

**STATE OF FLORIDA
DEPARTMENT OF BUSINESS & PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING**

PPI, INC., d/b/a/ The Isle Casino & Racing at
Pompano Park,

Petitioner,

and

WEST FLAGLER ASSOCIATES, LTD, and
**GULFSTREAM PARK RACING
ASSOCIATION, INC.**, d/b/a/ Gulfstream Park
Racing & Casino,

Intervenors,

v.

**DEPARTMENT OF BUSINESS &
PROFESSIONAL REGULATION, DIVISION
OF PARI-MUTUEL WAGERING,**

Respondent.

CASE No. 2011005602

VW 2011-038

FINAL ACTION ON PETITION FOR VARIANCE

The Department of Business & Professional Regulation, Division of Pari-Mutuel Wagering (Division), files this final action on PPI, Inc.'s "Petition for Variance," pursuant to Section 120.542, Florida Statutes.

ISSUE

1. Petitioner PPI, Inc., requests that it be granted a variance from the Rule 61D-14.073(1), Florida Administrative Code (F.A.C.), that requires each Florida licensed slot machine licensee to monthly manually read all slot machine meters referenced in Rule 61D-14.042(1)-(2), F.A.C., and reconcile those readings with the information on the facility based monitoring system (FBMS). Specifically, Petitioner requests a variance to conform its practices

Rec'd 5-13-11 BGS

to proposed amended Rule 61D-14.073(1), until that rule takes effect, which rule would require each licensed slot machine facility to record 25% of its slot machine meters each quarter and reconcile them with information in its FBMS.

FACTS

2. Petitioner is a Florida licensed slot machine facility under Chapter 551, Florida Statutes.

3. Pursuant to Section 551.103, Florida Statutes, the Division is authorized to regulate slot machine gaming and generally administer Chapter 551, Florida Statutes.

4. On February 2, 2011, Petitioner filed a "Petition for Variance" (Petition) from the provisions of Rule 61D-14.073, F.A.C., subsection (1) of which rule requires that each Florida licensed slot machine licensee monthly manually read all slot machine meters referenced in Rule 61D-14.042(1)-(2), F.A.C., and reconcile those readings with the information in the facility's FBMS. Petitioner sought the variance on the grounds of substantial hardship because the Division has already filed for adoption proposed amended Rule 61D-14.073 (along with eleven other slot machine proposed rules), subsection (1) of which would relax the meter reading requirement to require that each licensed slot machine facility record only 25% of its slot machine meters each quarter and reconcile them with information in its FBMS.

5. Notice of the Petition was published on February 18, 2011, in Vol. 37, Issue No. 7, of the Florida Administrative Weekly (FAW). The notice required that any affected person file a petition to intervene within no more than 14 days of the FAW publication.

6. On February 25, 2011, Gulfstream Park Racing Association, Inc. (Gulfstream), a Florida licensed slot machine facility, filed a timely petition to intervene seeking the same relief as Petitioner. Similarly, on February 28, 2011, West Flagler Associates, Ltd. (West Flagler),

also a Florida licensed slot machine facility, likewise filed a timely petition to intervene also seeking the same relief as Petitioner.

7. The Division is proceeding expeditiously to complete the adoption of proposed amended Rule 61D-14.073, as well as with the other proposed slot machine wide-area progressive rule amendments, and place them into effect as soon as possible.

CONCLUSIONS OF LAW

8. Section 551.103(1), Florida Statutes, provides in relevant part:

(1) The division shall adopt ...all rules necessary to implement, administer, and regulate slot machine gaming as authorized in this chapter. Such rules must include:

(d) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machine gaming that allow the division ... to audit the operation, financial data, and program information of a slot machine licensee, as required by the division ..., and provide the division ... with the ability to monitor, at any time on a real-time basis, wagering patterns, payouts, tax collection, and compliance with any rules adopted by the division for the regulation and control of slot machines operated under this chapter. Such continuous and complete access, at any time on a real-time basis, shall include the ability of ... the division ... to suspend play immediately on particular slot machines if monitoring of the facilities-based computer system indicates possible tampering or manipulation of those slot machines or the ability to suspend play immediately of the entire operation if the tampering or manipulation is of the computer system itself.

(e) Procedures for regulating, managing, and auditing the operation, financial data, and program information relating to slot machine gaming that allow the division ... to audit the operation, financial data, and program information of a slot machine licensee, as required by the division ..., and provide the division ...with the ability to monitor, at any time on a real-time basis, wagering patterns, payouts, tax collection, and compliance with any rules adopted by the division for the regulation and control of slot machines operated under this chapter. ...

