

**COMMISSION MEETING
THURSDAY, MARCH 9, 2006
DRAFT MINUTES**

Chair Ludwig called the meeting to order at 1:30 p.m. at the Red Lion Olympia Hotel. He introduced the following members present:

MEMBERS PRESENT: **COMMISSIONER CURTIS LUDWIG, Chair**, Kennewick
 COMMISSIONER ALAN PARKER, Vice Chair, Olympia
 COMMISSIONER JANICE NIEMI, Seattle
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Quilicene
 SENATOR MARGARITA PRENTICE, Seattle

STAFF PRESENT: **RICK DAY**, Director
 NEAL NUNAMAKER, Deputy Director
 CALLY CASS, Assistant Director - Field Operations
 DAVE TRUJILLO, Assistant Director - Licensing
 AMY HUNTER, Administrator- Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 GAIL GRATE, Administrative Assistant

Staff Accomplishments: **Chair Ludwig** and **Director Day** presented 5-year service awards to License Technician Melanie Bowdish and License Technician Kim Basher.

Director Day then noted this was both a sad and a celebratory occasion for Deputy Director Neal Nunamaker who is retiring at the end of this month; therefore, this is Mr. Nunamaker's last Commission Meeting. Director Day noted that Mr. Nunamaker began his state service with the Washington State Gambling Commission in June of 1975 as a student intern, and he confirmed Mr. Nunamaker has been with the agency since the creation of the Commission and he has been an asset to the Commission. Director Day reviewed Deputy Director Nunamaker's work history noting that he started as a Clerk II, and progressively promoted to the positions of Clerk Typist III, Cashier Assistant, Statistical Reports Complier, Clerk Supervisor, Gambling Investigator I and II, Senior Gambling Investigator, Special Agent IV, Program Manager, Assistant Director, and finally to the position of Deputy Director. Director Day acknowledged that Mr. Nunamaker has definitely served as his right hand person and that he has done an outstanding job for this agency and the state. Director Day

affirmed it has been a pleasure to work with Deputy Director Nunamaker, and he extended his sincere congratulations.

1. Review of Agenda and Director's Report:

Director Day noted the agenda was updated to reflect some technical corrections; however, there were no substantive changes or inserts to the agenda packet. He proceeded with his report.

Budget Adjustments – Decision Package Deputy Director Position:

Director Day referred to Tab 1(a), a budget decision package requesting the Commission restore the agency's Deputy Director Position. He noted that at one time the Commission had two Deputy Directors. In response to the budget and agency streamlining efforts one position was eliminated, and, as a result of Deputy Director Nunamaker's pending retirement, the second position was scheduled to be eliminated as well. Director Day explained he was asking to restore the position for four key points.

Director Day noted that if the existing position is eliminated, the number of people reporting directly to the Director for supervision and guidance would go from eight to eleven. In his opinion, Director Day believed that would create a limited ability for him to provide meaningful interaction or consultation with those administrators. Equally important was the present and future demands for Tribal negotiations and related issues. Director Day believed the time demands were exceeding his ability to administer the agency and negotiate at the same time. In the past year, he identified at least 200 hours spent in Tribal negotiations. Director Day acknowledged that his original recommendation to eliminate the second Deputy Director position was made because he had anticipated some consistency in Tribal negotiations—27 out of 29 compacts had been negotiated. However, major issues continue to come forward. The Commission is continuing to negotiate the Spokane Compact, and compact negotiations are anticipated with the Cowlitz Tribe as well as some renegotiation of the Snoqualmie Tribe Compact. Director Day felt it was essential to add the position back to relieve some of the time spent on negotiations and to prepare for the future.

Director Day also noted the Revised Codes of Washington statutes state the Commission shall have a Deputy Director position. He affirmed that at this point agency revenue is sufficient to allow the position to be restored. Director Day clarified that even with the restoration of this position, the Commission's total FTE since 2004 is still reduced by 20.4 positions. He emphasized that restoration of this position is in the best interest of the agency. Director Day respectfully requested that the Commission approve the restoration of the FTE and the funding for one Deputy Director as described in the agenda decision package.

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to authorize the restoration of the FTE and funding for one Deputy Director as described.

Commissioner Ellis verified whether the position would be effective on July 1, the first day of the next biennium. **Director Day** clarified the intent would be to restore the

position effective the end of this month. **Commissioner Ellis** verified there wouldn't be any adverse impact on the agency's financial situation during the current biennium. **Director Day** responded that there would not, other than to pay for the position. Commissioner Ellis noted the salary and wage level for the position was based on the current salary and wage level for the position. Director Day affirmed it was based on the incumbent's salary and wage level; however, that didn't necessarily mean that when the position is recruited and filled that it would be at that level, just that the potential was there. Commissioner Ellis inquired if that included any salary increases or cost of living increases that would apply across the board to employees in FY 07-08. Director Day indicated that staff doesn't normally include those until after an official decision package is presented and approved by the Commission.

Commissioner Parker commented that the decision package made a very good case for restoring the position and that he was in full support. He inquired if the position would be filled from the outside or inside the agency. **Director Day** advised the position would be open for internal and external candidates. A preference for an attorney will be established; however, the recruitment will not be strictly limited to those with a law degree. Director Day shared the new organizational change, noting the current Deputy Director is primarily in charge of enforcement, which is also the director's area of expertise. Therefore, the recruitment is intended to compliment the director's set of skills and change the organization slightly to combine this position with supervising the administrative side of the agency. There were no further comments. *Vote taken; the motion passed with five aye votes.* Director Day thanked the Commissioners for their support.

2006 Legislative Update:

As Ms. Hunter stepped forward, **Director Day** took a moment to note that Ms. Hunter has done an outstanding job as the agency's Legislative Liaison. He affirmed the Legislative Team consisting of Mr. Nunamaker, Ms. Cass, and Mr. Trujillo provided overall support; however, Ms. Hunter was the point person delegated to speak to the Legislature and will continue in that role. Director Day advised he wanted Ms. Hunter to know that he and the Commissioners appreciated her efforts.

Amy Hunter, Administrator, Communications and Legal Division reported the memo in the agenda packet was current as of the date that it was written; however, there were a couple of updates. The Legislature did adjourn on March 8.

SSB 6613 – Internet Gambling:

Only one gambling related bill passed, Substitute Senate Bill 6613, the bill that makes it clear that gambling over the Internet is prohibited. **Ms. Hunter** thanked Senator Prentice for introducing the bill and for all her work on the bill. It passed the Senate by a vote of 44 to 0, and then passed the House by a vote of 93 to 5. It was delivered to the Governor yesterday and staff remains very hopeful that it will be signed by the Governor. The Governor has 20 days to act on the bill because it was delivered to her in the last five days of the Legislative Session.

SGA 9335 – Commissioner Bierbaum’s Confirmation:

Ms. Hunter reported that Commissioner Bierbaum’s confirmation hearing was held on February 14. The Senate Committee passed that with a “do confirm” recommendation. Unfortunately they ran out of time to vote on a number of confirmations, and Commissioner Bierbaum has not been confirmed yet; however, she will continue to serve until the Legislature reconvenes. **Ms. Hunter** anticipated that the Senate will have more time next session, during a long session, to take the final vote on her confirmation. **Chair Ludwig** commented that if the Senate should meet in the interim, they could confirm the appointment even sooner. **Senator Prentice** didn’t anticipate a Special Session. She also advised there was an enormous backlog and to not take the lack of a confirmation vote personally. She affirmed the Legislature adjourned with over six pages of things that were not completed.

SHB 1944 – State Employee Raffles:

Ms. Hunter reported that Substitute House Bill 1944 was the bill that would have allowed state employees to conduct raffles—it did not make it out by deadline.

HB 3285 – Exemption for Nonprofit Bingo Operations from Gambling Tax:

House Bill 3285 would have given charitable and non-profit organizations a tax exemption if they had net receipts at \$200,000 or below for bingo or amusement games—it also did not make it out by deadline.

