

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUNDS PILOTS,

Respondent.

DOCKET TP-220513

TOTE MARITIME ALASKA, LLC'S POST
HEARING REPLY BRIEF

I. INTRODUCTION

1. TOTE does not seek “preferential treatment.” The pilotage rates for any similarly situated vessel which PSP services, or in the future might service, should be assessed based on the same criteria TOTE proposes herein. TOTE wants only to have its vessels assessed appropriately in light of their characteristics and without suffering rate shock. The Commission determined and ordered appropriate revenues for PSP during the last GRC; PSP should not be allowed to circumvent that determination and order by abruptly hiking TOTE’s invoicing and deriving higher total revenues.
2. PSP ignores the “absolute” versus “relative” risk dichotomy, and urges that because TOTE’s vessels purportedly are as risky to pilot as others, fees to service them should be commensurate with those charged for other vessels. Were the Commission to accept this analysis, PSP would derive overall higher revenues, as PSP does not propose lowering the rates it charges to those other vessels. In any event, the GRT tonnage metrics of TOTE’s vessels best

reflect their lighter weight and shallower draft, which support a conclusion that they are more maneuverable and less risky to operate. PSP offers no counter-argument.

3. The minimal testimony PSP devotes to the rate shock issue by portraying pilotage fees as a purportedly minor cost element of vessel operation disregards the notion of gradualism and how the Commission has addressed the issue for years. It cannot be disputed that PSP's precipitous fee increase constitutes rate shock – PSP hardly contests this.

4. As further explained below, the Commission should rule in favor of TOTE on all issues, and order PSP to refund the overcharged fees it has collected from TOTE since January 2021.

II. LEGAL ARGUMENT

5. PSP's argument may be summarized as "TOTE's vessels are as long as, and therefore as risky to operate as, others PSP services, and so should be assessed at the same rates as others; and TOTE's pilotage fees are a small element of vessel operation costs, and so there is no rate shock by the change in pricing methodology." This disregards (1) PSP's culpability in not proposing for TOTE's and the Commission's consideration in the last GRC the altered pricing methodology; (2) the fact that risk levels are not quantifiable, i.e., that multiple factors contribute to how risky a vessel is to pilot, only one of which is its length; (3) that by requesting that PSP and TOTE address the level of risk in piloting TOTE'S vessels, the Commission sought to determine how TOTE's vessels should be rated as compared to others, and not to allow PSP to derive higher-than-authorized gross revenues simply by showing TOTE's vessels are as risky as others; and (4) that rate shock is determined not as a function of a rate payer's overall operational costs, but as a function of how quickly and severely its pilotage rates are increased.

1) Risk Analysis

6. It is readily apparent that gauging levels of risk to pilot vessels is not an exact science, and is subject to numerous factors, only one of which is vessel length. As PSP puts it, "[t]here is

no such thing as a ‘typical’ piloted vessel on Puget Sound. Rather, different ships may present advantages or disadvantages depending on any number of factors that are simply not practical to incorporate in rate setting.” PSP’s Post-Hearing Brief at 57. At the heart of the analysis, as PSP’s witness Capt. Klapperich agreed, is maneuverability, which is impacted as much by vessel weight, draft, and operational equipment as vessel length. True, TOTE’s vessels are as long as others PSP services. But they have lower GRT tonnage measurements because of their exempted spaces. PSP agrees “[t]hat is because unlike GT ITC, the GRT system excludes or ‘exempts’ certain spaces including ‘open space.’” *Id.* at 54.

7. PSP analyzes only the comparable lengths of vessels with different tonnage metrics as the sole consideration. It obscures the testimony of witnesses from both parties by referring to the tonnage metrics as calculating “volumetric size.” *Id.* at 55. But PSP’s argument addresses risk only in the context of vessel length.

8. Vessels which do not have high levels of exempted spaces have minimally different GRT and ITC tonnages. They would be less maneuverable because of larger vessel weight and draft, rendering them less maneuverable during pilotage. PSP easily could have presented a comparison of the GRT and ITC tonnages of other vessels it services as a basis to demonstrate a disparity; TOTE assumes PSP did not do so because it would be apparent that the difference is minimal for most vessels. The unique design of TOTE’s vessels creates lower GRT than ITC tonnages for reasons pertinent to a risk analysis: their light weight and shallower draft render them more maneuverable, and therefore less risky to operate.

2) Rate Shock

9. PSP’s obscure attention to the rate shock issue is basically limited to a sentence in Mr. Erikson’s testimony, i.e., that he believes TOTE incurred no rate shock because “[g]iven the economic insignificance of pilotage rates to vessel voyages as discussed above, there is no

potential ‘rate shock’ associated with eliminating an unfair discount provided to a single buyer of pilotage services.” *Id* at 56.

10. Rate shock is a consideration the Commission has prioritized in dozens of rulings and orders in various contexts for many years. TOTE could find no precedent for an interpretation of “rate shock” that is derived not from the level and rapidity of a pricing increase, but from a rate payer’s overall operational costs. In the last GRC’s Order 09, the Commission specified that “[w]e decline to adopt Staff’s proposed rate design, which would result in rate shock for smaller vessels by producing rate increases as high as 234 percent.” Order 09 at iii. In other words, the concern was actual pilotage rate increase, and not increases of a rate payer’s overall operational expenses.

