

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
Complainant,

v.

PUGET SOUND PILOTS,
Respondent.

Docket TP-190976

RESPONSE TO COMMISSION'S NOTICE
OF INTENT TO AMEND FINAL ORDER

1. Pursuant to the Commission's Notice Reopening the Record; Notice of Intent to Amend Final Order, issued on December 20, 2021 (the "Commission's Notice"), which authorized the parties to file responses to the Commission's proposed amendment by 5 p.m. on January 14, 2022, Puget Sound Pilots ("PSP") files this Response to the Commission's Notice.

I. RESPONSE

A. The Commission Should Issue Specific Findings of Fact and Conclusions of Law Addressing Procedural Standards.

2. As the Commission is well aware, PSP and the Commission Staff both raised a number of procedural concerns about the timing of TOTE's Petition. Those concerns included: (1) the timeliness of TOTE's Petition; (2) whether the Commission may adopt a new tariff within 12 months of a prior tariff; and (3) the standards to be applied to a Petition to Amend under WAC 480-07-875. The Commission's Notice does not appear to resolve any of these issues other than perhaps through implication. Rather than implied findings and conclusions, the parties would be aided by clear and express findings of fact and conclusions of law addressing these points. In fact, failing to address the circumstances under which the Commission will authorize post-order Petitions such as TOTE's may invite further challenges by PMSA members, which was an issue PSP raised in its Response to TOTE's Petition. PSP thus suggests that the Commission issue an order with specific findings of fact and conclusions of law resolving TOTE Marine Alaska, LLC's ("TOTE") Petition so that the procedural rules are clear to the parties moving forward.

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B. Other Issues Should be Preserved for the Next General Rate Proceeding.

3. The Parties would also be benefitted by clear findings and conclusions addressing the Commission's intent regarding the amendments it will make to the Final Order. The Commission's Notice states that the Commission intends to amend the Final Order, Order 09, to address a deficiency in the record that substantially interfered with the Commission's ability to evaluate PSP's proposed rate design, and as a result the Commission intends to:

(1) require[e] PSP to identify and, from the date of the amended Final Order forward, defer until the rate effective date of PSP's next general rate case the incremental difference between the revenues collected from TOTE under PSP's current tariff (which assesses tonnage charges on IGT) and the amounts PSP would have collected from TOTE had tonnage charges been assessed based on GRT; and (2) requiring PSP in its next general rate case to present for Commission consideration and determination whether Gross Tonnage should be calculated using GRT or IGT, including for vessels operating exclusively in coastwise trade.¹

4. While these specific proposed amendments direct what action PSP should take to account for the revenue difference between tonnage charges based on GRT and IGT, PSP would benefit from further clarity in a number of ways. For one, the Commission should make clear that it intends for PSP to create a regulatory liability in the same amount of the deferred revenue.
5. The amended order should also be more specific about the potential options it may consider for the future treatment of the revenue it will order PSP to defer. If the Commission is requiring that PSP defer revenue so that the Commission can preserve the option of reducing PSP's future revenue requirement to correct a past workpapers error or to retroactively address a change in rate design, the Commission should be clear that this is its intent so that PSP's evidentiary presentation and legal argument in the next general rate case is appropriately guided.
6. While the Commission has not yet indicated what treatment is being considered, if the Commission is indeed considering rate relief to correct an error that resulted in increased charges to ratepayers, in the interest of fairness and equity the Commission should also simultaneously

¹ Commission's Notice of Intent to Amend Final Order, p. 2.

consider mistakes that resulted in underearning. As noted by PSP in its Response, the Commission relied upon other mistakes in the record that have resulted in PSP underearning its revenue requirement.²

7. The most significant mistake that reduced revenue collection can be found in the Commission Staff's vessel traffic projection in Exhibit SS-3r, which the Commission ultimately relied upon in Order 09. Specifically, Exhibit SS-3r included an inadvertent error in counting the test period vessel traffic that resulted in an over-projection of vessel traffic. Staff projected vessel traffic based upon a test year assignment count of 7,334. However, Weldon Burton, testified there were only 7,033 assignments in the time period used as the base year for projecting vessel traffic. Exh. WTB-1T. 15: 22-24.
8. The error in Exhibit SS-3r which resulted in Staff counting 7,334 vessel assignments is explained in greater detail in an email exchange between Commission Staff and Capt. Mike Moore in TOTE's Exh. MM-01. Specifically, Staff misunderstood how second pilot invoices were issued and counted them twice, which resulted in Staff erroneously concluding there were 7,334 assignments rather than 7,033. Had Staff not double-counted those assignments, after applying Staff's "VEAT" adjustment, Staff would have projected far fewer assignments for the rate year. But the Commission expressly approved Staff's vessel traffic projection in Order 09. Thus, when PSP performed the priceout, it was required to spread its revenue requirement over an erroneously inflated number of forecasted assignments. PSP is still evaluating the impact of this specific error, but believes it resulted in a revenue loss for 2021 of well over \$1,000,000.
9. While PSP understands the Commission cannot increase rates to make PSP whole for the revenue loss that resulted from the mistake in Staff's calculations, the Commission can address this error at the same time it addresses whether domestic vessels should be charged based on their IGT or

²² PSP's Response to TOTE's Petition, ¶ 53.

their GRT. In other words, at the conclusion of the next general rate proceeding, should the Commission ultimately apply the deferred revenue to a future rate year, it can first reduce the deferral by an offsetting amount to be calculated based on the revenue loss that resulted from Staff's mistake.

10. In fact, the offsetting errors were recognized by Staff in the email exchange included in TOTE's Exhibit MM-1 and were separately acknowledged to PSP. With the understanding that there were errors that impacted revenue collection on both sides of the equation, Staff believed they would essentially offset each other. Exh. MM-01. Thus, to the extent the Commission will now require PSP to defer revenue to avoid potential overearning, PSP requests that in the next general rate proceeding the Commission also consider evidence of underearning to offset any potential overearning.

II. CONCLUSION

11. While the Commission's Notice provided the parties with information regarding the amendments it will make to Order 09, it did not provide findings and conclusions to guide the parties going forward. The Commission should also ensure that all parties are treated fairly in the next future rate proceeding when it ultimately determines how deferred revenue should be resolved. Thus, in the interest of clarity for all parties in future rate proceedings, PSP thus requests that the Commission make findings and conclusions addressing the procedural issues raised in response to TOTE's Petition and expressly recognize that it will permit evidence of mistakes that impacted revenue collection to guide its decision regarding the treatment of deferred revenue.

Respectfully submitted this 14th day of January, 2022.

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s/ Blair I. Fassburg _____

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