

COMMONWEALTH OF PENNSYLVANIA

GAMING CONTROL BOARD

\* \* \* \* \*

IN RE: C H R CORP., D/B/A RUTTER'S - MOTION TO  
CONSIDER NEW VGT LOCATIONS

\* \* \* \* \*

BEFORE: MEMBERS OF THE BOARD:

DAVID M. BARASCH, CHAIRMAN

Obra S. Kernodle, IV

Sean Logan

T. Mark Mustio

Merritt C. Reitzel

Dante Santoni, Jr.

Denise J. Smyler

EX-OFFICIO MEMBERS/DESIGNEES IN ATTENDANCE:

Jennifer Langan, Esquire, Designee,  
Department of Treasury

Christin Heidingsfelder, Designee,  
Department of Revenue

HEARING: Wednesday, March 11, 2020, 10:12 a.m.

LOCATION: Strawberry Square Complex, Second Floor  
Harrisburg, PA 17101

Reporter: Derek Richmond

Any reproduction of this transcript is prohibited  
without authorization by the certifying agency.

A P P E A R A N C E S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CYRUS PITRE, ESQUIRE

Chief Enforcement Counsel

SARAH KOLESAR, ESQUIRE

Assistant Chief Counsel

Counsel for Office of Enforcement Counsel

CHRISTOPHER REED, ESQUIRE

CHR Corp.

2295 Susquehanna Trail

York, PA 17401

Counsel for CHR Corp., d/b/a Rutter's

SARAH C. DOTZEL, ESQUIRE

McNees, Wallace & Nurick, LLC

100 Pine Street

Harrisburg, PA 17101

I N D E X

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

OPENING REMARKS

By Chairman

4

PRESENTATION

By Attorney Reed

4 - 10

By Attorney Dotzel

10 - 14

By Attorney Reed

14 - 17

QUESTIONS

By Chairman

17 - 18

STATEMENT

By Attorney Kolesar

18 - 22

DISCUSSION AMONG PARTIES

22 - 24

STATEMENT

By Attorney Kolesar

24 - 26

QUESTIONS

By Board

26 - 31

DISCUSSION AMONG PARTIES

31 - 32

## P R O C E E D I N G S

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

-----  
CHAIRMAN: Can we have the  
representatives come forward, please?

Are there any - is there anybody who's  
going to be speaking today who is not an attorney?

ATTORNEY REED: No.

CHAIRMAN: I just then would ask that  
anybody's that going to speak today, please state and  
spell your name for the court reporter prior to your  
presentation.

Petitioners may begin.

ATTORNEY REED: Thank you, Mr.  
Chairman. Good morning, Board members.

Christopher Reed,  
C-H-R-I-S-T-O-P-H-E-R, R-E-E-D. I'm General Counsel  
for the Applicant. With me today is Sarah Dotzel,  
Associate General Counsel for the Applicant.

As you mentioned in summarizing this  
proceeding, there are two questions before you today,  
one on policy -.

CHAIRMAN: You need to lean into the  
microphone. We're not quite getting that.

ATTORNEY REED: The two questions  
before you today on a policy level. The first being

1 the acceptability of projections regarding diesel  
2 sales for a location that has no diesel sales. And  
3 second being at what point can the Board take action  
4 in the development phase of a new - newly or under-  
5 construction establishment location.

6           With respect to the projections, I  
7 think it's noteworthy first that both the Act and the  
8 regs clearly state that it is a requirement for an  
9 establishment to sell 50,000 gallons of diesel per  
10 month for the previous 12 months or project. There's  
11 no qualification in the language in the Act or regs  
12 regarding what projections mean.

13           So, there isn't a - have a history on  
14 a certain number of gallons and make a projection  
15 going forward. There's no qualification or must wait  
16 three months before a projection can be made. It's  
17 simply a projection.

18           It's Applicant's position that the  
19 language is meant to encompass newly-constructed  
20 locations to allow a qualifying location - otherwise  
21 qualifying location to project those diesel gallons  
22 going forward.

23           There are many factors that influence  
24 diesel sales beyond just previous history. Those  
25 include brand names, the addition or loss of a

1 competitor, the addition or loss of a key customer of  
2 an establishment.

