

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

MEEKER SOUTHERN RAILROAD)	
)	DOCKET NO. TR-100036
Petitioner,)	
)	PETITIONER’S REPLY TO THE
vs.)	RESPONSES BY PUBLIC WORKS
)	AND COMMISSION STAFF TO
PIERCE COUNTY PUBLIC WORKS & UTILITIES)	PETITIONER’S MOTION TO
)	AMEND ORDER 01
Respondent)	
)	USDOT CROSSING #085536R
)	UTC CROSSING #42A32.40
)	
)	

BACKGROUND

- 1 On December 20, 2010, Petitioner MEEKER SOUTHERN RAILROAD (“Meeker” or “Petitioner”) filed a Motion for an order amending Order 01 entered January 12, 2010, the order granting Petitioner’s petition to modify a public highway-rail grade crossing and upgrade warning devices at 134th Avenue East in unincorporated Pierce County.
- 2 Subsequently, Respondent Pierce County Public Works & Utilities (“Public Works”) filed a response with the Commission by means of a letter dated December 30, 2010 from Pierce County Engineer Brian Stacy, P.E.
- 3 Further, on January 4, 2011, Assistant Attorney General Fronda Woods filed a Commission Staff Response to Petitioner’s Motion to Amend Order 01.
- 4 Following receipt of the Public Works Response and the Commission Staff Response,

Meeker has had its legal counsel work diligently with counsel and staff of Public Works and of the Commission to try to resolve the issues raised in the Public Works Response and in the Commission Staff Response. In addition, Meeker has had its civil engineering consulting firm, Sitts & Hill Engineers, Inc., work with Public Works staff on revisions to the set of supplemental and revised engineering drawing sheets for the crossing project (the set that Sitts & Hill submitted on December 22, 2010 to Public Works and sent a copy of that same day to Kathy Hunter of the Commission Staff).

REPLY TO THE PUBLIC WORKS RESPONSE LETTER

5 In the second paragraph of page 1 of the Public Works Response, Public Works asserted that Meeker “utterly failed to comply with the Commission’s Order.” Meeker denies that that was the case. Meeker has made substantial progress on the crossing modification project. Meeker has (a) completed installation of the spur track, (b) completed all but approximately the east 300 feet of the Phase 1 Service Siding (which portion of the siding, which is located on the property of Meeker’s customer Sound Delivery Service, has been deferred to a later time at the request of Sound Delivery), and (c) made substantial road improvements to 134th Avenue East (with further improvements to 134th and the installation of the automatic crossing signal system yet to be completed). The Commission’s Order 01 did not specify a completion date for the crossing project.

6 Beginning near the bottom of page 1 of the Public Works Response, Public Works expressed that it was opposed to the Motion unless Meeker agreed to four conditions. Those conditions are dealt with in order in the next four paragraphs of this Reply.

7 The first condition that Public Works expressed in the Public Works Response was that Meeker “remove the language [from the Motion] relating to multiple customers being served by the new spur track.” Meeker’s legal counsel has discussed that condition at

length with Public Works representatives who have orally conceded that the December 31, 2009 *Engineering Review and Evaluation (Third Revised Version)* report and supporting documents binder concerning the proposal (prepared by Gregory B. Heath, P.E. of Heath & Associates, Inc.) (the “Engineering Review and Evaluation”) was in fact predicated on multiple properties being served by the spur track, not just the Sound Delivery Service property. However, one of those Public Works officials, Marlene Ford, P.E., P.T.O.E., orally expressed to Meeker’s counsel on Thursday, January 20, 2010 that she is concerned about the possibility that additional service sidings off of the spur track (i.e., sidings other than the Phase 1 Service Siding) would (a) make possible back-and-forth train operations east of 134th that could facilitate coupling and uncoupling of rail cars and pick-up and delivery of rail cars entirely east of 134th and (b) such movements could potentially involve a backing train entering into the crossing and stopping on 134th while a siding switch is being thrown. To address that concern, Meeker now proposes the following operating condition be included in the requested Order Amending Order 01:

At such future time as the Phase 2 Service Siding (or any other additional sidings stemming from the spur, from the Phase 1 Service Siding, or from the Phase 2 Service Siding) are constructed thereby making possible back-and-forth train operations that could facilitate coupling and uncoupling of rail cars and pick-up and delivery of rail cars entirely east of 134th (by taking advantage of the additional track switching opportunities that would arise from such additional sidings), such back-and-forth train operations on the east side of 134th may not be conducted in a manner that would cause any portion of a train to back up into 134th Avenue East and stop in it.

(The revised proposed Order that accompanies this Reply includes this proposed condition as a new condition 4 to the grant of the Order.)

8 The second condition that Public Works expressed was that Meeker “must obtain the required county permits prior to working within the County right of way so a County inspector can be assigned to the project and confirm that improvements being made are consistent with the approved plans, field conditions, and County standards.” In that regard, Item 9 of revised Table 2 attached as Exhibit B to the revised proposed Order that accompanies this Reply states:

Prior to Meeker commencing any work associated with items 6, 7 and 8 [of Table 2], above, a permit to work within the Pierce County road right-of-way will be obtained from Pierce County Public Works and a preconstruction conference will be held.

If a simultaneous closure of both traffic lanes of 134th is planned, a road closure permit must also be obtained from Pierce County Public Works.

The text of that item of Table 2 was jointly developed on December 18, 2010 by Meeker’s counsel and by Jerry P. Bryant, P.E., Field Engineering Manager of the Public Works’ Office of the County Engineer.

9 The third condition that Public Works expressed was that Meeker “must submit bi-weekly Certified Payroll Reports . . . as proof that two certified flaggers (one on the north side and one on the south side of the tracks) are on site between the hours of 9:00 AM to 3:00 PM for the days that the spur track is in use [during the interim operation of the spur track prior to completion and commencement of operations of the automatic crossing signal system].” Commission Staff in its reply (see paragraph 9 thereof) proposed a similar condition. As stated in paragraph 15, below, Meeker has no objection to Commission Staff’s formulation provided that the requirement is limited to the actual days that crossings of 134th along the spur track are being made. (Item 5 of revised Table 2 attached as Exhibit B to the revised proposed Order that accompanies this Reply now reflects this.)

10 The fourth condition that Public Works expressed was that “Pierce County will require an approved Performance Bond . . . or an Assignment of Funds to guarantee the remaining work will be constructed timely and properly” Meeker contends that the Commission does not have authority to require Meeker to provide a financial guarantee. (See paragraph 14, below.) Nevertheless, as security for completion of the remaining road improvements, Meeker is negotiating in good faith seeking agreement from Public Works as to the amount and terms of an assignment for security of a portion of a claim for reimbursement of certain funds that Meeker currently has pending against Pierce County on an unrelated matter.

REPLY TO THE COMMISSION STAFF RESPONSE

11 Meeker does not object to the filing of reports contemplated by paragraph 3 of the Commission Staff Response.

12 In regard to paragraph 4 of the Commission Staff Response, Meeker has already submitted draft revised civil engineering design drawings to Kathy Hunter of Commission Staff and has incorporated into a yet further revised set her requested revision. Based on discussions that Meeker’s counsel has had through January 21, 2011 with Jerry P. Bryant, P.E., Field Engineering Manager of the Public Works’ Office of the County Engineer, Meeker is currently anticipating that the revised drawings will be approved by Public Works prior to the Wednesday, January 26, 2011 hearing on the Motion.

13 In regard to paragraph 5 of the Commission Staff Response, Meeker’s counsel has orally advised Assistant Attorney General Fronda Woods of Meeker’s negotiations with Public Works in progress.

