the spur track or the mainline track.</p>	<p>Control Supervisor Sharon K. Ward, who are employees of Asphalt Patch Systems, Inc. (a third-party company providing flagging services to Meeker) during all train crossings of 134th via the spur track.</p> <p>(The modification of Requirement/Limitation #5 to add flagging of the train crossings via the mainline track as part of the requirement was not agreed to by attorneys for Meeker, Public Works and the WUTC until late in the day on January 6, 2011 and was not known by Meeker's train operating crew and flagging crew in time for operations during the period of Sunday, December 19, 2010 through Saturday, January 8, 2011.)</p> <p>Note: For Meeker's next reporting period (the period of Sunday, January 9, 2011 through Saturday, January 22, 2011) flagging of the crossing will be provided during all train crossings of 134th via either the spur track or the mainline track.</p>
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recognizes that the named person has received
- knowledge and information compliant with
TCD and necessary to perform the duties of
Traffic Control Flagger.

Training was conducted by:

Organization Pierce College
Instructor's Name (print) Andrea Pollard
Instructor's ID Number 00081



**WASHINGTON STATE TRAFFIC CONTROL
FLAGGER**

Name **JIM ROSE**
I.D. No./S.S.N. **B013-Y142-014**
Card No. **269499**
Date of Expiration
Date of Issue **01/2014**

valid
with
photo
ID

Jim Rose
Flagger's Signature

APPENDIX L

[Service Date January 19, 2011]

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

MEEKER SOUTHERN RAILROAD,	)	DOCKET TR-100036
)	
Petitioner,	)	ORDER 02
)	
v.	)	NOTICE OF HEARING AND ORDER
	)	TO SHOW CAUSE WHY MEEKER
PIERCE COUNTY PUBLIC WORKS AND UTILITIES,	)	SOUTHERN RAILROAD SHOULD
	)	NOT BE FINED FOR VIOLATING
	)	COMMISSION ORDER 01
Respondent.)	
	)	(Set for January 26, 2011,
	)	at 8:00 a.m.)
)	
	)	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 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.

- 2 Respondent Pierce County Public Works and Utilities (Pierce County) consented to entry of an Order by the Commission without further notice or hearing.

- 3 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 as detailed in Order 01. The Commission also conditioned its approval on Meeker Southern completing all required safety upgrades prior to beginning any use of the new spur track, as follows:

All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff *prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding.* (Emphasis added.)

MOTION

- 4 On December 20, 2010, Meeker Southern filed a Motion to Amend Order 01 (Motion). Meeker Southern asks the Commission to “allow immediate and continued use of the spur track” for ongoing commercial support of Sound Delivery Service prior to installation of operational active warning devices and to approve its proposed schedule for completion of all required work at the crossing on or before May 2, 2011. Meeker Southern contends that its plan, which relies on the temporary use of certified flaggers at the activated crossing in place of Order 01’s requirement for active warning devices, does not present an unacceptable or unnecessary risk to public safety.
- 5 On December 30, 2010, Pierce County filed a letter in response to the Motion. Pierce County asserts that “Meeker has utterly failed to comply with the Commission’s Order” and consequently, the County has no confidence that the railroad will meet its responsibilities to public safety or that it will be fiscally responsible for all costs associated with the spur line project. In order for Pierce County to support any amendment to the Commission’s Order 01, the County asks the Commission to impose additional compliance conditions on Meeker Southern, including a performance bond and certified payroll reports to prove the railroad actually hires the required flaggers.
- 6 On January 4, 2011, Commission Staff filed its response to the Motion. Staff noted it is “not pleased with Meeker’s delay in installing the active warning devices or with Meeker’s apparent disregard of Order 01.” Even so, Staff is willing to support amendment of Order 01 if, as was the case with Pierce County, the Commission imposes several additional conditions on the railroad. In addition to requiring a performance bond, Staff recommends the Commission require the railroad to file regular progress reports and coordinate all revisions to engineering designs with Staff and with Pierce County.

- 7 On January 6, 2011, Meeker Southern filed a letter seeking leave to submit replies to both Pierce County's and Commission Staff's responses to the Motion to Amend Order 01 on or before Friday, January 21, 2011. According to the railroad, the other parties believe that ongoing discussions during the intervening time may facilitate a settlement. Further, all parties have agreed to allow Meeker to continue limited rail operations on the spur line subject to a set of specified conditions, including a requirement that Meeker file evidence no later than January 10, 2011, that each of its flaggers holds a valid traffic control flagger card meeting all requirements of WAC 296-155-305(6).
- 8 On January 11, 2011, Meeker Southern filed copies of four flagger cards, including one that had expired in November 2010. On January 13, 2011, Meeker Southern filed Meeker's Report #1 on Interim Use of the Spur at 134th Crossing and Photocopy of a New Flagger Card.
- 9 The Commission finds that a hearing on the Motion is necessary to enable the Commission to rule on that motion. The parties should be prepared to address the Motion and the proposed conditions on granting the relief requested, including but not limited to the public safety implications of those proposals.
- 10 The Commission further finds based on the record that has been compiled to date that Meeker Southern is not, and for some time has not been, in compliance with the requirements of Order 01. Specifically, Meeker Southern is in violation of the condition in Order 01 barring operational use of the new spur track until all required work has been completed to the reasonable satisfaction of the Commission and Pierce County.
- 11 Under RCW 81.04.380, public service companies, including railroads, are subject to penalties for violations of Commission orders of up to \$1,000 per violation or \$1,000 per day for a continuing violation. Each operational use of the new spur track is a violation of Order 01. Meeker Southern, therefore, must come prepared to show cause, if any, why the Company should not be fined up to \$1,000 per violation or \$1,000 per day for the continuing violation of Order 01.
- 12 **NOTICE IS HEREBY GIVEN that a hearing on Meeker Southern's Motion and to show cause why Meeker Southern should not be fined for violation of Order 01 will be held on January 26, 2011, at 8:00 a.m., in Room 206, Second Floor,**

DOCKET TR-100036
ORDER 02

PAGE 4

Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. If you are unable to attend the hearing in person, you may attend via the Commission's teleconference bridge line at (360) 664-3846. Please appear on the teleconference bridge five minutes before the status conference is scheduled to begin.

- 13 Adam E. Torem has been appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250 and will preside at the hearing.

ORDER

THE COMMISSION ORDERS THAT:

- 14 (1) A hearing in this docket will be held on January 26, 2011.
- 15 (2) Meeker Southern Railroad must come before the Commission at the hearing on January 26, 2011, to support its motion and to show cause why the Commission should not fine the company for violation Order 01.
- 16 (3) The Commission retains jurisdiction to effectuate the terms of this Order.
- 17 (4) The Commissioners, having determined that the original filing complied with the requirements of WAC 480-62-150(1)(f), WAC 480-62-150(2)(b) and RCW 81.53.030, directed the Secretary to enter this Order in accordance with WAC 480-07-904(1)(b).

DATED at Olympia, Washington, and effective January 19, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary

APPENDIX M

0010

1 JUDGE TOREM: I'll let you get that and sort that out.

2 MR. COLE: The first test date was on the 17th of
3 October.

4 JUDGE TOREM: Do you know how long the testing
5 continued?

6 MR. COLE: Well, between the empty and then unloading
7 some of the cars was probably two or three weeks. We're still
8 operating it now under --

9 JUDGE TOREM: That's what I understand --

10 MR. COLE: -- under an arrangement that we worked out
11 with Public Works.

12 JUDGE TOREM: At this point are they test trains or
13 conducting commercial operations?

14 MR. COLE: Well, we're just bringing in the cars that
15 aren't delivered to them.

16 JUDGE TOREM: I understand the scope of that operation
17 is laid out in the agreement you're working with Pierce County
18 and Commission staff a couple of trains per week?

19 MR. COLE: Yeah. It has -- I think -- Public Works'
20 interest is focused on crossing of 134th. The difference in
21 traffic between the original main line track and now having a
22 second one.

23 JUDGE TOREM: For the record, it looks like with a
24 switch and the spur track on the roadway those two tracks are
25 very close together.

APPENDIX N

0053

1 we have the public safety assured. I appreciate the detail
2 that has gone in to addressing the car queuing issue on Pioneer
3 Way east as well as the detail to making sure the flaggers are
4 fully certified to making sure that we have a limitation on how
5 long those train tracks and traffic might block the
6 intersection, and even the weekday timing issue that's now been
7 pen and inked on the clarification.

8 I will sign the proposed Order.

9 I'll ask Ms. Woods to make sure I have an electronic
10 copy so it'll be in our system if I had typed these 11 pages
11 and attachments. I appreciate the parties taking that off my
12 desk.

13 What I want to make sure that Commission staff should
14 also be following up with an investigation and be in touch with
15 Mr. Cole and Mr. Halinen to make sure we have a document of
16 some sort indicating the prior non-compliance with order one
17 from January of 2010 and whether Commission staff believes they
18 want to make a recommendation of the penalty of any amount or
19 what the normal amount might be in this case so Mr. Cole has
20 that on his desk and understands the compliance with the
21 Commission Order is not an option and something to be
22 negotiated around but to be complied with strictly at risk of
23 penalty. Whether the Commission would choose to a certain
24 penalty remains to be reviewed based on the record developed
25 today and any other further record that Mr. Halinen would be

0054

1 entitled to explain justifications as we defer that issue as to
2 the timing was -- what it was. It was a future issue, but I
3 want to make sure that's looked at and then if they indicate
4 they're not seeking penalty the Commission would like to know
5 why as well.

6 Is there anything else for the record this morning,
7 Mr. Salmon?

8 MR. SALMON: No.

9 JUDGE TOREM: Ms. Woods?

10 MS. WOODS: I just want to get clear on a procedural
11 question. On the proposed Order would you like me to e-mail
12 that directly to you or submit it through RMS?

13 JUDGE TOREM: Why don't you e-mail that directly to me
14 so that I can have one of our assistants, Ms. Kaech or
15 Ms. Walker, that the record center gets it in the appropriate
16 format and go from there.

17 I will sign this Order and date it today, the 26th of
18 January, and I'll provide this original to Ms. Walker. If the
19 parties want to have a copy made today I think we can use our
20 facilities here. Make sure you walk out with a hard copy today
21 and there will be electronic copies delivered later this
22 afternoon.

23 MR. HALINEN: Thank you very much.

24 JUDGE TOREM: Mr. Cole, any questions?

25 MR. COLE: No. I would offer my profound apologies

APPENDIX O

[Service Date January 26, 2011]

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

MEEKER SOUTHERN RAILROAD	)	DOCKET NO. TR-100036
)	
Petitioner,	)	ORDER 03
)	
vs.	)	ORDER AMENDING ORDER 01
	)	(THE ORDER GRANTING PETITION
PIERCE COUNTY PUBLIC WORKS &	)	TO MODIFY A PUBLIC HIGHWAY-
UTILITIES	)	RAIL GRADE CROSSING AND
	)	UPGRADE WARNING DEVICES AT
Respondent	)	134TH AVENUE EAST)
)	
	)	USDOT CROSSING #085536R
	)	UTC CROSSING #42A32.40

BACKGROUND

- 1 Pursuant to a delegation to the Commission's Secretary for decision, on January 12, 2010 the Commission's Executive Director and Secretary David W. Danner issued Order 01 under Docket No. TR-100036 granting Petitioner Meeker Southern Railroad's petition to modify a public highway-rail grade crossing and upgrade warning devices at 134th Avenue East in unincorporated Pierce County.
- 2 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 north of Pioneer Way East (in unincorporated Pierce County, Washington). During the latter portion of 2009, a five-sheet set of civil engineering design drawings prepared by Sitts & Hill Engineers, Inc.

ORDER 03 AMENDING
ORDER 01—Page 1

and approved by Pierce County Engineer Brian D. Stacy, P.E. set forth the proposal's original 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.

3 On December 20, 2010, Petitioner filed a motion to amend Order 01 (the "Motion") seeking an order correcting Background paragraph "5" (actually paragraph 6) and amending Conditions 1 and 3 as currently set forth in Order 01.

4 In addition to specifying the location of the proposed spur, the Original Design Drawings specified certain planned 134th Avenue East 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 ¶ 6 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 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 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 ¶ 6'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 correlates its forecasted 18 train crossings per train operating day upon future completion of such a Phase 2 Service Siding and possible other sidings stemming from it further to the east. (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 earliest.)

6 The spur track has recently been installed, as well as all but approximately the east 300 feet of the Phase 1 Service Siding along a portion of the north edge of the Sound Delivery Service property. The easterly extent of the siding matches the easterly extent of the loading dock that Sound Delivery Service has built so far along the north edge of its property. The portion of the siding so far constructed is sufficient to allow three long freight cars or four smaller freight cars to abut the Sound Delivery's currently constructed loading dock for loading and unloading. Sound Delivery Service plans an easterly extension of its loading dock at a later date and Meeker plans to correspondingly extend the length of the Phase 1 Service Siding at that time.

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 main track crossing surface has been upgraded from plank to asphalt (as was

contemplated by Background ¶ 8 of Order 01), and the newly constructed spur track crossing surface is now asphalt (as was contemplated by Background ¶ 8 of Order 01).

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). A proposal by Meeker to

regrade and repave 134th to the north to a point approximately 50 lineal feet north of the main line track's centerline was set forth in the Motion and was 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 were first supplemented and/or revised to reflect the proposed design of the 134th regrading and repaving and were approved by Public Works).

11 Thereafter, Petitioner enhanced its proposal so as to regrade and repave 134th to the north to a point approximately 60 lineal feet north of the main line track's centerline. The design of such regrading and repaving is embodied in a four-sheet set of supplemental and revised civil engineering design drawings prepared by Sitts & Hill Engineers, Inc. and approved on January 25, 2011 on behalf of the Pierce County Public Works Director (the "Revised Design Drawings"). The Revised Design Drawings consist of a supplemental sheet labeled C4.0 and revised Sheets C1.0, C1.1, and C2.0. (Sheets C1.2 and C1.3 of the Original Design Drawings are unchanged and remain in effect.) Commission Staff has reviewed the Revised Design Drawings and has no objections to them. (The now-proposed regrading and repaving of 134th to the north of the main line track is planned to reduce 134th's maximum longitudinal slope to approximately 4.27 percent.)

12 Order 01 did not have a schedule for completion of the crossing improvements. Attached to this amending order as Exhibit A is a four-page table (Table 1) that sets forth Meeker's updated 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 various changes to the Original Design Drawings that were embodied in the Revised Design

Drawings, was prepared in consultation with Mr. Bryant of Public Works and is acceptable to Public Works and to Commission Staff.

13 As noted in the comment cell corresponding to Item #5 in Table 1 (Exhibit A), 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. (That comment cell notes that 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, 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 five. Meeker has had its consulting engineering firm, Sitts & Hill Engineers, Inc., reflect the upgraded controllers and the changes to the design locations of the insulated rail joints on Sheet C2.0 of the Revised Design Drawings.

14 Sound Delivery Service (a customer of Petitioner) 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.

- 15 Attached to this amending order as Exhibit B is a one-page table (Table 2) that sets forth Meeker's updated 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 commencement of operation of the automatic flashing lights crossing signal system for the crossing and of corresponding advance warning signs is March 18, 2011.] Prior to such completion and commencement of operation of the signal system, 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 or the main line 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 crossings per day that the spur track may be used for crossings of 134th to 4, (c) limit the time period during the day when spur crossings will be 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 for spur operations once the flashing lights system is installed and operational. Operation of the spur under 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 would not present an unacceptable or unnecessary risk to public safety. In view of Sound Delivery's immediate need for such limited rail service via the spur track, such limited interim limited operations of the spur track would serve the public interest by facilitating commerce.

FINDINGS AND CONCLUSIONS

- 16 (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.*
- 17 (2) The 134th Avenue East grade crossing, identified as USDOT #085536R, is a public railroad-highway grade crossing within the State of Washington.
- 18 (3) WAC 480-62-150(1)(f) requires that the Commission grant approval prior to constructing multiple railroad tracks at a crossing, and WAC 480-62-150(2)(b) requires that the Commission grant approval prior to adding active crossing signal warning devices at a public railroad-highway grade crossing within the State of Washington. In Order 01, the Commission granted such approval for the 134th Avenue East grade crossing, subject to three conditions.
- 19 (4) On December 20, 2010, the Petitioner filed a motion to amend Order 01.
- 20 (5) The Commission has authority to amend its prior orders. *RCW 81.04.210 and WAC 480-07-875.*
- 21 (6) Commission Staff has reviewed the Motion and its supporting exhibits as well as (a) Public Works' December 30, 2010 response letter from Pierce County Engineer Brian Stacy, P.E. and (b) Meeker's January 21, 2011 Reply to the Responses by Public Works and Commission Staff and does not object to the Motion being granted on the conditions set forth below.
- 22 (7) The Pierce County Department of Public Works & Utilities has also advised the Commission that it has no objection to the grant of the Motion on the conditions set forth below.

- 23 (8) Having reviewed the Motion and its supporting exhibits as well as (a) Public Works' December 30, 2010 response letter from Pierce County Engineer Brian Stacy, P.E., (b) the January 4, 2011 Commission Staff Response, and (c) Meeker's January 21, 2011 Reply to the Responses by Public Works and Commission Staff, and having further considered the testimony, additional written evidence, and arguments of the parties made at the January 26, 2011 hearing on the Motion, the Commission concludes that Granting Petitioner's Motion would be in the public interest and would not present an unacceptable or unnecessary risk to public safety.

ORDER

THE COMMISSION ORDERS:

- 24 (1) Petitioner's Motion to Amend Order 01 is hereby granted.
- 25 (2) Background ¶ 6 of Order 01 is hereby 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 both the main line track and the spur track) on operating days to 12 and eventually up to 18 per operating day.
- 26 (3) Approval Condition 1 of Order 01 is hereby amended to state:
- (1) Unless otherwise approved by both Commission Staff and Public Works, the crossing modifications must conform to those described and attached to the petition and set forth on (a) Sheets C1.2 and C1.3 of the civil engineering design drawings. The drawings are identified by December 29, 2009, and bearing October 20, 2009 approval signatures of Brian D. Stacy, P.E., on behalf of the Pierce County Public Works Director and (b) Sheets C1.0, C1.1, C2.0 and C4.0 of the civil engineering design drawings bearing January 25, 2011 approval signatures on behalf of the Pierce County Public Works Director.
- 27 (4) Approval Condition 2 of Order 01 remains unchanged. It states:
- (2) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.

28 (5) Approval Condition 3 of Order 01 is hereby amended to state:

- (3) All work for the proposed spur track and the Phase 1 Service Siding (except for approximately the east 300 feet of the siding, which may be completed at any time after the commencement of operation of the remainder of the automatic flashing lights crossing signal system) shown on the design drawings shall be completed (a) in a timeframe consistent with the time schedule set forth in Table 1 attached to this amending Order as Exhibit A (unless otherwise approved by both Commission Staff and Public Works) and (b) to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding; PROVIDED, HOWEVER, that (i) Petitioner may immediately operate the spur line and Phase 1 Service Siding subject to the Special Requirements and Restrictions set forth in Table 2 attached to this Amending Order as Exhibit B and (ii) following installation and commencement of operation of the remainder of the automatic flashing lights crossing signal system for the crossing and of corresponding traffic control signs (which must occur by March 18, 2011 unless otherwise approved by both Commission Staff and Public Works), Petitioner must thereafter operate the spur line and Phase 1 Service Siding with the automatic flashing lights crossing signal system in operation.

29 (6) The following new approval condition (Approval Condition 4) is hereby added:

- (4) Unless otherwise approved by both Commission Staff and Public Works, at such future time as (a) the Phase 2 Service Siding and/or (b) any other additional sidings stemming from the spur, from the Phase 1 Service Siding, or from the Phase 2 Service Siding are constructed thereby making possible back-and-forth train operations that could facilitate coupling and uncoupling of rail cars and pick-up and delivery of rail cars entirely east of 134th (by taking advantage of the additional track switching opportunities that would arise from such additional sidings), if any such back-and-forth train operations on the east side of 134th involve a train heading west and either starting within or entering into a train detection zone and thereby turning on the automatic flashing lights crossing

signal system, then the entire train must (i) continue west through the 134th crossing so as to turn-off the system and (ii) continue far enough west to clear the west end of the train detection zone west of 134th before heading back to the east down the spur track.

30 (7) The following new approval condition (Approval Condition 5) is hereby added:

(5) Meeker rather than Pierce County shall be responsible for all of the costs of the installation of the proposed spur crossing and related improvements contemplated by the Revised Design Drawings.

31 (8) The following new approval condition (Approval Condition 6) is hereby added:

(6) Until such time as a left-turn lane or left-turn pocket on the west leg of the intersection of Pioneer Way and 134th has been constructed, between 4:45 p.m. and 5:45 p.m. each weekday the maximum length of trains passing through the 134th crossing on either the main line track or the spur track shall be 350 feet.