3 Another factor could be road work  
4 affecting the location. The reason I highlight what  
5 the implications and factors are that affect diesel  
6 sales is that historical projections alone are not the  
7 only basis or historical sales alone are not the only  
8 basis that should be relied upon in a projection.  
9 Certainly a location that loses its key customer will  
10 have a significant drop in diesel sales, even though  
11 they may well exceed diesel sales for the last decade.

12 The burden to meet diesel sales and  
13 the risk for failure to meet diesel sales should rely  
14 and rest on the Applicant. It's the Applicant's  
15 responsibility to project in good faith to the Board.

16 Regarding CHR specifically,  
17 projections that are submitted to the Board are the  
18 same projections that are utilized in pro forma and  
19 lending projections. Certainly an applicant that's  
20 relying or making statements to the Board are the same  
21 statements and projections to a lending institution  
22 has a significant penalty if it were to misstate or  
23 fraudulently represent the projections to the Board as  
24 well as to a lending institution.

25 CHAIRMAN: I'll just ask a clarifying

1 question. That last paragraph, is that a statement  
2 about Rutter's approach or are you making a generic  
3 statement?

4 ATTORNEY REED: No. To - that's  
5 specifically regarding Rutter's projections.

6 CHAIRMAN: So, you're saying that  
7 whatever projections you may make to us, you're not  
8 dealing with the substance here? This is a procedural  
9 matter. That the projections you will be making to  
10 us, which you're stating on the record, will be the  
11 same projections that you have made or will be making  
12 to lending institutions?

13 ATTORNEY REED: Correct.

14 When - when financing a construction  
15 project of a new location, a lender wants to see  
16 forecasting for what potential sales are. Those  
17 projections that we utilize for the Board are the same  
18 projections for sales that we utilize with lenders.

19 CHAIRMAN: Okay.

20 I just wanted to get that on the  
21 record.

22 I'm sorry. Please proceed.

23 ATTORNEY REED: Uh-huh (yes). Further  
24 highlighting, you know, the good faith of the  
25 Applicant, and any applicant generally, CHR has

1 reviewed its diesel sales historically for previously-  
2 submitted applications, and on at least four occasions  
3 has withdrawn applications for establishment licenses  
4 because it cannot, in good faith, project meeting the  
5 diesel sales numbers. Even for one location where  
6 arguably it did qualify, a customer was lost in that  
7 region, and on a good-faith basis could not project  
8 continuing to meet those sales.

9           That - that would have been a poor  
10 business decision for CHR or any applicant to project  
11 sales in order to obtain a license for one year and  
12 then only have that license revoked for failure to  
13 meet the diesel sale number. The cost involved to the  
14 establishment is significant. There is a structural  
15 renovation required that is borne by the applicant.  
16 If - additionally, there's loss of sales floor when  
17 you're rearranging an interior building.

18           Projecting for one year of a store's  
19 revenue with VGT - to have VGT would not cover the  
20 costs for constructing any type of nonreimbursable  
21 structural expense - excuse me, structural expense or  
22 the loss of floor sales, potentially.

23           Further, if an applicant generally was  
24 providing false information to the Board or misleading  
25 information regarding projections, that would tarnish

1 their name in the industry. And certainly an  
2 establishment cannot host VGTs without a terminal  
3 operator. And it's likely that any terminal operator  
4 would be unwilling to work with an establishment who  
5 has been found to provide fraudulent information to  
6 the Board with respect to its diesel projections.

7           The terminal operators additionally  
8 take on expense relative to placing machines,  
9 servicing machines and reimbursing nonstructural  
10 buildouts. The revenue received by a terminal  
11 operator in one year would not be covered by a single  
12 year's worth of revenue.

13           Additionally, regarding, you know, the  
14 acceptability of a projection is who is the  
15 appropriate person to make a projection on behalf of  
16 an applicant?

17           It is Applicant's position that that  
18 person should be someone with knowledge, skill and  
19 experience in making the diesel projections as well as  
20 controlling product offerings at an establishment  
21 location. That individual for Applicant specifically  
22 would be the Director of Fuels. That individual is  
23 responsible for identifying and recommending all fuel  
24 products that are offered at a Rutter's location.

