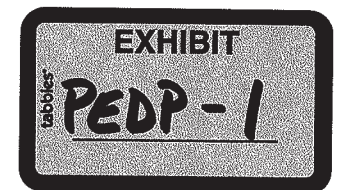


Pennsylvania Gaming Control Board v. Philadelphia
Entertainment and Development Partners, LP
Slot Machine License Revocation Proceedings

APPEAL OF DISCOVERY DEADLINE



Order Denying Appeal

| | | |
|---|---|---|
| BEFORE THE PENNSYLVANIA GAMING CONTROL BOARD | | <div style="border: 1px solid black; padding: 2px; display: inline-block;">FILED</div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">JUN 30 2010 Board Clerk PGCB</div> |
| To Re: | : | |
| Complaint for Revocation of | : | |
| Philadelphia Entertainment and | : | |
| Development Partners, L.P. d/b/a | : | Docket # 1008-2010 |
| Foxwoods Casino Philadelphia | : | |
| Slot Machine License 1367 | : | |
| | : | |

ORDER

And now, this 30th day of June, 2010, the following is ORDERED: All relief requested in the "Emergency Petition in the Nature of an Appeal" filed by Philadelphia Entertainment and Development Partners, L.P. ("PEDP") filed on June 22, 2010, is DENIED based upon the reasons as set forth below.

1. On April 29, 2010, the Board's Office of Enforcement Counsel filed a Complaint seeking revocation of the Slot Machine License of Philadelphia Entertainment and Development Partners, L.P. d/b/a Foxwoods Casino Philadelphia.
2. At the request of PEDP a discovery conference was conducted by the Director of Hearings and Appeals, acting as the Presiding Officer, on June 17, 2010.¹
3. In accordance with the Board's regulation at 58 Pa. Code § 491a.7(b)(1) and (7), the Presiding Officer has the authority to "regulate the course of hearings, including the scheduling thereof ... (and) ... dispose of procedural matters."

¹ The Board has designated through Regulation, found at 58 Pa. Code § 491a.6, that all matters, except for a hearing under §441a.7, will be assigned to OHA (the Office of Hearings and Appeals). In this particular matter, the Director of Hearings and Appeals has been assigned as the Presiding Officer.

Order Denying Appeal

PENNSYLVANIA

In Re:

Complaint for Revocation of Philadelphia Entertainment & Development Partners, L.P.'s Franchise Casino Philadelphia Slot Machines License 1507

And now, this 30th day of June, 2010, the Board has considered the request for the "Emergency Petition Entertainment and Development Partners, L.P." and has DENIED based upon the reasons as set forth below.

1. On April 29, 2010, the Complaint seeking revocation of Philadelphia Entertainment and Development Partners, L.P.'s Franchise Casino Philadelphia Slot Machines License 1507 was filed with the Board of Hearing and Appeals.
2. At the request of PEDP a Discovery Order was issued by the Board of Hearing and Appeals.
3. In accordance with the Board of Hearing and Appeals' (7) the Presiding Officer has issued an Order including the scheduling of the Discovery Order.

The Board has designated through Expedited Discovery a hearing under §411a.7, will be assigned to C. J. ... member, the Director of Hearing and Appeals.

This is also consistent with the general Administrative Law found at 1 Pa. Code § 35.187 and § 35.114.

4. An Order was issued by the Director of Hearing and Appeals on June 18, 2010 setting Friday July 30, 2010 as the deadline for completion of all discovery. Other time frames for responses, among other things, were also included in this Order. This Order addressed the disposition of a procedural pre-hearing matter.
5. On June 22, 2010, a document entitled "EMERGENCY PETITION IN THE NATURE OF AN APPEAL OF THE ORDER DATED JUNE 18, 2010, ISSUED BY THE DIRECTOR OF HEARINGS AND APPEALS DIRECTING THAT DISCOVERY IN THE WITHIN PROCEEDINGS BE COMPLETED BY THE CLOSE OF BUSINESS FRIDAY JULY 30, 2010; FOR AN EXTENSION OF TIME WITHIN WHICH ALL DISCOVERY MUST BE COMPLETED IN THE WITHIN PROCEEDINGS UNTIL OCTOBER 31, 2010; SCHEDULING THE COMMENCEMENT OF THE HEARINGS IN THE WITHIN PROCEEDINGS FOR NOVEMBER 2010; AND SEEKING CERTIFICATION OF ORDERS AND A STAY OF PROCEEDINGS" was filed by PEDP.
6. PEDP's appeal of the June 18, 2010 Discovery Order issued by the Director of Hearing and Appeals, acting as the Presiding Officer, appears to be taken in accordance with 1 Pa. Code § 35.20. (See Petition at paragraph 20). However, this General Rule is not applicable in this instance. The applicable rule is a Board Regulation found at 58 Pa. Code § 491a.7(f) which states that

Order Denying Appeal

PENNSYLVANIA

In Re:

Complaint for Revocation of Philadelphia Entertainment Development Partners, L.P.'s Franchise Contract Philadelphia Slot Machine License 1307

And now, this 30th day of June requested in the "Emergency Petition Entertainment and Development Partners DENIED based upon the reasons as set

1. On April 29, 2010, the Complaint seeking revocation Entertainment and Development Philadelphia.
2. At the request of PEDP a date of (Hearings and Appeals, a
3. In accordance with the Board (7), the Presiding Officer is including the scheduling of

* The Board has designated through Regulation a hearing under 644 Pa. Code, 7.01 will be assigned to the Director, for Director of Hearings and Appeals.

This is also consistent with Code § 35.187 and § 35.114.

4. An Order was issued by the 2010 setting Friday July 30 discovery. Other time frames included in this Order. This pre-hearing matter.
5. On June 22, 2010, a document NATURE OF AN APPEAL ISSUED BY THE DIRECTOR DIRECTING THAT DISCOVERY COMPLETED BY THE CLERK FOR AN EXTENSION OF MUST BE COMPLETED OCTOBER 31, 2010; SCHEDULING HEARINGS IN THE WITH AND SEEKING CERTIFYING PROCEEDINGS" was filed by
6. PEDP's appeal of the June 18, Hearings and Appeals, setting accordance with 1 Pa. Code However, this General Rule 1 rule is a Board Regulation for

"rulings of a presiding officer may not be appealed during the course of a hearing or conference except in extraordinary circumstances when a prompt decision by the Board is necessary."

7. A presiding officer is authorized to rule on motions prior to the commencement of a hearing when an immediate ruling is essential in order to proceed to the hearing. 1 Pa. Code § 35.180(a). In this instance, PEDP requested a discovery conference, one was conducted by the Presiding Officer and a discovery Order was issued in order to move this matter toward a hearing.
8. In light of the Board's regulations authorizing the Presiding Officer to rule on PEDP's discovery conference request and dispose of procedural matters, and the prohibition against appealing Presiding Officer's Orders except in extraordinary circumstances, the request to appeal and/or override the Order dated June 18, 2010 is DENIED.
9. Furthermore, discovery is not automatic in most administrative proceedings in the Commonwealth. See *Eastern Pennsylvania Psychiatric Institute, Department of Public Welfare v. Russell*, 465 A.2d 1313 (Pa. Cmwlth. 1983) (employees' contention that they were entitled to a broader form of discovery has not been substantiated by any case law suggesting that such a right exists in administrative hearings. In the absence of such a right, the fact that some adequate form of discovery was allowed is sufficient to show that no violation of due process rights occurred.)
10. The Board's regulations do allow for the opportunity to conduct some discovery, however, the discretion as to whether or not discovery should be

Order Denying Appeal

PENNSYLVANIA
 In Re:
 Complaint for Revocation of
 Philadelphia Entertainment &
 Development Partners, L.P.'s
 Foxwoods Casino Philadelphia
 Slot Machine License 1347

And now, this 30th day of June
 requested in the "Emergency Petition
 Entertainment and Development Partners, L.P.
 DENIED based upon the reasons as follows:

- On April 29, 2010, the
 Complaint seeking revocation
 Entertainment and Development Partners, L.P.
 Philadelphia.
- At the request of PEDP a
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 in accordance with the Board's
 (7), the Presiding Officer is
 including the scheduling of

*The Board has designated through Regulation
 a hearing under §491a.7(d) will be assigned to it.
 matter, the Director of Hearings and Appeals.

This is also consistent with
 Code § 35.187 and § 35.114.

- An Order was issued by the
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- On June 22, 2010, a document
NATURE OF AN APPEAL
ISSUED BY THE DIRECTOR
DIRECTING THAT DISCOVERY
COMPLETED BY THE CLAIMANT
FOR AN EXTENSION OF
MUST BE COMPLETED
OCTOBER 31, 2010; SCHEDULING
HEARINGS IN THE WITHIN
AND SIGNING CERTIFICATES
PROCEEDINGS was filed by
 PEDP's appeal of the June 18,
 Hearings and Appeals, acting
 accordance with 1 Pa. Code
 However, this General Rule
 rule is a Board Regulation for

"Hearings of a presiding
 hearing or conference
 decision by the Board."

- A presiding officer is not
 of a hearing when an
 hearing. 1 Pa. Code
 discovery conference,
 discovery Order was issued.
- In light of the Board's
 PEDP's discovery conference
 the prohibition against
 extraordinary circumstances
 dated June 18, 2010 in
 9. Furthermore, discovery
 the Commonwealth
 Department of Public
 (employees' contention
 has not been substantiated
 in administrative hearing
 adequate form of discovery
 of due process rights of
- The Board's regulatory
 discover, however, the

granted, and to what degree, lies with the Presiding Officer when discovery
 will "facilitate an efficient and expeditious hearing process, not unduly
 prejudice and burden the responding party and as may be required in the
 interests of justice." 58 Pa. Code § 493a.11(b)(1).

- The Presiding Officer has determined that there is adequate time for the
 parties to conduct discovery before the July 30, 2010 deadline for completion
 of all discovery.
- Therefore, the request for an extension of time to complete discovery until
 October 31, 2010 is DENIED.
- PEDP's request to schedule the hearing on the matter for November 2010 is
 DENIED at this time. A Hearing Notice will be sent to all parties at some
 time in the future setting the date, time and place for the hearing on this
 matter.
- Finally, the Presiding Officer will not refer this matter to the Board for its
 consideration because the Presiding Officer does not believe that this presents
 an "extraordinary circumstance" where prompt decision by the Board is
 necessary. See 58 Pa. Code § 491a.7(d). Therefore, PEDP's request seeking
 certification of Orders and for a stay of the proceedings is DENIED.

Linda S. Lloyd
 Linda S. Lloyd
 Director of Hearings and Appeals

4

Order Denying Appeal

"rulings of a presiding officer may not be appealed **during** the course of a hearing or conference except in extraordinary circumstances when a prompt decision by the Board is necessary."

BIE'S Complaint

- BIE Asserts Four Counts Against PEDP:
 - That PEDP has not met certain reporting conditions
 - That PEDP has not maintained undefined "suitability" requirements
 - That PEDP will be unable to open by May 29, 2011.
 - That PEDP is no longer suitable and/or financially fit for slot machine licensure.

The Allegations against PEDP are Serious

- PEDP's license and its \$50 million licensing fee are at stake.
- PEDP is entitled to Due Process:
 - Full and Fair Notice of BIE's Claims
 - A Full and Fair Opportunity to be Heard.

PEDP has a Right to Discovery

- ❑ The Board's Regulations establish a Right to discovery.
- ❑ The Board (through the Director) gave PEDP a right to discovery in this case.
- ❑ The absence of any published standards of "suitability", along with illusory discovery, constitute a denial of Due Process .

The Board's Regulations Specifically Provide For Discovery

§ 407a.3 (relating to confidential information) in any papers filed with the Clerk by filing a Motion to Protect Confidential Information.

(b) A Motion to Protect Confidential Information must:

(1) Set forth the specific reasons why the information should be deemed to be confidential information and, therefore, protected.

(2) Label as confidential all documents or portions of documents in the filing containing the confidential information that the party or individual is seeking to protect.

(c) Upon the filing of the Motion to Protect Confidential Information, the Director of Hearings and Appeals will review the motion and accompanying filings and, upon determining that a substantial basis exists, shall issue an interim order to protect the information, whether in the motion or the accompanying filings, from disclosure until the Board considers the matter in accordance with 65 Pa.C.S. §§ 701—716 (relating to open meetings). At all times during the pendency of the motion, the information in the motion and the accompanying filings shall be treated as confidential.

Source

The provisions of this § 493a.10a adopted July 10, 2009, effective July 11, 2009, 39 Pa.B. 3446.

§ 493a.11. Discovery.

(a) A party may, upon written motion to the Board or a presiding officer, request a prehearing conference solely for the purpose of discussing discovery procedures as the nature of the matter and facts of the proceedings require.

(1) At the prehearing conference, the presiding officer may grant any requests for discovery which serve to facilitate an efficient and expeditious hearing process, do not unduly prejudice and burden the responding party and as may be required in the interests of justice.

(2) A party may request discovery by one or more of the following methods:

- (i) Written interrogatories.
- (ii) Depositions.
- (iii) Affidavits.
- (iv) Production of documents or things.
- (v) Requests for admissions.

(3) With the approval of the presiding officer, the parties may enter into a binding discovery plan at the prehearing conference.

493a-5

(344555) No. 418 Sep. 09

The Board's Regulations Specifically Provide For Discovery

58 Pa. Code § 493a.11(a)(2) provides:

- (2) A party may request discovery by one or more of the following methods:
- (i) Written interrogatories.
 - (ii) Depositions.
 - (iii) Affidavits.
 - (iv) Production of documents or things.
 - (v) Requests for admissions.

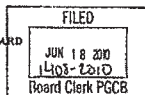
The Director's Discovery Order Specifically Confirmed the Right to Discovery

BEFORE THE
PENNSYLVANIA GAMING CONTROL BOARD

In Re:

Complaint for Revocation of
Philadelphia Entertainment and
Development Partners, L.P. d/b/a
Foxwoods Casino Philadelphia
Slot Machine License 1367

Docket # 1408-2010



ORDER RE: DISCOVERY

And now, this 18th day of June, 2010, after holding a pre-hearing conference on June 17, 2010 to discuss discovery issues, the following is ORDERED:

1. All discovery will be completed by close of business Friday July 30, 2010.
2. Any motions filed related to the discovery process will be answered by the opposing party within five (5) business days of the date of service of the motion. This supercedes the Board's regulations governing answers to motions.
3. All discovery requests in the form of interrogatories, production of documents or things, or requests for admissions will be responded to by the receiving party within ten (10) business days of the date of service of the document. If a party determines that additional time is needed to respond, it is suggested that the parties work out a mutually agreeable timetable for response. If a disagreement arises a motion to resolve the issue will be made to the undersigned and filed with the Board's Clerk.
4. The deposition schedule will be mutually worked out between the parties. If a dispute arises between the parties regarding the schedule, a written

motion to address the dispute will be made to the undersigned and will be filed with the Board's Clerk.

5. The regulation requiring permission from the agency head or the presiding officer to take a deposition, found at 1 Pa. Code § 35.145, is waived unless a party objects to a deposition request. If an objection arises, a request to take the deposition will be made to the undersigned in accordance with 1 Pa. Code § 35.145 and will be filed with the Board's Clerk.
6. In all other instances discovery will be governed by 58 Pa. Code § 492a.11 and 1 Pa. Code §§ 35.145-152.
7. The Office of Enforcement Counsel has agreed to and will provide to Philadelphia Entertainment and Development Partners, LP's ("PDEP") attorneys all documents in its possession that it believes are relevant to the Complaint for Revocation on or before Monday June 28, 2010. The production of these documents does not restrict PDEP attorneys from making further requests for relevant documents.
8. If any other dispute arises during the course of discovery a motion will be made to the undersigned and filed with the Board's Clerk in order to resolve the issue.

Linda S. Lloyd
Linda S. Lloyd
Director of Hearings and Appeals

The Director's Discovery Order Specifically Confirmed the Right to Discovery

Paragraph 3 of the Discovery Order, entered June 18, 2010:

All discovery requests in the form of interrogatories, production of documents or things, or requests for admissions will be responded to by the receiving party within ten (10) business days of the date of service of the document.

Once the Board decided generally and specifically to provide a right of discovery, Due Process and Fundamental Fairness require the Board to overturn any arbitrary and capricious restraint of the right which renders discovery illusory.

PEDP has been prevented from obtaining the meaningful discovery it needs to defend against BIE's Complaint, thereby denying PEDP its Due Process rights to meaningful notice and opportunity to be heard in defending its \$50 million license from revocation.

The Director has unreasonably truncated the discovery process.

April

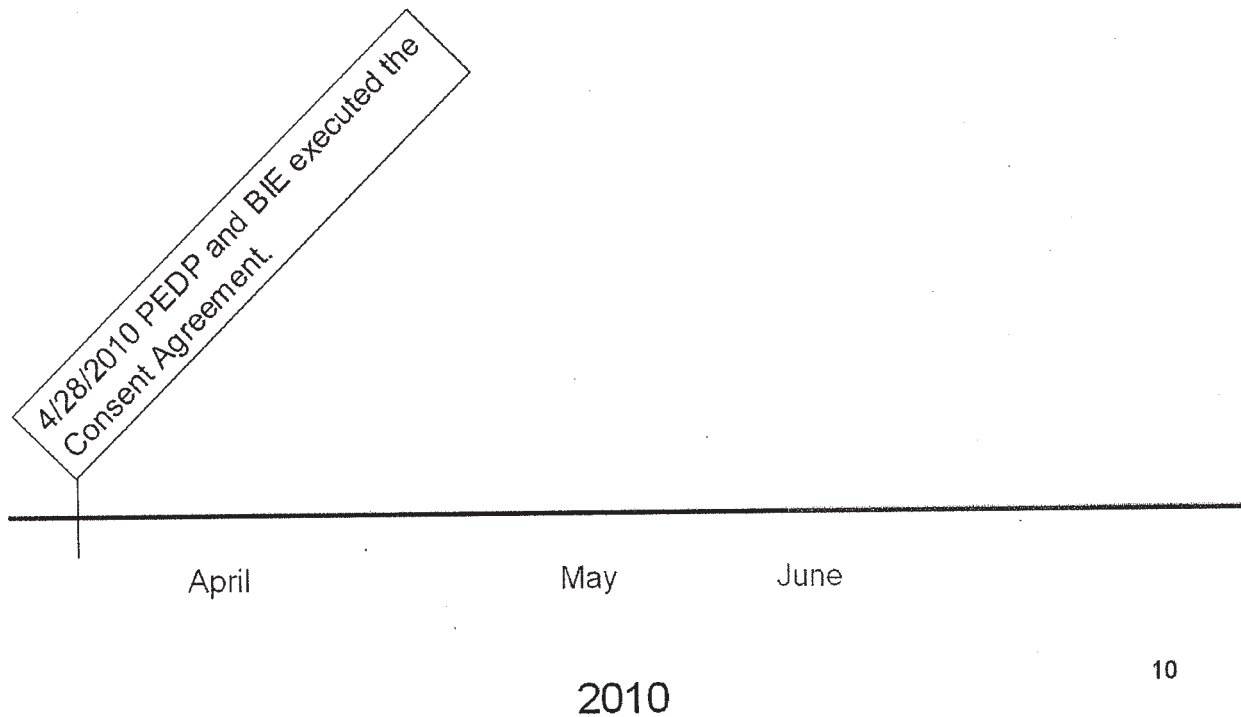
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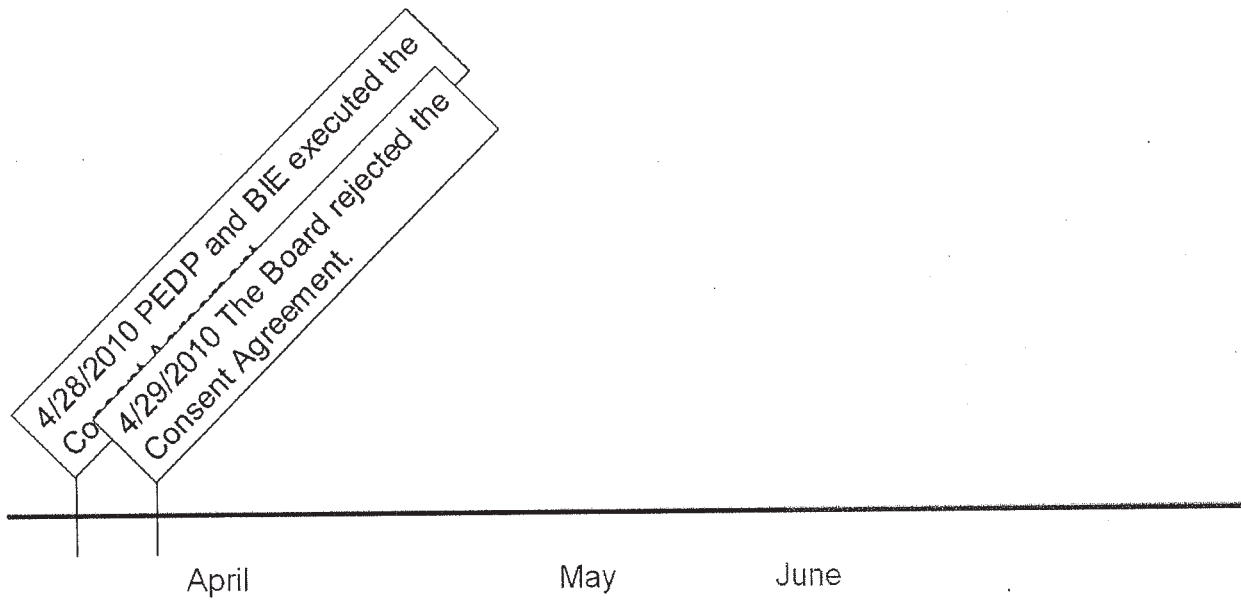
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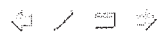
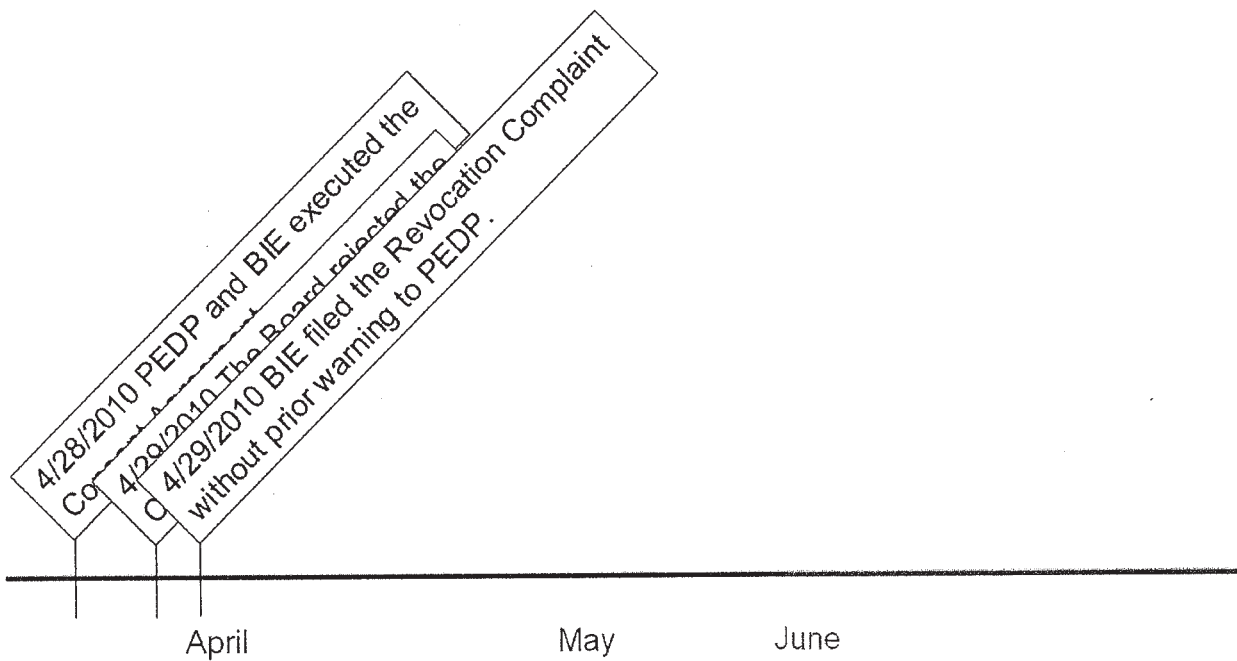
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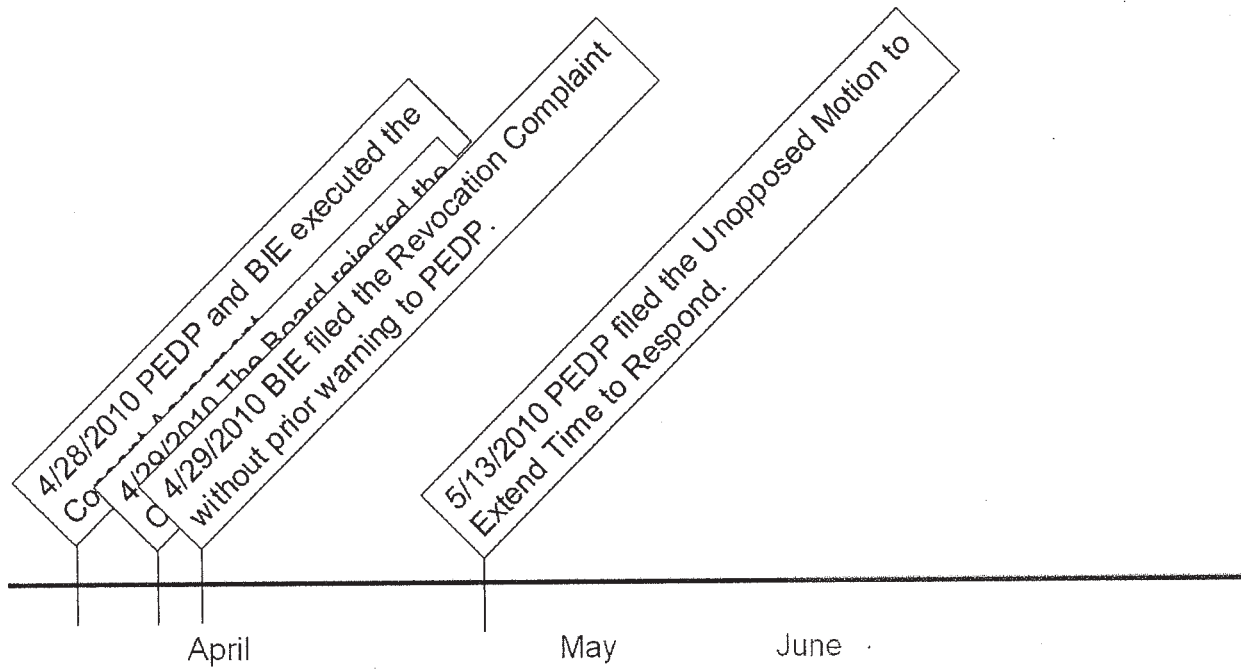


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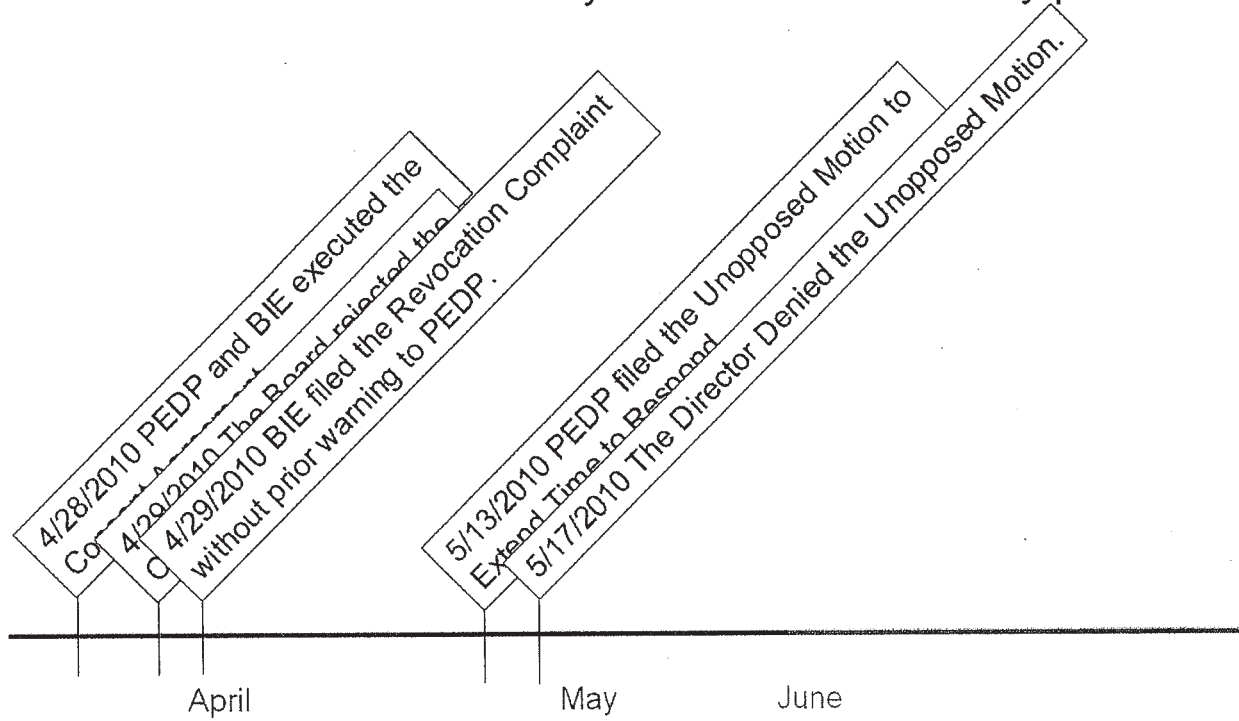


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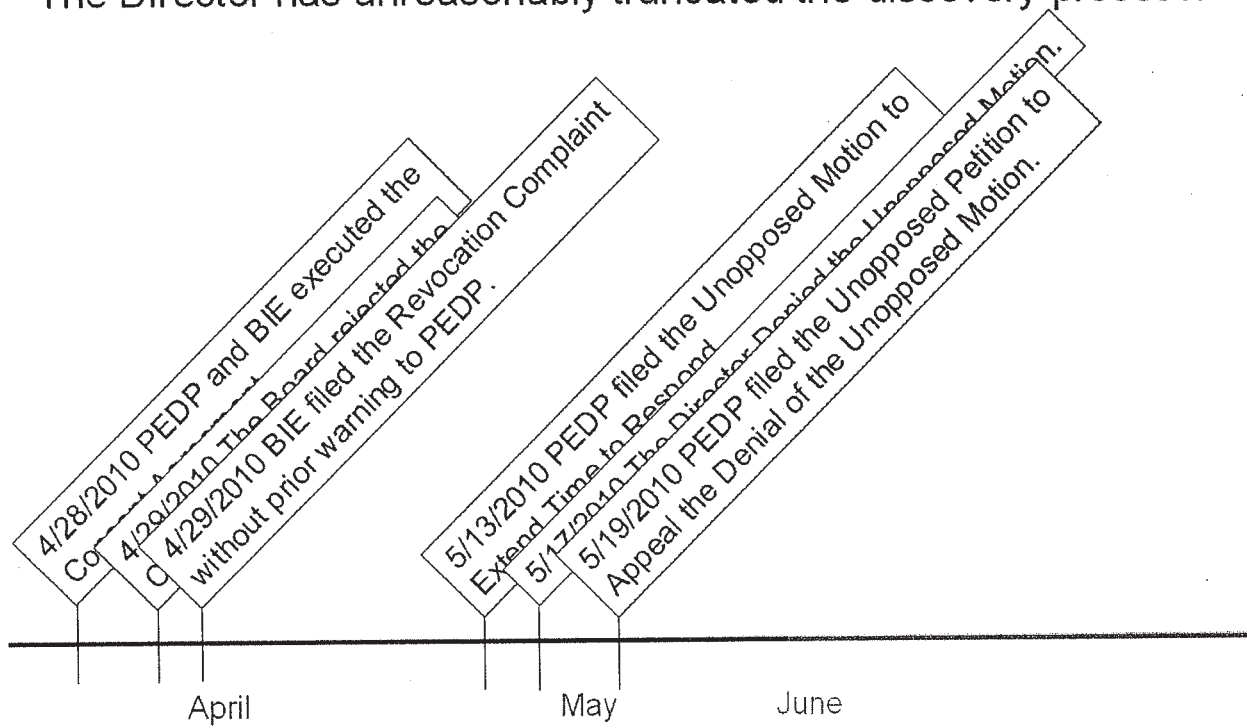
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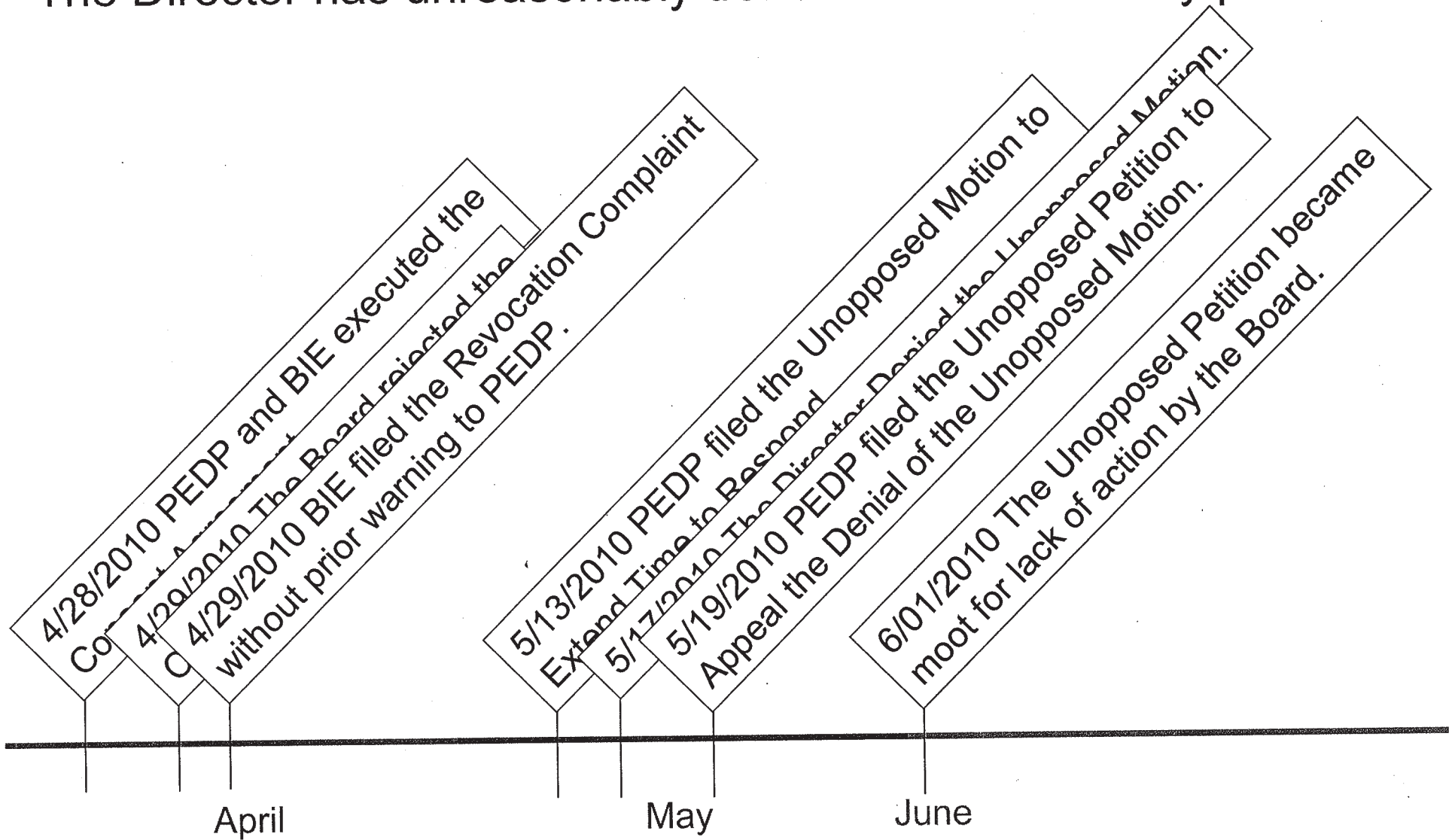
The Director has unreasonably truncated the discovery process.