SCR 8417 – Committee on Gambling Policy Setting:

Ms. Hunter noted the Commission supported Senate Concurrent Resolution 8417 that would have established a Committee on Gambling Policy Setting. It passed the Senate by a vote of 47 to 0, and made it out of the House Committee with a “do pass” recommendation, but ended up dying in rules. She noted there’s always a chance that during the interim either committee may decide to work on gambling issues—they may choose to hold roundtable discussions on gambling and they don’t necessarily require a resolution to do so. **Senator Prentice** agreed and advised she preferred that process because it educates the whole Legislative Committee instead of just a few people.

With no further comments **Ms. Hunter** thanked the Commission for taking positions on various bills, she noted the committees appreciated knowing the position of the Gambling Commission. Session next year will be 105 days and since it is the beginning of the new two-year cycle there will be new bills—anything that died this year will have to be reintroduced.

Correspondence:

Director Day addressed a letter from Ric Newgard of the Seattle Junior Hockey Association highlighting the current status of their revenues in relationship to the smoking ban.

Secondly, **Director Day** reported the Commission asked staff for a report regarding the local gambling taxes by licensees. The report summarizes punch-board, and pull-tab

activity by county. As a group, the total local gambling tax paid for fiscal year ending June 30, 2005, was \$48 million. **Commissioner Niemi** thanked Mr. Trujillo for compiling the data which was drafted in response to comments from licensees about how their organizations pay local taxes. She affirmed the Commission simply wanted an idea on how much they were. Commissioner Niemi asked her fellow commissioners to consider the slightly over \$48 million dollars that local city and county governments receive from gambling and to think about that as the Commission looks at the non-tribal gambling adjusted gross (in the area of \$600 million dollars), and to think about if that was the way the Commission wanted to handle the taxes.

Presentation – Annual Report – Tribal Contributions for Community Impacts and Charities:

Director Day introduced the presentation by noting that Tribal/State Compacts include provisions generally requiring that each tribe make charitable contributions. As the Commission has the responsibility for monitoring contribution compliance, staff has been requested to provide an annual report to the Commission. Coincidentally, a bill was introduced this year to require this type of information be reported to the Legislature. While that bill did not receive a hearing, it was very beneficial to contact the bill sponsors and let them know that the Commission had already initiated this process and the information was available if desired. Director Day then introduced Julie Lies and announced that Ms. Lies has been promoted to Assistant Director for the agency's Tribal and Technical Gambling Division. The division represents the consolidation of two units through the agency's recent reorganization and streamlining process. The RCW allows for a third Assistant Director—this is not creating a new position, this merely promotes and reclassifies Ms. Lies' current position. The promotion is granted for her performance and also because over the past year Ms. Lies' assumed more policy responsibility. She has been assigned to deal occasionally with the tribes on billing issues and to participate as a representative with her assigned staff on a 2 Percent Committee, or the Impact Committee. Director Day congratulated Ms. Lies on her promotion.

Assistant Director Lies introduced Special Agent Shanna Lingel from the North District of the Tribal Gaming Unit. Agent Lingel works out of the Wenatchee office and she was responsible for assembling the report being presented.

Ms. Lies highlighted the Gambling Commission's role in the verification and distribution of the 2 percent funds and the charity funds. Unit staff performs independent verifications—they review ledgers, check registers, and supporting documents to confirm the organization's status. Regarding charitable donations, they make sure the accrual was made properly—that a correct amount was distributed to the charitable organizations, and they verify the disbursements of the 2 percent funds to impacted agencies. Commission staff also participates in a 2 Percent Committee for those tribes that have committees. Ms. Lies explained that a few of the tribes that negotiated the early compact language do not have committees; however their distributions are still verified.

The purpose of the 2 percent community impact is to reimburse local governmental agencies that are impacted by the operation of the tribal casino. The types of impacts the

compact mentions are specific actual impacts, potential impacts, material impacts, or impacts based on documented costs. The tribes distribute the 2 percent based on their table game net revenue. Net revenue or net win means the gross money coming in to the casino less the prizes paid out. If the particular community has no impact then there is no disbursement made. **Ms. Lies** explained the committees have established an application process where they notify potentially impacted agencies of their ability to apply for the funds. The committee receives the applications which are reviewed along with the funds that are requested and the committee decides to approve, modify, or disapprove the particular disbursement.

Ms. Lies clarified that Class II gaming such as satellite wagering or off-site betting, sports pools, and the 100 square sports pool boards are not included in the table game revenue. Additionally, if the tribe operates charity tables, the proceeds from those are not included in this calculation either, and any non-gaming revenues like food and beverage or retail sales are not included. Given that explanation, **Commissioner Niemi** said she wasn't totally clear what the 2 percent meant. **Ms. Lies** explained there is a distinct difference between the 2 percent and the half percent distribution. The 2 percent is specifically table game revenues—compact language says up to 2 percent of table game revenue. A provision under Appendix X talks about a one percent accrual as well—if there is a community impact that is not funded by the 2 percent of table games, there is a half of one percent from the Tribal Lottery System revenues that can be applied. She affirmed there were tribes that use both the two percent from the table games and the half percent from the Tribal Lottery System to fund impacts for general government services like fire, emergency services, roads, and local law enforcement.

Ms. Lies affirmed each compact is negotiated separately with each tribe. There has been some discussion about the possibility of changing some of the language in future negotiations. **Ms. Lies** advised she would be working with a work group from the tribes to identify such language modifications and to hopefully get all the tribes working together on changing the language.

Chair Ludwig addressed the distributions noting that only 15 tribes distributed funds. **Assistant Director Lies** reported there are 20 compacted tribes within the state. In 2004, when the information was collected, there were only 18 operating tribes. Of the three that didn't distribute, one tribe is a Tribal Lottery facility only, which means that they do not have table games. The second tribe (in Mason County) had no provable impacts. In the case of the third tribe, a case report is being written for not being in compliance. If problems are discovered with tribes not making distributions; or, they are not made to qualified organizations, Commission agents work with the tribes to get that corrected and write a report.

Commissioner Parker addressed the existence of some compacts that are essentially agreements authorizing the tribe to have its share of lottery machines. They don't have an operating facility; however, they lease their gaming rights or their machines to some other tribe. **Ms. Lies** affirmed that if a tribe has allocated their machines and they do not

operate a facility, this requirement would not apply to them—it would apply to the tribe operating those allocations.

Commissioner Parker inquired if there was any fact-finding or investigation to determine whether there are local jurisdictions that have identified needs or impact issues that were not being met. **Ms. Lies** responded there have been some applications for funding that may not have been paid; however, that is generally because they didn't prove the actual impact. Each compact is different. In general, each compact says that there are going to be provable impacts. If for instance, a casino happens to be on a major highway and the local jurisdiction wanted to do an emphasis patrol some time in the future, usually that request is referred back to the tribe to work out as a government-to-government type of situation. That doesn't show provable impact. However, if they made service calls or had to deal with calls from the casino specifically, or if a new fire engine was needed because of the increase of calls to that location, those would be provable impacts.

Director Day noted that different tribes apply this differently, depending on the tribe and for the most part, the process. He noted the Colville process is different from the rest, they don't have a committee, the requests go directly to the tribe and they submit the process to arbitration if there is a dispute. Most of the other compacts have provisions that set up a committee and they use something similar to a grant application process for the tribes to consider whether they agree with the impact and whether they want to actually fund the particular project. He noted there are a couple of tribes that actually have pre-dedicated amounts that go to the Sheriff's Office or the Sheriff's Office Liability Payments. The most common method is the committee and the grant application process.

Commissioner Parker commented that the Tulalip Tribe has a very large facility and those were apparently financed outside of the 2 percent process. He asked for a more information on how that was financed. **Ms. Lies** responded that she would gather that information. **Director Day** noted the Yakima Tribe also facilitated some contributions to the highways for additional background information.

