

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
THURSDAY, MARCH 13, 2008**

Chair Niemi called the meeting to order at 1:40 p.m. at the Red Lion Hotel located in Olympia and introduced the members present.

MEMBERS PRESENT: **Commissioner Janice Niemi, Chair**, Seattle
Commissioner Peggy Ann Bierbaum, Vice Chair, Quilcene
Commissioner John Ellis, Seattle

STAFF PRESENT: **Rick Day**, Director
David Trujillo, Assistant Director – Licensing Operations
Amy Hunter, Administrator – Communications & Legal
Jerry Ackerman, Assistant Attorney General
Gail Grate, Executive Assistant

Partnership Program Participants:

Director Day explained the agency's Partnership Program and introduced Special Agents Dennis O'Bryan and Kim VanCleave who work in our Tribal Gaming Unit, Michelle Rancour and Sarah Rumley who work in our Licensing Operations Division, and Stephanie Hicks who works in our Business Operations Division.

1. Review of Agenda and Director's Report

Director Day reviewed the agenda for Thursday and Friday, noting there were no staff recommended changes to the agenda. PokerTek's attorney has requested that its petition for rule change be removed from the Friday's agenda (Item 7) to allow for additional work with staff on the rules. If it is agreeable to the Chair, the petition will be removed from this month's meeting schedule and the petitioner will have to submit a request to place his petition on the agenda at some time following the April meeting. **Chair Niemi** agreed.

Director Day noted that Petitioner Andrea Breithaupt, Item 10 on Friday's agenda, may not be here but that has not yet been confirmed. Bruce Marvin, Assistant Attorney General, will be present.

a) Presentations

> Tribal Contributions Report (PowerPoint Presentation)

Assistant Director Julie Lies presented a summary of the community impact and charitable distributions made by the tribes for fiscal year ending 2006. About half of the tribes have a September 30 year-end date and the rest have a December year-end date. The reason staff are looking at 2006 is because the tribes accrue in 2006 but have to distribute within 2007. Our agents go out in early 2008 and confirm the distributions were made. Approximately 20 tribes were operating 24 casinos during this time period. The net receipts for this time period was about \$1.3

billion, and about 88 percent of that was revenue from the tribal lottery systems (TLS).

Assistant Director Lies explained community impact distributions are generally calculated on 2 percent of net win from table games. The purpose of this particular fund is to reimburse local governments that have been impacted by the operation of a tribal casino. Compact language varies on what an impact is, which may be actual impact, potential impact, material impact, or impacts based on documented costs or impacts. Net win totaled about \$160 million for 2006. Satellite wagering, sports pools, class II wagering, charitable table proceeds, and non-gaming areas like food, beverage, and retail sales are not included in the net receipt calculation. Tribal lottery systems (TLS) are not included, and in some Compacts keno is also not included. Distributions may be made to fire and emergency services, ambulance services, Medic One, police departments, sheriff offices, the State Patrol, tribal police department, city and county governments, the Evergreen Council on Problem Gambling, hospitals, Chambers of Commerce, county economic development offices, etc. The funds distributed totaled \$5,989,856 for 2006, which is an increase of over \$1½ million from 2005. All tribes are in compliance with the community impact requirement under their Compacts.

Assistant Director Lies explained the ½ of 1 percent TLS charitable distributions are required under Appendix X, and will continue to be required under the recently approved Appendix X2, and distributed to charitable/nonprofit organizations within Washington State. The tribes are allowed to deduct for cost of developing, licensing, or otherwise obtaining the TLS. There was no significant change in the percentages from 2005. Distributions for the year 2006 were \$6,664,409, which was an increase of just under a million dollars. All tribes are in compliance with this requirement.

Chair Niemi noted that most of those present probably understand these figures and understand how they came about. It is appropriate for the tribes to do this and to explain that they give to the community and pay impact fees. Chair Niemi reminded everyone that the impact fees are a relatively common thing. When Chair Niemi was doing the budget, although the figures are different now, Walla Walla received an impact fee of about a million dollars because they have the prison, as does Monroe. Impact fees also pay for roads and fire, so when Everett wanted to become a federal port, there was much discussion about their impact fee, which apparently had to be more than what was gained by having the port in Everett. So Snohomish County got quite a few millions. It also depends on the effect of the people that are there. The tribes, of course, need police and fire, etc. When a Navy or Army base is in the area, money is needed for domestic violence and DUIs, so although it sounds funny, they also get impact fees. As far as the charitable giving, the tribes often provide lists of the people or organizations the tribes give to; they give across the board and they give to the right people. But you have to remember that the tribes are a \$1.3 billion business. Microsoft and Starbucks give a lot too,

which is deducted from their income tax, but the tribes do not pay any revenue. This is a big amount and is appropriately done, although it is not different, except for the fact there is no revenue like from any other large corporation in this state.

