

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

WASHINGTON UTILITIES AND)	DOCKET TR-110221
TRANSPORTATION COMMISSION,)	
)	ORDER 01
Complainant.)	
)	PREHEARING CONFERENCE
v.)	ORDER; NOTICE OF DEADLINE TO
)	FILE SETTLEMENT AGREEMENT
MEEKER SOUTHERN RAILROAD,)	<i>(Set for Friday, June 10, 2011)</i>
)	
Respondent.)	
.....)	

1 **NATURE OF PROCEEDING:** Docket TR-110221 is a formal complaint filed on April 1, 2011, by the Washington Utilities and Transportation Commission’s (Commission) regulatory staff (Commission Staff or Staff)¹ against Meeker Southern Railroad (Meeker Southern). The complaint alleges that Meeker Southern commenced operations on a spur track at the 134th Avenue East grade crossing in Pierce County, Washington (USDOT #085536R), prior to completing all required work to the satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff as required by Order 01 in Docket TR-100036 (Order 01), resulting in 50 separate violations of that Order.

2 Meeker Southern filed its answer to the complaint on April 21, 2011. Meeker Southern admits to starting operations on the spur line prior to obtaining all required approvals but offers a series of affirmative defenses in mitigation and extenuation.

3 **CONFERENCE.** The Commission held a prehearing conference on Monday, May 9, 2011, at 1:30 p.m., before Administrative Law Judge (ALJ) Adam E. Torem.

¹ In formal proceedings, such as this, the Commission’s regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners’ policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. See RCW 34.05.455.

4 **APPEARANCES.** Fronda Woods, Assistant Attorney General, Olympia,
Washington, appeared on behalf of Commission Staff. David L. Halinen, Fircrest,
Washington, represents Meeker Southern.

5 **INTERVENTION.** The Commission did not receive any petitions for intervention.

6 **PROTECTIVE ORDER.** No party sought a protective order.

7 **DISCOVERY.** The parties did not request that the Commission make formal
discovery available.

8 **SETTLEMENT NEGOTIATIONS.** At the conference, Commission Staff and
Meeker Southern requested the opportunity to engage in settlement discussions before
a procedural schedule is established to determine whether they can negotiate a
mutually satisfactory penalty amount and accompanying conditions. In the event the
parties reach an accord, they also asked that entry of an Initial Order be waived in
favor of having the Commissioners enter a Final Order as permitted by WAC 480-07-
820(1)(b)(iv). The parties' requests are reasonable, and the Commission will grant
those requests.

9 The parties shall ensure that any proposed settlement is documented in accordance
with WAC 480-07-740(2). The supporting Narrative must explain how any
recommended penalty amount and associated compliance conditions serve the public
interest. In this matter, both parties should consider whether the proposed settlement:

- appropriately sanctions the railroad for violating a Commission order; and
- prevents Meeker Southern from realizing undue profit attributable to unlawful commercial operations on the spur track.

If the supporting documents are sufficiently thorough, the Commission may enter a
Final Order without requiring testimony or conducting a formal settlement hearing.

10 **THE COMMISSION GIVES NOTICE That the deadline for the parties to
submit a Settlement Agreement and supporting Narrative is 5:00 p.m. on Friday,
June 10, 2011.** If the parties do not file a settlement agreement by that date, the
Commission will schedule a status conference to establish additional procedures.

- 11 **ALTERNATE DISPUTE RESOLUTION.** The Commission supports the informal resolution of matters before it. As discussed at the prehearing conference, the Commission has limited resources but may be able to provide dispute resolution services in this case, if requested. If parties wish to explore the Commission's mediation services, they should contact Gregory J. Kopta, Director, Administrative Law Division, at 360-664-1355.
- 12 **DOCUMENT PREPARATION AND FILING REQUIREMENTS.** Parties must file the **original plus 9 copies** of all pleadings, motions, briefs, and other prefiled materials. These materials must conform to the format and publication guidelines in WAC 480-07-395 and WAC 480-07-460. The Commission prefers that materials be three-hole punched with *oversized* holes to allow easy handling. The Commission may require a party to refile any document that fails to conform to these standards.
- 13 All filings must be mailed or delivered to the Executive Director and Secretary, Washington Utilities and Transportation Commission, P.O. Box 47250, 1300 S. Evergreen Park Drive, S.W., Olympia, Washington 98504-7250. Both the post office box and street address are required to expedite deliveries by the U.S. Postal Service.
- 14 A copy of all filings must be provided through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail delivery to records@utc.wa.gov. Alternatively, parties may furnish an electronic copy by delivering with each filing a 3.5-inch IBM-formatted high-density diskette or CD including the filed document(s). Parties must furnish electronic copies in MS Word 6.0 (or later) supplemented by a separate file in .pdf (Adobe Acrobat) format. Parties must follow WAC 480-07-140(5) in organizing and identifying electronic files.
- 15 **ELECTRONIC SUBMISSION OF DOCUMENTS.** Parties may submit documents electronically to the Commission on the filing deadline to expedite the filing process, but must file an original, plus **9** paper copies, of the documents with the Commission by 12:00 noon on the first business day following the filing deadline established in the procedural schedule. WAC 480-07-145(6). Parties may submit documents electronically through the Commission's Web Portal (www.utc.wa.gov/e-filing) or by e-mail to records@utc.wa.gov. Finally, to perfect filing, parties must simultaneously provide e-mail courtesy copies of filings to the presiding administrative law judge as well as to all other parties to the proceeding.
- 16 Electronic versions of all documents must be filed in accordance with WAC 480-07-140(6). Specifically, all documents must be filed in .pdf (Adobe Acrobat) format,

supplemented by a separate file in either .doc (MS Word), .wpd (WordPerfect), .xls (Excel), or .ppt (Power Point) format, as appropriate to the individual document.

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

DATED at Olympia, Washington, and effective May 10, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

ADAM E. TOREM
Administrative Law Judge