Commissioner Ellis referenced the tribe that didn't have any table games and therefore does not participate and is not required to contribute 2 percent to community impacts. He noted that to the extent that 2 percent money is inadequate to meet local community impacts, there is the half percent from TLS revenues. In a situation with a tribe that only has TLS machines; he questioned whether they contribute money out of their half percent provision. **Ms. Lies** acknowledged there is a provision within the appendix that states that if a tribe when making these contributions would be operating at a loss, they would not be required to make the distributions. She reported that in this particular year, that was the case with the tribe—the half percent would not apply for charity or for the impact. Commissioner Ellis inquired about how many machines the tribe was operating and was advised less than 100.

Commissioner Parker asked how Washington compares to neighboring states or states that might be similarly situated, for instance in Oregon or Idaho. **Ms. Lies** replied that she didn't have the specific details available at the moment; however, she did have some

contacts that could provide that information. **Director Day** noted staff had just looked at some of the provisions of an Oregon compact that dealt with 2 percent—they used it as a trust fund concept; however, it was basically the same theory. The impacts were identified and then the money went into a fund and was distributed from that fund. **Ms. Lies** believed California and Arizona do the same—the state oversees the money collection, it comes in to the state and is dispersed depending on the parameters that were established between the tribe and the state.

Ms. Lies reviewed the actual contribution information, and she addressed the timing difference. While it is now 2006, the reports are for 2004—primarily due to the timing of the internal audits and the timing of the funds that are distributed. Most of the tribes have a December 31 year ending, and at the end of 2004 they simply identified how much money they needed to distribute, and they distributed the money in 2005. That information is what staff verified in the first part of this year. She noted just under a \$500,000 difference increase between 2003 and 2004. There were 58 governments receiving funds for community impacts and 15 tribes that distributed funds. The tribes not included in this total were: new tribes, tribes only operating TLS, those that had no provable impact, or, those tribes with open investigations.

Ms. Lies explained the biggest chunk of the impact funds are fire and emergency services, which include city/county fire districts, ambulance/Medic One services and those sorts of things. Local law enforcement is 21 percent, and includes police departments, county sheriff's offices, the Washington State Patrol, and some tribal police departments. In general government, the organizations consist of city, county, or tribal governments. In these situations the money is sent to those particular jurisdictions; but, they were not earmarked for any particular services. They would be distributed by those governments. Other services that were not easily categorized are things like the Washington State Council on Problem Gambling, hospitals, the Chamber of Commerce, and economic development for different counties.

Commissioner Niemi commented that in view of the fact that this is about a billion dollars revenue statewide, after prizes are paid—she believed some people will be asking questions about their contributions, about the community impact contributions, and the other contributions. She affirmed that while it is reasonable to realize that tribal police are paid by the tribe and may come out of the 2 percent community impact fund, impact is community impact, and she believed there might be questions about that not fitting. She suggested that as this gets bigger, it may be something to keep an eye on. **Ms. Lies** affirmed that staff has had some discussion about that—and she noted that in some cases the tribal police department is the first responder to the casino.

Commissioner Ellis expressed his surprise that the impact expenses on local roads wasn't a number large enough to identify separately. He asked if that impact was rolled in the general government or other services category. **Ms. Lies** advised it was included in the general government category.

Ms. Lies reviewed the half percent charitable contributions that come from the Tribal Lottery System (TLS) as the second type of distributions made by the tribes as a requirement under Appendix X. It is half of 1 percent of the net win to bona fide charitable or nonprofit organizations within Washington State. Net win in this particular situation is the amount wagered less prizes paid. She reported there are also some allowable deductions for the cost of developing, licensing, or otherwise obtaining the TLS. In the first year of operation, tribes are actually only required to pay half of the half percent—resulting in a ¼ of a percent payment. In the second year, it is reduced by ¼ of a percent—resulting in .735 percent, and in the third year and subsequent years they are required to meet the half of a percent.

The total community impact 2 percent distribution in 2003 was \$4.5 million, which increased to \$5.4 million in 2004 for an increase of \$841,000. The distribution for 2004 included 777 organizations and 14 tribes. **Ms. Lies** noted the 2 percent impact fee disbursement was smaller than a half of a percent of the TLS because the Tribal Lottery System on average is about 80 percent of the revenue the tribes bring in. There are six types of organizations that receive distributions: churches, educational programs, social community services, sports programs, tribal programs, and youth programs. The largest section of these types of distributions is to social and community organizations. They are medical organizations such as March of Dimes, Muscular Dystrophy Organizations, and the Red Cross. It also includes food banks, housing authorities, Veteran's organizations, fraternal organizations, and cultural programs. The tribal organizations that received funds were museums, cultural programs, educational programs, or Native American organizations that were not nonprofits within our state. **Ms. Lies** reminded the audience that to be a bona fide charitable nonprofit organization in Washington, it does not require 501 status from the government—it's only when it is listed as a nonprofit charitable organization in the State. Educational programs are things like schools, academies, PTA's, colleges, scholarships and libraries. These programs are the Boys and Girls Clubs, Girl Scouts, Boy Scouts, YMCA, and camps for youth. Church organizations consist of churches, academies, and ministry activities. The sports category includes things like parks and recreational centers that have baseball, basketball, football, or hockey leagues, and similar associations.

At the conclusion of her presentation **Ms. Lies** called for questions and there were none. **Director Day** advised that staff will continue to provide this report annually and affirmed that staff was receptive to any improvements or changes.

Monthly Update Reports:

Director Day addressed the Congressional Update Summary and he noted the two bills the Commission is interested in are in the same status. One is in the House Resource Committee and the other is in the Senate Indian Affairs Committee. Neither has moved at this point and staff is still in the process of following up regarding the Commission's letter to the Governor and the Washington Congressional delegation.

Director Day drew attention to a news article reporting the Snoqualmie Tribe had been successful in their land into trust process. He also addressed an article called *Gamble of a*

Lifetime from the Spokesman Review which was a part of a series published. This particular individual was from an organized crime background—a person that the Commission was instrumental in making a gambling case against, and the article goes through his history and how he ended up in Spokane, Washington.

Chair Ludwig called for public comments on the Director's Report; there were none.

2. New Licenses, Changes, and Tribal Certifications:

Commissioner Niemi made a motion seconded by **Commissioner Parker** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-12. *Vote taken; the motion passed with five aye votes.*

3. Defaults:

Ms. Hunter recalled that at the October Commission Meeting there was a discussion about whether the Commission should be sending Administrative Charges by certified mail as well as regular mail, and the Commission decided to do so. Since October, staff has mailed about 40 sets of charges and received 39 signed receipts back. Only one was returned as not having a valid address, so the process has been very useful. She reported that mailing certified adds about ten minutes to the staff processing time and adds an average cost of approximately \$4.88 for each mailing. Staff sends out about 200 charges a year which amounts to approximately 50 hours in staff time and approximately \$1,000 in hard costs. **Commissioner Ellis** suggested that staff update Representative Serben since he was not present and since it was his request that staff take another look at the procedure. Ms. Hunter affirmed.

Justin Serry, Card Room Employee Revocation (not present):

Ms. Hunter reported that Justin Serry was formerly employed at the Suquamish Clearwater Casino and staff is requesting that his Class III Certification be revoked. Class III certifications are issued to employees who work at tribal casinos. The Tribe licenses the individual and then the Gambling Commission certifies them. Charges were brought against Mr. Serry based on his 2005 conviction for second-degree assault, domestic violence, and being armed with a deadly weapon (a felony). He failed to disclose this criminal history as well as the fact that he is currently on probation. Mr. Serry's employment was terminated and the Tribe revoked his license. The Commission brought charges against Mr. Serry. The charges were initially sent by certified mail and were returned. Staff resent them to the Airway Heights Correctional Center. Mr. Serry stated that he did not want to be given a hearing. Based upon his response, Mr. Serry has waived his right to a hearing. Staff requests a Default Order be entered revoking his certification.

