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1                                   BEFORE THE WASHINGTON STATE  
2                                   UTILITIES AND TRANSPORTATION COMMISSION

3	MEEKER SOUTHERN RAILROAD,	)	DOCKET TR-100036
		)	
4	Petitioner,	)	VOLUME I
		)	
5	vs.	)	PAGES 1 - 56
		)	
6	PIERCE COUNTY PUBLIC WORKS	)	
	AND UTILITIES,	)	
7		)	
	Respondent.	)	
8	_____	)	

9

10                   A Status Conference in the above matter was held on  
11                   January 26, 2011, at 8:00 a.m., at 1300 South Evergreen Park  
12                   Drive Southwest, Olympia, Washington, before Administrative Law  
13                   Judge ADAM E. TOREM.

14

15                   The parties were present as follows:

16

17                   WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, by  
18                   FRONDA WOODS, Assistant Attorney General, P.O. Box 40128,  
19                   Olympia, Washington, 98504. Telephone number is (360)  
20                   664-1225.

19

20                   MEEKER SOUTHER RAILROAD, by DAVID L. HALINEN, Attorney  
21                   at Law, 1019 Regents Boulevard, Suite 202, Fircrest,  
22                   Washington, 98466. Telephone number is (253) 627-6680.

21

22                   PIERCE COUNTY PUBLIC WORKS AND UTILITIES, by JOHN F.  
23                   SALMON, III, Deputy Prosecuting Attorney, 955 Tacoma Avenue  
24                   South, Tacoma, Washington, 98402-2160. Telephone number is  
25                   (253) 798-4282.

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P R O C E E D I N G S

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THE COURT: We'll be on the record.

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This is Administrative Law Judge Adam Torem,  
Wednesday, January 26, 2011, at 8 o'clock in the morning. This  
is Docket No. TR-100036. This is regarding the case of Meeker  
Southern Railroad and Pierce County Public Works and Utilities.  
This is U.S. Department of Transportation crossing 085536R.

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It's a railroad crossing at 134th Avenue East in Pierce County,  
Washington. This morning we're gathered for a Status

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Conference set last week by the Commission on its own motion in  
response to a Motion to Amend Order 01 entered January 12th,

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2010, a little over one year ago.

13

Let me take appearances on the record of the rest of  
the information provided to the court reporter.

15

Appearing for Meeker.

16

MR. HALINEN: David L. Halinen, H-A-L-I-N-E-N.

17

JUDGE TOREM: For Commission staff.

18

MS. FRONDA: Good morning, Your Honor. Fronda Woods,  
Assistant Attorney General for Commission staff.

20

JUDGE TOREM: For Pierce County.

21

MR. SALMON: John Salmon representing Pierce County.

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JUDGE TOREM: There's a number of other folks in the  
room that are potential witnesses or interested parties we may  
be hearing testimony this morning. We're not sure how the  
agenda will work out.

0003

1           What I do know, parties, I want to go through some  
2 background to make sure that all of you that aren't regularly  
3 appearing before the Commission understand a few different  
4 administrative law distinctions that haven't been apparent,  
5 that there's a clear understanding from the record. I'll get  
6 some background as to the work being done as previously  
7 approved from January of last year by the Commission on a  
8 petition to add a spur track at this crossing and then talk  
9 about the compliance issues that led us to today's status  
10 conference. I want to start, we distinguish the Commission  
11 itself from the function of its staff. The Commissioners are  
12 appointed by the governor, obviously, three folks that make all  
13 the decisions up here, and, occasionally, they delegate to  
14 administrative law judge, such as myself. When the Commission  
15 on this side of the building as its functions makes decisions,  
16 that's the Commission speaking. On the left side of the  
17 building when you came in is where our staff and Ms. Woods'  
18 clients resides. Those are technical assistance, our  
19 enforcement implementation staff. They don't bind the  
20 Commissioners. The Commissioners issue an Order speak for the  
21 Commission. If there's any permissions or negotiations had  
22 with staff that contravene an Order they're no good until the  
23 Commission has approved them.

24           I wanted to make sure, Mr. Halinen, in particular,  
25 your clients, you had a letter on record in the 6th of January

0004

1 of this year that indicates the ongoing negotiations to resolve  
2 your Motion to Amend and implies there's already in place a  
3 three-way agreement. The law of this case is Order one that  
4 was issued last year and remains until there's another Order  
5 issued. I want to make sure the County and your office have  
6 been advised of that so that we did get to the right place but  
7 with the Commissioner's approval.

8 Second question that I know has been on record is the  
9 timing of this matter. I don't know -- and maybe we can hear  
10 testimony on this or Counsel can make an offer of proof as to  
11 the expectations last year, I guess it was late 2009 when the  
12 petition was originally filed, Mr. Halinen

13 MR. HALINEN: I think it might have been filed  
14 January 4th of 2010.

15 JUDGE TOREM: I remember your letter came in, maybe  
16 there was some signatures late on the petition.

17 MR. HALINEN: That's correct.

18 JUDGE TOREM: That asked to upgrade the existing track  
19 thereby adding a spur track and change the passive controls to  
20 a more active. I don't know if there's any expectation that  
21 can be put on the record how long that work was expected to  
22 take to do all of the roadwork engineering, add the track and  
23 upgrade the signals.

24 Did your clients have an expectation? I know in the  
25 reply you filed last week there was no timeline order. I don't

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1 know that we normally do that. Was there an expectation?

2 MR. HALINEN: At that point there was not a specific  
3 expectation.

4 JUDGE TOREM: Did the County have expectations to when  
5 the project might be done? I know you consented to the entry  
6 of the Order last year.

7 MR. SALMON: We expected all the equipment to be  
8 installed prior to operation.

9 JUDGE TOREM: That was the condition that we're going  
10 to talk about.

11 Was there any expectation as to when all the  
12 installation would occur?

13 MR. SALMON: 2010. We had an expectation the crossing  
14 would be finished this last year, 2010.

15 JUDGE TOREM: Ms. Woods, did you have an indication  
16 from your staff there was a timeline?

17 MS. WOODS: Commission staff has not indicated that  
18 there was any expectation of any particular completion date but  
19 like the County Commission staff expected the work would be  
20 completed before the spur was being used.

21 JUDGE TOREM: Certainly that's the condition that  
22 exists in Order.

23 MR. SALMON: We were aware that Sound Transit was  
24 preparing its facility for business and we were -- Sound  
25 Delivery was preparing its site and, so, we knew that they were

0006

1 going to be using the rail and we expected that that would lead  
2 to the improvements being completed within a year or so.

3 JUDGE TOREM: It appears from what I have in the  
4 record that in early December maybe there was an e-mail  
5 December 1st that gave Commission staff, at least in the  
6 existing record before me, the first indication that there were  
7 operations ongoing or at least had initiated with the test  
8 train.

9 Mr. Halinen, do you have any indication of what a test  
10 train might be or do we need to swear in a witness to get that  
11 on the record?

12 MR. HALINEN: We probably should swear in Mr. Cole for  
13 that purpose.

14 JUDGE TOREM: Can you give me a spelling of your name?

15 MR. COLE: Byron, B-Y-R-O-N, Cole, C-O-L-E.

16 JUDGE TOREM: Let me swear you in.

17 BYRON COLE, having been duly sworn to tell the truth,  
18 the whole truth and nothing but the truth, testified on his  
19 oath as follows:

20 JUDGE TOREM: Mr. Cole, can you explain who you're  
21 affiliated with and talk about the test train, who's your  
22 employer?

23 MR. COLE: I'm the boss.

24 JUDGE TOREM: Which company?

25 MR. COLE: I'm the founder of the Ballard Terminal

0007

1 Railroad Company, LLC.

2 JUDGE TOREM: Would that be the same in this  
3 proceeding as "Meeker Southern Railroad?"

4 MR. COLE: We do business in Seattle, the Ballard  
5 Terminal Railroad, in the Pierce County as the Meeker Southern  
6 Railroad and in King County in the Bellevue/Redmond area it's  
7 the East Side Freight Railroad. We have three separate  
8 short-line freight operations.

