

**COMMISSION MEETING
THURSDAY, JULY 12, 2007
MINUTES**

Chair Niemi called the meeting to order at 1:30 p.m. at the La Quinta Inn located in Tacoma. She introduced Representative Geoff Simpson, from Covington, who is replacing Representative Alex Wood on the Commission as an ex-officio member. Chair Niemi then introduced the following members and staff present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair**, Seattle
 COMMISSIONER PEGGY ANN BIERBAUM, Vice-Chair, Quilcene
 COMMISSIONER ALAN PARKER, Olympia
 COMMISSIONER JOHN ELLIS, Seattle
 COMMISSIONER KEVEN ROJECKI, Tacoma
 SENATOR MARGARITA PRENTICE, Seattle
 SENATOR JEROME DELVIN, Richland
 REPRESENTATIVE RICHARD CURTIS, La Center
 REPRESENTATIVE GEOFF SIMPSON, Covington

STAFF PRESENT: **RICK DAY**, Director
 SHARON REESE, Deputy Director
 MARK HARRIS, Assistant Director – Field Operations
 DAVID TRUJILLO, Assistant Director – Licensing Operations
 AMY HUNTER, Administrator – Communications & Legal
 JERRY ACKERMAN, Assistant Attorney General
 GAIL GRATE, Executive Assistant

Director Day presented a certificate and pin to David Trujillo, Assistant Director of Licensing Operations, for 15-years of state service, which was all with the Gambling Commission.

Director Day explained about a recent joint investigation into a cheating scam developed with a game called mini baccarat, which represented a significant amount of time, effort, and cooperation from multiple jurisdictions. The indictments have all been issued for the alleged offenses. With the help of Chair Niemi and Julie Lies, Assistant Director of our Tribal and Technical Gambling Division, we would like to acknowledge and give thanks to a number of people involved in this investigation.

Director Day noted that the level of cooperation necessary between tribal, state, and federal agencies to be able to put something like this together continues to be demonstrated in Washington. Director Day thanked the Tribal casino operations, and in particular the Puyallup and Nooksack Tribal regulatory operations, for their assistance and patience during the investigation. A significant amount of money is involved and needs to be watched while these cases are being made. Director Day explained that two primary facilities were involved,

Puyallup Tribe's Emerald Queen Casino and the Nooksack River Casino. The Puyallup Tribe's approximate loss came to about a million dollars and about \$90,000 with the Nooksack Tribe. At this point on the Puyallup side of the case, there have been eight indictments issued, two Class III certified employees involved. The Nooksack had five indictments, with three Class III certified employees involved. This case involved a number of other states and Canada. Players in California have been indicted as well; players from California traveled to Washington, including the dealers here, to cheat in the game of mini baccarat. This investigation involves about four years of work. Director Day acknowledged the following people involved in the investigation:

- Tate London, Assistant U.S. Attorney, Prosecutor for both the Puyallup and the Nooksack case
- Lisa Reichenberger, Agent, California Department of Justice, Division of Gambling Control.
- Dawn Ringer, FBI
- Gina Davis, FBI Supervisory Special Agent
- Carlos Mojia, FBI Supervising Senior Resident Agent
- Jeff Madison, FBI Special Agent
- Scott Saxton, FBI Special Agent
- Joe Keliiholokai, Director of Puyallup Tribal Gaming Agency
- Phil Hackwith, Special Agent for the Puyallup Tribal Gaming Agency
- Becky Graybill, a former employee with the Puyallup Tribe
- Darrell Zimmerman, Assistant Director of the Puyallup Tribe's Emerald Queen Casino Surveillance Department
- Mike Jefferies, Nooksack TGA Director
- Marc Epp, Nooksack TGA Supervisor
- Doug Addler, Nooksack River Casino Surveillance Supervisor

Director Day added that one reason the agents can make good cases is because of the surveillance staff. It is often very difficult to pick out illegal activity on the surveillance tapes, but the surveillance operators usually catch it right away. Director Day noted that the following staff who assisted with the investigation all work for the Gambling Commission:

- Travis Vessey, Special Agent, assigned to the Puyallup and Nooksack Tribes
- Dick Kellogg, South District Supervisor
- Kevin Revoir, Special Agent
- Dan Wegenast, North District Supervisor
- Mona Nelson, License Technician
- Kim Basher, License Technician
- Cassie Voss, License Technician
- Philette Hamakua-Ling, Licensing Supervisor
- Several Gambling Commission Undercover Agents who won't be identified.

1. Review of Agenda and Director's Report:

Director Day reviewed the agenda for Thursday and Friday and noted changes and inserts added to the agenda packet since publication. He pointed out that after today's Executive Session would be continued discussion on the Hearings Chapter of the Rules Simplification Project from this morning's study session.

Centennial Accord Update

Director Day explained that the 18th Annual Centennial Accord meeting between the Governor and the Tribal Chairs and representatives was held June 19 at the Little Creek Casino near Shelton. The Centennial Accord process was designed to improve cooperation and communication between the Tribes and State Government. We provided a brief status report in the agenda packet. Director Day explained that of the 29 federally-recognized tribes in Washington, 28 have Class III Gaming Compacts and 21 of those tribes operate 27 casinos with net receipts over \$1.3 billion. Net receipts are the amount wagered less prizes. The Spokane Tribe Compact was signed by the Tribe and the State and approved by the Federal Government. The Compact resolved a process that spanned over 20 years of negotiations and litigations between the State, Tribe, and Federal Governments. Appendix X2, an amendment between the state of Washington and 27 Indian tribes, was approved and signed. An agreement between that many tribes and the state has not happened before and involved an immense amount of work on all sides. The amendment included provisions to provide more direct funding for addressing problem gambling and smoking cessation programs, and re-addressed the number and type of machines available in the state. The Gambling Commission is also working with the tribes in an attempt to streamline and eliminate duplication of processes. Director Day reported that a cooperative effort between our agency and the tribal gaming agencies has resulted in training over 800 attendees over the past two years. The Gambling Commission continues to meet regularly with Tribal TGA Directors to discuss regulatory concerns and issues.

Commissioner Ellis asked if there were any other developments concerning gambling that occurred in the context of the meeting, other than our presentation of the highlights. **Director Day** responded there was brief discussion in recognition of the necessary implementation of Appendix X2 and the new testing requirements that will be coming forward. The manufacturers are developing the new software applications necessary for the revisions approved in Appendix X2, so there was discussion about internal control development at the tribal level. Director Day noted the need for everyone to work together to ensure it is effectively implemented.

Preliminary 2007-2009 Budget Discussion

Director Day introduced Business Operations Division staff: Administrator Terry Westhoff, Cam Dightman, and Judy Pittelkau, who will help provide details and answer any questions. Using a PowerPoint presentation, Director Day explained the budget approval process and briefly reviewed the FY 07-09 budget approved in August 2006. He gave an update on the status of the FY 07 budget plan and reported on the revised revenue estimates for FY08 and FY09, noting the legislative adjustments and changes. He covered the agency's target working capital balance and explained some recommendations for the 07-09 budget proposal.

Representative Simpson asked for information about the revenue sources; for example, on pull-tabs, is it a strict licensing fee or is it a percentage of sales? You don't have to do it right now.

Director Day explained the license fee structure for pull-tabs and bingo is determined on a class basis, a set percentage depending on net revenue – the amount of revenue left after paying prizes. House-banked card rooms pay a set license fee depending on the number of tables. With the tribes, we certify but don't license. Some of the other fees are relative to individuals' licenses or certifications and ID stamps that go on amusement games and other gambling equipment to show the Commission's certification. Assistant Director Trujillo will put together other information and reports and provide them to Representative Simpson.

