

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-190976

ORDER 13

GRANTING IN PART AND  
DENYING IN PART PETITION FOR  
RECONSIDERATION

**BACKGROUND**

- 1 On November 11, 2020, the Washington Utilities and Transportation Commission (Commission) entered Order 09; Final Order Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing (Order 09) in the above-referenced docket. Order 09 was the final order in the first general rate case filed by Puget Sound Pilots (PSP) with the Commission.
- 2 On August 26, 2021, TOTE Maritime Alaska, LLC, (TOTE) filed a Petition for Amendment, Recission, or Correction of Order 09 (Petition) alleging that PSP's invoicing for two TOTE vessels is now based on their international gross tonnage (IGT) as opposed to their regulatory, or domestic, gross register tonnage (GRT), which resulted in substantially higher service rates for TOTE's two vessels than PSP had charged in previous years. TOTE further alleged that PSP represented in its testimony and workpapers that it would continue to assess rates for its two vessels based on GRT calculations. TOTE requested the Commission require PSP to (1) amend its tariff to require PSP to calculate tonnage charges for TOTE's two vessels based on GRT and (2) refund to TOTE the difference the IGT-based rates it has collected to date and the GRT rates that TOTE argues should apply.
- 3 On August 30, 2021, the Commission issued a Notice of Opportunity to Respond to Petition, which established a deadline of Friday, October 15, 2021, to respond to the Petition.

- 4 On October 15, 2021, the Commission received written responses from PSP, Pacific Merchant Shipping Association (PMSA), and Commission staff (Staff).
- 5 On December 20, 2021, the Commission issued a Notice Reopening the Record, Notice of Intent to Amend Final Order, and Notice of Bench Request (Notice). The Notice explained that that the Petition and the responses thereto raise new issues related to the methodology PSP uses to calculate Gross Tonnage that were neither presented to, nor considered and resolved by, the Commission in Order 09. The Commission determined it was appropriate to reopen the record to receive into evidence TOTE's Petition and the parties' responses and reply thereto, as well as supplemental information filed in support of PSP's compliance filing in this Docket.
- 6 The Notice further explained that the absence of the information identified in TOTE's Petition from the evidentiary record – as well as the responses and reply thereto – substantially interfered with the Commission's ability to evaluate PSP's proposed rate design. The Commission thus provided notice that it intended to amend Order 09 to address this deficiency by requiring PSP to track and defer the incremental difference between the IGT-based rates TOTE is currently paying and GRT-based rates for the two vessels at issue, and by requiring PSP to present the issue of Gross Tonnage rate calculation methodologies in its next rate case. The Notice authorized the parties to file responses to the Commission's proposed amendment by January 14, 2022.
- 7 On January 14, 2021, Staff, PSP, and TOTE filed responses to the Commission's Notice.
- 8 On February 2, 2022, the Commission entered Order 12 Granting Petition; Amending Final Order 09 (Order 12). The Commission found that TOTE demonstrated sufficient grounds to amend Order 09 because PSP failed to describe the proposed change to its rate design in testimony, and PSP provided exhibits and workpapers that used its previous methodology for calculating tonnage rates for the two TOTE vessels at issue. The Commission declined to adopt TOTE's proposed amendment to PSP's tariff because the Commission has not yet considered the issue of vessel tonnage rate calculations and TOTE has not yet provided evidence or argument related to the risk of piloting its vessels. The Commission thus concluded that it will decide issues related to calculating gross tonnage rates in PSP's next general rate proceeding and preserved this issue by requiring PSP to establish a regulatory liability account to defer, from the date of Order 12 until the rate effective date of PSP's next general rate case, the incremental difference between the revenues collected from TOTE for the two vessels under PSP's current tariff and the amounts PSP would have collected from TOTE for GRT tonnage charges.

9 Finally, the Commission declined to require PSP to refund to TOTE the incremental revenues it has collected to date because the Commission has not yet had the opportunity to receive testimony and evidence on vessel tonnage rate calculation methodologies in the context of a general rate case. The Commission advised TOTE it may petition to intervene in PSP's next general rate case, at which time it may present evidence to support its request for a refund of the deferred incremental revenues.

10 On February 11, 2022, TOTE filed with the Commission a Motion for Clarification or Reconsideration (Motion). In its Motion, TOTE requests clarification related to the Commission's requirement that PSP defer the incremental difference between the two tonnage methodologies until PSP's next GRC. Specifically, TOTE requests the Commission clarify (1) whether "defer" means that PSP must cease collecting the incremental difference, and (2) whether PSP must defer revenues collected in the past (*i.e.*, from January 2021 forward), revenues collected in the future, or both. TOTE also requests reconsideration of the Commission's "implied directive that TOTE pay the much higher service fees only to have PSP hold them in a regulatory liability account," arguing that such an outcome would be inconsistent with the Commission's findings in Order 12 that PSP did not adequately identify the tariff change as implemented.

