

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

IN RE THE MATTER OF

TOTE MARITIME ALASKA, LLC'S  
PETITION FOR AMENDMENT,  
RESCISSION, OR CORRECTION OF  
ORDER 09 IN DKT 190976

DOCKET TP-190976

MOTION FOR LEAVE TO FILE REPLY IN  
SUPPORT OF PETITION

**I. INTRODUCTION**

1. Movant TOTE Maritime Alaska, LLC (“TOTE”) moves, pursuant to WAC 480-07-825(2)(d)(ii), for leave to file a reply in further support of its WAC 480-07-875 Petition to Amend Order. TOTE could not have anticipated that (1) Puget Sound Pilots (“PSP”) and Staff would raise procedural arguments about the standards and regulatory provisions governing the issues TOTE raises in its petition, essentially recasting TOTE’s petition into a request for a rehearing; or (2) Staff would propose alternative methodologies to redress TOTE’s concerns and otherwise impact TOTE’s rights and interests. The regulatory framework governing TOTE’s petition bears on, if not dictates, how TOTE’s arguments will be analyzed and the burdens it must sustain to prevail. TOTE should be given an opportunity to be heard about the alternative options Staff proposes. Both circumstances essentially are new petitions to the Commission

brought by PSP and Staff to which TOTE should be allowed to respond. Accordingly, TOTE requests leave to file a reply addressing points it could not foresee PSP and Staff raising.

2. In the concurrently filed Proposed Reply in Further Support of TOTE's Petition, TOTE provides detail about points raised below, as well as citations to pertinent parts of the record.

## II. ARGUMENT

### *Leave for Reply*

3. TOTE requests leave to file a reply under WAC 480-07-825(2)(d)(ii), entitled **Petition for administrative review**, *Reply – By Leave of commission*, which provides:

A party otherwise has no right to reply to a response, but may petition for leave to reply. Any such petition must cite new issues raised in the response, state why the petitioner could not have reasonably anticipated those issues, and explain why a reply is necessary. The petitioner should attach a reply to the petition for leave to accept the reply.

4. TOTE addresses the new issues PSP and Staff raise in their response briefing and why TOTE could not reasonably have anticipated them. A reply is necessary so that the record is complete with TOTE's position on those unanticipated issues as presented below.

### *Governing Regulatory Standard of Petition*

5. TOTE brought this Petition under WAC 480-07-875, entitled "**Amendment, rescission, or correction of order**," urging that as written, the Commission's Final Order Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing (DKT TP-190976), dated November 25, 2020 ("the Order"), as well as the revised tariff PSP filed pursuant to the Order, do not fulfill the Commission's obligations under RCW 81.116.020, entitled **Pilotage services—Tariffs—Commission shall establish—Duties**, specifically: "(1) The commission shall establish in tariffs the rates for pilotage services provided under chapter 88.16 RCW" and ... "(3) ... shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services."

6. However, PSP argues in its response that WAC 480-07-870, entitled **Rehearing**, should govern the Commission's consideration of TOTE's Petition. Staff also notes that TOTE's Petition does not seek a WAC 480-07-870 rehearing and opportunity to submit new evidence. TOTE could not have anticipated that PSP and Staff would make this argument, and were the Commission to accept it, TOTE's arguments in its Petition would be presented differently. TOTE would like an opportunity to explain that WAC 480-07-875 is designed for the circumstances at hand and should be applied, and that even if WAC 480-07-870 is applied, TOTE's petition meets its requirements. A reply is necessary to that end.

7. By asking the Commission to reframe TOTE's Petition and consider it within different regulatory parameters, PSP essentially petitions the Commission itself. By responding to PSP's position in a reply, TOTE would essentially be responding to the substance of PSP's petition. TOTE did not address PSP's position that TOTE's request is a *de facto* request for rehearing in its original petition; could not have foreseen that PSP would attempt to cast it as such; and should be allowed an opportunity to explain why a rehearing is not necessary.

***Staff's Proposed Resolutions***

8. Staff's response to this Petition includes three proposed courses of action, or "options," urging the Commission to adopt one of them. Each of these proposed options would affect TOTE's rights and/or require action on its part for compliance. TOTE did not propose two of Staff's options (one of them is simply to grant TOTE's petition), or address their subject matter in its Petition. The option Staff urges the Commission to accept involves an intricate, three-step process in which TOTE would have to participate; and the other would require TOTE's entry into a special contract with PSP.

9. Were the Commission to adopt one of Staff's two proposed approaches to addressing the Petition's issues, TOTE would not have had an opportunity to be heard about the adopted approach's implications on TOTE unless it is given leave to file a reply. Here again, Staff essentially petitions the Commission itself for action TOTE did not request, seeking relief TOTE did not consider or address in its Petition. TOTE could not have anticipated Staff's proposed options until it saw them in Staff's response brief. Under these circumstances, a reply is warranted.

### III. CONCLUSION

10. For the reasons presented above, TOTE should be granted leave to file a reply. The record should be complete, and encompass TOTE's position as to unanticipated points PSP and Staff raise.

Dated this 12th day of November, 2021.

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