Commissioner Ellis made a motion seconded by **Commissioner Niemi** to enter an Order revoking Justin Serry's Class III certification to conduct gambling activities substantially in the form of the conclusions, decisions, and Final Order in Default included in the agenda packet under Tab 3(a). *Vote taken the motion passed with five aye votes.*

Steven Jones, Card Room Employee Revocation (not present):

Ms. Hunter reported that Steven Jones was formerly employed at the Tukwila Golden Nugget Casino in Tukwila. Staff is requesting that his card room employee license be revoked based upon his taking \$210 while dealing poker. He did this in four different ways—he took cash from player buy-ins and he also took a rake twice instead of only once on 48 occasions. On one occasion he took a rake three times and then he also took poker chips from his dealer tray. These activities were recorded on surveillance equipment and he was terminated. Mr. Jones' license expired January 20. He did not renew; however, the Commission does have jurisdiction over this matter because he was licensed when the charges were issued. Mr. Jones signed the charges. The legal secretary tried to make a courtesy call to him to remind him of the deadline to request a hearing; however, there was no answer. He did not respond to the charges and by not responding he has waived his right to a hearing. Staff is requesting a Default Order be entered revoking Mr. Jones' card room employee license.

Commissioner Ellis made a motion seconded by **Commissioner Niemi** to enter an Order revoking Steven Jones' card room employee license to conduct gambling activities substantially in the form of the findings, conclusions, decision, and Final Order in Default presented by staff in the agenda under Tab 3(b). *Vote taken the motion passed with five aye votes.*

4. 2006 – 2007 Commission Chair and Vice Chair Election:

Chair Ludwig reported the election of officers is being conducted this month because this may be the last day all five commissioners are present until the meeting in June. He called for nominations for the position of Chair and Vice Chair; noting the Chair elect and Vice Chair elect will take effect on July 1, 2006

Commissioner Niemi made a motion seconded by **Commissioner Parker** nominating Commissioner Ellis as Chair. **Commissioner Parker** then made a motion seconded by **Commissioner Niemi** to close nominations for the Chair position. *Vote taken; both motions passed unanimously.* (Commissioner Ellis abstained)

Commissioner Parker commented that he has appreciated serving as Vice Chair; however, his schedule and availability to regularly commit to the participation necessary for the position will be limited in the next year.

Commissioner Parker made a motion seconded by **Commissioner Bierbaum** nominating Commissioner Niemi as Vice Chair. **Commissioner Ellis** then made a motion seconded by **Commissioner Bierbaum** to close nominations for the position of Vice-Chair. *Vote taken; both motions passed unanimously.* (Commissioner Niemi abstained)

5. Other Business/General Discussion/Comments from the Public:

Chair Ludwig called for public comment.

Robert (Bob) Swanson (“Re-buy Bob”) introduced himself and his colleague Bill Treat, representing a segment of the industry dealing with tournaments and their impact. Mr. Swanson reported that he has been the Tournament Director at Fun Stew Luciano's, the

Iron Horse in Auburn, the Iron Horse Casino in Everett, and he is the current Tournament Coordinator at North Star. He distributed pamphlets/books and drew attention to Exhibit A—the first (single page) set of tournament rules in this state created in 2000. Since then, Mr. Swanson reported that he has written in excess of 38 sets of rules for the various casinos in the Northwest. Exhibit B deals with “Tournament Turkey” and the real world of playing tournaments. He drew attention to the number of tournaments available then and now. He noted that over \$400,000 a month is paid back to the players in these various casinos and that players are drawn in from Oregon, California, and other states. Exhibit D provided a sample of a more current set of rules.

Mr. Swanson reported the activity has become more sophisticated and has had a major impact on the community. He reported that he has conducted in excess of 2,000 tournaments and he noted that Mr. Treat is forming an Association of Northwest Tournament Players. Their desire, because this activity adds to the industry, is to balance the casinos needs and the players needs, to keep sportsmanship going, and to keep the game clean and honest by creating standard rules; rather than multiple sets that are created at the time in different venues and reviewed and approved by different agents and interpreted differently each time. **Mr. Treat** referenced reality TV and noted that activities such as Blackjack tournaments are becoming more and more popular. He asked the Commission to give more consideration to tournament activities and to focus on a consistent rule structure without interfering with casino etiquette. He indicated the current tournament structure and some of the rules promote cheating against the players, which adds up to an unfair advantage and isn’t good for society in general. He thanked the Commission for listening.

Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation/ Adjournment:

At 3:05 p.m., **Chair Ludwig** called for an Executive Session to discuss pending litigation/possible future litigation, and tribal negotiations. He advised no action would be taken subsequent to the Executive Session. The open public meeting was called back to order at 4:30 p.m. and immediately adjourned.

Minutes submitted by,

Shirley Corbett
Executive Assistant

**COMMISSION MEETING
FRIDAY, MARCH 10, 2006
DRAFT MINUTES**

Chair Ludwig called the meeting to order at 9:30 a.m. at the Red Lion Hotel in Olympia. The following members were present:

MEMBERS PRESENT: **COMMISSIONER CURTIS LUDWIG, Chair**, Kennewick
 COMMISSIONER ALAN PARKER, Vice Chair, Olympia
 COMMISSIONER JANICE NIEMI, Seattle
 COMMISSIONER JOHN ELLIS, Seattle
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STAFF PRESENT: **RICK DAY**, Director
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 DAVE TRUJILLO, Assistant Director - Licensing
 AMY HUNTER, Administrator- Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 GAIL GRATE, Administrative Assistant

6. Approval of Minutes – February 9 and 10, 2006:

Commissioner Niemi made a motion seconded by Commissioner Ellis to approve the meeting minutes of the February 9 and 10, 2006 as presented. Vote taken; the motion passed with four aye votes. (Commissioner Parker was not present)

7. Petition for Rule Change – Punchboard and Pull-Tab Service Businesses:

WAC 230-02-205, WAC 230-02-208, and WAC 230-04-133:

Mr. Trujillo explained the rule package dealing with rule change for punchboard and pull-tab service businesses was up for final action. The petition amends three rules: WAC 230-02-205 the definition of gambling service provider, WAC 230-02-208 the definition of punchboard and pull-tab service business, and WAC 230-04-133 punchboard and pull-tab service business restrictions. Currently punchboard and pull-tab businesses must apply for a gambling service supplier license if their combined gross billings are over \$20,000 in any calendar year.

The petitioner requests that the combined gross billings be increased from \$20,000 to \$25,000 because the Commission has not updated the threshold since adoption in 1998. Staff does not see any regulatory concerns with increasing the threshold by \$5,000 and therefore recommends adoption with the proposed effective date of July 1, 2006. The petitioner was not present.

Commissioner Niemi made a motion seconded by Commissioner Ellis to adopt the amendatory section of WAC 230-02-205 - gambling service supplier defined as recommended by staff. Chair Ludwig called for public comments and there were none. Vote taken; the motion passed with four aye votes.

Commissioner Niemi made a motion seconded by Commissioner Ellis to adopt the amendatory section of WAC 230-02-208 - punchboard and pull-tab services business defined as recommended by staff. Chair Ludwig called for public comments and there were none. Vote taken; the motion passed with four aye votes.

Commissioner Niemi made a motion seconded by Commissioner Ellis to adopt the amendatory section of WAC 230-04-133 - punchboard pull-tab service registration required, procedures, and restrictions as recommended by staff. Chair Ludwig called for public comments and there were none. Vote taken; the motion passed with four aye votes.

