

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, MAY 8, 2008
MINUTES**

Chair Niemi called the meeting to order at 1:35 p.m. at the Red Lion Hotel located in Pasco and introduced the members present.

MEMBERS PRESENT: **Commissioner Janice Niemi, Chair**, Seattle
Commissioner Alan Parker, Olympia
Commissioner Keven Rojecki, Tacoma
Senator Margarita Prentice, Seattle
Senator Jerome Delvin, Richland
Representative Geoff Simpson, Covington

STAFF PRESENT: **Rick Day**, 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

1. Agenda Review

Director Rick Day read a letter to Chair Janice Niemi from Commissioner John Ellis expressing his appreciation. Director Day reviewed the agenda for Thursday and Friday, noting the 9:00 a.m. start time for Friday's meeting. Director Day reported there were no other staff recommended changes to the agenda.

2. Snoqualmie Tribe Compact Amendment (PowerPoint presentation)

Director Day reported that the Snoqualmie Tribe was federally recognized in 1999 and their Compact was approved in April 2002. In October of 2006, the Tribe's trust land was approved and proclaimed as the Tribe's initial reservation. Staff-verified this information through the Bureau of Indian Affairs (BIA) and by reviewing the county records for trust land documentation. Staff also verified that the Tribe's gaming ordinance was approved. The casino will be located on the Snoqualmie Tribe's reservation on I-90 near North Bend and consumes almost the entire area.

Director Day explained that once staff notifies the Commissioners, the Legislature, the Tribe, and the various interested parties in the community in the area of a proposed Compact Amendment, the Legislature has 30 days to hold its hearing for review and comment and the Commission has 45 days to act on the Compact by either forwarding it to the Governor for approval or returning it to the Director for further negotiation. The Governor is the final execution authority on behalf of the State. The Tribe is responsible for sending the signed

document to the Department of Interior, and the Amendment is not effective until it is approved and published by the Department of Interior.

Director Day described the Amendment as a “Most Favored Nation” amendment, which allows the Snoqualmie Tribe to have what has come to be known as the “Muckleshoot Amendment” because it was the first tribe allowed to have a second facility. The Snoqualmie Tribe does not plan to have the second location but with approval for a second facility, the Snoqualmie Tribe would be allowed to have 75 tables, plus three nonprofit tables, at one location, and 50 tables, plus two nonprofit tables, at a second location. If the Tribe places more than 60 tables in operation, those additional tables have to be leased from another tribe. The proposed Amendment also separates the health and safety responsibilities between the Tribe and the Tribal Gaming Agency (TGA). The Snoqualmie Tribe is planning to open its casino in November of 2008.

Senator Jerome Delvin said he had read some of the articles about what was happening within the Snoqualmie Tribe and asked how that affected anything the State agrees to; if one side prevails over the other side – the side that was banished – whether that changes any situation. Does that affect the State’s role? Did the Commission negotiate with both sides at one time or one side at a time? If things change within that tribe, are there any concerns the State should have over what is going on internally? Is there anything we agreed to with the Tribe? **Director Day** replied there is actually no immediate concern to the State in this process, and our agency is doing its best to focus on its role regarding compact negotiation and amendment. The issue of government is between the Snoqualmie Tribe and the Bureau of Indian Affairs (BIA). The only area of concern would be the actual execution of the Compact by the Tribe, when the Commission would want to have re-verification. As far as personnel across the table, the Tribal Administrator is the same Tribal Administrator who has been negotiating with the Commission from day one. At this point, it is staff’s understanding that the Tribe has elected an Interim Chair, Mary Anne Hinzman, who also served as a previous Vice Chair and signed the X-2 Compact Amendment. Staff will keep an eye on communication with BIA and the Tribe as the process moves forward, but Director Day did not see any impact at this point.

Commissioner Parker asked what happens if the Commission is informed by a representative of the BIA that there has been a change within management or within the make-up of the Tribe and the BIA has withdrawn its recognition of the tribal government as a result of such changes because they have not been able to negotiate whatever issue was involved. What is the next thing that would happen under that sort of scenario and what next step would Director Day advise the Commissioners to take? **Director Day** replied that if it got to that formal state, he would defer to Mr. Ackerman. If something like that, which was formally produced, actually happened prior to the execution of the Compact, it might affect decisions about whether to move forward or if the Governor would choose to execute the Compact. That might be an equation because the Tribe executes first and then the Governor signs. There is another election scheduled on June 14 for Council and the Chair positions.

Assistant Attorney General Jerry Ackerman explained that under the Indian Gaming Regulatory Act (IGRA), a tribe has to be federally recognized to be able to game, and part of that recognition is the federal government establishing who speaks for the tribal government with regard to not just gaming but everything the tribe does. So at the execution stage when the Governor has to make a decision, the question is whether this amendment has been put forward and delivered to her desk properly executed by the tribe. Then, clearly, the agency would look to the federal government and ask if it recognizes the signing authority as the correct person to be executing this document on behalf of the Snoqualmie Tribe. Another thing to remember is that it gets a double check because in the end the Amendment, once executed by the Tribe and the Governor, has to be approved by the Secretary of the Interior and published in the Code of Federal Regulations. So if the federal government was not on board recognizing the Chair, or whoever signs on behalf of the Tribe, this Amendment would never be fully ratified and would never take place.

Commissioner Parker clarified he was looking down the road beyond the finalization of the Compact and whether any tribe has a change that does not meet the approval or the recognition criteria of the BIA, speaking for the Secretary of Interior, what would the scenario be then? What would happen from the Commission's point of view? If the Commission gets word that the Secretary of Interior has withdrawn recognition of this tribal government, what is the option then? **AAG Ackerman** responded that as far as he knew there was no precedent for that. The Commission would probably go to the premise upon which tribal gaming can take place under IGRA, which is that it is a federally recognized tribe and implies it has a federally recognized government and a leadership in whatever form the tribe chooses to elect that leadership. Mr. Ackerman thought questions would be raised if a tribe did not have a federally recognized government as to how, under IGRA, revenue could be properly directed to the purposes it is required under IGRA: health and welfare and public safety issues of the Tribe. That would cause great concern to the federal government, and it is certainly something that would have to be looked at and asked what the current status of the Compact is, given that the tribe can no longer execute in the manner envisioned by the Compact when it was signed. But having said all that, Mr. Ackerman did not know of a case anywhere in the country where that issue has had to be addressed.

Commissioner Parker asked if that was since the enactment of IGRA. **Mr. Ackerman** affirmed. **Commissioner Parker** added that he knew from his own experience that it has happened, that there are historical precedents of the Secretary of Interior withdrawing recognition of a tribe because of illegalities or irregularities in terms of how the tribe follows its own rules or creates a governing body. **AAG Ackerman** clarified that he was talking strictly about the applicability of an IGRA Compact. Certainly once a tribe's government has questions raised about it by the federal government with regards to its validity it affects a whole myriad of things. Mr. Ackerman said his comments were directed solely to how the State would interpret its obligations under an existing Compact with a tribe that had its federal recognition in jeopardy.

Mr. James McDermott, Chief Financial Officer of the Snoqualmie Entertainment Authority, introduced Danielle Davis, the Executive Director of the Snoqualmie Gaming Commission. Mr. McDermott explained that Mr. Matt Mattson was not able to attend this meeting because of a scheduling conflict and that he sends his apologies. Mr. McDermott

and Ms. Davis were present to represent the Authority and the Gaming Commission and would answer any general questions the Commissioners might have.

Chair Niemi asked if there were any questions; there were none.

Mr. McDermott thanked the Commissioners for their consideration.

Commissioner Parker wished the Tribe good luck.

Chair Niemi called for public comment.

Mr. Chris Kealy testified he was commenting from a public perspective as a citizen of the state of Washington. Mr. Kealy said he has sat through almost ten years of the Gambling Commission meetings and found this to be the most complete description he has seen on the front end of a Compact. Mr. Kealy thanked those involved, noting he has always wondered how these have come about. Mr. Kealy was amazed the Tribes can come out with the magnificent facilities in a short period of time. As he looked at the picture of the facility, he calculated there was a lot of money going into a facility like that. Mr. Kealy wondered how much of any part of this process identifies where that money is coming from, how those loans are appropriated, who secures those loans, what guarantees there are for repayment, and who benefits from the economic impact of this and how. The Tribe's books are not really looked at, or at least the public does not see that part of it. Mr. Kealy was curious about almost every facet of this. There are those kinds of questions that come up, especially when hearing talk about being up in the air regarding who actually is the governing body of this facility.

Chair Niemi indicated she did not think there was anything in the Compact dealing with that sort of thing. **Director Day** explained that the Commission does look at the financing and applies many of the same criteria and background information as is done with any other financing arrangement. It is not shown in the Compact Amendment itself because the Snoqualmie Tribe has already been approved. The Chief Financial Officer for Snoqualmie Tribe is probably more adept at describing those things, but this was actually described to the Commission as investment financing or a bond that was floated and identified as an acceptable mechanism. The topic Mr. Kealy addresses is actually something that has changed in tribal gaming in Washington over the years. A lot of the initial casinos that opened had more private financing, often designed around an interest in the facility. Over time, many of the tribal establishments have moved to more standard bank financing and transactions for their funding. This funding has been a complex issue for the Snoqualmie Tribe and their land development as they have moved forward. The other side of it is that IGRA requires all the money from Indian gaming be inured to the Tribe. That is part of the reason for the structure and what staff look for as they move through the financing process. **Chair Niemi** inquired whether the Tribe hires consultants. **Director Day** affirmed the tribes may, adding those contracts are generally approved by the National Indian Gaming Commission (NIGC). The Tribe is also required to have a financial audit and is required to have its own complete regulatory process.

Senator Prentice pointed out that at the Legislative Committee hearing the Tribe showed a film of them removing part of the side of the mountain from the ground up. The film was really very intricate and went on awhile but showed what goes into it and was really quite impressive.

Mr. Kealy thanked the Commission for their time and Director Day for the presentation.

Senator Prentice made a motion seconded by **Representative Simpson** to recommend approval of the proposed Snoqualmie Tribal Compact Amendment. *Vote taken; the motion passed unanimously.*

Commissioner Parker commented on the compacting process, pointing out it is unique to Washington State that members of the Legislature also sit as members of the Gambling Commission and whose authority is very clear that they can approve or disapprove these Compacts. And in this case, the Commissioners were pleased to see representation from the State Legislature join the regular Commission members to act on this Amendment.