11. PSP raises the timing of TOTE’s petition, just as it did in its Petition for Reconsideration of the Commission’s Orders in TOTE’s earlier petition to amend Order 09 in the last GRC. *Id.* at 57. The apparent theory is that because TOTE waited months before petitioning the Commission, it must not have subjectively experienced rate shock. However, the delay in TOTE’s filing the petition resulted from PSP’s taking months to consider TOTE’s request that the parties jointly petition for amendment. See TOTE Maritime Alaska, LLC’s Response to Petition for Reconsideration of Order 13 at 3. Briefly, TOTE addressed with PSP the precipitously increased rates and its counsel immediately after learning of the rate increase in January 2021. PSP’s counsel then requested from TOTE a letter explaining TOTE’s position, and then delayed responding for months. The Commission denied PSP’s Petition for Reconsideration. Thus, any pre-petition delays were occasioned by PSP and its (previous) counsel in response to TOTE’s good-faith attempts to avoid the costs and inconvenience of

TOTE's petition and intervention in the current GRC.

PSP contends:

TOTE's claim that a caveat in the tariff is needed because domestic vessels might not have a GT ITC measurement is incorrect, as demonstrated by the fact that PSP provides service to dozens of domestic vessels, all of which have GT ITC measurements. In fact, since 1992, all domestic ships above 79 feet length-over-all are required by the Coast Guard to have a GT ITC measurement.

Id. at 55-56. The fact that all vessels PSP currently services have GT ITC measurements is irrelevant. PSP offers no authority for its conclusion that "since 1992, all domestic ships above 79 feet length-over-all are required by the Coast Guard to have a GT ITC measurement" save the unsupported statement of its witness Phil Essex. The deleted language of PSP's earlier tariff Item 300, "[f]or vessels where a certificate of international gross tonnage is required, the appropriate international gross tonnage shall apply," would be nonsensical if all vessels were required to have them. As argued in TOTE's original petition to amend:

49 CFR §69.69(a), entitled **Tonnage Certificates**, provides as follows: "On request of the vessel owner, the authorized measurement organization must issue an International Tonnage Certificate (1969) as evidence of the vessel's measurement under this subpart for a vessel that is 24 meters (79.0 feet) or more in registered length, **will engage on a foreign voyage**, and is not a vessel of war [emphasis added]." 46 U.S.C. §14303, entitled **Tonnage Certificate**, provides that "[a]fter measuring a vessel under this chapter, the Secretary shall issue, on request of the owner, an International Tonnage Certificate (1969) and deliver it to the owner or master of the vessel. For a vessel to which the [International Convention on Tonnage Measurement of Ships] does not apply, the Secretary shall prescribe a certificate to be issued as evidence of a vessel's measurement under this chapter." The Coast Guard's Navigation & Vessel Inspection Circular NVIC 11-93 specifies that an ITC "must be carried on board any U.S. flag vessel (whether self-propelled or not) that is greater than 79 feet in convention length and **that is engaged on a foreign voyage** [emphasis added]." WAC 363-116-0751 and RCW 88.16.090, addressing pilot licensing, make separate references to GRT and ITC tonnage for purposes of pilot qualification.

TOTE's WAC 480-07-875 Petition to Amend Order at 15. Further, PSP's point that "... the fact that TOTE regularly pays pilotage based on GT ITC in British Columbia without objection

strongly undercuts its claim that it is somehow unreasonable to require it to do so on Puget Sound” is also flawed. PSP’s Post-Hearing Brief at 57. There is no option but to assess pilotage for vessels engaged in international voyages, as is the case when TOTE’s vessels call on BC ports, based on their international tonnage. TOTE’s vessels happen to make such occasional international voyages for maintenance and repair. Other vessels PSP services, or might service, might not. They might not have international tonnage certificates. At issue is a tariff of services and pricing which any member of the relevant public might seek PSP services under. PSP cannot justify its revised pricing process on this basis.

III. CONCLUSION

12. PSP asserts that “[t]he highly subjective and individualized ship-by-ship risk assessment that TOTE advocates is unworkable and would not lead to fair (or even predictable) rates.” *Id.* at 57. TOTE does no such thing, and this statement summarizes the flaws in PSP’s position. TOTE wishes to continue with the decades-long process PSP had no issue with regarding TOTE’s, and presumably all other coastwise vessels, being assessed rates based on GRT tonnage. TOTE’s vessels are less risky to pilot than most others, at least under certain analyses; but in any event, PSP should not be permitted to skirt the revenue caps the Commission ordered in the last GRC by ignoring the absolute versus relative risk dichotomy. That TOTE has experienced rate shock is indisputable.
13. Accordingly, the Commission should award TOTE all relief requested, including modification of the existing tariff Item 300; refund of PSP’s overcharged fees; and any other measures that would protect TOTE from incurring rate shock.

Dated this 12th day of May, 2023.

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