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BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

MEEKER SOUTHERN RAILROAD,)	
)	
Petitioner,)	
)	
vs.)	DOCKET NO. TR-081407
)	Volume II
PIERCE COUNTY PUBLIC WORKS)	Pages 29 - 36
AND UTILITIES,)	
)	
Respondent.)	

A prehearing conference in the above matter was held on December 7, 2009, at 10:05 a.m., at 1300 South Evergreen Park Drive Southwest, Olympia, Washington, before Administrative Law Judge PATRICIA CLARK.

MEEKER SOUTHERN RAILROAD, by DAVID L. HALINEN (via bridge line), Attorney at Law, 1019 Regents Boulevard, Suite 202, Fircrest, Washington 98466; telephone, (253) 627-6680.

PIERCE COUNTY PUBLIC WORKS AND UTILITIES, by JOHN SALMON (via bridge line), Deputy Prosecuting Attorney, Civil Division, 955 Tacoma Avenue, Suite 301, Tacoma, Washington 98402; telephone, (253) 798-4282.

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

Kathryn T. Wilson, CCR
Court Reporter

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

2 JUDGE CLARK: Good morning. It's
3 approximately 10:05, December 7th, 2009, in the
4 Commission's hearing room in Olympia, Washington. This
5 is the time and the place set for a status conference
6 in the matter of Meeker Southern Railroad versus Pierce
7 County Public Works and Utilities, Docket TR-081407,
8 Patricia Clark, administrative law judge for the
9 Commission presiding.

10 This is a telephonic status conference, so we
11 have two of the parties appearing on the telephone this
12 morning. I'm going to ask you to please identify
13 yourselves for the record starting first with Meeker
14 Southern Railroad.

15 MR. HALINEN: This is David Halinen, attorney
16 for Meeker Southern Railroad, and we also have on the
17 call Byron Cole, the manager of Meeker Southern.

18 JUDGE CLARK: Thank you. Appearing on behalf
19 of Pierce County Public Works and Utilities?

20 MR. SALMON: John Salmon with the prosecuting
21 attorneys office representing the County. I have with
22 me Marlene Ford and Jerry Bryant of the Pierce County
23 Public Works.

24 JUDGE CLARK: Thank you. Appearing on behalf
25 of Commission staff?

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1 MR. THOMPSON: Jonathan Thompson, assistant
2 attorney general, and I have Kathy Hunter with me from
3 the rail section of the Commission.

4 JUDGE CLARK: Thank you. I just want to
5 remind those of you on the bridge line that you need to
6 speak a little more slowly and perhaps loudly than you
7 would ordinarily speak, and for those individuals
8 appearing on the bridge line, it is necessary for you
9 to identify yourselves before you speak so that the
10 court reporter can make an accurate transcript.

11 The purpose of this status conference this
12 morning is pretty simple and straightforward. Just
13 need to check on the status of the petition that Meeker
14 Southern Railroad intended to file.

15 As you may recall, we have extended the
16 procedural schedule in this matter a couple of times to
17 afford Meeker Southern Railroad and Pierce County to
18 work out differences they might have regarding an
19 amended petition that the Railroad intends to file, so
20 that has not yet occurred, so I'm checking on the
21 status of when that petition would be filed or if there
22 are other procedural options we should undertake,
23 including having the Commission dismiss without
24 prejudice the current petition if Meeker Southern
25 Railroad does not intend to pursue relief from the

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1 Commission under that petition. I'm going to turn to
2 you first, Mr. Halinen.

3 MR. HALINEN: Thank you, Your Honor. I'm
4 happy to report that after a great deal of effort on
5 the part of my client and his team and also on behalf
6 of Public Works and the UTC staff, we've been able to
7 put together a set of detailed civil design drawings
8 and an engineering report that has met the satisfaction
9 of all parties.

10 The civil design drawings have been signed
11 off on behalf of the Department of Public Works, and it
12 is our intention after consultation with Mr. Salmon and
13 Mr. Thompson to submit a new petition simultaneously
14 withdrawing our existing petition and have an order
15 signed upon behalf of the director of the UTC. That's
16 what after these consultations appears to be
17 appropriate and would expedite this matter, and I look
18 forward to getting the confirmation of Mr. Salmon and
19 Mr. Thompson regarding this approach.

20 JUDGE CLARK: Before we go there,
21 Mr. Halinen, I do have a couple of questions. The
22 first is when do you anticipate filing the new
23 petition?

