

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

TOTE MARITIME ALASKA, LLC'S
MOTION FOR CLARIFICATION OR
RECONSIDERATION

I. INTRODUCTION

1. TOTE Maritime Alaska, LLC ("TOTE") moves, pursuant to WAC 480-07-835 and 480-07-850, for clarification or reconsideration of the Commission's Order 12 Granting Petition; Amending Order 09 dated February 2, 2022 ("Order Granting Petition").

II. ISSUES

2. By the Order Granting Tote's Petition, the Commission deferred until the next General Rate Case ("GRC") adjudication of the question of the imposition of a change in gross tonnage rate calculations. TOTE's Petition requested a refund of sums it paid Puget Sound Pilots ("PSP") since January 2021 above rates it would have paid had PSP's service fees been calculated based on tonnage as was done in years past and per representations in PSP's worksheets in support of its 2020 General Rate filing. Regarding this request for refund, the Commission directed PSP to deposit the differentials into a regulatory liability account until the next GRC. Order Granting Petition at para. 30.
3. Did the Commission intend to impose on TOTE the burden of paying to PSP the full IGT-assessed rates from this point forward until the next GRC, with PSP depositing such future collections into the regulatory liability account, or did the Commission intend only to direct PSP

to deposit its past collections into the regulatory liability account? TOTE requests clarification of the Commission's rationale of its decision in that regard; while it also appears there will be no refund, TOTE requests that the Commission reconsider the language of the Order Granting Petition at para. 30 and its corresponding language in the amended Final Order No. 09.

III. DISCUSSION

4. On December 20, 2021 the Commission issued its Notice Reopening the Record; Notice of Intent to Amend Final Order ("Notice"), which provides as follows at page 2:

The Commission finds that the absence of the information identified in TOTE's Petition and the responses and reply thereto from the evidentiary record substantially interfered with the Commission's ability to evaluate PSP's proposed rate design. The Commission thus intends to amend the Final Order to address this deficiency by: (1) ***requiring 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 [emphasis added].

By the clause "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 ...," TOTE inferred that the Commission intended to require PSP to defer, i.e., at least temporarily cease, collecting the incremental difference between two tonnage methodologies until the next GRC. There is no suggestion in the Notice that the Commission, recognizing PSP's lack of evidence and identifiable argument in its last GRC, and the resulting "rate shock" the Commission has always sought to avoid, intended to mandate that TOTE continue paying the exorbitantly higher service rates.

5. The Order Granting Petition provides as follows at paras. 21 and 22:

... Sufficient grounds for rehearing include changed circumstances since the Commission entered an order, harm to the petitioner resulting from the order that the Commission did not consider or anticipate when it entered the order, an effect of the order the Commission did not contemplate or intend, or any good and sufficient cause the Commission did not consider or determine in the order.

WAC 480-160-120(3) requires any party that petitions to revise PSP's tariff to identify each tariff item to be changed, to fully describe the proposed change, and to include information or documents to support the proposed change. Neither PSP's witness testimony nor its underlying data identified any change to PSP's vessel tonnage rate calculation methodology, and no witness explained the difference between using IGT and GRT to calculate rates. Absent that information, the Commission did not know, and could not have known, that there is more than one way to calculate vessel tonnage rates. PSP should have explicitly described the proposed change to its vessel tonnage rate calculation methodology in its direct testimony, provided reasons for the proposed change, and included supporting evidence. As the party with the burden of proof in this proceeding, PSP failed to comply with WAC 480-160-120.

TOTE is unclear as to the Commission's intentions in para. 30 of the Order Granting Petition, which provides as follows:

We require PSP to establish a regulatory liability account to defer, from the date of this Order forward until the rate effective date of PSP's next general rate case, the incremental difference between the revenues collected from TOTE for the Midnight Sun and North Star vessels under PSP's current tariff (which assesses tonnage charges based on IGT) and the amounts PSP would have collected from TOTE had tonnage charges been assessed based on GRT.

Specifically, by the clause "... defer, from the date of this Order forward until the rate effective date of PSP's next general rate case, the incremental difference between the revenues collected from TOTE," does the Commission mean (1) such revenues "collected" in the past (i.e., between January 2021 and the present) to be held in the regulatory liability account; (2) such revenues which will be "collected" in the future (i.e., between the date of the Order Granting Petition and the next GRC); or (3) both?

6. If the Commission intended (1) above, but also intended that PSP not collect the higher IGT-based rates going forward until the next GRC, then TOTE requests clarification of this paragraph and its corresponding provisions in the Amended Order. If the Commission intended (2) or (3) above, then TOTE requests clarification as to the Commission's rationale, which appears to be inconsistent with the Notice. This information would be important to TOTE's participation in the next GRC and would impact the application of the approved pilotage Tariff as to TOTE's vessels.

7. If the Commission intended (2) or (3) above, TOTE concurrently requests reconsideration of the implied directive that TOTE pay the much higher service fees only to have PSP hold them in a regulatory liability account. That arrangement would be inconsistent with the Order's findings that PSP did not adequately identify the tariff change as implemented in the GRC and impose on TOTE the "rate shock" the Commission has prioritized avoiding, i.e., the significant financial burden of paying added pilotage fees of \$378,411.84 in year one and \$383,825.92 in year two, for a total of \$762,237.76 in the two-year revised tariff period. The \$762,237.76 reflect fees that impose substantially higher pilotage costs than in years past and which are unsupported by PSP's submissions in the last GRC represented to the Commission. See Declaration of Alyson Atalie Collier and Second Declaration of Alyson Atalie Collier on file in this petition for specifics about the tremendous economic imposition the IGT-assessed rates have and will have on TOTE.

8. TOTE respectfully submits that it is inequitable for PSP to continue to bill TOTE for higher pilotage rates through 2022 when the Commission has found that PSP failed to meet its burden with regard to the TOTE vessels in the 2020 GRC. Moreover, it is equally inequitable to require TOTE to relitigate this issue during the next GRC for a release of already collected and

impounded funds when TOTE has already presented, and the Commission has found, that PSP failed to meet its burden in the 2020 GRC.

IV. CONCLUSION

9. TOTE supports the findings and conclusions of the Order Granting Petition, but would like to fully understand and have clarified the Commission’s intentions and rationale in the addressed provisions of the Order. In light of the Commission’s findings and conclusions that PSP has no basis for the collection of a rate in excess of that authorized by the Final Order, and because TOTE is now suffering these higher rates and experiencing “rate shock,” TOTE asks the Commission to clarify whether it is indeed its intention that TOTE, the innocent ratepayer, must continue to pay exorbitantly higher rates in 2022 and be required to relitigate these same issues at the next GRC to recover these improperly collected funds; and if so, TOTE respectfully requests that this be reconsidered.

Dated this 14th day of February, 2022.

By: /Steven W. Block

Steven Block, WSBA No. 24299
BlockS@LanePowell.com
LANE POWELL PC
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, Washington 98111-9402
Telephone: 206.223.7000
Facsimile: 206.223.7107

Attorneys for TOTE Maritime Alaska, LLC