

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

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

MEEKER SOUTHERN RAILROAD,

Respondent.

DOCKET NO. TR-110221

COMMISSION STAFF STATUS
REPORT ON SETTLEMENT
NEGOTIATIONS and PENALTY
RECOMMENDATION

1 The Washington Utilities and Transportation Commission Staff (“Commission Staff”) initiated this docket with a formal complaint filed on April 1, 2011. Commission Staff alleged that Meeker Southern Railroad (“Meeker”) had violated Order 01 in Docket TR-100036 by commencing operation on the spur track at the 134th Avenue railroad crossing in Pierce County before completing all proposed work to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff. Commission Staff alleged that Meeker had conducted operations on the spur track on 50 occasions for the purpose of delivering or picking up freight cars from Sound Delivery Service between October 17, 2010, and December 20, 2010. Commission Staff asked the Commission, pursuant to its authority under RCW 81.04.380, to assess penalties of up to \$1,000 per violation against Meeker.

2 In its Answer, filed on April 21, 2011, Meeker admitted the factual allegations in the
Complaint, and asserted affirmative defenses.

3 Administrative Law Judge Adam E. Torem convened a prehearing conference on
May 9, 2011. The parties requested the opportunity to engage in settlement negotiations.
Judge Torem granted that request and established June 10, 2011 as the deadline for the
parties to submit a Settlement Agreement and supporting Narrative under WAC
480-07-740.¹

4 Judge Torem also provided guidance on the objectives of any proposed settlement,
directing the parties to 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.²

5 The parties have had some communications regarding a possible settlement, but no
agreement has been reached. Meeker orally provided a settlement proposal on June 10,
2011, but Commission Staff lacks sufficient information to evaluate it. For the reasons
described below, Commission Staff recommends that the Commission assess a penalty of
\$10,640 against Meeker Southern Railroad.

6 The parties remained in the room after the conclusion of the prehearing conference
on May 9, 2011, and met informally at that time. Byron Cole, Meeker's General Manager,
stated that Meeker is paid \$380 per carload for its deliveries to Sound Delivery Service.
Based on the information in Attachment 1, Exhibit A to Meeker's Answer to the Complaint
in this docket, Commission Staff calculated that Meeker delivered 28 carloads to Sound

¹ *Wash. Utils. & Transp. Comm'n v. Meeker S. R.R.*, Docket TR-110221, Order 01 ¶¶ 8, 10 (May 10, 2011).

² *Id.* ¶ 9.

Delivery Service across the 134th Avenue crossing via the spur track between October 18, and December 17, 2010. Meeker's attorney verified that calculation in an email dated June 7, 2010. Commission Staff recognizes that the \$380 per carload figure may be gross revenues, not net, but Commission Staff has no other information about how much money Meeker earned from unlawful commercial operations on the spur track. Commission Staff calculates that Meeker was paid \$10,640 for the unlawful operations between October 18 and December 17, 2010 (28 carloads X \$380/carload = \$10,640). Accordingly, Commission Staff recommends a penalty of \$10,640.

7 Commission Staff recognizes the Meeker may not be able to pay \$10,640 all at once, and is agreeable to a twelve-month payment plan, if needed.

8 Meeker has been cooperative throughout the Staff investigation process and has acted in good faith. As described in the Inspection Report filed on June 3, 2011, Meeker has completed most of the work at the 134th Avenue East crossing to the satisfaction of Commission Staff, within the time period to which the parties agreed. For those reasons, Staff believes the full \$50,000 penalty authorized by RCW 81.04.380 is unwarranted.

9 In some penalty cases that come before the Commission, the Commission suspends part of the penalty on condition that no further violations occur within some period of time.³ Commission Staff does not recommend that treatment in this case. This matter does not involve a continuing activity. The circumstances that gave rise to the violations in this case are no longer present, the work at the 134th Avenue crossing has been substantially completed, and Meeker's commercial operations on the spur track are now lawful. Commission Staff reserves the right to seek penalties against Meeker in the future should a violation of some other Commission order, law, or rule occur, however.

³ See *In re Grant E. Farrell d/b/a Farrell Moving Co.*, Wash. Utils. & Transp. Comm'n Docket TV-091500.

10

For the above reasons, Commission Staff recommends a penalty of \$10,640.

DATED this 10th day of June, 2011.

Respectfully submitted,

ROBERT M. MCKENNA
Attorney General

A handwritten signature in cursive script that reads "Fronda Woods".

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