Senator Delvin thought they should be involved in everything.

Director Day congratulated the Snoqualmie Tribe and wished them the best of luck with their construction.

3. **Director's Report**

a) **Budget – Working Capital Balance – Licensing Trends** (PowerPoint presentation)

Director Day explained that as the Commission discussed the status of our agency's budget last month the topic quickly went into working capital balance, with some discussion about whether the Commission should consider passing a motion to establish a firm minimum working capital balance or a working capital balance target. The Commissioners asked Director Day to provide more information at this meeting about the working capital balance and discuss the merits of any possible motion in that regard. The Commission also asked the Director to present more data regarding the trends of licensed gambling, as well as tribal gambling. Director Day reviewed the material presented in the PowerPoint, explaining that the Commission has generally, through the budget process, set a minimum working capital balance target at the beginning of the fiscal year. The agency is at this minimum level at the start of the new fiscal year. Staff recommends the Commission authorize the agency to budget within a range where the minimum ending working capital balance goal is at least \$1.8 million, which would allow the agency to absorb the fluctuations and address the agency's ability to manage the budget and stay in the black for the year.

Chair Niemi asked if there were any questions. **Commissioner Parker** asked if a motion was required. **Chair Niemi** thought a motion was not needed if no one objected. **Director Day** affirmed a motion would not be required because it will be done through the budget process. Director Day confirmed the Commissioners agreement to move forward with that level of planning. **Chair Niemi** affirmed.

b) Proposed Strategic Plan

Director Day briefly reviewed the Strategic Plan, explaining it is required by the state budget process and is required to be submitted to the Office of Financial Management (OFM) in June. Director Day pointed out some of the accomplishments the agency has made:

- Approved the Spokane Tribal-State Compact, resolving over 20 years of dispute between the State and the Tribe
- Negotiated and approved Appendix X-2 with 27 of the tribes, probably the first time that kind of negotiation has been done in the State
- Completed a new gambling information system
- Completed the Rules Simplification Project, which spanned over three years, revised over 650 rules, and eliminated 54,000 plus words
- Developed and implemented licensee training workshops and outreach programs
- Implemented an enforcement program, completing joint investigations with the Liquor Control Board in approximately 85 licensed premises in response to public concern about underage gambling
- Taken actions to improve the safety of our employees, both in headquarters and in the field locations
- Implemented significant changes in recruiting policies, advertising, and recruiting of agency positions in response to the Civil Service reform
- Enhanced our Criminal Investigation Unit by adding analytic software, computer forensic capability
- Created career development and promotional opportunities for both our Gambling License Technicians and our Special Agents
- Participated in 11 federal investigations involving over \$264 million in seized illegal assets through our internet investigation program to date.

Director Day asked the Commission to approve this Strategic Plan, which is similar to what was approved in our Diversity Plan.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to approve the proposed Strategic Plan. *Vote taken; the motion passed unanimously.*

c) Correspondence

- > Draft letter to Office of Financial Management (OFM) requesting authorization for temporary cash deficits for Gambling Revolving Fund
- > Letter from Office of Financial Management approving use of Federal Seizure Account

Director Day asked the Commissioners for approval to finalize and mail the letter to OFM requesting approval for the agency to temporarily go in the red, if needed. The agency may be very close to going in the red in October or November if there is no good news and the federal forfeiture is not received by then. This request is a preventative measure to ensure the agency would be allowed to go into the red for a short period of time.

Chair Niemi asked if Victor Moore could authorize that without going to the Governor. **Director Day** thought Mr. Moore could authorize the request, and assumed this was actually approved by the Governor but is an authority vested in the Office of Financial Management.

Chair Niemi asked if there were any other questions; there were none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to approve sending the letter by **Director Day** to the Office of Financial Management. *Vote taken; the motion passed unanimously.*

Director Day pointed out two letters that were not included in the agenda packet: a letter from the law firm of Miller Malone and Tellefson and our response to their letter. Our agency has been working with this law firm and the coalition of licensees they represent in an attempt to come to some agreement around a package of changes to our administrative sanction and adjudication process. Unfortunately, at this point, it does not look like we are going to come to an agreement. We have different opinions, and the law firm advised our agency that they do not agree to move forward jointly and they plan to move forward with their own petition. Staff looks forward to receipt of that petition and discussion by the Commission.

- d) Monthly Update Reports
 - > Administrative Cases
 - > Federal Cases

Director Day noted the only federal activity has been a House Bill to prohibit the Treasury and Federal Reserve from implementing regulations under the Unlawful Internet Gambling Act.

- e) News Articles

Director Day directed the Commissioners to the various news articles included in the agenda packet.

Chair Niemi called for public comments on the Director's report; there were none.

4. New Licenses and Class III Certifications

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-20 in the agenda packet. *Vote taken; the motion passed unanimously.*

5. Defaults

Ms. Amy Hunter reported there were two defaults; both are for revocation of gambling licenses and are for small commercial punch board/pull-tab operators who failed to submit activity reports. Both of these businesses have since closed.

a) D’Jons Steakhouse, Buckley, Revocation

Ms. Hunter reported there are new owners in this location that do not have a gambling license. The Director issued charges by certified and regular mail. An agent confirmed the business has been closed since February. The licensee did not respond to the charges, and by not responding has waived its right to a hearing. Staff recommends the Commission revoke D’Jons Steakhouse’s gambling license.

Chair Niemi asked if there were any questions; there were none.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to enter a default order revoking the gambling license to conduct punchboard/pull-tab activity in D’Jons Steakhouse, as presented by staff. *Vote taken; the motion passed unanimously.*

b) Andy’s Diner, Seattle, Revocation

Ms. Hunter reported this licensee is also in violation of their settlement order in which they had agreed to submit all future reports on time. The Director issued the administrative charges by regular and certified mail. An agent confirmed the licensee was no longer in operation. The licensee has not responded to the charges, and by not responding has waived its right to a hearing. Staff recommends the Commission revoke Andy’s Diner’s gambling license.

Chair Niemi asked if there were any questions; there were none.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to enter a default order revoking Andy’s Diner’s license to conduct gambling activities, as presented by staff. *Vote taken; the motion passed unanimously.*

Chair Niemi called for a recess at 3:00 p.m., reconvening the meeting at 3:20 p.m.

Director Day pointed out two letters that were just presented. They are for tomorrow’s agenda and are both in consideration of the RGA proposals. One is from the Skyway Park Bowl and the other from the Recreational Gaming Association.

6. Petition for Rule Change – Amusement Game Locations

- a) Amendatory Section WAC 230-13-150 – Amusement game locations
- b) Amendatory Section WAC 230-13-080 – Operating coin or token activated amusement games
- c) Amendatory Section WAC 230-13-135 – Maximum wagers and prize limitations at certain amusement game locations

Ms. Hunter reported that the petitioner is Sean Englin, who operates Starfire Sports. This rule was discussed at the February meeting and is up for final action today. Starfire Sports is a multi-sports complex located in Tukwila. The petitioner wants to be able to operate two to eight different types of coin or token operated amusement games that would include everything from crane games to skee-ball games. The games would be inside the main facility where several different other types of video games are being operated. Staff

recommends final action on the three rules that are labeled staff's alternative, with an effective date of July 1, 2008.

Chair Niemi asked if there were any questions or public comment; there were none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to approve staff's alternative to WACs 230-13-150, 230-13-080, and 230-13-135, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

7. **Petition for Rule Change – Amusement Game Wager Limit Increase**

- a) Amendatory Section WAC 230-13-135 – Maximum wagers and prize limitations at certain amusement game locations

Assistant Director Trujillo reported the petitioner is Marv Galante of Music-Vend Distributing, a commercial amusement game licensee, who is asking to increase amusement game wagers from 50 cents to \$1.00. Mr. Galante came up with the increase from 50 cents to \$1.00 by using the Bureau of Labor Statistics inflation calculator. The current wagering limit has been in place for 20 years. To date, no statements opposing the petition have been received. Staff recommends final action be taken today. The petitioner is requesting the change become effective 31 days after adoption; however, to be consistent with WAC 230-01-015, staff recommends an effective date of July 1, 2008.

Chair Niemi drew attention to the fact that staff believes additional resources may be needed to respond to the complaints. Chair Niemi's main concern was that these are going to be for small children, and did not see any reason to raise the wager from 50 cents to \$1.00. **Assistant Director Trujillo** mentioned that he had relayed those concerns in February, but because there were no opposing statements, he did not bring them up again. Assistant Director Trujillo suggested that Mr. Galante come up and address Chair Niemi's concerns. **Chair Niemi** agreed. **Commissioner Parker** also agreed and wondered why the kids should be charged more.

Mr. Marv Galante, Music-Vend Distributing Company, explained the main point of the rule change is the inflation calculator, which says that \$1.00 today is worth about 50 cents 20 years ago. So from a pure monetary standpoint, we are not asking the kids to pay more money than was paid 20 years ago. Mr. Galante thought it was a rational rule change based on economics, even though he did not foresee that the dollar per play would take over the marketplace. In many instances, the marketplace will not allow charging \$1.00; people just will not play the machines. Mr. Galante said it was a perceived value thing; \$1.00 today just is not worth a lot of money – like when a driver pulls up to the gas station, it sure is not worth very much. Mr. Galante felt it was a logical progression, noting he was not getting any complaints from parents, but did not know if the Gambling Commission was getting any complaints from parents.

Chair Niemi asked if there were any questions.

Commissioner Parker asked if there was a danger of some people going out of business if the increase to \$1.00 was not approved. **Mr. Galante** replied that, by and large, they are small companies that have increasing costs and are under a lot of stress, but he did not know if that would happen for sure. It is only \$1.00 per play; every state in the country has \$1.00 per play machines, so he just thought it was something that was necessary at this point.