9 JUDGE TOREM: Are you familiar with proposed spur  
10 track, then, in Pierce County at 134th Avenue East?

11 MR. COLE: I've been working on it for four years. I  
12 designed it. I work with our customer Sound Delivery for all  
13 that time so I'm our chief engineer -- I don't mean blowing the  
14 whistle --

15 JUDGE TOREM: Excellent.

16 MR. COLE: -- for civil projects.

17 JUDGE TOREM: Can you, then, explain to me what a  
18 "test train" might be?

19 MR. COLE: The spur has a tight S curve in it before  
20 it arrives onto the Sound Delivery property and on the south  
21 Liberty property it runs immediately adjacent to a loading  
22 dock. It's very similar to a truck loading block. The top of  
23 a flatcar is about 42 inches above the rail. Top of a flatbed  
24 highway trailer is about 42 inches above the highway. That  
25 wasn't designed that way. It's just turned out over the years

0008

1 they're almost the same dimension. And, so, our position,  
2 Sound Delivery had built their eight acre site and they built a  
3 bulkhead and a shelf where the railroad track would come in --

4 MR. HALINEN: Your Honor, would it be helpful if I put  
5 between you and Mr. Cole a copy of the just County approved  
6 updated drawings as a demonstrative exhibit?

7 JUDGE TOREM: That would be fine. Lay that on the  
8 table, Mr. Halinen.

9 Show me the curve, what your client is referring to.

10 MR. COLE: Okay. Here's 134th. This is Pioneer Way.  
11 This is the Sound Delivery eight acre site and the spur comes  
12 off our main line. This is our 1877 main line and there's a  
13 turnout here. There's a switch here and a crossing of the road  
14 here and then here's these two 400-foot radius curves back to  
15 back and then it runs along this loading dock. Actually, phase  
16 one is the loading dock stops here. The test train was to  
17 check for clearance on this because the track needed to be as  
18 close as possible to the edge of the dock but it can't be  
19 scraping up against it. And, so, even though I measured the  
20 freight cars carefully -- these are really huge freight cars  
21 that use 100-foot cars -- and, so, the proof in the pudding is  
22 to run some cars up there very slowly and check that you have  
23 clearance and it's all worked out right.

24 JUDGE TOREM: I take it these test cars have to be  
25 pulled by an engine?



0009

1 MR. COLE: Yeah, with a locomotive.

2 We had a large order of amazingly large pipe that came  
3 from Alabama -- came from southeast Mississippi -- bigger than  
4 anything they handled here before. They had their yard opened  
5 and were in business some months before we built the spur.  
6 But, anyway, the material was we could see it on our daily  
7 sheets of inbound cars from all over Canada and U.S. coming  
8 into our railroad that these things were coming. And, so, a  
9 couple of them were unloaded on a team track we have down here  
10 but it was pretty precarious that six diamond pipes, one-inch  
11 wall, each one weighs 66,000 pounds --

12 JUDGE TOREM: I appreciate the size of the cargo.

13 Let me bring back the question to what was relevant to  
14 my consideration this morning --

15 MR. COLE: We ran both empty cars in and carefully  
16 measured how they fit and cornered and so forth and then we  
17 brought loads in because the loads of pipe were three stacked  
18 up and they were over-width loads. Railcars are basically  
19 ten-feet wide and these loads were 12-feet wide. We were also  
20 using this opportunity to test the over-width cars that were  
21 coming. We did that about a week or so.

22 JUDGE TOREM: Do you know when this test train began  
23 and how many of them you ran?

24 MR. COLE: Let's see. I have it written down in my  
25 day-timer.

0010

1 JUDGE TOREM: I'll let you get that and sort that out.

2 MR. COLE: The first test date was on the 17th of  
3 October.

4 JUDGE TOREM: Do you know how long the testing  
5 continued?

6 MR. COLE: Well, between the empty and then unloading  
7 some of the cars was probably two or three weeks. We're still  
8 operating it now under --

9 JUDGE TOREM: That's what I understand --

10 MR. COLE: -- under an arrangement that we worked out  
11 with Public Works.

12 JUDGE TOREM: At this point are they test trains or  
13 conducting commercial operations?

14 MR. COLE: Well, we're just bringing in the cars that  
15 aren't delivered to them.

16 JUDGE TOREM: I understand the scope of that operation  
17 is laid out in the agreement you're working with Pierce County  
18 and Commission staff a couple of trains per week?

19 MR. COLE: Yeah. It has -- I think -- Public Works'  
20 interest is focused on crossing of 134th. The difference in  
21 traffic between the original main line track and now having a  
22 second one.

23 JUDGE TOREM: For the record, it looks like with a  
24 switch and the spur track on the roadway those two tracks are  
25 very close together.

0011

1           MR. COLE: They are. There was lots of exercises on  
2 automobile queuing and, so, there was one car length about 17  
3 or 18 feet lost in the queuing line by adding the spur track.

4           JUDGE TOREM: I can see where the traffic concerns for  
5 queuing might be at the intersection of --

6           MR. COLE: Right. There's not a lot of room there for  
7 cars to que up and still be clear of Pioneer Way. It's the  
8 cars that turn off and trying to go northbound on 134th.

9           JUDGE TOREM: I understand. Thank you, Mr. Cole. I  
10 may have some additional questions for you but I think I have  
11 enough regarding what a test train might be.

12           Now, I know Sound Delivery Service is not a party to  
13 this but I understand it's principal is here and I just want to  
14 establish for the record their relationship to the spur track  
15 and the commercial operations ongoing today.

16           Sir, if I can have you, maybe, pull up to the table  
17 and before you sit down I'll swear you in.

18           TERRY LAWRENCE, having been duly sworn to tell the  
19 truth, the whole truth and nothing but the truth, testified on  
20 his oath as follows:

21           JUDGE TOREM: Please have a seat.

22           Can you tell me your name?

23           MR. LAWRENCE: Terry Lawrence, T-E-R-R-Y,  
24 L-A-W-R-E-N-C-E.

25           JUDGE TOREM: Are you the president, then, of Sound

0012

1 Delivery Service?

2 MR. LAWRENCE: That is correct.

3 JUDGE TOREM: I understood you used to have facilities  
4 in Seattle but you've moved to the Tacoma area.

5 MR. LAWRENCE: Yes, sir.

6 JUDGE TOREM: Can you tell me when you did that, when  
7 you relocated?

8 MR. LAWRENCE: We physically moved our operation and  
9 started performing daily work on the property on March 27th,  
10 2010.

11 JUDGE TOREM: Enlighten me as to what the operation is  
12 all about.

13 MR. LAWRENCE: Yes, sir.

14 We are a heavy haul flatbed trucking company that  
15 operate in interstate transportation. We also perform the  
16 services of trans-loading materials from railcars for  
17 distribution and storage to customers. We're also a container  
18 offloading station for import and export materials. We provide  
19 both outside storage of construction-related materials as well  
20 as inside warehousing of same products.

21 JUDGE TOREM: Can you tell me what your company's  
22 relationship is with Meeker Southern as well as this spur line?

23 MR. LAWRENCE: Meeker Southern is a service provider.  
24 They perform the task of bringing the railcars into our  
25 facility so that we may further offload the product and take

0013

1 care of our customers' needs. The rail spur has been developed  
2 with Mr. Cole's help, by our company, to provide continuing  
3 service of rail. We've been a rail trans-loader facility for  
4 both railroad Union Pacific and Burlington Northern for  
5 25 years.

6 JUDGE TOREM: When you relocated from Seattle did you  
7 anticipate the spur line was necessary to make your new  
8 facility operational?

9 MR. LAWRENCE: Yes, sir. For several years Sound  
10 Delivery Service had operated out of public team track  
11 facilities in downtown Seattle. Our means were to transport  
12 equipment and manpower between our main terminal facility and  
13 the rail siding to provide the work of offloading railcars. We  
14 came to a junction in a 25-year relationship with our current  
15 landlord in Seattle that they wished us to vacate the property  
16 within the next year or two. We have always desired to have  
17 rail siding on our own property to limit our expense of moving  
18 equipment back and forth as well as manpower and further  
19 enhance our operation and service working for our customers  
20 which brought us to Puyallup. Pierce County and the City of  
21 Puyallup offer many facilities that can provide rail spurs for  
22 our operation and we found the property that we're on currently  
23 a very desirable location. We had met with Mr. Cole prior to  
24 making a commitment on the purchase of the property to see if,  
25 in fact, a rail spur could be put into that location and then

0014

1 continue forthwith the development that's been taking us over  
2 the last three-and-a-half, four years.

3 JUDGE TOREM: When this first came to the Commission's  
4 attention with the Motion to Amend the Order you wrote a letter  
5 in support of that motion.

6 MR. LAWRENCE: Yes, sir.

7 JUDGE TOREM: Can you describe when you started  
8 relying on the spur track for actual commercial operations at  
9 this site?

10 MR. LAWRENCE: I'm not sure I understand the question  
11 completely.

12 JUDGE TOREM: What the Commission is interested in  
13 knowing, we had Mr. Cole describe test train but also to know  
14 when the trains started to carry equipment for which you're  
15 compensating Meeker Southern.