25           Additionally, they are responsible for

1 pricing all products, including diesel. And finally  
2 they are directly involved in performing analysis of  
3 traffic counts, truck counts, when developing pro-  
4 forma projections, both for diesel volumes as well as  
5 all product offering volumes for affidavits and  
6 projections to the Board as well as the lending  
7 institutions.

8                   And certainly a - a projection can be  
9 based upon comparable sites. For CHR specifically  
10 affidavits include identifying comparable sites based  
11 upon traffic count, geographic region and the product  
12 offerings aside from commercial diesel that are  
13 utilized to attract commercial vehicles. Those are  
14 the underlying bases for how projections are made by  
15 CHR and how the Board can rely upon a projection  
16 utilizing those same type of factors.

17                   With respect to when the Board should  
18 take action on a new store development, I would turn  
19 it over to Sarah Dotzel.

20                   ATTORNEY DOTZEL: Good morning.

21                   My name's Sarah Dotzel. S-A-R-A-H,  
22 D-O-T-Z-E-L.

23                   So, with regard to how far along  
24 truck-stop development should be in order to get Board  
25 approval, we believe that the Board should be able to

1 provide conditional approval during truck-stop  
2 development prior to when an establishment is open.  
3 And then final approval, we believe, can be granted on  
4 the day of opening such an establishment.

5           We think that this makes sense because  
6 conditional approval can be granted at the point of  
7 development when an initial inspection can be  
8 completed. On the initial inspection, the  
9 Investigator looks to confirm whether there are  
10 dedicated diesel islands, whether there's enough room  
11 for 20 commercial parking spots, whether there's a  
12 convenience store, three acres of land, whether that  
13 land is owned by the Pennsylvania Turnpike or not,  
14 whether the establishment is licensed as a lottery  
15 retailer. And also they can take a measurement of the  
16 VGT room, so - to confirm whether or not it matches  
17 our plans.

18           We think that this could be done  
19 during the development phase, because all of those  
20 items can be confirmed. Specifically for Rutter's we  
21 think this can happen in about two-and-a-half months  
22 prior to opening.

23           I'll turn your attention to our  
24 presentation. The - what's on the screen right now is  
25 the exterior plan that we submitted to PGCB. And in

1 order to get conditional licensure, an Inspector comes  
2 out and kind of confirms that everything we set in our  
3 plan is in existence and going to be put in place.

4 I mentioned that the Inspector will  
5 confirm whether we have dedicated diesel islands.  
6 Provide - prior to open - you know, we will already  
7 have infrastructure in place that identifies that we  
8 have dedicated diesel islands. This picture was taken  
9 about two-and-a-half months prior to opening of one of  
10 our stores that has already been licensed. And you  
11 can - the Investigator will be able to identify that  
12 there are diesel islands at the site.

13 So, this picture taken shows that the  
14 canopies are up. Also at this same time period you  
15 can see that there are diesel tanks in the ground.  
16 So, even though the store is not open, the  
17 Investigator will be able to confirm that item. This  
18 is necessary for conditional licensure.

19 Similarly, the Investigator will be  
20 able to measure the parking lot and confirm that there  
21 is space for 20 spots. This picture, taken about  
22 three-and-a-half months prior to open, shows - you can  
23 see up in the top right, it's not the clearest, but  
24 that's our space for parking at this site.

25 Three-and-a-half months out, not quite

1 ready, there's no curbing in, but there's grading and  
2 gravel down, but at two-and-a-half months out we have  
3 all the curbing in such that an Inspector can come out  
4 and get those measurements.

5                   With regard to whether there's a  
6 convenience store, three months out the infrastructure  
7 is there. That can be confirmed by an Investigator.

8                   This slide shows our interior design.  
9 So, this is what we submitted to PGCB at that  
10 comparable store or at that store that we have now  
11 been licensed. And this picture shows three months  
12 prior to open that - that this store is already being  
13 - being constructed. There's walls.