Representative Simpson asked if, in effect, it was just doubling the odds. Representative Simpson said his family was bowling in Renton, in Senator Prentice's district, a couple months ago and his ten-year old daughter asked if she could have a dollar to play the crane games, which she was given. Then his daughter came back after not winning anything and asked for more money. Representative Simpson said at some point he reached the threshold of, say, four bucks without winning anything and would not give his daughter any more money. His daughter got eight tries for the four bucks, but if the price was raised to \$1.00 each play, his daughter would only have gotten four tries. Presumably a person still has the same amount of disposable income. **Mr. Galante** explained that when he puts these machines out, he has to pay out. This is a mature market and these machines have been around for about 20 years. About 35 percent has to be paid out, just from the standpoint of people continuing to play them. If enough merchandise is not paid out, people will not play the machines. Not all the machines will be \$1.00 because the marketplace is still a 50-cent market, but there are some machines that are \$1.00 that have bigger and more expensive items in the machine. **Mr. Galante** said he would still have to pay out a certain amount of money for these machines to succeed. That will be the case in instances where there is a \$1.00 machine, but there will be mostly 50-cent machines in the marketplace.

Commissioner Rojecki commented that he had concerns when the Commission heard the petition for \$2.00 pull-tabs, which was directed at adults. Commissioner Rojecki's primary concern here was that the Commission was being asked to raise the amusement game wager to \$1.00 for a game that is directed towards minors.

Senator Prentice asked if anyone remembered why these games started, whether they were intended at one point to be a stimulant to the local businesses. She remembered this being called the fuzzy bunny bill, noting she has always been leery of these. Senator Prentice suggested that if Representative Simpson's daughter played that many, he may want to keep her out of there because that is where gambling addicts get started and there are plenty of problems trying to deal with that.

Commissioner Rojecki noted that **Mr. Galante** said most of the machines would stay at 50 cents and wondered if the industry had a projection on these machines; would it be predominately 10 percent of the machines going to \$1.00 if this was approved versus 90 percent of them staying at 50 cents? If the rule is modified, would this authorize \$1.00 in certain locations? When the \$2.00 change was being discussed many months ago it was for bigger games. The odds may be the same, but they are trying to recoup some of the costs. Was there some discussion by staff on that specific issue? **Assistant Director Trujillo** said no. **Commissioner Rojecki** asked if that was because staff was assuming that all of the machines are going to go to \$1.00. **Assistant Director Trujillo** replied that, at this point, the assumption would be that not all machines would go to \$1.00, and staff did not discuss a

particular percentage. **Director Day** added that staff did not deal with it much because the industry probably knows what their immediate plans would be. **Mr. Galante** explained the \$1.00 would only affect the contained prize machines that have the prize inside the machine; not the Whac-A-Mole or the Skee-Ball or games of that nature. It would probably be less than 5 percent because the marketplace will not allow more than a few of these machines.

Commissioner Parker was persuaded the Commission should give this a tryout and did not think there needed to be any conditions put on it. Staff could be asked to report back to the Commission in six months or a year to see if there are any problems with this. Commissioner Parker thought it was a reasonable justification based simply on the impact of inflation upon this particular type of game.

Commissioner Rojecki asked if the Commission could make a motion similar to what Commissioner Parker suggested, but to put stipulations on it. Or could the Commission approve the change and then disapprove it six months from now if they saw any problems? **AAG Ackerman** affirmed the Commission would be able to amend the rule. There was no second to Commissioner Parker's motion, so it would be appropriate to make another motion with conditions on it. Or Commissioner Parker could be asked if he would be willing to amend his motion to accept your conditions. **Commissioner Parker** asked if the condition would be that staff would make a report back to the Commission a year from now. **Chair Niemi** inquired what staff would say. **Commissioner Parker** replied it would be what staff's findings are on how the game is working. **Chair Niemi** said the players put in 50 cents or they put in a \$1.00. Chair Niemi could not imagine what staff could report. **Commissioner Parker** replied there is no distinction between different kinds of games and whether it is 50 cents or \$1.00. Some games, obviously, appear to the average person as being designed for a much younger, children's market, whereas, others would be more attractive to a higher-age market (teenager or adult). There really is no basis to distinguish the type of game for the different fee that would be charged. **Chair Niemi** noted the rule summary indicates the current wagering limit is for the locations for the crane games are located where school-age minors are likely to pay 50 cents, which is what Mr. Galante wants to go to \$1.00. There are others that do not allow minors to play, which are \$1.00. **Commissioner Parker** inquired the suggestion was to leave the limit as is because it is already distinguished between school-age minors and everyone else. **Chair Niemi** replied, basically, yes. **Commissioner Parker** withdrew his motion for lack of a second.

Commissioner Rojecki made a motion to deny the petition. **Commissioner Parker** would not second the motion, and deferred to the Chair to second it. **Chair Niemi** did not care to second the motion. *The motion died for lack of a second.*

AAG Ackerman confirmed there was not a second to Commissioner Rojecki's motion and no third motion was made, so this matter will die for lack of a second.

8. **Incorporating Rule Interpretations**

- a) Amendatory Section WAC 230-03-005 – Permits for recreational gaming activities
- b) Amendatory Section WAC 230-06-110 – Buying, selling or transferring gambling equipment
- c) Amendatory Section WAC 230-14-085 – Calculating markup for merchandise prizes
- d) New Section WAC 230-15-453 – Using match play or similar coupons in gambling promotions
- e) Amendatory Section WAC 230-15-475 – Tips from players and patrons to card room employees
- f) Amendatory Section WAC 230-15-460 – Supervision requirements for house-banked card games

Assistant Director Mark Harris reported that the amendment to WAC 230-03-005 incorporates an interpretation that allows operators to trade the script and chips for tickets to allow participants to have a drawing to win the prize at the end.

Chair Niemi called for public comment; there was none.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to adopt the proposed amendment to WAC 230-03-005, as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

Assistant Director Harris reported the amendment to WAC 230-06-110 incorporates the rule interpretation that allows unlicensed bingo game operators to possess gambling equipment.

Chair Niemi called for public comment; there was none.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to adopt the proposed amendment to WAC 230-06-110, as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

Assistant Director Harris reported the amendment to WAC 230-14-085 incorporates a rule interpretation that allows licensees to include gift certificates from their own location as a prize on a pull-tab game as long as the amount was not included as a 60 percent markup. This also incorporates the increase from \$750 to \$2,500 that was effective with the Commission approval of the Washington Charitable Civic Gaming Association's petition on February 2008.

Chair Niemi called for public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to adopt the proposed amendment to WAC 230-14-085, as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

Assistant Director Harris reported that WAC 230-15-453 is a new rule that will incorporate the requirements for using match play coupons and similar coupons in gambling promotions. A match play coupon is where a person places a bet (example \$10) and then the person plays the match play coupon with another bet (example \$10), the person would be paid off on the two bets (example \$20).

Chair Niemi called for public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to adopt new rule WAC 230-15-453, as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

Assistant Director Harris reported the amendment to WAC 230-15-460 clarifies that poker tables operated in a separate gambling area are not included in the calculation for levels of supervisors required for house-banked card games.

Chair Niemi called for public comment; there was none.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to adopt the proposed amendment to WAC 230-15-460, as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

Chair Niemi asked about WAC 230-15-475 that is listed on the agenda but is not in the agenda packet. **Ms. Hunter** responded that rule was meant to have been removed from the agenda, but was not.

9. Other Business/General Discussion/Comments from the Public

Chair Niemi called for public comment.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, spoke in her capacity as a board member of the Evergreen Council on Problem Gambling and thanked the Commission and staff for their participation in the conference held last week. The conference was a great success and included a lot of attendees from across the nation and from Canada. Some of the preliminary evaluations rivaled the National Conference on Problem Gambling. Ms. Chiechi specially thanked Amy Hunter, Susan Arland, and Roshawna Fudge for volunteering and for their involvement in last week's conference.

Mr. Max Faulkner, speaking as a consultant for Joker's Casino, informed the Commission there was a free comedy show at 8:30 p.m. at Atomic Bowl. Mr. Faulkner put some admission coupons on the table at the back of the room and gave directions to the Atomic Bowl. Mr. Faulkner said he could not speak for what the adult content of the comedy show would be, but he had heard it was a good comedian. Mr. Faulkner has a VIP table reserved for anyone interested.

Chair Niemi informed the audience that Friday's meeting would start early on Friday at 9:00 a.m.

Executive Session to Discuss Pending Investigations, Tribal Negotiations and Litigation

At 3:55 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigations. Chair Niemi called the meeting back to order at 4:25 p.m. and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, MAY 9, 2008
MINUTES**

Chair Niemi called the meeting to order at 9:05 a.m. at the Red Lion Hotel located in Pasco and introduced the members present.

MEMBERS PRESENT: **Commissioner Janice Niemi, Chair**, Seattle
 Commissioner Alan Parker, Olympia
 Commissioner Keven Rojecki, Tacoma
 Senator Margarita Prentice, Seattle
 Senator Jerome Delvin, Richland
 Representative Geoff Simpson, Covington

STAFF PRESENT: **Rick Day**, 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

Chair Niemi announced that since this was her last meeting and the end of her time on the Gambling Commission, she would like to say a few words about the Commission itself and the agency. She started with this agency about the same time as Director Day. Chair Niemi has been so impressed with the people running the agency: Rick Day, Amy Hunter, Mark Harris, and Dave Trujillo. They are hard workers and there has never been a problem about anything. Chair Niemi explained that she worked for an agency about the size of this agency when she was in D.C. It was an outrageous agency, far funnier than “The Office” on television or the British version of “The Office.” Chair Niemi did not go into details about what she did, but the agency also had the ability to give out grants, money, and contracts. After she left and came back to Seattle, for about two years Chair Niemi kept getting calls from the FBI asking if she knew about this incident or that incident. Chair Niemi was really pleased to have worked with the Commission and Jerry Ackerman, noting she has worked with assistant attorney generals probably half of her working life or more, and Jerry is the best. It is wonderful to have someone that you have that much confidence in and can follow-up with. When Chair Niemi started on the Commission, some of those in the audience were here; it has thinned out a lot because gambling has changed so much. Since the last seven years, we have gone from arguing about a level playing field to having no hope for a level playing field; it has changed that much. Chair Niemi hoped the Commission will understand the fact there is a real place for local card rooms and that communities need them; the communities need the money that they tax the card rooms. Chair Niemi also thought it was pretty obvious as you travel around the state that there really is no big opposition to gambling anymore – everyone has just kind of relaxed. There is good money for problem gamblers to solve that. Chair Niemi was hopeful the for-profit gaming would continue to be alive, adding we should realize things like inflation and understand that sometimes things

need to be done to help those who run those casinos survive. Chair Niemi thanked everyone for putting up with her. She came here with a very neutral idea about gambling – she was never opposed to it – and she voted for those bills that are now in the Legislature. And Chair Niemi said she was going to leave today and head south to Reno and gamble.