Senator Prentice indicated that looking at pull-tabs was a smart place to start because the ebb and flow and history of pull-tabs reflect a lot of other things. She suggested reviewing the information provided earlier today to the appropriate committees when the Legislature begins, noting the involvement of the numerous law enforcement agencies, which proves the need for trained agents. The needs of the people who saw this happening can't be predicted – there were enough honest people who didn't want to see this happening, but you can't always rely on that. Also, although they are not very visible, we need to have good budget staff doing their job. One thing Senator Prentice is always concerned with has to do with FTEs. Although the Gambling Commission budget doesn't come out of the general fund, the total figure is reflected in the Governor's budget, and they have always checked with me asking whether they really need that many FTEs? Senator Prentice's argument has always been that the Gambling Commission is a law enforcement agency, and it can't do the law enforcement job without the agents – so yes, it is necessary. But they are always very sensitive because at some point an editorial will point out how the number of state jobs has increased, even if the cost doesn't come from the General Fund. So starting out with a really good story like this about how Gambling Commission agents helped catch the scoundrels would show that the number of FTEs is effective, but we also need to have people there who have been appropriately trained and who believe in the job.

Director Day affirmed he would take Senator Prentice's advice, noting that the point raised about FTEs was part of the reason behind staff recommendations.

Commissioner Ellis commented that, once again, the presentation and supporting material demonstrate what a good job our budget team does. Commissioner Ellis particularly liked the slide showing the cash flow and the working capital balance with the extreme changes in the amount of revenue coming in. It is obviously like shooting at a moving target when trying to determine exactly how much money the Agency will need in order to fund this operation and year in and year out, staff seem to do an extremely good job. Commissioner Ellis congratulated Terry Westhoff's staff for that work.

Chair Niemi concurred with Commissioner Ellis, recalling about four years ago where we made major cuts in FTEs based upon the Governor's request. Chair Niemi was pleased there were no FTE cuts included in the budget plan. When you look at the net gambling receipts from a year ago they were \$1,612,000,000. The recommended budget plan could make up for the approximately \$1 million more that is going to be needed. The first place thing normally to do is let go of FTEs, and Chair Niemi was delighted to see that the budget staff have not done that. The increased attention has been on generating more revenue, and by looking at the amount of net gambling receipts. It was obvious that we were going to need at least that many FTEs to handle the amount of money that is coming in.

Commission Parker commented on the progressive vs. regressive nature of the budget policy where if you simply set license fees based the number of tables, as with card rooms, that causes smaller operators to essentially pay the same as larger operators. When considering a plan to address the future budget, Commission Parker hoped staff would consider making the fee system more progressive so the larger operators pay their share. Commissioner Parker noted that Washington State has an exemplary gambling regulatory organization based on fee income, as distinguished from the general fund that gets appropriated by the Legislature. It is then reflected in terms of the relationship between the Legislature and the operation of the Agency. Being able to continue to successfully manage an organization based on fee income has some very good public policy arguments in favor of it, because if we went to a general fund arrangement where operators were paying taxes into the general fund and tribal casinos were paying revenue sharing into a general fund, the Legislature is forced to get hands on in terms of the management of the organization. Commissioner Parker thought with the nature of regulating gambling, you are better off with a truly independent Commission, and the relationship we have with the Legislature seems to work very well.

Rules Simplification Project Status Update – Project Summary

Director Day reported that we are in the final stages of the Rules Simplification Project, directing the Commission to the status update prepared by Beth Heston. We are nearing the end of the Rules Simplification Project, but with publication and printing requirements, the schedule does not have much flexibility. Most of the rules were designed to go into effect in January 2008. At the August Commission Meeting, Ms. Heston will present the final three chapters for discussion and possible filing. Chapter 19 State-Tribal Compacts, Chapter 17 Hearing Rules, and a clean-up package. Plus there will be a package that will repeal the current rules in January 2008. Director Day thanked the Commissioners for their help in holding us to the line on substantive changes, recalling a comment from Commissioner Bierbaum that we sold the project based on the idea that this was a rewrite for simplification and not a broad change in substantive nature. Director Day commented that after over two-and-a-half years it was time to wrap up the project, noting at this point over 65,000 words have been removed from our rules (about 38% of the total). Director Day complimented everyone on their patience as we have worked through these rules proposals.

Correspondence

Director Day addressed correspondence:

- Ex Officio Representative Geoff Simpson 'Welcome to Commission' Letter, Appointment Letter, and Biography
- Ex Officio Representative Alex Wood 'Thank You' Letter
- Invitation Notices to Commission Meetings

Monthly Updates/News Articles:

Director Day briefly discussed the Administrative Case Update, the Seizure Update, the Federal Update, and the News Articles. The federal update shows the activity in Congress, including an informational hearing that was held on an Internet bill that would establish federal licensing schemes with a state option. A summary of the bill was included in the agenda packet along with some letters regarding Commission and Governor's opinions on changes to Class III jurisdiction.

Chair Niemi called for public comment on the Director's Report.

Chris Kealy, Iron Horse Casino in Auburn, testified that he was looking at the budget and how it flows through, and referred to the bar graph on the last page that shows the increase of gaming activity in the period. Inside that set of numbers, the information related to the individual components, shows the largest increase (\$1.6 billion) is from Tribal, which are largely a self-regulated body. When you look through some of the other numbers, they are actually down this year, with a year-to-date of \$85,000 in regulatory fees related to tribal regulation. The number that is getting lost in the graph is the shrinkage in the components of the industry on the house-banked side, the pull-tabs, and the bingo. It works anecdotally backward; they knew we were going to come to this issue of needing to change fee structures because of the fewer places to monitor. Mr. Kealy pointed out the information from December last year: 11 site visits by the Gambling Commission agent to his facility. Mr. Kealy started wondering if the agent had less to do, because there were half as many house-banked card rooms in the area. Mr. Kealy said he thought that the FTE reduction might have to be larger or the work load shifted somewhat and didn't understand how, when he saw so much reduction in his industry, that was not flowing into a need for less people.

Commissioner Ellis asked Mr. Kealy whether he was referring to the reduction in the number of house-banked card rooms, and asked if the reduction in the volume of business at the house-banked card rooms (down 20%) was because of Initiative 901. **Mr. Kealy** responded that he runs a \$22 million budget himself and was down about 20% on that budget (about \$4 million) and in that process he lost about 17% of his FTEs, adding that it is a direct connect. Mr. Kealy commented that he respects the sovereign nation status and their ability to increase their revenue. He noted that we all have expenses, proportionate to our existence, and we have expensive investments in these facilities. We are not likely to risk them through illegal activity; we know that we are not going to do

certain things and the tribes wouldn't either. Your public image can't be risked by fooling around with what the state has entitled us to do. Mr. Kealy was hoping that in the wake of the end of the rules simplification project there would be less of a need in the staff side and/or an increase in gaming, and was very nervous when looking at the page that indicates an increase in new revenue sources. That usually means a fee increase unless the Commission planned to authorize new activities, which Mr. Kealy did not feel was going to happen. Mr. Kealy said he was just trying to be aware of how we were going to accomplish this and where those efforts were being applied, adding he would try to put any other comments in writing during the next month.

Chair Niemi commented that she agreed with Commission Parker's thoughts about where the revenue should be coming from, which would not be from where Mr. Kealy was concerned about. Chair Niemi also thought that if you have that many fewer FTEs then you pay less licensing fees. **Mr. Kealy** responded that, no, because what we did touch on was a correct point. We have a fixed license fee so the proportionate portion of the income fits very well. It was developed very well by Mr. Ben Bishop during the growth of the card room industry, when the licenses were fixed for the facility. The proportionality comes through the number of employees, because the individuals are licensed. **Chair Niemi** said she was talking about the individual licenses. **Mr. Kealy** agreed, adding that on the tribal side, although he did not actually know the numbers, he was sure the number of tribal employees had also been an increase in revenue to the agency, which was needed because they have to regulate. Mr. Kealy said he was very supportive of how they do that. **Chair Niemi** commented that the revenue staff are being very imaginative, and that Mr. Kealy may be pleasantly surprised. **Mr. Kealy** said he hoped so.

2. **New Licenses and Tribal Certifications:**

Commissioner Ellis made a motion seconded by Commissioner Rojecki to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-36. Vote taken: the motion passed unanimously.

Chair Niemi called for a break at 3:00 p.m. & called the meeting back to order at 3:25 p.m.

3. a) **Defaults:**

Amy Hunter, Administrator of Communications and Legal Division, explained that the three default orders today were all for individuals; none of whom are currently working in gambling.

