



STATE OF WASHINGTON
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • TTY (360) 586-8203

December 7, 2010

Byron Cole
Meeker Southern Railroad
4725 Ballard Avenue NW
Seattle WA 98107-4810

Sent via E-mail and First Class Mail

**Re: TR-100036 – Status of Crossing Modifications at 134th Avenue East
USDOT #085536R**

Dear Mr. Cole:

Thank you for your December 1, 2010, e-mail regarding progress on the crossing modifications at the 134th Avenue East grade crossing in Pierce County. A copy of the e-mail is attached. Washington Utilities and Transportation Commission (Commission) staff is very concerned about the current situation you describe at this crossing. As we understand it, the spur track was constructed several weeks ago but the flashing light signals and other warning devices have not yet been installed in compliance with Commission Order 01 in Docket TR-100036. A copy of this order is attached.

We further understand that you have been operating trains on a regular basis over the modified crossing on the main line track and about once a week over the spur track for “testing” purposes. The 134th Avenue crossing does not have the appropriate level of protection for highway users. Staff strongly believes that these operations present an unacceptable and unnecessary risk to public safety and must be remedied immediately.

In accordance with Washington Administrative Code (WAC) 480-07-883, you are directed to submit a plan of action for full compliance with the Commission’s Order by December 20, 2010. A copy of WAC 480-07-883 is attached. Staff expects the plan to include:

- A reasonable timeline for fully conforming to the conditions in Order 01 in Docket TR-100036, dated January 12, 2010.

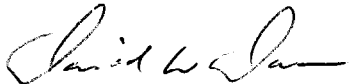


- Specific steps you will take to protect the public until the signals and other safety devices are installed and fully operational. To say “[t]he conductor on the test train hand flags the crossing as needed” is not acceptable.

This letter also serves as official notice that Commission staff considers any commercial use of the spur track as currently configured to be a violation of Commission Order 01 in Docket TR-100036, issued January 12, 2010. Commercial use in this context is defined as dropping off or picking up cars at your customers’ facility for compensation. If staff finds any material violation of the Commission’s Order, we intend to initiate enforcement action which may result in an emergency cease and desist or abatement order and monetary penalties up to \$1,000 per violation.

If you have questions or require additional information, please contact Kathy Hunter at (360) 664-1257 or khunter@utc.wa.gov.

Sincerely,



David W. Danner
Executive Director and Secretary

Attachments

cc: David Halinen, Attorney, Meeker Southern Railroad
John Salmon, Attorney, Pierce County
Jerry Bryant, Pierce County
Marlene Ford, Pierce County

Hunter, Kathy (UTC)

From: Byron Cole [byroncole2@comcast.net]
Sent: Wednesday, December 01, 2010 10:58 AM
To: Hunter, Kathy (UTC)
Cc: byroncole@comcast.net
Subject: RE: USDOT Number Posted at Shaw Road

Kathy:

Sorry about the missing message, I don't know what I did there. Probably multi-tasking, but not very effectively.

As to signage at the new MSN/Shaw Road grade crossing: I am having a second sign made, as I decided to subscribe to a contractor furnished answering service for all grade crossings on both MSN and BDTL. I should have it within a week. We will update our other bungalows within the next few months.

Regarding progress on the crossing at 134th avenue east, we continue to gather the required components needed to control the flashing lights. We are also keeping a close eye on the stability of the newly constructed spur subgrade and grade, and our customers retaining wall, by operating a test train about once a week. The conductor on the test train hand flags the crossing as needed. We will be meeting ,on site, with Pierce County Public Works, fairly soon to discuss the grade of the north approach of 134th, to our mainline track. This grade does not meet federal highway standards for gradients on approaches to railroad tracks. It is too steep, and has been this way for years. In addition, the paving is narrower at this point than at any other place in the vicinity of the crossing.

Regards, Byron

From: Hunter, Kathy (UTC) [<mailto:khunter@utc.wa.gov>]
Sent: Wednesday, November 24, 2010 10:25 AM
To: Byron Cole
Subject: RE: USDOT Number Posted at Shaw Road

Hi Byron,

There was no message included in the e-mail you sent me late Monday. Did you mean to include some information?