Director Day read a letter from Governor Gregoire thanking Chair Niemi for her time on the Commission.

10. Approval of Minutes – April 10-11, 2008 Meeting

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to approve the minutes of the regular meeting of April 10 and 11, 2008, as submitted by staff. *Vote taken; the motion passed unanimously.*

Assistant Director Trujillo directed the Commissioners to a written notice received from Dolores Chiechi, Executive Director of the Recreational Gaming Association, withdrawing items number 12, 15, 16, 17, and 24 of the RGA rule petitions from today's agenda.

11. Petition for Rule Change – Gambling Promotions

- a) Amendatory Section WAC 230-06-030 – Restrictions and conditions on gambling promotions
- b) Amendatory Section WAC 230-15-141 – Additional merchandise or cash prizes for card games

Assistant Director Trujillo reported the petitioner is Harmon Consulting, a licensed gambling service supplier. On April 17, the petitioner submitted Alternative A, which would remove the limit on gambling promotions altogether and would benefit licensees by allowing them to offer larger promotional items to players. Last month, the petitioner asked for changes that would have increased the value of promotional items operators can give their customers from \$500 to \$5,000, allowed licensees to provide additional entries to a promotional contest of chance to customers based upon their participation in a gambling activity, and removed the \$500 limit for additional merchandise or cash prizes in a non-monetary game to \$500. After much discussion, the Commission voted to file for discussion the first and third portions of the petition, and directed staff to work with the petitioner to come to a common understanding regarding the portion of his petition that was not filed. Staff met with Mr. Harmon and determined he wanted to use a player-tracking system as a method for rewarding frequent or loyal customers and to reward patrons based on their time in the business and the value of the retail restaurant items purchased, not tied to a gambling activity.

Up for discussion today is the Commission's Alternative to the original petition, which includes amending WAC 230-06-030 to raise the limit of gambling promotion items from \$500 to \$5000 and amending WAC 230-15-141 to remove the \$500 limit on additional merchandise or cash prizes to non-propriety games like blackjack and pai gow. Staff did not oppose increasing or removing the \$500 limit on gambling promotional items. Staff recommends further discussion on the Commission's Alternative and to file petitioner's

Alternative A for discussion. The petitioner is asking for the change to be effective 31 days from adoption, but staff requests an effective date of January 1, 2009.

Chair Niemi called for public comment.

Mr. Monty Harmon, Harmon Consulting, complimented Mr. Trujillo on his presentation of the rule and thanked staff for meeting with him to try to come to an agreement regarding the promotions side of the rule. Mr. Harmon thanked Chair Niemi for her comments and insights earlier regarding the future of the industry. Mr. Harmon told Chair Niemi she would be missed and thanked her for her service.

Commissioner Rojecki asked whether Mr. Harmon's alternative would take care of everything he needed and if that alternative was what Mr. Harmon would be seeking after the discussions with staff. **Mr. Harmon** responded that Alternative A was proposed for the purpose of asking "why have additional discussions about changes in the future, why not just have a one-time change." It was actually introduced to simplify the process and to say why not just eliminate the limit instead of increasing the limit, which staff does not appear to have an issue with.

Commissioner Parker asked how long, once they are filed, these would be up for discussion before they would be considered. **Ms. Hunter** replied the RGA has asked they be discussed for three months, which means they would be discussed at the July meeting and then up for final action at the August meeting. If there was one the Commission wanted to hold over for any reason, they would always have the ability to do that.

Chair Niemi asked if Mr. Harmon was requesting the Commission accept for filing only Amendatory Section a), and not b). **Mr. Harmon** affirmed, pointing out he was speaking to the petition he had put forward, not the RGA package. **Commissioner Rojecki** said no, b) has to be included also because it references another WAC. **Mr. Harmon** apologized, noting that based on the layout of the packet he was not sure where Alternative A fit in and assumed the Commission was talking about his petition, which is Item 11. Mr. Harmon thought that if there was an alternative to the petitioner's petition it would actually be the Commissioners decision whether to simply include that as one of the alternatives once a final decision is taken on that particular rule change. **Director Day** explained the changes being discussed are to WAC 230-06-030 and in both cases the one the Commission filed would increase the limit of promotional items to \$5,000, but the alternative that Mr. Harmon has suggested would eliminate that limit entirely. The differences between the alternative the Commissioners filed last meeting and Mr. Harmon's Alternative A is that section (1) in WAC 230-06-030 would be deleted with Mr. Harmon's alternative.

Commissioner Rojecki asked if the Commissioners could amend their alternative. **Director Day** affirmed the Commissioners could do that or if their interest was in eliminating the limit, they could simply file Alternative A, which would get the Commissioners to the same place. **AAG Ackerman** clarified the "Commission's Alternative Filed at the April 2008 Commission Meeting" was what was filed last month and was currently pending. Mr. Harmon has now brought forward an alternative to what

was filed last month that he is asking the Commission to file this month for discussion at the next two Commission meetings before the Commissioners make a final decision. The effect of it appears to be whether the Commissioners will amend their proposed rule filed last month to do away with the proposed \$5,000 cap on gambling promotions, leaving no cap on gambling promotions. **Ms. Hunter** clarified she thought she was answering a different question than what was asked. Mr. Harmon has not asked for additional time on this petition. So the Commissioners could file an amendment or Mr. Harmon's alternative and this would still be up for final action at the July Commission meeting, unless Mr. Harmon wants it to be on for an additional month. **Mr. Harmon** replied that July would be fine.

Commissioner Rojecki asked, in regards to Amendatory Section WAC 230-15-141 that was filed last month, if the Commission files Mr. Harmon's alternative, does that negate this one. It is more of a housekeeping issue because of the reference back to another RCW that would have to be made at some other point if it was not incorporated within this alternative. **AAG Ackerman** did not believe further amendment to WAC 230-15-141 would be necessary to accommodate Mr. Harmon's Alternative A because what is being proposed is to amend WAC 230-06-030 and the proposed amendment to WAC 230-15-141 simply references back to WAC 230-06-030. **Director Day** pointed out an error on the agenda: WAC 230-15-151 should read WAC 230-15-141.

Commissioner Rojecki made a motion seconded by **Commissioner Parker** to file for further discussion the petitioner's Alternative A to WAC 230-06-030, as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

The Recreational Gaming Association withdrew their petition under Item 12.

12. Petition for Rule Change – Gambling Promotions

- a) Amendatory Section WAC 230-06-030 – Restrictions and conditions on gambling promotions
- b) Amendatory Section WAC 230-06-035 – Credit, loans, or gifts prohibited
- c) Amendatory Section WAC 230-15-141 – Additional merchandise or cash prizes for card games

13. Petition for Rule Change – Wager increase from \$200 to \$500 for house-banked card games and remove \$1 limit on bonus wagers for progressive jackpots

- a) Amendatory Section WAC 230-15-140 – Wagering limits for house-banked card games

Assistant Director Mark Harris reported the petitioner is requesting to increase the maximum amount of a single wager or bonus wager in an odd-based game from \$200 to \$500 and the bonus wager for a progressive jackpot from \$100 to \$500 for house-banked card games. The RGA states that tribal casinos are authorized a \$500 betting limit while house-banked card rooms have been held to a lower \$200 limit. Tribal casinos are required to have a tribal gaming agent onsite during all hours that gaming is offered. The Commission may wish to consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.010. Staff recommends filing the petition for discussion, but only if the petitioner can justify why the increase is necessary and consistent with RCW 9.46.010. The petitioner requested an effective date of January 1, 2009.

Chair Niemi asked if there were any questions or public comment.

Mr. Max Faulkner, President of the Recreational Gaming Association (RGA), testified that Dolores Chiechi and he would like to discuss all nine of the RGA proposals in the form of a background, philosophy, and where they are coming from on these petitions for rule changes, as a way of explaining why nine were being submitted at this time and the thought content behind it. One thing the industry is looking for is a unification of card game rules – they know they are not tribal casinos and probably never will be. The tribes have craps, roulette, video lottery terminals, can extend credit, and can smoke in their facilities; the card room industry does not have any of those games and cannot extend credit or allow smoking in the card rooms. The industry is a lot closer to neighborhood bars and social rooms than it is to big casinos. Although the industry is allowed card games, it is only a small part of whole footprint of gambling in the state. In looking at the RCWs pertaining to gambling, the declaration, the Commission’s powers, social card game rules, Mr. Faulkner did not see anything in there as far as the Commission distinguishing between a tribal facility and a house-banked card room facility. They are all treated the same in the RCW language; there is no differentiation. Mr. Faulkner said the RGA was asking the Commission to file all nine of these petitions for further discussion under the philosophy and the idea of unification of card game rules.

Director Day explained that staff had included a summary at the beginning of the RGA petitions to clarify there is nothing in RCW 9.46 regarding tribal gambling except at the end where it states the Commission has authority to negotiate Compacts and regulate under those Compacts. The controlling statute is the Compacts and the Indian Gaming Regulatory Act (IGRA), which has a substantial policy difference that comes from two different sides of the equation. Under IGRA, economic development and funds to governments, etc., are part of the federal policy that governs the operation and negotiation of those Compacts, as opposed to the RCW that governs the operation of the laws and licensed gambling in the state of Washington. **Mr. Faulkner** indicated his point was where they intersect with the house-banked card games.

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, clarified that the legislative declaration, RCW 9.46.010 relays what the policy of gambling is in the state of Washington. Nowhere in that RCW does it state this is the policy for non-tribal gambling or that tribal gambling is held to a different policy level of what has limited the nature and scope of gambling. The RGA’s position is that the Commission has reaffirmed its belief that the levels of gambling that are market driven in Washington State have been set. The tribal venues are the limit the Commission has agreed to: the betting limits should be \$500, the number of spots, and the number of tables at tribal casinos. The RGA is arguing that for the card games the tribes are allowed, the non-tribal card rooms should be allowed the same levels. There is nothing in the legislative intent that says to hold the non-tribal card rooms to a lower limit or to limit that nature and scope of gambling, but allow the larger tribal casinos to have a larger expansion or venue. By way of the Compacts, craps and roulette all fall in line with what was allowed for Reno Nights, which is how the tribal casinos came to be, but non-tribal card rooms are only allowed blackjack and poker. The

RGA is asking that the non-tribal card rooms be allowed to play the same games at the same levels the tribes are allowed. Regarding the argument staff presented that tribal gaming agents are on the premises, Ms. Chiechi argued that the RGA members have controllers, who are part of their management and employees, onsite watching and monitoring, doing modules, ID checking, and making sure the security and the surveillance is all in check. The RGA contends that many of its members have the equivalent to a tribal gaming agent onsite 24 hours or whenever their card rooms are open. For those that do not, perhaps a negotiated rule could be discussed to requiring that or even an independent entity could come in and say there is additional oversight. It is not in the RGA members' best interest to cheat the customers or do things that are not going to bring that customer back. Essentially, it is in the licensee's best interest to make sure the game and players are protected so they keep coming back and have fun at the facility.