DATED at Olympia, Washington, and effective January 26, 2011.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge

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	This item was completed on 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	This item was completed on 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	The subject ditch/swale was re-established on Monday, December 20, 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	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	Install and make operational the remainder of the automatic flashing lights crossing signal system for the 134th crossing and corresponding traffic control signs.	Friday, March 18, 2011	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.)
6	<p>Regrade and repave 134th immediately north of Meeker's existing main line track for a distance of approximately 60 feet from the main line track's centerline to reduce 134th's surface slope.</p> <p>Paint remaining fog lines in accordance with the approved Revised Design Drawings.</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>	Monday, May 2, 2011	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, the design of which is reflected on the approved Revised Design Drawings, 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 Original Design Drawings.
7	Pave the shoulders of 134th to comply with the approved Revised Design Drawings.	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	

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 obtained from Pierce County Public Works.</p>		
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Y:\cf2585\010\WUTC\Order Amending Order 01\Exhibit A to Amending Order D2b [Table 1 DLH (1-21-11)].doc

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 crossings per day that the spur track may be used for crossings of 134th: <u>4</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 either the spur track or the main line track.	Meeker has already hired a third-party contractor, Asphalt Paving Systems, Inc., to provide the certified flaggers.
6	Meeker will be required to submit to Commission Staff and to Public Works a report (which may be submitted by email), due on the 1st and 15th day of each month, containing the following information verifying compliance with the conditions in this Table 2: a. Daily number of trains crossing 134 th Avenue East on the spur track, their length, and the date and time of each crossing. b. Daily number of trains crossing 134 th Avenue East on the mainline track, and the date and time of	

	<p>each crossing.</p> <p>c. Certified Payroll Reports (in conformance with the form proposed by Pierce County in its December 30, 2010 response to Meeker's Motion to Amend Order 01) listing the flaggers controlling traffic at the 134th Avenue East crossing, and showing the dates and times worked by each flagger.</p> <p>In addition, if Meeker plans to use any flaggers other than the flaggers that Meeker has already provided Public Works and Commission Staff photocopies of flagger's cards for evidencing that each flagger who will be listed on the Certified Payroll Reports holds a valid traffic control flagger card that meets the requirements of WAC 296-155-305(6), Meeker is required to file like evidence (such as a photocopy of each such other flagger's certification card, which may be sent via email) prior to using any other flaggers.</p>	
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APPENDIX P



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

February 2, 2011

David L. Halinen, Attorney
Halinen Law Offices, PS
1019 Regents Boulevard, Suite 202
Fircrest, WA 98466-6037

Re: Staff Information Request

Dear Mr. Halinen:

This letter serves as a confirmation of the information discussed and agreed to during the conference call with Washington Utilities and Transportation Commission (commission) staff on February 1, 2011.

By February 15, 2011, staff requests that Meeker Southern Railroad Company (Meeker Southern) provide the following information:

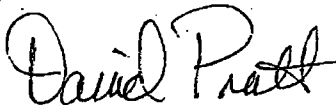
1. Specific information related to each Meeker Southern/Sound Delivery train movement over the 134th Avenue crossing from October 17, 2010, through December 18, 2010, including:
 - Date
 - Time
 - Track (main or spur)
 - Direction
 - Destination
 - Length of train in feet
 - Type and number of train cars
 - Whether the movement was a test train or a load hauled for compensation
 - How the crossing was protected during train movements

David Halinen
February 2, 2011
Page 2

2. Meeker Southern's explanation, including any mitigating factors, of why the company modified the 134th Avenue crossing and commenced operational use of the new spur track prior to satisfying the conditions in the commission's Order 01 in Docket TR-100036.
3. Spreadsheet of all Meeker Southern train movements from October 1, 2010, thru January 30, 2011.

Please direct your written response to Betty Young, Compliance Investigator, Transportation Safety. If you have any questions, Ms. Young can be reached at 360-664-1202, or by e-mail at byoung@utc.wa.gov.

Sincerely,



David Pratt

Assistant Director, Transportation Safety

APPENDIX Q

HALINEN LAW OFFICES, P.S.
A Professional Service Corporation

David L. Halinen, P.E., Attorney at Law
davidhalinen@halinenlaw.com

1019 Regents Boulevard, Suite 202
Fircrest, Washington 98466-6037

Tacoma: (253) 627-6680
Seattle: (206) 443-4684
Fax: (253) 272-9876

February 15, 2011

VIA EMAIL AND PRIORITY MAIL

Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Attn: Betty Young, Compliance Investigator, Transportation Safety

Re: Docket No. TR-100036
My Client Meeker Southern Railroad
(USDOT Crossing No. 085536 R)
(WUTC Crossing No. 42A32.40)
Meeker's Response to David Pratt's February 2, 2011 Staff Information Request

Dear Ms. Young:

On behalf of my client Meeker Southern Railroad ("Meeker"), I am writing to herewith provide you Meeker's response to the three-section Staff Information Request set forth in the February 2, 2011 letter sent to me by David Pratt, the Commission's Assistant Director for Transportation Safety.

**Meeker's Response to Section 1
and My Related Comments**

Meeker understands that Section 1 of the Staff Information Request focuses on the train movements delivering freight cars to or picking up freight cars from Meeker's customer Sound Delivery Service over the 134th Avenue East crossing from October 17, 2010 through December 18, 2010 regardless of whether the delivery/pickup point was (a) at the Sound Delivery Service site south of and abutting the east end of Meeker's "Phase 1 Service Siding" that Meeker installed during October 2010 or (b) Meeker's long-existing service siding on the north side of Meeker's main line track located approximately a quarter mile east of 134th Avenue East at Meeker's "East Puyallup Yard and Shops Facility." Use of the former of those two delivery/pickup points involves crossing 134th along the spur track, while use of the latter involves crossing 134th along the main line track. Based on that understanding, Meeker has prepared a two-page *Log of 134th Ave. E Crossings for Sound Delivery Service During the Period of October 17 2010 through December 18, 2010*, which is contained as the first part of Exhibit A (immediately following the Exhibit A cover page).

Washington Utilities and Transportation Commission
Attn: Betty Young, Compliance Investigator, Transportation Safety
February 15, 2011
Page 2

Section 1 of the Staff Information Request set forth the following nine bullet points of specific information sought in regard to the above-noted train movements:

- Date
- Time
- Track (main or spur)
- Direction
- Destination
- Length of train in feet
- Type and number of train cars
- Whether the movement was a test train or a load hauled for compensation
- How the crossing was protected during train movements

My comments concerning each of these bullet points are addressed below.

“Date” and “Time” Bullet Points

Note that the first column of the Exhibit A log sets forth the date of each of the subject crossing movements.

The second column of the Exhibit A log (under the heading “Time”) sets forth a *time range* during which the movement occurred. As explained in endnote “*” of the Exhibit A log, during the October 17, 2010 through December 18, 2010 time period, specific times at which the train crossings occurred were not recorded. However, the time ranges listed in the second column are accurate because they are the recorded time ranges when Meeker’s train crew was working on each of the days when the subject crossing movements took place. (None of the subject crossings occurred outside of the periods when the train crew was working.) Note also that the second column of the Exhibit A log indicates that the crossings on October 17, 2010 were on a Sunday.

“Track (Main or Spur)” Bullet Point

Note that the third column of the Exhibit A log (under the heading “Track”) in every instance lists the spur track as the track across which each of the subject crossing movements occurred. However, endnote “**” of the Exhibit A log qualifies that by explaining:

All crossings listed are shown as having taken place on the spur track because the associated freight cars were all deliveries to or pick-ups from Sound Delivery Service as the customer. Most if not all of these deliveries and pick-ups were from or to the Sound Delivery site. However, a few of these crossings may have involved delivery of cars via the main line track for pick-up by Sound Delivery Service at Meeker Southern’s siding east of 134th, which is accessible from the south side of 80th Street East.

Washington Utilities and Transportation Commission

Attn: Betty Young, Compliance Investigator, Transportation Safety

February 15, 2011

Page 3

Meeker has advised me that its records for the October 17, 2010 through December 18, 2010 time period do not distinguish which of the two delivery/pick-up locations for the Sound Delivery freight cars were used.

“Direction” and “Destination” Bullet Points

The fourth column of the Exhibit A log (under the heading “Direction”) sets forth the direction of each of the subject crossing movements.

Note that the fifth column of the Exhibit A log (under the heading “Destination”) indicates that the two October 17, 2010 crossings were for “testing of track only.” No cars were delivered to Sound Delivery in regard to those two crossings. All of the other eastbound crossings are shown in the fifth column of the Exhibit A log as having Sound Delivery as the destination, although (consistent with above-quoted endnote “**”) of the Exhibit A log) a few of those crossings may have involved delivery of cars via the main line track for pick-up by Sound Delivery Service at Meeker Southern’s siding east of 134th, which is accessible from the south side of 80th Street East. In regard to all of the westbound crossings (other than the October 17, 2010 westbound crossing), the fifth column of the Exhibit A log shows the destination as “unknown” because data was not recorded as to the westbound destinations.

“Train Length in Feet” Bullet Point

The sixth column of the Exhibit A log (under the heading “Length”) indicates what the *maximum* length of each train could have been. When the crossing involved Meeker’s engine only, the 50-foot length of the engine is noted in the sixth column. In regard to crossings involving the engine plus one or more freight cars, Meeker has advised me that its records for the October 17, 2010 through December 18, 2010 time period do not indicate the particular lengths of the freight cars involved but that the longest conceivable length per freight car would have been 100 feet from coupler knuckle to coupler knuckle. (See endnote “****” of the Exhibit A log.)

“Type and Number of Train Cars” Bullet Point

The seventh and last column of the Exhibit A log (under the heading “Train Components”) sets forth the engine plus the type of car (all of which were freight cars) and the number of cars that comprised each train.

The “Whether the Movement was a Test Train or a Load Hauled for Compensation” Bullet Point

Meeker addresses the issue of test trains and loads hauled for compensation at the top of the page of Exhibit A that immediately follows the two pages of the log.

Washington Utilities and Transportation Commission

Attn: Betty Young, Compliance Investigator, Transportation Safety

February 15, 2011

Page 4

**The "How the Crossing Was Protected
During Train Movements" Bullet Point**

Meeker addresses the issue of how the crossing was protected during train movements beginning at the middle of the page of Exhibit A that immediately follows the two pages of the log.

Meeker's Response to Section 2

In accompanying Exhibit B, Meeker sets forth its reasons why it commenced operational use of the new spur track prior to satisfying the conditions in the Commission's Order 01 in Docket TR-100036.

Meeker's Response to Section 3

In accompanying Exhibit C, Meeker sets forth its rail car logs for October, November, and December of 2010 and for January 2011 in response to section 3 of Mr. Pratt's request letter.

Please let me know if you have any questions or comments. Note that I will be sending you a separate letter tomorrow with my legal argument concerning the inappropriateness of civil penalties under the subject circumstances.

Sincerely,

HALINEN LAW OFFICES, P.S.



David L. Halinen

Enclosures (as noted above)

cc: Meeker Southern Railroad
Attn: Byron Cole, Manager (via email, with copies of enclosures)

Meeker Southern Railroad
Attn: James Forgette, Operations Manager (via email, with copies of enclosures)

Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC
(via email, with copies of enclosures)

Frona Woods, Washington Attorney General's Office (via email, with copies of enclosures)

Paul Curl, Transportation Safety, WUTC (via email, with copies of enclosures)

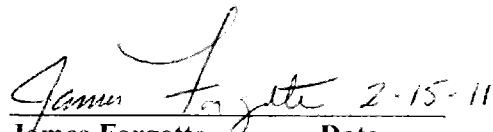
Exhibit A

to the February 15, 2011 response letter from Meeker Southern Railroad's attorney David L. Halinen to Washington Utilities and Transportation Commission, Attn: Betty Young, Compliance Investigator, Transportation Safety

Specific information related to each of Meeker Southern Railroad's "Sound Delivery Service" train movements over the 134th Avenue crossing during the period from October 17, 2010 through December 18, 2010

Prepared February 15, 2011

I, James Forgette, the Operations Manager for Meeker Southern Railroad, hereby certify that the data and information in the following pages of this exhibit are true and correct to my best knowledge and belief.


James Forgette 2-15-11
Date

Staff Investigation - Meeker Southern Railroad - TR-110221

**Meeker Southern Railroad
Log of 134th Ave. E Train Crossings for Sound Delivery Service
for the period of October 17, 2010 through December 18, 2010**

<u>Date</u>	<u>Time*</u>	<u>Track**</u>	<u>Direction</u>	<u>Destination</u>	<u>Length (ft)***</u>	<u>Train Components</u>
	Sunday					
10/17/2010	1-5 PM	spur	east	testing of track only	≤ 350 ft	engine + 3 freight cars
10/17/2010	1-5 PM	spur	west	testing of track only	≤ 350 ft	engine + 3 freight cars
10/18/2010	8-12 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
10/18/2010	8-12 AM	spur	west	unknown	50	engine
10/22/2010	8-1130 AM	spur	east	Sound Delivery	50	engine
10/22/2010	8-1130 AM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
10/25/2010	8-10 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
10/25/2010	8-10 AM	spur	west	unknown	50	engine
10/27/2010	8-10 AM	spur	east	Sound Delivery	50	engine
10/27/2010	8-10 AM	spur	west	unknown	≤ 150 ft	engine + 1 freight car
11/1/2010	8-10 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/1/2010	8-10 AM	spur	west	unknown	50	engine
11/3/2010	8-10 AM	spur	east	Sound Delivery	50	engine
11/3/2010	8-10 AM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	west	unknown	50	engine
11/5/2010	8-1130 AM	spur	east	Sound Delivery	50	engine
11/5/2010	8-1130 AM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/5/2010	8-1130 AM	spur	west	unknown	50	engine
11/8/2010	8AM-1PM	spur	east	Sound Delivery	50	engine
11/8/2010	8AM-1PM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/8/2010	8AM-1PM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
11/8/2010	8AM-1PM	spur	west	unknown	50	engine
11/8/2010	8AM-1PM	spur	east	Sound Delivery	50	engine
11/8/2010	8AM-1PM	spur	west	unknown	≤ 350 ft	engine + 3 freight cars
11/10/2010	8-1030 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
11/10/2010	8-1030 AM	spur	west	unknown	50	engine
11/12/2010	8-10 AM	spur	east	Sound Delivery	50	engine
11/12/2010	8-10 AM	spur	west	unknown	≤ 150 ft	engine + 1 freight car

Staff Investigation - Meeker Southern Railroad - TR-110221

11/12/2010 8-10 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
11/12/2010 8-10 AM	spur	west	unknown	50	engine
11/15/2010 8-12 AM	spur	east	Sound Delivery	50	engine
11/15/2010 8-12 AM	spur	west	unknown	≤ 150 ft	engine + 1 freight car
11/22/2010 8-10 AM	spur	east	Sound Delivery	≤ 250 ft	engine + 2 freight cars
11/22/2010 8-10 AM	spur	west	unknown	50	engine
11/24/2010 11AM- 1PM	spur	east	Sound Delivery	50	engine
11/24/2010 11AM- 1PM	spur	west	unknown	≤ 250 ft	engine + 2 freight cars
12/3/2010 8-12 AM	spur	east	Sound Delivery	≤ 250 ft	engine + 2 freight cars
12/3/2010 8-12 AM	spur	west	unknown	50	engine
12/6/2010 830-1030AM	spur	east	Sound Delivery	50	engine
12/6/2010 830-1030AM	spur	west	unknown	≤ 250 ft	engine + 2 freight cars
12/8/2010 8-10 AM	spur	east	Sound Delivery	≤ 150 ft	engine + 1 freight car
12/8/2010 8-10 AM	spur	west	unknown	50	engine
12/9/2010 1130-230PM	spur	east	Sound Delivery	50	engine
12/9/2010 1130-230PM	spur	west	unknown	≤ 150 ft	engine + 1 freight car
12/17/2010 8-10 AM	spur	east	Sound Delivery	≤ 250 ft	engine + 2 freight cars
12/17/2010 8-10 AM	spur	west	unknown	50	engine
12/17/2010 8-10 AM	spur	east	Sound Delivery	50	engine
12/17/2010 8-10 AM	spur	west	unknown	≤ 250 ft	engine + 2 freight cars
12/17/2010 8-10 AM	spur	east	Sound Delivery	≤ 350 ft	engine + 3 freight cars
12/17/2010 8-10 AM	spur	west	unknown	50	engine

Time* The time range shown for each crossing event is the total time range that the train crew worked that day. (Example: 8-10 AM means the crew start working at 8 am and finished by 10 am.) The actual crossings shown took place sometime during each such period. The specific time at which each crossing event took place was not recorded during the period October 17, 2010 through December 18, 2010.

Track** All crossings listed are shown as having taken place on the spur track because the associated freight cars were all deliveries to or pick-ups from Sound Delivery Service as the customer. Most if not all of these deliveries and pick-ups were from or to the Sound Delivery site. However, a few of these crossings may have involved delivery of cars via the main line track for pick-up by Sound Delivery Service at Meeker Southern's siding east of 134th, which is accessible from the south side of 80th Street East.

Length (ft)*** Actual length of each freight car is unknown, but no single freight car was longer than 100 feet from coupling knuckle to coupling knuckle.

end of log

Response to the Commission's request for information as "whether [each] movement was a test train or a load hauled for compensation"

With the exception of the freight cars hauled along the spur on October 17, 2010, all of the eastbound freight cars referenced on the train crossing log set forth on the two preceding pages were hauled for compensation to Meeker's customer Sound Delivery Service. However, the train movements on the spur from October 18, 2010 through November 3, 2010 had a dual of testing and hauling freight cars for compensation.

Testing operations, which were personally overseen by Meeker Southern Railroad's general manager Byron Cole, involved (a) examination of the spur track bed and rails for stability with different size and weight freight car loads, (b) application of lubricant on the spur track rails and examination of the functioning of the rails with that lubricant with different size and weight freight car loads, and (c) examination of clearances between the loaded freight cars of different sizes and loading conditions along the South Delivery Service site's loading dock.

Response to the Commission's request for information as to "how the crossing was protected during train movements"

All of the subject train movements during the period from October 18, 2010 through December 18, 2010 were protected by all of the following means:

- (1) By passive warning devices on each side of the crossing, which consisted of (a) "2 Tracks" Cross-Buck Signs near the tracks, (b) cross-buck pavement markings south of the crossing along 134th Avenue East, and (c) cross-buck pavement markings on 80th Street East to the east of 134th Avenue East;
- (2) By sounding the locomotive horn at each train's approach of the 134th crossing in accordance with CFR 49 CFR 222.21 (a section entitled "When must a locomotive horn be used?");¹

¹ The relevant divisions of the Code of Federal Regulations down to and including CFR 49 CFR 222.21 are as follows (along with the text of CFR 49 CFR 222.21):

TITLE 49 - TRANSPORTATION

SUBTITLE B - OTHER REGULATIONS RELATING TO TRANSPORTATION

CHAPTER II - FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 222 - USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY - RAIL GRADE CROSSINGS

subpart b - USE OF LOCOMOTIVE HORNS

222.21 - When must a locomotive horn be used?

(a) Except as provided in this part, **the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car shall be sounded when such locomotive or lead cab car is approaching a public highway-rail grade**

- (3) Sounding the locomotive bell at each train's approach of the 134th crossing; and
- (4) Providing warning at the 134th crossing consistent with the relevant portions of Rule 6.32.1 of the General Code of Operating Rules, Sixth Edition (Effective April 7, 2010) (known as "GCOR").²

crossing. Sounding of the locomotive horn with two long, one short, and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive or train occupies the crossing. This pattern may be varied as necessary where crossings are spaced closely together.

(b)(1) Except as provided in paragraph (b)(2) of this section, **the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing.**

(2) Trains, locomotive consists, and individual locomotives traveling at speeds in excess of 45 mph shall not begin sounding the horn more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

(c) As stated in 222.3(c) of this part, this section does not apply to any Chicago Region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

(d) **Trains, locomotive consists and individual locomotives that have stopped in close proximity to a public highway-rail grade crossing may approach the crossing and sound the locomotive horn for less than 15 seconds before the locomotive enters the highway-rail grade crossing, if the locomotive engineer is able to determine that the public highway-rail grade crossing is not obstructed and either:**

(1) The public highway-rail grade crossing is equipped with automatic flashing lights and gates and the gates are fully lowered; or

(2) **There are no conflicting highway movements approaching the public highway-rail grade crossing.**

(e) Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with paragraphs (b) and (d) of this section.

(Emphasis added.)

² The General Code of Operating Rules is an extensive general volume of railroad operating rules adhered to by numerous railroad companies throughout the United States. GCOR Rule 6.32.1 states:

6.32.1 Providing Warning Over Road Crossings

When cars are shoved, kicked or a gravity switch move is made over road crossings at grade, an employee must be on the ground at the crossing to provide warning until crossing is occupied. Make any movement over the crossing only on the employee's signal.

Warning is not required when crossing is equipped with:

- Gates that are fully lowered.

or

- Flashing lights or *passive warning devices* when it is clearly seen that no traffic is approaching or stopped at the crossing. Shoving movements must not exceed 15 MPH over crossing until occupied.

(Emphasis added.)

Exhibit B

to the February 15, 2011 response letter from Meeker Southern Railroad's attorney David L. Halinen to Washington Utilities and Transportation Commission, Attn: Betty Young, Compliance Investigator, Transportation Safety

Meeker Southern's explanation, including mitigating factors, of why the company commenced operational use of the new spur track prior to satisfying the conditions in the Commission's Order 01 in Docket TR-100036.

I, James Forgette, the Operations Manager for Meeker Southern Railroad, hereby certify that the data and information in the following pages of this exhibit are true and correct to my best knowledge and belief.