Robert Pacheco, Class III Certification Revocation

Ms. Hunter reported that Robert Pacheco is a Class III employee who works at the Muckleshoot Casino as an IT technician and assisted when one of the Tribal Lottery System machines malfunctioned. Mr. Pacheco took a ticket that was worth over \$110, initially denying he had taken the ticket. Mr. Pacheco said he had thrown the ticket

away, but later admitted he did take the ticket and planned to give it to someone he thought needed some money. All of what he was doing with the ticket was captured on the surveillance tape. The Muckleshoot Tribe revoked his license. By failing to respond to the charges issued, Mr. Pacheco waived his right to a hearing, and staff is requesting a default order be entered revoking his certification.

Chair Niemi asked if Mr. Pacheco or a representative was present. No one stepped forward.

Commissioner Bierbaum made a motion seconded by **Commissioner Ellis** that the Commission enter a default order revoking Robert Pacheco's Class III Certification to conduct authorized gambling activities, as presented by staff. *Vote taken;* the motion passed unanimously.

Marcus Matthews, Card Room Employee Revocation

Ms. Hunter reported that while working as a cashier at Happy Days Casino in Lakewood, Marcus Matthews took a patron's credit card and charged \$800 for an unauthorized cash advance on the card. Then Mr. Matthews gave the card to someone who was not the original patron. This was caught on surveillance tape. Charges were sent by certified mail and regular mail. Someone by the name of George Matthews signed for the certified mail. By failing to respond to the charges, Mr. Matthews waived his right to a hearing, and staff is requesting a default order be entered revoking his card room employee license.

Chair Niemi asked if Marcus Matthews or a representative was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** that the Commission enter an order revoking Marcus Matthew's Card Room Employee license to conduct authorized gambling activities, as presented by staff. *Vote taken;* the motion passed unanimously.

Manuel A. Rocha, Card Room Employee Revocation

Ms. Hunter reported that Mr. Rocha did not disclose criminal history information on his Card Room Employee application. Mr. Rocha's employer requested an emergency waiver, which allows someone to go to work when the business is short staffed so long as the applicant meets other conditions. Because Mr. Rocha did not disclose criminal history on his application, staff issued him a license. Six days later staff discovered that Mr. Rocha had a Criminal Trespass conviction from 2005, and when his fingerprint report came back it was discovered he had other undisclosed criminal history. Staff asked Mr. Rocha to provide court records for the undisclosed criminal history, which he did not do. The charges were sent by certified and regular mail. The certified mail was returned; however, the charges sent by regular mail were not returned, so it is presumed Mr. Rocha received them. Because Mr. Rocha did not respond to the charges, he has

waived his right to a hearing, and staff is requesting a default order be entered revoking his license.

Chair Niemi asked if Manuel Rocha or a representative was present. No one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** that the Commission enter an order revoking Manuel Rocha's Card Room Employee license to conduct authorized gambling activities, as presented by staff. *Vote taken; the motion passed unanimously.*

- b) **Request for Summary Suspension**
There were no summary suspensions.

(The following four Petitions were transcribed verbatim)

4. a) **Petitions for Review**

Charles Jarrett, Card Room Employee

Assistant Attorney General Bruce Marvin was present for the State, as well as the **Petitioner Charles Jarrett**. Mr. Jarrett and Mr. Marvin provided their testimony in the matter for review. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Niemi** recessed the meeting at 3:50 p.m. to deliberate the petition in executive session. The public meeting was reconvened 4:15 p.m.

Commissioner Ellis noted that Mr. Jarrett had submitted two letters in his support to the Commission, one from Tod McClane, casino manager at Great American Casino Tukwila and one from Seattle Police Detective Paul Suguro. The Commissioners reviewed these letters.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** that the record be deemed to be expanded with the inclusion of the two above-mentioned letters. *Vote taken, the motion passed unanimously.*

Commissioner Bierbaum made a motion seconded by **Commissioner Ellis** to grant the petition for review submitted by Charles Jarrett, and reverse the decision of the Administrative Law Judge to revoke Mr. Jarrett's license to conduct gambling activities in the state of Washington, and instead impose a suspension of his license to the duration of the term of the license, it is also the sense of the Commission that this sanction should constitute the full and complete disposition of this incident. *Vote taken, the motion passed unanimously.*

(Agenda Item #4(second half) and Item #5 were taken out of order)

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

Chair Niemi announced that Item #5 would be taken out of order to allow for other business/general discussion/comments from the public before hearing the testimony on the three remaining Petitions. **Chair Niemi** called for any other business or public comments; there was none. Chair Niemi continued with Item 4.

4. a) **Petition for Review**

Kevin C. Herbst, Card Room Employee

Assistant Attorney General Bruce Marvin was present for the State, as well as the **Petitioner Kevin C. Herbst and Counsel Tim Note**. Mr. Herbst, Mr. Note, and Mr. Marvin provided their testimony in the matter for reconsideration. A recording and a transcript of the hearing is available upon request. At the conclusion of the testimony, **Chair Niemi** recessed the meeting at 4:45 p.m. to deliberate the petition in executive session. The public meeting was reconvened 5:00 p.m.

Commissioner Bierbaum made a motion seconded by Commissioner Ellis to deny the petition for reconsideration submitted by Kevin Herbst and uphold the findings of fact and conclusions of law of the Administrative Law Judge and the penalty imposed. Vote taken, the motion passed unanimously.

4. b) **Petitions for Reconsideration**

(The Petitions for Reconsideration from Dave Swyter & Nga Tran were taken out of order because Nga Tran was not present)

Dave Swyter, Card Room Employee

Assistant Attorney General Bruce Marvin was present for the State, as well as the **Petitioner Dave Swyter**. Mr. Swyter and Mr. Marvin provided their testimony in the matter for reconsideration. A recording and a transcript of the hearing is available upon request.

Commissioner Bierbaum made a motion seconded by Commissioner Rojecki to deny the Petition for Reconsideration of the Commissioners Final Order on the Petition for a Declaratory Order submitted by Dave Swyter. Vote taken, the motion passed unanimously.

Nga Tran, Card Room Employee

Assistant Attorney General Bruce Marvin was present for the State. **Petitioner Nga Tran** was not present.

Commissioner Ellis asked as to the posture of this Petition for Reconsideration, assuming from the materials that the reason this matter was on the agenda was because previously when Ms. Tran filed her Petition for Reconsideration and it was on the agenda, she mentioned at the hearing that she had a criminal case pending. At that point, the Commission determined it should suspend any further consideration of the Petition for Reconsideration until her criminal case was completed, which has now occurred

based on her guilty plea. Commissioner Ellis asked whether that assumption was correct, and that someone had concluded it was appropriate to put this matter on the agenda today for a decision on the Petition for Reconsideration.

Mr. Marvin affirmed, noting he had certified copies of the statement of the defendant on the plea of guilty, and the judgment and sentence on two charges of Cheating in the First Degree that Ms. Tran entered into on April 3, 2007. Mr. Marvin believed the Commission's ruling had been that the Motion for Reconsideration would be revisited upon a final resolution. He was not sure if the Commission had this copy in their record, but he said he would be glad to offer them. Mr. Marvin thought that by Ms. Tran's absence she was conceding this as a moot point, but Mr. Marvin felt that for purposes of finalizing, it would be appropriate for these documents to be included in your records.

Commissioner Bierbaum asked what happens when a person does not show up for a hearing on their Petition for Review. **Commissioner Ellis** asked whether Ms. Tran received notice of this hearing. **Mr. Ackerman** said he was reviewing the procedure and apparently in this case there was a Summary Suspension and then a Default was ordered. **Mr. Marvin** believed the posture of the case was a Summary Suspension that was not challenged, a Default Order was entered, and then a Final Order was also issued whereupon she appeared and made a Motion to Reconsider the Final Order. **Mr. Marvin** understood that the Commission could go either way; they could either say that Ms. Tran defaulted on her Motion for Reconsideration and use that as the basis for denial, or look at the factual evidence the Commission has and simply conclude on that basis not to grant Ms. Tran a Motion for Reconsideration, since the reason the Commission stayed consideration of it previously was because they were awaiting the outcome of Ms. Tran's criminal case.