Commissioner Ellis asked how the reporting requirements for the tribes would change under Appendix X2. **Assistant Director Lies** replied that under Appendix X2 some additional distributions that would be made include .13 percent to smoking and tobacco cessation and .13 percent to problem gambling awareness and treatment. There are also many other things that the tribes contribute to in their local government. A third report under Appendix X2 called a Community Report would list all those things the tribes do, whether it is payment for helping with infrastructure, roads, schools, or other things not covered in the other reports.

- > Business Portal/Electronic Applications and Payments (PowerPoint Presentation)
Director Day recognized Ruth Zamora, one of the anchors in our technology group, who attended today to answer any technical, system-related questions that may arise during the presentation. Director Day noted that our agency has an excellent information technology group who run all our applications and keep everything rolling behind the scenes.

Assistant Director David Trujillo explained that he will take care of the business portal section of the presentation on behalf of Keith Schuster, who was not able to attend the meeting. In February 2006, Governor Gregoire issued Executive Order 06-02, which, in part, directed all regulatory, taxing, licensing, and permitting agencies and programs to improve and simplify services to Washington citizens and businesses. One element of this order was the development of a one-stop business portal.

Chair Niemi pointed out that in the paper it said that Washington came in second in the United States for the way their government was run, noting that part of that was because of this process. **Assistant Director Trujillo** agreed it was quite a nice recognition for the state of Washington. The Gambling Commission was one of the early agencies participating in the development of the business portal and Keith Schuster was the agency representative. In October 2007, the Doing Business in Washington website was recognized for outstanding achievement in the field of information technology, which was awarded to 11 entries chosen from 107 submissions by 30 state agencies. Doing Business in Washington is a one-stop shopping center for anyone wanting to open a business in Washington. It has tools to start a business, to grow a business, to register, to determine what kind of business structure desired, and how to get licenses and permits. It includes resources on information and taxes, and hiring and managing employees. This website can help a person determine if they need a specialty license and what must be done to obtain such a license. As a result of the rule simplification process last year, information and updated forms will be placed on the business portal website that will include information such as type of gambling licenses, what forms are

needed, and other information that prospective owners should know as they apply for a license.

Commissioner Ellis noticed that one of the links is for a customer feedback survey and asked if Assistant Director Trujillo was familiar with the results of the survey. **Assistant Director Trujillo** replied that he had not yet been on that portion of the website, although he has navigated through the website.

Ms. Judy Pittelkau, Senior Budget and Accounting Analyst in the Business Operations Division, provided background on the electronic payments and applications process that have been instituted in the agency. The agency's vision is to anticipate, innovate, and excel, and there are a couple of goals in the 2007-11 Strategic Plan that support that vision. One is to pursue improvements in innovations in agency programs and processes and another is to conduct business as simply as possible. In line with that, online processes was recognized as an essential project to accomplish those goals. Originally staff met with the Office of Financial Management (OFM), the State Treasurer's office, and General Administration. In 2003 staff started a discussion with them on the possibility of our agency using credit cards for our licensees. At that time it was felt that our agency was too small to absorb the costs of the program because the fees were pretty high. During the next couple years, staff continued ongoing discussions with those offices, keeping abreast of what was going on in the marketplace and positioning ourselves at a point that when it was determined that our agency was capable of handling the program, we would be ready to pursue it. We finally received approval from OFM and the Treasurer's office in 2005. When the feasibility study was done for this program and submitted to OFM, it went through on the first try, which was almost unheard of. Staff was pretty proud of that accomplishment.