8. Petition for Rule Change – Card Room Supervision:

WAC 230-40-815:

Jeannette Sugai Agent in Charge-Southwest Region reported that Item 8 is a petition for an amendment to WAC 230-40-815, which is up for final action. Currently WAC 230-40-815 requires a fourth supervisor in a house-banked card room be assigned the responsibility of supervising no more than five tables with a provision that the number may be increased to seven if no more than seven tables are operating and the layout has been approved by staff. Larry Wheaton submitted this petition requesting that the number of tables a floor supervisor is authorized to supervise be increased from five to six tables regardless of the number of tables operating. At the February Commission Meeting, staff filed an alternative, which would allow floor supervisors to supervise up to seven tables as long as the floor plan had been approved by Commission staff in their internal controls. Mr. Wheaton testified that he supported staff's alternative.

Staff recommends adopting the staff alternative of the petition filed at the February Commission Meeting. The petitioner has requested that the change be effective 31 days from filing. **Chair Ludwig** called for public comments.

George Teeny testified on behalf of the RGA and supported staff's recommendation noting that it makes sense. There were no further public comments.

Commissioner Ellis made a motion seconded by Commissioner Niemi that the Commission adopt an order approving the staff amendment to WAC 230-40-815 to be effective 31 days from days from the filing.

Mr. Ackerman verified if the motion was intended to include asking the Commission to vote to not approve the proposed amendment by the petitioner at the same time the vote is rendered to approve staff's alternative to that petition. **Commissioner Ellis** and **Commissioner Niemi** concurred. *Voted taken; the motion passed unanimously.*

9. Rules Simplification Project:

Chapter 230-03-001 through 230-03-340 – Permitting and Licensing, and Chapter 230-05-001 through 230-05-035 – Fees:

Ms. Heston Project Manager for the Rules Simplification Project noted that Chapter 03 and Chapter 05 have been presented to the Commission for the second time. Addressing Chapter 03, Ms. Heston explained the new rules define the terms “we, our, and us” to mean the Commission and staff. She also drew attention to a proposed repealer to align the Commission WAC with the recent court decision about licensed charitable nonprofits managing and operating commercial gambling activities, and repealers and new sections that cover marketing level restrictions for punchboard and pull-tab manufacturers, distributors and operators, which move sections from the chapters on punchboards and pull-tabs into the licensing section so that applicants can be more aware. Lastly, at the end of the chapter there are repealers for the public notice of license applications and a proposed repealer to the certification procedures for charitable nonprofits. The intent is to allow charitable and nonprofits licensees to self select their purpose.

Ms. Heston clarified the amendatory sections listed on the agenda are designed to bring the rules simplification process in alignment with the rules just passed as today's Agenda Item 7. Therefore, WAC 230-03-020 the punchboard/pull-tab service permit (raising the threshold to \$25,000) and WAC 230-03-210 the gambling service supplier license will be changed to match the rule that was previously amended for final action.

Commissioner Ellis verified the two amendatory sections are now included in the package for Chapter 3, and the proposed recommendation would be to adopt the two amendatory provisions today. **Ms. Heston** affirmed. (Commissioner Parker arrived at 9:50 a.m.)

Chapter 230-05-001 through 230-05-035 – Fees:

Ms. Heston addressed six corrections to this edition of the Chapter 05. She directed attention to WAC 230-05-020, Section 11 relating to failing to apply for license class upgrade—the language was amended to read “up to” 50 percent. A correction was also made to WAC 230- 05-025, Section 3 relating to punchboard and pull-tabs to correctly state the Class B one time variance fee at \$5,000 rather than the incorrect fee of \$10,000. Another correction was made in WAC 230-05-030, Section 2, dealing with license classes for distributors to reflect that the fee for annual gross sales for License Class A should be \$605 rather than \$603. The same fee correction was made in Section 6 relating to the Class A License for manufacturers. Lastly, WAC 230-05-030, Section 9 relating to defective punchboard/pull-tab cost recovery fees was corrected to reflect a fee of “up to” \$100. The next item in the same section dealing with failing to apply for a license class upgrade was also corrected to indicate a fee of “up to” 50 percent of the difference between our fees for the licensee's present license class and the new license class or

\$1,000, whichever is less, plus \$26. **Ms. Heston** reiterated the changes were typing errors which are being read into the record so there is no lack of clarity on how they appeared. **Jerry Ackerman**, Assistant Attorney General advised the Commission that in his opinion the corrected typing errors didn't amount to substantive changes for APA purposes; therefore, they were appropriate for the Commission to consider.

Commissioner Ellis noted the necessary repealers are in place as identified by Ms. Heston; however, he noted there wasn't a Chapter 04 repealer. **Ms. Heston** advised that Chapter 04 as well as all the other chapters/rules have to stay in effect until January of 2008. At that time, everything will get repealed at once and the new chapters/rules will go into effect at once. In that regard **Mr. Ackerman** asked that any motion clarify that the rules, if passed as indicated, would become effective on January 1, 2008. **Chair Ludwig** called for public testimony and there was none.

Commissioner Ellis made a motion seconded by **Commissioner Niemi** that the Commission adopt an order adopting the rules simplification rules presented by staff, for Chapter 230-03-010 through 230-03-340 with the proviso that Section 020 include the number \$25,000 rather than the number \$20,000 and that section 210 include the number \$25,000 instead of \$20,000 and that the effective date of the rules be January 1, 2008. *Vote taken; the motion passed with five aye votes.*

Commissioner Ellis made a motion seconded by **Commissioner Niemi** that the Commission adopts an order adopting the proposed rules for Chapter 230-05-001 through 230-05-035 including the corrections to typographical errors described by staff and that the rules be effective January 1, 2008. *Vote taken; the motion passed with five aye votes.*

Director Day thanked the Commissioners for taking the first step and for their patience with the rules simplification project. He acknowledged there is still a long way to go.

10. Petition for Rule Change – Cash Defined:

WAC 230-02-101 and WAC 230-12-050:

Deputy Director Nunamaker noted that Item 10 is a petition and a staff alternative dealing with the subject of gift cards. The petition for a rule change submitted by Harmon Consulting was filed at the October Meeting. The petitioner requested that cash be defined by rule. The new definition of cash would expand the methods that players could use to participate in gambling activities and receive their earnings. The petitioner indicated to staff that the intent of the change is to allow patrons to allow gift cards to purchase pull-tabs and allow pull-tab winnings to be added back to the gift cards. However, the proposal if approved would apply to all gambling activities. The petitioner stated that it would modernize the industry and take advantage of modern security benefits for a prepaid cashless system.

Staff opposes the petition for the following reasons. The standards must be developed for an accounting system that interacts with gift cards for gambling activities. Rules must be reviewed to determine other necessary changes and impacts of gambling activities. It

would be difficult for staff to verify whether winnings were credited accurately to gift cards and it would also allow pull-tab winnings to be credited to gift cards.

At the February Meeting, staff introduced an alternative to allow gift cards and gift certificates. That would be done through WAC 230-12-050, which provides the method of payment that could be used for gambling activities. Gift cards are prepaid and it would be treated the same as cash. Staff has no regulatory concerns about allowing gift certificates and gift cards to be used as payments for participating in gambling activities. However, gambling winnings would not be allowed to be added to the gift certificates or cards. Staff's alternative will be up for final action in June 2006. Staff continues to oppose the petition as submitted.

Chair Ludwig inquired about the reasoning for not permitting the gift card to be used to record credits back on the gift card. **Mr. Nunamaker** responded that primarily the person's use of the winnings would be limited – the player would be confined to using his winnings at that location only. He would not have the cash to walk out and spend it at the grocery store or restaurants. **Chair Ludwig** called petitioner Monty Harmon forward.

