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BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND	)	DOCKET NO. TR-110221
TRANSPORTATION COMMISSION,	)	
	)	
Complainant,	)	
	)	
v.	)	Volume I
	)	
MEEKER SOUTHERN RAILROAD,	)	Pages 1 - 13
	)	
Respondent.	)	
_____	)	

A prehearing conference in the above matter was held on May 9, 2011, at 10:00 a.m., at 1300 South Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge ADAM E. TOREM.

The parties were present as follows:

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

MEEKER SOUTHERN RAILROAD, by DAVID L. HALINEN, P.E., Attorney at Law, Halinen Law Offices, P.S., 1019 Regents Boulevard, Suite 202, Fircrest, Washington 98466-6037; telephone (253) 627-6680.

Shaun Linse, CCR NO. 2029  
Court Reporter

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

2 JUDGE TOREM: Good afternoon. It's Monday. It's  
3 already May 9, 2011. This is Docket TR-110221. This is a  
4 Utilities Commission complaint against Meeker Southern  
5 Railroad, and I'm Administrative Law Judge Adam Torem  
6 presiding today. We'll take appearances quickly first from  
7 Commission staff.

8 MS. WOODS: Good afternoon, Your Honor. I'm  
9 Fronda Woods, Assistant Attorney General for Commission  
10 Staff.

11 MR. HALINEN: I am David Halinen H-a-l-i-n-e-n,  
12 attorney for the Meeker Southern Railroad.

13 JUDGE TOREM: This hearing is going on today under  
14 this docket number for a complaint that was issued on  
15 April 1, 2011 that was per my direction in another docket  
16 that's related but separate from this. The other docket for  
17 cross-referencing is TR-100036, and the answer with the  
18 complaint was filed on April 21, 2011. This is the parties  
19 first opportunity to get together since the formal filing of  
20 documents and make recommendations on whether there's a way  
21 ahead that they are recommending or whether we should set a  
22 hearing or briefing to determine how to handle this  
23 complaint.

24 I think so we're all speaking from the same sheet  
25 of music today, my understanding is the complaint was

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1 supported by an investigation that alleges 50 times that the  
2 train crossed the spur crossing between October 17 and  
3 December 20 of 2010 and those 50 alleged violations could be  
4 subject to a penalty of up to \$1,000 per violation. And  
5 according to the answer there's an admission that the trains  
6 did make those crossings and the characterization of the  
7 violations ranges from 1 to 18, to please wait there's  
8 mitigating circumstances or an otherwise characterization on  
9 how the Commission should look at this based on an analogy  
10 in the Puget Sound Energy case.

11 So there were a number of affirmative defenses set  
12 out depending on how one characterized the language in the  
13 Commission's underlying order in the previously referenced  
14 docket and what the violations truly meant. But there was  
15 no dispute over the trains on which dates they ran. I think  
16 those actual admissions came from Meeker Southern.

17 Mr. Halinen, is that correct?

18 MR. HALINEN: That's correct.

19 JUDGE TOREM: The Commission I don't believe had  
20 any dispute that I was made aware of in the previous  
21 paperwork with the number for reported times that the train  
22 actually crossed prior to all of the work being done just  
23 now being completed hopefully this month.

24 MR. HALINEN: Correct.

25 JUDGE TOREM: So that's where we stand.

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1 Ms. Woods?

2 MS. WOODS: That's accurate, Your Honor.

3 JUDGE TOREM: I got the impression also that  
4 because this investigation was at my suggestion at the  
5 direction of the Commissioners from the other docket that  
6 there may have been no reason to name an exact penalty the  
7 Commission wanted to impose because perhaps they believe the  
8 Commissioners had one in mind or wanted to set their own,  
9 but there wasn't a number set for it. So I know Mr. Halinen  
10 he knows what the range might be but doesn't have an idea  
11 here for his client as to what the Commission might be  
12 seeking, and I haven't been given any such direction of a  
13 magic number.

14 I don't know if the parties had one that they  
15 wanted to put forward today or if there was simply one to be  
16 addressed by brief for what would be appropriate or perhaps  
17 the parties wanted time to get together and have a suggested  
18 stipulated agreement that might be more creative than one I  
19 could come up with.

20 MR. HALINEN: Were you thinking perhaps of a brief  
21 adjournment today for us to be able to discuss this with  
22 Commission Staff and having us come back on the record here?

23 JUDGE TOREM: It's possible or it could just  
24 simply be this turning into more of a status conference if  
25 you wanted a hearing on the matter which could be the most

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1 formal way to go or we just could set up a schedule for  
2 briefs or we could see about whether a settlement conference  
3 is appropriate and then setting a date to file other briefs  
4 for a settlement by depending. So there's a variety of ways  
5 we could go. There's an informal consultation that could be  
6 done today. I'll leave that up to Ms. Woods and her client.  
7 I know she has several here in the room that could speak to  
8 that.

