#### HALINEN LAW OFFICES, P.S.

A Professional Service Corporation

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#### 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

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

WUTC Docket No. TR-100036 Re:

> (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)

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, <sup>1</sup> 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 134<sup>th</sup> Avenue East on the *spur track*, their length, and the date and time of each crossing" <u>and</u> the "[d]aily number of trains crossing 134<sup>th</sup> 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).

- (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 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.
  - 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 134<sup>th</sup> Avenue East crossing, and showing the dates and times worked by each flagger.

<sup>&</sup>lt;sup>1</sup> Condition 2 states:

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)

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### **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 Forgette, 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 Forgette Date

# MEEKER SOUTHERN LOG FOR 134TH AVE. E CROSSING

200 ENG. + 2 CARS 271 ENG. + 3 CARS 200 ENG. + 2 CARS 194 ENG. + 2 CARS 121 ENG. + 1 CAR 125 ENG. + 1 CAR 106 ENG. + 1 CAR 50 ENGINE ONLY 50 ENG. ONLY 335 ENGINE + 3 CARS **LENGTH FEET PAGE 1 OF 1 TRAIN** CROSSING TIME OF 9:15 9:25 9:02 9:20 9:15 9:20 9:25 9:30 9:02 DECEMBER 19, 2010 THROUGH JANUARY 8, 2011 CROSSINGS **ONE-WAY** SPUR NONE NONE NONE NONE NONE **~** ∨  $\alpha$ N **LENGTH FEET** TRAIN 100 385 385 175 100 350 100 170 300 300 50 100 50 50 50 50 50 50 353 303 303 303 242 242 220 CROSSING TIME OF 15:00 16:15 10:15 10:00 8:14 9:45 8:45 9:30 9:50 8:10 8:35 9:10 9:45 8:55 9:20 9:30 8:30 9:30 8:20 9:05 8:30 9:15 CROSSINGS MAINLINE ONE-WAY α ε 4 0 m 4 DATE OF OPERATION 12/22/2010 12/23/2010 12/24/2010 12/28/2010 12/29/2010 12/31/2010 1/5/2011 1/3/2011 1/7/2011

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## Portion of Meeker's Report #1 dated January 12, 2011 VERIFICATION OF COMPLIANCE WITH TABLE 2

(a table attached as Exhibit C 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")

		inned Flashing Lights Crossing Signal System )
Requirement/	Description of	Comments
Limitation #	Requirement/Limitation	
1	Average number of days per week that the spur track will be used for crossings of 134th: 3 days	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 that the spur track was used during the reporting period is calculated as follows: $\frac{1+3+1}{3} = 1.6 \text{ days}$ That is less than the subject limitation.
2	Maximum number of round-trip crossings per day that the spur track may be used for crossings of 134th: 2	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: 9:00 AM to 3:00 PM	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: 3 cars plus an engine	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 <sup>th</sup> 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

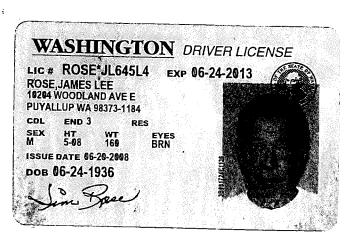
for Meeker,
Public Works
and the
WUTC)

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.

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.

(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.)

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



recognizes that the named person has received a knowledge and information compliant with TCD and necessary to-perform the duties of affic Control Flagger.

ring was conducted by:



WASHINGTON STATE TRAFFIC CONTROL FLAGGER

Name JIM ROSE 1.D. No./S.S.N. B013-Y142-0 Card No. 269499

Date of Expiration

Date of Issue

01/2014

Flagger's Signature

valid

with

photo

ID