Monty Harmon, Harmon Consulting advised that he appreciated Mr. Nunamaker's comments regarding the problem with the prizes and that he had prepared alternative wording to clarify some of the issues. He commented that in the past he provided the Commissioners with an article from the Wall Street Journal that showed how widespread cash cards are used throughout all industries. He also supplied a copy of RCW 19 which regulates gift certificates and noted the change in the law that allows gift certificates to not expire. He emphasized that paper certificate recordkeeping is much more difficult to maintain versus the much easier electronic system. He stated that he has also presented a sample gift certificate transaction from licensee Buzz Inn that detailed lunch and pull-tab purchases. He noted that after receiving his winnings in cash he had the winnings added back to the card. That was six months ago—he had a balance of about \$10—recently he returned to the facility and bought lunch, paid a tip, and he purchased more pull-tabs leaving a balance of 32 cents. All of the transactions are depicted—the date, time stamps, the transaction number, type of sale, and the balance on the card. Mr. Harmon emphasized his belief that this was really a tight system. It also curtails related fraud opportunities given the surveillance systems on the pull-tab areas. Typically forged tabs may not be discovered until the series is finished and pulled a couple days later; however, when a card is swiped with the date and time stamp, it would be easy to review tapes and identify any person passing forged pull-tabs. Mr. Harmon thought this was an advantage for the regulatory environment. Regarding the issue of credit being extended to a person, Mr. Harmon commented that the electronic deposits would already be held on the books by the business; although he affirmed there could be the hazard for the business in terms of accepting a bad check.

Mr. Harmon advised that he had alternative wording that clarifies the necessity for businesses that use this system to pay patrons who have these types of cards upon demand if they make such a request. He indicated the alternative wording was not a substantial change, simply wording that clarifies the cards are equivalent to cash and the licensee

must provide the money to the customer upon their request. He advised that he has labeled it Alternative C and he wasn't sure what the proper process should be. **Chair Ludwig** advised that he didn't want to re-start the rulemaking time and thought it would better to treat it as an amendment. **Mr. Ackerman** reported that he hasn't seen Mr. Harmon's proposed amendment and therefore couldn't comment on whether it's a substantive change or not. If it is not, he believed the best way to proceed would be to treat it as a proposed amendment to Mr. Harmon's petition. Since the rule is currently up for discussion, there is no reason that it couldn't appear alongside staff's alternative at the next hearing on this matter. The Commission could consider it in that form, at that time, and in the meantime staff will have a chance to review it and advise the Commission as to whether or not there are any issues with the APA about whether it is a substantive change. **Mr. Harmon** responded that he will be unavailable for the June meeting due to a planned vacation. (Senator Prentice left the meeting at 10:20 a.m.)

Ms. Hunter responded that it was not possible to move the final action date for staff's alternative forward to April because staff's alternative was substantively different from Mr. Harmon's proposal. It requires starting with the beginning step in the rulemaking process by filing a CR 101. She suggested the Commission could entertain postponing the matter until July, or they could take a vote on Mr. Harmon's original petition; however, it also appeared that Mr. Harmon wanted to change his petition. **Mr. Harmon** inquired if Mr. Ackerman looked at the changes and if they were determined not to be substantial, whether action could be taken on this matter in April. **Mr. Ackerman** responded that staff's alternative is a substantial change, which is a problem. He suggested that the Commission consider having this up for final action at the July meeting. **Chair Ludwig** commented that he won't be in attendance in July and he didn't want to see Mr. Harmon get delayed any longer than absolutely necessary because this rule has already been dealt with for several months. Mr. Harmon inquired if it would be possible to take the rules separately because they are different rules. Mr. Ackerman believed a motion could be made to break them out, to consider Mr. Harmon's petition at the April meeting—assuming the amendment is not substantive; however, that would put the Commission in a position of having to come back at the July meeting and possibly amend or repeal the action taken at the April meeting. Mr. Ackerman believed the most efficient way to handle this would be to consider everything before the Commission at the July meeting, with the understanding the Commission would lose the participation of Chair Ludwig after the June meeting. He noted there would be four other members who have heard the discussion that would be able to render a decision. Chair Ludwig advised his concern was not to keep Mr. Harmon waiting indefinitely. Earlier, due to Mr. Harmon's schedule and other things, the matter was continued, and apparently could be continued again in June. Chair Ludwig commented that he didn't want to see Mr. Harmon get lost in the procedure.

Mr. Parker inquired what would happen if the Commission doesn't agree with staff's proposal, and how that would impact the timing issue. He commented that the pros and cons haven't been discussed and that he wasn't personally persuaded by staff's rationale in terms of the rule change. **Chair Ludwig** replied that was another reason for taking them together—a decision could be made between the petitions as amended, or staff's

alternative at the same time. **Mr. Ackerman** affirmed the Commission has the option to approve Mr. Harmon's petition either in its original form, or as he proposes to amend it at the April Meeting. That may be done by severing staff's alternative and considering it at a later date; or, simply by denying staff's alternative and accepting Mr. Harmon's petition or his amended petition. It is just a matter of whether the Commission wants to consider both of these at the same time, or consider them as alternatives and select one.

Commissioner Ellis asked Mr. Ackerman if the Commission were to adopt Mr. Harmon's petition, wouldn't that effectively mute staff's alternative—from the standpoint that staff's alternative would say that the consideration required to participate in a gambling activity should be collected in full by cash, check, electronic point of sale, bank transfer, gift certificate or gift card, etc. If the Commission adopts Mr. Harmon's petition and redefined cash to include gift card, then when cash is addressed in the section that staff would amend, there is no need to add gift certificate and gift card to that definition. **Mr. Ackerman** agreed. He noted this has not proceeded in the normal fashion because staff has executed a separate filing for their alternative which has complicated this procedure. However, the Commission may either chose to deny staff's alternative or simply not to act on staff's alternative, and it will expire. One process takes six months and the other takes effect immediately.

Director Day reminded the Commission that discussion on this topic has been going on for a while, and some things have gotten lost in the scheme of things. One of the concerns would be that the customer would leave and would not have the cash if they decided to spend it, they would be "stuck" with their gift card. Another consideration is that this is a fairly significant policy change on behalf of the Commission. At this point, a card similar to a cash machine card has not been allowed. Players may not put a card in, play from the card, and then get their credits put back on the card. That system has not been allowed in the gambling activities this agency administers at this point (except for the Tribal Lottery System.) The change Mr. Harmon has proposed would essentially allow players to use a card in any gambling activity that the Commission authorizes—not just for pull-tabs; but, for any other activity. That is a significant change because it is a change in the definition of cash in the system. The card as proposed could be used to credit winnings which could be used anywhere in the activities the Commission administers. **Director Day** cautioned this was a significant policy change and a policy decision for the Commission's decision—he didn't want the Commission to not recognize this huge technical aspect.

Commissioner Ellis commented that based on the various transaction receipts, it appeared that Mr. Harmon was describing a situation in which he used his card to play pull-tabs, he had some winning pull-tabs, he took them to the cashier or the window, and at that point credit was added to his card for the winning pull-tabs. He questioned whether **Director Day** was describing a scenario in which the pull-tab machine itself would credit the winnings by adding them to a card a player used to pay for the winning pull-tabs. **Director Day** replied that the Commission has a case pending—a declaratory judgment regarding the use of a card in a machine. **Director Day** advised he was attempting to clarify that at this point that type of process is not allowed across the board

in all activities the Commission administers. Commissioner Ellis asked if it would solve the concern if there had to be a 2 or 3-step process—the customer buys the gift card in the first place, takes it to the game or pull-tab machine, inserts the card into the machine, gets some pull-tabs, has winning pull-tabs, and then goes back to someone else and has the winnings for those pull-tabs added to his gift card, and then gets receipts similar to those submitted by Mr. Harmon—as opposed to the machine itself crediting that card with the winnings. Commissioner Ellis affirmed that he understood that if the machine is crediting the winnings the issue presented is similar with the ongoing proceeding. However, if the machine was not crediting the winnings as such, if the player takes the pull-tab over to someone else who adds the value (a recorded transaction) of the pull-tab winnings to this card, he questioned if that would cause a regulatory problem raised by the machine itself crediting the winnings. **Director Day** responded that he wasn't sure that it does; but, he recommended following the whole thought because in another scenario if a player was at a house-banked card room table, the question staff would have is what process would that cash transaction follow. He acknowledged that it may seem like staff is being a little bureaucratic; however, right now there is a clear system that says if a player wins they are paid in cash. He cautioned that before the Commission changes the system entirely, staff wanted to make sure the rule will uniformly reflect how using that card would affect all the gambling activities the Commission administers.