### DISCUSSION

11 WAC 480-07-835(2) provides that a party may not file a motion for clarification that seeks to change an outcome with respect to one or more issues resolved by a final order, or that challenges a finding of fact or conclusion of law stated in the order. We thus construe TOTE's Motion as a Petition for Reconsideration. We grant it in part and deny it in part for the reasons explained below.

12 WAC 480-07-850 provides that a party may petition for reconsideration of a final order and that such petition must identify each portion of the challenged order the petitioner contends is erroneous or incomplete; cite those portions of the record and each statute, commission rule, or other law on which the petitioner relies to support its petition; and present a brief argument in support of the relief it requests.

13 Here, TOTE requests the Commission reconsider its decision to deny TOTE's request for refund and requests clarification regarding whether Order 09 requires TOTE to continue paying higher service fees that PSP will hold in a regulatory liability account. TOTE argues that this outcome 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.” TOTE further contends that it is inequitable for PSP to continue to bill TOTE for higher pilotage rates and to require TOTE to relitigate this issue in PSP’s next general rate case when PSP failed to meet its burden in this proceeding. We address each of these issues in turn.

- 14 First, TOTE misconstrues Order 12 as requiring PSP to cease billing TOTE for the Midnight Sun and North Star vessels using IGT rates prior to the conclusion of PSP’s next general rate case. In Order 12, we expressly rejected TOTE’s proposed tariff amendment and denied TOTE’s request for a refund of incremental revenues collected to date.<sup>1</sup> Order 12 made clear that PSP would continue to bill TOTE vessels consistent with its tariff as approved by the Commission.
- 15 To the extent that it finds ambiguity in Order 12, TOTE misunderstands a term of art. 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.”<sup>2</sup> This interpretation does not reflect how the term “defer” is used in regulatory accounting. As we explained in Order 12, “deferrals are created to earmark assets and liabilities for consideration in a future proceeding.”<sup>3</sup> Regulated companies routinely come before the Commission seeking deferred accounting treatment for regulatory assets and liabilities.<sup>4</sup> Thus, a Commission order requiring the deferral of incremental revenues for later consideration cannot be reasonably construed as requiring PSP to cease collecting those revenues.
- 16 Second, TOTE incorrectly argues that there was “no suggestion” in the Notice that the Commission would require TOTE to continue paying pilotage fees based on IGT.<sup>5</sup> The Commission’s Notice clearly required PSP to identify and defer the incremental difference in revenue between the amount collected under the current tariff (which calculates tonnage based on IGT) and the amounts PSP would have collected had tonnage charges been based on GRT. The Notice did not indicate, at any point, that the

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<sup>1</sup> Order 12 ¶¶ 28, 30.

<sup>2</sup> Motion ¶ 4 (emphasis added).

<sup>3</sup> Order 12 ¶ 31.

<sup>4</sup> See generally *In re the Petition of PacifiCorp d/b/a Pacific Power & Light Company*, Docket UE-020417 Order 03 (September 27, 2002) (discussing deferred accounting treatment and ratemaking principles at length).

<sup>5</sup> See Motion ¶ 4.

Commission would amend Order 09 to require PSP to bill TOTE using GRT rates for piloting its two vessels.

- 17 Third, TOTE expresses confusion about the Commission’s instructions to PSP in Order 12 regarding the required deferral and the associated regulatory liability account.<sup>6</sup> TOTE asks, essentially, whether PSP is required to defer revenues collected in the past, revenues collected in the future, or both.<sup>7</sup> This question is answered by referring to the express language of Order 12 and the date Order 12 was issued, February 2, 2022. We directed PSP “to defer, *from the date of this Order forward* until the rate effective date of PSP’s next general rate case,” the incremental difference in revenue at issue.<sup>8</sup> This language addressed specific concerns from both PSP and Staff regarding the creation of a regulatory liability,<sup>9</sup> and it provided sufficient guidance for deferring these revenues.
- 18 Finally, TOTE argues that requiring it to continue paying IGT-based pilotage rates would create “rate shock,” which is inconsistent with the Commission’s decision in Order 09.<sup>10</sup> Although TOTE correctly observes that the Commission expressed concern in Order 09 about rate shock for smaller vessels under Staff’s proposed rate design,<sup>11</sup> the Commission also expressed concern about relative risk based on vessel size. As we explained in Order 12, TOTE has not yet presented evidence related to the risk of piloting its vessels.<sup>12</sup> Nor has the Commission had an opportunity to appropriately consider different methods of calculating vessel tonnage or hear argument about whether TOTE’s vessels should be charged differently than all other vessels for which PSP provides pilotage service.
- 19 To be clear, it is premature to order PSP to provide TOTE a refund or to cease billing TOTE vessels using IGT-based rates consistent with its tariff. Accordingly, we decline to modify our conclusion in Order 12 that issues related to calculating vessel Gross Tonnage, including how TOTE’s vessels should be charged and whether TOTE is entitled to any refund, should be decided in PSP’s next general rate case.