Mr. Ackerman added that the Commission had already determined the matter at the Default hearing. Ms. Tran came forward and asked for a Reconsideration of that. Mr. Ackerman recalled that the Commission had set this over to allow the criminal case to play out, so what is before the Commission right now is a Motion to Reconsider the Default Order or to vacate the Default, however you care to phrase it. In any event, Ms. Tran has received notice of this proceeding and has not appeared, so her Motion for Reconsideration, which has been in abeyance for about a year, appears to be before the Commission to deny because no one is here to argue in favor of it.

Commissioner Ellis asked whether it would be appropriate, since we now have the evidence of her guilty pleas in the criminal proceeding, whether our decision should be on the basis of the guilty plea and not on the basis of a default. **Commissioner Bierbaum** suggested asking Mr. Ackerman, but it seemed procedurally inappropriate; you can't simply decide on the merit that Ms. Tran is not even here. **Mr. Ackerman** was concerned that all the notice the petitioner has had at this point has indicated this would be a Motion to Reconsider the Default. Ms. Tran has not been given notice that the Commission may reconsider the merits of the matter and enter a Final Order adjudicating

facts. All Ms. Tran knows is that she has been defaulted at this point, not that the Commission has made a determination whether to enter Findings, Facts, Conclusions of Law and a Final Order. The Order that is being reconsidered is an Order of Default.

Commissioner Ellis agreed, adding that if the Commission had agreed with Ms. Tran's position, they would have taken a two-step approach in which the Commission initially vacated the default and then addressed the merits. Commissioner Ellis suggested the Commission vacate the default and address the merits and on the basis of her guilty plea. **Mr. Ackerman** thought the problem was that the Commission never had an ALJ determination in this matter; it was a Summary Suspension. Then Ms. Tran was given notice that her license was revoked and she defaulted on the opportunity to have the hearing before the ALJ. **Mr. Marvin** understood that the Commission wanted some determination as to whether they were going to accept the motion, which would be contingent upon how the criminal case turned out. In this case, it turned out badly for Ms. Tran, so Mr. Marvin's assumption would be that under those circumstances, since Ms. Tran has these convictions, it would be futile to grant the Motion for Reconsideration because Ms. Tran is not going to be entitled to the relief, but Mr. Marvin wouldn't go any farther than that in terms of revising the final default order that is already in place. **Chair Niemi** asked whether the Commission should deny the Motion for Reconsideration, because Ms. Tran was not present. **Bruce Marvin** thought that would be the simplest way of handling it.

Commissioner Bierbaum made a motion seconded by **Commissioner Ellis** to deny Nga Tran's Petition for Reconsideration of the Order of Default based on the fact that Ms. Tran is not present. *Vote taken, the motion passed unanimous.*

At 5:45 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigation, and called the meeting back to order at 5:50 p.m. to announce that the Executive Session would be held Friday morning at 8:45 a.m. Meeting adjourned at 5:50 p.m.

**COMMISSION MEETING
FRIDAY, JULY 13, 2007
MINUTES**

Executive Session started at 8:45 a.m. and adjourned at 9:50 a.m.

Chair Niemi called the meeting to order at 10:00 a.m. at the La Quinta Inn located in Tacoma, and introduced the attendees present:

MEMBERS PRESENT: **COMMISSIONER JANICE NIEMI, Chair**, Seattle
COMMISSIONER PEGGY ANN BIERBAUM, Vice-Chair, Quilcene
COMMISSIONER ALAN PARKER, Olympia
COMMISSIONER JOHN ELLIS, Seattle
COMMISSIONER KEVEN ROJECKI, Tacoma
SENATOR MARGARITA PRENTICE, Seattle
SENATOR JEROME DELVIN, Richland
REPRESENTATIVE RICHARD CURTIS, La Center
REPRESENTATIVE GEOFF SIMPSON, Covington

STAFF PRESENT: **RICK DAY**, Director
SHARON REESE, Deputy Director
MARK HARRIS, Assistant Director – Field Operations
DAVID TRUJILLO, Assistant Director – Licensing Operations
AMY HUNTER, Administrator – Communications & Legal
JERRY ACKERMAN, Assistant Attorney General
GAIL GRATE, Executive Assistant

6. Approval of Minutes:

Commissioner Ellis made a motion seconded by Commissioner Rojecki to approve the minutes of the regular meeting of May 10-11, 2007 as modified and presented by staff.
Vote taken; the motion passed unanimously

Rules Up for Final Action

7. Petition for Rule Change from Nickels and Dimes, Inc. – Amusement Game Wagers
Amendatory Section WAC 230-20-685 – Commercial amusement games – Wager and prize limitations.

Assistant Director Mark Harris reported that the petitioner is requesting that amusement game wagering limits be increased from \$.50 to \$2.00 for regional shopping centers, movie theaters, bowling alleys, miniature golf courses, skating facilities, amusement centers, restaurant, and department and grocery stores. Amusement games

operated at other locations have no wagering restrictions, which include seasonal events, amusement centers, fairs, and places that have liquor licenses where minors are not present. The petitioner would like to offer a new type of crane amusement game that would offer higher end prizes. A picture of that device is included in the agenda packet, along with a picture of three other similar type amusement games that are offered. This petition would significantly increase the cost per play in areas that have uncontrolled environments, and would increase regulatory requirements, which currently operate with minimal regulatory requirements. Additional resources may be needed to regulate this activity, but no additional funding would be generated by this activity for the Commission to regulate. Staff recommends the Commission should consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.010 and whether the increase of the wagering limit is still entertainment as referred to in RCW 9.46.0201 and the need for additional agency resources if this passes. The petitioner requests the change become effective 31 days from filing; however, to be consistent with WAC 230-12-050, staff recommends the effective date be January 1, 2008.

Commissioner Ellis asked whether it was fair to say that these machines were not really geared to minors in a broad sense, but really geared to children; aren't the prizes typically stuffed animals? **Assistant Director Harris** affirmed that usually the crane game prizes are stuffed animals.

Chair Niemi called for public comment.

Kevin Jordan, Senior Vice President of Operations for Nickels and Dimes Inc. testified that when he was here last, the Commission asked what the rules were for other states and Mr. Jordan believed his office had supplied some information with regards to that. Mr. Jordan asked the Commission if they had any questions for him. There were none.

Commissioner Ellis stated that he understood the rationale of Nickels and Dimes in requesting the increase when looking at it from a purely economic standpoint and the number of years since the rule establishing the \$.50 limit was established it would make sense to increase the maximum payment for these games. But, at the same time, when you look at the context of these games, which are geared to children, it seems that expecting a \$2.00 payment for the games is just too much.

Commissioner Ellis made a motion seconded by Commissioner Rojecki to deny the petition for rule change.

Commissioner Bierbaum stated for the record that she had a hard time trying to figure out how to analyze this petition, and wondered why the Commission would place restrictions on the amount. But then what if a petition was received asking to increase the price to \$50? Commissioner Bierbaum agreed that the context in which these games are played is usually small children asking the parents for fifty cents to play the game.

Commissioner Bierbaum thought \$2 was quite a lot for a small child to play a game, and she would vote in favor of the petition being denied.

Vote taken; the motion passed unanimously.

8. **Petition for Rule Change from Shuffle Master –Games Played Within a Hand of Cards**

Amendatory Section WAC 230-40-010 – Social card games – Rules of play – Types of card games authorized.

Assistant Director Mark Harris reported that currently no more than two card games can be played within a single hand of cards. The petitioner is requesting the limit of number of games to be played in a single hand of cards be increased from two to three. Their intent is to add a progressive jackpot proponent to a game that currently has two games within a hand. A sample of that layout is included in the agenda packet. Currently, tribal casinos do not have any limits on the number of games they can play per hand, but only five tribes currently offer games with three games within a hand. The change would increase the number of wagers and payouts in the card games. The increasing complexity of the games and additional wagering options makes it more difficult to detect and harder for players to understand the payout structures. Field agents would need additional training to learn the new games to ensure they are operated properly. Additional staff time would be needed to review and approve the games and new service supplier and manufacturer applications. This may also be perceived as an expansion of gambling because the number of wagers and payouts per game could be increased. The Petitioner is requesting the change be effective 31 days from filing; however, to be consistent with WAC 230-12-005, staff recommends the effective date be January 1, 2008.

