



May 13, 2015

By Hand Delivery

Attorney General Maura Healey
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Re: Massachusetts Gaming Commission Regulations as to Category 2 Licenses

Dear Attorney General Healey:

I write as counsel to the Mashpee Wampanoag Tribe (“the Tribe”) to advise you that regulations recently promulgated by the Massachusetts Gaming Commission (“the Commission”) related to Category 2 licenses under the Massachusetts Expanded Gaming Act (“the Act”) directly violate both the Act and the express terms of the Tribal-State Compact between the Tribe and the Commonwealth (“the Compact”). The Tribe hereby respectfully requests that the Attorney General’s Office investigate this matter and advise the Commission to rescind or amend its regulations to bring them into compliance with the Act and the Compact and to ensure that the Category 2 licensee does not engage in gaming which is not allowed under the Act or the Compact for such licensees.

More specifically, the Commission’s regulations in 205 C.M.R. 143 purport to expand the definition of a Category 2 license from 1,250 slot machines to 1,500 gaming positions, and to *include table games*, while the Act specifically limits Category 2 license to 1,250 slot machines and defines a Category 2 license to include “*no table games*.” G.L. c. 23K, § 2 (emphasis supplied). Section 3.5 of the Compact also expressly defines a Category 2 License as excluding table games and including operation of not more than 1,250 slot machines. If the regulations are applied to allow a Category 2 licensee in Region C to operate more than 1,250 slot machines and/or to operate table games (which are solely within the province of a Category 1 license), the Commission will not only violate the Act, but will subject the Commonwealth to liability for breach of the express terms of the Compact on which the Tribe relied. Applying the regulations to permit a Category 2 licensee to add table games and/or to operate more than 1,250 gaming positions (in the form of slot machines) would deprive the Tribe of its benefits of the bargain by improperly diverting revenue it anticipated earning under the terms of the Compact to a Category 2 licensee. The Tribe estimates preliminarily that the diverted (and, therefore, lost revenue) to the Tribe would be upwards of \$30 million per year.

A brief summary of the history of the promulgation of the new regulations related to a Category 2 license under the Act is provided here as context. In the spring of 2014, the Commission was considering new regulations, including a regulation clarifying the definition of



“gaming position,” and particularly whether a “slot machine” may have more than one “gaming position.” The primary proponent of a regulation allowing multiple gaming positions at each slot machine was Penn National Gaming, Inc. (“Penn”). At that time, the Commission *had already awarded* to Penn the sole Category 2 license under the Act under the Act. G.L. c. 23K, § 2. In advocating for an expansion of the definition of a Category 2 license, Penn explained to the Commission in a May 22, 2014 letter that if such a regulation were approved, “Penn expects to have approximately 10-15 electronic table games at Plainridge Park Casino.” Letter from Frank T. Donaghue, Penn National Gaming, Inc. to Stephen Crosby, Chairman of Commission (May 22, 2014), at 3, a true and correct copy of which is attached here as Exhibit A. It so stated in spite of the fact that it had applied for, and been approved for, just 1,250 gaming positions and did not request, or even mention, table games in its application. *See* Springfield Gaming and Redevelopment LLC Application (Oct. 2, 2013) (located at <http://massgaming.com/wp-content/uploads/SGR-Application-2013.10.11-Update.pdf>), at 114, attached hereto as Exhibit B.

On August 15, 2014, among other regulations, the Commission enacted a new regulation providing that Category 2 licensees could have up to 1,500 “gaming positions,” while leaving unaltered the Act’s limit of 1,250 slot machines for such licensees. 205 CMR. 143.01(3) (the “Gaming Positions Regulation”). In full, the Gaming Positions Regulation provides:

For purposes of M.G.L. c. 23K and 205 CMR a slot machine that has multiple gaming positions, as defined by M.G.L. c. 23K, § 2, shall be considered a single slot machine. Provided, however, a Category 2 licensee shall not have more than 1,500 gaming positions available for play at anyone [sic] time.

In direct contradiction to the Act’s bright line distinction between slot machines and table games, on August 15, 2014 the Commission also enacted a regulation defining an electronic table game to be the equivalent of a slot machine: “An electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.” 205 CMR 143.09(2) (the “Table Games Regulation”).

The Gaming Position Regulation and Table Games Regulation directly contradict the Act, and are therefore invalid. *See Pepin v. Div. of Fisheries & Wildlife*, 467 Mass. 210, 221-22 (2014) (“Nor may regulations validly be promulgated where they are in conflict with the statutes or exceed the authority conferred by the statutes by which such [agency] was created.”) (internal quotations omitted). Those regulations purport to permit a Category 2 licensee to have “table games” even though the Act *prohibits a Category 2 licensee from having table games* and defines “table games” to be “a game, *other than a slot machine.*” G.L. c. 23K, § 2 (emphasis supplied). Indeed, the Act consistently distinguishes a “table game” from a “slot machine.” Section 2 of the Act defines a Category 1 license as “a license issued by the commission that permits the licensee to operate a gaming establishment *with table games* and slot machines,” while a defining feature of the Category 2 license is that it allows the operation of a gaming establishment “with *no table games.*” G.L. c. 23K, § 2 (emphasis supplied). To make the



distinction between table games and slot machines even more explicit, the Act then defines “table game” as “a game, *other than a slot machine*, which is authorized by the commission to be played in a gaming establishment.” *Id* (emphasis supplied). The Act does not draw any distinction between electronic and live table games, or suggest that there is any material difference between electronic table games and live table games. As both the Gaming Positions Regulation and Table Games Regulation are plainly inconsistent with the Act’s distinction between table games and slot machines, they are invalid.

The Gaming Positions Regulation further impermissibly renders meaningless the Act’s cap on the number of slot machines a Category 2 licensee may have, 1,250, and for that independently sufficient reason is invalid. See *Quincy v. Massachusetts Water Resources Auth.*, 421 Mass. 463, 468 (1995) (“[A] regulation that is irreconcilable with an agency’s enabling legislation cannot stand.”). Under the Act, a “gaming position” is “a designated seat or standing position where a patron of a gaming establishment can play a game.” G.L. c. 23K, § 2. In the public meetings regarding these, and other, regulations Commission Chairman Stephen Crosby raised his, correct, concern that permitting Category 2 licensees to have 1,500 gaming positions would be inconsistent with the intent of the General Court in creating the Act. As to the Gaming Positions Regulations, he explained that the 1,250 slot machine cap on Category 2 licenses has no effect if slot machines are permitted to have multiple gaming positions. As he put it:

I’m just a little bit troubled. I think it’s fairly harmless change, but I’m not at all sure this really is what the Legislature had in mind. *If they didn’t mean 1,250 but they meant there could be 1,250 with any number of multi-game positions, multi-game machines, what’s the point of the 1,250?* Why do we cap it – Presumably if it’s okay to cap it at two percent, we could within the law you’re saying we could do it at 50 percent or 100 percent if we wanted to.

Public Meeting #128 (Jul. 10, 2014), at 79:18–80:4, a true and correct copy of which is attached hereto as Exhibit C.

Even beyond the patent invalidity of the Gaming Position Regulations and Table Games Regulations, the application of those regulations to permit Penn to add up to 250 additional gaming positions to its slots parlor license would impermissibly allow Penn to modify its license without any public process. The Commission licensed Penn for a *total* of 1,250 gaming positions. As Penn put it in the Plainridge application the Commission approved, the gaming parlor will be made up of “1,250 slot machines (e.g., 1,250 total gaming positions) of the latest mix of customers’ favorite slot machine types and themes from MGC approved slot manufacturers.” Springfield Gaming and Redevelopment LLC Application (Oct. 2, 2013) (located at <http://massgaming.com/wp-content/uploads/SGR-Application-2013.10.11-Update.pdf>), at 114, attached hereto as Exhibit B. Penn made clear in a letter to the Commission advocating an expansion of the definition of “gaming position,” however, that if a regulation permitting additional gaming positions for Category 2 licensees were approved, “Penn expects to have approximately 10-15 electronic table games at Plainridge Park Casino.” See Exhibit A (emphasis



supplied). Further, the architectural plans Penn recently submitted to the Commission reflect that plans for 1488 slots and electronic table games. Most recently, Penn has announced publicly that it will have multi-player, interactive, electronic blackjack tables. High-Tech Gambling on the Table for Plainville Casino Opening, Boston Globe (May 11, 2015) (available at <http://www.bostonglobe.com/metro/2015/05/10/anyone-like-play-blackjack-asks-disembodied-voice-soon-opened-casino/A6iCMedtEGZ3WuolrUgtQJ/story.html>), copy attached hereto as Exhibit D. This violates the Act, the Compact and Penn's license.

To date, based on the Commission's website, Penn has not submitted any revised application for additional gaming positions, or for electronic table games. It has not provided any further detail as to the type of table games it proposes, or even the precise number of gaming positions it seeks. Based on publicly available documents, it appears that the Commission never informed Penn that it was limited to the 1,250 gaming positions for which it was approved or explained that as a Category 2 licensee the Act prohibited its use of table games.

The Act and its regulations set a high bar for public process regarding the granting of casino and slot parlor licenses. Under 205 CMR 102.06, "[m]atters not specifically provided for in 205 CMR regarding the licensing of a gaming establishment . . . shall be determined by the Commission or, where applicable, IEB or Commission staff in a manner consistent with the principles set forth in M.G.L. c. 23K, s 1." M.G.L. 23K, s. 1, in turn sets out the general purposes of the act, including that "gaming licensees shall be held to the highest standards of licensing" and "ensuring public confidence in the integrity of the gaming licensing process and in the strict oversight of all gaming establishments through a rigorous regulatory scheme is the paramount policy objective of this chapter."

Approving a licensee to operate gaming positions substantially over the number for which it was approved in a competitive process, and to operate table games never mentioned during the application process, would be a plain violation of M.G.L., 23K, s. 1, and the spirit of the Act. Indeed, by summarily granting an additional 250 gaming positions to Penn in the form of table games without any additional process, the Commission would suggest that any gaming license can be altered automatically where there is a new regulation, even one contrary to the Act and the Compact. The Tribe submits that such a position does not represent, "the highest standards of licensing." M.G.L., 23K, s. 1. Indeed, if Penn is allowed to increase to more than 1,250 gaming positions and to add table games, host community agreements and MEPA review may need to be revisited since they were based on Penn's original proposed configuration (and related traffic and environmental impacts, revenues, etc. that flowed from that configuration).

Further, importantly, no regulation the Commission has passed or could pass can or will alter the express terms of the Compact, which itself defines a Category 2 license. The contracting parties to the Compact clearly did not agree that Class 2 licenses could include authority to operate additional "gaming positions" or to include "table games" – electronic or live – when they agreed specifically that table games (without qualification) were excluded from



the definition of such a license. The Tribe relied upon the express terms of the Compact when it entered into that agreement, and it was assured by those terms that there would be only one Category 2 licensee in the Commonwealth, that the licensee would be allowed to operate a slots parlor limited to 1,250 slot machines (not some contrived number based on “gaming positions”) and that it would have no table games (electronic or otherwise). The Tribe thus had a reasonable expectation that as to table games it would need not compete with the Category 2 licensee.

Accordingly, if the Commission were to allow Penn to add up to 250 gaming positions and/or to add (as Penn has announced it will) table games of any sort to its slots parlor in Plainville, MA, just a short drive from the Tribe’s approved casino location, it will upend the bargain the Tribe struck with the Commonwealth, deprive the Tribe of the benefit of its bargain in an amount that the Tribe conservatively and preliminary estimates exceeds \$30 million in revenue per year, and it would subject the Commonwealth to liability for this breach.

Accordingly, the Tribe respectfully requests that the Attorney General’s office investigate this matter and ensure that the Commission brings its regulations into compliance with the Act and the Compact and to that the Category 2 license is not misused to engage in gaming which is not allowed for such licensees.

I would be glad to meet with you to discuss these issues further.

Very truly yours,

Howard M. Cooper

HMC/ckb

cc: Richard Johnston, Esq
Catherine Blue, Esq.
Mr. Stephen Crosby, Chairman, Massachusetts Gaming Commission
Ms. Gayle Cameron, Commissioner, Massachusetts Gaming Commission
James F. McHugh, Commission, Massachusetts Gaming Commission
Mr. Bruce Stebbins, Commissioner, Massachusetts Gaming Commission
Enrique Zuniga, Commissioner, Massachusetts Gaming Commission
(each by hand w/encls.)

Exhibit A



May 22, 2014

Stephen Crosby, Chairman
 Massachusetts Gaming Commission
 84 State Street, 10th Floor
 Boston, MA 02109

Re: 205 CMR 143.01(3)

Dear Chairman Crosby,

On behalf of Penn National Gaming, Inc. (Penn), I am writing to recommend a modification to proposed regulation 205 CMR 143.01(3). The proposed modification would provide that each designated seat or standing position at an electronic table game is a "gaming position" but that each such electronic table game constitutes only one slot machine under ch. 23K, § 2. We believe that the proposed regulation is consistent with the statutory scheme and has the benefit of increasing the daily taxes paid by the category 2 licensee to the Commonwealth under § 55 of ch. 23K while, at the same time, increasing proportionally the share of the annual fees paid by the category 2 licensee under § 56 of ch. 23K. Our proposed modification (with new language italicized) is as follows:

205 CMR 143.01(3) "For purposes of M.G.L. c.23k and 205 CMR each gaming position, as defined by M.G.L. c.23K, § 2, at a slot machine shall be considered a separate slot machine, *except for gaming positions at electronic table games. For the purposes of M.G.L. c.23K, § 56, each designated seat or standing position where a patron of a gaming establishment can play a multiplayer electronic table game will constitute a gaming position.*" (Additional language italicized)

Statutory and Regulatory Background:

Section 2 of ch. 23K defines a "gaming position" as a designated seat or standing position where a patron of a gaming establishment can play a game. See M.G.L. c.23K, §2. "Slot machine" is defined as "a mechanical, electrical or other device, contrivance or machine which, upon insertion of a coin, token or similar object therein, or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the individual playing or operating the machine to receive cash, or tokens to be exchanged for cash, or to receive merchandise or any other thing of value, whether the payoff is made automatically from the machine or in any other manner, except that the cash equivalent value of any merchandise or other thing of value shall not be included in determining the payout percentage of a slot machine." *Id.*

Draft regulation 205 CMR 143 provides that “an electronic table game shall be considered a slot machine in accordance with M.G.L. c. 23K, § 2 unless the simulation requires the intervention of a gaming employee prior to the final determination of winnings.” *Id.* at 143.09 (2). The draft regulation further provides that “for purposes of M.G.L. c.23K and 205 CMR each gaming position, as defined by M.G.L. c.23k, § 2, at a slot machine shall be considered a separate slot machine.” 205 CMR 143.01(3).

Penn suggests the revision to 205 CMR 143 based on the following factors:

1. The Proposed Regulatory Revision Falls within MGC’s Regulatory Authority

Under the proposed modification, each electronic table game would be considered an individual slot machine for the purposes of M.G.L. c. 23k, § 2k’s limit of 1,250 slot machines and each designated seat or standing position where a patron of a gaming establishment can play an electronic table game would be considered a separate “gaming position” for the purposes of the annual fees assessed under § 56. The proposed modification would allow Penn to weigh the cost of the increase in its proportional share of annual assessments under § 56 against the increased revenue that would result from adding gaming positions, and to add an appropriate number of gaming positions in accordance with that economic calculation. This also would have the effect of increasing the daily taxes paid to the Commonwealth under § 55, which imposes taxes on the licensee totaling 49% of its gross gaming revenue. M.G.L. c.23k, § 55 (b) and (c). Because Chapter 23k does not impose a cap on the number of gaming positions, the proposed modification is firmly within the Commission’s regulatory discretion. *See* M.G.L. c.23k, § 2 (limiting the Category 2 licensee to “1,250 slot machines,” with no reference to “gaming positions”). Adopting Penn’s proposed definition also will allow the Commission to increase the daily tax revenue paid to the Commonwealth under § 55, while maintaining the statutory number of slot machines noted in M.G.L. c. 23k § 2.

2. The Proposed Modification is Consistent with the Statutory Definition of “Slot Machine”

The proposed modification would recognize that electronic tables are “slot machines” under § 2, but also would clarify that each gaming position at an individual slot machine does not count as a separate slot machine for purposes of calculating the total number slot machines allowed category 2 licensees. We believe that if the legislature had intended § 2 to limit the total number of gaming positions (rather than the number of slot machines), it would have expressly said so. In § 56, for example, the legislature required a financial assessment based on the number of gaming positions in an establishment, not the number of slot machines or tables. Had it intended § 2 to govern the number of gaming positions, it easily could have done so by making explicit reference to the same term, just as it did in § 56. *See Commonwealth v. Galvin*, 388 Mass. 326, 330, 446 N.E.2d 391 (1983) (“[W]here the Legislature has employed specific language in one paragraph, but not in another, the language should not be implied where it is not present.”); *Alliance to Protect Nantucket Sound, Inc. v. Dep’t of Pub. Utilities*, 461 Mass. 166, 182-83 (2011) (“[W]e have given agencies broad discretion to interpret statutes that they enforce, lending ‘substantial deference’ to their interpretations.”) (citing *City Council of Agawam v. Energy Facilities Siting Bd.*, 437 Mass. 821, 828, 776 N.E.2d 1002, 1007 (2002)).¹ The

¹ The reference in § 2’s definition of the term “slot machine” to “the individual playing or operating” the game simply expresses the requirement that the machine pay something of value to a player and should not be construed to silently impose a limit on gaming positions. *See* M.G.L. c.4, § 6 (“Words importing the singular number may


proposed modification to the regulation thus is well within the Commission's authority and consistent with the language and legislative intent behind M.G.L. c.23k, § 2.

3. The Proposed Modification is Consistent with Other Jurisdictions

Other jurisdictions have adopted specific provisions differentiating electronic table games for purposes of gaming positions or game counts. Illinois Administrative code defines the term gaming position for the purposes of adhering to the 1,200 gaming position limit dictated by 230 ILCS 10/7(h). Specifically, EGDs are counted as 9/10s of a position. *See* Illinois Administrative Code 86 3000.606.(a) ("Positions for games utilizing Electronic Gaming Devices will be determined as 90 percent of the total number of devices available for play.") New Mexico state regulations also differentiate electronic table games from standard slot machines by including a proportional representation metric. Specifically, multi-station games shall not comprise more than three (3) percent of the total possible allowed gaming machines on the gaming floor and for game count purposes, each multi-station game having up to five (5) player terminals shall count as one (1) gaming machine, each multi-station game having between six (6) and ten (10) player terminals shall count as two (2) gaming machines and each multi-station game having between eleven (11) and fifteen (15) gaming machines shall count as three (3) gaming machines. 15.1.10.24(D)(4) NMAC. Penn contends that the suggested revision adheres to Massachusetts statute while following gaming position definitions found in other jurisdictions.

Based on the discussion above, Penn proposes that the Commission revise 205 CMR 143 to provide that each electronic table game constitutes a single slot machine for the purposes of M.G.L. c.23k, § 2, with each designated seat or standing position at an electronic table game constituting a "gaming position" for the purposes of M.G.L. c.23K, § 56. This modification, which is well within the Commission's regulatory authority, will permit Penn to add an appropriate number of gaming positions for electronic table games, thus increasing the daily tax revenue that is paid to the Commonwealth in proportion to Penn's gross gaming revenue. Finally, if approved, Penn expects to have approximately 10-15 electronic table games at Plainridge Park Casino.

Frank T. Donoghue



Vice President Regulatory Affairs &
Chief Compliance Officer

extend and be applied to several persons or things, words importing the plural number may include the singular ..."); *see also Alliance*, 461 Mass. at 183 (deferring to agency's determination that statute requiring solicitation of proposals (plural) permitted solicitation of a single proposal); *Comm'r of Corporations & Taxation v. Thayer, Bradley Co.*, 291 Mass. 197, 201, 197 N.E. 47, 49 (1935) (permitting joinder of actions for taxes assessed for two separate years where statute referred to "tax or excise" in its singular form).

Exhibit B

RFA-2 APPLICATION
For a Category 1 or Category 2 Gaming License



Applicant: Springfield Gaming and Redevelopment LLC

Gaming Establishment Of High Caliber With Quality Amenities In Partnership With Local Facilities

4-10 Gaming

Describe the proposed gaming area, including the square feet of gaming area, the number and types of table games and slot machines it will contain, the number of gaming positions, as defined in G.L. c. 23K, §2, it will contain and the specific location of the games and machines in the proposed gaming establishment. Further, please discuss any plans for special high limit or VIP areas.

Please attach a detailed, written response to this question as attachment 4-10-01 and provide a brief overview of your response in this box. The overview should contain, at a minimum, a brief summary of the description specifically including the number and types of table games and slot machines, and the number of gaming positions. The response provided in this box will be released to the public.

The gaming area at Plainridge Park Casino will be located in a new single story Slot Parlor structure of 106,000 gross square feet located between the parking structure and the existing simulcast / racing building and contain:

- Approximately 42,000 net square feet of Gaming area; and,
- 1,250 slot machines (e.g. 1,250 total gaming positions) of the latest mix of customers' favorite slot machine types and themes from MGC approved slot manufacturers.
- High Limit / VIP gaming areas will be determined based upon consumer preference shortly before or after commencement of gaming operations.

List of Attachments:

4-10-01 <u>Gaming</u>	4-10-08 _____
4-10-02 <u>Floor Plan</u>	4-10-09 _____
4-10-03 <u>Casino Plans</u>	4-10-10 _____
4-10-04 _____	4-10-11 _____
4-10-05 _____	4-10-12 _____
4-10-06 _____	4-10-13 _____
4-10-07 _____	4-10-14 _____

Check this box if you have additional attachments:

Exhibit C

THE COMMONWEALTH OF MASSACHUSETTS

MASSACHUSETTS GAMING COMMISSION

PUBLIC MEETING #128

CHAIRMAN

Stephen P. Crosby (via telephone)

COMMISSIONERS

Gayle Cameron

James F. McHugh

Bruce W. Stebbins

Enrique Zuniga

July 10, 2014 10:30 a.m.

BOSTON CONVENTION AND EXHIBITION CENTER

415 Summer Street, Room 102B

Boston, Massachusetts

1 was an important story to tell because
2 historically the diversity of our people that
3 work directly with the horses is a pretty
4 significant percentage. We found no precedent
5 for that.

6 COMMISSIONER MCHUGH: Okay. We
7 can't answer that today. I just put it on the
8 table to think about. Should we be doing it,
9 and if so how? And if not, why not?

10 MS. BANDA: Any other questions?

11 COMMISSIONER MCHUGH: Anything else?
12 Thank you very much. That's very helpful.
13 Thank you Director Durenberger.

14 MR. DAY: Commissioner McHugh,
15 Commissioners, our next topic is about gaming
16 positions. Briefly, you obviously probably
17 recall the Commission asked for public comment
18 regarding its discussion about the feasibility
19 of allowing more than a single gaming position
20 per slot machine, which is what our current
21 draft regulations reflect.

22 John Glennon is here to discuss
23 those comments that were received and also
24 offer just a draft of what language might work

1 for a concept that was discussed at the time at
2 the meeting. The idea would be is based on the
3 Commission's decision today, it would either
4 amend our regulations that we are ready to
5 final on the 24th or leave the current language
6 that we have already in the proposed
7 regulations.

8 COMMISSIONER MCHUGH: Okay.

9 MR. DAY: With that, I think John's
10 ready.

11 MR. GLENNON: Thank you very much,
12 Rick, Commissioners. So, the last time we
13 discussed this topic on June 12 was in response
14 to a letter which is in your packet from Penn
15 dated May 22. We had discussion. There was a
16 presentation about some alternatives by
17 Attorney Shtatnov. There were some suggestions
18 made.

19 We agreed to come back before you.
20 We requested public comment and there were two
21 additional letters which we received which are
22 also in your packet. We received a letter from
23 Mohegan on June 18 and then another letter from
24 Penn via their attorneys on the 27th. So,

1 those three letters are in your packet.

2 I am really here just to tee up the
3 discussion for you here today because I think
4 it's a decision on the part of the Commission
5 on what you want to do. So, there is some
6 current language. So, if you can go to the
7 deck and go to the second side.

8 So, the current language basically
9 makes a gaming position equivalent to a slot
10 machine. And we have some proposed language
11 for your consideration that makes a multiple
12 gaming position machine or a table game
13 classified as a single slot machine that allow
14 additional gaming positions up to 250. At this
15 point, I think it's really up to the Commission
16 to have a discussion. I'd be happy to answer
17 any questions.

18 COMMISSIONER MCHUGH: The language
19 on the previous slide is the language from 23K
20 section 2, right?

21 MR. GLENNON: Yes, it is,
22 Commissioner.

23 COMMISSIONER MCHUGH: The language
24 on the next slide --

1 MR. GLENNON: -- is in the draft
2 regulations which will come back before you for
3 final promulgation on the 24th.

4 COMMISSIONER MCHUGH: Right. Okay.
5 Do we define in that regulation, set of
6 regulations that will come back for final
7 approval do we define what a gaming position
8 is? There is a statutory definition of that.

9 MR. GLENNON: For purposes, it's the
10 language here. Each gaming position as defined
11 at a slot machine shall be considered a
12 separate slot machine, so one-to-one.

13 COMMISSIONER MCHUGH: That defines
14 what a slot machine is. It doesn't define what
15 a gaming position is. A gaming position is
16 defined in the statute as a place from which, I
17 think, a person can play a game, basically.
18 It's more precise than that. Do we have a
19 similar?

20 MR. GLENNON: I don't know the
21 answer to that I'm embarrassed to say. The
22 regulations are in the packet. But I believe
23 it would be the reverse of this. It would be
24 equating a gaming position to a slot machine,

1 ticket in, ticket out.

2 COMMISSIONER MCHUGH: I'm not make
3 myself clear. There is a definition in the
4 statute because the statute encompasses --
5 because gaming positions exist both at slot
6 machines and at table games. And the license
7 fees are based on gaming positions. So,
8 there's a definition in there of what a gaming
9 position independent of slot machines is. I
10 need not detain you now.

11 MR. GLENNON: I think the fee, the
12 \$600 fee is based on slot machines not gaming
13 positions.

14 COMMISSIONER MCHUGH: The overall
15 net assessment is in proportion to the number
16 of gaming positions. The difference between
17 the money we get from the slot machine
18 licenses, the annual license fees and our
19 operating costs is allocated among the
20 licensees in proportion to the number of gaming
21 positions in each licensee. And there is
22 therefore a definition of gaming position.

23 It just seems to me that however we
24 deal with this, we ought to have a definition

1 of what a gaming position is. And we can do
2 that.

3 MR. DAY: Commissioner McHugh, I
4 don't see it in the current slot regulations.
5 So, we will take a look at that as we finish up
6 on this issue.

7 COMMISSIONER MCHUGH: Okay. So,
8 assuming we get by that and we will, the
9 question is what do we want to do with
10 additional, 250 additional gaming positions.

11 COMMISSIONER ZUNIGA: I've stated
12 that point before. And I'm of the opinion that
13 we should allow that. That the ambiguity that
14 the statute created with the two definitions
15 gives the licensee, Penn in this case, the
16 slots parlor licensee a little leeway one that
17 other licensees don't have to worry about
18 because there is no limit to how many games --
19 slot machines or gaming positions they can
20 place.

21 Because this one has a limit and
22 there's this ambiguity, and because this is our
23 first licensee who in many ways is carrying a
24 lot of the costs that we incur, granted they

1 would be the first ones to market, and because
2 there's 49 percent to benefit for the
3 Commonwealth, I would be of the opinion of
4 allowing the proposed language as stated here,
5 some additional gaming positions but limit it
6 to the slot machines, to the 1250 slot
7 machines.

8 COMMISSIONER CAMERON: I would agree
9 with that assessment. I read the additional
10 comments and I think this is a very reasonable
11 number. I just think the option for we really
12 want to be competitive and the option for the
13 gamer to be able to have a different experience
14 is important.

15 I don't see -- We spoke an awful lot
16 the first time we debated this about making
17 sure we were not being unfair to other full
18 resort casinos in the Commonwealth. And I
19 think this number is low enough as to not
20 create a situation where competition is a real
21 issue. I really do, I am persuaded by the
22 offering of a different experience which this
23 would allow but not to the extent that it would
24 be an unfair advantage.

1 COMMISSIONER ZUNIGA: Can I speak to
2 that because I think that's a very important
3 point that I also didn't mention. This would
4 give the licensee the flexibility to not be
5 constrained to have to choose between one slot
6 machine as opposed to an electronic table game
7 that the market may prefer but would otherwise
8 cost them in the number of seats.

9 So, it gives again some leeway as to
10 what mix of products they can place their slot
11 strategy with. But again, within the confines
12 of what I believe the statute intended, which
13 is a certain limit.

14 COMMISSIONER STEBBINS: I'm in
15 agreement.

16 CHAIRMAN CROSBY: What was the end
17 of your sentence, Commissioner Zuniga? You
18 said about what the statute intended?

19 COMMISSIONER ZUNIGA: The statute
20 intended to limit the overall number of slot
21 machines in here. We're not opening the door
22 wide open. We're just giving a leeway to the
23 licensee by limiting the additional seats to
24 250. We're only giving them the leeway to

1 select between a mix of products that may have
2 more than one seat per slot machine.

3 CHAIRMAN CROSBY: They can do that
4 now we don't need to give them extra. They
5 could make some of the slot machines
6 multiplayer machines. There's no reason why
7 they can't have them mixed now.

8 COMMISSIONER ZUNIGA: They would but
9 it would cost them if you're only limiting them
10 to a number of seats.

11 CHAIRMAN CROSBY: Well, maybe it
12 would cost them but that wasn't the point.
13 Both you and Commissioner Cameron were saying
14 it's good to give them the opportunity to have
15 a broader mix of games. And this has nothing
16 to do with them having a broader mix of games
17 or not.

18 I'm just a little bit troubled. I
19 think it's fairly harmless change, but I'm not
20 at all sure this really is what the Legislature
21 had in mind. If they didn't mean 1250 but they
22 meant there could be 1250 with any number of
23 multi-game positions, multi-game machines,
24 what's the point of the 1250? Why do we cap it

1 -- Presumably if it's okay to cap it at two
2 percent, we could within the law you're saying
3 we could do it at 50 percent or 100 percent if
4 we wanted to.

5 COMMISSIONER ZUNIGA: Then if they
6 wanted to be slot machine equal gaming
7 position, they could have written that way as
8 well. That's essentially the ambiguity that we
9 are trying to resolve.

10 CHAIRMAN CROSBY: Right. But it
11 seems to me that they put two definitions
12 because when we assess the 600, is the 600
13 assessment on table game positions as well?

14 COMMISSIONER MCHUGH: No, it's on
15 slot machines.

16 CHAIRMAN CROSBY: So, there's no
17 other meaning for gaming positions in the
18 statute besides another way of referring to the
19 slot machines.

20 COMMISSIONER MCHUGH: No. There's a
21 separate definition for gaming position in the
22 statute. I don't have the language in front of
23 me now.

24 CHAIRMAN CROSBY: Is that the one

1 that talks about individual playing --

2 COMMISSIONER MCHUGH: It's a
3 position from which one can play a game.
4 That's not it exactly.

5 CHAIRMAN CROSBY: The individual
6 playing or -- Could somebody pull up the
7 definition of gaming position?

8 MS. BLUE: I have the definition,
9 Commissioner McHugh, if you would like it.

10 COMMISSIONER MCHUGH: Okay, great.

11 MS. BLUE: It's 23K, section 2,
12 gaming position is defined as a designated seat
13 or standing position where a patron of a gaming
14 establishment can play a game. So, position is
15 designed to cover both those positions at slot
16 machines and those positions at a table game
17 for example.

18 COMMISSIONER ZUNIGA: And electronic
19 table games which is fundamentally here what
20 we've been talking about.

21 CHAIRMAN CROSBY: Did that
22 definition include people playing baccarat?

23 MS. BLUE: Yes, it would.

24 CHAIRMAN CROSBY: It would?

1 MS. BLUE: Yes.

2 CHAIRMAN CROSBY: So, doesn't that
3 explain why the issue of the ambiguity there is
4 they've got two definitions. One is referring
5 to slot machines and one is referring to gaming
6 positions which is other kinds of positions not
7 just slot machines.

8 COMMISSIONER MCHUGH: The gaming
9 position definition fits both. In other words,
10 for tax purposes even if there were a one-to-
11 one ratio, the slot machine -- the slots parlor
12 would be assessed for the difference between
13 the \$600 fee and its share of our operating
14 costs in proportion to the 1250 gaming
15 positions, how that bore on the other gaming
16 positions at other licensees.

17 So, for determining that amount of
18 money it's the gaming position not the slot
19 that counts. So, gaming position plays a role
20 in a slots parlor even if it's a one-to-one
21 ratio.

22 CHAIRMAN CROSBY: Say that again.

23 COMMISSIONER MCHUGH: Gaming
24 position plays a role in determining the slots

1 parlor's taxation even if there are no multiple
2 gaming position slot machines. So, gaming
3 position wasn't set up just to deal with table
4 games. I guess that's my point.

5 COMMISSIONER ZUNIGA: Can I just
6 edit that out, because it's assessment not
7 taxation that you meant.

8 COMMISSIONER MCHUGH: Okay. That's
9 right, assessment for our operating costs.

10 COMMISSIONER ZUNIGA: Our operating
11 costs.

12 CHAIRMAN CROSBY: The \$600 that goes
13 to slot machines or that goes to gaming
14 positions?

15 COMMISSIONER MCHUGH: Slot machines.

16 COMMISSIONER ZUNIGA: Slot machines.

17 CHAIRMAN CROSBY: Slot machines. I
18 thought Penn was offering to pay \$600 on the
19 new gaming positions as well.

20 COMMISSIONER ZUNIGA: No.
21 Everything in excess -- everything that we
22 assess.

23 CHAIRMAN CROSBY: The assessment, I
24 got it. Okay. I'm sorry.

1 COMMISSIONER ZUNIGA: Everything
2 that we assess in excess of \$60 per slot
3 machine is going to be apportioned
4 proportionately on the basis of gaming
5 positions.

6 CHAIRMAN CROSBY: Right.

7 COMMISSIONER ZUNIGA: That would be
8 fair across all of our licensees because that's
9 just about everything else.

10 CHAIRMAN CROSBY: Right, right. Got
11 it.

12 COMMISSIONER MCHUGH: The slot
13 machine definition is extraordinarily broad.
14 And while it is conceivable that the
15 Legislature didn't envision a multiple position
16 slot machine specifically, it certainly created
17 a definition that would encompass not only the
18 traditional one-armed bandit, if you will, but
19 a multiple position slot machine and a variety
20 of other kinds of devices that will yield a
21 reward or a prize without human intervention.

22 So, it seems to me that the
23 Legislature recognizing -- One could view that
24 definition as a legislative recognition of the

1 evolutionary nature of what automatic prize
2 generating devices were. Therefore, one can't
3 I think reliably say that they didn't have a
4 multiple position slot machine in mind when
5 they drafted the statute.

6 CHAIRMAN CROSBY: I get that. I'm
7 not quite sure what the point of the 1250 was.
8 If the 1250 didn't really mean 1250, it meant
9 some multiple of 1250, a multiple which is up
10 to us to determine two percent, 50 percent, one
11 percent, then what was the point of the 1250 if
12 it didn't really mean 1250?

13 COMMISSIONER MCHUGH: It was to
14 prevent -- I hear you. And it seems to me that
15 we can look at that either way and that 250
16 more is de minimis in the overall scheme of
17 things.

18 CHAIRMAN CROSBY: Right.

19 COMMISSIONER MCHUGH: And that we at
20 the very least we take the 1250 as we don't
21 want competition between the slots and the
22 casino either on solely on the slots front or
23 on the table games' front. And govern
24 ourselves accordingly while allowing the slots

1 parlor to attract patrons who are interested
2 in, a few patron who are interested in
3 roulette.

4 COMMISSIONER ZUNIGA: Electronic
5 table games.

6 CHAIRMAN CROSBY: So, our rationale
7 would be that the law is imprecise as to its
8 intent. And this potentially enhances the
9 revenue to the Commonwealth, makes the facility
10 a more attractive facility in terms of
11 repatriating dollars and doesn't really, not a
12 big enough number to really hurt anybody.

13 COMMISSIONER MCHUGH: Right.

14 CHAIRMAN CROSBY: Okay. I guess I
15 can go along with that.

16 COMMISSIONER MCHUGH: Okay. Other
17 thoughts? You are looking today Director
18 Glennon simply for a position or a vote?

19 MR. GLENNON: I think we're looking
20 for your guidance on how to present the final
21 regulations to you in two weeks. And for that
22 based on the conversation your recommendation
23 for the language change or not.

24 COMMISSIONER ZUNIGA: I would say

1 given all of the discussion, I would say that
2 it merits a vote as to whether to change the
3 language to the proposed language based on this
4 discussion or keep the draft as originally
5 drafted when it comes to the definition.

6 COMMISSIONER MCHUGH: We could vote
7 or we could let Director Glennon bring back the
8 revised regulation with the revised definition
9 and then vote on that. That would probably be
10 a little cleaner.

11 MR. GLENNON: I'd be happy to do
12 that. And I will also make sure that there is
13 a clearer definition of gaming position within
14 the document.

15 COMMISSIONER MCHUGH: Right. I just
16 have one caveat that occurred to me as we were
17 having this discussion. And that's that what
18 we do with respect to the physical facility and
19 what we allow in the physical facility does not
20 have any necessary implications for what we do
21 in the Internet area, if we ever get there.

22 I don't take a position one way or
23 another there, but for me at least it's
24 important to recognize that this is dealing

1 with the physical facility and nothing more.
2 We just haven't gone beyond that. And we
3 haven't considered that and we haven't thought
4 about it and we haven't taken a position,
5 policy or otherwise on that by implication or
6 explicitly.

7 MR. DAY: And this proposed language
8 is specific to Category 2. So, that would be
9 helpful.

10 COMMISSIONER MCHUGH: Yes. Right,
11 right. Okay.

12 CHAIRMAN CROSBY: I had a couple of
13 other questions on CMR 143. Are we done with
14 that now? Are we coming back to that?

15 COMMISSIONER ZUNIGA: Can I just for
16 conclusion, are we in agreement that we're
17 asking Director Glennon to change the language
18 to the proposed language and come back with the
19 regulation?

20 COMMISSIONER MCHUGH: Right.

21 COMMISSIONER CAMERON: We are.

22 COMMISSIONER MCHUGH: Yes, 1250 with
23 250 gaming positions more. The language
24 that's --

1 COMMISSIONER ZUNIGA: -- proposed,
2 right.

3 MR. GLENNON: Mr. Chairman, to the
4 issue of 143, those are the regulations that
5 I'm going to bring back in a couple of weeks.
6 There are a lot of comments and a lot of input.
7 And while I think I could answer questions
8 today, I think I'm going to be much better
9 prepared to talk about all of the conversations
10 we've had with everybody around that including
11 the outcome from the public meeting in two
12 weeks.

13 CHAIRMAN CROSBY: Okay, fine.

14 COMMISSIONER MCHUGH: So, that means
15 that you've got the guidance that you need
16 today and that's very helpful. Great. Thank
17 you.

18 MR. GLENNON: Yes, that's very
19 helpful. Thank you.

20 COMMISSIONER CAMERON: Thank you.

21 COMMISSIONER MCHUGH: Okay. Let's
22 move on, Mr. Day, to item 4e.

23 MR. DAY: Thank you, Commissioner
24 McHugh. Essentially, what we were trying to do

Exhibit D.

MARATHON TRIAL UPDATES

Judge going through verdict form

High-tech gambling on the table for Plainville casino opening



JONATHAN WIGGS/GLOBE STAFF

The Plainridge Park Casino will feature electronic table games such as this one when it opens in June.

By Sean P. Murphy | GLOBE STAFF MAY 11, 2015

PLAINVILLE — The voices in Plainridge Park Casino beckon bettors to the blackjack tables, even as work crews busily apply finishing touches to the decor and test some of the most technologically advanced equipment available in the gambling industry.

“Hi, high-roller, come play with me?” asks one blackjack dealer, repeatedly. Each time she flashes a smile.

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“Anyone like to play blackjack?” asks another women’s voice.

However enticing the dealers sound, they are not live.

The voices emanate from video simulations of blackjack dealers appearing on the large screens of huge, high-definition TVs scattered throughout the cavernous hall of the casino, which is scheduled to open next month.

They stand over simulated blackjack tables complete with simulated decks of cards and simulated piles of cash. Arrayed around the tables and the simulated dealers — all of whom are female — are player stations, where real-life gamblers can test their skills at beating the house, at up to \$100 a hand.

“You place your bet and she begins dealing the cards,” Mike Thoma, a casino vice president, said while escorting a reporter on a preview tour last week.

“

The player stations come partially sheathed in black leather. They include comfortable foot rests for standing patrons, places to set down a drink, and of course a slot into which players will soon feed bills of every denomination.

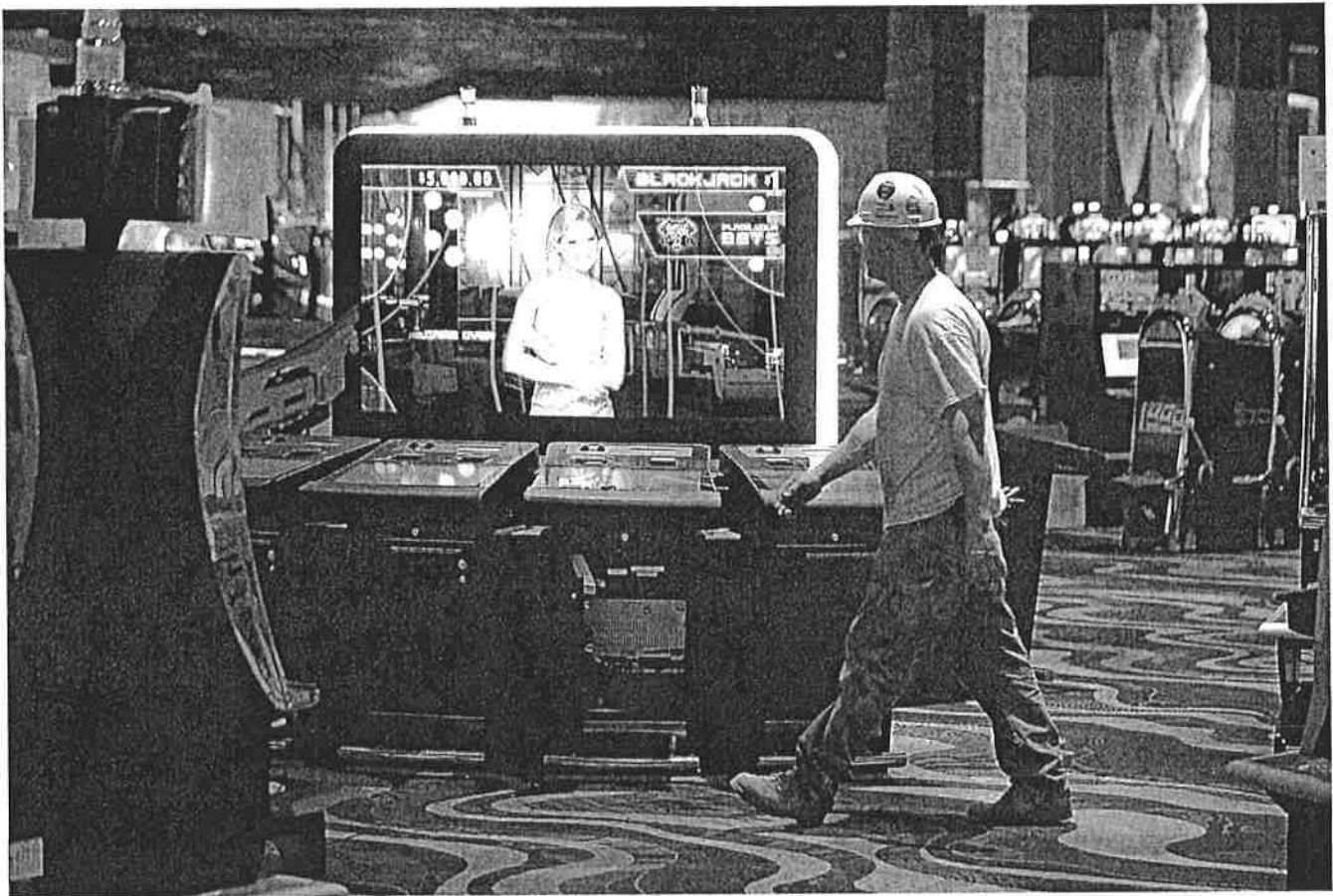
‘We’re envisioning a lively, noisy, exciting atmosphere.’

“These are the latest and greatest,” Thomas said of the casino’s 28 electronic table games, which are on the cutting edge of the highly competitive gambling industry. Altogether, Plainridge Park can accommodate 278 blackjack players at one time.

Players who have electronically placed bets receive two electronic cards from the smiling dealer; then the dealer — still smiling — goes around the table asking players if they want to add one or more cards to their hands. Players whose cards add up to a number closer to 21 than the dealer’s added cards (without going over) win.

Winners walk away with a printed ticket they can redeem for cash.

When it opens on June 24, Plainridge Park Casino will mark the beginning of the state’s casino era. In 2017, MGM Resorts expects to open its \$800 million resort casino in Springfield, and a year later, Wynn Resorts is slated to open a \$1.7 billion casino in Everett. A third resort casino is under consideration by the state Gaming Commission for Brockton, New Bedford, or Somerset.



JONATHAN WIGGS/GLOBE STAFF

During the tour on Friday, Thoma and other Penn National executives showed off their \$250 million facility, which is located on a 90-acre site about 35 miles southwest of Boston and 18 miles north of Providence. The casino is built on the site of the Plainridge Racecourse, which will continue offering harness horse racing and wagering.

The facility's gross gambling revenues are expected to be \$250 million a year, of which the state will take 40 percent, a \$100 million windfall. Another 9 percent is required to be put in a special fund to support the horse racing industry.

Besides the electronic table games, the Plainridge casino is fitted out with 1,222 flashing, whirling, honking slot machines, which give players the option of yanking an old-fashioned lever and simply hitting the "repeat bet" button.

Beyond the gaming floor are the outlines of what will be a stage for live entertainment, a lounge, a food court, and restaurants. Among the restaurants is Flutie's Sports Pub, developed by the former Boston College and New England Patriots quarterback Doug Flutie.

"We're envisioning a lively, noisy, exciting atmosphere," said Lance George, the general manager, who is responsible for meeting not only construction deadlines inside and outside the facility, but also regulatory ones as Plainridge becomes the first casino to come under the jurisdiction of the state gambling commission.

“Only 47 days to opening,” he said, amid teams of construction workers and others crisscrossing the gaming floor. “But who’s counting?”

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