24 MR. HALINEN: We have proffered a draft form
25 of the new petition for review by Public Works and the

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1 UTC staff last Thursday. We've gotten a feedback from
2 Mr. Thompson on it, favorable with a few minor
3 suggestions, and I believe Mr. Salmon has received that
4 feedback as well, and we are waiting feedback from
5 Public Works.

6 One of the things we are going to do as part
7 of this new petition is actually attach a copy of the
8 civil design drawings that have been approved by Public
9 Works as well as the finalized form of the engineering
10 report to the petition and incorporating by reference.
11 Those documents, the drawings and report, have already
12 been printed. They are ready to go. As soon as we've
13 got this final feedback and consensus from the parties,
14 we will be ready to go. I'm hoping to do that this
15 week. That's our intention.

16 JUDGE CLARK: Mr. Salmon?

17 MR. SALMON: The County's concerns were
18 essentially that the crossing comply with all the
19 requirements in the manual on uniform traffic control
20 devices and also that the County not be held
21 responsible for any of the costs of the improvement at
22 the crossing, and we understand that part of the new
23 petition, we are going to make it very clear that the
24 County won't be responsible for any of the costs, and
25 as Mr. Halinen just said, the plans will be

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1 incorporated by reference in full and that the crossing
2 be built according to those plans, and I think we are
3 all in agreement that that's what's going to happen.

4 JUDGE CLARK: Thank you, Mr. Salmon.
5 Mr. Thompson?

6 MR. THOMPSON: Staff, we talked about how
7 this all should work procedurally. I think we do agree
8 with the details as to what improvements should be at
9 the crossing, and the fact that the improvements that
10 have been agreed to should be put in place before the
11 spur track becomes operational, so there is a very
12 extensive report that the Railroad intends to file with
13 its new petition application, and that all appears
14 satisfactory to Staff.

15 We think procedurally, it's probably easiest
16 and most streamlined to just have the current petition
17 dismissed without prejudice and then have the Company
18 file its new documents through the informal process,
19 and then the Commission's executive secretary has
20 delegated authority to enter an order approving that
21 sort of petition.

22 JUDGE CLARK: Then I'm going to turn to you,
23 Mr. Halinen. Do you have an objection to the
24 Commission dismissing without prejudice the current
25 petition on the basis that the relief sought will be

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1 embodied in a new petition?

2 MR. HALINEN: My intention, Your Honor, was
3 to simultaneously file with you a motion for such a
4 dismissal on the day when we actually filed the new
5 petition. That way, we would have in hand -- one of
6 the things I've requested from Public Works is their
7 execution at the end of the new petition the waiver of
8 hearing. We felt that by having that waiver of hearing
9 in hand, that would be the formal agreement that the
10 crossing as proposed is acceptable and that we would
11 have the formal assurance that we need to be seeking
12 the dismissal without prejudice for this new filing.
13 If that's acceptable, we would request that you not
14 dismiss immediately but wait until that motion is
15 submitted.

16 JUDGE CLARK: Mr. Salmon, do you have any
17 input on this issue?

18 MR. SALMON: I think we would try to get to
19 that point where we are signing off on the waiver of
20 hearing. That's the plan, and I think we will be there
21 this week.

22 JUDGE CLARK: Mr. Thompson, do you have
23 anything further to add?

24 MR. THOMPSON: No. I think we are sort of
25 indifferent to whether the new petition and the

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1 dismissal occur simultaneously.

2 JUDGE CLARK: All right. I think that the
3 approach posed by Mr. Thompson is actually the simplest
4 and most expeditious one, but it appears that the
5 Railroad has a different preference and the outcome is
6 the same. So therefore, I'm not going to issue an
7 order dismissing the petition without prejudice, but I
8 will await the filing by the Railroad.

9 However, just to warn you, if I don't get
10 that relatively quickly, I'm going to be scheduling yet
11 another status conference, so I'm hoping that the
12 parties are able to get the paperwork together that's
13 necessary to resolve these matters quickly and that we
14 can proceed with the petition as an unopposed petition.

15 MR. HALINEN: Thank you, Your Honor.

16 JUDGE CLARK: Are there any further matters
17 that we should consider on the record this morning?

18 MR. HALINEN: Not from the Railroad's
19 perspective, Your Honor.

20 JUDGE CLARK: Hearing nothing, we are
21 adjourned.

22 (Prehearing adjourned at 10:13 a.m.)

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