

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
Complainant,

v.

PUGET SOUND PILOTS,
Respondent.

Docket TP-220513

**REBUTTAL TESTIMONY OF
ERIC C. KLAPPERICH
ON BEHALF OF PUGET SOUND PILOTS
MARCH 3, 2023**

TABLE OF CONTENTS

1. IDENTIFICATION OF WITNESS.....1

2. PURPOSE OF TESTIMONY.....1

3. CONCLUSION.....15

220

EXHIBIT LIST		
Exhibit No.	Description	Page Referenced
ECK-13	TOTE Maritime's Responses to PSP's Data Requests	5

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

1. IDENTIFICATION OF WITNESS

Q: Please state your name and position for the record?

A: Yes. My name is Captain Eric Klapperich and I am the Vice President of Puget Sound Pilots.

2. PURPOSE OF TESTIMONY

Q: What is the purpose of your testimony today?

A: The purpose of my testimony today is twofold. First, I respond to testimony submitted by witnesses on behalf of TOTE Maritime (“TOTE”) in opposition to PSP’s general rate case and in support of TOTE’s position that its ORCA class vessels, the M/V Midnight Sun and the M/V North Star, ought to pay pilotage based on these ships’ gross registered tonnage (“GRT”) rather than based on the ships’ gross tonnage as measured pursuant to the International Convention on the Tonnage of Ships, 1969 (“GT ITC”), like every other commercial ship requiring pilotage on Puget Sound. Second, I respond briefly to the testimony of PMSA witness Captain Michael Moore regarding the comparability of pilotage grounds and the skillsets required of pilots.

Q: What is your understanding of TOTE’s position in PSP’s prior rate case as to why its ships ought to pay pilotage based on its ships’ GRT rather than GT ITC?

A: My understanding is that in PSP’s prior rate case, TOTE took the position that the fact that these ships were engaged exclusively in coastwise or domestic commerce was the key basis for TOTE’s requested price discrimination in its favor.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Q: In your professional experience, does the fact that a TOTE ship – or for that matter any other ship – that is engaged in coastwise as opposed to foreign commerce, have any independent effect on the relative difficulty and risk associated with piloting that ship?

A: No.

Q: TOTE has taken the position that the fact that its ORCA class ships are engaged exclusively in coastwise commerce increases pilots’ familiarity with these ships and thereby makes them easier or comparatively less risky to pilot. Do you agree?

A. Certainly not. Pilots are trained to pilot all types of ships. Familiarity with a particular ship does not materially affect the difficulty and risk of pilotage. What is material is the fact that the ORCA class ships are large, approximately 65,000 GT ITC ships that present significant challenges in constricted waterways and require considerable skill in handling that is comparable to other ships of similar size.

Q: Have you reviewed the testimony submitted by the three witnesses appearing on behalf of TOTE in this rate case, including Alyson Atalie Dubs, Philip Morrell, and Captain Eric Loftfield?

A: Yes, I have carefully reviewed the testimony submitted by each of these three witnesses.

1 **Q: Is it your understanding that TOTE Maritime has abandoned the argument it**
2 **advanced in PSP’s prior rate case that it is entitled to price discrimination in its favor**
3 **based on the fact that its ships are engaged in coastwise commerce?**

4 A: I cannot say for sure what TOTE does or does not intend to argue in connection with this
5 rate case, however, none of its three witnesses appear to have addressed this topic in any fashion.

6
7 **Q: What is your understanding of the arguments advanced by TOTE’s witnesses in**
8 **support of its present request in this rate case to maintain price discrimination in its favor?**

9 A. It appears to me from reviewing these witnesses’ testimony that the general thrust of
10 TOTE’s argument is that it does not want to forfeit the cost savings that it has received based on
11 the unfounded preferential treatment it has received in the past. In addition, TOTE appears to
12 believe that unlike every other ship requiring pilotage on Puget Sound, certain individual
13 characteristics of its ORCA class vessels such as their rudder and propulsion systems ought to be
14 considered in determining the pilotage rates applied.