14                   And it's a little bit difficult to see  
15 here, but this is what we have. In that back corner  
16 behind where - the individuals on the left, that is  
17 our gaming room at that site. And the walls are  
18 already up and could be measured. The room and area  
19 could be measured by an Inspector. The same view. At  
20 two-and-half months out could also be measured.

21                   With regard to whether the land is  
22 three acres and not owned by the Pennsylvania  
23 Turnpike, an Investigator could confirm that via our  
24 deed. We can also get our lottery license about three  
25 months prior to open.

1           So, for all these reasons we think  
2 that conditional licensure can be issued prior to when  
3 a store is opened, because all of the criteria that  
4 need to be confirmed can be confirmed before open.

5           With regard to final inspection, we  
6 think that it could be granted or this can be  
7 completed the date an establishment opens. At a final  
8 inspection, the - a BIE Inspector confirms diesel  
9 total at their starting points, that the VGT drawing  
10 matches what the room actually is. He confirms that  
11 problem-gambling placards are on the ATM and on the  
12 TRU machine, there's a surveillance camera feed and  
13 conducts a manager interview. And we've done these  
14 final inspections on our opening date before and all  
15 of these criteria that need to be confirmed can be on  
16 that date.

17           And for those reasons we think that  
18 it's very feasible that all approvals can be granted  
19 such that an establishment can be opened with VGT.  
20 I'm going to turn it back over to Chris, unless  
21 there's any questions.

22           ATTORNEY REED: I want to reinforce  
23 that Applicant is not asking for special treatment for  
24 itself. There's certainly a question regarding what  
25 is an appropriate projection. And we've come to the

1 Board to hopefully get clarification on whether a new  
2 store can open based on projections alone. The reason  
3 why Applicant was - there's multiple reasons.

4           On our opening date, and we have had -  
5 and we have had openings where the VGT room is all but  
6 completed, you only get one first impression with your  
7 customers. Our customers show up. There's a room  
8 that's close to being done, but there's no machines in  
9 it. There's no security cameras in it yet, because  
10 until we have conditional licensure or are expecting  
11 final licensure, it wouldn't make sense for a terminal  
12 operator to invest any money in placing a machine if  
13 they would be permitted to place a machine or placing  
14 infrastructure necessary for any type of data feed or  
15 security cameras. And that leads to a potential  
16 inconvenience to our customers.

17           While a store is operating, once  
18 approvals are finally granted, construction has to  
19 almost recommence on that room alone. So, we need to  
20 place a plastic if the ceilings are going to be  
21 altered. Security cameras need to be placed. We need  
22 to make sure that the feeds are then running to the  
23 security monitor that is over the checkout area, which  
24 at times can require somebody being up on a ladder  
25 overtop of where our customers are.

1           So, it's - while that seems like a  
2 minimal inconvenience, we believe that what we've laid  
3 out to you is that it's possible for a store to open  
4 with VGT.

5           And finally, you know, with regard to  
6 opening, we've seen that stores that are operating for  
7 at least three months, they see significant revenue  
8 and then that revenue only increases after six months.  
9 We - Applicant currently has at least eight locations  
10 that have been open and operating for three months.  
11 And in those three months the average revenue for all  
12 of those locations is approximately \$213,000. Now  
13 that's total revenue being broken up, as per the Act,  
14 but it's split between the state and the terminal  
15 operating the establishment.

16           The locations that have been operating  
17 for at least six months, they're seeing average  
18 revenue over half a million dollars. So, there is a  
19 quick ramp-up from three months to six months in  
20 revenue. And that we've seen in locations that have  
21 been open longer than six months that that ramp-up  
22 only continues.

23           It's our belief that's in the best  
24 interest of every party receiving revenue that  
25 locations be able to open as soon as possible. And in

1 the case of a new location that would be on their  
2 opening day.

3                   CHAIRMAN: Before I turn it to  
4 Enforcement Counsel, I - I just - I have one  
5 clarifying question. You used the phrase - when you  
6 talk about projections, you used the phrase fraud.  
7 And I'm going to assume -. Well, I shouldn't. It -  
8 it's not your position that the only basis for  
9 rejecting - either rescinding a license someplace down  
10 the road or rejecting a license is whether it was  
11 fraudulent. It could just be wrong. Right?