16 MR. LAWRENCE: When we started occupying the property  
17 and moved in Mr. Cole graciously offered the use of a site for  
18 that he has noted to the north of the Pierce County Parks and  
19 Recreational Lands to operate our rail trans-load operation  
20 through the interim of building and opening our spur. The  
21 facility that Mr. Cole provided for us, although serviceable,  
22 was very precarious in its own layout. There is a public bike  
23 path/walking trail that is extremely close to the siding.  
24 We're handling materials that are upward -- on a typical  
25 operation -- upwards of 60 feet in length. There may be

0015

1 70 feet between the center of your spur and the bike/walking  
2 path.

3 Is that correct?

4 MR. COLE: Seventy-five feet for the main line and  
5 15 feet less, so it would be an even 60 feet.

6 MR. LAWRENCE: With these kinds of materials and  
7 handling these materials with large forklifts we had always  
8 maintained a concern of public safety with the walking  
9 trail/bike trail so close by these longer materials we had to  
10 be very, very cautious of how to proceed.

11 We were awarded a project that involved,  
12 approximately, 27 railcars of some extremely big, heavy,  
13 lengthy pipe. These lengths of pipe were anywhere from 80 to  
14 85 feet in length. We had several months advanced notice that  
15 the product was coming in via shipped from Mississippi.  
16 Recognizing the limitations of the temporary spur location that  
17 Mr. Cole has allowed us to operate on and its confinements  
18 towards safety, we really needed to push the spur through onto  
19 our property where we could operate more safely and away from  
20 the public. The limitations of that property trying to handle  
21 80, 85-foot long pieces of pipe with two, sometimes three  
22 forklifts working in tandem was a very, very hazardous  
23 operation.

24 JUDGE TOREM: Mr. Lawrence, you've described this  
25 anticipated delivery of pipe from Mississippi. Do you know

0016

1 when you knew that was coming, approximately?

2 MR. LAWRENCE: I bid the project in November of 2009.

3 My customer announced having been awarded the project

4 themselves early in 2010.

5 JUDGE TOREM: Was it before you moved to the property

6 in Puyallup?

7 MR. LAWRENCE: Yes, sir.

8 JUDGE TOREM: When did you actually take delivery from

9 Mississippi?

10 MR. LAWRENCE: Mr. Cole can confirm those dates. I

11 believe it was the date in October that he had described for --

12 I think there must have been a couple of carloads that came in

13 sometime between the 10th of October and the 16th and that were

14 unloaded.

15 JUDGE TOREM: That would correspond to that 17th of

16 October, first test train?

17 MR. COLE: I think we used the empties from the empty

18 cars, from the two that had been unloaded. It's on this map.

19 So there was those empty cars. We used those to check the

20 clearances using empty cars and then by that time the really

21 long pipes on 100-foot cars --

22 JUDGE TOREM: I think that gives me what I needed for

23 the time-frame, Mr. Cole and Mr. Lawrence, as to when this was

24 going on.

25 I think the Commission is clearly interested in



0017

1 knowing why an Order was issued last January to construct this  
2 spur track with certain conditions and all work was to be  
3 accomplished before these sort of operations were to take  
4 place, and in the record there's no justification for why, at  
5 that point, nine months have past and there were no signals in  
6 place and the road construction, apparently, hadn't been  
7 completed. The track must have been laid because now you were  
8 able to run a test train.

9           Mr. Halinen, I'm not sure if your clients want to  
10 address that today but the Commission needs to hear from  
11 someone from Meeker Southern as to an explanation as to why  
12 this wasn't all completed prior to this pipe arriving,  
13 apparently is a big deal, from Mississippi. I'll leave it to  
14 you to address if these gentlemen can help you with that or  
15 defer that later.

16           MR. HALINEN: I'll defer that.

17           JUDGE TOREM: Okay.

18           Now, Mr. Lawrence, you're not a party to this action  
19 by any means, but you're an interested before the Commission.  
20 We don't have a jurisdictional with your company but the  
21 Commission is concerned if we ordered a cease and desist of all  
22 operations until everything is constructed to both the County  
23 and Commission's staff's prerequisites, as was the original  
24 Order from last January, what the economic impact might be upon  
25 your company, particularly in these economic times, and the

0018

1 commitments you already made to ship from one landlord to now  
2 another, the Commission doesn't want to be in the position of,  
3 call it an "innocent bystander" out of business because we  
4 stick to our guns and have public safety, but we needed to hear  
5 from you -- and thank you for coming -- can you tell me what  
6 the operations would happen at your company if we did shut down  
7 the spur track until -- I don't know how long. We'll talk more  
8 about that shortly -- everything could be done?

9 MR. LAWRENCE: We are a small company that has in the  
10 past years employed upwards of 32 families. The current  
11 economic turn has been in the last couple of years has caused  
12 us to downsize. Now we support only, approximately 23,  
13 24 families. Our move into Puyallup has come out of very,  
14 unfortunately, timely in our careers where our company is  
15 barely staying alive, barely able to continue conducting  
16 business. To shut down our spur with the volumes of work that  
17 we have coming in the weeks to come, months to come, would  
18 almost triple our expenses for performing the duties that are  
19 required of us by our customers.

20 Our facility provides my workers with a safer  
21 environment. As Mr. Cole explained, we had designed the spur  
22 to be lower than the grade of our ground. Instead of having to  
23 climb up on railcars we are now able to step on to them from  
24 grade, certainly creates a safer environment for our workers,  
25 not only reducing the threat of injury from falls but also

0019

1 gives us an opportunity to operate more safety because of the  
2 visibility factor. We handle two types of railcars, flat cars  
3 which are very similar to a flatbed truck going down the  
4 highway in appearance, and gondolas. Gondolas are on  
5 high-sided railcar. I guess you could explain it like a tub on  
6 wheels. The reduced height of the track allows us to see down  
7 inside the car. When we're trans-loading products out of these  
8 types of railcars we have one man, sometimes two, working  
9 inside of that railcar in restrained, confined areas. With our  
10 visibility from our forklifts, which are very large forklifts,  
11 we can see down into those cars instead of having to look up  
12 towards them.

13 JUDGE TOREM: And these sorts of accommodations for  
14 safety are possible on your property as opposed to the other  
15 spur that Meeker offered?

16 MR. LAWRENCE: Yes.

17 JUDGE TOREM: In your opinion it's safer for your  
18 workers to be on your property on that spur line?

19 MR. LAWRENCE: Yes, sir.

20 JUDGE TOREM: That does require that trains cross  
21 134th Avenue East; is that correct?

22 MR. LAWRENCE: Yes. It also keeps us from working --  
23 in the situation of the public bike trail and walking path when  
24 we have children walking these paths on their bicycles they're  
25 more interested in what they're doing than what we're doing and

0020

1 to take us away from public exposure creates not only a safer  
2 situation for ourselves but for the general public, as well.

3 JUDGE TOREM: So the Commission actually enforced  
4 strictly the terms of Order 01 until Meeker Southern and  
5 whatever other parties need to make the improvements on the  
6 roadway you say it would triple your expenses?

7 MR. LAWRENCE: Yes.

8 JUDGE TOREM: How long would your company tolerate  
9 such a tripling of those related expenses? Weeks? Months?

10 MR. LAWRENCE: I would say upwards of weeks, not  
11 months. We are operating on very thin to nonexistent profit  
12 margins. In order for us to perform such tasks on Mr. Cole's  
13 siding we need to transport our forklifts which can either be  
14 done by roadway under permit possible or, more expensively,  
15 transporting such equipment with our trucks using lowboy  
16 trailers which adds a tremendous amount of cost to our  
17 operation.

18 JUDGE TOREM: It's pretty clear we all know that  
19 Order one had the condition that everything be done prior to  
20 any operations.

21 Mr. Cole, let me come back to you and ask: You are  
22 president and founder of these companies. Does the company  
23 have a compliance officer or do you fill that function, as  
24 well?

25 MR. COLE: We're really small and, so, in the --

0021

1 JUDGE TOREM: Are you the chief cook and bottle  
2 washer?

3 MR. COLE: Yes.

4 When we started the company in 1996 it was on our  
5 Ballard Terminal Railroad operation in the Ballard  
6 industrial -- there we had partners in our company, myself, who  
7 came up with the idea, and the three shippers on that section  
8 of railroad all joined in. Over the years one of those  
9 shippers, the guy retired and one of the other ones was merged  
10 with a different company, so there's just the two of us  
11 involved financially in the company now. But along the way we  
12 have a first one and second one and we operate that two-side  
13 freight line in Snohomish/Woodinville area.