Commissioner Ellis asked about the status of the declaratory judgment proceeding and when it is likely to come back to the Commission with some detail on the issues involved. **Director Day** said that it was his understanding that it has been argued; however, the Commission is waiting for a decision.

Mr. Harmon agreed the Commission would have to approve any machines. However, in the operation of pull-tabs, he emphasized the winner has to be verified, someone has to look at the pull-tab in order to add the money back. On card tables, the chips are exchanged and the chips have to be taken back to the cage, they are not paid at the time of the win; therefore, Mr. Harmon didn't see that as being applicable. He further suggested that in today's environment, if the card concept is denied, the Commission would be passing up an opportunity for date, time stamped winnings, and the ability to investigate any fraud against the establishment, and to eliminate concerns regarding credit transactions with the customers. Mr. Harmon indicated the machine issue should be handled on a separate basis. **Director Day** responded that it is not unusual for the Commission to consider one decision and how that may be reflected later as it impacts other rule decisions. In this case if the Commission did not allow cash winnings to be credited back on to a transaction and continued to have cash only as a requirement, it wouldn't have to face the issue of whether or not to allow that into a machine.

Commissioner Bierbaum advised that she originally thought this wasn't a particularly good idea. However, the fact of the matter is that if someone is playing at a card table they get chips—not cash. The player is simply getting a way of counting the cash they will ultimately get. She suggested the card is doing the same thing. **Mr. Harmon** affirmed it's very similar to the pull-tab operation. A player may present winning pull-tabs and they get additional pull-tabs back, not cash. Commissioner Bierbaum verified

that if a player is playing Black Jack they get chips for their winning hands and they must then take them to a cashier who counts the chips and exchanges the winnings for cash. Commissioner Bierbaum suggested the card proposal is just another way of tabulating what the player has won while they play. They would then go to the cage and cash out the card. **Mr. Day** agreed with that point. **Chair Ludwig** called for further comments and Mr. Harmon advised that he would appreciate it if the Commission would consider dealing with this issue in April.

Jhan Smith Director of the Stillaguamish Gaming Commission inquired if the cards were allowed to retain some sort of cash value, whether the Commission would be looking at a Title 31 issue. He indicated that it appears that the credits may be accumulated, held, and used at a later date, which in his opinion turns into a banking function and becomes a Federal Title 31 issue. **Mr. Ackerman** didn't think so because this was a gift card function; it is simply loading the card a different way. He emphasized that he was not at all intending to comment on the wisdom of this; however, he didn't think it would be a banking transaction. **Commissioner Niemi** asked staff to look into that at a later time and report back. With no further comments, **Chair Ludwig** closed the public testimony, noting that staff will consider the possibility of what the Commission may do next month regarding this proposal or the alternative.

11. Petition for Rule Change – Magic Distributing, Inc. - Discriminatory Pricing

Restrictions:

WAC 230-12-330:

Mr. Nunamaker reported this petition was filed by Magic Distributing Inc. They have requested that the restrictions formerly found in WAC 230-12-330 which were repealed in October 2005, be reinstated. The petitioner believes that gambling equipment and related products should be available to all licensees without discrimination.

Discriminatory pricing restrictions were repealed effective October 10, 2005, which opened the market and allowed manufacturers and distributors to sell their products for different prices to different customers. The agency is no longer involved in how companies price their products. Staff no longer conducts discriminatory price checks; however, the restoration of this rule would reinstate the agency's role in pricing schedules for manufacturers and distributors. Before pricing and credit restrictions were repealed in October 2005, staff spent at least an equivalent of a halftime FTE enforcing the regulations. Approximately that equivalent would again be required to monitor these restrictions if reinstated. Staff recommends denial of the petition for the reasons set forth in the September 2005 Commission Meeting Minutes, which were the basis for the repeal of the rules in the first place.

Commissioner Parker commented that the Commission settled this issue after quite a bit of discussion. He suggested that if the Commission wanted to reconsider the rule, that would normally only be done if there was some significant new development or change. He inquired if there were any. **Mr. Nunamaker** responded that he was not aware of any. **Mr. Ackerman** commented that he understood Commissioner Parker's comment; however, for APA purposes the petition has been filed and presented to the Commission for possible filing. He advised that it has to be treated as if it has never happened before

in terms of the action the Commission must take; whether or not to file the petition, and to state the reasons which may be exactly as articulated—that the Commission sees no reason to revisit the matter. **Chair Ludwig** called for public comments on the proposed petition.

Eleanor Coffey from Magic Distributing, Inc. thanked the Commission for reviewing the petition. She reported that since the rule was repealed in October, she has had a hard time getting products from any of the manufacturers. She affirmed that she was aware that several of the larger distributors asked for the rule to be repealed. Ms. Coffey shared her belief that that it is the job of the Washington State Gambling Commission to regulate pull-tabs. With the current environment of the restrictions being repealed, she felt it created an unfair and uneven market. She believed it conflicted with many federal and state laws such as the Sherman Act, the Clayton Act, general rules of reason, anti-trust laws, illegal practices, and boycotts. Ms. Coffey affirmed that Mary Magnusson, Dan McCoy, and Walt Antoncich did an excellent job in June 2005 when they asked the Commission not to repeal the restrictions; but, it was done, which has resulted in allowing the large distributors and manufacturers to cut off the smaller distributors. **Chair Ludwig** asked if Ms. Coffey had any examples of specific distributors. Ms. Coffey responded that she had been advised by her customers that other distributors contacted them and told them that as of November 2005, the smaller distributors would be cut off and no longer around. She noted this occurred before the rule was even put into effect—as a way of getting rid of the smaller distributors. Specifically, Ms. Coffey reported that a representative from Wild Distributing told customers that Magic Distributing would no longer be around as of November 1 and their customers should buy from Wild Distributing since Magic Distributing would not be able to get the product. Since the larger distributors called the manufacturers, they refused to sell to several smaller distributors. She reported that a total of five manufacturers would not sell to her.

Chair Ludwig noted Ms. Coffey's attorney wrote a letter to one specific manufacturer. **Ms. Coffey** affirmed a letter was written to Trade Products and they responded by stating that due to the Commission repealing the rules, they didn't have to sell to Magic Distributing—and they are not. **Chair Ludwig** inquired if Ms. Coffey made any effort to file a complaint with the Commission staff about Trade Products and she reiterated that her attorney wrote to the manufacturer.

Commissioner Niemi commented that in her opinion, at least her vote at the meeting last year was based on the fact that this function was not within the Commission's mission. She emphasized that Ms. Coffey had not given her any reason to believe that it is, and she suggested there may be other places Ms. Coffey could go to for relief. Commissioner Niemi expressed her opinion that it is the Commission's mission to make sure that gambling is fair and to make rules dealing with gambling. She said the Commission is not here to regulate the market. **Commissioner Bierbaum** concurred with Commissioner Niemi that the mission of the Commission is to protect the players not necessarily the members of the industry. She had no idea why a manufacturer would not want to sell to someone who has money; and she suspected that there are other agencies that might be able to assist in that endeavor.

Commissioner Niemi made a motion seconded by Commissioner Bierbaum that the Commission opposes filing the petition for the reasons previously stated; and which also relates to the fact that it is not the mission of the Gambling Commission to regulate the market.

Mr. Ackerman noted the Commission has heard from Commissioner Niemi and Commissioner Bierbaum and that it would be an appropriate time for those who have not spoken to the issue to make a comment so that it may be reflected in the record. The APA requires that if the Commission denies a petition, it must do so in writing (through the minutes that are transcribed), unless the Commission would rather submit something later in writing.