Ms. Chiechi felt it was unique to be asked to justify why a rule should be filed, since previous petitions have just been filed for further discussion. Justification for passing the rule and arguments as to why the Commission should pass the rule would come back during discussions at future meetings. The RGA hoped the Commission would continue to do that as these rules are presented. Ms. Chiechi noted that staff has suggested denying the petition under item #19 related to tournaments and removing the limits but would recommend filing the petition if the RGA were to come back with an alternative. Ms. Chiechi asked the Commissioners to file the petition, let the RGA work with staff on what those changes would be, and then bring that back at the July meeting for discussion, which would allow continued discussion rather than starting from ground zero. Ms. Chiechi also asked for the same consideration on items 20, 21, and 23 to give the RGA the opportunity to argue the points.

Commissioner Parker said he heard Ms. Chiechi say the RGA is considering including some provision or some language that would, in effect, require a gaming agent on the premises, comparable to what tribal gaming has with a tribal gaming agent. **Ms. Chiechi** believed that would be a negotiation the RGA would be willing to have, if that is what it will take for the Commissioners to move these rules forward.

Chair Niemi noted staff had explained that when it comes to increasing the wager, it is not really known how often that would happen or how many casinos would be involved. It might make a difference in how the Commission feels about the petitions if Ms. Chiechi or someone else could expand on that.

Mr. Chris Kealy, Vice President of the RGA, explained he was involved in the process for submitting these rule changes and asked for the Commissioners consideration on them. In answer to Chair Niemi's question, when the wager was increased from \$100 to \$200, there was a lot of discussion about whether one, two, or ten clubs would even bother with that limit. As it turned out, about 90 percent of the clubs have employed that limit because they discovered it was a decision made by a customer not the facility. It does not have a great deal of impact on overall revenue but is a demographic decision – that there is a person willing to gamble at that level, that it is what makes the game interesting to them, and that they are able to afford it. Problem gamblers burn out no matter what. There could be a \$5

limit or a million dollar limit and the customer would still lose all their money because a problem gambler is an addicted person that is going to figure out a way to lose all their money. This is a demographic issue and product mix based on where the facility is and whether a person wants to stop at that place and gamble at that level. It applies east to west, north and south. Mr. Kealy listened to the presentation by staff and started to wonder whether this package was bent on destroying the industry because when reading the minutes to this meeting next month and when those Commissioners who are going to make the decision on this package look at this, that presentation paints a pretty desperate picture. The purpose is not to destroy the industry but to perfect the product mix – we are what we are and that is all we are. We are social card rooms that have been in business for over ten years. Legislators have come and gone, Governors have come and gone, and the card rooms are still here paying taxes. It is not an accident that this package is presented today, because the industry trusts in Chair Niemi. Mr. Kealy specifically asked Chair Niemi to enter her comments into the record of why she did or did not decide to file, because Chair Niemi has been here for seven years and has watched the process. The industry has accepted who we are and are only asking to be allowed to continue to be who we are and pay the taxes, employ the people, and continue what we were doing, and be regulated on a consistent and fair manner. Mr. Kealy found staff's presentation of this package to be not appropriate in his opinion and he was very disappointed that Brian Trevino's email letter was referred to numerous times, but only in the negative; not once were any of the positive paragraphs pointed out. Only the negative components of this package are being heard; the positive components are that the industry is just looking to be regulated in a consistent and fair manner.

Chair Niemi asked if the RGA was requesting the Commissioners file many of these petitions, rather than simply deny filing them, so the RGA can come in later to explain and clear up some of the staff objections. Some of the objections are pretty narrow and could be cleared up, but others are somewhat major like the wager increases. Chair Niemi's impression was that the RGA simply wants these petitions filed so they can be discussed by five commissioners. **Mr. Kealy** pointed out that five or six of the petitions were pulled because the RGA thought there was enough common ground on the ones submitted to be able to enjoy a process of filing them and then finishing the discussion and, hopefully, working over the next couple months on a few of those to tune them up and get them into a more acceptable version. The rest of the non-submitted ones would come forward in July or August in an admittedly agree-to-disagree format. But Mr. Kealy thought there was enough of a consensus on the ones brought forward today to be filed. Either way, Mr. Kealy was hopeful the Commissioners comments would be entered into the record. **Chair Niemi** said they were in the record. **Mr. Kealy** clarified he meant that in completion of this, the record would state what Chair Niemi might have done if still on the Commission in August or September; filing the petitions might be an indication and denying them would be an equal indication.

Mr. Gary Murrey, Recreational Gaming Association, explained he was there specifically to answer direct questions about the content of the rules and why the RGA changed certain parts. He offered to answer any questions of each rule as they are presented. Mr. Murrey noted the reference to RCW 9.46.010 is the public safety policy, keeping gambling honest,

and what the public is allowed to have access to as a level of gambling to keep it as a social past time. When looking at what the Compacts are and what gambling the public has access to, Mr. Murrey asked the Commission to look at the same policy as what the public has access to a card room gambling level. Not that they are equal, by any means, regarding who has what and what their duties are. The RGA understands that the tribal government has a responsibility to their government and their people, but our industry has a responsibility to its owners and stakeholders. They differ in policy and what the Commission has to look at; however, when the public safety element is brought back into it, there is common ground. That is where the RGA hopes the Commission will look if they believe the public safety is adequate; when there are \$500 limits at a tribe, Mr. Murrey hoped the Commission would look at that as the same activity and would regulate it and have the same levels.

Commissioner Parker indicated that goes to his question with Ms. Chiechi about whether the RGA is opposing there be an equal playing field in terms of gaming agents or having the equivalent of a gaming agent on premises. **Mr. Murrey** responded that, yes, if that requirement is what it takes to make the Commission feel comfortable enough, than say that if the industry wants this level then it must have this level of security to ensure the public safety. Mr. Murrey employs a full-time internal auditor that goes through and double-checks to make sure his card room business is following the rules, that the supervision is in place, and that the game rules are being followed, on top of what the Commission looks at. The RGA understands, to some degree, the Commission's problem with their budget and that the manpower may not be there. If the Commission approved this change, but only if the card room has the designated supervision, then each operator would have to decide whether or not they wanted to put those levels in. Mr. Murrey pointed out that when looking at the amount of gaming activity in the non-tribal card room sector from when it went from a \$100 limit to a \$200 limit, there was not see a massive change; and actually there has been a decline in the net gambling revenues in the non-tribal sectors since then. The industry is looking to be able to allow the ½ to 1 percent of those who like to gamble at a certain level be allowed to have access to that level.

Chair Niemi commented that she could not say what Commissioners Ellis or Bierbaum would do in this case; although, she had a pretty good idea. Chair Niemi felt reluctant to not file the petitions, with just three Commissioners present, so the other Commissioners would have the chance to state their thoughts when they come to the next Commission meeting. **Commissioner Parker** agreed, noting that the process should require there be a full discussion.

AAG Ackerman pointed out that Mr. Murrey has offered to address any individual questions the Commissioners may have about the rules being proposed. It seems appropriate to take Mr. Murrey up on that offer, and then to proceed through the rules one at a time and make a decision on whether to file or not to file. Mr. Ackerman noted that the Commission has heard from the proponents of the petition, but there may also be others who want to comment, so the opportunity should be provided to them.

Chair Niemi called for public comment; there was none.

Commissioner Parker made a motion seconded by Commissioner Rojecki to file for further discussion Amendatory Section WAC 230-15-140 as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

14. Petition for Rule Change – Wager increase from \$40 to \$500 for non-house-banked card games

- a) Amendatory Section WAC 230-15-135 – Wagering limits for non-house-banked card games

Assistant Director Harris reported the petitioner is requesting to increase the maximum amount of a single wager for a non-house-banked card game from \$40 to \$500 for house-banked licensees that offer non-house-banked card games and meet the surveillance requirements under the rules. Class E and Class F non-house-banked card game licensees would still be limited to the \$40 betting limit. Again, the RGA states that tribal casinos are authorized to offer up to \$500 limits while house-banked licensees are limited to \$40. In the past three years, there have been two petitions to increase the wagering limits for non-house-banked games. The first one was by the RGA that requested the betting limits to go from \$25 to \$100 and only applied to house-banked card game licensees operating poker. The Commission denied the petition based on the reasoning that the increase in wager limits would constitute an expansion of gambling. The second one was by a poker player who requested the wager limits to go from \$25 to \$40, which the Commission recently approved. Under the Tribal-State compacts, poker is considered Class III gaming wagering if the limits exceed \$40, which is the current maximum allowed for non-tribal casinos. If the wagering limit for non-tribal casinos increased to \$500, the Tribal Class II threshold would be raised \$500. The State does not regulate Class II gambling activities at tribal casinos.

The Commission may want to consider whether the proposal is consistent with the legislative intent expressed in RCW 9.46.010. Staff recommends filing the petition for discussion if the petitioner can justify why the increase is necessary and consistent with RCW 9.46.010. The petitioner requested an effective date of January 1, 2009.

Chair Niemi asked if there were any questions or public comment.

Commissioner Rojecki thought Mr. Kimmerle was one of the proponents to change this and asked if \$40 was the original limit. **Mr. Murrey** replied that Mr. Kimmerle had asked for \$40 and one of the RGA members suggested amending it to \$100, but since that had not been in the discussion, the Commission approved the \$40 limit. This proposal strictly addresses this activity in a highly supervised house-banked arena, and not in the lower level of supervision in a Class F or Class E card room, and is looking at two different levels of supervision, surveillance requirements, and security requirements. Therefore, just like Class III versus Class II gaming in the tribes, there would be different levels of regulatory requirements; better supervision, more surveillance, more requirements before being able to offer the higher limit in those arenas only. That is the difference between this petition and Mr. Kimmerle's original petition.