15 **Q: As to TOTE’s first argument – it’s desire to retain the cost benefits of the**
16 **preferential rate treatment it enjoyed historically – is there in your opinion any basis to**
17 **continue this practice merely based on past precedent?**

18 A: Absolutely not. The past practice of assessing TOTE’s pilotage based on GRT has
19 unfairly benefited TOTE at the expense of PSP and its other customers for many years. The fact

1 that something has been done incorrectly and unfairly in the past is no reason to allow that bad
2 practice to continue. To the contrary, it is critically important and legally required that rates be
3 nondiscriminatory. Consistent with that mandate, it is essential that TOTE's ships be charged
4 pilotage based on their GT ITC just like every other ship.

5
6 **Q: As to TOTE's second argument – that specific ship handling and maneuverability**
7 **characteristics of the Orca class vessels such as their twin screw configuration, power to**
8 **weight ratio, or twin rudders ought to be considered in determining appropriate pilotage**
9 **rates for these ships – do you have an opinion as to whether these considerations are**
10 **appropriate?**

11 A. It would be totally inappropriate to consider the specific ship handling or maneuverability
12 characteristics of TOTE's ORCA class vessels in determining pilotage rates. Again, TOTE is
13 simply asking for special treatment and price discrimination in its favor. Many of the ships that
14 call Puget Sound regularly have characteristics that make them more or less maneuverable in
15 particular situations. For example, many cruise ships have bow thrusters on the bow, and azipod
16 units on the stern, which makes these ships far more maneuverable than TOTE's ORCA class
17 vessels. Likewise, some single screw container ship also incorporate a bow thruster on the bow.
18 Containerships designed this way can be as maneuverable going forward at a slow speed as the
19 ORCA class ships, and they are much more maneuverable going backwards or astern.

The inclusion of a bow thruster in a ship's design – which TOTE's ships lack –
significantly improves the ship's handling and maneuverability during docking and undocking.

Nevertheless, ships with and without bow thrusters pay pilotage based on their GT ITC without
REBUTTAL TESTIMONY OF ERIC C. KLAPPERICH

1 regard to their different handling traits. That is because any attempt to differentiate pilotage rates
2 based on an individualized evaluation of each ship's unique performance – which may compare
3 favorably or unfavorably to another ship of like size depending on conditions or even individual
4 pilot preference – would be highly subjective and completely impracticable. For example, if a
5 ship's specialized maneuvering features or "tools," like a bow thruster are not functioning or
6 available, or an engine is not operating, how would the tariff be adjusted? I am not aware of any
7 pilotage district in or outside the United States that performs the type of ship-by-ship rate setting
8 exercise that TOTE is requesting the Commission engage in. To the contrary, the reason that PSP
9 and many other pilot groups use GT ITC to assess pilotage rates is precisely because it is a highly
10 standardized and effective proxy for the relative risk and difficulty associated with piloting a
11 particular ship.

12 **Q: If the Commission were to consider individual ships' characteristics apart from the**
13 **standardized GT ITC tonnage metric in determining pilotage rates, are there any**
14 **particular characteristics of TOTE's ORCA class ships that increase the difficulty and risk**
15 **of piloting these vessels?**

16 A: Yes. The ORCA class vessels have high side shells that rise above the main deck to the
17 uppermost deck. This protects interior decks from weather that are being utilized for carrying
18 cargo. This added side shell above the main deck creates additional sail area in square meters
19 that makes them highly susceptible to wind forces. Pilots apply this profile of the whole ship in
square meters to a wind force formula to calculate and create a static base of wind forces in tons

on expected windy days. The result of this calculation helps create a complement of tugs that

1 may need to be considered. For example, instead of two tugs, the winds might be strong enough
2 to order a third to maneuver in the waterway safely. This may happen several times a year in the
3 Blair waterway in Tacoma, where the winds are regularly 12-18 knots, but can be 30 knots or as
4 high as 50-60 knots in the winter. It is also worth noting that the TOTE ships have a relatively
5 large fuel capacity of 664,294 gallons. A copy of TOTE's responses to PSP's recent data
6 requests confirming the ships' fuel capacity is attached as Exh. ECK-13.