James Forgette 2-15-11
James Forgette **Date**

Reasons why Meeker Southern Railroad commenced operational use of the new spur track prior to satisfying the conditions in the Commission's Order 01 in Docket TR-100036		
Reason and/or Mitigating Factor Number	Reason and/or Mitigating Factor	Comments
1	Meeker's customer Sound Delivery Service had (and continues to have) a desperate need to have freight rail cars loaded at its new facility located at the east end of Meeker's new spur track.	
2	Without use of the new spur track, the freight cars would have had to have continued to be delivered via the main line track for unloading by Sound Delivery Service at Meeker's long-time existing service siding along the north side of the main line track located approximately a quarter mile east of 134th Avenue East (at Meeker's "East Puyallup Yard and Shops Facility"), a siding that is only accessible by motor vehicle from the south side of 80th Street East.	
3	By the time that use of the new spur had begun, (a) the spur track and its bedding had been installed in accordance with the approved civil drawings and (b) substantial 134th Avenue NE road improvements had been made. Even though all of the road improvements contemplated by the approved civil drawings had not been completed, the road improvements that had been made substantially enhanced the condition of the 134th Avenue East roadway at the crossing over the long-standing poor condition that existed prior to the spur track installation.	
4	With the enhanced roadway condition of 134th and the ability to	Unloading by Sound Delivery Service at Meeker's East Puyallup Yard and

	<p>safely run all trains crossing along the spur track outside of 134th's PM peak traffic hours (trains that were all 350 feet or less in length) at slow, safe speeds of approximately only 5 mph, in Meeker's view overall safety to both the public and Sound Delivery's workers was enhanced by using the spur track to deliver freight cars directly to the new Sound Delivery Site for unloading at Sound Delivery's new loading dock rather than continuing to deliver those freight cars via the main line track for unloading by Sound Delivery Service at Meeker's East Puyallup Yard and Shops Facility.</p>	<p>Shops Facility necessitated Sound Delivery's forklifts (forklifts that were generally needed for use in Sound Delivery's outside storage yard) being driven or trucked on surface streets through the 134th crossing in order to get to 80th Street East to access that Facility. Once the forklifts were there, the Sound Delivery forklift operators then had to unload the delivered freight cars and load the materials onto transport trucks for hauling back to the Sound Delivery yard.</p> <p>All of the Sound Delivery haul trucks picking up materials unloaded by the forklifts at Meeker's East Puyallup Yard and Shops Facility would have had to continue to cross the public trail and be loaded by the forklifts.</p>
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Exhibit C

to the February 15, 2011 response letter from Meeker Southern Railroad's attorney David L. Halinen to Washington Utilities and Transportation Commission, Attn: Betty Young, Compliance Investigator, Transportation Safety

Spreadsheets of Meeker Southern monthly rail car logs for the four-month period from October 2010 through January 30, 2011

I, James Forgette, the Operations Manager for Meeker Southern Railroad, hereby certify that the data and information in the following pages of this exhibit are true and correct to my best knowledge and belief.


James Forgette **Date**

**MEEKER SOUTHERN
RAILCAR LOG
OCTOBER, 2010**

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
PTTX 137250	OPT	10/01/10	10/01/10	10/06/10	10/06/10	(+) 128 HOUR	1	372
	PIPE	FRI 0035	FRI 0930	WED 0800	WED 0900	(-) 120 MSN		
						(+) 008 OPT		
PTTX 930911	SDS/SHAPE	10/03/10	10/04/10	10/06/10	10/06/10	0	2	373
	SUN 0631	SUN 1100	MON 0900	WED 0800	WED 0900			
	SUN 0518							
TTPX 811161	OPT/IRON	10/03/10	10/04/10	10/06/10	10/06/10	0	3	374
	SUN 0631	SUN 1100	MON 0930	WED 0800	WED 0900			
	SUN 0518							
TTPX 142168	OPT/IRON	10/03/10	10/04/10	10/06/10	10/06/10	0	4	375
	SUN 0631	SUN 1100	MON 0930	WED 0800	WED 0900			
	SUN 0518							
BNSF 546189	OPT/IRON	10/03/10	10/04/10	10/06/10	10/06/10	0	5	376
	SUN 0631	SUN 1100	MON 0930	WED 0800	WED 0900			
	SUN 0518							
TTPX 80049	SDS/SHAPE	10/03/10	10/04/10	10/06/10	10/06/10	0	6	377
	SUN 0631	SUN 1100	MON 0900	WED 0800	WED 0900			
	SUN 0518							
ICE 69008	OPT	10/06/10	10/06/10	10/08/10	10/08/10	0	7	378
	IRON	WED 0247 TA	WED 0830	FRI 0800	FRI 0830			
		BNSF NO ICHD	MSN NO REPORT	MSN NO REPORT	MSN NO REPORT			
ICE 69017	OPT	10/06/10	10/06/10	10/08/10	10/08/10	0	8	379
	IRON	WED 0247 TA	WED 0830	FRI 0800	FRI 0830			
		BNSF NO ICHD	MSN NO REPORT	MSN NO REPORT	MSN NO REPORT			
HS 2885	OPT	10/07/10	10/08/10	10/11/10	10/11/10	0	9	380
	PLST	THU 2351	FRI 0900	MON 0800	MON 0930			
HS 2894	OPT	10/07/10	10/08/10	10/11/10	10/11/10	0	10	381
	PLST	THU 2351	FRI 0900	MON 0800	MON 0930			

**MEEKER SOUTHERN
RAILCAR LOG
OCTOBER, 2010**

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
PTTX 913294	SDS CAST	10/10/10 SUN 1348	10/11/10 MON 0830	10/15/10 FRI 0800	10/15/10 FRI 1030	0	11	382
PTTX 136349	SDS CAST	10/10/10 SUN 1348	10/11/10 MON 0830	10/15/10 FRI 0800	10/15/10 FRI 1030	0	12	383
PTTX 142158	OPT IRON	10/10/10 SUN 1348	10/11/10 MON 0900	10/13/10 WED 1500	10/15/10 FRI 1030	0	13	384
CEFX 30124	OPT IRON	10/10/10 SUN 1348	10/11/10 MON 0900	10/13/10 WED 1500	10/15/10 FRI 1030	0	14	385
PTTX 141157	SDS PIPE	10/15/10 FRI 0243	10/15/10 FRI 0900	10/20/10 WED 0800	10/20/10 WED 1258	0	15	386
PTTX 136106	SDS PIPE	10/15/10 FRI 0243	10/15/10 FRI 0900	10/20/10 WED 0800	10/20/10 WED 1258	0	16	387
PTTX 136022	SDS PIPE	10/15/10 FRI 0243	10/15/10 FRI 0930	10/20/10 WED 0800	10/20/10 WED 1258	0	17	388
PTTX 137269	OPT IRON	10/15/10 FRI 0243	10/15/10 FRI 0930	10/20/10 WED 0800	10/20/10 WED 1258	0	18	389
PTTX 137295	OPT IRON	10/15/10 FRI 0243	10/15/10 FRI 0930	10/20/10 WED 0800	10/20/10 WED 1258	0	19	390
PTTX 142133	OPT IRON	10/15/10 FRI 0243	10/15/10 FRI 0930	10/20/10 WED 0800	10/20/10 WED 1258	0	20	391

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
GATX 96029	CBC WAX	10/15/10 FRI 0243	10/15/10 FRI 1000	10/21/10 THU 0728	10/22/10 FRI 1058	0	21	392
PTTX 137249	SDS PIPE	10/16/10 SAT 2131	10/18/10 MON 0930	10/22/10 FRI 0800	10/22/10 FRI 1058	0 EXTRA HOURS - MSN	22	393
PTTX 141124	SDS PIPE	10/16/10 SAT 2131	10/18/10 MON 0930	10/22/10 FRI 0800	10/22/10 FRI 1058	0 EXTRA HOURS - MSN	23	394
PTTX 141181	SDS CAST	10/16/10 SAT 2131	10/18/10 MON 0930	10/22/10 FRI 0800	10/22/10 FRI 1058	0 EXTRA HOURS - MSN	24	395
PTTX 137278	OPT IRON	10/22/10 FRI 0307	10/22/10 FRI 1000	10/25/10 MON 0800	10/25/10 MON 0900	0	25	396
PTTX 142160	OPT IRON	10/22/10 FRI 0307	10/22/10 FRI 1000	10/27/10 WED 0800	10/27/10 WED 0930	(+) 127 HOUR (-) 120 MSN (+) 007 OPT	26	397
TILX 194836	OPT EMPTY	10/22/10 FRI 0307	10/22/10 FRI 1000	10/27/10 WED 0800	10/27/10 WED 0930	0	27	398
GLNX 21118	OPT EMPTY	10/22/10 FRI 0307	10/22/10 FRI 1000	10/27/10 WED 0800	10/27/10 WED 0930	0	28	399
TEIX 20511	OPT EMPTY	10/22/10 FRI 0307	10/22/10 FRI 1000	10/27/10 WED 0800	10/27/10 WED 0930	0	29	400
PTTX 142405	SDS PIPE	10/24/10 SUN 1237	10/25/10 MON 0930	10/27/10 WED 0800	10/27/10 WED 0930	0	30	401

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
RAILCAR TOTALS:			PRODUCT TOTALS:			DEMURRAGE TOTALS:		
CBC	1		CAST	3		CBC	0	
OPT	18		COIL	0		OPT	15	HOURS
SDS	14		EMPTY	3		SDS	0	
BIGG CRNE	0		IRON	12		TPK	0	
TOTAL	33		METL	0		TOTAL	30	
			PCBD (OSB)	0				
			PIPE	10				
			PLST	2				
			PULP	0				
			RAIL	0				
			SHAPE	2				
			WAX	1				
			TOTAL	33				

**MEEKER SOUTHERN
RAILCAR LOG
NOVEMBER, 2010**

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
PTTX 142167	OPT IRON	11/01/10 MON 1402 MSN REPORT	11/01/10 MON 0930 RMI DATES INCORRECT	11/03/10 WED 0800	11/03/10 WED 0900	0	1	405
TILX 194780	OPT EMPTY	11/03/10 WED 0301	11/03/10 WED 0930	11/05/10 FRI 0800	11/05/10 FRI 1100	0	2	406
ICE 69012	OPT IRON	11/05/10 FRI 0222	11/05/10 FRI 0900	11/8//10 MON 0800	11/08/10 MON 1200	0	3	407
PTTX 137041	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 0800	11/08/10 MON 1200	0	4	408
PTTX 142106	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 1600	11/08/10 MON 1630	0	5	409
PTTX 142086	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 1600	11/08/10 MON 1630	0	6	410
PTTX 141039	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 1600	11/08/10 MON 1630	0	7	411
PTTX 136113	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 0800	11/08/10 MON 1200	0	8	412
PTTX 142175	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 0800	11/08/10 MON 1200	0	9	413
PTTX 142176	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 0800	11/08/10 MON 1200	0	10	414

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
PTTX 141100	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 0800	11/08/10 MON 1200	0	11	415
PTTX 142162	SDS PIPE	11/05/10 FRI 0222	11/05/10 FRI 1030	11/08/10 MON 0800	11/08/10 MON 1200	0	12	416
BNSF 546282	OPT IRON	11/07/10 SUN 1216	11/08/10 MON 0900	11/11/10 THU 1738	11/12/10 FRI 0830	0	13	417
PTTX 142112	OPT IRON	11/07/10 SUN 1216	11/08/10 MON 0900	11/11/10 THU 1738	11/12/10 FRI 0830	0	14	418
PTTX 136085	SDS PIPE	11/12/10 FRI 0242 BNSF REPORT	11/10/10 WED 0830	11/11/10 THU 1738	11/12/10 FRI 0830	0	15	419
NS 168236	OPT COIL	11/12/10 FRI 0242	11/12/10 FRI 0900	11/17/10 WED 0800	11/17/10 WED 0830	0	16	420
PTTX 141159	SDS PIPE	11/12/10 FRI 0242	11/12/10 FRI 0900	11/15/10 MON 0800	11/15/10 MON 1130	0	17	421
BNSF 546053	OPT IRON	11/14/10 SUN 1213	11/15/10 MON 0900	11/17/10 WED 0800	11/17/10 WED 0830	0	18	422
BNSF 546114	OPT IRON	11/14/10 SUN 1213	11/15/10 MON 0900	11/17/10 WED 0800	11/17/10 WED 0830	0	19	423
HS 2885	OPT PLST	11/14/10 SUN 1213	11/15/10 MON 0900	11/19/10 FRI 0800	11/19/10 FRI 0900	0	20	424

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
HS 2894	OPT PLST	11/14/10 SUN 1213	11/15/10 MON 0900	11/19/10 FRI 0800	11/19/10 FRI 0900	0	21	425
PROX 46122	OPT EMPTY	11/14/10 SUN 1213	11/15/10 MON 0900	12/01/10 WED 1300	12/03/10 FRI 1130	0	22	426
SRIX 80132	CBC WAX	11/14/10 SUN 1213	11/15/10 MON 1000	12/02/10 THU 1400	12/03/10 FRI 1130	0	23	427
UTLX 201857	OPT EMPTY	11/19/10 FRI 0255	11/19/10 FRI 0930	12/01/10 WED 1342	12/03/10 FRI 1130	0	24	428
UTLX 500071 DECEMBER INVOICE	OPT EMPTY	11/19/10 FRI 0255	11/19/10 FRI 0930	12/10/10 FRI 0928	12/10/10 FRI 0930	0	25	429
ALY 91708	SDS IRON	11/21/10 SUN 1219	11/22/10 MON 0900	11/24/10 WED 0800	11/24/10 WED 1130	0	26	430
BNSF 546056	OPT IRON	11/21/10 SUN 1219	11/22/10 MON 0930	11/24/10 WED 0800	11/24/10 WED 1130	0	27	431
PTTX 142031	SDS PIPE	11/21/10 SUN 1219	11/22/10 MON 0900	11/24/10 WED 0800	11/24/10 WED 1130	0	28	432
TTPX 806179	OPT IRON	11/21/10 SUN 1219	11/22/10 MON 0930	11/24/10 WED 0800	11/24/10 WED 1130	0	29	433
FURX 125674 DECEMBER INVOICE	OPT EMPTY	11/28/10 SUN 1245	11/29/10 MON 0930	12/10/10 FRI 0915	12/10/10 FRI 0930	0	30	434

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
RAILCAR TOTALS:			PRODUCT TOTALS:			DEMURRAGE TOTALS:		
CBC	1		CAST	0		CBC	0	
OPT	19		COIL	1		OPT	6	
SDS	13		EMPTY	5		SDS	0	
BIGG CRNE	0		IRON	12		TPK	0	
TOTAL	33		METL	0		TOTAL	6	
			PCBD (OSB)	0				
			PIPE	12				
			PLST	2				
			PULP	0				
			RAIL	0				
			SHAPE	0				
			WAX	1				
			TOTAL	33				

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
PTTX 142161	SDS PIPE	12/03/10 FRI 0128	12/03/10 FRI 0900	12/06/10 MON 0800	12/06/10 MON 0930	0	1	437
PTTX 142098	SDS PIPE	12/03/10 FRI 0128	12/03/10 FRI 0900	12/06/10 MON 0800	12/06/10 MON 0930	0	2	438
CEFX 30147	OPT IRON	12/03/10 FRI 0128	12/03/10 FRI 0930	12/06/10 MON 0800	12/06/10 MON 0930	0	3	439
PTTX 142104	SDS PIPE	12/09/10 THU 1616 BNSF REPORT	12/08/10 WED 0830	12/09/10 THU 1619	12/09/10 THU 1621	0	4	440
TILX 194836	OPT EMPTY	12/09/10 THU 1616 BNSF REPORT	12/08/10 WED 0900	12/14/10 TUE 1050	12/16/10 THU 1130	0	5	441
BNSF 546001	OPT IRON	12/12/10 SUN 1216	12/13/10 MON 1100	12/16/10 THU 0800	12/16/10 THU 1130	0	6	442
BNSF 546015	OPT IRON	12/12/10 SUN 1216	12/13/10 MON 1100	12/16/10 THU 0800	12/16/10 THU 1130	0	7	443
BNSF 546022	OPT IRON	12/12/10 SUN 1216	12/13/10 MON 1100	12/17/10 FRI 0800	12/17/10 FRI 1230	0	8	444
BNSF 546120	OPT IRON	12/12/10 SUN 1216	12/13/10 MON 1100	12/16/10 THU 0800	12/16/10 THU 1130	0	9	445
BNSF 546241	OPT IRON	12/12/10 SUN 1216	12/13/10 MON 1100	12/16/10 THU 0800	12/16/10 THU 1130	0	10	446

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
BNSF 546295	OPT IRON	12/12/10 SUN 1216	12/13/10 MON 1100	12/16/10 THU 0800	12/16/10 THU 1130	0	11	447
PTTX 136316	SDS PIPE	12/17/10 FRI 0332	12/17/10 FRI 0930	12/17/10 FRI 1200	12/17/10 FRI 1230	0	12	448
PTTX 137273	SDS PIPE	12/17/10 FRI 0332	12/17/10 FRI 0930	12/21/10 TUE 0851	12/23/10 THU 1600	0	13	449
PTTX 142102	SDS PIPE	12/17/10 FRI 0332	12/17/10 FRI 0930	12/21/10 TUE 0851	12/23/10 THU 1600	0	14	450
PTTX 142109	SDS PIPE	12/17/10 FRI 0332	12/17/10 FRI 0930	12/21/10 TUE 0851	12/23/10 THU 1600	0	15	451
PTTX 142142	SDS PIPE	12/17/10 FRI 0332	12/17/10 FRI 0930	12/17/10 FRI 0851	12/17/10 FRI 1230	0	16	452
TTPX 804454	OPT IRON	12/24/10 FRI 0142 MSN REPORT	12/23/10 THU 1630	12/27/10 MON 1329	12/28/10 TUE 1000	0	17	453
TTPX 804179	OPT IRON	12/24/10 FRI 0142	12/24/10 FRI 0930	12/27/10 MON 1329	12/28/10 TUE 1000	0	18	454
ATSF 68207	OPT COIL	12/24/10 FRI 0142	12/24/10 FRI 0930	12/27/10 MON 1329	12/28/10 TUE 1000	0	19	455
GONX 310015	OPT IRON	12/24/10 FRI 0142	12/24/10 FRI 0930	12/27/10 MON 1329	12/28/10 TUE 1000	0	20	456

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
TILX 190452 JANUARY INVOICE	OPT EMPTY	12/24/10 FRI 0142	12/24/10 FRI 0930	01/01/11 MON 0220	01/03/10 MON 0900	0	21	457
BNSF 546102	SDS SHAPE	12/26/10 SUN 1232	12/28/10 TUE 0900	12/29/10 WED 0800	12/29/10 WED 0930	0	22	458
BN 580437	OPT IRON	12/26/10 SUN 1232	12/28/10 TUE 0930	12/29/10 WED 0800	12/29/10 WED 0930	0	23	459
ATSF 68046	SDS METAL	12/29/10 WED 0259	12/29/10 WED 0930	12/31/10 FRI 0800	12/31/10 FRI 0930	0	24	460
BNSF 546062	OPT IRON	12/29/10 WED 0259	12/29/10 WED 0900	12/31/10 FRI 0800	12/31/10 FRI 0930	0	25	461
HS 3127	OPT PLST	12/29/10 WED 0259	12/29/10 WED 0900	12/31/10 FRI 0800	12/31/10 FRI 0930	0	26	462
HS 3137	OPT PLST	12/29/10 WED 0259	12/29/10 WED 0900	12/31/10 FRI 0800	12/31/10 FRI 0930	0	27	463
TTPX 806353	OPT IRON	12/29/10 WED 0259	12/29/10 WED 0900	12/31/10 FRI 0800	12/31/10 FRI 0930	0	28	464

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
RAILCAR TOTALS:		PRODUCT TOTALS:			DEMURRAGE TOTALS:			
CBC		CAST	0		CBC	0		
OPT		COIL	1		OPT	0		
SDS		EMPTY	2		SDS	0		
BIGG CRN!		IRON	13		TPK	0		
TOTAL		METAL	1		TOTAL	0		
		PCBD (OSB)	0					
		PIPE	8					
		PLST	2					
		PULP	0					
		RAIL	0					
		SHAPE	1					
		WAX	0					
		TOTAL	28					

**MEEKER SOUTHERN
RAILCAR LOG
JANUARY, 2011**

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
BNSF 546277	OPT IRON	01/02/11 SUN 1251	01/03/11 MON 0900	01/03/11 MON 1511	01/05/11 WED 0900	0	1	1
JTLX 44	OPT IRON	01/02/11 SUN 1251	01/03/11 MON 0900	01/03/11 MON 1511	01/05/11 WED 0900	0	2	2
TTPX 806223	OPT IRON	01/02/11 SUN 1251	01/03/11 MON 0900	01/03/11 MON 1511	01/05/11 WED 0900	0	3	3
TTPX 806198	OPT IRON	01/05/11 WED 0101	01/05/11 WED 0900	01/07/11 FRI 0634	01/07/11 FRI 0900	0	4	4
BNSF 545505	OPT IRON	01/05/11 WED 0101	01/05/11 WED 0900	01/07/11 FRI 0634	01/07/11 FRI 0900	0	5	5
PROX 46122	OPT EMPTY	01/07/11 FRI 0211	01/07/11 FRI 0930	01/31/11 MON 1252	01/31/11 MON 1254	0	6	6
UTLX 201857	OPT EMPTY	01/07/11 FRI 0211	01/07/11 FRI 0930	01/21/11 FRI 1049	01/24/11 FRI 0931	0	7	7
BNSF 545461	SDS SHAPE	01/09/11 SUN 1253	01/10/11 MON 0930	01/14/11 FRI 0800	01/14/11 FRI 0931	0	8	8
BN 621845	SDS SHAPE	01/14/11 FRI 0240	01/14/11 FRI 1001	01/18/11 TUE 0800	01/18/11 TUE 0930	0	9	9
BNSF 545539	SDS SHAPE	01/14/11 FRI 0240	01/14/11 FRI 1001	01/18/11 TUE 0800	01/18/11 TUE 0930	0	10	10