14 JUDGE TOREM: How many employees do you have for --

15 MR. COLE: Myself, as a manager. I have one other  
16 fellow, Forgette, F-O-R-G-E-T-T-E.

17 JUDGE TOREM: The two of you are the main managers?

18 MR. COLE: Right. He's the operations manager. He  
19 takes care of all the day-to-day calls to Burlington Northern  
20 who supplies all of our inbound cars and he talks to all the  
21 shippers and he schedules the conductors and engineers to go  
22 run the trains. He makes about a million calls a day. I  
23 couldn't do it without him. I'm the big-picture guy doing  
24 things like that. Right now we have seven train crew  
25 employees.

0022

1                   JUDGE TOREM:  Who would you say is your chief safety  
2 officer?  Is that a big-picture thing or a little-picture  
3 thing?

4                   MR. COLE:  I think that James and I share it equally.

5                   Along that line I'd like to say that we have  
6 13 consecutive years -- I have the 13 plaques on the wall of my  
7 office from our trade association safety division and these  
8 plaques are for a zero accident rate.  We have 13 zeros.  We  
9 have one, the Jake Award, with distinction for a zero rate for  
10 every year we've been in business.

11                  JUDGE TOREM:  It would please the Commission to see  
12 you have 14, 15 and 16 and so on.

13                  What I'm concerned with here, and when we looked at  
14 the record that, in my words, it's blatant and clear, it's  
15 admitted that the railroad has gone ahead and operated and  
16 violated the terms O1.

17                  MR. COLE:  It's my fault.

18                  JUDGE TOREM:  I appreciate that.  We want to get it  
19 resolved whether there will be any punitive action will be the  
20 direction of investigation and document what we're getting into  
21 today.  This Order was styled today as a Show Cause Order and I  
22 do want to note for the record, probably shouldn't have been.  
23 If we're going to seek penalties against your company, sir, we  
24 would do that through an investigation and issue a separate  
25 complaint, so that won't be on the table today.  You won't walk

0023

1 out of here saying I'm going to issue an Order with fines. We  
2 may direct Commission staff to begin investigation and  
3 determine what's out there, the extent of the violations, if  
4 any, and any mitigating circumstances or establishing some of  
5 that related today, but to give me a big picture today, my main  
6 concern is to make sure you get to that 14th plaque and these  
7 issues don't result in any safety violations for the people of  
8 Puyallup that use the bike path or the motoring public at the  
9 intersection that this Commission is responsible for.

10 One other issue, to be frank with you, that we're  
11 concerned about was the way that the flaggers were being  
12 handled. First, I'm not sure what it means to have a conductor  
13 flag a train because I'm not familiar with that day-to-day  
14 operation and how many personnel are there, but even as part of  
15 this potential resolution that's been proposed over the last  
16 couple of weeks there were four flaggers that were sent in --  
17 and Mr. Halinen in his letter, I appreciated the candor,  
18 pointed out that a Jim Ward did not have a current flagger's  
19 card. While that may seem to be a technical violation, and  
20 Mr. Ward may sure as heck know what he's doing, stopping  
21 traffic and have the right training, current certifications are  
22 required, and just from the records that were submitted he had  
23 already worked and flagged at least, I think, five separate  
24 days prior to renewing his card on January 12th. That sort of  
25 thing doesn't give confidence in my boss that Meeker Southern

0024

1 is taking railroad safety seriously. The 13 plaques are a  
2 great testament. It's the attention to detail that the  
3 Commission expects for each and every one of its regulations  
4 whether the ones we've adopted by reference from the federal  
5 level or the ones that this Commission has determined to  
6 require the public safety if they're followed. That's the sort  
7 of thing we need, that confidence in you, if we're going to  
8 approve any sort of interim agreement to not impact Sound  
9 Delivery. It's sort of tied up with where we are today based  
10 on what you admitted was your fault.

11 MR. COLE: I was going to say that the flaggers were  
12 subcontracted. They weren't our employees. They're not our  
13 employees.

14 JUDGE TOREM: I understood that to --

15 MR. COLE: I guess it's embarrassing. It wouldn't  
16 make me happy to find that out. I think the company that does  
17 employ them is being one of the better contracting companies  
18 around. I suppose they were embarrassed as well.

19 JUDGE TOREM: I understand the frustration in  
20 delegating something out that's not done correctly.

21 MR. COLE: And we showed it to you.

22 JUDGE TOREM: From my time in the military I can tell  
23 you can delegate authority but not responsibility and these  
24 will come back to haunt you.

25 MR. COLE: I had 23 years, most of it at McChord.



0025

1 JUDGE TOREM: I'll be there on Friday.

2 What I can tell you, we need to make sure that when  
3 you ask somebody to do a job that you're responsible for that.  
4 You don't want one of those guys to cause you the 14th plaque.

5 MR. COLE: We discovered it instantly as soon as we  
6 adopted this program.

7 JUDGE TOREM: I understand. It may seem like a  
8 technical detail but it's an absolutely important one.

9 MR. COLE: We got after them. The contractor that  
10 supplied them took care of it right away.

11 JUDGE TOREM: Let me turn to the other counsel's table  
12 because I want to hear some of the conditions that were being  
13 imposed. One was a performance bond. There was no amount  
14 noted. Since that's come up to my attention I wanted to  
15 question Commission staff if they believed, as to Mr. Halinen  
16 has called to our attention, this Commission may not have the  
17 authority under law or regulation to impose a performance bond.

18 Ms. Woods.

19 MS. WOODS: The Commission's position under the RCW  
20 that was cited in the Commission's staff response, Commission  
21 does have authority to allocate cost responsibility. It was  
22 our understanding that in the prior docket, the 2008 docket  
23 that preceded this one, there was an agreement between the  
24 County and the Railroad that the Railroad would assume  
25 responsibility for costs.

0026

1           JUDGE TOREM: Was the cost allocation authority, which  
2 the Commission has, do you think that translates to the  
3 practical level of performance bonds?

4           MS. WOODS: I think it would have to, Your Honor. I  
5 don't know how you could enforce a cost allocation without that  
6 authority.

7           JUDGE TOREM: Mr. Halinen, you might have a different  
8 view on that.

9           MR. HALINEN: Looked at the face of the statute  
10 regarding cost allocation, nothing of the sort is directed to  
11 the question of performance bonds or other financial  
12 guarantees. I have been involved in land use matters, not UTC  
13 matters, but throughout my career I've had occasion to deal  
14 with many municipalities, counties and cities dealing with land  
15 development matters and their codes explicitly call for or at  
16 least provide discretion to the Public Works Department. The  
17 codes of such counties and cities provide explicit authority  
18 for requiring a performance guarantee of one sort or another,  
19 either a bond or assignment of funds or savings accounts, that  
20 sort of thing.

21           JUDGE TOREM: Pierce County can do that in this case,  
22 do you agree?

23           MR. HALINEN: With respect to the road improvements,  
24 things in their right-of-way.

25           Anyway, back to my point: Without some particular

0027

1 language suggesting that guarantees are within the scope, I do  
2 not think the statute empowers the Commission to order that  
3 type of an arrangement.

4           Notwithstanding that, I do want to add that I've been  
5 working with Mr. Salmon in negotiating an agreement regarding  
6 an assignment of a claim for substantial funds owed to my  
7 clients by different department of Pierce County and I believe  
8 we're just about in the exact terms of such an agreement. He  
9 can confirm that.

10           MR. SALMON: We're getting close to an agreement.

11           JUDGE TOREM: Let me take a moment. It's about 8:45.  
12 I don't believe we have anybody on the bridge line.

13           If there's anybody that's listening would you identify  
14 yourself?

15           I don't hear anyone.

16           It's time for our next hearing. I'll turn off this  
17 line and that way we won't have any interruptions when the  
18 interested parties in the Pacific or general rate case start  
19 calling in.

20           I think for me I have another question back to  
21 Mr. Halinen, you, and Mr. Cole: If the Commission determines  
22 to order a complete cessation and desist from further  
23 operations how long would it take for Meeker Southern to come  
24 into complete compliance with Order 01? I think the timeline  
25 you proposed was around early May of this year.

0028

1           MR. HALINEN: That's correct. We had a May 2nd  
2 timeline to complete the balance of the asphalt paving  
3 improvements on 134th north of the main line track, however, we  
4 were anticipating an earlier completion for the crossing  
5 system. We provided the May period in the schedule because of  
6 the uncertainties of the weather in terms of paving and so we  
7 wanted it, maybe possible, weather permitting, to complete the  
8 paving earlier but after consultation with Public Works we felt  
9 it was appropriate to provide that much time to complete the  
10 paving.