7 **Q: Is it your position that TOTE should be penalized or charged higher pilotage rates**
8 **due to the risks and difficulties that its ORCA class ships present?**

9 A: No. I mention these factors to highlight the complete impracticability of making the sort
10 of individualized ship assessments that TOTE asks the Commission to engage in, and to
11 underscore the importance and reasoning behind applying the standardized metric of GT ITC to
12 all ships in determining pilotage rates.

13
14 **Q: Why is GT ITC a more accurate and effective measure than GRT of the relative**
15 **difficulty and risk associated with piloting a particular ship?**

16 A. As explained in detail in the testimony of expert witness Phil Essex, GT ITC is a far more
17 standardized and accurate measure of a ship's true volumetric size – which is a strong proxy for
18 risk and difficulty of pilotage – because it is less susceptible to manipulation by design
19 techniques such as the “tonnage openings” employed by TOTE Maritime in the design of the
ORCA class ships. The inclusion of these tonnage openings at the stern of the ships' main higher

1 decks removes virtually the entire volume of these two large cargo decks from the GRT
2 calculation which results in a substantial under-representation of the ship's true volumetric size.

3
4 **Q: In Mr. Morrell's testimony, he compares the cargo carrying capacity of TOTE's**
5 **ORCA class ships to a container ship of comparable GT ITC. In your opinion and based**
6 **on your professional experience, is Mr. Morrell's testimony on this topic relevant to**
7 **determining whether GRT or GT ITC should be used to calculate the pilotage rates applied**
8 **to TOTE's vessels?**

9 A: No. Mr. Morrell's comparison of cargo-carrying capacity between TOTE's RO/RO ships
10 and a container ship of similar GT ITC is an apples-to-oranges comparison that has no relevance
11 whatsoever to setting appropriate pilotage rates for the ORCA class ships.

12 As an initial matter, Mr. Morrell's implication that "exempt space" on the Orca class
13 ships' main deck is not used for cargo is highly misleading. Rather, as Mr. Essex explains in his
14 testimony, this space is exempted from GRT (but not GT ITC) calculations due to TOTE's use of
15 small openings at the ship's stern. Contrary to what Mr. Morrell implies, the main deck of the
16 ORCA class vessels that comprise the large majority of the difference in these ships' GRT and
17 GT ITC measurements are absolutely used to carry cargo.

18 More to the point, a vessel's cargo capacity is a poor measure of pilotage that is not used
19 for a simple reason: Pilots pilot the *whole* ship. From the pilot's perspective in assessing the
relative difficulty and risk associated with piloting a particular ship, it is irrelevant whether that
volume is used for cargo, crew accommodations, voids, water tanks, or any other purpose. That

1 is why GRT is such a poor metric for calculating pilotage. Whereas GRT measures only a ship's
2 "non-exempt" cargo carrying space (which, as Mr. Essex explains and the TOTE ships
3 demonstrate, is manipulable), GT ITC gives a much more accurate measure of the ship's true
4 volumetric size.

5
6 **Q: PMSA witness Captain Moore states at page 269 of his testimony that "PMSA**
7 **supports TOTE's requests in this proceeding for the new tariff to reflect the continuation**
8 **of the historic practice by PSP to charge US-flagged vessels by their domestic tonnage and**
9 **foreign-flagged vessels by their international tonnage." Does PSP have a "historic practice"**
10 **of charging US-flagged vessels by their domestic tonnage?**

11 A: Absolutely not. Captain Moore's statement is false. In fact, Many US-flagged ships use
12 PSP's services and – with the exception of TOTE's ships – every one of them pays pilotage
13 based on the ship's GT ITC. TOTE is a singular outlier, and for the reasons explained in my
14 testimony and Mr. Essex's, fairness requires that it should be brought into conformance with the
15 GT ITC metric.