Thanks -

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
Cell: (360) 701-1612
Fax: (360) 586-1150

From: Byron Cole [<mailto:byroncole2@comcast.net>]
Sent: Monday, November 22, 2010 6:12 PM
To: Hunter, Kathy (UTC)
Cc: byroncole@comcast.net
Subject: RE: USDOT Number Posted at Shaw Road

From: Hunter, Kathy (UTC) [<mailto:khunter@utc.wa.gov>]
Sent: Friday, November 19, 2010 1:55 PM
To: Byron Cole
Subject: USDOT Number Posted at Shaw Road

Hi Byron,

Checking back in with you to see if the USDOT's (sign) has been posted at the new Shaw Road crossing.

Thanks -

Kathy Hunter, Deputy Assistant Director, Transportation Safety
Washington Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
PO Box 47250
Olympia, WA 98504-7250

Office Telephone: (360) 664-1257
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**BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION**

MEEKER SOUTHERN RAILROAD,)	DOCKET TR-100036
)	
Petitioner,)	ORDER 01
)	
)	ORDER GRANTING PETITION TO
)	MODIFY A PUBLIC HIGHWAY-RAIL
)	GRADE CROSSING AND UPGRADE
PIERCE COUNTY PUBLIC WORKS AND UTILITIES,)	WARNING DEVICES AT 134 th
)	AVENUE EAST
Respondent.)	
)	
.....)	USDOT: #085536R

BACKGROUND

- 1 On January 4, 2010, Meeker Southern Railroad (Meeker Southern or Petitioner) filed with the Utilities and Transportation Commission (Commission), a petition seeking approval to modify a railroad-highway grade crossing and upgrade warning devices. The crossing is identified as USDOT #085536R and is located at the intersection of 134th Avenue East and Petitioner’s tracks in Pierce County.

- 2 Respondent Pierce County Public Works and Utilities consented to entry of an Order by the Commission without further notice or hearing.

- 3 Current railroad warning devices at the crossing consist of cross bucks, advance warning signs, and pavement markings.

- 4 134th Avenue East is classified as a collector arterial with two-lane, two-way traffic and a posted vehicle speed limit of 35 miles per hour (mph). Average annual daily traffic through the crossing is estimated at 2,525 vehicles, including eight school bus trips. Commercial motor vehicle traffic is minimal.

- 5 The Petitioner currently operates trains over the crossing 10 days per month. On these operating days, Meeker Southern operates four trains per day over a single main line track. The maximum allowable train speed limit is 10 mph. No passenger trains operate on these tracks.

- 6 Meeker Southern proposes to add a spur track to the crossing which will allow service to a new customer. Operations on the new spur track will increase the number of trains using the crossing on operating days to 12 and eventually up to 18 per operating day.
- 7 Meeker Southern will upgrade the passive warning devices to shoulder-mounted flashing lights. Motion sensitive train detection will be installed to detect approaching trains. Each assembly mast will have three pairs of 12-inch flashing LED light signals; pedestrian bell; cross buck sign; “2 Tracks” sign, and a “Stop Here When Flashing” sign. The signal equipment bungalow will contain a back-up power supply, power-on indicator light, and an emergency notification sign.
- 8 Meeker Southern will also install advance warning signs and pavement markings in accordance with the design drawings submitted with this petition. In addition, Meeker Southern will trim and maintain existing brush within the clearing sight distance triangles as specified in the design drawings. The existing crossing surface will be upgraded from plank to asphalt. The new spur track crossing surface will also be asphalt.
- 9 The proposed modification of this crossing is in the interest of providing rail access to industrial properties located to the east-southeast of 134th Avenue East and promoting economic development in Pierce County.

FINDINGS AND CONCLUSIONS

- 10 (1) The Washington Utilities and Transportation Commission is an agency of the State of Washington having jurisdiction over public railroad-highway grade crossings within the state of Washington. *Chapter 81.53 RCW.*
- 11 (2) The 134th Avenue East grade crossing, identified as USDOT #085536R, is a public railroad-highway grade crossing within the state of Washington.
- 12 (3) WAC 480-62-150(1)(f) requires that the Commission grant approval prior to constructing multiple railroad tracks at a crossing and WAC 480-62-150(2)(b) requires that the Commission grant approval prior to adding active crossing signal warning devices at a public railroad-highway grade crossing within the state of Washington.
- 13 (4) Commission Staff investigated the petition and recommended that it be granted with conditions.