11           JUDGE TOREM: Can you remind me as to a target date  
12 for the active signals?

13           MR. HALINEN: As we've been working with Commission  
14 staff and public work staff, Mr. Salmon, regarding trying to  
15 come up with what we would view as an agreeable order for your  
16 consideration, our most recent submittal was March 18th and  
17 that's predicated upon having a clear okay to continue  
18 relatively soon if more proceedings are necessary before we  
19 continue that will have to slide a little bit commensurably.

20           JUDGE TOREM: I think those are most of the background  
21 issues I wanted to get on the record this morning.

22           Counsel, tell me, is it time to take a quick break for  
23 all of you to discuss if this helps set the tone or if you have  
24 questions for me where the case is postured right now before we  
25 close in the next half hour to 45 minutes? If you want to

0029

1 discuss positions on the record to help me understand greater,  
2 if you'd rather have the time to talk amongst yourselves we can  
3 take a break now.

4 MR. SALMON: I'd like to briefly address Pierce  
5 County's big position.

6 JUDGE TOREM: Please.

7 MR. SALMON: Pierce County wants to see this spur  
8 operated successfully. It's been several years now that we've  
9 been dealing with this issue. I think the original petition  
10 was filed in July or August of 2008.

11 JUDGE TOREM: That was the predecessor case referenced  
12 in Ms. Woods' brief.

13 MR. SALMON: That's correct. That was filed as a  
14 modification of a crossing. We were opposed to that  
15 categorization. We thought it was a new crossing. I believe  
16 Al J. Clark agreed it was a new crossing. So, essentially,  
17 much of this process has involved negotiation and agreement  
18 between the County, Meeker Southern and the UTC staff. The  
19 biggest problem we have at this point is that we feel as though  
20 agreements have not been honored by Meeker. We found out that  
21 the crossing was being operated, basically, because I think the  
22 UTC staff got in touch with the County and asked them to put a  
23 sign up. So our concerns are that the agreements are followed  
24 and that Mr. Cole and Meeker do what they've agreed to do.

25 JUDGE TOREM: I did note the strong language in your

0030

1 response in December to this noting. I can't remember the  
2 exact quotes but regarding the lack of honoring those  
3 agreements to Pierce County's satisfaction and yet the County  
4 is flexible enough to want to see operations continue with some  
5 conditions.

6 MR. SALMON: We do.

7 JUDGE TOREM: How does the County take any added  
8 enforcement or monitoring that might be required of it to  
9 ensure these agreements are honored?

10 MR. SALMON: That was the purpose of the performance  
11 bond. The hope was that if we had a performance bond or Meeker  
12 failed to perform we could get the crossing built for  
13 Sound Delivery. Mr. Cole can actually build this project far  
14 cheaper than the County could, and, so, I think the cost for  
15 the County become prohibitive if we ask them to provide the  
16 full amount on the performance bonds. I think we're going to  
17 count on the UTC and staff to impose sanctions if the work  
18 isn't done on the schedule that Mr. Cole has provided. We are  
19 asking at this point for the performance bonds for the roadwork  
20 so we can make sure the roadwork is completed with our  
21 standards.

22 The other issue we had here is that Meeker was  
23 supposed to get permits to work on the roadway and they never  
24 did any of that, as well. So a lot of these issues with  
25 roadwork probably could have been resolved if we had had

0031

1 somebody out there at the time the construction was done.

2 JUDGE TOREM: Is the County working directly with  
3 Mr. Cole on these permits or other required documents?

4 MR. SALMON: We're working through Mr. Halinen. But,  
5 yes, we told Mr. Halinen that once we get the financial  
6 assurance we will issue the permit to work on the roadway.

7 JUDGE TOREM: Thank you.

8 Anything else, Mr. Salmon?

9 MR. SALMON: No, Your Honor.

10 JUDGE TOREM: Ms. Woods?

11 MS. WOODS: Thank you, Your Honor.

12 UTC staff is concerned about public safety at this  
13 crossing. We have been negotiating, as Mr. Halinen and  
14 Mr. Salmon have said, about conditions for interim use of the  
15 spur until active warning signals are put in.

16 As Your Honor has pointed out, there is another party,  
17 Sound Delivery. UTC staff is concerned about not contributing  
18 to the financial collapse of that business because the business  
19 would not be able to use the spur before the active warning  
20 signals are in. So, UTC staff has been willing to negotiate  
21 some interim terms for having flaggers out there with reporting  
22 requirements so we have some assurance that the crossing is  
23 safe for motorists who are going through there.

24 JUDGE TOREM: Do you believe you're going to be able  
25 to work out between Mr. Salmon for Pierce County and

0032

1 Mr. Halinen something that Mr. Cole will be able to comply with  
2 to the staff's satisfaction and keep public safety at that  
3 crossing at the level we need?

4 MS. WOODS: At this point the UTC is satisfied with  
5 the conditions that have been negotiated among the parties.

6 JUDGE TOREM: It's now five minutes to 9:00. We'll  
7 take a ten-minute break to give them time to present all those  
8 conditions. It may be a reference to what Mr. Halinen filed  
9 late last week in a red-line format that I think took into  
10 account his initial Motion to Amend and further responses from  
11 both Pierce County and Commission staff, and if the three  
12 parties are in agreement to submit that as what the proposed  
13 Motion to Amend Order 01 is, then I'd like to hear that with  
14 assurance that that will be met from Mr. Cole and they could  
15 issue a verbal order today in that regard. But I want to make  
16 sure there's full agreement and each party knows what's  
17 expected of Meeker Southern and any roadway from Pierce County  
18 and any flagger safety at the crossing so the motoring public,  
19 which is my main concern, is protected if we allow these  
20 operations to continue.

21 Anything else before we take a break?

22 MR. SALMON: I think we may need a little bit more  
23 than ten minutes. We might need half an hour.

24 JUDGE TOREM: Let me know when we're ready, if it's  
25 going to be half an hour. I will defer my 9:30 until we're



0033

1 done today because I don't want you to come back. There's no  
2 reason to artificially cut the hearing short today. We'll be  
3 here until we get it done.

4 Let me know when we're ready.

5 MR. SALMON: Thank you.

6 JUDGE TOREM: Anything else?

7 We'll be in a brief recess.

8 (Short break was taken in the proceedings.)

9 JUDGE TOREM: We're back on the record here at about  
10 9:42.

11 Counsel, where are we?

12 MR. HALINEN: During the recess we were able to  
13 successfully negotiate the last issues that Mr. Salmon  
14 referenced before the break and we have a proposed order  
15 mutually acceptable to counsel for Public Works, Commission  
16 staff and Meeker.

17 I'm putting the last pages together here for you.

18 JUDGE TOREM: I've been handed what looks like a  
19 proposed order.

20 I take it, Mr. Halinen, this is similar to what was  
21 originally proposed, it's 11 pages plus several attachments?

22 MR. HALINEN: Yes. It's been fine-tuned in various  
23 respects, but, generally speaking, addresses the same general  
24 subject matter. More conditions of approval have been added.  
25 We just arrived at language for additional Commissioner

0034

1 approval during the recess and we added a parenthetical change  
2 in the order portion starting on page nine. Just now we added  
3 a parenthetical clarification in background paragraph number  
4 six.

5 I would like to add, Your Honor, that Saturday morning  
6 I e-mailed and hand delivered on Monday morning another round  
7 of changes following consultation. Yesterday we were  
8 continuing working on that, so, we got to this point through  
9 concerning negotiations.

10 JUDGE TOREM: I did see, I think, one at 3:20 in the  
11 morning on Saturday.

12 MR. HALINEN: That's the one I was referring to. I  
13 received that and I appreciate knowing you were working hard to  
14 make sure we could resolve this. It was a terrible Friday  
15 night.

16 JUDGE TOREM: It may have been the only light on in  
17 your office.

18 MR. HALINEN: I'm sure that's correct.

19 JUDGE TOREM: I'm certain Mr. Miller and his crew were  
20 long gone.

21 MR. HALINEN: Yes. He's in the office next door to  
22 me.

23 JUDGE TOREM: Let me hear from Pierce County and from  
24 staff, as well, as just a brief resuscitation of what's in this  
25 Order so we can put in on the record in sum rather than me

0035

1 stumble through it.