16 Captain Moore's support of TOTE's request to continue price discrimination in its favor
17 is surprising, as doing so will inevitably shift pilotage costs to foreign shippers (*i.e.*, PMSA's
18 members) to cover the resulting delta in PSP's revenue requirement. Lastly, it is worth noting
19 that statutory limits on pilots' liability for negligence do not apply to coastwise assignments for
vessels sailing under U.S. registry. In that respect, a pilot is more at risk when piloting a

1 domestic vessel than a foreign one. For this reason too, it makes absolutely no sense for TOTE
2 to enjoy the benefit of pilotage rates that discriminate in its favor.

3
4 **Q: Captain Moore also testifies regarding the comparability of pilotage districts. In
5 particular, at page 196 of his testimony, he states that “[t]he unique nature of navigation in
6 nearly every port is one of the reasons why pilotage is, and should remain, focused on local
7 knowledge and skillsets.” Do you agree with Captain Moore’s testimony?**

8 A: Yes and no. I agree, of course, that local knowledge is important to pilotage. I disagree
9 strongly, however, that the fundamental skillsets necessary to succeed as a pilot differ materially
10 between pilotage districts. To the contrary, the skills that are foundational to pilotage, such as
11 ship handling, speed management, management of course over ground, tug management, traffic
12 management and, most importantly, the ability to multitask and manage combinations of these
13 challenges under variable and at times highly adverse maritime conditions and/or in constricted
14 waterways are common to all pilots. Every pilot has been trained and is an expert in this common
15 skillset. This is demonstrated, for example, by the overseas manned model trainings (discussed in
16 my initial testimony) that Puget Sound Pilots attend with fellow pilots from all over the world,
17 where we train together on a wide range of model ships and configurations to hone skills, tools
18 and techniques involving hydrodynamics, pivot point, turning radius, and other maneuvering
19 levers and physics. These are skills that are common to and required of all pilots.

While a pilot’s skillset must no doubt be applied to a particular pilotage ground based on
the pilot’s local knowledge, Captain Moore’s statement that differences between individual ports

1 and pilotage grounds somehow makes it “impossible to establish comparability generally” is flat
2 wrong and it ignores the realities of the pilot’s profession. Frankly, Captain Moore has never
3 been trained as a pilot and his testimony on this issue demonstrates his fundamental lack of
4 understanding of our profession.

5
6 **Q: At pages 196 and 197 of his testimony, Captain Moore attempts to illustrate his**
7 **point that it is allegedly impossible to establish comparability using photographs that he**
8 **claims juxtapose the “constricted waterways” of the Port of Long Beach against what he**
9 **calls the “wider, deeper waterways that characterize the navigational lanes of the Puget**
10 **Sound.” Do you agree with Captain Moore’s characterization?**

11 A. No, I do not. In fact, the similarities between the constricted waterways of Puget Sound
12 and the Port of Long Beach illustrate my point that while ports vary in their particulars, the
13 fundamental skills that all pilots must master are the same.

14 As an initial matter, the photograph of Puget Sound that Captain Moore selected is a
15 cherry-picked screenshot from a video exhibit included with my initial testimony taken *before*
16 the ship enters the constricted waterway. To provide a more apt comparison, below are
17 photographs taken from several of Puget Sound’s constricted waterways that “characterize” our
18 pilotage district and are every bit as technical and challenging to pilot as waterways at the Port of
19 Long Beach or, for that matter, any other pilotage district in the United States:

1

2

3

4

5

6

7



8

9

10

11

12

13

14

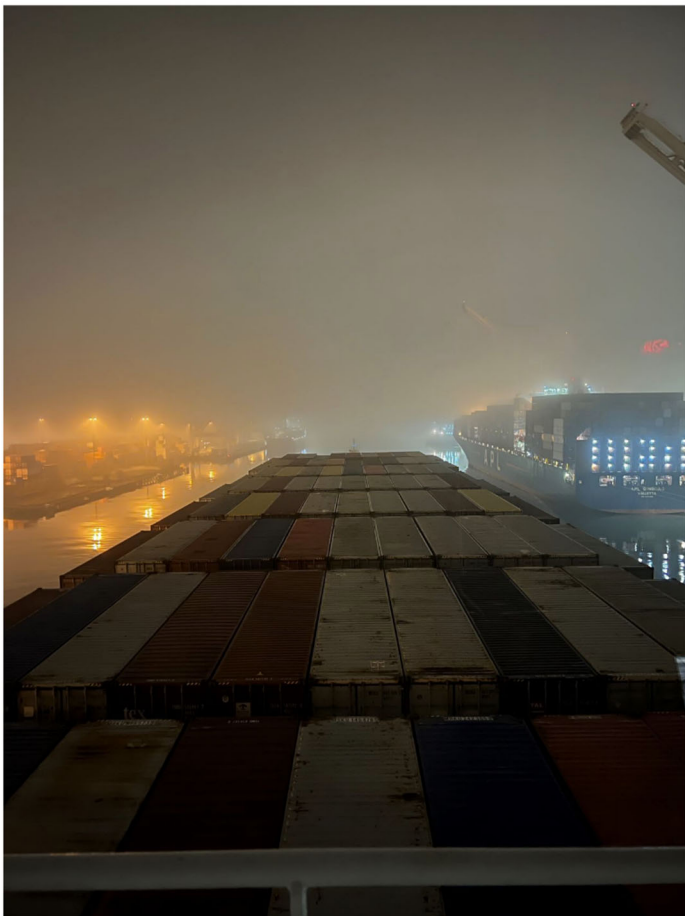
15

16

17

18

19



1

2

3

4

5

6



7

8

9

10

11

12

13

14

15

16

17

18



19

1 Captain Moore's testimony also includes photographs of the now-defunct and removed
2 Gerald Desmond Bridge at the Port of Long Beach to support his incorrect claim that the two
3 pilotage districts are somehow not comparable. Interestingly, he fails to include photographs of
4 the new Long Beach International Gateway Bridge that replaced Gerald Desmond Bridge and
5 added another approximately 50 feet of overhead clearance. Photographs that accurately depict
6 the referenced waterway and bridge at the Port of Long Beach as they exist today are reproduced
7 below:





1
2
3
4
5
6
7
8
9 The thrust of Captain Moore’s testimony is to imply that pilotage districts including the
10 Port of Long Beach require fundamentally different or greater skillsets than Puget Sound and
11 that, therefore, David Lough’s testimony regarding the comparatively low DNI earned by Puget
12 Sound Pilots relative to pilots from other districts is inapt. Captain Moore is wrong. The reality is
13 that the fundamental skills that apply to pilotage are highly comparable across pilotage districts.
14 More to the point, the waterways that Puget Sound Pilots negotiate day-in and day-out including
15 at the ports of Tacoma and Seattle are at least as constricted and no less difficult to pilot safely
16 than the waterways of any of pilotage districts that Mr. Lough identifies in his testimony.

17 **Q: Is there anything else you would like to point out regarding Captain Moore’s use of**
18 **the now-defunct Gerald Desmond Bridge at the Port of Long Beach as purported evidence**
19 **that Puget Sound is somehow less challenging than other West Coast pilotage grounds?**

1 A: Yes. Captain Moore chose a particularly bad example to advance his flawed argument.
2 Apart from the fact that the bridge depicted in his testimony no longer exists, the presence of a
3 bridge in the waterway typically does not significantly affect the difficulty of a transit. Going
4 under a bridge involves a fairly straightforward air draft clearance calculation that takes into
5 consideration the bridge height (as measured on the chart), minus height of tide, minus the ships
6 keel to mast height (provided by ship), plus draft, equals clearance. In Puget Sound, we do these
7 calculations in the Duwamish River (which is very constricted), for the West Seattle Bridge, and
8 high cable crossings in two places. We also do this calculation in Tacoma in the Hylebos
9 waterway and the Narrows Bridge.

10 In short, Captain Moore's use of this example to argue that the Port of Long Beach
11 presents greater shiphandling challenges than the constricted waterways of Puget Sound is
12 misleading and totally inaccurate.

13 3. CONCLUSION

14 **Q: Does this conclude your testimony?**

15 A: Yes.
16
17
18
19

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

Haglund Kelley, LLP

2177 SW Broadway

Portland, OR 97201

Tel: (503) 225-0777 / Fax: (503) 225-1257