Chair Niemi asked if credit cards are now being used and if a fee was charged to use a credit card, like it is for property taxes, so the agency is not out any money. **Ms. Pittelkau** replied there is no fee charged for the licensee to go online and use a credit card; the agency is absorbing the fees for this program. Ms. Pittelkau identified the team that put this all together: Philette Hamakua-Ling, Collene Engle, and Jessica Quiles from the Licensing Operations Division, Ruth Zamora from our Information Technology Division, Roshawna Fudge from the Communications and Legal Division, and herself. The team met with various state agencies to determine best practices, lessons learned, and potential options and costs that other agencies had already implemented and narrowed it down to three agencies whose programs most closely resembled ours to build our program from. The team decided to implement the program in an incremental manner. Instead of putting all of our applications online at one time, it was decided to start with the easiest one to begin to train licensees on how to use the program. That also provided a method for reviewing the program online to look for any problems or ways to improve the process. Our Information Technology Division built the

system and another team was put together to test it. This team consisted of Tina Griffin, Michelle Davis, and Cassie Voss from the Licensing Operations Division, Michelle Pardee from the Legal Division, and Joanne Graley from the Business Operations Division. Five licensees were selected to be trained on the program and test it before the program went live the end of March 2007.

Commissioner Ellis asked if Ms. Pittelkau knew the approximate breakdown between applicants who use the electronic payment system, or the credit card payment system, versus those who do not. **Ms. Pittelkau** replied that the usage has been relatively small but that only the add/transfer process has been tried online. One reason could be that a lot of the smaller licensees do not have internet access or do not have credit cards to use in the system. The next phase is to add renewals to the online process.

Ms. Philette Hamakua-Ling, Supervisor in Licensing Operations Division, reported that her staff are involved in processing the add/transfer applications. The online add/transfer process has allowed employers the opportunity to add an employee by going onto our website. Three online services are offered: card room employee transfer/add employer application, personnel termination notification online process, and the recreational gaming activity report. Of the 83 house-banked card rooms currently operating, about 85 percent have registered for this system. Unfortunately only 20 are actively using the system, but those 20 are very satisfied. Staff is working on the option for employers to be able to request a renewal application online.

b) Legislative Report

Ms. Amy Hunter reported that all of the bills included in the agenda packet died except for Engrossed Senate Bill 5927, the Public Disclosure Exemption bill, which the Commission voted in support of last month. A draft letter to the Governor letting her know of the Commissioners support has been prepared for the Chair's review. This is a good bill that takes away some of the uncertainty on the Commission's ability to protect sensitive documents. Ms. Hunter reported that the final budget did include one provision that would assist the agency. The budget states that "Pursuant to RCW 43.88.050, the gambling commission and the office of financial management may address the cash flow of the gambling revolving fund in anticipation of payments of forfeiture revenue from the federal government." The agency has been notified that it is eligible for a federal forfeiture because of an internet gambling investigation, but the details are still being worked out.

- > SGA 9281 – Commissioner Ellis' Confirmation made it out of rules with the do-confirm recommendation, but did not make it to the Senate floor. There were close to 90 other confirmations that did not make it to the Senate floor. Commissioner Ellis will continue to serve on the Commission and next year the Legislature may have to have another confirmation hearing.
- > Agency Request Legislation

- SSB 6316 – Retaining Interest on Gambling Revolving Fund, passed the Senate 46 to 0, had a hearing in House Appropriations and passed out of committee, made it out of rules and was on the floor calendar, but it did not make it to a vote of the floor.
- > Carry-Over Legislation – Agency Request Bills
 - HB 1345 – Penalties for Underage Gamblers, passed the House 96 to 1, made it to the Senate floor, but died there.
 - SHB 1346 – Barring List, passed the House 94 to 1, made it out of committee, made it out of rules, and died on the Senate floor.
- > 2008 New Bills
 - ESB 5927 – Public Disclosure Exemptions for Financial Statements, Auditor’s Reports, and Internal Controls
 - HB 2489 - Increasing Price of Raffle Tickets, passed the House 95 to 0, but died in Senate rules after passing out of the Senate committee.
 - HB 3220 – Local Government Raffles, passed the House 95 to 0, made it out of the Senate committee, and died in Senate rules.
 - House Bill 3292 – Recording Executive Sessions, died in House rules. There had been about 19 amendments proposed on the bill.

This was year two of the two-year legislative cycle, so any bills that died have to be reintroduced next year as new bills. Staff will have a report at the July Commission meeting on possible ideas for the 2009 legislative session, plus have some type of rule proposal related to fees similar to what was in Senate Bill 6441.

c) Correspondence

- > Letter to Attorney General McKenna regarding fee increases - DRAFT
Director Day explained this letter was prepared as a result of the agency’s fee bill request dying in committee. Agency legal staff and Assistant Attorney General Ackerman helped prepare and have reviewed the draft letter requesting an Attorney General Opinion specific to the fee increase that the Commission passed in November of 2007. In part, the letter states the Commission followed the requirements of RCW 34.05 and its customary practice regarding notice, filing, and hearings to adopt an administrative rule that increased the gambling license and identification stamp fees with an effective date of January 1, 2008. No one testified against the proposed increases at the September or November 2007 meetings. According to the Administrative Procedure Act (APA), the rule change could not go into effect until 31 days after Commission approval, which resulted in the rule taking effect after I-960’s effective date of December 6, 2007. During the ensuing period there has been some debate about the application when the Commission had already approved the fee increase. Staff has received verbal opinions from officials within the Office of Financial Management and the Attorney General’s office that, given the legal and factual circumstances outlined above, the agency could legally implement the fee increases adopted by the Commission in November 2007. Staff has not been provided anything in writing to confirm those opinions. The request for an Attorney General Opinion pertains only to the Commission approved fee

increase and would mean about \$498,000 worth of revenue for the Commission. Director Day recommended that if the Commissioners decided to go forward with this request for an Attorney General Opinion, he would like the opportunity to check in with the Governor's Policy Office once more to ensure the agency is not going in a direction that would be disruptive to other planning. Staff requests the Commission authorize the final preparing of this request for an Attorney General Opinion.

Chair Niemi asked whether Assistant Attorney General Ackerman was involved in the writing of this request. **AAG Ackerman** affirmed he had reviewed the letter and made suggestions as to its composition. **Chair Niemi** instructed the Director to proceed with preparing the final letter for her signature. **AAG Ackerman** suggested that, for the record, it would be helpful if the Commission made a motion to authorize the request for the Attorney General Opinion.

Commissioner Bierbaum made a motion seconded by **Commissioner Ellis** to authorize staff to proceed with a request for a formal Attorney General Opinion. *Vote taken; the motion passed unanimously.*

- > Letter from Coalition for Responsible Gaming and Regulation
Director Day pointed out this letter accepted the January 30 rule proposal package on behalf of the Coalition for Responsible Gaming and Regulation. As a result of discussions between the group of licensees and our staff, a compromise set of rule proposals dealing with mitigating/aggravating circumstances and limits around penalties was accepted to present to the Commission. The rule proposals were presented to the study session today, but not many changes came out of the study session discussion. Staff anticipates requesting the Commission file the rules next month.
- > Letter from Suquamish Indian Tribe regarding regulatory fees and our response
Director Day noted staff is currently working with the Washington Indian Gaming Association, and that several of the tribes that filed letters have deferred to that process to resolve billing disputes and work through the process.
- > Request from Joel Douglas, Harbor Lands, Co., and our response
Director Day reported the petition asks that tribes be required to establish and operate medical service clinics near the casinos to serve the majority of their tribal constituency with suitable and acceptable out-patient care. Staff response stated this was not within the Commission's jurisdiction. Director Day explained that the state does not have a role in the type of decisions requested in the petition. Most of the Compacts have a public safety provision, but it generally requires compliance with tribal and federal laws like public health and building codes. The tribal governments make their determination on how to spend their funds, much like cities, state, and federal governments do.

Chair Niemi noted that she had dinner this week with the person who probably was most in charge of providing those services and he said the relationships with the tribes was going very well and he did not see any problem at all with this. So apparently everyone is fairly happy with it. **Director Day** added that we have seen many presentations showing the various services, medical facilities, out-patient care facilities, and tribal elder care services that the tribes have established.

Comments from the Public

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

Ms. Dolores Chiechi, Executive Director of the Recreational Gaming Association, thanked the Commissioners and staff for their support on Senate Bill 5927, which was helpful in getting the bill through the Legislature. Ms. Chiechi distributed a letter expressing the Recreational Gaming Associations appreciation.

Ms. Maureen Greeley, Executive Director of the Evergreen Council on Problem Gambling, distributed a packet of information about the organization, which was previously known as the Washington State Council on Problem Gambling. The organization has new staff and a new office in Olympia not far from the Gambling Commission. Ms. Greeley reported that their goals included providing services and programs for people with gambling problems, whether they are the problem gamblers themselves, their family members, their employers, or their co-workers. Ms. Greeley said she was here today to answer any questions the Commissioners may have and to thank staff of the Gambling Commission for their help to the Council and to Ms. Greeley as a new Director. The organization is very small, with only two staff and a good volunteer board. In addition to providing new agent training for your licensees and tribal gaming agents, the organization does a lot of public outreach and awareness. Because the organization's first conference last year was so successful, the board decided to make it an annual event. Susan Arland, with your agency, will be presenting at our conference. Not only is Gambling Commission staff helping with presentations, but many are volunteering during the conference. Ms. Greeley thanked the Commission for being a partner to the Council on Problem Gambling. **Chair Niemi** commented she was glad the Council on Problem Gambling was available to take the burden from the Gambling Commission.

2. New Licenses and Class III Certifications

Assistant Director Trujillo presented the list of new licenses and Class III certifications for approval.

Commissioner Bierbaum made a motion seconded by **Commissioner Ellis** to approve the list of new licenses, changes, and tribal certifications as listed on pages 1-13 in the agenda packet. *Vote taken; the motion passed unanimously.*

3. Request to Exceed Raffle Prize Limit – Wenatchee Rotary Foundation

Assistant Director Trujillo explained that a licensee who wishes to exceed the \$40,000 raffle prize limit is required to request the Commission's permission and to show good cause

for the request. Wenatchee Rotary Foundation is requesting approval to offer a raffle prize with a value of approximately \$49,500. Informational material provided by Wenatchee Rotary Foundation is included in the agenda packet. Staff believes this licensee has shown good cause to exceed the prize limit and recommends approval of the request.

Commissioner Ellis made a motion seconded by Commissioner Bierbaum to authorize the Wenatchee Rotary Foundation to conduct a raffle as described in the letter from Nathan Bishop and to offer a prize with a value of approximately \$50,000. Vote taken; the motion passed unanimously.

4. **Default**

Kelvin J. Barr, Class III Employee, Revocation

Ms. Hunter reported Mr. Barr took three video gaming department vouchers, which are used in conjunction with the tribal lottery system, worth about \$65 while working as a supervisor at the Muckleshoot Indian Casino in Auburn. The Tribe has revoked his tribal gaming license. Charges were issued to him by certified mail and regular mail. By failing to respond to the charges Mr. Barr waived his right to a hearing and the Commission may enter a final order in default. Staff recommends the Commission revoke Kelvin Barr's Class III certification.

Chair Niemi asked if Mr. Kelvin J. Barr was present or a representative. No one stepped forward.

Commissioner Bierbaum made a motion seconded by Commissioner Ellis to enter a default order revoking Kelvin J. Barr's Class III certification to conduct gambling activities substantially in the form of the findings, conclusions, decision, and final order in default submitted by staff. Vote taken the motion passed unanimously.

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

Chair Niemi noted that the poker table is set up in the next room if anyone would like to see how it operates. The petition will not be discussed again until at least the May meeting, so this might be a good chance to take a look at it and see how it works. Chair Niemi asked if Mr. Miller would like to comment about the table.

Mr. Frank Miller, Miller Malone and Tellefson, and his partner Dave Malone, representing PokerTek, testified that this company came to his firm a few years ago. They were from the Dell Corporation and wanted to form a style of poker rooms that would be tied to the World Series of Poker. When that went away, PokerTek called a year later and explained they were going to develop a table game, an electronic poker table that can not only aid in the regulation of the game, but also be enjoyable for people. It has taken PokerTek a few years to work on this product, and they asked Mr. Miller to help get it presented before the Commission for analysis and review. Mr. Miller is currently working with tribes in the state to have it placed as a Class II table because he feels it is gaming equipment, not a gambling device. Mr. Miller was willing to debate that issue, but does not believe it is. A person cannot play against the device – it takes a minimum of two players – and it is really nothing

more than an electronic poker table. The beauty of the table is there are electronic chips and electronic cards, but no live dealer. The customer has to go to a cashier's cage and open an account and receive a name card to play. Chips are bought from the table and all the accounting is done by the table, which tells players when they win or lose and takes care of the rake. The customers have to go back to the cage and show identification to get their money. The technology has tremendous regulatory capabilities and enhancements. Staff had some concerns on some rules, and while Mr. Miller did not agree that all applied, he agreed it was worthy of discussion. Mr. Miller asked Director Day for the ability to go back and sit down with Commission staff and see if they can come to an agreement on what rules apply, and hopefully get it worked out. Once that is done, PokerTek will request the petition for rule change be put back on the agenda for debate on the policy issues. Some of the issues include whether the Commission is prepared to not require a live dealer and be comfortable with electronic chips. Mr. Miller encouraged the Commissioners and audience to take a look at the table to see how it works. **Director Day** confirmed with Mr. Miller that the demonstration would not have any money involved today. **Mr. Miller** replied there was no money involved, just chips – play money.

Commissioner Ellis noted that from the summary the Commission received, it seemed like interesting issues until he got to the proposed amendment and discovered the proposed rule change would apply not only to poker, but to hearts, pinochle, cribbage, rummy, etc. **Mr. Miller** explained that the table could be limited to poker. The reason the additional games were included was because the rule being amended actually authorized card games, so the proposal was worded so this table could be used for those games. The wording was just part of the rule that the proposal came from. The table being demonstrated does not have pinochle or cribbage, only poker, and Mr. Miller was more than willing to remove those games from the wording of the proposed rule change. Mr. Miller encouraged the Commissioners to take a look at the poker table – PokerTek brought it all the way up to Washington and it is quite an operation to set up. The table currently has been approved in 32 jurisdictions – it is very popular on the cruise ships and New Jersey just approved it last week for testing. The table is getting recognition around the country, but it is not something that is going to dominate the market – it is something that a few places will enjoy.

Chair Niemi called for other public comment. There was none.

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

At 3:05 p.m., **Chair Niemi** called for an Executive Session to discuss pending investigations, tribal negotiations, and litigations. At 4:15 p.m. Chair Niemi called the meeting back to order and immediately adjourned.

**WASHINGTON STATE
GAMBLING COMMISSION MEETING
FRIDAY, MARCH 14, 2008**

Chair Niemi called the meeting to order at 9:35 a.m. at the Red Lion Hotel located in Olympia and introduced the members present, noting that Commissioner Bierbaum was not able to attend today's meeting.

MEMBERS PRESENT: **Commissioner Janice Niemi, Chair, Seattle**
Commissioner Alan Parker, Olympia
Commissioner John Ellis, Seattle
Senator Margarita Prentice, Seattle
Representative Gary Alexander, Olympia

STAFF PRESENT: **Rick Day, Director**
David Trujillo, Assistant Director – Licensing Operations
Amy Hunter, Administrator – Communications & Legal
Jerry Ackerman, Assistant Attorney General
Gail Grate, Executive Assistant

6. Approval of Minutes – Regular Meeting, February 14-15, 2008

Commissioner Ellis made a motion seconded by Commissioner Parker to approve the minutes of the regular meeting of February 14-15, 2008, as submitted by staff. Vote taken: the motion passed unanimously.

(Item 10 taken out of order)

10. Petition for Review
Andrea Breithaupt, Card Room Employee
Bruce Marvin, Assistant Attorney General

Chair Niemi asked if Andrea Breithaupt or any person representing her was present. **Assistant Attorney General Marvin** explained that Ms. Breithaupt had sent a handwritten fax to the Gambling Commission yesterday indicating she would not be attending. Ms. Hunter has some documents that set forth the issues that have been flying back and forth between the staff and Ms. Breithaupt, who is taking issue with whether she received adequate notice of today's hearing. A declaration by Maureen Pretell, legal secretary for the Gambling Commission, is included that sets forth the steps Ms. Pretell took to contact Ms. Breithaupt to notify her of the meeting and confirm that, up until yesterday, Ms. Breithaupt was available. Ms. Breithaupt's primary contention appears to be that it makes no sense to her that the Commission would have sent a notice of hearing to her old and her new address. Ms. Breithaupt had not provided notice to the Commission of her new address, other than through telephonic means, so Ms. Pretell was being cautious and sent notices to both the

new and the old address, which was a reasonable step to take. Ms. Breithaupt contends that she never received the notice, but Ms. Pretell, in her declaration, confirms that the notice was sent and that Ms. Breithaupt was contacted on numerous occasions by telephone and that Ms. Breithaupt confirmed she would be available to attend today's meeting – then yesterday that was no longer possible. Mr. Marvin recommended fashioning Ms. Breithaupt's correspondence as a request for a continuance and Commission staff asks that the Commission deny that continuance. This issue was also encountered during the initial proceedings for the initial order. Ms. Breithaupt learned that she could get a continuance if she retained counsel, so she retained counsel and as soon as Ms. Breithaupt was granted the continuance, she un-retained counsel. There is a history here of conveniently making facts fit the circumstances required to get a continuance. Under the WACs, in order to consider a continuance and grant it, there must be timely notice of the request for the continuance presented to the Commission and there must be good cause shown. Mr. Marvin would posit that under these circumstances, Ms. Breithaupt has not met either of those requirements.