12                   If you made a projection, you're going  
13 to have a certain amount of - of gallonage in good  
14 faith and it turns out you're not close -. I'm trying  
15 to understand your position. If you get to the end -.

16                   I'll use a simple example. If you get  
17 to the end of the first year and due to no fraud or  
18 anything if you're not anywhere close to the - the  
19 gallonage required by the statute, is the standard  
20 fraud or is it just you're wrong?

21                   ATTORNEY REED: I'm not suggesting  
22 that the standard would be fraud. Certainly  
23 projections can be missed, both on an operating  
24 location and a new location.

25                   CHAIRMAN: Right.

1                   ATTORNEY REED: I was utilizing the  
2 term fraud with respect to not only the projections  
3 being made to the Board but also projections being  
4 made to a lender, as a method to allay concerns that  
5 the Applicant isn't simply throwing out - we're hoping  
6 to hit the minimums when there is no bases. It's the  
7 underlying reasons within that affidavit that provide  
8 support for the projections.

9                   CHAIRMAN: And so it's not - I just  
10 want to get this on the record. It's not your  
11 position or Rutter's position that the failure to hit  
12 the targets required by the Act only become operative  
13 if there's a showing fraud in the projections. It  
14 could just be you didn't hit your projections.

15                   ATTORNEY REED: No.

16                   That - that's not what happens. Yes.

17                   CHAIRMAN: Thank you.

18                   At this moment is there any other  
19 questions? I'm going to turn it over to Enforcement  
20 Counsel. Please.

21                   ATTORNEY KOLESAR: Good morning  
22 Chairman and members of the Board. Sarah Kolesar,  
23 K-O-L-E-S-A-R, Assistant Enforcement Counsel with the  
24 Office of the Enforcement Counsel (OEC).

25                   OEC is of the opinion that granting -

1 granting Rutter's request would be unconstitutional  
2 intermingling of independent agency functions, inhibit  
3 OEC and BIE from fulfilling their mandated duties and  
4 would render diesel fuel-sale requirements under the  
5 Act worthless.

6           First, the Act prescribes that OEC act  
7 as an independent entity from the Board responsible  
8 for fulfilling prosecutorial function within the  
9 agency.

10           Further, BIE has always determined the  
11 scope of all background investigations which this  
12 Board has consistently upheld. In this instance,  
13 Rutter's wishes to have the Board limit what  
14 information BIE and OEC may request as part of their  
15 independent review and investigation of Rutter's  
16 applications.

17           OEC is of the opinion that allowing  
18 Rutter's to make this instant request to the Board  
19 prior to the completion of the Board's licensing and  
20 background investigation process would upend the  
21 Board's regulatory process. Granting Rutter's relief  
22 would derail the well-established licensing process  
23 and risk the comingling of independent prosecutorial  
24 and adjudicatory functions within the agency, while  
25 simultaneously creating an unequal and unjust

1 licensing process amongst applicants.

2 BIE and OEC would be unable to  
3 complete their statutorily-mandated duties if the  
4 Board acted to limit those duties in any way.

5 Further, involving the Board in an  
6 investigatory matter prematurely will have a negative  
7 impact on the Board's ability to act as an impartial  
8 Fact-Finder in determining whether an application  
9 should be granted or denied.

10 At this time a recommendation by BIE  
11 or OEC has yet to be made regarding either  
12 application. If Rutter's motion is granted, the Board  
13 would be opening up Pandora's box to countless other  
14 requests for instant gratification.

15 Second, Rutter's is requesting that  
16 locations be licensed prior to being open and  
17 operational. In order to file an application, the  
18 Applicant must meet the physical requirements under  
19 the Act such as having operational diesel islands, 20  
20 parking spaces dedicated for commercial motor  
21 vehicles, a convenience store, a lottery retail  
22 license, at least three acres of land not owned by the  
23 PA Turnpike and appropriate diesel-fuel sales. OEC is  
24 of the opinion that for a VGT Establishment  
25 Application to be deemed complete, the business must

1 be open and operational to establish that the physical  
2 requirements under the Act can be inspected.

3           If the establishment is not open for  
4 business, BIE and OEC are unable to satisfactorily  
5 determine whether the applicant meets this required  
6 statutory criteria, because we would be required to  
7 rely solely on projections and architectural designs.  
8 Any projections or architectural designs relating to a  
9 location that is not open are pure predictions and  
10 conjecture. It cannot solely be relied upon.

11           An inspection by BIE of an operational  
12 business is necessary to determine if the Applicant  
13 meets the requirements of the Act and Board  
14 regulations. Anything less is speculative.

15           An applicant submitting proposals and  
16 schematics cannot establish that an applicant will one  
17 day in the near or distant future be operating and/or  
18 eligible for licensure.

19           In this instance, Rutter's wants to  
20 dictate to the Board how the licensing process should  
21 occur, how BIE should conduct its background  
22 informations and what information OEC should have in  
23 order to make a recommendation to the Board.

24           The Board is tasked with protecting  
25 the public and integrity of gaming in the

1 Commonwealth, which surely outweighs any perceived  
2 personal inconvenience to Rutter's.

3 CHAIRMAN: Before you proceed, will  
4 you just clarify something for me? Isn't there a  
5 difference between a pure schematic drawing and a  
6 building that's 95 percent complete and physically  
7 available for inspection?

8 ATTORNEY PITRE: If that business is  
9 95 percent complete and - and not open for business,  
10 we can't ensure that a convenience store exists  
11 selling prepackaged goods. Now we can, like in the  
12 instance of Store 81 - that application was filed  
13 October 16th, we granted the Conditional License in -  
14 on November 22nd. The Conditional License allows the  
15 Inspector to go out and inspect that facility for  
16 final licensure.

17 Once that inspection is complete, then  
18 we draft a Final Background Investigation Report to go  
19 to the Board. That Final Background Investigation  
20 Report was taken up by this Board in February.

21 So, it's only - it was only a  
22 five-month process from the time that they filed the  
23 application to the time that the license was granted  
24 and - and their full licensure was granted. So, I  
25 think anything - having our Inspectors - our - our

1 employees walk upon in its construction site to ensure  
2 that they meet the requirements of the Act is  
3 premature. I think that the - the store needs to be  
4 complete and I think it needs to be open for business,  
5 i.e., it's operational.

6 CHAIRMAN: Again - yeah, I understand  
7 that. That - that - I understand the position. I'm  
8 just trying to clarify -.

9 ATTORNEY PITRE: And - and we can't -  
10 and we can't guarantee the timeline. We - we  
11 basically - we have over 3,000 investigations going on  
12 as we speak. We can't guarantee that just because  
13 they're 95 percent complete that we'll have the  
14 personnel available to go out and inspect that - that  
15 facility.

16 So, I - I can't leapfrog them in front  
17 of everybody else that we're conducting investigations  
18 on in order to complete because they're 95 percent  
19 complete. So, I can't guarantee that would even take  
20 place.

21 CHAIRMAN: I understand.

22 I'm just trying to get back to the  
23 argument Ms. Kolesar was making with - with the phrase  
24 schematics and projections. And there is a difference  
25 between looking at drawings and looking at a building

1 that might be completely finished, for example.

2 ATTORNEY PITRE: A building that might  
3 be completely finished but not be able to offer the  
4 services that they said they would be - they would be  
5 offering. Because anything could happen from the time  
6 that construction is not complete to the time that it  
7 is complete. That could prolong their construction  
8 even longer.

9 CHAIRMAN: Okay. Thank you.

10 I'm sorry. Please continue.

11 ATTORNEY KOLESAR: Lastly, Rutter's is  
12 requesting that the Board accept their fuel-sale  
13 projections without being required to provide  
14 underlying calculations or any actual sales. This  
15 Board has previously held that there must be  
16 substantial evidence that a prediction on fuel sales  
17 is based on a trend or calculated from information  
18 already known.

19 What Rutter's has provided are mere  
20 conclusory statements, not reliable projections.  
21 Without Rutter's essentially required to show their  
22 work in support of their conclusions and have  
23 appropriate diesel-fuel sales, BIE is incapable of  
24 completing a full background investigation because  
25 Rutter's simply provided no evidence at all much less

1 substantial evidence.

