

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.<sup>1</sup> 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 134<sup>th</sup> Avenue East. The Commission

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<sup>1</sup> 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.<sup>2</sup> 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 1<sup>st</sup> and 15<sup>th</sup> of each month. Staff will recommend penalties if Meeker does not file the reports or complete the work on time.<sup>3</sup>

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 134<sup>th</sup> Avenue East crossing,<sup>4</sup> 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.<sup>5</sup>

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 134<sup>th</sup> Avenue East

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<sup>2</sup> RCW 81.53.140.

<sup>3</sup> See RCW 81.04.380; RCW 81.04.405.

<sup>4</sup> See RCW 81.53.060; RCW 81.53.261.

<sup>5</sup> 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 134<sup>th</sup> 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.<sup>6</sup> 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  
.....<sup>7</sup>

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

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<sup>6</sup> 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).

<sup>7</sup> *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 134<sup>th</sup> 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 134<sup>th</sup> 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 134<sup>th</sup> via either the spur track or the mainline track.

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

- a. Daily number of trains crossing 134<sup>th</sup> Avenue East on the spur track, their length, and the date and time of each crossing.
- b. Daily number of trains crossing 134<sup>th</sup> 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 134<sup>th</sup> 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.

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<sup>8</sup> 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.<sup>9</sup>

### 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 134<sup>th</sup> 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

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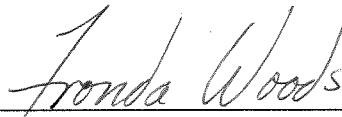
<sup>9</sup> See RCW 81.04.380; RCW 81.04.405; RCW 81.04.510; RCW 81.53.190; RCW 81.53.210.

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



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