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<sup>6</sup> Motion ¶ 5 (discussing Order 12 ¶ 30).

<sup>7</sup> *Id.*

<sup>8</sup> Order 12 ¶ 30 (emphasis added). *Accord* Order 12 ¶ 34.

<sup>9</sup> *Id.* ¶ 30, n.7.

<sup>10</sup> *See* Motion ¶¶ 6-8.

<sup>11</sup> *E.g.*, Order 09 ¶¶ 356-59.

<sup>12</sup> Order 12 ¶¶ 28, 33.

20 We nevertheless find it appropriate to revisit our decision to require PSP to begin deferring the incremental difference in revenue beginning the date Order 12 was entered. If the Commission later finds that PSP charged unjust and unreasonable rates for the two vessels at issue, allowing TOTE to seek relief from the date its Petition was filed produces a more equitable result by preserving TOTE's claim for relief from the date that it first asserted its interest and challenged the rates in PSP's tariff.

21 We thus grant TOTE's Motion, in part, and amend Order 12 to require PSP to defer the incremental difference in revenue at issue from the date TOTE's Petition was filed, or August 26, 2021, forward.

22 To effectuate the decisions set forth in this Order, we modify paragraph 34 of Order 12 as follows:

- Amend paragraph 361B:

We observe that PSP made changes to its Gross Tonnage rate calculation methodology in its tariff that it failed to identify and describe as required by Commission rules. 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 International Gross Tonnage (IGT) and Gross Register Tonnage (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.

Moreover, PSP presented, and the Commission relied upon, workpapers that identify incorrect rates for two vessels belonging to TOTE Maritime Alaska, LLC: Midnight Sun and North Star. To preserve these deficiencies and errors for resolution in PSP's next general rate proceeding, we require PSP to (1) identify and, from August 26, 2021, the date ~~this Order is amended~~ of TOTE Maritime Alaska, LLC's Petition forward, defer in a regulatory liability account until the rate effective date of PSP's next general rate case the incremental difference between the revenues collected from TOTE for the vessels Midnight Sun and North Star under PSP's current tariff (which assesses tonnage rates based on IGT) and the amounts PSP would have collected from TOTE for these two vessels had tonnage charges been assessed based on GRT; and (2) to present for Commission consideration and determination in its next general rate case whether Gross Tonnage should be calculated using GRT or IGT, including for vessels operating exclusively in coastwise trade.

- Amend conclusion of law paragraph 39D:

(39D) PSP is required to identify and, from August 26, 2021, the date ~~this Order is amended~~ of TOTE Maritime Alaska, LLC's Petition forward, defer in a regulatory liability account until the rate effective date of PSP's next general rate case the incremental difference between the revenues collected from TOTE Maritime Alaska, LLC, for the vessels Midnight Sun and North Star under PSP's current tariff (which assesses tonnage rates based on IGT) and the amounts PSP would have collected from TOTE Maritime Alaska, LLC, for these two vessels had tonnage charges been assessed based on GRT.

- Amend Section V, Order:

(4) Puget Sound Pilots is required to identify and, from August 26, 2021, the date ~~this Order is amended~~ of TOTE Maritime Alaska, LLC's Petition forward, defer in a regulatory liability account until the rate effective date of PSP's next general rate case the incremental difference between the revenues collected from TOTE Maritime Alaska, LLC, for the vessels Midnight Sun and North Star under PSP's current tariff and the amounts PSP would have collected from TOTE Maritime Alaska, LLC, for these two vessels had tonnage charges been assessed based on Gross Register Tonnage.

(5) Puget Sound Pilots is required in its next general rate case to present for Commission consideration and determination whether Gross Tonnage should be calculated using Gross Register Tonnage or International Gross Tonnage, including for vessels operating exclusively in coastwise trade. PSP must also address how its proposed rate design is consistent with principles of rate shock and gradualism.

## ORDER

23 **THE COMMISSION ORDERS THAT:**

- 24 (1) TOTE Maritime Alaska, LLC's Motion is GRANTED, in part, and DENIED in part.
- 25 (2) Order 12 is AMENDED as set forth in paragraph 22 of this Order.

- 26 (2) The Commission retains jurisdiction over the subject matters and parties to this proceeding to effectuate the terms of this Order.

Dated at Lacey, Washington, and effective February 24, 2022.

**WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner