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COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

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IN RE: HSP GAMING, LP (SUGARHOUSE) - PETITION TO
INTERVENE IN THE CATEGORY 2 PROCEEDINGS

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PUBLIC HEARING

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BEFORE: WILLIAM H. RYAN, JR., Chairman
Gregory C. Fajt; Anthony C. Moscato;
Annemarie Kaiser; Keith R. McCall; John
J. McNally; David W. Woods; Members,
Jennifer Langan, representing Robert
McCord, State Treasurer, Robert P.
Coyne, representing Daniel P. Meuser,
Secretary of Revenue Jorge Augusto,
Representing George Greig, Secretary
of Agriculture

HEARING: Wednesday, January 8, 2014

LOCATION: Pennsylvania Gaming Control Board
Strawberry Square Complex, 2nd Floor
Harrisburg, PA 17101

Reporter: Lacey C. Gray

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CHAIRMAN:

:52:11 All right. Now, having established
:52:14 that HSP is the only Petitioner in this proceeding,
:52:17 we will begin our final hearing prior to our public
:52:20 meeting, specifically the hearing on HSP's Petition
:52:23 to Intervene in the Category 2 proceedings.
:52:29 Counselor, you're on again.

ATTORNEY DONNELLY:

:52:29 Thank you. First of all, I don't mean
:52:36 to --- by using adversarial I'm using it in general
:52:41 terms. I recognize --- I agree with what Mr. Miller
:52:41 put on the record as to Office of Enforcement
:52:43 Counsel's (OEC) role here. I may slip and continue
:52:45 to call them as an adversary but I don't mean that
:52:51 literally in a legal term.

:52:52 The standard for intervention in an
:52:54 administrative proceeding, especially before this
:52:57 Board, the bar is very low. I do take issue with the
:53:04 recitation of what the standard is. I don't think
:53:06 that's a standard and I don't think that it's set
:53:08 forth in the current version of the regulations.

:53:12 I don't think that purports with the
:53:15 Bensalem case, which addressed this issue or the

:53:19 1 Supreme Court's case in Society Hill case.
:53:23 2 Essentially the way I understand what the Court and
:53:28 3 the Supreme Court said and Bensalem said is, you have
:53:31 4 to look at these things two different ways. First of
:53:34 5 all, intervention. At the administrative level all a
:53:38 6 person or an entity needs shown is a direct interest
:53:42 7 and that direct interest can be a competitor. I
:53:47 8 think that was made quite clear by both courts. Once
:53:49 9 you have that interest of a direct competitor you are
:53:53 10 eligible for intervention.

:53:57 11 I'll come back to whether intervention
:53:59 12 must be granted, but it's clear, I think, without
:54:04 13 argument that we have met the standard of
:54:07 14 eligibility. There is a second standard and that is
:54:09 15 of standing, and the standing standard comes in at a
:54:13 16 later stage in the proceedings at a court level. And
:54:17 17 standing --- as OEC pointed out earlier, standing is
:54:23 18 a concept essentially developed by the federal courts
:54:27 19 and imported into the state courts.

:54:29 20 And it has to do with concepts that are
:54:31 21 not present here. It has to do with concepts such as
:54:35 22 separation of powers, whether federal court should be
:54:39 23 interfering or whether a court should be interfering
:54:42 24 with things that legislators do or executives do.
:54:46 25 So, when a litigant appears before a court, the

:54:50 1 judicial branch, the Court is supposed to put its hat
:54:54 2 on and say, well, I've got to think about who that
:54:57 3 litigant is. I'm one of three co-equal branches.
:55:01 4 And part of whether I hear from the litigant is to
:55:03 5 show respect, be it a judicial respect or a
:55:08 6 Constitutional respect to my other branch. So,
:55:11 7 that's one element of standing.

:55:13 8 Another important element of standing
:55:15 9 that we don't have here, that we don't have the first
:55:19 10 one, is the question of whether or not you have an
:55:25 11 administrative proceeding. In this particular action
:55:28 12 the administrative entity in question is a branch of
:55:34 13 the executive. So, you don't have those --- the
:55:37 14 separation of power issues. Second issue that you
:55:40 15 often see in standing cases is where someone is
:55:44 16 asking federal court to overcome a state court
:55:47 17 action.

:55:47 18 Obviously, we don't have that here. We
:55:49 19 don't have the problems that the federal court
:55:52 20 developed these concepts of standing and adjudication
:55:55 21 based on the Federal Constitution. We don't have
:55:58 22 that problem here because this is all state issue.
:56:01 23 We don't have the federalism issue of standing that
:56:06 24 usually causes a standing problem because no one is
:56:09 25 asking federal court to do anything here. So, we

:56:12 1 don't have a separation of powers problem. We don't
:56:15 2 have a federalism problem.