Director Day asked if Mr. Murrey agreed that the RGA also has petitions filed to reduce the level of supervision for poker games. **Mr. Murrey** affirmed, clarifying the poker combination of rules. On a later rule, the RGA is ask for the lowering the supervision when a card room only offers poker in a house-banked arena; that card room could separate the activities. But if a card room is offering poker at the higher house-banked level, then the requirement would be to have the higher levels of supervision and requirements. Certain card rooms in this state currently offer poker for a few hours a day before opening the table games and do not want to bring in extra staff; they would not be offering the higher level of poker without having that extra staff and supervision. If it is necessary to get that clarification for staff to feel comfortable, the RGA can go forward and make the amendments to ensure that the comfort level is there.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to file for further discussion Amendatory Section WAC 230-15-135 as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

The Recreational Gaming Association withdrew their petition under Item 15.

15. Petition for Rule Change – Increase per hand fee from \$1 to \$5 for Class F and house-banked card rooms

- a) Amendatory Section WAC 230-15-080 – Authorized fees and authorized methods of collection

The Recreational Gaming Association withdrew their petition under Item 16.

16. Petition for Rule Change – Remove 5% commission limit on winning hands in house-banked card rooms

- a) Amendatory Section WAC 230-15-480 – Commissions on winning hands

The Recreational Gaming Association withdrew their petition under Item 17.

17. Petition for Rule Change – Increasing the player-supported jackpot administrative fee from 10% to 35%

- a) Amendatory Section WAC 230-15-390 – Collecting an administrative fee on the player-supported jackpot

18. Petition for Rule Change – Allowing Baccarat and allowing nickels and dimes to be used in all commission games

- a) Amendatory Section WAC 230-15-035 – Requirements for authorized card games
- b) Amendatory Section WAC 230-15-145 – Making wagers with chips or coins

Assistant Director Harris reported the petitioner is requesting to be allowed to use community cards in card games, which would allow games like baccarat and mini-baccarat to be played in commercial card rooms. Currently players must have their own hand of cards and cannot bet on another player's hand or the house's hand. It also would allow nickels and dimes to be used in card games that charge a commission. In 1997, the definition of social card game was changed when house-banked card games were allowed, and the language "for skill" was removed. During the following three years, mini-baccarat

was allowed in commercial card rooms. In 2000, Ben Bishop, the director at that time, felt that mini-baccarat did not meet the legislative intent of what a social card game was because players were not making wagers on their own individual hand. The rules were amended and mini-baccarat was no longer allowed. There have been three petitions in the past five years to allow players to bet on community cards; two were denied and one was withdrawn by the petitioner. These types of card games are allowed under the Tribal-State Compact. If passed, this would authorize at least two new card games, baccarat and mini-baccarat, and would also authorize several other games the Commission has not approved in the past and some they may not even be aware of. Staff would require additional training on the new games. Staff recommends filing this petition for further discussion.

Chair Niemi thought this change had been before the Commission earlier and was turned down. **Ms. Hunter** affirmed, explaining that two years ago, in October of 2005, the Commission filed a petition on this issue and then ended up not passing it in January 2006. There had been two other petitions submitted before that; one in 2005 that was withdrawn, and another one in August 2003 that had been a split vote so did not pass. The Commission has dealt with this topic four times since 2000. **Commissioner Parker** pointed out that the history of the rule indicates that in 2000 Director Bishop felt that mini-baccarat did not meet the intent of what a social card game is because the players are not making the decisions on their own hands. Commissioner Parker inquired whether that was still the facts. **Ms. Hunter** affirmed the law has not changed.

AAG Ackerman noted there was at least one reference in the minutes to comments made in the past. Mr. Ackerman was not sure what the issues were prior to 1997 when the statute changed but thought that under the current law, baccarat and mini-baccarat are card games and, as such, the Commission has authority to decide whether to allow them under the RCW. Mr. Ackerman indicated he had been around for all three of the prior attempts and, in the past, the Commission has as a policy matter decided to adopt former Director Bishop's line of reasoning, which was that this was viewed not as an expansion of gambling in a legal sense but a potential expansion of gambling in a policy sense. Mr. Ackerman's recollection of the last go-round was that the Commissioners felt this was in fact something that should be addressed to the Legislature and, at that point, declined to go down that path. Mr. Ackerman thought that had been discussed in full at least two times. Mr. Tull's petition was discussed a little bit less but the discussion was of the same nature. The question is, does this Commission want to go down that path. **Chair Niemi** understood and was willing to agree that part of the problem has been that staff believed there was a difference between allowing baccarat and mini-baccarat. The way the petition is worded would allow a lot of other similar games and the Commission had objected to the other similar games, yet it keeps coming back with that language in it. **AAG Ackerman** explained part of the problem, historically, has been in the way the petitions have been worded. The petitions have not come forward and asked the Commission to allow mini-baccarat in house-banked card rooms, they have come forward in a more generic sense asking authorization for house-banked card rooms to offer games where players can bet on other than their own hands. The Commission felt that to be an open-ended situation and they would not be able to anticipate where it might go.

Chair Niemi asked if there were any questions or public comment.

Mr. Murrey responded that if the Commission viewpoint would be that this could be filed with just baccarat or mini-baccarat, the RGA could go back and negotiate that language. It was easier to address the rules as they were written instead of identifying a specific game. Mr. Murrey asked the Commission to file the proposal and give the RGA the direction to work with staff to identify specifically the mini-baccarat game. **Commissioner Parker** said that sounded good to him.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to file for further discussion Amendatory Section WAC 230-15-035 as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

19. Petition for Rule Change – Tournaments – Remove \$100 limit on entry fees and \$400 limit on buy-ins

a) Amendatory Section WAC 230-15-210 - Entry fees and buy-ins for card tournaments

Assistant Director Harris reported the petitioner is requesting the dollar limits on card tournament entry fees and buy-ins be removed and instead require the licensees to state in their rules what fee they would charge. The RGA states that house-banked card room licensees should be allowed to offer games at the same levels being authorized in the Washington State tribal gaming market. Card room licensees are currently allowed to charge a maximum of \$100 per player per entry fee and a maximum of \$400 for buy-in. The tribal limits for Class II tournaments are limited to \$100 for entry fees and \$400 for buy-ins. The limits for Class III tournaments are \$2,000 for entry fees and \$8,000 for total buy-ins. The tribal casino is required to have a tribal gaming agent on premises whenever the gaming is operated.

Staff does not support removing the limits on entry fees and buy-ins on tournaments and recommends denying the petition. If a new petition was submitted with a reasonable limit, staff would recommend filing for further discussion. The petitioner has requested an effective date of January 1, 2009.

Chair Niemi asked if there were any questions.

Commissioner Rojecki asked what would be considered reasonable. **Assistant Director Harris** replied that since no limit was proposed, he did not have an answer.

Chair Niemi called for public comment.

Mr. Murrey explained this proposal was to give players the opportunity to win entries into national, televised tournaments. At the current entry levels and limited number of tables, it is impossible to create those opportunities for the customers who demand them. The industry is not looking to raise the limit just to charge huge entry fees, but just enough to cover those national tournaments that require certain entry fees and certain things from the operators in order to run their satellites.

Commissioner Parker said he was not sure what the demand would be for this, asking if evidence had been submitted to the Commission about this. **Mr. Murrey** replied he did not think there was any evidence that had been submitted to the Commission. Mr. Murrey was not sure what the barrier was but thought the reality from the industry is the opportunity to give it a shot and have it available to the customers if the demand is there. It is hard to say the demand is there when the opportunity has not been provided to ask for it or to offer it once or twice to see if the demand is there. There is sometimes a disparity in the size of the room or how many tables are offered, when watching the Western Gambling Journal, looking at different venues that allow poker and have the satellites, and what the entry fees are.

Commissioner Parker stated he was reluctant to move ahead with this because he did not really understand the ramifications from the point-of-view of the Commission's role of regulating gambling. The Commission could say they will file it, which could mean nothing happens except that the Commission moves ahead with further analysis and discussion, and then the vote to adopt or not adopt is something that will take place in July or August.

Commissioner Rojecki asked if, on the tribal side, tribal gaming agents are required to be there when these types of high stakes are played. **Chair Niemi** said the tribes do not have this, and stated that anything unlimited makes the Commission nervous. **Commissioner Rojecki** agreed. **Commissioner Parker** asked if there was a suggestion for what would be a reasonable limit to propose, rather than proposing unlimited.

Ms. Chiechi, Executive Director of the Recreational Gaming Association, again asked the Commission to consider filing these rules and then let the RGA work with staff to come up with acceptable limits. Ms. Chiechi understood the question about what is the demand, and felt the RGA could bring that information forward if the Commission chooses to file it for further discussion. Ms. Chiechi said they could bring those items to the Commission for consideration in the final adoption or denial of the rule change. The RGA would like to work with staff to come up with reasonable limits and have that before the Commission at the July meeting.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to file for further discussion Amendatory Section WAC 230-15-210 as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

20. Petition for Rule Change – Tournaments – Awarding re-buys and chips to certain players

a) Amendatory Section WAC 230-15-225 – Tournament rules and prizes

Assistant Director Harris reported the petitioner is requesting a rule change that would allow card tournament operators to give players additional or discounted re-buys based on the amount of time of the players previous play and to use a drawing to determine what player advances to an open seat at a tournament. The RGA states that house-banked card room licensees should be allowed to offer games that are authorized at the levels being

currently authorized by other gaming in the market in the state of Washington. The tribes currently conduct tournaments that match what card rooms are currently allowed to do. RCW 9.46.0265 defines “player” as a natural person that engages on equal terms with other participants. Commission rules require players to compete on an equal basis for all non-house-banked games. The petitioner has requested an effective date of January 1, 2009. Staff recommends denying the petition based on the policy considerations.

Chair Niemi asked if there were any questions or public comment.