The Director has unreasonably truncated the discovery process.



The Director has unreasonably truncated the discovery process.



2010

The Director Arbitrarily Limited Discovery.

- June 1, 2010: PEDP filed a Motion for Discovery Conference.
- June 11, 2010: The Director Scheduled a Discovery Conference.

- The June 11, 2010 Order Scheduling the Discovery Conference provided:

“[P]lease come prepared to set a discovery schedule in this matter, as well as discuss any other issues that the parties believe may aide [sic] in moving forward with the efficient and effective hearing of this matter .”

The Director's Actions At the Discovery Conference

- The Director gave the parties only 25 business days for discovery.
- The Director failed to consider the impact of the July 4th Holiday weekend.
- The Director failed to consider the routine difficulties that are traditionally experienced when scheduling discovery during the summer months.
- The Director made clear that her discovery deadline was not negotiable and that no reasons argued by counsel would alter the decision, including the fact that this is a case of first impression where a \$50 million license is at stake, and where PEDP has not been given meaningful notice of the standards against which it is to be judged.

- At the Discovery Conference, the Director indicated that the sole rationale for establishing this arbitrarily truncated discovery deadline was because 58 Pa. Code 491a.8(h) of the Board's Regulations require matters to be heard within 90 days.
- That Regulation provides (emphasis added):

Hearings will be **scheduled** by the OHA, except for hearings under §441a.7 which will be scheduled as the Board may direct. Hearings for violations of the act or this part will be scheduled within 90 days of the initiation of action by the Bureau.

Prejudice to PEDP

- The July 30, 2010 discovery deadline provided only 25 business days to complete discovery.
- PEDP did not have the benefit of discovery during the 16 days between the filing of the Motion for Discovery Conference and the Discovery Conference.

It Is Board's Purview to Hear an Appeal of the Discovery Order.

- June 22, 2010: PEDP filed the Emergency Petition appealing the Discovery Order to the **Board**.
- June 30, 2010: The **Director** denied the Emergency Petition, having apparently refused to forward the Emergency Petition to the Board.

The Director concluded that 58 Pa. Code § 491a.7(f) insulated her Discovery Order from consideration by the Board until after the merits hearing on BIE's Complaint.

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The Director concluded that 58 Pa. Code § 491a.7(f) insulated her Discovery Order from consideration by the Board until after the merits hearing on BIE's Complaint.

the presiding officer rejecting or excluding oral testimony must be a statement of the substance of the evidence which counsel contends would be adduced by the testimony. If the rejected or excluded evidence is in documentary or written form, a copy of the evidence shall be marked for identification and shall constitute the offer of proof.

(2) Unless the Board acts upon a question referred by a presiding officer for determination within 30 days, the referral will be deemed to have been denied.

(g) This section supersedes 1 Pa. Code §§ 35.185--35.190 (relating to presiding officers).

Source

The provisions of this § 491a.7 amended October 26, 2007, effective October 27, 2007, 37 Pa.B. 5774; amended July 11, 2009, effective July 12, 2009, 39 Pa.B. 3446. Immediately preceding text appears at serial pages (331236) and (334161) to (334162).

§ 491a.8. Hearings generally.

(a) Unless the Board hears the matter directly, all matters, except for hearings under § 441a.7 (relating to licensing hearings for slot machine licenses), will be assigned to the OHA. The Board may designate a member of the Board or other qualified person to serve as presiding officer in a particular matter.

(b) Hearings will be public, except as provided in section 1206 of the act (relating to Board minutes and records).

(c) Hearings will be documentary unless otherwise designated by the Board or presiding officer and may provide for:

- (1) Receipt of sworn testimony.
- (2) Receipt of all relevant documentary evidence.
- (3) Opportunity for parties to be heard.
- (4) A complete evidentiary record.
- (5) Submission of a report or recommendations to the Board.

491a-5

(344547) No. 418 Sep. 09

The Director concluded that 58 Pa. Code § 491a.7(f) insulated her Discovery Order from consideration by the Board until after the merits hearing on BIE's Complaint.

58 Pa. Code § 491a.7(f) (as cited by the Director in the June 30, 2010 Order) provides:

(f) Rulings of presiding officers may not be appealed **during the course of a hearing or conference** except in extraordinary circumstances when a prompt decision by the Board is necessary. In this instance, the matter will be immediately referred by the presiding officer to the Board for determination.

The Director's Discovery Order was not issued "during the course of a hearing or conference" because the Discovery Conference had already concluded.

Pa. Code § 41.31 (relating to request for hearing); and 55 Pa. Code § 41.42 (relating to request for declaratory relief).

§ 35.20. Appeals from actions of the staff.

Actions taken by a subordinate officer under authority delegated by the agency head may be appealed to the agency head by filing a petition within 10 days after service of notice of the action.

Notes of Decisions

The General Rules of Administrative Practice and Procedure specifically provide a prompt right of appeal from the actions of a subordinate acting under authority delegated by the Board.

Pa. Code § 121.34 (relating to institutional appeals and hearings for other than the Federal Family Education Loan Program); 22 Pa. Code § 201.3a (relating to nonadjudicatory benefit appeal); 22 Pa. Code § 233.116 (relating to petitions requiring action prior to appointment of hearing officer); 22 Pa. Code § 233.124 (relating to power of subpoena); 22 Pa. Code § 351.1 (relating to purpose and scope); 28 Pa. Code § 1009.2 (relating to recognition); 28 Pa. Code § 1011.4 (relating to denial, restriction or withdrawal of accreditation); 34 Pa. Code § 111.11 (relating to content and form); 34 Pa. Code § 131.32 (relating to petitions except petitions for joinder and challenge proceedings); 34 Pa. Code § 131.121 (relating to penalty proceedings initiated by a party); 34 Pa. Code § 213.6 (relating to grievances arising from administration of the act); 43 Pa. Code § 5.7 (relating to reconsideration and appeals); 43 Pa. Code § 5.20 (relating to reconsideration and appeals); 43 Pa. Code § 5.27 (relating to reconsideration and appeal); 43 Pa. Code § 5.34 (relating to appeals); 43 Pa. Code § 5.46 (relating to appeals); 49 Pa. Code § 21.33a (relating to failure to comply with standards); 49 Pa. Code § 21.162a (relating to failure to comply with standards); 52 Pa. Code § 5.44 (relating to petitions for appeal from actions of the staff); 55 Pa. Code § 20.82 (relating to written request for appeal); 55 Pa. Code § 41.31 (relating to request for hearing); 55 Pa. Code § 2380.12 (relating to appeals); 55 Pa. Code § 2390.12 (relating to appeals); 55 Pa. Code § 3130.83 (relating to appeals); 55 Pa. Code § 3270.12 (relating to appeals); 55 Pa. Code § 3280.12 (relating to appeals); 55 Pa. Code § 3290.13 (relating to appeals); 55 Pa. Code § 3700.72 (relating to family approved appeals); 58 Pa. Code § 51.44 (relating to appeals); 58 Pa. Code § 53.4 (relating to limiting access to Commission property and other restrictions); 58 Pa. Code § 53.24 (relating to tournament and fishing derby permits); and 58 Pa. Code § 63.40 (relating to fishing tournaments and fishing derbies).

PROTESTS

§ 35.23. Protest generally.

A person objecting to the approval of an application, petition, motion or other matter which is, or will be, under consideration by an agency may file a protest.

35-12

The General Rules of Administrative Practice and Procedure specifically provide a prompt right of appeal from the actions of a subordinate acting under authority delegated by the Board.

1 Pa. Code § 35.20 provides:

§ 35.20. Appeals from actions of the staff.

Actions taken by a subordinate officer under authority delegated by the agency head may be appealed to the agency head by filing a petition within 10 days after service of notice of the action.

- July 7, 2010: PEDP filed the Petition for Reconsideration of the June 30, 2010 Order denying the Emergency Petition.
- July 29, 2010: Board Hearing on the Petition for Reconsideration.

This Appeal Is Not Moot

- PEDP has been forced to litigate its right for enough time to take meaningful discovery throughout the entire discovery period.
- PEDP has been attempting to secure meaningful discovery by interrogatories, document requests, and depositions, but has been faced with constant objections, which have not been fairly resolved and which have necessitated extensive motion practice, some of which motions are still pending.

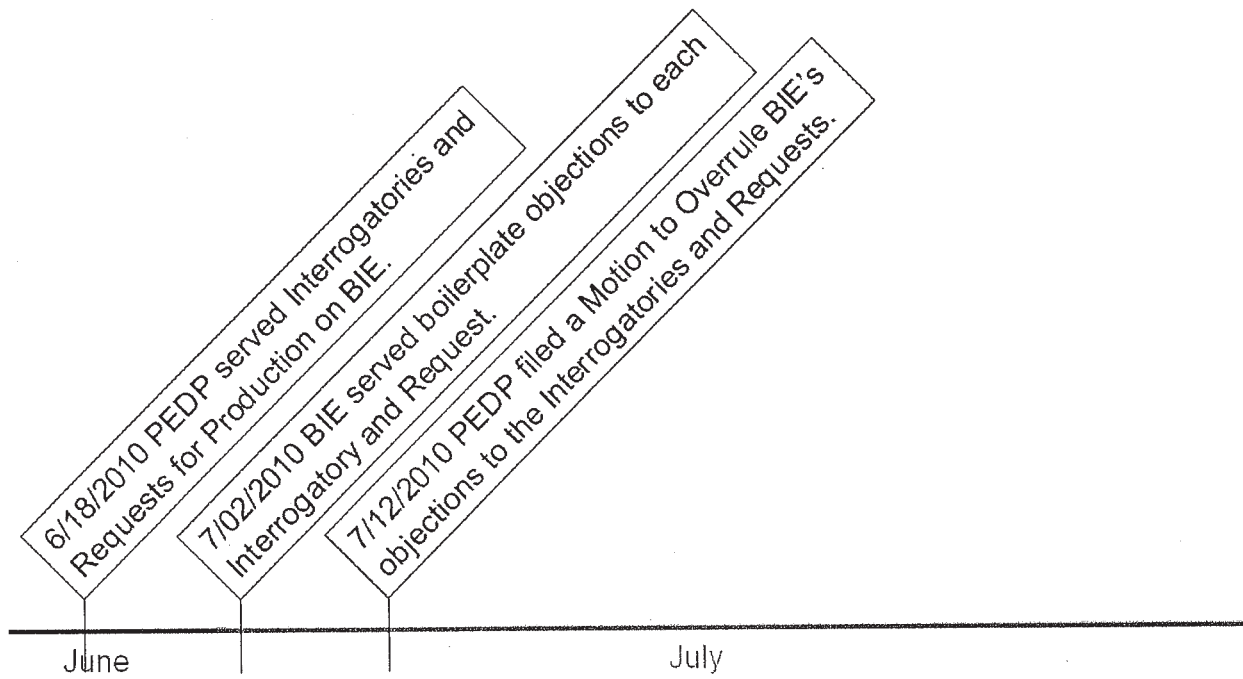
PEDP Still Has Not Been Provided with Meaningful Discovery.

June

July

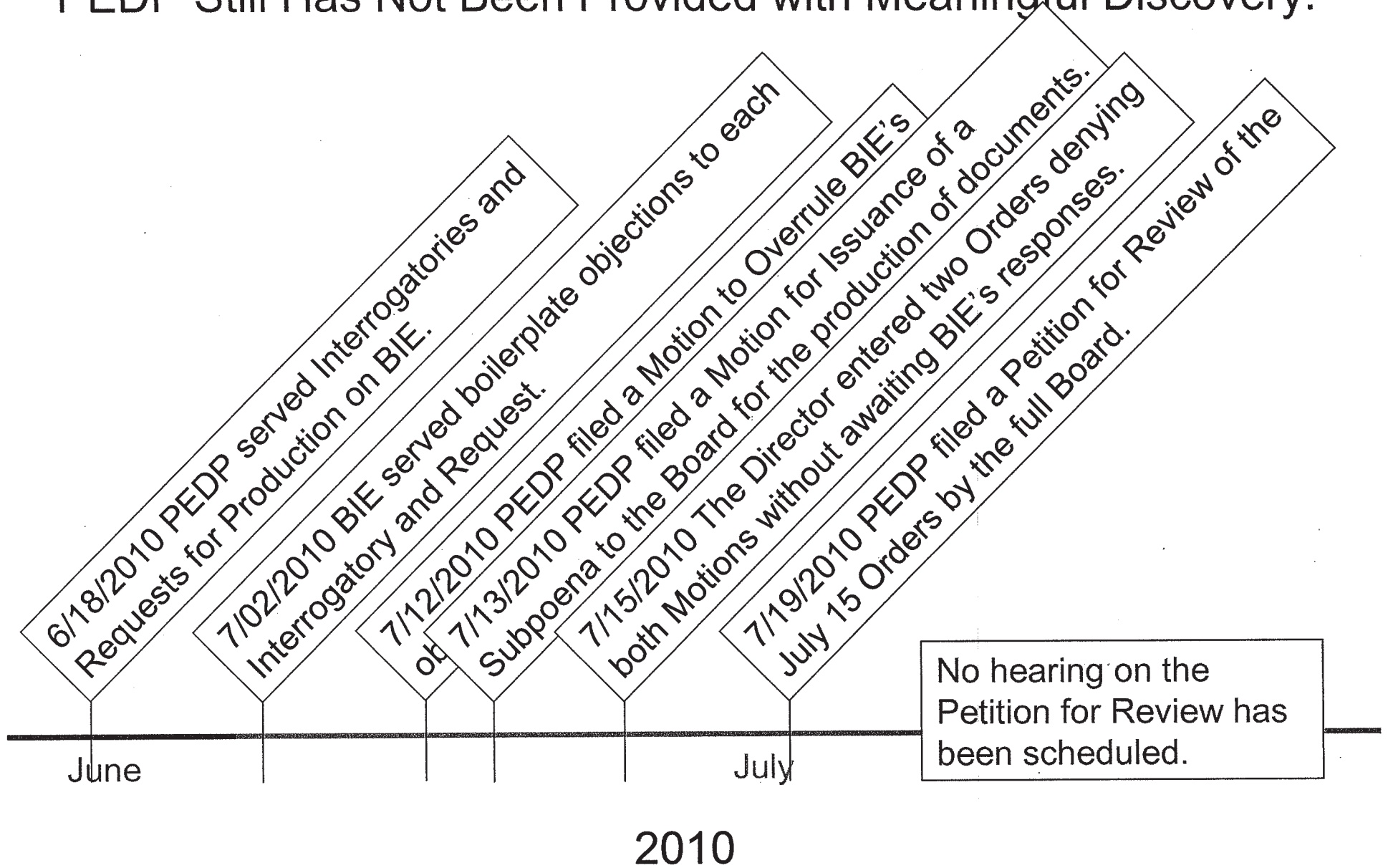
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PEDP Still Has Not Been Provided with Meaningful Discovery.



2010

PEDP Still Has Not Been Provided with Meaningful Discovery.



PEDP Still Has Not Been Provided with Meaningful Discovery

- July 19, 2010: PEDP provided written notice to BIE of four depositions:
 - Cyrus R. Pitre, Esq.;
 - Joseph Morace;
 - William Dobbins;
 - BIE investigator(s) most knowledgeable of the investigation of PITG Gaming, LLC, in connection with *In re: Joint Application of PITG Gaming, LLC and Holdings Acquisition Co., L.P. for Approval of the Reorganization, Change of Control and Recapitalization of PITG Gaming, LLC and Other Relief in Connection Therewith* (OHA Docket # 42028).
- July 21, 2010: BIE objected to producing Mr. Pitre or the BIE Investigator(s) assigned to the PITG change-in-control matter.
- July 22, 2010: PEDP filed a Motion for the Depositions of Mr. Pitre and the BIE Investigator.

PEDP Still Has Not Been Provided with Meaningful Discovery

- July 27, 2010: BIE filed a Reply and Objection to the Motion. BIE also changed its position and objected to producing Mr. Morace and Mr. Dobbins.
- July 28, 2010: The Director denied the Motion for the Depositions of Mr. Pitre and the BIE Investigator.
- July 28, 2010: PEPD filed a Motion for the Depositions of Mr. Morace and Mr. Dobbins.
- That Motion remains pending.

Discovery is critical because PEDP's \$50 million license is at stake and there is no published guidance as to how to adjudicate a licensee's financial fitness or suitability.

- The Board has never before commenced proceedings to revoke a \$50 million slot machine license.
- There are no published guidelines for determining a licensee's financial fitness or suitability.

PEDP Has Still Not Been Provided with any Meaningful Discovery.

- Categories of Discovery Denied:
 - Change in control of a slot machine licensee.
 - Suitability of a licensee.
 - Commencement of enforcement actions.
 - Practices, procedures, and standards for determining suitability.
 - Documents relevant to the Complaint.
 - BIE/OEC's complete files relating to PEDP.
 - Communications concerning PEDP and PEDP's license.
 - Relevant BIE/OEC notes, and documents.

Due Process Rights

- PEDP is facing the revocation of its \$50 million license;
- BIE's Complaint, coupled with the Director's discovery rulings, seek to deprive PEDP of its \$50 million license without a meaningful hearing.
- Without the opportunity to discovery of the criteria considered to evidence financial fitness and suitability, PEDP cannot defend the claims in the Complaint.

Relief

- Instant appeal of the Discovery Order and July 30, 2010 discovery deadline.
- Pending appeal of the Orders denying PEDP's Motion to Overrule Objections to Interrogatories and Requests for Production and Motion for Issuance of Subpoena to the Board to Produce Documents.
- Anticipated appeal of the Order denying PEDP's Motion for Issuance of Deposition Subpoenas to Cyrus Pitre, Esq., and the PITG Investigator(s).
- Pending Motion for Issuance of Deposition Subpoenas to Joseph Morace and William Dobbins.

Moreover, consistent with procedural due process, the Board always has the authority to extend any deadline established by the Board's regulations.

Moreover, consistent with procedural due process, the Board always has the authority to extend any deadline established by the Board's regulations.

- (3) Requests for a continuance of a hearing shall be made orally or in writing to the presiding officer, stating the facts on which the request rests. Requests for continuance will be considered only for good cause shown.
- (b) Subsection (a) supersedes 1 Pa. Code § 31.15 (relating to extensions of time).

Moreover, consistent with procedural due process, the Board always has the authority to extend any deadline established by the Board's regulations.

58 Pa. Code § 497a.5(a)(1) provides:

[W]henever under this part or by order by the Board, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may be extended by the Board, for good cause, upon a motion made before expiration of the period originally prescribed or as previously extended.