:56:17 3 Thirdly, as I think probably more
:56:19 4 importantly --- I may be running too long --- the
:56:23 5 Supreme Court made it plain that those are two
:56:25 6 different concepts. The concept of standing versus
:56:28 7 the concept of intervention. And as the previous
:56:32 8 Applicant made the point that the Court made it clear
:56:35 9 that a person who has a direct interest is to do
:56:39 10 exactly what we're doing here, move to intervene
:56:41 11 before the administrative agency. And once we have
:56:44 12 intervened before the administrative agency, should
:56:48 13 we take a litigated matter to the Court, the Court
:56:51 14 would then apply a different standard for standing.

:56:54 15 And that different standard is direct
:56:57 16 immediate and not being adequately represented by any
:57:03 17 other party. Standard at this level is just direct.
:57:05 18 It's not immediate. It's not substantial. It's not
:57:11 19 whether other parties can represent. So, I come back
:57:14 20 and I think the Courts have made it quite clear that
:57:16 21 we have a direct interest in these proceedings at
:57:20 22 Sugarhouse where a competitor would put out a lengthy
:57:23 23 written statement.

:57:25 24 We've proffered a relatively lengthy
:57:27 25 expert report to address the elements of competition.

:57:34 1 I don't think that this is the appropriate time to go
:57:37 2 into the merits. I know it isn't. So, I won't do
:57:40 3 that, but I do want to point out that in our written
:57:43 4 statement and in the expert report we noted that the
:57:48 5 --- what the legislature of this Commonwealth has
:57:51 6 already recognized, that there is extreme competition
:57:55 7 that has been created in the --- whatever market you
:58:00 8 want to define, Philadelphia area market, the
:58:04 9 Mid-Atlantic or the northeast, since the statute was
:58:06 10 adopted in 2004. New York, as this Board is well
:58:13 11 aware because I know it watches these matters very
:58:16 12 closely, it's coming online now. Delaware is
:58:19 13 expanding. New Jersey just went internet.
:58:23 14 Pennsylvania itself is considering internet.
:58:26 15 Pennsylvania has the tavern bills. Maryland is
:58:30 16 expanding, recently expanded in --- Baltimore area is
:58:34 17 now going to develop a casino outside of the
:58:38 18 Washington area.

:58:38 19 So, we're essentially being surrounded
:58:40 20 by competition, Ohio. All of these factor in. It's
:58:46 21 not a happy situation at all and part of the purpose
:58:52 22 of having someone like Sugarhouse to come in to
:58:55 23 intervene is to try to put those elements forth.
:59:00 24 Now, as I stated before, a couple of the --- my
:59:04 25 adversaries do not object to the intervention. I

:59:08 1 don't understand that Market 8 or Stadium object to
:59:10 2 intervention, however, they do have conditions that
:59:13 3 they would like the Board to impose.

:59:16 4 There are varying conditions, I won't
:59:18 5 go over them all. You can find them online, but we
:59:22 6 have no problem with agreeing to meet the time tables
:59:24 7 that are set forth with the Board, follow the Board's
:59:27 8 rules and play and color with inside the lines. We
:59:30 9 certainly intend to do that.

:59:32 10 The real objections are --- the
:59:38 11 objections of OEC are essentially that the written
:59:42 12 statement and petition are in some cases hearsay and
:59:47 13 some cases just set forth generalized statements of
:59:52 14 competition. Well, at this stage of the proceeding,
:59:55 15 as I understand your rules and regulations, that is
:59:59 16 what we are supposed to do. We're supposed to send
:00:01 17 in a written statement as one of the adversaries did
:00:04 18 know. The written statement is to put the
:00:06 19 adversaries on notice as to what you want to
:00:09 20 intervene in and what you intend to --- you know,
:00:12 21 kind of giving a generalized presentation as to what
:00:14 22 your theory is.

:00:20 23 If we're granted intervention status we
:00:22 24 will take that written statement, add appropriate
:00:26 25 citations and perhaps alter or amend it as we

:00:30 1 reserved our right to do, but when it is submitted,
:00:33 2 if we're permitted the authority to submit it, it
:00:36 3 will have --- it'll be a document that at least the
:00:39 4 Board can take, if nothing else, judicial notice of
:00:42 5 given the facts --- for the most part facts set forth
:00:46 6 in there are public record.

:00:49 7 For example, New York just authorized
:00:51 8 additional casinos. Moreover, one of the purposes of
:00:56 9 sending around, circulating the expert report before
:01:00 10 the hearing was to have the expert endorse the facts
:01:06 11 in that --- in the written statement. An expert can
:01:11 12 rely on hearsay in forming his opinions and the
:01:16 13 expert in this case adopted the facts set forth in
:01:22 14 the written statement and added some and, of course,
:01:25 15 gave some preliminary opinions and so on.

:01:29 16 I will kind of --- I think we also ---.
:01:32 17 Not only do we fall squarely into the Bensalem and
:01:37 18 Society Hill case, we also fall squarely into the
:01:39 19 rules of appellate procedure. I think it's 35.28,
:01:44 20 which has directly affected, not directly,
:01:47 21 substantial and immediate. I do want to address ---
:01:52 22 it has three rules there, directly affected, not
:01:55 23 adequately represent and may be bound by the ruling.
:01:58 24 Well, we'll certainly be bound by a ruling that this
:02:01 25 Board makes.

:02:02 1 We are directly affected. I think it's
:02:04 2 clear under --- under case law I cited. And the case
:02:08 3 law also addressed the general rules of appellate
:02:16 4 procedure. I won't go over it again because I know
:02:18 5 this Board is familiar with both of those cases. We
:02:21 6 fall squarely into that. As to adequately
:02:24 7 represented, we've raised a number of issues that
:02:27 8 have not been raised to my knowledge, and certainly I
:02:30 9 haven't heard or seen written any analysis of the
:02:33 10 competition that's going on coming down the pike,
:02:37 11 what's going on in Atlantic City, what's going on in
:02:40 12 these other states or what's going on in the
:02:42 13 Commonwealth. I haven't seen any of that.

:02:44 14 I have seen that the legislature has
:02:47 15 acknowledged it and recognized it, and is right now
:02:50 16 out with a request for proposals to do a study in
:02:54 17 this matter and to make a determination as to what,
:02:58 18 if anything, the Commonwealth should do to look at
:03:01 19 its gaming loss, that no one is raising. I don't
:03:06 20 believe anyone has raised 1304 and 1330. The two
:03:11 21 statutory provisions that we put forth in our written
:03:15 22 statement, which I believe affects at least three of
:03:18 23 the Applicants and maybe more. There's one of the
:03:20 24 things I put forth.

:03:22 25 I did my very best to dig through the

:03:24 1 public records to determine what the ownership is and
:03:27 2 the Board has a very good --- but difficult to
:03:31 3 decipher, but very good site to go through that. But
:03:34 4 I do not know and will not know, I don't think our
:03:37 5 client will know for sure, what all these interests
:03:40 6 are until such times as we get into the licensing
:03:43 7 proceedings. In interest of time, we have a way of
:03:48 8 sliding around. There are management companies
:03:50 9 involved. There may be changes in ownership by the
:03:53 10 time we get to licensing. No one has raised those
:03:57 11 issues at all.

:03:59 12 And finally no one's looking at, I
:04:01 13 don't think for Sugarhouse, is that --- Sugarhouse is
:04:04 14 what I used in the petition, it's parties who are
:04:09 15 interested in what Sugarhouse does. We have a number
:04:17 16 of interests. We have interests in people who own
:04:19 17 the property, interests in our employees, we have
:04:22 18 interests of the city and interests of the
:04:25 19 foundation. We have interests of a special services
:04:29 20 district. Just really watch --- I'm sure the Mummings
:04:29 21 the other day, Sugarhouse sponsors the Mummings
:04:29 22 Parade.

:04:38 23 Sugarhouse has to look out --- and it's
:04:42 24 easy to say, well, you're just looking out for your
:04:46 25 profits. Well, we're not just looking out for our

:04:48 1 profits. As most of the people, a number of the
:04:52 2 Commissioners are aware of, I've spent probably
:04:54 3 35 years in dealing with casinos and a lot of them in
:04:58 4 New Jersey, and I still represent casinos in New
:05:02 5 Jersey. I've seen firsthand what happens when you
:05:04 6 have too much competition.

:05:06 7 There's only certain things that
:05:09 8 businesses can do to survive. They have mortgages,
:05:12 9 they have fixed duties, taxes and mortgages. And
:05:17 10 when there is insufficient revenues coming in there's
:05:20 11 only so many levers that people can pull. And those
:05:23 12 levers I will submit --- and if granted intervention
:05:29 13 our expert in the testimony we'll put in will try to
:05:32 14 point that out to support it. Because those levers
:05:35 15 are not good, in our opinion, for the Commonwealth.
:05:39 16 It causes people to start worrying about capital
:05:42 17 expenditure because you can cut back on something
:05:44 18 like that, start worrying about expansions, start
:05:46 19 worrying about whether you're hiring new employees or
:05:49 20 promoting employees.

:05:51 21 And I've seen it and, like I said, one
:05:53 22 of the statistics I put in with the petition was
:05:57 23 we've seen a decline in revenues there of almost
:06:00 24 40 percent. Almost to the point, five billion to
:06:03 25 three billion. And almost to the same numbers.

:06:06 1 Approximate number of employees go from about 50,000
:06:09 2 to about 30,000. It's not a happy scene out there
:06:14 3 and one of the things casinos can control are
:06:19 4 revenues and may well be determined that there are
:06:23 5 additional revenues, but having additional revenues
:06:25 6 is not a good thing for the long term success in the
:06:32 7 state --- Commonwealth.

:06:34 8 I also want to point out to a special
:06:37 9 interest of not being adequately represented ---.

:06:37 10 CHAIRMAN:

:06:40 11 Counselor, just ask you to ---.

:06:40 12 ATTORNEY DONNELLY:

:06:44 13 I'll speed up. Sugarhouse is currently
:06:45 14 in \$100 million plus, almost \$150 million expansion
:06:48 15 where we will be adding additional gaming product,
:06:51 16 additional amenities and so on. All this was
:06:56 17 committed to way back when in the initial licensing
:06:59 18 hearings. And so that's another element of not only
:07:04 19 additional competition, but interest.

:07:08 20 I'll wrap up with when I was looking to
:07:12 21 writing the statement I looked through a lot of
:07:15 22 reasons to show a specialized interest and I came
:07:18 23 across --- I looked a lot at economists just to see
:07:21 24 what quotes there might be. One really struck me
:07:23 25 from Kings. Not that I'm endorsing necessarily what

:07:29 1 he said, but he had a statement that stuck in my
:07:31 2 mind. Something along the lines of two misses for
:07:35 3 the poor are great, two trains for London to New York
:07:38 4 not so great.

:07:39 5 And that's what I think we want to try
:07:42 6 to bring forth to this Board, that adding additional
:07:46 7 supply to this market where there's insufficient
:07:51 8 demand now is not going to be a happy thing we don't
:07:54 9 believe for Sugarhouse, for the rest of the casinos,
:07:58 10 and for the Commonwealth. And for all of the people
:08:00 11 that have an interest in the health and welfare of
:08:03 12 the casino. Thank you.

:08:04 13 CHAIRMAN:

:08:04 14 Okay. Thank you, Counselor. Market
:08:06 15 East.

:08:06 16 ATTORNEY HAYES:

:08:06 17 Mr. Chairman, members of the Board,
:08:06 18 again Kevin Hayes on behalf of Market East
:08:11 19 Associates. Our positions are set forth in our
:08:13 20 responsive brief, so I'll try to be very brief in my
:08:16 21 response to Sugarhouse's Counsel. As a general rule,
:08:21 22 Market East Associates does not oppose Sugarhouse's
:08:25 23 Petition to Intervene. If the Board is so inclined
:08:28 24 to grant their Petition to Intervene we request that
:08:33 25 certain conditions be placed on that, on that

:08:36 1 approval.

:08:36 2 First and foremost we would
:08:38 3 respectfully request that the Board strike the
:08:41 4 written statement which accompanied the December 16th
:08:44 5 submission of Sugarhouse because it is --- doesn't
:08:48 6 comply with the Board's regulations relating to the
:08:51 7 written statement and it violates rules of evidence
:08:56 8 pertaining to administrative proceedings.

:08:59 9 Next, we would ask that Sugarhouse not
:09:02 10 be afforded any participation that is greater than
:09:06 11 the parties themselves. In other words, clearly
:09:10 12 Counsel has indicated that he would like to
:09:12 13 participate in pre-hearing discovery. There's
:09:15 14 nothing in the Board regulations or in the Rules of
:09:18 15 Evidence pertaining to administrative proceedings
:09:21 16 which would entitle them to that and we would
:09:24 17 strongly oppose that. Lastly, any effort that ---
:09:27 18 any attempt to request by Sugarhouse --- and I don't
:09:29 19 know if that's still out there, that they would be
:09:32 20 able to cross examine our witnesses during the
:09:34 21 proceedings, we would respectfully request that that
:09:38 22 be denied as well.

:09:41 23 We think it's clear that the Board has
:09:44 24 discretion in determining the extent that a party can
:09:48 25 participate once granted intervention and we would

:09:51 1 defer to the Board on that. Thank you.

:09:53 2 CHAIRMAN:

:09:54 3 Thank you very much. PA Gaming
:09:58 4 Ventures.

:09:58 5 ATTORNEY FITZGERALD:

:09:59 6 Thank you, Mr. Chairman. Again, my
:10:00 7 name's Robert Fitzgerald. I'm here on behalf of PA
:10:04 8 Gaming Ventures. I don't think I need to repeat the
:10:06 9 arguments and the objections that we raised in our
:10:08 10 answer and objections that we filed on
:10:10 11 September 27th. Suffice it to say that it is our
:10:13 12 position that Sugarhouse should not be permitted to
:10:15 13 intervene in our licensing proceeding for three
:10:18 14 reasons. First, and I think that's a point that has
:10:20 15 been made in most of the objections and answers, the
:10:24 16 so called interests that Sugarhouse has identified.
:10:26 17 Primarily the purported interest in what they call a
:10:29 18 direct and competitive harm that another Philadelphia
:10:32 19 casino might cause can only be grounds for
:10:35 20 intervention if one is to disregard the plain
:10:40 21 language of the Gaming Act. There is and can be no
:10:43 22 dispute that the Gaming Act requires that two casinos
:10:45 23 be licensed in Philadelphia.

:10:47 24 Section 1304 requires that the next
:10:49 25 Category 2 License that this Board issue be in

:10:52 1 Philadelphia. Section 13 --- excuse me. That was
:10:56 2 Section 1307. Section 1304 is even more explicit.
:11:00 3 It says, two Category 2 License facilities and no
:11:03 4 more shall be located by the Board in the city of the
:11:05 5 first class.

:11:07 6 The General Assembly determined that a
:11:09 7 distribution of Gaming and Slot Machine Licenses
:11:14 8 allowing for two Category 2 casinos in Philadelphia
:11:17 9 was necessary to provide Philadelphia, the only city
:11:22 10 of the first class, its fair share of expected
:11:24 11 revenues and development. An unanticipated turn of
:11:28 12 economic events frustrated the first attempt to build
:11:30 13 and license that first Philadelphia casino. As a
:11:33 14 result Sugarhouse has, for the last years --- last
:11:37 15 six years, enjoyed what is effectively a monopoly
:11:41 16 position in the city.

:11:42 17 At its core we think the petition is
:11:44 18 merely an attempt by Sugarhouse to maintain the
:11:47 19 status quo, notwithstanding a clear intent of the
:11:50 20 legislature and the requirements of the law. This
:11:53 21 interest in denying the competition is admittedly
:11:56 22 very real and very personal to Sugarhouse, but it's
:12:00 23 not the legitimate direct, substantial or immediate
:12:04 24 interest that might justify intervention.

:12:06 25 I do want to be clear, the substantial

:12:09 1 direct and immediate is the standard. That's what's
:12:11 2 sets forth in the regulation. And all of the
:12:13 3 discussion about the federal standard and separation
:12:16 4 of powers, I just don't think it applies nor does the
:12:19 5 standard that might be set forth in the general rules
:12:21 6 of administrative practice and procedure. The rules
:12:24 7 governing this licensing proceeding and intervention
:12:27 8 in this proceeding are set forth clearly in Section
:12:30 9 441A.7Z.

:12:34 10 The second reason that Sugarhouse
:12:36 11 intervention should be denied is because it's simply
:12:39 12 not necessary. The issues that Sugarhouse claims
:12:43 13 that require its participation, the competitive harm
:12:46 14 that we talked about and the enforcement of the
:12:49 15 Gaming Act's ownership criteria will be fully
:12:52 16 presented, discussed and considered at PA Gaming
:12:55 17 Ventures' January 28th hearing even without
:12:58 18 Sugarhouse's participation. The Gaming Act requires
:13:01 19 nothing less from PA Gaming Ventures and this Board
:13:03 20 in that these issues receive a complete hearing.
:13:06 21 Thus to apply the standards set forth in the
:13:08 22 regulations, Sugarhouse's alleged interests will be,
:13:11 23 quote, adequately represented.

:13:14 24 Lastly, Sugarhouse made speculative
:13:17 25 pronouncements regarding the damage a second

:13:19 1 Philadelphia casino will do to the gaming market
:13:22 2 across the Mid-Atlantic and northeast sections of
:13:25 3 this country. At this hearing I need only note that
:13:29 4 Sugarhouse is simply wrong when it suggests giving a
:13:32 5 license to PA Gaming Ventures will fail to meet the
:13:38 6 Act's demands for revenue, development and job
:13:41 7 opportunity.

:13:44 8 I won't spend time on the details. At
:13:48 9 the January 28th hearing, PA Gaming Ventures will
:13:51 10 establish the economic benefits, the operational
:13:53 11 viability and the employment development that will
:13:56 12 result from its building of the Hollywood Casino.
:13:56 13 The salient point here is that Sugarhouse's fear that
:14:01 14 a second casino will result in the demise of gaming
:14:04 15 is not grounds for intervention. It's simply not
:14:07 16 true.

:14:08 17 If I may, I'd like to address a little
:14:10 18 more fully Sugarhouse's alleged interest in enforcing
:14:13 19 the ownership and multiple license limitations in
:14:16 20 Sections 1304 and 1330 of the Gaming Act. Sugarhouse
:14:20 21 directed its concerns to only some of the Applicants
:14:23 22 and PA Gaming Ventures, which is one of those
:14:26 23 Applicants. Again, I don't think it's necessary or
:14:28 24 appropriate at this hearing to show that PA Gaming
:14:30 25 Ventures satisfies the requirements to the Gaming Act

:14:30 1 on these issues.

:14:34 2 I will note, however, that I don't
:14:35 3 think, contrary to the representation of Mr.
:14:38 4 Donnelly, that this is a new issue that's going to be
:14:40 5 raised by Sugarhouse's intervention. As the Board
:14:43 6 may be aware, PA Gaming Ventures has been involved in
:14:46 7 a number of communications with the OEC to discuss
:14:49 8 its ownership structure, its compliance with 1304 and
:14:53 9 1330. PA Gaming Ventures will be attending a second
:14:56 10 pre-hearing conference with the Bureau of Licensing
:14:59 11 and the OEC on January 14th, and the role that these
:15:02 12 issues may play at the January 28th hearing will be
:15:06 13 discussed at that time.

:15:07 14 Most importantly PA Gaming Ventures
:15:09 15 will, of course, address its ownership structure at
:15:11 16 the hearing and will answer at the time any questions
:15:13 17 the Board and its staff might have. In sum, there
:15:17 18 have been and will be opportunities to fully address
:15:19 19 the meaning and application of Sections 1304 and
:15:23 20 1330. I would only state that the multiple license
:15:26 21 limitations were intended and has always been
:15:28 22 understood to allow for a Licensee to own one-third
:15:31 23 of another license. And PA Gaming Ventures' proposal
:15:34 24 adheres to that understanding and that Penn National
:15:37 25 Gaming, Inc. is only one-third owner of PA Gaming

:15:41 1 Ventures.

:15:41 2 Of course, there are many details
:15:43 3 pertaining to Penn's control or lack thereof of PA
:15:48 4 Gaming Ventures. On that point, the Board's
:15:50 5 clarifying regulations provide the contractual
:15:54 6 interests including those in management contracts are
:15:56 7 not to be considered when determining ownership
:15:58 8 interests. That's set forth in Sections 441A.17,
:16:02 9 paragraph G and I.

:16:04 10 Even so, PA Gaming Ventures and Penn
:16:08 11 have worked closely with the Board staff to explain
:16:11 12 the details of Penn and PA Gaming Ventures management
:16:14 13 and operations agreements and to explain how they do
:16:18 14 not conflict with the Act's requirements. The real
:16:20 15 point here, of course, is that there's nothing in
:16:22 16 Section 1304 or 1330 that provides a reason for
:16:26 17 Sugarhouse to be a party in the licensing proceeding.

:16:30 18 Clearly the issues of ownership and
:16:32 19 control have been and will be more than adequately
:16:36 20 considered. Sugarhouse can contribute nothing to
:16:39 21 those discussions or to the resolution of that issue,
:16:41 22 at least certainly identified nothing that it can
:16:43 23 contribute. Which brings me to the request for
:16:45 24 discovery.

:16:46 25 Sugarhouse has essentially made in its

:16:49 1 paper, and I think today, that it does not know if
:16:51 2 there is a problem with PA Gaming Venture's
:16:53 3 application. Therefore, asks leave to find out what
:16:56 4 it can, and this is the definition of a fishing
:17:00 5 expedition. As explained in our papers, discovery is
:17:03 6 unnecessary, inconsistent with and contrary to the
:17:06 7 governing regulations and unfairly prejudicial to PA
:17:06 8 Gaming Ventures.

:17:10 9 We ask for the request for discovery be
:17:12 10 denied and the hearing move forward. PA Gaming
:17:15 11 Ventures --- in conclusion PA Gaming Ventures opposes
:17:19 12 the request for intervention and ask that the Board
:17:22 13 exercise its discretion to deny the Petition to
:17:24 14 Intervene. Thank you.

:17:25 15 CHAIRMAN:

:17:25 16 Thank you, sir. EHL Local Gaming?

:17:25 17 ATTORNEY PITRE:

:17:33 18 Not represented here today.

:17:34 19 CHAIRMAN:

:17:35 20 Okay. Stadium Casino?

:17:35 21 ATTORNEY KOHLER:

:17:42 22 Good afternoon. I'll be very brief.

:17:44 23 As Mr. Donnelly mentioned, Stadium Casino does not
:17:47 24 oppose intervention. The reason for that is not that
:17:50 25 I necessarily disagree with Mr. Fitzgerald or Mr.

:17:55 1 Fabius, but having been much involved in these
:17:57 2 intervention cases that have been cited in the
:18:01 3 Appellate Courts we see too much exposure on appeal.
:18:04 4 And, you know, simply put we don't want to have to do
:18:09 5 this twice.

:18:09 6 With that said, intervention gives, you
:18:12 7 know, a very limited role under the Board's
:18:17 8 regulations and the statute. There's no right to
:18:19 9 discovery. There's no right to Cross Examination
:18:22 10 under the statute and, in fact, for our Intervenors
:18:25 11 there's no right to even really do a presentation.
:18:29 12 The right is to submit an expert report or written
:18:34 13 testimony.

:18:36 14 We ask the Commission that if they do
:18:40 15 grant intervention, that the participation should be
:18:44 16 limited. As to 1304 and 1330, which were also raised
:18:49 17 against Stadium Casino, whether or not Sugarhouse is
:18:55 18 adequately represented by the OEC and BIE, in general
:19:02 19 they certainly are on 1304 and 1330. As Mr. Donnelly
:19:08 20 may not be aware, those issues are addressed in great
:19:12 21 detail in the suitability reports and I'm sure are
:19:16 22 going to be addressed and represented well by OEC at
:19:21 23 the suitability --- at the licensing hearings. With
:19:24 24 that I'll rest.

:19:24 25 CHAIRMAN:

:19:26 1 Thank you very much. Okay. Tower
:19:30 2 Entertainment.

:19:30 3 ATTORNEY FABIUS:

:19:32 4 Last but not least. Last and least.
:19:43 5 I'll refrain from repeating points of my colleagues.
:19:47 6 We certainly agree with respect to the conditions if
:19:49 7 intervention is granted. I'd like to focus why Tower
:19:55 8 Entertainment is in a unique position. Market
:19:58 9 competition in and of itself is not sufficient
:20:00 10 grounds to establish a substantial, immediate, direct
:20:02 11 interest required for intervention.

:20:04 12 Mr. Fitzgerald already walked through
:20:06 13 1304 and 1307 requiring a second Category 2 License
:20:10 14 facility. The Board is presently in litigation in
:20:12 15 which Tower Entertainment is an intervenor. It's at
:20:15 16 Commonwealth Court where there were oral arguments in
:20:18 17 December. Chief Counsel, Doug Sherman, argued at
:20:21 18 that hearing in front of Commonwealth Court that even
:20:23 19 if all five Applicants were found --- were unable to
:20:26 20 demonstrate the eligibility of suitability the Board
:20:29 21 under 1304 and 1307 would have to put the
:20:32 22 applications back out for bid and attempt to
:20:35 23 effectuate the mandate in 1304 and 1307.

:20:39 24 The significance of that is to the
:20:41 25 extent Sugarhouse feels it's actually injured, the

:20:44 1 correct forum is General Assembly and the text of
:20:48 2 Sections 1304 and 1307. You know, General Assembly
:20:52 3 expands small games of chance, and did not touch 1304
:20:55 4 and 1307, leaving two Licensees in the City of
:20:59 5 Philadelphia.

:21:01 6 A direct interest, which Mr. Donnelly
:21:05 7 concedes he has to demonstrate. A direct interest
:21:08 8 means the matter complained of caused harm to the
:21:12 9 party's interests, i.e., there is a causal connection
:21:14 10 between the harm and the violation of law. To the
:21:16 11 contrary, there's no violation of law. The law says
:21:19 12 there shall be two Category 2 facilities in the City
:21:23 13 of Philadelphia.

:21:24 14 But more importantly the causal
:21:27 15 connection is the statute, not the present licensing
:21:31 16 proceeding. So, there's no causal connection between
:21:34 17 the perceived injury and the proceeding in which
:21:37 18 they're seeking intervention. Therefore they can't
:21:39 19 substantiate a direct interest.

:21:41 20 I would respond to two specific points
:21:45 21 as well. Mr. Donnelly says there are three
:21:49 22 Applicants for which he has explicitly contested
:21:53 23 eligibility, Tower Entertainment is not one of them.
:21:56 24 Tower Entertainment's ownership is not a secret.
:21:56 25 It's on the Board's website, it's Bart Blatstein.

:21:59 1 Bart Blatstein does not have any ownership interest
:22:01 2 in any other casino in the Commonwealth of
:22:04 3 Pennsylvania.

:22:05 4 There's a minority interest under one
:22:08 5 percent of Mr. Robert Bogel (phonetic). He does not
:22:11 6 have any ownership interest in any casino in the
:22:14 7 Commonwealth of Pennsylvania. There is no 1304 or
:22:17 8 1330 issue with Tower Entertainment. There is no
:22:21 9 eligibility issue raised in Sugarhouse's petitions.
:22:24 10 That puts them in stark contrast to each other
:22:28 11 Petition to Intervene that the Board has granted in
:22:30 12 prior licensing applications.

:22:32 13 Parx obtained intervention status in
:22:35 14 Valley Forge contesting Valley Forge's eligibility as
:22:37 15 well as established resort hotel. Mountain View
:22:41 16 Thoroughbred Racing Association obtained intervention
:22:42 17 status in Penn Harrah's Gaming in 2010 on the grounds
:22:45 18 that Penn Harrah's Gaming was not eligible for a
:22:49 19 Category 3 License. And Meadows obtained
:22:49 20 intervention status in the Application of Woodlands
:22:52 21 Fayette, LLC on the grounds that Woodlands Fayette,
:22:56 22 LLC was not a well established resort hotel.

:23:00 23 They have no eligibility argument.
:23:02 24 They have no interest in Tower Entertainment and even
:23:04 25 if the Board were to grant intervention in the other

:23:06 1 applications we would ask that the Board deny an
:23:10 2 intervention in Tower Entertainment's application.

:23:10 3 Thank you.

:23:10 4 CHAIRMAN:

:23:10 5 Thank you.

:23:10 6 ATTORNEY DONNELLY:

:23:16 7 Mr. Chairman, may I reply one minute?

:23:17 8 CHAIRMAN:

:23:18 9 Tell you what, why don't we get the OEC
:23:22 10 first and then we'll give you one minute?

:23:22 11 ATTORNEY MILLER:

:23:27 12 Trying to step on my toes again. Mr.
:23:29 13 Chairman and members of the Board, we really don't
:23:31 14 have a dog in this fight other than to make sure that
:23:34 15 the Board is aware of our position with regard to the
:23:37 16 regulations and Sugarhouse's compliance with the
:23:39 17 same. As is explained in our answer and objection,
:23:45 18 we believe that Sugarhouse has simply not met the
:23:47 19 requirements for intervention in a licensing hearing.
:23:49 20 And we don't believe it's an abuse of the Board's
:23:52 21 discretion to deny the petition. However, if the
:23:54 22 Board were to grant intervention to Sugarhouse we ask
:23:57 23 that the Board not give them any competitive
:24:00 24 advantage over the other Applicants. Providing
:24:04 25 discovery to Sugarhouse, providing Sugarhouse the

:24:07 1 means of obtaining documents which they're not
:24:14 2 entitled would give them such a competitive
:24:16 3 advantage, and we ask that if the Board were to use
:24:19 4 their discretionary powers to grant intervention that
:24:22 5 they deny the right to discovery or any other method
:24:24 6 of obtaining a competitive advantage by Sugarhouse.
:24:29 7 Thank you.

:24:29 8 CHAIRMAN:

:24:30 9 Mr. Donnelly.

:24:30 10 ATTORNEY DONNELLY:

:24:31 11 One minute.

:24:31 12 CHAIRMAN:

:24:31 13 One minute.

:24:31 14 ATTORNEY DONNELLY:

:24:32 15 In our written statement we did address
:24:35 16 a direct, substantial, immediate standard. We did
:24:38 17 not --- although I disagree I think the standard is
:24:41 18 direct. We addressed it and I think we meet it.
:24:44 19 Number two, the Board does have discretion, I think,
:24:47 20 but it would be an abuse of discretion and Bensalem
:24:52 21 makes very clear it would be an abuse of discretion
:24:54 22 to turn down this application. Number three, the
:24:56 23 argument that the law mandates that this second ---
:25:04 24 this license be reissued, that's in litigation right
:25:05 25 now. And that's an opinion that's held by persons.

:25:08 1 But other people have different opinions, so that ---
:25:10 2 we're not commenting on that litigation. We do know
:25:10 3 it's in litigation.

:25:14 4 To the extent that Penn says that we
:25:16 5 don't believe that there's a problem with their
:25:19 6 application, that's not correct. We do believe
:25:22 7 there's a problem with their thing. And then finally
:25:24 8 just close up, again, I come back to the case law I
:25:27 9 think which was very clear that we've met the
:25:30 10 standard for intervention.

:25:32 11 CHAIRMAN:

:25:32 12 All right. Thank you, sir. Questions
:25:34 13 from the Board? Ex-Officio members? Thank you,
:25:39 14 ladies and gentlemen. The matter's now closed. I
:25:43 15 note it's 1:25. The Board will take a recess why
:25:52 16 don't see say 'til 2:15. And when we come back we'll
:25:56 17 begin today's public meeting. So we're in recess
:26:02 18 until 2:15. Thank you all.

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HEARING CONCLUDED

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CERTIFICATE

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I hereby certify that the foregoing proceedings,
hearing held before Chairman Ryan was reported by me
on 1/8/2014 and I Lacey C. Gray read this transcript
and that I attest that this transcript is a true and
accurate record of the proceeding.

Lacey C. Gray

Court Reporter

:27:55