**MEEKER SOUTHERN
RAILCAR LOG
JANUARY, 2011**

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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
UTLX 201851	OPTIMUS EMPTY	01/14/11 FRI 0240	01/14/11 FRI 1030	01/21/11 FRI 1212	01/24/11 FRI 0931	0	11	11
ICE 69039	OPTIMUS IRON	01/16/11 SUN 1250	01/18/11 TUE 1000	01/19/11 WED 1148	01/24/11 FRI 0931	0	12	12
FURX 125674	OPTIMUS EMPTY	01/21/11 FRI 0259	01/24/11 MON 1000	01/31/11 MON 0800	01/31/11 MON 1254	0	13	13
UTLX 500071 JANUARY INVOICE	OPTIMUS EMPTY	01/21/11 FRI 0259	01/24/11 MON 1000	02/01/11 TUE 0844			14	14
ATSF 68219	OPTIMUS COIL	01/26/11 WED 1008	01/28/11 FRI 1030	01/31/11 MON 0800	01/31/11 MON 1254	0	15	15
CSS 19059	OPTIMUS IRON	01/26/11 WED 1008	01/28/11 FRI 1030	01/31/11 MON 0800	01/31/11 MON 1254	0	16	16
TILX 194836 JANUARY INVOICE	OPTIMUS EMPTY	01/26/11 WED 1008 WHL 1/28/11 1015					17	17
UTLX 58638 JANUARY INVOICE	OPTIMUS EMPTY	01/26/11 WED 1008 WHL 1/28/11 1015					18	18
UTLX 500138 JANUARY INVOICE	OPTIMUS EMPTY	01/26/11 WED 1008	01/31/11 MON 1045				19	19
PTTX 142160	OPTIMUS IRON	01/28/11 FRI 0051	01/28/11 FRI 1030	01/31/11 MON 1700			20	20

**MEEKER SOUTHERN
RAILCAR LOG
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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
BNSF 511955	SDS METAL	01/28/11 FRI 0051	01/28/11 FRI 1000	01/31/11 MON 0800	01/31/11 MON 1254		21	21
TTPX 804722	OPTIMUS IRON	01/28/11 FRI 0051	01/28/11 FRI 1030	01/31/11 MON 1700			22	22
TTPX 804911	OPTIMUS IRON	01/28/11 FRI 0051	01/28/11 FRI 1030	01/31/11 MON 1700			23	23
BNSF 546181	OPTIMUS IRON	01/30/11 SAT 1112	01/31/10 TUE 1045	02/01/11 TUE 1700			24	24

**MEEKER SOUTHERN
RAILCAR LOG
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Railcar	Commodity	Date Received	Date Placed	Date Released	Date Interchanged	Demurrage	month#	YTD #
RAILCAR TOTALS:		PRODUCT TOTALS:			DEMURRAGE TOTALS:			
CBC		CAST			CBC	0		
OPT		COIL	1		OPT			
SDS		EMPTY	8		SDS			
TOTAL		IRON	11		TPK	0		
		METAL	1		TOTAL			
		PCBD (OSB)						
		PIPE						
		PLST						
		PULP						
		RAIL						
		SHAPE	3					
		WAX						
		TOTAL	24					

APPENDIX R

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February 28, 2011

VIA EMAIL AND PRIORITY MAIL

Frona Woods
Assistant Attorney General
Washington Utilities and Transportation Division
PO Box 40128
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Washington Utilities and Transportation Commission
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Olympia, WA 98504-7250

Attn: Betty Young, Compliance Investigator, Transportation Safety Enforcement

Re: Docket No. TR-100036
My Client Meeker Southern Railroad
(USDOT Crossing No. 085536 R)
(WUTC Crossing No. 42A32.40)
Arguments as to Why, in View of Mitigating Circumstances and the Functional
Equivalent of a Civil Penalty that Meeker Has Already Incurred, Civil Penalties
Should Not Be Imposed Upon Meeker

Dear Ms. Woods and Ms. Young:

On behalf of my client Meeker Southern Railroad ("Meeker"), I am writing in follow-up to my February 15, 2011 letter to you, Ms. Young, a letter with attached exhibits that provided you with Meeker's response to the three-section Staff Information Request set forth in the February 2, 2011 letter sent to me by David Pratt, the Commission's Assistant Director for Transportation Safety. Following a summary of background facts, today's letter sets forth arguments on Meeker's behalf as to why the Commission should not impose civil penalties on Meeker.

Background

Meeker's Straightforward Admission of the Violation

During the January 26, 2011 hearing before Administrative Law Judge Adam Torem, Meeker's general manager, Byron Cole, straightforwardly and repeatedly admitted that Order 01

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had been violated. (Specifically, Meeker had violated Condition 3 of Order 01¹ by starting operation of the spur line and Phase 1 Service Siding during October 2010 before all work for the proposed spur track and the Phase 1 Service Siding shown on the project design drawings had been completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff.) During the hearing, Mr. Cole apologized for the violation and promised to meticulously adhere to the Amended Order (Order 03) that Judge Torem issued near the hearing's conclusion. (That order, among other things, modified Condition 3 of Order 01 to allow immediate use of the spur and Phase 1 Service Siding subject to the Special Requirements and Restrictions set forth in Table 2 attached to Order 03 as Exhibit B.²)

Mitigating Circumstances Relating to the Violation

Significant mitigating circumstances underlie Meeker's violation of the Order. Some of them are set forth in the table that is part of Exhibit B accompanying my February 15, 2011 letter to you, Ms. Young, a table that I hereby incorporate by reference into this letter.

¹ Condition 3 of Order 01 states:

All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding.

² Paragraph (5) of Order 03 states:

(5) Approval Condition 3 of Order 01 is hereby amended to state:

(3) All work for the proposed spur track and the Phase 1 Service Siding (except for approximately the east 300 feet of the siding, which may be completed at any time after the commencement of operation of the remainder of the automatic flashing lights crossing signal system) shown on the design drawings shall be completed (a) in a timeframe consistent with the time schedule set forth in Table 1 attached to this amending Order as Exhibit A (unless otherwise approved by both Commission Staff and Public Works) and (b) to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff ~~prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding~~; PROVIDED, HOWEVER, that (i) Petitioner may immediately operate the spur line and Phase 1 Service Siding subject to the Special Requirements and Restrictions set forth in Table 2 attached to this Amending Order as Exhibit B and (ii) following installation and commencement of operation of the remainder of the automatic flashing lights crossing signal system for the crossing and of corresponding traffic control signs (which must occur by March 18, 2011 unless otherwise approved by both Commission Staff and Public Works), Petitioner must thereafter operate the spur line and Phase 1 Service Siding with the automatic flashing lights crossing signal system in operation.

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Terry Lawrence's Hearing Testimony Explained How Both Public Safety and Worker Safety Were Enhanced by the Spur's Use

In regard to the mitigating circumstances summarized in the table, note that during the January 26, 2011 hearing, extensive testimony by Terry Lawrence, the president of Meeker's now-spur-connected customer Sound Delivery Service, testified that beginning mid-last October Sound Delivery Service needed to take delivery of 27 railcar loads of "big, heavy, lengthy pipe," pipe that was 80 to 85 feet in length. [Mr. Cole has explained to me that (a) each piece of pipe was six feet in diameter and weighed up to as much as 33 tons and (b) was loaded on the railcars with two pipes side-by-side on the bottom of the railcars with the third pipe balanced on top of the middle of the bottom two).] The first two of those railcar loads of pipe were unloaded at Meeker's team track located along the north side of Meeker's main line track approximately a quarter mile east of 134th Avenue East and just south of 80th Street East (at Meeker's "East Puyallup Yard and Shops Facility"), a siding that is only accessible by motor vehicle from the south side of 80th Street East. Mr. Lawrence pointed out during his testimony that a bike path/walking trail was in close proximity to that siding.³ He further pointed out that handling the heavy, bulky, long lengths of pipe being unloaded from railcars and loaded onto delivery trucks at that location was hazardous and necessitated the use of two and sometimes three forklifts working together. He explained that, by unloading the rest of the railcars at the new Sound Delivery Service loading dock along the end of the newly constructed Phase 1 Service Siding (rather than at Meeker's East Puyallup Yard and Shops Facility), (i) the risk of Sound Delivery's unloading and unloading of such extremely large pipe in relatively close proximity to the public trail was eliminated and (ii) various risks to Sound Delivery's workers (risks arising from the pipes' extreme size) were also eliminated.

Sound Delivery's Railcars Had to Pass through the 134th Crossing Whether They Were Unloaded at Meeker's East Puyallup Yard and Shops Facility or at the Sound Delivery Site

Whether Sound Delivery unloaded its railcars at Meeker's East Puyallup Yard and Shops Facility or at the Sound Delivery Service site, those railcars had to pass through the 134th Avenue East crossing. Crossing of 134th could not be avoided by using the Meeker's existing service siding at Meeker's East Puyallup Yard and Shops Facility.

Under the Particular Operational Circumstances at Hand, Use of the Spur for Transit of Sound Delivery's Railcars Posed No Significant Safety Risk to Motorists or Pedestrians at the 134th Crossing

During the time of day of each spur crossing over the period of the violation of Condition 3 of Order 01, no significant risk to public safety was posed at the 134th crossing by (a) operating the spur track for transit of railcars to and from the Sound Delivery site versus (b)

³ Byron Cole pointed out during his hearing testimony that the bike path/walking trail was 60 feet from that siding.

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using the main line track to take those railcars to and from Meeker's East Puyallup Yard and Shops Facility. The following facts make clear why.

First, the spur track is in close proximity to and generally parallel with the main line track at the 134th crossing (a distance ranging from only about 17 to 19 feet away from the main line track). This modest change to the 134th crossing is not confusing to the motoring public.

Second, all of Meeker's trains (whether on the spur track or main line track) have been run very slowly through the crossing (at a speed generally not exceeding approximately 5 mph).

Third, as noted in Exhibit A to my February 15, 2011 letter to you, Ms. Young, all train movements through the 134th crossing during the period from October 18, 2010 through December 18, 2010 were protected by all of the following means:

- (1) Passive warning devices on each side of the crossing, devices that consisted of (a) "2 Tracks" Cross-Buck Signs near the tracks, (b) cross-buck pavement markings south of the crossing along 134th Avenue East, and (c) cross-buck pavement markings on 80th Street East to the east of 134th Avenue East;
- (2) Sounding the locomotive horn at each train's approach of the 134th crossing in accordance with CFR 49 CFR 222.21 (a section entitled "When must a locomotive horn be used?");⁴

⁴ The relevant divisions of the Code of Federal Regulations down to and including CFR 49 CFR 222.21 are as follows (along with the text of CFR 49 CFR 222.21):

TITLE 49 - TRANSPORTATION

SUBTITLE B - OTHER REGULATIONS RELATING TO TRANSPORTATION

CHAPTER II - FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 222 - USE OF LOCOMOTIVE HORNS AT PUBLIC HIGHWAY - RAIL GRADE CROSSINGS

subpart b - USE OF LOCOMOTIVE HORNS

222.21 - When must a locomotive horn be used?

(a) Except as provided in this part, the locomotive horn on the lead locomotive of a train, lite locomotive consist, individual locomotive, or lead cab car ***shall be sounded when such locomotive*** or lead cab car ***is approaching a public highway-rail grade crossing***. Sounding of the locomotive horn with two long, one short, and one long blast shall be initiated at a location so as to be in accordance with paragraph (b) of this section and shall be repeated or prolonged until the locomotive or train occupies the crossing. This pattern

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- (3) Sounding the locomotive bell at each train's approach of the 134th crossing; and
- (4) Providing warning at the 134th crossing consistent with the relevant portions of Rule 6.32.1 (Providing Warning Over Road Crossings) of the General Code of Operating Rules, Sixth Edition (Effective April 7, 2010) (known as "GCOR").⁵

may be varied as necessary where crossings are spaced closely together.

(b)(1) Except as provided in paragraph (b)(2) of this section, **the locomotive horn shall begin to be sounded at least 15 seconds, but no more than 20 seconds, before the locomotive enters the crossing.**

(2) Trains, locomotive consists, and individual locomotives traveling at speeds in excess of 45 mph shall not begin sounding the horn more than one-quarter mile (1,320 feet) in advance of the nearest public highway-rail grade crossing, even if the advance warning provided by the locomotive horn will be less than 15 seconds in duration.

(c) As stated in 222.3(c) of this part, this section does not apply to any Chicago Region highway-rail grade crossing at which railroads were excused from sounding the locomotive horn by the Illinois Commerce Commission, and where railroads did not sound the horn, as of December 18, 2003.

(d) **Trains, locomotive consists and individual locomotives that have stopped in close proximity to a public highway-rail grade crossing may approach the crossing and sound the locomotive horn for less than 15 seconds before the locomotive enters the highway-rail grade crossing, if the locomotive engineer is able to determine that the public highway-rail grade crossing is not obstructed and either:**

(1) The public highway-rail grade crossing is equipped with automatic flashing lights and gates and the gates are fully lowered; or

(2) **There are no conflicting highway movements approaching the public highway-rail grade crossing.**

(e) Where State law requires the sounding of a locomotive audible warning device other than the locomotive horn at public highway-rail grade crossings, that locomotive audible warning device shall be sounded in accordance with paragraphs (b) and (d) of this section.

(Emphasis added.)

⁵ The General Code of Operating Rules is an extensive general volume of railroad operating rules adhered to by more than a hundred railroad companies throughout the United States. GCOR Rule 6.32.1 states:

6.32.1 Providing Warning Over Road Crossings

When cars are shoved, kicked or a gravity switch move is made over road crossings at grade, an employee must be on the ground at the crossing to provide warning until crossing is occupied. Make any movement over the crossing only on the employee's signal.

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(Meeker has advised me that those means together with the slow train speeds were the crossing safety protocol that Meeker has always used along the main line track at the 134th crossing prior to the installation of the spur track.)

Fourth, the loss of roadway length available for queuing of northbound motor vehicles along 134th south of the crossing (a loss equivalent to just the length of one motor vehicle resulting from the installation of the spur track 17 to 19 feet south of the main line track) would only have been an issue if the spur track would have been used for trains crossing 134th along the spur with a length in excess of 350 feet during the weekday PM peak traffic hour of 4:45 PM to 5:45 PM. However, during the period of the violation of Order 01, the spur track was never used for trains with a length in excess of 350 feet during the weekday PM peak traffic hour of 4:45 PM to 5:45 PM.⁶ Accordingly, the actual operation of Meeker's trains through the spur crossing did not cause queued northbound traffic to extend into Pioneer Way to the south of the crossing.

Fifth, by the time that use of the new spur had begun, substantial 134th Avenue East road improvements had been made. Even though all of the road improvements contemplated by the originally approved civil drawings had not been completed by that point in time, the road improvements that Meeker's contractor had made substantially enhanced the condition of the 134th roadway at the crossing over the previous, long-standing poor condition of the roadway at the crossing that existed prior to the spur-track installation. (Note that, historically, Pierce

Warning is not required when crossing is equipped with:

- Gates that are fully lowered.

or

- Flashing lights or passive warning devices when it is clearly seen that no traffic is approaching or stopped at the crossing. Shoving movements must not exceed 15 MPH over crossing until occupied.

(Emphasis added.)

⁶ The table that is part of Exhibit A accompanying my February 15, 2011 letter to you, Ms. Young, lists the train lengths and time ranges during which all of the trains using the spur passed through the 134th Avenue East crossing from October 17, 2010 through December 18, 2010. The Exhibit A table shows that none of those trains exceeded 350 feet in length and that none of them passed through the 134th crossing during the weekday PM peak traffic hour of 4:45 PM to 5:45 PM. Likewise, in regard to trains using the spur track during the time period from December 19, 2010 until Order 01 was amended by Order 03 on January 26, 2011 (i.e., the time period during which flagging of train crossings along the spur track was performed by certified flaggers), the data set forth in Meeker's Report #1 and Report #2 submitted to Commission Staff show that (a) none of those trains were comprised of more than an engine plus three cars (and thus none of them had a length exceeding 350 feet because the engine length from knuckle coupler to knuckle coupler is 50 feet and the maximum length of any of the freight cars that Meeker hauled was 100 feet from knuckle coupler to knuckle coupler) and (b) none of the trains passed through the 134th crossing during a weekday PM peak traffic hour of 4:45 PM to 5:45 PM.

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County has been solely responsible for the expense of the construction and maintenance of 134th near the crossing,⁷ but maintenance of 134th was obviously lacking.) Meeker's general manager, Byron Cole, has reported to me that upon the completion of the roadway paving work done by Meeker's roadway contractor during October 2010, numerous smiling drivers who passed through the crossing (drivers who appeared to have been long accustomed to the poor condition of 134th at the crossing) gave him a "thumbs up" sign in appreciation of the much-improved roadway condition.

Sixth, Meeker has only ever had one locomotive located and operating on its main line track or any of its connected spur or siding tracks. Because that is the case, no more than one train has ever been available to operate near or pass through the 134th crossing at the same point in time. Accordingly, (a) no actual risk of a second train has been posed to motorists or pedestrians at the 134th crossing in conjunction with the use of the spur and (b) no confusion to motorists has ever been caused by a second train at or near the 134th crossing in conjunction with the use of the spur.

In sum, the use of the spur for transit of Sound Delivery's railcars during the period of the violation of Order 01 posed no significant safety risk to motorists or pedestrians at the 134th crossing. The close proximity of the spur to the main line track and Meeker's continuation of its slow train speeds and the other elements of its above-described crossing safety protocol on both the spur track and main line track at the 134th crossing have together prevented the use of the new spur track from causing any confusion to the motoring public. Further, the short train lengths on the spur and the fact that all periods of actual spur-crossing use have been outside of weekday PM peak traffic hours have prevented spur use from queuing automobile traffic south of the spur track into Pioneer Way. Also, use of the spur did not commence until 134th roadway improvements were made that substantially improved the condition of the roadway over its long-standing poor condition. In addition, the fact that Meeker only has a single locomotive and thus has never been able to operate more than a single train on the main line track, let alone near or through the 134th crossing, at the same time has avoided any possible increase in actual risk or motorist confusion in conjunction with the use of the spur track if Meeker had more than one operational engine.

⁷ Note that a "Highway Easement" (Highway Easement No. 25874—a colored copy of which is attached as Exhibit 1) for the roadway that eventually became 134th was granted to Pierce County by the Northern Pacific Railway Company on three terms, the first of which stated:

1. The street or road shall be constructed *and maintained* in a good and workmanlike manner and kept as safe for public travel as possible. **The expense of construction and maintenance thereof shall be borne by *the grantee*; and the Railway Company shall not be liable for or assessed for any of the expense of construction or maintenance.**

(Emphasis added.)

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Throughout the Entire Period of the Violation of Order 01, the Operation of the Spur Generally Complied with the Four Operating Limitations Set Forth in What Eventually Became Exhibit B to Order 03 (and, from and after the January 6, 2011 Agreement Among Meeker, Public Works, and Commission Staff as to those Four Operating Limitations, the Operation of the Spur Fully Complied with Them)

The four special operational limitations on the spur track listed as Requirement/Limitation #1 through #4 as now set forth on Exhibit B (Table 2) to Order 03 (operational limitations that are identical to Requirement/Limitation #1 through #4 agreed to on January 6, 2011 by counsel on behalf of Meeker, counsel on behalf of Pierce County Public Works, and legal counsel on behalf of Commission Staff and set forth in Table 2 attached to my January 6, 2011 letter to David W. Danner, the Commission's Executive Director and Secretary) are listed in the table below along with corresponding comments as to how those limitations related to actual spur-track operations.

SUMMARY OF COMPLIANCE WITH REQUIREMENT/LIMITATIONS #1 THROUGH #4 OF TABLE 2 FROM OCTOBER 17, 2010 THROUGH JANUARY 26, 2011 (a table attached as <u>Exhibit B</u> to WUTC Order 03, which table sets forth "Special Requirements and Operational Limitations Concerning Meeker Southern Railroad's Crossings of 134th Avenue East Via the Mainline and 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>	The time period from Sunday October 17, 2010 through January 26, 2011 is a 14½-week period. The total number of days during that period that the spur was used for crossings of 134th Avenue East was 27 days. Thus, the average number of days per week that the spur track was used for crossing during the subject period is calculated as follows: $\frac{27 \text{ days}}{14.5 \text{ weeks}} = 1.86 \text{ days per week}$ That was less than the subject limitation.
2	Maximum number of crossings per day that the	For the period from October 17, 2010 through December 18, 2010, the Exhibit A table

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	<p>spur track may be used for crossings of 134th: <u>4</u></p>	<p>accompanying my February 15, 2011 letter to the Commission (Attn: Betty Young) shows that 6 crossings occurred on three different days (namely, November 5, 2010, November 8, 2010, and December 17, 2010—all three of those days being days prior to the January 6, 2011 agreement by counsel on behalf of Meeker, counsel on behalf of Pierce County Public Works, and counsel on behalf of Commission Staff) and that only 2 crossings occurred on the other 16 spur-crossing days. (Not more than four spur crossings per crossing day occurred on any day after the January 6, 2011 agreement.)</p> <p>For the period from December 19, 2010 through January 8, 2011, the log (spreadsheet) in Meeker's Report #1 concerning limited operation of the spur track shows that only 2 spur crossings occurred on all four of the spur-crossing days.</p> <p>For the period from January 9, 2011 through January 26, 2011, the log (spreadsheet) in Meeker's Report #2 concerning limited operation of the spur track and main line track shows that 4 spur crossings occurred on one day (namely, January 14, 2011) and that only 2 spur crossings occurred on all of the other three spur-crossing days.</p> <p>Note that the <i>average</i> number of spur crossings per spur-crossing days was as follows:</p> $\frac{(3 \times 6) + (1 \times 4) + (2 \times 23) \text{ crossings}}{27 \text{ spur-crossing days}} = \underline{2.52} \text{ crossings per day}$
<p>3</p>	<p>Hours during the day that spur crossings will be limited to: <u>9:00 AM to 3:00 PM</u></p>	<p>For the period from October 17, 2010 through December 18, 2010, the Exhibit A table accompanying my February 15, 2011 letter to the Commission (Attn: Betty Young) only indicates a time range when the train crew was working. The actual crossing times were not logged. Except for the very first crossing day (October 17, 2010, which was a Sunday, a light traffic volume day on area roadways, on which the crew finished work at 5 PM), the crew finished its workday no later than</p>

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leave to do so if I wanted to submit a rebuttal and further explained that I could file such a request with Mr. Danner.

