

[Service Date April 1, 2011]

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

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

MEEKER SOUTHERN RAILROAD,

Respondent.

DOCKET TR-110221

COMPLAINT

- 1 The Washington Utilities and Transportation Commission on its own motion, and through its Staff, alleges as follows:

PARTIES

- 2 Complainant, the Washington Utilities and Transportation Commission, is an agency of the State of Washington, with jurisdiction over public railroad-highway grade crossings within the state of Washington under RCW Chapter 81.53.
- 3 Respondent, Meeker Southern Railroad (Meeker Southern), is a company that owns and operates a railroad in the state of Washington.

JURISDICTION

- 4 The Commission has jurisdiction over the subject matter of this Complaint pursuant to RCW 80.01.040, RCW 81.01.010, RCW 81.04.110, RCW 81.04.380, and RCW 81.04.460. The Commission has jurisdiction over Meeker Southern because it is a public service company under RCW Chapter 81.04.

BACKGROUND

5 The following facts, set forth in a Staff Investigation Report of this matter, establish probable cause for the Commission to complain against the activities of Meeker Southern and to seek penalties in accordance with applicable law.

6 On January 4, 2010, pursuant to RCW 81.53.060, Meeker Southern filed with the Commission a petition seeking approval to modify a railroad-highway grade crossing by adding a spur track, and to 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. The materials accompanying the petition stated that operations on the new spur track would increase the number of trains using the crossing. The Commission assigned docket number TR-100036 to the petition.

7 On January 12, 2010, the Commission entered Order 01 in Docket TR-100036, granting Meeker Southern's petition to add a spur track to the crossing and to upgrade warning devices. The Commission conditioned its approval on Meeker Southern's completing all required safety upgrades prior to beginning any operation 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.)

8 In November 2010, Commission Staff (Staff) contacted Meeker Southern regarding a new spur track at the 134th Avenue crossing. Staff understood that the spur track had been installed and the main crossing surface repaved as part of the crossing surface modification. Staff questioned when active warning devices would be installed and reminded Meeker Southern that according to a condition in Order 01, all work for the proposed spur track had to be completed to the satisfaction of Pierce County and Staff prior to operational use of the track.

9 Meeker Southern responded on December 1, 2010, providing information about the progress at the 134th Avenue crossing and stating it was operating a test train about once a week over the spur track.

- 10 On December 20, 2010, Meeker Southern filed a Motion to Amend Order 01 (Motion) in Docket TR-100036, which included a proposed timeline for Meeker Southern to fully conform with the conditions in the proposed amended order and specific steps Meeker Southern proposed to take to protect the public until the signals and other safety devices were installed and fully operational. The Motion stated that the spur track had been recently installed and that roadway pavement improvements were made to the crossing. The Motion also argued that Order 01 should be amended to allow “immediate and continued use of the spur track.”
- 11 On January 6, 2011, Meeker Southern filed a letter explaining that Pierce County Public Works and Staff had negotiated some conditions for Meeker Southern’s operation on the spur track. On January 13, 2011, Meeker Southern filed a report on its use of the spur track between December 19, 2010, and January 8, 2011, in accordance with the conditions described in the January 6 letter.
- 12 The Commission held a hearing on the matter on January 26, 2011. During the hearing, the Administrative Law Judge asked Staff to follow up with an investigation to determine prior non-compliance with Order 01 and a recommendation for penalties if appropriate. The Commission also issued Order 03 amending the January 2010 order in Docket TR-100036.
- 13 Staff’s investigation confirmed that Meeker Southern violated Order 01 in Docket TR-100036 when it conducted operations on the spur track over the 134th Avenue crossing on 50 occasions for the purposes of delivering or picking up freight cars from Sound Delivery Service between October 17, 2010, and December 20, 2010.

APPLICABLE LAW AND REGULATIONS

- 14 Under state law, a common carrier includes railroads and railroad companies. RCW 81.04.010(11).
- 15 The term “public service company” includes every common carrier. RCW 81.04.010(16).
- 16 By law, every public service company that violates any Commission order is subject to a penalty of up to one thousand dollars for every such violation. RCW 81.04.380. In the case of a continuing violation, every day’s continuance thereof shall be a separate and distinct offense. *Id.*

- 17 The Commission is authorized to file a complaint on its own motion setting forth any act or omission by any public service company that violates any law or any order or rule of the Commission. RCW 81.04.110.

COMPLAINT

- 18 The Commission, through its Staff, re-alleges the allegations contained in paragraphs 5 through 13 above.
- 19 Meeker Southern has violated Commission Order 01 in Docket TR-100036 by commencing operation on the spur track and Phase 1 Service Siding at the 134th Avenue railroad crossing prior to all proposed work shown on the design drawings being completed to the reasonable satisfaction of Commission Staff and Pierce County Public Works and Utilities Staff. Specifically, Meeker Southern conducted operations on the spur track on 50 occasions for the purposes of delivering or picking up freight cars from Sound Delivery Service between October 17, 2010, and December 20, 2010.

REQUEST FOR RELIEF

- 20 Staff requests that the Commission, pursuant to its authority under RCW 81.04.380, assess penalties of up to \$1,000 per violation against Meeker Southern.

PROBABLE CAUSE

- 21 Based on a review of the Staff Investigation Report of this matter, and consistent with RCW 80.01.060, RCW 81.01.010, and WAC 480-07-307, the Commission finds probable cause exists to issue this Complaint.

DATED at Olympia, Washington, and effective April 1, 2011.

GREGORY J. KOPTA
Director, Administrative Law Division