Commissioner Ellis asked Mr. Harris to give the Commission his gut reaction as to what the quantification of those impacts might be with regard to the number of potential resources and facts. Are we talking about a lot of additional staff time or would the additional staff time be fairly inconsequential and not amount to an additional FTE, for example? **Assistant Director Harris** replied that it would likely be just at the front end to get the new games approved and to make sure that everybody understood the games. As time went on, the need for approval and review time would probably drop off, and it wouldn't increase enough to require adding additional FTEs.

Chair Niemi asked if Mr. Snell were present.

Roger Snell, Shuffle Master, commented that Mr. Harris mentioned that currently only five tribes have games that qualify. Mr. Snell stated that number would increase, because Shuffle Master has recently acquired the rights to do progressives on its games. Mr. Snell said it was Shuffle Master's intention to add a one dollar optional wager for players to fund an incrementing, progressive jackpot. Mr. Snell imagined that before too long Shuffle Master will have quite a few of these at the tribal casinos in Washington.

Commissioner Bierbaum wondered what Shuffle Master was? **Mr. Snell** responded that Shuffle Master is a gaming company based in Las Vegas that manufactures card shuffling machines, and secondly we develop, patent, and market proprietary table games like Let It Ride, Ultimate Texas Hold'em, Four Card Poker, Three Card Poker, Hi-Lo Stud Poker. **Commissioner Bierbaum** was surprised that Shuffle Master holds a patent on Texas Hold'em. **Mr. Snell** explained that Shuffle Master actually has a patent application for Ultimate Texas Hold'em. The game Texas Hold'em is public domain, but Shuffle Master has filed for a patent on the specific rules of the house-banked version.

Commissioner Ellis asked Mr. Snell to describe briefly how the progressive jackpot would work. **Mr. Snell** replied he could do that in as much or as little detail as Commissioner Ellis desired. **Commissioner Ellis** thought a little detail would be enough. He had heard a number of references and various contacts to progressive jackpots, but was not sure he had ever heard them described as to what they mean. **Mr. Snell** explained that Washington has some progressive games, like Caribbean Stud Progressive Blackjack, which is an optional wager of typically one dollar. It will be set at an amount of two dollars. In our case, let's say Fortune Pai Gow Progressive, which is the first game Shuffle Master wants to roll out if this rule gets changed, has an optional dollar wager. The wager pays if the player gets a strong hand, probably four of a kind or better, and as more wagers are made, the meter increments, the jackpot goes up and up and up, and the longer it takes before somebody hits the supreme hand that triggers the jackpot, it just keeps going higher and higher and higher. It generates a lot of interest among players, and then it hits and goes back down to, say, \$10,000, analogous to a bad beat jackpot, if you have those here in your card rooms, where a fraction of the player's money adds onto the meter and at some point hits and goes back down to its original starting point.

Chair Niemi asked Mr. Harris whether any of the card rooms have approached him about wanting this. **Assistant Director Harris:** responded that over the years we have had several submissions by different manufacturers for games that have three or more hands that card rooms had an interest in operating, but which we have had to deny. Recently, we have not received any. **Senator Prentice** commented that this had been an ongoing request, that Mr. Snell had been before the Commission before, or somebody had. **Mr. Snell** affirmed that this started about a year ago, but the original petition asked for a complete repeal of this rule, to open it up to an unlimited number of bets, which was never the intention. Because of the error this has dragged on a bit, and Mr. Harris may not have had too many requests from casinos or card rooms, but Shuffle Master has had quite a few requests to add this wager onto our most popular games.

Max Faulkner, President of the Recreational Gaming Association (RGA) testified that the RGA represents the clubs and supports this petition. RGA does not consider it a major innovation because there have been progressive bets before. Mr. Faulkner thought there is currently a game in the market that has three bets. **Commissioner Ellis** asked whether there would be player confusion between player-supported jackpots and

progressive jackpots; would they be used in the same games and, if so, would that cause confusion? **Mr. Faulkner** explained that in the past there had been a bonus bet, like a match bet, and there had been games with progressive bets, but in this state we haven't had the two together where there would be a bonus bet and a progressive bet. That would be new to this state so I really can't say how it would be perceived, but there would be signs explaining the games. We have new games that come out all the time and we have a training period. A lot of times we will put a game out for free play at some of our locations for a couple of days so the customers can get used to it and the dealers can get used to dealing it, so when the game is played for real money there is not the shock. **Commissioner Ellis** commented that, if he understood it correctly, if you had a game going where you had both the player supported jackpot and the progressive jackpot, then number one, the players would have the option to make a dollar bet, as Mr. Snell described it on the progressive jackpot, and at the same time a portion of each pot would be taken out, up to \$2 for the player-supported jackpot, and there would essentially be two progressive-type jackpots going on in the same game. **Mr. Faulkner** thought the one was a pay scale, so he thought it was more like three-card poker where the player could bet their basic bet, they could bet their basic bet and the pay scale bet that is currently on the game, or they could bet their basic bet, the pay scale bet, and the bonus bet, which is progressive. Or the player could bet their basic bet and just the progressive, it would give the player more options in their betting, and it is a limit on the progressive...

Assistant Director Harris clarified that the player-supported jackpots are offered on poker games, not house-banked games; that would be a separate issue. The jackpots operated on house-banked card games are either a progressive payout or an odds-based payout. This would allow you to have both of them; you could also have a game that had three different payout structures, the first hand being a blackjack hand, the next hand being a war hand, and the third hand being a poker hand, which would give the player a couple different combinations. Most likely you will probably see a straight wager, an odds-based payout, and then maybe a progressive payout. **Mr. Faulkner** agreed. You take an existing game like Fortune Pai Gow Poker in which the player makes a wager against the dealer. The player can then make an odds way out bet, an optional wager, and he's given another optional wager of a dollar for a progressive. For what it's worth, from the perspective of the market, a game like Fortune Pai Gow Poker has hands that are very difficult to get, in a million-to-one probability. There is no casino in this state, in this country, or on this planet that would pay fair odds on that. No one is going to pay \$100,000, \$500,000, a million to one, because it will hit. But with a progressive jackpot, the casinos are able to offer attractive, large odds to customers because they are paying the customers with their own money – the losers of the wager are paying the eventual winner. So the players are happy because they get big odds, and the house is happy because the prize is not coming directly out of their pockets. That is why progressives are popular, and they are not going to be particular to Washington for Shuffle Master – they will be everywhere. It is a great opportunity for Shuffle Master and it is something we know the players and the casinos are going to love as well.

Chair Niemi asked whether Mr. Faulkner anticipated much use of this. **Mr. Faulkner** responded that some of the mom and pop clubs are pretty price-sensitive on these games, and there has been an increase in some of the lease fees that are paid, which is a factor. Then we'll see if people play them. Sometimes when these new games are introduced, they give the clubs a break for a couple months, and so the games are put in to see how they go. **Chair Niemi** thought Mr. Faulkner was not really sure about how this is done. **Max Faulkner** agreed, adding that Mr. Snell was right that the progressives are fairly popular for some players.

Commissioner Peggy Ann Bierbaum made a motion seconded by **Commissioner Keven Rojecki** to adopt amendatory section WAC 230-40-010 as proposed by the petitioner and presented by staff with an effective date of January 1, 2008. *Vote taken: the motion passed unanimously.*

9. **Petition for Rule Change from Porterhouse – Dealing Card Games by Hand Amendatory Section WAC 230-40-800** – Operating rules for house-banked card games. **Assistant Director Mark Harris** reported that currently all house banked card games must be dealt by a shuffling device or a shoe. The petitioner, Robert Otto, a licensed card room manager, is requesting that house-banked card games that use a single deck be hand dealt by the dealers. The Petitioner is specifically interested in the ability to hand deal Pai Gow Poker, but this petition would allow all single dealt games to be dealt by hand. The purpose of requiring the use of a shuffler or dealing shoe is to reduce and minimize the risk of card manipulation and cheating. Not holding the decks in their hand provides fewer opportunities for dealers to manipulate the random distribution of cards. When the rule was up for filing at the April Commission Meeting, Chair Niemi asked for additional information on possible ways cheating could with hand dealing. Special Agent Rick Schulte will provide a follow up on the presentation he gave at the April meeting.