9. Subsection (1) of Rule 61D-14.073, F.A.C., currently provides:

(1) Accounting department employees shall at least once a month manually read and record all meters referenced in subsections 61D-14.042(1)-(2), F.A.C., and reconcile those readings with the information on the facility based monitoring system.

10. Proposed subsection (1) of amended Rule 61D-14.073, F.A.C., will provide:

(1) Accounting department employees shall:

(a) Manually read and record at least 25 percent of all facility slot machine electronic meters each quarter until all facility slot machine meters are read as required in Rule 61D-14.042(2), F.A.C., by the end of each calendar year; and

(b) Reconcile the readings obtained pursuant to paragraph (1)(a) above with the meter information for each of the corresponding slot machine meter records on the facility based monitoring system

11. Section 120.542, Florida Statutes, provides in relevant part:

(1) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship or would violate principles of fairness.

(2) Variances and waivers shall be granted when the person subject to the rule demonstrates that the purpose of the underlying statute will be or has been achieved by other means by the person and when application of a rule would create a substantial hardship For purposes of this section, "substantial hardship" means a demonstrated economic, technological, legal, or other type of hardship to the person requesting the variance or waiver.

(5) A person who is subject to regulation by an agency rule may file a petition with that agency, with a copy to the committee, requesting a variance or waiver from the agency's rule.

12. A "Variance" is defined in Section 120.52(21), Florida Statutes, as "a decision by an agency to grant a modification to all or part of the literal requirements of an agency rule to a person who is subject to the rule."

ORDER

WHEREFORE, it is hereby ORDERED:

1. Gulfstream's and West Flagler's petitions to intervene shall be and are hereby GRANTED.

2. In light of the Division's present rulemaking, the request for a variance from the requirements of current Rule 61D-14.073(1), F.A.C., shall be and is hereby GRANTED until such time as the present rule is amended or replaced.

DONE AND ORDERED this 5 day of May, 2011, in Tallahassee, Florida.



MILTON CHAMPION, DIRECTOR
Division of Pari-Mutuel Wagering
Department of Business & Professional Regulation
1940 North Monroe Street
Tallahassee, Florida 32399-1035

NOTICE OF RIGHT TO APPEAL UNLESS WAIVED

Unless expressly waived, any party substantially affected by this final order may seek judicial review by filing an original Notice of Appeal with the Clerk of the Department of Business and Professional Regulation, and a copy of the notice, accompanied by the filing fees prescribed by law, with the clerk of the appropriate District Court of Appeal within thirty (30) days of rendition of this order, in accordance with Rule 9.110, Florida Rules of Appellate Procedure, and Section 120.68, Florida Statutes.

CERTIFICATE OF SERVICE

I hereby certify this 12th day of May, 2011, that a true copy of the foregoing "Final

Action" has been provided by U.S. Mail to:

JACK SKELDING, JR., ESQ.
Brewton Plante, P.A.
225 South Adams Street, Suite 250
Tallahassee, Florida 32301-1709

JOHN M. LOCKWOOD, ESQ.
Gunster, Yoakley & Stewart, P.A.
215 South Adams Street, Suite 601
Tallahassee, Florida 32301-1720

BRIAN A. NEWMAN, ESQ.
JOSHUA D. AUBUCHON, ESQ.
Pennington, Moore, Wilkinson, Bell & Dunbar, P.A.
Post Office Box 10095
Tallahassee, Florida 32302-2095

for: 
RONDA BRYAN, AGENCY CLERK
Department of Business & Professional Regulation

Copy furnished to:

Michael A. Martinez, Deputy General Counsel
Joseph M. Helton, Jr., Chief Attorney, Division of Pari-Mutuel Wagering

Add'l copies furnished by email to:

Jack Skelding (jskelding@reuphlaw.com)
John Lockwood (jlockwood@gunster.com)
Brian Newman (brian@penningtonlaw.com)
Josh Aubuchon (josh@penningtonlaw.com)

FILED	
Department of Business and Professional Regulation	
Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	2/2/2011
File #	

STATE OF FLORIDA
DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION
DIVISION OF PARI-MUTUEL WAGERING

IN RE:

PETITION FOR VARIANCE FROM
RULE 61D-14.073, F.A.C.