Chair Niemi noted that the Commission has had ample time to read all the material submitted for the February meeting and for this meeting and have an idea of what the appeal is about. It is being suggested that the Commission call this hearing today since Ms. Breithaupt is not present. It is hard to tell from her writing, but it appears to be another request for a continuance. If the Commission were to deny that request, how should the underlying application be handled? **AAG Marvin** replied that Ms. Breithaupt's statement is somewhat ambiguous and, being overly cautious, Mr. Marvin fashioned it as a request for continuance. In any event, Ms. Breithaupt has acknowledged that if that motion is denied the Commission should go ahead and consider the matter today and render a final decision with regard to a final order. **Chair Niemi** asked if Mr. Marvin was suggesting that the Commission consider the underlying issue today. **AAG Marvin** affirmed, requesting that to the extent there is a motion for a continuance on the table, the Commission deny that motion and move on to consider the substance of the arguments.

Commissioner Ellis asked whether Ms. Breithaupt was advised last month when the Commission granted her continuance that it would result in her petition being heard yesterday or today. **AAG Marvin** replied that Ms. Breithaupt had received ample notice. Ms. Pretell has attached telephone logs that provide a very thorough narrative of the efforts that have been made by the staff to ensure that Ms. Breithaupt was fully informed of today's hearing, and it appeared from Ms. Breithaupt's call yesterday that she had notice of the hearing. Since the request notices were sent to both her new and her old addresses, Ms. Breithaupt was clearly advised as required by the APA, plus there is the verbal confirmation in the telephone logs.

Commissioner Ellis asked if it was Mr. Marvin's position that the Commission would be well advised to enter an order on the merits of Ms. Breithaupt's petition as opposed to a default order. **AAG Marvin** affirmed he thought it would be appropriate to enter an order on the merits. **Chair Niemi** noted this was not a criminal trial where the defendant has to be present. **Commissioner Parker** agreed with the Attorney General's recommendation.

AAG Ackerman asked Mr. Marvin if he knew whether Ms. Breithaupt was currently employed in the industry, if she was currently working under her license. **AAG Marvin** believed that as of the time of the initial order Ms. Breithaupt was working, but he was not sure if she was currently working. **AAG Ackerman** explained that the Commission has three options at this point: continue the matter to the next Commission date, enter a default, or proceed to hear this matter on the merits, which the Commission has done in the past when faced with a similar situation. This person has been notified both in writing and verbally and has chosen to absent herself from the hearing, so the Commission can proceed in her absence and decide on the merits.

Commissioner Ellis said his preference would be to treat the petitioner's communication as a request for a continuance and to deny the request for a continuance. Given the voluminous record that is before the Commission, and the fact that they have had two meetings to prepare to understand the record, Commissioner Ellis would like to address the petition on its merits as opposed to entering a default order. **Commissioner Parker** and **Chair Niemi** agreed.

Commissioner Ellis made a motion seconded by **Commissioner Parker** that the Commission deny Ms. Andrea Breithaupt's request for a continuance dated March 13, 2008. Vote taken; the motion passed unanimously.

Chair Niemi asked if Mr. Marvin had anything else he wanted to say before the Commissioners adjourned to decide on the merits. **AAG Marvin** commented that the history of this case was somewhat unique. The Commission's knowledge of what was going on dates back to 2007 when they first became aware there was a bench warrant out for Ms. Breithaupt's arrest related to her extensive history of traffic infractions. If not for that arrest warrant, these issues would very likely have continued to be underground and the Commission would have been unaware of what was going on. Many of these infractions, in and of themselves, would not rise to the level where administrative charges would be sought, but when looked at as a whole, clearly demonstrates disrespect for the laws of the land. Staff are also concerned that so much was going on in this woman's life that should have been reported and was not, they are critical concerns that go straight to the heart of the mission of the Commission. Accordingly, staff feels that under these circumstances the revocation imposed by the Adjudicative Law Judge was warranted and appropriate.

Chair Niemi called for an executive session at 9:50 a.m. to deliberate the matter and recalled the public meeting at 9:55 a.m.

Commissioner Ellis made a motion seconded by **Commissioner Parker** that the Commission enter an order affirming on the merits the decision of the Administrative Law Judge concerning the Petition for Review submitted by the Andrea L. Breithaupt and denying her Petition for Review. Vote taken; the motion passed unanimously.

Commissioner Ellis stated that the record before the Commission is voluminous in demonstrating that Ms. Breithaupt had more than 40 traffic offenses between 2001 and

2006. Ms. Breithaupt failed to disclose most of those traffic offenses in her renewal applications for her license to conduct gambling activities for her Class III certification. Accordingly, the overwhelming weight of the evidence supports the findings of the Administrative Law Judge in his determination that Ms. Breithaupt's license should be revoked. **Commissioner Parker** added he thought the Commission has been fair in handling this case and there would be no reason to delay it. **Chair Niemi** agreed with both Commissioners. After looking at the underlying record before the Administrative Law Judge, Chair Niemi was surprised with the number of problems with Ms. Breithaupt's driving record. It started long before the warrant was discovered for driving without a license, which means this person was driving uninsured, and is another reason for the Commission to be concerned. The volume of the problems and the fact that someone was uninsured convinced Chair Niemi that Ms. Breithaupt's license to conduct gambling activities should be revoked. Chair Niemi explained that the revocation would be effective as of the time that Ms. Breithaupt receives the notice.

(Item 7 was withdrawn by the Petitioner)

7. Petition for Rule Change – Electronic Poker Tables

- a) Amendatory Section WAC 230-15-030
Authorized non house-banked card games.

Chair Niemi asked if anyone in the audience cared to comment on the withdrawal of the petition on the electronic poker tables. No one stepped forward.

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 230-15-460** – Supervision requirements for house banked card games

Ms. Jeannette Sugai, Agent-in-Charge of the Southwest Region, reported that Item 8 consists of four rule amendments and one new proposed rule that are up for discussion and possible filing today. The purpose of all five items is to incorporate language from existing rule interpretations into the current rules. During the Rule Simplification Project, one of the goals was to incorporate all interpretations into the rules, but these five did not make it into that process. WAC 230-03-005 incorporates a rule interpretation that existed since 2006 and would clarify that participants would be allowed to trade script for tickets and the organization could conduct a drawing to determine who wins prizes at the end of the recreational gaming activity. Staff recommends filing for further discussion. WAC 230-06-110 incorporates a rule interpretation that has existed since 2005 and clarifies that charitable/nonprofit

organizations can possess bingo equipment without a gambling license and can sell gambling equipment to unlicensed operators if the operator can legally possess the equipment without a license. WAC 230-14-085 incorporates a rule interpretation that has been in existence since 2005 and clarifies that pull tab licensees can offer gift certificates to their own establishments as merchandise prizes on a punchboard or pull-tab game. However, the licensees would not be able to include the value of that gift certificate in their calculation of the 60 percent payout for the game. The proposed amendment would also incorporate a change that became effective in February of 2008 restricting the total cost to an operator for the purchase of a merchandise prize to not exceed \$2,500 – previously the maximum was \$750. WAC 230-15-453 incorporates a rule interpretation that has been in effect since 2006 and clarifies the requirements for card rooms that use match play or other similar type gambling promotions. This interpretation was originally put forward to address concerns that came up when licensees were using those types of coupons. WAC 230-15-460 incorporates a rule interpretation that has been in existence since 2005 that clarifies that poker tables operated by a house-banked card room licensee in a separate area of the card room or a separate pit would not be included in the table calculation to determine the required levels of supervision.

Chair Niemi called for public comment – there was none.

Commissioner Ellis made a motion seconded by **Commissioner Parker** to file for further discussion proposed WACs 230-03-005, 230-06-110, 230-14-085, 230-15-453 and 230-15-460 as presented by staff, with an effective date of July 1, 2008. *Vote taken; the motion passed unanimously.*

9. **Other Business/General Discussion/Comments from the Public**
Chair Niemi called for public comment. No one stepped forward.

With no further business, **Chair Niemi** adjourned the meeting at 10:05 a.m., noting the next meeting would be held on April 10 and 11 at the Red Lion Hotel in Olympia.

Minutes prepared by:

Gail Grate
Executive Assistant