9 MS. WOODS: I agree, Your Honor. Thank you for  
10 accurately assessing the situation of Commission Staff.  
11 Commission staff didn't feel because the way that this case  
12 originated, Commission Staff didn't feel comfortable until  
13 we got to this prehearing conference with suggesting a  
14 particular penalty number, and we have not discussed  
15 settlement at this point, but Commission Staff is interested  
16 in doing that. I don't think we could reach a settlement  
17 figure today. We don't have all the right people here  
18 today. Some of them are on annual leave this week, but I  
19 believe that we could have some discussions and characterize  
20 this as a status conference and have some time later to  
21 report back.

22 JUDGE TOREM: All right. I know that the director  
23 of the division is gone this week and I believe next as well  
24 so it may be that we get into the first week of June or so  
25 for a deadline to say perhaps set another additional status

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1 conference or perhaps craft a settlement. And because  
2 there's not a set amount I don't think it prevents the  
3 parties from reaching a consensus in saying this is the  
4 amount that the penalty, for instance, might be payable  
5 regardless and another amount that might be suspended based  
6 on future compliance. There's any amount of creativity as I  
7 suggested earlier that can go into these settlement  
8 agreements.

9 I think the Commission's goal in this as in most  
10 of its orders is to ensure compliance, and from what I've  
11 seen in the other related docket number the railroad has  
12 been faithful in filing its twice-a-month reports and  
13 keeping up to date and keeping the Commission informed of  
14 anything that might cause a delay of completion of this  
15 crossing. As we talked about before going on the record  
16 today even weather issues to finish road construction.

17 So I don't see why we couldn't pick a date, Ms.  
18 Woods and Mr. Halinen, that might work to either come back  
19 or to target filing a settlement that might work for the  
20 Commissioners. And if there's a reason perhaps that I can  
21 consult with them that they find that they don't want to  
22 accept the settlement, I'd rather do that, at least to get  
23 some idea of where their range would be so I don't have to  
24 accept it and then you get a surprise Commissioners' final  
25 order that says, "No, we're not accepting the settlement,"

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1 and then we're back. I'd rather essentially see if we can  
2 waive initial order in a case like this since it wasn't an  
3 open meeting order to begin with that motivated this and  
4 have me exercise their discretion in the form of a final  
5 order in this case as we do a settlement so that, you know,  
6 they're accepting not just an Administrative Law Judge have  
7 to wait three weeks to see if it becomes final.

8           Just so your client understands, Mr. Cole, the  
9 Commission here always has the opportunity to review an  
10 Administrative Law Judge's order. So even if there's  
11 agreement between the parties, I would hate to accept an  
12 agreement that I thought was reasonable and then have you  
13 get surprised by the Commissioners later saying, "No, what  
14 we really want in this case is something different." So  
15 that if we refused it, it would be right up front. You  
16 would have an opportunity to renegotiate or see what  
17 conditions they would want to put on the order as opposed to  
18 accepting it without condition. So it would take that step  
19 out of the process and the mystery up front waiting for  
20 three weeks to see if it stands up.

21           MR. COLE: Okay.

22           JUDGE TOREM: Ms. Woods, does that make sense?

23           MS. WOODS: Yes, it does. Thank you.

24           MR. HALINEN: Your Honor, I was going to interject  
25 along the lines of thinking that you had there. It might be

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1 helpful for the Commissioners when they get to the point of  
2 reviewing this matter for them to consider the February 28  
3 letter that I submitted to Ms. Woods and to Betty Young of  
4 Commission Staff in which I set forth in probably too much  
5 detail, I apologize for this, the mitigating circumstances  
6 and analysis of how the penalty case in the Commission's  
7 Puget Sound Energy case Docket No. UG-001116 would fairly  
8 apply to the Meeker civil penalty case before the Commission  
9 now. And I think that would provide helpful guidance.

10 I essentially have briefed this matter already in  
11 this regard in that letter. So we are, Meeker is interested  
12 in pursuing settlement possibilities with the Commission  
13 Staff and we appreciate this opportunity to do so.

14 JUDGE TOREM: Excellent. When we have  
15 settlements, Mr. Halinen, that can certainly be referenced,  
16 and I can bring that as part of the filing in the answer to  
17 the Commissioners' attention.

18 MR. HALINEN: Thank you.

19 JUDGE TOREM: The settlement itself will have a  
20 lot of boilerplate that I'm sure you've seen in other  
21 documents that try to be the end all and be all, but we  
22 require a narrative in which case both sides explain why  
23 it's a good idea for the Commission if they're entering a  
24 settlement to do it and with the compromises that have been  
25 made as much as can be discussed. In a case like this I



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1 think the process lends itself more to mitigation  
2 discussions and a compromise from both sides discussion  
3 where the public interest lies. In some of our more  
4 economic regulatory cases you see utility rates sometimes it  
5 just says we all think it's in the public interest and no  
6 one wants to talk about what went on inside the black box of  
7 everybody's wallet getting opened and closed.