VW 2011-038

PETITION FOR VARIANCE

COMES NOW Petitioner, PPI, Inc., d/b/a The Isle Casino and Racing at Pompano Park, by and through its undersigned counsel, and files this Petition for Variance from Rule 61D-14.073, F.A.C., and as grounds therefore would show:

1. Petitioner is The Isle Casino and Racing at Pompano Park, 1800 SW 3rd Street, Pompano Beach, FL 33069, (954) 972-2000 (office), and (954) 972-9970 (facsimile).
2. Counsel for the Petitioner is Jack M. Skelding, Jr. of Jack M. Skelding, Jr., P.L., P.O. Box 669, Tallahassee, FL 32302, 850-222-7718 (Office), and (850) 222-8222 (facsimile).
3. The applicable rule is Rule 61D-14.073, F.A.C.
4. The statute the rule is implementing is Section 551.103(1)(d), Florida Statutes.
5. The type of action requested is a variance from the current version of Rule 61D-14.073, F.A.C., with authorization to follow proposed Rule 61D-14.073, F.A.C.
6. The purpose of Rule 61D-14.073, F.A.C., is to have all slot machine meters read and reconciled with the facility based monitoring system. The current version of the rule requires the Petitioner to manually read and record all meters referenced in subsections 61D-14.042(2), F.A.C., and reconcile those readings with the information on the facility based monitoring system monthly. Proposed Rule 61D-14.073, F.A.C., would

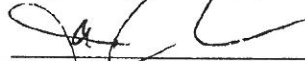
require the Petitioner to manually read and record at least 25 percent of all facility slot machine electronic meters each quarter until all facility slot machine meters are read by the end of each calendar year; and to reconcile the readings with the facility based monitoring system. Petitioner has 1,452 slot machines and each machine has four (4) meters for a total of 5,808 readings. It is a substantial hardship to manually read, record and reconcile all meters monthly.

7. The public purpose behind Section 551.103(1)(d), Florida Statutes, can be accomplished by following proposed Rule 61D-14.073, F.A.C. which requires that 25% of all meters be read and reconciled each quarter until all meters have been read and reconciled in a calendar year. Quarterly meter readings instead of monthly readings would alleviate the substantial hardship of monthly meter readings on Petitioner.

8. A variance would be temporary until proposed Rule 61D14-.073, F.A.C. becomes a final rule.

Wherefore Petitioner requests that it be granted a variance to Rule 61D14.073, F.A.C., and be authorized to follow proposed Rule 61D14.073, F.A.C.

Respectfully submitted,



Jack Skelding Jr.

Fla. Bar No.: 0134704

Jack Skelding Jr., P.L., Of Counsel

BREWTON PLANTE, P.A.

jskelding@bplawfirm.net

225 South Adams Street, Suite 250

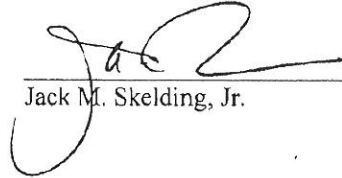
Tallahassee, FL 32301

Phone: (850) 222-7718

Fax: (850) 222-8222

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Variance was sent via U. S. Mail to Mary Polombo, Clerk, Department of Business and Professional Regulation, Division of Pari-mutuel Wagering, 1940 North Monroe Street, Tallahassee, Florida 32302-0551 this 1st day of February, 2011.



Jack M. Skelding, Jr.

Copies to:

Via U.S. Mail

Joint Administrative Procedures Committee
Room 120
The Holland Building
Tallahassee, Florida 32399-1300

Via E-Mail

Milton Champion, Director
Division of Pari-mutuel Wagering

Joe Helton, General Counsel
Division of Pari-mutuel Wagering

BREWTON PLANTE, P.A.

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JACK M. SKELDING JR., P.L., OF COUNSEL
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February 1, 2011

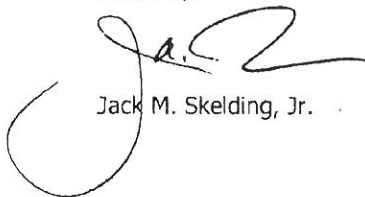
Ms. Mary Polombo, Clerk
Department of Business and Professional Regulation
Division of Pari-Mutuel Wagering
1940 North Monroe Street
Tallahassee, 1035FL 32399-

RE: The Isle Casino and Racing at Pompano Park - Petition for Variance from
Rule 61D-14.073, F.A.C.

Dear Ms. Polombo:

Enclosed please find the Petition for Variance for filing in the above reference matter.

Sincerely,



Jack M. Skelding, Jr.

JMSjr/jgw

RECEIVED
2011 FEB -2 A 10-30
DIVISION OF
PARI-MUTUEL WAGERING

JACK M. SRELDING, JR.
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