Special Agent Rick Schulte said he has been with the Gambling Commission for nearly six years and has had the opportunity to work in both tribal and non-tribal casinos. In April he demonstrated to the Commission some ways of cheating and showed some surveillance videos. Agent Schulte explained the risks associated with hand dealt blackjack. Knowing what the risks are and being able to combat them helps minimize the risk. The reason for the shoe was to minimize the amount of time the dealers and players were touching the cards. Using a dealing shoe or shuffling through automatic shuffling machines like Shuffle Master, keeps the card from being displayed until it comes out. Agent Schulte showed slides of five risks associated with hand dealing cards: Dealer showing the cards or pinching the deck; Dealer marking cards; Dealing seconds; Dealer signaling the player; and False shuffles. **Commissioner Ellis** asked whether the players dealt by hand in poker games or the house provided dealers in poker games or house-banked games. **Agent Schulte** replied that the House provides dealers in the card rooms and in the tribes. **Assistant Director Harris** clarified there are still player-dealt games authorized in the state, but not many places have them. Most card rooms provide a center

dealer, but there are games where the deal rotates around the players; although very few. Staff concerns with allowing hand dealing are the increase in the dealer's opportunity for cheating, and the possibility the number of cheating cases may go up, which would increase the time agents spend on investigating. Operators would need additional procedures in their internal controls. Most of our staff are trained to investigate cheating schemes; although the schemes are still fairly difficult to detect. The petitioner is requesting that the change become effective 31 days from filing; however, to be consistent with WAC 230-12-005 staff recommends an effective date of January 1, 2008.

Chair Niemi called for public comment.

Chris Kealy, Vice President of the RGA, testified that he runs his business by the numbers, and reads the numbers to find the cheating. This game will be more vulnerable to cheating than games dealt from a shoe, because it is one more variable in the card mechanics scheme of life. The real front line in gaming management and regulation in the state are the floor employees, surveillance staff, shift managers, and the owners of the facilities. Because it is Mr. Kealy's money that gets stolen when players cheat, he is very concerned. Mr. Kealy felt this was not going to cause a big impact either way; there may only be two more cases of cheating in the next three years because of the change if approved. When there is an opportunity to steal, people think they can get away with it but they don't, because the numbers don't lie, which is how we go back and forth to get there. In the end the RGA supports this petition.

Commissioner Bierbaum stated that, just so people know how she analyzed this petition, back when this rule was adopted there was a reason why the requirement that all hands be dealt by a machine or shoe, which was to attempt to minimize all chances of cheating and ensure that gambling is legal and honest. In order for a rule to be changed, there has to be a good reason for changing the rule that would make the Commission depart from the decision that was made initially. There is not enough compelling reason in this petition, except the owner doesn't want to pay Shuffle Master for the shoe.

Commissioner Ellis agreed, adding that given the Commission's responsibility to ensure that gambling is honest to the extent possible, the current rule serves that purpose. Commission Ellis did not think the burden of showing that an exception should be created has been met.

Commissioner Ellis made a motion seconded by **Commissioner Bierbaum** to deny this petition for rule change. *Vote taken; the motion passed unanimously.*

10. **Petition for Rule Change from Tacoma AmVets – Recording \$20 bingo winners**
Amendatory Section WAC 230-20-102 – Bingo prizes – Record of winners.
Assistant Director Mark Harris reported that the petitioner is requesting that bingo licensees no longer be required to report addresses for cash and merchandise prizes of \$20 or less. The proposal would also change the requirement of using a prize receipt and

would allow prizes of \$20 or less to be recorded on a prize receipt log. The current rule requires prize receipts, with the exception that merchandise prizes of \$15 or less may be recorded on a prize receipt log. The Petitioner states the change would allow operators to receipt for prizes faster during speed bingo sections. The change would make bingo receipting requirements more consistent with what is currently authorized for pull-tab winner recording requirements. The Petitioner requests the change be effective 31 days from filing; however, to be consistent with WAC 230-12-.005, staff recommends the effective date be January 1, 2008.

Chair Niemi called for public comment.

Ronnie Strong, Bingo Manager of AmVets Post #1 Bingo requested the Commission to consider passing this rule change effective 31 days from filing because AmVets Bingo is through its downfall for the summer and it is looking like they may have to lay off some people during this time, and currently six people are hired to work Speed Bingo. With this rule going into effect, we could probably drop down to three or four people, which would save on wages. **Chair Niemi** asked whether the Commission had an option as to the effective date. **Commissioner Ellis** said it appeared from the documents that the petitioner requested the change become effective 31 days from filing and staff indicated that to be consistent with WAC 230-12-005 the effective date would be January 1, 2008. **Chair Niemi** said her question was whether the Commission has an option to do it in 31 days rather than January 1, 2008. **Mr. Ackerman** replied that the Commission does have the option; however, if the Commission chooses to do it in 31 days, it would not be consistent with WAC 230-12-005. **Director Day** added that the Commission has concluded that the facts raised by the Petitioner justifying an earlier implementation would outweigh the normal adoption dates that are prescribed in the rule. In addition, the training requirements or changes would not necessarily place anybody else at a disadvantage.

Ric Newgard, Washington Charitable and Civic Gaming Association, testified that they fully support this rule change because it would simplify a lot of things and make our life easier in a lot of areas. The Association also supports the 31-day effective date, because there would be no staff training and it does not change the parameters of what the agents would be doing within the facilities. Mr. Newgard said the industry would greatly appreciate the Commission expediting the change.

Commissioner Bierbaum felt the effective date of 31 days from filing would not adversely affect anyone and Mr. Strong had indicated there were some good reasons for implementing it prior to January 2008.

Commissioner Peggy Ann Bierbaum made a motion seconded by **Commissioner Rojecki** to adopt amendatory section WAC 230-20-102, as presented by staff, with an effective date of 31 days from filing. *Vote taken; the motion passed unanimously.*

11. **Petition for Rule Change from Washington Charitable and Civic Gaming Association**

Increasing carry-over jackpot prize limits and ticket count

Amendatory Section WAC 230-30-045 – Carry-over jackpot pull-tab series – Definitions – Requirements.

Assistant Director Dave Trujillo reported that the petitioner is asking for two changes to the current rule. The first change increases the cap for accumulated carryover jackpots from \$2,000 to \$5,000. The second change increases the maximum pull-tabs in a series with carryover jackpots from 6,000 pull-tabs to 10,000 pull-tabs. Carryover jackpot pull-tab series are games where prizes pass to another pull-tab game within the series if the prize is not won. The licensee must carry over accumulated jackpots to another game in the series until the jackpot is finally won. At the May meeting, Gary Murrey, on behalf of Great American Casino, spoke in support of this petition. As a result of that discussion, it was determined the original \$2,000 cap had been put in place because the carryover jackpot game was fairly new.

Chair Niemi called for public comment.

Ric Newgard, Washington Charitable and Civic Gaming Association, testified that this game has been played for ten years now, and has a clean track record. Mr. Newgard explained how the game works and showed a carryover flare. When a player wins the big prize, he/she gets to scratch a secondary window; if the player scratches the winning secondary window, he/she wins the big prize. If the player scratches the wrong secondary window, he/she wins a lower prize. That set would then come down, and a new set would go up, and the prize amount would increase – it just keeps growing until it hits the maximum. It is a very simple concept; a very simple request. Mr. Newgard thought it would help with pull-tab sales, and if pull-tab sales go up then license fees go up. Mr. Newgard requested the Commission consider approving this petition and asked for an effective date of 31 days from filing.

Commissioner John Ellis felt there was no reason not to accept the request of the petitioner for an effective date 31 days from filing because it does not appear to be vital that the rule change be implemented consistent with all of the rules simplification project changes.

Commissioner Ellis made a motion seconded by Commissioner Rojecki to adopt amendatory section WAC 230-30-045, as presented by staff, effective 31 days from filing. *Vote taken; the motion passed unanimously.*

12. **Petition for Rule Change from Washington Charitable and Civic Gaming Association – Increasing pull-tab prize limits and ticket count**

Amendatory Section WAC 230-30-080 – Punch board and pull-tab series restrictions – Prizes, size of game, and location of winners.