8           In this case where a penalty is the only opening  
9 and closing of anyone's wallets, I think explaining why  
10 situations came up can be easier in the narrative and can be  
11 styled in whatever forms you want the Commissioners to  
12 highlight, and there can be supporting documents appended to  
13 the narrative or at least cross-referenced if we want to  
14 spare some more trees on this round that are already  
15 attached to your answer.

16           MR. HALINEN: Right. By the way, Your Honor, the  
17 reason I chose the Puget Sound Energy case for analysis is  
18 because it had gone through a rather fulsome explanation of  
19 why the penalty and related sum were being accepted as a  
20 settlement in that case, and so that seemed to be the most  
21 fulsome type of explanation of factors the Commission has  
22 looked at that I came across at least.

23           JUDGE TOREM: Excellent. I know the Commission is  
24 having discussions on other dockets in other Department's  
25 about where they want to be in amounts of penalties and

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1 enforcement so this will give them yet another piece in the  
2 rail side of the house to consider it being as consistent as  
3 they want to be and see if they agree with your analysis in  
4 the Puget Sound Energy case.

5 MR. HALINEN: Wonderful. Thank you.

6 JUDGE TOREM: I think then we just need to set a  
7 date by which under you'll consult a file or we come back if  
8 it's not filed by that date to set up another process. It  
9 sounds like you both agree that reaching a settlement is  
10 going to happen or be close. And the negotiations if we  
11 wait for I think Mr. Pratt to come back at the end of the  
12 month and set something up would he be participating in  
13 those or would he be just there to be the approving  
14 authority for any number you reach?

15 MS. WOODS: I suspect the latter, although I don't  
16 know for sure.

17 JUDGE TOREM: Given the holiday week of Monday the  
18 30th that would be the soonest I think because he would have  
19 a full week before that, and I don't know if you need a week  
20 to finish drafting the documents as well. I know I have a  
21 hearing on the 7th and 8th of June, but I'm available that  
22 week after the holiday Monday. We could be available if we  
23 need to get together or simply a filing deadline. You let  
24 me know what works for that first half of June.

25 MR. HALINEN: I was going to suggest the second

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1 week of June for the filing deadline. Weather permitting  
2 we'll be beyond the road work then and we'll have the site  
3 conference, and that might provide some opportunity for  
4 further discussion as well if that would be acceptable.

5 MS. WOODS: That's fine with me.

6 JUDGE TOREM: Okay. So Friday the 10th of June.

7 MR. HALINEN: Great.

8 JUDGE TOREM: If the parties for some reason  
9 realize they're going to be somewhere farther apart and  
10 aren't going to be able to submit a full settlement to the  
11 case, if you reach your point and you reach your point and  
12 there's something worth having a hearing on, feel free to  
13 send a letter in advance of that and let me know. If I  
14 don't get something by the 10th of June, then I'll go ahead  
15 and set a status conference for later that month to find out  
16 where the impasse may be.

17 MR. HALINEN: Okay.

18 JUDGE TOREM: I don't think this case would need  
19 it, but if you decide that you want another judge in our  
20 division to act as a mediator we can do that. Just let me  
21 know and let Ms. Woods so we can get Mr. Kopta, the  
22 Director, and he can either choose to be your mediator  
23 himself or see which of the judges is available to handle  
24 the case. But again I think the amount of information  
25 that's been exchanged and the cooperation that's been shown

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1 in the other docket it's probably something you will be able  
2 to reach relatively quickly and an appropriate number for  
3 both parties.

4 MR. HALINEN: That's our intention.

5 JUDGE TOREM: Anything else we need to put on the  
6 record in this matter?

7 MR. HALINEN: I don't think so, Your Honor.

8 JUDGE TOREM: All right. Then I think what I'll  
9 end up doing is instead of issuing it may be in the form of  
10 a prehearing conference order, it may simply be a notice,  
11 but I'll issue some kind of paperwork setting that June 10  
12 deadline in writing and figure out I'll just say it's going  
13 to be in a formal order or in the form of a notice and we  
14 will just see how it formats out today and tomorrow. So  
15 this prehearing conference is adjourned at ten minutes to  
16 2:00.

17 \* \* \* \* \*

18 (Whereupon, the prehearing conference adjourned at  
19 1:50 p.m.)

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2 In re: WUTC v. Meeker Southern Railroad

3 Docket No. TR-110221

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10 I, Shaun Linse, CCR, do hereby certify that the  
11 foregoing transcript prepared under my direction is a  
12 full and complete transcript of proceedings held on  
13 May 9, 2011, in Olympia, Washington.

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Shaun Linse, CCR 2029

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