2 MR. SALMON: Mr. Halinen would be better able to do  
3 that.

4 JUDGE TOREM: Mr. Halinen, if you could, not paragraph  
5 by paragraph, but tell me what's summarized in the background,  
6 and after we've done that I'll hear from Counsel as to their  
7 satisfaction with the conditions. It looks like we had access  
8 to a computer and printer this morning. It doesn't look like  
9 there's any pen and ink changes?

10 MR. HALINEN: That's correct. We sided with the  
11 condition language we were adding would be crisper and easier  
12 to understand if we avoided pen and ink.

13 JUDGE TOREM: All right. Although we typically don't,  
14 as ALJ's here, sign proposed orders, I mean, Superior Court  
15 does those sorts of things, and we write our own if Commission  
16 staff believes that this has everything the Commission wants  
17 I'll hear from Ms. Woods, and that's the procedure we'd like to  
18 deviate from, we simply won't have a word copy necessarily  
19 available unless that can be provided to me for our record  
20 staff if I choose to sign this out today.

21 MR. HALINEN: I was going to say, Ms. Woods was kind  
22 enough to go down to her computer with me and she actually  
23 typed up this last version. So the word version is on her  
24 computer and I'm sure she can give it to you.

25 JUDGE TOREM: You know all the little nit-noids of

0036

1 administrative law and the Commission might be satisfied yet.

2 Let me have you summarize for our record.

3 MR. HALINEN: Yes.

4 The first page provides just background regarding the  
5 history of the original Order. We then have a reference to  
6 original design drawings that had been approved and had been  
7 referenced in the original Order. I then mentioned the Motion  
8 that we filed to amend the original Order.

9 JUDGE TOREM: This is from December 20th of last year?

10 MR. HALINEN: That's correct.

11 There is reference to some of the features of the  
12 Motion, the fact that we were asking for a technical correction  
13 to background paragraph six in the original Order, some  
14 explanation of that.

15 On page three, paragraph six, in reference to the spur  
16 track having recently been installed and all that to be  
17 approximately the east 300 feet of the phase one service  
18 siding.

19 JUDGE TOREM: That was what was being referenced in  
20 earlier testimony as extending further into the property?

21 MR. HALINEN: It's along the north edge of the  
22 Sound Delivery property that's here. So, the service siding is  
23 coming down -- the contemplation that it will go all the way to  
24 the end of the property, Sound Delivery decided not to  
25 construct their loading dock all the way down at this point in

0037

1 time to defer that expense, and, so, the spur went down as far  
2 as the loading dock. When the balance of the loading dock is  
3 completed --

4 JUDGE TOREM: So the proposed Order reference to that  
5 east 300 feet of the line would be 300 feet more to complete  
6 what's shown on the drawings?

7 MR. HALINEN: Yes. It's approximate.

8 JUDGE TOREM: In this case it'll be good enough for  
9 government work?

10 MR. HALINEN: Yes.

11 JUDGE TOREM: All right. We have the description in  
12 paragraph six.

13 MR. HALINEN: There's also a reference to the fact  
14 that certain roadway pavement improvements had been completed  
15 on 134th, and then a description of the fact that the southerly  
16 length of those improvements was not as great as contemplated  
17 on the original plans, but after consultation with Public Works  
18 and staff, a revised design that would add paving improvements  
19 north of the main line track would substitute --

20 JUDGE TOREM: These are the December 16th updated  
21 drawings in paragraph ten?

22 MR. HALINEN: Yes. There's a reference to the fact  
23 there was contemplation of more work, and then we get to the  
24 revised design drawings on paragraph 11, page five. Those  
25 drawings were approved -- this was a set that later looked at

0038

1 earlier and that is for you, Your Honor. You'll note that all  
2 of the revised sheets have been updated and bear the 1/25/11 --  
3 this is a six-sheet set. There's four sheets that have been  
4 updated. Two sheets of the original set were not changed at  
5 all and they bear their original dates.

6 JUDGE TOREM: So this is paragraph 11 referring to the  
7 January 25th drawings?

8 MR. HALINEN: That's correct.

9 Paragraph 12 we make mention that Order 01 did not  
10 have a schedule for completion for crossing improvements but  
11 now we attached as Exhibit A to this proposed Order a table  
12 that sets forth a schedule.

13 In paragraph number 13 we pointed out some details  
14 regarding a change in the controller systems that will be  
15 connected to the flashing lights.

16 Paragraph 14 mentions Sound Delivery and its needs.

17 Page seven, paragraph 15, we reference Exhibit B which  
18 is a table dealing with interim operation of the crossing,  
19 interim use of the spur track up through the point that the  
20 crossing lights signal system is installed. That table sets  
21 forth a special limitations and requirements relating to the  
22 flagging operation, and I should say the limitations that  
23 relate to the number of trains, the length of the trains and  
24 flagging and those sorts of things.

25 Going to page eight, "Findings and Conclusions."

0039

1 These are sort of, from what I've seen, typical of the types of  
2 findings and conclusions in other ordinances that I've reviewed  
3 and it refers to the materials that are before you.

4 Then we get to the body of the Order. It approves the  
5 motion. It amends the background paragraph number six in a  
6 couple of particulars. First of all, it changes the phrase "a  
7 new customer" at the end of the new sentence to, simply, "new  
8 customers," plural. In the second sentence there's a  
9 clarifying parenthetical that was added.

10 By the way, the next text in these conditions is all  
11 underlined and any deletions have been indicated by strike  
12 through.

13 In approval condition number three we have reference  
14 to the revised drawings. So now we have proper reference to  
15 all the now current drawings in this six-sheet set that I  
16 provided you today.

17 JUDGE TOREM: I see that you have the January 25th  
18 drawings referenced there?

19 MR. HALINEN: Right.

20 As I say, two of the sheets that were in this set are  
21 still the October 20th, '09, drawings. They were unchanged.  
22 So the 6th sheet set dictates two of those and four of the  
23 others.

24 On page 10 approval condition number three has been  
25 modified to note that the phase one service siding has east

0040

1 300 feet that can be completed at a later time, and it  
2 references the time-frame, it mandates that the work be  
3 completed, (a) in a time-frame consistent with the time  
4 scheduled set forth in table one attached. This is the  
5 operative link to the schedule.

6 JUDGE TOREM: I see the earlier cited March 18th date  
7 that we discussed this morning for the traffic control signs?

8 MR. HALINEN: Yes.

9 JUDGE TOREM: Does that apply to the automatic  
10 flashing lights, all of the active warnings signals would be  
11 installed?

12 MR. HALINEN: The active warning signal is part of  
13 that.

14 JUDGE TOREM: So March 18th is the date by which  
15 flashing red lights and any other items at the crossing to warn  
16 the public will be installed?

17 MR. HALINEN: Yes. But there are road improvements  
18 that have to be completed after that date.

19 JUDGE TOREM: Understood.

20 MR. HALINEN: And that's all dealt with in the table.

21 And then we also have a proviso that allows the  
22 interim operation of the service siding under the special  
23 requirements and limitations of Exhibit B, which is the  
24 table two, and that, again, has to do with the flagging, has to  
25 do with the limitation on the size of trains and the number of



0041

1 trips and so forth.

2 JUDGE TOREM: It looks like that next proviso in  
3 paragraph 29 of the proposed Order, approval condition four, is  
4 referring to yet a second phase two service siding which looks  
5 like on here to be slightly -- I think it's north of the  
6 phase one siding which is already built.

7 MR. HALINEN: That's correct.

8 JUDGE TOREM: This would operate in parallel on  
9 Sound Delivery Services' property.

10 MR. HALINEN: Actually, would it be --

11 JUDGE TOREM: I see some other boundary lines. It  
12 parallels the phase one siding.

13 MR. HALINEN: Yes. This is the north boundary, this  
14 line --

15 JUDGE TOREM: Yes.

16 MR. HALINEN: -- this dotted line right here is the  
17 Sound Delivery north boundary. This is property that the  
18 underlying owner is Pierce County and it's managed by  
19 Pierce County Parks and Recreation Department. My client has  
20 an easement over the area for the phase one service siding and  
21 anticipate requiring an easement from Parks and Recreation over  
22 the balance of the phase two service siding route and will do  
23 so before that is constructed. There's no current schedule for  
24 the phase two service siding.

25 JUDGE TOREM: These would be anticipated for other

0042

1 storage or for other customers?

2 MR. HALINEN: For adjacent and further properties to  
3 the east.

4 JUDGE TOREM: I see there are operational conditions  
5 to make sure that the traffic signals operate and turn off  
6 correctly?

7 MR. HALINEN: Exactly.

8 On page 11, approval condition five, sets forth Meeker  
9 rather than Pierce County being responsible for all the costs  
10 of the installation of the spur crossing and related  
11 improvements.