Assistant Director Dave Trujillo reported that this petition increases the maximum prize limits for all pull-tabs to \$2,500. Presently fifty-cent pull-tabs have a maximum prize of \$500 and one dollar pull-tabs have a maximum prize of \$750. The petitioner is also asking to increase the maximum number of pull-tabs in a series to 25,000. The last increase was in 1995, when the number of pull-tabs was increased from 6,000 to 10,000 pull-tabs. If the petition is approved, staff requests also bringing merchandise prizes in line with what the petitioner was requesting for cash prizes. Assistant Director Trujillo reviewed the report explaining the license fees and how they are calculated that was included in the agenda packet. As a result of the discussion at the May meeting with Chris Kealy and at the request of Chair Niemi, also included in the agenda packet is a report showing the decline in pull-tab licenses and pull-tab gross receipts.

Representative Curtis asked whether increasing the odds from 10,000 to 25,000 and the jackpot to \$2,500 would affect the odds of winning. **Assistant Director Trujillo:** replied the increase would not affect the odds of winning; there is still a required percentage of payout. **Commissioner Ellis** asked whether the numbers presented on the table showing the combined gambling activity analysis first referred when showing the annual license fees for bingo and punch boards/pull-tabs was strictly for charitable and nonprofits, as the table indicates. And that the last few tables, in particular the gross receipt table last referred to, covers the entire industry. **Dave Trujillo** affirmed that it covers the entire pull-tab industry because this rule would impact not only charitable and nonprofits, it would impact the entire pull-tab industry. **Director Day** explained that part of the reason these figures on license fees are included was because there was previous discussion about how much the different type of licensees paid; also because of the size of these games and the possible additional time it may take for agents to investigate a related complaint, would it be a consideration to have an additional fee. Staff do not feel it would be necessary because of the frequency and because of the amount of current fees. **Assistant Director Trujillo** added that although staff anticipates some increase in time spent conducting compliance inspections, investigating complaints, and conducting quality control investigations, the amount of time overall is fairly minimal. There is one policy consideration: Progressive pull-tabs are currently authorized to have up to 50,000 pull-tabs but there are additional rules for these games, such as the pull-tabs must be dispensed through a pull-tab dispensing device and there are longer retention requirements. The petitioner has requested the change become effective 31 days from filing; however, to be consistent with WAC 230-12-005 staff recommends an effective date of January 1, 2008.

Commissioner Ellis asked with regard to the level of fees paid to the Commission as a result of punch boards and pull-tabs, with the increases if this rule is approved, then the result of the increase in maximum prizes will presumably produce increases in the

volume of play and, therefore, will result in an increase in fees paid by the licensees. **Dave Trujillo** agreed that would be the natural conclusion.

Chair Niemi called for public comment.

Ric Newgard, Washington Charitable and Civic Gaming Association, showed the Commission a current pull-tab flare for a 6000 series, explaining that what got him started on this was that as he was walking through his local distributor's warehouse picking out pull-tabs for his operation, he noticed on the shelves a lot of pull-tabs that have \$1,000, \$1,500, and \$2,000 jackpots. They are games that Mr. Newgard can't have because of the prize caps. These games are already available and are in the warehouses. These are games that are used in bingo facilities on tribal locations. Mr. Newgard said he was not reinventing the wheel nor asking manufacturers to make anything new, he is just asking to have access to something that is already on the shelf.

Commissioner Bierbaum made a motion seconded by **Commissioner Rojecki** to adopt amendatory section WAC 230-30-080, as presented by staff, effective January 1, 2008. *Vote taken; the motion passed unanimously.*

Chair Niemi called for a recess at 11:00 a.m. and reconvened the meeting at 11:15 a.m.

13. Rules Simplification Project – Chapter 13

New Chapter WAC 230-13 - Amusement Game Rules (*this chapter won't become effective until 01-01-08*).

Beth Heston, Project Manager, reported that there have been no changes to the packet as presented in April and May.

Chair Niemi asked if any Commissioner wanted to separate out any rule; no one responded. Chair Niemi called for public comment; there was none.

Ms. Heston pointing out that the title page in the agenda packet has an incorrect heading on it. Also, immediately following the chapter in the same tab an amendatory section was prepared in case the petition to change the amusement game wagers took place. That will be disregarded, since the earlier motion did not pass.

Commissioner Ellis made a motion seconded by **Commissioner Bierbaum** to adopt new section WAC 230-13, as presented by staff, effective 1-1-08. *Vote taken; the motion passed unanimously.*

14. Rules Simplification Project – Chapter 01

New Chapter WAC 230-01 - About the Commission (*This chapter won't become effective until 01-01-08*).

Ms. Heston reported that initially an incorrect version of Chapter 01 was placed in the Commission agenda packet. Ms. Heston provided copies of the correct version that has

been before the Commission since April, but it also has an incorrect title on it; the rules are up for final action not for discussion and possible filing. Ms. Heston noted that the public agenda packet also has the incorrect version of the Chapter in it. There are copies of the correct version of the Chapter on the back table.

Chair Niemi asked if any Commissioner wished to make any comments or separate out any of the rules. **Commissioner Bierbaum** asked where the section regarding the purpose and organization of the Commission went. **Ms. Heston** replied it was taken out because it is present in the RCW. **Commissioner Bierbaum** asked Mr. Ackerman about the time and place of public meetings – the rule says that the date of public meetings is supposed to be designated, so is it okay to say “normally” or do we need to specify the dates on which we hold regularly-scheduled meetings? **Mr. Ackerman** responded that this WAC is actually supplemented by a filing that the Commission does at the beginning of each year setting forth the location, time, and date for each meeting. **Representative Curtis** asked for clarification on what the difference would be between this than a city council that has its meetings on the second and fourth Thursday of each month and saying that at the beginning of the year we are going to have our meetings on the second and fourth Thursday of each month, outlining the dates, and then not having to do a public notice 24 hours in advance. Is there a difference or a reason this rule is different? **Mr. Ackerman** replied that as long as the agency complies with the minimum period for giving the notice, it can be done at one filing at the beginning of the year. Mr. Ackerman was not aware of a requirement to do it every month, so long as it has been done at the beginning of the year and the set schedule is adhered to. Obviously if the dates or time are changed, a supplemental filing would have to be done sufficiently in advance of the meeting to meet the rule. **Ms. Heston** added that the rule used to say two weeks in advance, so the actual practice of posting it in January was codified – the agency gives more than two weeks’ notice.

Director Day pointed out that each month we publish the agendas in advance of the meetings as well. At times the Commission has the need to call a special meeting, which is another reason for the reference to normally. **Commissioner Ellis** said that obviously a special meeting would have to comply with the rules themselves.

Chair Niemi called for public comment; there was none.

Commissioner Ellis made a motion seconded by **Commissioner Rojecki** to adopt new section WAC 230-01, as presented by staff, effective January 1, 2008. *Vote taken; the motion passed unanimously.*

Rule Up for Discussion

15. **Petition for Rule Change from Washington Charitable and Civic Gaming Association – Electronic bingo card daubers**

Amendatory Section WAC 230-20-244 - Electronic bingo card daubers – Definition – Operating restrictions - Standards.

Assistant Director Mark Harris reported that the petitioner is requesting that printed card faces no longer be issued to players on electronic bingo card daubers unless requested; however, the operators will keep a printed master file or index available for inspection. The Commission has viewed electronic bingo card daubers and electronic bingo cards as player-assisted devices and not bingo cards. Electronic bingo card faces are stored on the electronic daubers. Players can purchase up to 66 card faces to play for a single game. The electronic daubers allow the players to input the bingo number called and the machine marks each number entered by the player, and then informs the player of the winning card face. The player is responsible for verbally announcing ‘bingo.’ One of the petitioner’s reasons for asking for this change is that the old system required the players to play the same 66 bingo card faces every single game, but a new version that is available allows for 66 cards to be randomized. The proposed amendment would pose little or no impact on our regulatory program. The Commission should consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.02050 and conforms to the definition of Bingo. The petitioner requests that the change be effective 31 days from filing; however, to be consistent with WAC 230-12-005 staff recommends an effective date of January 1, 2008.

Chair Niemi asked if the Commission had any questions and called for public comment.