- 14 (5) After examination of the petition filed by Meeker Southern Railroad on January 4, 2010, and giving consideration to all relevant matters and for good cause shown, the Commission grants the petition.

ORDER

THE COMMISSION ORDERS:

- 15 The petition of Meeker Southern Railroad to modify a railroad-highway grade crossing and upgrade warning devices at the intersection of 134th Avenue East and Petitioner's tracks in Pierce County is granted. Approval of the petition is subject to the following conditions:

- (1) The modifications must conform to those described and attached to the petition and set forth on the five-sheet set of civil engineering design drawings. The drawings are identified by December 29, 2009, and October 20, 2009, approval signatures by Brian D. Stacy, P.E., on behalf of Pierce County Public Works Director.
- (2) Traffic control devices must comply with all applicable standards specified in the U.S. Department of Transportation Manual on Uniform Traffic Control Devices.
- (3) 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.

The Commissioners, having determined that this filing complies with the requirements of WAC 480-62-150(1)(f), WAC 480-62-150(2)(b) and RCW 81.53.030, directed the Secretary to enter this Order.

DATED at Olympia, Washington, and effective January 12, 2010.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Executive Director and Secretary

NOTICE: This is an order delegated to the Secretary for decision. In addition to serving you a copy of the decision, the Commission will post on its Internet Web site for at least fourteen (14) days a listing of all matters delegated to the Secretary for decision. You may seek Commission review of this decision. You must file a request for Commission review of this order no later than fourteen (14) days after the date the decision is posted on the Commission's Web site. The Commission will schedule your request for review for consideration at a regularly scheduled open meeting. The Commission will notify you of the time and place of the open meeting at which the Commission will review the order.

The Commission will grant a late-filed request for review only on a showing of good cause, including a satisfactory explanation of why the person did not timely file the request. A form for late-filed requests is available on the Commission's Web site.

This notice and review process is pursuant to the provisions of RCW 80.01.030 and WAC 480-07-904(2) and (3).

WAC 480-07-883

Compliance filing — Filing requirements; timing; commission action.

A party must strictly limit the scope of its compliance filing to the requirements of the final order to which it relates. If the commission finds that a compliance filing varies from the requirements or conditions of the order authorizing or requiring it, either by falling short of or by exceeding the authorization, conditions, or requirements of the order, the commission may reject the filing unless it has preapproved the variance. If the commission accepts in error a compliance filing that does not comply with the order authorizing the filing, the commission's acceptance does not validate the noncompliant elements of the filing.

(1) Filing requirements.

(a) A party who files a compliance filing must make its filing consistent with the filing requirements of the docket authorizing the filing, i.e., file the required number of copies, and serve the filing on all other parties in the docket.

(b) A compliance filing must include the following:

(i) A cover letter that identifies the order to which the filing relates;

(ii) All required tariff sheets; and

(iii) Work papers that clearly demonstrate the derivation of the proposed tariffs.

(2) **Service requirement.** A party who makes a compliance filing must serve it on each party to the proceeding in which the compliance filing is authorized or required. Service must be initiated on the same day as the filing.

(3) Timing; effective date.

(a) The commission will state in its final order authorizing or requiring a compliance filing the date by which the compliance filing must be made and the effective date that should appear on any tariff sheets that are required as part of a compliance filing. The commission may state the amount of time it will require to examine any proposed compliance tariff sheets between their filing and their proposed effective date.

(b) A compliance filing does not become effective automatically on its stated effective date. Commission action is required before any compliance filing can be effective. The commission may enter an order approving a compliance filing or taking other appropriate action. The commission may delegate to the secretary, by written authorization in individual proceedings, the authority to approve or take other appropriate action with respect to a compliance filing.

(4) Commission action on compliance filing.

(a) The commission may enter an order in any proceeding in which a compliance filing is authorized or required that:

(i) Approves the compliance filing; or

(ii) Rejects a compliance filing or any portion of the filing that apparently fails to comply.

(b) If the commission rejects all or part of a compliance filing, the party may refile. The commission may impose conditions on refileing.

(c) If the commission approves a compliance filing, but later discovers that it failed to recognize that the compliance filing was, in fact, incomplete or did not fully comply with the order authorizing or requiring the filing, the commission may take any necessary and lawful steps to secure full compliance.