Mr. Murrey explained the intent of this rule was to allow players who play consistently in poker for several hours the chance to come back and use their time as a method of consideration to have extra chips, more than somebody who just came in off the street to play. A new customer would buy into a poker game tournament for an entry fee of \$25 and get 1,000 chips, but a customer who played for 20 hours last week could get a bonus of 200 chips buy-in or a free re-buy. Currently re-buys in tournaments and bonus chips if the re-buys are bought when all their chips are bought up front are allowed. The industry is looking for another consideration – to have extra chips or more re-buys based on the time a customer puts into the poker game and competed for cash games over their past history.

Commissioner Parker indicated that policy considerations in the material provided states the Commission may want to consider whether using a drawing to select who will advance to an open seat instead of the outcome of the game is allowed under the RCW, and asked if Mr. Murrey could add to the Commission’s understanding of that. **Mr. Murrey** replied it was considered about the same time as certain considerations over the past ten years on that extra element of advancing on not skill but chance. Mr. Murrey explained how this works is if there are three poker tables of a tournament and three of those people advanced from each table to the next round, the next table would start with nine people instead of a round number of 10. The common way to get that tenth person was to draw from the eliminated players for the lucky person to advance. This used to be a common practice and is still done in the tribal and national venues. Staff has considered that to be an element of chance instead of skill, which is where the policy consideration lies – whether to enter into that gray area of whether skill got the player to the final table or if it was strictly an element of chance. This would be limited to only those people that were in the tournament to begin with and had paid their entry fees on an equal basis. Everyone who was eliminated had an equal chance of advancing through that random drawing.

AAG Ackerman added he assumed staff’s concern was about the sections in RCW 9.46.0265 where player means “a natural person who engages on equal terms with the other participants,” and “a natural person who gambles at a social game of chance on equal terms with the other participants.” The concern may have been that there would be people playing their way into a beneficial position and other people getting there through a drawing or something that does not relate to actually competing against the other players.

Commissioner Parker asked if there was a possibility this would be determined to be outside what is authorized under the RCW. **Director Day** affirmed, adding that concern was brought up by staff. Director Day thought the players’ advancement in the tournament

would then become something other than their play, as all the other players. **Commissioner Parker** commented that was a murky area. **Director Day** said he was no tournament expert by any stretch but was not sure, depending on the number of players the tournament wanted to advance, if it was those players that were left standing as opposed to entering some other element that is then spread unequally amongst the players. **Assistant Director Harris** agreed, clarifying that instead of people advancing based on the quantity of chips they have left, like the top three chip holders advance, now there is somebody advancing just based on a drawing that is not tied to the outcome of the card game but is just a random drawing based on all the people that were eliminated. It is not based on the result of the card game or the player's chip level, which is what the other players advance on. The concern is that it is not tied to the outcome of a card game.

Mr. Murrey asked the Commission to file this; to move forward in the process. If the Commission's concern is just that portion of the rule, the RGA will work with staff on that portion. It helps to understand where the concerns are to create a working negotiated rule-making process.

Commissioner Parker indicated some of these have bigger flags than others, and this one is a big flag item. **Mr. Murrey** agreed, adding one of the keys to this process was the RGA developed these rules under what was thought would be good for the industry and what was being done around the world, and then submitted them. This is the first chance to really understand where staff has concerns and where it becomes difficult to negotiate, understand, work back and forth, and have a give-and-take working relationship. As we proceed forward, the RGA is going to try to draft something that, in the end, the Commission feels comfortable in adopting. If we can move forward under that guise and understand where the Commission is not comfortable, the RGA will definitely work to find that common ground. **Commissioner Parker** wanted **Mr. Murrey** to understand that his moving to file does not indicate in any way **Commissioner Parker's** willingness to move to adopt. **Mr. Murrey** appreciated that and thanked the Commission for the opportunity to create the discussion and the dialogue.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to file for further discussion Amendatory Section WAC 230-15-225 as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

21. Petition for Rule Change – Tournaments – Remove 30 day limit on length of tournaments

a) Amendatory Section WAC 230-15-220 – Restricting length of card tournaments

Ms. Amy Hunter reported the petitioner is requesting to remove the length on card tournaments, which is currently 30 days. The RGA states the tribal markets are allowed to run long-term tournament play to allow players to qualify for other tournaments such as the World Series of Poker. It's the type of longer tournament that they want to be able to do for people who want to go to the World Series of Poker. The main reason for having a 30-day limit is to ensure that all of the buy-ins are returned in a timely manner, and because the record keeping requirements and controls are pretty minimal. Most card tournaments at

tribal casinos are Class II activities, so they are not under the Commission's direct regulatory jurisdiction. A tournament would be Class III if the \$40 betting limits are raised, and then the State would have regulatory jurisdiction.

Staff does not support removing all of the time limits on tournaments, and recommends denying the petition based on regulatory concerns, resource impacts, and policy considerations listed in the rule summary.

Chair Niemi asked if there were any questions and called for public comment.

Mr. Murrey understood from comments earlier that the concern is with no limits. The RGA would be more than happy to work with staff on a comfortable limit as to the number of months or days that a tournament could last. The philosophy is to have a "Tournament of Champions" type of situation where if a player wins one month they get a free shot at the end of the year at big champion, and the card room would hold a little over each month to have those big tournaments. Again, the RGA would be more than happy to work with staff on a limited scope of days they would feel comfortable with. **Director Day** asked if that included 30 days. **Commissioner Rojecki** noted he was going to ask that same question.

Chair Niemi indicated that if someone moves to file this she was going to vote against it for two reasons. The first one is the Commission has so far filed things that they are going to have to think about a lot of procedural things. The meetings in July and August are going to be pretty heavy-duty meetings because there are a lot of policy changes that are up, and this is kind of overload. Chair Niemi's opinion was that if the Commission really wants to address this, they should do it at some later time. But if the two other Commissioners want to move to file, and they agree, then it will be filed. **Commissioner Parker** said he was not prepared to make a motion. **Commissioner Rojecki** agreed. **Chair Niemi** stated there was no motion to file.

AAG Ackerman clarified that under the APA, reasons need to be stated when the Commission makes a decision not to file. Chair Niemi clearly stated her reasons, but the other two Commissioners should state their reasons for not filing.

Commissioner Parker stated he shared Chair Niemi's view on this. **Commissioner Rojecki** also shared Chair Niemi's view.

Mr. Kealy, Vice President of the RGA, asked if when the Commission does not file something, can it be procedurally withdrawn and/or does it automatically get considered at the next meeting. He knew that these can hang out there about six months. Mr. Kealy honestly felt like this proposal had more common ground with staff than almost anything else in the package, if it had a limit on the time. If it had inside of an accounting year type of a limit, staff seems to be relatively okay with it, which is failing to get to this meeting in an informational way. **Director Day** responded that he did not want to interfere in Mr. Ackerman's answer, but thought the answer was if the Commission decides not to file, that petition is dead. It does not prevent the petitioner from re-filing a different petition in July.

Chair Niemi agreed, adding that she thought the RGA was asking too much of Commission members in a policy way. This may be very simple and the RGA can talk to staff and re-file and possibly a new petition would just roll through, but the decision was made not to file. **Mr. Kealy** apologized and thanked the Commission.

22. Petition for Rule Change – Increase the number of players at card tables

a) Amendatory Section WAC 230-15-055 – Limit on number of players at each table

Ms. Hunter reported the petitioner is requesting the number of players that can be seated at a card table be increased for house-banked card games from seven to nine players at a table, unless it is limited by the manufacturer's rules. The RGA is also requesting that if it is a non-house-banked game, primarily it would be a poker game, that the rule be changed from 10 to 12. The RGA states that tribal venues are allowed up to nine players in house-banked card games and up to 12 players at poker tables. The tribal compacts do not address how many players can be seated at the tables; it is done through game rules. One tribe allows 12 players by the rules, but by policy only allows nine. Staff is not aware of any Tribes that are offering 12 players at their non-house-banked poker games. Staff does not anticipate that all licensees will offer the additional player positions. Typically, cheating occurs when the dealer is occupied with other duties, so if there are more players at the table, there will be the potential of more distractions, which can make it more difficult for dealers and surveillance to monitor the games at the table. This could increase the number of complaints and cheating investigations. This change would allow the card room to have 30 players above what is currently authorized; or the equivalent of four additional tables for games like blackjack or blackjack derivatives. A large part of many of the house-banked card rooms is poker, which is played with one deck of 52 cards and could only have seven players. Staff is recommending the Commission file this for further discussion

Chair Niemi asked if there were any questions or public comment.

Commissioner Parker indicated this was one of those equal playing field proposals and thought it would be helpful if someone could clarify what this change really amounts to.

Gary Murrey explained this petition was looking at games played as normal but with more player spots. With mini-baccarat, the standard number may be nine; with Pai Gow, the number is six; with blackjack the common number is seven. What is being proposed is to look at manufacturer game rules for determining the number of spots. In the next couple of meetings, some manufacturers may possibly be asking for ten spots because there are a couple of games that play at ten spots, with only five players. This gives the industry the ability to have access to the kind of the games that are available in the industry, limited to the number the manufacturer determines is the appropriate number for that game.

Commissioner Parker made a motion seconded by **Commissioner Rojecki** to file for further discussion proposed WAC 230-15-055 as presented by staff, with an effective date of January 1, 2009. *Vote taken; the motion passed unanimously.*

23. Petition for Rule Change – Regulations when operating only Class F games at house-banked card rooms

- a) Amendatory Section WAC 230-15-270 – Surveillance when Operating both only Class F games at and house-banked card room games

Assistant Director Harris reported the petitioner is requesting that house-banked card game licensees that also offer Class F poker or poker-type games no longer have to meet the requirements of house-banked games when they operate only poker. The proposed change would reduce requirements for house-banked licensees when they operate only poker games, including surveillance and cashier's cage requirements. House-banked card games and poker games are two different types of activities and require different types of regulation. The two activities are currently allowed to be combined and operated under house-banked licenses on the condition they followed the higher restrictions, which this proposal changes.

Staff recommends denying the petition. If a new petition were submitted removing only the requirements for a surveillance room, staff would recommend filing for further discussion. The petitioner is requesting an effective date of January 1, 2009.

Chair Niemi asked if there were any questions or public comment.

Gary Murrey explained this petition was in conjunction with what was discussed before about the surveillance requirements when operators are only doing poker. Although card rooms are required to the standard level that is meant for house-banked games, the industry is looking for a separation between the activity itself. If it makes the Commission feel comfortable if the higher limit in the poker and the house-banked arena goes through, the RGA will make sure to clarify that those activities at the house-banked level are a Class III level, like in the tribal venue, and that all levels of supervision and surveillance are there. Only when dealing with Class E and F level of play is this going to take effect. Mr. Murrey wanted to make sure the RGA's intent was clear. If staff believes this is not getting to that intent, the RGA is more than happy to work on additional rules to get to that intent, if the Commission deems this is an appropriate rule.

