

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
RESPONSE TO PETITION FOR
RECONSIDERATION OF ORDER 13

I. INTRODUCTION

1. TOTE Maritime Alaska, LLC ("TOTE") responds to the Petition for Reconsideration of Order 13 ("Petition") filed by Puget Sound Pilots ("PSP") in accordance with the Commission's Notice of Opportunity to File Written Responses to Petition for Reconsideration dated March 15, 2022. PSP submits two factually inaccurate assertions in the Petition. Correction of these inaccuracies demonstrates that the Petition should be denied, and that the deferral to August 26, 2021 previously ordered by the Commission is entirely proper.

II. DISCUSSION

2. In its Petition, PSP points to purported hardships it would encounter if the Commission does not reconsider Order 13 and reverse its decision to require PSP to defer fee differentials derived from PSP's calculation of pilotage fees for two TOTE's vessels based on their international gross tonnage ("IGT") as opposed to their regulatory (domestic) gross register tonnage ("GRT"). PSP asserts that the retroactive date should be "no earlier than January 14, 2022 - the date on which TOTE first notified PSP (and the Commission) of its intent to seek reimbursement of the incremental difference in revenue." Petition at para. 5. See also para. 18.

3. TOTE began objecting to PSP's revised pricing methodology immediately upon receipt of its first PSP invoices based on revised tonnage figures for services under the new tariff. TOTE identified the change in tonnage for its two vessels, and responded by paying PSP's pilotage fee invoices at the rates that would have applied had PSP correctly assessed them based on the vessels' GRT tonnage. TOTE and PSP engaged in an extensive dialogue beginning in March 2021 over what PSP called "short pays" of its invoices. Ultimately, PSP forced TOTE to pay the higher rates under a threat of cessation of services. PSP itself summarized this in Puget Sound Pilots' Response to TOTE Maritime Alaska LLC's Petition to Amend Order filed on October 15, 2021, wherein it stated at para. 17:

Soon after the effective date of the Commission's tariff, TOTE attempted to short-pay PSP invoices. The amount TOTE remitted reflected a precise recalculation of charges based upon a clear understanding of the tariff but applying the tonnage charge based upon the GRT of its vessels rather than the IGT. After TOTE attempted to short pay multiple invoices, PSP's President, Ivan Carlson, called Phil Morrell to determine why the invoices were not being paid in full. That discussion did not resolve the issue.

4. See also Declaration of PSP president Ivan Carlson dated October 15, 2021 submitted in support of PSP's Response at para. 16 confirming the same with additional detail about the communications. Clearly, PSP knew from the outset that TOTE believed it should not be required to pay IGT-assessed rates, and was seeking to remedy PSP's overcharges from the time they were discovered by recouping what it believes are overcharged sums.

5. Discussions between counsel for TOTE and PSP began in March 2021 as well, and included statements from TOTE's counsel that the gross revenues PSP would derive by the unexpected IGT-assessed rates between January 2021, when PSP's new tariff took effect, and December 2022, when it concludes, would be an estimated \$762,237.76. These same figures were addressed in TOTE's WAC 480-07-875 Petition to Amend Order (at para. 5) filed on August 26, 2021.

6. This inequitable windfall was at the heart of TOTE's petition, and addressed the same differentials PSP had been charging since January 2021 that the parties and their counsel had discussed since March 2021. PSP does not argue, and the record does not suggest, that TOTE was urging that any portion of the \$762,237.76 was appropriate for PSP to retain. PSP cannot credibly argue it inferred otherwise. Put simply, PSP has always known that TOTE wanted full reimbursement of all rates assessed on the vessels' IGT tonnage.

7. PSP also inaccurately asserts that "TOTE significantly extended the time between filing its Petition to Amend and the issuance of Order 12, first by requesting a continuance of the deadline to file a motion for leave to reply, and then filing a reply that was irrelevant to the Commission's decision." Petition at para. 24. TOTE requested the extension, as stated in its request, as a result of pandemic-related circumstances and its counsel's move to a new law firm. And TOTE's reply was clearly relevant and proper, as is demonstrated by the WUTC ALJ's granting TOTE leave to file it over PSP's objections. Notably, PSP did not respond to TOTE's pre-petition overtures toward resolution for many weeks after they were submitted first by phone, and then by a letter PSP's counsel requested in May 2021.

8. Lastly, the concept of retroactive deferrals is not new, the Commission having adjudicated their propriety in previous proceedings in the context of challenges based on the prohibition against retroactive ratemaking. See, e.g., *In Re the Petition of PacifiCorp d/b/a Pac. Power & Light Co. for an Acct. Ord. Authorizing Deferral of Excess Net Power Costs.*, No. UE-020417, 2002 WL 32866434, at 2 (Sept. 1, 2002), wherein the Commission ruled:

We resolve the parties' arguments concerning retroactive ratemaking and conclude that authorizing deferral accounting, in appropriate circumstances, for costs incurred during periods that post-date an application to establish such accounting does not violate the general prohibition against retroactive ratemaking. Accordingly, if the evidence adduced in this proceeding supports allowing PacifiCorp to defer any of its power costs incurred after May 31, 2002, it is within

the scope of our authority to authorize the Company to include entries in a deferral account commencing as early as June 1, 2002, as requested by PacifiCorp in its filing on April 5, 2002.

9. Some of the same concerns PSP raises would apply in any instance in which a retroactive deferral is ordered, and they have not been deemed adequate grounds to defeat a determination that retroactive deferral is proper.

III. CONCLUSION

10. PSP cannot credibly argue it was unaware TOTE wished to recoup its past overcharges as part of its Petition. The dialogues between the parties and their counsel throughout 2021 were predicated on TOTE avoiding an additional \$762,237.76 in service fees throughout the new tariff's term, which includes higher rates PSP began charging in January 2021. TOTE would have filed its Petition months earlier had PSP not drawn out the process by delayed responses. Accordingly, the Commission should not disturb its Order 13.

Dated this 29th day of March, 2022.

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