On January 4, 2011, Mr. Cole and I had a phone conference with you, Ms. Woods, with Ms. Hunter, and with Paul Curl (who joined us a little late). I explained Meeker's contentions concerning portions of Mr. Stacy's letter to Mr. Danner, and Mr. Cole commented on the 134th crossing. We also discussed flagging of the crossing, and we agreed that I would file a request to Mr. Danner by Thursday, January 6, 2011 for leave to submit both (a) a reply to Mr. Stacy's letter and (b) a reply to the response to Meeker's motion that you explained that Commission Staff planned to send out later that day. During that conference call, I also questioned whether the Commission has authority to impose a financial-guarantee requirement and you, Ms. Woods, explained that you were unsure but would email me a citation to the statute concerning cost apportionment. At the end of our call, Mr. Cole invited Commission Staff to visit the site and observe a spur-crossing operation.

Also on January 4, 2011, I received via email from Commission Staff member Betsy DeMarco the Commission Staff's response to Meeker's Motion to Amend Order 01. I discussed it with Mr. Cole later that day by phone and in my office the next day.

On the morning of January 6, 2011, Mr. Cole, Sound Delivery's Terry Lawrence, and I met with Deputy Pierce County Executive Kevin Phelps, Joe Phillips of the County Executive's Office, County Engineer Brian Stacy, Public Works' Jerry Bryant, and Deputy Pierce County Prosecutor John Salmon at Mr. Phelps' office. We discussed right-of-way permit issues, Public Works' plan to consider whether to provide (a) a single right-of-way permit for all work in the right-of-way or (b) a separate right-of-way permit for the signal-system improvements and one for the road improvements, Public Works' willingness to consider our proposed assignment of Meeker's claim against Pierce County Parks and Recreation in lieu of a bond for work in County right-of-way, interim flagging, and Public Works' willingness to have the flagging done only during the portion of the day when the spur was being used.

Also during the afternoon of January 6, 2011, I spoke by phone with Mr. Salmon regarding my explanation of my phone conference with you, Ms. Woods, and with Ms. Hunter and Mr. Curl on Monday, January 4, 2011 about my interest in submitting a reply to Mr. Stacy's letter to Mr. Danner and to the Commission Staff's response to our Motion to Amend Order 01. I explained to Mr. Salmon that in view of (a) the progress we had made during the meeting that morning (January 6, 2011) at Mr. Phelps' office and (b) the progress we were making toward settling the issues it seemed to me that we should propose to Mr. Danner a pause in the Commission's process to give us time for settlement before a reply would be due. Mr. Salmon told me that he would be willing to go along with a 14-day time period. Immediately thereafter, Mr. Salmon and I spoke with you, Ms. Woods, on a three-way call regarding my explanation of the meeting we had had that morning at Mr. Phelps' office and my explanation that Mr. Salmon and I were in agreement about a 14-day period during which I could submit a reply while we continued to negotiate outstanding issues. You, Ms. Woods, then contacted Ms. Hunter about the 14-day period and phoned me back to confirm that it was acceptable if Meeker would agree

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to provide the interim reporting to Commission Staff called for in the Commission Staff's response. After you, Ms. Woods, and I left a voice mail message for Mr. Salmon to that effect, I phoned Mr. Cole and confirmed that the interim reporting during the 14-day period would be acceptable to Meeker. You, Ms. Woods, and I then had a three-way phone conference with Mr. Salmon concerning the time frame and Mr. Cole's agreement to have Meeker do the requested reporting, and we agreed that Meeker's reply would be due on Friday, January 21, 2011. I then prepared and sent out a letter to Mr. Danner advising him of the arrangement that the three of us reached on behalf of Meeker, Public Works, and (I had thought) the Commission. (At the January 26, 2011 hearing, Judge Torem clarified that Commission Staff did not have authority to bind the Commission without express authorization by the Commissioners or one of the Commission's administrative law judges to do so.)

During the afternoon of January 7, 2011, I spoke by phone with Mr. Bryant regarding his explanation that he had completed his review of the revised civil drawings and that he was awaiting drawing comments from Ms. Ford, regarding right-of-way permit issues, and regarding financial-guarantee issues.

On the afternoon of January 10, 2011, I sent a letter via email and U.S. Mail to Mr. Bryant, Ms. Ford, Mr. Salmon, Ms. Hunter, and you, Ms. Woods, regarding flagger cards with attachments.

On January 12, 2011, I emailed to Mr. Bryant, Ms. Ford, Mr. Salmon, Ms. Hunter, and you, Ms. Woods, a letter from me along with the first of Meeker's agreed-upon reports (Report #1) concerning compliance with the agreed-upon spur-operating limitations and requirements.

On January 13, 2011, I met with Mr. Bryant at his office to discuss the 1912 Highway Easement and an exhibit drawing that Meeker had Sitts & Hill Engineers, Inc. prepare relating to it, to existing conditions, and to the project design layout. I explained to him that, within the land area encompassed by the 1912 Highway Easement, the County does not have road right-of-way but only easement rights and that a right-of-way permit thus should not be required for the remaining signal-system work (all of which lay outside of County road right-of-way). Mr. Bryant and I also reviewed and discussed Ms. Ford's red-marked comments on Sitts & Hill's revised civil drawings, which I took with me and provided to engineers Robert Dahmen and Don Davis at Sitts & Hill for their review and follow-up work.

On January 14, 2011, Mr. Cole and I had the first of two meetings with Mr. Dahmen and Mr. Davis at Sitts & Hill to review and discuss Ms. Ford's red-marked drawing comments and to discuss follow-up drawing-revision work that Mr. Davis was to do.

On January 18, 2011, Mr. Cole and I had the second of two meetings with Mr. Dahmen and Mr. Davis at Sitts & Hill to continue review of Ms. Ford's red-marked drawing comments and to discuss follow-up drawing-revision work, as well as portions of Ms. Ford's comments that needed to be discussed with her and Mr. Bryant. I phoned Mr. Bryant to arrange a meeting at the Public Works office with Mr. Bryant and Ms. Ford the following afternoon.

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On the morning of January 19, 2011, I spoke with Mr. Salmon to introduce to him the right-of-way issue that I had discussed with Mr. Bryant on January 13, 2011 and to explain that I wanted to meet with him about it. Mr. Salmon suggested that he and I both meet with Mr. Bryant about it while I was at the Public Works office that afternoon. Mr. Salmon then phoned Mr. Bryant and phoned me back to confirm that he had made such an arrangement with Mr. Bryant.

On the afternoon of January 19, 2011, Meeker's engineers Mr. Dahmen and Mr. Davis attended a meeting with me at Public Works along with Mr. Bryant and Ms. Ford. (Mr. Salmon arrived in the middle of the meeting.) Mr. Davis brought in sets of further-revised civil drawings and pointed out how those drawings addressed various of Ms. Ford's and Mr. Bryant's revision requests. Also discussed and debated were (a) some of the other drawing revision requests that Ms. Ford made, (b) the appropriateness of some of those requests, and (c) approaches to addressing them. After Mr. Salmon arrived, we discussed the 1912 Highway Easement and the Sitts & Hill map exhibit relating to that easement and to potential prescriptive right-of-way for the portion of the existing 134th roadway lying outside of that easement. I explained that no County right-of-way permit should be required for completion of installation of the signal system because all of the work would be performed outside of the actual County right-of-way, and Mr. Bryant agreed to explain the matter to Mr. Stacy and ask him whether he would agree to not object to that work being done without a right-of-way permit.

Late in the afternoon of January 19, 2011, I received an email message from the Commission's "Document Service Queue" forwarding a "Notice of Hearing and Order to Show Cause Why Meeker Should Not Be Fined for Violating Order 01." I discussed that notice and order briefly with you by phone, Ms. Woods, that afternoon.

On the morning of January 20, 2011, I spoke further by phone with you, Ms. Woods, concerning the Show Cause Order and concerning whether Ms. Hunter had completed her review of the revised civil drawings. I then sent Ms. Hunter an email letter explaining (a) that Public Works had provided us with its review comments on the afternoon of January 13, 2011, (b) that, in response, Meeker's consulting engineers, Sitts & Hill Engineers, Inc., had made several revisions to the drawings and presented a proof set to Mr. Bryant and Ms. Ford on January 19, 2011 at a meeting I attended at the Public Works office in Tacoma, (c) that, during that meeting, consensus had been reached on a few last minor revisions to be made to the drawings, (d) that the drawings had been subsequently made ready for resubmittal to Public Works, and (e) my questions as to whether she (Ms. Hunter) had any comments on the drawing set sent to her on December 22, 2010 and whether I should simply have Sitts & Hill overnight to her the latest set of the drawings for her to review.

Also on the morning of January 20, 2011, Mr. Bryant phoned me regarding his follow-up comments concerning proposed road shoulder bedding, regarding his intention to email me his requested alternative approach, and regarding his explanation that he wants Sitts & Hill Engineers to provide structural calculations concerning the concrete bases for the flashing lights

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signal assemblies. I told him that I would ask Sitts & Hill to provide those calculations (which I did and which were submitted to Public Works). Mr. Bryant also explained that he left a voice mail message for Mr. Stacy. In addition, Mr. Bryant told me of his follow-up discussion with Ms. Ford concerning her agreement that the *Engineering Review and Evaluation (Third Revised Version dated December 31, 2009)* for the crossing contemplates multiple customers (which was contrary to the position that Public Works had taken in Mr. Stacy's December 30, 2010 letter to Mr. Danner). Mr. Bryant tentatively arranged with me to have a follow-up call with me and Ms. Ford around 3:00 or 3:30 that afternoon to discuss a remaining outstanding question that Ms. Ford had concerning the potential for back-and-forth train movements along the spur through the 134th crossing associated with the planned future Phase 2 Service Siding.

On the afternoon of January 20, 2011, I received a reply email message from you, Ms. Woods, regarding Ms. Hunter's revision request concerning the revised civil drawings. I forwarded that message to Mr. Dahmen and Mr. Davis at Sitts & Hill Engineers (as well as to Mr. Cole) and they made the requested revision to the drawings.

Also on the afternoon of January 20, 2011, I received an email message from Mr. Bryant to confirm a time that afternoon for the planned phone call with him and Ms. Ford. I emailed him back to advise him that three paper sets of the updated civil drawings should arrive that afternoon at his office between 3:30 and 3:45. (They were delivered to Mr. Bryant along with the structural calculations he had requested.)

In addition, on the afternoon of January 20, 2011, I spoke with you, Ms. Woods, by phone regarding the Commission Staff's response to our Motion to Amend Order 01 and regarding Meeker's willingness to amend the [Proposed] Order Amending Order 01 in view of it. During our discussion, you also explained to me that the Show Cause Order that was sent to us a few days before not only involved a hearing on January 26, 2011 on the issue of a potential civil penalty but also a hearing on our Motion to Amend Order 01. I explained to you that I would like to reach agreement with Commission Staff and Public Works on all remaining issues before the hearing, if possible, and I proposed a three-way call with you, Ms. Woods, and Mr. Salmon the next day. You explained that you would be off work the next day but in on Monday, January 24, 2011. Accordingly, I explained that I would try to arrange a three-way phone conference with you and Mr. Salmon for that Monday afternoon.

Further on the afternoon of January 20, 2011, I spoke with Mr. Bryant and Ms. Ford by phone regarding Ms. Ford's explanation of her concern about potential back-and-forth train movements over the crossing during switching between the Phase 1 and Phase 2 Service Sidings, regarding my suggestion of a concept for an operating condition that would address her concern, and regarding my plan to prepare and email her a draft for her review and approval.

On the morning of January 21, 2011, I phoned Mr. Bryant regarding the January 26, 2011 hearing and explained that it would be helpful to have the revised civil drawings signed off by Public Works before then. He told me that he did not see any reason why they could not be

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signed off by then and that he would review the updated revised drawings and the returned mark-ups of the previous set that day (January 21).

Also on the morning of January 21, 2011, I phoned Mr. Salmon regarding my phone conference the previous afternoon with you, Ms. Woods. I explained to him that the January 26, 2011 hearing is on our Motion to Amend Order 01, as well as on the Show Cause matter, and I requested a three-way phone conference with him and you, Ms. Woods, on Monday, January 24, 2011. Mr. Salmon responded by telling me that he would not be available on that Monday. Accordingly, he and I tentatively planned for 9:30 a.m. three-way phone conference with you, Ms. Woods, on the following Tuesday (January 25, 2011). I also explained to him that (a) I would be working on a revised draft [Proposed] Order that day (January 21, 2011) to reflect the issues that had been resolved through negotiation and (b) I would email it to him and Mr. Bryant as soon as possible.

During the afternoon of January 21, 2011, I prepared and emailed to Mr. Salmon and Mr. Bryant for their review (a) a redlined revised draft 2a of Meeker's [Proposed] Order Amending Order 01, (b) a redlined revised Exhibit A attachment to the [Proposed] Order, and (c) Meeker's previously proposed Exhibit B to the [Proposed] Order (for reference). I spoke briefly by phone with Mr. Salmon shortly thereafter and he told me that he could squeeze in a call with me at 9:00 a.m. on Monday, January 24, 2011 after all and that he would phone Mr. Bryant to see whether he could join us on the call then.

Also on the afternoon of January 21, 2011, Mr. Cole met at the City of Puyallup with Dan Handa, P.E., a civil engineer with City of Puyallup Development Services, to discuss getting a City of Puyallup right-of-way permit for the installation of the flashing-lights signal assembly on the south side of the spur track planned to be located slightly within the City's 134th Avenue East right-of-way. Mr. Cole left Mr. Handa a set of the civil design drawings to further review in that regard.

Late in the afternoon of and throughout the night of Friday, January 21, 2011 and until 3:24 a.m. on Saturday, January 22, 2011, I worked (in phone consultation with Mr. Cole) on preparation of (a) a reply to Public Works and Commission Staff responses to Meeker's Motion to Amend Order 01, (b) two more redlined, revised drafts (drafts 2b and 2c) of Meeker's [Proposed] Order Amending Order 01, as well as a clean draft 2c, (c) redlined and clean revised versions 2b of Exhibit A, (d) redlined and clean revised versions 2 of Exhibit B, (e) a letter to Mr. Danner and Judge Torem, and (f) an email letter to Mr. Danner, Judge Torem, and the Commission's Records Center forwarding all the documents (with copies to Mr. Cole; Ms. Hunter; you, Ms. Woods; Mr. Salmon; Mr. Stacy; Mr. Bryant; Ms. Ford; and Sound Delivery's Terry Lawrence). My legal assistant hand-delivered hard copies of the documents to the Commission's Records Center early on Monday morning, January 24, 2011.

On Monday morning, January 24, 2011, I had a speakerphone conference with Mr. Salmon, Mr. Bryant, and Ms. Ford regarding the documents I emailed out during the wee hours of Saturday morning and regarding Meeker's proposed assignment of Meeker's claim against

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Pierce County Parks and Recreation for moneys owed on another matter (an assignment that Meeker proposed as an alternative to Public Works' insistence on a performance bond for the remaining roadway work).

Later on Monday morning, January 24, 2011, I had a phone discussion with you, Ms. Woods, regarding a plan for us to have a 10:00 a.m. three-way conference call the next day with Mr. Salmon, regarding your explanation to me that you planned to meet with Commission Staff at 8:00 a.m. the next day concerning this matter, and regarding your explanation that from your reading of the revised materials I send out you had no objections to them. I emailed Mr. Salmon to advise him of the planned three-way call.

During the afternoon of January 24, 2011, at the request of Mr. Cole, I prepared draft 3a of Condition 4 of the [Proposed] Order and emailed it to Ms. Ford for her review (because it addressed the future possible back-and-forth train movements she had expressed concerns about). I then discussed it with her by phone, and she told me that it was acceptable to her. I then sent her a confirming email.

Later on January 24, 2011, I prepared a redlined revised draft 3a of the [Proposed] Order and a redlined revised version 3 of Exhibit B to that order.

Late in the evening of January 24, 2011, I prepared an initial draft of the Assignment [to Public Works] for Security of the Claim for Reimbursement and a draft Exhibit A (Table 1) to that proposed assignment.

After phone consultation with Mr. Cole, on the morning of January 25, 2011, I emailed Mr. Salmon and Ms. Woods Meeker's proposed redlined revised draft 3a of the [Proposed] Order and redlined revised proposed version 3 of Exhibit B to it. I also left a voice mail message for Mr. Bryant asking him about the status of Public Works' review of the latest submittal of the drawings.

Also, after phone consultation with Mr. Cole, on the morning of January 25, 2011, I emailed Mr. Salmon a draft of the proposed Assignment [to Public Works] for Security of the Claim for Reimbursement and a draft Exhibit A (Table 1) to it. I also left a voice mail message for Ms. Ford asking about the status of the approval of the civil drawings and explaining a change that I planned to make to paragraph 5 of the draft [Proposed] Order.

In addition, on the morning of January 25, 2011, I had a three-way call with Mr. Salmon and you, Ms. Woods, regarding (1) your revision requests to draft 3a of the [Proposed] Order, (2) discussion of the preference that all three of us had to deal with our Motion first at the next day's hearing, (3) my plan to have civil engineer Robert Dahmen, P.E. attend that hearing ready to provide testimony in case the judge wanted to hear such testimony, and (4) the Show Cause portion of the hearing.

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Late in the morning of January 25, 2011, I spoke by phone with Ms. Ford regarding Public Works' progress on the review of the civil drawings, and she explained that they would have their review of the revised civil drawings completed by noon with minimal comments and that we could (a) pick up their mark-up of those drawings with their comments, (b) have Sitts & Hill make the final requested revisions, and (c) have Sitts & Hill submit mylars of the drawings to Public Works for approval signatures that afternoon. I made arrangements for the pickup and for Sitts & Hill to make the final requested revisions and submittal of the mylars of the drawings to Public Works. County Engineer Stacy signed the approval block on each mylar drawing later that afternoon.

During the afternoon of January 25, 2011, I spoke further with Ms. Ford concerning her maximum-train-length issue. I then prepared a redlined revised draft 3b of the [Proposed] Order and also prepared a redlined revised version 3b of Exhibit B to the [Proposed] Order and then emailed them to you, Ms. Woods, along with my comments and my explanation that the revised civil drawings had been signed off by Public Works (with a copy of the email also being sent to Mr. Salmon).

On the morning of January 26, 2011, Mr. Cole and I participated in the hearing before Judge Torem. During the recess, we were able to successfully negotiate with Public Works and Commission Staff final language for a mutually agreed-upon [Proposed] Order to present to Judge Torem following the recess, an order that he signed before the end of the hearing with just one minor additional (agreed-upon) revision. (The judge marked it as Order 03.)

During the afternoon of January 26, 2011, Mr. Salmon and I reached agreement on the final form of the Assignment [to Public Works] for Security of the Claim for Reimbursement, which Mr. Cole then signed on behalf of Meeker and gave to Mr. Salmon for countersignature on behalf of Public Works.

Late in the afternoon of January 26, 2011, you, Ms. Woods, phoned me and explained that you would like to schedule a February 1, 2011 call with me that you as well as Ms. Hunter, Mr. Curl, and you, Ms. Young, would all participate in concerning getting records from Meeker of train movements (especially commercial train movements to Sound Delivery). I agreed to have that call at 1:00 p.m. on February 1.

On January 27, 2011, Meeker asked me to assist in securing a City of Puyallup right-of-way permit for the installation of the flashing-lights signal assembly planned in the City of Puyallup's 134th Avenue East right-of-way. That afternoon, after reviewing Puyallup's code provisions concerning right-of-way permits, I spoke by phone with Dan Handa, P.E., a civil engineer with City of Puyallup Development Services, regarding my explanation of the right-of-way permit that Meeker needs, the Public Works-approved revised civil drawings, and Order 03. He explained that he had previously met with Mr. Cole and had reviewed a set of the drawings that Mr. Cole had provided him. Mr. Handa told me that the proposed location of the flashing-lights signal assembly is not a problem with the City's traffic engineer but that he (Mr. Handa) has consulted with City Attorney Cheryl Carlson and she had advised him that, in order to secure

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a right-of-way permit, an agreement between Meeker and the City concerning the installation of the flashing-lights signal assembly in City right-of-way will be required.

After doing further research in Puyallup's municipal code, I phoned City Attorney Carlson later in the afternoon of January 27, 2011 and explained my phone conference with Mr. Handa. She acknowledged that Mr. Handa had spoken to her about Meeker's right-of-way permit request and that she had been holding things up. She explained that before making a decision about what would need to be done, she wanted information about Meeker's rail corridor property rights. During our discussion, I gave her an explanation of the history of the rail corridor, the railroad easement that BNSF conveyed to BTRC, and the railroad easement for the spur track that the County conveyed to BTRC. She requested copies of the easement instruments and I promised to email them to her by the next day. I also explained that there is a WUTC Order requiring signal-system completion operation by March 18, 2011 and, in light of it, I requested her cooperation in expediting the right-of-way permit's issuance. She requested a copy of Meeker's crossing petition to the Commission, and I promised to email her a copy of it. Our phone discussion was cordial.

During the evening of January 27, 2011, I prepared and sent an email letter to Ms. Carlson forwarding a completed right-of-way-permit application and corresponding map exhibits, the November 2000 Easement from BNSF to BTRC, the Agreement Regarding Easements for Railroad and Slope Purposes between the County and BTRC, Meeker's Petition to the WUTC to Modify the Grade Crossing, my 1/4/10 letter to the Commission's Executive Director David Danner that forwarded that petition to the Commission, Order 01 approving the Petition on January 12, 2010, Order 03 (amending Order 01), and the January 25, 2011 six-sheet set of the revised, Public Works-approved civil design drawings along with my comments. (I copied Mr. Cole and Mr. and Handa on that email).

