

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

MEEKER SOUTHERN RAILROAD,	)	DOCKET TR-100036
)	
Petitioner,	)	ORDER 02
)	
v.	)	NOTICE OF HEARING AND ORDER
	)	TO SHOW CAUSE WHY MEEKER
PIERCE COUNTY PUBLIC WORKS	)	SOUTHERN RAILROAD SHOULD
AND UTILITIES,	)	NOT BE FINED FOR VIOLATING
	)	COMMISSION ORDER 01
Respondent.)	
	)	(Set for January 26, 2011,
	)	at 8:00 a.m.)
)	
	)	USDOT: #085536R
.....)	

BACKGROUND

- 1 On January 4, 2010, Meeker Southern Railroad (Meeker Southern or Petitioner) filed with the Utilities and Transportation Commission (Commission), a petition seeking approval to modify a railroad-highway grade crossing and upgrade warning devices. The crossing is identified as USDOT #085536R and is located at the intersection of 134th Avenue East and Petitioner’s tracks in Pierce County.
- 2 Respondent Pierce County Public Works and Utilities (Pierce County) consented to entry of an Order by the Commission without further notice or hearing.
- 3 On January 12, 2010, the Commission entered Order 01, granting Meeker Southern’s petition to add a spur track to the crossing and increase the number of operating days and trains using the crossing. The Commission conditioned approval of the new spur track and increased rail traffic on Meeker Southern upgrading the passive warning devices to shoulder-mounted flashing lights, motion sensitive train detection equipment, and various other safety improvements at the crossing as detailed in Order 01. The Commission also conditioned its approval on Meeker Southern completing all required safety upgrades prior to beginning any use of the new spur track, as follows:

All work for the proposed spur track and the Phase 1 Service Siding shown on the design drawings shall be completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff *prior to the Petitioner starting operation of the spur line and Phase 1 Service Siding.* (Emphasis added.)

MOTION

- 4 On December 20, 2010, Meeker Southern filed a Motion to Amend Order 01 (Motion). Meeker Southern asks the Commission to “allow immediate and continued use of the spur track” for ongoing commercial support of Sound Delivery Service prior to installation of operational active warning devices and to approve its proposed schedule for completion of all required work at the crossing on or before May 2, 2011. Meeker Southern contends that its plan, which relies on the temporary use of certified flaggers at the activated crossing in place of Order 01’s requirement for active warning devices, does not present an unacceptable or unnecessary risk to public safety.
- 5 On December 30, 2010, Pierce County filed a letter in response to the Motion. Pierce County asserts that “Meeker has utterly failed to comply with the Commission’s Order” and consequently, the County has no confidence that the railroad will meet its responsibilities to public safety or that it will be fiscally responsible for all costs associated with the spur line project. In order for Pierce County to support any amendment to the Commission’s Order 01, the County asks the Commission to impose additional compliance conditions on Meeker Southern, including a performance bond and certified payroll reports to prove the railroad actually hires the required flaggers.
- 6 On January 4, 2011, Commission Staff filed its response to the Motion. Staff noted it is “not pleased with Meeker’s delay in installing the active warning devices or with Meeker’s apparent disregard of Order 01.” Even so, Staff is willing to support amendment of Order 01 if, as was the case with Pierce County, the Commission imposes several additional conditions on the railroad. In addition to requiring a performance bond, Staff recommends the Commission require the railroad to file regular progress reports and coordinate all revisions to engineering designs with Staff and with Pierce County.

- 7 On January 6, 2011, Meeker Southern filed a letter seeking leave to submit replies to both Pierce County's and Commission Staff's responses to the Motion to Amend Order 01 on or before Friday, January 21, 2011. According to the railroad, the other parties believe that ongoing discussions during the intervening time may facilitate a settlement. Further, all parties have agreed to allow Meeker to continue limited rail operations on the spur line subject to a set of specified conditions, including a requirement that Meeker file evidence no later than January 10, 2011, that each of its flaggers holds a valid traffic control flagger card meeting all requirements of WAC 296-155-305(6).
- 8 On January 11, 2011, Meeker Southern filed copies of four flagger cards, including one that had expired in November 2010. On January 13, 2011, Meeker Southern filed Meeker's Report #1 on Interim Use of the Spur at 134th Crossing and Photocopy of a New Flagger Card.
- 9 The Commission finds that a hearing on the Motion is necessary to enable the Commission to rule on that motion. The parties should be prepared to address the Motion and the proposed conditions on granting the relief requested, including but not limited to the public safety implications of those proposals.
- 10 The Commission further finds based on the record that has been compiled to date that Meeker Southern is not, and for some time has not been, in compliance with the requirements of Order 01. Specifically, Meeker Southern is in violation of the condition in Order 01 barring operational use of the new spur track until all required work has been completed to the reasonable satisfaction of the Commission and Pierce County.
- 11 Under RCW 81.04.380, public service companies, including railroads, are subject to penalties for violations of Commission orders of up to \$1,000 per violation or \$1,000 per day for a continuing violation. Each operational use of the new spur track is a violation of Order 01. Meeker Southern, therefore, must come prepared to show cause, if any, why the Company should not be fined up to \$1,000 per violation or \$1,000 per day for the continuing violation of Order 01.
- 12 **NOTICE IS HEREBY GIVEN that a hearing on Meeker Southern's Motion and to show cause why Meeker Southern should not be fined for violation of Order 01 will be held on January 26, 2011, at 8:00 a.m., in Room 206, Second Floor,**

Richard Hemstad Building, 1300 S. Evergreen Park Drive S.W., Olympia, Washington. If you are unable to attend the hearing in person, you may attend via the Commission's teleconference bridge line at (360) 664-3846. Please appear on the teleconference bridge five minutes before the status conference is scheduled to begin.

13 Adam E. Torem has been appointed as the Administrative Law Judge from the Utilities and Transportation Commission's Administrative Law Division, 1300 S. Evergreen Park Drive S.W., Olympia, Washington 98504-7250 and will preside at the hearing.

ORDER

THE COMMISSION ORDERS THAT:

- 14 (1) A hearing in this docket will be held on January 26, 2011.
- 15 (2) Meeker Southern Railroad must come before the Commission at the hearing on January 26, 2011, to support its motion and to show cause why the Commission should not fine the company for violation Order 01.
- 16 (3) The Commission retains jurisdiction to effectuate the terms of this Order.
- 17 (4) The Commissioners, having determined that the original filing complied with the requirements of WAC 480-62-150(1)(f), WAC 480-62-150(2)(b) and RCW 81.53.030, directed the Secretary to enter this Order in accordance with WAC 480-07-904(1)(b).

DATED at Olympia, Washington, and effective January 19, 2011.

WASHINGTON STATE UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER
Executive Director and Secretary