Ric Newgard, Washington Charitable and Civic Gaming Association, showed the Commission an electronic bingo card dauber, noting it was just a device that assists in playing the game. Mr. Newgard also provided a game format sheet that shows the number of different types of games played at his facility. Mr. Newgard commented that his bingo customers would like to see this change made. When a customer plays on bingo paper, he/she gets a sheet of paper with the bingo faces. At the end of a game the player tears off the top sheet and plays on the next sheet which is a whole different set of card faces. The significance is that the customers feel that if they play the same card every time, they have less chance of winning. Mr. Newgard is proposing to rotate the cards on the electronic dauber machine, which causes a problem with the amount of paper needed to be generated for the 280 machines in his bingo hall. Mr. Newgard is asking to keep a master copy in a notebook of all the cards that are in the machine, which an agent or a customer can request to see at any time. That way he does not have to hand out reams of paper every time the machine is used. To do 66 cards rotating on the machine Mr. Newgard showed the Commission, the receipt would be 42 feet long, and it is not feasible to hand out a 42-foot receipt each time. Mr. Newgard has 280 machines in his hall and operates two to three sessions a day, so you can see the logistics of handing out the paper, printing the paper, and the cost. Mr. Newgard is not asking to eliminate

the cards; he just wants to keep one master log of all the cards, which would be available for inspection by the customer and/or by Commission staff on request.

Chair Niemi reminded everyone this was up for discussion; final action would be in August.

Ronnie Strong, AmVets Bingo, testified that he supported the petition and urged the Commission to file it for further discussion. **Chair Niemi** clarified it was filed in July. **Ronnie Strong** invited anyone who would like to come out to his bingo hall to see how the electronic daubers work, how games are loaded, and see the receipts printed. The petition is not asking for anything other than getting away from a receipt that is 50-miles long. The machine is not played any differently; cards are not played any differently, other than the rotating.

Linda Smith, bingo manager of Seattle Jaycee Bingo, testified that she was the person who opened the can of worms on this topic. When Jeremy from GTI approached us to upgrade our computer system with these rotating cards, I was concerned about the rules and how we would print them on the receipt, which Ms. Smith thought had to be given to the customers. Ms. Smith wasn't going to put something in her bingo hall that was against Commission rules. She knew that the customers would love to have the cards rotate in the machines. We also have another company's bingo dauber where the cards rotate, but it is made with a different computing system so the machine itself holds the cards, whereas the machine Mr. Newgard showed you is generated in a computer program. Ms. Smith hoped the Commission would consider passing this petition and allow the bingo halls to offer their customers every opportunity they can to have a more changing game. Ms. Smith also invited anybody who wished to come up to her bingo hall, which is in the Tukwila area and operates Sunday, Monday, and Tuesday; we would love to show the Commission how the machines work.

Rules Up for Discussion and Possible Filing

16. Rules Simplification Project – Chapter 16

New Chapter WAC 230-16 – Manufacturer, Distributor, Gambling Service Supplier Rules (*this chapter won't become effective until 01-01-08*).

Ms. Heston reported that there was not a specific chapter for manufacturers, distributors, and gambling service suppliers, but many of the changes made are similar to what was done to previous chapters. The reason these were pulled out of Chapter 12 was because they were buried in the chapter and manufacturers and distributors had to hunt to find their rules, so the rules were pulled out and put in a separate chapter. Ms. Heston explained the changes made to this rule.

WAC 230-16-001 includes gambling service suppliers, which were not previously included, and gambling equipment. The former rule only mentioned distributors and manufacturers or their representatives. The phrase gambling equipment is used instead of

gambling devices because there was confusion or ambiguity in the statute about the word device, which usually means something illegal, where gambling equipment means something that licensees are authorized to have. WAC 230-30-030 stated there could be a penalty of up to \$100 for each defective punch board or pull-tab series. Staff removed that specificity from WAC 230-16-050 to allow more discretion in the way the rule is enforced; in certain cases a less expensive fine may be chosen. The work “audit” is changed to “control,” because people mistakenly believe that audit means a full audit in accounting terms. All references to Keno Bingo were removed, because in Chapter 10 Keno Bingo was removed because no one was playing it. Staff recommend removing language about Class A, B, and unlicensed bingo games because the sales of partial containers to those classes of bingo halls are not restricted. Manufacturer types are changed because we are dealing with manufacturers who make electronic card facsimiles, which are not bingo cards but electronic facsimiles of playing cards. This rule was formerly in the card game rules, which seemed illogical because it really applied to the manufacturers of the machines. The machines have to have two tests: one by an independent gaming lab and one by our gambling lab, before the machine is authorized in Washington. Identification stamps are purchased by the manufacturers from our agency business office to identify the machine, the pull-tab series, or the bingo cards, and are applied to the product. We receive a small fee for each of these ID stamps. The rule was very complex for a very minor stamp. We have added amusement games and electronic bingo card daubers to the list of items requiring ID stamps, which will eliminate a duplication of requirements, and it is appropriate that the responsibility be put on the manufacturers for purchasing and placing the stamps. A definition of “reconcile” has been added so there is no ambiguity about what is meant when the rule say a business must reconcile its bank accounts. Generally-accepted accounting principles (GAAP) require recording all cash receipts in an original book. Language about sales and leases of general purpose equipment was removed because this information is already part of the accounting records. Most of the changes made to this chapter were to clear up ambiguities, to remove redundancies, and to ensure everyone knew what accounting and reporting requirements they had.

Chair Niemi asked if any Commissioner wanted to single out any of these rules. No one responded. Chair Niemi called for public comment; no one stepped forward.

Commissioner Ellis made a motion seconded by **Commissioner Bierbaum** to accept for filing and further discussion new section WAC 230-16, as presented by staff, effective January 1, 2008. *Vote taken; the motion passed unanimously.*

17. Rules Simplification Project – Chapter 21

New Chapter WAC 230-21 - Public Disclosure Rules (*this chapter won't become effective until 01-01-08*).

Ms. Heston thanked Jessica Quiles, Arlene Dennistoun, and Roshawna Fudge for their help in reviewing the Public Disclosure Act and the APA rules, and finding that our rules reflected a lot of duplication. Many sections of this chapter are repealed.

Chair Niemi asked if there were any questions.

Senator Prentice stated that this has been a truly heroic job. Just coming from my own professional background and knowing how much the agency truly relies on the documents, what has been accomplished is so great that some day somebody will be so grateful of what has been straightened out. Senator Prentice loved Ms. Heston's story about removing something that had been illegal all along. Senator Prentice said she could not rave enough about what she has seen here with this project.

Beth Heston thanked Senator Prentice, noting that she could not take much credit for this chapter because it largely fell on the shoulders of our Staff Attorneys and Public Records Officer; Ms. Heston said she was merely an organizer and a typist for this Chapter

Chair Niemi thought Senator Prentice was talking about the whole rule simplification project. **Senator Prentice** said she had been watching the study sessions and because she has had to do this kind of stuff herself, she knew what a drag it could be. Senator Prentice was impressed with the commitment of Ms. Heston to the project. **Director Day** agreed that we all were impressed.

Commissioner Rojecki made a motion seconded by **Commissioner Bierbaum** to accept for filing and further discussion new section WAC 230-21, as presented by staff, effective January 1, 2008. *Vote taken; the motion passed unanimously.*

18. Other Business/General Discussion/Comments from the Public/Adjournment:
Acting Chair Niemi called for public comment.

Gary Murray, representing the Recreational Gaming Association, welcomed Representative Simpson to the Commission and commented that the RGA looked forward to continued dialogue and a meaningful relationship in the future about everything that affects their businesses. Mr. Murray noted the Commission was an integral part of their daily business, their lives, and what they do, and invited the Commissioners and staff to tour some of the facilities. Mr. Murray noted that Senator Prentice has, on many occasions, dropped in to various clubs in her district.

Senator Prentice noticed, as she was looking at the minutes that were brought forth regarding the electronic daubers, that at the meeting on July 15, 1994, I asked a few questions. Only two of us, Sharon Reese and I, were there, and Senator Prentice just wanted to point out that there are some long-timers here.

With no further business, **Acting Chair Niemi** adjourned the meeting at 12:05 p.m., and noted the August 9-10 Commission meeting would be held at the Hilton in Vancouver.

Minutes submitted by,

Gail Grate
Executive Assistant