On the morning of Monday, January 28, 2011, I received a reply email message from Ms. Carlson acknowledging receipt of my email letter and the attached documents. I left her a voice mail message requesting a call back to discuss whether she by then had enough information and was ready to release the "hold" she had put on the proposed right-of-way permit.

A little later on the morning of Monday, January 28, 2011, I spoke by phone with Mr. Handa. I explained my phone discussion with Ms. Carlson the previous afternoon and that she had promised to review the matter further. I then asked him questions concerning the completed application form that I had emailed to Ms. Carlson (and copied him on) the night before, and we discussed details of some additional materials that the signal-system contractor would need to submit to the City in relation to the proposed right of way permit before it would be issued.

On the morning of January 31, 2011, I left an additional voice mail message for Ms. Carlson asking whether she was by then satisfied and would take the "hold" off of the proposed City of Puyallup right-of-way permit.

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On Monday, January 31, 2011, in compliance with item 4 of Exhibit A (Table 1) to Order 03, Meeker had a contractor create some crushed-rock temporary roadway shoulders along portions of the edges of 134th Avenue East near the crossing. [Note that in view of item 9 of Exhibit A (Table 1) to Order 03,⁹ neither a permit to work within the Pierce County road right-of-way nor a preconstruction conference with Pierce County Public Works was required for that temporary shoulder work, work that took only about half a day to complete.]

On January 31, 2011, I emailed to Mr. Danner, Judge Torem, and the Commission's Records Center PDFs of a letter from me addressed to Mr. Danner and Judge Torem along with Meeker's Report #2 concerning compliance with the spur-operating limitations and requirements set forth in Exhibit B (Table 2) attached to Order 03 (and I copied on that email Mr. Cole; James Forgette; Ms. Hunter; you, Ms. Woods; Mr. Salmon; Mr. Stacy; Mr. Bryant; and Ms. Ford). Five sets of hard copies of the items attached to the email were also mailed to Mr. Danner and Judge Torem in care of the Records Center.

Early in the afternoon of February 1, 2011, I emailed to you, Ms. Woods, and Ms. Hunter an Excel spreadsheet concerning spur trips to Sound Delivery from 10/17/10 through 12/18/10 that Meeker's Operations Manager, James Forgette, emailed me on 1/26/11. Immediately thereafter, I participated in the scheduled speakerphone conference with you, Ms. Woods, and with Ms. Hunter, Mr. Curl, Ms. Young, and the Commission's Assistant Director of Transportation Safety David Pratt regarding the Excel spreadsheet that I had just sent. During that call, I explained that Meeker creates month-by-month spreadsheet logs of all freight railcars that Meeker handles, and a request was made that I provide copies of those logs for the months of October 2010 through January 2011, which I agreed to provide to them. Also during the call, Ms. Hunter requested that by February 15, 2011 Meeker provide a report for the time period of October 17, 2010 through December 18, 2011 similar to Reports #1 and #2 (which I agreed to ask Meeker to create), and Mr. Pratt suggested that I prepare a memorandum setting forth mitigating circumstances (which I said I would provide but not by February 15, 2011 because of other pressing matters that I needed to attend to).

On the afternoon of February 7, 2011, I phoned Mr. Handa and asked him whether Ms. Carlson had told him yet whether or not an agreement between Meeker and the City would be required. He explained that she had not yet done so. Mr. Handa added that per a request from Mr. Cole, he (Mr. Handa) had phoned Ms. Ford to let her know that Meeker was seeking a right-of-way permit from Puyallup.

⁹ The first paragraph of item 9 of Exhibit A (Table 1) to Order 03 states:

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.

(Emphasis added.)

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Following my phone discussion with Mr. Handa, that same afternoon of February 7, 2011, I left a voice mail message for Ms. Carlson and sent an email message to her as well requesting a call back to discuss this matter.

On the afternoon of February 8, 2011, I left another voice mail message for Ms. Carlson, reminding her that it had by then been nearly two weeks since I had spoken to her and emailed her the documents she had requested and that I badly needed feedback from her. I again requested a call back.

On the morning of February 9, 2011, I attempted to reach Ms. Carlson by phone and, when my call was about to go to her voice mail, I spoke to a receptionist in the Puyallup City Attorney's office who said Ms. Carlson was in that day but was not available. I asked the receptionist to ask her to please call back. I then sent an email message to Ms. Carlson requesting that she propose a time for a scheduled call. Shortly thereafter, I received a call back from Ms. Carlson's paralegal, Frieda Cramer. She apologized on Ms. Carlson's behalf for not getting back to me sooner and explained that Ms. Carlson had been "snowed" with meetings and meeting preparations the last two weeks but was planning to try to phone me that afternoon. (When, shortly after 5:00 p.m., I still had not received a call from Ms. Carlson, I sent her an email message thanking her for having her legal assistant phone me that morning, explaining that I would be working into the evening, and requesting that she phone me that evening if she could.)

On the afternoon of February 10, 2011, I tried phoning Ms. Carlson again and, when I did not reach her, I spoke again to Ms. Cramer, who explained that Ms. Carlson was out of the office right then. I told Ms. Cramer that Ms. Carlson still has not phoned me and that, because of time pressure my client was under, I was desperate to speak with her. Ms. Cramer assured me that she would urge Ms. Carlson to phone me. Right afterwards, I left an additional voice mail message to Ms. Carlson.

On the morning of February 11, 2011, I sent an additional email message to Ms. Carlson, reiterating my need to speak with her and asking her to squeeze a call out to me.

On February 15, 2011, I emailed to Mr. Danner, Judge Torem, and the Commission's Records Center PDFs of a letter from me addressed to Mr. Danner and Judge Torem, along with Meeker's Report #3 concerning compliance with the spur-operating limitations and requirements set forth in Exhibit B (Table 2) attached to Order 03 (and I copied on that email Mr. Cole; Mr. Forgette; Ms. Hunter; you, Ms. Woods; Mr. Salmon; Mr. Stacy; Mr. Bryant; and Ms. Ford). Five sets of hard copies of the items attached to the email were also mailed to Mr. Danner and Judge Torem in care of the Records Center.

Between February 11 and February 15, 2011, Meeker worked on response materials to Mr. Pratt's February 2, 2011 letter to me. I phoned Ms. Young on the afternoon of February 15, 2011 and explained that the response was nearing completion but that we would appreciate being able to email it after 5:00 PM that day to provide us with a little more time to complete the

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response. She agreed, and we exchanged confirming emails that afternoon. I emailed out to her during the wee hours of the morning of February 16, 2011 Meeker's response to Mr. Pratt's letter. Hard copies were mailed out to her later in the day on February 16.

On the afternoon of February 16, 2011, I finally spoke again by phone with Ms. Carlson, who was again cordial. After apologizing for not getting back to me sooner because of her recent crazy schedule, she explained that the City of Puyallup would require Meeker to enter into a license agreement with the City for the installation of the flashing-lights signal assembly in City right-of-way and that a proposed form of such an agreement would require City Council approval. She went on to explain that she would be leaving the following day to travel with her daughter to look at colleges back east and that she would prepare a draft agreement as soon as she got back (maybe even during her trip) and email it to me so that I could review it with Meeker. I asked her how soon the license agreement can be before the City Council for approval and she said March 15, 2011. She added that the agreement should be fairly simple. I reminded her of the March 18, 2011 deadline that Meeker is facing under Order 03 regarding completion and commencement of operation of the signal system. I then requested that she email me a bullet-points list concerning this matter before she left on her trip so I could use it to help me seek Commission Staff and Public Works approval of a time extension of the signal-system completion deadline. She sent me such an email a short while later that afternoon.

On the afternoon of February 17, 2011, I spoke with you, Ms. Woods regarding my explanation of (a) Mr. Cole's contact with the City of Puyallup to arrange to get a right-of-way permit for the flashing-lights signal-system assembly within City, (b) the feedback he received from Mr. Handa at the City to the effect that Ms. Carlson was raising a question as to whether some sort of agreement would have to be entered into with the City as a prerequisite to issuance of a right-of-way permit for the installation, and (c) that on January 27, 2011 Mr. Cole had requested that I contact Ms. Carlson and assess whether or not an agreement would actually be required and, if so, assist in the negotiation of such an agreement. I explained my friendly phone conference with Ms. Carlson on January 27, 2011, my emailing her numerous documents that same night in follow-up to our discussion, and the numerous voice mails and emails I had sent to her seeking feedback and stressing the urgency of the matter. I added that late the previous afternoon, I finally received a call back from Ms. Carlson, and I explained to you the gist of what she told me. I also forwarded to you Ms. Carlson's February 16 email message to me. I then explained to you that, in view of the process of working through the City Council on the license agreement, it would be impossible for Meeker to meet the March 18, 2011 deadline for completion and operation of the crossing signal system and, accordingly, Meeker would need a time extension. You responded that you viewed the circumstances as warranting a time extension. I added that Meeker had held up further work on the signal system awaiting resolution of the Puyallup matter because the extent of the remaining overall signal-system work is relatively modest and should be done as a single continuous effort. I requested that you discuss this with Commission Staff, and I told you that I would prepare a written request to Commission Staff and Public Works.

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On February, 24, 2011, Meeker's roadway contractor for the remaining 134th roadway improvement work, Asphalt Patch Systems, Inc., took out a right-of-way permit from Pierce County Public Works concerning the remaining 134th road improvements. (A copy of that permit and an attached copy of Pierce County's receipt for the permit fee that was paid are attached to this letter as Exhibit 3.)

In sum, these extensive, consistent efforts by Meeker and Meeker's team members following Meeker's receipt of Mr. Danner's December 7, 2010 letter concerning the violation demonstrate positive cooperation with the Commission, Commission Staff, and Public Works to (a) amend the approval order, (b) bring the project into complete compliance with the amended order, and (c) bring the crossing modification project to a successful conclusion.

Gaining Compliance; Likelihood of Recurrence.

With Judge Torem's grant of Meeker's Motion to Amend Order 01 following Meeker's negotiation of the [Proposed] Order, Meeker came into full compliance with the approval order as amended by Order 03. Meeker met the January 31, 2011 deadline for completion of interim shoulder work and timely submitted the interim crossings operations reports that were due on February 15, 2011, both of which demonstrate full compliance with Exhibit B (Table 2) of Order 03.

As I explained to you, Ms. Woods, by phone on February 17, 2011, Meeker is facing a delay in getting approval of a right-of-way permit from the City of Puyallup for the installation of the flashing-lights signal assembly planned in the City's 134th Avenue East right-of-way. As noted on pages 26 to 29, above, I have been in consultation with Puyallup's City Attorney, Cheryl Carlson, concerning Meeker entering into a license agreement that she is insisting is a prerequisite to getting the right-of-way permit. Ms. Carlson has been friendly and cooperative but her schedule has been very busy, which has kept this from moving forward as quickly as I would have hoped. I do anticipate that Meeker will be able to negotiate the license agreement and get the right-of-way permit. As I explained to you on February 17, in view of (a) the delay with the City of Puyallup, (b) the practical need to install the remainder of the crossing signal system as a single, continuous effort (due to the relatively small scope of the remaining signal-system work), and (c) the corresponding need to commence the remainder of the signal-system work after execution of the license agreement and the City's issuance of the right-of-way permit, Meeker requests that both Commission Staff and Public Works agree to an extension of the March 18, 2011 completion deadline for installation and making operational the remainder of the crossing signal system for the 134th crossing and corresponding traffic control signs. As I reminded you during our February 17, 2011 phone discussion, Commission Staff and Public Works have authority to approve such an extension under amended approval Condition 3 of Order 03.¹⁰

¹⁰ Paragraph 28 of Order 03 states as follows:

Approval Condition 3 of Order 01 is hereby amended to state:

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With approval by Commission Staff and Public Works for a time extension that would provide five weeks beyond the date of issuance of the City's right-of-way permit for installation and making operational the remainder of the crossing signal system for the 134th crossing and corresponding traffic control signs, Meeker should be able to stay in full compliance with the approval order as amended by Order 03.

Effect of a Penalty

In considering whether or not Commission Staff should recommend that the Commission impose a penalty, several factors should be kept in mind in view of the Commission's PSE Case Opinion relating to the effect of a penalty.

First of all, note that in working with Public Works officials during mid-December 2010 to determine the extent of 134th Avenue East roadway improvements that ought to be completed, instead of merely making a slight adjustment to the roadway slope south of the spur track and extending south the paving work on an extension of that adjusted slope roughly another 20 feet beyond the south end of the repaved roadway section that Meeker's contractor had built during October 2007 (i.e., slope adjustment and extended paving work that would have fully met the roadway design specified on the originally approved civil drawings), Meeker promptly agreed with Public Works and with Commission Staff to regrade and repave 134th to the north of the

-
- (3) All work for the proposed spur track and the Phase 1 Service Siding (except for approximately the east 300 feet of the siding, which may be completed at any time after the commencement of operation of the remainder of the automatic flashing lights crossing signal system) shown on the design drawings shall be completed (a) in a timeframe consistent with the time schedule set forth in Table 1 attached to this amending Order as Exhibit A (unless otherwise approved by both Commission Staff and Public Works) and (b) to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff ~~prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding~~; **PROVIDED, HOWEVER, that (i) Petitioner may immediately operate the spur line and Phase 1 Service Siding subject to the Special Requirements and Restrictions set forth in Table 2 attached to this Amending Order as Exhibit B and (ii) following installation and commencement of operation of the remainder of the automatic flashing lights crossing signal system for the crossing and of corresponding traffic control signs (which must occur by March 18, 2011 unless otherwise approved by both Commission Staff and Public Works), Petitioner must thereafter operate the spur line and Phase 1 Service Siding with the automatic flashing lights crossing signal system in operation.**

(Boldfacing and italics added for emphasis.)

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main line track about 60 feet because doing so will provide a better roadway at the crossing.¹¹
That roadway work to the north of the main line track, the design of which is now reflected on

¹¹ Paragraphs 9 through 12 of Order 03 state:

- 9 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.
- 10 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.
- 11 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). A proposal by Meeker to regrade and repave 134th to the north to a point approximately 50 lineal feet north of the main line track's centerline was set forth in the Motion and was 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 were first supplemented and/or revised to reflect the proposed design of the 134th regrading and repaving and were approved by Public Works).
- 12 Thereafter, Petitioner enhanced its proposal so as to regrade and repave 134th to the north to a point approximately 60 lineal feet north of the main line track's centerline. The design of such regrading and repaving is embodied in a four-sheet set of supplemental and revised civil engineering design drawings prepared by Sitts & Hill Engineers, Inc. and approved on January 25, 2011 on behalf of the Pierce County Public Works Director (the "Revised Design Drawings"). The Revised Design Drawings consist of a supplemental sheet labeled C4.0 and revised Sheets C1.0, C1.1, and C2.0. (Sheets C1.2 and C1.3 of the Original Design Drawings are unchanged and remain in effect.) Commission Staff has reviewed the Revised Design Drawings and has no objections to them. (The now-proposed regrading and repaving of 134th to the north of the main line track is planned to reduce 134th's maximum longitudinal slope to approximately 4.27 percent.)

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the revised civil drawings that Public Works approved on January 25, 2011 with the agreement of Commission Staff, will correct a longstanding roadway edge sag problem along the west edge of the roadway a short distance to the north of the existing main line track. Meeker had no legal duty to correct that problem and could not constitutionally have been compelled to correct it in connection with Meeker's addition of the spur track because the spur track lies to the south of the main line track rather than to the north of it [and therefore the spur track did not exacerbate the problem to the north, leaving no "nexus" between the roadway's existing problem to the north and installation of the spur track to the south—see *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987)]. By agreeing in mid-December to do that roadway work to the north of the main line track rather than merely make a slight adjustment to the roadway slope south of the spur track and extend south the paving work on an extension of that adjusted slope roughly another 20 feet, Meeker (a) has already incurred a cost of approximately \$10,000 in topographic surveying and civil engineering design fees from Sitts & Hill Engineers and (b) estimates an additional construction cost of approximately \$12,600 beyond the approximately \$3,500 that it would have cost to extend the paving to the south approximately another 20 feet to comply with the originally approved civil drawings.¹² That combined \$22,600 surveying, engineering, and construction expense incurred by Meeker in good faith for the safety and benefit of the general motoring public should be viewed as the functional equivalent of a civil penalty. The Commission should not impose a civil penalty on top of that expense.

The second factor that should be kept in mind in relation to the effect of imposition of any penalty on Meeker is that the above-noted \$22,600 functional equivalent of a civil penalty that Meeker has already incurred is a tremendously greater expense for tiny short line railroad company Meeker than the \$106,000 total amount of the \$50,000 civil penalty and \$56,000 cost to implement an anti-drug and alcohol misuse awareness-training program for Puget's employees was for utility giant Puget in the PSE case. Meeker is one of three operating divisions of Ballard

Note that had the 134th pavement work been performed precisely in accordance with the originally approved civil 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 the low portion of the west edge of 134th's westerly lane. In contrast, with 134th's existing approximately 3.16-percent longitudinal slope south of the crossing and now proposed maximum 4.27-percent longitudinal slope north of the crossing, the total longitudinal slope differential on both sides of the crossing will be approximately 7.4 percent [namely, (a) about 0.4 percent less along the centerline than would have been the case if the road had been constructed precisely as contemplated by the original civil design drawings, and (b) about 3.3 percent less in relation to the slope along the existing low portion of the west edge of 134th's westerly lane than would have been the case if the road had been constructed precisely as contemplated by those original drawings].

¹² See the copy of a February 24, 2011 "Proposal and Contract" from road contractor Asphalt Patch Systems, Inc. attached to this letter as Exhibit 4, which indicates a cost of \$14,723 plus tax for the paving work. Assuming a sales tax rate of approximately 9.5 percent, the total construction cost of that remaining paving work is approximately \$16,100. Note that on February 24, 2011, I asked Jay Looker, one of the owners of Asphalt Patch Systems, Inc., to provide me an estimate of what it would cost to do the approximately 20 feet of additional pavement work to the south of the crossing instead of the pavement work to the north. He sent me an email (see attached Exhibit 5) indicating \$3,500. The construction cost difference to Meeker for the roadway work to the north will thus be approximately \$12,600.

Staff Investigation - Meeker Southern Railroad - TR-110221

Frona Woods, Assistant Attorney General, and Washington Utilities and Transportation

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\$106,000 settlement amount and the BTRC/Meeker \$22,600 functional equivalent of a civil penalty in relation to the 5,000-times-greater revenue that PSE has than BTRC has.

For all of the above reasons, the Commission should not impose a civil penalty on Meeker. Please let me know if you have any questions.

Sincerely,

HALINEN LAW OFFICES, P.S.



David L. Halinen

Enclosures (Exhibits 1 through 6 as noted above)

cc: Meeker Southern Railroad
Attn: Byron Cole, General Manager (via email and first class mail, with copies of enclosures)

Meeker Southern Railroad
Attn: James Forgette, Operations Manager (via email, with copies of enclosures)

David Pratt, Assistant Director of Transportation Safety, WUTC (via email and Priority Mail, with copies of enclosures)

Kathy Hunter, Deputy Assistant Director, Transportation Safety, WUTC (via email and Priority Mail, with copies of enclosures)

Paul Curl, Transportation Safety, WUTC (via email and Priority Mail, with copies of enclosures)

THE NORTHERN PACIFIC RAILWAY COMPANY, a corporation under the laws of Wisconsin, in consideration of one dollar and the agreements herein contained grants unto

Pierce County,

of the State of Washington

portions of the right of way of the Railway Company described as follows, to-wit:

Those portions of the Railway Company's right of way in sections 25, 26 and 36 in Twp. 20 North, Range 4 East, W.M., as shown colored in red upon the attached blue print plat which is made a part hereof.

80th St East

The privilege hereby granted is effective from the 1st day of November, 1912 until terminated as provided in this agreement or otherwise.

This grant is made upon the following terms:

- 1. The street or road shall be constructed and maintained in a good and workmanlike manner and made and kept as safe for public travel as possible. The expense of construction and maintenance thereof shall be borne by the grantee; and the Railway Company shall not be liable for or assessed for any of the expense of construction or maintenance.
2. Should the right of way, the right to use which is hereby granted, or any portion thereof, be required for the construction of tracks, buildings, including public and private warehouses, or for other railroad purposes, the grantee shall change the location of said street or road and vacate the said right of way, or such portion thereof as the Railway Company shall request; and the entire expense of such change shall be borne by the grantee.
3. The Railway Company may upon ninety days' notice in writing revoke this permit, and the grantee hereby agrees in that event to peacefully and promptly surrender possession of the premises unto the Railway Company.

IN WITNESS WHEREOF, the parties hereto have executed these presents in duplicate originals this 1st day of November, 1912.

NORTHERN PACIFIC RAILWAY COMPANY,

By J.L. Watson Principal Right-of-Way Agent.

Attest: W. A. Stewart, County Auditor

J. Wisbach Deputy Clerk

PIERCE COUNTY,

By W. Martin

J.F. Libby #25874

EXHIBIT 1

THE NORTHERN PACIFIC RAILWAY COMPANY, a corporation under the laws of Wisconsin, in consideration of one dollar and the agreements herein contained grants unto

Pierce County

of the State of Washington, the right to use for the purpose of a public street or road, but for no other purposes whatsoever, portions of the right of way of the Railway Company described as follows, to-wit:

Those portions of the Railway Company's right of way in sections 25, 26 and 36 in Twp. 20 North, Range 4 East, W.M., as shown colored in red upon the attached blue print plat which is made a part hereof.

80th St East

S T A M P:

THIS REPLACES LEASE NO. 20923
FAVOR A. GARDELLA
DATED 12/1/08 TERM INDEF. YEARS.