12 The last item, which is what we just agreed to during  
13 the recess, says, "Until such time as a left-turn lane or left  
14 turn pocket on the west leg of the intersection of Pioneer Way  
15 and 134th has been constructed between 4:45 p.m. and 5:45 p.m.  
16 each day, the maximum length of trains passing through the  
17 134th crossing on either the main line track or spur track  
18 shall be 350 feet." That's a condition that was to address  
19 queuing concerns that Public Works had. If in the future a  
20 left-turn lane or pocket on this leg was constructed then there  
21 would be an opportunity for queuing there which would solve any  
22 concerns.

23 JUDGE TOREM: This would be for people making a left  
24 turn from Pioneer Way east onto 134th Avenue East?

25 MR. HALINEN: That's correct. The current lack of

0043

1 that left-turn lane or pocket makes the relatively short  
2 queuing distance more of a concern. When the traffic is the  
3 heaviest during the 4:45 p.m. and 5:45 p.m. hour there will be  
4 special limitations on the size of trains.

5 JUDGE TOREM: Let me quickly interrupt and ask  
6 Mr. Salmon if Public Works has a similar concern for a morning  
7 peak traffic hour or if it's simply an afternoon issue that  
8 needs to be addressed.

9 MS. FORD: Marleen Ford, public works traffic  
10 engineer.

11 We did look at the a.m./p.m. peak hours to determine  
12 the worst case scenario, so that's what we were quoting for the  
13 traffic evaluation study.

14 JUDGE TOREM: The current language would apply to  
15 seven days per week. I don't know that it's necessary to amend  
16 this again to limit to weekdays and skip holidays, and the rest  
17 of such things, but if the railway understands that this is a  
18 seven day per week provision and it's also to be read in  
19 conjunction, Ms. Woods, with the existing Administrative Code  
20 that limits the amount of time a train can block a crossing,  
21 and this is a public crossing, without special permission, and  
22 an exception from the rule, then I think that will probably be  
23 acceptable to Public Works if we understand this to be a seven  
24 day blanket provision.

25 Is that your understanding, Mr. Cole?

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1 MR. COLE: Yeah. I guess so. I never really thought  
2 about it until recently.

3 JUDGE TOREM: It'll require --

4 MR. COLE: I don't think the traffic is worse on the  
5 weekends.

6 JUDGE TOREM: I'm sure it's not, but simply if there  
7 was a compliance inspection 5:00 p.m. on a weekend and you had  
8 a 355-foot train you'd be in violation. It's just something  
9 that your engineers understand the level of detail once it's  
10 agreed to you can be held to that

11 MR. COLE: I'd rather it was weekday.

12 JUDGE TOREM: It says "each day" here. The terms as  
13 it is maybe we'll pen and ink that to be weekday --

14 MR. HALINEN: Please.

15 JUDGE TOREM: Once we agree to the terms --

16 MR. HALINEN: That would be appreciated, each weekday.

17 JUDGE TOREM: I'll strike the word "day" and on my  
18 copy pen and ink in "weekday."

19 MR. HALINEN: Thank you.

20 Are you leaving the word "each" in there?

21 JUDGE TOREM: Yes. "Each weekday the maximum length  
22 of trains."

23 MR. HALINEN: Thank you.

24 JUDGE TOREM: As far as the completion of the table,  
25 this has specific dates that either have occurred or will

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1 occur. I see that the March 18th, 2011, date is in table one,  
2 item five, regarding the installation of active warning  
3 signals. Again, the terms of the Order, essentially, delegate  
4 the extension provision of this to a joint agreement by staff  
5 and Pierce County, and if there is going to be an extension of  
6 the March 18th installation date I'd like to see something  
7 placed into the record with a letter to Mr. Danner, as the  
8 executive secretary and director of the agency, to make sure  
9 that --

10 MR. HALINEN: It's monitored. It's in your system.

11 JUDGE TOREM: That's right. Because if this Order is  
12 going to delegate the extension of time periods, as I made the  
13 distinction earlier this morning, between what the Commission  
14 orders being the rule of the case that we're clear on the  
15 record here that this presumes that Commission staff, and when  
16 they have agreement from Pierce County, does have the authority  
17 to extend the dates in this table and the order in this  
18 regards.

19 Ms. Woods, is that the intent, so we don't have to  
20 have a separate Order?

21 MS. WOODS: That is the intent, Your Honor.

22 JUDGE TOREM: Are the May 2nd dates regarding the  
23 paving, which is mainly Pierce County's concern, also of that  
24 same delegation? I didn't pay as close attention as to whether  
25 those dates can be extended in the language of the Order.

0046

1 Mr. Salmon, is that your client's concern?

2 MR. SALMON: Yes, Your Honor.

3 JUDGE TOREM: I know we would like to have this done  
4 in 2010, but if there's a necessary extension again then if  
5 Commission staff agrees with you then we'll have some implied  
6 extension authority with those being the primary concern on the  
7 grounds.

8 MR. SALMON: And we would file those with the UTC?

9 JUDGE TOREM: Yes.

10 Now, in the previous suggestions there were  
11 requirements for various progress reports. Are those also  
12 required at this -- will I be expected to see other electronic  
13 indications that some progress or milestones have been met.

14 It looked like table two, item six, has reports due on  
15 the 1st and 15th of each month?

16 MR. HALINEN: Yes. That's the provision. That is  
17 what requires those reports.

18 JUDGE TOREM: So the first requirement would be due  
19 February 1st, then, to update us as to where anything would be  
20 and, again, mid-February?

21 MR. HALINEN: We were planning to -- because of the  
22 agreement of Counsel -- we were planning to have one filed this  
23 afternoon, and we might do that and do another one on the 1st.  
24 I don't know what we should do. If we submit this one it would  
25 be a few days early, would that be okay, and count for the 1st

0047

1 and the next one be on the 15th, or do you want one today and  
2 another one on the first? I want to get this right.

3 JUDGE TOREM: Let me ask the parties before I  
4 interject.

5 Ms. Woods, one report between now and the 1st or --

6 MS. WOODS: Today is the 26th.

7 I didn't understand that there were going to be any  
8 additional reports.

9 MR. HALINEN: In the December -- the January 6 letter  
10 to Mr. Danner I had embodied that we were going to have one for  
11 the 12th and one for the 26th and, so, the 26th is today and  
12 it's being prepared today so we were going to submit it today  
13 if we could get this week's data in it and submit it for  
14 February 1 or we could finish it and have just like a one-week  
15 period of time included in the next one.

16 MS. WOODS: Let me check with my clients for a moment.

17 (Discussions with clients.)

18 JUDGE TOREM: Given, then, counsel are in agreement  
19 that it would be a waste of time and, perhaps, your clients'  
20 time and money, as well, to do two reports, and given that the  
21 State has chosen to take the day off on Friday -- we have even  
22 one less day to review your report -- we'll wait for February  
23 1st with the first report due on this proposed Order.

24 MR. HALINEN: Thank you.

25 JUDGE TOREM: Were there any other highlights on the

0048

1 table that we needed to summarize?

2 MR. HALINEN: I don't think so.

3 JUDGE TOREM: Mr. Salmon.

4 MR. SALMON: Nothing in the proposed Order,  
5 Your Honor. Mr. Halinen and I have agreed on language for an  
6 assignment of funds in lieu of a performance bond and we're  
7 hoping to get that signed today and then Meeker will apply for  
8 a permit to work in the right-of-way and we'll issue that as  
9 soon as possible after receiving the application and that  
10 should remove all the impediments to him working on the  
11 project. We'll get that done this week if we get everything.

12 JUDGE TOREM: Excellent. I'll leave the roadway  
13 right-of-way to the County, as it rightfully should be.

14 Ms. Woods, in staff's proposal what concerns that you  
15 had before this morning were addressed and are we assured that  
16 Meeker will be in a good position to comply?

17 MS. WOODS: I'd like to point out a few things in the  
18 proposed Order that are a particular concern to staff. I think  
19 some of them have already been mentioned.

20 First, in paragraph 15 --

21 JUDGE TOREM: Page seven?

22 MS. WOODS: Yes.

23 We did earlier talk about the deadline of March 18th  
24 as the date for getting the active warning devices operational.  
25 That date is acceptable to staff provided the other conditions



0049

1 stated in the Order are met. One of them is also stated in  
2 that same paragraph, and that is using certified flaggers for  
3 all train crossings of 134 via the spur track or the main line  
4 track. Meeker has agreed to that condition that staff  
5 requested.

6 JUDGE TOREM: That would include any of the  
7 preexisting traffic even prior to the addition of the spur  
8 track. So, is that because of the added tracks and the added  
9 potential of confusion and the lack of signals that are in  
10 place at this time?

11 MS. WOODS: That is correct, Your Honor. The crossing  
12 has been modified. It's a different configuration from what it  
13 was when there was just a main line track.

14 JUDGE TOREM: Is it staff's position that any time  
15 there are two tracks in a roadway it incrementally increases  
16 the inherent danger of rail and road crossings?

17 MS. WOODS: I don't understand staff's position to be  
18 that generic. It has more to do with this particular crossing.  
19 The volume of traffic that's going through there and the way  
20 various roadways and tracks are configured in relation to each  
21 other.

22 I would like to focus, again, on paragraph 30, that's  
23 page 11, new approval condition five, which addresses the  
24 financial responsibility. I see, Your Honor, that it simply  
25 states that Meeker, rather than Pierce County, shall be

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1 responsible for costs. So, Your Honor, you need not address  
2 the question of whether the Commission has authority to require  
3 a bond. On table one, item five, once again, the March 18th  
4 date for getting signals in is something that's important to  
5 staff.

6 On table two, condition five, once again, flaggers to  
7 be provided for all train crossings of 134 via either the spur  
8 track or the main line track until the active warning devices  
9 are operational.

10 Condition six, we talked about that a little bit  
11 earlier, is the reporting requirements, those enable staff to  
12 verify that flaggers are actually out there and present when  
13 trains are going through there.

14 JUDGE TOREM: Okay.

15 Mr. Lawrence, I know you're not a direct party, again,  
16 to the agreement, but due the limitations on the operation of  
17 the track with the lengths of trains and timing, do those sound  
18 realistic for supporting the economic viability of your  
19 business or did you need anything more than one engineer and  
20 three cars at a time?

21 MR. LAWRENCE: No. Everything sounds very fine with  
22 me, sir.

23 JUDGE TOREM: This would meet your needs and avoid any  
24 undue economic impact on your company?

25 MR. LAWRENCE: Yes, Your Honor.

0051

1           JUDGE TOREM: Mr. Cole, you've had a chance with  
2 Mr. Halinen to go over this and watch the negotiations over the  
3 last few weeks and we already had our discussion about  
4 compliance this morning. Do I have your assurance, as the  
5 president and founder of this short line rail company, that  
6 each and every word in this document will be adhered to and  
7 we'll get to that 14th safety plaque on the wall?

8           MR. COLE: I'd be foolish to not do that, wouldn't I?  
9 So, Your Honor --

10          JUDGE TOREM: There's only one right answer, isn't  
11 there?

12          Mr. Cole: Yes. Meticulously.

13          JUDGE TOREM: I do want to clarify that I understand  
14 from your perspective that Mr. Lawrence was correct earlier in  
15 his testimony that you've had commercial agreement with them  
16 since, at least, mid-October to move railcars on and off on  
17 property for that pipe from Mississippi or anything else.

18          MR. COLE: That's essentially true. His father and I  
19 met more than four years ago and shortly thereafter had a  
20 meeting with Pierce County Economic Development folks about  
21 this when he was looking for a site and contemplating buying  
22 this eight-acre site that was very expensive for the dirt.  
23 And, so, it's been the longest, most terrible journey, four  
24 years plus, now. It was four years last fall. We want to get  
25 it done. We've had this handshake contract that I really feel

0052

1 obligated to perform. They got through lots of hurdles and,  
2 ultimately, were able to move their operation from South Park  
3 in King County to here and set up and there was still no rail  
4 track serving them and, so, they operated for months and months  
5 out of secondary track. I feel badly that I didn't have that  
6 thing ready, have the track in there and operational by the  
7 time they were operational for all others.

8 JUDGE TOREM: I appreciate that. I want to make sure  
9 I understand from you that you acknowledge that there was or  
10 wasn't a paid commercial operation going prior to today and  
11 maybe back as far as October to move those trains so that a  
12 test train may have been operated at the railway's expense, but  
13 I want to know, yes, there were also some commercial trains so  
14 there was financial benefit to the railway by operating at  
15 early, as well.

16 MS. COLE: Yes. The way the short line payment system  
17 works, we get paid by Burlington Northern. It's as though  
18 Burlington Northern owned it and operating it and we get a  
19 division of the revenue -- pittance, of course -- anyway, for  
20 the long haul across country.

21 JUDGE TOREM: All right. Thank you, sir. I  
22 appreciate your candor today.

23 Counsel, I think this does address all the concerns  
24 that I raised earlier with the Commission. The Commission's  
25 main concern at that intersection between track and road that

0053

1 we have the public safety assured. I appreciate the detail  
2 that has gone in to addressing the car queuing issue on Pioneer  
3 Way east as well as the detail to making sure the flaggers are  
4 fully certified to making sure that we have a limitation on how  
5 long those train tracks and traffic might block the  
6 intersection, and even the weekday timing issue that's now been  
7 pen and inked on the clarification.

8 I will sign the proposed Order.

9 I'll ask Ms. Woods to make sure I have an electronic  
10 copy so it'll be in our system if I had typed these 11 pages  
11 and attachments. I appreciate the parties taking that off my  
12 desk.

13 What I want to make sure that Commission staff should  
14 also be following up with an investigation and be in touch with  
15 Mr. Cole and Mr. Halinen to make sure we have a document of  
16 some sort indicating the prior non-compliance with order one  
17 from January of 2010 and whether Commission staff believes they  
18 want to make a recommendation of the penalty of any amount or  
19 what the normal amount might be in this case so Mr. Cole has  
20 that on his desk and understands the compliance with the  
21 Commission Order is not an option and something to be  
22 negotiated around but to be complied with strictly at risk of  
23 penalty. Whether the Commission would choose to a certain  
24 penalty remains to be reviewed based on the record developed  
25 today and any other further record that Mr. Halinen would be

0054

1 entitled to explain justifications as we defer that issue as to  
2 the timing was -- what it was. It was a future issue, but I  
3 want to make sure that's looked at and then if they indicate  
4 they're not seeking penalty the Commission would like to know  
5 why as well.

6 Is there anything else for the record this morning,  
7 Mr. Salmon?

8 MR. SALMON: No.

9 JUDGE TOREM: Ms. Woods?

10 MS. WOODS: I just want to get clear on a procedural  
11 question. On the proposed Order would you like me to e-mail  
12 that directly to you or submit it through RMS?

13 JUDGE TOREM: Why don't you e-mail that directly to me  
14 so that I can have one of our assistants, Ms. Kaech or  
15 Ms. Walker, that the record center gets it in the appropriate  
16 format and go from there.

17 I will sign this Order and date it today, the 26th of  
18 January, and I'll provide this original to Ms. Walker. If the  
19 parties want to have a copy made today I think we can use our  
20 facilities here. Make sure you walk out with a hard copy today  
21 and there will be electronic copies delivered later this  
22 afternoon.

23 MR. HALINEN: Thank you very much.

24 JUDGE TOREM: Mr. Cole, any questions?

25 MR. COLE: No. I would offer my profound apologies

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1 for causing everybody all this problem and get her done  
2 attitude, of course, doesn't always -- isn't the best course.

3 JUDGE TOREM: Well, from our shared military  
4 experience we know that that's sometimes the case.

5 Thank you for the drawings. I'll hold on to these.  
6 If there are smaller electronic versions that want and need to  
7 be in the record system I'll leave that to staff if that should  
8 occur. It'll be a reference for me if there's any further  
9 items that need to be taken in this way.

10 The only other styling is strike the word "proposed"  
11 and pen and ink that this is now "Order three" in this matter.  
12 So, it's Order 03, so when we track it that will be how the  
13 record center will have it.

14 Okay. All right. Seeing nothing further, it's now  
15 about 10:20, and we are adjourned.

16 (Conclusion of proceedings.)

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I, LESLEY E. KAY, a duly authorized Court Reporter and Notary Public in and for the State of Washington, residing in Olympia, do hereby certify;

That the foregoing proceedings were taken before me and thereafter transcribed by me by means of computer-aided transcription; that the transcript is a full, true and complete transcript of said proceedings;

That I am not a relative, employee, attorney or counsel of any party to this action, or relative or employee of any such attorney or counsel, and I am not financially interested in the said action or the outcome thereof;

That upon completion of signature, if required, the original transcript will be securely sealed and the same served upon the appropriate party.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this \_\_\_ day of \_\_\_\_\_, \_\_\_\_.

---

LESLEY E. KAY  
WA CCR #3244  
CA CSR #6847  
NV CCR #791