Assistant Director Harris clarified that Mr. Murrey's opening statement said surveillance requirements, but this proposal would remove all the requirements, not just surveillance requirements, to the lower level. **Mr. Murrey** did not think staff was comfortable with the way the rule was written, that it takes away other levels of security, but if staff believes that just removing that portion makes it more comfortable and removes some of staff's concerns, Mr. Murrey thought they could get there with some negotiation.

Commissioner Parker suggested holding off on filing this petition. **Chair Niemi** said she thought so. **Commissioner Rojecki** pointed out that some of the resource impacts noted are a bit more significant than some of the others in the staff prepared documents, especially undercover.

Max Faulkner, President of the Recreational Gaming Association, explained he had contacted the general clubs around the state regarding all of the RGA's nine petitions for

rule changes. There has been some discussion on whether these rule changes will have any effect or not. Feedback received was that this rule was the one that a lot of the clubs are really interested in. Mr. Faulkner felt there was nothing in the rule that could not be worked out with staff over the next two months.

Commissioner Parker made a motion to file.

Commissioner Rojecki said he would like to hear staff's recommendation if a new position were submitted removing only the surveillance room requirements – it goes hand-in-hand with some of the other things that have been discussed.

Director Day replied he was trying to put this in a reasonably neutral fashion, but this is a rule change that staff is particularly concerned about. Director Day was not sure that staff could work something out to this level, because of the testimony, not to indicate there may be some flexibility. As Assistant Director Harris reported, this eliminates the standards, and although there may be one or two things staff might be willing to change, Director Day did not want there to be any perception that staff is in agreement with the context of this rule. **Assistant Director Harris** agreed.

Director Day thought the industry had made a pretty good point and staff could accept, to a certain degree, where poker is conducted in a house-banked card room that it may be reasonable for lessening some of standards for poker games. However, staff's straight-forward position would be that the house-banked operation itself makes a decision which mix of card games it chooses to play. So staff's preference, as far as what is the best regulatory situation, would be for the same standards regardless of the game. Staff has concerns with this particular rule, but is always willing to ensure the agency is not being over-regulatory.

Commissioner Parker withdrew his motion.

Chair Niemi stated the decision has been not to file; there is no motion to file. Chair Niemi did not object to not filing the proposal, partly because the volume of important things the Commission is going to have to discuss in the next two or three months is getting quite large. Chair Niemi pointed out that it would be fine if the RGA wanted to re-file this proposal with the understanding of the current concerns. That would give the Commission members time to settle some things and be ready to deal with this request. **Commissioner Rojecki** added that some of the concerns brought up by staff far outweigh the decision not to file.

The Recreational Gaming Association withdrew their petition under Item 24.

24. Petition for Rule Change – Repeal requirement to deal cards from a shoe

- a) Amendatory Section WAC 230-15-465 – Dealing all house-banked card games from a dealing shoe

25. Petition for Rule Change – Minimum cash on hand

- a) Amendatory Section WAC 230-15-055 – Minimum cash on hand requirements
Alternative #1 and Alternative #2

Assistant Director Harris reported the petitioner is requesting funds that are on premises in the vault and ATM, in addition to the cage, be counted towards the minimum bank cash on hand requirements. In addition to the above request, an alternative was filed that would change the measurement time from beginning opening of the business to conclusion of the count. The Commission adopted a rule effective January 1, 2008, requiring house-banked card rooms to have enough cash on hand to pay out prizes by maintaining the minimum amount of cash in the cage before opening for the business day. The language “before the opening of business day” was established to help insure card rooms had enough cash on hand when they opened for the day to pay out large cash prizes that may be won right after opening. There are no requirements in our WAC rules covering ATMs; just record keeping and surveillance requirements for licensees’ safes and vaults. Staff feels the language “before opening for the business day” is still the correct time to measure the amount of cash on hand. Not all licensees and card rooms will operate for a 24-hour period, but those who are will still have to designate a beginning time in their record keeping requirements.

Staff opposes allowing the money in the ATM machine to count towards the minimum cash requirement on hand and changing the measurement time to the conclusion of the count. Staff does not oppose allowing the money that is kept in the licensee’s vault or safe to count towards the minimum cash requirement when the vault and safe area are under surveillance as required. The petitioner has requested an effective date of 31 days from adoption. Staff recommends denying the petition.

Mr. Murrey explained this rule was brought forward recently as part of the Rule Simplification Process to come to a number that was acceptable with Commission and staff at a level that made sure the public would be paid should they win. The concern of some of the industry and the smaller operators in particular is the actual application of the process. During the day as a player buys in, every dollar that bought a chip has to go into a locked drop box. Chips cannot be bought through the cage, so the money is locked into a lock box, and at the end of the day the money is counted; therefore, the controls are in place to know how much is there and how much should be taxed. After the count process, that money is transferred to the cage; that cash is in the building, and in the system, and is available. The problem becomes a timing issue – some of the RGA members are asking that the time to take the picture of how much money is available is right after the count process. Staff is asking for that to be just before opening the doors for business. If the picture is taken right before the doors open and the count process is not finished, all the cash that went through the day is sitting in that box and will be in the cage available for payout within three or four hours. Other rules that require the card rooms to be able to pay our customers allows for cash or check. There is a rule that would make this fraud if the card room did not have the funds available to pay a winner. There are other rules that are addressed if the card room cannot pay and there are other violations involved. What is being discussed is the cash available in the cage or in the building. Some of the RGA members would like the Commission to look at it as what is in the building and available at some point in time

during the gaming day. Staff is looking for a picture or a spot where agents can come in, and count, and say the card room is in compliance. It is a matter of when that picture is taking place, and it becomes an onus on the members to make sure the count process is moved up early enough. That costs more money and more security issues because an operator would be more comfortable to open up those boxes when there are more people in the building and more security. Those boxes are locked and sealed with three or four locks to get to them. That is where philosophical differences are running on this.

Chair Niemi asked if Mr. Murrey was really serious about the ATM part. **Mr. Murrey** responded that the ATM was not a major issue. The safes and vaults are important because the card room does not want all the money in the drawer sitting right there where the customers are. The safes and vaults are very important, but the ATM is not. Mr. Murrey did not staff had a problem with safes and vaults, the real difference is on the time of the count, when the picture is taken on how much cash is available.

AAG Ackerman asked which of the two alternatives submitted by the petitioners are the Commissioners being asked to adopt. **Mr. Murrey** believed the original idea with the RGA was Alternative #1. After some comments from our smaller operators and understanding the timing issue, the RGA felt it appropriate to give the Commission the ability to adopt Alternative #2, giving the flexibility of when the count can be conducted. If the Commission is not comfortable with staff's comments, then the RGA would appreciate Alternative #1, and the ATM part can be eliminated as the process moves forward. Alternative #2 is preferable, but Alternative #1 would be the fallback position. **AAG Ackerman** asked for clarification that the RGA was requesting the Commission to adopt Alternative #2. If the Commission declines to do so, then Mr. Murrey would be asking that because the Commission has declined to file Alternative #2 would the Commission consider filing Alternative #1. **Mr. Murrey** believed that was the plan.

Commissioner Parker stated he did not think this proposal was ready to be filed, that he would rather wait until it has been clarified before actually filing the rule change. **Chair Niemi** agreed with Commissioner Parker's reasons as to why he does not want to make a motion, noting there are a couple of alternatives and the Commission is not ready to decide which alternative should be filed. **Director Day** added that staff believed some modifications might be appropriate and will work with the industry to see if these can be fine tuned a little bit. **Chair Niemi** agreed that was her understanding and it should be easier to solve.

26. Other Business/General Discussion/Comments from the Public/Adjournment

Chair Niemi called for public comment.

AAG Ackerman commented that, in looking over this package and as a way of planning for staff and/or the Commissioners, a great deal of work was deferred today with these proposed changes. Mr. Ackerman anticipated there was going to be a more vigorous discussion of policy with regard to the differences between tribal gaming and non-tribal gaming and the purposes for which the Legislature has allowed non-tribal gaming, which is stated in RCW

9.46.010, versus the reasons for which Congress has specifically allowed tribal gaming, the different purposes that it serves, and the different legislative decisions that have been made as to the proper scope of tribal gaming and non-tribal gaming. Some of the questions posed in these petitions appear simple on their face, but Mr. Ackerman suspected that when the legislators find out that these matters are being proposed, they will not view them as so simple. For instance, by statute there is a 15 table limit in a facility, which is a revised limit that was increased from what was originally allowed. When the Legislature passes statutes like that, they are presumed to know what the current state of the law is, including the WACs. So when the Commission receives a proposal to increase the number of people that can sit at those tables, it would effectively increase the maximum number of players that can be in a facility at any one time. There are a number of these other proposals that have similar sorts of ripple effects. When talking about unlimited entry fees into tournaments, the Commission has to figure out how that squares with existing wagering limits that have been maintained over the years and have only recently been raised. There has been discussion that this may all be done in two meetings, but Mr. Ackerman noted that a majority of the Commissioners who will be deciding these issues are not present at this meeting: Commissioners Ellis and Bierbaum, and possibly a third member appointed to succeed Chair Niemi. Now that the Commissioners have filed these, there is the option to have as many hearings over a six month time period as needed to educate the other Commissioners, to hear the support for these petitions being put forward, and to hear the negotiated agreements that may or may not be forthcoming between the industry and staff. Mr. Ackerman pointed out that the Commission may or may not be in a position to hold one more hearing and then go to a vote the following month.

Chair Niemi agreed, adding she hoped Mr. Ackerman's comments helped the audience understand why the Commissioners refused to file the ones they did.

Mr. Faulkner, President of the Recreational Gaming Association and as a spokesperson for the industry, thanked Chair Niemi for her service in helping to keep gaming honest and safe in the state and wished her the best.

With no further business, **Chair Niemi** adjourned the meeting at 11:15 a.m., noting the next meeting would be held on July 10 and 11 at the Heathman Lodge in Vancouver.

Minutes prepared by:

Gail Grate
Executive Assistant