The privilege hereby granted is effective from the 1st day of November, 1912, until terminated as provided in this agreement or otherwise.

This grant is made upon the following terms:

1. The street or road shall be constructed and maintained in a good and workmanlike manner and made and kept as safe for public travel as possible. The expense of construction and maintenance thereof shall be borne by the grantee; and the Railway Company shall not be liable for or assessed for any of the expense of construction or maintenance.
2. Should the right of way, the right to use which is hereby granted, or any portion thereof, be required for the construction of tracks, buildings, including public and private warehouses, or for other railroad purposes, the grantee shall change the location of said street or road and vacate the said right of way, or such portion thereof as the Railway Company shall request; and the entire expense of such change shall be borne by the grantee.
3. The Railway Company may upon ninety days' notice in writing revoke this permit, and the grantee hereby agrees in that event to peacefully and promptly surrender possession of the premises unto the Railway Company.

IN WITNESS WHEREOF, the parties hereto have executed these presents in duplicate originals this 1st day of November, 1912.

NORTHERN PACIFIC RAILWAY COMPANY,

By J. L. Watson
Principal Right-of-Way Agent.

ATTEST:

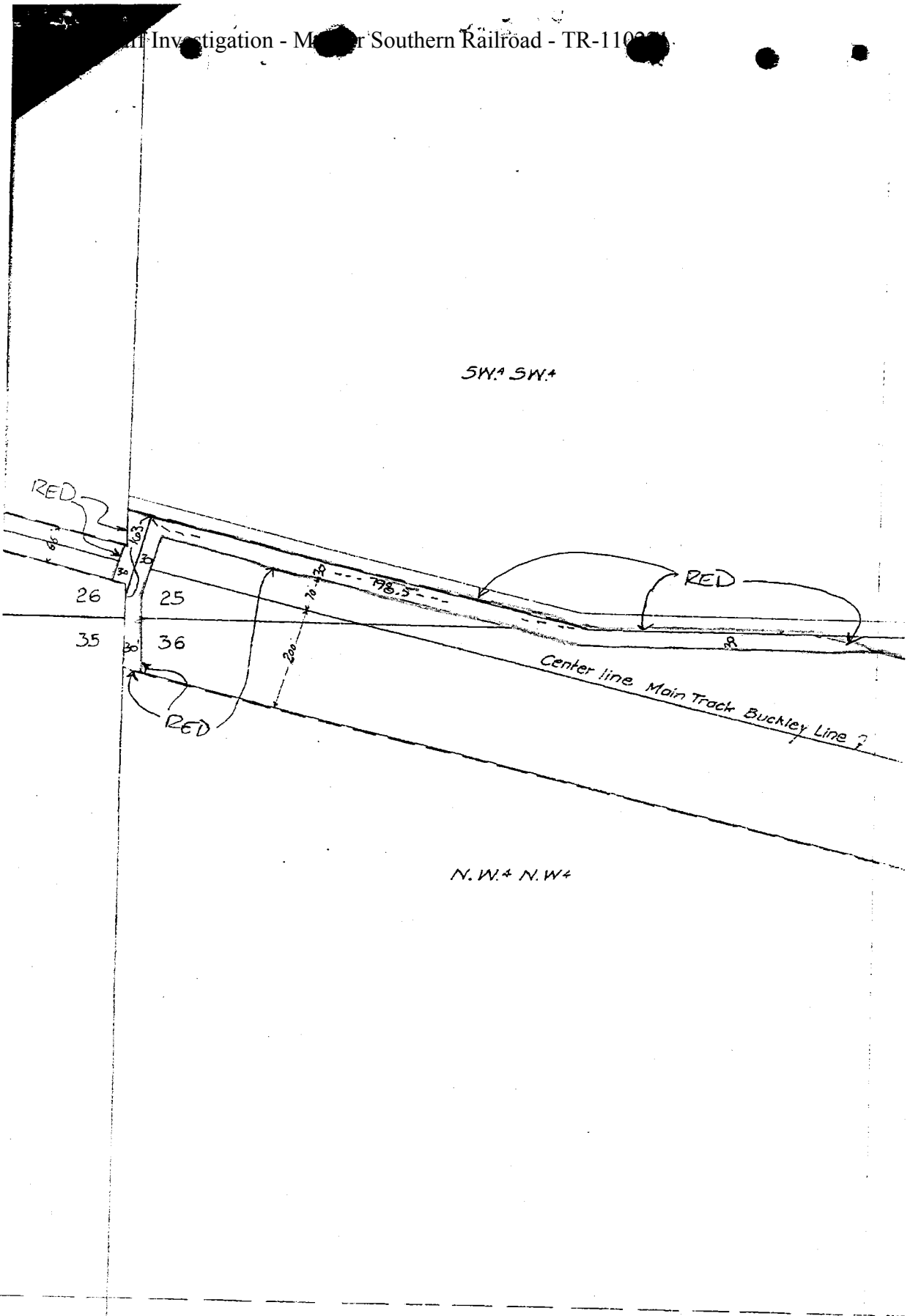
PIERCE COUNTY

A. J. Wiesbach
Clerk.

By H. C. Martin

J. F. Libby

#25874



80 ST C
 25, 26, 36 - 20-4

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant,
v. PUGET SOUND ENERGY, INC., Respondent.

DOCKET NO. UG-001116

Washington Utilities and Transportation Commission

2002 Wash. UTC LEXIS 235

July 25, 2002

CORE TERMS: settlement agreement, pipeline, settlement, staff, regulator, violator, alcohol, regulated, natural gas, gravity, audit, regulation, cooperation, enforcing, anti-drug, covered employees, drug testing, prevention, omissions, testing, message, misuse, foster, signals, testing program, annual report, straightforward, cooperating, seriousness, deterrence

PANEL: [*1] RICHARD HEMSTAD, Commissioner; PATRICK J. OSHIE, Commissioner

OPINION: COMMISSION ORDER ACCEPTING SETTLEMENT

SYNOPSIS: *The Commission issued a complaint alleging that Puget Sound Energy, Inc. (PSE), Respondent, allowed its anti-drug and alcohol misuse prevention program to lapse during the period 1997 to 2000, contrary to Commission rules. The Commission simultaneously accepts a proposal by Commission Staff and the Respondent to settle the complaint without hearing by payment of penalties in the amount of \$ 50,000 and by investment of \$ 56,000 in process improvements. Chairwoman Marilyn Showalter dissents.*

I. SUMMARY

PROCEEDINGS: The Washington Utilities and Transportation Commission's Pipeline Safety Staff conducted an inspection of Puget Sound Energy, Inc.'s, anti-drug and alcohol misuse prevention program on July 12, 2000. On July 10, 2002, the Commission issued a Complaint alleging that Puget violated WAC 480-93-010, which adopts and incorporates Title 49 of the Code of Federal Regulations ("CFR"), Part 199, by failing to maintain an anti-drug and alcohol misuse prevention plan for its covered gas pipeline employees during the years 1997 through 2000.

SETTLEMENT [*2] AGREEMENT: On July 10, 2002, the Commission Staff and Puget ("Parties") filed a Settlement Agreement that proposes to resolve all issues raised in the Complaint.

II. MEMORANDUM

On July 12, 2000, Commission Pipeline Safety Staff conducted a drug and alcohol program inspection of Puget. On July 10, 2002, the Commission issued a Complaint alleging violations of WAC 480-93-010, which adopts the provisions of 49 CFR Part 199. The Parties have reached agreement on the resolution of the issues raised by the Complaint and voluntarily entered into the attached Settlement Agreement. The Settlement Agreement reflects the Parties' proposal to the Commission for resolution of all outstanding issues alleged in the Complaint and constitutes a Settlement Agreement within the meaning of WAC 480-09-466.

In summary, the Settlement Agreement provides for the following actions to be taken by Puget to resolve the outstanding Complaint:

(1) Puget will pay the Commission penalties totaling \$ 50,000 for apparent violations of WAC 480-93-010 (Compliance with certain federal standards required), which adopts and incorporates 49 CFR, Part 199. Puget will continue to act in compliance with [*3] the substance abuse plan for covered employees that it instituted in March 2001 (the "2001 Plan"), including random drug testing at a rate equal to or

greater than the required minimum level. The 2001 Plan complies with WAC 480-93-010 and 49 CFR, Part 199.

(2) Puget will spend an amount totaling approximately \$ 56,000 to implement an anti-drug and alcohol misuse awareness-training program for all of its employees. This additional training will consist of a 30-minute mandatory training session for all employees covering Puget's "Substance Abuse Plan for Covered Employees" and Puget's "Substance Abuse Plan for Non-Covered Employees." The cost of this program shall be paid for with shareholder funds, and will not be recovered through rates.

The Company failed to meet the drug testing requirements of WAC 480-93-010 and 49 CFR, part 199, during a four year period and had no such testing program for a considerable portion of that time. The Company acknowledges the existence of facts from which the Commission could conclude that it had violated the rule, and proposes along with Commission Staff that the Commission simultaneously issue a complaint against it and accept a settlement [*4] between the parties that provides for payment of a penalty but no formal acknowledgment of existence of a violation.

The circumstances of this event are of grave concern to the Commission. There is a clear link between substance abuse impairment of key personnel and risk of hazard in the transportation of natural gas. The questions that we face in this docket are how to respond to those circumstances.

We recognize that the primary function of penalties is to gain compliance. The direct concern of any penalty is compliance by an accused violator. An additional concern is the demonstration to other regulated entities and the public that while the Commission encourages compliance, it will take appropriate action, including the assessment of penalties, when it discovers violations.

In accepting a settlement that proposes a penalty, the Commission will look to see whether the proposal is proportioned to the gravity of the apparent violations and to assure against future violations. n1 In setting the amount of a penalty, it is appropriate to consider many factors. These include the seriousness of the violations; the circumstances of the violation, including whether the violation [*5] is intentional; the cooperation of the respondent and its willingness and achievements in rectifying violations; the frequency of violations, and cooperation in investigations; whether or not the violation has been corrected; and the possibility of recurrence.

n1 *Order M.V. No. 136510, In re Joe Sicilia, Inc., app. No. H-4969 (Sept., 1967).*

Here, we are satisfied that both the agreed sanctions and the process are appropriate.

Seriousness of the violation. Unquestionably, this is a serious violation. We may never know whether lack of the required testing program allowed an impaired person to make critical judgments that will contribute to a future incident. It is a very serious matter and warrants substantial action.

Circumstances of the violation. The program was allowed to lapse in the period after Puget Power merged with Washington Natural Gas to become PSE. The circumstances are by no means excusable, but they appear to be an isolated -- albeit serious -- event.

Cooperation and attitude. [*6] The Company appears to have been cooperative following discovery of the problem. It did not delay progress toward rectifying the problem, and it has taken appropriate corrective action by bringing the testing program into complete compliance. Its attitude, particularly under new corporate leadership, has been positive.

Gaining compliance; likelihood of recurrence. Commission Staff is satisfied, as are we, that the company remains in full compliance and that the likelihood of recurrence of this violation is nil.

Effect of a penalty. A penalty should send a message, both to companies who violate the law and to others who are watching. The message must be clear, however, and it must be thoughtfully applied. An appropriate penalty must strike

the right balance and send the right message. It must be large enough to connote the significance of the violation, yet appropriately scaled to recognize the degree of cooperation and correction obtained from the respondent. Here, a substantially larger penalty could discourage this or other regulated companies from disclosing problems that they discover and could impair their willingness to cooperate in correcting them. The sanctions [*7] imposed in this order include a penalty and also include program enhancements at shareholder expense that might not be otherwise obtainable. We are satisfied that an acceptable balance has been struck.

Value of settlement and appropriateness of the settlement process. The process by which this matter comes to the Commission is satisfactory and appropriate. By cooperating in a settlement process, the Company shares responsibility and ownership of the process and the result. While adjudications are an appropriate means of dispute resolution, they are not the only means. We believe that a less adversarial process is more likely to achieve a global resolution of issues and less likely than litigation to encourage hiding of relevant facts.

The state's Administrative Procedure Act encourages settlements, *RCW 34.05.060*, as does the Commission's procedural rule, *WAC 480-09-466*. The Commission has the full authority and the responsibility to inquire into and make an independent decision about a settlement proposal and its practical and policy implications. The Commission has full authority to accept or reject a proposed settlement and to [*8] enter into an adjudication.

Here, we are satisfied that the process was appropriate, that we have had a sufficient opportunity to review the underlying facts and circumstances, that the sanctions are sufficiently large to connote the seriousness of the Company's failures, and that the penalty is not so large as to discourage regulated companies from promptly correcting violations and from cooperating with the Commission while exercising its regulatory responsibilities.

We accept the settlement proposed jointly by the Company and Commission Staff, and adopt it as our own in this order.

III. FINDINGS OF FACT

The Washington Utilities and Transportation Commission is an agency of the State of Washington, vested by statute with authority to regulate in the public interest the rates, services, facilities, and practices of all persons engaging within this state in the business of supplying any utility service or commodity to the public for compensation, and related activities, including gas companies.

(1) Puget Sound Energy, Inc., is a privately owned company that engages in the business of providing electric and natural gas services for profit within the State of Washington.

[*9]

(2) On July 10, 2002, the Commission issued a Complaint in which it alleged that Puget had violated Commission rules that adopt and incorporate federal regulatory standards relating to maintaining anti-drug and alcohol abuse prevention activities.

(3) On July 10, 2002, Staff and Puget filed a Settlement Agreement to resolve the alleged violations cited in the Commission's Complaint.

IV. CONCLUSIONS OF LAW

The Washington Utilities and Transportation Commission has jurisdiction over the subject matter and the parties. Chapters 80.04 and 80.28 RCW.

(1) The Settlement Agreement, which is attached to this Order as Appendix A, is consistent with the public interest.

(2) The Settlement Agreement fully and fairly resolves the issues pending in Docket No. UG-001116. The terms of the Settlement Agreement should be accepted and adopted as the Commission's own as though set out herein.

(3) The Commission retains jurisdiction to effectuate the provisions of this order.

V. ORDER

THE COMMISSION ORDERS THAT The terms of the Settlement Agreement, as signed by representatives for the Parties and as set out in the attachment to this order, are hereby accepted and adopted by the [*10] Commission as its own for purposes of this proceeding. In doing so,

THE COMMISSION DISMISSES The Complaint, subject to PSE's payment of penalties specified in the Settlement Agreement no later than seven days following the date of this Order.

DATED at Olympia, Washington, and effective this day of July, 2002.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

RICHARD HEMSTAD, Commissioner

PATRICK J. OSHIE, Commissioner

DISSENTBY: SHOWALTER

MARILYN SHOWALTER, Dissenting:

With the approval of this Settlement Agreement, both the Commission and Puget Sound Energy fail to live up to their responsibilities for pipeline safety. For *four years*, PSE had virtually no drug-testing program to speak of, much less one that meets numerous state and federal requirements. These requirements are designed to ensure that the men and women who make *judgments* when burying, repairing, and operating natural gas pipelines--judgments that can have life-or-death consequences long into the future--are not affected by alcohol or drugs. The gaping breadth and gravity of PSE's abdication cannot be squared with the Settlement Agreement in which PSE expressly denies it committed any violation. If PSE [*11] will not admit a violation, the Commission should proceed to hearing, and, if a violation is found, impose an appropriate penalty.

I begin with general observations, in Part A, on the subject of enforcing public safety rules, including settlement of enforcement actions, after which I will turn, in Part B, to the particulars of the Settlement Agreement itself.

A. GENERAL CONSIDERATIONS IN ENFORCING PUBLIC SAFETY RULES

1. Principles

Safety standards, including pipeline safety rules, exist to protect us from danger and injury. Cars, trucks, boats, airplanes, trains, and electrical appliances, and pipelines--just to name a few--are subject to rules that cover both how these items are manufactured and how they are operated. Most of the regulations are relatively objective: the speed limit is 60 mph, the pipeline thickness must be so many millimeters, blood alcohol level may not exceed .08, etc. Other rules may be less precise, but compared to economic regulation, which requires navigating complex economic, financial, and technological dynamics among multiple parties, safety regulation is relatively straightforward.

Enforcement of safety regulations is an exercise of [*12] police power, that is, of the authority of the government to impose restrictions for the sake of public welfare, order, and security. Violation of these regulations is subject to civil penalties (or, in the case of criminal laws, to criminal penalties). Usually the regulator, who has the job of enforcing the regulations, enjoys some degree of discretion in pursuing and punishing violations. The regulator exercises prosecutorial discretion in deciding whether to investigate a violation, and in deciding whether to bring a complaint or charge. The regulator enjoys judicial discretion in deciding what kind of fine or other sanction may be appropriate.

The general considerations in determining an appropriate enforcement response to a violation include:

a) Specific deterrence

The response should deter the violator from offending again.

b) Rehabilitation

It may be appropriate to require the violator to undertake steps to correct the condition which led to the violation.

c) General deterrence

The response should send appropriate signals to other violators, would-be violators, non-violators, and the general public. These signals should foster adherence to the [*13] law.

d) Justice

Justice operates both as a minimum and maximum constraint. The response should be appropriate to the gravity of the offense. If the response is too harsh or over-reaching, it will be perceived as unfair to the violator or as an abuse of government power. If the response is too lenient, it will be seen as preferential and lax. There may, of course, exist individual mitigating circumstances, which justice (and mercy) may accommodate when warranted. Regulators should work toward fair and even-handed responses that uphold their responsibility to protect the public and inspire public trust in them to do so.

These principles are not always easy to balance, and different decision-makers will balance them differently. But regulators should be balancing *all* of these principles, not ignoring some of them. As I will discuss later, I think that the principles of general deterrence and justice have gotten short shrift in the Settlement Agreement.

2. Settlement Considerations

In a settlement agreement, the litigating parties present to the regulator a proposed resolution of the dispute. In the case of pipeline safety regulation, Commission Staff acts in [*14] an investigative and prosecutorial role, and the Commission acts in a quasi-judicial role. Unlike settlements of price-regulation cases, which typically involve many murky issues disputed by multiple parties, settlements of safety-regulation disputes typically involve two parties--the Staff and the regulated company--and determine a) whether a violation (or multiple violations) occurred and b) the appropriate response.

In evaluating how to respond to a violation of a safety rule, the Commission should weigh all of the principles discussed above. In the case of settlement agreements (as distinct from fully adjudicated cases), there may be some additional considerations.

a) Conservation of Resources

Fully litigating a contested case costs the time and money of the Commission and of the parties. In a world where the demand for government and corporate resources always exceeds the supply, it is surely a benefit to avoid these costs. This potential benefit, however, should be measured realistically. First, is the cost really being avoided? That is, if the parties do not reach a particular settlement, will the case actually go to a full adjudication before the Commission? [*15] In a contested rate case, there is no alternative. With respect to many safety violations, however, the Staff already has expended considerable resources thoroughly investigating the violation, with the result that the real dispute focuses not so much on the fact of a violation as on the consequences of it. In this situation, the parties negotiate over the penalty or other consequences, but if they fail to reach agreement, the regulated company will not necessarily want to proceed to a full-blown hearing. If the case does go to hearing, the considerable resources already expended in the investigation stage, in which the Staff and the company generally have become very familiar with the facts and issues, reduce the incremental costs of the hearing itself.

Second, the costs *and time* of trying to negotiate a settlement may be greater than simply going to hearing. Especially in cases where the underlying facts of a violation are not really contested--only the consequences are--the costs of lawyers and managers engaged in rounds of settlement discussions may well exceed the costs of filing complaint, calling for an answer, and promptly proceeding to hearing. In the event a hearing [*16] actually is requested. A straightforward and prompt finding of violation and imposition of a penalty (or mitigation of penalty) may save everyone time and money. Indeed, this is how many violations of our transportation regulations are handled, and they are handled successfully and efficiently.

Third, and most important, the benefit of avoiding the costs of litigation must be weighed against the substantive provisions of the settlement agreement. If the alleged violation is grave but the proposed penalty is inappropriate, the settlement should be rejected and the costs of litigation endured. It is only by being willing to back up a serious charge with a full adjudication that the integrity of any enforcement system is maintained.

b) The Value of Reaching a Consensus

When parties can reach an agreement on the fair disposition of a contested case, their common sense of achievement, of reaching a meeting of the minds, and of cooperating together are thought to help form relationships that foster cooperation and understanding in addressing subsequent difficult issues, which continually arise in the regulatory environment. Further, just the fact that two or more "opposing" [*17] parties have found their way to agreement gives confidence that a fair result has been reached.

This theory has its limits, however, and even has a dark side. The close focus that parties give a particular case can cause them to lose the broader perspective of where the case fits in the scheme of things. The natural desire to resolve a conflict, the closed universe of a negotiation, and the interpersonal sympathies and pressures that develop in regulatory relationships can disorient one's enforcement compass and obscure one's general sense of direction. When this misorientation becomes chronic, critics will charge that a regulatory agency has been "captured" by those it regulates, and that a cooperative relationship is no more than a "cozy" relationship. At this time, for example, there are national charges that corporate officers, their supposedly independent accountants, and relevant regulators all have failed in their responsibilities, out of excessive and self-interested concern for the short term and a lack of long-term perspective (and moral backbone). This dynamic points out that reaching a consensus has little value if the consensus is not faithful to the fundamental principles [*18] that should be guiding those achieving it. An important function of the Commissioners--who are not part of the negotiations that lead to the consensus among parties--is to act as an independent check, a fresh set of eyes, on the settlement agreement to ensure that the parties have not lost sight of any important principles.

c) Concessions and Conditions

Proposed settlements commonly contain concessions, which reduce the sanctions that potentially could have been imposed. These might include a finding of only one or two violations, when several were originally alleged; penalty amounts that are lower than what might have been imposed; partial or full suspension of penalty amounts; and even, as is the case here, an agreement not to find violation at all. Settlements also may contain conditions, which the violator agrees to perform. Failure to perform often brings the prospect of further sanctions.