Chair Ludwig reported that he felt the same way he did when he voted against the repeal in October. If the motion is to deny, he advised he would probably vote against that motion for the same reasons. **Commissioner Ellis** stated he would be consistent with what he said when the issue was before the Commission in October. He emphasized that attempting to police relationships between manufacturers, distributors, and retailers is not part of the mission of the Commission. He preferred, rather than addressing that sort of a jurisdictional issue, to simply indicate his feeling that there are other legal remedies available for the petitioner. Accordingly, he felt that it would be inappropriate for the Commission to use its resources and staff in that area and that he would adhere to the same rationale in voting to deny the petition.

Commissioner Parker advised that he supported the motion for the reasons he stated earlier. **Chair Ludwig** closed the public testimony. *Vote taken; the motion passed with four aye votes—Chair Ludwig voted nay.*

12. License Fees for Military Personnel:

WAC 230-04-204 and WAC 230-05-035:

Assistant Director David Trujillo reported that Item 12 is up for discussion and possible filing. The proposed change would allow deployed armed service personnel to renew their expired license or certification at the regular renewal rate. Currently, if the license or certification expires and fourteen days pass, the applicant must apply at the new applicant cost. This change would allow the applicant to apply at the renewal rate of \$136 for up to six months after returning from deployment, which translates to a savings of approximately \$81 for the applicant.

Item 12 (b) is about timing issues. WAC 230-05-035 for individual license fees is part of the Rules Simplification Project which was included in a motion earlier today and added language as a new Section 8. Staff does not see any regulatory concerns and recommends filing items 12 (a) and 12 (b) for further discussion.

Commissioner Niemi made a motion seconded by Commissioner Ellis to file Item 12 (a) and (b) with amendatory sections to WAC 230-04-204 and WAC 230-05-035 for discussion.

Chair Ludwig called for public testimony, there were no comments; however he questioned why the rules were up for possible filing today and won't become effective until January 1 of 2008. **Director Day** reported that WAC 230-04-204 makes the rule change in the existing the rules. However, the fee change in 230-05-035 makes that change in the rules simplification packet. Staff is attempting to change today's rule and the one that will go into effect in 2008. **Commissioner Bierbaum** verified that assuming the rules are passed; military personnel will immediately get that reduction in their fee. **Director Day** affirmed, thirty-one days after filing. *Vote taken; the motion passed unanimously.*

Chair Ludwig called for a recess at 10:55 a.m. and reconvened the meeting at 11:10 a.m. (Commissioner Parker left the meeting at 11:00 a.m.)

13. Transporting and Displaying Gambling Devices at Trade Shows and Conventions:

WAC 230-12-337:

Deputy Director Nunamaker reported this is a new rule up for discussion and possible filing. WAC 230-12-237 deals with manufacturers and distributors transporting and displaying gambling devices at trade shows and conventions. The rule would allow licensed manufacturers and distributors to transport, display, and take orders for authorized gambling devices at trade shows and conventions. RCW 9.46.215 states that the possession and transportation of gambling devices is illegal unless it is in the furtherance of a gambling activity authorized by RCW or Commission rule. This rule authorizes licensed manufacturers and distributors to transport gambling devices to trade shows and to display them to authorized operators. Because Commission staff received a number of inquiries about this issue, a policy was created a couple of years ago while staff determined if there were other associated issues. No issues came up and staff is now placing the current policy into a rule. Staff has received no comments either for or against the rule and recommends filing for discussion. **Chair Ludwig** called for public comments.

Ernie Stebbins, Executive Director for the Washington Indian Gaming Association (WIGA) advised that he is also a Trade Association representative who has held trade shows for the Indian Gaming operators and manufacturers over the last six years. He advised that his understanding of the Commission's current policy is that manufacturers and distributors may display devices at trade shows in furtherance of the activity for which their license was issued. This proposal quantifies existing policy. He believed there were additional aspects of the existing policy such as exhibitors must notify the Commission when they are going to bring the devices in the state, the times, and the locations of the trade show, presumably so the Commission may have an agent present to inspect the devices. He also believed the serial numbers are also provided.

Mr. Stebbins advised that he supported the Commission's mission to protect the public and to ensure that gambling is legal and honest. He stated that mission is also shared by the tribal governments. He noted that current gambling statutes make it a federal offense to transport or possess gambling equipment without specific regulatory authority. **Mr.**

Stebbins affirmed Commission staff has done a good job of putting the existing policy into an administrative code filing and he thought the reference to legal devices authorized by federal law was particularly important to the Indian country since the regulatory framework for tribal government gaming is regulated from federal law. He advised that he would like to look at the proposal and have it reviewed by the WIGA legal council and noted he may have additional comments in the future. With no further comments **Chair Ludwig** closed the public testimony.

Commissioner Niemi made a motion seconded by **Commissioner Ellis** to file WAC 230-12-337 for further discussion. *Vote taken; the motion passed with four aye votes.*

14. Rules Simplification Project:

Chapter 230-06 – Rules for all Licensees

Ms. Heston asked that Chapter 06 of the Rules Simplification Project be filed for further discussion. Currently, Chapter 12 - Rules of General Applicability apply to everyone. In Chapter 06, staff created and pulled the rules from other sections that apply for all licensees, or, anyone who holds a gambling license.

The chapter has two rule summaries. The first rule summary concerns intoxicated persons operating or playing gambling activities. Rules have been taken from two different sections (Chapter 40 rule 320, Sections 01 and 03, and rule 230 Chapter 30-050), that talk about restricting intoxicated persons from playing or operating and they have been combined into a new rule 230-06-015. The rule mandates that licensees must not allow any person who appears to be intoxicated or under the appearance of any narcotic or other substance to operate or play any gambling activity. Effectively, the rule that was formerly just in the house-banked card room chapter and just in the punchboard pull-tab chapter is now a universal rule for all gambling activities. A similar universal change was made to the age restrictions for players through rule 230-06-010, which mandates that Licensees must not allow anyone under the age of 18 to participate in gambling activities. She then acknowledged a list of exceptions that have long been in the rules. The second rule summary for consistency sake establishes and regularizes all of the due dates/the amount of time given to a licensee to return documentation to the Commission at 30 days. Staff recommends filing Chapter 06 of the Rules Simplification Project for further discussion.

Director Day recalled that while it was a while ago, the Commission requested that staff take a look at the various deadlines and make an attempt at achieving some consistency; which has been incorporated in this chapter.

Commissioner Ellis made a motion seconded by **Commissioner Bierbaum** that the Commission enter an order to accept the proposed Rules Simplification Chapter 06 for filing in the form presented by staff for further discussion. **Chair Ludwig** called for public testimony, there was none. *Vote taken; the motion passed with four aye votes.*

15. Other Business/General Discussion/Comments from the Public:

George Teeny speaking on behalf of the RGA and from the RGA's point of view stated that it has been a pleasure working with Deputy Director Nunamaker over the years, noting that he's always shown himself to be an individual that would listen and would study the situation. Even though parties may have not agreed with everything, he shared information, and the RGA respected Mr. Nunamaker. Mr. Teeny addressed a personal experience and noted that during the whole process, Mr. Nunamaker held himself to be a gentleman who was also very understanding—and that he carried that philosophy with him for the last 18 years—the time that Mr. Teeny was personally been acquainted with Mr. Nunamaker. Mr. Teeny affirmed that it has been a pleasure to know that Mr. Nunamaker was on the regulatory side of this industry. He said he was very sorry to see Mr. Nunamaker leave because he brought history and understanding with him, and although there are others to replace Mr. Nunamaker, he wasn't sure they'll do as good of a job as Neal. In closing, Mr. Teeny said, "From my heart, thank you very much Neal for the last 18 years, and from the RGA, for the work that you have done with us."

With no further comments **Chair Ludwig** called for executive session at 11:20 a.m. to discuss a personnel issue. He reconvened the meeting at 11:35 a.m. and immediately adjourned the meeting. The April meeting will be held at the Heathman Lodge in Vancouver on April 13-14, 2006.

Minutes submitted by,

Shirley Corbett
Executive Assistant