- 14 In regard to paragraph 7 of the Commission Staff Response, Meeker denies that RCW 81.53.130 provides authority to the Commission to require a bond from Meeker. (Nevertheless, as noted in paragraph 10, above, as security for completion of the remaining road improvements, Meeker is negotiating in good faith seeking agreement from Public Works as to the amount and terms of an assignment for security of a portion of a claim for reimbursement of certain funds that Meeker currently has pending against Pierce County on an unrelated matter.)
- 15 In regard to paragraph 9 of the Commission Staff Response, Meeker has no objection to Commission Staff's requested revision to Item 5 (flagging) in Table 2 to the proposed Order provided that the requirement is limited to the actual days that the crossings of 134th along the spur track are being made. (Revised Table 2 attached as Exhibit B to the revised proposed Order that accompanies this Reply has revised Item 5 accordingly.)
- 16 In regard to paragraph 10 of the Commission Staff Response, Meeker has no objection to Commission Staff's requested twice-per-month reporting to Commission Staff containing of certain requested categories of information verifying compliance with the conditions in Table 2 for the period of the interim operation of the spur track prior to completion and commencement of operations of the automatic crossing signal system. Meeker notes that, per agreement among Meeker's counsel, Public Works' counsel, and Commission Staff counsel, Meeker has already provided Commission Staff and Public Works with (a) photocopies of flagger cards and (b) the first of such informational reports. (Revised Table 2 attached as Exhibit B to the revised proposed Order that accompanies this Reply has created an Item 6 to address this.)
- 17 In regard to paragraph 12 of the Commission Staff Response, Meeker acknowledges that, in Meeker's Motion and in Meeker's original [Proposed] Order Amending Order 01,

Meeker made a typographical error in referencing Paragraph 5 of Order 01 rather than Paragraph 6. Meeker intended to reference Paragraph 6 and stands corrected. (The revised proposed Order that accompanies this Reply has corrected that typographical error as well.)

18 In regard to paragraphs 13 and 14 of the Commission Staff Response, Meeker now realizes that Meeker made an overstatement in asserting in paragraph 12 of its Motion that the change in the type of equipment to be installed in the active warning device system was “pursuant to the direction of Ed Harper, Chief Grade Crossing Signal Inspector of the Commission.” Meeker hereby apologizes for that overstatement and hereby strikes that assertion from the Motion and from Table 1 attached to the Motion. (That assertion has been stricken from Revised Table 1 attached as Exhibit A to the revised proposed Order that accompanies this Reply.)

MEEKER’S REVISED PROPOSED ORDER

19 Attached hereto are (a) a “redlined” revised proposed version of Meeker’s [Proposed] Order Amending Order 01 (including “redlined” Tables 1 and 2 attached thereto as Exhibits A and B, respectively), illustrating the changes made to the proposed Order submitted with Meeker’s Motion on December 20, 2010, and (b) a “clean” revised proposed version of that proposed Order (including “clean” revised Tables 1 and 2 attached thereto as Exhibits A and B).

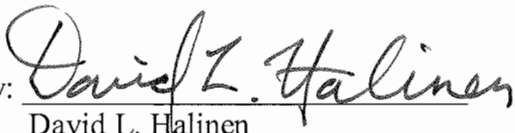
MEEKER’S POTENTIAL WITNESSES AT THE WEDNESDAY, JANUARY 26, 2011 HEARING

20 At the hearing scheduled for Wednesday, January 26, 2011, Meeker plans to call as a witness civil engineer Robert Dahmen, P.E. to testify concerning various factual matters discussed in the Motion and set forth in Meeker’s revised [Proposed] Order Amending Order 01. Meeker may also call as witnesses in support of the Motion (a) Meeker’s

general manager, Byron Cole, and (b) Terry Lawrence, vice-president of Sound Delivery Service.

DATED this 21st day of January 2011.

HALINEN LAW OFFICES, P.S.

By: 
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