In evaluating a proposed settlement containing concessions and conditions, it is useful to compare it to the straightforward application of the penalty statute that governs the proceeding. The basic sequence contemplated by most penalty statutes is: complaint alleging violations; admission [*19] of the violation or hearing to determine if there has been one; finding of a violation; penalty. Settlements that deviate from or this basic sequence should be justified in light of the general principles discussed above.

Of all things that might be conceded, the one that matters most is whether there is a finding of a violation. Without such a finding, there is no official record that a violation of a rule or law has occurred. Officially, *it did not happen*. Without such a finding, other jurisdictions have no official knowledge of misbehavior. Without such a finding, it is questionable, in my view, whether "penalties" may even lawfully be imposed (though some kind of payment, as a condition of avoiding a finding, might be proper). There may well be times when leniency, in the form of making no finding of a violation, is appropriate. Factors to consider, always in relation to the principles above, include: if the alleged behavior is slight, if the rule at issue is new or confusing, if the alleged violator has no history of misconduct, if no real harm has been done, if the alleged violator took affirmative steps quickly to remedy the situation, and any particular mitigating [*20] circumstances surrounding the conduct in question.

Of all things that most tempt regulators, it is the imposition of many conditions, designed to ensure that the regulated company performs up to standard--and sometimes beyond otherwise applicable general standards. In prosecuting and punishing violations, regulators have significant leverage over regulated companies. Regulators should be careful to exercise this power wisely and judiciously. They should not use the threat of a violation as a hammer to extract conditions that exceed the scope and gravity of the underlying violation. They should not abuse their power. Further, they should consider the resources it will take to monitor the conditions and their willingness to impose further sanctions if

the conditions are not met--as distinct from simply imposing an immediate penalty and concluding the matter. Regulators generally have ongoing regulatory oversight over the companies they regulate, including the ability to ask for information, perform an audit, and so on. If a violator violates again the regulator, when imposing the second sanction, can take into account the prior violation.

With these general considerations in mind, [*21] I now turn to the particular context and terms of the proposed Settlement Agreement in this case.

B. EVALUATION OF THE PROPOSED SETTLEMENT AGREEMENT

1. Facts

Since 1990, federal rules (which the Commission has adopted as state rules) have required operators of natural gas pipelines to have drug and alcohol testing programs for "covered" employees. Covered employees include those who perform operations, maintenance, or an emergency-response function. The term does not include clerks, office workers, etc. It does include employees of private contractors as well as direct employees of a pipeline operator. Among other things, the rules require random testing of covered employees, follow-up on those who test positive, prohibitions against allowing employees to work on pipelines if they test above certain thresholds, referral to treatment programs, and full reporting annually of compliance with numerous requirements of the rules. The rules are fairly detailed and take up 20 or so pages. In general, they are designed to prevent employees from performing safety-related functions if they are under the influence of alcohol or drugs.

It appears that prior to its merger with [*22] PSE, Washington Natural Gas had an ongoing, compliant drug and alcohol program. Then, after the merger, PSE simply dropped the ball. PSE has some 700 "covered" employees. It was required to provide updated lists of current employees to its tester (Virginia Mason Clinic) in order to allow the tester to administer a random-selection method and randomly test, throughout the year, at least 25% of covered employees annually. Instead, the actual percentages were 20% in 1997, 0.4% in 1998, 0% in 1999, and 0% in 2000.

PSE also was required to submit an annual report to the federal Office of Pipeline Safety providing details of its program (including results of testing, which are used to establish future years' required testing percentages for the industry), and to keep records of its actions under the program. Puget submitted *no* annual report for the years 1997, 1998, or 1999. Nor did it (nor could it) keep adequate records, because it did not perform the functions the records were supposed to document.

These and other deficiencies were uncovered in an audit performed by Commission Staff in July of 2000.

2. Settlement Agreement

Under the terms of the Settlement [*23] Agreement, Puget agrees to pay a \$ 50,000 "penalty" and agrees to spend \$ 56,000 on training supervisors to recognize symptoms of drug or alcohol use. There is no admission by Puget, and no finding by the Commission, that Puget violated any rule. To the contrary, the Agreement provides, in paragraph 16 that

No action taken or statement made by a Party in connection with the compromise reflected in this Agreement shall be deemed or construed to be an admission of the truth or falsity of any matter pertaining to any claim, demand, or cause of action referred to herein or relating to the subject matter of this Agreement, or any acknowledgment by such Party of any fault or liability to the other Party or to any other person or entity.

Thus, although Puget has written a letter to the Commission in which it "acknowledges that certain deficiencies existed in the execution of its drug plans during the audit years," and further acknowledges the key specific acts and omissions that Staff found to be "apparent" violations, Puget expressly refuses to admit to violating any rule. The majority, by adopting the Settlement Agreement, joins Puget and the Staff, in expressly not finding a [*24] violation.

3. Application of Principles and Other Factors

a) Specific Deterrence

I think it probable that Puget will operate an adequate program for the foreseeable future and will not re-offend, at least not on the scale of the past. Within a year after the audit, it had re-established a program that generally satisfies Staff. I would be more confident, however, had the Commission found a violation, as such a finding would convey our firm resolve to treat serious violations seriously, which approval of the Settlement Agreement does not.

b) Rehabilitation

Puget has demonstrated to Staff's satisfaction that it has "cured" its problem.

c) General Deterrence

The Settlement Agreement, and the Commission's approval of the Settlement Agreement, utterly fail to send the appropriate signals to other violators, would-be violators, and non-violators. They send the wrong signals. Puget had no drug or alcohol program to speak of for a period of *four years!* Puget failed to file any annual report at all for three years. These gross omissions undermine the integrity and trustworthiness in the safety of Puget's natural gas pipelines, which can fail (fatally) [*25] years after improper installment or repair. It is difficult to imagine a more gaping lapse of a serious safety responsibility. The message that is sent is: "Puget got off easy." That is a terrible message to send to any pipeline operator. Those who might be tempted to cut corners will take heart. Those who spent money for well-administered programs those four years justifiably may feel dismayed.

These were "umbrella" offenses, in the sense that they obscure numerous other, more specific, potential deficiencies. If one fails to file one's income tax forms, the IRS cannot evaluate any of numerous criteria in order to determine if appropriate taxes have been paid. That is why failure to file is a serious offense. The IRS does not say, "Pay a small fee, and as long as you are now current, we'll forget about the past." Further, the integrity of taxing system and the federal budget depend on everyone filing (and on the IRS enforcing). So, too, here, it is impossible to carry out or to enforce the specific provisions of the drug and alcohol rules if the Company has no program to begin with, keeps no records, and files no documentation of its compliance (or non-compliance). For example, [*26] as mentioned, the information on random drug testing that is required in the annual reports is used to establish the percentage of employees that must be tested in the industry in future years. The integrity of that aspect of the national pipeline safety program depends on *all* pipeline operators filing their annual reports. All pipeline operators--and their regulators--must do their part in carrying out and enforcing these requirements.

d) Justice

The Settlement Agreement is neither fair nor just. Its leniency--particularly the absence of any finding of a violation--is grossly disproportionate to gravity of the offending conduct. If failure to have any meaningful program for a period of four years does not warrant a finding of violation, how can Staff or the Commission justify finding violations for any number of particular deficiencies of pipeline operators who *do* have on-going programs? If extended omissions in an area as inherently dangerous as pipelines do not qualify for a finding of violation, how can Staff or the Commission justify enforcing myriad consumer, service-quality, and reporting rules that, while important, generally do not have life-or-death consequences?

[*27]

The penalty of \$ 50,000 is also paltry, considering the gravity and breadth of Puget's omissions, and considering Puget is the largest pipeline operator in the state, with total company revenues of \$ 3.4 billion. Determining the "right" amount of a penalty is not an exact science, but a penalty of \$ 50,000, especially when coupled with no finding of a violation, is feather-light.

e) Avoiding Costs of Litigation

This mantra sounds particularly off-key here. The Staff completed a thorough investigation and report. Puget has acknowledged the essential facts; it just hasn't admitted a legal violation. If the Settlement Agreement were rejected, I doubt a hearing, if in fact one were requested, would be very complicated or involve the expenditure of significant additional resources.

Meanwhile, how much time and money have been spent trying to negotiate the Settlement? The Staff audit was conducted *two years ago*. The Staff report was completed more than one year ago. Suppose the Staff, immediately following the audit, simply had sought, and the Commission had filed, a complaint alleging that Puget failed to meet its percentages for random drug testing for four years, and [*28] failed to file annual reports for three years. Whether Puget admitted the violations or requested a hearing, the case, including imposition of appropriate (and timely) sanctions, could have been concluded within a few months. I think it likely that less money and less time would have been expended under that scenario, with no difference in expected future behavior.

f) The Value of Reaching a Consensus

When opposing parties in a dispute come to a meeting of the minds, the effect can be constructive, and the result can be balanced. Here, I think the parties somehow lost perspective, and elevated the goal of reaching an agreement above the principles that should inform the agreement.

g) Pending Federal Enforcement Action

At the Open Meeting, Puget intimated that it did not want to admit to a violation, because it faces similar charges at the federal level, which are not yet resolved. Since the state and federal rules are identical, and the required programs are under dual jurisdiction, Puget either violated both or neither rules. In general, I have no objection to coordinating the timing of two proceedings, within reason, but the result at the state level still [*29] needs to be appropriate, which in this case it is not. Perhaps the amount of the penalty should take into account the possibility of penalty amounts that might be imposed by another jurisdiction, but the same rationale does not apply to whether there should be a *finding* in our jurisdiction. Moreover, the entire matter has dragged on far too long. After a certain point in time, deference to another jurisdiction's process becomes an unjustified excuse.

h) Labor Relations Confusion

Puget explained that after its merger with Washington Natural Gas, it had difficulty dealing with various labor unions, including over the issue of drug-testing. While a few months of confusion might be understandable, years of neglect is inexcusable, and suggests much more than a labor-relations problem. In any event, it is the Company's legal responsibility to meet requirements at issue.

CONCLUSION

Puget Sound Energy carries a heavy responsibility, both legal and moral, to ensure the integrity and safety of its natural gas pipelines. An important aspect of this responsibility is the administration of drug and alcohol testing programs for employees whose work can affect the safety of pipelines [*30] years into the future. If Puget failed for four years to administer such a program, it should be required to own up to that fact, take its lumps, and move on.

This Commission carries a heavy responsibility, both legal and moral, to enforce laws and rules that protect the public from death and danger. The excellent work of our pipeline safety staff in investigating and bringing to light Puget's failures demands a corresponding commitment from Staff and this Commission to follow through with appropriate sanctions. Unfortunately, the Settlement Agreement and this Commission's approval of it fail to convey such a commitment. The majority proclaims this to be "a very serious matter" that "warrants substantial action." But their lenient action rings louder than their words.

In a time when many eyes are critically focused on corporate misbehavior and on regulators' ability to correct it, both Puget and this Commission should live up to their responsibilities. Over the long run, that is how to foster trust between a regulated company and its regulator, and that is how to foster trust by the public in corporate and governmental institutions.

This matter should be set for hearing to [*31] determine whether violations occurred, and if so, to further determine appropriate sanctions.

For the foregoing reasons, I dissent.

MARILYN SHOWALTER, Chairwoman

Legal Topics:

For related research and practice materials, see the following legal topics:

Communications Law U.S. Federal Communications Commission Jurisdiction Energy & Utilities Law Transportation & Pipelines Natural Gas Transportation Energy & Utilities Law Transportation & Pipelines Pipelines General Overview

Staff Investigation - Meeker Southern Railroad - TR-110221

1313K1

***** Print Completed *****

Time of Request: Wednesday, January 26, 2011 00:53:01 EST

Print Number: 1841:264990384

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Send To: SANTELLI, DEBBIE
HALINEN LAW OFFICES, P.S.
1019 REGENTS BLVD STE 202
TACOMA, WA 98466-6037



PIERCE COUNTY PUBLIC WORKS AND UTILITIES DEPARTMENT

2703 South Moe Road, Tacoma, Washington 98402

Jerry West: (253) 798-3687

Greg Dussault: (253) 798-2243

Permit # 012611-B

Date Issued 2-24-11

RIGHT-OF-WAY PERMIT

EXHIBIT 3

PERMIT FOR:

[] Culvert in Right-of-Way

[] Test Holes in Right-of-Way

[] Tree/Vegetation Removal from Right-of-Way

[] Storm water Disposal Project

[X] Other Right-of-Way Request

WORK IN RIGHT OF WAY OF 134TH AVE TO REBUILD BOTH LANES FOR 60 FT NORTH OF MAIN TRACK XING.

Applicants Name: MEEKER SOUTHERN RAILROAD Telephone: 206-982-1447

Applicants Address: 4745 BALLARD AVE NW SEATTLE, WA 98107

Contractor to Perform work: ASPHALT PATCH SYSTEMS Telephone: 153-595-2746

LIC #: ASPHAPS099BP Bond: SA3230

Project Address: 134TH AVE AT BOTH STEE

Reason for Request: ROAD GRADE IS TOO STEEP APPROACHING RETRAKES FROM THE NORTH, Sec. 25 & 26 Twp. 20N Rng. 4E W.M.

I certify that the above information is correct and that the application regulations and ordinances relating to this work will be complied with. The work will be constructed as directed by the County Engineer or his authorized representative and all conditions as stated below will be complied with.

Proof of Insurance & Bonding is Required Before Permits are Issued

Signature of Contractor (All Information Above Must Be Filled Out)

Table with 2 columns: Site Development Permit Needed? (Yes/No) and 400 SF New Impervious Area, 50 CY of Material Moved, Environmental Studies

72 Hours Prior to Work Notify: JERRY BRYANT Telephone No.: 798-3687

For Final Inspection Call: Telephone No.:

Engineer's Instructions and Conditions: CONSTRUCT AS PER APPROVED PLANS SIGNED & DATED BY BRIAN STACY, 1-25-11. WORK SHALL BE PROVIDED IN ACCORDANCE W/ ORDER 03 ASSOCIATED WITH DOCKET NO TR-100036 WITH THE WSUTC. THE ABOVE APPROVED PLANS SHALL BE ON SITE AT ALL TIMES DURING CONSTRUCTION.

- All work and materials shall conform to Pierce County standards and specifications.
Repair to any and all damage to road infrastructure, private property, landscaping and /or utilities shall be the responsibility of the applicant / contractor and shall be approved by all affected agencies.
All traffic control shall conform to MUTCD standards and specifications.
Call before you dig for utility locates (1-800-424-5555).

Permit Approved By: Jerry Bryant Date: 1-27-11

Work is hereby Inspected and accepted By: Date:

See Right-of-Way Permit guidelines as per Chapter 17B.10 of Pierce County Code This Right-of-Way Permit is good for 90 days from the date it was approved, per Chapter 17B.10.105 of PCC

PIERCE COUNTY
DEPARTMENTAL CASH RECEIPT

NO. 588557

RECEIVED FROM Asphalt Paving Systems

ADDRESS _____

FOR General R/w Permit 134th Ave E DOLLARS \$ 75.00
R/R Crossing

ACCOUNT		HOW PAID
AMOUNT OF ACCOUNT PAID		CASH
BALANCE DUE		CHECK <input checked="" type="checkbox"/>

DATE 2-24 2011

BY James FUND/DEPT. NO. _____



8812 CANYON ROAD EAST • PUYALLUP, WA 98371
Telephone (253) 535-2590 • Fax (253) 535-2746 • www.asphaltpatchsystems.com

Attention Byron	Fax (206)782-7724	Email
Contracting Party Meeker Southern Railroad	Telephone (206)782-1447	Date 2/24/11
Address 4725 Ballard Ave. NW	Job Name Asphalt Work	
City, State, & Zip Seattle. Wash. 98107	Job Location Crossing at 134th Ave E	

We hereby submit specifications and estimates for:

Grind meet lines to area 40' x 55'. Grade sidewalk 80' x 6'.
Clean, haul away all spoils. Apply tack, apply class 1/2 HMA.
Seal edges with AR 4000. APS will handle all traffic control.

Job cost. \$ 14,723.00 plus tax

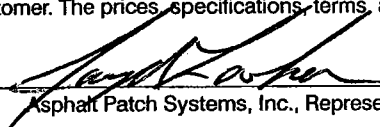
Thank you, Jay Looker

NOT AN INVOICE (SEE INVOICE FOR PAYMENT TERMS)

- * All prices are based on 2" depth, unless otherwise specified.
- * Job to be remeasured upon completion.
- * Prices subject to change upon remeasurement.

The contract price is only good for 30 days and is subject to renegotiation and change if construction does not begin within 30 days of the date of the construction agreement due to delays which are not the fault or responsibility of the contractor.

ACCEPTANCE OF PROPOSAL: I have read and understand the Terms and Conditions on the back of this Proposal and Contract, as well as the Notice to Customer. The prices, specifications, terms, and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified.


Asphalt Patch Systems, Inc., Representative

Approved Customer Signature

Date of Approval
220

David Halinen

From: Jay Looker [Jay@asphaltpatchsystems.com]
Sent: Thursday, February 24, 2011 11:02 AM
To: David Halinen
Subject: RE: Asphalt proposal

David, Pave additional area to the south, approx. 20' x 25' would have cost Meeker \$ 3500.00 Thanks Jay

-----Original Message-----

From: David Halinen [mailto:DavidHalinen@halinenlaw.com]
Sent: Thursday, February 24, 2011 10:55 AM
To: Jay Looker
Subject: RE: Asphalt proposal

Thanks, Jay!

Dave Halinen
Halinen Law Offices, P.S.
1019 Regents Blvd, Suite 202
Fircrest, Washington 98466-6037
(206) 443-4684 Seattle
(253) 627-6680 Tacoma
(253) 272-9876 FAX
davidhalinen@halinenlaw.com

-----Original Message-----

From: Jay Looker [mailto:Jay@asphaltpatchsystems.com]
Sent: Thursday, February 24, 2011 10:54 AM
To: David Halinen
Subject: FW: Asphalt proposal

Washington's oldest local energy utility

EXHIBIT 6

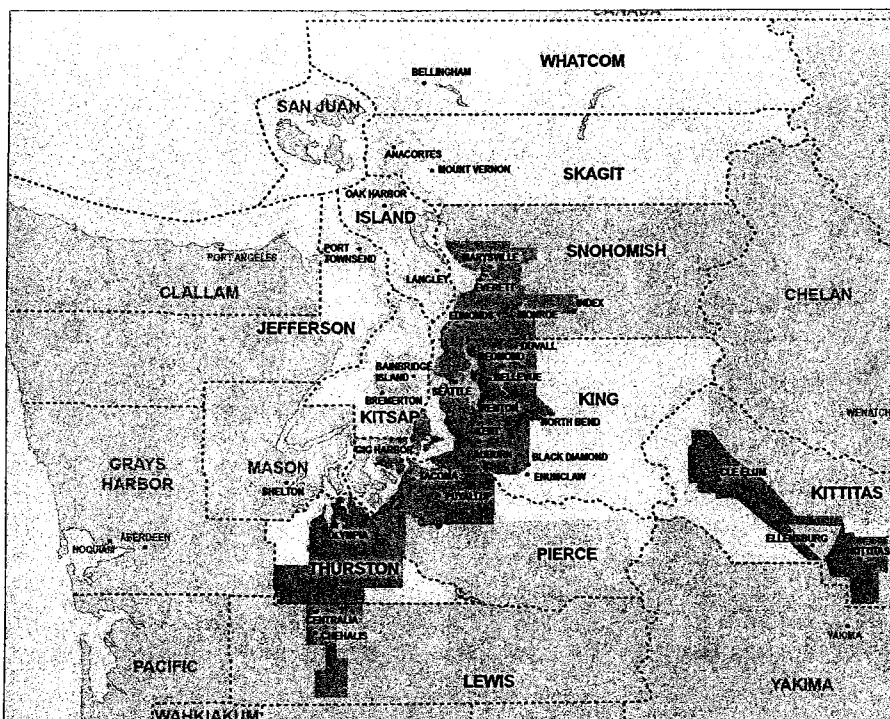
Company Overview

Puget Sound Energy is Washington state's oldest local energy utility, providing electric and natural gas service to customers primarily in the vibrant Puget Sound area.

The region has experienced dramatic change during PSE's century-plus history, but one thing has remained constant: PSE's focus on safe, reliable and affordable energy service. Our commitment to serving communities and to helping make them better places to live and work is as steadfast as ever.

PSE's service area is home to some of America's most recognized and respected businesses, including Boeing, Microsoft, Amazon.com, Weyerhaeuser, Starbucks, Costco and Nordstrom.

PSE's parent company, Puget Energy, merged in 2009 with Puget Holdings, a group of long-term infrastructure investors.



- Combined electric and natural gas service
- Electric service
- Natural gas service

Headquarters: Bellevue, Wash.

Revenues: \$3.32 billion

Assets: \$8.81 billion

Employees: 2,900

Customers:

- More than 1 million electric
- Nearly 750,000 natural gas

Service area: 6,000+ square miles, primarily in Puget Sound region of Western Washington

Service-area population: Approximately 4 million

Counties served:

- Island (electric)
- Jefferson (electric)
- King (combined)
- Kitsap (electric)
- Kittitas (combined)
- Lewis (natural gas)
- Pierce (combined)
- Skagit (electric)
- Snohomish (natural gas)
- Thurston (combined)
- Whatcom (electric)

Energy sales (2009):

- 26.3 million megawatt hours
- 1.135 billion therms (1 therm = 100,000 Btu or about 100 cubic feet of natural gas)

Average residential rate (Jan. 1, 2011):

- 9.8¢ per kWh (based on average household usage of 1,000 kWh)
- \$1.22 per therm (based on average household usage of 68 therms)