2                   Where a location is not open and  
3 operating or operating with less than three months  
4 diesel-fuel sales, there are no trends and there is no  
5 information. There is only speculation. The Board  
6 has ruled that merely stating a prediction is not  
7 enough to meet the standard. If an applicant is not  
8 operating, BIE and OEC are subject to situations where  
9 a pending application exists, however, the physical  
10 structures and operations do not exist in order to  
11 complete a full background investigation.

12                   Accepting speculative projections with  
13 no history of diesel-fuel sales would lead to an  
14 absurd result where any VGT establishment could simply  
15 state that it will meet the monthly fuel-sale  
16 requirement is the future 12 months without  
17 illustrating actual sales. This result back would  
18 mean that the fuel-sale requirements specifically set  
19 forth in the Act would be rendered worthless.

20                   Overall, Rutter's is essentially  
21 requesting that the Board rely on future events that  
22 have yet to occur and upend the Board's entire  
23 licensing process in order to make the process more  
24 convenient for them.

25                   OEC respectfully requests that the

1 Board deny Rutter's motion and establish regulatory  
2 standards defining acceptable diesel-fuel sale  
3 projections that require no less than three months of  
4 sales to establish a trend, an expert report  
5 confirming and detailing the future fuel-sale  
6 projections with underlying calculations and  
7 supporting methodology and an Affidavit from the  
8 President or Chief Operating Officer attesting to fuel  
9 sales and projected fuel sales.

10                   If you have any questions, we would be  
11 happy to answer them at this time.

12                   CHAIRMAN: Yeah. I - I - I have one.

13                   My question is, what - the projections  
14 are at the time that we would be making the ruling of  
15 whether or not to grant the license, isn't that an  
16 evidentiary question that would be specific to each  
17 application and what evidence has been presented and -  
18 and - and what challenges you might make and perceive  
19 here?

20                   If there's no underlying evidence -.  
21 I'm just trying to follow you. If there's absolutely  
22 no underlying support, other than saying, I'm making  
23 50 - I will be making 50,000 gallons a month - now  
24 explain the basis for that, which is I think what you  
25 were suggesting could happen -. Doesn't that just go

1 to the weight of the evidence of whether or not that  
2 there's substantial evidence to - to support our  
3 findings?

4 ATTORNEY PITRE: It - it does. And  
5 what - what happened is that we denied - we  
6 recommended denial of the application. It goes to a  
7 hearing. By the time it goes to a hearing and makes  
8 its way to the Board, three months have passed. It -  
9 it's a lot - I'm just trying to make the process  
10 simpler.

11 What they - what - what Rutter's fails  
12 to realize and what the VGT applicants fail to realize  
13 is that the process that we set in place is a lot  
14 quicker than the process - the alternative. The  
15 alternative is us issuing a denial letter and going  
16 through a painful long drawn-out hearing. And then  
17 that Report and Recommendation coming before the Board  
18 and then the Board going through a hearing on the same  
19 matter.

20 And by that time we could have gotten  
21 the three months of fuel sales, determined whether or  
22 not they meet the - the - the fuel sales, have a  
23 background investigation to report to the Board and  
24 have them licensed.

25 So, even if they submit calculations,

1 I'm going to challenge those calculations, just  
2 because I don't know the methodology. And if I have  
3 to hire an outside consultant to - to - to - to do  
4 that, then that's what we'll have to do. And so the  
5 expenses grows and grows and grows unnecessarily when  
6 this could be a smooth process that we set up in order  
7 to make sure that these - these facilities get online  
8 quickly.

9 CHAIRMAN: Okay. Thank you.

10 Have a few questions from Mark.

11 MR. MUSTIO: I have two quick  
12 questions, Cyrus. Other than the staffing that you -  
13 issue that you raised, how does the criteria differ as  
14 it relates to drawings and schematics that was used  
15 originally when Category 1 Casinos were going through  
16 the process?

17 ATTORNEY PITRE: How it -?

18 MR. MUSTIO: Right.

19 In other words, I - I assume that  
20 there was a lot of reliance on schematics and drawings  
21 to get Category 1s up and running.

22 ATTORNEY PITRE: That's correct.

23 MR. MUSTIO: And how is that situation  
24 different than what we have now? Is it statutorily  
25 different or just there's just so much more work that

1 you have to do that makes it a little bit more  
2 different now?

3 ATTORNEY PITRE: Well, it's - it's  
4 both, because the statute requires that you have a  
5 truck-stop establishment. The definition of a truck-  
6 stop establishment basically says that they have to be  
7 equipped with diesel islands used for, not will be  
8 used for, used for presently the selling of diesel  
9 fuel. So, that place has to be built, okay, and have  
10 the pumps that are used for the sale of diesel -  
11 diesel fuel. So, the definition of truck-stop  
12 establishment itself presents a current present-day  
13 situation. Okay?

14 Now, the only thing we're asking, and  
15 I think that Rutter's is asking, is for a definition  
16 of projections. And with that definition of  
17 projections, we think that you - you should establish  
18 at least three months of fuel sales in a quarter.  
19 That three months was based upon knowing that if we  
20 just received sole calculations, that it would be a  
21 hearing process, people going through the hearing  
22 process and -.

23 MR. MUSTIO: Okay. Just -.

24 ATTORNEY PITRE: Okay.

25 MR. MUSTIO: One thing -

1                   ATTORNEY PITRE: That's fine.

2                   MR. MUSTIO: - I have a quick question  
3 for Applicant, if that's okay.

4                   Is this store - the - these two stores  
5 that we're discussing here today, are they of unique  
6 design or are they exactly the same design and same  
7 architectural plans that you have for other stores  
8 that you have in operation that may or may not have  
9 VGTs in them?

10                   ATTORNEY REED: Yes.

11                   MR. MUSTIO: Yes, meaning they're  
12 exact or -?

13                   ATTORNEY REED: Yes, they are - I  
14 don't want to say exact, because the interior in a lot  
15 of those might be situated in a different manner, but  
16 the room itself is configured in the exact same  
17 manner. The -.

18                   MR. MUSTIO: The size - the - the  
19 perimeter is the exact same size to other stores?

20                   ATTORNEY REED: The square footage of  
21 the building is the exact same size as -.

22                   MR. MUSTIO: The same exact perimeter,  
23 not square footage? Is the layout the exact same?

24                   In other words, have you gone and  
25 said, you know what, we're going to use the - so we

1 don't have to go through architectural expense we're  
2 going to use the exact same plans that we used in  
3 another store?

4 ATTORNEY REED: Yes.

5 MR. MUSTIO: Thank you.

6 ATTORNEY PITRE: Now, if I may,  
7 Commissioner. Now, we've seen different - we have  
8 different parking designs for different Rutter's  
9 stores all over the Commonwealth. So, all the parking  
10 designs are not the same.

11 MR. MUSTIO: I was just trying to get  
12 to the convenience store issue.

13 ATTORNEY PITRE: Yeah, but -.

14 MR. MUSTIO: Thank you. Thank you.

15 CHAIRMAN: Are there any questions  
16 from the Board at this time? We're going to take a  
17 recess at this point. We'll be back.

18 ---

19 (WHEREUPON A SHORT BREAK WAS TAKEN.)

20 ---

21 CHAIRMAN: We're back on the record.  
22 Before we proceed, I'd like to say an usual thing has  
23 occurred. We had such great arguments from both sides  
24 that you have thoroughly confounded the Board.

25 And the result is we're tabling any

1 decision on this matter for the time being and  
2 hopefully we'll be in the position to come back our  
3 next Public Session and give some guidance to the  
4 parties in this matter. We appreciate the arguments  
5 from both sides.

6 \* \* \* \* \*

7 HEARING CONCLUDED

8 \* \* \* \* \*

9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## CERTIFICATE

I hereby certify that the foregoing proceeding was reported by me on 03/11/2020 and that I, Derek Richmond, read this transcript, and that I attest that this transcript is a true and accurate record of the proceeding.

Dated the 21<sup>st</sup> day of April, 2020



Derek Richmond,  
Court Reporter